

Anticipated acquisition by Korean Air Lines Co., Ltd of Asiana Airlines Inc.

Decision on relevant merger situation and substantial lessening of competition

ME/6924/21

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SUMMARY

1. On 17 November 2020 Korean Air Lines Co. (**Korean Air**) and Asiana Airlines Inc. (**Asiana**) entered into a binding Share Subscription Agreement, pursuant to which Korean Air will subscribe for, and purchase from, Asiana shares representing 63.88% of the total issued and outstanding stock of Asiana (**the Merger**). Korean Air and Asiana are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.
2. The Parties both supply scheduled air passenger transport services (**air passenger services**) and air cargo transport services (**air cargo services**) internationally, including between the UK and South Korea.
3. The Competition and Markets Authority (**CMA**) has assessed whether it is or may be the case that the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of:
 - (a) horizontal unilateral effects in the supply of air passenger services on the London-Seoul route; and
 - (b) horizontal unilateral effects in the supply of air cargo services on (i) the Europe to South Korea route for customers transporting cargo from the UK to South Korea; and (ii) the South Korea to Europe route for customers transporting cargo from South Korea to the UK.

Horizontal unilateral effects in the supply of air passenger services on the London-Seoul route

4. Both Parties supply air passenger services between London Heathrow Airport (**LHR**) and Seoul's Incheon International Airport (**ICN**).
5. The Parties are the only suppliers of direct air passenger services between London and Seoul. British Airways – the only other supplier of direct air passenger services on the route prior to the COVID-19 pandemic – exited the route in 2020.
6. Even when indirect flights are taken into account, the Parties are the largest suppliers on the route and would hold a very significant market position post-Merger. According to the Parties' estimates, on any IATA season from Summer 2019 to Winter 2021/2022, the Parties' combined share of supply of air passenger services between LHR and ICN – including direct and indirect (one-stop) flights – was around 50%. Moreover, the CMA believes that this share does not fully reflect the strength of the Parties' market position, given that the evidence received by the CMA indicates that indirect air passenger services do not provide a strong constraint on direct services on the London-Seoul route.
7. The evidence received by the CMA indicates that the Parties are competing closely on the London-Seoul route. The Parties are the only providers of direct flights and both operate out of LHR and ICN with similar schedules (with arrival and departure times within an hour and a half of each other – the closest alternatives available to customers). The Parties are both South Korean-based airlines (so provide a similar in-flight offering). The majority of third-party respondents to the CMA's investigation indicated that the Parties were strong or the strongest competitors on the route.
8. Based on share of supply data and third-party feedback, the CMA found that carriers such as Lufthansa, Finnair, Air France-KLM, Etihad and Emirates – all of which operate indirect flights on the London-Seoul route – exert a weak to moderate competitive constraint on the Merged Entity. The CMA does not consider there are any other carriers that exert a material competitive constraint on the Merged Entity on the route. The CMA therefore considers that there is insufficient constraint from alternative suppliers to constrain the Merged Entity post-Merger.
9. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of air passenger services on the London-Seoul route.

Horizontal unilateral effects in the supply of air cargo services

10. Both Parties offer direct air cargo services between the UK and South Korea via dedicated freight aircraft and passenger aircraft (using space in the luggage hold, referred to as **belly-hold cargo**).
11. The evidence received by the CMA indicates that, in contrast to air passenger services, customers for air cargo services often purchase services in only one direction. The CMA also found that competitive conditions in the supply of air cargo services differ depending on the direction of travel. The CMA has therefore considered competition in each direction of the route separately (rather than using 'paired' approach applied in its assessment of passenger services).
12. In keeping with its duty to consider whether competition concerns arise in any markets within the UK, the CMA considered the options available to customers transporting cargo by air from the UK to South Korea (and vice versa). The evidence available to the CMA indicates that the use of transshipment by land and sea between the UK and European airports is common. The CMA also has found that there may be some important UK-specific aspect of competition that affect the strength of alternative suppliers available for some customers of these services. The CMA has therefore considered the competitive effects of the Merger within frame of references (in each direction) that include (direct and indirect) flights between Europe and South Korea, while taking into account UK to South Korea (and South Korea to UK) aspects of competition.

The Europe to South Korea route for customers transporting cargo from the UK to South Korea

13. The Parties have high combined shares of supply and the Merged Entity will be, by some distance, the largest player in the supply of air cargo services on both the Europe to South Korea and UK to South Korea routes. Customs data on volumes of cargo transported from the UK to South Korea and its (direct and indirect) routing indicate that direct flights account for significant proportion of cargo transported from the UK to South Korea.
14. Other evidence received by the CMA also indicates that the Parties are competing closely and that the constraint from alternative suppliers on the Merged Entity will be limited post-Merger.
 - (a) The Parties are currently the two main suppliers of direct air cargo services from the UK to South Korea, being the only providers of scheduled direct cargo flights other than IAG/British Airways (who currently competes only pursuant to

a codeshare arrangement with Korean Air). While there are also some unscheduled direct flights, these appear to be most a weak constraint on the Parties. The Parties are therefore particularly close competitors for customers with a preference for direct flights.

- (b) Several customers of the Parties' services from the UK to South Korea expressed a strong preference for direct flights. The majority of customers that responded to the CMA's investigation raised concerns about the impact of the Merger, primarily on the basis that the Parties are the main suppliers of direct air cargo services between the UK and South Korea.
- (c) All other competitors are far smaller than the Parties (eg the next largest competitor is half the size of Air Asiana) and do not offer direct scheduled services. Some customers identified limited or no alternatives to the Parties, while ranking the Parties as the strongest providers. A small number of customers listed alternatives to the Parties but identified those alternatives as weaker than the Parties.

- 15. While the CMA found some evidence on recent capacity expansion on the route, the suppliers that have expanded remain small compared to the Parties and do not offer direct scheduled services (so are generally weaker competitors to the Parties than the Parties are to each other). There is no indication that any spare global capacity could be reallocated to expand the capacity of direct flights between the UK and South Korea.
- 16. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea.

The South Korea to Europe route for customers transporting cargo from South Korea to the UK

- 17. The Parties have high combined shares of supply and are among the largest players in the supply of air cargo services on the South Korea to Europe or UK routes. Customs data on volumes of cargo transported from South Korea to the UK and its (direct and indirect) routing indicate that direct flights account for significant proportion of cargo transported from South Korea to the UK.
- 18. Other evidence received by the CMA also indicates that the Parties are competing closely and that the constraint from alternative suppliers on the Merged Entity will be limited post-Merger.

- (a) The Parties are currently the two main suppliers of direct air cargo services from South Korea to the UK. The Parties are therefore particularly close competitors for customers with a preference for direct flights.
 - (b) Several customers of the Parties' services from South Korea to the UK expressed a strong preference for direct flights. The majority of customers that responded to the CMA's investigation raised concerns about the impact of the Merger, primarily on the basis that the Parties are the main suppliers of direct air cargo services between South Korea and the UK.
 - (c) All other competitors would be significantly smaller than the Merged Entity and do not offer direct scheduled services. Some customers identified limited alternatives to the Parties, but generally ranked the Parties as the strongest providers.
19. As with the Europe to South Korea route, there is some evidence on recent capacity, but no indication that any spare global capacity could be reallocated to expand the capacity of scheduled direct flights between South Korea and the UK.
20. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK.

Conclusion

21. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 21 November 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

22. Korean Air and Asiana provide air passenger services and air cargo services internationally, including between the UK and South Korea.¹ Both Parties have their principal hub at Seoul's ICN and are listed on the Korea Stock Exchange.²
23. Korean Air's turnover in the financial year 2021 was approximately £[X] billion worldwide and approximately £[X] in the UK.³
24. Asiana's turnover in the financial year 2021 was approximately £[X] billion worldwide and approximately £[X] in the UK.⁴

TRANSACTION

25. On 17 November 2020 Korean Air and Asiana entered into a binding Share Subscription Agreement, pursuant to which Korean Air will subscribe for, and purchase from, Asiana shares representing 63.88% of the total issued and outstanding stock of Asiana.⁵
26. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in the European Union, South Korea, the USA, China, Japan, Taiwan, the Republic of Turkey, Vietnam, Australia, Malaysia, Singapore and Thailand.⁶

¹ The Parties also offer (i) ground handling services to airports in South Korea; (ii) aviation maintenance, repair and overhaul services at South Korean airports; and (iii) flight training carried out in South Korea. Final Merger Notice submitted to the CMA on 14 September 2022 and as amended on 29 September 2022 (**FMN**), paragraphs 12.60-12.81.

² FMN, paragraphs 2.4 and 2.8.

³ Attachment 2 to the FMN. The revenue is determined based on a 'point of sale' method. The Parties submitted revenue figures based on three separate methodologies: (i) 50/50 split, in which revenue is allocated equally between country of origin and destination; (ii) point of origin, in which revenue is allocated to the country of departure; and (iii) point of sale, in which revenue is allocated to the country in which the ticket was sold.

⁴ Attachment 2 to the FMN. The revenue is determined based on a 'point of sale' method.

⁵ FMN, paragraphs 1.2, 2.1 and 2.3 and Attachment 1 to the FMN. The Parties submitted that Korean Air (which is publicly listed) is affiliated – through its largest shareholder, Hanjin KAL (who has a 27.57% shareholding in Korean Air) – with Hanjin KAL and Hanjin Transportation, neither of which have overlapping activities with the Parties with respect to the UK (FMN, paragraphs 2.5 and 2.41). These entities are therefore not discussed further in this decision.

⁶ FMN, paragraph 2.29. Of these, the Parties informed the CMA that Merger has received clearance from competition authorities in the Republic of Turkey, Taiwan, Thailand, Vietnam, Singapore, Malaysia and

PROCEDURE

27. The Merger was considered at a Case Review Meeting.⁷

JURISDICTION

28. Each of Korean Air and Asiana is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

29. In 2021, Asiana generated a revenue of £[X] in the UK.⁸ Accordingly, the Merger does not satisfy the turnover threshold set out in section 23(1)(b) of the Act.

30. According to share of supply data submitted by the Parties, the Merged Entity will have a share of more than 25%, with an increment resulting from the Merger, in:

(a) the supply of air passenger services on the London-Seoul route (whether considering direct or indirect flights for time sensitive (**TS**) or non-time sensitive (**NTS**) passengers);⁹ and

(b) the supply of air cargo services on the routes from (i) Europe to South Korea for customers transporting cargo from the UK to South Korea and (ii) South Korea to Europe for customers transporting cargo from South Korea to the UK.¹⁰

31. Accordingly, the share of supply test in section 23(4) of the Act is met.

32. The CMA therefore 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.

33. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 20 September 2022 and the statutory 40 working day deadline for a decision is therefore 14 November 2022.

Australia, and conditional approval from the Korea Fair Trade Commission (**KFTC**) on 13 May 2022, subject to certain structural and behavioural remedies.

⁷ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#), January 2021 (as amended on 4 January 2022) (**CMA2revised**), from page 46.

⁸ Attachment 2 to the FMN. The revenue is determined based on a 'point of sale' method. The turnover test is not met regardless of how Asiana's UK turnover is being calculated.

⁹ See Tables 1 to 4 below.

¹⁰ See Tables 5 and 8 below.

COUNTERFACTUAL

34. The CMA assesses the prospects for competition with the merger against the competitive situation without the merger (ie the counterfactual).¹¹ In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹²
35. The counterfactual assessment is not intended to be a detailed description of the conditions of competition that would prevail absent the merger (which are better considered in the competitive assessment) and will often focus on significant changes affecting competition between the merger firms, such as, among other things, exit by one of the merger firms.¹³ In Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where each of those scenarios is a realistic prospect, the CMA will choose the one where the Parties exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.¹⁴
36. For the CMA to accept an exiting firm counterfactual at Phase 1, it must believe, based on compelling evidence, that it is inevitable that, absent the Merger: (i) the firm would have exited (through failure or otherwise) (**Limb 1**); and (ii) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question (**Limb 2**).¹⁵

The Parties' submissions

37. In the Parties' merger notice submitted to the CMA in September 2022, the Parties submitted that, the appropriate counterfactual is one in which Asiana will be a substantially weaker competitor on the relevant routes¹⁶ as compared to its competitive position prior to the COVID-19 pandemic and in 2021.¹⁷ While the

¹¹ [Merger Assessment Guidelines \(CMA129, March 2021\)](#) (**Merger Assessment Guidelines**), paragraph 3.1.

¹² [Merger Assessment Guidelines](#), paragraph 3.2.

¹³ [Merger Assessment Guidelines](#), paragraph 3.8.

¹⁴ [Merger Assessment Guidelines](#), paragraphs 3.8 and 3.12.

¹⁵ [Merger Assessment Guidelines](#), paragraphs 3.21 and 3.23. At Phase 2, the CMA will assess whether the most likely counterfactual is one in which the 'exiting' firm would have exited the relevant markets and there would not have been an alternative, less anti-competitive purchaser for the firm or its assets than the acquirer in question.

¹⁶ I.e. in the supply of air passenger services on the London-Seoul route and the supply of air cargo services on the Europe to South Korea and South Korea routes.

¹⁷ FMN, paragraph 11.5.

Parties submitted that, in the view of the Korea Development Bank (**KDB**),¹⁸ Asiana is likely to exit the supply of air passenger services on the London-Seoul route, the Parties did not submit that it was inevitable that Asiana would exit the relevant routes.¹⁹ In particular, the Parties submitted that:

- (a) Asiana continues to face financial difficulties, given in particular that:
 - (i) Asiana faced financial difficulties before COVID-19, resulting in difficulties meeting its obligations to its creditors and Asiana signing various Memorandums of Understanding (**MoUs**) with the state-owned KDB and its largest shareholder, Kumho E&C.²⁰ These MoUs included self-rescue plans²¹ and resulted in Asiana receiving short-term borrowings of £1.6 billion from KDB and the Export-Import Bank of Korea.²²
 - (ii) After entering into these MoUs, Asiana's financial position has continued to deteriorate.²³ While the Parties noted that Asiana has seen some improvement in its financial results in 2021, they submitted that Asiana continues to experience financial difficulties as result of ongoing disruption caused by the COVID-19 pandemic.²⁴
- (b) As a consequence of these financial difficulties, in the KDB's view, Asiana is likely to exit the supply of air passenger services on the London-Seoul route²⁵ and, if it does not exit, will be a significantly weakened competitor on the route.

¹⁸ KDB is a wholly state-owned policy development bank in South Korea and a major creditor of Asiana. Amongst others, KDB facilitates the restructuring of Korean companies. FMN, paragraph 2.4.

¹⁹ In the FMN, the Parties did not make any submissions as to whether there would have been an alternative, less anti-competitive purchaser for Asiana or its assets to Korean Air.

²⁰ FMN, 11.9-11.14. The first MoU was signed on 6 April 2018. Additional MoUs were signed on 3 May 2019, 22 April 2020 and 14 September 2020.

²¹ This included, for instance, plans for improvement of Asiana's financial structures and business restructuring. FMN, paragraph 11.10.

²² FMN, paragraph 11.14.

²³ In particular, the Parties submitted that, according to Asiana's financial statements for the year ending 31 December 2019, Asiana's current liabilities exceeded its current assets by approximately £2 billion. In March 2020, Asiana's auditor considered that Asiana could no longer be rehabilitated through financial support. Asiana entered into a special agreement with KDB and other interested parties to pursue the sale of Asiana and received approximately £2.2 billion in public funds to ensure its business is supported until November 2020. The sale of Asiana was unsuccessful. FMN, paragraphs 11.15-11.18.

²⁴ FMN, paragraphs 11.19 and 11.22-11.28. The Parties noted, however, that IATA (whose data Korean Air uses for internal, long-term demand projections) forecasts (as at March 2022) that air passenger demand will recover to 2019 levels in 2024 (FMN, paragraph 21.12).

²⁵ The Parties submitted that, while Asiana is currently generating profits in air cargo services, such profits are linked to a surge in air cargo rates compared to those prior to the COVID-19 pandemic. The Parties submitted that KDB considers that air cargo rates are likely to return to previous levels, at which point it will be difficult for Asiana to continue to generate profits and compete against 'mega carriers' with low-cost structures, and as such Asiana's air passenger services business cannot be sustained by the temporary surplus in its air cargo service business. FMN, paragraph 11.30.

