

**INITIAL PHASE 2 SUBMISSION
5 September 2018
("INITIAL SUBMISSION")**

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**").*

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A. EXECUTIVE SUMMARY

1. Menzies Aviation ("**Menzies**") has reviewed the CMA's Phase 1 Decision of 7 August 2018 (the "**Decision**") concluding that Menzies' acquisition of Airline Services ("**AS**") (the "**Transaction**") would result in a realistic prospect of a substantial lessening of competition ("**SLC**") at Edinburgh ("**EDI**"), Glasgow ("**GLA**"), and Heathrow ("**LHR**") in relation to de-icing, and at Gatwick ("**LGW**") and Manchester ("**MAN**") in relation to ground handling services (collectively referred to as the 5 "**Overlap Airports**").
2. Menzies believes that the Decision is fundamentally flawed, in that it significantly understates the degree of competition that exists between providers of ground handling and de-icing services and overstates the impact that the loss of AS as a competitor will have on competition in the relevant markets.
3. This error in approach leads the CMA to seriously mischaracterise the nature of competition in the UK and applies to all the relevant markets, but the Decision is particularly untenable in respect of ground handling at LGW and MAN. These airports are highly competitive markets with more existing suppliers than at any other airport in the UK apart from LHR. In both locations, those competitors include both Swissport and dnata, which are significant global players. When this highly relevant context is taken properly into account, it is clear that there is no scope for a SLC to arise in this regard.
4. The Decision also does not reflect both Parties' counterfactual situation, where Menzies is [§<]; and AS, [§<]. [§<].
5. Menzies' rationale for acquiring AS, [§<], was to acquire a complementary business, which would allow Menzies to expand its range of services offered, in particular in relation to de-icing, [§<]. Menzies did not and does not believe that the Transaction will adversely affect competition in any relevant market and as demonstrated by Menzies' internal documents such considerations simply did not feature in its decision to proceed with the Transaction.
6. The Parties' consistent view, based on their direct and current experience, is that the relevant markets are highly competitive and that post-Transaction a range of different competitive constraints will continue to ensure that more than sufficient competitive choices remain available for all airlines at each of the Overlap Airports.
7. The incredibly competitive UK market is generally characterised by low [§<] margins and prices. This is driven by the market reality that there are many competitors willing to supply these services at extremely low rates and there is constant pressure from airlines to reduce prices. In assessing the competitive situation at each of the Overlap Airports the CMA must take these factors into account.

Bidding markets

8. Competition in the relevant markets involves formal and informal tenders from suppliers that are active at particular airports as well as those that are not. In its Decision, the CMA has in effect reached its finding of a possibility of a SLC by taking into account only those providers that are presently providing the relevant services at the Overlap Airports, and by analysing the Parties' and competitors "legacy" share of supply, based on number of turns.
9. This is not the correct analytical approach and it is strongly rejected by the Parties. Relying solely on turn data as a measure of share of supply, together with other errors in approach, has led the CMA wrongly to conclude at Phase 1 that, post-Transaction, the combined entity will

likely have a strong market position, and remaining rivals would not provide an effective competitive constraint. This conclusion simply does not reflect the market reality.

Numerous strong rivals remain

10. As is explained in detail below, the competitiveness of the relevant markets is clearly demonstrated by the facts. In the last 3 years there have been numerous new entrants into the UK (e.g. DHL, Stobart, WFS, RED, GGS, Omniserv), as well as expansion into new airports (e.g. Premiere and Azzurra into LTN and BHX) and exits, because competition has driven prices so low it has become difficult for providers to operate profitably (e.g. [REDACTED] and [REDACTED]). Annex 1 sets out details of market entry and exit.
11. Post-Merger there will remain more than sufficient actual and potential competitors.
12. In assessing the actual competition at each of the Overlap Airports the CMA has overemphasized the strength and closeness of competition between the Parties based on legacy shares, and has not sufficiently taken into account the ability of other competitors present in the UK to bid on any future tender, nor recent entrants in the UK market. It is particularly erroneous to suggest that providers such as Swissport or dnata are not a sufficient competitive threat to Menzies and AS in ground handling services at LGW, but also given their on-going tender activity and recent wins: [REDACTED], or [REDACTED]¹ contract.
13. Indeed the market for ground handling at both LGW and MAN is even more competitive today than it was 2 years ago when the CMA cleared Menzies' acquisition of ASIG ("Menzies/ASIG")² at Phase 1.
 - 13.1 At **LGW**, following the exit by Aviator, various new entrants have come into the market. For example, DHL (an entirely new supplier to ground handling) entered having won the easyJet contract which represents the most significant carrier; and Swissport re-entered with the Virgin contract in 2016. There have also been a number of moves to self-supply (by BA, Norwegian and Aurigny). [REDACTED]. The Parties estimate that their combined share of supply in 2018 is modest at around [30-40]%.³
 - 13.2 At **MAN**, while [REDACTED] [REDACTED] have won new contracts and Aviator has continued to operate at the airport⁴. Menzies' share since 2016 (when it acquired ASIG) to post February 2019 [REDACTED] and the Parties estimate their combined share of supply is low, around [REDACTED]%.
14. Furthermore the CMA has limited itself to those **currently providing** the relevant service at each Overlap Airport. However, this is not the correct analysis for bidding markets. The CMA also wrongly disregarded a number of actively expanding competitors as unlikely to enter the market in a "timely, likely and sufficient" manner. As should be obvious from various recent examples, any provider of the relevant services can in principle bid for future contracts and so act as a meaningful constraint. There is clear evidence of various

¹ [REDACTED]

² CMA Decision of 15 December 2015 on the Anticipated acquisition by Menzies Aviation plc. and Menzies Aviation Inc. of ASIG Holdings Corp, case ME/6639/16

³ Figures presented are for 2018 YTD and calculated based on a "share of turns" basis and a "share of passenger" basis. Self-supply is, on a highly conservative basis, excluded from these calculations. Turn data is calculated by reference to the number of turns per supplier per month - the turn data provided in Phase 1 was annualised and accordingly this means the shares of supply based on turns in this submission are slightly different and more accurate than those provided in Phase 1.

⁴ At the time of the CMA Menzies /ASIG decision [REDACTED].

established players demonstrating an intention to expand their ground handling activities in the UK (e.g. Stobart, DHL, WFS, Azzurra, Avia Partner, Omniserv).

15. In the on-going easyJet MAN ground handling tender, not only all existing providers currently providing services at the airport should be considered relevant competitors, (that is to say Swissport, dnata, Premier, Aviator [X]); but also all those currently bidding on MAN tenders ([X]) should be counted as *actively* competing at MAN, as they undeniably are doing so. [X] thereby fundamentally undermining the CMA's view that new suppliers cannot compete effectively.
16. A further pertinent example of the strength of potential competition is the fact that WFS [X]. Clearly WFS's experience as a global ground handler was sufficient for it to be considered as a credible provider in the UK. That is not to say that it is necessary to have a global presence to be a credible entrant as demonstrated, for example, by the entry of DHL, which as far as the Parties are aware has no third party operations outside the UK,⁵ at LGW.
17. The numerous examples of entry discussed in this submission prove these are not theoretical threats or unique examples (see further Annex 1) - they are actually happening. Self-evidently, these must be taken into account when assessing Menzies' market position in the UK.
18. Self-supply is another important source of competitive constraint. The CMA has excluded all self-suppliers from its market definition and as a wider competitive constraint on the Parties. This is a fundamental error as self-supply by the airlines does impose a significant constraint. At any given moment an airline can choose to switch to self-supply. Moreover, the availability of the new subsidiary and white-label (such as those offered by Omniserv) models offer an attractive alternative solution to traditional self-supply models ensuring that existing providers must remain competitive in both their price and service offering.

Menzies and AS are not close competitors for de-icing

19. Menzies and AS are not close competitors in relation to de-icing services, and most specifically in relation to EDI and GLA, where the Parties have very differentiated offerings. Indeed, while they both have de-icing rigs and staff at these locations, the Parties *do not actually compete against each other* at these airports, and no evidence is presented in the Decision to contradict this view. Specifically:
 - 19.1 Menzies [X] provides de-icing services as ancillary to its ground handling services to those airlines that seek to procure de-icing as part of a bundled proposition (of ground handling services, including de-icing). Whilst Swissport competes actively for these contracts, the evidence is very clear that AS cannot and does not as it is not a supplier of ground handling at either EDI or GLA.
 - 19.2 In contrast, AS [X] tenders on de-icing only "network contracts" (i.e. multi-site/multi-airport de-icing contracts). Swissport again competes for these contracts given its extensive de-icing footprint. Menzies [X].
 - 19.3 [X], and they both face competition from a closer competitor, namely Swissport. Consequently, there can be no basis for a SLC finding. In fact, for each type of contract, the competitive landscape will remain the same - but the overall offering to

⁵ DHL does self-handle in some locations outside the UK.

customer airlines will be improved as the merged entity will be able to provide a similar comprehensive offering to rival Swissport.

- 19.4 While the Decision proposes some speculative theories of harm based on the idea that airlines could switch between contract types to foster competition, there is no evidence of this type of behaviour in practice at EDI or GLA: the Parties are not aware of any instances where this has happened for those types of locations. Furthermore, the suggestion that AS could become a credible competitor for bundled contracts by entering ground handling is not realistic (evidence of the fact [X]).

