

Anticipated acquisition by MUFG Bank Ltd relating to the aviation business of DVB Bank SE

Decision on relevant merger situation and substantial lessening of competition

ME/6835-19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 4 October 2019. Full text of the decision published on 13 November 2019.

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

SUMMARY

1. DVB Bank SE (**DVB Bank**) has agreed to sell (i) its aviation finance business (the **Target Business**) to Mitsubishi UFJ Financial Group, Inc (**MUFG**) via its wholly owned subsidiary MUFG Bank Ltd (**MUFG Bank**) and (ii) its aviation investment management services (**AIM**) and aviation asset management services (**AAM**) businesses (together, the **AAM/AIM Business**) to BOT Lease Co Ltd (**BOT Lease**) (the **Merger**). MUFG, the Target Business and the AAM/AIM Business are referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of MUFG, the Target Business and the AAM/AIM Business is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of loans for the financing of aviation assets. The CMA has assessed whether the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to a frame of reference for the supply of loans for the financing of aviation assets in the UK and globally.

4. The Parties' combined market shares in the supply of loans for the financing of aviation assets in the UK and globally are low. The CMA believes that the Parties do not compete closely with each other as they primarily focus on different types of customer within the market. The CMA also believes that the market for the supply of loans for the financing of aviation assets is fragmented, and the merged entity would face sufficient competitive constraints from competitors and potentially suppliers of alternative means of financing (eg from the capital markets).
5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of loans for the financing of aviation assets in the UK and globally.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. MUFG Bank is a Japan-based, globally active provider of corporate finance. It has a dedicated team for its aviation finance business consisting of about 30 professionals located in Tokyo, Singapore, Hong Kong, London and New York. The turnover of MUFG Bank in the financial year ending 31 March 2018 was approximately £[REDACTED] worldwide, of which approximately £[REDACTED] was generated in the UK.
8. MUFG holds approximately 22.6% of the shares of BOT Lease. BOT Lease is based in Tokyo, Japan, and has overseas offices in several Asian countries as well as in Mexico. It mainly engages in leasing services and financing services, including the provision of aviation finance globally and in the UK. The turnover of BOT Lease in the financial year ending 31 March 2019 was approximately £[REDACTED] worldwide.
9. The Target Business consists of the aviation finance business of DVB Bank, a German bank specialising in international transport finance business. Specifically, the Target Business comprises: (i) senior secured loans to airlines and aircraft leasing companies; (ii) certain indirect aircraft equity investments as well as derivatives relating to such aircraft lending and investments; and (iii) certain advisory mandates. The turnover of the Target Business in 2018 was approximately £[REDACTED] worldwide, of which approximately £[REDACTED] was generated in the UK.

10. DVB Bank also provides aviation investment management services and aviation asset management services through the AAM/AIM Business¹. The turnover of the AIM Business in 2018 was approximately £[x] worldwide. The turnover of the AAM Business in 2018 was approximately £[x] worldwide, of which approximately £[x] was generated in the UK.

Transaction

11. On 1 March 2019, MUFG Bank, DVB Bank and BOT Lease entered into an asset purchase agreement (**APA**) relating to the aviation business of DVB Bank (the **Transaction**).
12. Under the APA:
 - (a) DVB Bank will sell the Target Business to MUFG through MUFG Bank and certain wholly-owned subsidiaries. The Transaction comprises all assets, the operating platform and all employees of the Target Business (the **Acquisition**). Post-Transaction, the Target Business will be entirely (indirectly) owned by MUFG.
 - (b) DVB Bank will also sell the AAM/AIM Business to BOT Lease via a subsidiary of BOT Lease to be established, in which BOT Lease will, directly or indirectly, hold approximately 85.1% of the shares and MUFG will own the other 14.9% (the **AAM/AIM Holding Company**) (the **BOT Lease Acquisition**). Post-Transaction, the AAM/AIM Business will be entirely (indirectly) owned by the AAM/AIM Holding Company.
13. Subject to certain adjustments provided for in clause 3 of the APA, the total consideration for the Target Business will be EUR [x], to be paid in cash. The consideration for the BOT Lease Acquisition will be EUR [x].
14. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Germany and Japan. The Merger has been cleared by both of these authorities. Completion of the Merger is conditional on UK merger control approval.

