

**MERGER NOTICE  
UNDER SECTION 96 OF THE ENTERPRISE ACT 2002  
("NOTICE")**

**ME/6746/18**

**MENZIES AVIATION (UK) LIMITED / PART OF THE AIRLINE  
SERVICES BUSINESS OF AIRLINE SERVICES LIMITED**

**DLA PIPER UK LLP  
3 NOBLE STREET  
LONDON, EC2V 7EE  
UNITED KINGDOM**

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## EXECUTIVE SUMMARY

### The transaction

John Menzies plc ("**Menzies**"), through its wholly owned subsidiary Menzies Aviation (UK) Limited (the "**Purchaser**" or the "**Notifying Party**"), has acquired part of the airline services business of Airline Services Limited (the "**Seller**"), namely that in relation to de-icing, aircraft presentation and ground handling ("**AS**" or the "**Target**") (the "**Transaction**").

The Transaction is primarily complimentary, and the acquisition of the Target provides Menzies with the ability to offer new services or services in locations where Menzies does not operate. Menzies is a global provider of traditional ground handling services (typically comprising baggage, ramp, passenger and airside cargo transport services) with minimal activities in both de-icing and internal presentation services. [X]. AS is a de-icing and aircraft presentation (both internal and external cleaning of aircraft) focussed supplier, with minimal, recent activities in traditional ground handling services. AS is active in ground handling services at only two UK airports, London Gatwick ("**LGW**") and Manchester ("**MAN**"). AS is a very new entrant in ground handling at MAN, having only begun to offer those services in April 2018.

Nevertheless, there are areas of overlap between the activities of Menzies and AS in the provision of ground handling, de-icing and internal presentation at some locations. However, Menzies and AS overlap at only eight airports in the UK (and globally, as AS is not active outside of the UK), while they are only active in overlapping services at five airports. These areas of overlap are described briefly below.

### Overlaps

Menzies considers that the only areas where there are horizontal overlaps with AS would be in the provision of:

- de-icing services at Edinburgh ("**EDI**");
- de-icing services at Glasgow ("**GLA**");
- ground handling services at LGW;
- de-icing services at London Heathrow ("**LHR**"); and
- ground handling and internal presentation services at MAN.

### *Bidding markets*

The Parties have calculated shares of supply by reference to known turns serviced by each competitor currently operationally active at the respective overlap airports. However, in markets such as this (where prices are individually determined on a per contract basis through a bidding process), the shares presented can only offer a working proxy. Indeed, the CMA has previously agreed that market shares are particularly transient in this sector. Customers for the overlap services typically terminate contracts with short notice, and can, and do, invite competitors who may not be operating at an airport to tender. There are very low barriers to switching, indeed the evidence shows that customers regularly switch significant contracts with employees often TUPE'd across to new providers. Equally equipment is readily available. Due to the nature and size of individual airlines at an airport, the loss or gain of a single contract can have a significant change in a competitor's market share.

### *Closeness of competition*

The Parties do not perceive the other to be their closest competitor at any of the overlap airports. Primarily, [§<]. By contrast, [§<].

In *ground handling*, Menzies' main competitors are [§<], with AS historically only active at LGW, having only entered MAN in April 2018. At LGW and MAN there are a sufficient number of handlers that have successfully bid for ground handling contracts historically (even when considered from an individual service line perspective) and a sufficient number of remaining handlers and bidders (and consequential competitive constraint) that will exist post-Transaction.

Considering *de-icing*, AS was traditionally a de-icing and aircraft presentation specialist business, with its main competitors being [§<]. At LHR, there will remain a sufficient number of de-icing providers (or potential providers) following the Transaction (either across the airport or from a terminal-by-terminal perspective). At EDI and GLA, there are notably fewer competitors than at LHR, but this is due to the dynamics at smaller airports, where there simply is not enough business to maintain a large number of de-icers (de-icing is entirely seasonal work). Swissport (which is an established global business offering an identical range of services as the Merged Entity) will remain the strongest competitor at both of these airports, and will certainly constrain the Merged Entity. Furthermore, Menzies only recently began providing de-icing services at GLA following a regional tender for [§<]. The Transaction simply reverts the levels of competition to that which existed before that tender.

Equally, in *internal presentation*, Menzies is a minor player and does not typically do any cleaning at the majority of UK airports. Key competitors of AS are companies like [§<]. The only location where Menzies and AS overlap for internal presentation is at MAN, however at least four competitors will remain at MAN following the Transaction.

### *Competitive constraints*

From the supply side, the markets in question include both independent providers (without corporate ties to airlines) and providers under airline ownership (which typically compete to service third party airlines alongside self-supplying their parent airline). Providers invariably operate across numerous airports throughout the UK (and internationally) and it is the case that competitive constraints are apparent at any particular airport from: (i) those providers that are currently operationally active at that airport; (ii) those providers that are not, but will be known by the airlines from other airports and consequently invited to bid for contracts (particularly given a lack of any barriers to expansion); and (iii) the threat that an airline could turn to self-supplying.

This would be the case at EDI and GLA despite the perceived concentration post-Transaction. In this industry it is common for there to be only one or two providers at small airports. The airlines retain other means of exercising their buyer power (for example, employing numerous contracts with the same providers across different airports, hosting multi-airport tenders on a sole contract basis and the threat of switching to self-supply).

Importantly, since the CMA's consideration of *Menzies / ASIG*, which completed in early 2017, there have been a number of significant and demonstrative examples to support the argument that self-suppliers form one and the same product market with independent third party competitors, and there are recent examples of customers reverting to self-supply from third party supply. The Parties invite the CMA to re-consider its assessment of this part of the product market in *Menzies / ASIG* based on the arguments set out in this Notice.

*No barriers to entry or expansion*

There are low barriers to entry and very low barriers to expansion. The airside components of ground handling, de-icing and internal presentation are licensed businesses, with licences awarded by the relevant airport authority. It is the case that since liberalisation of the ground handling market (by way of the Directive), obtaining a licence to operate at a particular airport is simple and routine and simply represents the means by which the relevant airport authority satisfies itself that a provider is capable of effectively and safely operating (indeed the Parties have shown various and frequent entry into new airports and have no knowledge of a licence not being awarded to a willing entrant).

Further, costs of entry (whether achieved by way of an incumbent transfer<sup>1</sup> or new entry) are nominal (particularly so when achieved by way of an incumbent transfer). Indeed, the nature of competition for the ground handling market is such that, upon successfully bidding for a contract, the incumbent provider's equipment (by asset acquisition) and workforce (by operation of TUPE) will typically be transferred to the successful bidder. The recent entry in October 2017 into UK ground handling by DHL at LGW and AS' entry into ground handling at MAN are just two of the examples mentioned in this submission.

*Airlines' buyer power*

Since the liberalisation of the ground handling market (removing the monopolistic nature of handling at airports across the EEA) airlines have seen an increase in their ability to control the market through the exercise of their significant countervailing buyer power.

Most airlines are international businesses of significant scale that procure services at the multiple airports from which they operate. At any given time they will have in place numerous contracts with a range of different willing providers, all capable of meeting the airline's requirements. Further, the services in question are commodity services perceived as very similar across the range of providers that provide them, such that airlines are not inclined to pay any premium for these non-differentiated services.

As a result, there is a significant degree of knowledge as to the costs of services (particularly so where an airline has self-supplied, even if not at that particular airport) and airlines use that knowledge to drive fierce price competition between bidders and negotiate the best terms. From a provider's perspective, there is little opportunity to achieve good margins (providers face increasing pressure to lower prices and maintain service levels) and few opportunities to innovate. Airlines can and do manipulate the terms of their tender processes and contracts to secure the best value bids. Some choose to procure their services from a sole provider, some procure on an individual service line basis and some choose to partially or wholly self-supply their requirements. Similarly, airlines normally request the right to terminate contracts on between 60 and 90 days' notice and frequently put their requirements out to tender. From a provider's perspective there is, therefore, always a risk that an airline customer may switch to a competitor.

In context, the markets in question are all developing from a 'flooded' market (following liberalisation) to a market in which, by reason of fierce price competition and resulting low margins, organic consolidation has occurred through providers merging operations and some exiting the market. Notably, though, there have been a number of recent entrants, as has been demonstrated below.

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<sup>1</sup> A transfer of the existing provider's assets and workforce

## **Conclusion**

At each of the five overlap airports the Parties argue that sufficient competition will remain and that they are not each other's closest competitor. In this industry the airlines clearly have significant countervailing buyer power with the various providers all offering very similar services. As a result, competition occurs predominantly and invariably on price.

The Transaction does not give rise to a substantial lessening of competition. In particular, the Merged Entity will continue to face fierce competitive constraint from other providers (whether independent or otherwise) and from the very real threat of an airline inviting a 'new' provider to an airport and/or switching to self-supply (a consideration that is increasingly weighing on competitors' minds, due to recent activity in the market). The airlines will continue to exercise their significant countervailing buyer power, such that the Merged Entity will not be in a position to raise prices or relax its service levels to the detriment of any of its customers.

## LIST OF ANNEXES

Annex	Document <sup>2</sup>
2.1	Business Purchase Agreement
2.2	Transitional Services Agreement
2.3	Menzies - Corporate Structure
2.4	ASL - Corporate Structure
8.1	Press Release - <i>Menzies Aviation Acquires Airline Services Limited</i> (5 April 2018)
8.2	RNS Announcement - <i>Menzies Aviation Acquires Airline Services Limited</i> (6 April 2018)
8.3	Menzies' 2017 annual report and accounts
8.4	Menzies' latest management accounts (to February 2018)
8.5	Purchaser's 2016 annual report and accounts
8.6	ASL's 2017 directors' report and financial statements
8.7	AS' latest management accounts (for the eight months to 31 January 2018)
8.8	[ <del>ⓧ</del> ]
8.9	[ <del>ⓧ</del> ]
8.10	[ <del>ⓧ</del> ]
8.11	[ <del>ⓧ</del> ]
8.12	[ <del>ⓧ</del> ]
8.13A	[ <del>ⓧ</del> ]
8.13B	[ <del>ⓧ</del> ]
8.13C	[ <del>ⓧ</del> ]
8.13D	[ <del>ⓧ</del> ]
8.13E	[ <del>ⓧ</del> ]
8.13F	[ <del>ⓧ</del> ]
8.13G	[ <del>ⓧ</del> ]
8.13H	[ <del>ⓧ</del> ]

<sup>2</sup> Where appropriate, the party that produced the Annex has been identified

<b>Annex</b>	<b>Document<sup>2</sup></b>
8.13I	[REDACTED]
8.13J	[REDACTED]
8.13K	[REDACTED]
8.13L	[REDACTED]
8.13M	[REDACTED]
8.13N	[REDACTED]
8.13O	[REDACTED]
9.1	AS - Investment Overview ([REDACTED])
9.2	Menzies - Deal Overview and Integration Plan ([REDACTED])
9.3	Menzies - Board Presentation ([REDACTED])
9.4	PWC - <i>Airline Services: Market review and exit considerations</i> ([REDACTED])
9.5	Airline Services & Components Group Limited - Board Minutes (September 2017)
9.6	Airline Services & Components Group Limited - Board Minutes (November 2017)
9.7	Airline Services & Components Group Limited - Board Minutes (December 2017)
9.8	PWC - Overview of Offers Received ([REDACTED])
10.1	Airbus - Growing Horizons, Global Market Forecast (2017 - 2036) (Presentation)
10.2	Airbus - Growing Horizons, Global Market Forecast (2017 - 2036) (Booklet)
10.3	IATA - Economic Performance of the Airline Industry (December 2017) (Briefing Notes)
10.4	IATA - Economic Performance of the Airline Industry (December 2017) (Presentation)
10.5	IATA - Economic Performance of the Airline Industry (December 2017) (Data)
10.6	Boeing - Current Market Outlook (2017 - 2036) (Summary)
10.7	Boeing - Current Market Outlook (2017 - 2036) (Report)
10.8	FAA Aerospace Forecast (2018 - 2038)
10.9	Menzies - Brand Philosophy and Guidelines for Use
11.1	[REDACTED]
11.2	[REDACTED]
12.1	Menzies - Sub-Contractor Details



Annex	Document <sup>2</sup>
13.1	[X]
15.1A	[X]
15.1B	[X]
15.1C	[X]
15.1D	[X]
15.1E	[X]
15.1F	[X]
15.1G	[X]
15.1H	[X]
15.1I	[X]
15.1J	[X]
15.1K	[X]
15.1L	[X]
15.1M	[X]
15.1N	[X]
15.1O	[X]
15.1P	[X]
15.1Q	[X]
15.1R	[X]
15.1S	[X]
15.1T	[X]
15.1U	[X]
15.2A	[X]
15.2B	[X]
15.2C	[X]
15.2D	[X]

Annex	Document <sup>2</sup>
15.2E	[X]
15.2F	[X]
15.2G	[X]
15.2H	[X]
15.2I	[X]
15.2J	[X]
15.2K	[X]
15.2L	[X]
15.2M	[X]
15.2N	[X]
15.2O	[X]
15.2P	[X]
15.2Q	[X]
15.2R	[X]
15.2S	[X]
15.3A	[X]
15.3B	[X]
15.3C	[X]
15.3D	[X]
15.3E	[X]
15.3F	[X]
15.4A	[X]
15.4B	[X]
15.4C	[X]
15.4D	[X]
15.5A	[X]

Annex	Document <sup>2</sup>
15.5B	[X]
15.5C	[X]
15.5D	[X]
15.5E	[X]
15.5F	[X]
15.5G	[X]
15.5H	[X]
15.5I	[X]
15.5J	[X]
15.5K	[X]
15.5L	[X]
15.5M	[X]
15.5N	[X]
15.6A	[X]
15.6B	[X]
15.6C	[X]
15.6D	[X]
15.6E	[X]
15.6F	[X]
15.6G	[X]
15.6H	[X]
15.6I	[X]
15.6J	[X]
15.6K	[X]
15.6L	[X]
15.6M	[X]

<b>Annex</b>	<b>Document<sup>2</sup></b>
15.6N	[REDACTED]
15.6O	[REDACTED]
15.6P	[REDACTED]
15.6Q	[REDACTED]
15.7	[REDACTED]
15.8	Map of LHR
15.9	[REDACTED]
16.1	Menzies - Tender Data for Overlap Airports
16.2	Menzies - Contracts at Overlap Airports
16.3	AS - Contracts at Overlap Airports
26.1	General Contact Details
26.2	Menzies Contact Details - EDI - De-icing
26.3	AS Contact Details - EDI - De-icing
26.4	Menzies Contact Details - GLA - De-icing
26.5	AS Contact Details - GLA - De-icing
26.6	Menzies Contact Details - LGW - Ground handling
26.7	AS Contact Details - LGW - Ground handling
26.8	Menzies Contact Details - LHR - De-icing
26.9	AS Contact Details - LHR - De-icing
26.10	Menzies Contact Details - MAN - Ground handling
26.11	AS Contact Details - MAN - Ground handling
26.12	Menzies Contact Details - MAN - Internal presentation
26.13	AS Contact Details - MAN - Internal presentation
26.14	Menzies Contact Details - EDI - Ground handling
26.15	Menzies Contact Details - GLA - Ground handling
26.16	Menzies Contact Details - Bristol - Ground handling
26.17	Menzies Contact Details - London Stansted - Ground handling

**LIST OF DEFINED TERMS**

<b>Term</b>	<b>Definition</b>
Aero Mag	Aéro Mag 2000
above wing	services that do not require access to the tarmac or aircraft
Act	the Enterprise Act 2002
AMI	Air Menzies International Limited
Airline Services Interiors	ASL's airline interiors business
AS	part of the airline services business of ASL acquired by the Purchaser
ASL	Airline Services Limited
BA	British Airways (including British Airways and British Airways CityFlyer)
below wing	services which require access to the tarmac and aircraft
BPA	a business purchase agreement entered into between the Purchaser and the Seller on [X]
Candidate Markets	the provision of certain services as described in paragraph 144
CMA	the Competition and Markets Authority
Commission	the European Commission
Directive	Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports
EDI	Edinburgh Airport
EEA	the European Economic Area
EU	the European Union
EU Merger Regulation	Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings
FAA	Federal Aviation Administration
FBO	an organisation appointed by an airport authority to operate at the airport and provide certain services for private charter flights

<b>Term</b>	<b>Definition</b>
GGS	Gatwick Ground Services
GLA	Glasgow Airport
IAG	International Airlines Group
IATA	International Air Transport Association
IDS	Integrated Deicing Services
Jet2	Jet2.com
LDC	Lloyds Development Capital
LGW	London Gatwick Airport
LHR	London Heathrow Airport
MAN	Manchester Airport
Menzies	John Menzies plc
Menzies Aviation	Menzies' aviation business
Menzies Distribution	Menzies' distribution business
Merged Entity	the combination of the Purchaser and the Target following the Transaction
movement signal	post-flight signals that record the number of passengers on board. They are prepared and maintained by the ground handler charged with embarking passengers
Notifying Party	Menzies Aviation (UK) Limited
OFT	the Office of Fair Trading
Overlap Airports	EDI, GLA, LGW, LHR and MAN
Overlap Services	the provision of ground handling, de-icing or internal presentation services, as defined in paragraph 134
Parties	the Purchaser and the Target
Provider	each provider (or potential provider) of an Overlap Service
Purchaser	Menzies Aviation (UK) Limited
self-handling	where airlines service their ground handling requirements themselves and do not procure these

<b>Term</b>	<b>Definition</b>
	services (in whole or in part) from third parties
self-supply	where airlines service their ground handling, de-icing or internal presentation requirements themselves and do not procure these services (in whole or in part) from third parties
Seller	Airline Services Limited
SLA	service level agreement
Stobart	Stobart Aviation Services
Target	part of the airline services business of ASL acquired by the Purchaser
Transaction	the acquisition of the Target by the Purchaser
TSA	a transitional services agreement entered into between the Purchaser and the Seller on 4 April 2018
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UK	the United Kingdom

**PART I GENERAL INFORMATION**

1. Provide the name and contact details of:
- (a) an individual within each of the merger parties;
  - (b) any authorised representatives of each of the merger parties;
  - (c) if not already provided in response to (a) and (b), the person(s) submitting the Notice; and
  - (d) the person to whom the CMA should address any correspondence.

1. The acquiring entity is Menzies Aviation (UK) Limited (the "**Purchaser**" or the "**Notifying Party**"). The primary contact on behalf of the Purchaser is:

Name: [X]  
 Position: [X]  
 Address: Two Lochside Avenue, Edinburgh Park, Edinburgh, EH12 9DJ, United Kingdom  
 Telephone number: [X]  
 Email address: [X]

2. The Purchaser's authorised representative in this matter is DLA Piper UK LLP, which is responsible for submitting the Notice and to which all correspondence should be addressed, c/o [X]. The primary contacts at DLA Piper UK LLP are:

Name: [X]  
 Position: [X]  
 Address: DLA Piper UK LLP, 3 Noble Street, EC2V 7EE, United Kingdom  
 Telephone number: [X]  
 Email address: [X]

Name: [X]  
 Position: [X]  
 Address: DLA Piper UK LLP, 3 Noble Street, EC2V 7EE, United Kingdom  
 Telephone number: [X]  
 Email address: [X]



- Name: [REDACTED]  
Position: [REDACTED]  
Address: DLA Piper UK LLP, 3 Noble Street, EC2V 7EE, United Kingdom  
Telephone number: [REDACTED]  
Email address: [REDACTED]
3. The purchased business was part of the airline services business of Airline Services Limited ("ASL" or the "Seller"). The primary contact on behalf of the Seller is:<sup>3</sup>
- Name: [REDACTED]  
Position: [REDACTED]  
Address: Canberra House, Robeson Way, Sharston Business Park, Manchester, M22 4SX, United Kingdom  
Telephone number: [REDACTED]  
Email address: [REDACTED]
4. The Seller's authorised representative in this matter is Eversheds Sutherland (International) LLP. The primary contacts at Eversheds Sutherland (International) LLP are:
- Name: [REDACTED]  
Position: [REDACTED]  
Address: Bridgewater Place, Leeds, West Yorkshire, LS11 5DR, United Kingdom  
Telephone number: [REDACTED]  
Email address: [REDACTED]
- Name: [REDACTED]  
Position: [REDACTED]  
Address: Bridgewater Place, Leeds, West Yorkshire, LS11 5DR, United Kingdom  
Telephone number: [REDACTED]  
Email address: [REDACTED]
5. The purchased business is the Seller's business in relation to de-icing, aircraft presentation and ground handling ("AS" or the "Target"). The primary contact on behalf of the Target is:
- Name: [REDACTED]  
Position: [REDACTED]  
Address: Canberra House Robeson Way, Sharston Green Business Park, Manchester, M22 4SX

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<sup>3</sup> The Seller respectfully requests that the CMA contacts its authorised representative, Eversheds Sutherland (International) LLP, in the first instance. Appropriate contact details are contained at paragraph 4

Telephone number: [REDACTED]

Email address: [REDACTED]

6. The Target's authorised representative in this matter is DLA Piper UK LLP. The same contact details as have been identified in paragraph 2 above are those to which all correspondence should be addressed.

## PART II MERGER DETAILS

### THE MERGER SITUATION

2. Describe the arrangements by which the enterprises will cease/have ceased to be distinct (the merger), including:

(a) the parties to the merger (the merger parties);

#### Purchaser

7. The Purchaser is a private company limited by shares (incorporated in England and Wales with registration number 03985080).
8. The Purchaser's ultimate controlling entity is John Menzies plc ("**Menzies**"), a public company limited by shares listed on the London Stock Exchange. Menzies' head office is in Edinburgh, UK. Menzies reported turnover of £2,517.7 million for the year ended 31 December 2017 at which time it had approximately 36,000 employees.

#### Seller

9. Airline Services Limited ("**ASL**" or the "**Seller**") is a private company limited by shares (incorporated in England and Wales with registration number 01685094).
10. The Seller's ultimate controlling entity is Lloyds Development Capital ("**LDC**"), the private equity division of Lloyds Bank plc. LDC is active in the private equity mid-market and provides funds for buyouts and development capital transactions in UK unquoted companies.

#### Target

11. The Purchaser has acquired part of the airline services business of the Seller, namely that in relation to de-icing, aircraft presentation and ground handling ("**AS**" or the "**Target**", and together with "**Menzies**", the "**Parties**") (the "**Transaction**").

(b) the type of transaction;

12. ASL (with the assistance of its advisors, PWC) initially produced an investment overview<sup>4</sup> which was sent to [X] companies who expressed an interest in purchasing AS.<sup>5</sup> ASL received offer letters from [X] companies, namely [X] and Menzies.<sup>6</sup> Menzies was selected because it offered the best value and ultimately the opportunity for a smoother sale.
13. The Transaction has been implemented by means of an asset purchase agreement entered into between the Seller and the Purchaser on [X] (the "**BPA**"), pursuant to which the Purchaser has acquired all the relevant assets, contracts and employees relating to the Target. The Consideration (as defined in the BPA) was paid to the Seller's legal representatives on the same date.

<sup>4</sup> See further Annex 9.1

<sup>5</sup> Including Menzies, [X]

<sup>6</sup> The content of these bids is summarised in Annex 9.8

14. Fully executed copies of the BPA and a transitional services agreement entered into on the same date (the "TSA") are enclosed at Annexes 2.1 and 2.2 respectively.

(c) *the consideration;*

15. The Purchaser has acquired the Target for the purchase price of approximately [X], subject to certain adjustments. As set out in paragraph 13, this Consideration (as defined in the BPA) was paid to the Seller's legal representatives on the same date.

(d) *the key terms;*

16. Completion of the Transaction has occurred, and was [X].

(e) *the timing;*

17. The Transaction completed on [X].

(f) *the strategic and economic rationale for the transaction;*

### **Menzies**

18. The Transaction offers Menzies an opportunity, in line with certain key strategic priorities,<sup>7</sup> [X]. In particular, the Transaction offers a significant opportunity to: [X].
19. Notably, the Transaction also offers Menzies the opportunity to transform [X] (see further paragraph **Error! Reference source not found.**).
20. The Transaction also aligns with Menzies' *Excellence Manifesto*, which sets three goals for Menzies and its employees: [X]. In particular, the Transaction will assist Menzies with the second goal, that of offering [X].<sup>8</sup>
21. Further, the Transaction offers Menzies the opportunity to [X] with Menzies' and AS' combined (the "**Merged Entity**") wider, complementary service offering.
22. [X].

### **AS**

23. AS was sold as it was owned by a private equity investor and the sale was a part of the investment process. See further the response to question 11.
24. No detailed analysis was undertaken in respect of the sale of AS or of the offers, where the preferred bid was obvious to ASL (see further paragraph 12). Note that ASL does not generally produce internal analyses and has a limited set of documents relating to the sale of AS in its possession. See further the response to question 9.

<sup>7</sup> Namely: [X]. See further page 3 of Annex 8.8

<sup>8</sup> For more information on Menzies' *Excellence Manifesto*, please see page 4 of Annex 8.8

*(g) whether it is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the CMA and the competition authorities in those jurisdictions; and*

25. The Transaction is not being notified in any other jurisdictions, on the basis that the Target operates solely in the UK and no filings for other jurisdictions are required.

*(h) the ownership structure pre and post-merger, including any pre-merger links between the merger parties.*

26. Please see the following documents:

Annex	Document
2.3	Menzies' pre-Transaction (and post-Transaction) <sup>9</sup> ownership structure diagram
2.4	Target's pre-Transaction ownership structure diagram <sup>10, 11</sup>

27. There are no structural links pre-Transaction between the Parties, although there are various instances where the Target has provided services to customers of Menzies Aviation (defined in paragraph 29) as a sub-contractor (see further paragraphs 102 to 105 below).

3. *Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).*

### **Menzies**

28. Menzies (the Purchaser's ultimate controlling entity) is a public company limited by shares listed on the London Stock Exchange.
29. Menzies is divided into its aviation business ("**Menzies Aviation**") and its distribution business ("**Menzies Distribution**").

### *Menzies Aviation*

30. Menzies Aviation is further divided into four business units:
- ground handling (which is the only area of overlap with the Target);
  - cargo handling;
  - cargo forwarding; and
  - fuelling.

<sup>9</sup> As Menzies has acquired AS via an asset purchase

<sup>10</sup> As far as the Notifying Party is aware, as at the date of the Transaction, LDC (Nominees) Limited (a wholly owned subsidiary of Lloyds Development Capital (Holdings) Limited, which is in turn a wholly owned subsidiary of LBG Equity Investments Limited) was the majority shareholder in, and only 'person with significant control' of, Airline Services and Components Group Limited, the holding company of the ASL corporate group

<sup>11</sup> This excludes Airline Services Technics Limited, a dormant subsidiary of Airline Services Holdings Limited

31. The *ground handling business unit* operates at [X] airports in [X] counties. It is supported by approximately [X] staff and offers a 'menu' of services to over [X] airline customers. It handles approximately [X] flights annually. The menu of services offered includes passenger handling services which include ticket desk, boarding, dispatch, passenger lounge, baggage reclaim and lost baggage services. Further, the ground handling business unit offers aircraft 'turnaround' services, including load control, baggage loading and unloading, passenger and baggage transfer, towing and push-back, cabin cleaning and de-icing services (these latter services require access to the ramp at a particular airport, for which a ramp (or 'airside') licence is required for security reasons).
32. The *cargo handling business unit* operates at [X] facilities located around the world and offers 'intermediary' services to customers that require goods to be transported by air. It handles approximately [X] annually. [X].
33. The *cargo forwarding business unit* is independently operated by Menzies' subsidiary Air Menzies International Limited ("AMI"). AMI offers 'neutral' air-freight wholesaling services where it does not directly offer freight-forwarding services (and, therefore, does not compete with those airlines that directly offer these services which might otherwise be customers of Menzies Aviation). [X].
34. The *fuelling business unit* operates at [X] airports located around the world. It is supported by approximately [X] staff, handling approximately [X] flights annually, and dispensed approximately [X] litres of fuel in the eleven months to December 2017. The business unit provides into-plane fuelling for airlines (dealing with delivery of fuel to individual aircraft in preparation for their upcoming journeys) and fuel farm management (the storage, management and accounting of fuel supplies on airport campuses).

#### *Menzies Distribution*

35. The Menzies Distribution division operates logistics and fulfilment services across the UK from a network of [X] depots and is supported by approximately [X] staff. Similarly to AMI, Menzies Distribution acts as a 'neutral' consolidator for some of the UK's major parcel networks and further acts as a collecting service for online retail exporters. Menzies Distribution is unaffected by the Transaction and is not considered further in this Notice.

#### **Target**

36. Prior to the Transaction, AS was a trading division of ASL, which is a subsidiary of a holding company called Airlines Services Holdings Limited. Immediately prior to [X], and the current Transaction, ASL was divided into its handling business (AS) and its interiors business ("**Airline Services Interiors**").

#### *AS*

37. AS provides de-icing and aircraft presentation services to over [X] airlines at [X] UK airports (including [X] international and regional airports, and [X] satellite airports), but only carries out ground handling services at [X] of those airports (one of which it only entered in April 2018). It also carries out minimal supervision and warehousing and airside storage facilities services. AS employees around [X] employees.

#### *Airline Services Interiors*

38. Airline Services Interiors designs and manufactures aircraft interior products. It redesigns, refurbishes and upgrades cabin interiors, passenger seating and in-flight entertainment. It also

repairs and maintains aircraft seats and galley equipment and supplies engineered parts. Airline Services Interiors is based exclusively in Sharston, Manchester, where it employs between [X] employees at any given time.

39. On [X], Airline Services Interiors was sold to [X]. Airline Services Interiors is unaffected by the Transaction and is not considered further in this Notice.

4. *Provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by:*

(a) *either of the merger parties in the last two years which involve the products or services in any Candidate Market identified in response to question 13; and*

(b) *both or all merger parties in the last two years (that is, where the merger parties were party to the same transaction).*

40. With the exception of *Menzies / ASIG*,<sup>12</sup> which was examined by the Competition and Markets Authority ("CMA") between October 2016 and April 2017, Menzies has not undertaken any acquisitions or sales which involved airline services in the UK in the last two years.

