

COMPLETED ACQUISITION BY MENZIES AVIATION (UK) LIMITED OF PART OF THE BUSINESS OF AIRLINE SERVICES LIMITED

Issues statement

18 September 2018

The reference

1. On 14 August 2018, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by Menzies Aviation (UK) Limited (**Menzies Aviation**) of part of the business of Airline Services Limited (the **Merger**) for further investigation and report by a group of CMA panel members.
2. Throughout this document we refer to the part of the business purchased by Menzies Aviation as **Airline Services**, and to Menzies Aviation and its parent John Menzies plc as **Menzies** (collectively, the **Parties**), except where the context requires otherwise.
3. The CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
4. In answering these two questions we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger has or may be expected to result in an SLC.¹
5. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC (paragraph 3(b) above), having had regard to evidence referred to in the CMA's phase 1 decision on relevant merger situation and substantial lessening of competition (the **Phase 1 Decision**).²

¹ [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The *Merger Assessment Guidelines* have been adopted by the CMA board (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), Annex D).

² See [Phase 1 Decision](#), dated 7 August 2018.

This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

6. We are publishing this issues statement in order to assist parties submitting evidence to our inquiry. The issues statement sets out the issues we currently envisage being relevant to our inquiry and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

7. On 4 April 2018, Menzies Aviation acquired Airline Services for approximately £13 million in cash (subject to certain adjustments) by means of an asset purchase agreement entered into between Airline Services Limited and Menzies Aviation, pursuant to which Menzies Aviation acquired all the relevant assets, contracts and employees relating to Airline Services.
8. Menzies Aviation is wholly owned by John Menzies plc. Menzies operates at approximately 213 airports in 35 countries. Menzies is a public company listed on the London Stock Exchange and reported worldwide turnover of £2,517.7 million and UK turnover of £1,499.9 million for the year ended 31 December 2017. As at September 2018 Menzies operated two divisions: aviation services and distribution.³ We will focus on Menzies Aviation in our analysis.
9. Menzies Aviation operates at around 16 airports in the UK and provides ground handling, de-icing, aircraft presentation, cargo handling and cargo forwarding services to airlines. Menzies Aviation generated turnover of £151.3 million in 2017.⁴
10. Airline Services is primarily a provider of de-icing, ground handling and aircraft presentation services. It operates at 17 airports in the UK and generated turnover of around £35 million in the UK for the year ended 30 April 2017.
11. The Parties' activities cover ground handling services, de-icing services and internal presentation services at a number of UK airports. Menzies provides ground handling services at ten airports,⁵ de-icing services at five airports⁶, and

³ On 5 September 2018, Menzies announced the completion of the disposal of Menzies Distribution, its print media business, to investment funds managed by Endless LLP. Menzies stated that the disposal created a pure play global aviation services business that was operating in a structural growth market and marked Menzies' exit from the market for print media and retail logistics. <http://www.johnmenziesplc.com/investor-centre/regulatory-news/2018/05092018-completion-announcement-re-disposal-of-menzies-distribution/>

⁴ Source: *Menzies Aviation (UK) Limited Annual report and accounts for the year ended 31 December 2017*.

⁵ Aberdeen, Bristol, Edinburgh, Glasgow, Isle of Man, London City, London Gatwick, London Heathrow, London Luton and Manchester.

⁶ Aberdeen, Edinburgh, Glasgow, Isle of Man and London Heathrow.

internal presentation services at two airports.⁷ Airline Services provides ground handling services at two airports,⁸ de-icing services at twelve airports⁹, and internal presentation services at twelve airports.¹⁰

12. The Parties overlap in the supply of:
 - (a) de-icing services at Edinburgh airport (**EDI**);
 - (b) de-icing services at Glasgow airport (**GLA**);
 - (c) de-icing services at London Heathrow airport (**LHR**);
 - (d) ground handling services at London Gatwick airport (**LGW**);
 - (e) ground handling services at Manchester airport (**MAN**); and
 - (f) internal presentation services at MAN.