Significant Airline Buyer Power

20. The Decision does not adequately reflect that this industry is characterised by significant countervailing buyer power, which manifests itself in a number of different ways, and which is not in any way diminished by the Transaction.
- 20.1 The airlines are experienced buyers, with sophisticated procurement departments, and operations across multiple services and airports and are well aware of potential providers and have a keen understanding of likely costs. Airlines are able to use this knowledge, regardless of the number of bidders participating on any given tender or contract renewal to extract best value. The airlines use information obtained through the tender process to play bidders off against each other.
- 20.2 Airlines can and do flex contract terms as suits them and can pull a tender at any time, or terminate a contract at short notice. Airlines also demonstrate their strong negotiating power by frequently requiring their providers to accept changes in flights serviced (either number of daily flights or scheduling changes), again as best suits the airlines' commercial interests, whilst these changes often have significant negative cost implications for the provider.
- 20.3 There are no barriers to switching providers for the airlines. The minimal costs involved are all borne by the providers and switching can be done in a matter of weeks, for example, the time from the award of the [X] starting to provide services was approximately one month.⁶ Equally there are no material differences or regulatory barriers in the provision of the services as between different airports, such that any provider with ground handling experience, even if not previously active at a specific airport, can tender and offer the services. It is incontestable that airlines can and do invite tenders from suppliers that do not have existing activities at airports. Various examples of small and large airlines engaging in this behaviour as a way of facilitating competition and entry are provided in this Initial Submission.
- 20.4 To the extent that some contracts are of insufficient value to support stand-alone entry, these contracts are still fiercely competed on, as they can make a significant difference to the profitability of a provider at an individual airport. Moreover these airlines can all still exercise their buyer power through adjusting the scope of services, offering network contracts or through collective purchasing.
- 20.5 Furthermore, all airlines have the very real option to switch to self-supply and not just the larger carriers such as a BA, Ryanair, Norwegian Airlines, Jet2 but also a small airline such as Aurigny at LGW (for further details see Annex 1, Para 6). Any

⁶ The Parties have entered new markets in [X] weeks, see Para 6.4 of the Response to the Issues Letter, submitted to the CMA on 20 July 2018 (the "Issues Letter Response").

airline that starts to self-supply often subsequently becomes a contender for third party contracts, including the smaller contracts which may complement their own scheduling needs.

No concerns can plausibly arise at any Overlap Airport

21. Specifically in relation to the 5 Overlap Airports the following considerations mean that there is no scope for a SLC in any location:

21.1 De-icing

21.1.1 **EDI and GLA:** [X] both compete head on with Swissport. The Transaction will, therefore, have no effect on the key competitive dynamic at these airports.

21.1.2 **LHR:** The remaining de-icing providers - Aero Mag and Cobalt - are a sufficient and significant competitive constraint. Moreover, the market is likely to be in significant flux due to the on-going tenders for the BA and Virgin contracts which may well lead to the creation of a new provider.⁷ These are both major contracts that would be sufficient to sponsor new entry, thereby placing a constraint on the suppliers of de-icing at the airport as a whole.

21.1.3 In addition, [X] has demonstrated itself through recent bidding activity to still be an active competitor in LHR despite [X], and Swissport and Azzurra are both highly credible new entrants and so constraints. It is, therefore, highly likely if not inevitable that the competitive dynamic at LHR will materially change in the near future.

21.2 Ground handling:

21.2.1 **LGW:** The Parties' combined share of supply at LGW is modest even when calculated on a "legacy basis" (and excluding self-supply), estimated at [30-40]-[30-40]%.⁸ LGW is one of the major UK airports where there have been very significant fluctuations and changes in providers in recent years. This market volatility demonstrates that both potential new entry and self-supply are continuing significant constraints that will apply *in addition* to competition from those providers currently present and which are themselves sufficient and very credible competitors (including dnata and Swissport - large global providers of ground handling services). Legacy shares of supply at LGW based on number of turns substantially understates the competitive threat posed by these actual and potential competitors, which can only be fully assessed by analysing recent bidding data. [X].

21.2.2 **MAN:** The Parties' combined share of supply at MAN is low [X]%⁹ MAN is one of the largest UK airports and is likely to grow further,¹⁰

⁷ [X].

⁸ Passenger / turn data respectively

⁹ Passenger / turn data respectively

¹⁰ MAN is the only UK airport with 2 runways that are not fully utilised and they have already started significant terminal expansion, with a number of airlines growing their operations at this airport, and new airlines starting services from MAN. It is therefore not surprising to see the various UK recent entrants currently all bidding on MAN contracts.

making it very attractive for entry and expansion by existing providers. Indeed, on-going tenders confirm this (with e.g. [X] winning new contracts and [X]. [X]).

21.2.3 At both LGW and MAN recent bidding activity confirms that existing providers at those airports are looking to expand (LGW: [X] and at MAN: [X]), and providers not currently present at those airports are capable and willing to enter. To dismiss such new entrant constraints as unlikely to be "*timely, likely or sufficient*"¹¹ at these airports as the CMA did at Phase 1 is simply wrong.

22. In this submission, we address the serious mischaracterisation of competition in the relevant markets in the Decision, and set out the relevant facts and arguments that should be taken into account by the CMA when assessing the case in more detail at Phase 2. The Parties are very confident that the CMA will conclude, on this basis, that no SLC can arise in respect of any of the 5 Overlap Airports or otherwise and will, accordingly, clear the Transaction unconditionally.

¹¹ See Paras 72, 87, 105, 123, 141 and 159.

B. PRELIMINARY ISSUES: ACCESS TO INFORMATION AND DATA GATHERING

Access to tender and bidding data

23. A key feature of the markets in which the Parties operate is that contracts are put out to tender using processes designed by airlines and in which providers receive very little information about other participants beyond the minimal feedback provided by the airline (which has not been retained by AS). Therefore, the key information that the CMA needs in order to confirm the competitiveness of these markets is held by the airlines.
24. The Parties are aware of the tenders they have participated in, but have limited knowledge of tenders where they were not invited to bid. At Phase 1, the lack of access to this information was a serious handicap to the Parties in explaining how competition works. This also limits the range of quantitative techniques that the Parties can employ to provide evidence.
25. This issue is compounded at Phase 2 by the fact that the Decision provided to the Parties has key information redacted. Put simply, the CMA's Phase 1 Decision appears to be highly dependent on third party comments - the Parties cannot see what those comments were in sufficient detail to be able to make their case at Phase 2. For this reason, Menzies urges the CMA:
 - 25.1 to disclose the bidding information which was sent to the CMA in Phase 1 by airlines to the Parties. Since this is historic bidding information about contracts that have been awarded (and in some cases, are now terminated), it cannot be regarded as commercially confidential to airlines or other bidders;
 - 25.2 to the extent that the bidding information is incomplete, to seek additional information from airlines and other providers; and
 - 25.3 to ask airlines to supplement bidding information provided and to be provided with supporting contemporaneous information such as formal tender scorecards and other notes.
26. It is critical that the Parties are able to have access to the relevant information in order to understand the case that has been made against them and allow them properly to respond.

Access to share of supply data

27. The Decision also relies heavily on data presented to the CMA on share of "turns" as a basis for calculating market shares. The Parties consider that such data is potentially highly misleading and risks significantly understating the significance of some competitors. Further explanation of why annual turn data does not accurately reflect the competitive strength of their rivals is set out further in this submission. The Parties urge the CMA in these circumstances to collate, and share with them, information on more relevant metrics that do accurately capture the strength of their competitors at the overlap airports. The Parties note that they have already been able to obtain complete data on passenger numbers¹² which they consider is a more relevant market share metric for ground handling. This new data is presented below.

¹² Passenger numbers means seat number or capacity, rather than actual number of passengers. Data is taken from the "Official Aviation Guide"

C. INTRODUCTION TO THE OVERLAP SERVICES

Description of ground handling and de-icing services at airports in the UK

28. The issues raised in the Decision relate to the provision of ground handling services and de-icing services at the 5 Overlap Airports where the Parties overlap in the supply of de-icing services - GLA, EDI and LHR, and ground handling services - LGW and MAN.
29. Ground handling services have been considered by the European Commission and the CMA on a number of occasions. The CMA has previously identified that ground handling services comprise of a variety of different services. In the *Aviator / Swissport* decision, 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"¹³ (but ultimately left the product market definition open).¹⁴ The EU Commission has previously been satisfied that ground handling services could be divided into several distinct segments on the basis of either:
- 29.1 *Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports*,¹⁵ the Annex to which describes ground handling services to include: passenger handling;¹⁶ baggage handling;¹⁷ freight and mail handling; ramp handling;¹⁸ aircraft services; fuel and oil handling; aircraft maintenance; flight operations and crew administration; and surface transport;¹⁹ or
- 29.2 the IATA Standard Ground Handling Agreement,²⁰ 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.
30. De-icing services refers to the process for removing ice or frost from a plane before take-off. De-icing is seasonal, and is only done during the coldest 7 months of the year. De-icing is a very small part of the ground handling services operations at UK airports (it can represent less

¹³ ME / 6578 / 15, *Completed acquisition by Aviator LGW Limited of the assets of Swissport Limited's ground handling business at London Gatwick* (5 February 2016), paragraph 20.

¹⁴ ME / 6578 / 15, *Completed acquisition by Aviator LGW Limited of the assets of Swissport Limited's ground handling business at London Gatwick* (5 February 2016), paragraph 30.

¹⁵ A Commission proposal to effectively repeal the Directive was withdrawn in 2015 and the Directive remains in force (as amended).

¹⁶ Check-in; landside passenger assistance; airside gate management; air bridge connection and disconnection; and passenger security checks.

¹⁷ 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.

¹⁸ 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).

¹⁹ 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.

²⁰ An industry-standard agreement employed between airline customers and handlers to perform services at particular airports.

than 5% of an airline's spend on all ground handling services). De-icing events will be extremely infrequent as part of an airline's overall departures, but are very important due to the safety issues involved and the impact that delays have on an airline and an airport's scheduling.