41. The Target has not undertaken any transactions which involved airline services in the last two years with the exception of, as discussed in paragraph 39 above, ASL's sale of Airline Services Interiors to [X].

42. The Parties have not been parties to the same corporate transaction in the last two years.

## JURISDICTION

5 *Explain why:*

(a) *a relevant merger situation (as per section 23 of the Act) has been created; or*

(b) *arrangements are in progress or contemplation which will result in the creation of a relevant merger situation.*

43. The Transaction has been effected by way of the BPA, pursuant to which Menzies has acquired the Target indirectly through the Purchaser. Menzies and the Target have, therefore, upon completion of the Transaction, ceased to be distinct within the meaning of section 26 of the Enterprise Act 2002 (the "Act").

44. Furthermore, while the Target's UK turnover is not sufficient to constitute a relevant merger situation under section 23(1) of the Act, the Transaction does constitute a relevant merger situation under section 23(2) of the Act, by virtue of the overlap between Parties in relation to certain services they both provide.

<sup>12</sup> ME/6639/16 - *Anticipated acquisition by Menzies Aviation plc and Menzies Aviation Inc. of ASIG Holdings Limited and ASIG Holdings Corp.*

6. *Indicate the annual UK, EEA, and worldwide turnover in the last financial year associated with each of:*
- (a) *the acquirer (including group companies where relevant), and*
- (b) *the target (if not already provided under question 5).*

### **Menzies**

45. Menzies (the ultimate parent and controlling entity of the Purchaser) reported turnover in its annual accounts for the year ended 31 December 2017 as follows:

<b>Geography</b>	<b>Turnover (m)</b>
<i>UK</i>	<i>£1,499.9</i>
<i>EEA</i>	<i>£1,720.1</i>
<i>Worldwide</i>	<i>£2,517.7</i>

### **Target**

46. The pro-forma turnover attributable to the Target only, which was all in the UK in the year ended 30 April 2017 was [§<].<sup>13</sup>

7. *Explain why the transaction is not subject to the European Union Merger Regulation (EU Merger Regulation), (highlighting whether it is notifiable in the UK by virtue of the 'two-thirds' rule in article 1(2) or 1(3) of that Regulation).*

47. The Target's Community-wide turnover generated in the last financial year did not exceed EUR 100 million<sup>14</sup> and the relevant thresholds under Article 1(2) and 1(3) of the EU Merger Regulation are not, therefore, met. As a result, the Transaction is not subject to the EU merger control regime.
48. The Transaction is not, therefore, notifiable in the European Union ("EU") by virtue of the 'two-thirds' rule in Articles 1(2) and/or 1(3) of the EU Merger Regulation. Rather, it is notifiable in the UK by virtue of section 23 of the Act as discussed in response to question 5 above.

<sup>13</sup> Please note that ASL sold the other business that it carried out, Airlines Services Interiors, in [§<]. See further paragraphs 38 and 39

<sup>14</sup> Applying the appropriate European Central Bank conversion rates for the relevant periods



### PART III SUPPORTING DOCUMENTS

8. Provide:

(a) a press release or report and details of any notifications to listing authorities (for example, for admission to the UK Listing Authority Official List and for admission to trading on the London Stock Exchange) or other documentation evidencing that the merger (or merger proposal) has been made public, and

(b) a copy of the documents bringing about the merger situation, including any heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the CMA informed of any subsequent changes to the document.

(c) If the offer is subject to the City Code, copies of the Offer Document and Listing Particulars. If these are not yet available, provide copies of the latest drafts and supply the final versions as soon as they are issued.

(d) for each of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger), the most recent annual report and accounts and last set of monthly management accounts.

(e) copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger). Where any horizontal overlap or vertical relationship involves, for example, a specific division or brand of one or both of the merger parties, a business plan for the relevant division or brand should be provided as well.

49. Please see the following documents:

Annex	Document
<i>Question 8(a)</i>	
8.1	Press Release - <i>Menzies Aviation Acquires Airline Services Limited</i> (5 April 2018) <sup>15</sup>
8.2	RNS Announcement - <i>Menzies Aviation Acquires Airline Services Limited</i> (6 April 2018) <sup>16</sup>
<i>Question 8(b)</i>	
2.2	the BPA
<i>Question 8(c)</i>	
N/A	Not applicable
<i>Question 8(d)</i>	
8.3	Menzies' 2017 annual report and accounts <sup>17</sup>

<sup>15</sup> Also found at: <http://menziesaviation.com/news/menzies-aviation-acquires-airline-services-limited/>

<sup>16</sup> Also found at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/MNZS/13594186.html>

Annex	Document
8.4	Menzies' latest management accounts (to February 2018) <sup>18</sup>
8.5	The Purchaser's 2017 annual report and accounts <sup>19</sup>
8.6	ASL's 2017 directors' report and financial statements
8.7	AS latest management accounts (for the eight months to 31 January 2018)
<i>Question 8(e)</i>	
8.8	[REDACTED]
8.9	[REDACTED] <sup>20</sup>
8.10	[REDACTED], <sup>21</sup> for 1 May 2018 to 30 April 2019
8.11	[REDACTED], <sup>22</sup> for 1 May 2018 to 30 April 2019
8.12	[REDACTED], <sup>23</sup> for 1 May 2018 to 30 April 2019

50. Further, though not strictly responsive to this question, see also the following documents, which are Menzies' *Aviation Business Reviews* for the last twelve months:

Annex	Document
8.13A	[REDACTED]
8.13B	[REDACTED]
8.13C	[REDACTED]
8.13D	[REDACTED]
8.13E	[REDACTED]
8.13F	[REDACTED]
8.13G	[REDACTED]
8.13H	[REDACTED]

17 See also: <http://www.johnmenziesplc.com/media/1984/annual-report-and-accounts-fy17.pdf>

18 [REDACTED]

19 [REDACTED]

20 This document was prepared by [REDACTED] (prior to the inception of the Transaction) in its capacity as a consultant to Menzies Aviation. Menzies respectfully requests that the references to [REDACTED] and formatting of the document (which do not form any part of the substantive content) are disregarded

21 Including all airports and head office

22 In relation to [REDACTED]

23 In relation to [REDACTED]

Annex	Document
8.13I	[X]
8.13J	[X]
8.13K	[X]
8.13L	[X]
8.13M	[X]
8.13N	[X]
8.13O	[X]

9. *Provide copies of any documents in either of the merger parties' possession which:*
- (a) *have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of either merger party (whether prepared internally or by external consultants), and*
- (b) *either:*
- (i) *set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for, the acquisition), or*
- (ii) *assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties and in either of their possession that specifically relate to the sale of the target. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.*

*Indicate (if not contained in the document itself) the date of preparation and the identity and role of the author(s) within the merger parties or external consultants.*

51. Please see the following documents:

Annex	Document
9.1	ASL - Investment Overview ([X])

Annex	Document
9.2	Menzies - Deal Overview and Integration Plan ([REDACTED])
9.3	Menzies - Board Presentation ([REDACTED]) <sup>24</sup>
9.4	PWC - <i>Airline Services: Market review and exit considerations</i> (November 2016)
9.5	Airline Services & Components Group Limited - Board Minutes (September 2017)
9.6	Airline Services & Components Group Limited - Board Minutes (November 2017)
9.7	Airline Services & Components Group Limited - Board Minutes (December 2017)
9.8	PWC - Overview of Offers Received (13 March 2018)

52. Note that ASL does not generally produce internal analyses and has a limited set of documents relating to the sale of AS in its possession. ASL has made enquiries of its remaining senior managers in respect of question 9 and has provided Annex 9.1 and Annexes 9.4 to 9.8 in response.<sup>25</sup>

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<sup>24</sup> Redacted for legal advice privilege

<sup>25</sup> Note that this excludes any documents which are legally privileged (to the extent that they would be relevant)

10. Provide copies of documents (including, but not necessarily limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which:

(a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management of either merger party (whether prepared internally or by external consultants), and

(b) set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to question 12 below.

53. Note that the documents provided in response to this question are updates to the documents provided in relation to the same question in *Menzies / ASIG*. The documents were selected for *Menzies / ASIG* because, aside from Annex 10.9 (*Menzies' Brand Philosophy and Guidelines for Use*), these are all industry recognised reports that are produced for the purposes of the various entities noted (for example, Airbus, IATA and Boeing). They were selected as they are the most relevant industry recognised reports for global aviation growth forecasts within *Menzies'* possession.

54. Of these third party reports, none have been prepared by *Menzies* or for *Menzies*. As such, they have not been prepared by or for any member of the board of directors (or equivalent body) or senior management of *Menzies*, but may have, at one time or another, been read and considered by some of *Menzies'* commercial personnel when preparing business plans or forecasts.

55. Please see the following documents:

Annex	Document
10.1	Airbus - Growing Horizons, Global Market Forecast (2017 - 2036) (Presentation)
10.2	Airbus - Growing Horizons, Global Market Forecast (2017 - 2036) (Booklet)
10.3	IATA - Economic Performance of the Airline Industry (December 2017) (Briefing Notes)
10.4	IATA - Economic Performance of the Airline Industry (December 2017) (Presentation)
10.5	IATA - Economic Performance of the Airline Industry (December 2017) (Data)
10.6	Boeing - Current Market Outlook (2017 - 2036) (Summary)
10.7	Boeing - Current Market Outlook (2017 - 2036) (Report)
10.8	FAA Aerospace Forecast (2018 - 2038)
10.9	<i>Menzies</i> - Brand Philosophy and Guidelines for Use

56. See also Annexes 9.1 and 9.4, as provided in response to question 9 of this Notice. Note that, beyond these two documents, AS does not have anything relevant as it did not purchase third party reports and it did not need to conduct such analysis given its internal expertise and knowledge of the market.

## PART IV COMPETITION ASSESSMENT

## COUNTERFACTUAL

11. *If the notifying parties consider that the CMA should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the notifying parties consider it should be used for that assessment.*

57. [REDACTED].

58. [REDACTED].

59. Any alternative acquisition of the Target would have most likely been to an existing airport services operator (like Menzies) who could leverage the merger's cost efficiencies and economies of scale. However (unlike Menzies) other such buyers may have had to withdraw from certain services and from certain airports as part of such an acquisition. As can be seen from the list of potential buyers, these were a mix of companies focussed on ground handling and those focussed on cleaning and other airport services (see further footnote 5 above). These companies would not have necessarily continued AS' current service offering or geographical spread. For example, the Notifying Party notes that [REDACTED] and, without an existing equivalent business, a cleaning focussed company would likely have exited this market following its acquisition of AS.

60. [REDACTED]<sup>26</sup>.

## MARKET DEFINITION

12. *Describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have a vertical relationship, or where they supply related products/services.*

**Overlap product market(s)**

61. The Parties are both active in the provision of a range of airport services to airlines, and although they do overlap at various UK airports and in some services, for the most part [REDACTED], while [REDACTED].

62. As is discussed in detail in response to question 13 below, the term 'ground handling services' can encompass a wide range of separate services, broadly split into the following categories:

- *baggage handling services* comprise the loading and unloading of baggage from an aircraft, handling baggage in the sorting area, sorting it, preparing it for departure and transporting it from the sorting area to the reclaim area;
- *passenger handling services* comprise reservation and ticketing, supervision management, check-in services, basic security services, arrival and departure services, aircraft boarding and passenger lounge facilities;

<sup>26</sup> A turn is an industry term used to mean the servicing of the arrival and subsequent departure of an aircraft

- *ramp handling services* comprise aircraft loading and unloading, marshalling, push-back and towing, aircraft presentation, toilet and water servicing, de-icing, airport transportation (for both crew and passengers), freight and baggage transfer and traffic operations (comprising flight documentation and planning, crew briefing, weight and balance, load planning, ground to air communication and flight supervision); and
  - *airside cargo transport services* consist of the transportation of cargo between the aircraft and a cargo handler's warehouse.
63. These services all (with the exception of some passenger handling services) require a "**ramp licence**" (also called an "**airside licence**") to access the tarmac and aircraft and are often referred to as "**airside**" services by reason of this licensing requirement.
64. However, the Parties do not consider that it is an accurate representation of the market to simply include all services within these four broad categories within the definition of ground handling services, primarily because the Parties believe that de-icing and aircraft presentation services (in particular) fall within different (and separate) product markets. Note that:
- *de-icing services* consist of the storage and use of de-icing fluid to remove ice from the wings and engines of aircraft. De-icing fluid is stored in storage tanks located at an airport and then dispensed to de-icing rigs which are used to spray aircraft. Typically a de-icing service provider will own its own storage tanks, though it can also purchase de-icing fluid from other de-icers where it does not have the capability to store de-icing fluid on-site; and
  - *aircraft presentation services* are split into internal presentation and external presentation services. In the case of internal presentation services, these can include interior cleaning, seat cover changing, carpet fitting, leather seat cover cleaning and maintenance and disinfection, though many providers will only focus on interior cleaning. In the case of external presentation services, these are exterior washing and polishing (see further paragraph 95).
65. Moreover, while it is a traditional ground handling service, the Parties consider that airside cargo transport services could be deemed to be a separate product market to baggage, passenger and ramp handling services because it is required at a smaller number of locations, services different businesses and, at LHR, uses different equipment.<sup>27</sup> However, the Parties do not consider that the segmentation of airside cargo transport services from baggage, passenger and ramp services is relevant to the CMA's assessment of the Transaction and accordingly it has not been considered in detail in this Notice. Consequently, the CMA can keep the market definition open in this regard, as it will not impact its review of the Transaction.
66. In a similar fashion, while the provision of lounge services could be considered to be a traditional ground handling function, it is a bespoke offering which is often provided by independent lounge operators such as Restaurant Associates or Baxters. The provision of lounge services is not integral to a ground handler's business and indeed, few ground handlers are active in providing this service. The Parties do not consider that it should be included within the market definition for ground handling services, though they note that the CMA's assessment would not change by virtue of doing so. Consequently, the CMA can also keep the market definition open in this regard, as it will not impact its review of the Transaction.

27

At LHR, airside cargo transport is carried out using flatbed and box trucks, rather than tow tugs and cargo dollies (as at every other UK location where it is required). This is due to local restrictions imposed by the airport authority, which govern what equipment can be taken through a tunnel under one of the runways

67. Therefore, while it is the Parties' experience that most baggage, passenger and ramp services are typically grouped together for the purpose of contracting with customers (despite some not requiring a licence),<sup>28</sup> there are exceptions to this including de-icing services and internal and external aircraft presentation services. Note that Menzies does not undertake any external presentation services in the UK and so this product market is not considered substantively in this section. Rather, it is considered in the *Non-overlap product market(s)* section below.
68. The basic reasoning behind this assertion is that, for both de-icing services and internal presentation services, these can be tendered for on a separate basis and can be provided by a different set of competitors. Furthermore, for internal presentation services (which can be done on each turn of the aircraft), it is the Parties' experience that these services can be an 'after thought' for smaller airlines as they do not focus on these services when tendering. See further the response to question 13 for the Parties' reasoning.
69. Consequently, and as is discussed in response to question 3 above, the Parties overlap in the provision of ground handling services (including overlaps in all of baggage, passenger, ramp and air cargo transport services), de-icing services and internal presentation services. However, in the case of the former, AS provide these at just two UK airports (one of which it only entered in April 2018), while in the case of the latter two services, [X].
70. The Parties submit, therefore, that for the purposes of reviewing the Transaction, the appropriate frames of reference should be:
- **"ground handling services"** (comprising baggage handling, passenger handling, ramp handling (with the exception of de-icing and presentation services) and airside cargo transport services) to all airlines;
  - **"de-icing services"** to all airlines; and
  - **"internal presentation services"** to all airlines.
71. As discussed in response to question 13 below, the European Commission's (the "**Commission**") and the CMA's decisional practice supports this frame of reference.

#### **Overlap geographic market(s)**

72. As is discussed in response to question 3 above, Menzies is active through its ground handling business unit at approximately [X] airports worldwide, including eleven airports in the UK. AS is active at sixteen airports, and only in the UK.
73. While Menzies provides ground handling services under its global brand, AS provides its services under a national brand, and as such they only overlap at certain UK airports.
74. The Parties submit, therefore, that the Transaction does not raise any issues at either the global level or the national level. As a result, the Parties consider that the CMA can leave open the question of whether the Transaction should be assessed on a global or national basis.
75. The narrowest geographical markets against which the CMA could assess the Transaction are the individual airports at which the Parties compete in the UK. The Parties therefore consider that the appropriate frames of reference against which the CMA should assess the Transaction

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<sup>28</sup> Though note that some airlines divide services into separate contracts and different handlers may, therefore, perform different functions for the same airline



are the individual airports, although clearly in assessing competition at an individual airport, an important factor is the ease of entry and exit by other service providers and the fact that airlines can and do invite service providers that are not currently operationally active at the airport in question to bid.

### **Overlaps between the Parties**

76. The table below sets out, for airports where one or both of the Parties is active in the UK, the services that are provided by both of the Parties. It highlights where they overlap in terms of service provision at individual airports (in orange), while also identifying which airports have only one active Party (in grey) (either in the services listed or in other services, such as fuelling for Menzies or external presentation for AS).<sup>29</sup> Broadly speaking it shows that while Menzies is much more focussed on providing the various typical ground handling services (baggage handling, passenger handling, ramp handling and airside cargo transport), AS is more focussed on de-icing and internal presentation services (the exception being London Gatwick and Manchester).

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<sup>29</sup> This colour coding is used throughout the Notice

**Table 12.1: Airport and Service Overlaps between Menzies and AS**

			Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
Aberdeen	ABZ	Menzies	✓	✓	✓	✓	✓	✗
		AS	✗	✗	✗	✗	✗	✗
Birmingham	BHX	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✓	✓
Bristol	BRS	Menzies	✓	✓	✓	✗	✗	✗
		AS	✗	✗	✗	✗	✓	✓
Cardiff	CWL	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✗	✗
Edinburgh	EDI	Menzies	✓	✓	✓	✓	✓	✗
		AS	✗	✗	✗	✗	✓	✓
Exeter	EXE	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✓	✓	✗	✓	✓
Glasgow	GLA	Menzies	✓	✓	✓	✓	✓	✗
		AS	✗	✗	✗	✗	✓	✓
Isle of Man	IOM	Menzies	✓	✓	✓	✓	✓	✗
		AS	✗	✗	✗	✗	✗	✗
Liverpool John Lennon	LPL	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✓	✓
London City	LCY	Menzies	✗	✓	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✗	✗
London Gatwick	LGW	Menzies	✓	✓	✓	✓	✗	✗
		AS	✓	✓	✓	✓	✓	✓
London Heathrow	LHR	Menzies	✓	✓	✓	✓	✓	✓
		AS	✗	✗	✗	✗	✓	✗
London Luton	LTN	Menzies	✓	✓	✓	✓	✗	✗
		AS	✗	✗	✗	✗	✓	✗
London Stansted	STN	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✓	✓
Manchester	MAN	Menzies	✓	✓	✓	✓	✗	✓
		AS	✓	✓	✓	✓	✓	✓
Newcastle	NCL	Menzies	✗	✗	✗	✗	✗	✗
		AS	✗	✗	✗	✗	✓	✓

			Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
Newquay <sup>30</sup>	NQY	Menzies	X	X	X	X	X	X
		AS	X	X	X	X	X	✓
Southend	SEN	Menzies	X	X	X	X	X	X
		AS	X	X	X	X	X	✓

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<sup>30</sup> Note that [X]

77. As demonstrated, the Parties overlap in the provision of:
- de-icing services at Edinburgh ("EDI");
  - de-icing services at Glasgow ("GLA");
  - baggage handling, passenger handling, ramp handling and air cargo transport services at London Gatwick ("LGW");
  - de-icing services at London Heathrow ("LHR"); and
  - baggage handling, passenger handling, ramp handling, air cargo transport and internal presentation services at Manchester ("MAN"),
- which, together, are referred to throughout the Notice as the five "Overlap Airports".

78. The Parties' *total turnover* in the UK for each service identified in paragraph 70 above is set out below.<sup>31</sup>

**Table 12.2: Total Ground Handling, De-icing and Aircraft Presentation Turnover in UK by Service (in £'000)<sup>32</sup>**

[REDACTED]<sup>33</sup>

79. The Parties' *total turnover* at each of the five Overlap Airports is set out below.

**Table 12.3: Total Turnover by Airport (in £'000)**

[REDACTED]<sup>34</sup>

80. The Parties' *ground handling turnover* at each of the Overlap Airports is separately set out below.

**Table 12.4: Total Ground Handling Turnover by Airport (in £'000)**

[REDACTED]<sup>35, 36</sup>

81. The Parties' *de-icing turnover* at each of the Overlap Airports is separately set out below. Note that Menzies [REDACTED] (see further the section on vertical relationships at paragraph 102). Accordingly, Menzies generates turnover from de-icing at EDI ([REDACTED]) of its total local turnover

<sup>31</sup> Note that the turnover figures contained within Tables 12.2 to 12.6 do not typically include the turnover attributable to sub-contracts (see further paragraphs 102 to 105), though the approach is not always consistent, in particular where Menzies sub-contracts as part of its turnaround rates

<sup>32</sup> Note that Menzies' figures cover only internal presentation turnover (it is not active in external presentation services in the UK) while AS' figures cover all aircraft presentation services turnover. Though it is not possible to split AS' aircraft presentation services turnover further (i.e. by internal and external presentation), AS estimates on an approximate basis that its total external presentation turnover in the UK over the last three years would be on average less than [REDACTED] per annum

<sup>33</sup> Note that AS only had a six month accounting period in FY 2015

<sup>34</sup> Note that AS only had a six month accounting period in FY 2015

<sup>35</sup> Note that AS only had a six month accounting period in FY 2015

<sup>36</sup> Note that AS entered ground handling at MAN in April 2018 following its win of the Flybe MAN contract

can be attributed to de-icing), GLA ([REDACTED]) of its total local turnover can be attributed to de-icing) and LHR ([REDACTED]) of its total local turnover can be attributed to de-icing).

**Table 12.5: Total De-icing Turnover by Airport (in £'000)**

[REDACTED]<sup>37, 38</sup>

82. The Parties' *aircraft presentation turnover* at each of the Overlap Airports is separately set out below. As is shown, Menzies generates [REDACTED] revenue from internal presentation services at LHR ([REDACTED] of its total local turnover can be attributed to internal presentation) and MAN ([REDACTED] of its local turnover can be attributed to internal presentation).<sup>39</sup>

**Table 12.6: Total Presentation Turnover by Airport (in £'000)<sup>40</sup>**

[REDACTED]<sup>41</sup>

83. Furthermore, please see Table 12.7, which consolidates Tables 12.3 to 12.6 into one table that illustrates the Parties' turnover by Overlap Airport, plus Birmingham, London Stansted and Bristol.

**Table 12.7: Parties' Turnover by Airport in 2017 (in £'000)**

[REDACTED]<sup>42, 43, 44, 45, 46</sup>

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37 Note that [REDACTED]. See further the section on vertical relationships

38 Note that AS only had a six month accounting period in FY 2015

39 [REDACTED]. See further Annex 12.1

40 Note that Menzies' figures cover only internal presentation turnover (it is not active in external presentation services in the UK) while AS' figures cover all aircraft presentation services turnover. Though it is not possible to split AS' aircraft presentation services turnover further (i.e. by internal and external presentation), AS estimates on an approximate basis that its total external presentation turnover in the UK over the last three years would be on average less than [REDACTED] per annum

41 Note that AS only had a six month accounting period in FY 2015

42 Excluding fuelling

43 AS' figures cover all aircraft presentation services turnover and though it is not possible to split AS' aircraft presentation services turnover further (i.e. by internal and external presentation), AS estimates on an approximate basis that its total external presentation turnover in the UK over the last three years would be on average less than [REDACTED] per annum

44 Note that AS entered ground handling at MAN in April 2018 following its win of the Flybe MAN contract

45 Note that Menzies has since exited London Stansted. See further paragraph 127

46 See further footnote **Error! Bookmark not defined.**

84. Moreover, the airports where Menzies is least active in the Overlap Services are as follows (listed with smallest first, based on turns):

- *ground handling services* - [REDACTED];
- *de-icing services* - [REDACTED]; and
- *internal presentation services* - [REDACTED],<sup>47</sup>

while the airports where AS is least active in the Overlap Services are as follows (listed with smallest first, based on turns):<sup>48</sup>

- *ground handling services* - LGW ([REDACTED]) and MAN ([REDACTED])<sup>49;50</sup>
- *de-icing services* - [REDACTED]; and
- *internal presentation services* - [REDACTED].

85. Paragraph 84 emphasises the complementary nature of the Transaction. Menzies is a global provider of traditional ground handling services [REDACTED],<sup>51</sup> while AS is a de-icing and aircraft presentation (both internal and external cleaning of aircraft) focussed supplier, with minimal, recent activities in traditional ground handling services.<sup>52</sup>

#### **Non-overlap product market(s)**

##### *Fuelling services*

86. Menzies is active in the provision of fuelling services whereas AS is not and never has been.
87. Fuelling services comprise: (i) the organisation and execution of airport fuelling and defuelling operations, including the storage and stewardship of fuel at airport 'fuel farms' and the onward delivery of fuel to the aircraft; and (ii) the handling and control of the quality / quantity of fuel deliveries into the aircraft, as well as the replenishing of oil and other fluids. A fuelling services provider may participate in one or both of the fuel farm and into-plane fuelling operations at any one airport. A licence is required in order that a fuelling services provider has access to the tarmac and aircraft in order to provide the fuelling services.
88. The CMA considered fuelling services in its recent *Menzies / ASIG* decision. Given the lack of overlap in fuelling services, this does not need to be considered any further by the CMA in this case.

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<sup>47</sup> [REDACTED].

<sup>48</sup> Note that, because the relevant information was not available from AS, its figures for de-icing and internal presentation have been calculated by summing the OAG reported turns for each of its known customers. The discrepancy in order to that previously submitted between [REDACTED] for de-icing is likely to be due to the proportion of de-icing events (and therefore revenue) relative to serviceable turns at each airport ([REDACTED]).

<sup>49</sup> Though AS only entered the MAN ground handling market in April 2018

<sup>50</sup> [REDACTED]

<sup>51</sup> [REDACTED]

<sup>52</sup> Indeed, it is only active in ground handling at two UK airports, LGW and MAN, the latter of which it only entered in April 2018

*Landside cargo transport services*

89. Menzies (through its cargo handling and cargo forwarding business units) is active in the provision of landside cargo transport services (which are different to airside cargo transport services, as considered in the *Overlap product market(s)* section above) whereas AS is not.
90. Landside cargo transport services comprise cargo terminal operations, warehousing and inventory control, cargo security, handling of dangerous goods, documentation for import and export, customer clearance, global cargo tracking and live animal management. Different to other ground handling services, landside cargo handlers do not require access to the tarmac and aircraft (as they will typically pass cargo to an airside cargo transport services handler) and no licence is, therefore, required.
91. The Parties consider that landside cargo transport services form a distinct product market. Importantly, no licence is required to provide these services<sup>53</sup> and although (as is the case for Menzies at LHR) ground handlers may provide both airside and landside cargo transport services, there is no obvious reason that they form part of one and the same product market. Rather, the need for a licence to provide airside cargo transport services suggests that a delineation is indeed appropriate. Note that, in the case of Menzies at LHR, [X] (as discussed in response to question 3 above).
92. The decisional practice supports the Parties' views. Landside cargo transport services were distinguished by the Commission in *LBO France / AviaPartner* and in *Swissport / Servisair* as a specific and separate product market.<sup>54</sup> Landside cargo transport services have further been distinguished from 'offline' cargo transport services<sup>55</sup> by the French competition authority in its review of the *Vinci / France Handling* transaction,<sup>56</sup> although this delineation has previously been left open by the Commission<sup>57</sup> and has not been considered by the CMA in its decisional practice regarding similar transactions to date.
93. It is the Parties' view, however, that the CMA can leave the market definition open in relation to landside cargo transport services as no competition concerns arise on any market definition.

*External presentation services*

94. AS is active in the provision of external presentation services whereas Menzies is not (in the UK).
95. External presentation services consist, simply, of the cleaning the outside of an airplane, whether in a hanger or on the tarmac. This service is not done on every turn. The Parties consider that external presentation services form a distinct product market (particularly from internal presentation services). A licence is required in order that a service provider has access to the tarmac and aircraft in order to provide the required cleaning services and they are typically tendered for on an individual basis, partly because they are rarely required. They

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<sup>53</sup> However, to operate a cargo warehouse that handles international imports and exports the operator requires a 'transit shed operator' approval from Her Majesty's Revenue and Customs. Such approvals are reviewed on a three-yearly basis

<sup>54</sup> *LBO France / AviaPartner*, paragraphs 20 and 39 and *Swissport / Servisair*, paragraph 32

<sup>55</sup> Services provided for freight which will not be or was not loaded at the airport where it is eventually handled and which do not, therefore, need to be provided at airport

<sup>56</sup> Opinion of the Conseil de la concurrence no 05-A-13 of 3 March 2006, paragraph 32 and the Minister of Economy's Letter C2004-132 of 25 July 2005, concerning the acquisition of France Handling by Vinci Services Aéroportuaires

<sup>57</sup> *LBO France / AviaPartner*, paragraph 47, *Swissport / Servisair*, paragraph 54 and COMP/M.7766 - *HNA Group / Aguila* (17 November 2015), paragraph 16

require particular equipment and a distinct skill set (in particular, both are very different from internal presentation services). Besides AS, the other main providers in the UK of this service are Flightcare and Jet Wash, while aircraft maintenance companies also sometimes provide external presentation services.

96. It is the Parties' view, however, that the CMA can leave the market definition open in relation to external presentation services as no competition concerns arise on any market definition.

*Conclusion on non-overlap product market(s)*

97. The Parties do not consider that the Transaction affects the competitive conditions in fuelling services, landside cargo transport services or external presentation services at any UK airports, because there are no overlaps in the provision of those services, and because each forms a separate product market (for the reasons set out above).
98. Furthermore, the Commission has in previous decisions consistently regarded fuelling services and landside cargo transport services as each forming separate product markets to ground handling services (and de-icing and aircraft presentation services). The Parties agree with that approach.

