EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.11071 - DEUTSCHE LUFTHANSA / MEF / ITA

(Only the English text is authentic)

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8(2) Regulation (EC) 139/2004

Date: 3/7/2024

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EUROPEAN
COMMISSION

Brussels, 3.7.2024
C(2024) 4729 final

COMMISSION DECISION

of 3.7.2024

declaring a concentration to be compatible with the internal market and the EEA agreement

(Case M.11071 – DEUTSCHE LUFTHANSA / MEF / ITA)

(Only the English text is authentic)

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COMMISSION DECISION

of 3.7.2024

declaring a concentration to be compatible with the internal market and the EEA agreement

(Case M.11071 – DEUTSCHE LUFTHANSA / MEF / ITA)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[2], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 23 January 2024 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

1. INTRODUCTION

(1) On 30 November 2023, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which Deutsche Lufthansa AG ("Lufthansa" or "DLH") and the Ministry of Economy and Finance of Italy ("MEF") will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control over Italia Trasporto Aereo S.p.A. ("ITA") (all together the "Parties") by way of a purchase of shares (the "Transaction").

(2) **Lufthansa** and **ITA** operate an extensive network of routes from their respective hubs in Austria, Belgium, Germany, Switzerland and Italy. Lufthansa has joint ventures with United Airlines and Air Canada for transatlantic routes as well as with All Nippon Airways for routes to Japan. The joint venture partners coordinate on price, capacity and scheduling and share revenues. Therefore, the Commission treats each joint venture as a single entity in its assessment.

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1 OJ C 115, 9.8.2008, p.47.

2 OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2. THE PARTIES AND THE TRANSACTION

2.1. The Parties

(3) Lufthansa is the holding company of the Lufthansa Group which is headquartered in Cologne, Germany. Its air transport business includes, inter alia, Lufthansa Passenger Airlines, Swiss International Air Lines Ltd. ("SWISS"), Brussels Airlines S.A./N.V. ("Brussels Airlines"), Austrian Airlines AG ("Austrian Airlines"), Air Dolomiti L.A.R.E. S.p.A. ("Air Dolomiti"), Eurowings GmbH ("Eurowings"), EW Discover GmbH ("EW Discover"), Edelweiss Air AG ("Edelweiss") and its joint venture with 7•UN +DYD <ROODUÕ $ 2 ³7XUNLVK $LUOLQHV´ ("SunExpress"). Lufthansa operates hubs in Frankfurt, Munich, Brussels, Zurich and Vienna. Lufthansa is also a member of the global airline alliance Star Alliance. Furthermore, Lufthansa has, among others, joint ventures with United Airlines and Air Canada for transatlantic routes ("A++ JV") as well as with All Nippon Airways ("ANA") for routes to Japan ("J+ JV"). In addition, Lufthansa has a joint venture with Air China covering routes between Europe and China ("C+ JV"). The JV partners coordinate on price, capacity and scheduling and share revenues. Lufthansa is active worldwide.

(4) MEF carries out the tasks and responsibilities of the Italian Government in the fields of economic policy, financial policy, budgeting, and tax policies. MEF holds shareholdings in public and strategic companies in Italy, among others in the transport sector (ENAV S.p.A., Ferrovie dello Stato) and is the sole shareholder in ITA. The undertakings in which MEF has shareholdings are active worldwide.

(5) ITA is an Italian airline company, created by the Italian State on 9 October 2020, which is active worldwide. It is headquartered in Rome. ITA is wholly owned by the MEF and is a member of the global airline alliance Sky Team.

2.2. The Transaction

(6) According to an Investment Agreement dated 16 June 2023, MEF and Lufthansa will each contribute to a capital increase of ITA (EUR 250 million and 325 million respectively). Following the capital increase, Lufthansa will hold a stake of 41% in ITA, […] and MEF will hold the remaining 59%, […].

(7) Lufthansa will have the right to exercise a fixed-price call option [details on options].[3]

(8) [Details on options].[4]

(9) The Parties explained that they [details on options][5]

(10) Lufthansa and MEF state that […][6] […].[7]

2.3. Joint control

(11) Following the Transaction, ITA's board will consist of five directors, two appointed by […Lufthansa] and three by […MEF…].[8] Each Party will have the power to remove and replace the directors it appointed.[9]

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3 Form CO, paragraph 273 and response to RFI-23, questions 1 and 3.
4 Form CO, paragraph 274 and response to RFI-23, question 3.
5 Response to RFI-28, question 1.
6 Form CO, paragraph 240.
7 Form CO, paragraph 281.
8 Form CO, paragraph 255.

(12) In addition to the right of each of Lufthansa and MEF to appoint directors to the board, [details on governance structure][10] [details on governance structure].[11] [Details on governance structure], the CEO will be appointed by the board among Lufthansa's two directors according to Lufthansa's choice.[12]

(13) [Details on governance structure].[13] [Details on governance structure].[14] As acknowledged by Lufthansa and MEF, the Reserved Matters relate to the strategic decisions that go beyond rights normally accorded to minority shareholders to protect their financial interest, and usually confer upon the holder the power to exercise decisive influence on the commercial policy of an undertaking.[15]

(14) Veto rights which confer joint control typically include decisions on issues such as the budget, business plan or the appointment and dismissal of senior management.[16] Consequently, this indicates that with the Transaction Lufthansa and MEF acquire joint control over ITA.

(15) Lufthansa and MEF argue however that the Transaction is an acquisition of sole control over ITA by Lufthansa.[17] They invoke four arguments pertaining to the context of the privatisation decrees (section 2.3.1), Lufthansa and MEF's roles in the board of directors (section 2.3.2), Lufthansa's role in appointing the CEO (section 2.3.3) and MEF's role as a "leaving shareholder" (section 2.3.4).

2.3.1. Context of the privatisation decrees

(16) Lufthansa and MEF argue that the Transaction "takes place pursuant to and in compliance with… decrees foreseeing the privatization of ITA with an airline as a majority shareholder and with its 'overriding involvement in the management' of ITA."[18] The Commission notes however that the Decree of the President of the Council of Ministers, issued on 22 December 2022, on the sale of MEF's shares in ITA ("Decree")[19] in fact seems to insist on MEF's control over ITA post-Transaction:

(a) Lufthansa and ITA themselves explain that the Decree, which superseded an earlier decree of 11 February 2022,[20] "removed the provision originally setting that the MEF would have only been able to retain a non-controlling minority share."[21]

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9 Response to RFI-14, question 22.

10 These are typically the "chief" officers such as chief financial officer ("CFO"), chief operating officer ("COO"), etc.

11 Response to RFI-14, question 24.

12 Form CO, paragraphs 268-269.

13 Form CO, paragraph 256.

14 Form CO, paragraph 256.

15 Form CO, paragraph 257, making reference to the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p.1) (the "CJN"), recital 69.

16 CJN, recitals 68-70.

17 Nevertheless, the Parties have stated in the Form CO, paragraph 200, that should the Commission find that post-Transaction, Lufthansa and MEF will jointly control ITA, then MEF should be considered as a notifying party. Accordingly, MEF signed the notification alongside Lufthansa.

18 Form CO, paragraph 283, fifth bullet point.

19 Decreto del Presidente del Consiglio dei ministri 22 dicembre 2022, Procedura di dismissione della partecipazione del Ministero dell'economia e delle finanze in ITA S.p.a. (22A07448) (GU n.1 del 2-1-2023).

20 Form CO, paragraph 14 and 19.

21 Form CO, paragraph 19.

(b) The Decree states in its preamble that "the divestment [of MEF's] participation in [ITA] can be achieved in several phases, without prejudice to the recognition in each phase of [MEF's] adequate powers to oversee the pursuit of the aforementioned objectives"[22] that is, industrial development and strengthening of ITA's activities.[23] In their Response to the SO the Parties argued that the Commission misinterpreted the Decree and [details on transaction structure rationale][24] The Commission notes that this explanation does not affect the conclusion that during the phased divestment MEF will have decision-making powers that grant it joint control over ITA.

(c) The Decree also states in its preamble that the sale procedure of ITA should be limited to parties that "are able to acquire an initial shareholding in [ITA] of such a size as to confirm the seriousness of the commitment as well as subsequently acquire control or a majority of the capital" [emphasis added].[25] This Recital confirms that the intention of the Italian State is that the buyer should not acquire sole control immediately with the Transaction but only at a later stage, presumably with the exercise of one the different options held by Lufthansa or MEF.

(d) The Decree stipulates in the operative part that MEF should have "adequate powers of control over the management" of ITA[26] as well as control mechanisms "on decisions relevant to the pursuit of the development and strengthening objectives" of ITA.[27]

2.3.2. Lufthansa and MEF's roles in the board of directors

(17) Lufthansa and MEF argue that while no strategic business decision can be adopted solely with the votes of Lufthansa's directors, […],[28] for the following reasons.

(18) First, Lufthansa and MEF argue that the Investment Agreement provides that [details on agreement terms].[29] The Commission notes however that, with the exception of the appointment of the CEO, the Investment Agreement does not constrain the vote of the MEF directors with respect to strategic decisions, [details on agreement terms].

(19) Second, Lufthansa and MEF argue that, according to Italian law, MEF does not exercise "management and coordination activities" over the companies in which it holds a shareholding.[30] However, the provisions of Italian law referred to relate to the liability of management companies towards the shareholders of the companies they manage. They do not affect the ability of MEF to influence the commercial strategy of ITA through the appointment of directors to ITA's board. In fact, Lufthansa and MEF themselves argue, as explained in the paragraph above, that indeed [details on agreement terms].[31]

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22 Decree, Preamble, Recital 12.
23 Decree, Preamble, Recital 11.
24 Response to the SO, paragraph 700, first bullet point.
25 Decree, Preamble, Recital 13.
26 Decree, Article 1, sub-Article 4(b)(ii).
27 Decree, Article 1, sub-Article 4(b)(iii).
28 Form CO, paragraph 260; response to the Article 6(1)(c) decision, paragraph 332.
29 Form CO, paragraph 261.
30 Form CO, paragraph 262.
31 Form CO, paragraph 261.

(20) Third, Lufthansa and MEF argue that the Italian competition authority (Autorita Garante della Concorrenza e del Mercato, "AGCM") has repeatedly expressed the principle of the autonomy of the entities in which MEF holds a stake in making strategic and operational decisions.[32] However, as further explained by Lufthansa and MEF, the findings of the AGCM did not relate to the question of control but to the question whether all companies controlled by MEF are to be considered as a single group.[33] The Commission notes, that in the decisions invoked by Lufthansa and MEF the AGCM did in fact find that it was MEF who acquired control of the targets. These decisions therefore do not lend support to the argument that MEF would not control ITA post-Transaction.

(21) Fourth, Lufthansa and MEF argue that, since Lufthansa would be the ITA shareholder with industrial expertise, and since […].[34]

(22) The Commission notes that even though Lufthansa would play a major role in ITA's operations,[35] there is no indication that post-Transaction MEF would lose interest in the management of ITA, leaving it entirely in the hands of Lufthansa. In fact, as acknowledged also by Lufthansa and MEF,[36] the Decree had the aim of concluding an industrial partnership for ITA to pursue the objective of ITA's industrial development and future growth, with particular focus on the development of national hubs and its entry into strategic markets and increase of long-haul routes.[37] For that purpose the Decree stipulates that MEF should have "adequate powers of control over the management of ITA,[38] as well as control mechanisms "on decisions relevant to the pursuit of the development and strengthening objectives of ITA.[39] It arises from the Decree that the Italian State has plans for the future strategic development of ITA and, to guarantee that, MEF intended to retain control over ITA.

(23) In a submission relating to Lufthansa's transatlantic JV (see paragraph (3) above), the Parties added that post-Transaction "MEF being a 59% shareholder in ITA postclosing, MEF will clearly have a strong interest in developing ITA's profitability, […]."[40] They further stated that "MEF will post-closing have the necessary governance powers to enable the above benefits to be archived. Consequently, […]."[41]

(24) The Commission further notes that according to recital 67 of the CJN "it is not necessary to establish that an acquirer of joint control of the joint venture will actually make use of its decisive influence. The possibility of exercising such influence and, hence, the mere existence of the veto rights, is sufficient

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32 Form CO, paragraph 263, referring to C12382 - MINISTERO DELL'ECONOMIA E DELLE FINANZE/SACE, 03.08.2021, and C12107 – MINISTERO DELL'ECONOMIA E DELLE FINANZE/BANCA MONTE DEI PASCHI DI SIENA, 18.10.2017.

33 Response to RFI-24, question 1.

34 Form CO, paragraphs 264-265; response to the Article 6(1)(c) decision, paragraph 335-338; response to the SO, paragraph 700, fourth and fifth bullet points.

35 From CO, paragraph 272.

36 Form CO, paragraph 19.

37 Decree, Article 1, sub-Article 4.a): "Il Ministero dell'economia e delle finanze avvia la trattativa in esclusiva con il soggetto o i soggetti individuati ai sensi dei commi precedenti, al fine di definire, anche con la partecipazione di ITA S.p.a.: a) il piano industriale di sviluppo e crescita di ITA S.p.a., con particolare attenzione allo sviluppo degli hub nazionali, all'ingresso in mercati strategici e all'incremento delle rotte a lungo raggio;"

38 Decree, Article 1, sub-Article 4(b)(ii).

39 Decree, Article 1, sub-Article 4(b)(iii).

40 Parties' Submission on JV Partners, 15 March 2024, paragraph 10.

41 Parties' Submission on JV Partners, 15 March 2024, paragraph 11.

Furthermore, even if MEF were to become post-Transaction a mere financial investor in ITA, quod non, the Commission notes that recital 81 of the CJN explains that "joint control is not incompatible with the fact that one of the parent companies enjoys specific knowledge of and experience in the business of the joint venture. In such a case, the other parent company can play a modest or even non-existent role in the daily management of the joint venture where its presence is motivated by considerations of a financial, long-term strategy, brand image or general policy nature. Nevertheless, it must always retain the real possibility of contesting the decisions taken by the other parent company on the basis of equality in voting rights or rights of appointment to decision making bodies or of veto rights related to strategic issues". As explained in paragraphs (11)-(14) above, post-Transaction MEF will enjoy rights of appointment to decision making bodies as well as veto rights related to strategic issues.

(25) Furthermore, […] it is likely that MEF would maintain its interest in the commercial policy of ITA for the foreseeable future, considering that [details on investment agreement].

(26) Fifth, Lufthansa and MEF recall the legal duties of directors towards the company, its shareholders, creditors and third parties. Lufthansa and MEF argue that considering these legal duties and the fact that Lufthansa would be the shareholder of ITA with industrial expertise, the MEF directors are unlikely to vote differently than the CEO of ITA (and a Lufthansa appointed director), "particularly if this could result detrimental to the interests of the company".[42] The Commission notes however that as explained in paragraph (22) above, MEF has a strategic vision for ITA and aims to maintain control in order to achieve it. Furthermore, as explained in paragraph (22) above, MEF enjoys rights of joint control over ITA and it cannot be concluded that Lufthansa would exercise sole control over ITA by virtue of its industrial expertise. Moreover, joint control is also in line with how Lufthansa describes the aftermath of the Transaction in its Annual Report 2023: "The Lufthansa Group is in close contact with the relevant authorities in order to obtain approval for the transaction as soon as possible and take ***joint operational responsibility*** [emphasis added] for ITA Airways".[43]

(27) Sixth, Lufthansa and MEF argue that the conclusion that Lufthansa would have sole control is consistent with the Commission's practice to find sole control when a minority shareholder alone was able to create deadlock situations by blocking key decisions.[44] The Commission notes however that post-Transaction both Lufthansa and MEF will be able to create such deadlock situations, leading to the joint control.

2.3.3. Lufthansa's role in appointing the CEO

(28) Lufthansa and MEF argue that the conclusion that post-Transaction Lufthansa will solely control ITA "is further reinforced by the fact that the Board of Directors shall appoint the CEO among [the Lufthansa] directors, who are selected by [Lufthansa]…

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42 Form CO, paragraph 266.

43 Lufthansa Annual Report 2023, page 145, available at https://report.lufthansagroup.com/2023/annual-report/en/ (last accessed on 11 March 2024).

44 Form CO, paragraph 267; see also Response to the SO, paragraph 700, second bullet point. These are however situations where there are more than two shareholders, none of whom can unilaterally adopt strategic decisions for the company. However, one (and only one) of these shareholders does enjoy veto rights that allow it (and only it) to block strategic decisions. In past decisions the Commission found that such a shareholder would exert sole control over the company. See Cases M.5335 – Lufthansa/SN Airholding, paragraph. 7 and M.2777 – Cinven limited/Angel street holdings, paragraph 8.

[details on governance structure]".[45] According to Lufthansa and MEF this would mean that Lufthansa would have "the right to manage the activities of the company and to determine its business policy on the basis of the organisational structure" which the CJN in recital 57 considers as a possibility for a minority shareholders to exercise sole control.[46]

(29) This argument cannot be accepted. First, recital 57 of the CJN relates to circumstances in which only the minority shareholder by virtue of specific rights can determine the business policy of the company. This would not be the case of ITA post-Transaction where both Lufthansa and MEF will have veto rights over strategic decisions. Second, as explained by Lufthansa and MEF, [details on governance structure] that, as explained in paragraphs (11)-(14) above, refer to [details on governance structure]. Therefore, it cannot be said that post-Transaction the CEO is able to determine the strategic commercial behaviour of ITA.

(30) In their response to the Article 6(1)(c) Decision (see paragraph (47) below) the Parties argued that "the evidence of sole control is further reinforced [details on governance structure]. In fact, if MEF already enjoyed the level of influence generally attached to a majority share, it would not need this additional protection."[47]

(31) The Commission considers that for the reasons explained above, MEF will exert immediately post-Transaction joint control over ITA even without veto power over the appointment of the CEO. The fact that in the future [details on governance structure] does not affect the conclusion that immediately post-Transaction MEF will have sufficient powers to exert joint control over ITA.

2.3.4. MEF's role as a "leaving shareholder"

(32) Lufthansa and MEF argue that "MEF is a 'leaving shareholder' insofar [details on investment agreement]".[48] According to the Commission's decision practice, this 'together with other elements, may lead to the conclusion that there is de facto sole control.'"[49] […] "it is believed that MEF would not attempt to jeopardize the financial and commercial support by [Lufthansa]",[50] a belief reinforced because MEF […].[51]

(33) The Commission notes that the CJN states in recital 60 that "an option to purchase or convert shares cannot in itself confer sole control unless the option will be exercised in the near future according to legally binding agreements. However, in exceptional circumstances an option, together with other elements, may lead to the conclusion that there is de facto sole control." It is not disputed by Lufthansa and MEF that [details on options].[52] This conclusion is reinforced by the fact that [details on options]. The question is therefore whether in the case at hand there are "exceptional circumstances" and "other elements" that would lead to the conclusion that Lufthansa's options confer on it de facto sole control over ITA.

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45 Form CO, paragraphs 268; Response to the SO, paragraph 700, third bullet point.

46 Form CO, paragraphs 269.

47 Response to the Article 6(1)(c) decision, paragraph 334. See also Form CO, paragraph 271 referring to Clause 16.5 of the Investment Agreement.

48 See paragraphs (7) and (8) above.

49 Form CO, paragraph 275, citing recital 60 CJN.

50 Form CO, paragraph 277; response to the 6(1)(c) decision, paragraph 37.

51 Form CO, paragraphs 278-280.

52 Form CO, paragraph 273.

(34) The Commission does not consider that in this case there are "exceptional circumstances" and "other elements" that lead to the conclusion that post-Transaction Lufthansa will exercise sole control over ITA. As explained in paragraphs (11)-(14) and (25) above, post-Transaction MEF will enjoy rights that would allow it to influence strategic matters that determine the commercial policy of ITA, and there is no indication that post-Transaction MEF would lose interest in the management of ITA leaving it entirely in the hands of Lufthansa.

(35) The two Commission decisions cited by Lufthansa and MEF[53] do not support their argument. In the first case, Ford had the power, at its sole discretion and at any time, to convert shares that would grant it control over the company within a matter of hours and without any further cash disbursement.[54] In the case at hand, [details on options].[55]

(36) In the second case, the Commission found that, post-Transaction, Arla had the right to determine all main business decisions of the target on its own although it acquired only 30% of the shares in the target. The existence of an unconditional call option for Arla to purchase the remaining 70% of share was only "supporting" the view that Arla already controlled the target as from the acquisition of the 30% shareholding.[56] In the case at hand, Lufthansa will not have the right, post-Transaction, to determine all main business decisions on its own, since those will require the consent of MEF.

2.3.5. Conclusion on joint control

(37) For the reasons set out in section 2.3, the Commission concludes that post-Transaction Lufthansa and MEF will jointly control ITA. There are no indications that MEF would relinquish its contractual veto rights and follow Lufthansa's decision-making after the Transaction. Instead, there are clear indications, that MEF, implementing the Decree, may pursue specific objectives with its shareholding in ITA.

(38) In view of the above conclusion, as accepted by Lufthansa and MEF,[57] they are also both considered as notifying parties.

2.4. Full functionality

(39) Post-Transaction ITA will operate as a full function joint venture. It will continue to operate on a lasting basis with its own presence on the market, with management dedicated to its day-to-day operations and access to sufficient resources (finance, staff and assets). ITA's activities will go beyond a specific function of its parents.[58]

3. UNION DIMENSION

(40) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Lufthansa: EU […]; MEF:[59] EUR […]).[60] Each of them has

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53 Form CO, paragraphs 275 and 283.

54 Case IV/M.397 – Ford/Hertz, paragraph 4.

55 Response to RFI-23, question 2.

56 Case M.4323 – Arla/Ingman Foods, paragraph 8.

57 See footnote (19) above.

58 Response to RFI-22, question 4.

59 The turnover of MEF is based only on the turnover of ITA, excluding other undertakings controlled by MEF. The turnover of ITA alone is sufficient for the Transaction to have Union dimension.

60 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the CJN. Pursuant to paragraph 156 CJN, the relevant date for establishing jurisdiction is 2019, and pursuant to paragraph 169 CJN, the relevant year for the turnover data is 2018.

a Union-wide turnover in excess of EUR 250 million (Lufthansa: EUR […]; ITA: EUR […]).[61] They do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.[62]

(41) The Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. THE PROCEDURE

(42) On 20 March 2023, Lufthansa and MEF submitted the first draft notification to the Commission. This initiated pre-notification discussions between the Commission and the Parties to discuss the amount of information to be provided in a notification. Subsequently, the Parties took a long time to respond to the Commission's pre-notification requests to add information to the draft notification. For instance, Lufthansa and MEF submitted the second draft notification on 15 August 2023, around five months after the first draft notification. Both draft notifications were incomplete, however, as they were missing essential information, such as up-to-date market data, forward-looking assessments, information on joint ventures, information on ITA's financials, internal documents, and information on the governance of ITA. In reaction, the case team sent additional questions to the Parties on 29 August 2023, to which the Parties responded on 27 October 2023, albeit in an incomplete manner. The Commission sent additional questions to the Parties on 31 August 2023, 19 October 2023, 27 October 2023 and 17 November 2023, to which the Parties responded respectively on 17 October 2023, 3 November 2023, 13 November 2023 and 28 November 2023.

(43) On 22 June 2023, in parallel to the pre-notification discussions, […].

(44) On 7 August 2023, the Commission adopted a Statement of Objections on that derogation request, informing Lufthansa and ITA that, on a preliminary basis, the measures envisaged, which would have amounted to an important step towards the integration of Lufthansa's and ITA's activities, (i) fell under the suspension obligation pursuant to Article 7(1) of the Merger Regulation and (ii) did not meet the conditions set in Article 7(3) of the Merger Regulation. The latter was because (a) the suspension obligation imposed by the Merger Regulation would not have led to serious harm to Lufthansa, ITA or third parties; (b) the envisaged measures could have had adverse effects on passengers, and (c) the Transaction raised prima facie competition concerns possibly affecting a large number of routes and passengers. On 21 August 2023, following the adoption of the Statement of Objections, Lufthansa and ITA withdrew their request for derogation.

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61 Turnover calculated on the basis of the "50/50 split" method, which consists in allocating the revenue from an individual route operated by an air carrier in a 50%/50% ratio to the country of origin and the country of final destination so as to take into account the cross-border character of the service provided (see for example case M.4439 – Ryanair / Aer Lingus, paragraph 18). Lufthansa does not account for its turnover on the basis of the "50/50 split" method and was therefore able to provide only estimates of its turnover on this basis. Lufthansa only calculates its turnover on the basis of the "point of sale" method which consists in allocating the turnover to the country where the ticket sale occurred. Under this method Lufthansa's Union-wide turnover in 2022 was EUR […] and ITA's EUR […]. Under the "place of departure" (or "point of origin") method, which consists in allocating the revenue from an individual route operated by an air carrier to the country where the place of departure of the flight is located, Lufthansa estimates its 2022 turnover was EUR […] and ITA's turnover was EUR […]. The Transaction has therefore Union dimension under all three methods.

62 This can be established on the basis of ITA's turnover alone (see footnote 59 above) because already Lufthansa does not achieve more than two-thirds of its Union-wide turnover in a single Member State.

(45) The Transaction was notified to the Commission on 30 November 2023.

(46) On 8 January 2024, Lufthansa and MEF proposed commitments under Article 6(2) of the Merger Regulation. Those commitments were, however, not market tested by the Commission because they did not address all the areas of preliminary competition concerns that had been identified by the Commission.

(47) On 23 January 2024, the Commission raised preliminary competition concerns as to the compatibility of the Transaction with the internal market and the functioning of the EEA Agreement and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation ("the Article 6(1)(c) Decision"). The Commission concluded that the Transaction raised preliminary competition concerns as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to (i) the supply of scheduled passenger air transport services on 38 points of origin/points of destination (O&D) markets (namely 28 short-haul routes[63] and 10 long-haul routes[64]) and additional long-haul routes between Italy and the following destinations: New York, Washington, San Francisco, Chicago and, Toronto, on which currently no airline provides a non-stop connection,[65] as defined in section 6.6[66]; (ii) the potential creation or strengthening of a dominant position at Milan-Linate airport (LIN), leading to potential foreclosure concerns in relation to the provision of passenger air transport services from and to LIN[67]; and (iii) to the potential market for the provision of ITA's feeder traffic to services operated by other air carriers in competition with the Parties on various international routes.[68]

(48) The Article 6(1)(c) Decision also found that the commitments proposed by the Parties on 8 January 2024 were not sufficient to eliminate the Commission's preliminary competition concerns as to the compatibility of the Transaction with the internal market, for the reasons described in that decision.

(49) On 24 and 26 January 2024, the Commission provided non-confidential versions of certain key submissions by third parties collected during the Phase I investigation to the Parties.

(50) Following its 6(1)(c) Decision, the Commission conducted its Phase II market investigation. As a result, the present Decision is based on evidence collected by the Commission during the pre-notification stage and the Phase I and Phase II investigations.

(51) On 5 February 2024, the Parties submitted their written comments on the Article 6(1)(c) Decision ("Response to the Article 6(1)(c) Decision").

(52) On 25 March 2024, a statement of objections (the "Statement of Objections" or "SO") was sent to the Parties, concluding on a preliminary basis that the notified Transaction would significantly impede effective competition in a substantial part of the internal market.

(53) On 11 April 2024, the Parties submitted their written comments on the Commission's Statement of Objections (the "Response to the SO" or "Response to the Statement of

63 Short-haul flights are flights of a duration of less than six hours. For the purposes of this Decision, short-haul flights exclude transatlantic flights (regardless of their duration).

64 Long-haul flights are flights of a duration of more than six hours.

65 See recital (1068) of the Article 6(1)(c) Decision.

66 See footnote 318.

67 See recital (1069) of the Article 6(1)(c) Decision.

68 See recitals (1070) of the Article 6(1)(c) Decision.

Objections"). The Parties requested to further present their arguments at an oral hearing.

(54) On 11 April 2024, the Parties also submitted a first set of commitments in the Phase II investigation with a view to render the concentration compatible with the internal market pursuant to Article 8(2) of the Merger Regulation (the "Initial Commitments"). The Parties did not consult the Commission on a draft before the formal submission. These Initial Commitments did not address all of the competition concerns raised by the concentration, were unlikely to address the competition concerns they were meant to address and were unclear and incomplete from a technical perspective. Therefore, the Commission decided not to market test the Initial Commitments. On 17 April 2024, in a videoconference meeting, the Commission provided feedback to the Parties on the Initial Commitments, including its decision not to market test them. Throughout the proceedings, fourteen third-persons were recognized as interested third person for the purpose of Article 18(4), second sentence, of the Merger Regulation. Nine interested third-persons submitted comments on a non-confidential version of the Statement of Objection made available to them.

(55) An Oral Hearing took place on 19 April 2024, with the participation of representatives of the Parties, eight interested third-persons, the Commission, and the competent authorities of seven Member States.

(56) On 26 April 2024, the Commission decided to extend the procedure by a total of 5 working days in accordance with Article 10(3) second subparagraph, third sentence of the Merger Regulation, with the agreement of the Parties. Accordingly, the legal deadline for a Commission decision was extended until 13 June 2024.

(57) On 29 April 2024, the Commission sent a first Letter of Facts to inform the Parties about additional factual elements which were not included in the Statement of Objections, and which supported some of the Commission's preliminary conclusions reached in the Statement of Objections (the "First Letter of Facts"). A second Letter of Facts was sent on 5 May 2024 (the "Second Letter of Facts"). The Parties submitted their responses to the First and Second Letter of Facts respectively on 6 May 2024 and 14 May 2024 ("Observations to the First Letter of Facts" and "Observations to the Second Letter of Facts").

(58) On 6 May 2024, the Parties formally submitted a second set of commitments in the Phase II investigation (the "Second Commitments"), aimed at addressing the preliminary competition concerns arising from the Transaction. In line with Article 10(3) fist subparagraph, second sentence of the Merger Regulation and paragraph 89 of the Commission notice on remedies,[69] the deadline for the Commission to take a decision in this case was then extended by 15 working days, until 4 July 2024.

(59) On 13 May 2024, despite its preliminary concerns regarding their lack of effectiveness, the Commission launched a market test in connection with the Second Commitments. The Commission considered it appropriate to market test the Second Commitments in this case so that it would be able to base its decision on the best available evidence, despite its preliminary concerns.

[69] Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004OJ C 267, 22.10.2008 ("Remedy Notice").

(60) In the following weeks, Lufthansa submitted several revised commitments in draft form. Upon request, the Commission provided preliminary feedback to Lufthansa and/or the Parties on those revisions during telephone calls and during the state-of-play meeting of 23 May 2024. On 18 June 2024, the Parties submitted a final version of their commitments (the "Final Commitments").

(61) State of play meetings were held on 21 December 2023, 7 February 2024, 14 March 2024, 25 April 2024 and 23 May 2023 respectively (i) to inform the Parties of the preliminary results of the Phase I investigation and to provide an opportunity for the Parties to prepare the formulation of a possible remedy proposal in Phase I before expiry of the deadline provided in Article 18 of the Implementing Regulation, (ii) to facilitate the Parties' understanding of the Commission's concerns at an early stage of the Phase II proceedings, (iii) to explain to the Parties the Commission's preliminary view on the outcome of the Phase II investigation and to inform the Parties of the type of objections DG Competition might set out in the SO, (iv) to provide the Parties with an opportunity to understand DG Competition's position after it has considered their reply and heard them at an Oral Hearing, to discuss the scope and timing of possibly remedy proposal and to enable the Parties to discuss with DG Competition its views on the Initial Commitments, and (v) to enable the Parties to discuss with DG Competition its views on the Second Commitments and the results of the market testing of those remedies.. In addition, the Commission held regular phone calls with the Parties throughout all stages of the proceedings.

(62) Access to file was first provided on 26 March 2023. Subsequent access to the file was provided on 26 April, 7 May, 24 May and 20 June 2024. In addition, access to confidential information relied upon by the Commission in the SO, as well as in the First and Second Letter of Facts was granted to the Parties' advisors in accordance with the data room procedure, opened for an initial period of 2 working days on 26 and 27 March 2024, and re-opened on 9, 17, 18 April 2024 and 2 May 2024.

(63) On 20 June 2024, the Commission sent a draft of the decision to be taken pursuant to Article 8(2) of the Merger Regulation ("the Decision") to the Advisory Committee with the view of seeking the Committee's opinion. The meeting of the Advisory Committee took place on 28 June 2024 and the Committee issued a positive opinion.

5. THE COMMISSION'S INVESTIGATION

(64) The Commission collected evidence from various sources at various stages of the investigation.

(65) In the pre-notification phase, the Commission reviewed the information provided in the draft Form CO and its accompanying draft annexes. Furthermore, the Commission requested information and held meetings and conference calls with the Parties. Moreover, the Commission addressed requests for information to train operators and consumer organisations and held conference calls with several competitors in air passenger services.

(66) Following the notification of the Transaction on 30 November 2023, the Commission carried out its Phase I investigation. The Commission sent several requests for information to the Parties, which included requests addressed to each of Lufthansa and ITA for internal documents prepared between 1 January 2021 and mid-December 2023, among others in relation to (i) business plans, strategic plans and fleet plans, (ii) perception of the competitive landscape, monitoring of and reporting on competitors, analysis of market evolution as well as analysis of barriers to entry, (iii) commercial strategy, operation plans and pricing decisions, (iv) partnerships and

joint ventures with other passenger airlines, and (v) rationale, negotiation and execution of any agreement between Lufthansa and ITA.

(67) In addition to requests for information addressed to the Parties, the Commission addressed during its Phase I investigation six different requests for information by way of electronic questionnaire pursuant to Article 11(2) of the Merger Regulation to (i) competitors active in short-haul air passenger services, (ii) competitors active in long-haul air passenger services, (iii) corporate customers of both short-haul and long-haul air passenger services as well as travel agencies and tour operators, (iv) competitors and customers of air cargo services, (v) airport managers and (vi) slot coordinators.[70]

(68) Following the opening of proceedings on 23 January 2024, the Commission carried out a thorough Phase II market investigation. Namely, the Commission (i) sent several requests for information to the Parties, including as regards the network dimension of their businesses and as regards market data on the overlap routes; (ii) addressed individualised requests for information to around 20 airlines active on the relevant short-haul and long-haul routes, including follow-up requests on specific issues, (iii) conducted in-depth interviews with numerous rival airlines; (iv) carried out an extensive document review, which included the internal documents related to the topics listed in paragraph (66); (v) requested further information from Italian airport managers; (vi) held in-depth meetings with the Parties concerning select issues regarding ITA's performance and financial situation, Lufthansa's network business model, overlaps with indirect flights in short-haul traffic, Lufthansa's pricing strategies for short and long-haul routes, and the closeness of competition between Lufthansa and ITA in short-haul traffic; (vii) carried out a regression analysis to assess the relationship between the competitive landscape and the ticket prices charged by DLH, (viii) carried out extensive analyses on the effect of ITA's potential shift into the A++ JV and Star Alliance, on market share patterns and network dynamics, as well as on overlaps in the indirect/indirect long-haul connections and on incentives to foreclose rivals from access to feed traffic on the overlapping routes, including the potential effects of such a strategy, and (ix) reviewed several complaints received by citizens, a consumer association and competing airlines.

(69) Following the submission of the Second Commitments on 6 May 2024, the Commission carried out a market test. The Commission sent several requests for

[70] The Commission notes, that in the Parties' Response to the SO, the Parties offer various alternative interpretations of the responses to the questionnaires indicated in paragraph (67) (see e.g. paragraph 44 of the Parties' Response to the SO). The Commission has generally interpreted the responses by relying on the responses submitted by respondents expressing a view (i.e. answering the questions and providing an answer other than "I do not know"). The Commission considers this approach to be appropriate as the lack of a response or an "I do not know" response cannot be considered as either an expression of concern or a lack thereof. The Commission also notes that the Parties argue in their Response to the SO (paragraph 334) that responses have been redacted without providing a non-confidential summary of the content. The Commission notes that questionnaires are designed in a way that the context clearly indicates what the confidential content of the response may be, and it is not possible to provide further "summary" e.g., of a yes or no response regarding planned entry on a specific route. The Commission also considers that it is proportional and in line with the procedural rules of the Commission to prioritise ensuring that pivotal information is provided, rather than risking market participants refusing to provide complete responses due to the requirement to summarise their answers. Lastly, the Commission notes that the legal advisors of the Parties could and did multiple times access highly confidential information of the Parties competitors (which was difficult to summarise in a non-confidential summary) within the framework of the data room process.

information by way of electronic questionnaires to competitors, customers, slot coordinators and airport managers. Market test questionnaires were sent to (i) competitors (Questionnaire 01_Competitors - (Remedies Market Test, hereafter referred to as the "Competitors Remedies Market Test"), (ii) slot coordinators and airport managers (02_Others - (Remedies Market Test) - Slot coordinators and airport managers, hereafter referred to as the "Slot Coordinator and Airport Managers Remedies Market Test") as well as (iii) customers and third parties (03_Others - (Remedies Market Test) - Customers and third parties, hereafter referred to as the "Customer and Third Parties Remedies Market Test"). The Commission also sent specific requests for information to two potential remedy takers, […], and interviewed them. The Commission also addressed several requests for information to the Parties regarding the draft and formally submitted commitments.

(70) The Commission's findings in this Decision are based on a holistic approach, interpreting the results of the various complementary analyses in light of the overall evidence on the file, as described in paragraphs (65) to (69).

6. RELEVANT MARKETS

(71) Both Lufthansa and ITA are active in the supply of scheduled passenger air transport services and scheduled cargo air transport services. Both also provide access to their flights to other airlines for connecting passengers in the context of interlining arrangements ("feeder traffic"). Lufthansa is also active in the supply of the following services that are upstream to the provision of scheduled air transport services: (i) maintenance, repair and overhaul ("MRO") services, (ii) ground handling services, (iii) landside cargo handling services, and (iv) flight simulator training services.

(72) For the reasons set out in sections 6.1-6.10 the Commission concludes that the relevant markets to assess for the purpose of this merger control Decision are:

- The supply of scheduled passenger air transport services on the basis of the "point of origin/point of destination" ("O&D") approach. The network dimension of competition between Lufthansa and ITA and their strong presence at the same airports will, however, be taken into account in the competitive assessment (sections 6.1);
- The supply of feeder traffic defined on an O&D basis (section 6.9);[71]
- The market for airport infrastructure services in Milan-Linate airport (LIN) under the airport-by-airport approach (section 6.10);
- Air cargo transport services (section 6.11);
- maintenance, repair and overhaul ("MRO") services, which can be further subdivided to distinguish between (i) line maintenance, (ii) heavy maintenance, (iii) engine maintenance and (iv) components maintenance (section 6.12);
- ground handling services (section 6.13);

[71] Feeder traffic does not give rise to a separate significant impediment of effective competition but is a relevant input considered in the competitive assessment of the Transaction. The discussion on feeder markets is a useful background for the competitive assessment below.