The Parties noted that Asiana is particularly vulnerable to competition from low-cost carriers on short-and-mid-haul flights and Asiana's financial difficulties mean it is unlikely to be able to make the investments needed in order to remain competitive.²⁶

- (c) In circumstances where Asiana exits the supply of air passenger services on the London-Seoul route, Asiana's ability to compete in the supply of air cargo services on the Europe to Korea and Korea to Europe routes would be substantially weakened. In this regard, the Parties submitted that:
 - (i) it would be difficult to maintain a fleet of cargo planes in the event that Asiana were to exit the supply of air passenger services;²⁷ and
 - (ii) even if Asiana's air cargo services could continue to exist without air passenger services,²⁸ Asiana's ability to compete would be reduced as it would have less capacity given the absence of passenger belly cargo.²⁹

38. In response to the CMA's issues letter, the Parties submitted that:³⁰

- (a) the criteria for the 'exiting firm' test are met and absent the Merger Asiana will exit all the relevant markets, including the London-Seoul route;
- (b) further, absent the Merger, Asiana would have already exited the relevant markets (given that Asiana has received a cash injection from Korean Air that was premised on consummation of the Merger, without which Asiana would have already faced insolvency); and
- (c) at the very least, absent the Merger, Asiana would have been a materially weakened competitor, however there is no specific evidence on precisely what Asiana in this materially weakened form would look like (as given that, absent the Merger, Asiana would exit the market, there is no 'Plan B').

²⁶ Specifically, the Parties submitted that Asiana's aircraft fleet is dated (meaning that it is less able to service long-haul flights effectively) and its technology and infrastructure require significant upgrades to keep pace with the changing airline market. FMN, paragraph 11.21.

²⁷ FMN, paragraph 11.32.

²⁸ The Parties submitted that it would be difficult to maintain a fleet of cargo planes in the event that Asiana were to exit the supply of air passenger services. FMN, paragraph 11.32.

²⁹ FMN, paragraph 11.32.

³⁰ The Parties' response to the CMA's issues letter of 19 October 2022 (the **Parties' response to the issues letter**), paragraph 25.

The CMA's assessment

39. The Parties' initial submission for the purposes of the CMA's formal investigation, as set out in the final merger notice, was that the appropriate counterfactual is one in which Asiana will be a substantially weaker competitor – as compared to its competitive position prior to the COVID-19 pandemic and in 2021 – in each of (i) the supply of air passenger services on the London-Seoul route and (ii) the supply of air cargo services on the Europe to South Korea and South Korea routes. This was based on the position that, in the view of the Parties and the KDB, Asiana is likely to exit the supply of air passenger services on the London-Seoul route.
40. The Parties subsequently stated, in response to the issues letter, that the criteria for the 'exiting firm' test are met, but also noted that they 'understand' that such a position 'is highly unlikely to be accepted at Phase 1'.³¹
41. While the CMA has received extensive evidence of Asiana's financial difficulties, the available evidence does not support the position that the continuation of the prevailing conditions of competition is not a realistic prospect.³²
42. As concerns an exiting firm scenario, the Parties have not provided compelling evidence that it is inevitable that, absent the Merger, Asiana would have exited the relevant routes, and there would have been no alternative, less anti-competitive purchaser for Asiana or its assets. There is, for example, limited evidence to allow the CMA to consider whether Asiana would have been able to restructure itself successfully and whether an alternative, less anti-competitive, alternative purchaser for the firm or its assets would have been available. Moreover, the fact that the Parties only submitted that the exiting firm test is met at a very advanced stage of the CMA's investigation (ie in response to the issues letter) has limited the CMA's ability to conduct the evidence-gathering that would typically be required to assess whether this test is met.

³¹ In the Parties' response to the CMA's issues letter, the Parties indicated that they had not submitted that the criteria for an exiting firm counterfactual were met because the CMA had indicated that it would be highly unlikely to accept such a counterfactual in Phase 1. The CMA notes that while the evidential threshold in order for the CMA to find at Phase 1 that the test for an exiting firm counterfactual is met is high, it may be met where the CMA receives compelling, contemporaneous evidence that Limb 1 and Limb 2 of the test are met. See, for example, the CMA's decision of 30 March 2022 in respect of the anticipated merger of Nijjar Group Holdings (Acton) Limited and Medina Holdings Limited (ME/6907/202) and the CMA's decision of 21 December 2018 in respect of the completed transaction between Aer Lingus Limited and Cityjet Designated Activity Company (ME/6782/18).

³² As noted in paragraph 35, in Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where each of those scenarios is a realistic prospect, the CMA will choose the one where the Parties exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.

43. As concerns a counterfactual that Asiana would be a substantially weaker competitor:
- (a) As set out in the CMA's guidance, if the CMA finds that the merger firm would not be likely to exit absent the merger, it does not follow that it may instead decide that the firm would be a weaker competitor in the counterfactual.³³ The CMA has therefore separately considered whether the evidence submitted by the Parties supports the position that Asiana would be a substantially weaker competitor to the standard required in Phase 1 proceedings.
 - (b) To the extent that Asiana's financial difficulties and other disruption resulting from the COVID-19 pandemic have affected Asiana's ability to compete on the London-Seoul route to date, the impact of these factors will be reflected in the prevailing conditions of competition on the route.³⁴
 - (c) While the Parties have stated that the Merger 'brings stability' to Asiana, the Parties have not adduced any evidence to show which aspects of Asiana's recent performance are related to the Merger (and therefore should be excluded from the appropriate counterfactual).
 - (d) The Parties have not advanced any specific evidence as to why, if Asiana does not exit the route, its ability to compete in the supply of passenger services on the route absent the Merger would be substantially weakened.
 - (e) While the Parties have provided submissions in relation to the commercial and operational challenges facing Asiana, these were in many cases unevidenced (and therefore provide only limited support for the position that these challenges will result in a significant change in the nature of Asiana's commercial offering). For example, while the Parties submitted that Asiana's aircraft fleet is generally dated and its technology and infrastructure require significant upgrades to keep pace with the changing airline market, the CMA has not received probative evidence to support this point (or to explain its specific impact on Asiana's performance on the routes within the scope of the CMA's investigation).

³³ [Merger Assessment Guidelines](#), paragraph 3.25.

³⁴ With regard to these financial difficulties, the CMA notes that that Asiana's financial position has improved as of 2019. While Asiana generated a consolidated operating loss of [x]£[x] in 2019, it has since seen two years of consecutive year-on-year growth in its operating profits, with an operating profit of £[x] in 2021. While Asiana's consolidated revenues were negatively impacted by the pandemic in 2020, it has since seen its revenues increase in 2021 on prior year levels (FMN, Table 11.1). While the CMA notes the Parties submitted that the improvement in Asiana's finances was triggered [x], this indicates that Asiana's financial position has been improving and may continue to stabilise.

(f) Similarly, with regard to Asiana's future ability to compete in the supply of air cargo services on the Europe to South Korea and South Korea to Europe routes, the Parties have not advanced any specific evidence as to why, if Asiana does not exit the supply of air passenger services on London-Seoul route, its ability to compete on the air cargo services routes absent the Merger would be substantially weakened.³⁵

44. The Parties told the CMA that evidence to support the position that Asiana would be a substantially weakened competitor absent the Merger is generally not available because there is no 'Plan B'.

45. The CMA notes, however, that the fact that a firm is subject to financial difficulties (even where very significant) generally does not, in isolation, automatically mean that the firm should be considered to be a substantially weakened competitor. For example, while Asiana may continue to face financial difficulties, it is not clear how these would affect its ability to compete in air passenger services on the London-Seoul routes or air cargo services on the Europe to South Korea and South Korea to Europe. There may, for example, be options open to Asiana that do not result in exit or an otherwise diminished competitive offering on this route (eg, in terms of reduced frequency or a less competitive schedule for air passenger flights, or less capacity in its air cargo services offering) on those routes.

46. Accordingly, the CMA has not received sufficient evidence that, in the event that Asiana does not exit the supply of air passenger services on London-Seoul route, Asiana's ability to compete in either the supply of air passenger services on the London-Seoul route or the supply of air cargo services on the Europe to South Korea and South Korea routes, would be substantially less than in the prevailing conditions of competition, such that a counterfactual of the prevailing conditions of competition is not realistic.

Conclusion

47. The CMA therefore considers that the appropriate counterfactual with respect to air passenger services on the London-Seoul route and air cargo services on the Europe to South Korea and South Korea to Europe routes for customers transporting cargo from the UK to South Korea and from South Korea to the UK is the prevailing conditions of competition. The CMA has taken into account the

³⁵ As set out in paragraph 37(c), the Parties' submissions that Asiana would be substantially weakened as a competitor in the supply of air cargo services on the Europe to South Korea and South Korea to Europe routes are premised on their submission that Asiana would be likely to exit the supply of air passenger services on the London-Seoul route.

ongoing impact of the ongoing COVID-19 pandemic, where relevant, in its competitive assessment.

FRAME OF REFERENCE

48. The CMA is required to consider whether it is or may be the case that the Merger may be expected to result, in a substantial lessening of competition within any market or markets in the UK for goods or services.³⁶

Air passenger services

49. The Parties both provide air passenger services between the UK and Korea through operating flights from LHR to ICN and vice versa.

The Parties' submissions

50. The Parties submitted that, for the purpose of assessing the competitive effects of the Merger on air passenger services, the appropriate frame of reference is the non-directional³⁷ London-Seoul route.³⁸ In particular, the Parties submitted that:

- (a) The appropriate frame of reference should adopt the 'point of origin/point of destination' (**O&D**) city pair approach³⁹ used by the European Commission in previous merger cases (in which every combination of an airport or city of origin to an airport or city of destination is defined as a distinct market).⁴⁰
- (b) Indirect (one-stop) flights exert significant competitive pressure on direct (non-stop) flights. The Parties noted in this respect that, in previous merger cases, the European Commission has found that, for long-haul routes (generally

³⁶ Section 33(1) of the Act.

³⁷ Meaning that competitive conditions on the route are assessed without distinguishing by direction of travel.

³⁸ FMN, paragraph 13.1.

³⁹ In respect of air passenger services, the European Commission has in previous merger decisions defined relevant markets on the basis of two approaches: (i) the O&D approach (where the target was an active air carrier) and (ii) the 'airport-by-airport' approach (where the target held an important slot portfolio). Under the O&D approach, every combination of an airport or city of origin to an airport or city of destination is defined as a distinct market. Such a market definition reflects the demand-side perspective whereby passengers consider all possible alternatives of travelling from a city of origin to a city of destination, which they do not consider substitutable for a different city pair. By contrast, under the 'airport-by-airport' approach, every airport (or substitutable airports) is defined as a distinct market meaning that the effects of a transaction on competition are assessed for all O&Ds, taken together, to or from an airport (or substitutable airports). See, eg, M. 9287 *Connect Airways / Flybe* (5 July 2019), paragraphs 47-48 and 120.

⁴⁰ FMN, paragraph 13.12.

above 6 hours), indirect (one-stop) flights compete with direct (non-stop) flights.⁴¹

- (c) It is not necessary to distinguish between TS passengers and NTS passengers⁴² given that (i) the competitive dynamics for TS and NTS passengers are uniform as between all air passenger service providers and (ii) the increasing price sensitivity of corporate customers makes such a distinction redundant. The Parties submitted, however, that in previous merger cases the European Commission has noted that it may be relevant to distinguish between TS passengers and NTS passengers for long-haul routes⁴³ and that demand for air passenger services is sensitive to factors such as punctuality, direct/indirect flights, travel time, frequency, mileage, the brand of service provider (including the alliance it belongs to) and services such as inflight meals.⁴⁴
- (d) While under the O&D approach the European Commission has considered that flights to or from airports with sufficiently overlapping catchment areas may be considered as substitutes, airport substitutability is of limited relevance for the purpose of the CMA's assessment.⁴⁵ This notwithstanding, the Parties submitted that, with respect to London, the London airports (LHR, Gatwick (**LGW**), City, Stansted, Luton) should be considered substitutable with each other and that LGW in particular could provide a competitive constraint on LHR,⁴⁶ given:
 - (i) there are examples of previous decisions in which the European Commission and CMA had found or considered that LGW and LHR may be substitutable on certain routes;⁴⁷

⁴¹ FMN, paragraph 13.19. See, eg, M. 7541 IAG / Aer Lingus (14 July 2015), paragraph 33.

⁴² The European Commission has previously used 'TS passengers' to refer to time sensitive passengers who tend to travel for business purposes, require significant flexibility with their tickets (such as cost-free cancellation and modification of the time of departure, etc) and tend to pay higher prices for this flexibility in contrast to 'NTS passengers' to denote non-time sensitive customers who travel predominantly for leisure purposes or to visit friends and relatives, book long time in advance, do not require flexibility with their booking and are generally more price-sensitive. See, eg, M. 7333 Alitalia / Etihad (14 November 2014), paragraphs 70-74.

⁴³ FMN, paragraphs 13.16-13.17. See, eg, M. 7541 IAG/Aer Lingus (14 July 2015), paragraphs 20-29.

⁴⁴ FMN, paragraph 13.11(i).

⁴⁵ FMN, paragraphs 13.24-13.27.

⁴⁶ Parties' response to the issues letter, paragraph 32(b).

⁴⁷ FMN, paragraphs 13.24-13.25. See, eg, AT.39596 AA/BA/IB (25 June 2010) (Commitment 1.1.1) (in which the European Commission recognised that long-haul services to LGW are substitutable for services to LHR) and *Investigation into the AJBA*, Decision to issue interim measures directions dated 17 September 2020 (in which the CMA considered the constraint of LGW on LHR on a route-by-route basis).

- (ii) there are good road and rail connections between LGW and London which mean that using the fastest train available, the travel time from LGW to London is only slightly longer than from LHR to London;⁴⁸
- (iii) Korean Air operated flights between LGW and ICN in 2012;⁴⁹ and
- (iv) LGW is closer to areas of Greater London that are traditionally associated with the Korean community, and [3<] or more of Korean Air's passengers for the London-Seoul route have Korean nationality.⁵⁰

The CMA's assessment

The O&D city pair approach

51. The CMA has not received any evidence to suggest that the O&D city pair approach is not an appropriate framework for the purposes of assessing the competitive impact of the Merger on air passenger services. In this respect, the CMA has not received any evidence that there are differences in supply or demand that mean that the competitive conditions differ according to the direction of travel (such it would be appropriate to consider separate frames of reference for 'unidirectional' routes from London to Seoul and from Seoul to London). The CMA notes that, unlike for the supply of air cargo services (see paragraph 59), passengers tend to purchase return flights. The CMA has considered the substitutability of airports serving the London-Seoul route below.

TS/NTS passengers and direct/indirect flights

52. The CMA has considered all types of passengers and direct and indirect flights in its frame of reference. The CMA has considered the relative constraint from indirect flights and the impact of the Merger on alternatives for customers with different needs where relevant in the competitive assessment.

Airport substitutability

53. The CMA notes that, in applying the O&D approach, the European Commission has previously found that (i) flights to or from airports with sufficiently overlapping catchment areas can be considered as substitutes in the eyes of passengers (particularly if the airports serve the same main city); and (ii) in order to correctly capture the competitive constraint that flights to or from two different airports exert

⁴⁸ FMN, paragraph 13.26.

⁴⁹ Parties' response to CMA's issues letter, paragraph 32 (a).

⁵⁰ Parties' response to the issues letter, paragraph 32(b).

on each other, a detailed analysis taking into consideration the specific characteristics of the relevant airports is necessary.⁵¹

54. The CMA considers that there may be limited substitutability – at least for some customers – as between LHR and other London airports for air passengers travelling between London and Seoul, having regard to the following evidence.
- (a) The only direct flights between London and Seoul are between LHR and ICN (see paragraph 84 (a)). There have not been any direct flights between London and Seoul from other London airports in the last four years.⁵²
 - (b) While most competitors that responded to the CMA’s investigation indicated that, in principle, (indirect) flights between other London airports and ICN could be alternatives to direct flights between LHR and ICN where available, one submitted that flights from another London airport would not be considered a viable alternative for the majority of passengers. Another submitted that while indirect flights from LGW to ICN are available, LGW offers a much lower and weaker connecting option for customers.
55. For the purpose of assessing the competitive impact of the Merger, the CMA has considered all London airports from which (direct or indirect) flights to/from Seoul are operated in its frame of reference and has considered the relative constraint from other London airports where relevant in the competitive assessment.

Conclusion

56. In light of the evidence summarised above, for the purpose of assessing the competitive impact of the Merger on air passenger services, the CMA considers the appropriate frame of reference to be the supply of air passenger services on the (non-directional) London-Seoul route. The CMA has not sub-segmented the frame of reference by reference to TS/NTS passengers, direct/indirect flights or particular airports but has taken into such distinctions, where appropriate, in its competitive assessment.

⁵¹ The evidence used by the European Commission to characterise airport substitutability includes *inter alia* a comparison of actual distances and travelling times to the indicative benchmark of 100 km/1 hour driving time, the outcome of the market investigation (views of the airports, the competitors, and other market participants), and the parties’ practices in terms of monitoring. See, eg, M. 9287 *Connect Airways / Flybe* (5 July 2019), paragraph 61.

⁵² Third-party response to the CMA’s Combination Airlines Questionnaire (2021), question 4. 2021 refers to questionnaires sent in **November** 2021. The CMA reached out to respondents to confirm that the information and views they provided remain accurate as of **September** 2022 and took account of any revisions in its assessment.