¹ The AIM Business comprises DVB Bank's investment consultant and fund management team. This team advises the Deucalion aviation investment funds (**Deucalion Funds**), through which DVB Bank and third-party institutional investors co-invest in aviation assets. The AAM Business provides aircraft remarketing, lease management, technical management and general consultancy services for assets in the Deucalion Funds as well as to third parties such as airlines, aircraft lessors and financial institutions.

Rationale for the Transaction

15. The Parties told the CMA that the rationale for the Merger is twofold:
- (a) MUFG's and the Target Business' activities are complementary in nature as their respective customers have different risk profiles: MUFG's aviation finance business focuses on serving major airlines in developed markets looking to purchase new aircraft, whereas the Target Business focuses on riskier customer profiles such as [X] and [X] airlines as well as aviation leasing companies who may look to purchase used aircraft.²
 - (b) The Transaction is an opportunity for MUFG to expand its aviation financing capability through the acquisition of experienced aviation professionals, with a view to enhancing MUFG's global corporate and investment banking business, thereby generating higher returns and diversifying its portfolio range and product offering.

Jurisdiction

16. Pursuant to the reference test under section 33 of the Enterprise Act 2002, the CMA must determine whether it believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
17. A relevant merger situation is defined as two or more enterprises ceasing to be distinct where the turnover or share of supply test is met.³

Enterprises

18. Each of MUFG, the Target Business and the AAM/AIM Business is an enterprise.⁴

² The Parties told the CMA that [X] includes the largest airlines / "mega-carriers" which are in many cases [X] with international as well as domestic focus. [X] includes mid-sized airlines, less focused on long-haul and less well-known (other than in local markets) than [X] airlines. [X] includes smaller operators in, for example, developing countries/markets.

³ Section 23 of the Act.

⁴ Enterprise is defined under section 129(1) of the Act as the activities or part of the activities of a business. In determining whether activities are transferred, the CMA will consider whether the transfer will enable "economic continuity" (Groupe Eurotunnel S.A. v Competition Commission [2015] UKSC 75 (Eurotunnel I) para 120). The CMA's guidance (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), paragraph 4.6 – 4.11) suggests that of particular importance will be the transfer of customer lists, goodwill and/or employees (TUPE transfer). Here, it is noted that the transfer of the Target Business includes the platform, assets and employees. Further, in relation to the AIM/AAM business, this also includes DVB Bank's investment consultant and fund management team which advises the Deucalion aviation investment funds (comprising over USD2.3bn).

Ceasing to be distinct

19. The CMA considered whether the APA gives rise to enterprises ceasing to be distinct, i.e. results in enterprises coming under common ownership or control under section 26(1) of the Act, which includes direct or indirect legal control, de facto control or the ability materially to influence policy.

The Acquisition

20. Pursuant to the APA, MUFG will acquire, indirectly, 100% of the Target Business, conferring a controlling interest.

The BOT Lease Acquisition

21. The CMA also considered whether MUFG may have the ability to exercise material influence over the AAM/AIM Business.
22. The CMA believes that it may be the case that MUFG currently has the ability to exercise material influence over BOT Lease (and thus, as a result of the APA, may have the ability to exercise material influence over the AAM/AIM Business) on the basis of the following evidence:
 - (a) MUFG holds an approximately 22.6% stake (directly or indirectly) in BOT Lease.⁵
 - (b) Although MUFG does not have a formal right to appoint directors to the board of BOT Lease,⁶ historically at least one person who is employed by MUFG has been appointed as a director of BOT Lease and currently two persons associated with MUFG are on its board (out of a total seven). An additional three directors were previously associated with MUFG. Accordingly, only two directors out of seven have no experience working at MUFG.
 - (c) MUFG provides one credit line to BOT Lease, with an outstanding amount of [REDACTED]. Under the terms of the loan, “[REDACTED]”

⁵ The CMA notes that, under BOT Lease’s articles of association, all resolutions of a general meeting require a 50% majority save for certain minority protection resolutions specified under Japanese law which require a two-thirds majority with a one-third quorum. With a 22.6% stake, MUFG is not able to unilaterally pass or veto resolutions at the BOT Lease general shareholders meeting. Additionally, there is no shareholder agreement nor any other agreement affecting MUFG’s shareholder rights in BOT Lease.

⁶ And there are no provisions regulating the board (either regarding quorum or decision making) that would obviously enable the MUFG directors to block major decisions of BOT Lease.