31. The airport operators are critical players in the field of ground handling and de-icing services. They provide licences to allow providers to offer ground handling or de-icing services at that airport, and will routinely monitor performance since these services impact the efficiency and safety at an airport. Airports can also step in to increase the number of providers (as LHR did in the case of de-icing services, where they introduced Aero Mag to run the a de-icing pad for the airport, after seeing the use of BA's pads)²¹, and equally have the ability to remove a ground handler for poor performance.
32. However, in most cases it is the airlines that are the purchasers of ground handling and de-icing services. Ground handling and de-icing represent a relatively small proportion of an airline's total costs, and so have a negligible impact on the costs to passengers. However, ground handling and de-icing have come under significant financial pressure as airlines have sought to cut costs.
33. The nature of airlines means that the majority are large international players, operating at many different sites and mostly in multiple jurisdictions. As a result, they are skilled and technical purchasers in business to business transactions. Moreover, airlines will usually interact with the same service providers at multiple airports across the UK and elsewhere.
34. In reality, different airlines have different requirements at airports, and will vary their contracts accordingly. Consequently, an airline can bundle de-icing services into ground handling services, as well as a number of other functions (such as airline presentation). Similarly, a provider will typically supply a variety of these services, in order to manage the seasonal nature of some services (such as de-icing).

Ground handling providers

35. Table 1 presents an overview of the key suppliers of ground handling services in the UK and surrounding territories,²² including their footprint (i.e. the number of airports they cover) and recent contracts that they have won. Menzies is globally one of the largest ground handling services providers operating at over 200 airport locations in 6 continents, and the second largest ground handling services provider in the UK. The largest is Swissport. By contrast, AS is a very minor player and only operates at [§<]. There are, in addition to the Parties, multiple alternative and remaining active competitors.

Table 1: Comparison of Ground Handling Providers active in the UK

Competitor	Number of airports covered in UK	Brief overview and comments on recent major contract wins/bidding behaviour
Swissport	[§<]	Long-established global market leader, actively bidding. [§<].
Menzies	[§<]	Global ground handler, [§<]
dnata	[§<]	Large global player, expanding in the UK

²¹ See Para 5.7(e)(iv) of the Issues Letter Response.

²² Including the Republic of Ireland, Guernsey and Jersey

Competitor	Number of airports covered in UK	Brief overview and comments on recent major contract wins/bidding behaviour
		with recent wins at [REDACTED].
DHL	[REDACTED]	New entrant in 2014 at LGW, [REDACTED].
WFS	[REDACTED]	Global player that was at MAN until 2017 [REDACTED].
Premiere	[REDACTED]	Small UK ground handler that is [REDACTED].
Aviator	[REDACTED]	International ground handler [REDACTED], and could easily re-enter other airports. Capable and credible supplier that could start tendering.
Airlines Services	[REDACTED]	[REDACTED]
Stobart	[REDACTED]	Stobart has recently expanded from SEN (which it owns and operates) to STN in a move which likely sees them begin an expansion into a number of other UK airports. Stobart has publically announced that it is applying for airside licences at a number of locations
Cobalt	[REDACTED]	Recently acquired by the French Groupe Crit. Recently won [REDACTED] (so clearly expanding in the UK).

De-icing Providers

36. Table 2 presents comparable information for de-icing providers in the UK. AS is the second largest de-icing services provider in the UK operating at [REDACTED] airports, the largest again being Swissport which operates at [REDACTED]. By contrast, Menzies only provides de-icing services at [REDACTED] locations in the UK, and [REDACTED]. As such, Menzies is a minor competitor in the UK relative to other de-icers. As set out below, there are again numerous remaining alternative competitors to the Parties.

Table 2: Comparison of de-icing Providers active in the UK

Competitor	Number of airports covered in UK	Comments on recent major contract wins/bidding behaviour
Swissport	[REDACTED]	Largest footprint and most significant player in the UK. Can tender for both bundled and network contracts.
Menzies	[REDACTED]	[REDACTED]
AS	[REDACTED]	[REDACTED]
IDS	[REDACTED]	A global de-icing specialist which entered the UK in LTN, and was until 2016 active in LHR and is [REDACTED].
Aero Mag	[REDACTED]	A global de-icing specialist, entered LHR in 2015

[REDACTED]

37. The Parties consider that the UK ground handling and de-icing markets are among the most competitive globally.
38. [REDACTED]²³²⁴. The implications of this for the CMA's competitive assessment are discussed in more detail below (see Paras 80 to 86).

Figure 1: Menzies profitability by airport (FY 2018-19) budget and actual (Ground handling, de-icing and cleaning)

[REDACTED]

[REDACTED]

39. Comparative information on AS's budget profitability at a station level is provided in Figure 2. This demonstrates [REDACTED].
40. In fact, in the period from 31 July 2017 (during the most profitable summer season) to when Menzies acquired AS, [REDACTED].
41. Furthermore, it should be noted that [REDACTED].

Figure 2: AS profitability by airport (FY 2018-19) budget

[REDACTED]

Bidding markets

42. The Decision failed to properly take into account the fact that the ground handling and de-icing markets are bidding markets.
43. In previous decisions, the CMA has accepted that ground handling markets are bidding markets, and assessed them on that basis.²⁵ Menzies, AS and their competitors bid for contracts, which can be large, infrequent and sufficiently long-term to mean that the gain or loss of a major contract can materially impact the profitability of any given provider. While many contracts currently in place might be for one year in term, increasingly the trend has been for customers to invite tenders for much larger and longer contracts, typically 3-5 years
44. Competition authorities have accepted that in bidding markets where large long term contracts are tendered infrequently, market shares do not necessarily indicate the existence of market power. For example, in *Siemens/VA Tech*, a Phase 2 investigation, the European Commission stated that:

"the fact that there is bidding on a market does not in itself allow any conclusion to be drawn as to the intensity of competition to be expected, or as to the significance of market shares as

²³ [REDACTED].

²⁴ Ibid,

²⁵ For example, Menzies/ASIG, case ME/6639/16 - see in particular Para 62.

*an indicator of possible market power. The key factor is rather the bidding pattern in individual cases. For example, even where there is a small number of credible bidders, particularly intensive competition is to be expected if, in a bidding market, a large proportion of tenders is awarded in a few large transactions. In this and similar cases, market shares would, in practice, provide very little information on the possible market power of a bidder."*²⁶

45. Similarly, in its decision on the acquisition by Northgate of Anite, the OFT noted that:

*"given the length of the contracts negotiated in this instance the OFT considers it likely that market shares estimated on a legacy basis may give a distorted picture of the recent competitive situation."*²⁷

46. The Commission's and OFT's analysis in those cases is squarely on point. Shares of supply for ground handling and de-icing based on legacy contracts give a very poor indication of the true nature of current competition at airports for the following reasons:

46.1 Airlines invite multiple suppliers to bid including those not operating at an airport (and so are seen as credible alternatives). This very real constraint is self-evidently not captured by shares of supply.

46.2 Whilst the Parties are not able to estimate shares of supply on the basis of "recent contract" wins, that analysis would inevitably demonstrate that their combined shares are much lower. In this regard, it is important to note that [3<].

46.3 Negligible switching costs for the airlines and low barriers to entry or expansion means that no incumbent can take its market position for granted, and can lose significant market share on a single contract. For example, [3<].

47. For these reasons, in Phase 2, the CMA should place very significant weight on the assessment of reliable and up-to-date bidding data from tenders when assessing the ability of suppliers to make credible bids in future tenders, which is the key determinant of competition in these markets, rather than relying solely on the Parties' historic shares of supply. The actual market dynamics are simply not reflected by a static snapshot of the market shares of the existing competitors at any airport at a particular time.

Countervailing buyer power

48. The CMA placed "limited weight" on countervailing buyer power in Phase 1, largely because of its concern about the position of small airlines²⁸ (or small contracts) who could not, the CMA believed, exercise such power or benefit from the buyer power exercised by larger players.

49. This is a picture of competition that the Parties simply do not recognise. Airlines of all sizes can and do use a range of tendering and negotiating methods to undermine any attempt by suppliers to increase prices (and would continue to do so following this Transaction).

²⁶ Case M.3653 SIEMENS / VA TECH, paragraph 39.

²⁷ <http://webarchive.nationalarchives.gov.uk/20100916080831/http://www.of.gov.uk/OFTwork/mergers/decisions/2008/Northgate>. See also the OFT's decision in Idox plc/ Lalpac Limited <https://assets.publishing.service.gov.uk/media/555de30fe5274a74ca000061/Idox.pdf>

²⁸ Small airlines was not defined by the CMA in the Decision and is a misnomer. An airline may be a global player, but have a small presence at an airport. Similarly, an airline may be small, but have a significant presence at its base airport.

Equally the option of self-supply is just as feasible, and the threat to self-supply just as credible, for smaller operations (whether it is a small airline, or a large airline with small operations at a particular airport) as the examples of Norwegian, Aurigny and Jet2 demonstrate.

The CMA's Guidance on Buyer Power

50. The CMA's guidance recognises that buyer power constrains the exercise of market power by suppliers and can prevent the finding of a SLC where the merged entity will not have the ability or incentive to increase prices or otherwise degrade service quality or levels of innovation in the relevant markets.²⁹ The CMA's guidance states that where all of the merged entity's customers possess countervailing buyer power post-merger, then a SLC is unlikely to arise. Where some, but not all, customers of the merged entity possess countervailing buyer power, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.
51. The CMA's guidance notes that buyer power may arise if the customer can easily switch its demand away from the supplier. Typically, that is where there are alternative suppliers, or where the customer has the ability to sponsor new entry or enter the supplier's market itself by vertical integration.³⁰

Sources of buyer power in bidding markets

52. Additionally, a tender structure may increase the buyer's leverage in negotiations. The UK competition authorities have identified that this could involve threatening to: re-tender contracts; to delay tenders; to bundle different services or services required in different locations; and/or designing contracts in such a way to achieve the best possible terms for the buyer. Moreover, tendering large and/or long-term contracts can have the effect of encouraging new entry or expansion.
53. In *Xchanging/Agencyport*,³¹ buyers were considered able to use the bidding system to gain a high level of understanding about the market and achieve competitive prices and other terms, thereby exerting a considerable degree of buyer power. In that case, the CMA found that:
- 53.1 customers undertook regular reviews of competing offerings in the market to assess whether they should switch supplier, and put considerable effort into purchasing decisions, including obtaining detailed information on the different product offerings;
- 53.2 when making purchasing decisions, customers assessed price, quality and likely levels of servicing over the lifetime of the product, and there were strong incentives to find the best option given the adverse consequences of a poor choice; and
- 53.3 some customers delayed the timing of their purchases if they were not satisfied with the offers available, indicating a further strategy for exerting pressure on suppliers.
54. Other examples of companies using a tender process to exert buyer power include *Pork Farms/Kerry Foods*,³² a Phase 2 decision in which both merging parties supplied the food

²⁹ Merger Assessment Guidelines, Section 5.9, September 2010, published by the Office of Fair Trading and the Competition Commission and subsequently adopted by the CMA Board

³⁰ Merger Assessment Guidelines, paragraph 5.9.3

³¹ Report on the completed acquisition by Xchanging plc of certain companies comprising all of the European operations of Agencyport Software Group, paragraphs 6.16 - 6.42.

retail sector. As a result of the commoditised nature of the products supplied, the fact that there were no "must-stock" brands, and the evidence that retailers (including smaller players) could and did switch all or part of their purchases between suppliers, the CMA found that where suppliers sought to increase prices, customers could issue a tender or threaten to switch some or all of their purchases to a competing supplier.