Air cargo services

57. As set out above, the Parties overlap in the supply of air cargo services. Both Parties offer air cargo services between the UK and South Korea via dedicated freight aircraft and passenger aircraft (using belly-hold cargo).⁵³

The Parties' submissions

58. The Parties submitted that, for the purpose of assessing the competitive effects of the Merger on air cargo services, the appropriate frames of reference are air cargo services on the route from Europe to East Asia and the route from East Asia⁵⁴ to Europe.⁵⁵ In particular, the Parties submitted that:

- (a) Unlike air passenger services, it is appropriate to assess competition by reference to separate frames of reference for unidirectional routes.⁵⁶ The Parties noted in this regard that air cargo transport generally involves one-way routes and the type of customers and demand varies depending on the direction of the route.⁵⁷
- (b) Consistent with the European Commission's findings in previous merger decisions, the appropriate geographic scope at each end of the route is Europe and East Asia.^{58,59} In support of this position, the Parties noted that the European Commission has previously found the appropriate geographic scope at each end of the route to be continent-wide where local infrastructure is adequate for onward connections (eg, by road, train, or inland waterways).⁶⁰ Further, the Parties submitted that:

⁵³ FMN, paragraphs 12.39, 12.50 and 12.53.

⁵⁴ In this regard the Parties' submitted data for 'East Asia' comprising South Korea, China, Japan, Hong Kong and Taiwan (FMN, footnote 157).

⁵⁵ In the alternative, the Parties submitted that, consistent with the Korea Fair Trade Commission (**KFTC**) Korean Air/Asiana (22 February 2022) (**KFTC Decision**), the appropriate geographic scope would be Europe to South Korea (and vice versa). FMN, paragraph 13.40.

⁵⁶ FMN, paragraph 13.1.

⁵⁷ FMN, paragraph 13.28. The Parties noted that this is consistent with the findings of the KFTC with respect to the Merger (FMN, paragraph 13.54, citing KFTC Decision, paragraph 403).

⁵⁸ FMN, paragraphs 13.31 and 13.40. In previous merger decisions, the European Commission has found cargo is generally less time sensitive than passengers and cargo is usually transported by trans-modal means of transport "behind" and "beyond" the points of (air) origin and destination, meaning the geographic scope at either end of the route should be defined more broadly. See, eg, M. 6447 IAG/BMI (30 March 2012), paragraph 87.

⁵⁹ In the alternative, the Parties submitted that, consistent with the KFTC Decision, the appropriate geographic scope would be Europe to South Korea (and vice versa) (FMN, paragraph 13.40).

⁶⁰ For example, in M. 6447 IAG/BMI (30 March 2012), paragraph 94. FMN, paragraph 13.31. The Parties noted however that, given the relatively expensive fare (as compared to waterline shipping) air cargo

- (i) with respect to the Europe end of the route, the Parties submitted that the European Commission has consistently found the relevant geographic scope to be Europe (including the UK) and that there is no reason for the CMA to depart from this approach following the UK's exit from the European Union (**EU**);⁶¹ and
 - (ii) with respect to the East Asia end of the route, the Parties submitted that the applicable trade and customs regime and infrastructure in place supports transshipment (ie by road, train and by sea) to/from other countries in East Asia.⁶²
- (c) Consistent with the previous decisional practice of the European Commission,⁶³ the appropriate frame of reference encompasses all cargo, without further sub-segmentation by reference to type of aircraft or cargo carrier (eg carriers operating dedicated freight aircraft only as compared to carriers operating belly-hold cargo services only or 'combination' carriers offering both), or type of cargo.⁶⁴ In particular, the Parties submitted that:
- (i) all freight necessarily requires some transshipment even in the context of a non-stop flight where cargo must be loaded onto a truck at origin, transhipped from truck to aircraft and vice versa on arrival;⁶⁵ and
 - (ii) even 'special cargo', such as pharmaceutical (eg vaccines) and fresh cargo is transported on routes requiring transshipment (eg through cargo

services are used to move valuable or fragile cargo, such as semiconductor, electronic devices, or automotive parts. (FMN, paragraph 13.29).

⁶¹ In this respect, the Parties submitted that: (i) the European Commission has previously included in a 'Europe-wide' geographic scope countries outside of the single market and customs union (eg Switzerland) and with much less developed infrastructure links to mainland Europe than the UK (eg Iceland and Malta); (ii) the transport links between the UK and mainland Europe that were part of the reason for the European Commission having defined a Europe-wide market as including the UK remain fully in place; and (iii) while there are some additional administrative procedures required for imports and exports between the UK and the EU, these do not materially change the applicable customs/regulatory procedures as the UK remains a party to the Common Transit Convention (**CTC**), an EU customs treaty allowing goods to move across borders under simplified (or no) procedures between the EU and the CTC countries, or between the CTC countries. FMN, paragraphs 13.31 and 13.34.

⁶² In this regard, the Parties noted the existence of free trade agreements and agreements that support simplified customers clearance processes and ongoing cooperation between the Korean, Chinese and Japanese governments to progress transportation logistics in the region. FMN, paragraphs 13.43-13.45.

⁶³ For example, in *M. 8361 Qatar Airways / Alisarda / Meridana* (22 March 2017), paragraphs 37_41 (the market was left open), *M. 6828 Delta Air Lines / Virgin Group / Virgin Atlantic Limited* (20 June 2013, paragraphs 79-81), *M. 6447 IAG/BMI* (30 March 2012), paragraph 93-96.

⁶⁴ FMN, paragraphs 13.36-13.39.

⁶⁵ FMN, paragraph 13.37(i).

being unloaded from one aircraft and repacked on another where being transported via indirect – ie multi-stop, multi-aircraft – flights).⁶⁶

The CMA's assessment

Unidirectional routes

59. The CMA considered the following evidence in relation to whether demand and supply for air cargo services between the UK and South Korea differs by direction of travel.
- (a) The CMA notes that cargo typically travels only in one direction (unlike for the supply of air passenger services, where passengers tend to purchase return flights). Some of the customers that responded to its investigation purchase air cargo services in only one direction.⁶⁷
 - (b) The shares of supply submitted by the Parties (see Table 5 and 8) indicate that competitive conditions, in particular the relative sizes of air cargo service providers, differ depending on the direction on the route. By way of example AeroLogic held a share of just [0-5]% on the South Korea to Europe route in 2020, but a share of [5-10]% (making it the largest player other than the Parties) on the Europe to South Korea route; DHL similarly had a share of [0-5]% on the South Korea to Europe route in 2020, but [5-10]% on the Europe to South Korea route.
60. The CMA therefore considers that the appropriate frames of reference in air cargo services are unidirectional.⁶⁸

Geographic scope

61. The European Commission has previously assessed the air transport of overall cargo on a continent-to-continent basis and continent-to-country basis. As regards Europe, the European Commission has concluded that the relevant geographic market for air cargo encompasses the entire continent because the local

⁶⁶ FMN, paragraph 13.37(ii).

⁶⁷ Third-party responses to CMA's Cargo Customer Questionnaire, question 3.

⁶⁸ The CMA notes that this is consistent with previous merger decisions in which the European Commission found that air cargo transport markets are unidirectional due to differences in demand at each end of the route. See, eg, See, eg, M. 8361 *Qatar Airways / Alisarda / Meridiana* (22 March 2017), paragraph 39, and M. 6447 *IAG/BMI* (30 March 2012), paragraph 90.

infrastructure is adequate to allow for onward connections, for instance, by road, train or inland waterways.⁶⁹

62. The CMA is required to consider the impact of the Merger on competition within any market or markets in the UK. For the purpose of its assessment, the CMA considered the options available to customers transporting cargo by air from the UK to South Korea (and vice versa). In this regard, the CMA considered the available evidence as to whether routes involving transshipment by land (road and rail) and sea (i) from the UK to European airports for onwards shipment by air to South Korea and (ii) from other East Asian airports to South Korea are considered alternatives to (direct or indirect) flights from the UK to South Korea (and vice versa).⁷⁰ In this regard:
- (a) Data supplied by the Parties (see paragraph 144 below) indicate that around two-thirds of cargo originating in the UK is transported to South Korea on either indirect flights from the UK or through routes involving transshipment.⁷¹
 - (b) The majority of competitors that responded to the CMA's investigation stated that the use of transshipment between the UK and European airports for onward air transport to or receiving cargo transported by air from South Korea is common.⁷² For instance, a competitor told the CMA that it is common to ship

⁶⁹ M. 3280 *Air France / KLM* (11 February 2004), paragraph 36. The CMA notes that in previous merger decisions, the European Commission considered that for air cargo services – as with air passenger services – from the demand side, the users ask for transport of freight on a point of origin – point of destination basis (and, as such, each point-of-origin / point-of-destination pair constitutes, in principle, a relevant market). However, the European Commission found that the peculiarities of the cargo sector justify a wider geographic scope than for air passenger services given: (i) freight may be routed with a higher number of stop-overs such that any indirect route (including with multiple stop-overs) is substitutable to any direct route (provided the total travel time and cost remain reasonable); and (ii) air transport of freight is often a part of multi-modal transport (eg by truck from the origin point to the air gateway, by air to the destination gateway and by truck from that gateway to the final destination) even when the gateway is very distant from the point of origin. See JV.19 – *KLM / Alitalia* (11 August 1999), paragraphs 21-23.

⁷⁰ In the reverse direction, the CMA considered the available evidence as to whether routes involving transshipment by land (road and rail) and sea (i) from South Korea to other East Asian airports for onwards shipment by air to the UK and (ii) from other European airports to the UK are considered alternatives to (direct or indirect) flights from the South Korea to the UK.

⁷¹ These data do not allow the CMA to assess the proportion of cargo originating in the UK is transhipped but notes feedback from competitors that indicates that transshipment is common.

⁷² Third-party responses to CMA's Combination Airlines Questionnaire (2021), questions 15 and 16. Third-party response to CMA's Cargo Airlines Questionnaire (2021), question 14. One third party explained that regarding shipments to Europe, Asian airlines generally do not like sending too many aircrafts to the UK as it is restrictive. Many cargo aircrafts may be sent into Frankfurt, Paris or Amsterdam, for example, and then road fed out of these hubs to final destinations. Airlines generally have agreements with trucking providers. This third party does the opposite: it ships the cargo to London, which will then be picked up by, for example, a truck owned by this airline company and taken to Amsterdam to be flown to its final destination (note of call with a third on 8 June 2021).

cargo via truck from the UK to another airport in Europe and then fly to ICN.⁷³ Further, a number of competing providers of air cargo services noted that they offered trucking services between the UK and European airports.⁷⁴

- (c) By contrast, the majority of competitors that responded to the CMA's investigation stated that the use of transshipment between South Korea and East Asian airports for onward air transport to or receiving cargo transported by air from the UK/Europe is not common.⁷⁵ One of these competitors explained that shipping cargo into South Korea by sea from another East Asian airport takes a significant amount of time and that transporting cargo from another East Asian airport via land is not possible given the only land border of South Korea is North Korea.⁷⁶

63. The CMA therefore considers that the appropriate frames of reference includes flights from Europe to South Korea and vice versa.

Direct/indirect flights

64. The CMA has considered direct and indirect⁷⁷ flights between the UK and South Korea and between other airports in Europe and South Korea in its frames of reference. The CMA has received evidence that for some customers, overall transit time and direct flights may be important (see paragraph 66122(b)). The CMA has taken into account the extent to which indirect flights constrain direct flights in its competitive assessment.

Type of cargo and cargo carrier

65. Overall, third-party feedback indicates that segmentation by type of air cargo or air cargo carrier is not appropriate. Most competitors – including competitors operating belly cargo and freighter services – explained that they can transport any or most types of cargo.⁷⁸ A few competitors told the CMA they are able to transport general

⁷³ Note of call with a third-party on 15 June 2021.

⁷⁴ Note of call with a third-party on 15 June 2021; third-party response to CMA's Combination Airlines Questionnaire (2021), question 15.

⁷⁵ Note of call with a third party on 7 June 2021; note of call with a third-party on 6 July 2021; note of call with a third-party on 16 June 2021.

⁷⁶ Note of call with a third party on 7 June 2021.

⁷⁷ The Parties submitted that it is conventional in industry terminology for "direct" cargo flights to include non-stop and multi-stop flights (in this context the cargo stays on the same aircraft until it reaches its final destination) whereas indirect cargo flights refer to cargo transported by one-stop and multi-stop flights provided that the cargo will move from one aircraft to another before it reaches its final destination (FMN, paragraph 12.54 and Parties' response to the CMA's RFI dated 1 and 2 September 2022, footnote 4.).

⁷⁸ Third-party response to CMA's Cargo Competitor Questionnaire (2021), question 2; third-party responses to CMA's Combination Airlines Questionnaire (2021), question 11; third-party responses to CMA's Combination Airlines Questionnaire (2022), question 11.

cargo.⁷⁹ Finally, one competitor said it is able to ship, amongst others, express goods⁸⁰ and another, mail and pharmaceuticals.⁸¹ Some competitors noted that there are constraints on belly cargo space.

66. The CMA received mixed customer feedback as to whether the supply of air cargo services should be segmented by type of cargo. A few customers clarified that they tend to use the same airlines for different types of cargo⁸² while a few others stated the contrary (eg in the case of the transport of semiconductor capital equipment).⁸³ One of these third parties explained that airlines have a similar level of service for various types of cargo, whilst for others transit time is an important factor in their choice of provider. One customer said that for some types of cargo, such as oversized or perishable goods, the services provided by the Parties are the only available option given their quality and the Parties' handling experience.⁸⁴
67. On this basis, the CMA considers that it is appropriate to assess the effects of the Merger in relation to a frame of reference for the supply of air cargo services without further sub-segmentation by type of cargo or cargo service provider. To the extent that the Parties are closer competitors for certain types of cargo, for example, cargo that is express or needs to travel directly, the CMA has considered this in the competitive assessment.

Conclusion

68. In light of the evidence summarised above, for the purpose of assessing the competitive impact of the Merger on air cargo services, the CMA considers the appropriate frames of reference to be the supply of air cargo services on the Europe to South Korea and South Korea to Europe routes for customers transporting cargo from the UK to South Korea and from South Korea to the UK.
69. The CMA's evidence gathering at Phase 1 has focussed on customers of the Parties' air cargo services from the UK to South Korea and from South Korea to the

⁷⁹ Third-party responses to CMA's Combination Airlines Questionnaire (2021), Q11.

⁸⁰ Third-party responses to CMA's Combination Airlines, question 11.

⁸¹ Third-party responses to CMA's Combination Airlines, question 11.

⁸² Third-party responses to CMA's Cargo Customer Questionnaire (2021), question 6.

⁸³ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 8; and third-party responses to CMA's Cargo Customer Questionnaire (2021), question 6.

⁸⁴ Some customers explained that they use different airlines for different types of cargo, but their response did not include any comments as to whether the other airlines are able to supply air cargo services for all types of cargo. In this regard, one customer told the CMA that it uses Korean Air for certain types of cargo due to loyalty advantages whereas another said it uses Asiana for other types of cargo because their rates are more competitive than Korean Air. Another customer explained it takes into account capacity when selecting the air cargo provider and clarified the type of cargo is not a criterion that it takes into account. See third-party responses to CMA's Cargo Customer Questionnaire (2022), question 8.

UK. In this regard, the CMA notes that there may be some important UK-specific aspects of competition which affect the strength of the alternative suppliers available for some customers of these services. In assessing the effects of the Merger for these customers, the CMA has therefore considered competition at the Europe to South Korea (and South Korea to Europe) level and taken into account UK to South Korea (and South Korea to UK) aspects of competition.

Conclusion on frame of reference

70. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the supply of air passenger services on the London-Seoul route;
 - (b) the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea; and
 - (c) the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK.

COMPETITIVE ASSESSMENT

71. The CMA has considered horizontal unilateral effects in the supply of:
- (a) air passenger services on the London-Seoul route (**TOH1**);⁸⁵
 - (b) air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea (**TOH2**); and
 - (c) air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK (**TOH3**).⁸⁶

⁸⁵ In terms of air passenger services, the Parties also overlap on 54 indirect routes from LHR based on 2018-2020 DDS Estimate Data. The CMA notes that there are only five indirect routes where the Parties have a combined share of supply of more than 20%: London-Daegu (South Korea); London-Gimhae (South Korea); London-Palau (Palau Island); London-Fukuoka (Japan) and London-Weihai (China). The number of passengers on each of these routes is however low and varies between 100 and 15,000. FMN, paragraphs 14.34-14.36. Given this, these overlaps are not discussed further in this decision.

⁸⁶ The Parties also overlap in the provision of air cargo services between the UK and other countries. The Parties calculated share of supply estimates (using CASS cargo data) on a unidirectional O&D country to country pair basis for the past three years for routes from the UK to countries other than South Korea and from countries other than South Korea to the UK on which the Parties both provide air cargo services (16 in total). For these routes, the Parties' combined shares were less than 10% in all cases (and for 8 routes, less than [0-5]%) (FMN, paragraph 14.57 and Tables 14.31, 14.34-14.36). As such, these overlaps are not considered further in this decision.