(d) The Parties' internal documents indicate that MUFG views itself as the ultimate purchaser in the BOT Lease Acquisition.⁷

23. Based on a review of MUFG's shareholding rights, board representation, the extent of BOT Lease's financial dependence on MUFG and MUFG's internal documents, the CMA believes that it may be the case that MUFG has the ability to exercise material influence over BOT Lease and may therefore have the ability to exercise material influence over the AAM/AIM Business under the APA.⁸
24. In view of the Acquisition and the BOT Lease Acquisition being effected via a single agreement and being conditional on one another (with both subject to the same closing conditions)ⁱ, the CMA has considered the two transactions as forming part of one single relevant merger situation.

Jurisdictional thresholds

25. The UK turnover of the Target Business and the AAM/AIM Business combined exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
26. The CMA therefore believes that it is or may be the case that the Merger will result in the creation of a relevant merger situation in which MUFG acquires a controlling interest in the Target Business and the ability to exercise material influence over the AIM/AAM Business.

Counterfactual

27. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

⁷ In particular: (i) (MUFG document) [REDACTED], slide 11 is entitled "[REDACTED]" and considers various options, including BOT Lease; (ii) (MUFG document) [REDACTED], includes a list of "[REDACTED]" and the first item is "[REDACTED]"; (iii) (DVB document) [REDACTED], slide 13 is a draft press release for the transactions, which describes BOT Lease as an affiliate of MUFG; and (iv) (DVB document) [REDACTED], slide 5 states that "[REDACTED]".

⁸ Likewise, in assessing the effect on competition of the Merger, the CMA has treated BOT Lease as forming part of MUFG's company group. However, the inclusion of BOT Lease has not had a material impact on the CMA's assessment.

a realistic prospect of a counterfactual that is more competitive than these conditions.⁹

28. In this case, there is no evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments to support a different counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

29. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹⁰
30. The Parties¹¹ overlap in the supply of loans for the financing of aviation assets. The term aviation finance refers to the provision of capital (directly or indirectly) to airlines and leasing companies or investors for the purchase or refinancing of commercial aviation assets (i.e. aircraft and aircraft engines).¹²
31. The Parties¹³ also overlap in the provision of advisory and management services to the aviation sector. The Parties submitted that the narrowest candidate market in relation to advisory and management services to the aviation sector would be the provision of financial advisory and arranging services to the aviation sector.¹⁴ The Parties' presence in the provision of such services is very small. MUFG has [✂] in this market and the Target

⁹ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

¹⁰ *Merger Assessment Guidelines*, paragraph 5.2.2.

¹¹ MUFG, BOT Lease and the Target Business are active in the supply of loans for the financing of aviation assets. The AAM/AIM Business is not active in this segment.

¹² Aviation finance also includes (i) capital markets; (ii) export credit; and (iii) the direct leasing of aviation assets. The Parties do not have any activities in relation to (i) to (iii), apart from BOT Lease which (to a limited extent) provides leasing services to the aviation sector.

¹³ MUFG and DVB Bank (via the AAM/AIM Business and, to a limited extent, the Target Business) are active in the provision of advisory and management services to the aviation sector. BOT Lease is not active in this segment.

¹⁴ This would include (i) 'arranging services' to the aviation sector, which entails identifying and sourcing aircraft on lease for investors to purchase (and potentially lease back); and (ii) 'financial advisory services', which entails advising aviation customers (e.g. airlines, lessors and investors) on how to raise capital (e.g. equity, debt, leases or proceeds from asset sales).

Business has [X] advisory mandates globally. The Parties' estimate there are at least [X] mandates globally. No third parties raised any competition concerns. As a result, this decision does not address the provision of advisory and management services to the aviation sector any further.