- x cargo handling services (section 6.14); and
- x flight training services 6.15)

(73) As regards potential sub–segmentations of the market for scheduled passenger air transport services on the basis of the O&D approach, the Commission concludes the following:

- x There is a need to distinguish between IATA summer and winter seasons, but the seasons will be discussed in the same sections of this Decision (section 6.2).
- x There is no need to distinguish between services supplied at wholesale to tour operators or retail to end-customers in this case because such distinction does not have an effect on the outcome of the competitive assessment (section 6.3).
- x As regards a segmentation by category of passengers: the Commission will leave open the question whether time-sensitive ("TS") and non-time sensitive ("NTS") passengers belong to separate markets for the relevant long-haul routes. The Commission considers that they form part of the same market for the relevant short-haul routes. However, TS demand may be taken into account in the competitive assessment (section 6.4).
- x As regards a segmentation on an airport-pair or city-pair basis if the city of origin or destination is served by more than one airport: the question as to whether this segmentation warrants separate product markets can be left open with respect to most airports relevant for this Decision because it does not have an effect on the outcome of the competitive assessment. The Commission, concludes however that, on a conservative basis:
- x With respect to Düsseldorf, Düsseldorf airport (DUS) and Cologne airport (CGN) are within the same market. The Commission can leave open the question whether Dortmund airport (DTM) and Weeze Niederrhein Airport (NRN) also belong to that market (section 6.5.3.3).
- x With respect to Milan, Milan Linate airport (LIN) and Milan Malpensa airport (MXP) belong to the same market. The Commission can leave open the question whether Bergamo airport (BGY) also belongs to that market (section 6.5.3.6).
- x With respect to New York, John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR) belong to the same market. The Commission can leave open the question whether La Guardia Airport (LGA) and New York Stewart International Airport (SWF) also belong to that market (section 6.5.3.8).
- x With respect to Rome, Fiumicino airport (FCO) and Ciampino airport (CIA) belong to the same market (section 6.5.3.9).

(74) As regards a segmentation between direct and indirect flights: the question as to whether this segmentation warrants separate product markets can be left open for the relevant long-haul routes because it does not have an effect on the outcome of the competitive assessment. However, the competitive assessment will take into account that competitors offering indirect connections are more remote competitors than those offering direct flights. Direct and indirect flights do not form part of the same

market for the relevant short-haul routes unless specific circumstances exist (section 6.6).

(75) With the exception of the Rome – Hamburg route, there is no need to distinguish between scheduled and charter flights because such distinction does not have an effect on the outcome of the competitive assessment (section 6.7).

(76) As regards a segmentation between different modes of transport, for the purpose of this decision, rail passenger services between city-pairs that are longer than 6 hours should not be considered in the same market as air passenger services between the same city-pairs although they may be taken in consideration to the extent that they exert out of market constraints on air passenger services. By contrast, rail services between city-pairs that are up to 3-4 hours long may be considered as exerting direct competitive constraint on air passenger services between the same city-pairs (section 6.8).

(77) As regards MRO, ground handling services, cargo handling services, and flight training services, the Commission considers that, for the purposes of the present Decision, it is not necessary to determine the exact market definition, as the Transaction would not significantly impede effective competition under any plausible market definition, as discussed in more detail below in sections 6.12-6.15.

6.1. Origin & destination ("O&D") approach

6.1.1. The Commission's decisional practice

(78) With regard to scheduled passenger air transport services, the Commission has, in its prior decisional practice defined the relevant markets on the basis of the O&D approach.

(79) In line with the Commission's notice on market definition,[72] where the merger involved airlines actively providing passenger air transport services, the Commission has given pre-eminence to demand-side substitution, whereby it considered that customers need transportation from one point to another and that competition takes place on an O&D city-pair basis.[73] Consequently, the Commission has traditionally followed the O&D approach. Under the O&D approach, every combination of an airport (or city, where relevant) of origin to an airport (or city, where relevant) of destination is defined as a distinct market.[74] The effects of a transaction on competition are thus assessed for each O&D separately.

6.1.2. Lufthansa and MEF's view

(80) Lufthansa and MEF do not contest the Commission's approach and provided information and market data on the basis of the O&D approach, taking into consideration airport substitutability when appropriate.[75]

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72 Commission Notice on the definition of relevant market for the purpose of Community competition law, OJ C 372, 9.12.1997, p. 5, recently replaced by Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ C, C/2024/1645, 22.2.2024.

73 It follows from the O&D approach that connecting passengers flying on a given O&D as part of their journey do not represent the same demand as O&D passengers. See e.g. Case M.7333 – Alitalia/Etihad, paragraph 65.

74 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 49; M.8964 – Delta/Air France-KLM/Virgin Group/Virgin Atlantic, paragraph 48; M.8869 – Ryanair/LaudaMotion, paragraph 96; M.7541 – IAG/Aer Lingus, paragraph 14; M.7333 – Alitalia/Etihad, paragraph 63; M.6447 – IAG/bmi, paragraph 31.

75 Form CO, paragraph 342.

6.1.3. The Commission's assessment

(81) The market investigation results indicate that the O&D approach remains appropriate for the analysis of the Transaction. The majority of respondents consider that the O&D approach is an appropriate way to assess the effects of the Transaction on the supply of air transport services to passengers.[76] As explained by a customer, an informed online travel agent: "the O&D approach is relevant to assess the effects of the Transaction as each route reflects the demand-side perspective whereby passengers consider all possible alternatives of traveling from a city of origin to a city of destination, which they do not consider substitutable for a different city pair."[77] A carrier explained that "passengers travel by choosing the direct/connection flight to transfer from Origin to Destination, and the airline business is based on the O&D consideration."[78]

(82) Several carriers opined, however, that the O&D approach should be complemented by a network analysis.[79] As explained by United Airlines: "we agree with the Commission's position in prior merger and alliance proceedings that the O&D city pair is the relevant market definition for passenger services. As a result, a relevant product market includes all O&D services in the relevant city pair. However, because of the increased network connectivity that alliances provide, the Commission should also take into account network competition to provide a meaningful assessment of competition in the airline industry today."[80]

(83) In light of the above, the Commission finds it appropriate to assess the effects of the Transaction under the O&D approach, considering the lack of substitutability between different O&Ds from the point of view of passengers.

(84) The Commission nevertheless acknowledges that the competitive assessment needs to factor in supply-side considerations and network effects, given Lufthansa's and ITA's operations as network carriers,[81] in the following ways:

(85) First, the Commission takes account of the specific supply conditions of the scheduled passenger air transport services provided by the Parties as network carriers in its competitive assessment under the O&D approach, notably with regard to (i) overlaps due to indirect connections,[82] (ii) closeness of competition and (iii) barriers to entry. In particular, the Commission's analysis looks into the extent to which the Parties compete with each other and with other carriers through indirect connections which are central to their business model as network carriers. Furthermore, the degree of overlap between the networks of Lufthansa and ITA and their market positioning as network carriers is used to assess how closely the Parties compete with

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76 Responses to question C.1 of questionnaire 03 to short-haul competitors, question C.A.1 of questionnaire 04 to long-haul competitors and C.A.1-1 of questionnaire 06 to customers of both short-haul and long-haul flights.

77 Response of eDreams to question C.A.1-2 of questionnaire 06 to customers of both short-haul and long-haul flights, ID 9710.

78 That is, when considering and comparing the entire O&D portfolio of carriers. Response of All Nippon Airways to question C.A.2 of questionnaire 04 to long-haul competitors.

79 Responses of Air France-KLM, IAG, Condor, LOT and United Airlines to question C.A.2 of questionnaire 04 to long-haul competitors and the responses of Wizz Air and Air France-KLM to question C.1-2 of questionnaire 03 to short-haul competitors.

80 Response of United Airlines to question C.A.2 of questionnaire 04 to long-haul competitors, ID 12201.

81 The different carrier business models (network as opposed to point-to-point, low-cost and ultra-low-cost as opposed to full-service), are explained in sections 7.5 and 9.1 below.

82 Section 6.6 below explains the circumstances in which indirect flights, on long-haul and short-haul routes, should be considered as being part of the same market as direct flights on the same route.

each other and with their competitors, including notably with low-cost carriers ("LCC's") that fly point to point (that is, without offering connecting flights). Moreover, the Commission investigates the role of connecting traffic in the Parties' operations as part of the assessment of the conditions for entry and expansion on routes under the O&D approach, in line with the feedback gathered during the market investigation.

(86) Second, the Commission takes account of the specific supply conditions in terms of slot holdings and presence at certain airports (at Milan Linate (LIN) in particular, but also at Lufthansa's hub airports (see section 7.6.1 below) as part of the competitive assessment under the O&D approach. In the first place, the high congestion of certain airports and the concentration of slots in the hands of the merged entity is addressed as part of the assessment of the barriers to entry under the O&D approach for routes of concern. In the second place, the increased ability of the merged entity to respond to entry or expansion of a competitor on a route thanks to the Parties' market power at an airport is also addressed as part of the assessment of the conditions for entry and expansion on routes of concern under the O&D approach.

(87) In light of the above, for the purpose of this Decision, the Commission will apply the O&D approach, taking account of the network dimension of competition between Lufthansa and ITA and their rivals and of their strong presence at certain airports in its assessment of the effects of the Transaction under the O&D approach.

6.2. Distinction between the IATA summer and winter season

(88) In the airline industry, operations are divided into a summer and a winter season, as agreed under the umbrella of the International Air Transport Association ("IATA"). Slots are allocated and flights are scheduled separately for the IATA summer season, which begins on the last Sunday of March and ends on the last Saturday of October, and the IATA winter season, which begins on the last Sunday of October and ends on the last Saturday of March. The Commission has in its past decisional practice assessed the effects of concentrations on each of the seasons, albeit discussing both seasons in the same sections.[83] The Parties follow this approach in their notification and the Commission does not have indications that it should deviate from this established practice in this case.

6.3. Distinction between sales of scheduled air transport services to tour operators and to end customers

(89) Carriers, both charter and scheduled airlines, may sell seats (or entire flights) to tour operators, which then integrate the flights into package holidays or resell seats to end customers.

6.3.1. The Commission's decisional practice

(90) In prior decisions, the Commission has regarded the wholesale supply of airline seats to tour operators (wholesale market) as a distinct market from the supply of scheduled air transport services to end customers (retail market).[84] The Commission found that, from a demand-side perspective, tour operators have different

[83] See e.g. Cases M.9287 – Connect Airways/Flybe, paragraphs 328f, 337f, 345f, 354f among others; and M.8964 - Delta/Air France-KLM/Virgin Group/Virgin Atlantic, paragraphs 202ff, 212ff, 223ff among others.

[84] See e.g. Cases M.8046 – TUI/Transat France, paragraphs 66-88; M.5867 – Thomas Cook/Öger Tours, paragraph 14-16; M.4601 – KarstadtQuelle/MyTravel, paragraphs 39-43; M.4600 – TUI/First Choice, paragraph 52-57; M.3770 – Lufthansa/SWISS, paragraph 20.

requirements from those of individual passengers (for example, as regards the purchase of large seat packages in advance of the start of the season or the negotiation of rebates).[85]

(91) In recent decisions,[86] the Commission has considered that, for the purpose of assessing the horizontal effects of a transaction, the supply of airline seats to tour operators only constitutes a meaningful market on routes where both parties are active in sales to tour operators to a significant extent, representing at least 5% of the seats sold by each of the parties. Indeed, in the absence of any (material) overlap, a separate assessment of the market for the supply of airline seats to tour operators cannot be considered relevant. Conversely, a separate assessment of the market for the retail supply of airline seats may be relevant if there is a significant difference in the competitive position of the air carriers present in the wholesale and retail markets.

6.3.2. Lufthansa and MEF's view

(92) Lufthansa and MEF are of the opinion that the Transaction would not raise competition concerns as to its compatibility with the internal market and with the functioning of the EEA Agreement with respect to the supply of airline seats to tour operators, under any plausible market definition.[87]

6.3.3. The Commission's assessment

(93) The results of the market investigation were mixed. Some carriers were of the opinion that a distinction between sales of scheduled air transport services to tour operators and to end customers is justified citing similar considerations to those noted in the Commission's decisional practice, referring mainly to the difference between wholesale and retail demand and sales. Other carriers opined that the distinction is irrelevant, mostly due to the limited sales to tour operators.[88] Opinions also diverged between customers, with a significant share responding that they do not know.[89] Among airport managers, the majority of respondents did not know; among those who expressed an opinion, the majority considered that the distinction is irrelevant.[90]

(94) In any case, for the purpose of this Decision it is not necessary to distinguish between sales of scheduled air transport services to tour operators and to end customers. On all routes concerned by the Decision, other than a few exceptions reviewed in the paragraph immediately below, the activities of Lufthansa and ITA in sales to tour operators appear to be very limited (less than [0-10]% of each Party's sales) or all competitors active on these routes are active in both sales of scheduled air transport services to tour operators and to end customers.[91] From the supply side, there appears to be no differences between sales of scheduled air transport services to tour operators and to end customers and carriers active on a route can typically easily

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85 See e.g. Case M.6663 – Ryanair/Aer Lingus III, paragraph 409.

86 See Cases M.9287 – Connect Airways/Flybe, paragraph 119; M.8964 – Delta/Air France-KLM/Virgin Group/Virgin Atlantic, paragraph 44.

87 Form CO, paragraphs 394 and 399.

88 Responses to questions C.B.1 and C.B.2 of questionnaire 04 to long-haul competitors and question C.7 of questionnaire 03 to short-haul competitors.

89 Responses to questions in section C.D of questionnaire 06 to customers of both short-haul and long-haul flights.

90 Responses to question D.D.1 of questionnaire 01 to airport managers.

91 Response to RFI-23, question 6 and annex Q6.

start or increase sales to tour operators.[92] The Commission therefore finds on a basis that both segments should be considered part of the same market.

(95) With respect to the routes where the Parties' sales to tour operators exceed 5% of their sales, on Rome-Brussels and Rome-Frankfurt, the main competitor of Lufthansa and ITA, Ryanair, is not active in sales to tour operators. The Commission anyways finds that the Transaction would have significantly impeded effective competition on these routes with respect to retail sales to end-customers. The Parties offered commitments that would ensure that the number of competing airlines operating on these routes remains the same post-Transaction. Consequently, there is no need stage to distinguish a separate market of sales to tour operators.

6.4. Distinction between passenger groups

6.4.1. The Commission's decisional practice

(96) The Commission has in its decisional practice considered distinguishing, for a given O&D route, between (i) time sensitive ("TS" or "premium") passengers who tend to travel for business purposes, require significant flexibility for their tickets and are willing to pay higher prices for this flexibility, and (ii) non-time sensitive ("NTS" or "non-premium") passengers who travel predominantly for leisure purposes, do not require flexibility with their booking and are more price-sensitive than TS passengers. However, in recent decisions, the Commission has noted that passengers are becoming increasingly price-sensitive and more and more corporate customers apply lowest fare policies.[93]

(97) In particular, for short-haul flights, the Commission has found that the distinction between TS and NTS has become somewhat artificial, as the offerings for TS and NTS passengers on these routes have become very similar. The Commission concluded that it was not appropriate on short-haul routes to define separate markets for TS and NTS and instead considered a market comprising all passengers.[94]

(98) For long-haul flights, the Commission has considered in the past that it may be relevant to distinguish between TS and NTS passengers.[95] On the one hand, the Commission has concluded that services in at least First and Business class, and services in Economy class, were in different product markets on transatlantic routes.[96] On the other hand, it has assessed the possible effects of concentrations on

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92 Responses to Phase II RFIs to Air France-KLM [ID 11426], question 27; Air Canada [ID 11344], question 21; Air India [ID 11349], question 22; Air Transat [ID 11307], question 17; American Airlines [ID 11533], question 18; ANA [ID 11172], question 17; Delta [ID 11276], question 31; easyJet [ID 11469], question 12; IAG [ID 12009], question 20; Luxair [ID 11174], question 10; Norse [ID 11704], question 32; Ryanair [ID 11267], question 2; United Airlines [ID 11221], question 21; Wizz Air [ID 11311], question 5.

93 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 51 et seq.; M.8964 – Delta/Air France-KLM/Virgin Group/Virgin Atlantic, paragraph 51 et seq.; M.7541 – IAG/Aer Lingus, paragraph 20 et seq., M.7333 – Alitalia/Etihad, paragraph 70 et seq. In

94 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 55; M. 8869 – Ryanair/LaudaMotion, paragraph 142; M.7541 – IAG/Aer Lingus, paragraph 28; M.6663 – Ryanair/Aer Lingus III, paragraph 387.

95 See e.g. Cases M.8964 – Delta/Air France-KLM/Virgin Group/Virgin Atlantic, paragraph 54; M.8361 – Qatar Airways/Alisarda/Meridiana, paragraph 23; M.7541 – IAG/Aer Lingus, paragraphs 29; M.7333 – Alitalia/Etihad, paragraph 74; M.6828 – Delta Air Lines/Virgin Group/Virgin Atlantic Limited, paragraph 28.

96 See Case AT.39596 – BA/AA/IB, paragraph 22.

long-haul O&D city-pairs without distinguishing between TS and NTS travellers when the vast majority of the parties' passengers were NTS travellers.[97]

6.4.2. Lufthansa and MEF's view

(99) Lufthansa and MEF consider that it is not necessary to distinguish between passenger groups.[98] They point out that business travellers are also price sensitive and may plan their meetings and flights in a way that would save them expensive flexible tickets.[99] Second, while in the past there was a clear distinction between restricted leisure tickets and flexible business tickets, the distinction between passenger groups is blurry today because airlines use sophisticated yield management systems to offer on all their flights a large variety of fare classes with different levels of service and flexibility.[100] Third, the distinction between passengers according to "business" or "leisure" compartments is not instructive anymore since many passengers travelling for business these days do so in the leisure compartments, while some leisure travellers prefer traveling in greater comfort, for which airlines have introduced hybrid travel classes (such as "premium economy").[101]

6.4.3. The Commission's assessment

6.4.3.1. Short-haul routes

(100) The results of the market investigation were mixed on the question whether the distinction between TS and NTS passengers is justified with respect to short-haul flights.

(101) The large majority of short-haul carriers opined that the distinction between TS and NTS passengers is not appropriate for the assessment of the Transaction.[102] As explained by one carrier: "as observed by the Commission in recent years, the dividing line between these two types of passenger groups has become blurred, particularly on short-haul routes. The following airline travel trends contributed to blurring the line between time sensitive and time-insensitive passengers: (i) decreasing proportion of passengers (particularly, corporate customers) acquiring premium tickets for short-haul travel, (ii) traditional time sensitive passengers increasingly switching to low cost carriers; (iii) most airlines allowing passengers to transfer their tickets (for a given fee, usually small); (iv) limited product differentiation, as airlines increasingly offer a single cabin in their aircraft. Alongside this one way sector pricing[103] has removed the traditional price discrimination approach of charging extra for returns within a week."[104]

(102) By contrast, the majority of customers having expressed an opinion were of the view that the distinction between TS and NTS is appropriate for the assessment of the Transaction.[105] One customer explained for example that "a distinction is critical in

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97 See e.g. Cases M.7270 – Cesky Aeroholding/Travel Service/Ceski Aerolinie, paragraphs 21-25; M.5141 – KLM/Martinair, footnote 112.

98 Form CO, paragraph 349.

99 Form CO, paragraph 350.

100 Form CO, paragraphs 352 et seq.

101 Form CO, paragraphs 349 et seq.

102 Response to question C.2-1 of questionnaire 03 to short-haul competitors.

103 That is, offering customer one-way tickets.

104 Response of easyJet to question C.2-2 of questionnaire 03 to short-haul competitors, ID 12368.

105 Responses to question C.B.1-1 of questionnaire 06 to customers of both short-haul and long-haul flights.

terms of supply of inventory and the availability of that inventory closer of time of travel."[106]

(103) Considering the Commission's practice, the arguments and explanations of the Parties, the views and explanations of their competitors but noting the diverging opinions of customers, the Commission considers that on balance it is not appropriate for the purpose of the Decision to define generally separate markets for TS and NTS passengers on short-haul flights. The distinction between these groups may however still be relevant when examining closeness of competition in the competitive assessment (sections 9 and 10 below).

6.4.3.2. Long-haul routes

(104) On all long-haul routes analysed, the majority of carriers having expressed an opinion, responded that there are differences between TS and NTS passengers in terms of parameters such as level of service, sales channel and preference for direct/indirect connections.[107] Carriers also considered that TS passengers contributed significantly to profitability and viability of operations on all of these routes.[108] On the other hand, with respect to most of the routes analysed, the majority of carriers having expressed an opinion were of the view that the competitive conditions (for example, number of competing airlines, their identity and their market position) do not diverge in the provision of air passenger transport services to TS and NTS passengers.[109] Furthermore, responses diverged between routes with respect to the question whether the distinction between TS and NTS passengers is relevant for assessing the impact of the Transaction; while for some routes the majority of carriers having expressed an opinion considered that the distinction is relevant, for others the majority of carriers having expressed an opinion considered it to be irrelevant.[110]

(105) As will be explained further in section 10 below, the Commission considers that the distinction between TS and NTS passengers does not affect the competitive assessment with respect to any of the long-haul routes examined. The exact market definition with respect to long-haul routes can therefore remain open.

6.5. Airport substitutability

6.5.1. The Commission's decisional practice

(106) When defining the relevant O&D markets for passenger air transport services, the Commission has previously found that 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 city).[111]

(107) The evidence used to characterise airport substitutability has included among other factors a comparison of actual distances and travelling times to the indicative benchmark of 100 km or 1 hour/60 minutes driving time,[112] the outcome of the

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106 Response of Boston Consulting Group to question C.B.1-2 of questionnaire 06 to customers of both short-haul and long-haul flights, ID 5629.

107 Responses to question C.C.1 of questionnaire 04 to long-haul competitors.

108 Responses to question C.C.2 of questionnaire 04 to long-haul competitors.

109 Responses to question C.C.3 of questionnaire 04 to long-haul competitors.

110 Responses to question C.C.4 of questionnaire 04 to long-haul competitors.

111 See e.g. Cases M.8361 – Qatar Airways/Alisarda/Meridiana, paragraph 29; M.7333 – Alitalia/Etihad, paragraph 82; M.6663 – Ryanair/Aer Lingus III, paragraph 65.

112 The indicative benchmark of 100 km/1 hour driving time is used as a first proxy only. It was defined by the Commission in the specific case of routes served out of Dublin (see Case M.6663 – Ryanair/Aer

market investigation (views of competitors and other market participants) and the competitors' practices in terms of monitoring of competition.

(108) The Commission will therefore assess, for each relevant O&D, whether flights departing from airports with overlapping catchment areas belong to the same market.

6.5.2. Lufthansa and MEF's view

(109) Lufthansa and MEF do not contest the Commission's general approach to airport substitutability.

(110) To substantiate their views on the substitutability of specific airport-pairs, the Parties have submitted data from the "[…] (the "Catchment Area Tool"). The tool models the share of passengers (based on 2019 data) that used airports that the Parties consider substitutable and whose origin or destination was one of a variety of sub-regions considered as the catchment area of these airports.[113] For example, for Frankfurt, the data submitted by the Parties from the Catchment Area Tool shows the share of passengers that passed through Frankfurt-FRA and the share of passengers that passed through Frankfurt-Hahn, separately for various sub-regions, including smaller regions, such as Bad Kreuznach and larger regions, such as Frankfurt am Main.[114] The Parties argue that this data shows that there is "a significant share of travellers from areas around the relevant cities that are (i) using an airport located further away than 100 km/1 hour travel time and (ii) using both/several of the airports the Parties consider as substitutable in this Form CO".[115]

(111) The Parties' arguments with regards to airport substitutability for specific cities are included in sections 6.5.3.2 to 6.5.3.12 below.

6.5.3. The Commission's assessment

6.5.3.1. Common considerations

6.5.3.1.1. The Catchment Area Tool

(112) In relation to the data submitted from the Catchment Area Tool, the Commission considers, that these data do not provide evidence that can help reaching conclusions on airport substitutability. This is for the following reasons.

(113) In the first place, the data submitted from the Catchment Area Tool is too rough and unable to actually track demand substitution as is relevant for market definition. The data do not provide any direct evidence that passengers that passed through these airports considered these airports substitutable. Instead, these data only show that there were some passengers in each region that chose to travel via one airport, whereas there were some (potentially other) passengers that chose to travel from the other airport. For example, the data submitted from the Catchment Area Tool does not distinguish between individual flight routes or groups of routes, such as long-haul and short-haul flights. However, most secondary airports, including Frankfurt-Hahn, Brussels-Charleroi, Munich-Memmingen and Hamburg-Lübeck, only or primarily operate short-haul flights whereas most primary airports operate both long-haul and short-haul flights. Therefore, based on the data submitted, it cannot be excluded that (for some regions) passengers included in the Parties' tables will use the primary

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Lingus III, paragraph 82) and subsequently used as a first proxy in other cases, such as M.7541 – IAG/Aer Lingus, paragraph 64.

113 Form CO, paragraph 448.

114 Form CO, Table 6.4.1.

115 Form CO, paragraph 448.

airport only for long-haul flights whereas they use the secondary airport only for short-haul flights. Similarly, it cannot be excluded that passengers included in the Parties' tables will use the primary airport for certain destinations not offered from the secondary airport and the secondary airport for destinations not offered from the primary airport. In these cases, there would be no relevant demand-side substitutability between these airports for passengers in these regions, while the Catchment Area Tool would still report significant shares of passengers flying from each of the airports for these regions. Overall, the data submitted by the Parties does not consider the proportion of passengers included in the tables that in fact had a choice between the airports when booking their tickets. The Parties themselves note that passengers' choice of airport is also dependent on the offer of flights,[116] and that substitutability between airport should be measured in relation to flights to the same destinations.[117] The Commission therefore notes that the Catchment Area Tool does not provide the relevant data, that would allow to compare airport utilisation rates by regions with respect to the same offer of flights.[118]

(114) In the Response to the SO the Parties acknowledged that the Catchment Area Tool cannot identify which airports a single traveller considered but that "when looking at route specific data and when observing that a relevant share of passengers from the city chooses the one or the other airport, the conclusion that the airports are largely substitutable can certainly be made."[119] The Commission notes first that it is not clear what "route specific data" the Parties are referring to and what is its relationship to the results of the Catchment Data Tool. Second, the difficulty remains that the results reported by the Catchment Data Tool do not explain why passengers chose the airports they used. As explained above, the Catchment Data Tool may report significant numbers of passengers willing to travel to distant airports but does not exclude that this may be because only the distant airport offers them the relevant flight options (e.g. traveling to a large airport offering long-haul flights or to a secondary airport that serves a short-haul destination not served from the main airport), these passengers may not consider the distant airport when a closer airport offers the same options (e.g., when the near-by airport offers a relevant short-haul flight).

(115) In the second place, even if the data from the Catchment Area Tool could provide relevant evidence on airport substitutability, the Parties' analysis of the data submitted from the Catchment Area Tool does not provide a conceptual framework that would allow the Commission to assess whether the observed (significant) variation in airport usage across regions is consistent with the Parties' conclusions that these airports are sufficiently substitutable from a market definition standpoint.

(116) As an illustration of the high level of observed variation in airport usage across regions, Table 1 reproduces the Parties' analysis for Frankfurt based on the Catchment Area Tool.

116 Response to the Article 6(1)(c) decision, paragraph 111, fourth bullet point and paragraph 124.
117 Response to the Article 6(1)(c) decision, paragraph 124.
118 Response to the Article 6(1)(c) decision, paragraph 124.
119

Table 1: Share of passengers using both airports (FRA and HHN) – Parties' analysis[120]

Region	FRA share, %	HHN share, %
Bad Kreuznach	[70-80]	[10-20]
Birkenfeld	[40-50]	[30-40]
Cochem-Zell	[30-40]	[30-40]
Rhein-Hunsrück	[40-50]	[30-40]
Bernkastel-Wittlich	[20-30]	[30-40]
Kusel	[50-60]	[20-30]
Neunkirchen	[30-40]	[20-30]
St. Wendel	[30-40]	[20-30]
Frankfurt am Main	[90-100]	[0-5]
Ludwigshafen am Rhein	[80-90]	[0-5]
Mainz	[90-100]	[0-5]
Wiesbaden	[90-100]	[0-5]

Source: Form CO, Table 6.4.1. Based on the Parties' analysis using data from Catchment Area Tool

(117) The table shows that there is significant variation in the share of passengers in each region that used FRA and HHN, respectively. As can be seen in the table above, in most regions there is a strong preference for FRA compared to HHN. This could partly be explained by the fact the FRA, compared to HHN, is a much bigger airport serving significantly larger volumes of passengers,[121] and flights, including (unlike HHN) also long-haul flights. However, if the size of the airport would have been the main reason for the difference in share of passengers between the two airports, it could have been expected that the shares would be similar between the regions (unless air travel patterns are very different between regions, but there is no evidence for that). However, what the figure below shows is that in fact the distance from the airport is the more important reason for passengers' choice. In the areas closest to HHN and farthest from FRA, very similar shares of passengers choose HHN and FRA. The closer the region is to FRA and the farther it is from HHN, the share of passengers using FRA compared to HHN increases significantly. A plausible interpretation of these figures is that while some passengers to and from the farther regions from FRA may still use it because it offers connections that HHN does not offer, passengers to and from regions close to FRA would only rarely use HHN even when it offers the same connections as FRA. This would mean that contrary to the

120 Percentages are calculated in terms of passengers that flew from that region over 2019 (e.g., for Bad Kreuznach, it means that around [70-80]% of passengers that flew at least once over the year 2019 flew from FRA airport, whereas around [10-20]% of these passengers flew from HHN airport).

121 In 2022, FRA served 45 million passengers while HHN only 1.3 million; Form CO, paragraph 448, 12th bullet point, 3rd sub-bullet point.

Parties arguments, FRA and HHN are not substitutable when the same connections are offered from both.

Figure 1: Distances ratio and passenger shares FRA/HHN

Source: Commission's calculations based on RFI 12568[122].

(118) In the Response to the SO, the Parties argued that "it is not surprising" that usage shares are higher in regions closer to the airport because of the shorter travel time, but that travel time is not the only deciding factor. Other factors such as price and flight offer are also important parameters.[123] The Commission notes that indeed for these exact reasons it was explained above that the Catchment Area Tool is not instructive in identifying substitutability between airports. The Commission points out above that passengers may travel longer distances to larger airports not because they are substitutable to closer airports but because they offer flights that closer but smaller airports do not offer. Furthermore, the Commission analysis (see Figures 1 and 4) shows a strong tendency of passengers to choose the closer airport, suggesting in fact limited substitutability between the different airports. In addition, the Catchment Area Tool provides no information on prices and how they may affect the choice of airports.

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122 The figure plots all regions identified in the response to RFI-3, DLH Annex 51 - Airports catchment overlaps (passenger data). The vertical axis represents for each region the share of passengers using FRA from the total of passengers using FRA and HHN. The horizontal axis represents for each region the distance ratio to HHN/FRA: 0% means that the distance from the region to HHN and FRA is equal; -50% means that the region is half the distance from FRA (e.g. 50km) than HHN (e.g. 100km); 50% means that the region is half the distance from HHN (e.g. 50km) than FRA (e.g. 100km).

123 Response to the SO, paragraph 658.

(119) The "heat maps" provided by the Parties that are visualising the underlying data from the Catchment Area Tool further illustrate this large variation across regions. Continuing to use the example of Frankfurt, Figure 2 and Figure 3 show the heat maps for HHN and FRA, respectively. While Figure 2 shows that passengers using HHN are concentrated around the closest regions neighbouring the airport, Figure 3 shows that passengers using FRA are more widely distributed but also concentrated around the regions neighbouring the airport (which includes the Frankfurt metropolitan area) with only some overlap in the respective heat maps for HHN and FRA. The heat maps do not provide any new evidence compared to Table 1 that would allow to conclude that the two airports form part of the same market.

Figure 2: Heat map of passenger usage of Frankfurt-HHN – Parties' analysis

[…]

Source: Form CO, Annex M.11071 – RFI 3 – DLH Annex 52.10 […].

Figure 3: Heat map of passenger usage of Frankfurt-FRA – Parties' analysis

[…]

Source: Form CO, Annex M.11071 – RFI 3 – DLH Annex 52.8 – […].

(120) The Parties also rely on the Catchment Area Tool in order to argue that within the same catchment area, the questions whether an airport is a regional or main city airport has no impact on passengers' demand with respect to short haul routes because the Catchment Area Tool shows that the majority of passengers travel to and from the surroundings regions rather than the cities themselves. The Parties conclude that consequently carriers operating from a main city airport are not closer competitors to each other than a carrier operating from a regional airport in the same catchment area.[124]

(121) The Commission notes however that according to the Catchment Area Tool data provided by the Parties,[125] in some main city airports such as Munich airport and Milan-Linate, the majority of passengers do originate from the main city. Furthermore, the Catchment Area Tool data provided by the Parties also shows that for all main city airports, the largest passenger group is by far the group of passengers traveling from or to the main city and that passengers have a strong preference for using the main city airport. More generally, the Catchment Area Tool data clearly shows, as presented in the figure 1 above, contrary to the Parties argument, that passengers' choice of airport is strongly influenced by distance from and to the airport. Consequently, flights offered from the same airport are closer substitutes for passengers compared to flights to the same destination offered from a different airport even if in the same catchment area.

(122) For these reasons, the Commission considers that the data submitted from the Catchment Area Tool do not provide evidence that can help reaching conclusions on airport substitutability.

6.5.3.1.2. Online flight websites

(123) Lufthansa and MEF support their arguments with respect to airport substitutability with information on the results of flight searches made using online flight websites (for example: eDreams, Kayak, Swoodoo, MoMondo). The results presented by Lufthansa and MEF offer a combination of different airports for the inbound and

124 Response to the 6(1)(c) decision, paragraphs 40-44.

125 Response to RFI-3, Annex 51.

outbound flights at the same end of the trip.[126] According to Lufthansa and MEF these results are sometimes "the best offer" (that is, the cheapest) and sometimes "an offer" among the results. According to Lufthansa and MEF these results support their arguments with respect to the substitutability of the airports presented in these results, and in particular to the substitutability of a number of main airports and nearby regional airports. In the response to the Article 6(1)(c) Decision the Parties added that "these are widely trusted, public sources, available to all customers… Therefore in the Parties view, this data is representative from the passengers' usage point of view".[127] The Commission considers that these results do not demonstrate substitutability between airports.

(124) In the first place, Lufthansa and MEF did not provide any explanation with respect to the method used by the flight websites to select the airports presented in their results and indeed "have no particular insight into the methodology of the flight websites to select the airports".[128] It is therefore not clear to what extent the airports are chosen according to criteria that are relevant for the assessment of substitutability in the sense used for market definition.

(125) In the second place, flight websites present numerous results and combinations for each query, typically intending to cater to the most price sensitive end-customers. Therefore, the fact that flight websites offer a combination of different airports for the inbound and outbound flights at the same end of the trip, does not provide by itself evidence to substitutability when the number of end-customer actually purchasing such trip is unknown and other elements of evidence suggest that the airports are not substitutable.

6.5.3.1.3. Road travel times ranges

(126) In the Response to the SO the Parties note that the road travel times ranges from city centres to airports, included in Tables 2-13 below, consider the minimum driving time in off-peak hours and the maximum driving time in peak hours. The Parties argue that it is entirely unclear why the Commission applies such an approach in this particular case, which does not follow the approach in previous case practice. According to the Parties this can lead to excessive wide range of driving time and potentially misleading conclusion as a result.[129]

(127) The Commission notes that in its decisional practice it has referred to road (and rail) travel time ranges.[130] There can be no dispute that road travel times may change significantly during the day, depending on the density of traffic and other road conditions. The Commission considers that providing road travel times ranges between minimum travel time during off-peak hours and maximum travel time during peak hours provides a more complete picture of the duration of the road travel to the airport that passengers may experience. It is recalled that the indicative driving time is used as a first proxy only.[131]

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126 For example: "when searching for flights from Brussels to Rome, e.g. via eDreams search engine (sample travel date 04 May to 14 May 2023), the best offer includes an outbound flight to FCO [Fiumcino airport] and a return flight from CIA [Ciampino airport]." Form CO, paragraph 466.

127 Response of the Parties to the Article 6(1)(c) decision, paragraph 126.

128 Response of the Parties to the Article 6(1)(c) decision, paragraph 126.

129 Response to the SO, paragraph 661.

130 See for example: Cases M.9287 Connect Airways / Flybe, paragraphs 83 and 93; M.8869 Ryanair / LaudaMotion, paragraph 187; M.8633 Lufthansa / Air Berlin, paragraph 64.

131 See footnote 113 above.

6.5.3.2. Brussels

(128) According to Lufthansa and MEF, the city of Brussels is served by two airports: Brussels airport (BRU) and Charleroi airport (CRL). BRU and CRL are located respectively 15 km and 60 km away from Brussels city centre.

(129) In prior decisions regarding Brussels' two airports, the Commission has reached different conclusions. It has concluded that BRU and CRL are substitutable for flights between Dublin and Brussels,[132] while they are not substitutable for flights between Vienna/Bratislava and Brussels.[133]

(130) Lufthansa and MEF submit that that BRU and CRL are substitutable for the vast majority of passengers in the Brussels region.[134] In support of their argument, the Parties submitted that the flight website eDreams offers for the route Brussels - Rome includes both BRU (outgoing) and CRL (ingoing) for the same trip.[135] The Commission takes note of this argument, under the reservations expressed in section 6.5.3.1.2 above.

(131) The Parties also refer to the data from the Catchment Area Tool. The Commission has already explained in section 6.5.3.1.1 above the reasons for which it does not consider this source to be informative. In addition, the figure below reproduces the for BRU/CRL the analysis made for FRA/HHN in figure 1 above. Similar to FRA/HHN, BRU (19 million passengers in 2022) is significantly larger than CRL (8 million passengers in 2022)[136] and, unlike CRL, also offers long-haul connections. Figure 4 below shows, similarly, to Figure 1 with respect to FRA/HHN, high correlation between the relative share of passengers using each airport and the distances from the airport. It is therefore plausible to conclude, contrary to the Parties arguments,[137] that the ratio of passengers using BRU compared to CRL cannot be explained only by BRU's advantage in size and flight offer. BRU and CRL may in fact not be substitutable when the same connections are offered from both.

132 Cases M.6663 – Ryanair/Aer Lingus III, paragraph 186; M.4439 – Ryanair/Aer Lingus, paragraph 196. See also case SA.10493 concerning measures in favour of Brussels South Charleroi Airport and Ryanair, paragraph 626, that was based on the findings in M.6663.

133 Case M.5440 – Lufthansa/Austrian Airlines, paragraph 259.

134 Form CO, paragraph 638.

135 Form CO Figure 1 and 21.

136 Form CO, page 163.

137 Form CO, paragraph 619 et seq.

Figure 4: Distances ratio and passenger shares for BRU/CRL

Source: Commission's calculations, ID 12568[138].