The markets under investigation

55. The market features envisaged in the CMA's Guidance and the cases cited above that gave rise to countervailing buyer power clearly apply in respect of ground handling and de-icing services markets. In particular:
- 55.1 Ground handling is seen as a commodity product for which all providers compete predominantly on price. While airlines may say that service and reputation are important, the reality is that all providers mentioned by the Parties have the necessary expertise to provide the required service.³³ There are, therefore, numerous potential providers.
 - 55.2 Airlines can sponsor new entry. Any airline with sufficient volume, whether they are a large airline or a smaller regional one, can be a catalyst for market entry (see Annex 1). This affords them significant power to negotiate highly competitive prices.
 - 55.3 Airlines know the true costs of the services, as they have sophisticated procurement teams with detailed industry knowledge. They purchase the services in multiple locations and often self-supply in some locations (not necessarily in the UK).
 - 55.4 Airlines are global businesses and they interact and contract with the same providers at multiple airports and leverage their purchasing power across all their airports.
 - 55.5 Airlines use competitive tendering processes which are designed to give them maximum flexibility to achieve low prices and ensure their desired levels of service. Agreements are often terminable on short notice, which helps ensure service levels.
 - 55.6 The loss of a contract (even a small value one at any airport) can impact the profitability of a provider's entire operation.³⁴
 - 55.7 Airlines can purchase services jointly. Consequently, airlines with smaller volumes at a particular airport are able to constrain costs by group tendering. Menzies has experience of airlines having done this very effectively in the USA, and they have begun to replicate those tactics in the UK. For example, [X] and [Y] can purchase jointly at LHR.
 - 55.8 Airlines can use the threat of *self-supply* to drive better bargains with the Providers of ground handling and de-icing. This constraint is discussed further below.

³² Completed acquisition by Pork Farms Caspian Limited of the chilled savoury pastry business of Kerry Foods Limited, 3 June 2015

³³ In any event, airlines can impose minimum requirements.

³⁴ For example, if it impacts the scheduling of the airlines' flights and its effect on staff utilisation.

The constraint from suppliers not active at airports

56. In the Phase 1 Decision, the CMA mischaracterised and wrongly disregarded the constraint imposed by suppliers not currently active at an airport.
57. In particular, where suppliers are not active at an airport but are nevertheless bidding on contracts the Parties understand that the CMA has assessed the constraint from these suppliers under the "*timely, likely and sufficient*" test. This is not the correct approach: players actively bidding on contracts are actual competitors participating in the competitive process - not potential entrants into the relevant market.
58. In any event, some of the bidders have actually entered the market during the CMA's phase 1 investigation, such as [X], and this must be taken properly into account. Similarly, [X].
59. The Parties consider that, given the wealth of examples including very recent ones of providers not active at airports winning substantial contracts, it should be beyond any doubt that in this industry these competitors confer a significant constraint. This applies to both ground handling and de-icing services, and regardless of the airport. This market dynamic will no doubt be further confirmed by the CMA's market investigation in Phase 2.
60. For each airport and relevant service, the Parties identified those they considered to be the most likely credible competitors including those with a known aim to expand their business in the UK. The CMA market investigation at Phase 1 confirmed this fact,³⁵ and yet in the CMA's assessment of potential entrants at the relevant Overlap Airports the CMA contradicts itself and wrongly dismisses the threat posed by these competitors as a constraint on the Parties.

Self-Supply as a real constraint

61. Historically various airlines self-supplied, typically by setting up a ground handling subsidiary, that would then often also service other airlines. Many airlines then sold off these subsidiaries, the most recent example being Cobalt that used to be owned by Air France KLM and was sold in 2017 to the French Groupe Crit. In addition, over the last two years, there have been numerous examples of airlines taking their ground handling back in-house, thus moving to self-supply.
62. While switching to self-supply has always been theoretically possible, since the Menzies/ASIG transaction there have been a number of real world examples in the UK (see Annex 1). As such, while previously competition authority decisions have taken a conservative approach and not regarded self-supply as being in the same product market or acting as a credible competitive constraint, this is no longer justified and must be re-evaluated in the light of the current climate and the number of recent switches to self-supply.

³⁵ See notably at Para 200-202 of the **Decision**.

63. De-icing at LHR is a case in point. [X]. Furthermore, BA advertises its ability to offer ground handling services to third parties.³⁶
64. This is just one example that demonstrates that the threat of de-icing self-supply and the constraint it imposes is real and credible.
65. With respect to ground handling, there are a number of new alternative models which offer a very attractive self-supply solution and which differ significantly from traditional self-supply models analysed previously by the competition authorities. Namely:
- 65.1 The subsidiary model - where an airline creates a subsidiary entity to provide the services. This allows the subsidiary to compete for third party work or to be spun off.
- 65.2 The white label model - whereby a part of the services are outsourced allowing an airline the benefits of self-supply without the staff and resourcing risks. In the case of Norwegian Airlines, Red Handling UK Limited ("**RED**") was set up as a wholly owned subsidiary which self-supplies ground handling services for Norwegian Airlines at LGW. The subsidiary is staffed by Omniserv, a company that provides aviation services and manpower and owned by ABM Group, while the ground handling equipment is provided by Norwegian Airlines itself.
66. These alternative self-supply models are increasingly seen as attractive and credible alternatives to an airline and impose a strong competitive constraint on the Parties. In both cases, the self-supply sponsors new entrants into the market which are then also capable of providing ground handling services to third parties.
67. The use of third party facilities management companies (which may or may not be already present at the airport), such as Omniserv, to provide employees (on the basis that staff costs are the largest cost element in ground handling services) lowers barriers to exit to self-supply, while the arm's length management of self-supply entities by airlines allows them to sponsor entry into the supply of ground handling services to third parties (i) first as a way of spreading the fixed costs of self-supply; and (ii) subsequently as a profitable service line in its own right. The Parties understand that Omniserv is actively seeking to expand opportunities, and other similar "white label" providers could seek to enter the market too. Omniserve has successfully sold this model to [X], who have recently switched to self-handling at [X]. As a result they should be seen as a credible alternative bidder/competitor for ground handling services.
68. It appears that some airlines told the CMA that it would typically not be cost effective for airlines other than very large airlines to self-supply ground handling services. However, there are clear examples in the industry that demonstrate that it is not just the larger airlines that have considered self-supply as an alternative. A current example is Aurigny which is a very small airline which chose to switch to self-handling its ground handling at LGW and Guernsey.
69. It is important to understand that the decision to self-supply may not be purely cost driven and in many cases, the Parties believe that self-supply is more expensive for an airline than an outsourced solution. There are multiple reasons that an airline might move to self-supply, other than price, including to allow greater control over the services provided.

³⁶ See <http://www.ba-mro.com/baemro/groundHandlingLHR.shtml>

Accordingly, it does not follow that the costs of self-supply for smaller airlines, or large airlines with low volumes at an airport, would be prohibitive, or that those customers could not credibly threaten to switch to self-supply.

70. At Phase 1, the CMA gave insufficient weight to these actual examples of self-supply and was wrong to conclude that self-supply is not an option for all airlines. At Phase 2, the CMA must properly take into account the significant competitive constraint imposed by self-supply and the threat of self-supply by all airline customers.

D. COUNTERFACTUAL

71. In its Decision the CMA has taken the pre-Transaction conditions of competition to be the relevant counterfactual, and in doing so wrongly disregarded:

71.1 [REDACTED]; and

71.2 [REDACTED].

[REDACTED]

72. In relation to AS' counterfactual, the CMA has assumed that it was likely to have competed actively against Menzies by seeking to expand its ground handling operations at LGW and MAN. [REDACTED].

72.1 [REDACTED].

72.2 [REDACTED].

72.3 [REDACTED].

72.4 [REDACTED].

72.5 [REDACTED].

72.6 [REDACTED]³⁷.

72.7 [REDACTED].

73. The Decision referred to AS' growth aspirations, which are referred to also in the 2016 ASL accounts. [REDACTED].

74. Specifically with regards to the situation at MAN, the correct counterfactual for the Transaction [REDACTED].

75. [REDACTED].

76. [REDACTED].

77. So in reality AS could only have successfully expanded at MAN if [REDACTED]. It is a safe assumption that none of the other bidders (Stobart, DHL and WFS) would have been subject to [REDACTED]. Accordingly, [REDACTED].

78. In light of the above, it is simply incorrect to assess the Transaction as resulting in the loss of a significant and likely expanding competitor at MAN. Rather there are significantly more active providers present at the airport (e.g. Swissport, dnata, Premiere, Aviator), and others not present but actively bidding (e.g. DHL, Stobart and WFS) that are a much greater competitive constraint on Menzies than AS would have been absent the Transaction.