Product scope

32. No previous UK or EU cases have defined the supply of loans for the acquisition of aviation assets nor aviation finance more generally.
33. The Parties sought to inform the CMA's review of the Merger by reference to the Commission's decisional practice relating to the broader equipment finance market. In summary:
 - (a) equipment finance enables customers to acquire the use of assets through a variety of finance means, including outright cash purchase, leasing, loans and other forms of credit provided by banks or equity investment that might be offered by financial institutions or other finance companies;¹⁵ and
 - (b) a distinction by type of financed asset has ultimately been left open.¹⁶
34. The Parties submitted that the financing of aviation assets requires specialised, sector-specific knowledge. They therefore submitted that the relevant product scope is that of providing financing solutions for the acquisition of aviation assets.
35. They further submitted that a distinction may potentially be drawn between (i) leasing products (where a lessor grants the right to use an aviation asset for a period of time to the lessee, in exchange for a fee) and (ii) other types of financial products, such as various kinds of loan arrangements.
36. The CMA considered whether the product scope should be further segmented within the supply of loans for the financing of aviation assets to distinguish between customer types (e.g. higher risk and lower risk customers). Evidence from third parties and the Parties' internal documents indicated that competitive conditions could differ between these segments. However, the

¹⁵ Cf. Commission, COMP/M.7944, Crédit Mutuel / GE Capital's factoring and equipment financing business in France and Germany, para. 16; COMP/M.2577, GE Capital / Heller Financial, para. 12.

¹⁶ Commission, COMP/M.2577, GE Capital / Heller Financial, para. 13; COMP/M.7944, Crédit Mutuel / GE Capital's factoring and equipment financing business in France and Germany, para. 18 (in the narrower context of asset leasing).

evidence also suggested that, on this segmentation, the Parties would be active in different markets.

37. Accordingly, on a cautious basis, the CMA has assessed the supply of loans for the financing of aviation assets as a whole. The CMA has also taken into account differences in the Parties' activities in its competitive assessment. However, it was not necessary for the CMA to reach a conclusion on the exact product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

38. The Parties submitted that the relevant geographic market is global in scope.
39. The CMA received some evidence from third parties supporting a global frame of reference. In particular:
- (a) Several customers indicated that they source loans from institutions across the world;¹⁷ and
 - (b) Several competitors told the CMA they operate their business on a global basis and that this is representative of the industry as a whole.¹⁸
40. However, the CMA also received some evidence from third parties indicating that the market may have a regional dimension. For instance, one competitor [X] indicated that *“regional banks will often also compete: for example, if Emirates is looking for a loan in the Middle East, the banks listed would complete [sic] with regional banks.”* This is consistent with evidence from some customers, who told the CMA that they source loans from regional providers.¹⁹
41. Accordingly, on a cautious basis, the CMA has considered the impact of the Merger affecting customers in the UK (ie on a regional basis) and globally. However, it was not necessary for the CMA to reach a conclusion on the

¹⁷ For example, one customer [X] stated that, apart from MUFG, they consider *“banks headquartered in Japan or the Far East, including Bank of China and Sumitomo Mitsui Banking Corporation (“SMBC”)”* for aviation financing, as well as some of the European banks *“including Nord LB, Helaba, HSBC, Deka Bank, Credit Agricole, KfW and others”*. Another customer [X] stated that *“Aviation finance is a global industry with lots of banks in Europe, Asia and the US”* and that it *“believes it will still have many options to source aviation finance after the merger”*.

¹⁸ One competitor [X] stated that its *“business is run on a global basis”*, that *“they don’t really think about it on a regional basis”* and that aviation financing markets *“operate on a global basis”*. Another competitor stated that its *“loan book is global”* [X]. Another competitor [X] stated that *“most competitors in the supply of aviation loans are present in all continents: they would have a team in e.g. New York; London, Frankfurt or Paris; and Hong Kong or Singapore”*.

¹⁹ For example, [X]

exact geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

42. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of loans for the financing of aviation assets in the UK and globally.²⁰

Competitive assessment

Horizontal unilateral effects

43. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.²¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.
44. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of loans for the financing of aviation assets in the UK and globally.
45. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered a range of evidence in relation to the following areas:
- (a) the shares of supply of the Parties and their competitors;
 - (b) the closeness of competition between the Parties;
 - (c) the competitive constraints posed by alternative suppliers within the market; and
 - (d) any 'out of market' constraints.

²⁰ The CMA considers that while regional banks may provide some additional competitive constraint in the UK which will not be present in other parts of the world where different regional banks may be present, the same evidence, set out in the competitive assessment below, broadly applies both in the UK and globally.

²¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Shares of supply

46. During its investigation, the CMA gathered estimates of shares of supply of loans for the financing of aviation assets in terms of:
- (a) loan book size, available both on a global and UK-wide basis; and
 - (b) annual new bank debt volumes, available on a global basis only.