(132) According to the Parties, a report prepared by the airport manager of BRU shows that in many cases when Ryanair opened route from CRL, flight capacities for the same destination from BRU were decreased.[139] An analysis performed on data from Brussels Airlines (Lufthansa group), showed that […].[140] In addition, the Parties note that in 2022 Ryanair closed its based in BRU and increased its activity in CRL. The Parties argue that this supports the conclusion that BRU and CRL are in the same catchment areas as it is not reasonable to assume that Ryanair would give up the Brussels metropolitan region.[141] Finally, the Parties provide examples of internal documents in which Lufthansa, that is active in BRU, […].[142] The Commission takes note of these arguments, which are taken into account together with the evidence resulting from its market investigation.

(133) The distances and travel times from BRU and CRL to Brussels city centre are summarised below:

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138 The figure plots all regions identified in the response to RFI-3, DLH Annex 51 - Airports catchment overlaps (passenger data). The vertical axis represents for each region the share of passengers using BRU from the total of passengers using BRU and CRL. The horizontal axis represents for each region the distance ratio to HHN/FRA: 0% means that the distance from the region to CRL and BRU is equal; -50% means that the region is half the distance from BRU (e.g. 50km) than CRL (e.g. 100km); 50% means that the region is half the distance from CRL (e.g. 50km) than BRU (e.g. 100km). The figure does present the result for the Charleroi region because the ratio of distance to BRU is so high that if presented in the Figure, the scale of the Figure would render it unintelligible. As expected, a comparatively high share of passengers (55.5%) from Charleroi use CRL compared to BRU (31.3%).

139 Form CO, paragraph 628.

140 Form CO, paragraph 630.

141 Form CO, paragraph 633.

142 Form CO, paragraph 635.

Table 2: Distances and travel times from BRU and CRL to Brussels city centre

Airport	Approximate distance to city center	Approximate travel time to city center		
	Road	By car/taxi[143]	By train	By bus[144]
BRU	15 km	18 70 min	16 min	49 min
CRL	60 km[145]	50 140 min	55-84 min (train + bus)	55-84 min

Source: response to RFI-29, Table 2.

(134) The Commission first notes that BRU is within the indicative 100 km and 1 hour drive distance to Brussels city centre. On the other hand, while CRL is within the 100 km indicative distance to Brussels city centre, travel time by road is longer than an hour when traffic is busy and CRL is not connected to it by train.

(135) The results of the market investigation were inconclusive with respect to the substitutability of BRU and CRL.[146] While the majority of carriers and airport managers who expressed an opinion viewed BRU and CRL as substitutable,[147] the majority of customers who expressed an opinion considered them not to be substitutable.[148]

(136) For the purpose of this Decision, the exact market definition can be left open since the Transaction raises competition concerns with respect to all plausible market definitions and the Commission's conclusions below regarding whether the Transaction significantly impedes effective competition on routes to or from withinthis catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.3. Düsseldorf

(137) According to Lufthansa and MEF, the city of Düsseldorf is served by four airports: Düsseldorf airport (DUS), Cologne airport (CGN), Dortmund airport (DTM) and Weeze Niederrhein Airport (NRN). DUS and CGN are located respectively 7 km and 44 km away from Düsseldorf city centre. Farther away are Dortmund airport (DTM)

143 The road travel time ranges (Tables 2-13) refer to the Parties' estimates regarding (a) minimum driving time in off-peak hours and (b) maximum driving time in peak hours.

144 The bus travel time estimates (Tables 2-13) were taken from the timetables of the respective bus companies and do not reflect changes in travel time at peak and off-peak hours; response to RFI-32, question 4B.

145 The Parties note that the distance between the city centre of Brussels and CRL is 46 km, following the information cited by the Commission in previous decisions (response to RFI-29, paragraph 62 and footnote 23). However, based on Google Maps, it seems that the 46 km distance refers to geodesic distance while the distance by road is about 60 km.

146 Slot coordinators did not express opinions on airport substitutability with respect to any of the airports affected by the Transaction. Responses to questions in section C.A. of questionnaire 02 to slot coordinators.

147 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.4 of questionnaire 03 to short-haul competitors.

148 Responses to question C.F.4 of questionnaire 06 to customers of both short-haul and long-haul flights.

and Weeze Niederrhein Airport (NRN), respectively 66 and 61 km away from Düsseldorf city centre.

(138) In recent decisions in which this question was examined, the results of the Commission's market investigations were inconclusive and the Commission left the question open whether the four airports are substitutable.[149]

(139) Lufthansa and MEF submit that DUS, CGN, DTM and NRN are substitutable for the vast majority of passengers in the Rhine-Ruhr metropolitan region.[150] The Parties base their argument on the distances and travel times from the airports to Düsseldorf city centre and an example of an internal document in which the Parties argue that Lufthansa monitors […].[151] The Commission notes however that while the said document[…],[152] it only examines […].[153] […].

(140) In the Response to the SO, the Parties referred to an additional internal document that "demonstrates that [Lufthansa] monitors […]."[154] However, as can be seen in this internal document, […].

(141) For NRW for example the document examines [details of an internal document].

(142) Similarly, for Baden-Württemberg (BaWü), the document examines [details of an internal document] This group of airports does not represent a catchment area. The Parties themselves argued that FKB and STR create a catchment area by themselves (see section 6.5.3.10 below) and that FMM belongs to a different catchment area with Munich Airport (MUC) (see section 6.5.3.7 below). In conclusion, the document is not instructive with respect to catchment areas since it refers to airports according to their location on the territory of German regions.

Figure 5: Lufthansa internal document

[…]

Source: Lufthansa internal document.

(143) The Parties also refer to data from the Catchment Area Tool,[155] and the results of searches on flight search websites.[156] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative. With respect to flight search websites, the Commission notes in addition that the results presented by the Parties did not refer to DTM.[157]

(144) The distances and travel times from DUS, CGN, DTM and NRN to Düsseldorf city centre are summarised below:

149 Cases M.8633 – Lufthansa / Certain Air Berlin Assets, paragraph 71 et seq ; and M.8869 - Ryanair / Laudamotion, paragraph 193 et seq.
150 Form CO, paragraph 562.
151 Form CO, paragraph 556.
152 Form CO, annex RFI 1 - DLH Annex 9 – […].
153 Form CO, annex RFI 1 - DLH Annex 9 – […].
154 Response to SO, paragraph 666.
155 Form CO, paragraph 545 et seq.
156 Form CO, paragraph 557 et seq.
157 Form CO, paragraph 558.

Table 3: Distances and travel times from DUS, CGN, DTM and NRN to Düsseldorf city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
DUS	10 km	16 – 45 min	6 18	27 min
CGN	54 km	40 85 min	49 - 59 min	50 min (once a day)
DTM	80 km	60 150 min	96 – 116 min (train + bus)	[N/A]
NRN	85 km	60 130 min	88 min (train + bus)	[N/A]

Source: response to RFI 29, Table 3.

(145) The Commission first notes that DUS and CGN are within the indicative 100 km and 1 hour drive distance to Düsseldorf centre. On the other hand, DTM and NRN, while being less than 100 km away, are more than a 1-hour drive or train ride away from Düsseldorf centre and are not connected directly to Düsseldorf centre by train or bus.

(146) The results of the market investigation were inconclusive with respect to the substitutability between DUS and CGN. The majority of carriers who expressed an opinion were of the view that DUS and CGN were substitutable.[158] On the other hand, an analysis conducted by a carrier that operated from both DUS and CGN showed that DUS and CGN attract significantly different shares of customers from different post code areas, suggesting that the two airports serve different catchment areas.[159] The views of airport managers[160] and customers[161] were mixed.

(147) The results of the market investigation suggest that DTM and NRN are not substitutable to DUS. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that DTM and NRN are not substitutable to DUS.[162]

(148) For the purpose of this Decision, the exact market definition can be left open. The Transaction raised competition concerns with respect to both a market encompassing only DUS and CGN and a market encompassing all four airports, and the Commission's conclusions below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not

158 Responses to question C.A.5 of questionnaire 03 to short-haul competitors.

159 Condor's Observations of 12 December 2023, paragraph 21, ID 11270.

160 The majority of airport managers who expressed an opinion were of the view that DUS and CGN are not substitutable but at the same time half of them estimated that a ticket price difference of up to 10% would incentivise to switch between the airports. Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers.

161 The Customers who expressed an opinion were split in the middle on the question whether DUS and CGN are substitutable. Responses to question C.F.5 of questionnaire 06 to customers of both short-haul and long-haul flights.

162 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.5 of questionnaire 03 to short-haul competitors, question C.F.5 of questionnaire 06 to customers of both short-haul and long-haul flights. See also non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 12, ID 2367.

affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.4. Frankfurt

(149) According to Lufthansa and MEF, the city of Frankfurt is served by two airports: Frankfurt airport (FRA) and Frankfurt-Hahn airport (HHN). FRA and HHN are located respectively 11 and 124 km away from Frankfurt city centre.

(150) While in some early decisions the Commission found that Frankfurt and Frankfurt-Hahn airports could be considered as substitutable[163] in the most recent decision the results of the Commission's market investigation were inconclusive, and the Commission left the question open.[164]

(151) Lufthansa and MEF submit that FRA and HHN airports are substitutable for the vast majority of passengers in the Frankfurt region.[165] The Parties based their argument on the distances and travel times from FRA and HHN to Frankfurt city centre. The Parties also referred to data from the Catchment Area Tool.[166] In addition, the Parties referred to the results of flight search websites.[167] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative.

(152) The Parties argue that the move of Ryanair from FRA to HNN due to the increase in airport charges at FRA demonstrates that the two airports are in the same catchment area.[168] Finally, the Parties provide an example of Lufthansa internal document where it is stated that Lufthansa is closely monitoring […].[169]

(153) The distances and travel times from FRA and HHN to Frankfurt city centre are summarised below:

Table 4: Distances and travel times from of FRA and HHN to Frankfurt city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
FRA	11 km	10 – 28 min	12 15 min	20 min
HHN	124 km	75 – 130 min	[N/A]	130 min

Source: response to RFI 29, Table 4.

(154) The Commission first notes that while FRA is within the indicative 100 km and 1 hour drive distance to Frankfurt city centre, HHN is significantly farther away both in terms of distance and driving time. In addition, HHN does not have a train station and is not connected by train.

163 Case M.6663 – Ryanair / Aer Lingus III, paragraph 198 et seq. Case M.4439 – Ryanair / Aer Lingus, paragraph 204 et seq.

164 Case M.8869 – Ryanair / Laudamotion, paragraph 207 et seq.

165 Form CO, paragraph 527.

166 Form CO, paragraph 508 et seq.

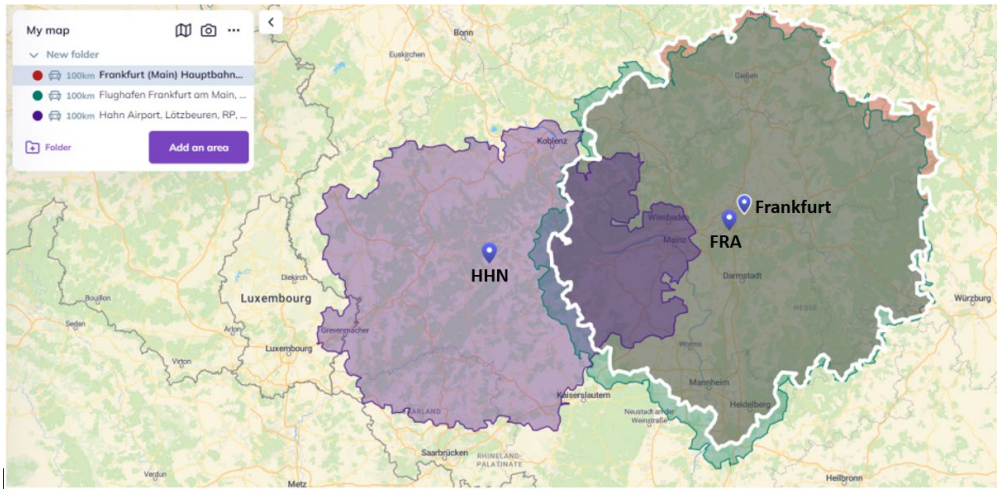
167 Form Co, paragraph 519 et seq.

168 Form CO, paragraph 524 et seq.

169 Form CO, paragraph 526.

(155) The figure below illustrates catchment areas of 100km road distance from Frankfurt city centre, FRA and HNN. As can be seen in the figure,[170] HHN is significantly outside the catchment area of Frankfurt city centre and only small shares of their respective catchment areas overlap.

Figure 6: Catchment areas of Frankfurt city centre, FRA and HHN, based on 100km road distance



Source: response to RFI 2, Annex Q2, map 6.3.1.

(156) The results of the market investigation suggest that FRA and HHN are not substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that FRA and HHN are not substitutable.[171]

(157) Air France-KLM for example explained that "Frankfurt Hahn is closer to Luxembourg than Frankfurt (situated 1h35 min by car from Frankfurt center). It has no facility to operate large traffic flows. It has around 2.5m pax per year for the moment in comparison to close to 70m for FRA. Only Wizz and Ryanair are operating from HHN on a very low frequency basis and to leisure destinations only. Hahn is only reachable by Bus in 2hours from Frankfurt city. Frankfurt airport is located close to the city and also reachable easily from Mainz/Wiesbaden and Darmstadt which are the four main cities to contribute locally. HAHN cannot play that role. FRA main airport operates a state of the art train station with hundreds of high-speed and regional train per day connecting FRA airport to rest of Germany, It is one of the main station for Deutsche Bahn."[172]

(158) Ryanair for example explained that "it does not consider HHN and FRA to be perfectly substitutable airports that serve the same customer demand (notably, there is some degree of substitutability, but Ryanair mostly do not consider them to be substitutable). For instance, Ryanair mentions that (i) HHN is located far from Frankfurt city (approximately 120 km); and (ii) passenger traffic to HHN is mainly

170 The white line represents 100km road distance from Frankfurt city centre. The purple area represents 100km from HHN.

171 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.6 of questionnaire 03 to short-haul competitors, question C.F.6 of questionnaire 06 to customers of both short-haul and long-haul flights.

172 Response of Air France-KLM to question C.A.6 of questionnaire 03 to short-haul competitors, ID 12093

point-to-point and leisure-related in contrast to passenger traffic in FRA, that is associated to a large extent with business customers and long-haul connections."[173]

(159) Although in its response to Commission's questionnaire Ryanair responded that "most passengers (50-90%) consider these airports as close substitutes",[174] it also explained that –

"There is a bus from Hahn Airport to Frankfurt city centre which is direct, frequent and affordable meaning the city is very accessible from both airports. However, it takes just 15 minutes to reach Frankfurt from Frankfurt Airport and it takes 2 hours to reach Frankfurt from Hahn Airport. Both airports have similar security waiting times. Only very time-sensitive passengers will choose Frankfurt Airport over Hahn Airport when there is a material difference in flight prices as we have previously seen from moving flights from Frankfurt Airport to Hahn Airport. The defining factors for passengers deciding to fly to/from Frankfurt will be airfare prices, the loyalty program available and the time/day of flights. There is, however, a material difference in the facilities available at both airports with Frankfurt Airport having significantly better facilities than Hahn Airport. For passengers making connections, Frankfurt Airport is much better connected for both short-haul and long-haul. Hahn Airport does not cater for long-haul routes."[175] [emphases added]

(160) The Commission notes that in addition to the significant difference in travel time and quality of facilities, Ryanair pointed out that a "material" (rather than small) difference in price, is required for NTS passengers to switch from FRA to HHN and that TS passengers will not switch in any case, suggesting that the two airports are not in the same market.

(161) In their Response to the SO, the Parties suggested that Ryanair contradicts itself because in response to the same questionnaire Ryanair stated that the distinction between premium vs non-premium customers based on time sensitivity is not relevant for the assessment of the Transaction.[176] However, Ryanair explained that it objects to a distinction based on time sensitivity because "short-haul flights within Europe attract a range of customers, including time-sensitive travellers."[177] There is no contradiction between this statement and the statement cited above that "only very time-sensitive passengers will choose Frankfurt Airport over Hahn Airport when there is a material difference in flight prices."

(162) The considerations noted above tend to suggest that FRA and HHM are not in the same market. However, for the purpose of this decision, the exact market definition can be left open as the Transaction raised competition concerns under any plausible market definition, and the Commission's conclusions below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

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173 Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 11, ID 2367.

174 Response of Ryanair to question C.A.6.1 of questionnaire 03 to short-haul competitors, ID 12597.

175 Response of Ryanair to question C.A.6.2 of questionnaire 03 to short-haul competitors, ID 12597.

176 Response to the SO, paragraph 671, second bullet point.

177 Ryanair response to question C.2.2 of questionnaire -3 to short-haul competitors.

6.5.3.5. Hamburg

(163) According to Lufthansa and MEF, the city of Hamburg is served by two airports: Hamburg Airport (HAM) and Lübeck Airport (LBC). HAM and LBC are located respectively 9 and 75 km from Hamburg city centre.

(164) In the past the Commission considered that HAM and LBC airports are substitutes for flights between Dublin and Hamburg.[178] In earlier cases, however, the Commission had examined routes to HAM without examining the questions whether HAM is substitutable to LBC.[179]

(165) Lufthansa and MEF submit that HAM and LBC belong to the same market.[180] The Parties base their arguments on the distances and travel times from of HAM and LBC to Hamburg city and the Commission's earlier cases.

(166) The distances and travel times from HAM and LBC to Hamburg city centre are summarised below:

Table 5: Distances and travel times from of HAM and LBC to Hamburg city

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
HAM	9 km	16 – 55 min	25 min	38 – 59 min
LBC	70 km	45 – 100 min	73 – 78 min (indirect link)	[N/A]

Source: response to RFI 29, Table 5[181].

(167) The Commission first notes that HAM is within the indicative 100 km and 1 hour drive distance to Hamburg city centre. LBC is also located less than 100 km away from Hamburg city centre, but travel times from LBC to Hamburg city centre are more than 1 hour by road when traffic is busier and more than 1 hour by indirect train. There is only indirect rail connection and no bus connection between Hamburg city centre and LBC.

(168) In the Response to the SO, the Parties argued that the driving time ranges based on peak and off-peak hours do not follow the Commission's past practice, lacks justification and can lead to an excessively wide range of driving time and misleading conclusions. The Parties also argued that in a previous case the Commission considered travel time by car from LBC to Hamburg city centre was just 60min (without considering peak and off-peak hours) and that some respondents to the market investigation in that case considered the travel time to be only 30min.[182]

178 Case M.4439 – Ryanair / Aer Lingus, paragraph 212 et seq.

179 Case M.3770 – Lufthansa / SWISS and Case M.3940 Lufthansa / Eurowings.

180 Form CO, paragraph 534.

181 Due to clerical mistake, the source of the Table 5 above was identified in the SO as Form CO, Table 6.5.

182 Response to the SO, paragraph 674.

(169) The Commission notes its explanation in section 6.5.3.1.3 above regarding its use in peak/off-peak road travel time. The driving time estimation cited from a previous Commission decision cannot bind the Commission as it relates to dynamic road and traffic conditions that are prone to change over time.

(170) The results of the market investigation suggest that HAM and LBC are not substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that HAM and LBC are not substitutable.[183]

(171) The considerations noted above suggest that HAM and LBC are not in the same market. However, for the purpose of this decision, the exact market definition can be left open as the Transaction raised competition concerns under any plausible market definition, and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.6. Milan

(172) According to the Parties, the city of Milan is served by three airports: Milan Linate airport (LIN), Milan Malpensa airport (MXP) and Bergamo airport (BGY). LIN, MXP and BGY are located respectively 7 km, 50 km and 45 km away from Milan city centre. The Parties' activities overlap only in LIN.

(173) In prior decisions, the Commission concluded that the three airports are substitutable for flights between Dublin and Milan.[184] In other decisions, the market investigation was inconclusive and the question was left open.[185]

(174) Lufthansa and MEF submit that LIN, MXP and BGY are substitutable for the vast majority of passengers in the Milan region and need to be taken into account when assessing the Parties' market position on relevant routes ex the Milan region.[186]

(175) The Parties base their argument on the distances and travel times from the airports to Milan city centre, noting that a direct train link between BGY and Milan city centre will open in 2026.[187] These arguments are examined in more detail below.

(176) Further with respect to BGY, the Parties argued that the Commission should take into consideration the plans to expand the airport for the 2026 winter Olympics.[188] The argument of the Parties is based on several succinct news reports and the Parties do not elaborate how the expansion of BGY and its number of passengers would affect its substitutability with LIN and MXP considering that BGY is already today not particularly congested (see section 6.10.1.3 below).

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183 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.7 of questionnaire 03 to short-haul competitors, question C.F.7 of questionnaire 06 to customers of both short-haul and long-haul flights.

184 Cases M.6663 – Ryanair/Aer Lingus III, paragraph 252; M.4439 – Ryanair/Aer Lingus, paragraph 267.

185 Case M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraph 81 et seq. with respect to Milan – Los Angeles and Milan – San Francisco. Case M.7333 – Alitalia / Etihad, paragraph 95 et seq. with respect to Milan – Abu Dhabi, Milan – Rome and Milan – Belgrade.

186 Form CO, paragraph 500.

187 Response to the Article 6(1)(c) decision, 111, fourth bullet point.

188 Response to the Article 6(1)(c) decision, 111, fourth bullet point and Response to the SO, paragraph 683.

(177) The Parties also refer to the data from the Catchment Area Tool and to results of searches on flight search websites. The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative.

(178) Finally, the Parties also argue that from supply side perspective, it is essential for carriers to spread the offer across the airports within one catchment area to avoid operational risks and diversify their offering.[189] The Commission notes however that the mere fact the carriers spread their activity between nearby airports does not mean by itself that they are in the same catchment area as carriers may spread their activity between airports exactly in order to operate in different catchment areas and capture different passenger flows. Indeed, one carrier has explained that it "operates both from MXP and Milan Bergamo Airport ('BGY'). The strategic rational behind operating bases in both airports is the different catchment areas that these two airports serve."[190]

(179) In any case, it is doubtful that it is essential for carriers to spread their offer between the Milan airports. According to the information provided by the Parties[191] only a minority representing less than third of the carriers that are active in the Milan airports (27 out of 105) operates in more than one airport and in some cases the operations in the secondary airport are very limited (less than 10% in terms of passengers). ITA for example flew close to 4 million passengers from LIN in 2023 and only 85 thousand from MXP and is not flying anymore from MXP as of 2024. Only three airlines operate in all Milan airports. The majority of the carriers operating in more than one Milan airport (16 carriers out of 27) operate in LIN and MXP. The Commission considers that this limited presence in two or more airports does not show that it is essential for carriers to spread their offer between the Milan airports and that the airports are substitutable to each other.

(180) The distances and travel times from LIN, MXP and BGY to Milan city centre are summarised below:

Table 6: Distances and travel times from LIN, MXP and BGY to Milan city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
LIN	7 km	12 – 45 min	29 min (metro + bus)	25 min
MXP	45 km	40 – 100 min	49 – 54 min	50 – 70 min
BGY	45 km	35 – 80 min	75 – 90 min (train + bus)	50 – 60 min

Source: response to RFI-29, Table 6.

189 Form CO, paragraph 472; response to the Article 6(1)(c) decision, 111, fifth bullet point, second sub-bullet point; Response to the SO, paragraph 684.

190 Non-confidential minutes of a conference call with NEOS, dated 16 February 2024, paragraph 4, ID 11599.

191 Response to RFI-32, annex Q7.

(181) The Commission first notes that LIN, MXP and BGY can be all within the indicative 100 km and 1 hour drive distance to Milan city centre. However, distance and travel time to LIN are significantly shorter than to MXP and BGY. During heavier traffic hours travel times to MXP and BGY may exceed 1 hour. BGY is also not connected by direct train link to Milan city centre. The Parties argued that the Commission should have taken into consideration the direct train link between BGY and Milan city centre that is due to open in 2026 and will offer similar travel time as between MXP and Milan city centre. As explained further below, the market investigation suggested that the BGY rail connection has limited effect on the analysis of substitutability between the Milan airports.

6.5.3.6.1. Substitutability between LIN and MXP

(182) The majority in each group of respondents to the market investigation (airport managers, short-haul competitors and customers) was of the view that LIN and MXP are substitutable from the point of view of passengers.[192] However, because of its proximity to the city centre, LIN is considered to be the airport of choice for "premium traffic",[193] that is TS passengers or passengers who are not price sensitive that are willing to pay a premium in order to benefit from the comfort of using an in-city airport. Luxair explained that these passengers will not consider switching from LIN and will simply use whichever carriers operate in LIN.[194]

(183) easyJet explained that "there are in general situations where Malpensa and Linate are substitutable. However, for the core Milan city catchment Linate is clearly a preferable airport in terms of proximity. But the limited range of services (it is in particular very focussed on short domestic routes) at Linate, the unusual traffic distribution rules and inefficient use of slots limits the current potential for competitive".[195] According to Air France-KLM "The catchment area of MXP and LIN only partially overlap in terms of geographies and passenger segments. MXP serves much more the northern area of Milan and caters long-haul flights. LIN serves the city, plus the southern catchment area, and is limited to short & medium haul flights due to limitations imposed by authorities. The airports are approximately 80km apart, meaning short flights this would add [a lot] of travel time. It is widely acknowledged in the industry that Linate airport is the favourite airport for time sensitive passengers in the Milan area thanks to is unique location. MXP may conversely be an alternative for non-sensitive passengers, including on short & medium haul flights."[196]

(184) An internal document of ITA describe [197] […].[198] An internal document of Lufthansa states that […].[199] Another Lufthansa internal document explains that […].[200] In the

192 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.2 of questionnaire 03 to short-haul competitors and question C.F.2 of questionnaire 06 to customers of both short-haul and long-haul flights.

193 Non-confidential minutes of a conference call with NEOS, dated 16 February 2024, paragraphs 10 and 14, ID 11599.

194 Response to RFI to Luxair, question 2.a.ii., page 4 and 4.b., page 7, ID 11174.

195 Response of easyJet to question C.A.2 of questionnaire 03 to short-haul competitors, ID 12368.

196 Response of Air France-KLM to question C.A.2 of questionnaire 03 to short-haul competitors, ID 12093.

197 ITA internal document, […].

198 ITA internal document, […].

199 Lufthansa internal document, […].

200 Lufthansa internal document, […].

Response to the SO the Parties point out that […][201] […].[202] The Commission notes that while the internal document expresses the view that the three airport draw passengers from the same catchment area, it also explains that LIN offers passengers a unique experience that is not substitutable with that offered by BGY and MXP.

(185) In the Response to the SO the Parties also argued that carriers can offer premium services at all airports and that in any case there is no clear distinction any more between TS and NTS customers.[203] The Commission notes that with respect to the distinction between TS and NTS customers, indeed, in section 6.4 above, the Commission found, based on the evidence, that on short-haul routes (LIN is used only for short-haul flights) it is not needed to distinguish between groups of passengers (business/leisure, TS/NTS). However, the evidence clearly shows that because of its proximity to the city, LIN allows carriers to serve "premium passengers" in the sense that they are willing to pay more in order to fly to or from LIN due to the comfort of its vicinity to Milan city centre. With respect to "premium services" that may be offered in BGY and MXP, the Commission understand that the Parties refer to the quality of services in terms of hospitality, not vicinity to the city centre. This finding is specific to LIN and is not affected by the findings with respect to the question whether within O&D markets distinct segments should be identified according to types of passengers.

(186) In conclusion, the Commission considers that the market investigation indicates that generally LIN and MXP are substitutable. However, from the point of view of carriers, LIN, unlike MXP, offers the possibility of serving a segment of "premium passengers" that are willing to pay more in order to fly to or from LIN. This consideration would be taken into account when considering of closeness of competition and in the airport-by-airport analysis below.

6.5.3.6.2. Substitutability between LIN and BGY

(187) The results of the market investigation were mixed with respect to the substitutability of LIN and BGY. Half of the carriers having expressed an opinion considered BGY as substitutable with LIN while the other half considered them not substitutable or that the response is dependent on the individual route.[204] All airport managers who expressed an opinion were of the view that BGY is not substitutable with LIN.[205] Among customers, the majority of customers having expressed an opinion were of the view that BGY and LIN are not substitutable or that the response depends on the individual route.[206]

(188) The considerations relating to LIN as an airport for "premium passengers" are particularly relevant in differentiating LIN from BGY that is mainly serving LCCs, representing 90% of its activity in terms of number of flights.[207]

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201 Lufthansa internal document, […].

202 Response to the SO, paragraph 681.

203 Response to the SO, paragraph 680.

204 Responses to question C.A.2 of questionnaire 03 to short-haul competitors.

205 Responses to question D.A.4 of questionnaire 01 to airport managers.

206 Question C.F.2 of questionnaire 06 to customers of both short-haul and long-haul flights.

207 Response to RFI-22, question 5.d. and annex Q5d; response of Air France-KLM to question C.A.2-2 of questionnaire 03 to short-haul competitors; response to RFI to Luxair, question 2.b.ii., page 6 and question 3.b., page 7, ID 12093.

(189) With respect to the new BGY train link, the Commission notes that, as pointed out by respondents to the market investigation, the line is currently planned to be operational only in 2026 and as is common with large infrastructure projects, it cannot be excluded that its operation will be postponed.[208] In any case, respondents to the market investigation were of the view that the train connection, once operational, would not increase substitutability between BGY and LIN.[209]

6.5.3.6.3. Substitutability between MXP and BGY

(190) The results of the market investigation were mixed with respect to the substitutability of MXP and BGY. The majority of airport managers having expressed an opinion did not consider the two airports to be substitutable. The airport managers of MXP and BGY provided diverging opinions: while the airport manager of MXP (and LIN), S.E.A S.p.A. considers the two airports not to be substitutable, the airport manager of BGY, SACBO S.p.A. views them as substitutable.[210]

(191) Among customers, only a minority considered BGY and MXP as substitutable. The largest group of respondents considered that the two airports are not substitutable and a smaller group of customers responded that it depends on specific routes.[211]

(192) The majority among carriers expressing an opinion considered BGY and MXP as substitutable although some carriers responded that they do not consider the two airports to be substitutable or that it depends on the individual route.[212] One carrier for example explained that it "operates both from MXP and Milan Bergamo Airport ('BGY'). The strategic rational behind operating bases in both airports is the different catchment areas that these two airports serve."[213]

6.5.3.6.4. Conclusions with respect to the Milan airports

(193) In conclusion, the Commission considers that the evidence tends to show that LIN and MXP are generally substitutable and LIN and BGY are not. The results with respect to the substitutability of MXP and BGY were mixed.

(194) In the Response to the SO, the Parties noted that when carriers were asked whether the three airports should be considered substitutable,[214] the majority of carriers responded that the three airports are substitutable to each other.[215] The Commission notes however that the results of the market investigation on this question were mixed since the majority view of customers (that is, passengers) differed from the majority view of carriers. Only a minority of customers expressing a view considered the three airports as substitutable to each other. The majority of customers expressing

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208 Luxair noted for example that 17 000 citizens signed a petition against the project; response to RFI to Luxair, question 8.c, ID 11174.

209 Response to RFI to Luxair, question 9 (ID 11174); response to RFI to […] question 8, ID 11199; response to RFI II-1 to Air France-KLM, question 44, ID 11426; response to RFI II-1 to Wizz Air, question 31, ID 11311.

210 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers.

211 Responses to question C.F.2 of questionnaire 06 to customers of both short-haul and long-haul flights.

212 Responses to question C.A.2 of questionnaire 03 to short-haul competitors.

213 Non-confidential minutes of a conference call with NEOS, dated 16 February 2024, paragraph 4, ID 11599.

214 The Commission asked about the substitutability between the airport pairs LIN/BGY, LIN/MXP and BGY/MXP and also between all the three considered together.

215 Response to the SO, paragraph 678, referring to responses to question C.A.2.d of questionnaire 03 to short-haul competitors.

a view responded that the three airports are either not substitutable (the largest group of respondents) or that their substitutability depends on the route.[216]

(195) For the purpose of this Decision, it can be left open whether the market encompasses only LIN and MXP or whether it encompasses all three airports as the Transaction raised competition concerns under the two relevant market definitions, and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.7. Munich

(196) According to Lufthansa and MEF, the city of Munich is served by two airports: Munich airport (MUC) and Memmingen airport (FMM). MUC and FMM are located respectively 40 and 110 km away from Munich city centre.

(197) In prior decisions, the Commission reached different conclusions depending on the routes, air carriers and customers. While in one case MUC and FMM airports were found to belong to the same market for routes between Dublin and Munich,[217] in another case FMM was deemed unlikely to be substitutable to MUC, except for a very limited number of particularly non-time sensitive passengers.[218] The market investigation in the most recent case tended to confirm the limited substitutability between the two airports from the point of view of passengers but ultimately the question was left open.[219]

(198) Lufthansa and MEF consider that MUC and FMM are substitutable for the vast majority of passengers in the Munich region.[220] The Parties base their arguments on the distances and travel times from MUC and FMM to Munich city centre as well as on the Commission's past cases.[221]

(199) The Parties also refer to data from the Catchment Area Tool[222] and the results of searches on eDreams.[223] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative. Furthermore, with respect to the search on eDreams, the Parties were not able to present search results that include both airports. As showed in the figure below, the Parties only presented a screen shot including a drop menu when "Munich" is typed into the search box which includes FMM.

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216 Responses to question C.F.2 of questionnaire 06 to customers of both short-haul and long-haul flights.

217 Case M.8633 – Lufthansa / Certain Air Berlin Assets, paragraphs 85 and the reference there to case M.6663 – Ryanair / Aer Lingus III, paragraph 265.

218 Case M.8633 – Lufthansa / Certain Air Berlin Assets, paragraphs 85 and the reference there to case Case M.5335 – Lufthansa / SN Airholding, footnote 185.

219 Case M.8633 – Lufthansa / Certain Air Berlin Assets, paragraphs 88-90.

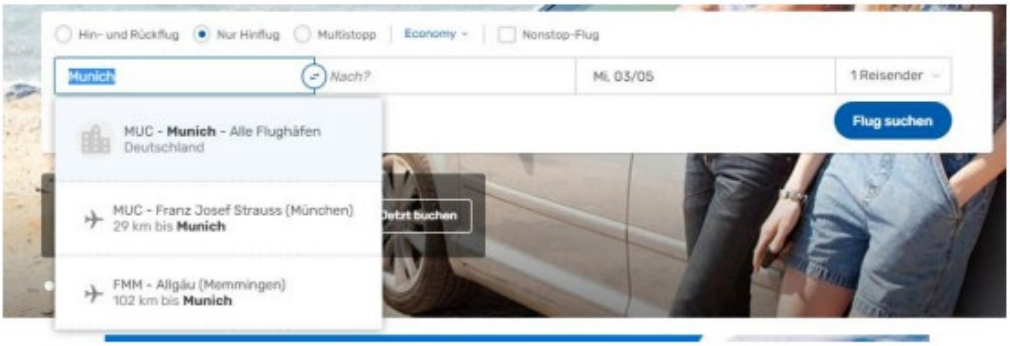
220 Form CO, paragraph 583.

221 Form CO, paragraph 565-566.

222 Form CO, paragraph 569 et seq.

223 Form CO, paragraph 519 et seq.

Figure 7: eDreams flight search with Munich as departure (example)



Source: Form Co, Figure 17

(200) Finally, the Parties provide examples of two Lufthansa internal documents which according to the Parties show that […].[224]

(201) The distances and travel times from MUC and FMM to Munich city centre are summarised below:

Table 7: Distances and travel times from MUC and FMM to Munich city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
MUC	39 km	30 70 min	40 min	45 min
FMM	112 km	70 120 min	86 – 100 min (train + bus)	80 min

Source: response to RFI 29, Table 7.

(202) The figure below illustrates catchment areas of 100km road distance from Munich city centre, MUC and FMM. As can be seen in the figure,[225] FMM is outside the catchment area of Munich city centre and only small shares of their respective catchment areas overlap.

Figure 8: catchment areas of Munich city centre, MUC and FMM, based on 100km road distance

Source: response to RFI 32, Annex Q2, map 6.6.1.

[224] Form CO, paragraph 580 et seq.

[225] The white line represents 100km road distance from Munich city centre. The purple area represents 100km from MMF.

(203) The Commission first notes that while MUC is within the indicative 100 km and 1 hour drive distance to Munich city centre, FMM is farther away and travel time by road is significantly longer than 1 hour. There is no direct train connection between Munich city centre and FMM.[226]

(204) Second, the results of the market investigation suggest that MUC and FMM are not substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that MUC and FMM are not substitutable.[227]

(205) The considerations noted above tend to suggest that MUC and FMM are not in the same market. However, for the purpose of this Decision, the exact market definition can be left open as the Transaction raises competition concerns under any plausible market definition to the assessment of the Transaction (i.e. MUC or MUC/FMM), and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.8. New York

(206) According to Lufthansa and MEF, the city of New York is served by four airports: LaGuardia Airport (LGA), John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR) and New York Stewart International Airport (SWF). LGA, JFK, EWR and SWF are located respectively 13 km, 27 km, 27 km and 112 km away from New York city centre.

(207) In a previous case, the market investigation tended to confirm that JFK and EWR are substitutable, but the question was left open.[228] The Commission did not have the opportunity to examine whether LGA and SWF belong to the same market.

(208) Lufthansa and MEF submit that services from LGA, JFK and EWR airports should be considered as part of the same market.[229] The question whether SWF belongs to the same market can be left open in their view because it would not affect the competitive assessment.[230] The Parties base their argument on the distance and travel times from the airports to New York city centre, past Commission and U.S. cases and one ITA internal document in which […].[231] The Parties also refer to the data from the Catchment Area Tool and to results of searches on flight search websites.[232] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative.

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226 Lufthansa and MEF point to a connection by combination of and bus and train between Munich city centre and FMM with travel time of 86-100 minutes.

227 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.8 of questionnaire 03 to short-haul competitors, question C.F.8 of questionnaire 06 to customers of both short-haul and long-haul flights. See also non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 12, ID 2367.

228 Case M.7333 – Alitalia / Etihad, paragraphs 108-109.

229 Form CO, paragraph 673.

230 Form CO, paragraph 678.

231 Form CO, paragraphs 663-667, 671.

232 Form CO, paragraphs 668 and 672.

(209) The distances and travel times from LGA, JFK, EWR and SWF to New York city centre are summarised below:

Table 8: Distances and travel times from LGA, JFK, EWR and SWF to New York city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
LGA	10 km	14 50 min	[N/A]	52 86 min (indirect link)
JFK	30 km	24 85 min	50 60 min (indirect link)	[N/A]
EWR	20 km	28 80 min	52 min (indirect link)	70 min
SWF	115 km[233]	75 130 min	133 min (indirect link)	110 min (indirect link)

Source: response to RFI 9, Table 8.