Market definition

13. We will define the relevant market, which contains the most significant alternatives available to the customers of the merger Parties that act as a competitive constraint on the Parties.¹¹ The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool to focus much of our analysis but it is important to note that it will not determine the outcome of our analysis of the competitive effects of the merger. Defining the market is likely to involve an element of judgement.¹²

Ground handling, de-icing, and internal presentation services

14. As considered in several previous European Commission, CMA and Office of Fair Trading decisions,¹³ ground handling encompasses a number of different

⁷ London Heathrow and Manchester.

⁸ London Gatwick and Manchester.

⁹ Birmingham, Bristol, Edinburgh, Exeter, Glasgow, Liverpool John Lennon, London Gatwick, London Heathrow, London Luton, London Stansted, Manchester and Newcastle.

¹⁰ Birmingham, Bristol, Edinburgh, Exeter, Glasgow, Liverpool John Lennon, London Gatwick, London Stansted, Manchester, Newcastle, Newquay and Southend.

¹¹ [Merger Assessment Guidelines](#), paragraph 5.2.1.

¹² [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹³ ME/6639/16 - *Anticipated acquisition by Menzies Aviation plc and Menzies Aviation Inc. of ASIG Holdings Limited and ASIG Holdings Corp*, CMA, 3 March 2017 (**Menzies/ASIG**); ME/6578/15 - *Completed acquisition by Aviator LGW Limited of the assets of Swissport Limited's ground handling business at London Gatwick*, CMA, 5 February 2016 (**Aviator/Swissport**); Case No COMP/M.7021, **Swissport / Servisair**, 18 December 2013 (**Swissport/Servisair**); ME/4429/10 - *Completed acquisition by Servisair UK Limited of the regional ground handling business of Aviance UK Limited*, OFT, 15 June 2010 (**Servisair/Aviance**).

services which may be provided together by one supplier or by different suppliers, including:

- (a) baggage activities: loading and unloading of baggage from an aircraft, handling baggage in the sorting area, sorting, preparing for departure, and transporting baggage from the sorting area to the reclaim area;
- (b) ramp activities: loading and unloading of aircraft, baggage and freight, push-back and towing of the aircraft, passenger debarkation via steps, aircraft safety checks upon arrival and departure, and traffic operation (including flight documentation and planning, crew briefing, weight and balance, load planning, ground to air communication and flight supervision);
- (c) passenger management activities: check-in, passenger assistance landside, gate management airside, air bridge connection and disconnection, and passenger security checks;
- (d) airside cargo handling activities; and
- (e) other services, including de-icing, fuelling, aircraft cleaning and landside cargo transport.

15. The Phase 1 Decision considered that the appropriate starting point for the product frame of reference for ground handling should encompass the supply of baggage, ramp, passenger and airside cargo handling services (together, **Ground Handling Services**).
16. 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.
17. Aircraft presentation services are split into internal presentation and external presentation services. Internal presentation services include interior cleaning, seat cover changing, carpet fitting, leather seat cover cleaning and maintenance and disinfection. External presentation services include exterior washing and polishing. Menzies does not supply external presentation services in the UK, and therefore external presentation services were not considered further in the Phase 1 Decision.
18. The Phase 1 Decision considered whether Ground Handling Services, de-icing services and internal presentation services, or a combination of these services, should be considered within the same product frame of reference but concluded that it was appropriate to use separate frames of reference for Ground Handling Services, de-icing services and internal presentation services.

