

**PARTIES' RESPONSE TO THE CMA ISSUES STATEMENT DATED
18 SEPTEMBER 2018
("RESPONSE")**

ME/6746/18

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*The terms used in this Response have the same meaning as that given in the Merger Notice submitted to the CMA on 11 June 2018 (the "**Merger Notice**") and the Initial Submission submitted to the CMA on 5 September 2018 (the "**Initial Submission**").*

A. INTRODUCTION

1. Menzies has already made detailed submissions during Phase 1, in its Initial Submission and at the Site Visit as to why no SLC is likely to arise as a consequence of the Transaction. In brief summary, the Parties have explained previously why the following key dynamics of competition in the relevant ground handling and de-icing markets mean that the Transaction should be cleared unconditionally:
 - 1.1 The **ground handling and de-icing markets are competitive** across the UK - there are numerous strong competitors bidding on and winning new contracts, including from Menzies. Competition for contracts comes from both players already present at the relevant airport, and from those that are active elsewhere in the UK and globally. These competitors include the likes of Swissport, the global and UK market leader, dnata, WFS, IDS, Cobalt, Aviator, Aviapartner, Stobart, DHL and Aero Mag;
 - 1.2 **Entry and expansion barriers are low** and there are numerous examples of new entry in the UK as previously provided as Annex 1 to the Initial Submission.
 - 1.3 **Menzies and AS do not compete closely** - the Transaction is complementary and will allow Menzies to expand its portfolio of services.
 - 1.4 **Airlines are powerful buyers** who are themselves operating in a competitive sector and have strong incentives to drive down costs from their own suppliers. They are able to do this in a variety of ways, including by: tendering contracts and switching provider and/or threatening to do so; switching to self-supply and/or threatening to do so using their position at multiple airports to offer network contracts; bundling the procurement of services to leverage their purchasing power across markets and providers; passing commercial and financial risk to providers under contract terms; and joint purchasing through alliances.
 - 1.5 **UK margins are thin** [X], which demonstrates the competitiveness of the relevant markets whereby lower regulatory barriers (as compared to other markets) have attracted entry from outside the UK. [X].
2. We do not repeat previous submissions made on these points in further detail in this Response. Instead, this Response summarises how the arguments raised with the CMA apply specifically at each of the Overlap Airports on which the CMA will focus its analysis in Phase 2 (i.e. ground handling at MAN and LGW and de-icing at EDI, GLA and LHR). This Response will also cover how competitive conditions at the Overlap Airports have changed post-Transaction and even following the CMA's Phase 1 Decision.
3. Menzies welcomes the confirmation in the CMA's issues statement dated 18 September 2018 ("**Issues Statement**") that no competitive concerns arise in respect of the supply of internal presentation services at MAN.
4. This Response addresses:
 - 4.1 first, why Theories of Harm 1(a) and 1(b) will not give rise to an SLC with respect to any individual Overlap Airports; and
 - 4.2 second, why Theory of Harm 2 is not plausible and the CMA was correct to discount the possibility of an SLC on this basis at Phase 1.