**Non-overlap geographic market(s)**

99. With regard to those services where there is no overlap between the Parties (i.e. fuelling services, landside cargo transport services and external presentation services), it is the Parties' view that the geographic market is limited locally in scope to individual airports for the following reasons:
- fuelling services are limited locally in scope because of airport-specific supply contracts and fuelling infrastructures. This has been found to be an appropriate frame of reference in Commission<sup>58</sup> and CMA<sup>59</sup> decisional practice;
  - landside cargo transport services are limited locally in scope because of airport- or area-specific service requirements. Again, this has been found to be an appropriate frame of reference in Commission decisional practice.<sup>60</sup> The CMA also found the same limitation to be appropriate, though in relation to a wider product market.<sup>61</sup> However, in *Swissport / Servisair* a distinction was made between a geographic market focused on a specific airport and one encompassing neighbouring airports;<sup>62</sup> and
  - external presentation services can be limited locally in scope because of airport-specific supply contracts, though some airlines equally tender on a regional basis.

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<sup>58</sup> COMP/M.1383 - *Exxon / Mobil* (29 September 1999), paragraph 812, COMP/M.1628 - *TotalFina / Elf* (9 February 2000), paragraph 224, COMP/M.3110 - *OMV / BP (Southern Germany Package)* (11 June 2003), paragraph 27, COMP/M.5005 - *GALP Energia / ExxonMobil Iberia* (31 October 2008), paragraph 39, COMP/M.5880 - *Shell / Topaz / JV* (4 November 2010), paragraph 24 and COMP/M.7270 - *Cesky Aeroholding / Travel Service / Ceske Aeroline* (18 December 2014), paragraphs 46

<sup>59</sup> *Aviator / Swissport*, paragraph 44

<sup>60</sup> *LBO France / AviaPartner*, paragraph 70

<sup>61</sup> *Aviator / Swissport*, paragraph 44

<sup>62</sup> *Swissport / Servisair*, paragraphs 51 and 52



100. In any case, the Parties consider that the CMA need not definitively conclude the geographic market against which it should assess these non-overlap product markets as no competition concerns arise on any of these segmentations.

### Related markets

101. Apart from those discussed in response to this question, the Parties do not consider that they are active in the supply of any products or services that are related to ground handling, de-icing or internal presentation services.

### Vertical relationships

102. Customers of the Parties tend to invite tenders for all or some of their services and often pick and bundle services for cost or convenience reasons. The customer may also have a preference for a certain service to continue to be provided by an existing supplier. As one of the larger airport services providers, Menzies will therefore often tender as the main contractor and then sub-contract individual services. [REDACTED].
103. [REDACTED]<sup>63</sup>
104. Menzies does not sub-contract de-icing services to any business other than AS in the UK.
105. [REDACTED]<sup>64</sup>
106. For details on Menzies' sub-contracted services by airline and location for the Overlap Airports, please see Annex 12.1.<sup>65, 66</sup> [REDACTED].

13. *Identify (and explain the rationale for identifying):*

*(a) the narrowest candidate product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services) the narrowest candidate product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Candidate Market(s)).*

*(b) any other plausible candidate product/service and geographic market(s) where the merger parties overlap, have a vertical relationship, or supply related products/services (together with the Narrowest Candidate Market(s), the Candidate Market(s)).*

### Product market(s)

#### *Ground handling, de-icing and internal presentation*

107. Ground handling services have been considered by the Commission and the CMA on a number of occasions. This consideration is discussed in detail below, along with the Parties' views.

<sup>63</sup> Stobart Air is an Irish regional airline headquartered in Dublin that operates scheduled services under the brands Aer Lingus and Flybe on behalf of their respective owners

<sup>64</sup> Denoted by an '\*', [REDACTED]

<sup>65</sup> Correct as at 23 March 2018

<sup>66</sup> Annex 12.1 covers Menzies' sub-contracting relationships at the Overlap Airports only and paragraph 103 should be consulted for an exhaustive list of the vertical relationships between the Parties

108. With reference to the response to question 12 and Table 12.1 above, it is the Parties' view that, theoretically, the narrowest possible product markets that exist are those for each service line provided by both Menzies and AS. However, it is the Parties' view that these are not the narrowest plausible product markets that exist.
109. The Commission has previously been satisfied that ground handling services could be divided into several distinct segments on the basis of either:
- *Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (the "Directive")* (the Annex to which describes ground handling services as including passenger handling,<sup>67</sup> baggage handling,<sup>68</sup> freight and mail handling, ramp handling,<sup>69</sup> aircraft services, fuel and oil handling, aircraft maintenance, flight operations and crew administration and surface transport;<sup>70</sup> or
  - the IATA Standard Ground Handling Agreement,<sup>71</sup> which lists the following services:
    - managing functions;
    - passenger services;
    - ramp services (including baggage handling, marshalling, parking, ramp to flight deck communication, loading and unloading, safety measures, push-back and towing, cleaning, toilet and water services and catering);
    - load control, communications and flight operations;
    - cargo and main warehouse services (including customs control);
    - support services (including accommodation and fuel farm services);
    - security; and
    - aircraft maintenance.
110. The Commission had previously left open the question of whether each segment / service constituted a distinct product market in *AviaPartner / Maersk / Novia*.<sup>72</sup> However, in more recent decisions, the Commission has confirmed that distinct product markets exist. In *LBO France / AviaPartner*,<sup>73</sup> the Commission found that baggage, passenger and ramp services

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<sup>67</sup> Check-in, landside passenger assistance, airside gate management, air bridge connection and disconnection and passenger security checks

<sup>68</sup> Loading and unloading of baggage from an aircraft, handling baggage in the sorting area, sorting and preparing for departure and transporting baggage from the sorting area to the reclaim area

<sup>69</sup> Loading and unloading of aircraft, baggage and freight, push-back and towing of aircraft, passenger debarkation, aircraft safety checks and traffic operation (flight documentation and planning, crew briefing, weight and balance, load planning, ground to air communication and flight supervision)

<sup>70</sup> The Directive includes as ground handling a range of services which, from a competition law perspective, are clearly not substitutable either from a supply or a demand side (e.g. baggage, fuel and freight or mail handling). However, the purpose of the Directive is to open up access to the provision of these services at airports within the EU, where traditionally these were subject to monopoly supply by the airport itself or by a sole ground handler

<sup>71</sup> An industry-standard agreement employed between airline customers and handlers to perform services at particular airports

<sup>72</sup> COMP/M.2254 - *AviaPartner / Maersk / Novia*, paragraphs 14 and 15

<sup>73</sup> COMP/M.6671 - *LBO France / AviaPartner*

form one and the same product market.<sup>74</sup> In *Swissport / Servisair*,<sup>75</sup> the Commission later widened this to specifically and additionally include airside cargo transport services,<sup>76</sup> being the transportation of cargo between the aircraft and the warehouses of cargo handlers.

111. The CMA will be familiar with the ground handling services market from two recent investigations, including its recent assessment of *Aviator / Swissport*,<sup>77</sup> where the CMA described ground handling "as the servicing of an aircraft when it is on the ground at an airport and generally consists of ramp, passenger, baggage and airside cargo services".<sup>78</sup> However, the CMA left the product market definition open, as the merger raised no concerns, even on that "narrow" basis.<sup>79</sup> In the other, *Menzies / ASIG*, it described ground handling as "the supply of baggage, ramp, passenger and airside cargo handling services".<sup>80</sup> This included, for one airport only, de-icing services.<sup>81</sup>
112. It is clear, therefore, from European and UK precedent, that the supply of baggage, ramp, passenger and (potentially) airside cargo handling services should constitute a product market. It is the Parties' belief though that this should not include either de-icing services or internal presentation services.
113. In particular, the Parties note the evidence received by the CMA in *Aviator / Swissport* that "[o]ther services such as cleaning and de-icing services may be contracted for separately" to baggage, passenger, ramp and airside cargo transport services.<sup>82</sup> This demand-side perspective suggests that de-icing and internal presentation are separate markets (including to each other).
114. In support of this, it is the Parties' experience that although an airline customer's procurement function will typically seek to negotiate a sole contract that covers baggage, passenger, ramp and occasionally airside cargo transport services, this is not always the case with de-icing or internal presentation services, as reflected in the third party evidence received by the CMA in *Aviator / Swissport*. Even if it is the case, it is possible for de-icers and internal presentation businesses to bid solely for (and win only) those relevant service lines.
115. Furthermore, in the UK, de-icing services are procured only for those months when the temperature falls to, or below, freezing. The Parties recognise that operating a business primarily based on a seasonal service could be considered to be impractical. However, the Target operated in precisely this way until 2014 (as, indeed, do other de-icing providers (see paragraph 117 below)), when it decided to expand its operations into traditional ground handling services (though at LGW only). It did, and still does, [X] (see further paragraph 162).

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74 *LBO France / AviaPartner*, paragraph 20

75 COMP/M.7021 - *Swissport / Servisair*

76 *Swissport / Servisair*, paragraph 18

77 ME/6578/15 - *Completed acquisition by Aviator LGW Limited of the assets of Swissport Limited's ground handling business at London Gatwick*

78 *Aviator / Swissport*, paragraph 20

79 *Aviator / Swissport*, paragraph 30

80 *Menzies / AS*, paragraph 44

81 Note that for the other two overlap airports considered in detail, LHR and MAN, de-icing was not considered to be part of the same product market, primarily because of the size of the airports and the number of competitors offering each service

82 *Aviator / Swissport*, paragraph 29(a)

116. De-icing services also require capital investment (in storage tanks and de-icers), and this equipment is not transferrable. De-icing services can be licensed separately to other airside licences by airport authorities, because they require an additional level of safety, though this depends on the airport. Further, much like the provision of fuelling services, a de-icer holds the risk of their de-icing fluid becoming contaminated. A strong de-icing competitor will also employ a de-icing fluid expert, who will determine the correct mix of the de-icing fluid. [X].
117. Finally, from a supply side, there are a number of specialist providers that compete to provide de-icing or internal presentation services specifically. For de-icing, this includes Integrated Deicing Services ("IDS")<sup>83</sup> and Aéro Mag 2000 ("Aero Mag"),<sup>84</sup> and there are also airlines with trained engineers that can handle de-icing requirements as necessary in a self-supplying capacity (as, indeed, BA does at LHR).<sup>85</sup> For internal presentation, this includes larger facilities management companies, such as OCS,<sup>86</sup> and other aircraft presentation focussed businesses, such as Flightcare<sup>87</sup> and CCS.<sup>88</sup>
118. Set out below in the table below are those competitors that the Parties consider are actual or potential competitors in ground handling, de-icing and internal presentation services in the UK.

**Table 13.1: UK Competitors in Ground Handling, De-icing and Internal Presentation Services**

	Ground handling	De-icing	Internal presentation
<i>Parties</i>			
Menzies	✓	✓	✓
AS	✓	✓	✓
<i>Independents</i>			
Aero Mag	X	✓	X
ASC	✓	X	X
Aviator	✓	✓	X
Avia Partner	✓	✓	✓
Azzurra	✓	X	✓
CCS	X	X	✓

<sup>83</sup> IDS is part of a large United States business operating from approximately 35 airports throughout the United States, Switzerland and the UK

<sup>84</sup> Aero Mag is a Canadian business operating from approximately twelve airports throughout Canada, the United States and the UK

<sup>85</sup> BA handles its own de-icing requirements at LHR. However, Menzies understands that in 2014 BA tendered its de-icing requirements in order that it had 'back up' de-icers available as necessary. Menzies (via AS) did handle some of BA's de-icing requirements at that time, as did Airline Services. Since then, BA has reverted to self-supplying its de-icing requirements at LHR. BA handles de-icing requirements for itself and other airlines within IAG (for example, Vueling)

<sup>86</sup> OCS is an international supplier of facilities services, including aircraft cleaning services. OCS serves around fifty airlines globally and cleans over 55,000 planes every year. OCS is currently active at LHR, LGW and MAN in the UK

<sup>87</sup> Owned by Swissport, Flightcare is an international aircraft presentation business

<sup>88</sup> CCS is an international airline services business

	Ground handling	De-icing	Internal presentation
Cobalt <sup>89</sup>	✓	✓	✗
Dalcross Handling	✓	✓	✗
Flightcare	✗	✗	✓
ICTS <sup>90</sup>	✓	✗	✗
IDS	✗	✓	✗
OCS	✗	✗	✓
Omniserv	✓	✗	✓
Premiere Handling	✓	✗	✗
Sky Partner <sup>91</sup>	✓	✓	✓
Stobart <sup>92</sup>	✓	?	?
Swissport	✓	✓	✗
WFS	✓	✓	✓
<i>Self-suppliers</i>			
Aurigny	✓	✓	✓
BA <sup>93</sup>	✓	✓	✓
DHL	✓	✗	✗
dnata <sup>94</sup>	✓	✓	✗
GGS <sup>95</sup>	✓	✗	✓
Jet2 <sup>96</sup>	✓	✗	✗
RED	✓	✓	✓

119. There are, therefore, supply-side and demand-side aspects to the provision of de-icing and internal presentation services which support the Parties' view that they are a separate market than the provision of baggage, passenger, ramp and airside cargo transport services (as well as from each other).

<sup>89</sup> An international ground handler owned by Groupe Crit. See further paragraph 129

<sup>90</sup> Please note that ICTS has passenger handling capacity only

<sup>91</sup> An international ground handler owned by Groupe Crit

<sup>92</sup> The Parties are not aware as to whether Stobart is currently bidding for de-icing or internal presentation activities, however, they are aware that it is intending to significantly grow its presence in the UK following its entry into ground handling at London Stansted

<sup>93</sup> See further footnote 95

<sup>94</sup> dnata is owned by Emirates and operates in a ground handling capacity on an international basis from approximately 75 airports. It was formed in 1959 in Dubai and has expanded internationally since then, including recent expansion at MAN following a successful bid for a contract with Cathay Pacific

<sup>95</sup> Note that Gatwick Ground Services ("GGS") is a wholly-owned subsidiary of BA that provides ground handling and internal presentation services to BA at LGW. Regardless, BA self-supplies passenger handling directly at LGW, while it also self-supplies its own requirements and those of other IAG and third party airlines at LHR

<sup>96</sup> Note that Jet2.com ("Jet2") has baggage, passenger and ramp capacity only

120. Therefore, the Parties do not consider that it is plausible to assess ground handling services on an individual basis and, consequently, agree in the main with the decisional practice that a distinct product market comprising baggage, ramp, passenger and airside cargo transport services exists, with the exception of de-icing and internal presentation services, which the Parties submit are separate product markets altogether. The Parties therefore submit that these are the appropriate narrowest product markets that exist for the provision of these services.

*Self-supply*

121. A number of airlines service their ground handling, de-icing or internal presentation requirements themselves and do not currently procure these services from third parties. Where that is the case those airlines are said to "**self-supply**",<sup>97</sup> sometimes through a subsidiary entity which often offers its services to third party airlines. Self-supplying airlines do therefore compete against independent suppliers.
122. In *Aviator / Swissport*, the CMA did not find it necessary to come to a conclusion on whether self-suppliers should be included in one and the same product market as no airlines at the airport in question (LGW) at the time of assessment self-supplied all of their ground handling requirements. In *Menzies / ASIG*, the CMA noted that there were examples of self-supplying by airlines in the UK, but that the propensity to self-supply may vary by airport.<sup>98</sup> Ultimately it decided "*on a cautious basis*" to not include self-supplying within the relevant product reference.<sup>99</sup>
123. The Commission has considered similar arguments and in each instance reached a different view:
- in *Swissair / Sabena*,<sup>100</sup> it expressly recognised that the potential for an airline to self-supply imposes a competitive constraint on independent ground handlers, but ultimately left the question open;<sup>101</sup>
  - in *LBO France / AviaPartner*, it dismissed the arguments, based on an independent ground handler's non-access to that part of the market where an airline self-supplies;<sup>102</sup> and
  - in *Swissport / Servisair*, it left the question open, because the assessment was unaffected by the inclusion or exclusion of self-suppliers.<sup>103</sup>
124. It is clear that this decisional practice has depended on the facts of those particular local markets considered. In this case, it is the Parties' view that at the Overlap Airports (particularly at LHR) self-suppliers form one and the same product market with independent third party competitors (based on the reasoning and the examples set out below).

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97 Also referred to as "**self-handling**" in relation to ground handling services

98 *Menzies / ASIG*, paragraph 43

99 *Menzies / ASIG*, paragraph 43

100 COMP/M.616 - *Swissair / Sabena*

101 *Swissport / Sabena*, paragraph 34

102 *LBO France / AviaPartner*, paragraph 23

103 *Swissport / Servisair*, paragraph 22

125. Importantly, an airline could feasibly switch to self-supplying either by terminating its arrangements with independent suppliers (note that standard supply agreements in this industry typically provide for a fixed term, though the customer sometimes retains a right to terminate prior to the fixed term if it moves to self-supply)<sup>104</sup> or when a supply contract comes to an end. This is particularly the case as, often at the end of a contract, the incumbent supplier may be willing to transfer the relevant assets used for the particular airline and the employment of the relevant workforce will typically transfer statutorily under the provisions of the *Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended)* ("**TUPE**").<sup>105</sup>
126. Equally, any airline that switches to self-supplying will typically offer the same services to third party airlines as they are covered by the same licence and such operation can create efficiencies of scope and scale (especially where there is spare equipment capacity). In all cases, self-supply requires the same licence to operate airside as independent suppliers.
127. The Parties' view, that self-suppliers at the Overlap Airports form one and the same product market with independent third party competitors, is supported by a number of examples of airlines switching to or from self-supply and/or self-suppliers servicing third party airlines (including several key examples since *Menzies / ASIG*):<sup>106</sup>
- Norwegian began self-supplying ground handling, de-icing and internal presentation services at LGW through its subsidiary, RED, in December 2016. This example is particularly key because Norwegian is a low cost carrier that has turned to self-supplying at a location that is not its natural hub, indicating that an airline can self-supply at any location. Furthermore, Norwegian is currently growing significantly and the Parties expect that, [REDACTED];
  - DHL has moved from self-supplying ground handling services for its cargo aircraft (which clearly do not involve passenger handling services) to supplying ground handling services to easyJet at LGW (entrance in October 2017);
  - Aurigny began self-supplying at LGW and Guernsey, and separately supplies Flybe, Blue Island and Eurowings at Guernsey, in December 2017;
  - Jet2 has moved to self-supplying at several UK airports, including EDI, GLA, London Stansted, MAN and Newcastle since January 2017. [REDACTED];<sup>107</sup>
  - BA began self-supplying ground handling and internal presentation services at LGW through its subsidiary, GGS, in November 2016 and March 2018 (respectively) following the exit from the market of Aviator and OCS (respectively);
  - Menzies used to provide ground handling services to bmi at LHR. Following the purchase of bmi by BA, the ground handling services provided to bmi by Menzies was

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104 See further paragraph 157

105 TUPE is overriding employment law the purpose of which is to protect employees in the UK if the business under which they are employed changes ownership, with the effect of transferring their employment to the new owner. Its application is unaffected by the identity of the old or new employer and neither independent suppliers nor self-supplying airlines benefit from any exemption from its application where there is a transfer of an organised workforce dedicated to that handler or airline

106 See further Table 13.2 for examples of self-supplying and self-suppliers servicing third party airlines at LHR. LHR has been taken as an illustrative airport, there are clearly examples of self-supplying at other airports, as have been mentioned elsewhere in this Notice

107 In support of this, see Annex 13.1, which is Menzies' *Aviation Business Review* for EMEA for March 2018 (dated 13 April 2018)

progressively moved to BA under a self-supply arrangement. Note also that BA has also previously provided ground handling services to third party airlines (outside of the International Airlines Group ("IAG")<sup>108</sup>) (for example, American Airlines until autumn 2015, when [X] won that business);

- United similarly self-supplies at LHR and has previously provided ground handling services to third party airlines (for example, El Al until 2014, when [X] won that business); and
- Emirates, via dnata, self-supplies at LGW, LHR and MAN, as well as servicing the following third party airlines at the following locations: (i) LGW - Aeroflot, Cathay Pacific and China Airlines; (ii) LHR - Aeromexico, China Southern, Jet Airways and Kenya Airways; and (iii) MAN - Cathay Pacific, Lufthansa, Germanwings, Eurowings, Austrian Airlines and Swiss. Indeed, in 2016, dnata undertook a greater proportion of supply at LHR for third party airlines (approximately 87%) than for its parent airline (approximately 13%).<sup>109</sup>

128. Further, Stobart, which is active as an airline through Stobart Air (which undertakes flights under the Flybe and Aer Lingus brands), is also active as a supplier at London Stansted (via Stobart Aviation Services). Though it is appreciated that it does not currently self-supply, Stobart is important because it operates at both the airline and supplier levels of the market.
129. There are also many historic examples of self-suppliers supplying third party airlines. Set out below is a table of airlines at LHR that the Parties understand have provided services for airlines outside of their corporate groups. Note that until 2017 when it was acquired by Groupe Crit (and became an independent), Cobalt was jointly owned by Air France and KLM (it was originally formed by merging the individual handling businesses of Air France and KLM in 2009).<sup>110</sup> As a self-supplier, Cobalt operated from both LHR and (until 2012 when it is understood by the Parties that Cobalt exited the airport following the loss of a large contract) at London City. Cobalt, in fact, undertook a greater proportion of handling for third party airlines at LHR (approximately 63%) than for its parent airlines, Air France and KLM (approximately 37%).<sup>111</sup>

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<sup>108</sup> IAG is the ultimate owner of BA, Aer Lingus, Iberia and Vueling

<sup>109</sup> Prior to its restructuring, Heathrow Airport Limited (the operating company of LHR) produced 'scorecards' for suppliers (both independents and self-suppliers) on a monthly basis, scoring and ranking them against identical key performance indicators with the scorecard then being published. Though these are no longer produced, these scorecards are the basis for these figures. Furthermore, the combination of independents and self-suppliers on these scorecards is (albeit anecdotal) evidence in support of the Parties' view that self-suppliers impose a competitive constraint on independents

<sup>110</sup> At which time general manager for Air France-KLM in the UK was quoted as saying: "[i]t made strategic, as well as financial, sense to pool our resources and talent into one company and create operating synergies for both ground handling companies" (<https://www.flightglobal.com/news/articles/air-france-klm-merges-handling-at-heathrow-and-city-322884/>)

<sup>111</sup> See further footnote 109



**Table 13.2: Previous Self-Suppliers at LHR**

Supplier	Third Party Airline Customer	Period
Cobalt	Aeroméxico	Until 2017 <sup>112</sup>
	Air France	
	China Southern	
	Delta	
	Etihad	
	Japan Airlines	
	Jet Airways	
	Kenya Airways	
	KLM	
	Korean Air	
	Royal Brunei	
	Virgin Atlantic	
dnata <sup>113</sup>	Biman Bangladesh Airlines	Between 2016 and 2017
	China Eastern	
	Garuda Indonesia	
	Iran Air	
	Oman Air	
	Pakistan International Airlines	
	Philippine Airlines	
	Qatar Airways	
	Singapore Airlines	
BA	American Airlines	Until 2015
	Japan Airlines	Between 2010 and 2015 <sup>114</sup>
	Royal Jordanian	
Air Canada <sup>115</sup>	Air China	Until 2014 <sup>116</sup>
	Aer Lingus	
	All Nippon Airways	
	Cathay Pacific	
	Middle Eastern Airways	
	Philippine Airlines	
	Royal Jordanian	

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112 As a self-supplier

113 Note that dnata continues to self-supply Emirates and a number of third party airlines, as set out in paragraph 127

114 The Parties understand that OneWorld Alliance members had agreed (in approximately 2010) that 'host' airlines would handle other members' requirements and at LHR BA has previously carried out some handling for other OneWorld Alliance members as listed in the table above

115 Until 2014 Air Canada self-supplied its requirements at LHR

116 When AS (now Menzies) took over Air Canada's ground handling business

Supplier	Third Party Airline Customer	Period
	Thai Airways	
American Airlines	Cathay Pacific	Until 2009
	Egyptair	
	Gulf Air	
	Kuwait Airways	
	Saudi Arabian Airlines	
	Turkish Airlines	
United	US Airways	Historic <sup>117</sup>
	TAM	

130. In addition to those airlines that self-supply all of their requirements, it is the Parties' understanding that a number of airlines at LHR also partially self-supply.<sup>118</sup> Consequently, some of their requirements will be self-supplied and others will be outsourced.
131. In addition, some airlines divide their requirements such that multiple suppliers could be servicing the same airline. Airlines can, in effect, 'cherry-pick' services from different suppliers whether independent, another airline's self-supplying subsidiary or its own self-supply subsidiary.<sup>119</sup>
132. Therefore, the threat of airlines turning to self-supply imposes a competitive constraint on independent suppliers. The Parties submit that there is no reason in principle why the CMA should exclude self-suppliers from the product market. Indeed, the Parties consider that by reason of the asymmetry of a self-supplier's access to tender processes for third party airlines, they should rightly be identified as imposing a competitive constraint on independent suppliers when competing for contracts. Further, their ability to turn to self-supply upon termination of a contract (indeed, this can even happen prior to completion of the term (see further paragraph 125)) is a competitive constraint on independent suppliers competing in the market.
133. The Parties respectfully submit, therefore, that self-suppliers should rightly be included in each product market discussed above and, in any event, the competitive constraint imposed by self-suppliers on independent suppliers should be considered by the CMA in its assessment of the Transaction.

*Conclusion on product market(s)*

134. It is on this basis that the Parties consider that the appropriate narrowest product markets against which the CMA could assess the Transaction are:

<sup>117</sup> The Parties are not aware of when United ceased handling for US Airways and TAM

<sup>118</sup> Including American Airlines, Cathay Pacific, TAM and Virgin

<sup>119</sup> Indeed, at larger airports those well-known airlines (such as American Airlines, BA, Cathay Pacific, United and Virgin Atlantic at LHR and BA at LGW) are often keen to retain a degree of control over some of their handling requirements (those airlines listed all handle their 'front-of-house' requirements in order (it is suspected by the Parties) to retain a degree of control over passenger interaction for branding purposes). It further permits those airlines to staff their own hubs (to a certain extent) which may permit expansion into other airline services

- the supply of ground handling services (comprising baggage, passenger, ramp (excluding de-icing and internal presentation services) and airside cargo transport services) by all providers, inclusive of self-suppliers;
- the supply of de-icing services by all providers, inclusive of self-suppliers; and
- the supply of internal presentation services by all providers, inclusive of self-suppliers,

which, together, are referred to throughout the Notice as the "**Overlap Services**". Furthermore, each provider (or potential provider) of an Overlap Service is referred to as a "**Provider**".

### Geographic market(s)

#### *Ground handling, de-icing and aircraft presentation*

135. In line with the Commission's decisional practice, the CMA assessed the *Aviator / Swissport* transaction on a local basis (at LGW) and the *Menzies / ASIG* transaction on a local basis (at LHR, MAN and Aberdeen). This is consistently the basis on which the authorities have assessed transactions concerning ground handling services,<sup>120</sup> sometimes considering neighbouring airports to be included in the local market,<sup>121</sup> and often leaving the question of the exact market definition open.<sup>122</sup> This conclusion is largely reliant on the fact that there is no demand-side substitutability (between airports) once an airline has chosen to operate at a particular airport.<sup>123</sup>
136. There is little by way of precedent, however, which informs the Parties as to the precise geographic market definition which addresses the bidding nature of the markets in question. Indeed, the Commission has considered competition 'for the market' only twice and on both occasions concluded (while leaving the question open) that, by reason of the fact that ground handlers bid for tenders across the EEA, the relevant geographic market could be at least national in scope and possibly EEA-wide.<sup>124</sup>
137. All ground handlers and de-icers (as well as some internal presentation service providers) are licensed under the Directive (to provide airside services) and (at least for the time being) EEA passporting of such authorisation applies. Any existing licensee could, therefore, participate for a new contract at any airport, particularly as they may already be known to the airline customers at other airports.
138. Further, it is the Parties' experience that airline customers will sometimes host tender processes that encompass multiple airports, and the CMA and the Commission have noted that tenders and contracts covering multiple airports may be gaining momentum as a favoured strategy by airline customers.<sup>125</sup> The (then) Office of Fair Trading ("**OFT**") similarly noted

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<sup>120</sup> COMP/M.4164 - *Ferrovial / Quebec / GIC / BAA*, paragraph 23, *LBO France / AviaPartner*, paragraph 57 and COMP/M.7270 - *Cesky Aeroholding / Travel Service / Ceske Aeroline*, paragraph 42

<sup>121</sup> *Swissport / Servisair*, paragraph 44 and COMP/M.7766 - *HNA Group / Aguila*, paragraph 14

<sup>122</sup> COMP/M.1124 - *Maersk Air / LFV Holdings*, paragraph 25, COMP/M.2254 - *AviaPartner / Maersk / Novia*, paragraph 18, COMP/M.5440 - *Lufthansa / Austrian Airlines*, paragraph 44 and COMP/M.5747 - *Iberia / British Airways*, paragraph 47, *LBO France / AviaPartner*, paragraph 59 and COMP/M.7270 - *Cesky Aeroholding / Travel Service / Ceske Aeroline*, paragraphs 43

<sup>123</sup> *LBO France / AviaPartner*, paragraph 58 and *Swissport / Servisair*, paragraph 39

<sup>124</sup> *LBO France / AviaPartner*, paragraph 65 and *Swissport / Servisair*, paragraph 45

<sup>125</sup> *Aviator / Swissport*, paragraphs 42 and *Swissport / Servisair*, paragraph 42

third party evidence of a preference to centrally negotiate contracts rather than on an airport-by-airport basis.<sup>126</sup> Indeed, IAG recently invited tenders on behalf of BA, Aer Lingus, Iberia and Vueling on a regional basis with a major multi-airport, multi-service tender that covers Aberdeen, EDI, GLA, London City and MAN in the UK, and Dublin in Ireland (the "**IAG Tender**"), while Wizz recently hosted a multi-airport tender for Aberdeen, GLA, Birmingham and Bristol.<sup>127</sup> The IAG Tender went to market in [X], was awarded to Menzies in [X] and commenced at the various airports between [X] and [X].