(210) The Commission first notes that LGA, JFK and EWR are within the indicative 100 km. While LGA is within the 1-hour drive distance, travel to JFK and EWR may take significantly long during rush hour. SWF is beyond the 100 km and 1 hour drive distance to New York city centre. However, LGA is only used for internal flights in the United States and is not used for transatlantic flights.[234]

(211) Second, the results of the market investigation suggest that JFK and EWR are substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that JFK and EWR are substitutable.[235] However, some respondents consider that there are relevant differences between these two airports. For example, Air France-KLM considers that EWR has "a broader coverage than JFK as it also serves New Jersey and that it "is generally viewed as a better option to reach Manhattan for long-haul passengers".[236]

(212) On balance, the Commission considers that the available evidence suggests that JFK and EWR belong to the same market while LGA and SWF do not (for the purposes of transatlantic long-haul flights). However, for the purpose of this decision it can be left open whether the market also includes LGA and/or SWF since the Transaction does not raise competition concerns both when including and excluding these airports from the relevant markets, and the Commission's conclusion below

233 The Parties indicated a distance of 70-75km that is probably a confusion with miles (112-120km).

234 LGA and SWF are currently not used for any direct long-haul connections between North America and Italy and only represent an immaterial share of passengers on indirect connections on these routes. See further, section 12.3.1below.

235 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.E.2 of questionnaire 04 to long-haul competitors, question C.F.16 of questionnaire 06 to customers of both short-haul and long-haul flights.

236 Non-confidential minutes of the conference call with Air France-KLM dated 6 November 2023, paragraph 16, ID 9836.

regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. While the Commission considers that JFK and EWR belong to the same market, it will take into consideration limitations in substitutability between these two airports in the competitive assessment as an element of closeness of competition.

6.5.3.9. Rome

(213) According to Lufthansa and MEF, the city of Rome is served by two airports: Fiumicino airport (FCO) and Ciampino airport (CIA). FCO and CIA are located respectively 32 km and 15 km away from Rome city centre.

(214) The Commission notes that currently neither the Parties, nor any of their competitors fly from CIA on the routes to Frankfurt, Munich,[237] Stuttgart and Zurich. Nevertheless, CIA may be relevant for the assessment considering potential barriers to entry and expansion. For the assessment of the long-haul routes, the question of substitutability between FCO and CIA is not relevant as FCO is the only airport in Rome that is used for long-haul flights and hence the competitive assessment of each of the long-haul routes does not change depending on whether CIA is included in the same market as FCO or not.

(215) In two earlier decisions the Commission concluded that FCO and CIA were substitutable for passengers from Dublin.[238] In a more recent case the market investigation was inconclusive, and the question was ultimately left open.[239]

(216) Lufthansa and MEF submit that FCO and CIA are substitutable for the vast majority of passengers in the Rome region and need to be taken into account when assessing the Parties' market position on relevant routes to and from the Rome region.[240] The Parties base their arguments on the distances and travel times from the airports to Rome city centre and past Commission decisions.[241] In addition, the Parties refer to ITA internal documents that […].[242] The Commission takes note of these arguments, which are taken into account together with the evidence resulting from its market investigation.

(217) Furthermore, the Parties also refer to the data from the Catchment Area Tool, and to results of searches on flight search websites.[243] In addition, the Parties refer to ITA internal documents that […].[244]

(218) The distances and travel times from FCO and CIA to Rome city centre are summarised below:

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237 To Munich Lufthansa also flies from CIA, however its market share was below 1% in the 2022/2023 winter season and had no market share in the 2023 summer season.

238 Case M.4439 – Ryanair / Aer Lingus, paragraph 254 et seq. Case M.6663 – Ryanair / Aer Lingus III, paragraph 280 et seq.

239 Case M.7333 – Alitalia / Etihad, paragraphs 93-94 with respect to Abu Dhabi – Rome and numerous short-haul routes from Rome.

240 Form CO, paragraph 470.

241 Form CO, paragraphs 451-455.

242 Form CO, paragraph 469.

243 Form CO, paragraph 456 et seq.

244 Form CO, paragraph 469.

Table 9: Distances and travel times from FCO and CIA to Rome city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
FCO	32 km	26 - 85 min	32 – 85 min	55 – 90 min
CIA	15 km	20 - 65 min	33 – 45 min (train + bus)	35 min

Source: response to RFI 9, Table 9.

(219) The Commission first notes that FCO and CIA are both within the indicative 100 km and 1 hour drive distance to Rome city centre, although in during rush hour drive time may be longer.

(220) Second, the market investigation provides indications that FCO and CIA are substitutable. The majority of carriers and customers who expressed an opinion consider FCO and CIA as substitutable.[245]

(221) The considerations above tend to suggest that FCO and CIA are in the same market. Therefore, for the purpose of this Decision, the Commission will define the market as encompassing both airports. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.10. Stuttgart

(222) According to Lufthansa and MEF, the city of Stuttgart is served by two airports: Stuttgart airport (STR) and Karlsruhe Baden-Baden airport (FKB). STR and FKB are located respectively 14 and 107 km from Stuttgart city centre.

(223) The market investigation in an earlier case was inconclusive, tending to show that STR and FKB are not substitutable from the point of view of passengers. However, the question was ultimately left open.[246]

(224) Lufthansa and MEF submit that STR and FKB are substitutable for the vast majority of passengers in Stuttgart region.[247] The Parties argue that, although FKB is more than 100km and 1 hour driving distance from Stuttgart city centre, this benchmark is according to the Commission's practice only a first proxy.[248] The Parties consider that the data from the Catchment Area Tool and to results of searches on flight search websites show that the two airports are in the same catchment area.[249] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative.

245 Responses to question C.A.3 of questionnaire 03 to short-haul competitors, C.F.3 of questionnaire 06 to customers of both short-haul and long-haul flights.

246 Case M.8633 – Lufthansa / Certain Air Berlin Assets, paragraphs 95-98.

247 Form CO, paragraph 605.

248 Form CO, paragraph 586, see also footnote 113 above.

249 Form CO, paragraph 590 et seq.

(225) Finally, the Parties argue that internal documents of Lufthansa show that […].[250]

(226) The distances and travel times from STR and FKB to Stuttgart city centre are summarised below:

Table 10: Distances and travel times from STR and FKB to Stuttgart city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
STR	14 km	16 40 min	27 – 32 min	[N/A]
FKB	107 km	80 145 min	110 – 137 (indirect link)	100 105 min (twice a day)

Source: response to RFI 29, Table 10.

(227) The Commission first notes that while STR is within the indicative 100 km and 1 hour drive distance to Stuttgart city centre, FKB is significantly farther away and considerably above 1 hour drive time. There is also no direct train link to FKB and bus frequency is very limited (only twice a day).[251]

(228) The figure below illustrates catchment areas of 100km road distance from Stuttgart city centre, STR and FKB. As can be seen in the figure,[252] FKB is well outside the catchment area of Stuttgart city centre and only small shares of their respective catchment areas overlap.

Figure 9: catchment areas of Stuttgart city centre, STR and FKB, based on 100km road distance

Source: response to RFI 32, Annex Q2, map 6.7.1.

(229) Second, the results of the market investigation suggest that STR and FKB are not substitutable. The majority who expressed an opinion in each group of respondents

250 Form CO, paragraph 600.

251 Lufthansa and MEF note that there is a link combining train and bus between Stuttgart city centre and FKB with travel time of 137 minutes.

252 The white line represents 100km road distance from Frankfurt city centre. The purple area represents 100km from HHN.

(airport managers, short-haul carriers and customers) was of the view that STR and FKB are not substitutable.[253]

(230) The considerations noted above tend to suggest that STR and FKB are not in the same market. However, for the purpose of this Decision, the exact market definition can be left open as the Transaction raises competition concerns under any plausible market definition, and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.11. Vienna

(231) According to Lufthansa and MEF, the city of Vienna is served by two airports: Vienna airport (VIE) and Bratislava airport (BTS). VIE and BTS are located respectively 20 km and 74 km away from Vienna city centre.

(232) The Commission's practice with respect to the question has differed in function of the routes assessed. In two previous decisions, the Commission found that VIE and BTS were substitutable with respect to flights to and from Dublin.[254] In two other cases, the market investigation results were inconclusive and the question was ultimately left open.[255]

(233) Lufthansa and MEF submit that that VIE and BTS airports are substitutable for the vast majority of passengers in the Vienna region.[256] The Parties base their argument on the distances and travel times from VIE and BTS to Vienna city centre,[257] the Commission's past decisions[258] as well statements made by the Commission in the assessment it conducted in the context of the relocation of the European Medicines Agency in 2017[259] and statements of the owner and manager of the Vienna airport and Interreg.[260] The Parties also consider that results of searches on flight search websites show that the two airports are in the same catchment area.[261] The Commission has explained in section 6.5.3.1.2 above the reasons for which it does not consider these sources to be informative.

253 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.9 of questionnaire 03 to short-haul competitors, question C.F.9 of questionnaire 06 to customers of both short-haul and long-haul flights. See also non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 12, ID 2367.

254 Cases M.6663 – Ryanair/Aer Lingus III, paragraphs 324-337; M.4439 – Ryanair/Aer Lingus, paragraphs 218-225.

255 Case M.6447 – IAG / bmi, paragraphs 66-67 (with respect to London-Vienna). Case M.8869 – Ryanair/ Laudamotion paragraphs 163-165 (with respect to Vienna – Paphos/Larnaca, Marrakech, Malaga, Palma de Mallorca).

256 Response to RFI-21, paragraph 21.

257 Response to RFI-21, paragraphs 6-7.

258 Response to RFI-21, paragraphs 8-9.

259 Response to RFI-21, paragraphs 13.

260 Response to RFI-21, paragraphs 12 and 13. Interreg is an EU programme supporting cooperation across borders through project funding; the statement was taken from a report on VIE.

261 Response to RFI-21, paragraph 14 et seq.

(234) The distances and travel times from VIE and BTS to Vienna city centre are summarised below:

Table 11: Distances and travel times from VIE and BTS to Vienna city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
VIE	18 km	14 - 45 min	16 - 25 min	20 min
BTS	74 km	55 – 100 min	N/A	105 min

Source: response to RFI 29, Table 12.

(235) The Commission first notes that both VIE and BTS are within the indicative 100 km drive distance. However, drive time to BTS is generally above 1 hour and more than 1.5 hours during peak hours. There is no train connection to BTS.

(236) Second, the results of the market investigation suggest that VIE and BTS are not substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that VIE and BTS are not substitutable.[262]

(237) The considerations noted above tend to suggest that VIE and BTS are not in the same market. However, for the purpose of this Decision, the exact market definition can be left open as the Transaction raises competition concerns under any plausible market definition, and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.12. Zurich

(238) According to Lufthansa and MEF, the city of Zurich is served by two airports: Zurich airport (ZRH) and Basel airport (BSL). ZRH and BSL are located respectively 12 and 91 km from Zurich city centre.

(239) In prior decisions, the Commission assessed routes from or to Zurich and Basel airports as separate markets.[263] In a more recent decision, the market investigation was inconclusive with respect to the substitutability of ZRH and BSL from the point of view of passengers and the question was ultimately left open.[264]

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262 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.11 of questionnaire 03 to short-haul competitors, question C.F.11 of questionnaire 06 to customers of both short-haul and long-haul flights.

263 Case M.5440 – Lufthansa/Austrian Airlines, paragraph 223 et seq. for Vienna-Basel and Vienna-Zurich. Case M.5335 Lufthansa/Brussels Airlines, paragraph 264 et seq. (for Brussels – Basel) and paragraph 281 (for Brussels – Zurich) M.3770 – Lufthansa/SWISS for e.g. Zurich-Munich and Basel-Munich, paragraph 51 et seq.

264 Case M.8633 – Lufthansa/Certain Air Berlin Assets, paragraphs 103-105.

(240) Lufthansa and MEF submit that ZRH and BSL are substitutable for the vast majority of passengers in the Zurich region.[265] The Parties point out to the fact the carrier SWISS (Lufthansa group) offers combined air and rail tickets to attract to its hub in ZRH passengers from several train stations close to the border and outside Switzerland including Basel main station.[266]

(241) The Parties also consider that the data from the Catchment Area Tool and the results of searches on flight search websites show that the two airports are in the same catchment area.[267] The Commission has explained in section 6.5.3.1 above the reasons for which it does not consider these sources to be informative.

(242) The Parties also adduce internal documents of Lufthansa that according to the Parties show that […].[268] In the Response to the SO, the Parties added that in these documents […].[269] The Commission notes however that the documents […]. There is no statement in those documents from which it can be understood that […][270] […].

(243) In the Response to the SO, the Parties made reference to a third Lufthansa internal document in which it is stated that […].[271] The fact that the catchment areas of BSL and ZRH are partially overlapping is considered below.

(244) The distances and travel times from ZRH and BSL to Zurich city centre are summarised below:

Table 12: Distances and travel times from ZRH and BSL to Zurich city centre

Airport	Approximate distance to city center	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
ZRH	12 km	12 30 min	15 – 43 min	65 73 min
BSL	91 km	65 120 min	76 - 96 min (indirect link)	85 110 min

Source: Form CO, Table 6.11

(245) The Commission first notes that ZRH is within the indicative 100 km and 1 hour drive distance to Zurich city centre. While BSL is within the 100 km drive distance to Zurich city centre, the travel time is significantly longer than 1 hour and there is no direct train link to Zurich city centre.

265 Form CO, paragraphs 641 and 661.
266 Form CO, paragraph 644.
267 Form CO, paragraph 646 et seq.
268 Form CO, paragraph 660.
269 Response to the SO, paragraph 688.
270 The Parties did not argue, and the Commission's market investigation did not raise the possibility that GVA is substitutable to ZRH and BSL. Indeed, GVA is located 255km away from BSL and 278km from ZRH.
271 Response to the SO, paragraph 689.

(246) The figure below illustrates catchment areas of 100km road distance from Zurich city centre, ZRH and BSL. As can be seen in the figure,[272] BSL as at the border of the catchment area of Zurich city centre and only about half of their respective catchment areas overlap.

Figure 10: Catchment areas of Zurich city centre, ZRH and BSL, based on 100km road distance

Source: response to RFI 2, Annex Q2, map 6.9.1.

(247) Second, the results of the market investigation suggest that ZRH and BSL are not substitutable. The majority who expressed an opinion in each group of respondents (airport managers, short-haul carriers and customers) was of the view that ZRH and BTS are not substitutable.[273]

(248) The considerations noted above tend to suggest that ZRH and BSL are not in the same market. However, for the purpose of this Decision, the exact market definition can be left open as the Transaction raises competition concerns under any plausible market definition, and the Commission's conclusion below regarding whether the Transaction significantly impedes effective competition on routes to or from within this catchment area is not affected by the particular market definition adopted. Nevertheless, the Commission will take into consideration which airport carriers fly to when assessing how closely they compete with one another.

6.5.3.13. Other city catchment areas

(249) The table below presents the additional cities relevant to the overlapping short-haul and long-haul routes discussed in sections 9 and 10 below, as well as the airports that are located within these cities' catchment areas, according to the Parties' submissions. The Commission considers that, for the below cities with more than one airport within its catchment area according to the Parties, the question of airport substitutability can be left open, as the competitive assessment does not change for these cities depending on the specific market definition.

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272 The white line represents 100km road distance from Zurich city centre. The purple area represents 100km from BSL.

273 Responses to questions D.A.2 and D.A.4 of questionnaire 01 to airport managers, question C.A.10 of questionnaire 03 to short-haul competitors, question C.F.10 of questionnaire 06 to customers of both short-haul and long-haul flights.

Table 13: additional cities

City	Airport	Distance from city centre
Barcelona[274]	Josep Tarradellas Barcelona-El Prat airport (BCN) Girona Airport (GRO) Reus Airport (REU)	13km 90km 104km
Beijing[275]	Beijing Nanyuan (NAY) Beijing Capital International airport (PEK) Beijing Daxing International airport (PKX)	21km 29km 60km
Bologna[276]	Bologna Guglielmo Marconi airport (BLQ), Forli Airport (FRL) Parma Airport (PMF)	12km 78km 106km
Buenos Aires[277]	Jorge Newbery airport (AEP) Ezeiza airport (EZE)	9km 35km
Cairo[278]	Cairo International airport (CAI) Giza Sphinx International Airport (SPX)	20km 44km
Catania[279]	Vincenzo Bellini Catania Airport (CTA) Cosimo Airport (CIY)	6km 96km
Chengdu[280]	Shuangliu International airport (CTU) Chengdu Tianfu International airport (TFU)	23km 51km
Chicago[281]	Chicago Midway International Airport (MDW) Chicago O'Hare International Airport (ORD)	18km 28km
Copenhagen[282]	Copenhagen Airport (CPH) Roskilde Airport (RKE)	8km 37km
Dallas[283]	Love Field (DAL) Dallas-Fort Worth International airport (DFW)	12km 28km
Denver[284]	Centennial airport (APA) Denver International airport (DEN)	30km 36km
Dubai[285]	Dubai International airport (DXB) Al Maktoum International Airport (DWC)	14km 60km
Florence[286]	Florence Peretola airport (FLR) Pisa Galileo Galilei airport (PSA)	7km 81km
Guangzhou[287]	Foshan airport (FUO) Guangzhou Baiyun International airport (CAN)	31km 32km
Hannover[288]	Hannover Airport (HAJ) Bremen Airport (BRE)	10km 99km

274 Response to RFI-64, question 1.
275 Response to RFI-64, question 1.
276 Response to RFI-64, question 1. In response to RFI-35, question 21, the Parties argued that only BLQ and RFL are substitutable.
277 Form CO, paragraph 707 et seq. response to RFI-64, question 1.
278 Form CO, paragraph 7121 et seq.; response to RFI-64, question 1.
279 Response to RFI-35, question 21; response to RFI-64, question 1.
280 Response to RFI-64, question 1.
281 Form CO, paragraph 722 et seq; response to RFI-64, question 1.
282 Response to RFI-64, question 1.
283 Response to RFI-64, question 1.
284 Response to RFI-64, question 1.
285 Response to RFI-64, question 1.
286 Response to RFI-35, question 21; response to RFI-64, question 1.
287 Response to RFI-64, question 1.
288 Response to RFI-64, question 1.

City	Airport	Distance from city centre
Los Angeles[289]	Hollywood Burbank Airport (BUR) Los Angeles International Airport (LAX) Burbank Long Beach Airport (LGB) Long Beach Ontario International Airport (ONT) John Wayne Airport (SNA) San Bernardino International Airport (SBD).	26km 29km 37km 64km 66km 105km
Mexico City[290]	Mexico City Airport (MEX) Toluca International Airport (TLC) Felipe Angeles International Airport (NLU)	8km 42km 64km
Miami[291]	Miami International Airport (MIA) Fort Lauderdale International Airport (FLL)	10km 38km
Montreal[292]	Montréal-Pierre Elliott Trudeau International (YUL) Montréal-Saint-Hubert (YHU) Montréal-Mirabel International (YMX)	18km 19km 55km
Naples[293]	Naples International Airport (NAP) Salerno Costa d'Amalfi Airport (QSR).	4km 73km
Nice[294]	Nice Côte d'Azur Aéroport – Nice Airport (NCE) Cannes-Mandelieu Airport (CEQ)	8km 37km
Olbia[295]	Olbia Airport (OLB) Alghero (AHO)	3km 106km
Orlando[296]	Orlando International airport (ORL) Orlando Sanford Airport (SFB)	7km 45km
Palermo[297]	Palermo-Punta Raisi airport (PMO) Trapani airport (TPS)	31km 112km
Perth[298]	Perth Airport (PER) Jandakot Airport (JAD)	15km 19km
San Diego[299]	San Diego International airport (SAN) McClellan–Palomar Airport (CLD)	4km 8km
San Francisco[300]	San Francisco International Airport (SFO) Oakland International Airport (OAK) Oakland Norman Y. Mineta San José International Airport (SJC) San José Charles M. Schulz–Sonoma County Airport (STS).	24km 37km 75km 100km
Seattle[301]	King County International Airport (BFI) Seattle Tacoma International airport (SEA)	9km 21km
Seoul[302]	Gimpo International Airport (GMP) Incheon International Airport (ICN)	19km 68km

289 Form CO, paragraph 679 et seq. Distances were searched by the Commission on Google Maps. In response to RFI-64, question 1, the Parties argued that only LAX and ONT are substitutable.

290 Response to RFI-64, question 1.

291 Form CO, paragraph 683 et seq.; response to RFI-64, question 1.

292 Response to RFI-64, question 1.

293 Response to RFI-35, question 21; response to RFI-64, question 1.

294 Response to RFI-64, question 1.

295 Response to RFI-64, question 1.

296 Response to RFI-64, question 1.

297 Response to RFI-64, question 1.

298 Response to RFI-35, question 21; response to RFI-64, question 1.

299 Response to RFI-64, question 1.

300 Form CO, paragraph 689 et seq. Results of Commission search on Google Maps. Response to RFI-64, question 1. In the response to RFI-64, question 1, the Parties argued that only SFO and OAK are substitutable.

301 Response to RFI-64, question 1.

302 Form CO, paragraph 741 et seq.; response to RFI-64, question 1.

City	Airport	Distance from city centre
Sao Paulo[303]	Sao Paulo-Congonhas airport (CGH) Sao Paulo-Guarulhos International airport (GRU) Viracopos – Campinas International Airport (VCP)	13km 26km 91km
San Diego[304]	San Diego International airport (SAN) McClellan–Palomar Airport (CLD)	4km 8km
Shanghai[305]	Hongqiao International Airport (SHA) Pudong International Airport (PVG)	19km 44km
Singapore[306]	Seletar Airport (XSP) Changi International Airport (SIN)	19km 21km
Stockholm[307]	Bromma airport (BMA) Arlanda Airport (ARN) Stockholm Skavsta airport (NYO)	8km 43km 106km
Tampa[308]	Tampa International airport (TPA) St. Pete–Clearwater International Airport (PIE).	10km 30km
Tokyo[309]	Tokyo Haneda airport (HND) Narita International airport (NRT)	24km 74km
Toronto[310]	Billy Bishop Toronto City Airport (YTZ) Lester B. Pearson International Airport (YYZ) Hamilton Airport (YHM)	3km 29km 91km
Trieste[311]	Trieste Airport (TRS) Ljubljana Airport (LJU	30km 83km
Venice[312]	Venice Marco Polo airport (VCE) Venice Treviso airport (TSF)	13km 41km
Washington[313]	Reagan Washington Airport (DCA) Washington Dulles Airport (IAD) Baltimore/Washington International Thurgood Marshall Airport (BWI)	5km 45km 51km

Source: see footnotes 275 - 314.

6.5.3.14. Cities served by a single airport

(250) The cities noted in the table below are served by a single airport and the Parties did not claim substitutability between each of these airport and other airports.[314]

Table 14: Cities served by a single airport

City	Airport
Amman	Queen Alia International airport (AMM)
Abu Dhabi	Abu Dhabi Zayed International airport (AUH)
Addis Ababa	Addis Ababa Bole International airport (ADD)
Athens	Eleftherios Venizelos airport (ATH)
Bari[315]	. D U R O : Airport (BRI)

303 Form CO, paragraph 701 et seq.; response to RFI-64, question 1.
304 Response to RFI-64, question 1.
305 Response to RFI-64, question 1.
306 Response to RFI-64, question 1.
307 Response to RFI-64, question 1.
308 Response to RFI-64, question 1.
309 Form CO, paragraph 715 et seq.; response to RFI-64, question 1.
310 Form CO, paragraph 750 et seq; response to RFI-64, question 1.
311 Response to RFI-64, question 1.
312 Response to RFI-35, question 21; response to RFI-64, question 1.
313 Form Co, paragraph 695 et seq.; response to RFI-64, question 1.
314 Response to RFI 35, question 21; response to RFI-64, question 1. See also SO, footnotes 1068, 1070, 1072, 1077, 1092, 1105.
315 Initially the Parties did not argue any substitutability to BRI (response to RFI 35, question 21. See also SO, footnotes 1072, 1077, 1105). Only in very late stage of the process the Parties argued that BRI is

City	Airport
Beirut	Beirut Rafic Hariri International airport (BEY)
Brindisi[316]	Papola Casale Airport (BDS)
Boston	Edward J. Logan International airport (BOS)
Cagliari	Cagliari International Airport Elmas (CAG)
Casablanca	Casablanca Mohammed V airport (CMN)
Charlotte	Charlotte Douglas International airport (CLT)
Chongqing	Jiangbei International airport (CKG)
Delhi	Indira Gandhi International airport (DEL)
Detroit	Detroit Metropolitan Wayne County airport (DTW)
Geneva	Geneva International airport (GVA)
Genoa	Genoa Cristoforo Colombo Airport (GOA)
Doha	Doha Hamad International airport (DOH)
Hangzhou	Xiaoshan International airport (HGH)
Lamezia Terme	Lamezia Terme International Airport (SUF)
Madrid	Madrid Barajas Airport (MAD)
Philadelphia	Philadelphia International Airport (PHL)
Prague	Vaclav Havel International Airport (PRG)
Pristina	Pristina International Airport (PRN)
Riyadh	King Khalid International Airport (RUH)
Shenzhen	Shenzhen Bao'an International Airport (SZX)
Tel Aviv	Ben Gurion Airport (TLV)
Valencia	Valencia Airport (VLC)
Verona	Verona Villafranca Airport (VRN)
Wenzhou	Wenzhou Longwan International airport (WNZ)

Source see footnote 315

6.6. Distinction between direct and indirect flights

(251) On a given O&D pair, passengers can travel by way of a direct (or non-stop) flight between the point of origin and the point of destination or by way of an "indirect" (or one-stop) flight on the same O&D pair via an intermediate destination.[317]

6.6.1. The Commission's decisional practice

(252) In previous decisions, the Commission has considered that the substitutability between direct and indirect flights on a route-by-route basis depends on various factors, including notably the flight duration, but also price considerations or the

substitutable with BDS (response to RFI 64, question 1). The Parties did not substantiate their late claim which is also not likely considering that the two airports are about 128km apart and are each more than 100km from the other city's centre.

316 Initially the Parties did not argue any substitutability to BDS (response to RFI 35, question 21. See also SO, footnotes 1068, 1070). Only in very late stage of the process the Parties argued that BDS is substitutable with BRI (response to RFI 64, question 1). The Parties did not substantiate their late claim which is also not likely considering that the two airports are about 128km apart and are each more than 100km from the other city's centre.

317 "Non-stop" flights are flights that take off at airport A and land at airport B and are constantly in the air between A and B. "Direct" flights may entail a refuelling stop and/or a disembarking/re-embarking stop but are marketed under a single flight code and are flown with a single aircraft. "One-stop" flights include direct flights that do not qualify as "non-stop", as well as indirect flights which are journeys that require a change of aircraft or a change of flight code. Although "non-stop" and "one-stop" are not exactly synonymous with the terms "direct" or "indirect", references to "direct" and "indirect" flights in this decision should be understood as also referring to "non-stop" and "one-stop" flights.

inconvenience associated with the indirect flight (e.g., obligation to transfer, higher vulnerability to disruption).[318]

(253) In particular, for short-haul flights, the Commission has considered that indirect flights do not generally provide a competitive constraint to direct flights absent exceptional circumstances, for example, the direct connection does not allow for a one-day return trip or the share of indirect flights in the overall market is significant (at least 10% of passengers).[319]

(254) For long-haul flights, the Commission has considered that indirect flights could constitute a competitive alternative to direct services under certain conditions, in particular, if they are marketed as connecting flights on the O&D pair in the computer reservation systems, they are operated on a daily basis and cause only a limited extension of the trip (maximum 150 minutes connecting time).[320]

6.6.2. Lufthansa and MEF's view

(255) Lufthansa and MEF do not contest the Commission's past decisional approach.[321]

6.6.3. The Commission's assessment

6.6.3.1. Short-haul flights

(256) With respect to short-haul flights, a two third majority of customers who expressed an opinion in the market investigation were of the view that direct and indirect flights between routes in Italy on the one hand and routes in Germany, Austria, Belgium and/or Switzerland, which are the countries with the routes affected by the Transaction, are not substitutable. Nevertheless, a significant share of about a third of the customers who expressed an opinion were of the view that direct and indirect short-haul flights are substitutable.[322] A larger share of customers, about 40%, considered that convenient indirect flights are substitutable to direct flights when there is only one direct flight option.[323] The large majority of short-haul carriers did not think that customers consider direct and indirect flights on short-haul routes to be substitutable[324] and would not monitor competitors' indirect flights on the routes where they themselves offer direct flights.[325] However, half of the carriers considered that when there is only one direct flight option, customers may consider the direct option substitutable with convenient indirect flights.[326]

(257) In view of the large share of customers that may consider indirect short-haul flights, specifically when there is only one direct flight option, and the fact that half of the carriers shared the same view, the Commission considers, in accordance to its prior practice, that direct and indirect flights between the same short-haul route O&D

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318 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 57; M.8361 – Qatar Airways/Alisarda/Meridiana, paragraphs 24-25; M.7541 – IAG/Aer Lingus, paragraph 30; M.7333 – Alitalia/Etihad, paragraphs 75-76; M.6663 – Ryanair/Aer Lingus III, paragraph 373.

319 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 57, M. 8361 – Qatar Airways/Alisarda/Meridiana, paragraph 25; M. 7541 – IAG/Aer Lingus, paragraph 32; M.7333 – Alitalia/Etihad, paragraph 77; M.6663 – Ryanair/Aer Lingus III, paragraph 375.

320 See e.g. Cases M.6447 – IAG/bmi, paragraphs 69 and 71; M.5747 – Iberia/ British Airways, paragraph 17; M.5141 – KLM/Martinair, paragraphs 142-144.

321 Form CO, paragraphs 410 et seq.

322 Responses to question C.C.1 of questionnaire 06 to customers of both short-haul and long-haul flights.

323 Responses to question C.C.2 of questionnaire 06 to customers of both short-haul and long-haul flights.

324 Responses to question C.3 of questionnaire 03 to short-haul competitors. See also non-confidential minutes of a conference call with Air France-KLM, dated 16 October 2023, paragraph 23, ID 10199.

325 Responses to question C.4 of questionnaire 03 to short-haul competitors.

326 Responses to question C.5 of questionnaire 03 to short-haul competitors.

make part of the same market when indirect flights represent at least 10% of passengers on the route (see paragraph (252) above).

6.6.3.2. Long-haul flights

(258) With respect to long-haul flights, the large majority of customers responding to the market investigation considered that direct and indirect long-haul flights are substitutable.[327] Long-haul carriers responded in the same vein. All long-haul carriers who operate on the relevant routes and expressed an opinion were of the view that indirect flights compete with direct flights.[328] The large majority of long-haul carriers – even those who do not operate on relevant routes – opined that where there is only one company offering a direct flight on a specific O&D route, passengers may consider indirect flights as alternatives to that direct connection.[329] The large majority of long-haul carriers who operate on the relevant routes said they monitor the activity of carriers offering indirect flights on the same routes.[330]

(259) The Commission therefore concludes that for purposes of this Decision, direct and indirect flights between the same O&D on long-haul routes should be considered to fall in the same market.

(260) However, as outlined in detail in section 10.1.4, while the available evidence suggests that indirect and direct connections on long-haul routes belong to the same product market, there is significant evidence that suggests that passengers prefer direct connections over indirect connections. This suggests that, for long-haul routes, airlines offering direct connections compete more closely with one another than with airlines offering only indirect connections (as also explained in more detail in section 10.1.4)

6.7. Distinction between charter flights and scheduled flights

(261) Charter flights, as opposed to scheduled flights, are usually defined as air transport services that take place outside normal schedules, normally through a hiring arrangement with a particular customer (in particular a tour operator). Charter companies usually operate on a seasonal basis with a relatively low frequency of flights, in response to the requirements of tour operators (for example, once a week on Saturday, only during the summer season).[331]

6.7.1. The Commission's decisional practice

(262) The Commission has in previous cases considered that most of the services offered by charter companies (package holiday sales, seat sales to tour operators) are not in the same market as scheduled point-to-point air passenger transport services.[332]

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327 Responses to question C.C.3 and C.C.4 of questionnaire 06 to customers of both short-haul and long-haul flights. See also non-confidential minutes of a conference call with American Airlines, dated 6 November 2023, paragraph 4, ID 5632; non-confidential minutes of a conference call with Air Transat, dated 21 November 2023, paragraph 24, ID 7141; non-confidential minutes of a conference call with Delta, dated 19 October 2023, paragraph 19, ID 1165; non-confidential minutes of a conference call with IAG, dated 6 November 2023, paragraph 23, ID 2353; non-confidential minutes of a conference call with TAP, dated 10 November 2023, paragraphs 18-19, ID 8827.

328 Responses to question C.D.1 of questionnaire 04 to long-haul competitors.

329 Responses to question C.D.11 of questionnaire 04 to long-haul competitors.

330 Responses to question C.D.8 of questionnaire 04 to long-haul competitors.

331 See Case M.6663 – Ryanair/Aer Lingus III, paragraph 388.

332 See e.g. Case M.6828 – Delta Air Lines/Virgin Group/Virgin Atlantic Limited, paragraph 68; M.6663 – Ryanair/Aer Lingus III, paragraph 418; M.4439 – Ryanair/Aer Lingus, paragraph 311.

(263) However, the Commission has left open whether dry seats (seats only without other services) sold by charter carriers and scheduled point-to-point air passenger transport services are part of the same relevant product market.[333] Furthermore, the Commission has held that the distinction between scheduled and charter airlines has become blurred, as even full-leisure airlines operate scheduled services.[334]

6.7.2. Lufthansa and MEF's view

(264) Lufthansa and MEF are of the view that the distinction between charter and scheduled flights is not relevant anymore and that all seats sold to individual end-customer on flights on the same O&D are part of the same market irrespective whether on scheduled or chartered flights.[335] First, the vast majority of seats purchased by tour operators are on scheduled flights.[336] Second, passengers can book seats on scheduled and charter flights through the same distribution channels.[337]

6.7.3. The Commission's assessment

(265) The majority of customers who expressed an opinion responded that the distinction between scheduled and chartered flights was not appropriate for the relevant routes.[338] The majority of customers who provided an answer explained that either they do not use charter flights or that there are none on the relevant routes.[339] The majority of carriers who expressed an opinion also considered that the distinction is not appropriate for the relevant routes.[340]

(266) According to the information provided by Lufthansa and MEF, charter flight represents negligible activity (<1.2%) on all routes concerned by the Transaction with the exception of Rome – Hamburg.[341] On Rome – Hamburg, which is the only route on which the Parties overlap in operating charter flights, charter flights represented a significant share of 15 to 30% of overall capacity in terms of seats in each of IATA seasons Summer 22, Winter 22 and Summer 23.[342] The Parties' direct customers are tour and cruise operators that sell the seats to their end-customers, The Parties do not offer dry seats on these charter flights directly to passengers.[343]

(267) Consequently, given the significant share of charter flights of the overall capacity in terms of seats on the Rome-Hamburg route, the activities of the Parties in charter flights on this route will be considered separately from the activities in scheduled flights (see further section 9.3.1 below). Otherwise, due to their negligible scope, it is unnecessary for the purpose of this decision, to distinguish separate markets for charter flights and scheduled flights as it will not affect the assessment of the Transaction.[344]

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333 See Case M.6663 – Ryanair/Aer Lingus III, paragraph 418 et seq.
334 See Case M.5141 – KLM/Martinair, paragraph 114.
335 Form CO, paragraph 387, 388 and 404.
336 Form CO, paragraph 388, 405.
337 Form CO, paragraphs 389, 404.
338 Responses to question C.D.1 of questionnaire 06 to customers of both short-haul and long-haul flights.
339 Responses to question C.D.1.2 of questionnaire 06 to customers of both short-haul and long-haul flights.
340 Responses to question C.6 of questionnaire 03 to short-haul competitors. See also questionnaire 1 to NEOS, non-confidential response of 31 October 2023 to question 2; Questionnaire to TUI, non-confidential response of 19 October 2023 to question 3.
341 Response to RFI-28, question 6 and annex Q6.
342 Response to RFI-28, question 6 and annex Q6.
343 Response to RFI-29, question 1.c. […].
344 See Case M.5141 – KLM/Martinair, paragraph 115.

6.8. Distinction between air and train passenger transport services

6.8.1. The Commission's decisional practice

(268) When defining the relevant O&D markets for air transport services, the Commission has previously also considered other transport alternatives to the extent that they are substitutable to a flight (intermodal competition). This has been considered in cases where alternative modes of transport on the respective O&D route can be considered comparable and can therefore be considered as valuable alternatives by customers.[345]

(269) To assess the issue of substitutability between air and other transport modes on a given route, the Commission has taken into account, among others, the following elements: (i) total travel time from city centre to city centre for air transport and for the possible alternative mode(s) of transport; (ii) schedules; (iii) proportion of passengers travelling by the different modes of transport; (iv) prices or pricing strategies of airlines and providers of other transport services; and (v) overall quality, reliability and convenience of service offered on aircraft and on the alternative mode(s) of transport.

(270) In previous decisions the Commission considered competition between rail and air transport in circumstances in which the duration of the rail travel was up to 4.5 hours. For connections close to and above 4 hours the Commission generally considered that rail travel is not substitutable to air travel for TS passengers.[346]

6.8.2. Lufthansa and MEF's view

(271) Lufthansa and MEF consider that train services could be considered part of the same market as flight services on certain short-haul overlapping routes but submit that the question of market definition can be left open and the pressure exerted by train services factored in as part of the competitive assessment.[347]

(272) The Parties clarified however that "train services are not substitutable for air travel services on European short haul routes in general, but that on some routes train services may be a viable substitute for certain types of customers (e.g. for customers that are cost-conscious or aware of their impact on the environment and are striving to reduce their carbon footprint by choosing train over air services)."[348]

(273) Specifically, Lufthansa and MEF consider the substitutability of train transport services with air transport services as relevant for the routes Milan-Frankfurt, Milan-Stuttgart, Rome-Munich and Rome-Zurich.[349] On those routes, both Lufthansa and ITA offer air passenger transport services. According to Lufthansa and MEF, the routes are also served by attractive direct or indirect train services (some of which are night train options) by various train operators or combinations of those, i.e., the Italian train operator Trenitalia, the Austrian Federal Railways ("ÖBB"), the Swiss Federal Railways ("SBB") and/or the German train operator Deutsche Bahn ("DB").

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345 See e.g. Cases M. 9287 – Connect Airways/Flybe, paragraph 107; M.6796 – Aegean/Olympic II, paragraph 52; M.6447 – IAG/bmi, paragraph 75.

346 Cases M.3280 – Air France/KLM, paragraph 70; M.3770 – Lufthansa/SWISS, paragraphs 55 and 63; M.5403 – Lufthansa/BMI, paragraph 63; M.5440 – Lufthansa/Austrian Airlines, paragraphs 138, 144, 189; M.5830 – Olympic/Aegean Airlines, paragraphs 1367 and 1390; M.6447 – IAG/BMI, paragraphs 191, 214, 238, 249; M.9287 – Connect Airways/Flybe, paragraphs 108 and 113.