B. NO COMPETITION BETWEEN THE PARTIES FOR DE-ICING AT GLA AND EDI, LITTLE COMPETITION AT LHR

5. With regard to de-icing at EDI and GLA, the Parties do not compete for the same customers. As shown in the tender analysis previously provided by the Parties, the Parties do not bid against each other for de-icing contracts at either EDI or GLA and so do not, in fact, compete with each other for de-icing contracts at either EDI or GLA. The Transaction will not, therefore, affect the competitive dynamics in these markets and so does not have the potential to give rise to an SLC.
6. The de-icing contracts which Menzies services and is invited to bid for at EDI and GLA can be described as "bundled" de-icing contracts - the de-icing services are bundled in with the ground handling services under the contract.
7. Airlines typically opt for bundled contracts when their anticipated demand for de-icing at the airport is limited (for example because they have minimal flights per day and no night-stopping aircraft) and this is not sufficient to justify the cost and time spent conducting a separate de-icing tender.
8. Conversely, the de-icing contracts which AS generally services and is invited to bid for at EDI, GLA and LHR can be described as "network" de-icing contracts, in that they are specialist de-icing contracts, which are often supplied under a framework agreement covering several airports. Network de-icing contracts are awarded where bundling with ground handling at the airport does not make commercial sense (either because the customer requires a lot of de-icing or because the customer requires little to no ground handling).
9. AS's lack of ground handling capability at GLA, EDI and LHR effectively disqualifies it from bidding for bundled de-icing services with ground handling contracts and they have not been invited to tender on this basis. Menzies meanwhile has not been asked to bid for any of the same de-icing contracts awarded at GLA and EDI as AS since at least [REDACTED] (the date from which reliable data is available) given its lack of ability to provide de-icing services across a network of airports.
10. For each Party the closest competitive alternative for the customers they service and bid for is Swissport. In particular, Swissport provides ground handling services and de-icing services at GLA and EDI and is therefore well placed to compete against Menzies for bundled contracts. Furthermore, its wide de-icing network means it is also best placed to compete for those customers that are serviced by AS today.
11. At LHR, the picture is similar with only [REDACTED] of AS's [REDACTED] bids and Menzies' [REDACTED] bids since [REDACTED] being head-to-head¹. This suggests that airlines do not, in practice, see the Parties as *close* competitors in de-icing at LHR.
12. In all cases, the Parties face closer and stronger competition from other players already present at the airport and from players not present but which are competing on tenders.
13. In order to service the different contract types, the Parties have developed different business models and charging structures for de-icing. Therefore, it is even less likely that they would be viewed as competitive alternatives by customers.

¹ See Table 5 of the Initial Submission

14. Menzies charges its ground handling customers for de-icing on the basis of [REDACTED], reflecting the fact that [REDACTED].
15. Conversely, AS's business model is typically to [REDACTED]² [REDACTED]. As a result, [REDACTED]. [REDACTED]. In summary, therefore, the Parties do not compete at EDI and GLA and only compete on a very limited basis at LHR, such that an SLC is not likely at any of these airports.

C. DE-ICING AT LHR IS A COMPETITIVE MARKET

16. In addition to the Parties, there are two established alternative providers at LHR providing de-icing services and which alone would represent a sufficient constraint on the merged entity post-Transaction. These players would have every incentive to bid on future contracts and so grow market share at LHR.
17. The Parties agree that an assessment of recent bidding activity is central to determining the correct scope of competition in the relevant markets and consider that recent activity at LHR demonstrates the highly competitive nature of this market.
18. [REDACTED] is known to have recently bid for de-icing services at LHR,³ which shows that it is (and the airlines consider it be) a credible entrant to the market. This is supported by the facts that: (a) [REDACTED]; and (b) [REDACTED].
19. Additionally, the airport operator at LHR, HAL, plays a leading role in regulating the supply of de-icing services at LHR. While other airport operators do play a role in regulating services provided to airlines at their airports, HAL has historically been even more involved because de-icing at LHR has a particular political and economic sensitivity given the crucial and high profile role of that airport to the UK as a whole.
20. De-icing is a major focus for the airport as the consequences of a failure in de-icing provision can be serious for the airport, not only from a health and safety perspective, but also any shut down of LHR is very damaging economically for both the airport and the UK as a whole.
21. Among other things, HAL has:
 - 21.1 specifically monitored de-icing fluid levels (enough for three "red days", i.e. days where frequent de-icing is needed);
 - 21.2 recently built infrastructure for de-icers to use at LHR; and
 - 21.3 invited new entry by de-icers into LHR in order to increase spare capacity (for example, inviting Aero Mag to operate at LHR as a de-icer).
22. Menzies understands that [REDACTED].
23. Moreover, LHR is a major airport hub - the largest in the UK and one of the largest globally. Many major airlines operate through LHR and they exercise significant buyer power at this airport (and elsewhere). It is simply not plausible that powerful airline buyers would tolerate uncompetitive pricing or service at LHR.

² [REDACTED].

³ The Parties are aware that, at the very least, [REDACTED] participated in the recent BA tender

24. British Airways accounts for over half the flights from LHR and the large majority of night-stopping flights such that it represents a very significant proportion of de-icing demand. BA currently self-supplies de-icing at LHR, with support from a third party (currently [REDACTED]) under a contingency contract. However, the Parties strongly suspect that [REDACTED]⁴ [REDACTED].
25. The size of the BA contract at LHR would be sufficient to allow entry by two new providers and so it is entirely possible that there will be two new entrants to LHR within the next 12 months, even if no other contracts are awarded to players not currently present at LHR.
26. The Parties are confident that the CMA will confirm this picture of competition in the market through discussion with third party competitors and airlines on their recent tender and bidding activity and in respect of their future commercial intentions; and will conclude, on the balance of probabilities, that no SLC will arise at LHR.