139. It is the Parties' view that, were the CMA to assess the Transaction on a local, airport-by-airport basis (being the narrowest plausible geographical frame of reference), it is clear that there are no entry barriers for any existing service provider active in the UK (or for that matter within the EEA) to bid for contracts at any UK airport.
140. However, noting the decisional practice and the CMA's uncertainty in *Aviator / Swissport* as to what extent multi-airport tenders imposed competitive constraint on ground handlers,<sup>128</sup> the Parties have, on a cautious basis, considered the Transaction on an airport basis (being the narrowest plausible geographic frame of reference) and assessed its effects at each of the Overlap Airports individually.
141. In *Menzies / ASIG*, with respect to LHR the CMA also considered whether a distinction needed to be made between ground handling services being provided by terminal and always assessed the transaction in relation to Terminal 2 and Terminal 3. While the Parties do not agree that the terminals should be considered separate markets, information regarding terminals has also been provided for LHR.

#### *Conclusion on geographic market(s)*

142. It is on that basis that the Parties consider that the appropriate geographic market against which the CMA should assess the Transaction should be at least national in scope and possibly EEA-wide. However, the Parties accept that the CMA may want to consider the narrowest possible geographic frame of reference and therefore consider the impact of the transaction at each of the five Overlap Airports. In any event, the Parties consider that the CMA need not definitively conclude the geographic market against which it should assess the Transaction as no competition concerns arise on any segmentation.

### **SHARES OF SUPPLY**

14. *Provide the shares of supply (by value and, where appropriate, volume) for the merger parties and each of their principal competitors for the Candidate Markets (see question 13).*

143. See the response to question 15, specifically paragraphs 204 to 317.

<sup>126</sup> ME/4429/10, *Completed acquisition by Servisair UK Limited of the regional ground handling business of Aviance UK Limited*, paragraph 25

<sup>127</sup> See further the discussion below relating to GLA and MAN in response to question 15

<sup>128</sup> *Aviator / Swissport*, paragraphs 42. The CMA did, however, consider "evidence on the constraint posed by ground handlers currently not supplying ground handling services in London Gatwick in its competitive assessment" (paragraph 44)

<b>HORIZONTAL EFFECTS</b>
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15. *Provide a description of how competition works in each Candidate Market where the merger parties overlap. The description of such competitive dynamics in the Candidate Market should include (but not necessarily be limited to):*
- (a) *information on the competitive constraint posed by each of the merger parties on each other and on the competitive constraint posed by the other principal suppliers in the Candidate Market(s);*
- (b) *an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of separate customer groups, if any, and an explanation of how the competitive dynamics differ across these customer groups;*
- (c) *a description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another;*
- (d) *an explanation of the role and significance of product/service differentiation (including an explanation of the extent to which the merger parties' products/services are differentiated);*
- (e) *an explanation of how pricing is determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process organised by customers), including, in appropriate cases (as explained below), supporting documentation; and*
- (f) *an explanation of the supply chain (including distribution channels) for the product(s)/services(s), and of any differences between separate geographic areas, where the merger parties overlap, in relation to the supply of the same products/services.*

### Summary

144. As discussed in response to question 13 above, the Parties consider that the following product and geographic markets are the narrowest plausible markets in which to assess the Transaction:
- the provision of ground handling services (comprising baggage, passenger, ramp (excluding de-icing and internal presentation services) and airside cargo transport services) by all providers (inclusive of self-suppliers) to all airlines at each of: LGW and MAN;
  - the supply of de-icing services by all providers (inclusive of self-suppliers) to all airlines at each of: EDI, GLA and LHR; and
  - the supply of internal presentation services by all providers (inclusive of self-suppliers) to all airlines at MAN only,
- together, the "**Candidate Markets**".
145. It is the Parties' view that the Transaction will not give rise to any horizontal unilateral effects in the Candidate Markets as the Parties are not each other's closest competitor. Principally it

should be noted that while both Parties provide the Overlap Services, Menzies is primarily focussed on ground handling ([§<])<sup>129</sup> and AS is widely known as a de-icing and aircraft presentation services provider.<sup>130</sup> AS' reputation on the market as a de-icing specialist was illustrated by an article in The Times reporting the Transaction titled *Cool move for Menzies as it lands aircraft de-icer*.<sup>131</sup>

146. There are various other Providers that provide similar services and are present at various UK airports, including (primarily):
- for ground handling services: Cobalt, DHL, dnata and Swissport;
  - for de-icing services: Aero Mag, Cobalt, dnata, IDS and Swissport; and
  - for internal presentation services: CCS, dnata, Flightcare, OCS and Omniserv.
147. Clearly, while there is some overlap in competitor sets between the three Overlap Services, there are equally competitors whose primary focus is a particular Overlap Service, particularly for internal presentation. Furthermore, all airlines will inevitably be contracting with numerous Providers across all airports at which they operate and will, therefore, be familiar with a wide range of Providers and the likely costs of providing Overlap Services (particularly so if that airline has ever self-supplied).
148. In any event, the perceived similarity of the Overlap Services across Providers, the demonstrable ease of switching between Providers<sup>132</sup> and the lack of any capacity constraints on Providers (that can easily scale their operations following a contract award or loss) means that all existing Providers, and in particular all those already operationally active in the UK, will impose a more than sufficient competitive constraint on the Merged Entity post-Transaction regardless of location.

### **General considerations in the Overlap Services markets in the UK**

#### *Regulatory considerations*

149. The Directive concerns access to the relevant market at Community airports.
150. As discussed at paragraph 109 above, the Annex to the Directive describes ground handling services to include passenger handling, baggage handling, freight and mail handling, ramp handling, aircraft services, fuel and oil handling, aircraft maintenance, flight operations and crew administration and surface transport.
151. For the purposes of this Notice therefore, the Directive covers the three overlap product markets discussed in the response to question 12, and references to 'ground handling services' or 'ground handlers' with respect to the Directive include all Providers (i.e. providers of ground handling services, de-icing services and aircraft presentation services).

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<sup>129</sup> The remainder was derived from non-overlap services, such as fuelling

<sup>130</sup> Although AS achieved [§<] (note that AS also provides external aircraft presentation services), it only entered the market for ground handling services in 2014 and remains a minor competitor. Notably, it is only active at two airports (one of which it entered in April 2018) and its 2017 ground handling turnover was [§<] of Menzies' 2017 ground handling turnover

<sup>131</sup> See further: <https://www.thetimes.co.uk/article/cool-move-for-menzies-as-it-lands-aircraft-de-icer-z98tcqbt9>

<sup>132</sup> As the CMA found in *Aviator / Swissport*, paragraph 53: "17 airlines operating out of Gatwick airport changed their ground handling services supplier during 2014 and 2015"

152. Pursuant to the Directive, the Commission publishes a list of airports to which the Directive applies. The Directive applies to each of the UK airports at which the Parties overlap in the provision of ground handling services (i.e. the Overlap Airports).<sup>133</sup>
153. The Directive requires that Member States take necessary steps to ensure free access by ground handlers to the market and further it explicitly requires Member States to ensure the freedom to self-handle.<sup>134</sup>
154. In certain cases, where justified by space or capacity constraints, the number of ground handlers may be limited to two (and in exceptional cases to one) by a Member State subject to requirements of transparency, proportionality and non-discrimination. This does not, however, currently apply to the Overlap Airports. Therefore, access to the Overlap Airports in the UK is not restricted, save that the supply of ground handling services may require a licence to be obtained from the relevant airport authority which for any undertaking with ground handling experience would not be difficult to obtain (the requirements for licences are discussed in detail in the response to question 12).
155. Further, the Directive permits Member States to make the supply of ground handling services conditional upon obtaining approval from an independent public authority. The criteria for approval must relate to "*a sound financial situation and sufficient insurance cover, to the security and safety of installations, of aircraft, of equipment, and of persons, as well as to environmental protection and compliance with the relevant social legislation*".<sup>135</sup>
156. Prior to the Directive coming into force and the opening up of the ground handling services market at Community airports, ground handling was typically monopolistic in nature (with either the airport itself or a sole handler providing ground handling services) and customers complained about high prices and poor quality of service. Liberalisation has led to markets in which there are few barriers to entry or expansion, substantially greater choice for airline customers and a market in which there is significant countervailing buyer power.
157. Contracts for ground handling are now, almost always, competitively tendered. In effect, the ground handling market is now a customer-led market in which handlers bid for contracts and it is the Parties' experience that contracts are awarded on price. This is non-controversial as ground handling services are perceived by airlines as very similar across handlers and the Parties expect that competitors have a similar cost base that is known to airline customers.<sup>136</sup> Furthermore, the structure of the market whereby agreements are based on IATA standards, means that termination clauses and penalties are in the customer's favour. Notably, agreements typically provide for a fixed term in order that a Provider can amortise its fixed costs over a long enough period. However, customers:
- often retain the right to unilaterally terminate contracts on between 60 and 90 days' notice;

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133 *Commission Communication concerning the procedure laid down by Article 1(4) of Council Directive 96/67/EC (2015/C035/03)*

134 The Directive further sets out categories of ground handling services (baggage, ramp, fuel and oil and freight / mail handling) the supply of which may be limited by Member States where certain quantitative criteria are met by an airport. If a Member State exercises its powers of limitation, however, it cannot limit the number of independent ground handlers or self-handlers to less than two for any of the services mentioned

135 Directive, Article 14(1)

136 This was recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62, which discussed third party evidence of ground handling being perceived by airlines as a "*commodity service*" indicating that "*price primarily drives competition*"

- sometimes retain a right to unilaterally terminate prior to the fixed term if they are moving to self-supply (but not to another third party provider); and/or
- regularly require a performance-based break clause.<sup>137</sup>

See, for example, the example of Jet2 at paragraph 127. Furthermore, an example of how these agreements can favour customers can be seen in the Transaction itself, where most key contracts require customer consent to assign.

158. See Annexes 15.4A to 15.4U for examples of AS' customer contracts, as set out below:

Annex	Document
15.4A	[X]
15.4B	[X]
15.4C	[X]
15.4D	[X]
15.4E	[X]
15.4F	[X]
15.4G	[X]
15.4H	[X]
15.4I	[X]
15.4J	[X]
15.4K	[X]
15.4L	[X]
15.4M	[X]
15.4N	[X]
15.4O	[X]
15.4P	[X]
15.4Q	[X]

<sup>137</sup>

In other words, the option to terminate if the Provider's service levels fall below a specified level. For example, this could be measured with reference to safety records, 'door opening' time, 'on-time' performance, etc.



Annex	Document
15.4R	[REDACTED]
15.4S	[REDACTED]
15.4T	[REDACTED]
15.4U	[REDACTED]

*Demand-side considerations*

159. Customers for the Overlap Services are airline operators. As discussed above, airline operators invariably host tender processes for the award of contracts for the Overlap Services.
160. The scope of the tenders varies from airline to airline. In many cases, airlines tender all of their ground handling requirements together and award a sole contract covering baggage, passenger, ramp and airside cargo transport services. This can include de-icing and internal presentation as well, though this is not always the case. As discussed at paragraph 63 above, the grouping of these services by airline customers in tender processes is unaffected by the licensing requirement for the provision of baggage, ramp, airside cargo and de-icing services, as airlines expect that a Provider will fulfil its requirements in any event or will sub-contract their obligations.
161. However, how an airline chooses to procure its services is entirely its choice and within its sole control. It may sometimes tender for each Overlap Service (including for each separate ground handling service line) separately or in lesser combinations. Airline customers may also test the market by issuing 'full service' and 'individual service line' tenders simultaneously. In some circumstances there may be economies of scope and scale from contracting a sole Provider,<sup>138</sup> whereas in others better value may be available if a Provider has spare capacity in a given Overlap Service or specific service line.<sup>139</sup> Note that de-icing requirements may be tendered on an ad-hoc basis (particularly in the UK where de-icing requirements are limited to a very short season) but equally these seasonal requirements are sometimes encompassed by a 'full service' tender and, where the successful bidder does not have de-icing capacity, it would simply sub-contract its obligations, as indeed Menzies regularly does (as mentioned above).
162. Note that [REDACTED].
163. It is the Parties' view that, in practice, airlines are most likely to issue a 'full service' tender and then, in the event that it does not receive sufficiently competitive bids, may subsequently choose to divide the tender into individual Overlap Services or service lines in order to extract the best value bids from the market.

<sup>138</sup> It is Menzies' experience that at larger 'hub' airports (such as LHR and LGW) there is a mixed practice of airlines hosting 'full service' and 'individual service line' tenders (a practice which is uncommon (but not unheard of) at smaller airports). Examples of airlines that have hosted simultaneous tenders are: (i) Qantas, Aegean Airlines, Air India, American Airlines, Lufthansa, Austrian Airlines and Jet2 at LHR; and (ii) Air Canada at LGW

<sup>139</sup> For example, a handler may have capacity between certain flights to offer ramp handling services to a different airline customer

164. It is the Parties' experience that where an airline's Overlap Service requirements are divided (between independent Providers or otherwise), they are divided by Overlap Service and service line and not by flight schedule.
165. Contracts for the provision of ground handling services are usually awarded for a term of between three and five years, although airlines normally request the right to terminate contracts on between 60 and 90 days' notice (see further paragraph 157).<sup>140</sup>
166. Contracts vary in value depending on the expected number of serviceable turns and the size of aircraft concerned (with different equipment needed to service narrow- and wide-bodied aircraft).<sup>141</sup> For example, narrow-bodied aircraft are predominantly bulk-loaded (i.e. the cargo is loaded one item at a time on a conveyor and placed onto shelves in the cargo hold) while wide-bodied aircraft are container-loaded (i.e. containers are loaded on the ground and then transported and placed into the cargo hold). In order to meet these different loading requirements, different ground handling equipment is needed to service narrow- and wide-bodied aircraft.
167. However, it is the Parties' view that all Providers are equally capable of providing Overlap Services to any airline and for any type of aircraft, despite the fact that particular aircraft may require specific equipment.<sup>142</sup> It is the Parties' understanding that most Providers do bid and service a range of aircraft (in the respective markets in which they operate). Such equipment (whether specific to narrow or wide-bodied aircraft) can be easily leased or purchased and the expertise necessary to service wide-bodied aircraft is largely the same as that required to service narrow-bodied aircraft. Further, Providers are invited to tender for contracts by the airlines and it is the Parties' experience that invitations do not target any particular Provider on the basis of particular expertise or current equipment capacity. Neither do the airlines divide their narrow- and wide-bodied aircraft requirements (where relevant). Providers, therefore, respond accordingly to all the requirements of a particular tender.
168. Contracts are generally awarded to a single Provider but in some circumstances service lines are divided between Providers (and in some cases airlines may self-supply some service lines), allowing airlines to 'cherry-pick' which Providers service which requirements.
169. It is the Parties' view that any Provider (independent or otherwise) would be capable of servicing any airline as all Providers provide substantially the same services. Commercially, however, some self-supplying airlines may choose not to bid for contracts with airlines that are perceived to be their rivals (for example, it is unlikely that BA would bid to supply ground handling services to Virgin Atlantic even if it was content to handle American Airlines until 2015).
170. As mentioned above, tenders vary in geographic scope, ranging from a single airport to entire regions (BA, for example, recently tendered for the provision of ground handling services across three separate regions: Europe, Scandinavia and the UK).
171. The cost of participating in a tender for an airline contract is primarily, if not wholly, the cost of administrative and management time ([&lt;]). As such, it varies between the Parties and

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140 The Parties note that the IATA Standard Ground Handling Agreement includes a bilateral termination provision on 60 days' notice at clause 11.4 (<http://www.swissport.com/fileadmin/downloads/publications/standard-ground-handling-agreement-2013.pdf>)

141 The consideration of specialised equipment is not relevant for internal presentation services

142 This includes both Menzies and AS

depends on the size and scope of the tender,<sup>143</sup> though in all cases it is negligible when compared with the turnover and profit attributed to a successful tender.

172. Menzies considers the cost of participating in a small tender to be [X], the cost of participating in a medium tender to be [X] and the cost of participating in a large tender to be [X]. AS considers the cost of responding to a small tender to be approximately [X]. It considers the cost of responding to a large tender to be approximately [X]. [X].
173. In the Parties' view there are a number of factors that may cause a Provider to choose not to bid for a tender (in no particular order):
- value of the contract;
  - services covered by the tender;
  - number of aircraft covered;
  - schedule of the aircraft (and associated volumes);
  - type of aircraft;<sup>144</sup>
  - a Provider's pre-existing presence (or lack thereof) at a location;
  - level of service required under the service level agreement ("SLA");<sup>145</sup>
  - reputation of the airline;
  - credit rating of the airline;
  - contractual terms (such as payment and termination clauses);
  - likelihood of obtaining a licence for the relevant location(s);<sup>146</sup> and
  - suitability of the tender with the Provider's local and wider business models.
174. See attached at Annexes 15.2A to 15.3F examples of tender related documents for the Parties:

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<sup>143</sup> [X]

<sup>144</sup> The Parties consider that most (if not all) major Providers have the capability to service all types of aircraft, though a Provider may consider whether it has to ability to do so at the specific times required under the schedule to which the tender relates

<sup>145</sup> Note that airlines often have a claw-back mechanism if the service levels set out in the relevant SLA are not met. If these are strict, they can reduce a Provider's profits

<sup>146</sup> Note that obtaining a licence to operate at a particular airport is simple and routine and simply represents the means by which the relevant airport authority satisfies itself that a provider is capable of effectively and safely operating (indeed the Parties have shown various and frequent entry into new airports in the draft Notice and have no knowledge of a licence not being awarded to a willing entrant)

Annex	Document
<i>Menzies</i> <sup>147</sup>	
15.2A	[ <del>ⓧ</del> ]
15.2B	[ <del>ⓧ</del> ]
15.2C	[ <del>ⓧ</del> ]
15.2D	[ <del>ⓧ</del> ]
15.2E	[ <del>ⓧ</del> ]
15.2F	[ <del>ⓧ</del> ]
15.2G	[ <del>ⓧ</del> ]
15.2H	[ <del>ⓧ</del> ]
15.2I	[ <del>ⓧ</del> ] <sup>148</sup>
15.2J	[ <del>ⓧ</del> ]
15.2K	[ <del>ⓧ</del> ]
15.2L	[ <del>ⓧ</del> ] <sup>149</sup>
15.2M	[ <del>ⓧ</del> ] <sup>150</sup>
15.2N	[ <del>ⓧ</del> ]
15.2O	[ <del>ⓧ</del> ]
15.2P	[ <del>ⓧ</del> ]
15.2Q	[ <del>ⓧ</del> ]
15.2R	[ <del>ⓧ</del> ]
15.2S	[ <del>ⓧ</del> ] <sup>151</sup>
<i>AS</i> <sup>152</sup>	
15.3A	[ <del>ⓧ</del> ]
15.3B	[ <del>ⓧ</del> ]

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147 [~~ⓧ~~]

148 See further paragraphs 178

149 See further paragraphs 178

150 See further paragraphs 178

151 See further paragraphs 178

152 [~~ⓧ~~]

Annex	Document
15.3C	[REDACTED]
15.3D	[REDACTED]
15.3E	[REDACTED]
15.3F	[REDACTED]

175. [REDACTED]<sup>153</sup>.

176. [REDACTED].

177. [REDACTED].

Annex	Document <sup>154</sup>
15.4A	[REDACTED]
15.4B	[REDACTED]
15.4C	[REDACTED]
15.4D	[REDACTED]

178. [REDACTED].

179. [REDACTED].

Annex	Document
15.5A	[REDACTED]
15.5B	[REDACTED]
15.5C	[REDACTED]
15.5D	[REDACTED]
15.5E	[REDACTED]
15.5F	[REDACTED]
15.5G	[REDACTED]
15.5H	[REDACTED]
15.5I	[REDACTED]
15.5J	[REDACTED]

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<sup>153</sup> [REDACTED]

<sup>154</sup> Redacted in agreement with the CMA on the following basis: (1) information unrelated to Menzies Aviation; (2) information relating to Menzies Aviation outside of the UK; and (3) legally privileged advice or summaries thereof

Annex	Document
15.5K	[X]
15.5L	[X]
15.5M	[X]
15.5N	[X]
<i>Board minutes</i> <sup>155</sup>	
15.6A	[X]
15.6B	[X]
15.6C	[X]
15.6D	[X]
15.6E	[X]
15.6F	[X]
15.6G	[X]
15.6H	[X]
15.6I	[X]
15.6J	[X]
15.6K	[X] <sup>156</sup>
15.6L	[X]
15.6M	[X]
15.6N	[X]
15.6O	[X]
15.6P	[X]
15.6Q	[X] <sup>157</sup>

*Supply-side considerations*

180. Procurement of input for the provision of the Overlap Services is similar for all Providers (albeit that there are differences in the subject of the procurement). For ground handlers and de-icers, equipment is usually leased from a lease-hire provider but could equally be

<sup>155</sup> Redacted in agreement with the CMA on the following basis: (1) information unrelated to Menzies Aviation; (2) information relating to Menzies Aviation outside of the UK; and (3) legally privileged advice or summaries thereof

<sup>156</sup> Note that this is a duplicate of Annex 15.4B

<sup>157</sup> Note that this is a duplicate of Annex 15.4D

purchased outright (either used or new). There is very little equipment required for internal presentation services. Labour for all Overlap Services is either sourced on contract or on a permanent basis, with the incumbent Provider in many cases transferring assets and employees to the successful bidder in a tender process.

181. It is the Parties' experience that labour costs represent the largest cost of providing the Overlap Services. The Parties do not expect that labour costs vary between Providers to any appreciable extent. Naturally, however, there is some variation in equipment costs, which will depend on the nature of the Overlap Service being provided and whether the Provider chooses to lease or purchase its equipment.<sup>158</sup> The equipment is not UK- or airport-specific and Providers can, therefore, use equipment that has been freed up by the loss of a contract at another airport.<sup>159</sup> There are various examples of suppliers moving equipment around between airports to meet new demand (including ground handling equipment and de-icing equipment). Where equipment is leased it can sometimes be transferred back to the lease-hire provider where a Provider no longer requires it. Furthermore, in relation to the internal presentation services, this is clearly not an issue at all.
182. The bidding nature of the market in which the Providers compete is discussed in greater detail below in relation to demand-side considerations. However, it is the Parties' experience that given the ease of switching and perceived similarity in service offering between the various Providers (within the individual product markets of course), competition for the market very much comes down to price, on which Providers compete fiercely to win contracts. There is, therefore, very significant pressure on Providers to minimise their costs and maximise utilisation of their equipment and staff.
183. Although some airline customers may have a preference for contracting with a single Provider for all of its Overlap Service requirements, the ability to provide a full 'menu' of services itself is not critical to successfully bid for contracts. [redacted]<sup>160</sup>[redacted]. Ultimately this enables Providers to respond competitively to tender processes that encompass service lines which they may not actually provide themselves (rather than being precluded entirely from responding to an invitation to tender). Indeed, sub-contractual arrangements are commonplace in the ground handling services market such that Providers generally are not precluded from responding to an invitation.<sup>161</sup> It does not appear, therefore, that airline customers are concerned with exactly which Provider provides the service in practice.
184. Where a Provider does not hold the requisite licence at a particular airport, this does not preclude it from credibly competing in a tender process for a particular contract. In the event of a successful bid it is the Parties' experience that licences are readily available such that there is no disadvantage to a bidder if they do not already hold a licence for the airport concerned. There are, therefore, few regulatory barriers to entry posed by the licensing regime if a Provider is not already present at a particular airport. DHL's recent entry into ground handling at LGW for easyJet is a key example of this dynamic as ground handling passenger aircraft was a brand new product offering for DHL globally and they bid for, and won, the business without securing a licence first.

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<sup>158</sup> For example, wide-bodied aircraft require different equipment to narrow-bodied aircraft

<sup>159</sup> Some airports, however, have specific requirements regarding the age of equipment: LHR and LGW, for example, do not permit the use of equipment over fifteen years of age

<sup>160</sup> For example, AS provides de-icing and internal presentation services on behalf of Menzies at a number of UK airports (see further paragraph 103. [redacted])

<sup>161</sup> A list of Menzies' sub-contractual arrangements in place across the UK is attached at Annex 12.1

185. Upon successfully bidding for a contract it is typically the case that the incumbent Provider transfers its assets to the new Provider as part of its exit. As discussed at paragraph 125 above, this is typically achieved by way of an asset transfer under which the employment of the incumbent's employees is transferred under TUPE. Equipment can either be transferred, sold or sub-leased as appropriate. In effect, therefore, there is little (if any) difference from the airline customer's perspective in terms of actual service provision brought about by a change in the ultimate contracted Provider.

*Self-supplying considerations*

186. As discussed in response to question 13, airline customers are also free to provide their own Overlap Services.<sup>162</sup> Where that is the case, the need for a tender process falls away and there is, *prima facie*, no competition for that airline customer's requirements.

187. However, it is the Parties' experience that self-suppliers do in fact impose competitive constraint on the remainder of the market in two distinct ways. Firstly, those airlines whose requirements are currently serviced independently can switch (or credibly threaten to switch) to self-supplying. Secondly, where they are present, self-suppliers are often willing and able to provide their services to third party airlines in direct competition with other Providers (for example, dnata and, historically, BA). Both constraints impose pressure on the remainder of the market to further decrease bid prices, minimise costs and maximise utilisation of equipment and staff.

188. It is a practical reality that airlines with sufficient requirements (i.e. with a sufficient frequency of flights) can feasibly turn to self-supplying.<sup>163</sup> Where an airline does in fact turn to self-supplying it may also compete to service third party airlines which may, in turn, result in more capacity in the market. The airline itself will often have additional capacity to service third-party airlines and the incumbent Provider (that lost the airline's business) will have spare capacity with fewer opportunities (i.e. airline customers) to service. For example (in addition to the ground handling examples at paragraph 127):

- BA, at LHR, self-supplies its own ground handling and de-icing requirements and those of other airlines within IAG and has, in the past, also serviced third party airlines (such as American Airlines until autumn 2015 when [S<] won that business) (see paragraph 129 above);
- BA, via GGS, self-supplies internal presentation services at LGW;
- Norwegian, via RED, self-supplies de-icing and internal presentation at LGW;
- Ryanair, at London Stansted, self-supplies de-icing; and
- Logan Air provides meets its own de-icing requirements at several Scottish airports (and is considering self-handling as well).

189. In addition to self-supplying airlines, the Parties are also subject to competitive constraint from airports themselves, including London City (which exclusively provides "**below**

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<sup>162</sup> This may be supplied by a separate business vehicle / subsidiary (for example, BA self-supplies through GGS at LGW and Norwegian self-supplies through RED at LGW)

<sup>163</sup> As with independent suppliers, an airline which does not currently self-supply at any given airport faces the same (few) hurdles in entering the market



**wing**<sup>164</sup> ground handling services [✂]) and London Southend (which provides de-icing and aircraft presentation services).

190. For transparency, the Parties have considered the following service lines as above or below wing:

**Table 15.1: Above / Below Wing Services**

Service Line	Above / Below	FoH / BoH
Baggage handling	Below	BoH
Passenger handling	Above	FoH
Ramp handling	Below	BoH
Airside cargo transport	Below	BoH
De-icing	Below	BoH
Internal presentation	Below	BoH

### Common features of the Candidate Markets

#### *Demand-side considerations*

191. In each of the Candidate Markets, it is the case that the Parties and their competitors are perceived by airlines as similar and tenders are (as a result) typically won on price (which is the primary basis on which Providers seek to differentiate their bids) rather than by reference to non-price factors.<sup>165</sup>
192. For the most part, airline customers procure the Overlap Services by way of tender processes, subject to specific requirements. It is the Parties' experience that the operational and quality aspects of a tender are not particularly burdensome to meet (even where a Provider is not, at the time of the tender, present at a particular airport) and it follows that price is predominantly the means by which bids are differentiated.
193. Airline procurement functions are sophisticated purchasers and it is the Parties' experience that they are skilled at leveraging bids received in order to secure the lowest possible price. Indeed, as discussed above, it is the Parties' view that, in practice, an airline would most likely issue a full service tender and in the event that it did not receive sufficiently competitive bids it may subsequently choose to divide the tender into individual service lines in order to extract the best value bids from the market. Note that while an airline may issue a full service tender, this would not prevent Providers from bidding for specific aspects of a tender.
194. As discussed at paragraph 157 above, the Overlap Services are perceived by airlines as similar across Providers (within each specific Overlap Service) and airline customers are not concerned by which Provider fulfils their service requirements in practice.<sup>166</sup> As a result, and as the CMA recognised in both *Aviator / Swissport* and *Menzies / ASIG*, airlines have the ability to, and frequently do, switch between Providers within each specific Overlap Service

<sup>164</sup> Below wing services are those services which require access to the tarmac and aircraft. In a similar vein, "above wing" services are those services that do not require access to the tarmac or aircraft

<sup>165</sup> Recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62, which discussed third party evidence of ground handling being perceived by airlines as a "commodity service" indicating that "price primarily drives competition"

<sup>166</sup> This was recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62, which discussed third party evidence of ground handling being perceived by airlines as a "commodity service" indicating that "price primarily drives competition"

- (i.e. there is little customer loyalty in the Candidate Markets).<sup>167</sup> This is also because an airline customer faces very little in the way of delay or costs in switching Providers (its costs would largely be those of hosting a tender process which are, in any event, hosted on a regular basis)<sup>168</sup> and there are very few practical implications for a customer in switching Providers, including legal implications, as airline customers normally request the right to terminate contracts on between 60 and 90 days' notice.<sup>169</sup>
195. This is particularly the case for ground handling and internal presentation services where the value of the contracts means that the (minimal) costs for customers of switching Providers are proportionately less than for other services, including de-icing, giving them a greater incentive to switch. As is set out above, this facilitates a large amount of 'contract churn', though it should be noted that customers are not averse to switching de-icing Providers either.
196. In light of the ease with which airline customers can switch and the low barriers to expansion and entry for any new or existing Providers to bid for contracts and begin operating at any UK airport, the airlines have (and will continue to have post-Transaction) numerous means by which they can exercise their countervailing buyer power, irrespective of the number of Providers that might be operating at any one airport.
197. With the exception of (in a small number of cases) internal presentation services, airlines procure Overlap Services at every airport from which they operate (whether from independent Providers or otherwise) and, therefore: (i) will soon identify price differences between airports which cannot be explained by reference to any particular local factor;<sup>170</sup> (ii) can decide to divide their service line requirements (i.e. within each Overlap Service) and invite bids on that basis; (iii) will be exposed to a range of alternative Providers for any number of their service line requirements; and (iv) host tenders across a range of several airports, thereby increasing the value of the contract opportunity for the bidding Providers.
198. By way of a very recent example in relation to the latter point, at GLA until late 2017 there were only two providers of de-icing services (Swissport and AS). However, Menzies won the IAG Tender (Swissport previously did BA's de-icing at GLA) and [X], to GLA in order to provide this service to BA.