³⁷ A relevant extract is attached. The full document was submitted to the CMA as part of the Response to the CMA's s 109 Notice dated 15 August 2018.

79. Specifically with regards to ground handling services, as understood from AS' Managing Director, [REDACTED].

[REDACTED]

80. With respect to Menzies, the CMA noted the submission [REDACTED].³⁸

81. [REDACTED].

82. [REDACTED].

83. [REDACTED].

84. [REDACTED].

85. [REDACTED].

86. [REDACTED].

³⁸ See Para 25 of the Decision.

E. FRAME OF REFERENCE

Product scope

87. In its decision, the CMA considered the impact of the Transaction in relation to three product markets:
- 87.1 the supply of ground handling services which (on the basis of evidence received by the CMA from the Parties and third parties) the CMA decided comprised the supply of baggage, ramp, passenger and airside cargo handling services;
 - 87.2 the supply of de-icing services³⁹; and
 - 87.3 the supply of internal presentation services.⁴⁰
88. The CMA decided that each of: ground handling services, de-icing services and internal presentation services should be treated as separate markets. The CMA also concluded that self-supply by airlines should be not included in the product frame of reference.

Contract types

89. In previous cases, the CMA has identified that ground handling services comprise of a variety of different services, but generally consisting of ramp, passenger, baggage and airside cargo services (see Para 29 above).
90. Broadly, the Parties agree with the CMA's approach to the product market definition for ground handling and de-icing services. However, the position is very different for EDI and GLA de-icing, where there are two entirely separate methods of contracting namely:
- 90.1 network contracts - which consist of a contract for the provision of only de-icing services, but on a multi-site (i.e. multi-airport) basis; and
 - 90.2 bundled contracts - which consist of a combination of ground handling services including de-icing as well as baggage, passenger, ramp and airside cargo transport services.
91. This dynamic must be taken into account when assessing the relevant product markets at EDI and/or GLA.

Self-supply

92. As mentioned above (see Paras 61 to 70 above), there is a clear requirement for the CMA to re-assess self-supply in order to take account of the current market conditions.

Geographic Scope

³⁹ Worth noting that de-icing will include freight aircraft - as there is no differentiation of service for de-icing freight aircraft and commercial passenger flights.

⁴⁰ Paragraph 45 of the Decision

93. As with the Product scope above, the Parties generally agree with the CMA's conclusions regarding the appropriate geographic market for the CMA to assess the merger being airport wide.⁴¹
94. However, the Parties consider that it is necessary to determine that this frame of reference applies equally to each of the Overlap Airports and in particular, the stark difference in contracting for de-icing services at EDI and GLA suggests that the position may not be so simple.
95. The CMA acknowledges in the Decision that a large proportion of airlines tender for services on a network basis.⁴² While the CMA suggests that airlines would accept bids for single airports, the Decision presents no evidence to support this. The Parties consider there is very limited substitutability between the alternative contract types of single site bundled contracts and multi-site network contracts. This is reflected in the arguments set out above (see Paras 89 to 91), and specifically in relation to the bidding data for EDI and GLA (see Tables 3 & 4).

⁴¹ See Para 50 of the Decision.

⁴² See Para 47 of the Decision.

F. COMPETITIVE ASSESSMENT AT THE OVERLAP AIRPORTS

96. This section outlines the Parties' response to the SLC findings set out in the Decision at the Overlap Airports, which in summary is that, for the reasons explained, the Phase 1 Decision is unsupported and there is no basis to conclude that any SLC will arise as a result of the Transaction.
97. The Parties disagree with both the method of the CMA's assessment of the 5 Overlap Airports and also the conclusions.

Shares of supply

98. In bidding markets, market shares based on legacy contracts simply do not reflect the true competitive dynamics in this industry. In addition, the use of 'turn' data, which shows the number of aircraft flights a de-icing or ground handling services provider deals with at each airport, as the basis for calculating shares of supply does not accurately demonstrate the competitive significance of rivals.
99. While turn data may be a proxy for identifying which providers have activities at an airport it does not reflect the scale of their activities (as it does not reflect the size of aircraft and so the number of passengers they service). It is therefore not a good measure of scale for general ground handling services, and it is totally irrelevant for de-icing, demand for which is driven by the seasonality of airlines' schedules and the number of night-stopping aircraft.⁴³ The turn data was provided, along with the above health warnings, in order to assist the CMA, as it is the only comparable data that the Parties have access to in order to estimate their and competitors' share of supply.
100. In the Phase 2 process, the CMA should instead concentrate its analysis on the bidding position, strength and credibility of bidders who are already at an airport and potential new entrants who are either actively bidding or who are able to actively bid.

DE-ICING SERVICES

Introduction

101. De-icing services providers need to demonstrate that they have the necessary equipment and trained personnel to carry out de-icing. Nevertheless, de-icing services will be the same regardless of the airport and are still seen as a commoditised product. Therefore, any relevant experience would not have to be at the actual airport of tender. There are often low barriers for a new entrant to the airport where the airline is bidding. Indeed until recently Menzies had no de-icing capabilities at GLA, [REDACTED] and trained the required employees. Similarly IDS entered Luton airport based on winning the easyJet de-icing contract there.
102. The Parties believe that during the Phase 2 investigation it will become clear to the CMA that, at EDI and GLA, [REDACTED]. The merger between Menzies and AS at those airports therefore will have no scope to result in a SLC, as the competitive dynamic for each type of contract

⁴³ For example, Menzies may have a bundled contract for ground handling and de-icing for a global airlines that does one flight a day into EDI. That carrier will have 365 turns per annual, however if its turn is during the day it is unlikely to require much if any de-icing at all (and Menzies may only receive minimal revenues despite having a contractual obligation to ensure it has the staff and assets just in case). In contrast both Swissport and AS may have a network de-icing contract for a UK based regional carrier whose aircraft overnight at EDI and will require significant de-icing to ensure all flights depart on schedule. Given the importance of the latter such airline may well have agreed to pay a minimum annual retainer fee.

tendered will remain unchanged. In short, the Transaction does not have the potential to affect competition for de-icing services at those airports.

103. At LHR the Parties do compete. However, the Parties equally believe that there is clearly very strong competition from other suppliers at LHR, new entrants and self-supply. Furthermore there are sufficient countervailing constraints either from the threat of competition, and/or the buyer power of airlines or the airport itself (some of which have, in the past, sponsored entry.)
104. The Parties firmly believe that the airlines' annual "turn data" that the CMA has used for de-icing will not accurately reflect the type and scale of competitors' activities at airports. For example, the annual number of turns provided in Phase 1 does not reflect the seasonality of flights (with more flights occurring over the summer and holiday periods) - and de-icing is usually only done within a 7 months period over the winter (from October - April). Indeed many airlines will often only fly certain routes over the summer tourist period meaning that *annual* turn data is not a good proxy for de-icing share of supply.
105. Additionally, not every flight will require de-icing, and that will depend on the temperature and the period of time that a flight has been grounded. Night-stop flights, where the plane is grounded overnight, are more likely to require de-icing as temperatures will drop considerably during night time and a plane will need to be de-iced before the first departures in the morning (for example [REDACTED]), and a number of other airlines require their aircraft to be anti-iced (a form of de-icing done when the forecast for the overnight temperature drops below +3 degree Celsius, before any pre-departure activity is undertaken)).
106. For these reasons, the Parties urge the CMA to collect other data on the value of contracts, the number of de-icing events and/or the volume of fluid used that would more accurately reflect their scale.

De-icing at EDI and GLA

107. At EDI and GLA, the CMA has identified an overlap as both Menzies and AS provide de-icing services and has characterised the Transaction as a 3:2.
108. This is not accurate as it fails to reflect [REDACTED].

The Parties are not [REDACTED] competitors at EDI or GLA

109. The Parties highlighted to the CMA at Phase 1 that there is a fundamental difference in their businesses at both EDI and GLA. As such, they [REDACTED] at these airports and instead both compete with Swissport.
110. On the one hand, Menzies pursues and services bundled Contracts (see Para 90 above).⁴⁴ These are contracts which AS cannot compete for because it does not have ground handling operations.
111. AS, on the other hand, pursues and services network Contracts (see Para 90 above). These are contracts which [REDACTED].

⁴⁴ Menzies has traditionally focussed on ground handling services in the UK, and, as mentioned above, only provides de-icing at [REDACTED]. At all airports other than LHR Menzies [REDACTED]. AS on the other hand expanded its business specifically as a de-icing specialist [REDACTED].

112. These differences in the Parties' business models means that they have the ability to provide de-icing services to very different types of airline at EDI and GLA. In particular:
- 112.1 [REDACTED].
- 112.2 [REDACTED].⁴⁵
113. The lack of competition between the Parties is demonstrated by the fact that there are [REDACTED] cases where the Parties have competed for the same contracts in the period for which reliable data is available (i.e. from early 2016). In particular, the available tender data indicates that:
- 113.1 [REDACTED];
- 113.2 [REDACTED].

Table 3: Comparison of MA and AS De-icing Tender Data at EDI (July 2016 to date)

[REDACTED]

Table 4: Tender data: Glasgow (De-icing, 2016 to present)

[REDACTED]

114. Crucially, whilst the Parties do not have [REDACTED] to compete for the same type of contracts, Swissport does have de-icing capabilities across a large number of UK airports (see Table 2), and is also a major supplier of ground handling services at EDI and GLA. As such, it competes directly with AS (in relation to Network Contracts) and Menzies (in relation to bundled contracts).
115. In summary, therefore, there is [REDACTED] of competition between the Parties. The Parties instead compete directly with Swissport for contracts. This competition will not be affected by the Transaction and accordingly, there can be no basis for a finding of a SLC.