D. [REDACTED]

27. [REDACTED]^{5 6 7}.
28. [REDACTED].
29. [REDACTED].

E. THE PARTIES HAVE LOW MARKET SHARE AT LGW AND MAN

30. The Parties have done further work since Phase 1 and have produced market share data for ground handling on the basis of passenger numbers, which is a more accurate reflection of their market positions given that passenger numbers and so the ground handling requirements vary depending on the aircraft size. Using a 'turn' metric does not take these variations into account and therefore overstates both the Parties' share of supply. As explained previously, the Parties consider that in the ground handling markets, where competition takes place through a tender process, shares of supply are of less relevance when assessing market power.⁸
31. In any event, however, the Parties' combined share is low and falling.⁹

31.1 At MAN, on a passenger number basis and [REDACTED], the Parties' combined share will be [REDACTED]%.

⁴ [REDACTED]

⁵ At paragraph 25 of the Phase 1 Decision

⁶ From paragraph 80 of the Initial Submission

⁷ See paragraph 82 of the Initial Submission

⁸ As noted by the OECD in its paper "Competition in Bidding Markets", "*Existing market shares are not always informative about competition in the future, whether in markets with bidding or markets without bidding. It can be useful to separate the concepts of competition ex ante and market share ex post, and note that the ex post market share does not necessarily reflect the intensity of competition in the market during the bidding process. The key is to identify likely credible bidders in future bidding opportunities*", page 8, DAF/COMP(2006)31

⁹ On a passenger number basis. See also pages 18 and 23 of the Site Visit Presentation.

- 31.2 At LGW, on a passenger number basis, the Parties' combined share is [30-40]%, which also reflects a decline due to recent contract losses by Menzies. [§<] such that it is possible that further material changes in market share are possible in that timeframe especially in the recent context of [§<].
32. Accordingly, the factual evidence that we have provided during this process demonstrates that there are sufficient alternative providers available at MAN and LGW that will continue to act as an effective and sufficient constraint post-Transaction.
33. [§<] and this further underscores the volatility of the markets and that market shares at any one time are not a good indicator of competitive strength.

F. LOW BARRIERS TO ENTRY AND EXPANSION IN GROUND HANDLING AT MAN AND LGW

34. Moreover, and as noted in the Parties' previous submissions,¹⁰ barriers to entry for ground handling are extremely low.
35. Menzies notes that a single customer has been sufficient to sponsor entry into the ground handling market at MAN and LGW. Providers that are not present at MAN and LGW (generally, or in ground handling specifically) who are asked to bid are not mere "stalking horses", but can and do win ground handling contracts bringing about their entry into the airport and/or that market. With respect to MAN:
- 35.1 [§<];
- 35.2 winning the Jet2.com contract was sufficient to facilitate the entry of WFS into the airport in April 2013;
- 35.3 winning the Thomas Cook contract was sufficient to facilitate the entry of Aviator into the airport in 2015;
- 35.4 winning the FlyBe contract was sufficient to facilitate the entry of AS into the airport in April 2018;
- 35.5 winning the Emirates contract was sufficient to facilitate the entry of dnata into the airport in October 2014; and
- 35.6 winning the Loganair and Aurigny contracts was sufficient to facilitate the entry of Premiere into commercial ground handling at MAN in April 2018, following which it won the Jet Airways contract which will commence in November 2018.
36. With respect to LGW:
- 36.1 winning the easyJet contract was sufficient to facilitate the entry of DHL to the airport in 2017;
- 36.2 winning the Monarch contract was sufficient to facilitate the entry of AS into ground handling at the airport (and indeed, into ground handling in the UK) in November

¹⁰ See in particular paragraphs 348 - 362 of the Merger Notice and paragraphs 123 - 124, 163 - 165 and 181 - 183 of the Initial Submission.