Table 1 and

47. Table 2 below present the Parties' global and UK shares of supply respectively, in terms of loan book size.²² These tables indicate that the Parties' combined shares of supply of loans for the financing of aviation assets are very low: [5-10]% on a global basis and [5-10]% in the UK.

Table 1: Shares of supply of loans for the financing of aviation assets worldwide (by loan book size) (2017)²³

Loans for aviation assets worldwide (loan book size)	Volume (USD million)	Share of supply
MUFG (incl. BOT Lease)	[REDACTED]	[0-5]%
Target Business	[REDACTED]	[0-5]%
Combined	[REDACTED]	[5-10]%
CACIB	[REDACTED]	[0-5]%
BNP Paribas	[REDACTED]	[0-5]%
Natixis	[REDACTED]	[0-5]%
Sumitomo	[REDACTED]	[0-5]%
Total market value	315,000	100%

Source: Parties' estimates

²² Shares of supply provided in Table 1 and Table 2 have been calculated on the basis of total loans outstanding. This is a metric of "volume" as opposed to "value" as it does not reflect the lenders' gross income / revenue but rather the gross amount of the loan that is still to be re-paid by the borrowers.

²³ The Parties have only been able to provide the market size estimates for 2017, which were estimated by BCG for a due diligence report prepared for the purpose of the Transaction. For consistency, they have therefore provided their loan book size for the same time frame. The loan book sizes of competitors are the Parties' best estimates, which are broadly consistent with the data provided by the third-parties.

Table 2: Shares of supply of loans for the financing of aviation assets in the UK (by loan book size) (2018)²⁴

Loans for aviation assets in the UK (loan book size)	Volume (USD million)	Share of supply
MUFG (incl. BOT Lease)	[REDACTED]	[0-5]%
Target Business	[REDACTED]	[0-5]%
Combined	[REDACTED]	[5-10]%
Total market value	15,875	100%

Source: Parties' estimates; publicly available sources

48. Table 3 below presents the Parties' shares of supply globally in terms of annual new bank debt volume. Annual new bank debt volume may be a better reflection of current competitive conditions than loan book size given that estimates based on the latter may include relatively old loans.²⁵ On this basis, the Parties' combined share of supply of loans for the financing of aviation assets is even lower: [0-5]% in 2017 and [0-5]% in 2018.

Table 3: Shares supply of loans for the financing of aviation assets worldwide (by annual new bank debt volume) (2017/2018)²⁶

Financing of aviation assets globally (new lending)	2017		2018	
	Volume (USD million)	Share of supply	Volume (USD million)	Share of supply
MUFG (incl. BOT Lease)	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Target Business	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Combined	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Total market value	101,000	100.0%	143,400	100%

Source: Parties' estimates; publicly available sources

49. The CMA notes that these shares of supply are consistent with MUFG's Transaction-related documents, which similarly indicate combined shares of supply of [5-10]% at most.

²⁴ The Parties have been unable to estimate competitor shares of supply in the UK. They submit that, as is the case on a global basis, the market for the supply of loans for the financing of aviation assets in the UK is very fragmented.

²⁵ [REDACTED].

²⁶ The 2017 market size was estimated by BCG for a due diligence report prepared for the purpose of this Transaction. The 2018 market size was estimated by the Parties.

Closeness of competition

50. The CMA has examined the closeness of competition between the Parties and considered within its assessment:

- (a) the Parties' views;
- (b) evidence from internal documents; and
- (c) third party views.

Parties' views

51. The Parties submitted that they are not close competitors as:

- (a) MUFG's aircraft-financing business mainly serves major airlines (lower risk customers) in developed markets looking to purchase new aircraft; and
- (b) In contrast, the Target Business focuses on transactions that require a deeper level of loan structuring, asset and residual value analysis as well as remarketing and trade knowledge, such as transactions involving the financing of used aircraft. The Target Business's customers therefore comprise predominantly [REDACTED] and [REDACTED] airlines (higher risk customers) as well as aviation leasing companies.

Internal documents

52. The Parties submitted a range of documents, including financial reports, rating agency reports, market reports, board presentations, meeting minutes and due diligence materials.

53. On the one hand, one internal document provided by MUFG indicates that the Parties have a significant number of common customers. A slide entitled "[REDACTED]" displays a Venn diagram in which MUFG and DVB Bank share [REDACTED] of the [REDACTED] clients shown.²⁷

²⁷ [REDACTED].