72. Horizontal unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to profitably raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service, and innovation) on its own and without need to coordinate with rivals.⁸⁷

Horizontal unilateral effects in the supply of air passenger services on the London-Seoul route (TOH1)

73. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as result of horizontal unilateral effects in the supply of air passenger services on the London-Seoul route.
74. In its assessment, the CMA has considered: (i) shares of supply; (ii) the closeness of competition between the Parties; and (iii) the competitive constraint from alternative suppliers remaining post-Merger. The CMA has also considered the Parties' submissions on the extent to which South Korean regulations may constrain the ability of the Parties to increase prices and the impact of the Merger on policy interests of the Korean Government. The CMA has taken into account in its assessment the Parties' submissions and the views of third parties.

Shares of supply

75. Tables 1 to 4, below, show the Parties' estimated shares of supply of air carriers operating the ICN-LHR route for IATA seasons Summer 2019 to Winter 2021/2022 for (i) direct flights (for all passengers) and direct and indirect (one-stop) flights for (ii) all passengers (iii) TS passengers only and (iv) NTS passengers only.⁸⁸
76. The Parties provided data in relation to ICN-LHR. To the extent that LGW or another London airport is a substitute to LHR, or another Seoul airport is a substitute for ICN (see paragraph 545355), the shares in Tables 2 to 4 below may overstate the Parties' position on the London-Seoul route. The CMA does not consider that any overstatement would materially affect the CMA's overall findings in respect of air

⁸⁷ [Merger Assessment Guidelines](#), paragraph 4.1.

⁸⁸ The Parties provided estimates based on DDS Estimate data. DDS Estimate data is based on actual ticketing data from subscribing airlines and estimates for non-subscribing airlines (FMN, paragraph 14.8). The CMA has not considered it necessary to consider in detail the appropriateness of using DDS Estimate data for shares of supply estimates given that the shares estimated are consistent with other evidence indicating a limited number of rivals to constrain the Merged Entity post-Merger.

passenger services given the evidence presented below in paragraphs 80 to 95 in relation to closeness of competition and alternatives.⁸⁹

Table 1: ICN-LHR route, non-stop operations only, (both NTS and TS passengers) shares of supply, %, 2019-2021

	<i>Summer 2019</i>	<i>Winter 2019/20</i>	<i>Summer 2020</i>	<i>Winter 2020/21</i>	<i>Summer 2021</i>	<i>Winter 2021/22</i>
Korean Air	[40-50]	[40-50]	[80-90]	[80-90]	[60-70]	[60-70]
Asiana	[30-40]	[30-40]	[10-20]	[10-20]	[30-40]	[30-40]
Combined	[70-80]	[70-80]	[90-100]	[90-100]	[90-100]	[90-100]
British Airways	[20-30]	[20-30]	[5-10]	[0-5]	[0-5]	[0-5]
Other	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]

Source: FMN, Annex 19 (Tab 1b). Notes: in Annex 19, shares of supply of less than 2% have been aggregated to the 'other' category. As, further to British Airways ceasing operations on the route in Winter 2020/2021, the CMA understands the share attributable to 'Other' in Summer 2021 to reflect a discrepancy in the available DDS Estimate data.

Table 2: ICN-LHR route, non-stop and one-stop operations, (both NTS and TS passengers) shares of supply, %, 2019-2021

	<i>Summer 2019</i>	<i>Winter 2019/20</i>	<i>Summer 2020</i>	<i>Winter 2020/21</i>	<i>Summer 2021</i>	<i>Winter 2021/22</i>
Korean Air	[30-40]	[30-40]	[60-70]	[50-60]	[30-40]	[30-40]
Asiana	[20-30]	[20-30]	[10-20]	[5-10]	[10-20]	[10-20]
Combined	[60-70]	[60-70]	[70-80]	[50-60]	[50-60]	[50-60]
British Airways	[10-20]	[10-20]	[0-5]			
Lufthansa	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]
Finnair		[0-5]	[0-5]	[5-10]	[10-20]	[10-20]
Etihad	[0-5]		[0-5]	[5-10]	[0-5]	[0-5]
Air France-KLM	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]	[10-20]
Qatar Airways			[5-10]	[10-20]	[0-5]	[0-5]
Emirates				[0-5]		
Turkish						[0-5]
Other	[10-20]	[5-10]	[0-5]	[0-5]	[5-10]	[0-5]

Source: FMN Table 14.2

Table 3: ICN-LHR route, stop and one-stop operations (TS passengers only) shares of supply, %, 2019-2022

	<i>Summer 2019</i>	<i>Winter 2019/20</i>	<i>Summer 2020</i>	<i>Winter 2020/21</i>	<i>Summer 2021</i>	<i>Winter 2021/22</i>
Korean Air	[50-60]	[40-50]	[80-90]	[60-70]	[40-50]	[40-50]
Asiana	[10-20]	[10-20]	[5-10]	[5-10]	[10-20]	[10-20]
Combined	[60-70]	[60-70]	[80-90]	[70-80]	[60-70]	[60-70]
British Airways	[20-30]	[20-30]	[0-5]			
Lufthansa		[0-5]			[5-10]	[5-10]
Qatar Airways			[0-5]	[5-10]	[0-5]	[0-5]
Air France-KLM				[5-10]	[10-20]	[5-10]

⁸⁹ In this regard, the CMA notes that the Parties submitted that airport substitutability is of limited relevance for the purpose of the CMA's assessment (FMN, paragraph 13.27) and submitted share of supply and schedule/frequency data for the LHRICN route. The CMA therefore understands that the Parties do not consider that their shares of supply or an analysis of schedule/frequency would materially differ if indirect flights from other London airports (and to other Seoul airports, if available) were included in these data.

Finnair				[0-5]	[10-20]	[10-20]
Emirates				[0-5]		[0-5]
Etihad					[5-10]	[0-5]
Other	[10-20]	[5-10]	[5-10]	[0-5]	[0-5]	[0-5]

Source: FMN Table 14.3

Table 4: ICN-LHR route, non-stop and one-stop operations (NTS passengers only) shares of supply, %, 2019-2022

	<i>Summer 2019</i>	<i>Winter 2019/20</i>	<i>Summer 2020</i>	<i>Winter 2020/21</i>	<i>Summer 2021</i>	<i>Winter 2021/22</i>
Korean Air	[30-40]	[30-40]	[60-70]	[40-50]	[30-40]	[20-30]
Asiana	[30-40]	[20-30]	[10-20]	[5-10]	[10-20]	[10-20]
Combined	[60-70]	[60-70]	[70-80]	[50-60]	[50-60]	[40-50]
British Airways	[10-20]	[10-20]	[0-5]			
Lufthansa	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]
Finnair		[0-5]	[0-5]	[5-10]	[10-20]	[10-20]
Etihad	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]	[10-20]
Air France-KLM	[0-5]		[0-5]	[5-10]	[0-5]	[0-5]
Qatar Airways			[5-10]	[10-20]	[0-5]	[0-5]
Emirates					[0-5]	
Turkish Airlines						[0-5]
Other	[10-20]	[5-10]	[5-10]	[0-5]	[0-5]	[0-5]

Source: FMN Table 14.4

77. Table 1 shows that, as of Winter 2020/2021, the Parties are the only operators of direct services on the LHR-ICN route.⁹⁰ Prior to BA's exit from the route, the Parties had a combined share of supply in excess of [70-80]% (on non-stop operations).
78. Tables 2-4 show that, on any IATA season from Summer 2019 to Winter 2021/2022, the Parties' combined share of supply of direct and indirect (one-stop) operations the LHR-ICN route was in excess of [40-50]%, irrespective of whether all passengers are considered together or TS and NTS passengers are considered separately. In Summer 2019 (prior to the COVID-19 pandemic), the Parties' combined share of supply exceeded [60-70]% on any basis. With the exception of Winter 2020/2021,⁹¹ Korean Air and Asiana were the largest and second largest operators on the route in any IATA season since Summer 2019.
79. Based on the evidence summarised above, the CMA considers that the supply of air passenger services on the London-Seoul route is concentrated. Post-Merger, the

⁹⁰ As noted, further to British Airways ceasing operations on the route in Winter 2020/2021, the CMA understands the share attributable to 'Other' in Summer 2021 to reflect a discrepancy in the available DDS Estimate data. As the only flights between London and Seoul during this period were between LHR and ICN (see paragraph 78) these shares represent the Parties' share of supply on the London-Seoul route.

⁹¹ When Qatar Airways had a share of supply of direct and indirect (one-stop) operations of [10-20]% for all passengers and [10-20]% for NTS passengers. Qatar Airways' share of supply in Winter 2021/2022 is [0-5]% or less.

Merged Entity will be the largest supplier on the route, with a share of supply of more than three times that of the next largest supplier.

Closeness of competition

80. The Parties submitted that, unlike air cargo services, demand for air passenger services is sensitive to factors such as punctuality, direct/indirect flights, travel time, frequency, mileage, the brand of service provider (including the alliance the airline belongs to) and services such as inflight meals.⁹²
81. Closeness of competition is a relative concept. Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.⁹³
82. The CMA has considered the following evidence in its assessment of closeness of competition between the Parties.
- (a) The Parties are currently the only airlines offering direct flights on the London-Seoul route (and prior to Winter 2020/2021 were two of only three carriers offering direct flights on the route) (see Table 1). The Parties are therefore the only alternatives for customers seeking direct flights between London and Seoul.
 - (b) The Parties are both South Korean-based airlines, and both have their hub based in ICN. A third party indicated that the inflight service offering of Korean Air and Asiana is similar. This third party stated that the Parties, as South Korean airlines, offer a more 'Korean service' in terms of language, food and entertainment.⁹⁴ Another third party noted that both Parties had a similar proposition to each other.^{95, 96}
 - (c) Weekly schedules submitted by the Parties for IATA seasons Summer 2019 to Summer 2022 inclusive show that, across all seasons in this period, the Parties' flights are the closest alternatives available to customers on the LHR-

⁹² FMN, paragraph 13.11(i). See also paragraph 28(c).

⁹³ [Merger Assessment Guidelines](#), paragraph 4.10.

⁹⁴ Note of call with a third party on 16 June 2021.

⁹⁵ Third-party response to CMA's Combination Airlines Questionnaire (2021), question 7.

⁹⁶ Third parties submitted that the main factors that customers consider when booking a flight for the London-Seoul route are price, schedule (ie arrival/departure time and/or total travel time), and quality of service. Some third parties also indicated that customers would consider whether the flight is direct or not when selection their air carrier for the London-Seoul route. See Third-party responses to CMA's Combination Airlines Questionnaire, question 6.

ICN route in terms of departure and arrival time, with inbound⁹⁷ and outbound⁹⁸ flights departing and arriving within an hour and a half of each other.⁹⁹

- (d) The CMA notes that Asiana's weekly frequency has reduced from 7 weekly flights in Summer 2019 to 3 weekly flights in Summer 2022.¹⁰⁰ The CMA has not considered weekly frequency to be a strong indicator of relative closeness of competition on the London-Seoul route given (i) as at Summer 2019 and Winter 2019/2020, weekly frequencies were the same across the majority of carriers operating (direct and indirect) flights on the LHR-ICN route¹⁰¹ and (ii) weekly frequencies in the subsequent seasons have fluctuated further to (ongoing) disruption as a result of the COVID-19 pandemic.¹⁰²
- (e) The Parties both operate out of LHR. To the extent that LGW or other London airports are substitutable with LHR, the Parties will nonetheless be closer rivals than carriers operating from other airports. As set out in paragraph 54(b) 54, some third parties told the CMA that flights from an airport other than LHR are not a viable alternative for the majority of passengers and that LGW offers a much lower and weaker connecting option for customers.

83. In addition, the CMA has considered the following evidence in its assessment.

- (a) The majority of third-party respondents to the CMA's investigation indicated that both of the Parties were strong (and in the majority of responses, the strongest) competitors on the London-Seoul route.¹⁰³

⁹⁷ In Winter, the Parties' flights departed from ICN at 13:00 (for Korean Air) and 14:30 (for Asiana) and arrived at LHR at 16:30 and 18:00, respectively. In Summer, the Parties' flights departed from ICN at 13:30 (for Korean Air) and 14:30 (for Asiana) and arrived at LHR at 17:25 and 18:50, respectively. FMN, Tables 14.6-14.12.

⁹⁸ In Winter, the Parties' flights departed from LHR at 18:50 (for Korean Air) and 20:10 (for Asiana) and arrived at ICN at 14:50 and 16:05, respectively (with the exception of Winter 2021/2022 in which Asiana's flights departed at the earlier time of 19:50 and arrived at 16:00). In Summer, the Parties' flights departed from LHR at 19:35 (for Korean Air) and 20:50 (for Asiana) and arrived at ICN at 14:35 and 15:50, respectively. FMN, Tables 14.13-14.20.

⁹⁹ The CMA notes that while these schedules pertain to LHR-ICN, the CMA has not received evidence from the Parties or third parties to indicate that schedules for carriers operating other (indirect) flights as between other London airports and ICN (or other Seoul airports, if available) would be close alternatives.

¹⁰⁰ FMN, Tables 14.6, 14.12, 14.14 and 14.20.

¹⁰¹ FMN, Tables 14.6, 14.7, 14.14 and 14.15.

¹⁰² As noted, IATA forecasted in March 2022 that that air passenger demand will recover to 2019 levels in 2024. FMN, paragraph 21.12.

¹⁰³ A competitor submitted that the Parties operate a similar type of service to each other. See note of call with a third party on 15 June 2021; third-party responses to CMA's Combination Airlines Questionnaire (2021), question 7.

(b) Asiana usually monitors the prices of Korean Air and British Airways¹⁰⁴ when setting prices for air passenger services on the London-Seoul route.¹⁰⁵

84. On the basis of the evidence set out above, the CMA considers that the Parties are close competitors in relation to the supply in air passenger services on the London-Seoul route.

Competitive constraint from alternative suppliers

85. The Parties submitted that the market for air passenger services is highly competitive¹⁰⁶ and noted that British Airways has previously operated direct flights on the London-Seoul route and could re-enter if demand recovers, which would reintroduce a strong competitor on the route.¹⁰⁷ Further, the Parties submitted that indirect flights exert significant competitive pressures on direct flights on the London-Seoul route.¹⁰⁸

86. As noted in paragraph 7777, Table 1 shows that, since Winter 2020/2021 the Parties are the only airlines flying direct on the London-Seoul route. Therefore, the Merger would remove the only alternative supplier for customers seeking direct flights between London and Seoul.

87. Third-party feedback indicates that indirect flights do not provide a strong constraint on direct flights on the London-Seoul route. For instance, one third party submitted that while, as a rule, one-stop flights compete with direct flights, the extent to which they can do so depends on the market penetration of direct flights on a route, and noted the significant extent to which direct flights operated by the Parties (and previously British Airways) penetrated the London-Seoul route prior to the COVID-19 pandemic.¹⁰⁹ Other third parties noted that majority (>80%) of flights on the London-Seoul route prior to the COVID-19 pandemic were direct flights.¹¹⁰

88. Tables 2-4 show that, as of Winter 2020/2021, the Parties' main rivals on the London-Seoul route in terms of indirect flights include Finnair, Lufthansa, and Air France-KLM.

¹⁰⁴ As set out in paragraph 76, British Airways has exited and no longer operates the London-Seoul route.

¹⁰⁵ FMN, paragraph 15.105.

¹⁰⁶ FMN, paragraph 1.9.

¹⁰⁷ FMN, paragraph 3.2.

¹⁰⁸ FMN, paragraph 3.3. The Parties further submitted that a number of carriers operating indirect flights (including Lufthansa, Finnair, Etihad, Air France-KLM and Qatar Airways) who are in a position to increase capacity in response to any reduction of competition. The CMA's assessment of the possibility of there being entry or expansion to mitigate an SLC is set out in the countervailing constraints section below.

¹⁰⁹ Note of call with a third party on 6 July 2021.

¹¹⁰ Third-party response to CMA's Combination Airlines Questionnaire, questions 2 and 3.