#### *Supply-side considerations*

199. The national market for the Overlap Services is very competitive. It is the case that (as far as the Parties are aware) no airport in the UK is restricted in terms of the number of airside licences it may offer and any Provider faces few barriers to expansion and entry. Indeed, including airlines, the Parties believe that there are currently over twenty-one entities providing ground handling services at one or more airports across the UK, over fourteen businesses providing de-icing services and over thirteen companies providing internal presentation services.
200. The level of competition in the national market does, however, when combined with the significant countervailing buyer power exercised by airlines, put Providers in a position where

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<sup>167</sup> *Aviator / Swissport*, paragraphs 58 and 61, and *Menzies / ASIG*, paragraphs 110 and 113

<sup>168</sup> Recognised by the Commission in *Swissport / Servisair*, paragraph 78

<sup>169</sup> The Parties note that the IATA Standard Ground Handling Agreement includes a bilateral termination provision on 60 days' notice (clause 11.4) (<http://www.swissport.com/fileadmin/downloads/publications/standard-ground-handling-agreement-2013.pdf>)

<sup>170</sup> Such as higher labour costs

they stand to make low margins. For example, as recently as September 2016, the Parties became aware that Aviator was in the process of exiting the UK ground handling market for financial reasons.<sup>171</sup> Aviator has now exited all airports with the exception of MAN.<sup>172</sup> The Notifying Party notes that [§<] and that [§<].

201. Providers present at a particular airport face few, if any, barriers to expansion between the Overlap Services and can readily bid for and take on new contracts. Note that:

- as discussed at paragraphs 180 and 181 above, input procurement largely consists of labour and equipment. Depending on the capacity utilisation of a particular Provider and the requirements of a particular contract, Providers may be able to expand their operations without additional investment in equipment and with very little or no investment in additional labour;<sup>173</sup> and
- in any event, input procurement is easily achieved, particularly given that the typical lead time on a contract is between 60 and 90 days and equipment from lease-hire providers and contract labour is readily available in the Candidate Markets. Depending on the nature of the equipment and the value of the contract in question, the Parties consider that returns on such investment could be expected within [§<].

202. Providers not present at a particular airport similarly face few, if any, barriers to entry into the Candidate Markets. A key example that has been discussed previously is that of DHL at LGW (see further paragraph 127), while Stobart also has a stated strategy of entering the ground handling market in the UK and has applied for airside licences at the majority of key UK airports, having entered the ground handling market at London Stansted (see further paragraph 367).

203. Generally therefore, there are few supply-side considerations that would indicate there should be any concerns with the Candidate Markets, especially because:

- airlines typically procure the Overlap Services across all airports at which they operate, with the exception of internal presentation services, where airlines typically procure services only at some airports in which they operate (on the premise that they are not done on every turn).<sup>174</sup> Airlines will, therefore, have at any one point in time commercial dealings ongoing with a range of different suppliers, and so will have a very thorough understanding of the likely costs of providing the Overlap Services (particularly so if the airline in question has ever self-supplied). It is the Parties' experience that the airlines will use that knowledge to their advantage when negotiating on price. Moreover, airlines can and do sponsor new entry at airports.<sup>175</sup> [§<].
- the cost of entry at a particular airport will vary depending on the size of the airport, whether the incumbent transfers equipment and/or employees and the requirements of the contract(s) the new entrant will serve. The Parties estimate, in any case, that costs of

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171 Of the Overlap Airports, Aviator is active at MAN airport only

172 Note that the Parties are aware from market intelligence that [§<]

173 Note that, [§<]

174 Third party or self-supplied internal presentation services are not carried out on every turn, primarily because they are not required and can be done by air stewards and stewardesses to the extent that they are (for example, collecting rubbish)

175 Recognised by the CMA in *Aviator / Swissport*, paragraph 76

entry are nominal, in particular where entry is effected by way of an incumbent transfer;<sup>176</sup>

- a licence is required to provide airside services at airports but it is the Parties' view that such licences are generally available (see paragraph 184 above);
- the cost of providing the Overlap Services is largely labour-related and will, therefore be common across Providers and airports. A new entrant does not, therefore, face any particular disadvantage to already-present Providers in terms of the costs it will incur in servicing an airline;
- the ground handling services market is expected to grow in line with the aviation sector generally. For example, there is expected to be a 4.7% annual growth in passenger traffic over the next twenty years;<sup>177</sup>
- contracts for the Overlap Services can often be terminated on between 60 and 90 days' notice and, in any event, tender processes are held on a regular basis, thereby offering opportunities for potential new entrants to bid;
- the ease of switching suppliers in this industry has already been noted by the CMA in the *Aviator / Swissport* transaction: "*17 airlines operating out of Gatwick airport changed their ground handling services supplier during 2014 and 2015*".<sup>178</sup> It is clear that in this industry there is significant tender activity and a correspondingly high degree of customer switching due, in part, to the ease with which Providers are able to adapt their capacity at short notice. In turn, this shows the ease with which a handler may enter or exit any airport; and
- it is the Parties' view that there are no supplier-specific features that would prevent any Provider from being able to service a particular airline and or competitively partake in a tender process.

#### *Shares of supply*

204. It is the Parties' view that the local shares of supply presented in response to this question 15 (see further below) only demonstrate a transient snapshot of competition at the time the data was collected. In doing so, they do not fully demonstrate the competitive dynamics of the markets under consideration as, despite being active participants in the market, the constraints posed by unsuccessful Providers will not be illustrated by the market shares shown.<sup>179</sup>
205. As discussed above, the costs of providing the Overlap Services are largely labour-related and the Parties expect that they will be similar across Providers. Similarly, sophisticated airline customers are likely to be aware of and understand a Provider's likely cost base (more so in the event that an airline has self-supplied). In that respect, the common labour costs of all Providers and the ease with which Providers can scale their capacity (though with little

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<sup>176</sup> The Parties' specific costs of recent entry at UK airports are provided in response to question 26 below

<sup>177</sup> See page 19 of Annex 10.7

<sup>178</sup> *Aviator / Swissport*, paragraph 53. The Commission further noted in *Swissport / Servisair* that switching costs are low, such that they do not "really" prevent switching (paragraph 78)

<sup>179</sup> In *Menzies / ASIG* the CMA recognized that in bid markets (as apply here), the share of supply is not necessarily representative of a Provider's strength (see paragraphs 62 and 113)

increase in profitability) effectively means that there is little difference between the margins of Providers, regardless of their large or small shares of supply.

206. Further, airlines normally request the right to terminate contracts on between 60 and 90 days' notice. There is no guarantee, therefore, that the Merged Entity would retain its combined share of supply (as presented below) post-Transaction (either as a result of change of control clauses,<sup>180</sup> standard termination clauses<sup>181</sup> or re-tendering in the normal course of business). In particular, changes on an individual contract basis can have a substantial impact on shares of supply, especially at locations where there are fewer airlines and Providers present. This was noted by the Commission in *LBO France / AviaPartner* (in the context of landside cargo transport specifically but the same principle applies equally to the Overlap Services generally).<sup>182</sup> See paragraph 157 for further discussion on the power of customers in relation to contracting for the Overlap Services.
207. The Parties submit, therefore, that the shares of supply presented are not particularly indicative of the level of competition in the local markets concerned over time. Rather they simply demonstrate the fierce level of price-based competition that occurred for the arrangements that are currently in place.
208. In terms of the figures themselves, it is not possible for the Parties to present meaningful shares of supply based on:
- *passenger numbers* - meaningful passenger number data is simply not maintained by either Party. The Parties considered whether it would be possible for them to calculate their own shares of supply based on the number of passengers carried by those airlines with which they have contracts and for which they prepare the "**movement signal**"<sup>183</sup>. However, it is impossible to obtain passenger data for other handlers in this manner and it would only be possible to calculate Menzies' and AS' shares of supply on this basis (and only for ground handling). Therefore, Parties do not consider that they are able to calculate meaningful shares of supply on this basis given the high level of contract churn in the market;
  - *contract value* - this would rely on simply guessing the value of other contracts, without necessarily knowing which services were included or whether service requirements were divided between different suppliers; or
  - *de-icing events*<sup>184</sup> or *internal presentation events* - while ground handling serviceable turns are a clear measure of ground handling activity, the same metric cannot be directly applied to de-icing or internal presentation. Indeed, the Parties do not consider that there is any fixed relationship between serviceable turns and either de-icing events or internal presentation events.

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180 [X]

181 See, for example, the example of [X] at paragraph 127

182 *LBO France / AviaPartner*, paragraph 102: "... customers (airlines) hold significant buyer power and will continue to do so post-Transaction. They can not only decide to self-handle but also more decisively to switch between different cargo handlers. The majority of the respondents to the market investigation have indicated that switching is rather easy and frequent, thus **making market shares volatile**" (emphasis added)

183 Post-flight signals that record the number of passengers on board. They are prepared and maintained by the ground handler charged with embarking passengers

184 The attendance of a de-icing rig at an aircraft

This is because ground handling serviceable turns are contractually agreed between a ground handler and an airline, and involve the provision of a specific number of services on either a 'per turn' or ad-hoc basis. De-icing events are not normally included as a required item for each turn (for the reasons set out below), but do typically form part of a schedule of services that are performed on an ad-hoc basis (either on request by the airline itself, or by engineers or the relevant airport authority). Such ad-hoc activities include aircraft towing or the provision of air start or air conditioning, as well as de-icing.

In contrast, internal presentation events are typically not an ad-hoc service (although they can be if they are required due to a specific event during a flight, such as a spillage or passenger sickness). They are scheduled based on an airlines' own specific requirements (for example, low cost airlines may only provide a cabin clean or tidy once or twice per day on the basis of eight or more turns, however a full service carrier may require internal presentation services more often). Internal presentation is also directly linked to the length of flight, with longer flights typically requiring more internal presentation services. The Parties would not know the level or type of services required by individual airlines from their competitors, and so it is difficult to estimate market size and shares on this basis.

Therefore, as set out, ground handling serviceable turns are not directly related to either de-icing or internal presentation events.

For de-icing, this is primarily because it is a weather dependant, seasonal service that is (in the UK) primarily provided to night stop aircraft. Therefore, while a de-icing provider is often under contract to an airline to service all its de-icing requirements at one or more locations, it would never in reality service every turn (or even a fixed proportion thereof) of that airline's aircraft, but only as and when required (which is entirely dependent on the weather). In fact, it would likely only service the first flight of each aircraft during the winter months, and this will, in any event, be dependent on local weather conditions, flight schedules and hub airports, among other factors. It is therefore difficult to assert any relationship between ground handling serviceable turns and de-icing events as this will vary from customer to customer, from year to year and from location to location, for those reasons. However, it is possible to estimate that if one of the Parties (or their competitors) are contracted to service airlines that account for 10% of serviceable turns at an airport, they will also service approximately 10% of all de-icing events at that airport.

Similarly for internal presentation, because of the variety of services provided, the varying regularity with which they are required and a lack of transparency in the market, providing figures on the number of internal presentation events is not useful, and indeed for competitors, is not achievable. Equally, however, it is not unreasonable to assume that if one of the Parties or their competitors service airlines that account for 10% of serviceable turns at an airport, they will also service approximately 10% of internal presentation events.

209. Instead, the Parties consider that the most useful proxy is to consider serviceable turns. For de-icing and internal presentation, such figures are calculated on the basis of the number of

ground handling turns per year that are attributable to each of the Parties' respective de-icing and internal presentation customers.<sup>185</sup>

210. Further, it is anticipated that the shares of supply provided (based on the number of aircraft turns serviced) may over-state the Parties' actual shares (which the Parties expect would be lower if calculated on an alternative basis). By way of example:

- the Parties expect that the methods of calculation described below may under-state the share of supply of a Provider that services mainly wide-bodied aircraft. Narrow-bodied aircraft have a maximum passenger capacity of approximately 300 (and are typically fitted to seat between 150 and 180 passengers) whereas wide-bodied aircraft can accommodate up to approximately twice the number of passengers. At LHR, for example, United (a self-supplier) predominantly operates wide-bodied aircraft on long-haul flights and it is expected that its share of supply calculated by reference to number of passengers carried may, therefore, be greater than when calculated by reference to annual turns serviced; and
- the shares of supply set out below and elsewhere in this Notice can only be calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year because Menzies are not able to segregate turns information on a more discrete basis. This will naturally emphasise the presence of the incumbent Providers, and minimise that of unsuccessful outgoing Providers. See in particular Table 15.5 where, despite Menzies only servicing BA from [redacted] onwards, they are still attributed with all of BA's turns for 2017 ([redacted]), to the detriment of Swissport's market share.

211. In addition, there may be a degree of double-counting in the Parties' method of calculation in instances where an airline's requirements are divided between a number of Providers (for example, where individual Overlap Services or service lines are procured separately or are sub-contracted out by the principal Provider). In those circumstances, a single turn assigned to one Provider for the purposes of calculating shares of supply could, in fact, be serviced by a number of Providers. As the Parties are unable to provide more meaningful estimates which would divide each airline's requirements between the different Providers they may contract with (if more than one), these shares could over-state the shares of supply. As a result, the figures should be treated with an appropriate degree of caution.

212. Therefore, subject to the points in paragraphs 207 to 211, the shares of supply presented below are calculated as accurately as possible by the Parties on the basis of each airline's annual number of turns<sup>186</sup> and Menzies' knowledge of which Provider services those airlines.

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<sup>185</sup> By way of example, if Menzies had three de-icing customers at a location, then the sum of those three customers' ground handling turns would equate to Menzies' de-icing turns, and Menzies' de-icing market share at that location would then be calculated as a proportion of that location's total annual turns

<sup>186</sup> Using OAG data. OAG is an air travel intelligence company based in United Kingdom. It provides digital information and applications to the world's airlines, airports, government agencies and travel-related service companies. See further: <https://www.oag.com/>

## Conditions of competition at Edinburgh Airport (EDI)

**Table 15.2: Overview of Providers at EDI**

	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
<i>Parties</i>						
Menzies	✓	✓	✓	✓	✓	✗
AS <sup>187</sup>	✗	✗	✗	✗	✓	✗
<i>Independents</i>						
Flightcare	✗	✗	✗	✗	✗	✓
Swissport	✓	✓	✓	✓	✓	✗
<i>Self-suppliers</i>						
Jet2	✗	✓	✗	✗	✗	✗

213. As can be seen from this table, the Parties overlap in de-icing at EDI. Menzies, AS and Swissport are the three de-icers at EDI.

### *Shares of supply*<sup>188</sup>

214. The table below sets out the Parties' best estimate shares of supply for the Providers present at EDI in 2015, 2016 and 2017, calculated by reference to the number of turns serviced, for the individual Overlap Services where both Parties are present at EDI, namely only de-icing.

**Table 15.3: De-icing Market Shares at EDI**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[✗]	[20-30]%	[✗]	[20-30]%	[✗]	[20-30]%
<i>AS</i>	[✗]	[50-60]%	[✗]	[50-60]%	[✗]	[50-60]%
<i>Merged Entity</i>	[✗]	[70-80]%	[✗]	[70-80]%	[✗]	[70-80]%
<i>Swissport</i>	[✗]	[20-30]%	[✗]	[20-30]%	[✗]	[20-30]%
<b>Total</b>	51,123	100%	55,155	100%	58,455	100%

215. As shown in this table, when one considers de-icing, AS was the largest provider, with Swissport and Menzies more or less equal. Initially, assuming that most existing de-icing contracts will stay with their existing provider, the Merged Entity's share of supply would be approximately [70-80]% (with an increment of [20-30]%). However, in reality, post-Transaction the customers would no longer have a reason to tender de-icing separately and it would likely be combined with the main ground handling contract for which Swissport and

<sup>187</sup> AS also provides 'front of house' welcome and information services on behalf of EDI airport. These are separate product markets to all of the Overlap Services

<sup>188</sup> As discussed at paragraph 210, throughout this Notice shares of supply based on turns have been calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year. Menzies are not able to segregate turns information on a more discrete basis



Menzies already strongly compete. This already occurs at various smaller UK airports including Aberdeen, as found by the CMA in its *Menzies / ASIG*.<sup>189</sup>

216. Regardless of whether self-supply is included or excluded when calculating market shares (the Parties continue to strongly maintain that excluding self-supply is not an accurate assessment of competition in the Candidate Markets, for the many reasons set out elsewhere in this Notice), the market shares calculated for EDI do not change as there is currently no de-icing self-supply at EDI.
217. For the same reasons as set out above, it is the Parties' view that these current shares do not fully demonstrate the competitive dynamics of this market, which is discussed further below.

*The competitive landscape at EDI, and remaining constraints*

218. EDI is a small to medium sized airport. 28 airlines operate regular<sup>190</sup> flight schedules and the airport in 2017 offered approximately 58,456 serviceable turns.<sup>191</sup> The Parties understand that Swissport has de-icing contracts with the most airlines at EDI (with [X] contracts in place), whereas Menzies de-ices [X] and AS de-ices [X]. These figures confirm that airlines do not give any preference to the Provider with the largest share of supply during the tender process and that Providers with the largest share of supply do not necessarily offer the best value bids. The Parties do not consider, therefore, that they are each other's closest competitor (indeed, Swissport is both locally and nationally a closer competitor to Menzies). Moreover, they consider that post-Transaction there will remain sufficient competitive constraint at EDI.
219. It is important to note that, as EDI is a small to medium sized airport, unless a de-icer has in place a number of contracts with airlines that require sufficient turns to be serviced, it is difficult to operate profitably. It is commercially unrealistic, therefore, to expect that a large number of de-icers would be present and competing for a modest amount of business.<sup>192</sup> [X]. This is evidence of the fact that EDI is not large enough to support a large number of Providers and that, post-Transaction, there will remain a level of competition that can be reasonably be expected at an airport the size of EDI.
220. Therefore, there will remain sufficient competitive constraint at EDI post-Transaction. Of primary importance, it is the Parties' experience that Swissport is a particularly strong competitor given its long established (and continuous) position at EDI, and the fact that the Parties expect it to maintain this position in the future. It is well-equipped to service the variety of airlines operating at the airport and, importantly, it is the Parties' experience that Swissport competes aggressively on price and clearly remains committed to maximising its presence at EDI.
221. Similarly, other Providers could respond to a tender process at any stage and enter the market, and other airlines (especially large ones) operating from EDI could feasibly turn to self-supply with ease (as Jet2 currently does for passenger handling at EDI). Even if entry is less likely for just de-icing services, an airline could decide to launch a multi-site, multi-service tender as BA recently did, which would likely include de-icing, and therefore make entry at EDI much more attractive. Indeed, the Parties are aware that all of DHL, WFS and Avia

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189 See paragraph 38 on the product market definition for de-icing at Aberdeen

190 Defined as more than 100 turns annually

191 Put in context, LGW offers approximately 143,000 serviceable turns annually and LHR offers approximately 238,000

192 Indeed, at three of the largest UK airports, namely LGW, LHR and MAN, there are only two, five and two competitors (respectively) currently providing de-icing services

Partner have the capability to enter the de-icing market at EDI, [3<].<sup>193</sup> After entry into the ground handling market, such competitors could easily leverage that position to enter the de-icing market at EDI. Alternatively, other existing airport service providers (such as Jet2) could expand their service offering to include de-icing (in the case of Jet2, this could be to self-supply and/or service third parties)<sup>194</sup>.

222. Moreover, as discussed above, the Parties do not consider that the Merged Entity's market share is indicative of any market power. Rather it is the airlines that will continue to lead the market and leverage bids received off of each other.
223. Furthermore, and also as discussed above, the common cost base of Providers is such that the Merged Entity could not expect its growth to have any impact on its ability to compete on price at a local level. The contract figures discussed in paragraph 218 indicate that airlines do not necessarily prefer Providers with the largest share of supply during the tender process, nor that Providers with the largest share of supply can offer the best value bids.
224. It is the Parties' view, therefore, that post-Transaction it is sufficient that two competing de-icers are present at EDI, being the Merged Entity and Swissport (a very strong competitor that offers the same full 'menu' of services as the Merged Entity). Further, as the recent history at this airport has shown, entry and exit have occurred regularly, and, if prices were to rise post-Transaction, other Providers could enter with ease, or indeed one or more airlines could turn to self-supplying.<sup>195</sup>
225. Further, when the fascia reduction is considered, there are other UK locations where only one or two Providers compete at small or medium sized airports without raising any concern from a competition perspective. For example, it is understood that Swissport is the only ground handler active at fourteen or fifteen UK airports, including Belfast City (approximately 18,000 serviceable turns annually), Belfast International (approximately 29,000 turns), Birmingham (approximately 61,000 turns), Liverpool (approximately 28,000 turns), Newcastle (approximately 29,000 turns) and Southampton (approximately 22,000 turns).
226. Additionally, set out below is a list of all those UK airports (excluding the Overlap Airports) at which there are, to the best of the Parties' knowledge, two or fewer active independent Providers:
- Belfast City (as discussed above) (approximately 18,000 turns);
  - Belfast International (as discussed above) (approximately 29,000 turns);
  - Birmingham (as discussed above) (approximately 61,000 turns);
  - Bournemouth (approximately 17,000 turns);
  - Bristol (approximately 38,000 turns);

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<sup>193</sup> See Annex 15.7

<sup>194</sup> See paragraph 127 for practical examples of this occurring

<sup>195</sup> However, given the significant countervailing buyer power that exists in the market, the Parties consider that price increases are not achievable by any means (the (then) OFT noted similar third party evidence in *Servisair / Aviance*, paragraph 62). Indeed (in relation to landside cargo transport specifically but in principle applies here) the Commission has noted the significant countervailing buyer power airlines hold and the same giving rise to the ease of switching to self-handling or between handlers (*LBO France / AviaPartner*, paragraph 102)

- Cardiff (approximately 14,000 turns);
  - Durham Tees Valley (approximately 10,000 turns);
  - East Midlands (approximately 39,000 turns);
  - Exeter (approximately 20,000 turns);
  - Guernsey (approximately 19,000 turns);
  - Humberside (approximately 9,000 turns);
  - Isle of Man (approximately 12,000 turns);
  - Leeds Bradford (approximately 23,000 turns);
  - Liverpool (as discussed above) (approximately 28,000 turns);
  - London City (approximately 40,000 turns);
  - London Luton (approximately 67,000 turns);
  - London Stansted (approximately 95,000 turns);
  - Newcastle (as discussed above) (approximately 29,000 turns);
  - Robin Hood Doncaster Sheffield (approximately 9,000 turns); and
  - Southampton (as discussed above) (approximately 22,000 turns).
227. As the CMA will note, these vary from airports with 9,000 turns (Humberside and Robin Hood Doncaster Sheffield) to those with 95,000 turns (London Stansted). It is therefore clearly commercially and competitively reasonable for an airport to have only a few Providers where the volume of turns does not allow for more.
228. For ground handling, a financially sustainable operation is reliant on the price per serviceable turn which, in part, is reliant on the size and number of aircraft under contract. Assuming market rates at the Overlap Airports, Menzies believes that a Provider would need to turn [3<] medium sized aircraft per day at EDI, GLA, LGW and MAN to be financially viable. While Menzies considers that this would be the same for LHR, the LHR airport authority requires that new entrants handle at least 5% of a terminal's requirements,<sup>196</sup> and this could be a limiting local factor. This requirement is based on turn numbers and is unrelated to aircraft size or the price per turn. It does not apply to a Provider who is already active at LHR, and is looking to secure entry into a new terminal.
229. As has been set out in this Notice, de-icing is only required in the winter where it is necessary to enable an aircraft to depart an airport without snow, ice or frost contamination. Typically Providers will invest in a de-icing service based on the volume of night stop aircraft as it is the majority of first wave departures on cold mornings that require de-icing. Having low volumes of aircraft to de-ice makes it difficult to ensure a viable business. However, de-icing

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As specified in footnote 285

services are often combined with other services, including external presentation services (as the rigs are used in cold conditions for de-icing and during warmer months for external presentation services). On this basis, Menzies considers that a standalone de-icing business would need a minimum of [X] per annum to operate effectively. However, as has been discussed above, the practicalities of running a standalone de-icing business would be difficult as it is assumed (for the purposes of these figures) that staff used during winter months for de-icing would need to be laid off for the summer when not required and then re-employed the following winter. These figures would be lower if a Provider could utilise labour and equipment synergies to produce revenue during the spring, summer and autumn.

- 230. Menzies considers that internal presentation requires [X] (see paragraph 228 above) to ensure a sustainable business. However, this is entirely dependent on the charge that a particular airline is willing to pay. Internal presentation is manpower resource inefficient as a Provider needs large numbers of staff for very short periods to complete the function (but requires minimal equipment, meaning there are low barriers to entry). Providers also need to consider the large number of budget airlines that typically only require these services once or twice a day on multi-sector schedules. Again, internal presentation services can often be combined with other services to achieve synergies.
- 231. To operate successfully at an airport, AS considers that a Provider requires a minimum level of revenue, being [X] for ground handling, [X] for de-icing and [X] for internal presentation. However, AS notes that these figures are subjective and based on its own historic cost base. AS does not operate on the basis that these figures vary by airport [X].
- 232. Therefore it is simply commercially unrealistic to expect that a large number of Providers would be present and competing for such a modest amount of business. Indeed, this is particularly the case for de-icing (as at EDI and GLA (see further below)), which, as has been explained elsewhere in this Notice, is normally only profitable when joined with other services. In the case of AS it has combined de-icing with aircraft presentation and passenger handling, but this could be done with other airport services. In particular the Parties note that Stobart, OCS and Omniserv participated in the auction for the purchase of AS and therefore could be looking to expand their airport services offerings in the UK. Note that, even with an increase in the serviceable turns at a specific airport, it is not precisely the case that there would be a corresponding increase in the number of Providers (as set out below).

*Conclusion on EDI*

- 233. The Parties submit, therefore, that post-Transaction sufficient competitive constraints will continue to operate such that the Transaction will not give rise to horizontal unilateral effects nor will it lead to any substantial lessening of competition at EDI.

**Conditions of competition at Glasgow (GLA)**

**Table 15.4: Overview of Providers at GLA**

	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
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	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
<i>Parties</i>						
Menzies	✓	✓	✓	✓	✓	✗
AS	✗	✗	✗	✗	✓	✓
<i>Independents</i>						
Flightcare	✗	✗	✗	✗	✗	✓
Swissport	✓	✓	✓	✓	✓	✗
<i>Self-suppliers</i>						
Jet2	✗	✓	✗	✗	✗	✗

234. As can be seen from the above table, the Parties overlap in de-icing at GLA. Menzies, AS and Swissport are the three de-icers at GLA.

*Terminal assessment at GLA*

235. It is the Parties' firm view that the relevant geographic market at GLA is in fact airport-wide and is not divided by terminal as an assessment on that basis would overlook important competitive constraints that are felt on an airport-wide (and the Parties submit on an even wider) basis given that Providers are invited to and do in fact bid for contracts with airlines (that only typically operate from one terminal where an airport is divided) irrespective of whether they are or are not active at the airport in question already and (if so) at which terminal. Further, in those previous merger cases concerning ground handling services at airports divided by terminals (of which there have been quite a number), the Parties note that a terminal-by-terminal assessment has not been considered appropriate by the relevant competition authorities. The Parties therefore do not propose to go into any further detail, but reserve the right to provide additional information if that becomes necessary.

*Shares of supply*<sup>197</sup>

236. The tables below sets out the Parties' best estimate shares of supply of the Providers present at GLA in 2015, 2016 and 2017, calculated by reference to the number of turns serviced, for the individual Overlap Services where both Parties are present at GLA, namely only de-icing.

**Table 15.5: De-icing Market Shares at GLA**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	-	-	-	-	[REDACTED]	[10-20]%
<i>AS</i>	[REDACTED]	[70-80]%	[REDACTED]	[70-80]%	[REDACTED]	[70-80]%
<i>Merged Entity</i>	[REDACTED]	[70-80]%	[REDACTED]	[70-80]%	[REDACTED]	[90-100]%
<i>Swissport</i>	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%	[REDACTED]	[5-10]%
<b>Total</b>	38,961	100%	42,065	100%	44,144	100% <sup>198</sup>

237. As can be seen from this table, AS is currently the main de-icing provider at GLA, [REDACTED]. Notably, until late 2017, Menzies did not provide any de-icing services at GLA, however, following the IAG Tender, it moved de-icing equipment to GLA (see further paragraph 198) and started providing this service ([REDACTED]). Its 2017 (and indeed current) market share is therefore entirely based on the one IAG contract. Post-Transaction, the Merged Entity's share of supply would be approximately [90-100]% with an increment of approximately [10-20]%. Notably, were it not for the multi-airport IAG Tender, Menzies would not have entered the market for de-icing services at GLA. The situation post-Transaction therefore reverts back to what it was prior to July 2017 (i.e. before the IAG Tender).
238. Regardless of whether self-supply is included or excluded when calculating market shares (the Parties continue to strongly maintain that excluding self-supply is not an accurate assessment of competition in the Candidate Markets, for the many reasons set out elsewhere in this Notice), the market shares calculated for EDI do not change as there is currently no de-icing self-supply at EDI.
239. For the same reasons as set out above, it is the Parties' view that these current shares do not fully demonstrate the competitive dynamics of this market, which is discussed further below.

*The competitive landscape at GLA, and remaining constraints*

240. GLA is a small to medium sized airport. 22 airlines operate regular<sup>199</sup> flight schedules and the airport in 2017 offered approximately 44,144 serviceable turns.<sup>200</sup> The Parties understand that Swissport has de-icing contracts with the most airlines at GLA (with [REDACTED] contracts in place), whereas Menzies (as discussed above) de-ices [REDACTED]<sup>201</sup> and AS de-ices [REDACTED].<sup>202</sup> As with EDI,

<sup>197</sup> As discussed at paragraph 210, throughout this Notice shares of supply based on turns have been calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year. Menzies are not able to segregate turns information on a more discrete basis. See in particular Table 15.5 where, despite Menzies only servicing BA from July 2017 onwards, they are still attributed with all of BA's turns for 2017 ([REDACTED])

<sup>198</sup> Taking account of rounding, and a small number of unallocated turns (246)

<sup>199</sup> Defined as more than 100 turns annually

<sup>200</sup> Put in context, LGW offers approximately 143,000 serviceable turns annually and LHR offers approximately 238,000

<sup>201</sup> Menzies entered GLA in July 2017 after winning the IAG Tender

<sup>202</sup> Note that, [REDACTED]. For further details, see Annex 12.1. [REDACTED]

these figures confirm that airlines do not give any preference to an existing Provider with the largest share of supply during the tender process and that Providers with the largest share of supply do not necessarily offer the best value bids.

241. As stated above, other than under the IAG Tender, Menzies has not previously provided de-icing services at GLA, meaning the only Providers were Swissport and AS. Therefore, prior to the IAG Tender, and to the extent that customers included de-icing within their invitations to tender for ground handling contracts, Menzies always sub-contracted de-icing at GLA to AS. Indeed, GLA has had only two de-icers for the last fourteen years, and it should be clear that it is not large enough to support more competitors in the absence of external factors (such as the IAG Tender).
242. Given Menzies' recent entry via a single de-icing contract at GLA, the Parties submit that the Transaction merely ensures that the two Providers who have always traditionally competed against each other continue to bid for these services at GLA.
243. Moreover, and as discussed in relation to EDI (at paragraph 219), GLA is a small to medium sized airport and unless a de-icer has in place a number of contracts for de-icing and/or other services with airlines that require sufficient turns to be serviced it is difficult to operate profitably. It is commercially unrealistic, therefore, to expect that a large number of de-icers would be present and competing for a modest amount of business.<sup>203</sup>
244. Importantly, post-Transaction there will remain sufficient competitive constraint at GLA. Swissport is a particularly strong competitor given its long established (and continuous) position at GLA, and it is well-equipped to handle the variety of airlines operating at the airport. Further, it is the Parties' experience that Swissport competes aggressively on price, and is clearly committed to maximising its presence at GLA, both in ground handling and de-icing services. Similarly, other Providers could respond to a tender process at any stage and enter the market, and other airlines operating from GLA could feasibly turn to self-supply with ease (as Jet2 currently does for passenger handling at GLA). Indeed, the Parties believe that all of DHL, WFS and Avia Partner have the capability to enter the de-icing market at GLA.
245. The Merged Entity's market share is therefore not indicative of any market power. Rather it is a result of the fact that AS has picked up both individual contracts and sub-contracts (including) by typically bidding only against Swissport (though the Parties do not believe this will necessarily be the case going forward). Post-Transaction, two bidders (with existing operations in de-icing at GLA) will remain, and these are the two existing ground handlers. As such one can expect de-icing to predominantly be included within the same contracts as ground handling (as is the case at Aberdeen (see further paragraph 215)). As discussed with respect to EDI, this does not exclude the possibility that, such as under the IAG Tender, another customer could procure on a multi-airport, multi-service basis which would encourage another Provider to enter the market at GLA.
246. It is the Parties' view, therefore, that post-Transaction it is sufficient that the two competing de-icers already operationally present at GLA, being the Merged Entity and Swissport (a very strong competitor that offers the same full 'menu' of services as the Merged Entity), remain. Further, as the recent history at this airport has shown, entry and exit can occur and, if prices

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<sup>203</sup> Indeed, at three of the largest UK airports, namely LGW, LHR and MAN, there are only two, five and two competitors (respectively) currently providing de-icing services

were to rise post-Transaction, other Providers could enter with ease, or indeed one or more airlines could turn to self-supplying.<sup>204</sup>

247. Finally, there are other UK locations where only one or two Providers compete at small or medium sized airports without raising any concern from a competition perspective (see further paragraphs 225 to 227 above).<sup>205</sup> The Parties submit that, as is the case at EDI (see paragraph 219 above), it is simply commercially unrealistic to expect that a large number of de-icers would be present and competing for such a modest amount of business at GLA. Indeed, this is particularly the case for de-icing, which, as has been explained elsewhere in this Notice, is normally only profitable when joined with other airport services. [X].

#### *Conclusion on GLA*

248. The Parties submit, therefore, that post-Transaction sufficient competitive constraints will continue to operate such that the Transaction will not give rise to horizontal unilateral effects nor will it lead to any substantial lessening of competition at GLA.

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<sup>204</sup> However, given the significant countervailing buyer power that exists in the market, the Parties consider that price increases are not achievable by any means (the (then) OFT noted similar third party evidence in *Servisair / Aviance*, paragraph 62). Indeed (in relation to landside cargo transport specifically but in principle applies here) the Commission has noted the significant countervailing buyer power airlines hold and the same giving rise to the ease of switching to self-handling or between handlers (*LBO France / AviaPartner*, paragraph 102)

<sup>205</sup> As the CMA will note from paragraph 227, these vary from airports with 9,000 turns (Humberside and Robin Hood Doncaster Sheffield) to those with 95,000 turns (London Stansted). It is clearly commercially and competitively reasonable for an airport to have only a few providers where the volume of turns does not allow for more



## Conditions of competition at London Gatwick (LGW)

**Table 15.6: Overview of Providers at LGW**

	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
<i>Parties</i>						
Menzies	✓	✓	✓	✓	✗	✗
AS	✓	✓	✓	✓	✓	✓
<i>Independents</i>						
CCS	✗	✗	✗	✗	✗	✓
Flightcare	✗	✗	✗	✗	✗	✓
OCS	✗	✗	✗	✗	✗	✓
Swissport	✓	✓	✓	✓	✗	✗
<i>Self-suppliers</i>						
Aurigny	✓	✓	✓	✓	✗	✗
BA <sup>206</sup>	✗	✓	✗	✗	✗	✗
DHL	✓	✓	✓	✓	✗	✗
dnata	✓	✓	✓	✓	✗	✗
GGG	✓	✓	✓	✓	✗	✓
RED	✓	✓	✓	✓	✓	✓

249. As can be seen from this table, the overlap between the Parties at LGW is in relation to ground handling services (given that Menzies does not provide de-icing services or internal presentation services at LGW). There are a number of other competitors in ground handling at LGW. Moreover, recent events, such as the exit of Aviator from LGW ground handling, the *de novo* entry into ground handling services by DHL (who previously did not provide any ground handling services to passenger aircraft at any airport in the UK) and Aurigny moving to self-handling (previously it was serviced by AS), show just how competitive this market is, and proves that switching and entry barriers are indeed very low.

### *Terminal assessment at LGW*

250. It is the Parties' firm view that the relevant geographic market at LGW is in fact airport-wide and is not divided by terminal as an assessment on that basis would overlook important competitive constraints that are felt on an airport-wide (and the Parties submit on an even wider) basis given that Providers are invited to and do in fact bid for contracts with airlines (that only typically operate from one terminal where an airport is divided) irrespective of whether they are or are not active at the airport in question already and (if so) at which terminal. Further, in those previous merger cases concerning ground handling services at airports divided by terminals (of which there have been quite a number), the Parties note that a terminal-by-terminal assessment has not been considered appropriate by the relevant competition authorities. The Parties therefore do not propose to go into any further detail, but reserve the right to provide additional information if that becomes necessary.

<sup>206</sup>

BA only directly self-supplies customer services at LGW, the remainder is self-supplied by its wholly owned subsidiary, GGS

Shares of supply<sup>207</sup>

251. The tables below set out the Parties' best estimate shares of supply for the Providers present at LGW in 2015, 2016 and 2017 (including and excluding self-supply, which the Parties maintain must be included in an accurate assessment of competition in the Candidate Markets), calculated by reference to the number of turns serviced, for the individual Overlap Services where both Parties are present at LGW, namely only ground handling.

**Table 15.7A: Ground Handling Market Shares at LGW**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[X]	[X]	[40-50]%	[X]	[10-20]%
<i>AS</i>	[X]	[X]	[X]	[10-20]%	[X]	[5-10]%
<i>Merged Entity</i>	[X]	[X]	[X]	[60-70]%	[X]	[20-30]%
<i>DHL</i>	-	-	-	-	[X]	[40-50]%
<i>GGS</i>	-	-	-	-	[X]	[10-20]%
<i>RED</i>	-	-	-	-	[X]	[5-10]%
<i>Swissport</i>	[X]	[X]	[X]	[0-5]%	[X]	[0-5]%
<i>dnata</i>	-	-	[X]	[0-5]%	[X]	[0-5]%
<i>Aviator</i>	[X]	[X]	[X]	[30-40]%	-	-
<i>Unknown</i> <sup>208</sup>	-	-	-	-	[X]	[5-10]%
<b>Total</b>	129,842	100%	136,765	100%	139,916	100%

252. As shown in the above table, the Merged Entity's share of supply would be approximately [20-30]% with an increment of approximately [5-10]%.

**Table 15.7B: Ground Handling Market Shares at LGW (Excluding Self-Supply)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[20-30]%
<i>AS</i>	[X]	[0-5]%	[X]	[10-20]%	[X]	[10-20]%
<i>Merged Entity</i>	[X]	[50-60]%	[X]	[60-70]%	[X]	[30-40]%
<i>DHL</i>	-	-	-	-	[X]	[60-70]%
<i>Swissport</i>	[X]	[30-40]%	[X]	[0-5]%	[X]	[0-5]%
<i>Aviator</i>	[X]	[10-20]%	[X]	[30-40]%	-	-
<b>Total</b>	129,842	100%	135,549	100%	96,281	100%

253. As shown in the above table, the Merged Entity's share of supply would be approximately [30-40]% with an increment of approximately [10-20]%, even excluding self-supply.

<sup>207</sup> As discussed at paragraph 210, throughout this Notice shares of supply based on turns have been calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year. Menzies are not able to segregate turns information on a more discrete basis

<sup>208</sup> Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

254. For the same reasons as set out above, it is the Parties' view that these historic shares of supply similarly do not fully demonstrate the competitive dynamics of the markets under consideration. They do not show the actual turnover (or churn) of individual contracts that make up those shares,<sup>209</sup> and the significant entry and exit that has taken place at LGW in recent times (this is discussed further below).<sup>210</sup> However, they do illustrate that the Merged Entity would not be the largest competitor at LGW (and in fact, would be significantly smaller than the largest competitor, DHL).

*The competitive landscape at LGW, and remaining constraints*

255. LGW is a large airport. 45 airlines operate regular<sup>211</sup> flight schedules and the airport in 2017 offered approximately 139,916 serviceable turns.
256. Post-Transaction there will remain sufficient competitive constraint at LGW. Even following the Transaction, the largest competitor (DHL, a recent entrant with a [40-50]% or [60-70]% market share, depending on whether you include self-supply) will be [X] the size of the Merged Entity by number of turns (even when self-supply is excluded). Furthermore, there are two other large competitors (in the form of self-supplying airlines), GGS and RED, and several smaller competitors (smaller by reference to airport presence, rather than UK-wide presence). Note though that of these smaller competitors, two are dnata and Swissport, who are large international ground handling service providers (both with significant presences elsewhere in the UK) and which are readily able to bid for and win contracts at any airport in the UK, including LGW.
257. Similarly, other new suppliers could respond to a tender process at any moment and enter the market (as did DHL), and other airlines operating from LGW could feasibly turn to self-supply with ease (as did Aurigny).
258. Moreover, as discussed above, the Merged Entity's market share is not indicative of any market power. Rather it is the airlines that will continue to lead the market and leverage bids received off of each other. Importantly, because the majority of ground handling contracts at LGW are up for renewal over the next eighteen months, it is very likely that, firstly, the airlines will continue these behaviours and, secondly, that there will be a significant upheaval in these market shares in the immediate future.
259. As discussed in detail above, the common cost base of Providers is such that the Merged Entity could not expect its growth to have any significant impact on its ability to compete on price at a local level. In particular, the Parties understand that there are currently 45 airlines operating regularly from LGW. DHL, the competitor with the largest market share only serves one customer (albeit the largest one at LGW, easyJet). However, Menzies serves [X] airlines and AS [X]. These figures indicate that airlines do not necessarily award contracts to a supplier already present at the airport, nor to the largest local supplier. Combined with the other market share to contract numbers seen in this Notice, it suggests that there is little correlation between a competitor's market share, and its ability to compete for future contracts.

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<sup>209</sup> See, to that effect, *LBO France / AviaPartner*, paragraph 102

<sup>210</sup> Note the significant market share variations for Menzies ('16 to '17), AS ('15 to '16), Swissport ('15 to '16) and Aviator ('15 to '16), and the entrance of DHL, GGS and RED in '17

<sup>211</sup> Defined as more than 100 turns annually

260. It is the Parties' view, therefore, that with seven or more ground handling suppliers post-Transaction there will be sufficient active competitors remaining at LGW. This does not even factor in new entrants who could bid at any point, which is emphasised by the fact that, as the recent history at LGW has shown, entry and exit have occurred regularly:

- DHL entered the ground handling market at LGW in October 2017 by winning the two easyJet contracts that Menzies had previously held. This gave DHL the largest ground handling market share at LGW, and proves that new entrants can provide a real competitive constraint to active ground handlers;
- Aurigny moved to self-supplying in December 2017; and
- Aviator exited the market in November 2016.

Therefore, if prices were to rise post-Transaction, other Providers could enter with ease, or indeed one or more airlines could turn to self-supplying.<sup>212</sup>

*Conclusion on LGW*

261. The Parties submit, therefore, that post-Transaction sufficient competitive constraints will continue to operate such that the Transaction will not give rise to horizontal unilateral effects nor will it lead to any substantial lessening of competition at LGW.

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<sup>212</sup>

However, given the significant countervailing buyer power that exists in the market, the Parties consider that price increases are not achievable by any means (the (then) OFT noted similar third party evidence in *Servisair / Aviance*, paragraph 62). Indeed (in relation to landside cargo transport specifically but in principle applies here) the Commission has noted the significant countervailing buyer power airlines hold and the same giving rise to the ease of switching to self-handling or between handlers (*LBO France / AviaPartner*, paragraph 102)

## Conditions of competition at London Heathrow (LHR)

**Table 15.8: Overview of Providers at LHR**

	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
<i>Parties</i>						
Menzies	✓	✓	✓	✓	✓	✓
AS	✗	✗	✗	✗	✓	✗
<i>Independents</i>						
Aero Mag	✗	✗	✗	✗	✓	✗
ASC	✓	✓	✓	✓	✗	✗
Azzurra <sup>213</sup>	✓	✓	✓	✓	✗	✓
CCS	✗	✗	✗	✗	✗	✓
Cobalt	✓	✓	✓	✓	✓	✗
eva	✗	✗	✓	✗	✗	✗
Flightcare	✗	✗	✗	✗	✗	✓
OCS	✗	✗	✗	✗	✗	✓
Omniserv	✗	✗	✗	✗	✗	✓
Swissport	✓	✓	✓	✓	✗	✗
<i>Self-suppliers</i>						
BA <sup>214</sup>	✓	✓	✓	✓	✓	✗
dnata	✓	✓	✓	✓	✗	✗
Other self-supplying	✓	✓	✓	✓	✗	✗

262. As can be seen from this table, the overlap between the Parties at LHR is in relation to de-icing services. Menzies, AS, Aero Mag, Cobalt and BA are the five de-icers at LHR.

### *Terminal assessment at LHR*

263. It is the Parties' firm view that the relevant geographic market at LHR is in fact airport-wide and is not divided by terminal. This is on the basis that such an assessment would overlook important competitive constraints that are felt on an airport-wide (and the Parties submit on an even wider) basis given that Providers are invited to and do in fact bid for contracts with airlines (that only typically operate from one terminal where an airport is divided)<sup>215</sup> irrespective of whether they are or are not active at the airport in question already and (if so) at which terminal. Further, in those previous merger cases concerning ground handling services at airports divided by terminals (of which there have been quite a number) the Parties

<sup>213</sup> The Parties note that [ ] is currently aggressively pursuing opportunities at (at least) LHR and London Luton through tendering with low prices

<sup>214</sup> BA self-supply ground handling, de-icing and internal presentation services, while also providing such services to Iberia, Iberia Express and Vueling

<sup>215</sup> Save for BA at LHR which currently exclusively operates near-exclusively from Terminal 5 and in a smaller additional capacity from Terminal 3

note that a terminal-by-terminal assessment has not been considered appropriate by the relevant competition authorities.

264. A map of LHR is attached at Annex 15.8. It in fact has only four active terminals and it is not expected that Terminal 1 will return to operation in the near future (or indeed at all) following its decommissionion.

(a) *Do airlines have separate contracts for different terminals?*

265. Generally speaking, the terminals a Provider services depends entirely on the terminals from which its airline customers operate and, at LHR, airlines typically operate from only one terminal, although multi-terminal contracts have been entered into in the past. Where this was the case, the customer typically still procured its requirements together and contracted on a multi-terminal basis. Indeed, some airlines procure and contract for their requirements on a regional basis.<sup>216</sup>

266. The table below shows how each of the Parties and their active competitors in de-icing divide their businesses across different terminals.

**Table 15.9: De-icing Providers at LHR Terminals**

	Terminal 2	Terminal 3	Terminal 4	Terminal 5
<i>Parties</i>				
Menzies	✓	✓	✓	✗
AS	✓	✓	✓	✗
<i>Independents</i>				
Aero Mag	✓	✓	✓	✗
Cobalt	✗	✗	✓	✗
<i>Self-suppliers</i>				
BA	✗	✓	✗	✓

(b) *Do Providers need separate licences for each terminal?*

267. Only one licence is required for a Provider to operate at LHR, regardless of from how many terminals it operates. The licence agreement will, however, specify those terminals from which the Provider may operate (of course, subject to the usual means of amendment, in particular seeking approval from the Airport Operators Committee and Heathrow Airport Limited (the airport operator)). It is the Parties' understanding that seeking approval to expand into another terminal is not particularly burdensome and does not present any real barrier to expansion.<sup>217</sup>

<sup>216</sup> For example, BA has in the past hosted tenders across three separate regions: Europe, Scandinavia and the UK (excluding LHR and its below wing requirements at LGW)

<sup>217</sup> Indeed, a Provider does not need to hold the necessary licence at the time of bidding for a contract. Provided it can meet the necessary criteria for the award of a licence it can always apply after it has won a contract. This dynamic is not specific to LHR and is seen throughout the UK

*(c) Can staff and equipment move freely between all terminals?*

268. The practical limitations (discussed below) on the use of assets across certain terminals at LHR bears no impact on the will or ability of a Provider to successfully bid for contracts at terminals at which they are not present at the time of bidding. Providers will either deploy spare equipment capacity or acquire new equipment (which is readily available in the market) as required. Indeed, from a Provider's perspective, they will at any time host a pool of equipment to service their airline customers and it falls to them to logistically and effectively service those airlines with that pool. This requires careful planning which may (and often does) result in acquiring equipment capacity<sup>218</sup> and managing staff capacity.<sup>219</sup>

*Movement between Terminals 2 and 3*

269. Terminals 2 and 3 are adjacent geographically with no practical restrictions to deploying equipment across the two terminals. The range of the de-icing equipment deployed at Terminals 2 and 3 permits all types to roam the tarmac feasibly. Further, from a de-icer's perspective on the tarmac there is no terminal divide between Terminals 2 and 3. By way of example, it is the case that adjacent stands can host an airline operating from Terminal 2 and one operating from Terminal 3 and so, from a de-icer's perspective, it is entirely irrelevant which terminal hosts those airlines.<sup>220</sup>
270. The airport offers parking facilities for de-icing equipment when it is not in use. These are spaces shared between all operational de-icers, with certain areas dedicated to certain types of equipment. At Terminals 2 and 3 the parking facilities house equipment that is deployed across the tarmac of both terminals.
271. Menzies deploys the same pool of equipment across its airline customers operating from Terminals 2 and 3 as do (it is understood) the other active competitors.

*Movement between Terminals 2 & 3 and 4*

272. De-icing equipment generally cannot be deployed across, on the one hand, Terminals 2 and 3, and, on the other, Terminal 4. De-icers are restricted by the airport itself from doing so.<sup>221</sup> Terminal 4 similarly, therefore, hosts parking facilities for those de-icers operating from it.
273. As discussed in greater detail below, Menzies was active at Terminal 4 in the period 2011 through 2014. During that time Menzies was also active at Terminals 1 and 3 (which is, practically speaking from a de-icer's perspective, equivalent to Terminals 2 and 3 now) but did not consider it, given the practical limitations, commercially feasible to deploy the same equipment across the two sites.

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<sup>218</sup> The markets for the Overlap Services are low-margin environments and it is the Parties belief that Providers generally do not maintain spare equipment capacity at any airport from which they operate which may otherwise limit their profitability if not utilised

<sup>219</sup> Staff can move freely between terminals. Whether this is commercially feasible, however, will remain within the Provider's discretion. It takes time to move staff such that (typically) a staff member would be assigned to a particular site for the entirety of their shift. That does not preclude the Provider from assigning a particular staff member to a different site on another shift

<sup>220</sup> The same is true for non-adjacent stands. Providers operating at Terminals 2 and 3 are truly agnostic to which terminal hosts which airlines

<sup>221</sup> With reference to the LHR map (at Annex 15.8) the practical barrier is apparent. There is a runway between the two sites. There is a tunnel running underneath the runway which links the two sites, however, access is restricted for most types of equipment by LHR itself

274. Further, in the low margin de-icing environment, the time taken to taxi equipment and staff between the two sites would be unproductive in that, in the alternative (and current factual) scenario, that equipment and those staff could be put to active use on the tarmac at either site rather than being deployed between the two. As an example, when Menzies previously successfully bid for the [X] ground handling contract it acquired new equipment capacity and housed it at Terminal 4.

*Movement between Terminals 2 & 3 and 5*

275. From a practical perspective, Terminals 2 and 3, on the one hand, and Terminal 5, on the other, are a significant distance apart and the Parties do not consider that it would be practically or commercially feasible to deploy equipment between the two sites. BA is in fact the only entity operating from both sites and it is understood that it has dedicated equipment housed at each site. Terminal 5 similarly, therefore, hosts dedicated parking facilities for BA.

*Movement generally*

276. More generally, it is the Parties' view that assessing the Transaction on a terminal-by-terminal basis at LHR runs the risk that the assessment cannot be undertaken on any meaningful basis. This is for the following reasons.
277. LHR is one of the world's largest airports and it is one of BA's international hubs (the other being LGW). It is well-known that BA almost exclusively operates from Terminal 5 and operates in a smaller additional capacity from Terminal 3, accounting for approximately half of the airport's overall traffic. BA currently self-supplies its own de-icing requirements and has equally provided such services outside of IAG.
278. As discussed above, BA is therefore the almost exclusive Provider for Terminal 5. Any terminal-by-terminal assessment of the Transaction at the neighbouring terminals will, therefore, overlook the competitive constraint BA poses on the airport as a whole from its operation at Terminal 5 because such would overlook the large volume of passenger and aircraft traffic that is exclusive to Terminal 5.<sup>222</sup> Indeed, as demonstrated at paragraph 127 above, BA has in the past handled airlines outside of IAG operating from different terminals. The same is true, in principle but not scale, of: (i) the constraint the other terminals pose on each other; and (ii) those other airlines that self-supply at LHR (for example, American Airlines, United and Virgin Atlantic).
279. Further, there is demonstrable bid activity and expansion across multiple terminals as set out below (see in particular Table 15.11).

*Shares of supply*<sup>223</sup>

280. The tables below set out the Parties' best estimate shares of supply for the Providers present at LHR in 2015, 2016 and 2017 (including and excluding self-supply, which the Parties maintain must be included in an accurate assessment of competition in the Candidate Markets), calculated by reference to the number of turns serviced, for the individual Overlap Services where both Parties are present at LHR, namely de-icing.

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<sup>222</sup> The same is true of the constraint the other terminals pose on each other

<sup>223</sup> As discussed at paragraph 210, throughout this Notice shares of supply based on turns have been calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year. Menzies are not able to segregate turns information on a more discrete basis



**Table 15.10A: De-icing Market Shares at LHR**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[10-20]%	[X]	[10-20]%	[X]	[5-10]%
<i>AS</i>	[X]	[10-20]%	[X]	[20-30]%	[X]	[20-30]%
<b>Merged Entity</b>	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
<i>BA</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>Aero Mag</i>	[X]	[0-5]%	[X]	[10-20]%	[X]	[10-20]%
<i>Cobalt</i>	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>IDS</i> <sup>224</sup>	[X]	[0-5]%	-	-	-	-
<i>Unknown</i> <sup>225</sup>	[X]	[0-5]%	[X]	[0-5]%	-	-
<b>Total</b>	236,289	100%	237,186	100%	237,832	100%

281. As shown in the above table, the Merged Entity's share of supply would be approximately [30-40]% with an increment of approximately [5-10]%. The Merged Entity will be a significantly constrained by BA, Aero Mag and Cobalt.

**Table 15.10B: De-icing Market Shares at LHR (Excluding Self-Supply)<sup>226</sup>**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[20-30]%	[X]	[20-30]%	[X]	[10-20]%
<i>AS</i>	[X]	[30-40]%	[X]	[50-60]%	[X]	[50-60]%
<b>Merged Entity</b>	[X]	[60-70]%	[X]	[70-80]%	[X]	[60-70]%
<i>Aero Mag</i>	[X]	[5-10]%	[X]	[20-30]%	[X]	[20-30]%
<i>Cobalt</i>	[X]	[0-5]%	[X]	[0-5]%	[X]	[5-10]%
<i>IDS</i> <sup>227</sup>	[X]	[10-20]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown</i> <sup>228</sup>	[X]	[5-10]%	[X]	[5-10]%	-	-
<b>Total</b>	111,197	100%	127,987	100%	129,546	100%

282. As shown in the above table, the Merged Entity's share of supply would be approximately [60-70]% with an increment of approximately [10-20]%. Whether self-supply is included or not, the Merged Entity will remain competitively constrained by Aero Mag, Cobalt and other competitors not currently operationally active at LHR, like IDS.

224 [X]

225 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

226 '15 figures revised to exclude Cobalt's supply to KLM, its parent company at the time (see further paragraph 129)

227 [X]

228 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

283. For the same reasons as set out above, it is the Parties' view that historic shares of supply similarly do not fully demonstrate the competitive dynamics of the markets under consideration. They do not show the actual turnover (or churn) of individual contracts that make up those shares.<sup>229</sup>

*The competitive landscape at LHR, and remaining constraints*

284. LHR is a large airport and offers approximately 238,000 serviceable turns annually across a significant number of airlines. It is a significant hub for many of its airlines (including BA).
285. The Parties are not each other's closest competitor at LHR. Rather, the Parties expect that (as a minimum) they will be challenged for de-icing contracts by Aero Mag, Cobalt and BA (see further the below Table 15.11). The majority of these Providers have demonstrated an ability to maintain their market position over the past three years which indicates that they have been effective at successfully bidding for contracts in tender processes. Furthermore, the Parties believe that each of these competitors, plus new entrants, existing LHR Providers that are not currently offering de-icing services and a number of historic LHR de-icing competitors (such as IDS, which is a large and reputable global de-icer that could re-enter the market at LHR at any point) will invariably be invited to bid for most (if not all) contracts at the airport.

**Table 15.11: Overview of Known Bidding Activity at LHR**

[REDACTED]<sup>230</sup>

286. Post-Transaction it is clear that there will remain sufficient competition that is capable of constraining the Merged Entity. Further, the Merged Entity will continue to face the threat of new entry from Providers not currently present at LHR, as well as the threat of airlines turning to self-supplying.
287. In conclusion, post-Transaction there will remain:
- significant competitors with significant market shares in de-icing;
  - a number of other smaller competitors, which still impose a competitive constraint in those tenders in which they compete with the Merged Entity; and
  - the threat of airlines turning to self-supplying (and additionally competing to supply third party airlines).

*Terminals shares of supply*

288. See also the tables below which show the information contained in Table 15.10B split by terminal. Importantly, the Parties strongly maintain that a terminal-by-terminal assessment is not appropriate for LHR (or any of the other Overlap Airports) as such an assessment would overlook important competitive constraints that are felt on an airport-wide basis given that Providers are invited to and do in fact bid for contracts with airlines (that only typically operate from one terminal where an airport is divided)<sup>231</sup> irrespective of whether they are or are not active at the airport in question already and (if so) at which terminal. Furthermore, the Parties note that in those previous merger cases concerning ground handling services at

<sup>229</sup> See, to that effect, *LBO France / AviaPartner*, paragraph 102

<sup>230</sup> [REDACTED]

airports divided by terminals (of which there have been quite a number), a terminal-by-terminal assessment has not been considered appropriate by the relevant competition authorities. For more discussion on the terminal-by-terminal assessment at LHR, please see the paragraphs 263 to 279 above.

(a) *Terminal 2*

289. Note that Terminal 2 currently has no airline that self-supplies. As such, only one table has been provided.

**Table 15.12: De-icing Market Shares at LHR (Terminal 2)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[20-30]%	[X]	[10-20]%	[X]	[5-10]%
<i>AS</i>	[X]	[30-40]%	[X]	[50-60]%	[X]	[50-60]%
<i>Merged Entity</i>	[X]	[60-70]%	[X]	[60-70]%	[X]	[50-60]%
<i>Aero Mag</i>	[X]	[11-20]%	[X]	[30-40]%	[X]	[40-50]%
<i>Cobalt</i>	-	-	[X]	[0-5]%	-	-
<i>IDS</i> <sup>232</sup>	[X]	[10-20]%	-	-	-	-
<i>Unknown</i> <sup>233</sup>	[X]	[10-20]%	-	-	-	-
<b>Total</b>	59,012	100%	56,439	100%	59,694	100%

290. The Merged Entity's share of supply for de-icing at LHR Terminals 2 is approximately [50-60]% with an increment of [5-10]%. Aero Mag (with a [40-50]% market share at LHR Terminal 2), a competitor that is present at all terminals at LHR at which the Parties are present, and the other active de-icers at LHR will continue to competitively constrain the Merged Entity post-Transaction.

231 Save for BA at LHR which currently exclusively operates near-exclusively from Terminal 5 and in a smaller additional capacity from Terminal 3

232 [X]

233 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

## (b) Terminal 3

**Table 15.13A: De-icing Market Shares at LHR (Terminal 3)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[30-40]%	[X]	[20-30]%	[X]	[20-30]%
<i>AS</i>	[X]	[20-30]%	[X]	[20-30]%	[X]	[20-30]%
<b>Merged Entity</b>	[X]	[50-60]%	[X]	[50-60]%	[X]	[50-60]%
<i>BA</i>	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
<i>Aero Mag</i>	-	-	[X]	[5-10]%	[X]	[5-10]%
<i>IDS</i> <sup>234</sup>	[X]	[5-10]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown</i> <sup>235</sup>	[X]	[0-5]%	[X]	[0-5]%	-	-
<b>Total</b>	39,156	100%	44,843	100%	45,561	100%

291. The Merged Entity's share of supply for de-icing at LHR Terminal 3 is approximately [50-60]% with an increment of [20-30]%. However, even if this very narrow market is assessed, BA ([30-40]%) and Aero Mag ([5-10]%) are strong competitors, and will continue to constrain the Merged Entity (and it should not be forgotten that de-icers active at other LHR terminals, or even those not currently active, can easily enter what is a bid market with low barriers to entry).

**Table 15.13B: De-icing Market Shares at LHR (Terminal 3) (Excluding Self-Supply)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[40-50]%	[X]	[40-50]%	[X]	[40-50]%
<i>AS</i>	[X]	[30-40]%	[X]	[30-40]%	[X]	[40-50]%
<b>Merged Entity</b>	[X]	[80-90]%	[X]	[80-90]%	[X]	[80-90]%
<i>Aero Mag</i>	-	-	[X]	[10-20]%	[X]	[10-20]%
<i>IDS</i> <sup>236</sup>	[X]	[10-20]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown</i> <sup>237</sup>	[X]	[5-10]%	[X]	[0-5]%	-	-
<b>Total</b>	26,277	100%	27,243	100%	28,102	100%

292. The Merged Entity's share of supply for de-icing at LHR Terminals 3 (excluding self-supply) is approximately [80-90]% with an increment of [40-50]%. However, Aero Mag and the other active de-icers at LHR will continue to competitively constrain the Merged Entity post-Transaction.

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234 [X]

235 *Menzies* is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

236 [X]

237 *Menzies* is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

## (c) Terminals 2 &amp; 3

**Table 15.14A: De-icing Market Shares at LHR (Terminals 2 & 3)<sup>238</sup>**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[20-30]%	[X]	[20-30]%	[X]	[10-20]%
<i>AS</i>	[X]	[30-40]%	[X]	[40-50]%	[X]	[40-50]%
<i>Merged Entity</i>	[X]	[60-70]%	[X]	[60-70]%	[X]	[50-60]%
<i>Aero Mag</i>	[X]	[5-10]%	[X]	[20-30]%	[X]	[20-30]%
<i>BA</i>	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
<i>Cobalt</i>	-	-	[X]	[0-5]%	-	-
<i>IDS<sup>239</sup></i>	[X]	[5-10]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown<sup>240</sup></i>	[X]	[5-10]%	[X]	[0-5]%	-	-
<b>Total</b>	101,030	100%	101,282	100%	105,286	100%

293. The Merged Entity's share of supply for de-icing at LHR Terminals 2 & 3 is approximately [50-60]% with an increment of [10-20]%. However, regardless of the fact that the Parties do not consider a terminal-by-terminal assessment to adequately reflect the market, Aero Mag and the other active de-icers at LHR will continue to competitively constrain the Merged Entity post-Transaction, for the reasons discussed elsewhere in this Notice.

**Table 15.14B: De-icing Market Shares at LHR (Terminals 2 & 3) (Excluding Self-Supply)<sup>241</sup>**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[20-30]%	[X]	[20-30]%	[X]	[20-30]%
<i>AS</i>	[X]	[30-40]%	[X]	[40-50]%	[X]	[40-50]%
<i>Merged Entity</i>	[X]	[60-70]%	[X]	[70-80]%	[X]	[60-70]%
<i>Aero Mag</i>	[X]	[10-20]%	[X]	[20-30]%	[X]	[30-40]%
<i>Cobalt</i>	-	-	[X]	[0-5]%	-	-
<i>IDS<sup>242</sup></i>	[X]	[10-20]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown<sup>243</sup></i>	[X]	[10-20]%	[X]	[0-5]%	-	-
<b>Total</b>	88,160	100%	83,682	100%	87,827	100%

238 Note that the data for '15 includes a limited amount of data for Terminal 1, which closed on 29 June 2015 (though by closure it had only been handling twenty daily flights)

239 [X]

240 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

241 Note that the data for '15 includes a limited amount of data for Terminal 1, which closed on 29 June 2015 (though by closure it had only been handling twenty daily flights)

242 [X]

243 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

294. Excluding self-supply, the Merged Entity's share of supply for de-icing at LHR Terminals 2 & 3 is approximately [60-70]% with an increment of [10-20]%. However, Aero Mag and the other active de-icers at LHR will continue to competitively constrain the Merged Entity post-Transaction, for the reasons discussed elsewhere in this Notice.

(d) Terminal 4

**Table 15.15A: De-icing Market Shares at LHR (Terminal 4)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[20-30]%	[X]	[10-20]%	[X]	[10-20]%
<i>AS</i>	[X]	[30-40]%	[X]	[20-30]%	[X]	[20-30]%
<i>Merged Entity</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>Aero Mag</i>	-	-	[X]	[20-30]%	[X]	[30-40]%
<i>Cobalt</i>	[X]	[20-30]%	[X]	[0-5]%	[X]	[20-30]%
<i>IDS</i> <sup>244</sup>	[X]	[10-20]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown</i> <sup>245</sup>	[X]	[0-5]%	[X]	[20-30]%	-	-
<b>Total</b>	26,827	100%	26,705	100%	24,260	100%

295. The Merged Entity's share of supply for de-icing at LHR Terminal 4 is approximately [40-50]% with an increment of [10-20]%. Aero Mag ([30-40]%) and Cobalt ([20-30]%) are strong, international competitors, and will continue to constrain the Merged Entity (and it should not be forgotten that de-icers active at other LHR terminals, or even those not currently active, can easily enter what is a bid market with low barriers to entry).

**Table 15.15B: De-icing Market Shares at LHR (Terminal 4) (Excluding Self-Supply)**<sup>246</sup>

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[30-40]%	[X]	[10-20]%	[X]	[10-20]%
<i>AS</i>	[X]	[30-40]%	[X]	[20-30]%	[X]	[20-30]%
<i>Merged Entity</i>	[X]	[60-70]%	[X]	[40-50]%	[X]	[40-50]%
<i>Aero Mag</i>	-	-	[X]	[20-30]%	[X]	[30-40]%
<i>Cobalt</i>	[X]	[5-10]%	[X]	[0-5]%	[X]	[20-30]%
<i>IDS</i> <sup>247</sup>	[X]	[20-30]%	-	-	-	-
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	-	-
<i>Unknown</i> <sup>248</sup>	[X]	[0-5]%	[X]	[20-30]%	-	-

244 [X]

245 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

246 '15 figures revised to exclude Cobalt's supply to KLM, its parent company at the time (see further paragraph 129)

247 [X]

248 Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<b>Total</b>	22,867	100%	26,705	100%	24,260	100%

296. Even excluding self-supply, the Merged Entity's share of supply for de-icing at LHR Terminal 4 is approximately [40-50]% with an increment of [10-20]%. However, even if this very narrow market is assessed, Aero Mag ([30-40]%) and Cobalt ([20-30]%) are strong, international competitors, and will continue to constrain the Merged Entity (and it should not be forgotten that de-icers active at other LHR terminals, or even those not currently active, can easily enter what is a bid market with low barriers to entry).

(e) *Terminal 5*

297. Note that Terminal 5 currently has only one airline, BA, and it self-supplies. As such, only one table has been provided. It is important to note that this dynamic at Terminal 5 illustrates that LHR should not be segmented by terminal, as to do so does not consider the important competitive constraint exerted by BA that is felt on an airport-wide basis.

**Table 15.13: De-icing Market Shares at LHR (Terminal 5)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	-	-	-	0%	-	0%
<i>AS</i>	-	-	-	0%	-	0%
<i>Merged Entity</i>	-	-	-	0%	-	0%
<i>BA</i>	[ <del>3</del> ]	100%	[ <del>3</del> ]	100%	[ <del>3</del> ]	100%
<b>Total</b>	[ <del>3</del> ]	100%	[ <del>3</del> ]	100%	[ <del>3</del> ]	100%

*Conclusion on LHR*

298. The Parties submit, therefore, that post-Transaction sufficient competitive constraints will continue to operate such that the Transaction will not give rise to horizontal unilateral effects nor will it lead to any substantial lessening of competition at LHR.

## Conditions of competition at Manchester (MAN)

**Table 15.14: Overview of Providers at MAN**

	Baggage handling	Passenger handling	Ramp handling	Airside cargo transport	De-icing	Internal presentation
<i>Parties</i>						
Menzies	✓	✓	✓	✓	✗	✓
AS	✓	✓	✓	✓	✓	✓
<i>Independents</i>						
Aviator	✓	✓	✓	✓	✗	✗
CCS	✗	✗	✗	✗	✗	✓
Flightcare	✗	✗	✗	✗	✗	✓
ICTS	✗	✓	✗	✗	✗	✗
OCS	✗	✗	✗	✗	✗	✓
Omniserv	✗	✓	✗	✗	✗	✗
Premiere Handling	✓	✓	✓	✓	✗	✗
Swissport	✓	✓	✓	✓	✓	✗
<i>Self-suppliers</i>						
dnata	✓	✓	✓	✓	✗	✗
Jet2	✓	✓	✓	✗	✗	✗
Other self-handling	✓	✓	✓	✓	✗	✗

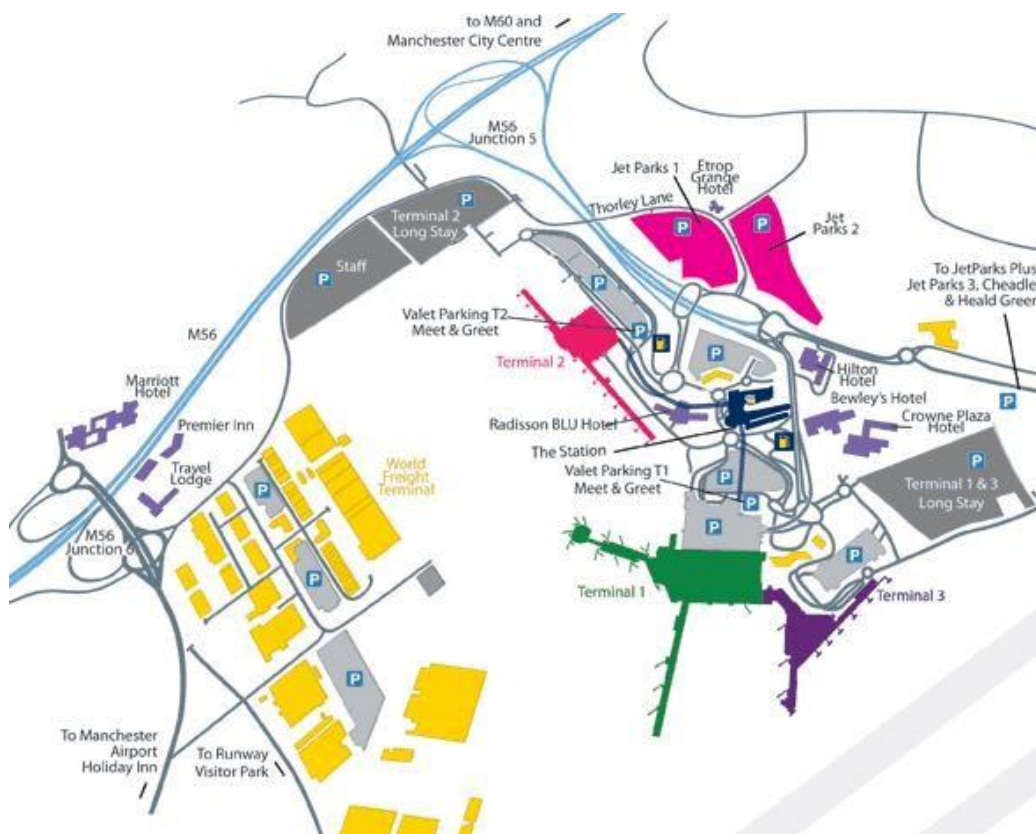
299. As can be seen from the above table, Menzies and AS compete in ground handling and internal presentation at MAN. Notably, AS is a very recent entrant in ground handling at MAN (in April 2018), having won the Flybe contract from Menzies. There are a number of competitors for each Overlap Service.



*Terminal assessment at MAN*

300. In the same way as at the other relevant Overlap Airports, it is the Parties' firm view that the relevant geographic market at MAN is in fact airport-wide and is not divided by terminal. This was also the approach taken by the CMA in its most recent decision applying specifically to ground handling services at MAN.<sup>249</sup> The Parties therefore do not propose to go into any further detail, but reserve the right to provide additional information if that becomes necessary. A simple map of MAN is below. As is shown, the three terminals are adjacent to one another.

**Figure 5.1: Map of MAN**



*Shares of supply*<sup>250</sup>

301. The tables below set out the Parties' best estimate shares of supply for the Providers present at MAN in 2015, 2016 and 2017 (including and excluding self-supply, which the Parties maintain must be included in an accurate assessment of competition in the Candidate Markets), calculated by reference to the number of turns serviced, for the individual Overlap Services where both Parties are present at MAN, namely ground handling and internal presentation.

<sup>249</sup> *Menzies / ASIG*, paragraph 55

<sup>250</sup> As discussed at paragraph 210, throughout this Notice shares of supply based on turns have been calculated on the principle that a Provider who gains a customer during a calendar year is attributed all of that customer's turns for that year. Menzies are not able to segregate turns information on a more discrete basis

**Table 15.15A: Ground Handling Market Shares at MAN**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>AS</i>	-	-	-	-	<sup>251</sup>	[0-5]%
<i>Merged Entity</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>Swissport</i>	[X]	[20-30]%	[X]	[30-40]%	[X]	[30-40]%
<i>Aviator</i>	[X]	[0-5]%	[X]	[5-10]%	[X]	[5-10]%
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	[X]	[5-10]%
<i>Unknown</i> <sup>252</sup>	[X]	[10-20]%	[X]	[10-20]%	[X]	[5-10]%
<b>Total</b>	70,044	100%	88,903	100%	97,873	100%

302. As shown in the above table, the Merged Entity's share of supply for ground handling is approximately [40-50]% with an increment of 0% (based on 2017 data). However, AS entered the MAN ground handling market in April 2018, having won the [X] contract ([X] turns) from Menzies. On this basis, and assuming current turn figures for 2018 are the same as 2017, Menzies would have a market share of [20-30]% ([X] turns) while AS would have a market share of [10-20]% ([X] turns). The increment would be [10-20]% and the Merged Entity's market share would remain [40-50]%.

**Table 15.15B: Ground Handling Market Shares at MAN (Excluding Self-Supply)**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>AS</i>	-	-	-	-	-	[0-5]%
<i>Merged Entity</i>	[X]	[50-60]%	[X]	[40-50]%	[X]	[40-50]%
<i>Swissport</i>	[X]	[20-30]%	[X]	[30-40]%	[X]	[30-40]%
<i>Aviator</i>	[X]	[5-10]%	[X]	[5-10]%	[X]	[5-10]%
<i>dnata</i>	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
<i>Unknown</i> <sup>253</sup>	[X]	[10-20]%	[X]	[10-20]%	[X]	[5-10]%
<b>Total</b>	68,964	100%	87,823	100%	96,793	100%

303. Even as a result of excluding self-supply, the assessment at MAN for ground handling changes only marginally. This is because only dnata self-supplies, and this is a negligible number of flights to Emirates (1,080 turns per annum). As can be seen in the table above, the Merged Entity's share of supply for ground handling will remain approximately [40-50]% with an increment of 0% (based on 2017 data). However, as has been noted previously, AS entered the MAN ground handling market in April 2018, having won the [X] contract ([X] turns) from Menzies. On this basis, and assuming current turn figures for 2018 are the same as 2017, Menzies would have a market share of [20-30]% ([X] turns) while AS would have a

<sup>251</sup> Note that AS only entered the ground handling market at MAN in April 2018. See further paragraph 304

<sup>252</sup> Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

<sup>253</sup> [X]

market share of [10-20]% ([redacted] turns). The increment would be [10-20]% and the Merged Entity's market share would remain [40-50]%.

**Table 15.16: Internal Presentation Market Shares at MAN**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[redacted]	[5-10]%	[redacted]	[5-10]%	[redacted]	[5-10]%
<i>AS</i>	[redacted]	[30-40]%	[redacted]	[20-30]%	[redacted]	[10-20]%
<i>Merged Entity</i>	[redacted]	[40-50]%	[redacted]	[30-40]%	[redacted]	[20-30]%
<i>Flightcare</i>	[redacted]	[50-60]%	[redacted]	[60-70]%	[redacted]	[60-70]%
<i>CCS</i>	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[5-10]%
<i>OCS</i>	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[5-10]%
<i>Unknown</i> <sup>254</sup>	[redacted]	[0-5]%	[redacted]	[0-5]%	[redacted]	[0-5]%
<b>Total</b>	80,946	100%	90,372	100%	96,064	100%

304. As shown by the above table, the Merged Entity's share of supply for internal presentation is approximately [20-30]% with an increment of approximately [5-10]%. As there is currently no self-supply for internal presentation at MAN, only one table has been provided. It is clear that, post-Transaction, the Merged Entity will remain significantly constrained by Flightcare ([60-70]%), CCS and OCS (both with [6-10]%).
305. For the same reasons as set out above, it is the Parties' view that historic shares of supply similarly do not fully demonstrate the competitive dynamics of the markets under consideration. They do not show the actual turnover (or churn) of individual contracts that make up those shares.<sup>255</sup> The CMA noted as much specifically in relation to MAN in *Menzies / ASIG*.<sup>256</sup>

*The competitive landscape at MAN, and remaining constraints*

306. The Parties do not consider that they are each other's closest competitor in ground handling or internal presentation.
307. In particular, AS is a recent entrant at MAN for ground handling, and Menzies' main competitors have over several years been Swissport, dnata, Aviator, WFS and self-supply (Menzies perceives [redacted] to be its closest competitor for ground handling). As can be seen from Table 15.14, in addition to the Parties, each of Swissport, dnata and Aviator are all currently active in the provision of baggage, passenger, ramp and airside cargo transport services. Each of those handlers has maintained their presence at MAN throughout the recent past and the Parties expect that they will continue to impose a significant competitive constraint post-Transaction. Furthermore, a smaller handler, Premiere Handling similarly offers baggage passenger, ramp and airside cargo transport services (to Small Planet, Signature, Arini, Logan Air and Titan Airways)<sup>257</sup> and will equally impose competitive constraint on the Merged Entity post-Transaction.

<sup>254</sup> Menzies is not aware of to which competitor(s) these outstanding turns should be allocated. It does not have visibility as to the entire market

<sup>255</sup> See, to that effect, *LBO France / AviaPartner*, paragraph 102

<sup>256</sup> *Menzies / ASIG*, paragraph 90

<sup>257</sup> A private aircraft handler

308. For internal presentation, Menzies is a relatively small competitor (both at MAN and in the UK as a whole) and Swissport (via Flightcare, a reputable, specialist supplier of internal presentation services) is a much more viable competitor to AS than Menzies is, or has ever been in the past. Indeed, the Merged Entity will remain significantly constrained by Flightcare ([60-70]%) and CCS and OCS (both with [5-10]%).
309. [REDACTED].

**Table 15.17: Overview of Bidders at MAN**[REDACTED]<sup>258</sup>

310. Further, the Merged Entity will continue to face the threat of new entry from Providers not currently present at MAN and the threat of airlines turning to self-supplying. Given the evidence of recent entry by AS and the continued existence of sufficient alternative suppliers, the Transaction does give rise to any substantial lessening of competition.

*Conclusion on MAN*

311. The Parties submit, therefore, that post-Transaction sufficient competitive constraints will continue to operate such that the Transaction will not give rise to horizontal unilateral effects nor will it lead to any substantial lessening of competition at MAN.

**Conditions of competition at other selected airports**

312. See below for an overview of the conditions of competition at other selected UK airports.

**Table 15.18: Overview of Aberdeen for 2017**

	Ground handling		De-icing		Internal presentation	
	Menzies	AS	Menzies	AS	Menzies	AS
<i>Turns</i>	approximately 24,438					
<i>Competitors</i>	<i>Dalcross Handling; Menzies; Swissport</i>		<i>Dalcross Handling; Menzies; Swissport</i>		<i>Flightcare</i>	
<i>Turns (per Party)</i>	[REDACTED]	-	[REDACTED]	-	-	-
<i>Profit (£'000)</i>	[REDACTED]	-	[REDACTED]	-	-	-

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As part of full-service tenders. Menzies sub-contracts de-icing at MAN to AS

**Table 15.19: Overview of Birmingham for 2017**

	Ground handling		De-icing		Internal presentation	
	Menzies	AS	Menzies	AS	Menzies	AS
<b>Turns</b>	approximately 61,000					
<b>Competitors</b>	Swissport		AS; Swissport		Flightcare	
<b>Turns (per Party)</b>	-	-	-	[X]	-	-
<b>Profit (£'000)</b>	-	-	-	[X] <sup>259</sup>	-	-

**Table 15.20: Overview of Bristol for 2017<sup>260</sup>**

	Ground handling		De-icing		Internal presentation	
	Menzies	AS	Menzies	AS	Menzies	AS
<b>Turns</b>	approximately 31,648					
<b>Competitors</b>	Menzies; Swissport		AS; Swissport		AS; Flightcare	
<b>Turns (per Party)</b>	[X]	-	-	[X]	-	[X]
<b>Profit (£'000)</b>	[X]	-	-	[X] <sup>261</sup>	-	[X] <sup>262</sup>

**Table 15.21: Overview of London City for 2017**

	Ground handling		De-icing		Internal presentation	
	Menzies	AS	Menzies	AS	Menzies	AS
<b>Turns</b>	approximately 38,647					
<b>Competitors</b>	Menzies; Sky Partner		London City Airport		Flightcare	
<b>Turns (per Party)</b>	[X]	-	-	-	-	-
<b>Profit (£'000)</b>	[X]	-	-	-	-	-

**Table 15.22: Overview of London Luton for 2017**

	Ground handling		De-icing		Internal presentation	
	Menzies	AS	Menzies	AS	Menzies	AS
<b>Turns</b>	approximately 51,517					
<b>Competitors</b>	Azzurra; Menzies; Swissport		Aero Mag; AS; Swissport		Flightcare	
<b>Turns (per Party)</b>	[X]	-	-	[X]	-	-
<b>Profit (£'000)</b>	[X]	-	-	[X] <sup>263</sup>	-	-

313. Aberdeen, Birmingham, Bristol, London City and London Luton are small to medium sized airports where (in a similar manner to EDI, GLA and the other airports set out in paragraph 226) limited demand for the Overlap Services means there are only a few active competitors.

259 For the period 1 May 2017 to 4 April 2018

260 See further Table 15.23

261 For the period 1 May 2017 to 4 April 2018. Note that [X].

262 See footnote 261

263 For the period 1 May 2017 to 4 April 2018

314. As is discussed in more detail elsewhere in this Notice, it is often simply commercially unrealistic to expect that a large number of Providers will be present at such airports, servicing modest amounts of business. This is particularly the case for de-icing, as is also explained elsewhere, though it is also applicable to ground handling and internal presentation. Indeed, the Parties estimate that there are at least twenty UK airports where there are two or less active Providers and that these vary from airports with 9,000 turns (such as Humberside and Robin Hood Doncaster Sheffield) to those with 95,000 turns (such as London Stansted).
315. The CMA will also note that there is no overlap in service provision between the Parties at any of the airports identified in Tables 15.18 to 15.22. As such, they should be discounted from the CMA's assessment as the Transaction is complementary in that regard and would not result in a substantial lessening of existing competition.
316. Furthermore, please see the following tables for market shares for the active ground handlers at Bristol and London Stansted for the last three years. These have been calculated on the same basis as the market shares considered elsewhere in this Notice. Note that Menzies has since exited London Stansted due to [REDACTED], while Stobart has entered that market.

**Table 15.23: Ground Handling Market Shares at Bristol**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
<i>Swissport</i>	[REDACTED]	[90-100]%	[REDACTED]	[90-100]%	[REDACTED]	[90-100]%
<b>Total</b>	27,305	100%	30,250	100%	31,44	100%

**Table 15.24: Ground Handling Market Shares at London Stansted**

Provider	'15 Turns	'15 Share	'16 Turns	'16 Share	'17 Turns	'17 Share
<i>Menzies</i>	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
<i>Swissport</i>	[REDACTED]	[80-90]%	[REDACTED]	[80-90]%	[REDACTED]	[80-90]%
<b>Total</b>	72,089	100%	76,147	100%	80,786	100%

317. As the CMA will note, there is no overlap in service provision between the Parties at either of these airports. Indeed, as discussed, Menzies has now exited London Stansted. As such (and as with Aberdeen, Birmingham, London City and London Luton), they should be discounted from the CMA's assessment as the Transaction is complementary in that regard and would not result in a substantial lessening of existing competition.

**Coordinated conduct**

318. The shares of supply (and underlying turns data) and level of contract churn discussed in response to this question 15 demonstrates that there is little incentive or ability for coordinated conduct.
319. Further, the Parties do not consider that there is any scope or incentive for coordinated conduct post-Transaction at the five Overlap Airports for the following reasons:
- airline customer procurement is outside of the Parties' control. However, this does not preclude Providers from responding competitively to tender processes that encompass service lines which it may not actually provide itself. As discussed at paragraph 183

above, sub-contractual arrangements are commonplace in the Overlap Services markets such that Providers generally are not precluded from responding to an invitation;<sup>264</sup>

- invitations to tender issued by the airlines are not transparent and the Parties are typically not aware of which, or how many, Providers have been invited to bid in a tender process. Further, if the Parties are not invited to bid then they may not become aware of the existence of the tender process until an airline customer switches Providers and the change becomes apparent at the airport in question. The ability of an airline to invite bids from both existing Providers at a particular airport and those not present (which may or may not provide services to the inviting airline at other airports or may or may not have been present previously at the airport), together with the opaqueness of the market mentioned above, indicates that the actual number of competitors active at an individual airport is not determinative of which competitors might be bidding in tender processes for contracts (making coordination practically difficult, notwithstanding the lack of incentives to coordinate). Irrespective of how concentrated an airport may be, competitive constraints remain, with the very real threat of an airline customer switching to another Provider or self-supplying;
- the different airlines' requirements at each airport can vary considerably in terms of their volume (number of turns they require) and the services they choose to outsource or self-supply;
- some airlines may host tender processes encompassing a number of airports where they require Overlap Services, but may not in fact award all contracts to a single Provider;
- while there may be some similarity as to likely cost of labour, there is little (or no) transparency as to the actual contracts awarded and what requirements they may cover. Not all Providers are necessarily invited to bid in each tender, nor is there necessarily any transparency as to how, or between which Providers, the awarded contract has been divided;
- Overlap Services are sourced in a customer-led market in which Providers bid for contracts with contracts often awarded on price rather than qualitative factors;<sup>265</sup>
- independent Providers face the risk of airlines switching to self-supplying with ease and switching between Providers generally;<sup>266</sup> and
- there are low barriers to entry and expansion as described in response to questions 18 and 21 below.

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<sup>264</sup> Menzies list of sub-contractual arrangements in place across the UK is attached at Annex 12.1

<sup>265</sup> Recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62

<sup>266</sup> Recognised by the (then) OFT in *Servisair / Aviance*, paragraph 69

320. These various external competitive constraints will remain the same pre- and post-Transaction and this supports the Parties' view that there is little impact on the potential for coordinated conduct. This is the case even if (as will be the case at EDI and GLA, the Transaction results in only two Providers supplying de-icing).<sup>267</sup>

16. *For Candidate Markets characterised by bidding processes and/or where customers typically issue requests for quotations, provide bidding data setting out any bids made by each of the merger parties to win business in the overlapping markets.*

321. See Annex 16.1 for Menzies' tender data for the Overlap Airports from March 2013 to May 2018.<sup>268, 269, 270</sup> This also includes Menzies' understanding of other bidders, although the process is not always transparent.

322. Unfortunately AS does not keep such records, primarily due to its lean management structure. [REDACTED].

323. See also Annexes 16.2, which demonstrates Menzies' understanding of current supply at the Overlap Airports by service line (including its own contracts),<sup>271</sup> and 16.3, which lists AS' active contracts at the Overlap Airports by service line.

#### INCREASE IN THE MERGER PARTIES' BUYER POWER

17. *If applicable, for any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects, if any, of such increased ability on competition at any levels of the supply chain.*

324. The Parties both source equipment for the provision of the Overlap Services at airports where they are active. Equipment may be leased or purchased outright (new or used). Similarly, the Parties lease premises from the airports at which they operate.

325. The Parties also occasionally source contract staff from external providers to fulfil certain roles, particularly in relation to passenger management functions.

326. It is arguable that the Merged Entity has the potential to obtain better commercial terms from its suppliers. [REDACTED].<sup>272</sup>

327. Moreover, the costs of a Provider are largely labour-related. Labour costs are typically static despite an undertaking's size or bargaining strength and the Parties arguably achieve no increase in buyer power as a result of the Transaction. [REDACTED].

328. [REDACTED].<sup>273</sup>

<sup>267</sup> Indeed there are numerous airports at which there are a few active handlers (see, for example, paragraph 256 above)

<sup>268</sup> The terms 'internal presentation', 'cleaning', 'aircraft cleaning', 'cabin presentation' and 'cabin tidy' all refer to the same service (i.e. the cleaning of the passenger and flight crew cabins in an aircraft)

<sup>269</sup> The term 'ACT' refers to 'airside cargo transport'

<sup>270</sup> The term 'lounge' refers to the provision of airport lounge services

<sup>271</sup> Note that Annex 16.1 is based on Menzies' market understanding of tender results and other public information

<sup>272</sup> Indeed, input procurement by the Merged Entity will differ significantly as it will encompass input for the provision of de-icing and internal presentation services which Menzies is not significantly active in



<b>LOSS OF POTENTIAL COMPETITION</b>
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18. *Describe whether any merger party has plans or has attempted in the last three years to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply). If so:*
- (a) *Provide any internal documents setting out plans of any merger party to expand in the overlapping product(s), service(s) and/or geographic area(s) or to enter a market where another merger party is operating.*
- (b) *Explain what barriers to entry or expansion exist for each merger party to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply).*
329. [X].
330. [X].
331. It is the Parties' view that there are no particular barriers to entry or expansion faced by the Parties or any of their existing competitors in the wider ground handling, de-icing or internal presentation services markets.
332. As set out in Tables 12.1 and 20.1, aside from the five Overlap Airports considered in more detail, the Parties are present at various other airports across the UK, each providing a number of different (non-overlapping) services. Given the ease with which any Provider can participate in a tender and (if awarded the contract) begin operations, there is theoretically a loss of potential competition from the other Party at each of these other airports. However, just as it would be easy for one of the Parties to begin providing these other services, there are similarly no capacity constraints on either the existing Providers at these airports or others not operationally present.
333. Importantly, it is commonplace for Providers to take part in tender processes without a licence to operate airside at the airport in question as they will, if successful, subsequently obtain a licence (these are, in the Parties' experience, regularly available)<sup>274</sup> and acquire the assets and expertise of the incumbent Provider by way of some corporate arrangement which is often subject to TUPE. In any event, because of such ease of new entry, it is the Parties' view that there is no advantage to any bidder in a tender process if they hold a licence to provide airside services at the time of bidding (if indeed an airside licence is required).
334. Further, there are a significant number of competitors in the Overlap Services markets that partake in tender processes at airports across the UK (most of which are subject to practical capacity limitations)<sup>275</sup> such that competition for contracts is fierce.

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<sup>273</sup> [X]

<sup>274</sup> The requirement that each Provider providing airside services must hold a licence awarded by the airport does not, in the Parties' view, pose any particular barrier to entry. Further, it is the Parties' experience that the powers contained in the Directive for airport authorities to restrict the number of Providers at any particular airport where it is appropriate to do so (as discussed above) are not exercised to any extent that would restrict a new entrant from bidding in tender processes for the provision of the Overlap Services. Where a Provider bids in such a tender process it is often with a view to later obtaining a licence from the airport

<sup>275</sup> See the comments in relation to de-icing at EDI and GLA

335. For example, Tables 21.1 and 21.2 demonstrate occasions on which each of the Parties (respectively) has successfully bid for a contract and subsequently entered an airport at which it was not present at the time (and the costs of doing so).
336. In the fuelling, landside cargo transport and external presentation services markets there is no potential for loss of competition as there is in fact no reduction in the number of competitors bidding in tender processes in those markets.

## VERTICAL EFFECTS

19. *If the merger parties operate at different levels of the supply chain (that is, a merger party is engaged in activities upstream or downstream of the activities in which the other merger party is engaged), describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of key inputs or access to customers.*

337. The Parties are direct competitors in the markets for the provision of certain ground handling, de-icing or internal presentation services at the Overlap Airports.
338. As discussed above, airline customer procurement is outside of the Parties' control. However, this does not preclude Providers from responding competitively to tender processes that encompass service lines which they may not actually provide themselves. Indeed, sub-contractual arrangements are commonplace in the Overlap Services markets such that Providers generally are not precluded from responding to an invitation.<sup>276</sup>
339. Even in circumstances where those sub-contractual arrangements were to result in a vertical relationship (for merger control purposes), the Parties submit that the Merged Entity would not have an ability to engage in any input or customer foreclosure strategy (or have any increased ability to that which is apparent pre-Transaction. In other words, the Transaction has no effect). Indeed, the customer-led nature of the market<sup>277</sup> is such that any strategy of a Provider to foreclose a competitor would be ineffective. Furthermore, the airline customer always has the option to exclude certain services from a contract and procure these directly from another Provider or indeed turn to self-supplying.
340. It is the Parties' view therefore that their sub-contractual arrangements would not result in any input or customer foreclosure, in a market where it is the airlines who decide whether or not to procure specific services under a particular contract, and where there are various other Providers that provide those services.
341. Increasingly tenders encompass the full range of airside services, including de-icing. To the extent that a customer really wanted to exclude this and open it up for other Providers that do not necessarily provide ground handling services, there remain a few de-icing suppliers such as Aero Mag and IDS that could expand from their current presence in the UK into other airports (particularly via a multi-airport de-icing contract). Both are large global companies that already operate across multiple airports in the US and Canada in particular, and could easily do so in the UK.

<sup>276</sup> Menzies list of sub-contractual arrangements across the UK is attached at Annex 12.1

<sup>277</sup> In which there is a sometimes a lack of demand for separate procurement of each Overlap Service or individual service line

342. In relation to internal presentation services, these services are more rarely combined with typical ground handling tenders, and Menzies only had a minimal presence in this market prior to the Transaction. To the extent that customers look for a bundled contract, other suppliers will still be able to sub-contract with the likes of OCS, Omniserv and others that will continue to provide these services (and could equally bid for these services directly).

#### CONGLOMERATE EFFECTS

20. *If the merger parties are active in "related" markets (eg products that are complementary or that belong to a range of products generally purchased by the same set of customers) and their individual share in any such related Candidate Market exceeds 30%, describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of inputs or access to customers.*

343. As discussed above, the Parties are present at various other airports across the UK, each providing a number of different services in which there are no overlaps and which (in the Parties' view) do not give rise to any conglomerate effects.
344. As discussed in response to question 12 above, Menzies is active in the provision of fuelling services and landside cargo transport services, whereas AS is not. In turn, AS is active in the provision of external presentation services, whereas Menzies is not.
345. The table below sets out, for airports where one or both of the Parties is active in any service in the UK, the non-overlap services (i.e. those that are provided by only one of the Parties). Airports where only one Party is active are in grey.

**Table 20.1: Non-Overlap Services**

			Fuelling	Landside cargo transport	External presentation
Aberdeen	ABZ	Menzies	✗	✗	✗
		AS	✗	✗	✗
Birmingham	BHX	Menzies	✓	✗	✗
		AS	✗	✗	✓
Bristol	BRS	Menzies	✗	✗	✗
		AS	✗	✗	✓
Cardiff	CWL	Menzies	✗	✗	✗
		AS	✗	✗	✗
Edinburgh	EDI	Menzies	✗	✗	✗
		AS	✗	✗	✓
Exeter	EXE	Menzies	✗	✗	✗
		AS	✗	✗	✓
Glasgow	GLA	Menzies	✗	✗	✗
		AS	✗	✗	✓
Isle of Man	IOM	Menzies	✗	✗	✗
		AS	✗	✗	✗
Liverpool John Lennon	LPL	Menzies	✗	✗	✗
		AS	✗	✗	✓
London City	LCY	Menzies	✓	✗	✗
		AS	✗	✗	✗
London Gatwick	LGW	Menzies	✓	✗	✗
		AS	✗	✗	✓
London Heathrow	LHR	Menzies	✓	✓	✗
		AS	✗	✗	✗
London Luton	LTN	Menzies	✓	✗	✗
		AS	✗	✗	✗
London Stansted	STN	Menzies	✗	✗	✗
		AS	✗	✗	✓
Manchester	MAN	Menzies	✓	✗	✗
		AS	✗	✗	✓
Newcastle	NCL	Menzies	✗	✗	✗
		AS	✗	✗	✓

			Fuelling	Landside cargo transport	External presentation
Newquay <sup>278</sup>	NQY	Menzies	X	X	X
		AS	X	X	✓
Southend	SEN	Menzies	X	X	X
		AS	X	X	X

346. While the Merged Entity will be able to provide other services at the same airports, it will not have the ability or incentive to leverage a position on one market in another by means of tying, bundling or other exclusionary practices, for the following reasons:

- the Parties' main competitors are able to offer essentially the same 'menu' of services to airline customers, either directly or through sub-contractual arrangements put in place subsequent to successfully bidding for a contract. For example, Swissport is also active in the provision of fuelling services in the UK and dnata is a significant landside cargo handler. Accordingly, a bundling strategy is unlikely to grant the Parties any competitive advantage. Indeed, Menzies currently could have the ability to engage in such a strategy with its fuelling services offering. However, despite the minor similarity with its other airside activities (in that Menzies requires a licence to provide fuelling services, by reason that they are also airside services), procurement for fuelling services is handled entirely separately by airline customers, with direct procurement from the oil companies or the airport itself being commonplace.<sup>279</sup> Further, from a practical perspective [X]. Finally, Menzies does not have the ability to bundle its landside cargo transport and ramp service offerings with other ground handling services as it does not provide both of these services at any of its airports;
- airlines have the ability to pick and choose services from different Providers, and it is in fact common for airlines to award Overlap Services contracts and fuelling, landside cargo transport and external presentation contracts (separately and individually) to a distinct pool of service providers. The Parties' experience is that contracts for fuelling services,<sup>280</sup> landside cargo transport and external presentation services are normally tendered separately by airline customers and the decision of an airline to accept more than one of these services from any given Provider is dependent on the ability of that Provider to propose competitive offers for all of the services being tendered. Therefore the Transaction is highly unlikely to have any effect on current procurement practices, particularly because airlines for the most part procure fuelling services directly from the oil companies or the airport itself;

<sup>278</sup> Note that, as discussed at footnote 30, [X]

<sup>279</sup> See paragraph 87 above. Fuelling services in the UK (including fuel farm management and into-plane fuelling services) are typically carried out by the fuelling services provider under a sub-contractual arrangement with the oil company or airport (as the case may be)

<sup>280</sup> As mentioned above, input supply for fuelling services relies on obtaining fuel from an oil supplier and is often subject to direct procurement by the airline from an oil company or airport and not the fuelling services handler

- the benefit of bundling services would be limited as economies of scope and scale between these services are low. Many of these services are provided from different premises at each airport by distinct personnel and with different equipment,<sup>281</sup> and
- the Transaction does not involve the combination of a business that is significantly active in the provision of an Overlap Service with a business that has a significant presence in any of the markets for the provision of fuelling, landside cargo transport or external presentation services. In particular, Menzies' activity in the provision of landside cargo transport is very limited geographically (to only [X]).

347. The Merged Entity will not therefore have the incentive or the ability to bundle ground handling, de-icing or internal presentation services with fuelling, landside cargo transport or external presentation services. The Transaction does not, therefore, give rise to any conglomerate effects.

## ENTRY OR EXPANSION

21. *Where notifying parties would like the CMA to consider whether or not the merged entity will be subject to constraints from potential entry or expansion, provide a description of the barriers to entry and expansion with respect to the Candidate Market(s).*

348. It is the Parties' view that there are no significant barriers to entry or expansion with respect to the Overlap Services (including, specifically, in relation to any of the Overlap Airports), and in particular for any Provider already active in the UK (who will likely already have the necessary expertise, licences (or ability to obtain them if awarded a contract) and customer relationships with the airlines).

349. As explained in detail above, the market for the provision of the Overlap Services (where prices are individually determined on a per contract basis through a bidding process) is a bidding market where competition occurs for the market.<sup>282</sup> In respect of each individual Overlap Service, the provision of that Overlap Service is perceived by airlines as very similar across Providers and the Parties expect that competitors have a similar cost base that is known to airline customers (i.e. labour costs) by reason of their wide procurement<sup>283</sup> (and in particular if they have ever self-supplied).<sup>284</sup>

350. While the regulatory environment and need for a licence to provide airside services could be seen as a barrier to entry, there are a significant number of competitors currently licensed to offer those services in the EEA and the UK.

351. For new entrants the award of a licence is required in order to provide airside services at an individual airport, but it is the Parties' experience that such licences are available upon successfully bidding for a contract and bidders often partake in tender processes before

<sup>281</sup> Fuelling services, in particular, are handled separately in a practical sense due to each airport's individual fuelling infrastructure. [X]

<sup>282</sup> Recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62

<sup>283</sup> The (then) Competition Commission in *Alpha Flight Group Ltd / LSG Lufthansa Service Holding AG merger inquiry* found that airlines could leverage their requirements (specifically in relation to catering but the same principle applies equally to other services to airlines generally) and supply contracts across a network of airports (and internationally) in order to improve their bargaining power (Final Report, paragraphs 7.51 and 7.53)

<sup>284</sup> This was recognised by the (then) OFT in *Servisair / Aviance*, paragraph 62, which discussed third party evidence of ground handling being perceived by airlines as a "commodity service" indicating that "price primarily drives competition"

- proceeding to acquire a licence.<sup>285</sup> Indeed, where a Provider is already active at other airports (and is already carrying a licence for those airports), it is reasonable to assume that they have the ability to meet an airline's particular requirements. This is explained at paragraph 184 above.
352. Each airport operates its own licensing system<sup>286</sup> and the content of licence applications may, therefore, vary from airport to airport (generally and not just between the Overlap Airports). However, the licensing systems in operation all simply check suitability to provide services and are ultimately governed by the Civil Aviation Authority. It is the Parties' view, therefore, that there are no material differences in obtaining licences at the Overlap Airports.
353. Entry costs vary depending on a number of factors including: (i) the number of turns; (ii) the volume of equipment to be leased and/or purchased; and (iii) the location of the airport. Furthermore, the cost of entry is lower when new entry is effected by way of an incumbent transfer because in such a scenario there is usually an established structure in place and employees transfer by way of TUPE.
354. The activities undertaken when launching at a new airport include: (i) obtaining an airside licence for that airport; (ii) establishing 'back office' functions such as IT systems; (iii) securing finance (depending on the level of cash to be invested by the Provider itself); (iv) preparing health and safety protocols and quality standards; (v) procuring and distributing uniforms and other equipment to new employees; (vi) establishing facilities for employees; and (vii) purchasing and/or leasing equipment. Notably, the entry costs for internal presentation services are significantly lower than others as this is this service requires very little specialist equipment.
355. It is the Parties' view that there are no significant differences in entry costs, activities and the time required to launch any individual Overlap Service at the Overlap Airports, other than those factors already highlighted above (for example, start-up at a larger airport will likely require more employees/additional equipment than at a smaller airport).
356. When considering launching at a new airport, the Provider's management will typically prepare a board paper or capital investment proposal setting out the business case for entry. The paper will cover financial justification, market and customer overview, risks and further opportunities and a project plan for the set-up and delivery phases. Once approved, the Provider will typically set up a project team to manage the project. Key delivery items will be obtaining an airside licence from the airport (if required), obtaining premises, placing orders for necessary equipment, recruiting/training staff and managing the relationship with the 'launch' customers and incumbent Provider(s) (if applicable).
357. The 'launch period' is typically between two and four weeks depending on the complexity of the airport location (i.e. it will take longer to establish permanent employees where the Provider is not entering by way of an incumbent transfer). The ultimate 'launch period'

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<sup>285</sup> The Parties understand that LHR does impose a minimum requirement on ground handlers that they service at least 5% of a terminal in order to obtain a licence. The Parties are under the impression that the following airlines have sufficient capacity to meet that requirement alone in terms of tendering their ground handling requirements: Aer Lingus, Air Canada, Air France, Air India, Alitalia, American Airlines, BA, Delta, germanwings, KLM, Lufthansa, SAS, Swiss and United. Other international airlines (including Cathay Pacific, Emirates and Finnair) are close to having sufficient capacity such that when combined with other smaller airlines the threshold would be met. In addition, LHR has, on occasion, waived this provision (for example, [3<]). The Parties do not consider, therefore, that this minimum requirement is an actual barrier to entry at LHR since the award of a contract with any of these airlines is sufficient to begin supply as a new entrant

<sup>286</sup> For example, LHR requires that new entrants handle at least 5% of a terminal's requirements although this criteria is understood to be applied flexibly in practice (see further footnote 285). Similarly, LHR requires that a handler is ISAGO (IATA's Safety Audit for Ground Operations) accredited. It is understood that most (if not all) Providers are (where relevant)

(including the planning stages and corporate approvals process) is approximately three months (in the Parties' experience).

358. The table below demonstrates Menzies' analysis of its cost of entry at UK airports at which it has entered over the past nine years.

**Table 21.1: Entry by Menzies**

[REDACTED]<sup>287</sup>

359. The table below demonstrates AS' analysis of its cost of entry at UK airports at which it has entered over the past five years, including expansion of services.

**Table 21.2: Entry by AS**

[REDACTED]<sup>288</sup>

360. As shown, where new entry is achieved by way of an incumbent transfer (i.e. where the incumbent handler transfers the relevant assets used for the particular airline and the employment of the relevant workforce will transfer under the provisions of TUPE) the cost of entry is low.
361. In the last nine years Menzies has planned to organically<sup>289</sup> enter the following UK airports, other than those at which it currently operates.

**Table 21.3: Menzies Planned Entry<sup>290</sup>**

[REDACTED]

362. [REDACTED].

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<sup>287</sup> [REDACTED]. London City exclusively self-supplies airside ground handling services

<sup>288</sup> Monarch was AS' 'launch' customer into the ground handling market

<sup>289</sup> In other words, not by way of an acquisition, such as in *Menzies / ASIG*

<sup>290</sup> See further slide 34 of Annex 9.2 which sets out Menzies' target stations



22. *If the notifying parties wish the CMA to consider potential entry or expansion in its competitive assessment, notifying parties should provide:*

*(a) details of any expansion, entry or exit in any of the Candidate Markets over the past five years, and*

*(b) details of any companies that the notifying parties believe are likely, post-merger, to enter or expand into any of the Candidate Markets in a sufficiently timely manner so as to adequately constrain the merged entity,*

*including, in either case, any available evidence for that submission and contact details for any companies named.*

363. Please see the response to question 21 for details on the Parties' recent entries into UK airports.

364. Adding to that response, Menzies has exited the following airports over recent years:

[X].

365. As can be seen, in the case of [X], Menzies exited as a result of losing a high volume contract and, in the case of [X], transferred its assets and employees (by way of TUPE) to the new Provider. However, as explained above ([X]) it is equally simple to subsequently re-enter an airport on the basis of a new contract (with low costs of entry).

366. AS has not exited any airports.

367. The following are further entrances/exits of Providers in the market that the Parties are aware of:<sup>291</sup>

- in 2013, WFS began to provide ground handling services at MAN to Jet2, Turkish Airlines and Brussels Airlines. WFS exited MAN by April 2017 (when Jet2 began self-supplying. Following its entry into self-supply at MAN, Jet2 also began self-supply at London Stansted);
- in 2014, Nordic ground handler Aviator entered the UK through its acquisition of Servisair's operations at LGW and Newcastle and Swissport's operations at Birmingham;<sup>292</sup>
- in December 2015, Cobalt successfully bid for a contract to provide baggage and ramp handling services to Virgin at LHR and has since expanded its capacity in order to service that contract;
- during the summer of 2015, IDS exited the de-icing market at LHR;
- in August 2016, AGS exited Aberdeen;

<sup>291</sup> Please see contact details as required at Annex 26.1 to 26.17 and 28.1

<sup>292</sup> This entry was the subject of the (then) OFT's decision in *Aviator / Swissport* and as part of the remedies package offered pursuant to the Commission's decision in *Swissport / Servisair*

- in April 2016, CCS entered the UK internal presentation market with contracts for Thomas Cook at LGW and MAN;
- in October 2017, DHL entered the UK ground handling market via its easyJet contracts at LGW (as mentioned at paragraph 260);
- in November 2017, Aviator exited the UK market for ground handling, with the exception of its operations at MAN;
- in January 2018, Azzurra entered the UK ground handling market at London Luton; and
- in March 2018, Stobart entered the UK ground handling market via contracts at London Stansted.

368. Notably, the most significant recent *de novo* entry into ground handling at an Overlap Airport was by DHL at LGW.

369. Consequently, as discussed above, it is within the usual course of business that a Provider may enter or exit a particular airport. The Parties submit, therefore, that there is a likelihood of any of their competitors (without specifically identifying any competitor in particular) on a wider (national, EEA-wide or global) basis entering the Overlap Services markets in the Overlap Airports in a sufficiently timely manner so as to constrain the Merged Entity. Equally, there is a likelihood that an airline (without specifically identifying any airline) could turn to self-supplying in a sufficiently timely manner so as to constrain the Merged Entity.

370. For contact details, please see the response to Part V of this Notice.

## COUNTERVAILING BUYER POWER

23. *Where notifying parties would like the CMA to consider whether or not the merged entity will be subject to countervailing buyer power, explain, with evidence where available, how the merged entity will be subject to this constraint.*

371. As described in detail above, the Overlap Services markets are all customer-led markets in which Providers bid for contracts. It is the Parties' experience that contracts are awarded on price. The Directive led to a shift from markets that were monopolistic in nature and very much in favour of Providers (in which customers complained about high prices and poor quality of service), towards markets which are significantly more customer-led (i.e. a market in which there is significant countervailing buyer power).

372. The nature of the markets are, as described above, such that the Overlap Services are similar in nature and upon successfully bidding in a tender process for a contract the assets and workforce of the incumbent Provider are typically transferred to the successful bidder. The day-to-day service provided to the airline customer is practically unchanged.

373. Consequently, it is the Parties' experience that tenders are typically won on price. This is not surprising given the airline customer's knowledge that its service levels are unlikely to change as a result of the tender process. Over time this has promoted fierce price competition between Providers who all have common costs that are largely labour-related. In that sense,

Providers have limited opportunity to innovate<sup>293</sup> and simply face increasing pressure from airline customers to lower their price and maintain their service levels.

374. Airlines normally request the ability to terminate contracts on between 60 and 90 days' notice<sup>294</sup> and can (and sometimes do) 'test' the market prior to the renewal of a contract regardless of whether they ultimately renew with the incumbent, switch Providers (at low cost and with ease)<sup>295</sup> or turn to self-supplying.
375. This, in effect, gives the airline customer a significant amount of countervailing buyer power, with knowledge that it will receive the same (or practically the same) level of service, regardless of the successful bidder in any tender process. The airline customer, therefore, has the power to dictate any and all terms of the tender process where competition in fact occurs. Indeed, the airlines' significant buyer power has been noted on numerous occasions by the competition authorities and it is not controversial that they continue to control the market.<sup>296</sup> Indeed, the recognition that "*price primarily drives the competition in the market*"<sup>297</sup> by the (then) OFT in *Servisair / Aviance* and recent consolidation in the market indicate the low-margin environment in which Providers operate and the fierce price competition that occurs.

## EFFICIENCIES AND CUSTOMER BENEFITS

24. *Where notifying parties would like the CMA specifically to consider at phase 1 any efficiencies or relevant customer benefits that the notifying parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.*

376. Menzies' appetite for the Transaction is [X]. This is in line with its *Excellence Manifesto*.<sup>298</sup>
377. As discussed above, the costs of providing the Overlap Services are largely labour-related. There are, therefore, no obvious efficiency gains in terms of reducing local costs as a result of the Transaction. However, the increased capacity of the Merged Entity may result in a [X].
378. As is also discussed above, it is expected that the common labour-related costs of providing the Overlap Services are such that there is little room to increase margins on the Provider's part. Further, the customer-led bidding nature of the market for the Overlap Services is such that price is very much driven (down) by the airline customers. As a result the Transaction is not expected to result in any pricing efficiencies.
379. Finally, there will (naturally) be efficiencies generated for the Merged Entity at a central, administrative level in being able to provide new and different services from the same

<sup>293</sup> Flight schedules do offer a limited opportunity for Providers to optimise their service provision such that from the supply-side there is an opportunity to innovate. Further, [X]

<sup>294</sup> Aggressive customers have also been known to pursue 30 day termination clauses

<sup>295</sup> *Aviator / Swissport*, paragraph 53. The Commission further noted in *Swissport / Servisair* that switching costs are low, such that they do not "really" prevent switching (paragraph 78)

<sup>296</sup> *Aviator / Swissport*, paragraph 76, *Swissport / Servisair*, paragraph 79, *LBO France / AviaPartner*, paragraph 102 and ME/4429/10, *Servisair / Aviance*, paragraphs 61, 62 and 69. The (then) Competition Commission in *Alpha Flight Group Ltd / LSG Lufthansa Service Holding AG merger inquiry* found that airlines could leverage their requirements (specifically in relation to catering but the same principle applies equally to airline services generally) and supply contracts across a network of airports (and internationally) in order to improve their bargaining power (Final Report, paragraphs 7.51 and 7.53)

<sup>297</sup> *Servisair / Aviance*, paragraph 62

<sup>298</sup> See further paragraph 20

airports, whereas the actual cost and expertise required to provide those services will remain very different. It will further remain entirely within the choice and control of the airlines as to how they wish to procure their service requirements at any given airport. They can and do 'test' the market for quotes on any number of combinations of services thereof.

380. The increased range of services of the Merged Entity at various airports is, therefore, not expected to change the way in which airline customers procure their services. Indeed, Swissport currently offers a full 'menu' of ground handling, de-icing, fuelling and aircraft presentation services and that offering is not, therefore, unknown to airline customers. Yet clearly it continues to face competitive constraint from other Providers that do not offer the same range of services.

#### **OTHER INFORMATION**

25. *Provide any other information that the notifying parties consider may be relevant to the CMA's Phase 1 investigation.*

381. Not applicable.

## PART V THIRD PARTY CONTACT DETAILS

26. Provide contact details for the relevant competitors and customers of the merger parties for (where applicable):
- (a) each of the Candidate Markets in which they overlap;
  - (b) each of the Candidate Markets in which the merger parties have a vertical relationship (providing contact details for the relevant competitors and customers of the merger parties on the upstream and downstream markets on which each merger party is active); and
  - (c) each of the Candidate Markets in which each of the merger parties provides related products/services.

382. See the following Annexes. Note that the Parties have provided their top ten customers (by contract value) by Candidate Market where available. Where the Parties individually have less than ten customers in a Candidate Market, all have been provided.

Annex	Document
<i>General</i>	
26.1	General Contact Details <sup>299</sup>
<i>Candidate Markets</i>	
26.2	Menzies Contact Details - EDI - De-icing
26.3	AS Contact Details - EDI - De-icing
26.4	Menzies Contact Details - GLA - De-icing
26.5	AS Contact Details - GLA - De-icing
26.6	Menzies Contact Details - LGW - Ground handling
26.7	AS Contact Details - LGW - Ground handling
26.8	Menzies Contact Details - LHR - De-icing
26.9	AS Contact Details - LHR - De-icing
26.10	Menzies Contact Details - MAN - Ground handling
26.11	AS Contact Details - MAN - Ground handling
26.12	Menzies Contact Details - MAN - Internal presentation
26.13	AS Contact Details - MAN - Internal presentation

<sup>299</sup> Note that this now includes the Civil Aviation Authority and the contents of Annex 28.1

Annex	Document
<i>Other customer contact details</i> <sup>300</sup>	
26.14	Menzies Contact Details - EDI - Ground handling
26.15	Menzies Contact Details - GLA - Ground handling
26.16	Menzies Contact Details - Bristol - Ground handling
26.17	Menzies Contact Details - London Stansted - Ground handling <sup>301</sup>

27. *To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.*

383. See the Annexes provided in response to question 26.

384. Further, see the below table for estimates of the annual value or volume of purchases UK-wide for the Parties' relevant suppliers.

**Table 27.1: Estimates of Annual UK Value or Volume of Purchases from Relevant Suppliers**

[REDACTED]<sup>302</sup>

28. *To the extent applicable, provide contact details for each of the companies that the notifying parties consider are likely to enter and expand into any of the Candidates Markets.*

385. See the Annexes provided in response to question 26, which contain details for the Parties' competitors in each of the Candidate Markets. Such competitors are, in the absence of barriers to entry at any of the Overlap Airports (or indeed any other airports in the UK), likely to expand their offerings to Overlap Airports where opportunities arise that fit with their internal corporate strategies. In addition to these competitors, the Parties consider that the competitors contained within Annex 28.1 are likely to enter and expand into one or more of the Candidate Markets, for the reasons set out in this Notice. Such competitors have also been included within Annex 26.1.

<sup>300</sup> AS is not active at EDI, GLA, Bristol or London Stansted for ground handling and as such does not have contact details for ground handling customers at these locations

<sup>301</sup> Menzies is no longer active at London Stansted, but has included contact details for the customers it had immediately prior to its exit

<sup>302</sup> [REDACTED]

29. *Provide the name and contact details, including address, and email address and telephone number, of:*
- (a) any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).*
  - (b) any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).*

386. See the Annexes provided in response to question 26.

**PART VI      DECLARATION**

*I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.*

*I understand that:*

*It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. This includes supplying such information to another person knowing that the information is to be used for the purpose of supplying information to the CMA;*

*The CMA may reject any Notice if it is suspected that it contains information which is false or misleading in any material respect;*

*The CMA conducts both Phase 1 and Phase 2 investigations. In the event that the merger is referred for a Phase 2 investigation, information provided to the CMA during the course of the Phase 1 investigation will also be used for the Phase 2 investigation; and*

*The CMA will bring the merger described in this Notice, and the fact that the Notice has been given, to the attention of interested parties.*

*Signed:*

*Name:*

*(block letters)*

*Position:*

*(block letters)*

*Date:*

*I confirm that the representative(s) (if any) named in reply to question 1(b) is/are authorised for the*



*purposes of proceedings related to the arrangements described under question 2 to act on behalf of the merger parties respectively specified in response to question 1(b) of this Notice. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which Menzies Aviation (UK) Limited will accept service or take receipt of documents in accordance with section 126(4) of the Enterprise Act 2002.*

*Signed:*

*Name:* .....

*(block letters)* .....

*Position:*

*(block letters)* .....

*Date:*

.....