54. In addition, one MUFG document states DVB Bank is a “[REDACTED]” and is “[REDACTED]”.²⁸ Another MUFG document²⁹ discusses DVB Bank as being “[REDACTED]” in the market, and being one of the top deal makers in 2016.³⁰
55. However, other MUFG documents suggest that the Parties focus on different parts of the market. In particular:
- (a) One document states that “[REDACTED]”.³¹
 - (b) Another document indicates that the Parties have different finance models, with a chart showing that MUFG focuses on [REDACTED] and [REDACTED] customers, whereas DVB Bank targets [REDACTED] customers. A second chart in the same document indicates that MUFG primarily focuses on [REDACTED], while DVB Bank focuses on [REDACTED].³²
56. Overall, the internal documents the CMA has analysed indicate that, whilst both Parties have some common customers and MUFG views the Target Business as a significant provider of loans for aviation finance, MUFG does not consider the Target Business to be a particularly close competitor.

Third party views

57. Evidence from competitors indicated that the Parties do not compete closely with each other. In its questionnaire, the CMA asked competitors to list their top 10 competitors. Most competitors that responded to our investigation only mentioned one of the Parties as one of their top 10 competitors.
58. Moreover, competitors indicated that the Parties have different strengths and weaknesses and focus on different parts of the market. Specifically, those responses indicated that:
- (a) MUFG Bank focuses on lower risk customers than DVB Bank; and
 - (b) MUFG Bank primarily focuses on the creditworthiness of the customer, while DVB Bank focuses on the value of the underlying asset.
59. Customer evidence also indicates that the Parties are not close competitors. In particular:

²⁸ [REDACTED].

²⁹ [REDACTED]

³⁰ However, as discussed in paragraph 65, these same documents both suggest that the market is fragmented with a broad range of players.

³¹ [REDACTED].

³² [REDACTED].

- (a) When customers last sourced a loan from either DVB Bank or MUFG, none of the customers considered the other merging Party as one of their top three alternatives.
- (b) One customer of both the Parties [X] indicated that “relationships with both parties have been in different markets and rarely, if ever, in direct competition”. Another customer of MUFG [X] suggested that it would have considered a number of players from Japan or the Far East (including MUFG), and from Europe, but not DVB Bank.

Conclusion

- 60. On the basis of this evidence, the CMA believes that the Parties do not compete closely with each other. Although there may be some overlap in their customer base, they primarily focus on different types of customer within the market.

Competitive constraints

- 61. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA has therefore assessed whether there are alternative suppliers which would provide a competitive constraint on the merged entity in the supply of loans for the financing of aviation assets in the UK and globally.
- 62. The CMA has considered within its assessment:
 - (a) the Parties’ views;
 - (b) evidence from internal documents; and
 - (c) third party views.

Parties’ views

- 63. The Parties submitted that post-Merger, there will remain a number of competitors which will exercise a constraint on the merged entity. In particular, they submitted that:
 - (a) Several globally active credit institutions compete to supply bank debt for aviation financing. Prominent players are: Sumitomo Mitsui Banking Corporation, BNP Paribas, Helaba, Deutsche Bank, DekaBank, NordLB, GE Capital Aviation Services, PK AirFinance and Korean Development Bank.

- (b) New entrants from Australia, the Middle East and China (such as Macquarie, China Development Bank, Industrial and Commercial Bank of China, Bank of China, Bank of Communications and China Construction Bank) are also increasingly engaged in aviation finance.

Internal documents

64. The Parties' internal documents indicate that the supply of loans for the financing of aviation assets is fragmented, with a large number of relevant competitors.
65. One MUFG document³³ suggests there is a "[REDACTED]" and that bank debt is provided by German, French, Chinese, and Japanese banks. The same document also includes a picture suggesting that there are 8 prominent players "*across regions*" (DVB Bank, BNP Paribas, Helaba, Deutsche Bank, DekaBank, Nord LB, PK AirFinance, KDB Bank). Another MUFG document suggests that "[REDACTED]"³⁴
66. DVB Bank's internal documents similarly suggest that the aviation financing market is competitive. One document states: "*As in previous years, market liquidity is abundant, and competition remains strong. As a result, we see continued pressure on pricing and this is reflected in lower 'gross' and 'net' margin levels across the range of new business we have concluded in 2018 year-to-date compared to levels seen in 2017.*"³⁵ Another document states: "*High competitive pressure, especially in the aviation sector, leads to a reduction in net commission income.*"³⁶