- (a) Finnair provides one stop flights on the London-Seoul route via Helsinki. Lufthansa provides one stop flights on the London-Seoul route via Munich or Frankfurt, and Air France-KLM offers flights on the London-Seoul route via Paris.
- (b) A small number of third parties responding to the CMA's investigation identified these airlines as alternatives to the Parties. However, these third parties considered that these indirect carriers exert only a weak or moderate competitive constraint on the Merged Entity in relation to the London-Seoul route.¹¹¹

89. In relation to smaller rivals shown in Tables 2-4, a small number of third parties identified other indirect airlines such as Emirates¹¹² and Etihad¹¹³ which could act as a constraint on the London-Seoul route. However, as above, third parties generally identified the competitive constraint exerted by these indirect airlines as weak or moderate. The CMA also notes that, based on Table 2, none of these alternatives identified by third parties have a material share of supply¹¹⁴ and all of the other indirect airlines have a low share of supply relative to the Parties.¹¹⁵
90. Based on the evidence set out above, the CMA considers that indirect flights do not provide a strong constraint on direct flights on this route. Furthermore, share of supply data and third-party feedback show that carriers such as Lufthansa, Finnair, Air France-KLM, Etihad, and Emirates exert a weak to moderate competitive constraint on the Merged Entity. The CMA does not consider there are any other carriers that exert a material competitive constraint on the Merged Entity.
91. As concerns the possibility of future re-entry of British Airways, the CMA considers that this is currently uncertain and has therefore not given detailed consideration to the impact on competition that such re-entry would have.¹¹⁶
92. To the extent that evidence is available on what impact this could have, the CMA notes that (i) the market would remain highly concentrated, with only two options for customers seeking direct flights on the London-Seoul route (ie the Merged Entity and British Airways); (ii) while competitors¹¹⁷ indicated that British Airways was (before it exited the route) a stronger competitor than the suppliers discussed

¹¹¹ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 7.

¹¹² Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 19.

¹¹³ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 19.

¹¹⁴ For instance, in Summer 2021 Etihad's share of supply is [0-5]% whilst Emirates', [0-5]%.
¹¹⁵ For instance, in Summer 2021 Korean Air's share of supply is [30-40]% whereas Asiana's, [10-20]%. The third largest player is Air France-KLM with a share of supply of [10-20]%.
¹¹⁶ [X].
¹¹⁷ Third-party response to CMA's Combination Airlines Questionnaire (2021), question 7.

above, British Airway's share was half or less than a third of the Parties' combined share of supply prior to the COVID-19 pandemic;¹¹⁸ and (iii) as set out above, Asiana's and Korean Air's flights appear to be the closest alternatives to each other in light of the specific nature of their offerings.

The constraint of South Korean regulation on the Parties' ability to increase prices

93. The Parties submitted that, post-Merger, the Merged Entity will not be able to freely increase prices on the London-Seoul route as (i) prices are strictly controlled by the South Korean government¹¹⁹ and (ii) there are further restrictions on prices as a result of the remedies offered to the KFTC pursuant to its investigation of the Merger (the **KFTC Remedies**).¹²⁰
94. With respect to existing price controls under South Korean regulation, as set out above, in its assessment of whether a merger gives rise to horizontal unilateral effects, the CMA considers whether the merger removes a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. The Parties have submitted that they compete with each other and rivals on the London-Seoul route. To the extent that price controls under existing South Korean regulation restrict the Parties' ability to increase prices, the CMA understands that such controls apply to all carriers operating on the route and do not prevent the Parties or their rivals flexing their prices (at least to some extent) within applicable regulatory parameters.¹²¹ Further, the CMA notes that price is only

¹¹⁸ As set out in Table 1, in Summer 2019 (prior to the COVID-19 pandemic and British Airways' subsequent exit) British Airway's share of supply of non-stop operations on the London-Seoul route was [20%-30]% as compared with the Parties' combined share of supply of [70-80]% (of which [30-40]% was attributable to Asiana). While British Airways had a similar share of supply to Asiana for TS passengers of direct and indirect (one-stop) flights between LHR and ICN, its share of supply was approximately half the size of Asiana's for all passengers and NTS passengers only.

¹¹⁹ The Parties submitted that air carriers need to obtain an approval from the Ministry of Land, Infrastructure and Transport (**MOLIT**) or file a report with MOLIT for passenger airfares in relation to South Korea outbound flights. According to the Parties, any request must justify the current airfares and any proposed change to these. The Parties also submitted MOLIT imposes a price ceiling applicable to all cabin classes. The Parties further submitted that these rules have a spill-over effect on South Korea inbound flights particularly because charging very different fares for the same trip, depending on the location of departure may damage consumers' trust and lead to customer dissatisfaction. FMN paragraphs 25.33-25.55.

¹²⁰ Specifically, the Parties submitted that under the KFTC Remedies, the average fare for each route, each quarter and each seat class cannot be increased by more than a certain threshold. FMN paragraph 25.32.

¹²¹ The CMA understands that air fares on South Korea inbound can be increased under the South Korean regulation provided the airline company submits the necessary justification. The CMA has not received evidence that South Korean regulation prevents airlines competing with respect to price on inbound flights on the London-Seoul route. In this regard, one third party told the CMA that its submissions to MOLIT have never been challenged (note of call with a third party on 16 June 2021). Further, the CMA understands that

one parameter of competition. The CMA has not received any evidence that applicable South Korean regulation restricts the Parties' and rivals' ability to compete on other competitive parameter parameters, such as quality of services or innovation.

95. With respect to the impact of the KFTC remedies, the CMA notes that such remedies are a consequence of the Merger and, as such, should not be incorporated into the counterfactual against which the CMA assesses the competitive impact of the Merger.¹²²
96. For the reasons set out above, the CMA does not consider that existing South Korean regulation or proposed KFTC remedies are relevant factors for its assessment of the competitive impact of the Merger on the London-Seoul route.

The impact of the Merger on policy interests of the Korean Government

97. The Parties submitted that the Merger significantly affects important policy interests of the Korean Government and that, in line with the principle of comity,¹²³ the CMA should take into account the effects in and interests of South Korea in its assessment of the Merger. The Parties noted, in particular, that:
 - (a) the KDB (a South Korea state-backed entity) promoted the Merger in an effort to restructure the aviation industry in South Korea and maintain its long-term viability and, as such, that the Merger allows for the recovery of funds provided to Asiana by its state-backed creditors and the protection of the Korean airline industry and economy;¹²⁴ and
 - (b) the Merger primarily concerns customers in South Korea and will have a minimal impact on UK customers.¹²⁵
98. The Act imposes a duty on the CMA to refer anticipated mergers for an in-depth phase 2 investigation if it believes that it is or may be the case that (i) arrangements

any such regulation is applicable only to the fares on South Korea outbound flights and has not received evidence that air carriers would be dissuaded from increasing the fare for South Korea inbound flights.

¹²² [Merger Assessment Guidelines](#), paragraph 4.1.

¹²³ In this respect, the Parties referred to the principle of comity as the concept of mutual respect among equal sovereign entities and plays a role in determining the recognition which one sovereign nation allows within its territory to the legislative, executive or judicial acts of another. Parties' submission on public interest, [section 3](#).

¹²⁴ Parties' submission on public interest, [section 3](#).

¹²⁵ The Parties submitted that, even prior to the COVID-19 pandemic, [X]% or more of Korean Air's passengers on the London-Seoul route had a Korean nationality whilst only [X]% of passengers had a British nationality. Parties' submission on public interest, [section 3](#). The Parties further noted that the KFTC in its investigation of the Merger recognised the economic benefits afforded by the Merger whilst imposing a number of conditions which will further enhance competition, including on the London-Seoul route.

are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation¹²⁶ (the **jurisdictional test**) and (ii) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets for goods or services in the UK¹²⁷ (the **SLC test**).

99. The role of comity within the UK merger control regime was recently considered by the UK Competition Appeal Tribunal (the **CAT**) in *Sabre Corporation v CMA*.¹²⁸ In that judgment, that CAT noted that considerations of territoriality (and therefore comity) are already taken into account within the jurisdictional test that the CMA is required to apply. The CAT noted, in particular, that the suggestion that this test 'should be construed restrictively (whether on the basis of the principle of comity or otherwise) is contrary to the wider purposes of merger control [...] – that is, the importance of ensuring effective merger control in the public interest'.¹²⁹
100. In this case, the CMA believes (as set out in paragraph 31 above) that the jurisdictional test is met with respect to the Merger.¹³⁰
101. As concerns the CMA's substantive assessment of a merger, the CAT also noted that '[c]onsiderations of territoriality are further provided for in the SLC test, itself directed towards competition within any market or markets in the UK'.¹³¹

¹²⁶ Section 33(1)(a) of the Act. In establishing whether the jurisdictional test is met, the CMA assesses whether: the turnover test (whether the UK turnover of the enterprise being taken over exceeds £70 million) set out section 23(1)(b) of the Act is met; or the share of supply test (whether the merged enterprises both either supply or acquire goods or services of a particular description in the UK and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it) set out in section 23(3)-4) of the Act is met.

¹²⁷ Section 33(1)(b) of the Act.

¹²⁸ [Sabre Corporation v Competition and Markets Authority](#), CAT judgment of 21 May 2021, paragraph 66 '[...] we do not consider that considerations of comity assist in the resolution of the jurisdictional issues in this case. Here, Parliament has expressly identified the relevant connecting factors which enable consideration of a merger with an "extra-territorial" dimension. Both jurisdictional tests in section 23 are based on a UK territorial connection. As regards the turnover test, there exists a jurisdictional nexus with the United Kingdom because the relevant turnover arises "in the United Kingdom". As regards the share of supply test, the jurisdictional nexus to the United Kingdom is provided by the fact that the goods or services are supplied "in the United Kingdom, or in a substantial part of the United Kingdom". Considerations of territoriality (and thus comity) are addressed within the share of supply test itself.'

¹²⁹ [Sabre Corporation v Competition and Markets Authority](#), CAT judgment of 21 May 2021, paragraph 74.

¹³⁰ Korean Air also submitted that it believes that the Merger, when implemented, will constitute a relevant merger situation. FMN, paragraph 5.2.

¹³¹ [Sabre Corporation v Competition and Markets Authority](#), CAT judgment of 21 May 2021, paragraph 86.

102. In this case, the CMA has assessed whether the Merger may be expected to result in an SLC in the supply of air passenger services on the London-Seoul route (which sits within the definition of a market in the UK for the purposes of the Act).¹³²
103. Accordingly, for the reasons set out above, the CMA believes that comity considerations are already taken into account in the application of the jurisdictional test and the SLC test. The CMA does not believe that there is any other basis to take the factors raised by the Parties into account in assessing the competitive impact of the Merger in the supply of air passenger services on the London-Seoul route.

Conclusion on TOH1

104. For the reasons above, the CMA considers that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of air passenger services on the London-Seoul route.

Horizontal unilateral effects in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea (TOH2)

105. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as result of horizontal unilateral effects in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea.
106. In its assessment, the CMA has considered: (i) shares of supply; (ii) the closeness of competition between the Parties; and (iii) the competitive constraint from alternative suppliers remaining post-Merger.¹³³ The CMA has taken into account in its assessment the Parties' submissions and the views of third parties.

¹³² The CMA has also assessed whether the Merger may be expected to result in an SLC in the supply of air cargo services on the Europe to South Korea for customers transporting cargo from the UK to South Korea and the South Korea to Europe route for customers transporting cargo from South Korea to the UK, as set out in the CMA's assessment of TOH2 and TOH3 below. The CMA's assessment of the Parties' submissions on the interests of the policy interests of the Korean's government applies equally to those TOHs. This is therefore not discussed further in this decision.

¹³³ The Parties submitted that the Korean regulation discussed in paragraph 93 above restricts the Parties' ability to increase cargo airfreight fees (FMN, paragraph 25.33). As explained in relation to TOH1, the CMA does not consider that that any such regulation prevents competition as between the Parties and their rivals with respect to price or other competitive parameters and so this is not discussed further in this decision.

Shares of supply

The Parties' estimates

107. The Parties submitted estimated shares of supply for the supply of air cargo services on the Europe to South Korea route in terms of volume, based on data from CASS, TRASS, FOIS and DHL.¹³⁴ The Parties submitted that these estimates are likely to underestimate the shares of supply of their competitors. In this regard, the Parties submitted that:

- (a) Estimates for DHL using TRASS data are likely to underestimate DHL volumes. The Parties have estimated DHL's volumes only on cargo transhipped through Leipzig airport, although DHL also uses other European airports.
- (b) Cargo volumes of other integrators are based on DHL volumes. Accordingly, it is likely the cargo volumes of other integrators are also underestimated.¹³⁵

108. Table 5 below shows the Parties' estimates of shares of supply (estimated as described above).

Table 5: Europe to South Korea route, cargo volume (tonnes) and shares of supply (%), 2019-2021

Year	2019		2020		2021		
	Carrier	Volume (tonnes)	Market Share (%)	Volume (tonnes)	Market Share (%)	Volume (tonnes)	Market Share (%)
	Korean Air	[<]	[20-30]	[<]	[30-40]	[<]	[30-40]
	Asiana	[<]	[10-20]	[<]	[10-20]	[<]	[10-20]
	Combined	[<]	[40-50]	[<]	[50-60]	[<]	[40-50]
	AeroLogic	[<]	[0-5]	[<]	[5-10]	[<]	[5-10]
	DHL	[<]	[5-10]	[<]	[5-10]	[<]	[5-10]
	Turkish	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	Cargolux	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	Ethiopian Airlines	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	Finnair	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	Atlas Air	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	Lufthansa	[<]	[5-10]	[<]	[0-5]	[<]	[0-5]
	FedEx	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
	KLM	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]

¹³⁴ The shares reflect volume of cargo on direct and indirect flights taking off from Europe (including the UK) and landing in South Korea. CASS stands for Cargo Accounts Settlements System, a system that is used to simplify the billing and accounts systems between airlines and freight forwarders. Not all air cargo service suppliers settle through CASS (FMN, paragraphs 14.46(ii) and 14.50(iii)). TRASS data is collected by the South Korean customs and captures cargo that has first been trucked from the UK to a European airport before being flown to Korea (Parties' response to the issues letter, paragraph 85). FOIS (Flight Operation Information System) shows data on arrivals and departures to and from South Korea (FMN, paragraph 14.68(ii)).

¹³⁵ FMN, paragraphs 14.74-14.75.

Air France	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
UPS	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
TNT	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
Polar Air Cargo	[<]	[0-5]	[<]	[0-5]	[<]	[0-5]
Other	[<]	[20-30]	[<]	[10-20]	[<]	[10-20]
Total	[<]	100.0	[<]	100.0	[<]	100.0

Source: Issues letter response slide deck, Slide 32 (Parties' calculation based on data from CASS, TRASS, FOIS and DHL).

109. Based on the Parties' estimates, in 2021, the Parties had a combined share of the supply of air cargo services on the Europe to South Korea route of [40-50]% (with an increment of [10-20]%). The Parties are the two largest suppliers on the route. They are followed by AeroLogic, DHL, and Turkish Airlines, whose shares of supply are [5-10]%, [5-10]%, and [0-5]% respectively. The CMA therefore notes, by way of comparison, that the increment brought by the Merger is similar to the combined 2021 share of supply of the next three largest competitors on the route.
110. The CMA further notes that the COVID-19 pandemic does not appear to have had a material impact on the position of the Parties and their competitors on the Europe to South Korea route. In 2019, the Parties were the two largest players on the route with a combined share of [40-50]% (and with the Merger increment being [10-20]%). The only other competitor with a share of supply above 5% ([5-10]%) was DHL, followed by a tail of smaller players.
111. As noted above, the CMA's investigation found that there may be some important UK-specific aspects of competition which affect the strength of alternative suppliers for some customers. For example, the CMA received a number of concerns from customers transporting cargo from the UK to South Korea. These customers indicated that they do not regard the transshipment of cargo to be a desirable option and strongly prefer flights from the UK to South Korea (see paragraph 122(b)(ii) below). The CMA has therefore also considered the Parties' estimated shares of supply for the supply of air cargo services on the UK to South Korea route.¹³⁶

Table 6: UK to South Korea route, cargo volume (tonnes) and shares of supply (%), 2019-2020

Carrier	2019		2020 ¹³⁷	
	Volume (Tonnes)	Share of volume (%)	Volume (Tonnes)	Share of volume (%)
Korean Air	[<]	[20-30]	[<]	[30-40]
Asiana	[<]	[20-30]	[<]	[20-30]
Combined	[<]	[40-50]	[<]	[50-60]
Other Airlines				
IAG/British Airways	[<]	[10-20]	[<]	[5-10]
CargoLogicAir	[<]	[0-5]		

¹³⁶ The shares reflect volume of cargo on direct and indirect flights taking off from UK and landing in South Korea. These estimates were calculated using the methodology described in paragraph 107.

¹³⁷ 2021 data not provided.

Volga-Dnepr-Airlines Integrators	[<]	[0-5]		
DHL	[<]	[0-5]	[<]	[5-10]
FedEx	[<]	[0-5]	[<]	[0-5]
TNT	[<]	[0-5]	[<]	[0-5]
UPS	[<]	[0-5]	[<]	[0-5]
Others	[<]	[30-40]	[<]	[20-30]
Total	[<]	100.0	[<]	100.0

Source: FMN Table 14.39 (Parties' calculation based on data from CASS, TRASS, FOIS and DHL).

112. The CMA notes that, based on the Parties' estimates, the Parties' shares of supply are higher on the UK to South Korea route compared to the Europe to South Korea route. In 2020, their combined share of supply was [50-60]% on a UK basis compared to [50-60]% on a European basis.