The CMA's SLC finding is speculative and not based on facts

116. In response to the evidence presented by the Parties during Phase 1 the Decision speculates that airlines either may be willing "to accept bids for the provision of one type of service at one airport where they consider it preferable to do so" or that they may be "able to choose between different contractual models when procuring de-icing services". On this basis the CMA concluded that the Merger is "liable to bring about a loss in the competitive tension between the contractual options available for customers at EDI and GLA".
117. The Parties submit that this speculative reasoning is incorrect and does not support a SLC finding.
118. First, the Parties note that the contracting methods of airlines are largely driven by the unique

⁴⁵ Or as a subcontract to a ground handler with no de-icing capabilities (e.g. AS was sub-contracted to Menzies at GLA prior to its 2017 win of the IAG contract).

features of their UK operations. This makes it unlikely that customers would in practice switch between tender types. Specifically, UK based regional airlines will tend to operate from a large number of regional networks and their overnight stay in the UK means de-icing is a critical service for them with the potential to create havoc for their flight schedules (a delayed morning departure then has repercussions for their entire network schedules and passenger satisfaction).

119. Given its importance they are likely to have a preference to separate the responsibility for the ground handling and the de-icing services (services which have to be carried out simultaneously and so no lead to no synergies for the supplier). They are unlikely to tender contracts on a single service/single airport basis as the cost would outweigh any benefits that could be obtained from doing so. By contrast, non UK based carriers and freight operators have far more limited de-icing requirements and regional footprints (as most of their aircraft will overnight in their home markets where they can be more efficiently used on other routes the next day). They are very unlikely to run de-icing only contracts as the cost would outweigh any benefits that could be obtained from doing so.
120. Second, and consistent with this, the Parties are not aware of any instances where an airline has chosen to accept bids for de-icing services at GLA and EDI only. Nor are the Parties aware of any examples where airlines have switched from a multi-site de-icing only tender to a single-site bundled tender (or considered doing so).⁴⁶ Accordingly the market reality does not support the view that airlines use these options as a way of creating competition between the Parties. To the contrary, these are not options that these airlines use in practice, meaning that the Parties [§<].
121. Third, even if airlines did consider these options to be credible, the removal of this hypothetical option does not mean that the Transaction is likely to result in a SLC. For this to be the case it would need to be true that airlines would (in the event of a price increase by either Party) be likely to deploy these options as a means to facilitate competition from a wider set of competitors (including both the Parties). Only in these circumstances could the Parties be considered to be genuine "potential competitors" for one another's contracts. The absence of any evidence of airlines using these options, coupled with the existence of Swissport as a strong and credible competitor for both types of contract strongly indicates that these are not options that airlines are likely to deploy. Indeed, it is far more likely that they would (in the event of a price increase) have simply switched from the either of the Parties to Swissport. As the merger will not affect this key competitive dynamic it cannot be considered to substantially lessen competition.
122. Finally, the CMA also speculates that AS may be better placed to compete for bundled contracts at EDI in particular going forward (Para 81 of the Decision). However, despite [§<]. This demonstrates that AS was highly unlikely to enter as a ground handler in a timely manner compared to others that are actively looking to expand their ground handling activities in the UK, and who have greater financial and group resources to do so. As explained above, AS' [§<] position meant that prospects for growth were limited.

The CMA's assessment of entry at EDI is inadequate

123. Finally, the CMA indicated that the evidence of potential entry into EDI for de-icing was "mixed" and did not adequately support the position that new entry "*would be timely, likely or*

⁴⁶ The Parties note that [§<]. However, [§<]. [§<]. Clearly it would not be willing to employ this business model to compete for de-icing only multi-site contracts as there would be no value in doing so.

sufficient"⁴⁷). A similar conclusion is reached for GLA. The Parties contend that [X] actual win of a ground handling contract at EDI (which the CMA was informed of at Paras 1 to 6 of the Response to the CMA's Fourth Request for Information submitted on 23 July 2018) makes it a very possible entrant for de-icing,⁴⁸ and that furthermore those considered for a tender by customers can change overnight, as evidenced at other similar smaller airports. Thus [X], while IDS entered Luton where it previously had no other operations.

124. At EDI there are various contracts of sufficient size that could realistically make entry attractive whether on a bundled or a network basis. Overall, the Parties submit that the constraint from entry is a real one.

Menzies [X] is not reflected in the Decision

125. The Parties highlighted to the CMA at Phase 1 that Menzies [X].⁴⁹
126. [X]. The implication of this is that Menzies would be unlikely to constitute a strong competitor for contracts at EDI [X]. This reality is not reflected at all in the Decision.

Counterfactual at GLA

127. [X], whereas if airlines had considered that there was a lack of competition at GLA in de-icing, they would have been expected to support a new entrant and so increase competition further.
128. On this basis, therefore, the CMA's finding that absent the Transaction, Menzies would have grown de-icing at GLA and that therefore as a result of the Transaction airlines will have their choice reduced, is not credible. [X].
129. [X]. In contrast, Swissport has [X] rigs at GLA and [X]. [X].

De-icing at LHR

The Parties are not close competitors at LHR

130. At LHR, one of the world's largest airports and where Menzies acquired its existing de-icing business when it bought ASIG, the competitive dynamics are different in that the Parties do compete for the same de-icing contracts, but have only done so on a limited basis. They are not, therefore, close competitors at LHR.
131. In this regard, the Parties have submitted tender data to the CMA which indicated that the Parties have only competed directly against one on a limited number of tenders. This tender data is presented in Table 5 below.
132. The CMA took a simplistic approach to this tender data in its Phase 1 assessment and merely took it as evidence of a competitive interaction between the Parties.
133. The Parties have never suggested that they did not compete against each other at all at LHR [X], but rather that the competition between them is weak and that the other remaining

⁴⁷ See Para 87 of the Decision.

⁴⁸ [X]

⁴⁹ See Paras 4.2, 4.4, 6.15 and 9.15 of the Issues Letter Response.

competitors are closer and stronger constraints. It is critical that during Phase 2, the CMA obtains tender data from third parties to confirm which contracts they bid on. The Parties are confident that this data will demonstrate beyond doubt that other competitors compete more frequently and/or could very readily tender against the merging Parties.

Table 5: Comparison of Menzies' and AS' De-icing Tender Data at LHR (July 2016 to date)

[REDACTED] [REDACTED]

The CMA has overstated Menzies' competitive position in de-icing

134. The Decision argues that the Transaction brings about a "significant" increment in market shares of [10-20]%. The implication is clearly that the CMA sees Menzies as a material competitor at LHR, such that its removal would result in a SLC.
135. However, the Parties consider that Menzies' competitive position is materially overstated by the Decision.
136. In particular, where Menzies supplies de-icing services it does so [REDACTED]. Consistent with the Parties' submissions made in relation to EDI and GLA, Menzies considers that the airlines that tender for de-icing services as part of a bundle will tend to be those that have relatively limited demand for de-icing services because they have fewer night-stopping aircraft at this airport. For these airlines, the costs of tendering de-icing separately are likely to outweigh any benefits from doing so. [REDACTED].
137. Overall, therefore, the Parties submit that by looking at shares of supply by turns (and not by value or by other metrics which may be more relevant for assessing the scale of de-icing services) the CMA has overstated Menzies' importance as a supplier of these services. The appropriate way to assess shares of supply in relation to de-icing is on the basis of de-icing events and value.

Competitive conditions at LHR are expected to change materially in the new future

138. Furthermore, the CMA has ignored the fact that currently by far the biggest provider of de-icing services is BA as a self-supplier, and that BA currently has a tender out that is likely to change the market dynamics at LHR. BA is not only tendering its back up de-icing services (which AS currently provides), but it has also invited tenders for full services at all its terminals. Whilst [REDACTED] [REDACTED], [REDACTED].
139. Not only will the BA award shape the competitive dynamics at LHR going forward, but the very fact that [REDACTED] bid shows that it is looking for contracts with which to re-enter LHR, and as such it cannot be ignored as a competitor at the airport. This is particularly the case given that until recently it was present at LHR, and it is a specialised global de-icing company which evidently has the relevant expertise, equipment and reputation to compete effectively against the Parties.
140. It is essential for the CMA to assesses these issues appropriately to identify both the competitors that are actively competing at LHR, and the likely impact this contract will have on the market going forward.

The CMA has incorrectly excluded self-supply from the LHR market

141. The CMA has excluded self-supply from its competitive assessment at LHR despite the fact that BA, the airline with by far the largest demand for de-icing services at this airport, currently self-supplies. This is not a reasonable approach.
142. First, as noted above BA is currently engaged in a tender process in which it is actively comparing self-supply to other competitive alternatives based on their relative attractiveness. BA is only likely to switch to a third party if such a bidder can demonstrate that it can offer a competitive de-icing solution once factors including price and operational risk are taken into account. This strongly indicates that self-supply and third party supply are directly competing alternatives.
143. Second, given that BA has significant demand for de-icing services, the fact that it clearly considers self-supply to be a credible competitive alternative means that this competitive option should not be excluded from the relevant market.

Entry is a real constraint at LHR

144. The CMA also was wrong in the Decision to dismiss the significance of the threat of new entry in de-icing at LHR as a real competitive constraint that should be taken into account. [X].
145. In identifying active bidders and possible entrants, the Parties have only named those that have either been active in de-icing at LHR before (specifically IDS, Swissport and dnata), or those that have the industry experience given they already provide de-icing elsewhere. The CMA notes that many of the potential entrants identified by the Parties "did not have existing de-icing operations and customer relationships in the UK and/or do not have an established reputation for good quality delivery in relation to de-icing services (Para 123 of the Decision). This is factually incorrect as all those mentioned do provide these services elsewhere in the UK or Europe), and so it is again an error to simply exclude the possibility of their entry:
- 145.1 Swissport has significant customer relationships globally with most airlines and provides de-icing services at the most UK airports ([X] in total), and already provides ground handling services at LHR. While the Parties are not in a position to confirm whether or not it has bid on any recent tender, it should be evident that it very easily could start doing so imminently given it is already a ground handler and has the capability to bundle this with de-icing and it has de-iced at LHR in the past following its acquisition of Servisair (which had a sizeable de-icing operation at the airport)..
- 145.2 dnata provides ground handling services at LHR, LGW and MAN and has provided de-icing services at LHR and various non-UK airports.
- 145.3 Azzurra are a ground handler with the necessary customer relationships with many of the airlines in the UK and across Europe.
- 145.4 ACS similarly are a ground handler with customer relationships with many of the airlines.