347 Form CO, paragraph 343.

348 Response to RFI-29, paragraph 113.

349 Form CO, paragraph 2331. In addition, in Form CO paragraph 1540, the Parties argue that a night train between Milan and Vienna is "a viable alternative for travellers who are sensitive about their ecological travel footprint."

6.8.3. The Commission's assessment

(274) Rail operators who responded to the market investigation opined that for train travel of above six hours passengers will generally prefer air transport services despite the availability of train services on the same route,[350] suggesting that this is the travel time above which rail travel is not substitutable to air travel. Carriers who expressed an opinion explained that they will not operate flights between O&Ds that are connected by a three to four hours train link. Air France-KLM for example confirmed that it does not consider trains of above 4 hours to be close substitutes to intra-EEA short-haul flights.[351] On a similar note, "SAS consider[s] trains to exercise an indirect competitive pressure for journeys that take up to three hours (domestic travel)",[352] and easyJet confirms that "(…) generally where the train is less than 3 hours the train will capture the majority of passengers"[353] Wizz Air "does not intend to operate flights between Zurich and Milan, due to the geographic proximity between the two cities, and their train connection that is <4 hours."[354]

(275) This approach is confirmed by the internal documents of the Parties. An internal document of Lufthansa states that […].[355] A more recent internal document of Lufthansa states that […].[356] An internal document of Lufthansa […].

Figure 11

[…]

Source: Response of Lufthansa and MEF on a Commission's request for information [n.]

(276) The Parties explained that ITA […].[357] An internal document of ITA shows […].

Figure 12

[ITA internal document]

Source: ITA internal document.

(277) The results of the market investigation show that substitutability between rail and air travel is stronger when rail travel time is up to three or four hours (which is in line with the Commission's practice noted in section 6.8.1 above) and its upper limit is six hours.

(278) The table below provides the flight and train travel times between the city pairs with respect to which Lufthansa and MEF argue that passenger air and rail transport compete.[358]

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350 Responses to question 7 of the questionnaire to train operators.

351 Response to RFI II-1 to Air France-KLM, question 31.b), ID 11426. See also Response of Air France-KLM to question E.B.4.2. of questionnaire 03 to short-haul competitors, ID 12093.

352 Response of SAS to question E.B.4.2. of questionnaire 03 to short-haul competitors, ID 12313.

353 Response of easyJet to question E.B.4.2. of questionnaire 03 to short-haul competitors, ID 12368. See also non-confidential minutes of a conference call with easyJet, dated 24 October 2023, paragraph 14, ID 1054.

354 Non-confidential minutes of a conference call with Wizz Air, dated 22 September 2023, paragraph 16, ID 861.

355 Lufthansa internal document, […].

356 Lufthansa internal document, […].

357 Form CO, paragraph 2352.

358 See footnote 350 above.

Table 15: Train travel times

Route	Operator	Train duration (fastest option)
Milan-Frankfurt	Cooperation Trenitalia/DB/SBB	7-8h[359]
Milan-Stuttgart	Cooperation Trenitalia/DB	7h31m[360]
Rome-Munich	Cooperation ÖBB/DB	13h (night train)[361]
Rome-Zurich	ÖBB	7h1m[362]

Source: Commission's compilation based on the sources indicated in the footnotes

(279) As can be seen in Table 15 above, rail travel times between the city pairs are longer than the six hours limit, and therefore do not compete directly with flights.

(280) The majority of rail operators expressing an opinion considered that train travel overall exerts negligible competitive pressure on air travel on Milan-Frankfurt and Rome-Munich and some competitive pressure on Milan-Stuttgart and Rome-Zurich.[363] The large majority of customers who expressed an opinion did not consider that trains exert competitive pressure on flights in any of these routes.[364] That was also the view of the majority of carriers who expressed an opinion.[365]

(281) The Commission also notes that it is the Parties' view that in principle train services and air travel services are not substitutable.[366] In addition, it is not clear from the Parties' argument how travellers who choose train travel over air travel due to environmental considerations rather than price and quality of service may see train and air travel as substitutable in terms that would affect competition between these modes of transport.

(282) Consequently, the Commission considers that for the purpose of this decision, rail passenger services between city-pairs that are longer than 6 hours (such as the services noted in Table 15 above) should not be considered in the same market as air passenger services between the same city-pairs although they may be taken in consideration to the extent that they exert out of market constraints on air passenger services. By contrast, rail services between city-pairs that are up to 3-4 hours long

359 Responses of DB, SBB and Ternitalia to the RFI to train operators, question 2, IDs 883, 852 and 900; Form CO, paragraph 1334.

360 Form CO, paragraph 1329. However, such a connection was not identified by Trenitalia and DB in their responses to the RFIs to train operators, question 2, ID883 and 900. SBB on the other hand reported in response to the RFI to train operators, question 2, ID852, that it operates a service between Stuttgart and Milan (change in Zurich) with a duration of 6h22min. The Commission was not able however to find such a connection searching the websites of SBB, DB, Trenitalia or meta websites (Rail Europe, Trainline). The fastest rail connection found was one-daily 7h31min connection (as noted by the Parties) with two changes (Karlsruhe and Basel).

361 Responses of DB and ÖBB to the RFI to train operators, question 2, IDs 883 and 864.

362 Response of ÖBB to the questionnaire to train operators, question 2, ID 864.

363 With respect to Rome-Vienna Responses to question 10 of the questionnaire to train operators, IDs 852, 864, 883 and 12566.

364 Responses to questions DB.1, D.B.3 and D.B.6 of questionnaire 06 to customers of both short-haul and long-haul flights.

365 Responses to questions E.B.3 and E.B.6 of questionnaire 03 to short-haul competitors and questions questionnaire 06 to customers of both short-haul and long-haul flights.

366 See paragraph (271) above.

may be considered as exerting direct competitive constraint on air passenger services between the same city-pairs.

6.9. Market for the provision of access to flights of another carrier for connecting passengers in the context of interlining arrangements

6.9.1. Introduction

(283) Passengers travelling on indirect flights, in particular long-haul flights, connect from one flight to another flight at a certain airport ("connecting" passengers). These passengers do not necessarily travel each "leg" of their journey with the same airline. Traffic made up by passengers connecting at either one or both ends of the route, in particular for long-haul flights, is referred to as "feeder traffic".[367]

(284) There are a variety of agreements ("interlining agreements") whereby single tickets may be sold for indirect journeys including two legs operated by the two airlines which concluded the agreement.[368] In the framework of such interlining agreements, the carrier granting access to its flights to passengers connecting onto another carrier's flight and travelling with a single ticket issued by this second carrier provides an "input" to the latter and is remunerated for it. This "input" is used to supply the downstream service, i.e. a ticket for an indirect journey on a given city-pair. Two carriers that interline are thus engaged in a vertical relationship when one of them sells tickets for indirect journeys including one leg operated by the other carrier.

(285) In addition, there are cases where both carriers can sell tickets for indirect journeys including one leg operated by the other party to the agreement. In such a situation, the vertical relationship is symmetrical: both carriers are active upstream and downstream in respect of one another. There are also cases where the ticket for the indirect journey is sold by a third party (e.g. a travel agent). In such situations, which also result from the existence of an agreement between the two carriers, these are active on closely related markets: they both provide inputs corresponding to each leg of the indirect journey, which are used to offer the downstream service (the indirect journey).

(286) Accordingly, depending on which company sells a ticket for such indirect journeys (one of the two carriers or a third party such as a travel agent), the two carriers may be regarded as engaged in a vertical relationship or active on neighbouring markets.

6.9.2. The Commission's decisional practice

(287) In prior decisions where one of the merging carriers provided competitors with feeder traffic, the Commission considered that the exact nature of the relationship between the merging carrier and the competing carrier engaged in interlining arrangements is of no relevance. The competitive assessment is the same no matter whether the two carriers are engaged in a vertical relationship or are active in closely related markets, providing the "inputs" necessary to a sale of tickets for indirect journeys by a third party.[369]

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367 See e.g. Case M.7541 – IAG/Aer Lingus, paragraph 106.

368 The main different types of "feeder traffic" provided to an airline by third-parties are the following: (i) IATA standard terms; (ii) Special Prorate Agreements (SPAs); (iii) codeshare agreements; and (iv) alliance memberships.

369 See e.g. Cases M.9287 – Connect Airways/Flybe, paragraph 168-173; M.7541 – IAG/Aer Lingus, paragraph 105-118; M.6447 – IAG/bmi, paragraph 78-86.

(288) In those prior decisions, the Commission concluded that the relevant upstream market is the provision of access to flights for connecting passengers, which is to be defined on an O&D basis but could also be based on the group of feeder routes to which access is provided.[370]

(289) In prior decisions the Commission also considered that connecting airports are generally not substitutable by other airports in the same area when assessing feed traffic routes, due to the inability of secondary airports to accommodate hub-and-spoke operations (by contrast to point-to-point operations) and to the limited number of inter-airport connections.[371]

6.9.3. Lufthansa and MEF's view

(290) Lufthansa and MEF are of the view that there is no separate feeder market that could be under the control of a carrier on the supply side. They explain that they are not active in the supply of access to flights to connecting passengers. They design their networks to cater for local demand or to ensure connectivity with their own long-haul operations. This resulting network may or may not provide connecting opportunities for third party carriers, but this is an opportunistic side-effect that is not taken into consideration to make the decision on opening a route. Airlines have a multitude of options available to them with regard to partnership and feeder traffic (interlining, codeshare, joint ventures). In all variations, there is a mutual and specific benefit for both parties.[372]

6.9.4. The Commission's assessment

(291) Respondents to the market investigation pointed to the relevance of feeder traffic when examining the impact of the Transaction. According to Air France-KLM "having short & medium haul connections on one side, and a connecting partner of the other side are therefore important elements that will contribute to opening a route."[373] All Nippon Airways (ANA) explained that "the role of feeder traffic from/to Rome would be important for ANA when considering entering this market".[374] LOT Polish Airlines said that "LOT is a traditional network carrier with a hub and spoke business model, thus the feeder traffic is of key importance".[375] According to Aerolíneas Argentina, "feeder traffic at FCO is key for profitability and it depends almost exclusively on ITA network".[376] Therefore, contrary to the Parties' arguments, airline carriers consider that access to feeder traffic constitutes an important part of their network planning and there appears to be strong market demand for feeder traffic and limited substitution options with alternative services.

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370 In the same way as the Commission has concluded in its prior decisions that the relevant downstream market is the market for the provision of air transport services, which is to be defined on an O&D basis (see Cases M.9287 – Connect Airways/Flybe, paragraph 182; M.7541 – IAG/Aer Lingus, paragraph 113; M.6447 – IAG/bmi, paragraph 511). In Case M.9287 – Connect Airways/Flybe, the Commission concluded that the upstream market for the provision of access to feeder traffic "has to be definedas comprisingall routes to the connecting airport where the flights carrying the feeder traffic are operated".

371 See e.g. M.7541 – IAG/Aer Lingus, paragraph 115 for London Heathrow or London Gatwick; M.5364 – Iberia/Vueling/Clickair, paragraph 53.

372 Form CO, paragraphs 976-979; response to the Article 6(1)(c) decision, paragraph 67.

373 Response of Air France-KLM to question D.B.14 of questionnaire 04 to long-haul competitors, ID 12029.

374 Response of All Nippon Airlines to question D.B.14 of questionnaire 04 to long-haul competitors, ID 12334.

375 Response of LOT to question D.B.14 of questionnaire 04 to long-haul competitors.

376 Response of Aerolineas Argentina to question D.B.14 of questionnaire 04 to long-haul competitors.

(292) Responses of carriers having expressed an opinion were evenly divided on the question whether they agree with the Commission's decisional practice to define a separate market for feeder traffic.[377] Among the carriers who did not agree with the Commission's decisional practice, easyJet explained that "in Europe we observe that there are very few airlines that operate primarily to provide feeder services." The Commission notes however that it is not necessary for carriers to "primarily" provide feeder services (or any service for that matter) for that service to be defined as a separate market.

(293) IAG and American Airlines responded in similar vein to the Parties that feeder traffic cannot be understood as an input or a service that is provided by carriers to other carriers which advise the commercial behaviour of carriers and on which they compete. This argument, that in principle there is no separate market for feeder traffic, cannot be accepted. As explained in section 6.9.1 above, it is not disputed that feeder traffic is an input of economic value for the provision of indirect O&D journeys and that access to feeder traffic is traded between carriers against consideration. The arrangements that enable feeder traffic are made between carriers and in a completely different manner than the sale of tickets to passengers. Feeder traffic therefore has the characteristics of a distinct market, separate from the sale of tickets to passengers.

(294) For the purposes of this merger control decision the Commission will examine feeder traffic on an O&D basis. The majority of respondents having expressed an opinion agreed with the Commission's decisional practice that connecting airports are generally not substitutable by other airports in the same area when assessing feed traffic routes, due to the inability of secondary airports to accommodate hub-and-spoke operations (by contrast to point-to-point operations) and to the limited number of inter-airport connections.[378]

6.10. Airport-by-airport approach

(295) Under the airport-by-airport approach, every airport (or substitutable airports) is defined as a distinct market. Such a market definition has notably been adopted by the Commission to assess the risks of foreclosure entailed by the concentration of slots at certain airports in the hands of a single undertaking. The effects of a transaction on competition are thus assessed for all O&Ds to or from an airport (or substitutable airports) and all other distinctions when relevant (e.g. TS vs. non-TS passengers, direct vs. indirect flights, charter flights vs. scheduled flights, wholesale vs. retail supply of airline seats) taken together.[379]

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377 Responses to Phase II RFIs to Air France-KLM [ID 11426], question 26; Air Canada [ID 11344], question 20; Air India [ID 11349], question 21; Air Transat [ID 11307], question 16; American Airlines [ID 11533], question 17; ANA [ID 11172], question 16; Delta [ID 11276], question 30; easyJet [ID 11469], question 11; IAG [ID 12009], question 19; Luxair [ID 11174], 11276 9; Norse [ID 11704], question 31; Ryanair [ID 11267], question 1; United Airlines [ID 11221], question 20; Wizz Air [ID 11311], question 2

378 Responses to Phase II RFIs to Air France-KLM [ID 11426] question 27; Air Canada [ID 11344], question 21; Air India [ID 11349], question 22; Air Transat [ID 11307], question 17; American Airlines [ID 11533], question 18; ANA [ID 11172], question 17; Delta [ID 11276], question 31; easyJet [ID 11469], question 12; IAG [ID 12009], question 19; Luxair [ID 11174], question 10; Norse [ID 11704], question 32; Ryanair [ID 111267], question 2; United Airlines [ID 11221], question 21; Wizz Air [ID 11311], question 3.

379 Cases M.9287 – Connect Airways / Flybe, paragraph 120; M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraphs 26 and 128; M.8869 – Ryanair/Laudamotion, paragraphs 63 and 222.

(296) Under the airport-by-airport approach the Transaction gives rise to competition concerns only with respect to Milan-Linate (LIN) airport.

6.10.1. Airport infrastructure services

6.10.1.1. The Commission's decisional practice

(297) The Commission has, in its prior decision practice, delineated a product market for the provision of airport infrastructure services to airlines, which includes the development, maintenance, use and provision of the runway facilities, taxiways and other airport infrastructure.[380] In prior decisions relating to the transfer of slots at airports, the Commission has not considered it appropriate to further distinguish within the market for airport infrastructure services, considering that slot portfolios give access to all infrastructure services necessary to operate at the airport.[381]

(298) The Commission has, in its prior decision practice, defined the geographic scope of the market for airport infrastructure services as the catchment area of individual airports. The Commission has also considered additional criteria relevant for assessing airport substitutability from the point of view of airlines in relation to the market for airport infrastructure services, while acknowledging that the airlines' choice of airports takes into account passengers' demand. In addition, the Commission has notably analysed the costs of operating from a particular airport, capacity constraints for slots and facilities, passenger volumes or the positioning of the airport (e.g. a niche airport serving high yield time-sensitive passengers or an airport serving mainly leisure, less time-sensitive passengers).[382]

(299) The Commission has taken account of all the above-mentioned criteria when assessing the geographic scope of the airport infrastructure services markets relevant for the assessment of the effects of transfer of slots.[383]

6.10.1.2 Lufthansa and MEF's view

(300) With respect to airport infrastructure services the Parties raised substitutability claims only with respect to the Milan airports.

(301) Lufthansa and MEF argue that Linate (LIN), Malpensa (MXP) and Bergamo (BGY) airports should be considered as belonging to same catchment area, and that, consequently, that these airports should be considered part of the same market for the purpose of the market for airport infrastructure services.[384]

(302) In their response to the Article 6(1)(c) Decision, Lufthansa and MEF pointed out that the substitutability of LIN with MXP and BGY is demonstrated by the fact that many of the destinations served from LIN are also served from MXP and BGY.[385] They

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380 Cases M.7270 – ýHVNê $HURKROGLQJ 7UDYHO 6HUYLFH ýHVNp DHUROL International/Axa PE/LLAGL, paragraph 12.

381 Cases M.9287 – Connect Airways / Flybe, paragraph 147; M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraphs 137-138; M.8869 – Ryanair/Laudamotion, paragraph 233; See also Cases M.8672 – easyJet/Certain Air Berlin assets, paragraph 72; M.8633 – Lufthansa/Certain Air Berlin assets, paragraph 116.

382 Cases M.9287 – Connect Airways / Flybe, paragraph 150; M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraph 140-141; M.8869 – Ryanair/Laudamotion, paragraph 234-235; M.5652 – GIP/Gatwick Airport, paragraph 14; M.4164 – Ferrovial/Quebec/GIC/BAA, paragraphs 15-17; M.3823 – MAG/Ferrovial Aeropuertos/Exeter Airport, paragraphs 16-19.

383 Cases M.8869 – Ryanair/Laudamotion, paragraph 236 et seq; M.8672 – easyJet/Certain Air Berlin assets, paragraph 73 et seq.; M.8633 – Lufthansa/Certain Air Berlin assets, paragraph 117 et seq.

384 Form CO, paragraph 1633-1634.

385 Response to the Article 6(1)(c) decision, paragraph 309 and 310.

also point out that in 2021 Ryanair obtained slots in LIN to operate a service to Brussels but ultimately did not operate it, continuing to serve Brussels from MXP and BGY. According to Lufthansa and MEF this shows the substitutability of LIN with MXP and BGY from the point of view of carriers.[386]

6.10.1.3 The Commission's assessment

(303) The Commission will examine below the substitutability between the Milan airports. With respect to the other airports concerned, the Commission will examine the effects of the Transaction for each airport individually. This is because the Parties did not claim substitutability between other airports. In addition, with respect to the other airports concerned, the Parties' position is strongest when examined for each airport individually (that is, without considering possible substitutability with other airports). As explained further in section 11 below, under the airport-by-airport approach, the Transaction gives rise to concerns only in LIN.

(304) Both Lufthansa and ITA hold slots in LIN. Lufthansa is also active in MXP while ITA had limited activities there and none after 2023. Lufthansa has very limited activities in BGY and ITA does not hold any slots there.[387] The Transaction only raises competition concerns when LIN is considered as a distinct market for airport infrastructure services.

6.10.1.3.1. Considerations pertaining to passengers' preferences

(305) The question of the substitutability of LIN with MXP and BGY from the perspective of the passengers is assessed in section 6.5.3.6 above. As explained there, LIN serves mainly passengers who are willing to pay a premium to use an in-city airport and for that passenger segment "MXP and LIN are not substitutable airports, so that the availability of slots at MXP does not have any impact on the slot situation at LIN."[388] The Commission considers that at the very least, carriers operating from MXP or BGY are not able to effectively compete on this passenger segment.[389] Moreover, contrary to the argument of the Parties, the fact that carriers fly from BGY and MXP to many of the same destinations as from LIN does not demonstrate that all three airport are substitutable from the point of view of all passengers (or carriers) since those airports do not necessarily serve the same types of passengers, LIN being the airport with greater ability to serve "premium" passengers, and as explained further below, they serve different types of carriers.

(306) In the Response to the SO, the Parties argued that "the fact that LIN would offer the possibility of serving ["premium passengers"] does not justify the assumption of a lack of substitutability with other airports".[390]

(307) The Parties base this claim on their arguments in another section of the Response to SO[391] where they rebut in general terms the Commission's finding that carriers operating from the same airport (for example, a city primary airport) are closer competitors than carriers operating from a different airport (for example, a more

386 Response to the Article 6(1)(c) decision, paragraph 309 and 311.

387 Form CO, paragraph 1647 and response to RFI-24, question 2 and annex Q2.

388 Response to RFI to Luxair, question 2.a.ii., page 4.

389 Response to RFI to Luxair, question 4.b., page 7. See also response to RFI II-1 to Air France-KLM, question 38 (ID 11426); Response to the RFI to […], questions 2a/2b and 4a/4b, ID 11199. Non-confidential minutes of a conference call with NEOS, dated 16 February 2024, paragraphs 12-13, ID 11599.

390 Response to the SO, paragraph 626.

391 Response to the SO, section A.III.a).v.

distant secondary airport).[392] The Commission notes however that this argument of the Parties was made in the context of closeness of competition in the O&D markets while here the question is rather market definition for airport infrastructure market in LIN. The Parties' argument does not engage with the findings of the Commission that are specific to the market for airport infrastructure in LIN.

(308) Second, the Parties argue that "market definition cannot rely on a subset of passengers".[393] The Parties rely on a Commission decision[394] which according to the Parties "stated that the fact that less time-sensitive charter and economy passengers who will consider travelling further away to an airport that can offer lower fares, could determine the geographic scope of the market for airport infrastructure services."[395] The Commission notes that first, in that decision the reference to the different types of passengers was made in very generic terms, i.e. whether they could be a factor in defining the relevant geographic market and, in any event the question was left open without further examination. Second, in any case, and contrary to the argument of the Parties, neither in that decision nor anywhere else, did the Commission set a principle according to which "market definition cannot rely on a subset of passengers". In defining markets, the Commission must take into consideration all relevant elements. As explained above, in analysing the market for airport infrastructure services from the demand side (that is, from the point of view of carriers), the Commission takes into consideration, among several considerations, also the choices of passengers as customers of the carriers. The fact that LIN offers carriers the possibility to serve a premium segment of passengers is a relevant element in the analysis that the Commission must consider.

(309) Third, the Parties note the blurred line between TS or business passenger and NTS or leisure passengers.[396] Indeed, in the product market definition under the O&D approach above, the Commission found, based on the evidence, that on short-haul routes (LIN is used only for short-haul flights) it is not needed to distinguish between these groups of passengers. These finding were relevant to the O&D markets and to their characteristics, for example, that on short haul flights it is not possible to clearly distinguish between TS/business class and NTS/leisure class tickets or seats.

(310) With respect to airport infrastructure services, as noted in section 6.10.1.1 above, the Commission recognised in the past that the positioning of the airport (e.g. a niche airport serving high yield time-sensitive passengers or an airport serving mainly leisure, less time-sensitive passengers) is a relevant consideration in market definition. Specifically with respect to LIN, the evidence clearly shows that because of its proximity to the city, LIN allows carriers to serve "premium passengers" that are willing to pay more in order to fly to or from LIN. This consideration, together with other considerations analysed below lead to the conclusion that carriers do not see the same business potential and opportunities in LIN compared to MXP/BGY and do not consider them as substitutable.

(311) Finally, referring to paragraph 335 of the SO (identical to paragraph (322) of this Decision), the Parties argue that in the SO the Commission still considered that it is not possible to conclude that airport slots at LIN should be defined separately from MXP. The Commission notes that such conclusion cannot be adduced from

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392 See section 9.1.2.2 below.

393 Response to the SO, paragraph 629.

394 Case M.1035 – Hochtief / Aer Rianta / Dusseldorf Airport.

395 Case M.1035 – Hochtief / Aer Rianta / Dusseldorf Airport.

396 Response to the SO, paragraph 630.

paragraph 335 of the SO, and that the SO clearly states in paragraphs 344 and 345, that LIN is not in the substitutable with MXP and BGY for airport infrastructure services.

6.10.1.3.2. Other considerations

(312) The levels of congestion also differ between the three airports. LIN, MXP and BGY are Level 3 coordinated airports.[397] However, LIN is significantly more congested than MXP and BGY:

Table 16: average congestion rate in LIN, MXP and BGY

	Summer 2022	**Winter 2023**	**Summer 2023**
LIN	76%	77%	77%
MXP	40%	31%	37%
BGY	43%	40%	49%

Source : Form CO (page 471 et seq.)

(313) In terms of size, 7.7 million passengers passed in LIN in 2022, compared to 21.3 million in MXP and 13.2 million in BGY.[398] LIN and BGY have one terminal and one runway for commercial flights each, while MXP has two terminals and two runways for commercial flights.[399]

(314) The airports have different positionings and marketing strategies vis-à-vis passenger traffic. LIN serves mainly network carriers; in 2023, LIN served 24 airlines, 13 of which were network carriers, representing about 80% of its activity in terms of flights.[400] 45 destinations could be reached from LIN, all of which were on short-haul routes.[401]

(315) BGY serves mainly LCC's; in 2023 BGY served 27 airlines, 14 of which were LCC's, representing more than 90% of its activity in terms of the number of flights.[402] 151 destinations could be reached from BGY, the large majority of which were on short-haul routes and a very small number of long-haul routes.[403]

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397 Worldwide Airport Slot Guidelines ("WASG"), annex 12.7. According to the WASG. there are three levels of airport congestion. A Level 3 airport 'is one where: a) Demand for airport infrastructure significantly exceeds the airport's capacity during the relevant period; b) Expansion of airport infrastructure to meet demand is not possible in the short term; c) Attempts to resolve the problem through voluntary schedule adjustments have failed or are ineffective; and d) As a result, a process of slot allocation is required whereby it is necessary for all airlines and other aircraft operators to have a slot allocated by a coordinator in order to arrive or depart at the airport during the periods when slot allocation occurs."In previous decisions the question whether neighbouring airports were in the same level of congestion category was a central consideration in defining the geographic scope of market for airport infrastructure services. See Case M.8869 – Ryanair / Laudamotion, M.8672 – easyJet/Certain Air Berlin assets; M.8633 – Lufthansa/Certain Air Berlin assets, paragraph 117 et seq.

398 Response to RFI-22, question 5.c.

399 Response to RFI-22, questions 5.a. and 5.b. LIN and BGY have each a second short runway not used for commercial flights.

400 Response to RFI-22, question 5.d. and annex Q5d.

401 Response to RFI-22, question 5.e. and annex Q5e.

402 Response to RFI-22, question 5.d. and annex Q5d.

403 Response to RFI-22, question 5.e. and annex Q5e.

(316) MXP served 80 airlines in 2023. Although a small minority of them (13) were LCC's, they represented more than half of its activity in terms of flights.[404] 180 destinations could be reached from MXP, many of them long-haul routes.[405]

(317) Based on the above, the airports present very different characteristics. LIN is much smaller than the two others in terms of numbers of passengers while being significantly more congested. It serves network carriers for a limited number of short-haul routes. BGY focuses on LCC's flying to a large number of destinations, mainly on short-haul routes. MXP is significantly larger than the other two airport and the least congested one, serving a much wider range of carriers and destinations on short and long-haul routes.

(318) With respect to the arguments advanced by the Parties in their response to the Article 6(1)(c) Decision (see paragraph (301) above), the Commission notes that the mere fact that the same destinations are served from different Milan airports does not show by itself that these airports are substitutable from the point of view of carriers. As explained above, LIN offers carriers the possibility of serving premium passengers and as explained further below, the three Milan airports present different characteristics from the point of view of carriers.

(319) With respect to the Parties' argument regarding the LIN slots not operated by Ryanair (see paragraph (301) above), Ryanair explained that "the nature of these slots (no arrival slots or only on a temporary basis) did not provide the capability for us to launch a long-term successful route out of LIN. If we had used these slots, our presence would have been subscale and uncompetitive. Therefore, we did not use these slots.[406] Ryanair did not operate the slots it received in LIN not because MXP and BGY offered a good alternative but because the slots were not sufficient to operate effectively in LIN, demonstrating rather the problem of congestion in LIN rather than substitutability with MXP and BGY.

6.10.1.3.3. Results of the market investigation comparing LIN and MXP

(320) Airport managers provided mixed views with respect to the substitutability of LIN and MXP from the perspective of airlines procuring airport infrastructure services. Only a minority of airport managers having expressed an opinion answered yes to the question whether, for the purposes of providing passenger air transport services, airlines consider airport slots for the in LIN and MXP as close substitutes. Half of airport managers having expressed an opinion, including the company managing both LIN and MXP (Società per Azioni Esercizi Aeroportuali S.E.A., "S.E.A"), responded with a qualified yes, that is, that airlines generally consider airport slots at these airports as substitutable but not for all routes and not under all circumstances. The other half responded with a "no".[407] The view of the majority of airport managers having expressed an opinion was that LIN and MXP are "very similar" from the point of view of airlines in terms of costs of operation but "different" or "very different" in terms of capacity constraints for slots and other facilities, passenger volumes, geographic location of the airport, profiles of customers that can be reached, types of routes flown to/from there and ability to attract customers/sell tickets. Specifically, S.E.A. opined that while both airports are "very similar" from the point of view of airlines operating costs and that the types of profiles of

404 Response to RFI-22, question 5.d. and annex Q5d.
405 Response to RFI-22, question 5.e. and annex Q5e.
406 Response to RFI II-1 to Ryanair, question 34.c, ID 11267.
407 Responses to question D.B.1 of questionnaire 01 to airport managers.

customers that can be reached are "similar" between the two airports, they are "different" or "very different" with respect to capacity constraints for slots and other facilities, passenger volumes, types of routes flown to/from there, ability to attract customers/sell tickets, geographic location of the airport.[408] The airport manager of BGY explained that "Milan Linate is perceived and considered as the real and only Milan's airport. All the European carriers, when possible, look at LIN as their preferred and first option to serve Milan, especially on the short-haul routes performed by legacy and low fares carriers. In case of slot availability Linate is the first choice for any airline that intend to start short-haul European routes from Milan. MXP is now the largest base for Low Cost carriers in Milan, is the only option for long haul carriers due to operational constraint in Linate (runway length and stand availabilities) and due to regulation restrictions in LIN (allowed for flight only within EU and UK). MXP is considered as second choice for all [the] carriers that [have] no access to LIN."[409]

(321) Airlines expressed similar views. The majority of short-haul airlines having expressed an opinion responded with a "no" or a "qualified no" to the question whether they consider airport slots in LIN and MXP as close substitutes.[410] While the majority of airlines having expressed an opinion were of the view that LIN and MXP are "similar" or "very similar" in terms of cost of operating at the airport, and customers' profiles that can be reached and types of routes flown to/from there, a significant minority (40%) considered them to be "different" on these parameters. Furthermore, the majority considered the two airports "different" or "very different" in terms of capacity constraints for slots and other facilities, passenger volumes, and geographic location.[411] In outlining the differences between the airports, airlines explained that LIN is much more congested and more in demand due to its proximity to the city centre and that, by contrast, MXP is the larger airport that can accommodate long-haul widebody aircraft.[412]

(322) Similarly, Assoclearance, the slot coordinator of Italian airports, opined that LIN and MXP are "very different" from the perspective of airlines in terms of passenger volumes (that is, number of passengers passing through each airport) and capacity constraints for slots and other facilities and "different" in terms of types of routes flown to and from.[413]

(323) In the view of the above considerations in sections 6.10.1.3.1 - 6.10.1.3.3, the Commission considers that, on balance, LIN and MXP are not in the same relevant market for procuring airport infrastructure services.

6.10.1.3.4. Results of the market investigation comparing LIN and BGY

(324) The responses in the market investigation provided strong indications that LIN and BGY should be considered separately under the airport-by-airport approach from the perspective of airlines procuring airport infrastructure services.

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408 Responses to question D.B.2 of questionnaire 01 to airport managers.

409 Response of SACBO to question D.B.3 of questionnaire 01 to airport managers, ID 7055.

410 Responses to question C.B.1 of questionnaire 03 to short-haul competitors.

411 Responses to question C.B.2 of questionnaire 03 to short-haul competitors.

412 Responses to question C.B.3 of questionnaire 03 to short-haul competitors.

413 Responses of Assoclearnce to question C.B.2 of questionnaire 02 to slot coordinators. Assoclearance did not have an opinion on the other criteria.

(325) The large majority of airport managers having expressed an opinion, including the managers of LIN and BGY were of the opinion that airlines do not consider airport slots at these airports as close substitutes.[414] The large majority of airport managers having expressed an opinion opined that LIN and BGY are "different" or "very different" with respect to all criteria asked about (cost, capacity constraints, passenger volumes, geographic location of the airport, profiles of customers that can be reached, types of routes flown to/from there and ability to attract customers/sell tickets). The managers of LIN and BGY considered the two airports to be "similar" with respect to types of routes and "different" or "very different" with respect to all other criteria.[415] Respondents explained that BGY is focused on low-cost traffic, while LIN is not.[416]

(326) Airlines expressed similar views. The majority of airlines having expressed an opinion did not consider airport slots in LIN and BGY as close substitutes.[417] The majority of airlines having expressed an opinion were of the view that LIN and BGY are "different" or "very different" with respect to cost, capacity constraints, passenger volumes, geographic location of the airport, profiles of customers that can be reached, types of routes flown to/from there.[418]

(327) Similarly, Assoclearance, the slot coordinator of Italian airports, opined that LIN and BGY are "very different" from the perspective of airlines in terms of capacity constraints for slots and other facilities and "different" in terms of passenger volumes.[419]

(328) Consequently, the Commission is of the view that LIN and BGY are not in the same relevant market under the airport-by-airport approach.

6.10.1.3.5. Conclusion

(329) When examining the substitutability between LIN and MXP from the point of view of carriers, the Commission notes the greater ability of LIN to serve premium passengers, the different, congestion levels between the two airports, and the results of the market investigation that provide an indication that LIN and MXP would not be substitutable from the point of view of carriers. Consequently, the Commission considers, that LIN and MXP are not in the same market for airport infrastructure services.

(330) When examining the substitutability between LIN and BGY from the point of view of carriers, the Commission notes that it is questionable whether LIN and BGY are in the same catchment area, that BGY is significantly less congested than LIN and that it serves mainly LCC's. The Commission also notes that the results of the market investigation provided strong indications that the two airports are not substitutable from the point of view of carriers. Consequently, the Commission considers, that LIN and BGY are not in the same market for airport infrastructure services.

(331) The Commission therefore considers that the relevant market is the market for the provision of airport infrastructure services in LIN.

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414 Responses to question D.B.1 of questionnaire 01 to airport managers.

415 Responses to question D.B.4 of questionnaire 01 to airport managers.

416 Responses to question D.B.5 of questionnaire 01 to airport managers.

417 Responses to question C.B.1 of questionnaire 03 to short-haul competitors.

418 Responses to question C.B.4 of questionnaire 03 to short-haul competitors.

419 Responses of Assoclearance to question C.B.4 of questionnaire 02 to slot coordinators. Assoclearance did not have an opinion on the other criteria.

6.11. Cargo Air Transport Services

6.11.1. Relevant product market

(332) In the Commission's decisional practice,[420] the freight market has historically been divided into cargo transport services, whereby cargo companies sell space on their assets (such as trucks or aircraft), and freight forwarders, which construct a "virtual" network consisting of third-party assets (transportation capacity) on the basis of customers' requirements. Freight forwarding has been defined as "the organisation of transportation of items […] on behalf of customers according to their needs".[421] Unlike the providers of cargo transport services, freight forwarders do not generally own any part of the network they use and normally hire transportation capacity from third parties.

(333) With regard to intercontinental cargo transportation, the Commission has previously indicated that the relevant market is limited to air cargo, excluding other modes of cargo transportation.[422] In the present case, the activities of the Parties are limited to air cargo transport, both intra- and intercontinental.

(334) A sub-segmentation of the market could be envisaged with regard to air cargo services using different types of aircraft, namely (i) cargo airlines offering dedicated freighter services, (ii) airlines with only belly space cargo capacity on passenger flights, (iii) combination airlines offering both dedicated freighter planes and belly space cargo capacity, and (iv) integrators.[423]

(335) In its previous decisions, the Commission has not sub-segmented the market according to the type of services the air cargo carriers provide.[424] Lufthansa, through Lufthansa Cargo AG, operates both pure freighter aircraft and passenger aircraft with freight belly space cargo capacity.[425] ITA, through ITA Airways Cargo, markets freight belly space cargo capacity and certain all-cargo charter flights.[426]

(336) The Commission has also found in previous cases that door-to-door small package delivery services, as offered by integrators,[427] constitute a separate market from air cargo services and freight forwarding,[428] as customers of small package delivery services have different requirements (in particular door-to-door transportation,

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420 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 14; M.6570 – UPS / TNT Express, paragraph 17, M.10149, Korean Air Lines/Asiana Airlines, paragraph 170ff.

421 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 23; M.6570 – UPS / TNT Express, paragraph 26; M.1794 – Deutsche Post / Air Express International, paragraph 8.

422 See Case M.6570 – UPS / TNT Express, paragraph 20; Korean Air Lines/Asiana Airlines, paragraph 170ff.

423 See Cases M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraph 157; M.6828– Delta Air Lines / Virgin Group / Virgin Atlantic Limited, paragraph 74; M.6447 – IAG / BMI, paragraph 89; M.5747 – Iberia / British Airways, paragraph 38; Korean Air Lines/Asiana Airlines, paragraph 170ff.

424 See Cases M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraph 161; M.6828 – Delta Air Lines / Virgin Group / Virgin Atlantic Limited, paragraph 75; M.6447 – IAG / BMI, paragraph 89; M.5747 – Iberia / British Airways, paragraph 38.

425 Form CO, paragraph 838.

426 Form CO, paragraph 840.

427 As acknowledged by the Commission's past practice, integrators offer not only (i) airport to airport services, but also (ii) handle cargo from the point of origin to the airport and from the airport to the final destination, including legal formalities, such as customs clearance (See Cases M.6828 – Delta Air Lines / Virgin Group / Virgin Atlantic Limited, footnote 62; M.6447 – IAG / BMI, footnote 50; M.5747 – Iberia / British Airways, footnote 26). Examples of integrators are DHL, UPS, FedEX , and TNT.