TRASS data

113. In addition to the shares as described above, the Parties also provided data on volumes of cargo departing from the UK and arriving in South Korea based on TRASS data.¹³⁸ The Parties submitted that TRASS data are the most comprehensive and representative data available as they reflect the origin and actual route of shipment (including transshipment by air and truck) whereas CASS data (which are used together with other data in the Parties' estimates set out above) are based on airway bill information and reflect the origin as the airport of departure.¹³⁹

114. Table 7 below shows the cargo volumes for goods transported from the UK to South Korea from 2019 to 2021, split by the country through which the cargo is transhipped. Figures for 'direct' indicate that cargo originating in the UK is not transhipped through another country.

Table 7: Cargo volume from the UK to South Korea (TRASS data), 2019-2021

Flight type	Transshipment country	2019		2020		2021	
		Volume (tonnes)	Share of volume (%)	Volume (tonnes)	Share of volume (%)	Volume (tonnes)	Share of volume (%)
Direct	N/A	4,733	35.6	4,036	33.4	4,817	35.0
Indirect	Germany	1,118	8.4	1,535	12.7	1,946	14.1
	Netherlands	307	2.3	808	6.7	1,385	10.1
	Turkey	802	6.0	756	6.2	922	6.7
	Qatar	653	4.9	664	5.5	893	6.5
	UAE	693	5.2	459	3.8	717	5.2

¹³⁸ TRASS data is data from the Korean Customs authorities and captures all cargo entering South Korea and the true origin of that cargo. Parties' response to the issues letter, paragraph 85.

¹³⁹ Parties' response to the issues letter, paragraph 85.

	Belgium	879	6.6	658	5.4	679	4.9
	Luxembourg	265	2.0	248	2.0	424	3.1
	China (inc. HK)	847	6.4	591	4.9	404	2.9
	Azerbaijan	510	3.8	619	5.1	304	2.2
	France	264	2.0	130	1.1	229	1.7
	Russia	288	2.2	492	4.1	215	1.6
	Others	1924	14.5	1103	9.1	839	6.1
Total		13,283	100.0	12,099	100.0	13,774	100.0

Source: Updated Cargo Briefing paper, Annex 3, and issues letter Response Slide Deck, slide 10.

115. Table 7 shows that [30-40]% of cargo transported from the UK to South Korea in 2021 was transported via direct flights departing from the UK. According to the Parties, as the Parties only transport cargo from the UK to South Korea via direct flights from the UK to South Korea, their share of supply in cargo transported from the UK to South Korea is at most [30-40]%.¹⁴⁰ The Parties submitted that allocating this [30-40]% share of cargo carried from the UK to the Parties would be an overstatement of their position, as other carriers such as British Airways and providers of unscheduled flights also offer direct services.¹⁴¹

The CMA's assessment

116. The CMA considers that the Parties' estimates indicate that they have high combined shares of supply and are, by some distance, the largest players in the supply of air cargo services on the Europe to South Korea and UK to South Korea routes.

117. The TRASS data show that direct flights account for a significant proportion of cargo transported from the UK to South Korea. As the Parties are the main suppliers of direct flights from the UK to South Korea, the TRASS data therefore also confirm that they are significant suppliers of air cargo services for customers transporting cargo from the UK to South Korea (and therefore any overstatement of their market position would be limited in practice).

118. Moreover, while the TRASS data provides useful information on the extent to which customers transporting cargo from the UK to South Korea use direct and indirect flights to transport cargo to South Korea (see paragraph 11364), it provides only

¹⁴⁰ Parties' response to the issues letter, paragraph 85.

¹⁴¹ Parties' response to the issues letter, paragraph 85.

limited insight into the closeness of competition between the Parties and the extent to which the Parties' customers regard other suppliers as alternatives.

119. In any case, the CMA notes that the Parties' submission that their share of supply is at most [30-40]% based on TRASS data (see paragraph 115) is based on the position that the Parties offer only direct flights. The CMA has not been able to verify in the time available to it following the Issues Meeting whether all of the Parties' volumes of cargo transported from the UK to South Korea are on direct flights from the UK, or whether cargo originating in the UK is transhipped by land/sea to other airports in Europe and transported on the Parties' flights from those airports. It is therefore not necessarily the case that the Parties' stated share of [30-40]% provides an overstatement of their position.
120. The CMA has considered this evidence in the round together with the other evidence it received relating to closeness of competition between the Parties and the strength of the alternatives to the Parties remaining post-Merger.

Closeness of competition

121. The Parties submitted that, compared to air passenger services, demand for air cargo services is less time-sensitive, and services are less sensitive to the route format, travel time and the brand of service provider. The Parties further submitted that cargo owners are extremely sensitive to price, given the quality of air cargo services is substantially similar across all service providers.¹⁴² As evidence of this position, the Parties noted that 65% of cargo is shipped from the UK to South Korea via indirect routings (see Table 7). The Parties further noted that this indicates that there are likely to be no particular risks associated with the handling of indirect cargo compared to the handling of direct cargo.¹⁴³
122. The CMA considered the following evidence in its assessment of closeness of competition between the Parties.
- (a) In terms of market structure, the Parties are currently the two main suppliers of direct air cargo services from the UK to South Korea (see paragraph 126(a)126).

¹⁴² FMN, paragraph 13.28.

¹⁴³ Parties' response to the issues letter, paragraph 92(c).

- (b) The CMA gathered information from customers who use the Parties' air cargo flights from the UK to South Korea to transport cargo from the UK to South Korea:
- (i) All customers responding to the CMA's investigation rated both of the Parties as the strongest suppliers for transporting cargo from the UK to South Korea (taking any route into account).¹⁴⁴
 - (ii) The majority of customers that responded to the CMA's investigation raised concerns in relation to the Merger, primarily on the basis that the Parties are the main suppliers of direct air cargo services between the UK and South Korea. One noted that the Parties are the only two airlines with non-stop, direct services between the UK and South Korea.¹⁴⁵ Further, some of these customers indicated that their business needs require direct flights from the UK, whilst some others¹⁴⁶ noted that even when direct flights are not required, they remain the preferred option due to faster transit time. Some of these customers also explained that indirect cargo flights present a greater risk of logistical issues (eg delayed flights and risk of goods getting damaged or going missing).¹⁴⁷
- (c) The CMA gathered information from the Parties' competitors:

¹⁴⁴ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 8; and third-party responses to CMA's Cargo Customer Questionnaire (2021), question 11. Korean Air received an average score of 4.9 and Asiana received an average score of 4.3 (both out of 5, where 5 is very strong) and were the most common providers listed. The Parties submitted that the CMA's cargo customer questionnaire was unduly focused on UK to South Korea and, with the exception of ranking transit options, questions relating to competitors were directed to focus on 'main suppliers of Air Cargo Services from UK to South Korea', which would likely cause respondents to focus only on direct options without considering options more broadly for UK via Europe, including in relation to competitiveness for price. The CMA considers that the risk of bias in customers' responses on these grounds is low. The CMA notes that it asked customers a total of three questions specifically on their use of air cargo services for cargo travelling from the UK South Korea, the first two setting out various transit options that customers may consider to this end (including mixed transit routes where cargo is transhipped to an airport in Europe for onward transport by direct or indirect flight to South Korea) and the third asking customers who they consider to be the main suppliers of air cargo services from the UK to South Korea.

¹⁴⁵ Third-party response to CMA's Cargo Customer Questionnaire (2022), question 12.

¹⁴⁶ Third-party responses to CMA's Cargo Customer Questionnaire (2021), question 6.

¹⁴⁷ Third-party responses to Cargo Customer Questionnaire (2022), response to question 7; and third-party responses to Cargo Customer Questionnaire (2021), response to questions 6 and 10.

- (i) The vast majority of competitors responding to the CMA's investigation rated both Parties as the strongest competitors for transporting cargo from the UK to South Korea.¹⁴⁸
- (ii) One competitor responding to the CMA's investigation raised concerns, specifically relating to the provision of air cargo services, indicating that the Merger would enhance the Parties' dominant market position.¹⁴⁹

123. The Parties submitted a bidding analysis, which the Parties submit shows that they hardly encounter each other in competition for cargo transportation between the UK and South Korea.¹⁵⁰ Further, the Parties submitted that both have a low success rate in bidding for cargo tenders.¹⁵¹ In considering the weight that should be given to this analysis, the CMA notes that competition does not tend to occur via tender; the Parties stated that there are generally no contracted volumes with customers, rather, cargo sales are made by customers who make individual inquiries by email or telephone each time that they require air cargo services.¹⁵² The CMA's assessment of the Parties' tender data confirms this position, showing that cargo volumes for which the Parties have competed for by way of tender (either successfully or unsuccessfully) make up less than [X]% of the cargo carried by the Parties.¹⁵³ On this basis, the CMA considers that the analysis submitted by the Parties does not provide meaningful insight into competition in the supply of air cargo services.

124. For the reasons set out above, the CMA considers that the Parties compete closely in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea.

¹⁴⁸ Whether through a direct or indirect flight from the UK to South Korea or through transshipment by land/sea to another airport in Europe for onward transport by air to South Korea. Third-party responses to CMA's Combination Airline Questionnaire (2021), question 19; and third-party responses to CMA's Cargo Competitor Questionnaire (2022), question 10. Korean Air received an average score of 5, and Asiana received an average score of 4.6 (both out of 5). Both airlines were the most common providers listed.

¹⁴⁹ Third-party response to CMA's Cargo Competitor Questionnaire (2022), question 24.

¹⁵⁰ FMN, paragraph 16.12.

¹⁵¹ FMN, paragraph 16.14.

¹⁵² FMN, paragraph 16.1.

¹⁵³ Data supplied by the Parties indicates that the tenders awarded to the Parties to carry cargo from UK to South Korea account for less than [X]% of the Parties' volume carried on the route. The Parties submitted that this conclusion did not take into account the [X] number of bids lost by the Parties and provided data on the Parties' bids (including those lost) from Europe to South Korea in the 2018 to 2021 period (see Issues Meeting Slide deck, slide 42). This shows that over the 2018 to 2021 period, the Parties collectively bid for [X] tonnes on routes from Europe to South Korea, winning [X] of them. As set out in slide 32 of the Issues Meeting Slide deck, the Parties collectively transported [X] tonnes from Europe to South Korea over the same period. The total cargo volumes bid on (including bids not won) therefore would represent less than [X]% of the cargo transported.

Competitive constraint from alternative suppliers

125. The Parties submitted that the supply of air cargo services between Europe and South Korea and the UK and South Korea is highly competitive.¹⁵⁴ In particular, the Parties submitted that:
- (a) IAG/British Airways is currently able to compete effectively by offering direct flights between LHR and ICN pursuant to its codeshare agreement with Korean Air (the **BA Codeshare Agreement**).¹⁵⁵ Further, under the UK – South Korea Air Services Agreement (**ASA**), Korean carriers are required to have codeshares with UK carriers in order to operate cargo freighters.¹⁵⁶ Therefore, according to the Parties, Korean Air is required to maintain the codeshare agreement with IAG/British Airways and this provides significant bargaining power to IAG/British Airways when it comes to negotiating cargo rates under the BA Codeshare Agreement. In addition, British Airways has previously offered belly-hold cargo while operating direct air passenger flights between LHR and ICN and could re-enter if demand recovers.¹⁵⁷
 - (b) Non-scheduled cargo carriers can offer a direct service from the UK and these non-scheduled flights can enter at any time when demand arises. The Parties submitted that volumes of cargo transported on non-scheduled direct flights from the UK to South Korea increased by around 600% between 2020 and 2021.¹⁵⁸
 - (c) Suppliers offering indirect options (whether via indirect flights from the UK or via routes involving transshipment by land/sea and onward air transport from other airports in Europe) such as Qatar Airlines and Turkish Airways exert a significant constraint on the Parties. In this regard, the Parties submitted that risks to goods are not material, and the Parties carry indirect goods on other routes.¹⁵⁹ Moreover, according to the Parties, should the prices on the Parties' flights increase by 10%, the Parties would expect a loss of [X]% of their

¹⁵⁴ Parties' response to the issues letter, paragraph 102 and FMN, paragraph 4.2.

¹⁵⁵ The Parties submitted that British Airways' exit from air passenger services on the London-Seoul route has had no impact on the BA Codeshare Agreement with respect to air cargo services. British Airways can continue to engage with freight forwarders and use Korean Air's aircraft for the transportation of such cargo (FMN, paragraph 12.43-12.44).

¹⁵⁶ Parties' response to the issues letter, paragraph 97(d).

¹⁵⁷ FMN, paragraphs 3.2, 15.13 (ii, a), and 26.86.

¹⁵⁸ Issues letter response slide deck, slide 14.

¹⁵⁹ Issues letter response slide deck, slide 13.

customers to indirect alternatives (although no evidence was provided to substantiate this position).¹⁶⁰

- (d) Integrators are one of the most significant groups of competitors. According to the Parties, integrators transport small parcels, e-commerce cargo, vaccines and other cargo.¹⁶¹
- (e) Finally, air cargo services are characterised by excess capacity, both between the UK/Europe and South Korea routes and globally. The Parties further submitted this excess capacity is likely to continue and this drives intense competition.¹⁶²

126. The available evidence indicates that there are several alternative options for customers transporting cargo from the UK to South Korea – including other direct flights from the UK and indirect options (whether indirect flights from the UK or routes involving transshipment by land/sea to other airports in Europe). The evidence also indicates, however, that these alternatives would provide only a limited constraint on the Merged Entity.

- (a) The Parties are the only independent suppliers of scheduled direct air cargo services from the UK to South Korea (and vice versa). While IAG/British Airways offers scheduled direct air cargo services between the UK and South Korea, since exiting the supply of air passenger services on the London-Seoul route, it only does so via to the BA Codeshare Agreement. The CMA notes therefore that IAG/British Airways' ability to compete effectively pursuant to this agreement relies on Korean Air continuing to offer such capacity at commercially acceptable rates. Further, while a small number of customers identified IAG/British Airways as a strong supplier for transporting cargo from the UK to South Korea, IAG/British Airways' share of supply on the Europe to South Korea route and the UK to South Korea route prior to the COVID-19 pandemic (when it also offered belly-hold cargo on its direct air passenger flights between LHR and ICN) was small relative to the Merged Entity's. With respect to the possibility of future re-entry of IAG/British Airways' direct belly-hold cargo, the CMA considers that this is uncertain (see paragraph 91). The

¹⁶⁰ Parties' response to the issues letter, paragraph 88.

¹⁶¹ Parties' response to the issues letter, paragraph 97(c).

¹⁶² FMN, paragraphs 4.2 and 15.126. The Parties estimated the overall excess capacity and each of the Parties' excess capacity in air cargo services from Europe to South Korea based on both the Seabury and CASS data (FMN, Tables 15.26, 15.28 and 15.30, Parties' response to the issues letter response). In relation to excess capacity more generally, see Issues letter response slide deck, slide 17.

CMA therefore considers that the constraint remaining from IAG/British Airways post-Merger is likely to be weak.

- (b) The CMA estimates that non-scheduled direct services represented [10-20]% of the capacity on direct air cargo flights from the UK to South Korea route in 2021.¹⁶³ The CMA notes, however, that no third parties that responded to the CMA's investigation identified non-scheduled cargo flight providers as a main competitor or supplier for transporting cargo from the UK to South Korea.¹⁶⁴ Further, the CMA notes that all customers who responded to the CMA's investigation rated frequency of service as an important factor when choosing an air cargo supplier to transport cargo from the UK to South Korea (suggesting that non-scheduled services would generally be considered as a materially weaker alternative).¹⁶⁵
- (c) Table 5 shows that the Parties' main rivals on the Europe to South Korea route include AeroLogic, DHL, Turkish Airlines, and Lufthansa, all of which provide indirect services from the UK (via indirect flights from the UK or routes involving further transshipment). These competitors are likely to be less close competitors to the Parties, given that they do not provide direct scheduled services.
- (d) Some customers that responded to the CMA's market investigation identified limited alternatives (and in the majority of cases, no alternatives) to the Parties for transporting cargo from the UK to South Korea, while ranking the Parties as the strongest providers, with Korean Air first, and Asiana second (see paragraph 112(b)). A small number of customers listed British Airways, Air France/KLM, Cargolux, Emirates, and Etihad Airways as alternatives to the Parties, but these competitors were scored as weaker alternatives compared to the Parties.¹⁶⁶ The CMA therefore believes these carriers would exert a limited constraint on the Merged Entity. The CMA notes that the Parties' submissions that they would lose [x] proportion of customers to rivals in the

¹⁶³ FMN, Table 14.33 shows that total capacity on the UK to South Korea route in 2021 according to Seabury was 24,939 tonnes. The Parties state that, based on Seabury data, non-scheduled flights volume rose from 423 tonnes in 2020 to 3,040 tonnes in 2021 on the UK to South Korea direct route. On the Europe to South Korea route, Parties state that non-scheduled flights volume rose from [x] tonnes in 2020 to [x] tonnes in 2021, out of 483,000 tonnes (Parties' response to the issues letter, paragraph 132(c)).