GROUND HANDLING SERVICES***Introduction***

146. While Menzies and AS overlap in the supply of ground handling services at LGW and MAN, the Parties consider that the CMA has fundamentally mischaracterised at Phase 1 both the nature of ground handling services and also the strength and importance of AS as a competitor for providing ground handling services at LGW and MAN. When these factors are assessed correctly the Parties consider that there is no basis for a SLC finding at these airports.
147. As set out above, airlines consider ground handling services to be a commoditised product. Switching between providers is very common, and airlines use the bidding process to ensure that costs of the existing provider are kept down, irrespective of the number of competitors actually considered on any individual tender or renewal (see Para 55.5 above). The result is a highly competitive market where suppliers at best make very small margins. Furthermore, the UK TUPE legislation also makes switching and entry much easier than elsewhere in Europe. [X]. This context is ignored in the Decision.
148. As with de-icing, airlines are able to invite tenders for contracts from providers who are active at an airport, but also from those that are not active. Indeed, there is a wide range of evidence of new entrants successfully competing for and winning contracts across the UK - and specifically at LGW and MAN.
149. At paragraph 68 of the Decision, the CMA wrongly states that smaller airlines are unable to attract new entrants to an airport. In fact, there is equally strong competition for new contracts (including from new entrants). Specifically:
- 149.1 Smaller airlines (and airlines with smaller contracts at a particular airport) do have the ability to encourage new entrants, and there are numerous examples of this (see Annex 1, Para 4).
- 149.2 Smaller airlines at an airport have the ability of combining contracts with other airlines to obtain a better negotiating position or to encourage new entry. As set out in the Issues Letter Response, Menzies has experience of airlines having done this very effectively in the US, and given the global nature of the industry airlines have begun to replicate those tactics elsewhere, including in the UK. For example, [X] jointly purchased ground handling services at [X]⁵⁰. With their existing (and increased/and expanding) code share arrangements and alliances, airlines are regularly able to discuss these options with other airlines.
- 149.3 Smaller contracts can be bundled with other contracts as part of a multi-service or a multi-site tender, which would be sufficient to provide an airline with critical mass to sponsor new entry or extract better value (there are countless examples of bundled multiservice contracts the UK.)
- 149.4 While a contract at an airport may be small, that does not necessarily correspond to the size or value of the customer for the providers of ground handling services. For example, [X] has only 1 turn a day in the winter. Nevertheless, it is a prestigious customer and a global player, with much larger operations at other airports in the UK and elsewhere. A provider may have a much stronger incentive to bid competitively for the [X] contract [X] than its size at that airport might suggest.

⁵⁰ [X].

- 149.5 Similarly, scheduling considerations also mean that small contracts can be very attractive. A small contract at an airport with take-off and landing slots at non-peak times could allow a ground handler to create significant synergies by filling the gaps between its other contract obligations.
150. As stated above, Menzies is the second largest ground handling services provider in the UK. Swissport is the largest ground handling services provider in the UK with a significantly larger operation than Menzies, and would remain the clear market leader following the Transaction. By contrast, AS [redacted]. As such, AS must be treated as a small competitor in the UK relative to other ground handlers. A complete overview of ground handlers active in the UK, alongside a summary of their recent wins is provided in Table 1 above. This includes significant wins obtained at airports where these rivals were not active at the time of bidding, clearly demonstrating the ease with which rivals can enter and provide ground handling services at airports.

Shares of supply

151. The Parties note that the Decision places considerable emphasis on legacy shares of supply based on numbers of turns at the overlap airports as a basis for its SLC finding.
152. The Parties have already discussed above why an analysis of legacy shares does not provide a good basis for assessing competition in bidding markets. These issues are particularly pertinent in the ground handling market where suppliers not active at airports can and do compete for contracts. An analysis of bidding data provides a clearer picture of the competitive constraint of rivals.
153. Moreover, for ground handling services, the Parties consider that focussing on turn data alone would not provide an accurate picture of the market and that other measures will provide a more accurate reflection of relative market strength at an airport. In particular, turn data does not take into account the difference in service required for wide bodied or narrow bodied aircraft (which will require very different levels of staffing). Therefore, a competitor with a greater historic focus on wide-body aircraft may have far more significant operations at an airport than its share of turns would suggest.
154. The Parties consider that the approach taken by the CMA considerably overstates the competitive significance of the Parties and considerably understates the competitive significance of certain rivals. These issues are discussed in more detail below.

Ground Handling Services at LGW

155. LGW is a major London based international hub airport, with a large number of airlines operating from it. The market for ground handling services at LGW is highly competitive and the Parties face competition from DHL, dnata and Swissport as actual suppliers at the airport and have a low share of supply. In addition, there are a number of other suppliers that are credible potential entrants at LGW, when contracts are up for renewal, including WFS. The number of existing and potential competitors at this airport means there is no plausible basis for a SLC finding.

Overview of suppliers

156. The Decision, at Table 4 and paragraphs 128 to 130, demonstrates that there have been 6 providers operating at LGW in the last 3 years, 5 of which are active today. Table 6 below provides an overview of the contracts supplied at LGW by each of these suppliers. It

demonstrates that (in addition to the Parties) there are three competitors at LGW that have recently won significant contracts at the airport.

Table 6: Comparison of Ground Handlers active at LGW

Competitor	Key contracts/recent wins
Swissport	[redacted] ⁵¹ .
dnata	[redacted].
DHL	[redacted].
Menzies	[redacted]
AS	[redacted]

157. In addition, that there are several UK ground handlers that are very likely to bid on contracts when they come up for renewal. These suppliers are discussed in more detail below.

Shares of supply at LGW

158. The Decision provided legacy share of supply information based on the number of turns (inclusive of legacy contracts), which as explained above does not adequately reflect the competitive constraint posed by alternative providers.
159. In this regard the Parties note that Swissport, DHL GGS, RED and Omniserv have only recently entered the market, meaning they will by definition have fewer legacy contracts than those competitors that have been in the market for a longer period. In particular, Swissport exited LGW in 2014, but is clearly now re-entering with various recent wins. The fact that some players are new entrants does not, however, mean that these suppliers are not important competitors for new contracts.

⁵¹ Air Canada subsequently exited LHR

160. The Parties have noted above the reasons why it is relevant to look at shares of supply on the basis of passenger numbers. Since the Decision was provided the Parties have obtained data on passenger numbers by airline which have allowed them to calculate shares of supply on this basis. These shares of supply are set out below. They indicate that:
- 160.1 The Parties' combined share of supply in 2018 is low on any basis. Their combined share of passenger numbers is [30-40]% whilst their combined share of turns is [30-40]%.
- 160.2 DHL's share of supply has increased substantially at the expense of Menzies. DHL's share of supply now stands at around [60-70%] on either measure.
- 160.3 Swissport and dnata's share of passenger numbers are both double their share of supply based on numbers of turns. Therefore, their operations at these airports are larger than their share of turns would suggest.

Table 7: Shares of supply LGW (2018 YTD)

	2017		2018	
	% Passenger numbers	% flight vol/turns	% Passenger numbers	% flight vol/turns
Menzies	[60-70]%	[70-80]%	[20-30]%	[20-30]%
Airline Services	[10-20]%	[10-20]%	[10-20]%	[10-20]%
DHL	[5-10]%	[5-10]%	[50-60]%	[60-70]%
dnata	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Swissport	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Parties' data on turns and passenger numbers

Competitive constraints at LGW

161. It is not in dispute that there are numerous ground handlers competing for contracts at LGW.⁵²
162. However, the CMA appears to have relied on a number of pieces of evidence from third parties, that have not been disclosed, to downplay incorrectly the constraint imposed by some of those rivals. For the following reasons, this approach is not justified:
- 162.1 DHL is the largest supplier at the airport on any measure. Whilst the CMA has redacted its reasons for dismissing its competitive constraint "in the short term", the Parties understand that [redacted],⁵³ but also believe that [redacted].⁵⁴ Self-evidently, however, DHL is capable of assessing new tenders and submitting new bids at LGW, and may

⁵² See Table 5 at Para 128 of the Decision.

⁵³ See paragraph 137. (a) of the Decision.

⁵⁴ [redacted]

well be doing so. Furthermore, its success in winning the largest contract at the airport clearly demonstrates that it is a credible and effective competitor. The Parties urge the CMA to obtain data on DHL's future bidding plans – including whether it is likely to bid for contracts in the short to medium term – and to reflect its recent success in its analysis of the constraint from this rival.

- 162.2 The CMA appears to discount the significance of Swissport and dnata at LGW due to their small presence.⁵⁵ However, as noted above, these suppliers' shares of supply are likely understated both because of the metric used by the CMA and because the use of legacy shares does not take into account the fact that Swissport exited LGW in 2014, and only recently re-entered and started bidding. Low market shares cannot be used as evidence that these suppliers “*may not be competing against the Parties for many customers*” as the CMA suggests. The Decision also alludes to tender data from third parties, but the CMA's assessment of that data is entirely redacted. The Parties urge the CMA to provide access to that data such that its conclusions can be robustly tested. The Parties seriously question whether such data could support the view that large multi-national ground handlers that have recently entered an airport by winning significant contracts are not currently bidding to expand their footprint at the airport.