428 See Korean Air Lines/Asiana Airlines, paragraph 188 ff.

assured transit times, track&trace) and expectations (reliability, security, global or at least EEA coverage). The Commission found that as a result, carriers also handle the small package shipments differently.[429]

(337) According to the Commission's precedents, cargo is less time-sensitive than passenger transport and thus may be routed with a higher number of stopovers. As a result, the Commission considered in previous decisions any indirect route either with or without transhipment as generally substitutable to any direct route.[430]

6.11.1.1. The Notifying Parties' views

(338) The Parties generally do not object to the Commission's prior decisional practice and consider that air transport of cargo should encompass all types of air cargo carriers and include all kinds of transported goods on a unidirectional basis.[431]

(339) The Parties submit that volumes shipped by integrators as part of their "door-to-door" business (possibly focused on small parcels) would fall into the same product market as the shipment of general cargo "airport-to-airport" by airlines, as all four air cargo carriers (cargo airlines, passenger airlines, combination airlines, integrators) compete for business with the same kinds of customers.[432]

(340) The Parties further submit that indirect and direct flights for cargo transport fall into the same product market, since customers seeking air cargo transport services would generally consider an indirect route as a viable alternative to a direct route (and vice versa).[433]

6.11.1.2. Commission assessment

(341) The market investigation in this case did not provide any reasons to depart from the Commission's prior decisional practice and therefore, for the purposes of the present Decision, the Commission will consider a separate product market for air cargo services, where the Parties are active, without further segmentation.

(342) In particular, in line with previous decisional practice, the respondents to the market investigation who expressed a view indicated that their customers or themselves as customers do not consider "door-to-door" services offered by integrators and "airport-to-airport" services by cargo airlines as close substitutes.[434] They explained that the "door to door service offered by integrators usually is focused on smaller shipments or parcel sizes. Airport to airport services are generally used for the movement of larger consignments or packaging of business to business" traffic one respondent explained, "[i]ntegrators and cargo airlines operate at different points in the value chain when addressing the market. Integrators cater directly to final customers or shippers' needs, assuming the roles of both forwarder and carrier, including the last mile. On the other hand, cargo airlines […] solely focus on providing transportation solutions to the forwarding market. In this context, cargo airlines can also act as service providers for integrators, and forwarders that

429 See M.7630 – FEDEX / TNT EXPRESS, paragraph 79; M.6570 – UPS / TNT Express, paragraph 159-164; M.10149, Korean Air Lines/Asiana Airlines, paragraph 188 ff.

430 M.5841 - Cathay Pacific Airways/ Air China/ ACC, paragraph 15; M.5141 - KLM/Martinair, paragraph 43; M.5747 - Iberia/British Airways, paragraph 37; Korean Air Lines/Asiana Airlines, paragraph 25.

431 Form CO, paragraph 879.

432 Form CO, paragraph 848.

433 Form CO, paragraphs 860-861.

434 07 Others – questionnaire for cargo customers and competitors,

integrate logistic services with cargo airline capacities find themselves in a competitive relationship with integrators."

(343) In light of the above, for the purposes of the present Decision, the Commission concludes that the Parties' airport-to-airport air cargo services and the integrators' core door-to-door small package delivery services belong to separate product markets. However, to the extent to which integrators offer spare capacity on the market for air cargo services, it will be taken into consideration in the competitive assessment of the present Transaction.

6.11.2. Relevant geographic market

(344) With respect to the geographic scope of the air cargo transport market, the Commission previously found that an O&D approach to the geographic market definition is inappropriate given that cargo is generally less time sensitive than passengers and that cargo is commonly transported by trans-modal methods beyond and behind the origin and destination points.[435] Accordingly, the Commission concluded in previous cases that the geographic market in relation to air cargo transport services can be defined as being wider than O&Ds and should rather be defined on a country- or continent-wide basis.

(345) In that respect the Commission concluded in previous cases that as concerns intercontinental routes, the catchment areas broadly correspond to continents, at least for those continents where local infrastructure is adequate to allow for onward connections. For continents where local infrastructure is less developed (e.g. Africa[436] or Asia[437]), the Commission in contrast found that the catchment area should be limited to the countries of destination.[438]

(346) Accordingly, the Commission has previously defined a European-wide market for intra-European routes of air cargo transport.[439]

6.11.2.1. The Notifying Parties' views

(347) The Parties consider the Commission's previous finding of unidirectional markets defined on a continent-to-continent basis (or country basis, where connecting transport infrastructure is less developed) is still appropriate.

6.11.2.2. Commission assessment

(348) For the geographic market definition, the Commission assesses in which geographic area the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.

(349) The market investigation in the present case did not provide any reasons to depart from the Commission's prior decisional practice and therefore, for the purposes of the present Decision, the Commission will assess the European-wide market for

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435 M.5747 – Iberia/British Airways, paragraph 36; M.5335 – Lufthansa/SN Airholding, paragraph 398; M.5440 – Lufthansa/Austrian Airlines, paragraph 28; M.3280 – Air France/KLM, paragraph 36; M.5403 – Lufthansa/BMI, paragraph 18; M.5181 – Delta Air Lines/Northwest Airlines, paragraph 19.

436 M.5403 – Lufthansa/BMI, paragraph 18.

437 M.5841 - Cathay Pacific Airways/ Air China/ ACC, paragraph 13.

438 M.5141 – KLM/ Martinair – paragraphs 37 – 39; M.5440- Lufthansa/ Austrian Airlines, paragraph 30.

439 M.9287 – Connect Airways/Flybe, paragraph 188; M.8361 – Qatar Airways/Alisarda/Meridiana, 22.03.2017, paragraph 39; M.6447 – IAG/bmi, paragraph 93; M.5747 – Iberia/British Airways, 14.07.2010, paragraph 41.

intra-European routes of air cargo transport and intercontinental routes of air cargo transport from Europe to North America, North America to Europe, Europe to Japan and Japan to Europe, where the activities of the Parties overlap.

6.12. Maintenance, Repair, and Overhaul (MRO)

6.12.1. Relevant product market

(350) Lufthansa is active in the market for MRO (Maintenance, Repair, and Overhaul) services through its subsidiary Lufthansa Technik AG, which provides MRO services to Lufthansa as well as to third party customers. The Lufthansa Technik group comprises 30 companies offering technical aviation services worldwide and serving more than 800 customers worldwide, including OEMs, aircraft leasing companies, operators of VIP jets, governments and armed forces, as well as airlines. Around […] of its business comes from entities within Lufthansa Group and […] from customers outside Lufthansa Group. In Italy specifically, Lufthansa Technik Milan provides MRO services at MXP.

(351) With regard to MRO services, the Commission has in its past practice distinguished between four separate product markets within the MRO sector, namely (i) line maintenance, (ii) heavy maintenance, (iii) engine maintenance, and (iv) components maintenance.[440]

(352) Lufthansa submits that the precise scope of the product market definition for MRO can be left open considering that the Proposed Transaction does not give rise to any competition concern under the narrowest market definition.[441]

(353) The Commission considers that, for the purposes of the present Decision, the precise product market definition for MRO can be left open, as the Transaction does not give rise to competition concerns under any plausible product market definition.

6.12.2. Relevant geographic market

(354) In its prior decisions, the Commission considered that the geographic scope of the market for heavy maintenance services might be at least EEA-wide, whereas line maintenance services has been considered as local in scope.[442]

(355) According to the past decisional practice, the Commission has acknowledged that line maintenance services are usually carried out at the airport of origin or destination, or at the aircraft's operational base. As regards to engine maintenance services and components maintenance services, the Commission has considered these services to be worldwide in scope.[443]

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440 See COMP/JV.19 – KLM/Alitalia; M.3280 – Air France/KLM and M.3374 – SR Technics/FLS Aerospace, p. 9; M.5440 – Lufthansa/Austrian Airlines, paragraph 37; M.5830, Olympic/Aegean, para 320; M.6447 – IAG / BMI, paragraph 105; M.7541 – AIG/ Aer Lingus, paragraph 119, M.6554 – EADS/STA/Elbe Flugzeugwerke, M.6410 – UTC/Goodrich, paragraph 174, M.8658 - UTC/Rockwell, paras 129, M.8985 - BOEING / KLX, paragraph 10.

441 Form CO, paragraph 899.

442 M.9287 – Connect Airways/Flybe, paragraph 195; M.7545 – IAG/Aer Lingus, paragraph 121; M.6554 – EADS/STA/Elbe Flugzeugwerke JV,para. 26; M.6447 – IAG/bmi, paragraph 108; M.3374 – SR Technics/FLS Aerospace, paragraph 12.

443 M.9287 – Connect Airways/Flybe, 05.07.2019, paragraph 195; M.7545 – IAG/Aer Lingus, 14.07.2015, paragraph 121; M.6554 – EADS/STA/Elbe Flugzeugwerke JV, 13.09.2012, paragraph 26; M.6447 – IAG/bmi, 30.03.2012, paragraph 108.

(356) Lufthansa submits that the precise scope of the geographic market definition for MRO can be left open, considering that the Proposed Transaction does not raise any competition concern under any plausible geographical definition.[444]

(357) The Commission considers that, for the purposes of this Decision, the precise product market definition for MRO can be left open, as the Transaction would not significantly impede effective competition under any plausible product market definition.

6.13. Ground handling services

6.13.1. Relevant product market

(358) Aircraft ground handling refers to the servicing of an aircraft while it is on the ground. With regard to the product market definition for ground handling services, the Commission considered in earlier decisions that ground handling services can be divided into distinct segments on the basis of either the International Air Transport Association ("IATA") Standard Ground Handling Agreement or the EU Directive on ground handling services.[445] [446] On that basis, the Commission has previously considered that it covers a variety of airport services such as ramp services (including aircraft guiding and towing, baggage loading and unloading, (airside) cargo and mail handling, refuelling, de-icing, catering, lavatory drainage, water cartage, cleaning and ground power) and passenger services (including check-in counter services, gate arrival and departure services, transfer counters, customer service and airport lounges).

(359) In its previous decisions, the Commission found that ground handling services – ranging from passenger and baggage registration and handling to leading the aircraft on the ground as well as cleaning and refuelling the aircraft – could be divided into several distinct segments but the determination whether each segment constituted a separate relevant market was left open.[447] However, in light of the different services provided and the lack of substitutability between the services and the fact that the services are procured under different contracts, the Commission concluded that ramp, passenger and baggage handling services formed a specific product market separate from landside cargo handling services.[448]

(360) The Commission considers that, for the purposes of the present Decision, it is not necessary to determine an exact product market definition, as the Transaction would not significantly impede effective competition under any plausible product market definition.

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444 Form CO, paragraph 902.

445 Council Directive 96/67/EC of October 15, 1996 on access to the ground handling market at Community airports, OJ 1996 L 272/36, as amended by Regulation 1882/2003 of the European Parliament and the Council of September 29, 2003, OJ 2003 L 284/1 (the "Ground Handling Directive") provides a definition of ground handling services according to which the following services constitute ground handling services: ground administration and supervision; passenger handling; baggage handling; freight and mail handling; ramp handling; aircraft services; fuel and oil handling; aircraft maintenance; flight operations and crew administration; surface transport; and catering services. Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272, 25.10.1996, pp. 36-45.

446 M.7021 – Swissport / Servisair, paragraph, 7 and footnote 4; M.2254 – Aviapartner/Maersk/Novia, paragraph 15; M.1913 – Lufthansa/Menzies/LGS/JV, paragraph 11; M.5747 – Iberia/British Airways, paragraph 45; M.5830 – Olympic/Aegean, para 311; M.6447 – IAG / BMI, paragraph 98.

447 See M.2254 – Aviapartner/Maersk/Novia, p. 60, and M.1913 – Lufthansa/Menzies/LGS/JV, p. 11.

448 M.7021 – Swissport / Servisair, paragraph 12; M.6671 – LBO France / Aviapartner, paragraph 14, 20.

6.13.2. Relevant geographic market

(361) The Commission considered in its previous decisions that the geographic scope for the provision of ground handling services was restricted to a specific airport given that the services required at a particular airport could not normally be substituted by services provided at other airports.[449] The Commission therefore concluded that the relevant geographic market for the provision of ground handling services was the area of a specific airport but ultimately left the question open.[450] The Commission also considered that a wider geographic market could be defined encompassing other airports within a catchment area that could attract airlines if ground handling service providers were present at those airports.[451]

(362) Lufthansa submits that the market for the provision of ground handling services extends beyond a single airport and encompasses the airports within the same catchment area (or at least two neighbouring airports), due to the fact that pricing for ground handling services is constrained both by competitors active at a particular airport and by other competitors active in the same catchment area.[452] Lufthansa further submits that the precise scope of the geographic definition of the market for the provision of ground handling services can be left open in the present case, considering that the Proposed Transaction does not give rise to any competition concern under any plausible geographical definition.[453]

(363) The Commission considers that, for the purposes of the present Decision, the precise definition of the geographic market for ground handling services can be left open as the Transaction would not significantly impede effective competition irrespective of the precise geographic market definition adopted.

6.14. Cargo handling services

6.14.1. Relevant product market

(364) In its prior decisional practice,[454] the Commission has considered that the market for cargo handling services constitutes a separate market, distinct from that of ramp passenger and baggage handling. The Commission has discussed the possibility of landside and airside cargo handling services being part of an overall cargo handling market, but it has ultimately left the question open.[455]

(365) Cargo handling services mainly involves the physical handling and storage of freight and mail, as well as the handling of related documents and the implementation of customs and security procedures. Cargo handling is generally provided to airlines or freight forwarders in warehouses or sheds which are generally not in the same area within the airport as the passenger terminals where ramp and passenger services are provided.

(366) Lufthansa is active in the market for the provision of landside cargo handling services through its subsidiary Lufthansa Cargo AG (LCAG).

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449 See M.1913 – Lufthansa/Menzies/LGS/JV.

450 See for instance M.1913 – Lufthansa/Menzies/LGS/JV, paragraph 12; M.4164 – Ferrovial/ Quebec/GIC/BAA, p. 14; M.5830 – Olympic/Aegean, para 314.

451 M.2315 – The Airline Group/NATS, paragraph 20.

452 Form CO, paragraph 921.

453 Form CO, paragraph 922.

454 M.7021 – Swissport / Servisair, paragraph 12; M.6671 – LBO France / Aviapartner, paragraphs 14, 20.

455 M.6671 – LBO France/Aviapartner, paragraph 39.

(367) Lufthansa submits that the Commission does not need to reach a view on the market definition in this case as the Proposed Transaction will not give rise to any competition concern, even under the narrowest plausible product market definition.[456]

(368) The Commission considers that, for the purposes of the present Decision, it is not necessary to determine an exact product market definition for cargo handling services, as the Transaction would not significantly impede effective competition under any plausible product market definition.

6.14.2. Relevant geographic market

(369) In its past decisional practice, the Commission has considered the market for the provision of landside cargo handling services to be restricted to a specific airport (or possibly two neighbouring airports), based on the assumption that the services required at a particular airport could not be substituted for services provided at other airports.[457]

(370) Lufthansa submits that the precise scope of the geographic definition of the market for the provision of landside cargo handling services can be left open in the present case, considering that the Proposed Transaction does not give rise to any competition concern under any plausible geographical definition.[458]

(371) The Commission considers that, for the purposes of the present Decision, the precise definition of the geographic market for cargo handling services can be left open as the Transaction would not significantly impede effective competition irrespective of the precise geographic market definition adopted.

6.15. Flight Training Services

6.15.1. Relevant product market

(372) Flight simulator training is an activity that airline crews are required to perform on a regular basis to keep up to date with the use and equipment of the aircraft to carry out conversion training, which is necessary to enable pilots to fly a different type of aircraft.

(373) As explained by the Parties,[459] flight training is in principle specific to certain aircraft types, but a single simulator allows pilots to train on and simulate more than one aircraft type. Most airlines have flight simulators themselves and provide their crew with the necessary flight training. Airlines routinely sell their training services with simulators to other airlines. However, the merchant flight simulator training offered by airlines to third parties represents a minor part of the total flight simulator training market.

(374) According to the Commission's prior decisional practice, civil flight simulator training constitutes a distinct product market from real flight training carried out in aircraft during flight.[460]

(375) Lufthansa is active in the market for flight training services through its subsidiary Lufthansa Aviation Training GmbH. With its training centres located in Central Europe, Lufthansa Aviation Training provides flight training services to other airline

456 Form CO, paragraph 939.
457 M.7021 – Swissport/Servisair, paragraph 48.
458 Form CO, paragraph 941.
459 Form CO, paragraph 949.
460 M.1786 – General Electric/Thomson CSF/JV, paragraphs 11-13.

as well as to private corporate and individual customers. It offers training programmes both for cockpit and cabin crew relating to every type of aircraft. Lufthansa Aviation Training also offers flight simulator training services through its 50 FFSs (Full Flight Simulators) which are located in its training centers of Berlin, Essen, Frankfurt, Munich, Wien and Zurich.[461]

(376) Lufthansa submits that the precise scope of the product market definition for flight simulator training can be left open, considering that the Proposed Transaction does not give rise to any competition concern under any plausible market definition.[462]

(377) The Commission considers that, for the purposes of the present Decision, it is not necessary to determine an exact product market definition for flight training services, as the Transaction would not significantly impede effective competition under any plausible product market definition.

6.15.2. Relevant geographic market

(378) In its past decisional practice, the Commission considered that the market for the provision of flight training services appears as worldwide or at least EEA-wide in scope,[463] because the players active in the market serve clients who are mobile all over the world and the airlines fly their crew where flight simulator training is available and readily switch supplier of flight simulator training in case of price increase.

(379) Lufthansa submits that the precise scope of the geographic definition of the market for the provision of flight training services can be left open considering that the Proposed Transaction does not give rise to any competition concern under any plausible geographical definition.[464]

(380) The Commission considers that, for the purposes of the present Decision, the precise definition of the geographic market for flight training services can be left open as the Transaction would not significantly impede effective competition irrespective of the precise geographic market definition adopted.

6.16. Flight ticket distribution services

6.16.1. Relevant product market

(381) Online flight ticketing services refer to the distribution of air passenger tickets by online ticket vendors.

(382) In prior merger and antitrust decisions concerning travel services, the Commission has defined a product market for the distribution of travel services distinct from the product market for the provision of travel services. In British Airways, the General Court confirmed the existence of such a separate market for the distribution of passenger air tickets (i.e. air travel agency services).[465]

(383) In addition, in prior merger decisions concerning online travel services, while ultimately leaving the product market definition open, the Commission has found evidence pointing towards the existence of a separate market for the online intermediation of travel services[466] and, within that market, of distinctions

461 Form CO, paragraph 950.
462 Form CO, paragraph 953.
463 M.1786 – General Electric/Thomson CSF/JV, paragraphs 14-16.
464 Form CO, paragraph 955.
465 Case T-219/99 - British Airways v Commission, ECLI:EU:T:2003:343, paragraph 107.
466 M. 8416 – Priceline/Momondo, paragraph 19.

(i) between services provided by metasearch engines allowing consumers to search for and compare prices (such as Kayak for flights) and OTAs allowing consumers to purchase tickets,[467] and (ii) by type of travel products.[468] The Commission also considered whether direct and indirect distribution of flight tickets belong to the same product market and concluded that online distribution of flights through OTAs and through airline websites are part of the same market, as online customers would look for the best available deals across all distribution channels.[469]

(384) In line with those precedents and with what the Parties submit, for the purposes of the current Decision, the Commission will consider a separate market for online flight ticketing distribution services encompassing both direct and indirect distribution.

6.16.2. Relevant geographic market

(385) The Parties submit that the market for the online distribution of flight tickets is worldwide in scope, as from the end-consumer's perspective, tickets for flights are available for purchase worldwide and there is no language barrier as most websites are available in different languages. Similarly, the parties submit that commercial interactions between various actors (e.g. airlines, OTAs, GDS, aggregators etc) typically take place on a worldwide basis and are not related to or limited to specific countries.[470]

(386) In a prior merger decision, the Commission defined the upstream side of the GDS market as EEA-wide.[471]

(387) The Commission considers that, for the purposes of the present Decision, the precise geographic market definition can be left open as the Transaction does not lead to competition concerns under any plausible market definition.

7. COMPETITIVE ASSESSMENT – COMMON CONSIDERATIONS

7.1. Legal Framework

(388) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

7.1.1. Horizontal assessments

(389) As concerns the assessment of horizontal overlaps (meaning when the undertakings concerned are active in the same relevant markets), the Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors may significantly impede effective competition, namely non-coordinated and coordinated effects.[472]

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467 M.9005 - BOOKING HOLDINGS / HOTELSCOMBINED, paragraph 43.

468 M. 8416 – Priceline/Momondo, paragraphs 41-51; M.6163 – AXA/ PERMIRA/ OPODO/ GO VOYAGES/EDREAMS, paragraph 24.

469 M.6163 – AXA/ PERMIRA/ OPODO/ GO VOYAGES/EDREAMS.

470 Reply to RFI 65.

471 M.4523 – Travelport/Worldspan, paagraphs 60-67.

472 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2014.

(390) As to the non-coordinated effects, which are mostly relevant for the Transaction, they may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger. Generally, a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm. Furthermore, mergers in oligopolistic markets involving the elimination of important competitive constraints – such as the ones that Lufthansa and ITA exert upon each other pre-merger – may, together with a reduction of competitive pressure on the remaining competitors, and even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition even if the concentration does not result in the creation or strengthening of a dominant position.[473]

(391) The Horizontal Merger Guidelines list a number of factors which may influence whether or not non-coordinated effects are likely to result from a merger, such as large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, the fact that the merger would eliminate an important competitive force, or the existence of barriers to entry.[474]

(392) According to the established case-law, paragraph 26 of the Horizontal Merger Guidelines "states in that regard, correctly, that those factors, taken separately, are not necessarily decisive. In addition, not all of those factors need to be present for significant non-coordinated effects to be likely. In that context, it must be found that those factors may, in principle, constitute evidence that a concentration would give rise to significant non-coordinated effects, which must be the subject of an overall assessment."[475]

(393) As regards the concept of "closeness of competition", this may play an important role in better understanding the competitive constraint exerted by different competitors on each other. As mentioned in section 6 on market definition, products offered by airlines can be differentiated, including based on the type of services offered (direct or indirect flights) or the airports from which the flights are operated. In line with paragraph 28 of the Horizontal Merger Guidelines, the higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. Conversely, the merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less-close substitutes.[476] A very high level of substitutability between the merging parties' products is not necessarily required.[477] Even where substitutability between the

473 Horizontal Merger Guidelines, paragraphs 22 to 25.

474 Horizontal Merger Guidelines, paragraphs 27 et seq.

475 C-376/20 P - Commission v CK Telecoms UK Investments, [2023] ECLI:EU:C:2023:561, paragraphs 260-261.

476 Horizontal Merger Guidelines, paragraphs 28-30.

477 As per the judgment of the European Court of Justice in Case-376/20 P Commission v CK Telecoms UK Investments, ECLI:EU:C:2023:561, the Commission is not required to conclude that the merging parties are "particularly close" competitors. Instead, it is sufficient to show that the Parties are close competitors.

merging parties' products is not particularly high, the loss of competitive constraints even by a more distant product can be problematic if the combined market position is high and remaining constraints are insufficient. Also, there may be a lower level of substitutability between the parties' products and the products of undertakings which are not party to the concentration, which is capable of incentivising the parties to the concentration to increase the prices of their products. Therefore, when the combined market shares are in excess of 50%, the assessment of closeness of competition does not generally require the parties to be close competitors for the Commission to find that a merger would significantly impede effective competition as market shares above 50% lead to a presumption of dominance and may in themselves be evidence of the existence of a dominant position. The assessment of closeness of competition is however more relevant where the combined market shares remain below 50% or where the Parties' products appear prima facia very different.

(394) Furthermore, some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. In such a case, competitors may not, either individually or in the aggregate, be in a position to constrain the merged entity to such a degree that it would not increase prices or take other actions detrimental to competition. For instance, the merged entity may have such a degree of control, or influence over, the supply of inputs or distribution possibilities that expansion or entry by rival firms may be more costly.[478]

(395) Based on the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both Lufthansa and ITA and their competitors.[479] The larger the market share, the more likely a firm is to possess market power.

(396) The European Courts have consistently held, including in airline industry-related cases, that there is a presumption of dominance when an undertaking enjoys a market share of 50% or more.[480] Accordingly, the Horizontal Merger Guidelines provide that "[a]ccording to well-established case law, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant market position".[481]

(397) Indeed, according to the established case law, "although the importance of market shares may vary from one market to another, very large shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position."[482] The General Court has noted in a case concerning the airline sector that "the Commission could not ignore the importance to be attached to those initial indications, which showed that the implementation of the notified transaction would have enabled [the acquirer] to acquire extremely high market shares."[483] The

478 Horizontal Merger Guidelines, paragraph 36.

479 Horizontal Merger Guidelines, paragraph 14.

480 See Cases T-177/04 – easyJet v Commission, paragraph 174, which refers to "almost 50%": "It is also to be noted that the market shares held by the parties together led the Commission to conclude that commitments should be offered on the markets affected and on which those parties enjoyed a market share of almost 50%, thereby respecting the presumption of dominance as laid down by the case-law", C-62/86 – AKZO v Commission, paragraph 60.

481 Horizontal Merger Guidelines, paragraph 17.

482 See Cases C-85/76 – Hoffmann La Roche v. Commission, paragraph 41; T-210/01 – General Electric v Commission, recital 115; T-342/07 – Ryanair v Commission, paragraph 41.

483 See Case T-342/07 – Ryanair Holdings plc v. Commission, paragraphs 41-60.

General Court concluded that "in the light of those findings […] the Commission was rightly able to find that the acquisition of very high market shares as a result of both the implementation of the concentration and the concentration level associated with it were relevant indicators of the market power which would have been acquired".[484]

(398) Furthermore, the larger the addition of market share (the increment), the more likely it is that a merger would lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms would find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment.[485]

(399) The Commission generally requires convincing evidence to approve concentrations that give rise to very high market shares. In its prior decisions, the Commission noted that when faced with "a high degree of dominance, the Commission must be particularly vigilant, because in such circumstances even a very small increase in market power can have a disproportionately large negative effect on the competitive conditions on the market place".[486]

(400) A merger involving a firm whose market share will remain below 50% after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes.[487]

(401) While market shares are an important factor, the Commission is also required to analyse the competitive constraints the merged entity will be subject to after the Transaction. In line with this framework, the Commission analysed in particular the competitive constraints imposed by actual competitors and by future competition due to potential entry and/or expansion.

(402) Finally, concentrations where an undertaking already active on a relevant market merge with a potential competitor in this market can have similar anti-competitive effects to mergers between two undertakings already active on the same relevant market and, thus, significantly impede effective competition, in particular through the creation or the strengthening of a dominant position. For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled. First, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Second, there must not be enough other potential competitors which could maintain sufficient competitive pressure after the merger.[488]

7.1.2. Non-horizontal assessments

(403) According to the Non-Horizontal Guidelines, non-coordinated effects may significantly impede effective competition as a result of a vertical or conglomerate merger principally if such merger gives rise to foreclosure. Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or

484 See Case T-342/07 – Ryanair Holdings plc v. Commission, paragraph 53.
485 Horizontal Merger Guidelines, paragraph 27.
486 See Case M.68 – Tetra Pak/Alfa-Laval, paragraph 4.
487 Horizontal Merger Guidelines, paragraph 17.
488 Horizontal Merger Guidelines, paragraphs 58 and 60.

incentive to compete.[489] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[490]

(404) The Non-Horizontal Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[491]

(405) Foreclosure may also take more subtle forms, such as the degradation of the quality of inputs supplied. In its assessment, the Commission may consider a series of alternative or complementary possible strategies.[492]

(406) In assessing the likelihood of an anticompetitive foreclosure scenario (be it in vertical or conglomerate mergers), the Commission examines, first, whether the merged entity would have, after the merger, the ability to foreclose their rivals, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition. In practice, these factors are often examined together as they are closely intertwined.[493]

7.1.3. The assessment of market entry and expansion

(407) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines, the entry or expansion of a competitor in a relevant market may provide a sufficient competitive constraint on the parties to the concentration. Therefore, entry and expansion analysis constitute an important element of the Commission's competitive assessment. For entry to be considered a sufficient competitive constraint on the parties to the concentration, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.[494]

(408) The General Court has noted that "the starting point for the issue of the entrance of new competitors onto the relevant markets is a situation where the new entrant is seeking to access the market on which the Merged Entity would be present, and where that entity […] would eliminate current competition between the parties to the concentration to the detriment of customers".[495] Consequently, the Court has held that "the mere "threat" of an entry, on which the applicant relies, is not sufficient. […] What counts is the prospect of an entrant which offsets the anticompetitive effects specifically established in the contested decision at that stage of the assessment".[496]

(409) To determine the likelihood of new entry, one consideration is that entry must be sufficiently profitable, considering the price effects of that entry and possible

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489 Non-Horizontal Merger Guidelines, paragraph 18.
490 Non-Horizontal Merger Guidelines, paragraph 29.
491 Non-Horizontal Merger Guidelines, paragraph 30.
492 Non-Horizontal Merger Guidelines, paragraph 33.
493 Non-Horizontal Merger Guidelines, paragraphs 32 and 94.
494 Horizontal Merger Guidelines, paragraphs 33-35 and 68; Non-Horizontal Merger Guidelines, paragraphs 51, 76 and 114.
495 Case T-342/07 – Ryanair v Commission, paragraphs 238-239.
496 Case T-342/07 – Ryanair v Commission, paragraphs 238-239.

responses of the incumbents.[497] The Commission's past practice shows that, in the airline sector, the attractiveness of the route in terms of overall passenger demand and type of route (e.g., routes that connect business hubs tend to be more profitable compared to routes connected more remote airports) is another relevant factor to assess the new entrant's incentives, as these factors may affect the economic viability of new entry.[498] Finally, the existence of barriers to entry is also relevant to assess the likelihood of new entry through their impact on the profitability of entry. Barriers to entry are specific features of the market, which give incumbent firms advantages over potential competitors. When entry barriers are low, the parties to the concentration are more likely to be constrained by entry. Conversely, when entry barriers are high, price increases by the merging firms would not be significantly constrained by entry. Historical examples of entry and exit in the industry may provide useful indications about the size of entry barriers. Barriers to entry can take various forms. For instance, in the airline sector they may exist because of the established position of the incumbent firms on the market,[499] because of high airport fees[500] and/or because of slot congestion at an airport.[501]

(410) The expected evolution of the market should be taken into account when assessing whether or not entry would be profitable. Entry is more likely to be profitable in a market that is expected to experience high growth in the future than in a market that is mature or expected to decline. Scale economies or network effects may make entry unprofitable unless the entrant can obtain a sufficiently large market share.[502]

7.2. Competitive situation most likely to prevail absent the Transaction (counterfactual)

7.2.1. Legal principles

(411) In assessing the competitive effects of a concentration, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed absent the merger (i.e., the "counterfactual" scenario).[503]

(412) In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating its effects.

(413) However, in some circumstances, the Commission may take into account future changes to the market that can be "reasonably predicted", such as the likely entry or exit of firms absent the merger.[504] Accordingly, current market shares may be adjusted to reflect reasonably certain future changes, for instance in the light of exit, entry or expansion. In any event, the Commission interprets market shares in the light of likely market conditions, for instance, if the market is highly dynamic in character and if the market structure is unstable due to innovation or growth.

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497 Horizontal Merger Guidelines, paragraph 69. In this regard, the General Court noted that "entry to a new market may require time to enable new entrants to assess whether entry to that market is likely to be profitable". See T-177/04 – easyJet v Commission, paragraph 201.

498 See, e.g. Case M.10149 – Korean Air Airlines/Asiana Airlines, paragraphs 277-287.

499 Horizontal Merger Guidelines, paragraphs 70-71.

500 See for example Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 22, ID 2367.

501 See for example Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 21-24, ID 2367.

502 Horizontal Merger Guidelines, paragraph 72.

503 Horizontal Merger Guidelines, paragraph 9.

504 Horizontal Merger Guidelines, paragraph 9.

(414) To the contrary, the Commission has no duty to take into account any changes that cannot be reasonably predicted or that are uncertain. Indeed, as noted by the General Court, the Commission's appraisal of a concentration within a market cannot be carried out on the basis of "hypothetical factors the economic implications of which cannot be assessed at the time when the decision is adopted."[505]

7.2.2. ITA's financial position

(415) While the Parties do not argue that ITA is a failing firm, in line with paragraph 90 of the Horizontal Merger Guidelines,[506] the Parties submit that the Transaction is "necessary to ensure a sustainable future perspective for ITA".[507] The Parties support this claim with reference to i) the financially unsuccessful history of ITA's predecessor Alitalia (as well as various attempts to integrate Alitalia with another airline), ii) ITA's initial business plan which includes the strategic objective for ITA to conclude "partnerships and integrations with European operators", and iii) the competitive landscape of the Italian passenger air transport sector.[508]

(416) To support the notion that ITA needs to integrate with another carrier to ensure its financial sustainability, the Parties also submit that, [details on ITA financials].[509] [Details on ITA financials].

(417) During the Phase II investigation, the Parties further submitted that, even though ITA's performance in full-year 2023 exceeded expectations (see more below), [Details on ITA financials].[510] According to ITA, [details on ITA financials].[511] Finally, ITA [details on ITA financials].[512]

(418) In their Response to the SO, Lufthansa and MEF further submit that the Commission generally overstated the position of ITA on the market and its financial viability in the long-term, considering that: [details on ITA financials].[513] In addition, Lufthansa and MEF point to internal documents from Lufthansa which consider that […].[514]

(419) The Parties' argument that ITA is not financially sustainable as a standalone carrier has been corroborated by several market participants, including the main competitors of the Parties, during the Commission's market investigation. For example, IAG explained that in its view "standalone airlines like ITA, lacking the scale and ability to make […] large investments, will become less and less competitive causing them to shrink and struggle to survive".[515] Likewise, Singapore Airlines explained that "ITA as a standalone airline is unlikely to remain a competitor without a transaction involving one of the major European airline groups. Integrating ITA in the Lufthansa group has the prospect of strengthening competition in the EEA".[516] Furthermore,

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505 Case T-2/93 – Société Anonyme à Participation Ouvrière Compagnie National Air France v. Commission, paragraph 70.

506 Form CO, paragraph 1173.

507 Form CO, paragraph 1156.

508 Form CO, paragraphs 1157-1164.

509 Form CO, paragraphs 1165.

510 Lufthansa and MEF's responses to RFI 36, Q6.

511 Lufthansa and MEF's responses to RFI 36, Q7.

512 Lufthansa and MEF's responses to RFI 36, Q8.

513 Lufthansa and MEF's Response to the SO, paragraph 20.

514 Lufthansa and MEF's Response to the SO, paragraph 21.

515 Non-confidential minutes of the conference call with IAG dated 6 November 2023, paragraph 17, ID 2353.

516 Non-confidential response of Singapore Airlines to question D.C.5. of questionnaire 04 to long-haul competitors, ID 12422.

Air Transat submitted that "ITA's potential viability without Lufthansa's acquisition faces challenges, especially when considering the historical context of its predecessor, Alitalia. The aviation industry's inherent complexities and financial constraints experienced by Alitalia and now by ITA underline the importance of strategic partnerships for operational and financial stability. Indeed, ITA has a similar business model compared to Alitalia, which faced difficulties in operating profitably and did not manage to compete against, on the one hand, airlines like Lufthansa, AFKLM, and IAG, and, on the other hand, low-cost carriers that are very well developed in Italy. Lufthansa's possible involvement could provide operational synergies, expertise, and financial support, addressing challenges that have historically impacted Alitalia's sustainability in the past. The absence of a substantial partner like Lufthansa might leave ITA dealing with similar issues, including route network limitations, fleet modernization challenges, and intense competition, potentially affecting its ability to operate independently in the competitive airline market".[517] Nevertheless, some market participants believe that ITA could remain competitive as a standalone business. For example, Air France-KLM stated that in its view the "Italy market is big enough for a carrier like ITA to survive and perform well, even without the support of Lufthansa".[518]

(420) The overall evidence collected by the Commission during its in-depth investigation, including ITA's actual financial reporting, shows that ITA is likely to be financially sustainable in the short- to medium term. This is for the following reasons:

(a) ITA's financial performance in 2023 exceeded both the expectations it had set out in its budget as well as its financial performance in 2022. [Details on ITA financials].[519] According to ITA, its financial overperformance in 2023 can be attributed to […]. Overall, in 2023, [details on ITA financials].[520]

(b) In its original business plan (2021-2025), [details on ITA financials].[521] Therefore, [details on ITA financials] cited by the Parties are directionally consistent with the original business plan and are inconclusive as to the question whether ITA as a standalone business is financially sustainable.

(c) [Details on ITA business plan].[522] [Details on ITA business plan].[523] The Commission considers that it is unclear whether the financial sustainability of ITA as a stand-alone carrier could be affected by [details on ITA business plan].

(d) [Details on ITA business plan].[524] [Details on ITA business plan]. However, the Commission notes that ITA's latest business plan (2023-2027) […]. This means that is unclear to what extent the forecasts contained in this business

517 Non-confidential response of Air Transat to question D.C.5. of questionnaire 04 to long-haul competitors, ID 12069.

518 Non-confidential minutes of the conference call with Air France-KLM dated 6 November 2023, paragraph 18, ID 9836.

519 Lufthansa and MEF submit that [details on ITA financials] (Response to the SO, paragraph 20). While this may be correct, this does not contradict the fact that ITA's performance in 2023 significantly exceeds the expectations set out in the original budget as well as ITA's performance in 2022.

520 Lufthansa and MEF's response to RFI 36, Q4. Lufthansa and MEF submit that [details on ITA financials].

521 M.11071 – RFI 1 - ITA Annex 1 - [Details on ITA business plan].

522 M.11071 – RFI 1 - ITA Annex 1 - [Details on ITA business plan].

523 M.11071 – RFI 1 - ITA Annex 2 - [Details on ITA business plan].

524 M.11071 – RFI 3 - ITA Annex 41 - [Details on ITA business plan], and M.11071 – RFI 1 - ITA Annex 2 - [Details on ITA business plan].

plan can serve as a reliable predictor of ITA's financial performance absent the Transaction.[525]

(e) In its press release accompanying its financial report for 2022, ITA explained that its financial results were "consistent with the company's start-up status in a market that was still weak in the first months of the year due to the continuing Covid pandemic".[526] In addition, according to a news report from 3 March 2024, ITA's management explained that it "can continue to operate alone also, as demonstrated by the recently released financial results [for 2023]", while highlighting that in order to "create and develop synergies, it needs the backing from a business partner".[527] These statements from ITA suggest that ITA's financial results in 2022 cannot be taken as evidence that ITA is not financially sustainable as a standalone business, and that indeed, as recently as March 2024, it considers that it can operate sustainably as a standalone business.

(421) That said, the Commission considers that ITA's long-term competitiveness as a stand-alone carrier is highly uncertain for the following reasons – and the Commission has taken this into consideration in the competitive assessment as well as in the assessment of the remedies, in particular for the long-haul routes.