¹⁶⁴ The Parties noted that IAG/British Airways operated direct non-scheduled air cargo services from the UK to South Korea in 2021 (Parties' response to the issues letter, paragraph 132(c)). The CMA has considered the remaining constraint from British Airways in paragraph 125(a) above.

¹⁶⁵ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 5. All respondents considered frequency as an important factor that is considered when selecting a supplier of air cargo services. Customers rated frequency 4 or more out of 5 (where 5 is the most important).

¹⁶⁶ Third-party responses to Cargo Customer Questionnaire (2022), question 8.

event of a price increase are entirely unsubstantiated and therefore cannot be considered to provide evidence of the strength of these alternatives.

- (e) The CMA also notes that one integrator identified by the Parties as a competitor indicated it is not materially active in the transport of cargo on the route and stated that it is focussed more on small parcels rather than cargo.¹⁶⁷

127. The CMA also considered the extent to which spare capacity exists on the Europe to South Korea route, as well as the extent to which spare capacity exists more generally, on a global basis, and could be brought on to the Europe to South Korea route:

- (a) On the Europe to South Korea route, the evidence on the current level of spare capacity is mixed. Data from Seabury¹⁶⁸, provided by the Parties, indicates that carriers such as Lufthansa have significantly increased their capacity on the route between 2019 and 2021.¹⁶⁹ The CMA notes that these carriers remain small relative to the Parties and do not operate direct scheduled flights.¹⁷⁰ In addition, the Parties provided estimates of spare capacity on the route and stated that these estimates show that there is substantial excess capacity.¹⁷¹ The CMA notes that these estimates have certain limitations. In particular, the data combines two data sources measuring different elements and may also underestimate utilisation. In light of the limitations in these data, the CMA considers that only limited weight should be placed on these estimates.¹⁷²
- (b) On the other hand, the majority of competitors responding to the CMA's investigation explained that they do not typically have capacity available to accommodate additional demand for air cargo services from the UK to South Korea.¹⁷³ Some competitors noted that there are constraints on belly cargo space or that they are operating a limited number of weekly frequencies. Finally, one competitor noted that the COVID-19 pandemic brought volatility in

¹⁶⁷ Third-party submission dated 26 November 2021.

¹⁶⁸ Seabury data shows air cargo capacity (not shipment volume) on a given direct flight, and as such, cannot be used to infer capacity from Europe to Korea via the Middle East.

¹⁶⁹ Issues letter response slide deck, slide 32.

¹⁷⁰ Table 5 shows that in 2021 Lufthansa had a share of supply of [0-5]% compared to the Parties' combined share of [40-50]%.

¹⁷¹ FMN, Table 15.26 and paragraph 15.126. The Parties' estimates indicate that capacity utilisation between Europe and Korea is 60%.

¹⁷² The numerator in the Parties' estimates is based on CASS data and the denominator is based on Seabury data. The Parties have stated that CASS data can underestimate demand, as it does not include non-scheduled charter flights and integrators and may not include all carriers that appear in Seabury data. (FMN, paragraph 14.46 and 14.50).

¹⁷³ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 13.

the market, suggesting it would be hard to estimate the available supply once air passenger services recover from the pandemic.

- (c) With regard to spare capacity on a global basis, the Parties submitted International Air Transport Association (IATA) data¹⁷⁴ which indicates that there is spare capacity in air cargo services globally. The Parties submitted that this spare capacity could be brought on to serve customers on the Europe to South Korea route. The data submitted shows that there is a cargo load factor (a measure of capacity utilisation) of 58% globally, and a cargo load factor of 70% on the Europe-Far East route. While the IATA data suggest that there is likely to be spare capacity globally in the supply of air cargo services, any expansion of capacity is likely to involve suppliers of indirect services, which are a weaker constraint on the Parties.

128. Given the above, the CMA considers that the Merged Entity will face limited competitive constraints the supply of air cargo services on the Europe to South Korea for customers transporting cargo from the UK to South Korea route post-Merger.

Conclusion on TOH2

129. Based on the evidence summarised above, the CMA considers that the Parties have high combined shares of supply and the Merged Entity will be, by some distance, the largest player in the supply of air cargo services on both the Europe to South Korea and UK to South Korea routes. Customs data on volumes of cargo transported from the UK to South Korea and its (direct and indirect) routing indicate that direct flights account for significant proportion of cargo transported from the UK to South Korea.
130. Other evidence received by the CMA also indicates that the Parties are competing closely and that the constraint from alternative suppliers on the Merged Entity will be limited post-Merger.
- (a) The Parties are currently the two main suppliers of direct air cargo services from the UK to South Korea, being the only providers of scheduled direct cargo flights other than IAG/British Airways (who currently competes only pursuant to a codeshare arrangement with Korean Air). While there are also some unscheduled direct flights, these appear to be most a weak constraint on the

¹⁷⁴ IATA gathers industry data and produces estimates relating to passenger travel, cargo, safety and flight operations. See: [IATA - Data & Statistics](#).

Parties. The Parties are therefore particularly close competitors for customers with a preference for direct flights.

- (b) Several customers of the Parties' services from the UK to South Korea expressed a strong preference for direct flights. The majority of customers that responded to the CMA's investigation raised concerns about the impact of the Merger, primarily on the basis that the Parties are the main suppliers of direct air cargo services between the UK and South Korea.
- (c) All other competitors are far smaller than the Parties (eg the next largest competitor is half the size of Air Asiana) and do not offer direct scheduled services. Some customers identified limited or no alternatives to the Parties, while ranking the Parties as the strongest providers. A small number of customers listed alternatives to the Parties but identified those alternatives as weaker than the Parties.

131. While the CMA found some evidence on recent capacity expansion on the route, the suppliers that have expanded remain small compared to the Parties and do not offer direct scheduled services (so are generally weaker competitors to the Parties than the Parties are to each other). There is no indication that any spare global capacity could be reallocated to expand the capacity of direct flights between the UK and South Korea.

132. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea.

Horizontal unilateral effects in the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK (TOH3)

133. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as result of horizontal unilateral effects in the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK.

134. In its assessment, the CMA has considered: (i) shares of supply; (ii) the closeness of competition between the Parties; and (iii) the competitive constraint from alternative suppliers remaining post-Merger. The CMA has taken into account in its assessment the Parties' submissions and the views of third parties.

Shares of supply

The Parties' estimates

135. The Parties submitted estimated shares of supply shares of supply for the supply of air cargo services on the South Korea to Europe route in terms of volume, based on data from CASS, TRASS, FOIS and DHL. The Parties submitted that these estimates are likely to underestimate the shares of supply of their competitors for the reasons set out in paragraph 107.
136. Table 8, below, shows the Parties' estimates of shares of supply (estimated as described above).

Table 8: South Korea to Europe route, cargo volume (tonnes) and shares of supply, %, 2019-2021

Year	2019		2020		2021	
Carrier	Volume (tonnes)	Market Share (%)	Volume (tonnes)	Market Share (%)	Volume (tonnes)	Market Share (%)
Korean Air	[x]	[20-30]	[x]	[30-40]	[x]	[30-40]
Asiana	[x]	[10-20]	[x]	[10-20]	[x]	[10-20]
Combined	[x]	[30-40]	[x]	[40-50]	[x]	[40-50]
Cargolux	[x]	[5-10]	[x]	[5-10]	[x]	[10-20]
Lufthansa	[x]	[10-20]	[x]	[10-20]	[x]	[10-20]
Turkish	[x]	[10-20]	[x]	[5-10]	[x]	[5-10]
KLM	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
Finnair	[x]	[5-10]	[x]	[0-5]	[x]	[0-5]
Air France	[x]	[5-10]	[x]	[0-5]	[x]	[0-5]
LOT	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
AeroLogic	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
British Airways	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
DHL	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
FedEx	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
TNT	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
UPS	[x]	[0-5]	[x]	[0-5]	[x]	[0-5]
Others	[x]	[10-20]	[x]	[10-20]	[x]	[10-20]
Total	[x]	100.0	[x]	100.0	[x]	100.0

Source: Issues letter Response Slide Deck, slide 31 (Parties' calculation based on data from CASS, TRASS, FOIS and DHL).

137. Based on the Parties' estimates, in 2021, the Parties had a combined share of the supply of air cargo services on the South Korea to Europe route of [40-50]% (with an increment of [10-20]% brought about by the Merger). The Parties' largest competitors are Cargolux, Lufthansa, and Turkish Airlines, whose shares of supply are of [10-20]%, [10-20]%, and [5-10]% respectively. The CMA notes that, based on 2021 data, post-Merger, the Merged Entity would have a share of supply of almost four times the size of the next largest player.

138. The CMA further notes that the COVID-19 pandemic does not appear to have a material impact on the position of the Parties and their competitors on the South Korea to Europe route. In 2019, the Parties' combined share by volume was [30-40]%, with a Merger increment of [10-20]% on this route. The Merger increment was larger than any other competitor's share of supply on this route in 2019.
139. As noted above, the CMA's investigation found that there may be some important UK-specific aspects of competition which affect the strength of alternative suppliers for some customers. For example, the CMA received a number of concerns from customers transporting cargo from South Korea to the UK. These customers indicated that they do not regard transshipment of cargo to be a desirable option and strongly prefer flights from the South Korea to the UK. The CMA has therefore also considered the Parties' estimated shares of supply for the supply of air cargo services on the South Korea to UK route.¹⁷⁵

Table 9: South Korea to UK route, cargo volume (tonnes) and shares of supply (%), 2019-2020

Carrier	2019		2020 ¹⁷⁶	
	Volume (Tonnes)	Share of volume (%)	Volume (Tonnes)	Share of volume (%)
Korean Air	[<]	[10-20]	[<]	[10-20]
Asiana	[<]	[5-10]	[<]	[5-10]
Combined Other Airlines	[<]	[10-20]	[<]	[20-30]
IAG/British Airways Integrators	[<]	[10-20]	[<]	[5-10]
DHL			[<]	[0-5]
FedEx			[<]	[0-5]
TNT			[<]	[0-5]
UPS			[<]	[0-5]
Others	[<]	[60-70]	[<]	[60-70]
Total	[<]	100.0	[<]	100.0

Source: FMN Table 14.40 (Parties' calculation based on data from CASS, TRASS, FOIS and DHL).

140. The CMA notes that, based on the Parties' estimates, in 2020 the Parties have a combined share of supply of [20-30]% with an increment of [5-10]%, while the only other significant competitor identified is British Airways with a share of supply of [5-10]%.

TRASS data

141. As discussed in paragraph 113, in addition to the shares as described above, the Parties have also provided shares of supply based on TRASS data.

¹⁷⁵ The shares reflect volume of cargo on direct and indirect flights taking off from South Korea and landing in the UK. These estimates were calculated using the methodology described in paragraph 113.

¹⁷⁶ 2021 data not provided.

142. Table 10 below shows the cargo volumes for goods transported from South Korea to the UK in 2021, split by the country through which the cargo is transhipped. Figures for 'direct' indicate that cargo originating in South Korea arriving in the UK is not transhipped through another country.

Table 10: Cargo volume from the South Korea to UK route (TRASS data), 2021¹⁷⁷

Flight type	Transhipment country	Volume (tonnes)	Share of volume (%)
Direct	N/A	2,118	29.2
Indirect	Qatar	1,812	25.0
	Germany	1730	23.9
	Turkey	338	4.7
	China	188	2.6
	Luxemburg	187	2.6
	Hong Kong	139	1.9
	Finland	138	1.9
	Azerbaijan	126	1.7
	France	116	1.6
	Netherlands	110	1.5
	AE	98	1.3
	Russia	93	1.3
	Others	51	0.7
Total		7,244	100.0

Source: Issues letter response slide deck, slide 11.

143. Table 10 shows that [20-30]% of cargo transported from South Korea to the UK in 2021 was transported via direct flights departing from South Korea. According to the Parties, as the Parties only transport cargo from South Korea to the UK via direct flights from South Korea to the UK, their share of supply in cargo transported from South Korea to the UK is at most [20-30]%.¹⁷⁸ The Parties further submitted that allocating this [20-30]% share of cargo carried from South Korea to the Parties would be an overstatement of their position, as other carriers such as British Airways and providers of unscheduled flights also offer direct services.

¹⁷⁷ Data only provided for 2021.

¹⁷⁸ Parties' response to the issues letter, paragraph 85.

The CMA's assessment

144. The CMA considers that the Parties' estimates indicate that they have high combined shares of supply and are among the largest players in the supply of air cargo services on the South Korea to Europe or UK routes.
145. The TRASS data show that direct flights account for significant proportion of cargo transported from South Korea to the UK. As the Parties are the main suppliers of direct flights from South Korea to the UK, the TRASS data therefore also confirm that they are significant suppliers of air cargo services for customers transporting cargo from South Korea to the UK (and therefore, any overstatement of their market position would be limited in practice).
146. Moreover, as noted in paragraph 117, while the TRASS data provides useful information on the extent to which customers transporting cargo from South Korea to the UK use direct flights and indirect to transport cargo to the UK, it provides only limited insight into the closeness of competition between the Parties and the extent to which the Parties' customers regard other suppliers as alternatives.
147. In any event, as noted at paragraph 119, the CMA notes that the Parties' submission that their share of supply is at most [20-30]% based on TRASS data (see paragraph 139, 142) is based on the position that the Parties offer only direct flights. The CMA has not been able to verify in the time available to it following the Issues Meeting whether all of the Parties' volumes of cargo transported from South Korea to the UK are on direct flights from South Korea, or whether cargo originating in South Korea is transported on the Parties' flights to other European airports and transhipped by land/sea from those airports to the UK. It is therefore not necessarily the case that the Parties' stated share of [20-30]% provides an overstatement of their position.
148. The CMA has considered this evidence in the round together with the other evidence it received relating to closeness of competition between the Parties and the strength of the alternatives to the Parties remaining post-Merger.

Closeness of competition

149. The CMA considered the following evidence in its assessment of closeness of competition between the Parties.
 - (a) In terms of market structure, the Parties are currently the two main suppliers of direct air cargo services from South Korea to the UK (see paragraph 122(a)).

- (b) The CMA gathered information from customers who use the Parties air cargo flights from South Korea to the UK to transport cargo from South Korea to the UK:
- (i) Around half of the customers that responded to the CMA's investigation rated both of the Parties as the strongest competitors for transporting cargo from South Korea to the UK (taking any route into account).¹⁷⁹
 - (ii) The majority of customers that responded to the CMA's investigation raised concerns in relation to the Merger, particularly because the Parties are the main suppliers of direct air cargo services between South Korea and the UK. The majority of customers indicated a preference for direct flights from South Korea to the UK, with one indicating they were a business requirement.¹⁸⁰
- (c) The CMA gathered information from the Parties' competitors:
- (i) All but one of the competitors responding to the CMA's investigation rated Korean Air highest, with Asiana being rated equal or second highest by all but two of the competitors for transporting cargo from South Korea to the UK.¹⁸¹
 - (ii) As noted in paragraph 122(c)(ii), one competitor responding to the CMA's investigation raised concerns, specifically relating to the provision of air cargo services, indicating that the Merger would enhance the Parties' dominant market position.¹⁸²

¹⁷⁹ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 11; and third-party responses to CMA's Cargo Customer Questionnaire (2021), question 15, Korean Air received an average score of 4.2 and Asiana received an average score of 4 (both out of 5, where 1 is very weak and 5 is very strong) and were the most common providers listed. See further footnote 149.

¹⁸⁰ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 10; and third-party responses to CMA's Cargo Customer Questionnaire (2021), question 14.

¹⁸¹ Whether through a direct or indirect flight from South Korea to the UK or to an airport in Europe for transshipment by land/sea to the UK. Third-party responses to CMA's Cargo Competitor Questionnaire (2022), question 18; and third-Third-party responses to CMA's Combination Airline Questionnaire (2021), question 27. Korean Air received an average score of 5 and Asiana received an average score of 4.5 (both out of 5) and were the most common providers listed.

¹⁸²Third-party response to CMA's Cargo Competitor Questionnaire, question 24.

150. The Parties submitted a bidding data analysis which, for the reasons discussed in paragraph 123, the CMA considers does not provide meaningful insight into competition in the supply of air cargo services.¹⁸³
151. For the reasons set out above, the CMA considers that the Parties compete closely in the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from South Korea to the UK.