19. The Phase 1 Decision also considered whether airlines which service their own ground handling, de-icing or internal presentation requirements (ie self-supply) should form part of the same product frame of reference as third party providers of these services. However, the Phase 1 Decision excluded self-supply from the relevant product frames of reference (although it took account of the constraint from self-supply, to the extent relevant, in the competitive assessment).
20. In relation to the relevant geographic market, based on the evidence received and consistent with previous decisions, the Phase 1 Decision considered the impact of the Merger at an airport-level (although it took account of the constraint from suppliers not currently active at an airport, where there is evidence of such constraint, in the competitive assessment).
21. In *Menzies/ASIG*, the CMA assessed Ground Handling Services at a terminal-level at LHR, given the barriers to moving ground handling equipment and staff between certain terminals (eg between Terminals 2/3 and Terminal 4 of LHR).¹⁴ However, based on the evidence received, the Phase 1 Decision considered the impact of the Merger at LHR at an airport-level, for de-icing services.
22. In our assessment at phase 2, we will use the frames of reference used in the Phase 1 Decision as a starting point for our analysis but, where relevant, we will consider out-of-market constraints and/or any differences in the degree of competitive constraints from different suppliers. We also expect to consider:
 - (a) whether self-supply should be considered within the frame of reference; and
 - (b) in relation to the geographic market, whether the frame of reference should be wider than airport-level, including whether the geographic market might be national and/or EEA wide.

Assessment of the competitive effects of the Merger

Counterfactual

23. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation absent the Merger). In phase 2, the CMA is required to make an overall judgment on whether or not an SLC has occurred or is likely to occur. In making our assessment, we will consider possible alternative scenarios of

¹⁴ See paragraph 55 of the [CMA's Phase 1 Decision in Menzies/ASIG](#).

competitive conditions and decide upon the appropriate counterfactual that we consider to be the most likely scenario based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.¹⁵

24. The Phase 1 Decision considered that the pre-Merger situation was the appropriate counterfactual,¹⁶ with such pre-merger conditions including Airline Services seeking to grow its ground handling business, and Menzies continuing to operate and compete for customers at EDI and MAN.¹⁷
25. We will assess the appropriate counterfactual in accordance with the approach the CMA adopts to its phase 2 inquiries including the extent to which Menzies and/or Airline Services would have been likely to have changed their operations and/or business strategy(ies) absent the Merger.

Theories of harm to be investigated by the CMA

26. Theories of harm describe the possible ways in which an SLC could arise as a result of a merger and provide the framework for our analysis of the competitive effects of the merger. We have set out below the theories of harm which we intend to investigate. However, we may revise our theories of harm as our inquiry progresses. Also, the identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence.
27. We welcome views on all the theories of harm set out below.

Theory of Harm 1: Unilateral horizontal effects - Loss of existing competition

28. The main focus for our phase 2 assessment will be on the loss of competition between the merging Parties in (a) ground handling at LGW and MAN and (b) de-icing at LHR, EDI and GLA.

¹⁵ [Merger Assessment Guidelines](#), paragraphs 4.3.2 and 4.3.6.

¹⁶ For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the competitive effects of the merger at phase 1 unless based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than those conditions. [Merger Assessment Guidelines](#), paragraph 4.3.5.

¹⁷ [Phase 1 Decision](#), paragraphs 19 to 26.

- *Theory of harm 1(a): Loss of existing competition in Ground Handling Services at LGW and MAN*

29. We will investigate whether the Merger has resulted, or may be expected to result, in an SLC from unilateral horizontal effects in relation to the supply of Ground Handling Services at LGW and/or MAN.

30. In our competitive assessment, we expect to examine:

(a) the Parties' combined share of supply of Ground Handling Services, and that of other providers at airports, including exploring methods of estimating shares of supply other than the share of turns¹⁸ (in particular, considering shares of supply based on revenues and passenger numbers).¹⁹ We will consider the extent to which the competitive dynamics at LGW and/or MAN are reflected in shares of supply;