(422) First, ITA's current business model has similarities with the one operated by its predecessor Alitalia, with both airlines operating as an Italian network carrier with hubs in Rome and, at present, also in Milan, flying many of the same routes that ITA operates today and being composed of many of the same assets (including aircraft) and workforce (including crews) as ITA. Alitalia had a long-standing history of financial difficulties and was continually loss making since 2008.[528] Previous attempts to integrate Alitalia into a large airline group, including an attempted integration with Etihad Airways in 2015, failed.[529] Ultimately, Alitalia had to enter into extraordinary administration in 2017 and, in March 2020, the airline was acquired by the Italian State which transferred Alitalia's assets to the newly created company ITA. While the Commission's ITA/Alitalia State Aid decision considered that the business plan of the newly created ITA company was sustainable, these business plans already had the stated aim of establishing "strategic partnerships with an airline company that would ensure the pursuit of the objectives of industrial development and strengthening of ITA's business".[530]

(423) Second, ITA's recent financial overperformance against the expectations set out in the business plan and compared to previous years are likely due to the generally favourable macroeconomic conditions for the aviation industry, including exceptionally strong demand and lower than expected fuel costs. It is uncertain whether a standalone ITA business would remain competitive if these

525 M.11071 – RFI 1 - ITA Annex 2 - [Details on ITA business plan].

526 "ITA Airways Board of Directors approved the preliminary Financial Report for the year 2022", ITA Airways (available at https://www.ita-airways.com/content/dam/ita/files/EN/fly/ita-world/press-release/2023/Press_release_ITA_Airways_approves_2022_Financial_Report.pdf), ID 12576.

527 Translated from the Italian original: "La compagnia 'può andare avanti anche da sola, come testimoniano i numeri dell'anno appena concluso'; ma 'per crescere e sviluppare le sinergie serve un partner alle spalle', fa sapere il management della compagnia aerea di Stato". Source: la Repubblica, "Ita e la frenata di Lufthansa: 'Solidi anche da soli, ma server partner'. Ue: scadenza è 6 giugno. L'ipotesi stop-the-clock", 3 March 2024, ID 11976.

528 State Aid SA.58173 (2021 N) (ex 2020 PN) – ITALY – Newco ITA, paras. 17ff.

529 Form CO, paragraph 1161.

530 Form CO, paragraph 87.

macroeconomic conditions were to worsen, e.g., due to unforeseen drops in demand (such as due to a financial crisis or other unpredictable events) or due to unforeseen increases in cost (e.g., permanent rise in the price of fuel).

(424) Third, in the present market conditions, […][531] […].[532]

(425) Overall, the Commission therefore finds that there is not sufficient evidence to conclude that ITA's short- to medium-term financial sustainability depends on the Transaction. Nevertheless, the Commission considers that the elements illustrated above indicate that ITA's long-term competitiveness in the provision of air passenger services may be significantly weakened absent the Transaction. Where relevant, the Commission has taken this into consideration in its competitive assessment of the Transaction and in its assessment of the remedies offered by Lufthansa and MEF, as further explained in section 12.3 and 14.5.3.2.

7.2.3. ITA's current network and future network planning

(426) In line with the analytical framework outlined in section 7.2.1, the Commission has investigated which changes to the competitive situation of ITA absent the Transaction can reasonably be predicted.

(427) The most suitable starting point to assess ITA's current and future network as well as ITA's future competitive situation more generally is ITA's internal planning as outlined in its business plans.

(428) Since its establishment as a company in November 2020, ITA has had three separate business plans approved by its board of directors. These are the initial business plan covering the period 2021-2025 from July 2021, the second business plan covering the period 2022-2026 from January 2022 and the latest business plan covering the period 2023-2027 from March 2023.[533]

(429) While in many cases the latest business plan approved by a company's board of directors represents the best estimate of a company's future planning in the counterfactual, in the current case the latest business plan (2023-2027) from March 2023 [details on ITA business plan].[534] Therefore, in the Commission's view, the latest business plan (2023-2027) from March 2023 does not necessarily represent an accurate view of ITA's future network and competitive situation absent the Transaction. Instead, the Commission considers that the second business plan (2022-2026) that was developed independently of the Transaction may represent a more accurate representation of ITA's likely future network and competitive situation absent the Transaction.

(430) The Commission notes that, contrary to the argument by Lufthansa and MEF in their Response to the SO, the fact that [Details on ITA business plan] does not mean that the Business Plan is inappropriate as a reference for ITA's likely future network and competitive situation absent the Transaction.[535] In particular, even absent the present Transaction, ITA could still seek an industrial partnership with another investor in order to implement its second business plan.

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531 Response to the SO, paragraph 20.
532 Response to the SO, paragraph 20.
533 Form CO, paragraph 94.
534 Form CO, paragraph 122.
535 Lufthansa and MEF's Response to the SO, paragraph 17.

(431) As set out in Figure 13, ITA has targeted significant growth since its launch in 2021. It is planning to increase its fleet size to around […] planes and is aiming to transport more than […] passengers on more than […] routes by 2026. It also intends to increase its workforce significantly to more than […] and is aiming to achieve revenues of more than EUR […] by 2026.

Figure 13: ITA's growth plans from 2021 to 2026 as reflected in ITA's business plan 2022-2026

[ITA internal document]

Source: Internal document by ITA, titled [...].

(432) As set out in Figure 14 and Figure 15, ITA's business model is that of a network carrier, focussing on the Rome-Fiumicino and Milan-Linate airports. [Details of ITA's business model].

Figure 14: ITA's network centred on Rome Fiumicino and Milan

[ITA internal document detailing ITA's business model]

Source: Internal document by ITA, titled [...].

Figure 15: ITA's network strategy

[ITA internal document detailing ITA's network strategy]

Source: Internal document by ITA, titled [...].

(433) Based on the above, the Commission concludes that ITA is on a significant growth trajectory, investing in additional aircraft and expanding capacity on new and existing routes. Its business model focusses on hub operations out of Rome-Fiumicino airport with an additional focus on short-haul connections from it and Milan-Linate airport.

7.3. Approach to the short- and long-term impacts of the Covid19 pandemic and Russia's invasion of Ukraine on the competitive landscape

(434) As noted by Lufthansa and MEF, the Covid19 pandemic has had a significant impact on the airline industry.[536] In particular, due to travel restrictions and public health concerns, demand for passenger air transport services significantly decreased after the beginning of the Covid19 pandemic in early 2020. As a result, the aviation industry suffered severe losses. All airlines had to temporally suspend and/or significantly reduce operations on almost all of their routes.

(435) In addition, as further noted by Lufthansa and MEF, Russia's invasion of Ukraine also had an impact on the European aviation sector.[537] Since the beginning of Russia's invasion of Ukraine in February 2022, the closure of Russian and Ukrainian airspaces for European airlines has shifted traffic south, whereas Russian airlines have ceased offering flights to EEA customers.

(436) However, the Commission's investigation did not provide evidence that the decline in demand caused by the Covid19 pandemic and Russia's invasion of Ukraine would be structural or permanent on the investigated routes. Rather, based on industry reports and the results of the Commission's investigation, the Commission considers that demand on the investigated routes has already recovered significantly and will continue to recover gradually from the Covid19 pandemic and that demand on the

536 Form CO, paragraphs 2301 to 2313.

537 Form CO, paragraphs 2314-2323.

investigated routes has not been significantly affected by Russia's invasion of Ukraine.

(437) In this context, according to public sources, many airlines already reported profits in summer 2022 whilst several airlines already outperformed their pre-Covid19 record profits.[538] According to the International Civil Aviation Organisation, the majority of international carriers fully returned to pre-Covid19 levels of operation by Q4 of 2022 or by Q1 of 2023.[539] Other public sources have forecasted significant increases in airline profits in 2023 compared to 2022.[540] Lufthansa itself recorded a highly successful year 2023: "2023 was one of the best years for the Lufthansa Group in economic terms. The recovery in demand for flights after the coronavirus pandemic continued. In the summer months, tourist travel in particular was in great demand. Accordingly, we further expanded our capacities, especially to leisure travel destinations. Overall, in the past year we once again welcomed more than 120 million passengers on board our aircraft and flew them safely to their destinations. The Lufthansa Group's earnings improved significantly compared with a year ago. Adjusted EBIT increased to around EUR 2.7bn. This means we have achieved the third-best result in the company's history."[541] Furthermore, Lufthansa finds for 2024: "On the basis of the forecasts shown for the performance of the overall economy and the sectors in which the Group operates, the Lufthansa Group assumes that the positive course of business in the reporting year will continue in the 2024 financial year. This expectation is based in particular on the ongoing strong demand in the Passenger Airlines segment, which is reflected at the start of 2024 in the form of continued positive developments in new bookings."[542]

(438) According to other sources, the airline industry has observed a boom in First Class and Business Class bookings by leisure (rather than business) passengers, partly because of the Covid19 pandemic.[543] This has led some airlines to announce significant investments in their premium products.

(439) The recovery in demand following the negative impact of the Covid19 pandemic is also reflected in ITA's internal documents. Figure 16 illustrates how air traffic from and to Italy, split between domestic, international (short-haul) and intercontinental

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538 "A data-driven analysis of the aviation recovery from the COVID-19 pandemic", Journal of Air Transport Management (Volume 19), June 2023, (available at https://www.sciencedirect.com/science/article/pii/S0969699723000443); "Pandemic year powered Cargolux to record 2020 profit", Luxembourg Times, 28 April 2021 (available at https://www.luxtimes.lu/businessandfinance/pandemic-year-powered-cargolux-to-record-2020-profit/1332540.html); "Europe's largest airline just sounded the alarm on travel demand", CNN, 24 July 2023 (available at https://edition.cnn.com/2023/07/24/business/ryanair-earnings-post-pandemic-travel-boom/index.html).

539 "Air traffic recovery is fast-approaching pre-pandemic levels", ICAO (available at https://www.icao.int/Newsroom/Pages/Air-traffic-recovery-is-fast-approaching-pre-pandemic-levels.aspx)

540 "European airline profits expected to 'strengthen' in 2023", Business Travel News Europe, 5 June 2023 (available at https://www.businesstravelnewseurope.com/Air-Travel/European-airline-profits-expected-to-strengthen-in-2023).

541 Lufthansa Annual Report 2023, page 7, available at https://report.lufthansagroup.com/2023/annual-report/en/ (last accessed on 11 March 2024).

542 Ibid, page 145.

543 "High-spending holidaymakers fill airlines' first-class and business seats", Financial Times, 9 May 2023 (available at https://www.ft.com/content/6bd19362-f890-4370-af84-f3130e505e1c); "Come fly first class with me", Financial Times, 12 May 2023 (available at https://www.ft.com/content/869955ee-82fc-4914-bcde-66fb601f2291).

(long-haul) traffic, has recovered already and is expected to grow further. According to this internal document, there is […].

Figure 16: Air traffic forecast for Italy, as contained in ITA's business plan 2023-2027

[ITA internal document]

Source: ITA internal document, titled […].

(440) In the Commission's view, in its assessment of the effects of the Transaction, the Commission needs to look beyond the temporary effects of the Covid19 pandemic. In line with the provisions of the Horizontal and Non-Horizontal Merger Guidelines, the Commission will therefore not take into account any short-term effects of the pandemic in making its assessment in this decision. Instead, it will assess primarily the market situation in the latest IATA seasons as a reference for the likely future market positions of the Parties' and their competitors, while putting less emphasis on market data from IATA seasons still heavily influenced by the effects of the Covid19 pandemic, such as IATA seasons summer 2020 and winter 2020/2021. In addition, to identify longer-term trends or dynamics, the Commission may also rely on market data from before the Covid19-pandemic. Third, the Commission will take into account any structural changes that have occurred in the market or that can reasonably be expected such as the lasting entry or exit of competitors or structural shifts in competitiveness caused by the Covid19 pandemic or other broader developments.

(441) Finally, the Commission's investigation has not brought forward any evidence that the competitive situation on the investigated routes has been significantly affected by Russia's invasion of Ukraine. Therefore, the purported impact of Russia's invasion of Ukraine is not further considered in this Decision.

7.4. Impact of state aid received by Lufthansa on the competitive assessment

(442) During the Covid19 pandemic, the Commission approved a EUR 6 billion recapitalisation package notified by Germany in favour of Lufthansa. The recapitalisation measures were fully redeemed by Lufthansa almost two years after the adoption of the decision, when Germany sold its last shareholding and exited Lufthansa's registered share capital. However, in May 2023, the General Court annulled the Commission decision.

(443) In accordance with EU case law, the merger assessment will need to assess whether and to what extent the state aid received by Lufthansa strengthened its financial and thus commercial position at the time of taking over ITA as well as its competitive position moving forward.[544]

(444) The Commission considers that the state aid Lufthansa received may have contributed towards it recovering from the Covid19 pandemic more quickly than some of its airline rivals that received less substantial state aid. It therefore may have contributed towards Lufthansa's ability to regain and defend its strong market position in Central Europe following the Covid19 pandemic.

(445) With regards to the possibility that the state aid that Lufthansa received contributed towards Lufthansa's ability to undertake the Transaction, the Commission notes that Lufthansa had already fully repaid the aid that it received from the German state by the time that the Transaction was agreed between the Parties.[545] In addition, the

544 See Cases T-156/98 – RJB Mining v Commission, paragraphs 112-115.

545 Form CO, paragraph 293.

initial capital injection by Lufthansa into ITA would equal EUR 325 million which constitutes less than […] of Lufthansa's annual worldwide turnover. Therefore, the Commission considers that the state aid that Lufthansa received did not play a decisive role in the Transaction.

7.5. ITA's business model and strategic priorities

(446) ITA is a network carrier with airport hubs in both Rome-Fiumicino (FCO) and Milan-Linate (LIN). LIN is a city airport dedicated primarily to serving local (premium) traffic from the Milan area to the main domestic and European markets.[546] FCO, on the other hand, serves as ITA's airport hub for long-haul operations, with also a wide network of domestic (intra-Italy) and short-haul (intra-European) operations that both have a strategic relevance to ITA on their own right as well as serve as important "feeder traffic" to ITA's long-haul operations at FCO.[547]

(447) As a network carrier, ITA's main pillars of operation include (among others) personalised promotions for customers, focus on business and premium leisure travel, and the maximization of profits through ancillary services. In addition, ITA has a focus on brand perception and strong marketing in key destinations.[548]

7.5.1. ITA's operations at Milan-Linate

(448) ITA operates 175 daily slots at LIN.[549] Given LIN's proximity to the city centre of Milan, which is the second biggest city in Italy and a business hub, ITA's air traffic operations at LIN concentrate on point-to-point domestic and short-haul traffic. Since ITA does not operate any long-haul flights from LIN, its operations at this airport focus less on connecting passengers than at FCO. In other words, ITA operates more like a classical point-to-point operator at LIN.

(449) As described in the internal documents of ITA (see Figure 17), […].

Figure 17: ITA internal document

[ITA internal document]

Source: ITA presentation titled […].

(450) Figure 18 shows that only a small proportion of ITA's passengers (on both domestic and short-haul flights) travelling to/from LIN are connecting passengers and that the large majority are point-to-point passengers. It also shows that ITA does not have any passengers travelling on long-haul to/from LIN.

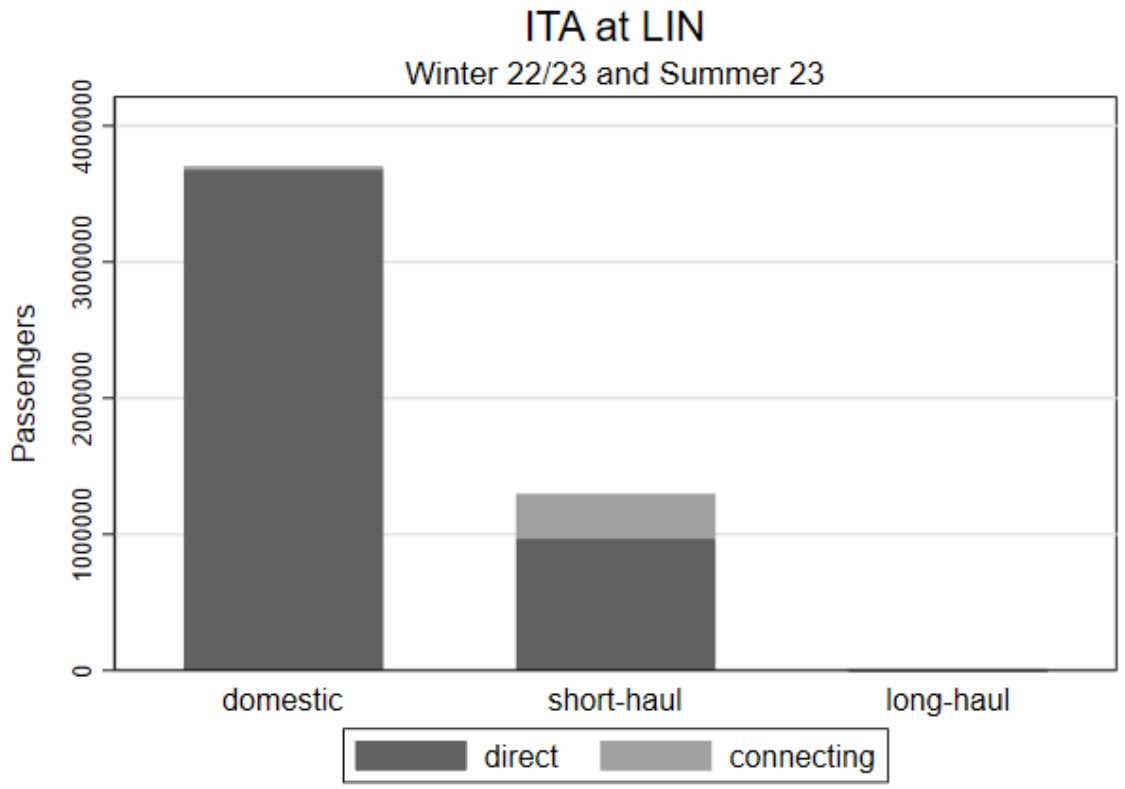
546 Form CO, paragraph 2458.

547 Feeder traffic refers to traffic composed of passengers, normally on domestic or short-haul flights, that connect onto other (normally long-haul) flights following their arrival at the destination of the first leg of the journey. Feeder traffic provided to an airline by a third-party airline (as discussed in section 6.9) constitutes a special kind of feeder traffic.

548 Form CO, paragraph 125.

549 Form CO, paragraphs 126, 137 and 140.

Figure 18: ITA direct and connecting passengers at Linate airport.



Source: Commission calculations based on response to RFI 36 Q1.

7.5.2. ITA's operations at Rome Fiumicino

(451) ITA's operations at FCO are those of a typical network carrier, where ITA's extensive network of domestic and short-haul flights serves as strategic feeder traffic for its more profitable long-haul operations.

(452) As shown in Figure 19, ITA connects FCO with 22 domestic locations, including most large and medium-sized Italian cities, such as Milan, Naples, Turin, Palermo, Genoa, Bologna, Florence, Bari and Catania. As described in the internal document below, for domestic flights to/from FCO, ITA seeks […], thereby highlighting the important interplay between ITA's domestic and long-haul operations at FCO.

Figure 19: ITA internal document

[ITA internal document]

Source: ITA presentation titled […].

(453) Figure 20 shows [ITA's network plans]. As shown in the internal document, [CITA's network plans] and, therefore, highlights the interplay between ITA's short-/medium-haul operations and long-haul at FCO.

Figure 20: ITA internal document

[ITA internal document]

Source: ITA presentation titled […].

(454) In terms of the long-haul connections that ITA operates from FCO, Figure 21 shows that ITA's main focus is destinations in North and South America, with presence in key destinations in Asia and Africa.[550]

Figure 21: ITA internal document

[ITA internal document]

Source: ITA presentation titled [...].

(455) Table 17 confirms that connecting traffic plays an important role for ITA's operations at FCO, with a significant proportion of ITA's passengers on domestic, short-haul and long-haul flights being connecting passengers. It shows ITA's top 5 domestic, short-haul and long-haul routes in Winter 2022/23 and Summer 2023 based on the total number of passengers flown across those two seasons. For each of these routes, it shows the proportion of connecting passengers overall, and on each end of the route (as well as passengers that connect on both ends of the route). As shown in the table, particularly for ITA's routes to/from Rome, connecting passengers make up a significant proportion of the overall volume of passengers flying on these routes with ITA.

Table 17: Connecting passengers on ITA's top domestic, short-haul and long-haul routes[551]

Route	Share of connecting passengers			
	Overall	At City 1	At City 2	At both
Domestic				
Milan-Rome	31.7%	4.0%	26.2%	1.4%
Catania-Rome	42.5%	0.0%	42.5%	0.0%
Cagliari-Rome	27.1%	0.0%	27.1%	0.0%
Catania-Milan	11.1%	0.0%	11.1%	0.0%
Palermo-Rome	46.7%	0.0%	46.7%	0.0%
Short-haul (excl. domestic)				
Milan-Paris	30.4%	26.2%	3.9%	0.2%
Rome-Paris	31.9%	27.7%	3.3%	0.9%
Milan-London	18.1%	16.6%	1.5%	0.0%
Rome-Athens	52.9%	48.5%	3.1%	1.3%
Rome-Barcelona	50.1%	49.1%	0.7%	0.3%
Long-haul				
Rome-New York	56.9%	41.4%	9.3%	6.2%
Rome-Sao Paolo	68.2%	46.3%	9.8%	12.1%
Rome-Buenos Aires	59.4%	58.6%	0.2%	0.5%
Rome-Miami	38.1%	34.6%	2.5%	1.0%
Milan-New York	11.7%	0.4%	11.2%	0.1%

Source: Response to RFI 48 Q1.

550 Form CO, paragraphs 126 and 127.

551 The table shows the share of passengers connecting to another flight on each end of the route, as well as the share of passengers that connect to another flight on both ends of the route. For example, for the route Milan-Rome, 4.0% of passengers connect to/from another flight in Milan only, whereas 26.2% connect to/from another flight in Rome only. 1.4% of passengers on the route Milan-Rome connect to another flight in both Milan and Rome. Overall, 31.7% of passengers travelling the route Milan-Rome with ITA connect to another flight on at least one end of the route.

(456) Table 18 shows that, similar to other network carriers, ITA's most profitable routes are […]. In particular, the table shows the average contribution margin, which represents the margin earned by ITA from point-to-point passengers, as well as the average network contribution, which represents the additional margin earned from passengers connecting onto other flights. […].

Table 18: ITA's contribution margins by type of route[552]

Type of route	Destinations	Average Contribution Margin per Pax (€)	Average Network Contribution per Pax (€)
Long-haul	North America (US/CA)	[…]	[…]
Long-haul	Japan	[…]	[…]
Long-haul	All other regions	[…]	[…]
Short-/medium-haul	Intra-European[553]	[…]	[…]
Short-/medium-haul	All other regions[554]	[…]	[…]
Domestic	Domestic[555]	[…]	[…]

Source: Response to RFI 44 Q4.

(457) Overall, this section shows that connecting passenger flows at FCO mean that ITA's domestic, short-haul and medium-haul operations at FCO are closely inter-connected (in a strategic, commercial and operational sense) with its long-haul operations, including to North America, at FCO.

7.6. Lufthansa's business model and strategic priorities

(458) Lufthansa is a network carrier connecting passengers through its various hubs with a focus on connections to short-haul routes with major destinations in Europe and long-haul routes with destinations around the world.[556] It includes:[557]

(a) network carriers, such as Lufthansa German Airlines, SWISS, Austrian Airlines, and Brussels Airlines which – in line with Lufthansa's multi-hub strategy – offer a broad range of flights from their primary airport hubs in FRA, MUC and ZRH as well as from secondary airport hubs in VIE and BRU;

(b) regional carriers, such as Air Dolomiti, as well as Eurowings Discover and Edelweiss (both leisure focused holiday airlines) which also connect passengers to Lufthansa's hubs;

(c) the point-to-point carrier Eurowings which provides a range of short- and medium-haul routes within Europe, in particular from German-speaking countries.

(459) Lufthansa's offer is complemented by the networks of its joint venture and Star Alliance partners.[558]

552 ITA has calculated the average contribution margin per pax by [Confidential information about the way ITA calculates profitability in the ordinary course of business].

553 This refers to routes within the IATA defined geographical area of Europe.

554 This includes short- and medium-haul routes from/to the Middle East and North Africa.

555 Flights where both the origin and destination is in Italy.

556 Lufthansa Group includes airlines both with network and point-to-point business models, however ultimately the airlines within the Lufthansa Group aim to feed Lufthansa's main hubs.

557 Form CO, paragraph 2457.

558 Form CO, paragraph 2457.

7.6.1. Multi-hub strategy

(460) Lufthansa's core countries include Austria, Belgium, Germany and Switzerland where its hubs are located, namely in Frankfurt (FRA), Munich (MUC), Brussels (BRU), Zurich (ZRH) and Vienna (VIE). As part of the multi-hub strategy, Lufthansa aims to offer a broad range of flights from its primary airport hubs in Frankfurt, Munich, and Zurich as well as from its secondary airport hubs in Vienna and Brussels. This offer is complemented by the networks of its Star Alliance and joint venture partners.[559]

(461) As explained in Lufthansa's internal documents (for example, see Figure 22 below), Lufthansa's business model relies on […] long-haul routes, which in turn are enabled by a wide and dense short-haul network which provides feeder traffic to these airport hubs.[560] Within the framework of this business model, long-haul operations are […]. These […] long-haul routes are, in turn, fed by high-frequency short-haul connections.

Figure 22: Lufthansa internal document

[Lufthansa internal document]

Source: Presentation titled […].

(462) The reliance of Lufthansa's long-haul network on its domestic and short-haul networks is also illustrated by Figure 23. This document explains that, […]. In addition, a large proportion of passengers on Lufthansa's long-haul flights […] are connecting rather than point-to-point passengers. According to Lufthansa, […].

Figure 23: Lufthansa internal document, dated 17 November 2022

[Lufthansa internal document]

Source: […].

(463) As explained in Figure 24, arrivals and departures at hubs form a wave structure whereby arrival waves are positioned earlier than the departure waves with the intention to connect as many arriving short-haul passengers with long-haul departures as possible. Importantly, network carriers with a hub structure require not only inbound but also outbound short-haul (de-feed) traffic. Short-haul flights of a network carrier, such as Lufthansa, primarily serve the purpose of feeding and de-feeding long-haul flights […]. Competitors of the Parties explain that network carriers have more freedom in adapting the prices of their short-haul connections (potentially rendering them less-profitable or not profitable at all) as their primary revenue drivers are the long-haul flights, which the short-haul flight feed (and de-feed). In this respect Ryanair noted that "short-haul routes can be cross-subsidised by the long-haul part of a journey which Lufthansa realises through feeding its hubs and long-haul flights from these hubs".[561] Vueling explained that "it may make sense for Lufthansa to operate high frequencies on short-haul routes to/from its bases in order to feed traffic to its long-haul routes, and which in turn ensure that high frequency short-haul routes are profitable on a total contribution basis".[562]

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559 Form CO, paragraph 175.

560 While the source of the figure is a presentation regarding […] the Commission considers that the business considerations depicted are applicable to all hubs of Lufthansa.

561 Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 18, ID 2367.

562 Non-confidential minutes of a conference call with Vueling (IAG Group), dated 18 October 2023, paragraph 13, ID 1026.

Figure 24: Lufthansa internal document

[Lufthansa internal document]

Source: Presentation titled […].

(464) Table 19 confirms that connecting traffic plays an important role for Lufthansa's operations, with a significant proportion of Lufthansa's passengers on domestic, short-haul and long-haul flights being connecting passengers. It shows Lufthansa's top 5 domestic, short-haul and long-haul routes in Winter 2022/23 and Summer 2023 based on the total number of passengers flown across those two seasons. For each of these routes, it shows the proportion of connecting passengers overall, and on each end of the route (as well as passengers that connect on both ends of the route). As shown in the table, connecting passengers make up a significant proportion of the overall volume of passengers flying on these routes with Lufthansa, particularly on long-haul flights but also on domestic and short-haul flights.

Table 19: Connecting passengers on Lufthansa's top domestic, short-haul and long-haul routes[563]

Route	Share of connecting passengers			
	Overall	**At City 1**	**At City 2**	**At both**
Domestic				
Düsseldorf-Munich	36.1%	3.0%	33.0%	0.1%
Hamburg-Munich	37.7%	0.4%	37.3%	0.0%
Berlin-Frankfurt	65.6%	0.1%	65.5%	0.1%
Frankfurt-Hamburg	64.8%	64.6%	0.1%	0.0%
Berlin-Munich	57.7%	0.3%	57.4%	0.0%
Short-haul (excl. domestic)				
Düsseldorf-Palma de Mallorca	1.3%	1.3%	0.0%	0.0%
Frankfurt-London	50.3%	46.6%	2.1%	1.5%
Zurich-London	24.4%	20.9%	3.0%	0.5%
Munich-London	26.9%	23.5%	2.4%	1.1%
Düsseldorf-Vienna	18.7%	2.8%	15.8%	0.0%
Long-haul				
Frankfurt-New York	71.0%	61.6%	1.9%	7.4%
Zurich-New York	61.4%	56.3%	1.9%	3.2%
Munich-New York	69.3%	59.2%	2.2%	7.9%
Vienna-New York	58.8%	42.4%	7.6%	8.8%
Frankfurt-Orlando	60.2%	59.9%	0.2%	0.1%

Source: Response to RFI 48 Q1.

(465) Finally, Table 20 shows that Lufthansa's most profitable routes are […]. In particular, the table shows the average contribution margin, which represents the margin earned by Lufthansa from point-to-point passengers, as well as the average

563 The table shows the share of passengers connecting to another flight on each end of the route, as well as the share of passengers that connect to another flight on both ends of the route. For example, for the route Düsseldorf-Munich, 3.0% of passengers connect to/from another flight in Düsseldorf only, whereas 33.0% connect to/from another flight in Munich only. 0.1% of passengers on the route Düsseldorf-Munich connect to another flight in both Düsseldorf and Munich. Overall, 36.1% of passengers travelling the route Düsseldorf-Munich with Lufthansa connect to another flight on at least one end of the route.

network contribution, which represents the additional margin earned from passengers connecting onto other flights. […].

Table 20: Lufthansa's contribution margins by type of route[564]

Type of route	Destinations	Average Contribution Margin per Pax (€)	Average Network Contribution per Pax (€)
Long-Haul	[…]	[…]	[…]
Long-Haul	[…]	[…]	[…]
Long-Haul	[…]	[…]	[…]
Short-Haul	[…]	[…]	[…]
Domestic	[…]	[…]	[…]

Source: Response to RFI 44 Q4.

(466) Overall, this section shows that Lufthansa's domestic and short-haul operations are closely inter-connected (in a strategic, commercial, and operational sense) with its long-haul operations.

7.6.2. Multi-brand strategy

(467) Lufthansa operates a multi-brand strategy differentiated for each airline of the group. In particular in their home markets, Lufthansa's network carriers and point-to-point carriers are strongly positioned and well-trusted brands. According to a […]survey, the brand awareness of "Lufthansa" […], while Eurowings has a brand awareness of […].[565] The multi-brand approach enables Lufthansa to market different offers (premium, value for money, etc.) across a network of brands based on local preferences.[566] According to Lufthansa's internal documents, Lufthansa's national brands, such as SWISS and Austrian drive customer loyalty, while allowing Lufthansa to market its premium offerings and further increase customer loyalty by utilising a single frequent flyer program across its brands. Each brand within the Lufthansa Group fulfils a defined role to optimally address all relevant customer segments and markets. Lufthansa and SWISS are the premium brands active in the global hubs (FRA, MUC and ZRH), while Austrian and Brussels constitute the premium brands active in the national hubs (VIE and BRU). Eurowings Discover and Edelweiss are value and leisure focused airlines primarily serving to feed and de-feed the global hubs of Lufthansa, while Eurowings (which is distinct from Eurowings Discover) and SunExpress serve primarily as point-to-point carriers. […], its multi-hub and multi-brand strategy allows Lufthansa to serve regions other than its economically attractive but "saturated" core countries Austria, Belgium, Germany, and Switzerland.[567]

7.6.3. Lufthansa's presence in Italy

(468) Lufthansa is present in Italy through various short-haul connections feeding its airport hubs in its core countries. Based on Summer 2024 capacity data, Lufthansa Group and its various subsidiaries currently have short-haul flights scheduled on 116 city-pairs (involving 136 airport-pairs) between Lufthansa's core countries in Austria, Belgium, Germany, and Switzerland (DACHB), on the one hand, and Italy, on the other hand. Lufthansa's 136 short-haul routes between DACHB and Italy

564 Lufthansa has calculated the average contribution margin per pax by [Confidential information about the way Lufthansa calculates profitability in the ordinary course of business].

565 Form CO, paragraph 2469.

566 Lufthansa presentation titled […].

567 Lufthansa presentation titled […].

cover 1 224 average weekly frequencies in Summer 2024 in total. Lufthansa's top 20 routes to/from Italy in terms of average weekly frequency in Summer 2024 is outlined in Table 21 below.

Table 21: Lufthansa's top 20 routes to/from Italy in terms of average weekly frequency in Summer 2024

Lufthansa subsidiary	Route	Weekly frequency (S24)
Lufthansa	Milan (LIN) – Frankfurt (FRA)	38
Lufthansa	Milan (MXP) – Frankfurt (FRA)	36
Lufthansa	Rome (FCO) – Frankfurt (FRA)	34
Lufthansa	Rome (FCO) – Munich (MUC)	32
Air Dolomiti	Venice (VCE) – Munich (MUC)	32
Austrian Airlines	Milan (MXP) – Vienna (VIE)	31
Lufthansa	Venice (VCE) – Frankfurt (FRA)	29
SWISS	Milan (MXP) – Zurich (ZRH)	27
Air Dolomiti	Florence (FLR) – Frankfurt (FRA)	27
Austrian Airlines	Venice (VIE) – Vienna (VIE)	27
Air Dolomiti	Florence (FLR) – Munich (MUC)	27
Air Dolomiti	Bologna (BLQ) – Munich (MUC)	27
SWISS	Rome (FCO) – Zurich (ZRH)	27
SWISS	Florence (FLR) – Zurich (ZRH)	25
SWISS	Venice (VCE) – Zurich (ZRH)	25
Lufthansa	Bologna (BLQ) – Frankfurt (FRA)	23
Air Dolomiti	Turin (TRN) – Munich (MUC)	20
Air Dolomiti	Bari (BRI) – Munich (MUC)	19
Lufthansa	Milan (MXP) – Munich (MUC)	19
Lufthansa	Naples (NAP) – Frankfurt (FRA)	19

Source: M.11071 Annex 100 Market shares tables (RFI9Q7(B) RFI31 Q3 Version.xlsx.

(469) The width and depth of Lufthansa's existing short-haul network to Italy is also outlined in the internal document from Lufthansa (Figure 25) below. This shows that Lufthansa's existing network in Italy covers most of the geography of Italy and that high frequencies connect most large and medium-sized cities in Italy with Lufthansa's hubs in Central Europe.

Figure 25: Lufthansa internal document

[Lufthansa internal document]

Source: […].

(470) As outlined in the below internal document (Figure 26), Italy is Lufthansa's most important European country outside its core countries in DACHB. As also described in this internal document, […].[568] In other words, Lufthansa's short-haul operations in Italy […] profit Lufthansa by feeding passengers into its hubs in DACHB where

568 See also: Lufthansa and MEF's response to RFI 35, Q20.

they are then transferred onto long-haul flights operated by Lufthansa. […]. In other words, […]. As stated in the document below, […].

Figure 26: Internal document from Lufthansa outlining its Italy strategy[569]

[Lufthansa internal document]

Source: […].

(471) Further strengthening its already significant presence in Italy plays a central role in Lufthansa's rationale for the Transaction as outlined in Figure 27 below. The document describes Italy as [details of a Lufthansa internal document].

Figure 27: Lufthansa internal document

[Lufthansa internal document]

Source: Lufthansa internal document, […].

(472) Air Dolomiti, which is a wholly owned subsidiary of Lufthansa based in Verona with a fleet of […] aircraft, […]. Air Dolomiti also has bases in Florence and in Venice. Air Dolomiti mainly offers connections between Italian airports and Lufthansa's hubs in FRA and MUC as shown in Figure 28 below (EN is the IATA airline code for Air Dolomiti). It is explicitly seen as a feeder airline for Lufthansa that serves to feed Italian passengers (primarily in Northern Italy) to its hubs in FRA and MUC for the purposes of strengthening Lufthansa's long-haul presence in Italy (via one- or multi-stop routes).

Figure 28: Lufthansa internal document

[Lufthansa internal document]

Source: […].

(473) Air Dolomiti also plans (see Figure 29 below) […].

Figure 29: Lufthansa internal document

[Lufthansa internal document]

Source: […].

(474) Air Dolomiti does not connect airports within Italy with each other.

(475) Finally, Lufthansa is currently present in Italy via its JV partners, including its transatlantic JV partners United Airlines and Air Canada from the A++ joint venture. The direct flights to/from Italy (all long-haul) offered by Lufthansa's JV partners based on Summer 2024 capacity are outlined in Table 24 below.

569 In this internal document, […]. It therefore is a measure of profitability used by Lufthansa.

Table 22: Direct long-haul routes of Lufthansa's JV partners to Italy - S24 weekly frequency

JV partner	Route	Weekly frequency (S24)
Air Canada	Rome (FCO) – Toronto (YYZ)	10
Air Canada	Rome (FCO) – Montreal (YUL)	8
Air Canada	Milan (LIN) – Montreal (YUL)	6
Air Canada	Venice (VCE) – Toronto (YYZ)	3
Air Canada	Venice (VCE) – Montreal (YUL)	2
United Airlines	Rome (FCO) – New York (EWR)	14
United Airlines	Rome (FCO) – Washington (IAD)	12
United Airlines	Naples (NAP) – New York (EWR)	11
United Airlines	Milan (MXP) – New York (EWR)	7
United Airlines	Rome (FCO) – San Francisco (SFO)	7
United Airlines	Rome (FCO) – Chicago (ORD)	7
United Airlines	Milan (MXP) – Chicago (ORD)	7
United Airlines	Venice (VCE) – New York (EWR)	6

Source: M.11071 Annex 100 Market shares tables (RFI9Q7(B) RFI31 Q3 Version.xlsx.

7.7. Evidence on the impact of the Transaction

7.7.1. Evidence from internal documents

(476) Internal documents of Lufthansa show that Lufthansa is expecting price increases on the overlapping routes after the Transaction.

(477) First, in the context of the first round of the privatisation process of ITA launched by the MEF in February 2022, where Lufthansa participated in a consortium with Mediterranean Shipping Co. (MSC), Lufthansa prepared an internal presentation […].[570] This presentation was prepared by senior managers within Lufthansa, including […].[571]

(478) In the presentation, […]. Figure 30 below shows an excerpt from the presentation […]. According to this slide, […]. As explained in further detail below, this means that Lufthansa expects that increased market concentration will result in increased profitability via the ability to profitably raise prices.

Figure 30: Lufthansa internal document

[Lufthansa internal document]

Source: […].