Competitive constraint from alternative suppliers

152. For the reasons set out in paragraph 125, above, the Parties submitted that the supply of air cargo services between Europe and South Korea and the UK and South Korea is highly competitive.
153. The available evidence indicates that there are several alternative options for customers transporting cargo from South Korea to the UK – including other direct flights from South Korea and indirect options (whether indirect flights from South Korea or routes involving transshipment by land/sea from other airports in Europe). The evidence also indicates, however, that these alternatives would provide only a limited constraint on the Merged Entity.
- (a) As discussed in paragraph 126(a), the Parties are the only independent suppliers of scheduled direct air cargo services from the UK to South Korea. While IAG/British Airways offers scheduled direct air cargo services from the UK, since exiting the supply of air passenger services on the London-Seoul route, it only does so via to the BA Codeshare Agreement. The CMA considers that the constraint remaining from IAG/British Airways post-Merger is likely to be weak, given (i) its ability to compete effectively pursuant to the BA Codeshare Agreement relies on Korean Air continuing to offer such capacity at commercially acceptable rates (ii) while a small number of customers identified IAG/British Airways as a strong supplier for transporting cargo from South Korea to the UK,¹⁸⁴ its share of supply on the South Korea to Europe route and the South Korea to UK route prior to the COVID-19 pandemic was small

¹⁸³ Data supplied by the Parties indicates that the tenders awarded to the Parties to carry cargo from South Korea to the UK account for [x<] % of the Parties' volume carried on the Korea to UK route. The Parties submitted that this conclusion did not take into account the [x<] number of bids lost by the Parties and provided data on the Parties' bids (including those lost) from South Korea to Europe in the 2018 to 2021 period (see Issues Meeting Slide deck, slide 42). This shows that over the 2018 to 2021 period, the Parties collectively bid for [x<] tonnes on routes from South Korea to Europe, winning [x<] of them. As set out in slide 31 of the Issues Meeting Slide deck, the Parties collectively transported [x<] tonnes from South Korea to Europe over the same period. The total cargo volumes bid on (including bids not won) therefore would represent [x<] % of the cargo transported from Korea to Europe.

¹⁸⁴ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 11.

relative to the Merged Entity's and (iii) the possibility of future re-entry of its direct belly-hold cargo is uncertain.

- (b) While the Parties noted constraint from non-scheduled direct air cargo services, no third parties that responded to the CMA's investigation identified non-scheduled cargo flight suppliers as a main competitor or supplier for transporting cargo from South Korea to the UK.¹⁸⁵ Further, most customers who responded to the CMA's investigation rated frequency of service as an important factor when choosing an air cargo supplier on the route (suggesting that non-scheduled services would generally be considered as a materially weaker alternative).^{186, 187}
- (c) Table 8 shows that the Parties' main rivals on the South Korea to Europe route include Cargolux, Lufthansa, and Turkish Airlines, all of which provide indirect services from South Korea (via indirect flights from South Korea and/or routes involving further transshipment). These competitors are likely to be less close competitors to the Parties, given that they do not provide direct scheduled services.
- (d) Customers that responded to the CMA's market investigation identified limited alternatives to the Parties for transporting cargo from South Korea to the UK, with half of them ranking the Parties as the strongest providers (with Korean Air first, and Asiana second), and only one customer listed more than two alternatives to the Parties. Some customers listed Qatar Airlines, Turkish Airlines, British Airways, Cargolux, Air France, Lufthansa, Finnair, and Singapore Airlines as alternatives to the Parties, but only Qatar Airlines was rated stronger than the Parties, and none were identified more frequently than the Parties.¹⁸⁸ The CMA therefore believes these carriers would exert a limited constraint on the Merged Entity. As discussed in paragraph 126(d), the CMA notes that the Parties' submissions that they would lose [X] proportion of customers to rivals in the event of a price increase are entirely unsubstantiated

¹⁸⁵ As noted in respect of TOH2, the Parties noted that IAG/British Airways operated direct non-scheduled air cargo services from the UK to South Korea in 2021 (Parties' response to the issues letter, paragraph 132(c)). The CMA has considered the remaining constraint from British Airways in paragraph 125(a) above.

¹⁸⁶ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 5. All respondents considered frequency as an important factor that is considered when selecting a supplier of air cargo services. Customers rated frequency 4 or more out of 5 (where 5 is the most important).

¹⁸⁷ The Parties did not submit data on the proportion of capacity on direct air cargo flights from South Korea to the UK accounted for by unscheduled flights.

¹⁸⁸ Third-party responses to CMA's Cargo Customer Questionnaire (2022), question 11; and third-party responses to CMA's Cargo Customer Questionnaire (2021), question 15

and therefore cannot be considered to provide evidence of the strength of these alternatives.

- (e) As noted in paragraph 126(e), the CMA also notes that one integrator identified by the Parties as a competitor indicated it is not materially active in the transport of cargo on the route and stated that it is focussed more on small parcels rather than cargo.¹⁸⁹

154. In relation to spare capacity, the CMA considers that, for reasons similar to those set out in paragraph 127, the evidence on the extent to which there is spare capacity on the South Korea to Europe route is mixed:

- (a) On the South Korea to Europe route, data from Seabury, provided by the Parties, indicates that carriers such as Lufthansa have significantly increased their capacity on the route between 2019 and 2021.¹⁹⁰ The CMA notes that these carriers remain small relative to the Parties and do not operate direct scheduled flights.¹⁹¹
- (b) On the other hand, the majority of competitors responding to the CMA's investigation explained that they do not typically have capacity available to accommodate additional demand for air cargo services from South Korea to the UK.¹⁹²
- (c) With regards to spare capacity on a global basis, as discussed in paragraph 127(c), while IATA data suggest that there is likely to be spare capacity globally in the supply of air cargo services, any expansion of capacity is likely to involve suppliers of indirect services, which are a weaker constraint on the Parties.

155. Given the above, the CMA considers that the Merged Entity will face limited competitive constraints on the South Korea to Europe route for customers transporting cargo from South Korea to the UK post-Merger.

Conclusion on TOH3

156. Based on the evidence summarised above, the CMA considers that the Parties have high combined shares of supply and are among the largest players in the

¹⁸⁹ Third-party submission dated 26 November 2021.

¹⁹⁰ Issues letter response, paragraph 87.

¹⁹¹ Table 8 shows that in 2021 Lufthansa had a share of supply of [10-20]% compared to the Parties' combined share of [40-50]%.

¹⁹² Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 13.

supply of air cargo services on the South Korea to Europe or UK routes. Customs data on volumes of cargo transported from South Korea to the UK and its (direct and indirect) routing indicate that direct flights account for significant proportion of cargo transported from South Korea to the UK.

157. Other evidence received by the CMA also indicates that the Parties are competing closely and that the constraint from alternative suppliers on the Merged Entity will be limited post-Merger.
- (a) The Parties are currently the two main suppliers of direct air cargo services from South Korea to the UK. The Parties are therefore particularly close competitors for customers with a preference for direct flights.
 - (b) Several customers of the Parties' services from South Korea to the UK expressed a strong preference for direct flights. The majority of customers that responded to the CMA's investigation raised concerns about the impact of the Merger, primarily on the basis that the Parties are the main suppliers of direct air cargo services between South Korea and the UK.
 - (c) All other competitors would be significantly smaller than the Merged Entity and do not offer direct scheduled services. Some customers identified limited alternatives to the Parties, but generally ranked the Parties as the strongest providers.
158. As with the Europe to South Korea route, there is some evidence on recent capacity, but no indication that any spare global capacity could be reallocated to expand the capacity of scheduled direct flights between South Korea and the UK.
159. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of air cargo services on the South Korea.

BARRIERS TO ENTRY AND EXPANSION

160. 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.¹⁹³

Air passenger services on the London-Seoul route (TOH1)

The Parties' submissions

161. The Parties submitted that, while the air passenger services sector can be characterised in general by a low supply elasticity compared to other sectors (given the high cost of aircraft and inability to 'store' unsold seats), route specific investments are not static and so there is very high supply elasticity in relation to specific routes.¹⁹⁴

162. In relation to the London-Seoul route in particular, the Parties submitted that:

- (a) there are number of carriers operating indirect flights (including Lufthansa, Finnair, Etihad, Air France-KLM and Qatar Airways) on the route who are in a position to increase capacity in response to any reduction of competition;¹⁹⁵
- (b) airport slots are not a significant barrier to entry in either London or South Korea, given:
 - (i) in South Korea, while ICN is a fairly congested airport, the congestion levels have in the past not prevented air carriers from launching or expanding their capacity on routes to/from this airport. In addition, ICN has plans to increase its capacity by building a fourth runway and expand the second passenger terminal, which will be complete by 2024;¹⁹⁶ and
 - (ii) in London, there are five airports which service London and at the very least LHR and LGW are substitutable. In any event, the Parties have a limited number of slots at LHR.¹⁹⁷

¹⁹³ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

¹⁹⁴ In this respect, the Parties submitted that air carriers currently have significant capacity and flexibility to plan their network operations and so could easily expand to a single route without incurring significant costs or time. FMN, paragraph 21.3.

¹⁹⁵ FMN, paragraph 3.3.

¹⁹⁶ FMN, paragraph 21.3.

¹⁹⁷ FMN, paragraph 21.5. The Parties further noted that expansion in seats offered on a route often does not require any additional slots to be obtained as an airline can simply redeploy a larger plane to fly the route (FMN, paragraph 21.6).

The CMA's assessment

163. Based on third-party evidence, the CMA understands that there are barriers to entry and expansion in the supply of air passenger services on the London-Seoul route. In particular, third parties noted the difficulty in obtaining slots at LHR and ICN¹⁹⁸ and one third party clarified there have been no new entrants on the London-Seoul route in the last four years.¹⁹⁹ According to one third party, indirect carriers need to take other factors into account such as connectivity which might be affected by, amongst other factors, constraints on air traffic rights and limited airport slots.²⁰⁰
164. The majority of the third parties that responded to the CMA's market investigation were not able to comment on entry and expansion in relation to the London-Seoul route as they do not have visibility on this topic.²⁰¹ One respondent told the CMA that future entry is unlikely given the negative impact of COVID-19 on demand.²⁰² Another respondent indicated it would enter the London-Seoul route only if certain key barriers to entry relating to this route such as the limited availability of slots at ICN could be surmounted.²⁰³
165. Finally, in relation to the Parties' submission on the expansion of ICN airport, the CMA notes that this expansion is uncertain and that there is no current visibility on how the potential future slots will be distributed among air carriers. The CMA has therefore not placed weight on this.
166. Accordingly, the CMA considers that the evidence received does not indicate that entry or expansion will be timely, likely or sufficient to mitigate any SLC arising.

Air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea (TOH2) and the South Korea to Europe route for customers transporting cargo from South Korea to the UK (TOH3)

The Parties' submissions

167. The Parties submitted that the barriers to entry and expansion in the air cargo services market are low. In this regard, the Parties submitted carriers can be flexible in their choice of airport and slots are not a constraint.

¹⁹⁸ Third-party responses to CMA's Combination Airline Questionnaire (2021), question 10.

¹⁹⁹ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 10.

²⁰⁰ Third-party response to CMA's Combination Airlines Questionnaire (2022), question 10.

²⁰¹ Third-party responses to CMA's Combination Airlines Questionnaire (2021), question 9.

²⁰² Third-party response to CMA's Combination Airlines Questionnaire (2021), question 10.

²⁰³ Third-party response to Combination Airlines Questionnaire (2022), question 2.

168. According to the Parties, as the scheduling of air cargo takes place approximately 21 days before the flight, new flights can be scheduled, provided there are available aircrafts. In particular, the Parties submitted that:
- (a) Virgin Atlantic started providing non-scheduled air cargo flights on the ICN-LHR route in February and March 2021, and therefore is a prospective entrant;²⁰⁴
 - (b) there has been a significant increase in non-scheduled cargo supply between the UK and South Korea using direct flights (in this regard, the Parties noted in particular that Maleth Aero (Malta) increased supply significantly in 2021);
 - (c) Cargolux, Aerologic, Air China Cargo and Ethiopian Airlines expanded supply between Europe and East Asia during the COVID-19 pandemic whereas Lufthansa, Aerologic, UPS, and Ethiopian airlines expanded capacity on the Europe to South Korea route;²⁰⁵
 - (d) there are no inherent restrictions to entry from the UK ASA, as the agreement only covers two London airports, ie LHR and LGW;²⁰⁶ and
 - (e) to the Parties' knowledge, many European countries do not have material restrictions for additional flights.

The CMA's assessment

169. Most of the competitors that responded to the CMA's market investigation told the CMA that it is difficult to enter routes that serve customers sending cargo from the UK to South Korea and from South Korea to the UK. According to these competitors, this is because of the strong position of the incumbents. Some of these competitors noted that entry is difficult given the length of the flight and the trusted service level of the incumbents.²⁰⁷

²⁰⁴ The Parties submitted Virgin Atlantic's total volume of supply to arrivals in South Korea was [redacted] (which amounts to [0-5]% of share based on FOIS data and [0-5]% based on CASS data).

²⁰⁵ FMN, paragraphs 22.15-22.21 and Parties' response to the issues letter, paragraph 132(c).

²⁰⁶ Parties' response to the issues letter, paragraph 135.

²⁰⁷ Third-party responses to CMA's Combination Airlines Questionnaire, question 30; Third-party responses to CMA's Cargo Competitor Questionnaire, question 21.

170. Furthermore, regardless of whether multiple European countries have open sky agreements²⁰⁸ or permissive regimes with South Korea,²⁰⁹ some competitors told the CMA that there are barriers to expansion such as limits to the number of weekly flights (for both cargo and passenger) between their hub country and South Korea.²¹⁰
171. Given the above, the CMA considers that evidence received in the investigation does not indicate that entry or expansion will be timely, likely or sufficient to mitigate any SLC arising.

COUNTERVAILING BUYER POWER

172. The Parties submitted that:
- (a) in relation to the supply of air passenger services, customers are well informed and select their service provider on the basis of their preferences.²¹¹
 - (b) in relation to the supply of air cargo services, customers are sophisticated purchasers with access to pricing information concerning the Parties and their competitors. The Parties further noted customers usually appoint freight forwarders to arrange the shipment of their goods²¹² and that, in line with the Commission's precedent, major freight forwarders are able to exert a certain degree of countervailing buyer power vis-à-vis air cargo carriers.²¹³ Additionally, the Parties submitted that some freight forwarders have their own dedicated air cargo fleet whilst others can lease aircraft from airlines with excess capacity.²¹⁴
173. As set out in the CMA's guidance, most forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – and are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because

²⁰⁸ An open sky agreement between two countries grants airlines from the countries involved operational rights to fly passengers and cargo in and out of the other country in question.

²⁰⁹ The Parties submit that Austria, Denmark, Finland, Germany, Greece, Portugal, Spain, and Sweden have open sky agreements, and Belgium, Italy and the Netherlands have permissive regimes. Parties' response to the issues letter, paragraph 135.

²¹⁰ Third-party response to CMA's Combination Airlines Questionnaire (2021), question 13 and; third-party response to CMA's Cargo Competitor Questionnaire (2022), question 13.

²¹¹ FMN, paragraph 23.1.

²¹² The Parties submitted that, based on 2019 data, the top ten freight forwarders account for [§<] % of volume on the UK to South Korea route.

²¹³ M. 5141 *KLM/Martinair* (17 December 2008) paragraph 52.

²¹⁴ FMN, paragraphs 23.2-23.6.

a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced.²¹⁵ For the reasons set out in detail above, the CMA believes that the Parties' customers will not have good alternatives to switch to post-Merger. On this basis, the CMA does not consider that customers will be able to exert buyer power to prevent an SLC arising.

THIRD-PARTY VIEWS

174. The CMA contacted customers that use the Parties' air cargo services. The CMA also contacted competitors of the Parties both in relation to air passenger services and air cargo services.
175. A significant majority of customers raised concerns that the Merger may result in a reduction of competition in relation to the supply direct cargo services between the UK and South Korea and may lead to price increases.
176. Almost half of the competitors in the supply of air cargo services raised concerns regarding the impact of the Merger on competition, whereas the majority of the competitors in the supply of air passenger services did not raise concerns in relation to the Merger. A small number of competitors submitted that the Merger would strengthen the Parties' presence on the London-Seoul route and at ICN.
177. Third-party comments have been taken into account where appropriate in the competitive assessment above.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

178. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of:
 - (a) horizontal unilateral effects in the supply of air passenger services on the London-Seoul route;
 - (b) horizontal unilateral effects in the supply of air cargo services on the Europe to South Korea route for customers transporting cargo from the UK to South Korea;

²¹⁵ [Merger Assessment Guidelines](#), paragraph 4.20.

- (c) horizontal unilateral effects in the supply of air cargo services on the South Korea to Europe route for customers transporting cargo from the South Korea to UK.

DECISION

179. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
180. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²¹⁶ The Parties have until 21 November 2022²¹⁷ to offer an undertaking to the CMA.²¹⁸ The CMA will refer the Merger for a phase 2 investigation²¹⁹ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides²²⁰ by 28 November 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
14 November 2022

²¹⁶ Section 33(3)(b) of the Act.

²¹⁷ Section 73A(1) of the Act.

²¹⁸ Section 73(2) of the Act.

²¹⁹ Sections 33(1) and 34ZA(2) of the Act.

²²⁰ Section 73A(2) of the Act.