(b) the Parties' tendering activity, and those of competitors, to explore closeness of competition between the Parties and competitors. We intend to explore what factors influence a provider's decisions on when to bid for a ground handling contract and the price (and other terms) submitted in a tender. We will consider how competitive conditions at airports, as well as cost drivers and other factors such as the provider's ability to bid for all or part of bundled and network contracts, may influence a provider's decision of whether to bid and the terms it offers. We also intend to explore how pricing and the margins of providers may vary across airports and how competitive conditions may drive these variables;

(c) the frequency with which airlines switch ground handling provider at different airports and the drivers of switching. We will look at the likelihood of entry and expansion by competitors at the overlap airports, including the extent to which potential competitors have bid for recent contracts, and (where possible) consider the insights that can be gained from previous examples of new entry by ground handlers;

(d) any potential buyer power of airlines and, particularly, their ability to self-supply or sponsor entry. In doing so, we will consider how the ability to exercise such options may differ between different airlines depending on, say, the value of their contract to providers, amongst other factors.

¹⁸ By 'turns', or turnarounds, we mean the process of loading, unloading, and servicing an aircraft.

¹⁹ One reason for this is that shares of turns do not reflect variation between aircraft in terms of passenger numbers, which may be an important driver of costs of a service for Ground Handling Services.

- *Theory of harm 1(b): Loss of existing competition in de-icing services at LHR, EDI and GLA*

31. We will investigate whether the Merger has resulted, or may be expected to result, in an SLC from unilateral horizontal effects in relation to the supply of de-icing services at LHR, EDI and/or GLA.
32. We will apply a similar analytical framework to that outlined in paragraph 30 above.

Theory of Harm 2: Unilateral horizontal effects - Loss of potential competition

33. We will investigate whether the Merger has resulted, or may be expected to result, in an SLC from unilateral horizontal effects in relation to the loss of potential competition for supply of Ground Handling Services and/or de-icing services, at UK airports more generally.
34. Airline Services started offering Ground Handling Services in the UK in 2014 when it secured a contract to supply Ground Handling Services at LGW. In a short period of time, it has grown organically at LGW and now has the second highest number of ground handling customers there (after Menzies). Airline Services also currently provides Ground Handling Services at MAN, entering in April 2018. In addition, the Phase 1 Decision considered that Airline Services had plans to grow its ground handling business absent the Merger.
35. We will consider how Airline Services may have expanded in Ground Handling Services in the absence of the Merger and whether it may have provided an important competitive force which would constrain Menzies at airports where Airline Services currently does not operate. We will consider whether the Merger involves a potential entrant that could have increased competition²⁰, and whether it may remove a firm which is not in the market, but which nevertheless imposes an existing constraint because of the threat that it would enter if existing firms in the market raised their prices.²¹
36. In our competitive assessment, in addition to the factors set out in paragraph 30 above, we expect to examine:

²⁰ The [Merger Assessment Guidelines](#) refer to this as 'actual potential competition' (see paragraph 5.4.14). Actual potential competition is a constraint only if and when entry occurs.

²¹ The [Merger Assessment Guidelines](#) refer to this as 'perceived potential competition' (see paragraph 5.4.16). Perceived potential competition may arise even though the Authorities do not believe that entry would actually occur.

- (a) the expansion plans of Airline Services, as well as those of Menzies and other providers of Ground Handling Services;
 - (b) the views of third parties as to the likelihood of Airline Services providing Ground Handling Services at further UK airports, and the type of competitive constraint²² Airline Services would pose if it were to enter other airports;
 - (c) recent dynamics in terms of tendering and winning contracts, and the factors that determine the price and service offer that providers bid. This will include whether the possibility of future competition from Airline Services has resulted in the pre-existing prices of the incumbent firm(s) being lower than they would otherwise have been.
37. In relation to de-icing services, the Merger involves a significant increase in Menzies' de-icing capability and is described by Menzies as primarily complimentary. We will consider whether, absent the Merger, Menzies would have sought to expand its de-icing capability and would have competed with Airline Services such as to lead to an SLC in relation to the loss of potential competition in the provision of de-icing services. We will apply a similar analytical framework to that outlined in paragraphs 35 and 36 above.