Third party views

67. Third-party evidence indicates that the market is fragmented, and the merged entity will be constrained³ by a number of significant competitors.
68. First, competitors and customers indicated on calls with the CMA that there is a large number of aviation loan providers in the market for supply of loans for the financing of aviation assets. This applies to both the credit-focused and asset-focused segments. For example:
- (a) One competitor [REDACTED] indicated that "*There is no shortage of liquidity in the market for the supply of aviation loans, compared to other markets like*

³³ [REDACTED].

³⁴ [REDACTED]

³⁵ [REDACTED].

³⁶ [REDACTED].

shipping. If airlines are looking for financing, they can send out an RFP to 40 banks and would get 20 offers. There are dozens and dozens of competitors that will provide commercial loans, including an increasing number of new players from Asia. The view is that an aircraft is a very liquid asset.”

(b) One customer [REDACTED] told the CMA that there is “a number of core lenders that have been in the industry through multiple economic cycles; and a long tail of lenders with less experience in the business. The former category comprises Citibank, Credit Agricole, Mizuho Bank, JP Morgan, Goldman Sachs, Credit Suisse, Bank of America and BNP Paribas, as well as MUFG and DVB, who are both very experienced. This is a non-exhaustive list.” That customer described the market as “fairly open and competitive”.

69. Second, the CMA has analysed how many proposals each customer received when sourcing their most recent loan from one of the Parties.

(a) Two customers [REDACTED] received proposals from 12 or more providers when sourcing their most recent loan from one of the Parties.

(b) Five other customers [REDACTED] received proposals from six or fewer providers. However, these customers generally sourced or considered sourcing loans from a large number of different providers.³⁷

70. Third, no third party has expressed any concerns about the Merger. Some third parties considered the Merger to be pro-competitive.³⁸

71. On the basis of this evidence, the CMA believes the market is fragmented and the merged entity will be constrained by a number of significant competitors.

Out-of-market constraints

72. The Parties submitted that alternative means of financing also exert significant competitive pressure. In particular, they submitted that:

(a) Only approximately one third of new aircraft delivered in 2017 were financed with bank debt. Another third of new aircraft were financed from the capital markets, which are ‘dominated’ by US financial institutions and provide readily available equity.

³⁷ [REDACTED]

³⁸ For example, one customer [REDACTED] believes the Merger will be pro-competitive, in that the biggest asset MUFG will gain is the skill and knowledge of the individuals in the DVB business.

(b) Financing from capital markets exerts a considerable competitive constraint on the pricing of bank debt as the market conditions for obtaining equity are currently favourable and both forms of financing are largely substitutable from a customer's perspective.

73. This is consistent with some third-party evidence received by the CMA which suggests that capital markets are likely to be an option for a number of airlines when looking to secure aviation finance.

Conclusion on horizontal unilateral effects

74. For the reasons set out above, the CMA believes that the Parties' combined market shares in the supply of loans for the financing of aviation assets in the UK and globally are low. The CMA believes that the Parties do not compete closely with each other as they primarily focus on different types of customer within the market. The CMA also believes that the market for the supply of loans for the financing of aviation assets is fragmented, and the merged entity would face sufficient competitive constraints from competitors and potentially suppliers of alternative means of financing (eg from the capital markets).

75. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of loans for the financing of aviation assets at the UK or global level.

Barriers to entry and expansion

76. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁹

77. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

78. The CMA contacted customers and competitors of the Parties.

79. Third party comments have been taken into account where appropriate in the competitive assessment above.

³⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Decision

80. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
81. The Merger will therefore **not be referred** under section 33(1) of the Act.

James Waugh
Director, Mergers
Competition and Markets Authority
4 October 2019

ⁱ The CMA concluded that the Acquisition and the BOT Lease Acquisition were inter-conditional on the basis that (i) completion of the BOT Lease Acquisition cannot occur absent completion of Acquisition and (ii) neither party can unilaterally effect the closing of the Acquisition alone as it remains subject to a right of rescission exercisable by either MUFG or DVB Bank if the closing conditions are not met by the long-stop date specified in the APA.