(479) Using a linear regression model, Lufthansa estimated how an increase in market concentration (measured in terms of change in HHI by O&D) will result in increased profit margins for all market participants on these routes where the increase in market concentration takes place. As explained by Lufthansa, "[a]s part of the methodology, all airlines present in an O&D can profit from market concentration.

570 Lufthansa and MEF's response to RFI 35, Q3.

571 Lufthansa and MEF's responses to RFI 35, Q1 and Q2.

Hence, also other airlines (OAL) see yield improvements.[572] Further, Lufthansa explained that, while increases in yield (or profit margins) are not always driven by increases in prices, in the present model any increases in yield are due to increases in prices on such routes (due to the loss of competition). […].[573] Overall, the underlying rationale of the estimated synergy can be summarised as follows (as taken from Lufthansa's internal document reproduced in Figure 31 below): […].

(480) Further background on the methodology is found in the two additional excerpts from internal documents from Lufthansa below (Figure 31 and Figure 32).

Figure 31: Lufthansa internal document

[Lufthansa internal document]

Source: […].

Figure 32: Lufthansa internal document

[Lufthansa internal document]

Source: […].

(481) In an internal email, a Lufthansa employee interprets the figures by explaining that the effects result from [details of an internal document].[574]

(482) In terms of methodology, […].[575] In addition, these synergies assume [methodology assumptions].[576] Contrary to Lufthansa's arguments in the Response to the SO,[577] […][578]), [579][580] […][581], […][582] […][583] […][584] […].[585]

(483) Importantly, the analysis is based on […]. This means that these models cannot reliably be used to estimate the actual total merger-specific effects of the Transaction.

(484) Nevertheless, the analysis performed by Lufthansa predicts positive price effects on […].[586] […].[587]

(485) Independently of the specific price effects found in this model, this presentation and the underlying models show that Lufthansa itself expects that the Transaction will result in significant price increases on many overlapping routes and that these price effects take place primarily on overlapping short-haul routes between Italy and the DACHB region and on overlapping long-haul routes between Italy and North America. Finally, this analysis shows that Lufthansa expects such price increases to take place on direct/direct, direct/indirect and indirect/indirect overlapping routes.

572 Lufthansa and MEF's responses to RFI 35, Q6.
573 Lufthansa and MEF's responses to RFI 35, Q6.
574 Email with the subject line […].
575 Lufthansa and MEF's responses to RFI 35, Q5.
576 Lufthansa and MEF's responses to RFI 35, Q18.
577 Response by Lufthansa and MEF to the SO, paragraph 42.
578 Email […].
579 Lufthansa internal document […].
580 Lufthansa internal document […].
581 Ibid, slide 5.
582 Lufthansa internal email exchange, […].
583 Ibid.
584 Lufthansa internal document […].
585 Lufthansa internal email exchanges […].
586 RFI 35 - DLH Annex Q6 - Market concentration Fare O&D.
587 […].

(486) Second, an undated document prepared by Lufthansa's management consultants ([…]) […] (here referred to as […]) […] (here referred to as […]).[588] While the document was not prepared by Lufthansa itself, as pointed out in the Response to the SO,[589] Lufthansa appears to have commissioned and compensated […] for this analysis and therefore appears to place value in the type of assessment performed in this document.

(487) As shown in the excerpt from this document below, Lufthansa's management consultants expect that […] that will lead to a […]. The document finds that […].

Figure 33: Internal document (Lufthansa) – [Lufthansa internal document prepared by a management consulting company]

[Lufthansa internal document prepared by a management consulting company]

Source:[...].

(488) Third, additional internal documents of Lufthansa see price increases or the raising of barriers to entry and expansion as a beneficial effect of acquiring ITA or […]:

(a) In one internal document, Lufthansa identifies […][590], "[…]" [591] […].[592]

(b) In one internal document, Lufthansa identifies as a strategic objective for its operations to the United States and Canada to […].[593]

(c) In one internal document, Lufthansa identifies […].[594] In another internal document, Lufthansa identifies […][595] as a benefit of acquiring ITA.

(d) In other internal documents, Lufthansa identifies […],[596] […][597] […],[598] […].

(e) In […] analysis quoted in Figure 33 above, Lufthansa's management advisors ([…]) predict "[…]" as one benefit of acquiring ITA and/or […].[599]

7.7.2. The Commission's regression analysis

(489) Annex I to the Decision details the regression analysis carried out by the Commission to assess the relationship between the competitive landscape and Lufthansa's average prices on both long-haul and short-haul routes. Annex I also addresses the Parties' comments on the Commission's regression analysis. This analysis can help in the assessment of whether the presence of competitors, and in particular ITA, has an impact on the prices charged by Lufthansa, as well as in quantifying the magnitude of such an impact. As such, the regression analysis contributes to assessing whether the Transaction is likely to significantly impede effective competition.

(490) Together with the Commission's regression, there are three independent pieces of regression analysis in the case file. As discussed above in section 7.7.1, in the

588 […].
589 Response by Lufthansa and MEF to the SO, paragraph 42.
590 Lufthansa internal document titled […].
591 Ibid, slide 9.
592 Ibid, slide 18.
593 Lufthansa internal document […].
594 Lufthansa internal document, […]; also contained in Lufthansa internal document […].
595 Lufthansa internal document, […]. The full quote reads […] with additional explanations […].
596 Lufthansa internal document […]; see also Lufthansa internal document […]; see also, in the context of discussions of […], Lufthansa internal document […].
597 Lufthansa internal document […].
598 Lufthansa internal document […] also contained in Lufthansa internal document.
599 […] document produced for Lufthansa, […].

context of the assessment of the Transaction, Lufthansa itself prepared its own regression modelling showing that the number of competitors active on a route is an important factor for prices: having fewer competitors active on a route is associated with higher prices.[600] Also, during the Commission's investigation the Parties submitted a supplementary cross-sectional regression analysis to support the their claim that Ryanair exerts significant competitive pressure on Lufthansa on routes where Ryanair is present,[601] and that ITA does not exert the same competitive pressure on routes where ITA is present.[602] While these various regression analyses differ in some of their technical and specification details, their results consistently point towards similar conclusions. Namely, all these regression models show that, on the relevant airline markets, competition matters, and having fewer competitors on a given route is associated with higher prices. In this general sense, the quantitative evidence on file supports the rest of the evidence gathered and assessed during the investigation.

(491) Regression analysis is a statistical tool commonly used in economics for understanding the relationship between two or more variables. In this case, the main variables are on the one hand Lufthansa's prices, and on the other hand the number of competitors. To shed light on the relationship between these two variables, the analysis has to control for the role played by other variables, for example demand and supply factors that can also influence Lufthansa's prices on a route.

(492) The Commission applied a methodology commonly known as 'fixed effects' regressions to a panel of data that allows to isolate the factors that influence Lufthansa's prices. The fixed effects methodology takes account of important but unobserved (or unmeasured) effects on price that do not vary over time on any given route or that vary over time but are the same across all routes. In addition, further control variables take account of important observed effects that may vary over time on a given route. As a result, the estimated effects will capture changes in prices on a route when changes in competition occur on that route (as opposed to simply comparing prices across routes where competition may differ).

(493) The data and analysis can then show whether Lufthansa offers lower prices on average on a route when there is more competition compared to when there are less operators. That is, the regression models and the data give rise to the testable hypothesis that other operators' presence is associated with a statistically[603] and economically significant reduction in Lufthansa's prices in the various routes where they overlap.

(494) The results of the regression analysis for short-haul routes suggest that (i) increased competition on a route is associated with lower average Lufthansa prices; and (ii) ITA's presence on a route is associated with lower average Lufthansa prices. These results indicate that a reduction in the number of competitors active on a route is likely to increase prices.

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600 […].

601 The Parties' cross sectional regression analysis finds that Lufthansa's prices on its routes on average are [10-20]% lower if it faces competition from an airline other than Ryanair, including ITA, and [30-40]% lower if it faces competition from Ryanair. See Annex, paragraph 75.

602 Supplementary regression analysis "ppt - Closeness of competition - 060324 - Final" submitted on 7 March 2024.

603 Statistical significance is a formal way of assessing whether observed associations are likely to be explained by chance alone.

(495) More specifically, the results of the regression analysis on short-haul routes indicate that:

(a) Routes with a higher number of competitors have prices on average [10-20]% lower than routes where Lufthansa is a monopolist.[604]

(b) Specifically, the first competitor is associated with Lufthansa's prices being reduced by [5-10]-[5-10]%,[605] while each subsequent additional competitor beyond the first one is associated with Lufthansa's prices being reduced by [0-5] - [5-10] additional percentage points.[606]

(c) The robustness analysis carried out suggests that the effect on Lufthansa's prices associated to the first competitor can range between [5-10]% to [20-30]%,[607] while the effect from each subsequent additional competitor can be as large as [10-20] percentage points.[608]

(496) The Commission's fixed effects regression also allows one to assess the relationship between ITA's presence and Lufthansa's prices. The results of this regression analysis indicate that ITA's presence on routes operated also by DLH is associated with on average approximately [10-20]-[20-30]% lower Lufthansa prices.[609]

(497) These results imply that Lufthansa's prices are estimated to be:

(a) about [5-10]-[5-10]% higher on monopoly compared to duopoly routes ("2-to-1" impacts), but about [10-20]% higher where the competitor disappearing is ITA, and

(b) about [0-5]-[5-10]% higher on duopoly compared to three-or-more-carrier routes ("3-to-2" impacts), but about [10-20]% higher where the competitor disappearing is ITA.

(498) Finally, the results of the regression analysis for long-haul routes also suggest that increased competition on non-stop routes to North America is associated with lower

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604 See Annex I, column (4) of Table 4 and Table 10, row labelled "2 or more additional competitors (incl. ITA/Alitalia, excl. Lufthansa)".

605 See Annex I, column (4) of Table 4 and Table 10, row labelled "1 additional competitor (incl. ITA/Alitalia, excl. Lufthansa)".

606 See Annex I, column (4) of Table 4 and Table 10, row labelled "Average effect from 3 to 2 carriers on a route". The effect of [0-5]% is statistically significant only at [10-20]% in the overall sample that include both IATA summer and IATA winter seasons, which indicates a moderate likelihood that the observed outcome is not due to random chance, though scientific research in economics typically consider a stricter threshold of [10-20]% to minimize the risk of false positives. This effect is nonetheless economically relevant: in smaller samples, even economically meaningful effects may fail to reach statistical significance due to the lower number of observations, whereas in larger samples, even small effects can achieve statistical significance. Therefore, the absence of statistical significance does not necessarily imply the absence of an economically meaningful relationship. Moreover, this effect is also larger and statistically significant at [10-20]% in the sensitivity based only on IATA summer seasons. When the analysis is carried out on only IATA summer seasons, the first competitor is associated with Lufthansa's prices being reduced by [10-20]%, while each subsequent additional competitor with a further 5 percentage points reduction. The estimated effect appears instead milder in IATA winter seasons.

607 See Annex I, columns (2) to (5) in Table 4, Table 5, Table 10 and Table 11, row labelled "1 additional competitor (incl. ITA/Alitalia, excl. Lufthansa)".

608 See Annex I, columns (2) to (5) in Table 4, Table 5, Table 10 and Table 11, row labelled "Average effect from 3 to 2 carriers on a route".

609 See Annex I, column (1) in Table 7, Table 8, Table 12 and Table 13, considering all rows containing the label "ITA is present".

average prices. Thus, the results clearly indicate that a reduction in the number of competitors active on a route is likely to increase prices. In particular:

(a) Routes with a higher number of competitors have prices on average [20-30]-[20-30]% lower than routes where Lufthansa is a monopolist.

(b) Specifically, the first non-stop competitor entering a route is associated with Lufthansa's prices being reduced by approximately [5-10]%, while each additional non-stop competitor with a further [10-20]-[10-20] percentage points reduction.

(c) The robustness analysis carried out suggests that the effect on prices associated to the first non-stop competitor can range between [5-10]% and [5-10]%, while the effect on prices associated to additional non-stop competitors beyond the first can range between [10-20]% and [10-20]%.

(d) The first additional indirect competitor decreases prices by only about [0-5]%,[610] while two or more additional indirect competitors decrease prices by about [5-10]% compared to monopoly, which means an additional indirect competitor beyond the first one is associated with Lufthansa's prices being about approximately [5-10] percentage points lower.

(499) These results also indicate that indirect competitors exert a competitive constraint on non-stop operators on long-haul routes, but also suggest that the constraint exerted by non-stop operators on other non-stop operators is likely greater than the one exerted by indirect competitors.

(500) Annex 1 provides a full overview of the findings of the Commission's analysis as well as a detailed assessment of the most relevant of the Parties' claims as per their Response to the 6.1.c Decision, their Response to Statement of Objections, their Response to Second Letter of Facts, as well as the other ancillary submissions as well as the points raised in the Oral Hearing.[611]

7.7.3. Stakeholder feedback

(501) First, although the results of the Commission's market investigations were mixed overall, several market participants have expressed concerns about the strong market position of the Parties and the potential negative effects on competition of the Transaction.

(502) In particular, several customers indicated that the Transaction has the potential to limit effective competition and will likely lead to worse market outcomes, leading to higher prices, lower capacity, and/or worse quality on the routes between the US and Europe. As an example, one customer explained that "After we have seen the effects of previous Lufthansa Group acquisitions, particularly the Air Berlin integration into Lufthansa's subsidiary Eurowings, we do not expect positive outcomes for the consumer or businesses rather a further growing airline group that will have the ability to dominate air traffic between Italy and its existing 'home markets' and thereby the incentive to increase air fares and/or decrease number of departures and

610 This effect is not statistically significant at 10% once the COVID period is included in the analysis.

611 See the Parties' Response to the Article 6(1)(c) Decision, paragraph 46 to 57, the Supplementary regression analysis named "ppt - Closeness of competition - 060324 - Final" submitted on 7 March 2024, the Parties' Response to the SO, paragraphs 26 to 32 and Annex I, and the Parties' Response to the LoF II, paragraphs 69-83.

overall choice for consumers"[612]. Another customer maintained that "looking at what happened both for passengers and for travel agencies after the acquisition of Austrian Airline, SWISS, Brussels Airlines, by LH, we can imagine that for IT and foreign consumers, as well as for Italian travel agency, the acquisition of ITA by LH will certainly have a NEGATIVE impact. Increase in prices, fewer services and opportunities of doing business also for Italian agencies and TOs"[613].

(503) Concerns around the strong market position of the merged entity were mirrored by several competitors. One competitor explained that "Through the transaction, Lufthansa is securing the flag carrier of one of Europe's largest market, a top destination for business (North), leisure (tourism) and VFR (Italian dispora)" [SIC] and that the Transaction "will further increase Lufthansa's mammoth position in this key market and in Central Europe. Customers will have no choice but fly Lufthansa, and it will become challenging for competitors (even the largest) to attract traffic to/from Italy. Besides, ITA has a growth plan that implies fleet orders and routes opening, thus further expanding the adverse effects of this transaction to potential destinations that ITA may serve in the future"[614]. Another competitor explained that the Transaction "will not be a positive development for Italian passengers specifically" and "traffic may be concentrated to fewer destinations and towards Lufthansa's hubs post-transaction"[615]. Additional concerns, mainly with respect to Milan Linate, have been raised by other competitors.[616] For instance, Wizz Air indicated that the Transaction "will further contribute to the slot concentration between the Parties (especially in LIN) and limit the ability of new entrants to effectively compete with the Parties"[617]. Since the rivals' submissions may be driven by self-interest, the Commission will rely on those only for their factual claims that can be corroborated from other sources, such as data or internal documents provided by the Parties.

(504) Likewise, several consumers indicated that they expect negative effects of the Transaction. As an example, a group of organizations representing European consumers, passengers, air ticket intermediaries and airports explained that, whilst "Europe's internal air travel market is a remarkable EU success story" as it "has led to cheaper, safer, and more comprehensive air connections throughout the EU", the current "wave of airline consolidation could drastically limit competition on thousands of connections, thus giving more leeway to market dominant players to develop and abuse their positions, at the expense of European travelers. The fact that many European airports are or will become congested combined with outdated EU airport slot allocation rules only adds to these concerns"[618].

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612 Non-confidential response of […] to question H.8 of questionnaire 06 to customers of both short-haul and long-haul flights, ID 8949.

613 Non-confidential response of […] to question H.8 of questionnaire 06 to customers of both short-haul and long-haul flights, ID 9675.

614 Non-confidential response of AFKLM to question G.2 of questionnaire 04 to long-haul competitors, ID 9285.

615 Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, ID 2367.

616 Non-confidential minutes of a conference call with Luxair, dated 6 June 2023, ID 430.

617 Non-confidential response of Wizz Air to question I.7 of questionnaire 03 to short-haul competitors (ID 9480). Non-confidential Condor's observations dated 12 December 2023, ID 11270, and Condor's non-confidential supplementary observation dated 23 February 2024, ID 11272.

618 Joint letter of BEUC, the European Passengers' Federation, the European Travel Agents' and Tour Operators' Association and Airports Council International – Europe, dated 31 January 2024 (ID 11383).

(505) By contrast, the deal is receiving support from the Parties' unions,[619] one individual consumer[620], as well as from the Parties' aircraft supplier.[621]

(506) Second, several market participants have expressed concerns about the negative impact of past acquisitions by Lufthansa of other European airlines. The Commission asked market participants how Lufthansa's expansion within the EEA through acquisitions in the past (including of Brussels Airlines, Austrian Airlines, parts of Air Berlin, Eurowings, Air Dolomiti and SWISS) has affected competition on routes to/from Austria, Belgium, Germany, Switzerland and other countries in the EEA and how their business was affected. Several customers and competitors active on short-haul routes pointed to a negative impact on competition and to higher prices. While a majority of the market participants had no particular view, market participants were three times more likely to conclude that the acquisitions of the airlines by the Lufthansa Group, had a negative impact on competition than a positive impact. For instance, with regard to Austria, 39 market participants held an unfavourable view concerning Lufthansa's acquisition of Austrian Airlines and the concomitant impact on competition in Austria compared to 9 market participants having a positive view of the acquisition. Similarly, 31 market participants determined that Lufthansa Group's acquisition of Brussels Airlines had a negative impact on competition, compared to 8 market participants having a favourable view of the acquisition.[622]

(507) Such dynamics seem to be mirrored also by Lufthansa's internal considerations. In an internal document, Lufthansa finds that neighbourhood traffic within the area formed by Germany, Austria, Switzerland and Belgium is […].[623] The […] on hub-to-hub flights within DACHB suggests that Lufthansa faces less competitive pressure on these routes and therefore also point towards a negative effect on competition of these past acquisitions.

8. HORIZONTAL OVERLAPS IN PASSENGER AIR TRANSPORT

(508) As further discussed in sections 9 and 10, based on the market investigation, the Commission finds that the Transaction would significantly impede effective competition with respect to passenger air services on:

(a) 10 short-haul routes where both Lufthansa and ITA offer (or intend to offer) direct services, namely on the routes from Milan to Brussels ('MIL-BRU'), Düsseldorf ('MIL-DUS'), Frankfurt ('MIL-FRA'), Hamburg ('MIL-HAM'), and Vienna ('MIL-VIE'); from Rome to Brussels ('ROM-BRU'), Frankfurt ('ROM-FRA'), Munich ('ROM-MUC'), Zurich ('ROM-ZRH'), and Hamburg ('ROM-HAM'); and,

(b) 8 short-haul routes where either Lufthansa or ITA offer (or intend to offer) direct services, and the other merging party offers indirect (one stop) service, namely: from Brindisi to Düsseldorf ('BDS – DUS'), from Bari to Frankfurt ('BRI – FRA'), from Bari to Munich ('BRI – MUC'), from Bari to Hamburg ('BRI – HAM'), from Naples to Frankfurt ('NAP – FRA'), from Naples to

619 Joint Statement of ITA Airways and Lufthansa Group Trade Unions, ID 10943.
620 Email from individual consumer, ID 10938.
621 Letter from Aercap, ID 11984.
622 Responses to question E.1 of questionnaire 06 to customers of both short-haul and long-haul flights. Responses to question F.1 of questionnaire 03 to short-haul competitors.
623 Lufthansa internal document, titled […].

Düsseldorf ('NAP – DUS'), from Naples to Hamburg ('NAP – HAM'), and from Cagliari to Munich ('CAG – MUC'); and,

(c) 3 long-haul routes where both ITA and one of Lufthansa's JV partners offers a direct service, namely: from Rome to each of Washington, San Francisco, and Toronto (summer only).

(509) The above overlaps are discussed below in section 9 (for the short-haul routes) and section 10 (for the long-haul routes).

9. COMPETITIVE ASSESSMENT – HORIZONTAL OVERLAPS ON SHORT-HAUL ROUTES

9.1. Common considerations on horizontal overlaps on short-haul routes

9.1.1. Competitive landscape

9.1.1.1. Actual Competition

(510) The direct competitors of the Parties on the short-haul routes where the Transaction gives rise to competition concerns, based on the Commission's assessment, (see sections 9.2, 9.3 and 9.4) are the following low-cost carriers ("LCCs") and ultra-low-cost carriers ("ULCCs").[624] The Commission highlights that there are no other network carriers active on these routes (other than Lufthansa and ITA) and therefore the only carriers exerting competitive pressure on Lufthansa and ITA are LCCs or ULCCs.

9.1.1.1.1. Ryanair

(511) Ryanair is a ULCC headquartered in Dublin, Ireland. The Ryanair group consists of Ryanair, Ryanair UK, Buzz, Lauda and Malta Air and connects 240 destinations over 40 countries, offering low fare options.

(512) Ryanair operates a point-to-point ("P2P") business model on short-haul routes. The P2P model entails offering direct, non-stop routes without connecting passengers through a hub.

(513) It is Lufthansa and ITA's only other competitor on the following routes where Lufthansa and ITA currently compete: Milan – Brussels (BGY-CRL), Milan – Düsseldorf (BGY-CGN), Milan – Frankfurt (BGY-HHN), Milan – Hamburg (BGY-HAM), Milan – Stuttgart (BGY-FKB), Rome – Brussels (CIA-CRL and FCO-BRU), Rome – Frankfurt (FCO-HHN) and Rome – Munich (FCO-FMM). Ryanair is also active on the routes Milan – Vienna (MXP-VIE) and Rome – Vienna (FCO-VIE) which ITA currently plans to enter.

(514) Ryanair primarily flies to secondary / regional airports (such as HHN or CRL) and usually has only a limited presence on primary airports (such as VIE or BRU).

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624 LCCs and ULCCs are similar in terms of business model, as both type of airlines provides P2P services, and their choices are primarily driven by costs. However, LCCs, such as easyJet, may choose to operate from primary airports and also attempt to be attractive to both leisure and business travellers. On the other hand, ULCCs usually aim to provide the most cost-effective solutions, with little to no regard to other considerations (various services, appeal to business or time-sensitive demand, etc.) and generally operate from secondary / regional airports. See non-confidential minutes of a conference call with easyJet, dated 24 October 2023, paragraph 8, ID 1054, and non-confidential minutes of a conference call with Vueling (IAG Group), dated 18 October 2023, paragraph 5, ID 1026.

9.1.1.1.2. Wizz Air

(515) Wizz Air is an airline group, headquartered in Budapest, Hungary. The business model of the group is similar to that of Ryanair's. It is a ULCC operating on a P2P basis, focusing on providing low fares and ancillary services. The network strategy of Wizz Air is to sell short-haul and medium-haul direct flights.[625]

(516) Wizz Air competes with Lufthansa and ITA on the route Rome – Zurich (FCO-BSL). It is also active on the route Rome – Vienna (FCO-VIE), whereas as of Summer IATA Season 2024 it will commence operations on the route Rome – Hamburg, where it plans to operate during both Winter and Summer IATA Seasons. ITA currently plans to enter the Rome-Vienna and Rome-Hamburg routes.

9.1.1.1.3. easyJet

(517) easyJet is an LCC headquartered in Luton, United Kingdom. It is a European majority owned and controlled LCC that operates a P2P business model. It is active in the European short-haul aviation market and is focused primarily in Western and Northern Europe. easyJet's principal activity is the operation of international and domestic scheduled services for air transport of passengers under a low-cost model. It operates domestic and international scheduled services on over 1000 routes in 36 countries to/from 155 airports, and operates three AOCs within the EU, UK and Switzerland.[626]

(518) easyJet competes with the Parties on the route Rome – Zurich (FCO-BSL).

9.1.1.1.4. Neos

(519) Neos is an Italian airline, part of the largest Italian touristic group – Alpitour. Neos, the airline is focused on the leisure market. It is headquartered in Milan, Italy, where it also operates its main base (in Malpensa). Neos, the airline, operates also from Verona, Rome, Bologna and Bergamo, 29 destinations out of which only 9 are short-haul routes. Neos' fleet consists of 6 B787-9 Dreamliner, 5 B737-800 and 4 B737-8 Max. In the course of 2024, Neos will increase its fleet by an additional 4 B737-8 Max. The majority of Neos' activities in 2023 were primarily focused on scheduled flights (87%), followed by limited charter flight activities (11%) and minimal air cargo transport, MRO and training activities (2%). Almost half of Neos' seats are sold through the tour operators of Alpitour Group (45%) while the remaining seats (55%) are sold through a number of distribution channels, including GDS, metasearch engines, OTAs and Neos' own website.[627] Neos currently has a special pro-rate interline agreement with ITA for interline electronic ticketing.[628]

(520) Neos does not currently compete with the Parties on any of the short-haul direct/direct overlapping routes. However, it operates Inclusive Tour Charter flights[629] on the route Milan – Hamburg (MXP – HAM) for affiliated cruise

625 Response of Wizz Air to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12134.

626 Response of easyJet to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12368.

627 Response of Neos to question B.2.1. of questionnaire 03 to short-haul competitors, ID 10170.

628 Response of Neos to a Commission's pre-notification request for information (RFI 1), dated 31 October 2023, question 4, ID 947.

629 Inclusive Tour Charter flights are operated for tour operators, with the seat capacity of the aircraft sold by the tour operator for its own purposes. These flights may fly with or without "dry seats" (seats which are available to be sold to customers through direct sales channels).

companies, whose seats, however, are not for sale on any distribution channel, and are only available to the customers of the cruise companies.[630]

9.1.1.1.5. Marabu Airlines

(521) Marabu is an Estonian airline, operating out of Hamburg and Munich in Germany, offering short and medium-haul flights for air transport passengers to (leisure) destinations in Portugal, Spain (including the Canary and Balearic Islands), Sardinia, Croatia, Greece and Egypt. Marabu's ticket sales are handled by the German leisure airline Condor Flugdienst GmbH.[631]

(522) Marabu Airlines competed with the Parties on the route Rome – Hamburg over the Summer IATA Season 2023.

9.1.1.2. Potential competition

(523) The Parties submit that they face threats of entry on certain short-haul direct/direct overlapping routes from Transavia, Vueling, TUI Fly, and Jet2, as a result of their presence and/or operation of bases in certain of the airports of concern as well as some of those competitors' past presence in some of the overlapping routes.[632]

9.1.1.2.1. Transavia

(524) Transavia, is the LCC subsidiary of the Air France-KLM group, with operations in the Netherlands and France. It operates a P2P business model directed at short- and medium-haul price sensitive customers (both leisure and corporate) as well as operating charter flights directed at tour operators.[633]

(525) Transavia does not currently compete with the Parties on any of the short-haul direct/direct overlapping routes.

9.1.1.2.2. Vueling

(526) Vueling is the Spanish LCC of the International Airlines Group ("IAG") and is headquartered in Barcelona, Spain. Vueling operates a P2P model and serves short-haul, medium-haul and long-haul destinations in Africa, Asia, Europe and the Middle East.[634]

(527) Vueling does not currently compete with the Parties on any of the short-haul direct/direct overlapping routes.

9.1.1.2.3. TUI

(528) TUI's airlines offer mainly charter services for passenger air transport, with predominantly a P2P short- and medium-haul network to leisure destinations around the Mediterranean (with limited presence in Italy), the Canary Islands, Cape Verde and Egypt (Red Sea). In addition, TUI´s airlines offer long-haul charter services to the Caribbean, Mexico and the US. TUI's airlines mainly sell tickets, either as part of TUI´s package offerings or as seat-only, through TUI´s own retail agency network or

630 Minutes of a conference call with Neos, dated 16 February 2024, paragraphs 6-7, ID 11599; and, Response of Neos to a Commission's pre-notification request for information (RFI 1), dated 31 October 2023, question 6, ID 947.

631 Response of Marabu Airlines to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12550.

632 Form CO, Table 7 and paragraph 1320; and Statement of the Parties on the Commission decision pursuant to Article 6(1)(c) Merger Regulation, dated 5 February 2024, paragraph 235.

633 Response of Air France-KLM to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12093.

634 Response of IAG to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12044.

own online websites. Rather than following a certain fare ladder, TUI's prices vary according to demand and can vary a lot over time, which is a different approach compared to the classic yield model often applied by scheduled airlines. This is because TUI is predominantly targeting the leisure market instead of the business travel segment.[635]

(529) TUI does not currently compete with the Parties on any of the short-haul direct/direct overlapping routes.

9.1.1.2.4. Jet2

(530) Jet2.com is the UK's third largest airline, flying from 11 UK airports to more than 65 destinations across Europe, the Mediterranean and the Canary Islands. In Summer 2023, Jet2.com operated a fleet of 119 planes.

(531) Jet2.com does not currently compete with the Parties on any of the short-haul direct/direct overlapping routes.

9.1.2. Closeness of competition

(532) This section contains a number of general remarks with respect to the closeness of competition between the Parties and their competitors, which to varying degrees are relevant for all short-haul routes covered by this Decision. As set out in Section 7.1.1, when the combined market shares are in excess of 50%, the Commission's competitive assessment does not generally require the parties to be close competitors for the Commission to find that a merger would significantly impede effective competition as market shares above 50% lead to a presumption of dominance and may in themselves be evidence of the existence of a dominant position. The assessment of closeness of competition is however more relevant where the combined market shares remain below 50% or where the Parties' products appear prima facia very different. However, as confirmed in the recent CK Telecoms judgement, even in oligopolistic markets, the Commission is only required to assess whether the merging parties are close competitors (rather than "particularly close" or "the closest" competitors).[636]

(533) In airline markets, the air transport services provided by different airlines are differentiated based on prices, schedules, frequency of service, on-board and off-board service, business model, the existence of a network or hub, and other factors. Based on the market investigation, the most important parameters to compete on the relevant short-haul routes are the price, the direct or indirect nature of the connections, the frequencies offered, the time of departure and arrival, and the distance/connection of the airport to/from the city centre. The overall passenger experience[637] may also be an important factor. At the same time, the financial strength of the carrier, the on-board services, the airline brand, the loyalty program available and sustainability considerations seem less important based on the results of the market investigation.[638]

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635 Response of TUI to question B.2.1. of questionnaire 03 to short-haul competitors, ID 12163.

636 Case-376/20 P Commission v CK Telecoms UK Investments, ECLI:EU:C:2023:561.

637 The Commission notes that overall passenger experience is a wider category compared to on-board services, as it encompasses also other features passengers of certain airlines may benefit from, such as the possibility of lounge access or luggage included in the fare price, etc.

638 Responses to question E.A.1. and E.A.2 of questionnaire 03 to short-haul competitors. The Commission considered a parameter important if the majority of respondents who answered these questions gave it a rating of either 4 or 5 on a 0-5 scale. The Commission notes that the results for "Overall passenger

(534) For two airlines to be considered as offering services which are close substitutes to each other, it is not necessary that the two services are identical. Some services may be closer substitutes than others. What matters from a competition perspective is the relative degree of substitutability between the services of the various carriers on the overlapping routes considering the city and airport pairs.

(535) Therefore, it is relevant to compare the Parties, but also the remaining competitors in each affected market. Accordingly, a route-specific assessment of the closeness of competition between the Parties and with the remaining competitors on the relevant routes is conducted below in sections 9.2, 9.3 and 9.4. However, some aspects of the analysis of the closeness of competition between the Parties and with remaining competitors apply generally on the affected markets and are therefore already presented in this section 9.1. Those aspects concern the Parties' and competitors' market positions, their business models, their brands, and the existence of significant bases in Italy (Rome and Milan) on the one hand and Austria, Belgium, Germany, and Switzerland on the other hand.

(536) In prior decisions,[639] the Commission has found that carriers offering scheduled air transport services form a heterogeneous group, with significant differences among carriers relating mainly to operating model ("network" carriers as opposed to "point-to-point" carriers) and level of service offered ("full-service" as opposed to the limited services offered by LCCs). Airlines were considered close substitutes for one another if they operated closely related business models and had a similar level of service.

(537) Against the above-mentioned background, in its Article 6(1)(c) Decision the Commission preliminarily concluded that the Parties are closer competitors to one another than to their LCC and ULCC competitors.

(538) In their response to the Commission's Article 6(1)(c) Decision as well as in a supplementary submission,[640] the Parties claim that the Commission's closeness of competition assessment is flawed, for the following reasons:

(a) Because although the assessment takes into account the Commission's past decisional practice in Ryanair / Aer Lingus III,[641] it does not adequately justify why the distinction between full-service network carriers on the one hand and LCCs and ULCCs on the other is still relevant;[642]

(b) Because the assessment fails to take into account (i) similarities and differences in the prices, frequencies and/or time of departure and arrival offered by the Parties and their competitors on each O&D route of concern, and (ii) passenger behaviour;[643]

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experience" were inconclusive, as 50% of the respondents who responded to these questions considered their importance 4 or 5 on a scale from 1-5, while the others considered it lower.

639 See e.g. Case M.6663 – Ryanair/Aer Lingus III, paragraph 40 and Case M.7541 – IAG/Aer Lingus, paragraph 162.

640 Statement of the Parties on the Commission decision pursuant to Article 6(1)(c) Merger Regulation, dated 5 February 2024. Supplementary regression analysis submitted by Lufthansa "p–t - Closeness of competition–n - 0603–4 - Final", dated 7 March 2024.

641 M.6663 – Ryanair/Aer Lingus III, paragraph 40.

642 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraphs 8-12.

643 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraphs 13-14.

(c) Because the different airport choices made by full-service network carriers on the one hand (i.e., large main airports) and LCCs and ULCCs on the other hand (often operating in secondary / regional airports) has no impact on passenger demand for (short-haul) flights from one catchment area to another and thus on the closeness of competition assessment;[644]and,

(d) That in fact, Ryanair is both Lufthansa and ITA's closest competitor[645] due to (i) its overall leading market position in Italy;[646] (ii) certain statements of Ryanair raised during the proceedings before the General Court concerning the State Aid received by Lufthansa during the Covid-19 pandemic;[647] (iii) the similar product portfolio offered by Lufthansa, ITA and Ryanair.[648]

(539) Finally, the Parties also provided their own data analysis on closeness of competition on the O&D routes of concern.[649] The Commission's response to the Parties' data analysis can be found in section 7.7.2 above.

(540) The Commission does not agree with the arguments made by the Parties in their response to the Article 6(1)(c) Decision and to the Statement of Objections, and concludes that the Parties are close competitors, and on many routes even each other's closest competitors, for the following reasons.

(541) First, the Commission considers that a distinction between full-service network carriers on the one hand, and LCCs and ULCCs on the other hand is relevant for the assessment of the short-haul O&D overlaps, for the reasons explained in section 9.1.2.1 below. The Commission acknowledges, that certain respondents to its market investigation submit that, for the assessment of short-haul O&D overlaps, the differences between network carriers and LCCs have become blurry.[650] However, evidence in the Commission's file suggests that there is still differentiation between full-service network carriers and their LCC / ULCC competitors that is highly relevant for customer's choice, and that there are several differences in their product offering. More specifically, evidence in the Commission's file (and described below in section 9.1.2.1) suggests that the Parties compete more closely on prices and frequencies with one another than with their competitors on each route. The circumstances which render Lufthansa and ITA closer competitors compared to their LCC / ULCC counterparts are primarily attributable to the fact that the business model of network carriers is still distinct compared to that of LCCs and ULCCs.

644 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraph 40 et seq.

645 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraph 15 et seq

646 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraphs 16-25.

647 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraph 27 et seq.

648 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraph 32 et seq.

649 Response of Lufthansa to the Commission's Article 6(1)(c) decision, dated 5 February 2024, paragraph 45 et seqSupplementary regression analysis submitted by Lufthansa "p–t - Closeness of competition - 0603–4 - Final", dated 7 March 2024.

650 Non-confidential minutes of a conference call with Wizz Air, dated 22 September 2023, paragraph 8, ID 00861; Non-confidential minutes of a conference call with Ryanair, dated 10 October 2023, paragraph 6, ID 2367.

(542) Second, evidence in the Commission's file suggests that, for the reasons explained in section 9.1.2.2 below, contrary to the Parties' view, the different airport choices made by full-service network carriers on the one hand (i.e., large main airports) and LCCs and ULCCs on the other hand (secondary / regional airports) does have a significant impact on customer choice for (short-haul) flights from one catchment area to another and thus on the closeness of competition assessment.[651] Thus, for each of the plausible alternative markets assessed (that is to say also where the Commission leaves the market definition open), the Commission takes into account how closely the different services offered on a market compete, in line with the legal framework set out in section 7.1.1.

(543) Third, most competitors, corporate customers, travel agents and tour operators responding to the market investigation consider Lufthansa and ITA to be each other's closest competitor on the analysed short-haul routes.[652] In addition, during the pre-notification market investigation, competitors of the Parties confirmed that Lufthansa and ITA are likely to be each other's closest competitors on the analysed short-haul routes. Ryanair, the competitor which the Parties repeatedly invoke as one of the most important competitors within Italy, noted that "even if it were to compete with the Parties on certain routes to and from Milan, because of its operation on certain neighbouring airports (primarily in Germany and Belgium), said competition would be distant"[653]. Wizz Air, which the Parties similarly consider as one of the main competitive forces constraining them clarified that "in the routes where Wizz Air competes with airlines belonging to the Lufthansa Group and ITA, it considers that the latter two compete closely, whereas Wizz Air competes closely with other low and ultra-low-cost carriers rather than Lufthansa or ITA."[654] These general considerations of the market investigation are further supported by evidence on the Commission's file, which reveal significant differences between the business model, business strategies, pricing considerations and flight-frequencies of Lufthansa and Ita and their LCC / ULCC competitors (see section 9.1.2.1 below).

(544) Fourth, and based on the three above-mentioned points, the Commission finds that Ryanair will normally not be the closest competitor of both Lufthansa and ITA on the short-haul O&D routes of concern. In particular, Ryanair's overall strong position in Italy is not relevant to the individual closeness of competition assessment of each of the O&D overlap routes, contrary to the Parties' claims.[655] The assessment of how closely companies compete takes into account to what degree products are closer substitutes within a relevant market.[656] Therefore, Ryanair's success on other O&D routes are not relevant to analyse how closely Ryanair competes with the Parties on the O&D routes under assessment in this Decision. Rather, as explained in detail in

the O&D routes under assessment in this Decisi