Potential entry at LGW

163. In the Decision, the CMA concluded that new entry would not be “*timely, likely and sufficient*” at LGW.⁵⁶ The Parties consider this statement to be untrue and unrealistic given the ease with which DHL and Swissport have recently entered the market, and moreover the Parties believe that a number of other suppliers including WFS are likely to bid for contracts and enter the market in the short to medium term. Furthermore, while dnata have been at LGW for a while, they have only recently expanded from handling Emirates to competing more actively on for other airlines (including narrow bodied ones). There are a large number of tenders up for renewal in the next 1-2 years and it is highly likely that they will be contested by these players and others in view of their recent respective contract wins.
164. The Parties urge the CMA to obtain and share data from third parties on their bidding behaviour and to rigorously test any claims that they do not intend to compete for contracts that are coming up for renewal in the next 1-2 years.
165. In addition, and despite the CMA's comment at paragraph 69 that smaller airlines find it difficult to attract new entrants to an airport, it is worth noting Swissport's re-entry at LGW. In November 2016, Swissport re-entered LGW to provide ground handling services to Virgin Atlantic, which operates just over 2,000 turns per year (approximately 5 to 6 turns a day) having previously exited LGW in 2015. While Swissport has expanded the number of airlines it provides ground handling to at LGW, it is clear that even a small contract would be sufficient to sponsor a new entrant.

Conclusion on ground handling at LGW

166. In conclusion, the Parties consider that ground handling services at LGW should be reviewed by the competition authorities as a bidding market. There are currently 3 significant rivals

⁵⁵ See paragraph 137. (b) of the Decision.

⁵⁶ Paragraph 141 of the Decision.

operating at the airport in addition to the merging Parties. These competitors are sufficient to confirm that a SLC is not likely. When other potential competitors (new entrants) are included, as well as the countervailing buyer power and threat of self-supply by airports, this conclusion is all the more clear.

Ground Handling Services at MAN

167. MAN is a large international hub and is moreover growing significantly. As mentioned in the Issues Letter Response at Para 9.1 MAN is an airport with spare capacity, and a growth airport for airlines (especially following the demise of Monarch in October 2017⁵⁷). As a result, it is an airport that a number of ground handling services are likely to seek to enter.
168. Indeed the data provided by the Parties will demonstrate that the market position is more competitive than was the case at the time of the Menzies/ASIG transaction,⁵⁸ where the factual scenario at this airport did not raise any SLC concerns for the CMA despite that at the time Aviator had just exited from LGW and was believed to be at risk of exiting MAN, and there had been much less interest from potential entrants than currently. Given the various changes at MAN since that merger decision, including Menzies' [X] and the AS counterfactual at this airport, the risk of any SLC should, *a fortiori*, be even less of a concern for the CMA in this Transaction.
169. The Parties strongly believe there is no basis for a SLC in MAN ground handling: the Decision identifies 4 actual suppliers each capable of bidding for and winning contracts at MAN. Furthermore the Parties understand that suppliers including [X]. This not only confirms that the set of competitors active at MAN will increase further in the short term but also illustrates that there are far greater numbers of competitors actually tendering for contracts at this airport. There is no prospect of a SLC in these circumstances.

Overview of ground handling suppliers at MAN

170. The Decision, at Table 5 and paragraphs 146 to 147, demonstrates that there are 6 providers currently operating at MAN. In addition to the above suppliers there are several UK ground handlers that are very likely to bid on contracts when they come up for renewal (and which are bidding in on-going tender processes). These suppliers are discussed in more detail below. Table 8 below provides an overview of the contracts serviced at MAN by each supplier with operations at the airport today.

Table 8: Comparison of Ground Handlers active at MAN

Competitor	Key contracts/recent wins
Swissport	[X]
dnata	[X]
Aviator	[X]
Premiere	[X]

⁵⁷ At 4am on 2 October 2017, the CAA confirmed that Monarch Airlines had ceased operations with immediate effect and had entered administration.

⁵⁸ See Para 102 of Menzies/ASIG.

Competitor	Key contracts/recent wins
Menzies	[REDACTED]
AS	[REDACTED]

Shares of supply at MAN

171. The Parties consider the use of share of supply information based on the number of legacy turns to assess the market position at MAN overstates the Parties' positions.
172. However, the Parties' shares of supply are low even when calculated on a legacy basis. In this regard, the Parties note that [REDACTED]. The Parties have therefore recalculated shares of supply reflecting [REDACTED] and also to reflect new information on passenger numbers. These new shares of supply are presented in Table 9 below and demonstrate that:
- 172.1 The Parties shares of supply are low– i.e. [REDACTED]% depending on which metric is used.
- 172.2 Menzies' share of supply [REDACTED].
- 172.3 Swissport is the largest player in MAN and its share is higher on a share of passenger basis
- 172.4 [REDACTED].

Table 9: Ground handling shares of supply by passenger numbers at MAN 2017/18

Competitor	2017		2018 (YTD)		2018 ([REDACTED])	
	Passenger numbers	Turns	Passenger numbers	Turns	Passenger numbers	Turns
Airline Services	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[REDACTED]%	[REDACTED]%
Menzies (including ASIG)	[30-40)%	[50-60)%	[20-30)%	[30-40)%	[REDACTED]%	[REDACTED]%
Aviator	[10-	[5-10)%	[10-20)%	[10-20)%	[REDACTED]%	[REDACTED]%

Competitor	2017		2018 (YTD)		2018 ([REDACTED])	
	20]%					
dnata	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[REDACTED]%	[REDACTED]%
Premier Handling	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[REDACTED]%	[REDACTED]%
Swissport	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[REDACTED]%	[REDACTED]%
[REDACTED]	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%

The Parties are not close competitors

173. Contrary to the CMA's conclusions at paragraph 149 of the Decision, [REDACTED]. In particular, [REDACTED]. This is an important fact that should be reflected by the CMA in its analysis.
174. The statements referred to by the CMA in the Decision to support its SLC finding are weak and not supported by the facts. No comparative analysis of the Parties' position against third parties is provided in the Decision.
175. With respect to the counterfactual for AS at MAN the background is as follows: [REDACTED].
176. [REDACTED].
177. [REDACTED]⁵⁹

Competitive constraints at MAN

178. As with LGW, it does not appear to be in dispute that there are a material number of ground handlers competing for contracts at MAN.
179. However, the CMA discounts the strength of Aviator, dnata and Premiere as competitive constraints at MAN. The Parties do not consider that there is any basis for such a conclusion.⁶⁰

179.1 Aviator - currently operators two significant contracts at MAN - Thomas Cook and Norwegian contracts.⁶¹

⁵⁹ [REDACTED].

⁶⁰ See paragraph 156 of the Decision.

⁶¹ See Footnote 172 of the Merger Notice.

- 179.2 The CMA argues that dnata has a small presence at MAN based on its current customers and on information that is redacted in the Decision. However, dnata is in reality a global player with a clear intention to expand at MAN demonstrated [§<]. The Parties also do not believe it is accurate to suggest that dnata is only targeting certain types of aircraft or customer at MAN and see dnata as a potential competitor for all customer contracts. The Parties urge the CMA to obtain current bidding data to confirm dnata's true competitive position.
- 179.3 Premiere has expanded at MAN and intends to grow further. Contrary to CMA's conclusions at paragraph 156. (c) of the Decision, Premiere is capable of serving larger airlines. In fact, Premiere [§<]. This is all entirely at odds with the CMA's findings in the Decision. Premiere has invested in new equipment and capabilities, and have recruited ready-trained staff from established players including Menzies, so has the capacity and capability of strong growth at MAN. The Parties urge the CMA to obtain bidding data to understand Premiere's true competitive position.
- 179.4 Strikingly, the CMA does not discuss WFS, Stobart, Aviapartner or DHL as competitors at all in the Decision, [§<]. These competitors together constitute an important constraint at this airport.
- 179.5 Furthermore, a switch to self-supply is always an additional alternative for an airline at any period of change when they tender a service. The subsidiary or white label models are increasingly more attractive to an airline and impose a strong competitive constraint on the Parties at MAN. Notably Jet 2 already operates at MAN on this basis.
180. As a result, the Parties consider that all of the existing Providers at MAN as well as DHL, Stobart, WFS and Avia Partner are capable of tendering for and winning ground handling services business from the airlines operating at MAN.

Potential entry at MAN

181. The Decision concludes that the available evidence "*does not adequately support the position that entry by providers not currently active in the provision of Ground Handling Services at MAN would be timely, likely and sufficient.*"⁶² This is not correct.
182. As described in the Issues Letter Response, the Parties understand that suppliers not active at the airport are indeed actively bidding on contracts. In particular, a number of new entrants had visited MAN with a view to bidding for the [§<] contract at this airport. These include [§<], all of which are ground handlers that have achieved considerable success in winning recent contracts, including at airports where they are not active.
183. The CMA has accordingly incorrectly discounted the possibility of new entry at Para. 159. Whilst much of this analysis is redacted the Parties do not see how the constraint from these suppliers can be ignored. These facts squarely contradict the CMA's conclusion that new entrants cannot credibly compete for contracts in ground handling at MAN going forward.

Conclusion on ground handling at MAN

⁶² See paragraph 159 of the Phase 1 Decision.

184. In conclusion, the Parties consider that ground handling services at MAN should be reviewed by the competition authorities as a bidding market. There are currently 6 credible bidders already operating at the airport. There is, therefore, no basis for the conclusion that the Transaction would result in a SLC for ground handling services at MAN. When other potential bidders are included (including those bidding for [X]), as well as the countervailing buyer power and threat of self-supply it is indisputable that this market is highly competitive and will remain so post-Transaction.

G. PRESENTATION SERVICES

185. The CMA did not have any concerns at Phase 1 in relation to presentation services, where there is minimal overlap between the Parties, and more than sufficient exiting alternative providers active. The Parties entirely agree with the CMA's conclusions.

H. LOSS OF ACTUAL POTENTIAL COMPETITION

186. We note the CMA's conclusions regarding the theory of harm of loss of actual potential competition and in the light of [8<], and the evidence that there are others present in the UK market who are much more likely to expand their ground handling operations. We agree with the CMA's conclusion that there is no realistic prospect of a SLC in this regard.

I. EFFICIENCIES

187. The merging Parties reserve their position to make representations with regard to any efficiencies that may arise as a result of this transaction at a later stage.