- 2014;
- 36.3 winning the Virgin Atlantic contract was sufficient to facilitate the re-entry of Swissport into the airport in November 2016 (even though that contract was a small contract which represented only approximately five to six turns per day); and
- 36.4 winning the Emirates contract was sufficient to facilitate the entry of dnata into the airport in May 2015.
37. There are also numerous examples at other UK airports, as submitted to the CMA previously in particular as Annex 1 to the Initial Submission.
38. A new entrant does not therefore need to be a well-established UK ground handler in order to establish a ground handling presence at MAN or LGW.
39. We note that the Phase 1 Decision found that both customers and airlines stated that "smaller airlines" found it difficult to attract new entrants to an airport with respect to both ground handling and de-icing.¹¹ Menzies does not recognise this account of the market and does not view any airlines as "small" in this context.
40. Further, there are numerous examples of handlers entering airports to serve airlines with small volumes at that airport in both the UK and other nearby markets:
- 40.1 Menzies entered Dublin in April 2018 via a ground handling contract for IAG (with the exception of Aer Lingus) covering approximately [X] turns per day (for BA, BACF, Vueling and Iberia Express);
- 40.2 Swissport re-entered LGW in November 2016 to ground handle approximately five to six turns a day for Virgin Atlantic (following an absence of twelve months from the LGW market);
- 40.3 as described above, dnata entered MAN in October 2014, and LGW in May 2015, by providing ground handling to Emirates for three turns per day; and Premiere entered commercial ground handling at MAN in April 2018 with a small number of turns for Loganair and Aurigny; and
- 40.4 Menzies entered Belfast City in April 2012 by providing ground handling to Aer Lingus on twelve turns per day. It entered when Aer Lingus started up operations at Belfast City, having ceased operations at Belfast International. However, following the IAG Tender, Menzies lost the contract ([X]) to Swissport and as a result closed its operations at that station in December 2017. It should be noted that IAG decided to grant Swissport the contract in the knowledge that this decision would result in Menzies exiting the airport leaving Swissport as the sole provider.
41. Even where entry cannot be sponsored, the CMA will see that small airlines or airlines with a small volume at a specific airport can also bundle ground handling contracts at airports where they have low levels of demand with ground handling contracts at airports where it has high levels of demand. For example, United Airlines at EDI has [X] turn per day during the winter¹² but is large enough elsewhere to overcome its "small" airline status at that airport.

¹¹ At paragraph 68 of the Phase 1 Decision

¹² See also paragraph 149.4 of the Initial Submission

Conversely, Loganair is a small airline globally, but has significant volume at EDI, GLA and Aberdeen airport. Moreover, it goes without saying that in addition to potential new entrants, the existing providers at MAN and LGW would also have a strong incentive to win "smaller" contracts in order to generate synergies with their existing contracts.

G. AIRLINE BUYER POWER

42. Menzies agrees that it is essential to take into account the ability of the airlines to exercise strong buyer power. The airlines do so in a variety of way as discussed in submissions made to the CMA.¹³
43. This means that whilst a high market share might *prima facie* be an indication of low competition (although in the present case, the Parties strongly dispute this), any potentially anticompetitive effects of a small number of suppliers at each of the Overlap Airports can be defrayed by airlines exercising their buyer power, including at airports where a wide choice of services *are* available.

H. THEORY OF HARM 2

44. With regards to the potential for AS to expand its ground handling business and in so doing compete with Menzies for ground handling contracts in the absence of the merger, the CMA concluded at Phase 1 that no plausible concerns arose on this basis and Menzies agrees with the CMA's analysis on this issue.
45. The CMA considered at Phase 1 the scope for concerns to arise on this basis and identified two airports - EDI and GLA - where there could be a loss of potential competition for ground handling resulting from the Transaction.
46. Menzies does not agree that there is scope for any loss of potential competition at EDI and GLA, but in line with the CMA's Phase 1 Decision, it also certainly does not believe that there are any other locations where this could potentially be an issue.
47. The CMA, in any event, concluded, on the basis of relevant evidence of other players bidding on contracts that those other players were "*in the round, at least as well placed as Airlines Services to enter*"¹⁴ at both EDI and GLA such that there is no realistic prospect of an SLC arising on the basis. Menzies agrees with this conclusion.
48. Regarding the possibility that Menzies would have expanded its de-icing business and so acted as a constraint on AS, as the CMA notes, Menzies' rationale for the Transaction is to [X]. [X].
49. There is, therefore, no basis for any concerns regarding loss of potential competition resulting from the Transaction.

¹³ See paragraphs 3.11-3.14 of the Initial Submission

¹⁴ Phase 1 Decision, paragraphs 191 and 202

I. CONCLUSIONS

50. The Parties are confident that the CMA will, for these reasons and on the balance of probabilities, conclude that there is no SLC in any market and so clear the Transaction unconditionally.