Other potential theories of harm on which we do not intend to focus

38. Given that some airlines tender for bundled contracts for both ground handling and de-icing, it is possible that the Merger could give rise to an SLC if:
- (a) the Merger would strengthen the ability of the merged entity to compete for bundled ground handling and de-icing contracts – for example, if the merged entity is able to leverage market power in one aspect of the contract bundle in its pricing strategy; and/or
 - (b) the Merger would prevent rival ground handling firms from bidding for contracts which combine ground handling and de-icing because those rivals are unable to subcontract de-icing services when they would previously have been able to use Airline Services for this.
39. Whether such competition concerns may arise will depend on factors such as whether the airlines that request tenders for a combined service of ground handling and de-icing are willing to split the contract, and whether ground-handlers have other suitable partners to whom they could sub-contract de-icing services. If these options are not available, it is possible that rivals who are not

²² For example, we will consider whether there are features of Airline Services' approach to competing for Ground Handling Service contracts, or the type of services which it provides, which might change the nature or intensity of competition in these markets.

able to offer competing bundles may lose contracts, which could lead them to lose efficiencies in their operations and fall below a profitable scale. They may then exit the airport and/or find it harder to bid for new contracts at the airport.

40. We intend to consider these issues further but do not envisage that they will be a major focus of our inquiry.
41. The Phase 1 Decision found that competition concerns did not arise in relation to the supply of internal presentation services at MAN. We do not propose to consider this theory of harm further unless any evidence comes to light that suggests we should do so.
42. In the *Servisair/Aviance* merger²³ coordinated effects were also considered in relation to Ground Handling Services. We do not propose to consider this theory of harm further unless any evidence comes to light that suggests we should do so.

Countervailing factors

43. Any analysis of a possible SLC involves considering the responses of others (eg rivals, potential rivals, suppliers and customers). Such responses which could potentially mitigate a possible SLC might include entry or expansion of rivals, or the exercise of countervailing negotiating power by suppliers or customers.

Entry and expansion

44. We will consider whether entry or expansion by competitors could prevent any SLC that might otherwise arise. To do this, we may assess evidence relating to:
 - (a) whether entry or expansion by rivals is likely to occur in a timely manner, which may include an assessment of the costs and time necessary to enter and/or expand;
 - (b) whether entry or expansion by rivals is likely, including any plans and the certainty of those plans;

²³ ME/4429/10 - *Completed acquisition by Servisair UK Limited of the regional ground handling business of Aviance UK Limited* (27 May 2010), <https://assets.publishing.service.gov.uk/media/555de33f40f0b669c400007b/Servisair.pdf>.

(c) whether entry or expansion is likely to be sufficient to prevent an SLC from arising.

Countervailing negotiating power

45. In some circumstances, customers may be able to use their negotiating strength to limit the ability of the merged firms to worsen prices or service.²⁴ We will examine whether such power exists in the current case and whether it is sufficient to prevent an SLC from arising. In particular, as discussed in paragraph 32(d) above, we will consider the ability of airlines to self-supply or sponsor entry.

Efficiencies

46. We will examine any submissions made in relation to efficiencies arising from the Merger. In particular, we will examine whether any potential efficiencies are rivalry-enhancing and could be expected to offset any loss of competition.

Other

47. We are not currently aware of any other countervailing factors, and none have been suggested by the Parties.

Possible remedies and relevant customer benefits

48. If we conclude provisionally that the Merger has resulted, or may be expected to result, in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a notice of possible remedies around the time of our provisional findings.

49. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

50. Any party wishing to respond to this issues statement should do so in writing, by no later than **5:00pm on 2 October 2018**. Please email Alison.Trinkl@cma.gov.uk or write to:

²⁴ [Merger Assessment Guidelines](#), paragraph 5.9.1.

Alison Trinkl
Menzies/Airline Services merger inquiry
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD