EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.10149 - KOREAN AIR LINES / ASIANA AIRLINES

(Only the English text is authentic)

REGULATION (EC) No 139/2004
MERGER PROCEDURE

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

Date: 13/02/2024

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EUROPEAN
COMMISSION

Brussels, 13.2.2024
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COMMISSION DECISION

of 13.2.2024

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

(Case M.10149 – KOREAN AIR LINES / ASIANA AIRLINES)

(Only the English text is authentic)

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(Case M.10149 – KOREAN AIR LINES / ASIANA AIRLINES)

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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 17 February 2023 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 13 January 2023, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which Korean Air Lines Co. Ltd ('Korean Air', Republic of Korea, referred to hereinafter as 'South Korea'), controlled by Hanjin KAL Co., Ltd, will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Asiana Airlines Inc. ('Asiana', South Korea). The concentration is to be accomplished by way of purchase of shares.[3] Korean Air and Asiana are referred to hereinafter as 'the Parties'.[4]

2. THE PARTIES AND THE OPERATION

(2) **Korean Air** is a full-service air carrier providing international airline services, mainly air passenger and air cargo services. Established in 1962, Korean Air, together with its

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1 OJ C 326, 26.10.2012, p.47.

2 OJ L 24, 29.1.2004, p. 1. 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.

3 Publication in the Official Journal of the European Union No C 20, 20.1.2023, p. 18.

4 Together Post-Transaction the 'Merged Entity'.

subsidiary Jin Air Co., Ltd, is the largest airline in South Korea. It operates a hub-and-spoke flight network with its principal hub at Incheon airport in Seoul, South Korea. To a lesser extent, Korean Air has activities in aerospace, maintenance, repair and overhaul services, ground handling services, reservation and ticketing information services and freight forwarding among others. Korean Air is a member of the SkyTeam alliance. Korean Air's largest shareholder Hanjin KAL Co., Ltd is active among others in transportation, hotels, tourism and airport businesses. The Korea Development Bank ("KDB") held 3.3% of Korean Air's shares as of September 2022.

(3) **Asiana** is a full-service air carrier providing international airline services, mainly air passenger and air cargo services. Established in 1988, Asiana, together with its subsidiaries Air Busan Co., Ltd and Air Seoul Inc., is the second largest airline in South Korea. Through Asiana IDT, Inc. it operates a telecommunications business; through Asiana Airport, Inc. it operates air transport support services (air cargo loading/unloading and ground operations); and through Kumho T&I, it offers financial services. Asiana is a member of the Star Alliance. Asiana's largest shareholder is Kumho Engineering & Construction Co., Ltd ("Kumho E&C").

(4) Because of Asiana's financial situation, the KDB and the Export-Import Bank of Korea ("KEXIM") entered into two agreements with Asiana for the purpose of providing it with financial support, dated 23 April 2019 and 14 September 2020. Those agreements confer extensive rights to those two banks over Asiana and its management.

3. THE CONCENTRATION

(5) On 17 November 2020, Korean Air and Asiana entered into a share subscription agreement ('SSA') according to which Korean Air will acquire 63.88% of the total issued and outstanding stock of Asiana (hereinafter referred to as the 'Transaction'). The remaining shares of Asiana will be retained by Kumho E&C (11.12%), Kumho Petrochemical Co. Ltd. (3.98%) and by a large number of smaller shareholders holding the remaining 21.03% of the shares. The minority shareholders will not hold any veto rights that would allow them to exercise control over Asiana and the Transaction would thus result in Korean Air acquiring sole control of Asiana.

(6) It follows that the proposed transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. UNION DIMENSION

(7) The undertakings concerned, Korean Air and Asiana, have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (Korean Air: EUR […]; Asiana: EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (Korean Air: EUR […] million and Asiana: EUR […]), but neither of them achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.[6]

(8) The Parties' turnover data are based on their audited financial accounts for 2019, for the reasons set out in section 4.1, and are calculated according to the "50/50 split" methodology, for the reasons set out in section 4.2. Since the date for establishing

[5] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p 1).

[6] See Annex 4 to the Form CO – Korean Air Lines and Asiana turnover (2019 in EUR) and Annex 31 which sets out in detail the calculation methods that were used to calculate the 2019 turnover of Korean Air and Asiana, for each of air passenger services, air cargo services, and ancillary activities.

jurisdiction took place before the end of the transition period under the Withdrawal Agreement between the United Kingdom ("UK") and the EU[7] (i.e., before 31 December 2020), the turnover realised by the Parties in the UK has been taken into account as turnover realised in the EU for the purposes of the jurisdictional assessment, following the reasoning set out in section 2.1 of the Commission's Notice to Stakeholders of 2 December 2020.[8] The Parties do not contest this approach under the Withdrawal Agreement[9] – their argumentation is limited to the relevant date for establishing jurisdiction as set out in section 4.1.2.

(9) In the following, the Commission will set out its findings with respect to (i) the relevant date for establishing jurisdiction (section 4.1) and (ii) the geographical allocation of the Parties' turnover (section 4.2).

4.1. Relevant date for establishing jurisdiction

(10) Korean Air and Asiana entered into the SSA on 17 November 2020, but notified the Transaction only on 13 January 2023.

(11) In the present case, the relevant date for establishing jurisdiction would have a direct impact on the assessment of jurisdiction. If the triggering event for jurisdiction was the SSA, the relevant turnover would concern 2019, the year before the beginning of the Covid19 pandemic. If the triggering event was instead the notification on 13 January 2023, the relevant turnover would concern 2021.[10] In the latter case, the relevant turnover thresholds would not be met since the Parties' turnover was affected by the Covid19-related travel restrictions.[11]

4.1.1. The Commission's consolidated jurisdictional notice

(12) As regards the relevant date for establishing jurisdiction, paragraph 156 of the Consolidated Jurisdictional Notice ("CJN")[12] stipulates that the relevant date is (i) the conclusion of the binding legal agreement; (ii) the announcement of a public bid; (iii) the acquisition of a controlling interest or (iv) the date of the first notification, whichever date is earlier.

4.1.2. Korean Air's views

(13) Korean Air considers that the correct date for establishing jurisdiction should not be the SSA but the date of the first notification in January 2023.[13] According to Korean Air, the Commission's guidance in the CJN on the relevant date for establishing jurisdiction assumes that there is only a limited period between the triggering event for a notification (for instance the signing of a binding agreement) and the actual notification. However, in the present case, three financial years (2020, 2021 and 2022) have elapsed between 2019 and the formal notification. Korean Air is therefore of the

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7 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

8 Commission Notice to Stakeholders, Withdrawal of the United Kingdom and EU rules in the field of Competition, published on 2 December 2020, section 2.1.

9 See Form CO, footnote 22.

10 Since the audited financial accounts for 2022 were not yet available to the Parties on 13 January 2023.

11 According to the audited financial accounts for 2021, the turnover thresholds would not have been met (world-wide turnover 2021: Korean Air: EUR […] and Asiana: EUR […]; EU-wide turnover: Korean Air: EUR […] and Asiana: EUR […]).

12 OJ of 16 April 2008, C95/1.

13 Form CO, paragraph 100 and Annex 32 – Korean Air Position Paper on Jurisdiction, paragraph 38 f.

opinion that jurisdiction should not be established based on turnover that is outdated and no longer reflects the actual financial position of the Parties.[14]

(14) Korean Air claims that this view is confirmed by the ruling of the European Court of Justice ('ECJ') in case C-202/06 - *Cementbouw*, in which the ECJ states that the competence of the Commission to review a transaction must be established at a fixed point in time that "*must necessarily be closely related to the notification of the concentration*".[15] According to Korean Air, the relevant date should therefore be the date of the first notification in January 2023 and the appropriate reference year consequently the year before the notification took place.

4.1.3. Commission assessment

(15) The Commission considers that no exception should be made in the present case from the general rule set out in paragraph 156 CJN, namely that the relevant date for establishing jurisdiction should be the SSA of November 2020 as the earlier date and not the later date of the first notification in January 2023. This is mainly due to the following reasons:

(16) First, the need for legal certainty as to the determination of the Commission's jurisdiction under the Merger Regulation requires a consistent application of paragraph 156. In that respect, the ECJ held in the *Cementbouw* case that "*the authority having competence to examine a concentration must be able to be identified in a way which is foreseeable*"[16] and that the Commission's competence "*cannot be challenged at any time or be in a state of constant flux*".[17]

(17) Second, the question which authority examines a transaction should not be in the hands of the merging companies. Deviating from paragraph 156 CJN may give the merging companies the possibility to influence jurisdiction by delaying or accelerating notifications.[18]

(18) Third, the close link between the relevant date for establishing jurisdiction and the notification to which the ECJ referred in the *Cementbouw* case relied on "*the importance of the obligation of notification in the system of control put in place by the Community legislature*"[19] which was still foreseen in Council Regulation (EEC) No 4064/89[20], which has since been replaced by the Merger Regulation. The system put in place by the Merger Regulation, however, abolished the obligation for the parties to a concentration to notify within a certain timeframe from the conclusion of a final agreement. Accordingly, under the present system of the Merger Regulation, the link between the relevant date for establishing jurisdiction and the notification is not as strict as it was at the time of the *Cementbouw* case and the need for legal certainty, as mentioned above and also emphasised by the ECJ, must prevail.

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14 Form CO, paragraph 100 and Annex 32 – Korean Air Position Paper on Jurisdiction, paragraph 38 f.

15 Case C-202/06 - Cementbouw, Judgment of the Court (First Chamber) of 18 December 2007, ECLI:EU:C:2007:814, paragraph 43.

16 Case C-202/06 - Cementbouw, paragraph 38.

17 Case C-202/06 - Cementbouw, paragraph 39.

18 See Opinion of AG Kokott in case C-202/06 P, Cementbouw Handel & Industrie BV, §45 (concerning Regulation 4064/89).

19 Case C-202/06 - Cementbouw, paragraph 43.

20 Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings, OJ of 30 December 1989, L395/1.

4.2. Geographic allocation of turnover

4.2.1. The Commission's jurisdictional notice and practice regarding air passenger transport services

(19) As set out by paragraph 196 CJN, the general rule for the geographic allocation of turnover is that turnover should be attributed to the place where the customer is located. The underlying principle is that turnover should be allocated to the location where competition with alternative suppliers takes place. According to paragraph 196 CJN this location is normally the place where the characteristic action under the contract in question is to be performed, that is to say where the service is actually provided or the product is actually delivered.

(20) Specifically for services, paragraph 199 CJN establishes that the place of the provision of the service to the customer is relevant. In particular, services containing cross-border elements should be considered to fall into three general categories, namely (i) cases where the service provider travels; (ii) cases where the customer travels; and (iii) cases where a service is provided without either the service provider or the customer having to travel. According to paragraph 199 CJN, in categories (i) and (ii), the turnover generated is to be allocated to the place of destination of the traveller, i.e. the place where the service is actually provided to the customer whereas in case (iii) the turnover generated is to be allocated to the customer's location.

(21) However, as regards air passenger transport services, the Commission is of the view that the categories included in paragraph 199 CJN do not properly capture the specificities of this type of service. As to the first and second categories, the service provider and the customer indeed travel, but not to each other's location. Instead, they both travel between the point of origin and the point of destination of the air passenger transport service at stake. The third category does not seem relevant either given that the service provider and the customer travel and in any event, competition does not take place merely at the location of the customer's location because the service is not provided there.

(22) To capture the specificities of air passenger transport services the Commission has developed three methodologies to geographically allocate the turnover of the undertakings concerned, namely the "point of sale", the "point of departure" and the "50/50 split"[21] methodology:

The "point of sale" methodology consists in allocating the turnover to the country where the ticket sale occurred.

The "point of departure" (also referred to as "point of origin") methodology 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.

The "50/50 split" consists in allocating the revenue from an individual route operated by an air carrier in a 50% ratio to the country of origin and a 50% ratio to the country of final destination of the relevant air transport service.

(23) As regards air cargo services, para. 201 CJN stipulates that cases concerning the transport of goods are different. This is mainly due to the fact the customer, to whom those services are provided, does not travel, but the transport service is provided to the

[21] See e.g., M.4439 - Ryanair/Aer Lingus, paragraphs 16 and following; M.8633 – Lufthansa/ Certain Air Berlin Assets, footnote 16; M.8361 – Qatar Airways/ Alisarda/ Meridiana, footnote 6; M.9287 – Connect Airways/ Flybe, footnote 28; M.6447 – IAG/ BMI, footnote 15.

customer at its location. According to para. 201 CJN, those cases would therefore fall into the third category (iii) of para. 199 CJN, according to which the location of the customer is the relevant criterion for the allocation of the turnover. The Commission's precedents, however, show that the turnover calculation of air cargo transport services is always calculated based on the same three methodologies mentioned above for air passenger services without differentiation between turnover related to air passenger or air cargo services, whenever the merging parties were active in the provision of both air cargo and air passenger transport services.[22]

(24) In the case at present, the jurisdictional thresholds are only met under one of the three methodologies, notably the "50/50 split" methodology, but not under the "point of sale" and the "point of departure" methodology.

4.2.2. Korean Air's views

(25) Korean Air claims that out of the three methodologies, the "point of sale" methodology should be relied on as the primary methodology for allocating turnover.[23] This methodology would most accurately reflect the location of the customer, which in the Parties' view is the guiding principle for allocating turnover.[24]

(26) Korean Air further points out that in the *SAirGroup/SAA* case, the Commission established jurisdiction solely on the basis of the "point of sale" methodology, without mentioning other methodologies.[25] According to Korean Air, there do not appear to be airline merger cases where jurisdiction was established based solely on any of the two other methodologies.[26] In Korean Air's view, the Commission has in contrast only relied on the "point of origin" and/or the "50/50 split" methodology in past airline merger cases, where the point of sale methodology could not be applied or where turnover already exceeded the thresholds under the "point of sale" methodology. According to Korean Air, in such latter cases, the notifying parties have typically relied only on the point of sale turnover data where it was available, adding (for the sake of completeness) that the applicable concentration would also have a Community dimension on the basis of the "50/50 split" and the "point of origin" methodologies.[27] According to Korean Air, this view is supported by the Commission's decision in the *Ryanair/Aer Lingus* case as this decision seems to acknowledge, in Korean Air's view, that other methodologies should only be applied if the "point of sale" turnover is not available.[28]

(27) Korean Air further explains that the turnover only meets the Merger Regulation thresholds under the "50/50 split" because it includes turnover generated in selling

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22 See e.g., M.5841 – Cathay Pacific Airways/ Air China/ ACC, para. 8; M.5181 – Delta Airlines/ Northwest Airlines, para. 6; M.5403 – Lufthansa/ BMI, para. 6; M.5141 – KLM/ Martinair, para. 8 and footnote 3; M.5747 – Iberia/ British Airways, para. 7, M.5335 – Lufthansa/ SN Airholding, para. 10; M.5440 – Lufthansa/ Austrian Airlines, para.8; M.5889 – United Air Line/ Continental Airlines, para. 7 and footnote 3.

23 Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 10; Response to the Letter of Facts, paragraph 2.

24 See Form CO, paragraphs 96 and following and Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 11 f.; Response to the Statement of Objections, paragraph 53 and 55.

25 M.1626 – SAir Group/ SAA, footnote 2; Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 27.

26 Response to the Letter of Facts, paragraph 4.

27 M.5335 – Lufthansa/ SN Airholding, M.5440 – Lufthansa/Austrian Airlines, M.5747 – Iberia/British Airways, M.5889 – United/Continental, M.6828 – Delta Airlines/Virgin Group/Virgin Atlantic Limited.

28 M.4439 – Ryanair/ Aer Lingus, para. 30; Response to the Statement of Objections, paragraph 55; Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 27 f.; Response to the letter of Facts, paragraph 6.

services to Korean customers rather than European customers.[29] Korean Air is of the opinion that relying on such turnover is not consistent with the Merger Regulation, which stipulates in Article 5(1) that the relevant turnover for establishing jurisdiction "*shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State, as the case may be*".[30] According to Korean Air, applying the "50/50 split" method would also not be consistent with the objective of EU merger control and the Commission's competence, which is to prevent mergers from having a negative impact (only) on EU customers in order to protect the European consumer's welfare.[31]

4.2.3. Commission assessment

(28) In the case at present, the jurisdictional thresholds are only met under the "50/50 split" methodology. The different turnover results depending on whether the "50/50 split" methodology, the "point of sale" or the "point of departure" methodologies are used, is due to the fact that the large majority of Korean Air's and Asiana's passengers originate in Korea[32]:

- For the "point of sale" methodology this has an impact in so far as most of the Parties' tickets are sold in Korea and therefore less turnover is allocated to Europe.
- As regards the "point of origin" methodology, the Commission has established that in cases where roundtrips are sold as a bundle with more advantageous prices compared to two one way tickets, the roundtrips are considered as one single service with in consequence only one single point of origin in contrast to two one-way-tickets which were considered as two services with two points of origin (one for each flight).[33] As Korean Air and Asiana mostly sell roundtrips originating in South Korea,[34] also according to the "point of origin" methodology most of the turnover would be allocated to Korea.
- If the "50/50 split" methodology was followed, half of the turnover would be allocated to each end of the routes, that is to say half of the turnover would be allocated to Korea and half of the turnover would be allocated to the EU, independently from the fact whether tickets have been purchased in Korea or the EU and whether the airlines business model consists in selling roundtrips with only one point of origin or in rather selling two one-way tickets with one separate point of origin for each flight.

(29) The Commission is of the view that, in this specific case, the Commission's jurisdiction to review the Transaction can be based solely on the "50/50 split" method for the following reasons:

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29 According to the Parties, between [0-5]% and [10-20]% of passengers on the overlap routes started their trip in the EU. The Parties further claim that on each of the four overlap routes flown by Korean Air, [90-100]% or more of all passengers had a Korean nationality, while passengers with an EU nationality represented only [0-5]-[5-10]%, see Briefing Paper, paragraph 4 ff.; Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 13 and Response to the Letter of Facts, paragraph 20.

30 Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 3.

31 Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 25 f.

32 According to the Parties, between [0-5]% and [10-20]% of passengers on the overlap routes started their trip in the EU. The Parties further claim that on each of the four overlap routes flown by Korean Air, [90-100]% or more of all passengers had a Korean nationality, while passengers with an EU nationality represented only [0-5]-[5-10]% (see Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 11 f.

33 M.4439 – Ryanair/ Aer Lingus, paragraph 27 following.

34 Form CO, paragraph 117 f.; Response to the Letter of Facts, paragraph 20.

(30) First, the Commission's decisional practice neither shows that the three methods need to be considered cumulatively, nor that at least two out of the three methods need to lead to the same results. The Commission's decisional practice demonstrates that allocating turnover based on one or even two methodologies is sufficient for establishing jurisdiction. This is evidenced by several precedents in the airline sector, where the Commission effectively established jurisdiction by either relying in one case[35] on one methodology and in several cases[36] on a combination of two out of the three methodologies.

(31) Second, the Commission's decisional practice does not show that the "point of sale" or the "point or origin" method should be relied on as the primary methodology.[37] In contrast, the Commission has considered all three methodologies equally in its precedents.[38] Even though it is indeed correct that in the *SAir Group/ SAA* case the Commission established jurisdiction solely based on the "point of sale" methodology, the underlying reasons are not clear from the decision as no mention is made of any of the other two methodologies. It is therefore not clear from the decision if reliable data was only available for the "point of sale" methodology and not for the other two methodologies or if the thresholds were at all only met under this but not under the other methodologies.[39] In the Commission's view it can therefore not be deduced from that decision that the Commission in past cases considered the "point of sale" methodology as the primary methodology for assessing jurisdiction as claimed by the Parties.[40] This is also reflected in the *Ryanair/ Aer Lingus* decision, where the Commission stipulates that the "point of sale" methodology "*is also increasingly difficult to apply in the air transport sector, given the constantly growing shares of direct Internet sales (in particular in case of point-to-point, low-cost airlines such as Ryanair and, to a large extent, Aer Lingus with the majority of tickets sold over the Internet). The absence of a physical transaction at a brick-and-mortar airline counter or travel agent makes it more difficult to physically locate customers purchasing tickets. Further, as the customer could buy the ticket on the Internet from practically any place in the world, this information would, even if available, not necessarily support the assumption of the Notice on the calculation of turnover that the location of customers when purchasing services will normally reflect where the parties to the transaction provide their services and the economic strength of the parties in a*

35 M.1626 – SAir Group/ SAA, footnote 2.

36 M.4439 – Ryanair/ Aer Lingus, paragraph 31; M.8361 – Qatar Airways/ Alisarda/ Meridiana, footnote 6; M.8633 – Lufthansa/ Certain Air Berlin Assets, footnote 16; M.8869 – Ryanair/ Laudamotion, footnote 13; M.8672 – Lufthansa/ Certain Air Berlin Assets, footnote 12; M.9287 – Connect Airways/ Flybe, footnote 28.

37 M.9637 - IAG/Air Europa, paragraph 7 and footnotes 5 and 6; M.9489 – Air Canada/Transat, paragraph 7 and footnotes 5 and 6; M.5403 - Lufthansa/ BMI, paragraph 6; M.5889 - United Air Line/ Continental Airlines; footnote 3; M.5335 - Lufthansa/ SN Airholding, paragraph 10; M.5440 - Lufthansa/ Austrian Airlines, paragraph 8; M.5747 - Iberia/ British Airways, paragraph 7.

38 The thresholds are met under all three methodologies in: M.5747 - Iberia/ British Airways; M.5440 - Lufthansa/ Austrian Airlines; M.5335 - Lufthansa/ SN Airholding; M.5889 - United Air Line/ Continental Airlines; M.5403 - Lufthansa/ BMI; M.9489 - Air Canada/Transat. The thresholds are met under the "50/50 split" and "point of departure" methodologies in: M.4439 - Ryanair/ Aer Lingus; M.9287 - Connect Airways/ Flybe; M.5141 - KLM/ Martinair; M.5181 - Delta Airlines/ Northwest Airlines. The thresholds are met under the "50/50 split" and "point of sales" methodologies in: M.8361 Qatar Airways/ Alisarda/ Meridiana. The thresholds are met under the "point of sales" methodology in: M.1626 - SAir Group/ SAA. Mixed or open results in: M.8633 Lufthansa/ Certain Air Berlin Assets; M.8869 Ryanair/ Laudamotion; M.5841 Cathay Pacific Airways/ Air China/ ACC; M.9637 IAG/Air Europa.

39 M.1626 – SAir Group/ SAA, footnote 2.

40 Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 27.

specific Member State."[41] This reasoning also applies to the Parties' argument that certain services such as ticket booking, ticketing (including cancellation, re-ticketing, covenants, refunds, accumulation of mileage, etc.), ancillary procedures for boarding, etc. are conducted at the point of sales or at the point of origin and therefore argue in favour of the "point of sale" or "point of origin" methodology, as also these services are now largely provided online and are therefore accessible from various locations all over the world.[42]

(32) Third, it appears from past practice that the Commission has not prioritised any of the three methods over another because there was no need to do so.[43] Indeed, it does not seem that the Commission has already analysed a situation where it had sufficient data to apply all the three methodologies, but the jurisdictional outcome would depend on the choice of the applicable method, as in the present case. In *Ryanair/ Aer Lingus*, the parties relied on the "point of departure" and the "50/50 split" methodologies to calculate their respective turnover. To the extent that the jurisdictional thresholds were met under these two methodologies, the Commission concluded that it was "*therefore not necessary in this case to decide which of these two possible methodologies is the more appropriate*."[44] However, the Commission considers that in such a situation, where the available methods lead to conflicting results, a choice must be made and that, to this end, it should be established which of the available methods better reflects the "*underlying principle [...] that turnover should be allocated to the location where competition with alternative suppliers takes place*".[45] This normally corresponds to "*the place where the characteristic action under the contract in question is to be performed, i.e. where the service is actually provided*".[46] In order to define the "characteristic action under the contract" or the relevant "service", according to para. 196 CJN, reference has to be made to the contractual obligations of the service provider vis-à-vis the customer. In the case of air passenger transport services that would be the air passenger transport service between the point of origin at an airport A and the point of destination at an airport B. At present, one of these airports would be located in the EU and one in Korea. The relevant service is therefore provided between the EU and Korea and that is where competition takes place. As air passenger transport services are provided between two places, i.e. the point of origin and the point of destination of the flight at issue – and not at the location of the customer or solely at the point of departure – the Commission is of the opinion that the "50/50 split" method should be considered as the most suitable proxy to allocate the turnover of air passenger transport service providers. In the Commission's view, the "50/50 split" methodology is the only methodology which takes sufficiently into account this particular geographic and often cross-border nature of air transport services.[47] Specifically for the present case, customers wishing to travel between South Korea and the EU, although they start their trip at one side of the route, purchase a service whose characteristic action is transportation from the point of origin in South Korea or the EU to the point of destination in South Korea or the EU. The characteristic action

41 M.4439 – Ryanair/ Aer Lingus, paragraph 22.

42 Annex 32 to the Form CO – Korean Air's Position Paper on Jurisdiction, paragraph 10, 11 f., 28.

43 M.4439 – Ryanair/ Aer Lingus, paragraph 31; M.8361 – Qatar Airways/ Alisarda/ Meridiana, footnote 6; M.8633 – Lufthansa/ Certain Air Berlin Assets, footnote 16; M.8869 – Ryanair/ Laudamotion, footnote 13; M.8672 – Lufthansa/ Certain Air Berlin Assets, footnote 12; M.9287 – Connect Airways/ Flybe, footnote 28; M.9287 – Connect Airways/ Flybe, footnote 28.

44 M.4439 – Ryanair/ Aer Lingus, paragraph 31.

45 CJN, paragraph 196.

46 CJN, paragraph 196.

47 See also M.4439 - Ryanair/ Aer Lingus, paragraph 23.

of that service takes therefore place equally at both ends of the route – namely in South Korea and the EU, regardless of the specific route taken.

(33) Fourth, while the Commission has not prioritised any of the three methods, the Commission has, however, since the very beginning of its merger control cases always applied the "50/50 split" methodology, considering this methodology as being a particularly appropriate methodology to geographically allocate turnover. Accordingly, the Commission states in one of its first airline merger cases Air France / Sabena (M.157):

"*Compte tenu de la difficulté inhérente au choix d'un critère de calcul ainsi que des possibles résultats divergents entre eux, la Commission a préféré proposer trois méthodes sans se prononcer définitivement sur celle qui s'avèrerait la plus adéquate. Ces trois méthodes étaient les suivantes* :

(i) attribution du chiffre d'affaires résultant de la prestation du service de transport aérien au pays de destination. Dans le cas de vols aller-retour ou circulaires, le pays de destination est celui qui est différent du pays d'origine (par exemple, dans le cas d'une route New York/Paris/New York desservie par une compagnie américaine, le chiffre d'affaires correspondant devrait être imputé à la France);

(ii) attribution du chiffre d'affaires sur la base d'un ratio 50%-50% respectivement au pays d'origine et de destination finale;

(iii) attribution du chiffre d'affaires résultant du service de transport aérien à l'État où le billet a été vendu.

***Même si le deuxième critère semble être le plus proche de l'esprit de l'article 5 paragraphe 1 car il vise les deux endroits entre lesquels le service de transport aérien a été effectivement rendu, incorporant ainsi le caractère transfrontalier de celui-ci**, la Commission a examiné les résultats de l'application de chacun d'entre eux dans le cas d'AIR FRANCE et de la SABENA. Selon les trois critères, le chiffre d'affaires total réalisé dans la Communauté en 1991 tant par le groupe AIR FRANCE que par le groupe SABENA a dépassé le montant de 250 millions d'écus sans que plus des deux tiers aient été réalisés à l'intérieur d'un seul et même État membre.*"[48]

(34) Fifth, in the most recent airline merger case which discusses the different methodologies, the Ryanair / Aer Lingus decision, the Commission considered the "50/50 split" methodology as being particularly appropriate to geographically allocate turnover in airline cases as *"it has been accepted as a possible approach in a number of past cases and seems, as noted in M.157 – Air France / Sabena, close to the spirit of the Merger Regulation since it takes into account the two places between which the service is actually provided, reflecting the cross-border character of the service in question.*[49] In that respect, the Parties' argument that it follows from the *Ryanair / Aer Lingus* decision that the "50/50 split" methodology is not the appropriate methodology to use when data under the "point of sale" or the "point of origin" methodologies is available, cannot be deduced from the wording of the decision. This is even more remarkable against the background that the turnover in that decision was calculated in accordance with the predecessor version of today's Merger Regulation,[50] which had

48 M.157 - Air France / Sabena, paragraphs 19 f.

49 M.4439 - Ryanair/ Aer Lingus, paragraph 23.

50 Article 5(1) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1–12), in conjunction with the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ C66, 2.3.1998, p. 25.

put an emphasis on the place where the customer is located[51] whereas the currently applicable rules on the geographic allocation of turnover in the CJN[52] (in force since 2008), puts an emphasis on the *"location where competition with alternative suppliers takes place"*. This location is normally also the place where the characteristic action under the contract in question is to be performed, i.e. where the service is actually provided and the product is actually delivered".[53]

(35) Sixth, contrary to what Korean Air claims, the Commission's opinion is not inconsistent with the objective of EU merger control to protect consumer welfare in the EU. "Consumer welfare in the EU" as referred to by the Parties does not only cover the welfare of EU citizens but the welfare of everybody who is purchasing products or to whom services are provided within the territory of the EU – notwithstanding their origins or nationalities. That also covers citizens from third countries (such as e.g. South Korea) who purchase services that are provided within the territory of the EU. This principle is also reflected in the CJN, for instance in the allocation of turnover to the EU in case of non-EU customers purchasing hotel accommodation or other services in the EU (see paras. 199 and 200 CJN). In the case of air transport services between an EU Member State and a third country, the air transport services are delivered between the point of origin at an airport A and the point of destination at an airport B, one of which is located within the territory of the EU. In that case, 50 % of the overall air transport services are provided within the territory of the EU and therefore to customers in the EU.

(36) Seventh, in the same vein, the "50/50 split" methodology is reflective of a general principle under EU merger control which disregards the nationality or country of residence of the customers as well as the location of the purchase but focuses on effects in the EU territory. In consequence, the impact on consumption within the EU should be assessed irrespective of the consumers' nationalities. This is because safeguarding competition for consumption in EU territory yields broader economic benefits. This holds true even if the consumers possess non-EU nationalities or if they purchase a product or service – which is at least partially provided within the EU – from outside the EU. This interpretation is also backed up by the legal framework as the Merger Regulation does not refer to EU customers and their nationality. Rather it refers to a significant impediment to effective competition ("SIEC") in the internal market, e.g., in Recital 6: "*A specific legal instrument is therefore necessary to permit effective control of all concentrations in terms of their effect on the structure of competition in the [Union]*".[54] This would also include follow-on effects, such as more general economic effects resulting from a reduction in the number of passengers flying between the two territories and affecting the exchange between the two territories. Any such effects are felt at both ends of the trip. Therefore, the "50/50 split" methodology constitutes a suitable proxy to allocate turnover to where competition between alternative suppliers has taken place, that is to say 50% to South Korea and 50% to the relevant EU country at the other side of the route.

(37) Eighth, as already mentioned above (see paragraph (34)), the Commission in the *Ryanair / Aer Lingus* decision already considered the "50/50 split" methodology as being particularly appropriate to geographically allocate turnover in airline cases as it takes into account the two places between which the service is actually provided,

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51 See paragraph 46 of the Notice on the calculation of turnover (Commission notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ C 66, 2.3.1998, p. 25.

52 OJ C95, 16.4.2008, p. 1.

53 See paragraph 196 CJN.

54 See also recital 5, recital 8, Article 2 and elsewhere throughout the Merger Regulation.

reflecting the cross-border character of the service in question.[55] In addition, the Commission considers in that decision that "*This method also provides a simple and clear criterion, and in this respect appears therefore in line with the very purpose of the system of thresholds of the Merger Regulation, that is, to provide a simple and efficient method to determine the authority that is competent to review a merger.*"[56] This is particularly true as the "50/50 split" methodology avoids arbitrary results according to whether air carriers sell roundtrip tickets or one-way tickets. As indicated above (see paragraph (28)), the Parties in the case at present sell roundtrips that are more advantageous than one-way tickets mainly to South Korean customers.[57] In consequence, the point of departure of these roundtrips is located in South Korea with the turnover of these flights being allocated to South Korea. As a result, the turnover thresholds are not met neither under the "point of sale" nor under the "point of origin" methodology but only under the "50/50 split" methodology. However, if the Parties would rather sell two one-way tickets instead of roundtrip tickets, the turnover allocation would be split between Europe and South Korea with most probably the turnover thresholds being reached under both the "50/50 split" and the "point of origin" methodology. When applying the "point of origin" methodology, the jurisdiction of the Commission therefore depends on the business model of the respective airlines of either selling roundtrips (like Korean Air and Asiana) or rather two one-way tickets (like Ryanair and Aer Lingus).[58] By opting for the "50/50 split" methodology the outcome would in contrast not depend on certain sales methods and therefore be more transparent, predictable and in consequence legally secure.

5. THE PROCEDURE

(38) The Transaction was notified to the Commission on 13 January 2023.

(39) On 17 February 2023, the Commission raised serious doubts 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 6(1)(c) Decision"). The Commission concluded that the Transaction raised serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to (i) the supply of passenger air transport services on the following routes: Seoul-Barcelona ("ICN-BCN"), Seoul-Frankfurt ("ICN-FRA"), Seoul-Paris ("ICN-CDG") and Seoul-Rome ("ICN-FCO"); (ii) potential competition in passenger air transport services; and (iii) cargo air transport services on the routes Europe-South Korea and South Korea-Europe.

(40) Equally on 17 February 2023, the Commission provided non-confidential versions of certain key submissions by third parties collected during the Phase I investigation to Korean Air.

(41) Following its 6(1)(c) Decision, the Commission conducted its Phase II market investigation which took place until the end of June 2023. As a result, the present Decision is based on evidence collected by the Commission during the Phase I and Phase II market investigations.

(42) On 28 February 2023, the Parties submitted their written comments on the Commission's 6(1)(c) Decision ("the Response to the 6(1)(c) Decision").

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55 M.4439 - Ryanair/ Aer Lingus, paragraph 23.

56 M.4439 - Ryanair/ Aer Lingus, paragraph 23.

57 Form CO, paragraph 117 f; Response to the Letter of Facts, paragraph 20.

58 In contrast to the Parties' claim in their Response to the Letter of Facts, paragraph 18 f.

(43) On 6 March 2023, Korean Air requested an extension of the Phase II deadline by 20 working days pursuant to Article 10(3) 2nd subparagraph of the Merger Regulation.

(44) On 28 March 2023 and 26 May 2023 respectively, two third parties were admitted as interested third persons by the Hearing Officer for the purpose of Article 18(4), second sentence of the Merger Regulation.

(45) On 17 May 2023, a statement of objections ("the Statement of Objections") was sent to Korean Air, concluding on a preliminary basis that the notified Transaction would significantly impede effective competition in a substantial part of the internal market.

(46) On 7 June 2023, the Parties submitted their written comments on the Commission's Statement of Objections ("the Response to the Statement of Objections").

(47) On 28 June 2023, the Commission decided, pursuant to Article 10(4) of the Merger Regulation, to suspend the time limit referred to in Article 10(3) of the Merger Regulation from 23 June 2023, following Korean Air's failure to submit a complete response to a request for information. During the time of suspension, the Commission and the Parties engaged in remedies discussions. The suspension ended on 5 December 2023, at which date the requested information was provided.

(48) On 8 August 2023, the Commission sent a Letter of Facts to inform Korean Air 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 Parties submitted a response to the Letter of Facts ("the Response to the Letter of Facts") on 23 August 2023.

(49) On 3 November 2023, Korean Air submitted first commitments pursuant to Article 8(2) of the Merger Regulation to address the competition concerns identified by the Commission. Accordingly, the legal deadline for the Commission's decision was automatically extended by 15 working days, pursuant to Article 10(3), first subparagraph of the Merger Regulation. The first commitments were submitted while the time limit for a decision set in Article 10(3) of the Merger Regulation was suspended. On 5 December 2023, the day on which the deadline suspension expired, Korean Air submitted a second set of commitments. On 6 December 2023, the Commission launched a market test of the commitments of 5 December 2023. On 9 January 2024, Korean Air submitted a third and final set of commitments which took into account the results of the market test and the Commission's assessment.

(50) State of play meetings were held on 2 February 2023, 2 March 2023, 15 May 2023, 23 June 2023 and 21 December 2023, respectively (i) to inform the Parties of the preliminary results of the Phase I investigation, (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, (iv) to provide the Parties with an opportunity to understand the position of the Directorate-General for Competition after it has considered their Response to the Statement of Objections and to serve as an opportunity to discuss the scope and timing of possible remedy proposals and (v) to enable the Parties to discuss with the Directorate-General for Competition its views on the proposed remedies and the results of the market testing. In addition, the Commission held regular phone calls with the Parties.

(51) Access to file was first provided on 22 and 26 May 2023. Subsequent access to the file was provided on 8 August, 11 and 20 December 2023, 23 January 2024 and 1 February 2024. In addition, access to confidential information relied upon by the Commission in the SO and Letter of Facts was granted to the Parties' advisors in

accordance with the data room procedure[59] from 22 May 2023 to 2 June 2023 and from 9 August 2023 to 23 August 2023.

(52) On 18 January 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 1 February 2024 and the Committee issued a positive opinion.

6. THE COMMISSION'S INVESTIGATION

6.1. Investigative steps

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

(54) In the pre-notification phase, the Commission reviewed the information provided in the draft Form CO and its accompanying draft annexes. Furthermore, the Commission held meetings and conference calls with the Parties as well as with several customers and competitors in air passenger and air cargo services. Towards the end of the pre-notification phase, the Commission also sent out advance copies of the Phase I investigation questionnaires to competitors.

(55) Following the notification of the Transaction on 13 January 2023, the Commission carried out its Phase I investigation. In addition to requests for information addressed to the Parties, the Commission addressed eight different requests for information by way of electronic questionnaire pursuant to Article 11(2) of the Merger Regulation to (i) competitors active in air passenger services between the EEA and South Korea, (ii) competitors active in air cargo services between the EEA and South Korea, (iii) potential competitors in air passenger or air cargo services between the EEA and South Korea, (iv) corporate customers of air passenger services between the EEA and South Korea, (v) travel agents and tour operators purchasing air passenger services between the EEA and South Korea, (vi) customers of air cargo services between the EEA and South Korea, (vii) airport managers and (viii) slot coordinators. The Commission also quantitatively assessed the relationship between the competitive landscape, in particular Asiana's presence, and the ticket prices charged by Korean Air, based on the Parties' econometric model that found no significant fare effects from additional carriers beyond two.

(56) Following the opening of proceedings on 17 February 2023, the Commission carried out its Phase II investigation. The Commission sent several requests for information to the Parties, which included a request addressed to each of Korean Air and Asiana for internal documents prepared between 1 January 2019 and 31 December 2019 as well as between 1 January 2022 and 22 February 2023, among others in relation to (i) business plans, strategic plans and fleet plans, (ii) monitoring of and reporting on competitors, (iii) operation plans and pricing decisions; (iv) exchanges between

[59] Business secrets and other confidential information of third parties within the meaning of Article 339 TFEU, Article 18(3) of the Merger Regulation and Article 17(3) of the Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Implementing Regulation", OJ L 336, 14.12.2013, page 1) can exceptionally be made available to the addressee of a Statement of Objections within the framework of the data room procedure and under the strict conditions set out in data room rules. The data room procedures are set in the Best Practices on the disclosure of information in data rooms, 2 June 2015, available at http://ec.europa.eu/competition/mergers/legislation/disclosure information data rooms en.pdf.

Korean Air or Asiana with the Korean Ministry of Transport of Land, Infrastructure and Transport with regard to traffic rights between South Korea and the EEA and (v) exchanges between Asiana and the KDB. The Commission also addressed individualised requests for information to around 25 airlines active or potentially active in air passenger and/or air cargo services between the EEA and South Korea, including follow-up requests on specific issues, and conducted detailed interviews with around 10 air cargo service customers and 3 specialised air cargo service competitors.

(57) Throughout the investigation, the Commission also investigated the Parties' claims concerning the future of Asiana's operations by addressing detailed requests for information to the KDB as well as to potential past and future alternative acquirers of Asiana and of Asiana's assets.

(58) Following the submission of commitments on 5 December 2023, the Commission carried out a market test. The Commission sent several requests for information by way of electronic questionnaires to competitors, customers, slot coordinators, airport managers and staff representatives. The Commission also addressed several requests for information to the potential remedy taker of the passenger commitments.

(59) The Commission's findings in this Decision are based on the overall body of evidence collected during the Commission's investigation, as described in paragraphs (54) to (58).

6.2. Issues encountered during the Commission's investigation and integrity of the Commission's investigation

(60) During its review of the Transaction, including the pre-notification stage, the Commission encountered several procedural issues which made it difficult to conduct an efficient and effective investigation.

6.2.1. Delays in providing information

(61) […].

(62) […].

(63) […].

6.2.2. Requests for information and exchanges with the Parties in order to obtain information necessary for the Commission's investigation and assessment

(64) […].

(65) […][60] […].

(66) […].[61] […].[62] […][63] […].

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(71) […].

7. RELEVANT MARKETS

(72) The Transaction mainly affects the supply of passenger and cargo air transport services between the EEA and South Korea. In the following, the Commission will set out its findings with respect to market definition in (i) passenger air transport services (section 7.1) and (ii) cargo air transport services (section 7.2).

7.1. Passenger air transport services

7.1.1. Origin & destination ('O&D') approach

7.1.1.1. Commission's decisional practice

(73) 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, where the target was an active air carrier.[71]

(74) In line with the Commission's notice on market definition,[72] where the merger involved airlines actively providing 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.

7.1.1.2. Korean Air's views

(75) Korean Air does not object in principle to this approach. However, it submits that the market should be defined on a case-by-case basis and that in the context of the Transaction two separate markets for each route can be potentially considered, depending on whether the flight (roundtrip) originates from South Korea or from outside South Korea (Point of Origin or 'POO' approach).[75]

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68 […].

69 […].

70 Reply to RFI16, question 12: […].

71 M.9287 – Connect Airways/Flybe; M.8869 – Ryanair/Laudamotion; M.8361 – Qatar Airways/Alisandra/Meridiana; M.7541 – IAG/Aer Lingus; M.7333 – Alitalia/Etihad; M.6828 – Delta Air Lines/Virgin Group/Virgin Atlantic Ltd; M.6447 – IAG/BMI; M.5889 – United Air Lines/Continental Airlines; M.5830 – Olympic/Aegean Airlines; M.5747 – Iberia/British Airways; M.5440 – Lufthansa/Austrian Airlines; M.5403 – Lufthansa/BMI; M.5364 – Iberia/Vueling/Clickair; M.5335 – Lufthansa/SN Airholding; M.5181 – Delta Air Lines/Northwest Airlines; M.3770 – Lufthansa/Swiss; and M.3280 – Air France/KLM. The O&D approach was confirmed by the General Court, most recently in Case T-342/07 – Ryanair Holdings plc v European Commission [2010] ECR, paragrah 53.

72 Commission Notice on the definition of relevant market for the purpose of Community competition law, OJ C 372, 9.12.1997, p. 5.

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. M.7333 – *Alitalia/Etihad*, paragraph 65.

74 See e.g. 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 117.

(76) According to Korean Air, this narrower market definition more accurately reflects the underlying market characteristics.[76] Korean Air argues that customers would prefer to book flights with carriers from their region and therefore the Parties' market shares may be different depending on the POO.[77] Furthermore, according to Korean Air, the demand on certain routes differs substantially depending on the point of origin, because there is a much higher demand for airlines to fly South Korean passengers to the EEA than for carriers to fly EEA passengers to South Korea.[78] Moreover, Korean Air submits that there are differences in demand and sales channels for each POO, which would affect the competitiveness of airlines for each POO and consequently their market shares by PPO*.[79] In addition, while Korean Air explains that its price setting decision is largely based on its competitors' prices,[80] it explains that it differentiates its pricing policy based on the POO.[81]

7.1.1.3. Commission assessment

(77) The Commission's investigation has overall confirmed that the Commission's O&D approach should also apply to this case. The investigation does not indicate that the Commission should depart from the O&D approach to assess the effects of the merger between Korean Air and Asiana, which are both active airlines.

(78) First, while there is no demand-side substitutability between starting a trip in South Korea and starting a trip in the EEA, there is full supply-side substitutability. The airlines active on the relevant routes connecting the EEA and South Korea all offer flights to/from the EEA and to/from South Korea, meaning that they all offer round-trips. When arriving at destination, they all have the capacity to take passengers from the destination back to the origin of the route, thus allowing passengers to travel the route in both directions starting at either end of the route. This is because if an airline has already made investments to transport customers on round trips starting at one end of the route (*e.g.,* in terms of putting the flight operations in place and hiring personnel at both ends of the route), it is inherent in the business operations that those investments can be used to start transporting customers on round trips starting at the other end. This is in fact what all airlines active on the routes have done and there is no example of an airline active only from one end of the route. While the results of the market investigation were inconclusive as to whether an airline offering round trips on a specific O&D originating in the EEA would be able to start providing round trips on the same O&D pair originating in South Korea quickly and without significant investments,[82] this issue seems less relevant because in the present case all carriers active on the route have in fact already made those investments, sell seats on the same flight simultaneously to customers with different POOs and can therefore react quickly and without additional investments to any changes in demand or supply conditions for the POOs relevant for the assessment of the Transaction.

(79) Second, the competitive conditions are comparable for the different POOs. In particular, on the same O&D pair between the EEA and South Korea (regardless of whether the passenger starts the round-trip journey from South Korea or from the EEA), the air carriers that are present, the available seat capacity and the service levels

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76 Form CO, paragraph 117.
77 Form CO, paragraph 117.
78 Form CO, paragraphs 120 and 125.
* Should read: 'POO'
79 Form CO, paragraph 123.
80 Form CO, paragraph 536.
81 Form CO. paragraph 127.
82 Replies to question C.A.5-1 of Questionnaire Q1 to competitors.

are the same.[83] This is also supported by the results of the market investigation where the majority of competitors expressing a view consider the above-mentioned parameters to be comparable.[84] As a result, it is questionable whether a separate assessment under the POO approach would be useful, as it would essentially assess the same competitive situation.

(80) Third, it is not a common practice in the industry to […]. Moreover, Korean Air's argumentation also does not seem to be coherent on this point, […][85] it also submits that it considers the price ceilings approved by the Ministry of Land, Infrastructure and Transport ('MOLIT')[86] for […][87] In addition, Korean Air itself explaines that its "*pricing policy is not fixed and is subject to changes depending on various factors such as the demand and the prices of competitors*".[88] Furthermore, in contrast to Korean Air's position, Asiana considered that […][89] While majority of competitors replying to the Commission market investigation considered that ticket prices are different depending on the POOs, competitors replies were inconclusive with respect to the nature of the price differences, as some competitors estimate that the fares are higher from POO EEA and others that they are higher from POO South Korea.[90]

(81) Fourth, Korean Air's argument on diverging passenger numbers by POO appears to be irrelevant for the question whether there is demand-side or supply-side substitutability between flights between the EEA and South Korea by POO. The fact that there is more demand from South Korea than from the EEA does not add anything to the question of whether customers or competitors consider flights between the EEA and South Korea substitutable by POO.

(82) Fifth, the O&D approach is considered to be appropriate by market participants. The majority of the respondents to the market investigation expressing views support the appropriateness of the O&D approach to assess the effects of the Transaction.[91] In particular, one competitor considers that "*the O&D approach provides an appropriate measure for understanding how many passengers want to fly between any two points*."[92] That said, the Commission acknowledges that some market participants pointed to some differences in competitive dynamics depending on the POO. For example, a competitor noted the differences in the passenger profile depending on whether they originate in South Korea or in the EEA.[93] In addition, the majority of competitors expressing views talked about differences regarding (i) ticket prices; and (ii) convenience of the time schedules.[94] The Commission will therefore take into account the particularities of the competitive dynamics depending on the POO when assessing the closeness of competition in the competitive assessment.

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83 However, as will be shown in paragraph (82) below, the majority of competitors estimate that ticket prices differ depending on the POO.

84 Replies to question C.A.2-1 of Questionnaire Q1 to competitors.

85 Form CO paragraph 127.

86 According to the Form CO, Annex 44, page 1 "*Under the Aviation Business Act ("**ABA**"), an air transport service provider operating international flights must obtain an approval from MOLIT or file a report with MOLIT for passenger airfares or cargo airfreight fees (excluding mail) on its international routes (ABA, Art. 14(1))*".

87 Form CO, Annex 44, page 2, paragraph 13.

88 Form CO, paragraph 536.

89 Form CO, paragraph 548.

90 Replies to question C.A.3-1 of Questionnaire Q1 to competitors.

91 Replies to (i) question C.A.1-1 of Questionnaire Q1 to competitors; (ii) question CA.1-1 of Questionnaire Q4 to corporate customers; (iii) question C.A.1-1 of Questionnaire Q6 to travel agents and tour operators; and (iv) question C.A.A.1-1 of Questionnaire Q7 to airport managers.

92 Reply of [a competitor] to question C.A.1-2 of Questionnaire Q1 to competitors.

93 Non-confidential minutes of the conference call with [a competitor].

94 Replies to question C.A.2-1 of Questionnaire Q1 to competitors.

(83) Sixth, the Commission has analysed the differences in market shares between POO EEA and POO South Korea.[95] For the routes ICN to/from BCN, CDG, FRA and FCO ('the Overlap Routes') and taking into account 6 IATA seasons, it seems that there are differences between market shares between the POOs. In particular, for (i) ICN-BCN the differences can go from approximately [0-5]% up to approximately [10-20]% depending on the IATA season; for (ii) ICN-FRA the differences can go from approximately [0-5]% up to approximately [10-20]% depending on the IATA season; for (iii) ICN-CDG the differences can go from approximately [0-5]% up to approximately [10-20]% depending on the IATA season. There is a larger difference from approximately [20-30]% up to approximately [30-40]% depending on the IATA season in terms of market shares between both POOs only in the ICN-FCO route. However, these market shares are no longer representative of the competitive environment as they include Alitalia's market share. Alitalia ceased its operations on 15 October 2021.[96] When assessing the set of market shares where Alitalia's market shares have been allocated proportionally to its competitors, as provided by the Parties,[97] market shares divergences still exist between both POOs on the ICN-FCO route, but are less significant and can go up to approximately [20-30]% depending on the IATA season. However, these differences do not outweigh the Commission's other findings regarding the O&D approach.

(84) In light of the above, for the purposes of this Decision, the Commission will apply the O&D approach, but will take into account the particularities of competitive dynamics depending on the POO when assessing how closely the Parties and their competitors compete. Furthermore, the Commission will take account of the fact that both Korean Air and Asiana are network carriers that also operate connecting flights – which goes beyond the assessment of route-by-route overlaps – and of their strong presence at the same airport in its competitive assessment of the effects of the Transaction.

7.1.2. Distinction between services supplied at wholesale level to tour operators and retail level to final customers

(85) Carriers, both charter and scheduled airlines, may sell seats (or entire flights) to tour operators, which resell those seats to end customers or sell package holidays in which those seats are integrated.

7.1.2.1. Commission's decisional practice

(86) In prior decisions, whenever appropriate, 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).[98] The Commission found that from a demand-side perspective, tour operators have different requirements from those of individual passengers (for example, purchase of large seat packages in advance from the start of the season or negotiation of rebates).[99]

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95 Response of Korean Air to RFI5, questions 1, 2, and 3. The Commission compared carriers' market shares for round trips starting in Korea against market shares for round trip starting in the EEA.

96 Form CO, paragraph 756.

97 Response of Korean Air to RFI5, question 3.

98 See e.g. Cases M.9287 – *Connect Airways/Flybe*, paragraph 117; M.8869 – *Ryanair/Laudamotion*, paragraph 119; M.8046 – *TUI/Transat France*, paragraphs 66-88; M.5867 – *Thomas Cook/Öger Tours*, paragraphs 14-16; M.4601 – *KarstadtQuelle/MyTravel*, paragraphs 39-43; M.4600 – *TUI/First Choice*, paragraph 52-57; M.3770 – *Lufthansa/Swiss*, paragraph 20.

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

(87) In recent decisions,[100] 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. 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 competitive position of the air carriers present in the wholesale and retail markets.

7.1.2.2. Korean Air's views

(88) Korean Air submits that there could be a degree of demand-side substitutability and supply-side substitutability between the wholesale supply of seats to tour operators and the sales of air transport services to end customers[101] and that, in any case, the Parties' sales to European[102] tour operators account for only a limited part of their air passenger revenues.[103]

7.1.2.3. Commission assessment

(89) For the purposes of this Decision, the Commission finds that it is not necessary to distinguish between services supplied at wholesale or retail level. While the demand characteristics of tour operators, purchasing airline seats at the wholesale market are different of those of passengers purchasing tickets at the retail market, on the supply side, all airlines are offering services at both segments of the market or could start doing so quickly and without incurring significant additional costs.[104]

7.1.3. Distinction between passenger groups

7.1.3.1. Commission's decisional practice

(90) 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 or to visit friends and relatives, do not require flexibility with their booking and are more price-sensitive than TS passengers.[105]

(91) However, in recent decisions, the Commission has noted that most passengers are becoming increasingly price-sensitive and more and more corporate customers apply lowest fare policies, at least with respect to short-haul routes.[106]

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

101 Form CO, paragraphs 180-182.

102 The Parties submit that for the purposes of the Transaction, the sales of the Parties to Korean tour operators are not relevant "*as those have no influence on the European market*" (Form CO, paragraph 798).

103 Form CO, paragraph 799.

104 Form CO, paragraph 181.

105 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 Case M.5364 – *Iberia/Vueling/Clickair*, the question was left open, as it would not affect the outcome of the competitive assessment.

106 M.8869 – *Ryanair/Laudamotion*, paragraphs 138-139; M.9287 – *Connect Airways/Flybe*, paragraphs 50-53.

(92) In particular, the Commission has found for short-haul flights[107] 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.[108] 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.[109]

(93) For long-haul flights,[110] the Commission has considered that it may be relevant to distinguish between TS and NTS passengers.[111] On the one hand, it has concluded that services in at least First and Business class, and services in restricted Economy,[112] were in different product markets on transatlantic routes.[113] On the other hand, it has assessed the possible effects of concentrations on O&D city-pairs without distinguishing between TS and NTS travellers when the vast majority of the parties' passengers were NTS travellers.[114]

7.1.3.2. Korean Air's views

(94) Korean Air does not consider it meaningful to segment markets between types of passengers into TS and NTS. According to Korean Air, the distinction between TS and NTS passengers is not appropriate, as (i) business travel is expected to witness a structural decline in the post-Covid19 era as corporate spending on travel is reduced;[115] (ii) corporate customers are increasingly price sensitive and the offerings for TS and NTS passengers are becoming very similar;[116] (iii) the competitive dynamics are uniform under this distinction between not only the Parties, but between all the market players.[117]

7.1.3.3. Commission assessment

(95) For the purposes of this Decision and for the reasons set out below, the Commission considers that the question of whether a distinction between TS and NTS passengers is relevant can be left open, as this would not change the outcome of the competitive assessment. Competition concerns arise regardless of whether the assessment is carried out on the overall market or on the two potential sub-markets of TS and NTS passengers.

(96) Evidence collected in the course of the investigation is mixed, pointing both towards and against distinguishing between TS and NTS passengers.

(97) On the one hand, first, TS passengers appear to be a noteworthy part of each route. In particular, based on information provided by the Parties, the ratio of TS passengers for

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107 Short-haul flights are flights of duration of six hours and less using a narrow-body aircraft.

108 M.8869 – *Ryanair/Laudamotion*, paragraph 142; M.9287 – *Connect Airways/Flybe*, paragraph 55.

109 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.

110 Long-haul flights are flights of a duration of six hours and more.

111 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.

112 Case COMP/39.596 – British Airways/American Airlines/Iberia, footnote 17: "*Restricted Economy class encompasses Economy tickets, which carry certain restrictions, such as non-availability of refund or additional fee for a change of flight*."

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

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

115 Form CO, paragraph 132.

116 Form CO, paragraph 132.

117 Form CO, paragraph 134.

the ICN-FRA and ICN-CDG routes is between approximately [5-10] and [20-30]%, whereas for the ICN-BCN and ICN-FCO routes the ratio is between approximately [5-10]% and [10-20]%.[118] In addition, according to a competitor, "*on routes other than Paris-Seoul, time-sensitive passengers dominate market.* […]"[119]

(98) Second, the investigation indicates that there are differences between TS and NTS passengers in terms of (i) preference for direct/indirect connections;[120] (ii) levels of services (*e.g.,* on-board services, airport lounges, frequent flyer program); and (iii) sales channels (*e.g.,* corporate contracts vs. directly on the airline's website. In this respect, two competitors noted that TS passengers typically acquire tickets through corporate contracts).[121]

(99) Third, some airlines' pricing strategy appears to depend on which passenger group is targeted. For instance, a competitor noted that it does not benchmark prices applied for premium passengers against competitors offering indirect flights, while it does so for non-premium passengers.[122]

(100) On the other hand, the results of the market investigation are inconclusive. First, the majority of competitors consider that a distinction between services offered to TS and NTS passengers is relevant for assessing the impact of the Transaction,[123] whereas customers expressing views consider that a distinction between TS and NTS passengers is not relevant.[124] In addition, the responses of travel agents and tour operators expressing views on this issue were inconclusive.[125]

(101) Second, with relation to how significantly traffic from TS passengers contributes to the profitability and viability of each of the relevant routes, the responses of competitors were inconclusive for the BCN-ICN, and FCO-ICN routes, while for the FRA-ICN and CDG-ICN routes, the majority of competitors expressing views consider that traffic from TS passengers significantly contributes to the profitability and viability.[126]

(102) Third, a market participant estimates that the distinction between TS and NTS passengers has become "*[…] somewhat blurred, as some business travellers increasingly travel on economy fares, whereas leisure travellers might choose a "premium" cabin to secure a seat on a high-demand flight […].*"[127] This view was however not confirmed or expressed equally clear by other market participants.

7.1.4. Airport substitutability

7.1.4.1. Commission's decisional practice

(103) 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

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118 Per IATA season, over the period IATA Winter 2018/2019 season to IATA Summer 2022 season; Form CO, paragraphs 392, 403, 414, and 423.

119 Non-confidential reply of [a competitor] to question C.C.2-2 of Questionnaire Q1 to competitors (ID8510).

120 Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a market participant].

121 Replies to question C.C.1-1 of Questionnaire Q1 to competitors. Non confidential minutes of a call with [a competitor]; non-confidential minutes of the conference call with [a competitor].

122 Non-confidential minutes of a call with [a competitor].

123 Replies to question C.C.4-1 of Questionnaire Q1 to competitors.

124 Replies to question C.B.3-1 of Questionnaire Q4 to corporate customers.

125 Replies to question C.C.1-1 of Questionnaire Q6 to travel agents and tour operators.

126 Replies to question C.C.2-1 of Questionnaire Q1 to competitors.

127 Non-confidential reply of [a market participant] to question C.C1-2 of Questionnaire Q6 to travel agents and tour operators.

overlapping catchment areas can be considered as substitutes in the eyes of passengers (particularly if the airports serve the same city).[128]

(104) In order to correctly capture the competitive constraints that flights to or from two (or more) airports exert on each other, a detailed analysis taking into consideration the specific characteristics of the relevant airports is necessary.

(105) The evidence used to characterise airport substitutability includes, among other factors, a comparison of actual distances and travelling time to the indicative benchmark of 100 km or 1 hour driving time,[129] the outcome of the market investigation (views of competitors and other market participants) and the competitors' practices in terms of monitoring of competition.

(106) For example, in precedents concerning the short-haul routes – but not long-haul routes – the Commission has considered the following airports as substitutes but has ultimately left the question open:

(a) Barcelona: El Prat (BCN), Girona-Costa Brava (GRO)[130] and Reus (REU).[131] [132]

(b) Frankfurt: Frankfurt (FRA) and Frankfurt-Hahn (HHN).[133] [134]

(c) Paris: Paris Charles de Gaulle (CDG), Paris Orly (ORY)[135] and Beauvais airport (BVA).[136] [137]

(d) Rome: Fiumicino (FCO) and Ciampino (CIA).[138] [139]

7.1.4.2. Korean Air's views

(107) Korean Air considers that most airports listed as substitutable in Commission precedents are not currently being used for long-haul direct or indirect flights to Seoul

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128 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.

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

130 GRO offers long-haul passenger flights outside of the European continent, with destination or origin: Morocco.

131 There are no long-haul passenger flights, outside of the European continent, operated to/from REU.

132 M.7541 – *IAG/Aer Lingus*, paragraphs 76-83; M.4439 – *Ryanair/Aer Lingus*, paragraphs 226-227.

133 HHN offers long-haul passenger flights outside of the European continent, with destination or origin: Morocco and Israel.

134 M.8869 – Ryanair/Laudamotion, paragraphs 207-213; M.4439 – Ryanair/Aer Lingus, paragraph 211.

135 ORY offers long-haul passenger flights outside of the European continent, with destination or origin:

- Africa (Algeria, Morocco, Ivory Coast, Tunisia, Benin, Mayotte, Mali, Jordan, Egypt, Cape Verde, Western Sahara, Mauritius, Reunion)
- Asia (China, Turkey, Jordan, Lebanon, Armenia, Israel)
- North America (USA, Canada, Mexico, the Bahamas, Guadeloupe, Martinique, Cuba, Haiti, Dominican Republic, Saint-Maarten)
- South America (Brazil, French Guiana)
- Oceania (French-Polynesia)

136 BVA offers long-haul passenger flights outside of the European continent, with destination or origin to: Morocco, Georgia and Jordan.

137 M.3280 – *Air France/KLM*, paragraph 28; M.6663 – *Ryanair/Aer Lingus III*, paragraph 279; M.9287 – *Connect Airways/Flybe*, paragraphs 66 and 76.

138 CIA offers long-haul passenger flights outside of the European continent, with destination or origin to: Morocco and Jordan.

139 M.4439 – *Ryanair/Aer Lingus*, paragraphs 254-255.

and could therefore not be used as substitutes by customers.[140] Given that the substitutability of these airports was mainly analysed on an intra-European O&D basis, it is difficult to transpose the reasoning to the present Transaction, which concerns long-haul routes.[141]

(108) While Korean Air agrees with the catchment areas of 100km or 1hour previously considered by the Commission, it notes that previous airport substitutability assessment concerned primarily short-haul O&Ds.[142] This means that the approach for long-haul O&Ds would potentially have to be adjusted accordingly, based on consumer preferences and their willingness to travel longer distances.[143]

(109) In addition, Korean Air has not conducted an analysis to determine which parameters would have to be used for airport substitutability regarding the Transaction and does not consider it necessary to conclude on airport substitutability.[144]

(110) However, Korean Air also notes the following:

(111) For Seoul, Korean Air submits that from the demand side, GMP airport is an attractive alternative to ICN, as it cuts approximatively 30 minutes of ground transportation.[145] From the supply side, other major airlines fly to GMP, such as Air China.[146]

(112) For Barcelona, Korean Air submits that other airline operators such as Ryanair market their services to GRO and REU as services to "Barcelona (Girona)" and "Barcelona (Reus)" respectively.[147]

(113) For Frankfurt, Korean Air states that airline operators such as Ryanair market their services to HHN as services to "Frankfurt (Hahn)", suggesting that HHN airport is appropriate for passengers heading for Frankfurt.[148] In addition, operators such as Ryanair also typically consider carriers serving FRA as competitors for its services to HHN.[149]

(114) For Paris, Korean Air submits that, on the demand side, most network carriers consider CDG and ORY airports to be substitutable, but that low-cost airlines[150] emphasize the importance of having the choice of airport with a view to minimizing their unit costs.[151] On the supply side, while both CDG and ORY could be used for destinations within the EU and to third countries, in practice, most network carriers have focused their activities on CDG while airlines operating at ORY mainly focus on domestic traffic.[152]

(115) For Rome, Korean Air submits that based on the Commission's market investigation in Case M.4439 – Ryanair / Aer Lingus, FCO and CIA airports were found to be substitutable from the customers' point of view for a large majority of point-to-point passengers.[153]

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140 Form CO, paragraph 160.
141 Form CO, paragraph 160.
142 Form CO, paragraph 161.
143 Form CO, paragraph 161.
144 Form CO, paragraph 161.
145 Form CO, paragraph 166.
146 Form CO, paragraph 166.
147 Form CO, paragraph 151.
148 Form CO, paragraph 153.
149 Form CO, paragraph 153.
150 In this Decision, low-cost airlines or low-cost carriers are also referred to as "LCC".
151 Form CO, paragraph 156.
152 Form CO, paragraph 156.
153 Form CO, paragraph 159.

7.1.4.3. Commission assessment

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

(117) Taking into account the relevant routes discussed in this Decision, which are long-haul routes, the Commission will analyse in sections 7.1.4.3.1 to 7.1.4.3.5 the question of airport substitutability concerning the following cities: (i) outside of the EEA: Seoul; (ii) in the EEA: Barcelona, Frankfurt, Paris, and Rome.[154] [155]

7.1.4.3.1. Seoul

(118) The city of Seoul is served by two airports: Incheon airport (ICN), and Gimpo International airport (GMP). ICN and GMP are located respectively 68 km and 18 km away from Seoul city centre.[156]

(119) For the purposes of the O&D assessment, the question of substitutability of ICN and GMP is relevant for the long-haul routes between Seoul and the EEA.

(120) The distances and travel times from ICN and GMP to Seoul city centre are summarised in Table 1.

Table 1 - Distances and travel times from ICN and GMP to Seoul city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By metro	By bus
Seoul				
ICN	68 km	1h	1h 10 min	N/A
GMP	18 km	18 min	38 min	40 min

Source: Form CO, paragraph 165

(121) For the purposes of this Decision and for the reasons set out below, the Commission will only take into account ICN airport in the competitive assessment, as GMP airport is not a close substitutable with ICN on the routes between the EEA and Seoul.

(122) First, GMP airport is a regional airport, which is currently not used for long-haul direct or indirect flights from the EEA to South Korea and vice versa by Korean Air or Asiana nor by competing airlines. As a result, customers cannot use this airport to fly directly or indirectly, with a single flight ticket, to/from the EEA.[157]

(123) Second, GMP airport is focused on domestic and to some extent regional traffic. Only five, short-haul international flights are offered from GMP airport, to destinations in Japan and China, demonstrating that airlines do not consider it suitable for long-haul international flights. Competitors explained that "*Korean government never allows long-haul routes from GMP*", that "*GMP only point-to-point traffic with focus on*

[154] For the sake of clarification, the Commission carries out its assessment for the substitutability between airports from the perspective of point-to-point passengers, who constitute the demand for scheduled passenger air transport services under the O&D approach. The substitutability between airports from the perspective of connecting passengers is not discussed in this Decision.

[155] Since July 2022, only Korean Air operates flights on the ICN – MXP routes, as Asiana has ceased operation after the spread of the Covid19 pandemic and does not have any future plans to resume operations (Form CO, footnote 203). Therefore, the Commission has not identified an actual or potential overlap on the long-haul route from Milan/Venice to Seoul.

[156] Form CO, paragraph 165.

[157] Form CO, paragraph 166

Korea Domestic routes, few/selected Asian destinations - no destinations outside Asia. Passenger longhaul operation not feasible" and that "*GMP caters only regional traffic (Japan, C[h]ina, etc). Long haul flights can be operated from ICN only*".[158]

(124) Third, the majority of customers and tour operators expressing a view do not consider GMP airport as a close substitute to ICN for flights to the EEA.[159] While the majority of competitors expressing a view said customers would likely consider the airports as close substitutes, when asked whether airlines would consider operating flights to the EEA from GMP airport, the views are split and one competitor saying airlines would consider operating flights from the airport qualifies its answer by saying the airport *"[c]ould be a viable alternative for growth if ICN was constrained, but airport remains as a regional hub more [than] a long haul airport*".[160] When asked from which airports in Korea it considered operating flights to the EEA, a potential entrant stated it only considered ICN airport and no other Korean airports were considered.[161] The potential entrant explained that ICN provides the most connecting flights beyond Seoul.[162] Finally, GMP slot coordinator considers that the main barrier to entry for airlines planning to start operating a long-haul route for air passenger transport services between Europe and South Korea from GMP airport is "lack of passenger demand", supporting the view that the airport is less attractive for such flights.[163]

7.1.4.3.2. Barcelona

(125) The city of Barcelona is served by three airports: El Prat airport (BCN), Girona-Costa Brava airport (GRO) and Reus (REU) airport. El Prat, Girona-Costa Brava and Reus airports are located respectively 13km, 100km and 80km away from Barcelona city centre.[164]

(126) For the purposes of the O&D assessment, the question of substitutability of El Prat, Girona-Costa Brava and Reus airports is relevant for the long-haul route from Barcelona to Seoul.

(127) For the purposes of this Decision and for the reasons set out below, the Commission will only take into account the El Prat airport in the competitive assessment, as Girona-Costa Brava and Reus airports are not considered to be substitutable with El Prat on the route to Seoul.

(128) The Commission first notes that El Prat, Girona-Costa Brava and Reus airports are all within the indicative 100km distance from the Barcelona city centre, but Girona-Costa Brava and Reus airports slightly exceed the 1hour drive distance (while El Prat airport does not).

(129) The distances and travel times from El Prat, Girona-Costa Brava and Reus airports to Barcelona city centre are summarised in Table 2.

158 Replies to question C.D.2 of Questionnaire Q1 to competitors.
159 Replies to question C.C.2 of questionnaire Q4 to customers and question C.D.2 of Questionnaire Q6 to tour operators and travel agents.
160 Replies to question C.D.4 of questionnaire Q1 to competitors.
161 Replies of a potential entrant] to question C.3 of questionnaire Q3 to potential entrants (ID8691)
162 [A potential entrant] non-confidential reply to question 13 of RFI1 […].
163 Reply of [a slot coordinator] to question D.1 of questionnaire 8 to slot coordinators (ID9839)
164 Form CO, paragraph 150.

Table 2 - Distances and travel times from BCN, GRO and REU to Barcelona city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Barcelona				
BCN	13 km	26 min	17 to 30 min	N/A
GRO	100 km	80 min	N/A	70 min
REU	80 km	70 min	N/A	80 min

Source: Form CO, paragraph 150

(130) Girona-Costa Brava and Reus airports are regional airports, which are currently not used for long-haul direct or indirect flights from the EEA to South Korea and vice versa by Korean Air or Asiana nor by competing airlines.[165] As a result, customers cannot use these airports to fly directly or indirectly, with a single flight ticket, to/from South Korea.

(131) The majority of market participants expressing views in the market investigation support the Commission's view on a lack of airport substitutability of BCN airports in this case, as they consider that the GRO and REU airports cannot be considered as close substitutes to BCN airport for flights to/from South Korea.[166] For example, one airport manager indicated that "*For Time-sensitive passenger or business passengers, the accessibility to Barcelona city is different between BCN and REU*"[167] and another airport manager that "*[…] huge competitive advantage of BCN over REU/GRO; airports not comparable*"[168], while one competitor indicated that "*REU caters mostly LCC carriers and charter services rather than long haul wide body operated services […]*"[169] and another competitor that GRO is "*very LCC driven airport and a fair distance from BCN*."[170] In addition, the majority of market respondents expressing views would not consider operating flights to South Korea from GRO and REU airports,[171] given that for example "*GRO is far away from the primary regional city of Barcelona and with significantly less transit options. A majority of passengers would prefer to use BCN when traveling to this region for the enhanced amenities and convenience*"[172] and REU is a "*Regional European airport and likely challenging for widebody operations needing to take long way around Russian airspace*."[173]

7.1.4.3.3. Frankfurt

(132) The city of Frankfurt is served by two airports: Frankfurt am Main (FRA) and Frankfurt-Hahn (HHN) airports. FRA and HHN are located respectively 12 km and 124 km from Frankfurt city centre.[174]

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165 Response of Korean Air to RFI9, question 6.

166 Replies to (i) question C.D.2-1 of Questionnaire Q1 to competitors; (ii) question C.C.2-1 of Questionnaire Q4 to corporate customers; (iii) question C.D.2-1 of Questionnaire Q6 to travel agents and tour operators; (iv) question C.A.B.2-1 of Questionnaire Q7 to airport managers.

167 Reply of [an airport manager] to question C.A.B.2-2 of Questionnaire Q7 to airport managers.

168 Reply of [an airport manager] to question C.A.B.2-2 of Questionnaire Q7 to airport managers.

169 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors.

170 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors.

171 Replies to (i) question C.D.4-1 of Questionnaire Q1 to competitors; (ii) question C.A.B.4-1 of Questionnaire Q7 to airport managers.

172 Reply of [a competitor] to question C.D.4-2 of Questionnaire Q1 to competitors.

173 Reply of [a competitor] to question C.D.4-2 of Questionnaire Q1 to competitors.

174 Form CO, paragraph 152.

(133) For the purposes of the O&D assessment, the question of substitutability of FRA and HHN is relevant for the long-haul route from Frankfurt to Seoul.

(134) For the purposes of this Decision and for the reasons set out below, the Commission will only take into account FRA in the competitive assessment, as HHN is not considered to be substitutable with FRA on the route to Seoul.

(135) The Commission first notes that only FRA is within the indicative 100km and 1hour drive distance to Frankfurt city centre, while HHN exceeds both indicators.

(136) The distances and travel times from FRA and HHN to Frankfurt city centre are summarised in Table 3.

Table 3 - Distances and travel times from 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
Frankfurt				
FRA	12 km	20 min	12 min	N/A
HHN	124 km	85 min	N/A	105 min

Source: Form CO, paragraph 152

(137) HHN is a regional airport, which is not currently being used for long-haul direct flights or indirect flights from the EEA to South Korea and vice versa by Korean Air or Asiana nor by competing airlines.[175] As a result, customers cannot use this airport to fly directly or indirectly, with a single flight ticket, to/from South Korea.

(138) The majority of market participants expressing views in the market investigation support the Commission's view on airport substitutability of FRA, as they consider that FRA and HHN cannot be considered as close substitutes for flights to/from South Korea,[176] and would not consider operating flights to South Korea from HHN airport.[177] For example, market participants indicate that "*HHN caters mostly LCC carriers and charter services rather than long haul wide body operated services* […]"[178], HHN is a "*LCC driven airport, [which] does not serve long haul connecting traffic*"[179], and HHN's "*airport infrastructure and services [are] not suitable for long-haul flights*."[180]

7.1.4.3.4. Paris

(139) The city of Paris is served by three airports: Paris-Charles de Gaulle airport (CDG), Paris-Orly airport (ORY) and Beauvais airport (BVA). Paris-Charles de Gaulle, Paris-Orly and Beauvais airports are located respectively 23 km, 19 km and 90 km away from Paris city centre.[181]

175 Response of Korean Air to RFI9, question 6.

176 Replies to (i) question C.D.2-1 of Questionnaire Q1 to competitors; (ii) question C.C.2-1 of Questionnaire Q4 to corporate customers; (iii) question C.D.2-1 of Questionnaire Q6 to travel agents and tour operators; (iv) question C.A.B.2-1 of Questionnaire Q7 to airport managers.

177 Replies to (i) question C.D.4-1 of Questionnaire Q1 to competitors; (ii) question C.A.B.4-1 of Questionnaire Q7 to airport managers.

178 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors.

179 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors.

180 Reply of [an airport manager] to question C.A.B.4-2 of Questionnaire Q7 to airport managers.

181 Form CO, paragraph 154.

(140) For the purposes of the O&D assessment, the question of substitutability of Paris-Charles de Gaulle, Paris-Orly and Beauvais airports is relevant for the long-haul route from Paris to Seoul.

(141) For the purposes of this Decision and for the reasons set out below, the Commission will not take into account BVA airport in its competitive assessment as it does not consider CDG and BVA airports to be substitutable. However, the Commission will leave open the question of whether CDG and ORY airports should be considered substitutable on the route to Seoul as the Transaction gives rise to a significant impediment to effective competition regardless of whether the market is assessed as ICN-CDG, or ICN-CDG/ORY for the route to Seoul. Market shares would remain the same for a market comprising of both CDG and ORY, and, as explained in section 8.6.3.2, ORY airport is highly slot congested.

(142) The Commission first notes that both Paris-Charles de Gaulle and Paris-Orly are within the indicative 100 km and 1 hour drive distance to Paris city centre, while Beauvais airport is within the indicative 100 km distance but slightly exceeds the indicative 1 hour drive distance to Paris city centre.

(143) The distances and travel times from Paris-Charles de Gaulle, Paris-Orly and Beauvais airports to Paris city centre are summarised in Table 4.

Table 4 - Distances and travel times from CDG, ORY and BVA to Paris city centre

Airport	Approximate distance to city centre	Approximate travel time to city centre		
	Road	By car/taxi	By train	By bus
Paris				
CDG	23 km	31 min	35 min	55 min
BVA	90 km	1hr 15 min	N/A	1hr 15 min
ORY	19 km	43 min	30-40 min	35 min

Source: Form CO, paragraph 154

(144) BVA is a regional airport, which is not currently being used for direct or indirect long-haul flights from the EEA to South Korea and vice versa neither by Korean Air or Asiana nor by competing airlines.[182] As a result, customers cannot use this airport to fly directly or indirectly, with a single flight ticket, to/from South Korea.

(145) Direct, long-haul flights are not available also from ORY airport to South Korea. While Lufthansa operated indirect flights from ORY to ICN via MUC during Summer 2022, according to DDS data, these flights carried no more than 600 passengers in the Summer 2022 season.[183]

(146) Market participants expressing views on the market investigation consider that CDG and BVA airports are not close substitutes.[184] For example, competitors explained that BVA is "*predominantly [an] LCC short haul airport*",[185] and it "*caters mostly LCC carriers rather than long haul wide body operated services*".[186]

182 Response of Korean Air to RFI9, question 6.

183 Korean Air's reply to RFI 9, question 6.

184 Replies to (i) question C.D.2-1 of Questionnaire Q1 to competitors; (ii) question C.C.2-1 of Questionnaire Q4 to corporate customers; (iii) question C.D.2-1 of Questionnaire Q6 to travel agents and tour operators; (iv) question C.A.B.2-1 of Questionnaire Q7 to airport managers.

185 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors (ID7674).

186 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors (ID9394).

(147) While the majority of market participants generally state they consider ORY to be a close substitute to CDG airport, the replies suggest that competitors consider it a close substitute to CDG mainly for NTS passengers, but not for TS passengers. In addition, the replies suggest that ORY serves mainly point to point operations and would not allow to offer connecting flights,[187] therefore making it less attractive for operations on routes to South Korea.

7.1.4.3.5. Rome

(148) The city of Rome is served by two airports: Rome Fiumicino (FCO) airport and Rome Ciampino (CIA) airport. Rome Fiumicino and Rome Ciampino are located respectively 32 km and 15 km away from Rome city centre.[188]

(149) For the purposes of the O&D assessment, the question of substitutability of Rome Fiumicino, and Rome Ciampino airports is relevant for the long-haul route from Rome to Seoul.

(150) For the purposes of this Decision and for the reasons set out below, the Commission will only take into account FCO in the competitive assessment, as CIA is not considered to be substitutable with FCO on the route to Seoul.

(151) The Commission first notes that both Rome Fiumicino and Rome Ciampino are within the indicative 100 km and 1 hour drive distance to Rome city centre.

(152) The distances and travel times from Rome Fiumicino, and Rome Ciampino airports to Rome city centre are summarised in Table 5.

Table 5 - 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
Rome				
FCO	32 km	32 min	31 min	N/A
CIA	15 km	26 min	N/A	40 min

Source: Form CO, paragraph 157

(153) CIA is a regional airport, which is not currently being used for long-haul direct flights or indirect flights from the EEA to South Korea and vice versa by Korean Air or Asiana nor by competing airlines.[189] As a result, customers cannot use this airport to fly directly or indirectly, with a single flight ticket, to/from South Korea.

(154) The majority of passengers and tour operators/travel agents expressing views consider that FCO and CIA are not close substitutes for flights to/from South Korea.[190] the majority of competitors consider that customers do not consider FCO and CIA to be close substitutes and that airlines would not consider operating flights to South Korea from CIA airport.[191]

187 Replies to (i) question C.D.4-1 of Questionnaire Q1 to competitors; (ii) question C.A.B.4-1 of Questionnaire Q7 to airport managers. Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors (ID7674).

188 Form CO, paragraph 157.

189 Response of Korean Air to RFI9, question 6.

190 Replies to question C.C.2 of Questionnaire 4 to corporate customers; replies to question C.D.2 of Questionnaire Q6 to travel agents and tour operators.

191 Replies to questions C.D.2 and C.D.4 of Questionnaire 1 to competitors.

(155) Market participants explained that "*CIA is a short haul dominated airport, largely backed by LCC carriers – not relevant for long haul flights*",[192] that "*passenger longhaul operation unattractive/not feasible due to infrastructure/ground transportation/accessibility deficits – no primary/hub airport*",[193] and that CIA is a "*low-cost airport with limited infrastructure, services and accessibility*".[194]

7.1.5. Distinction between direct and indirect flights

(156) 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.[195]

7.1.5.1. Commission's decisional practice

(157) 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 inconvenience associated with the indirect flight (*e.g.,* obligation to transfer, higher vulnerability to disruption).[196]

(158) 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, when the direct connection does not allow for a one-day return trip or when the share of indirect flights in the overall market is significant.[197]

(159) 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).[198]

7.1.5.2. Korean Air's views

(160) Korean Air submits that indirect one-stop (and not multi-stop) flights could be considered as a close substitute and exert competitive pressure on long-haul direct flights.[199] Even though indirect flights take longer than non-stop flights, indirect flights are offered on more competitive terms (*e.g.,* better price or quality, additional options in terms of timing and frequency).[200] For example, with relation to the price differences between direct and indirect flights, Korean Air submits that "*the lowest*

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192 Reply of [a competitor] to question C.D.2-2 of Questionnaire Q1 to competitors, see also Reply of [a competitor] to question C.D.4-2 of Questionnaire Q1 to competitors.

193 Reply of [a competitor] to question C.D.4-2 of Questionnaire Q1 to competitors (ID9623).

194 Reply of [an airport manager] to question C.A.B.4-2 of Questionnaire Q7 to airport managers.

195 "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.

196 See e.g. Cases 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.

197 See e.g. Cases 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.

198 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.

199 Form CO, paragraphs 139-140.

200 Form CO, paragraph 139.

fare of indirect flights is consistently lower than the corresponding average lowest fare of direct flights, often to a significant extent."[201]

(161) With relation to flight duration and other factors, Korean Air describes for each relevant passenger route the competitors' offerings and finds that the offer of several competitors offering indirect flights are comparable in terms of travel time, flight availability, schedule convenience and frequency.

7.1.5.3. Commission assessment

(162) For the purposes of this Decision and for the reasons set out below, the Commission considers that the question of whether direct and indirect flights form part of the same market for long-haul routes can be left open, as this would not change the outcome of the competitive assessment.

(163) First, the results of the market investigation were mixed:

(164) The competitors' views were inconclusive as to whether indirect flights can compete with direct flights.[202] According to competitors, an indirect flight would need to be approx. 19% cheaper than a direct flight for an average TS passenger to prefer it over a direct flight and approx. 11% cheaper for an average NTS passenger to prefer it over a direct flight.[203] Some corporate customers and travel agents and tour operators, without making a distinction between TS/NTS passengers, indicated that on average an indirect flight would need to be approx. 18% cheaper to be preferred over a direct flight.[204] Regarding lay over and overall travelling time, market participants had different views on how much longer the duration of lay-over time and total travel time of an indirect flight could and still compete effectively with a direct flight, however the results are not conclusive.[205] In any event, the Commission considers that a cut off of 150 minutes lay-over time cannot be applied mechanically. In particular, the relevance of one-stop flights also depends (among other criteria) of the ticket price, the time (during the day) of the stop-over, and of demand composition on the route.

(165) Some market participants indicated that for TS/business passengers, indirect flights are not a close substitute to direct flights, while for NTS/leisure passengers indirect flights could be considered a close substitute to direct flights, depending on different factors such as price and total duration of the trip.[206] For example, a competitor considers "*that there is a difference between leisure and business travellers with respect to the choice of direct versus indirect flights. For leisure passengers, the main choice factor is price and they are more willing to put price above the total length of the flight. Therefore, compared to business passengers, leisure passengers appear to be more likely to consider cheaper indirect flights, depending on how much time this would add to their trip* […]."[207] According to another competitor: "[…] *competitors offering indirect flights with less than 6 hours of transfer tim*e […] *could potentially be considered as viable alternatives under certain conditions for non-time sensitive passengers and, in some instances, also for time-sensitive passengers*."[208]

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201 Form CO, paragraph 145.

202 Replies to question C.F.1 of Questionnaire Q1 to competitors.

203 Average of replies to question C.F.2-2 and C.F.2-4 of Questionnaire Q1 to competitors.

204 Replies to (i) question C.E.4-2 of Questionnaire Q4 to corporate customers; and (ii) question C.F.3-2 of Questionnaire 6 to travel agents and tour operators.

205 Especially considering the broad range of answers, from 1.5 to 15 hours.

206 Non-confidential minutes of a call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a market participant].

207 Non-confidential minutes of the conference call with [a competitor].

208 Non-confidential minutes of the conference call with [a competitor]

(166) According to the travel agents and tour operators expressing a view, factors such as price difference, difference in total travel time and the duration of the lay-over affect the substitutability between direct and indirect flights.[209]

(167) Overall, the majority of competitors and corporate customers expressing their views consider that a distinction between direct and indirect flights is relevant to assess the impact of the Transaction for all the relevant routes between the EEA and South Korea as they do not consider that direct and indirect flights are close substitutes.[210] The responses from travel agents and tour operators on this issue were mixed and inconclusive.[211]

(168) Second, the large price differences between direct and indirect flights indicated by the Parties, are shown in Table 6 below. According to the data provided by the Parties in the four Overlap Routes between the EEA and South Korea the price differences between direct and one-stop flights based on average lowest fares can go up to […]%, which indicates that they are rather significant.[212]

Table 6 – Average price differentiation between direct and indirect (one-stop) flights

Route	Difference as % of direct for lowest fare from EU		Difference as % of direct for lowest fare from South Korea	
	2022	2019	2022	2019
ICN-BCN	[…]%	[…]%	[…]%	[…]%
ICN-FRA	[…]%	[…]%	[…]%	[…]%
ICN-CDG	[…]%	[…]%	[…]%	[…]%
ICN-FCO	[…]%	[…]%	[…]%	[…]%

Source: Form CO, paragraph 145

(169) While there is no need to conclude for market definition purposes, the Commission will nevertheless take into account in its competitive assessment the fact that direct flights compete more closely with other direct flights than with indirect flights in the relevant air passenger transport routes assessed in this Decision.

209 Replies of question C.F.1-1 of Questionnaire Q6 to travel agents and tour operators.

210 Replies to (i) question C.F.11-1 of Questionnaire Q1 to competitors; (ii) question C.E.5-1 of Questionnaire Q4 to corporate customers.

211 Replies to question C.F.4-1 to Questionnaire Q6 to travel agents and tour operators.

212 The Parties provided 4 tables with an overview of the Parties' and competitors' lowest fares on each of the four routes (ICN-BCN, ICN-FRA, ICN-CDG and ICN-FCO), based on price information obtained from ATPCo and Asiana Smart Operating System. The price shown on these tables for each of the airlines is the lowest fare that applies for at least a few weeks or months between 1 November and 8 December of 2019 and 2022 and include the round-trip fare, as well as fuel surcharge (also known as "carrier imposed fee") and tax. In addition, since fuel surcharge and tax data for 2019 are not available, the corresponding quantities for 2022 are used as a proxy.

7.2. Cargo air transport services

7.2.1. Relevant product market

7.2.1.1. Segmentation between cargo transport services and freight forwarding services

7.2.1.1.1. Commission's decisional practice

(170) In the Commission's decisional practice,[213] 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*".[214] 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.

(171) With regard to intercontinental cargo transportation, the Commission has previously indicated that the relevant market is limited to air cargo.[215] In the present case, the activities of the Parties are limited to air cargo transport.

7.2.1.1.2. Korean Air's views

(172) Korean Air does not object to the Commission's prior decisional practice and considers that the two markets, freight forwarding and air cargo, can be considered as vertically related.[216]

7.2.1.1.3. Commission assessment

(173) 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.[217]

7.2.1.2. Air cargo services; substitutability with other means of transport

(174) The Parties do not claim that air cargo services are substitutable with cargo services by other means of transport.[218] They do, however, point to competitive pressure exerted by other means of transport.[219]

(175) The market participants responding to the Commission's market investigation confirmed that they do not consider cargo transport by other means of transport to be close substitutes with air cargo transport between Europe and South Korea, in particular due to the much longer transportation time.[220] As an example, one customer explained that "*transport by sea or ocean does not constitute a viable alternative for*

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213 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 14; M.6570 – UPS / TNT Express, paragraph 17.

214 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.

215 See Case M.6570 – UPS / TNT Express, paragraph 20.

216 Form CO, paragraph 12.

217 Given Korean Air's negligent activities in the market for freight forwarding, with an estimated market share of below 1% in both the EEA and Korea, the market for freight forwarding services will not be further discussed.

218 Form CO, paragraph 279.

219 Form CO, paragraph 280 f.

220 Replies to question C.A.10 of Questionnaire Q2 to cargo competitors and question C.A.8 of Questionnaire Q5 to cargo customers.

air transport due to significant differences in price and transit."[221] The information submitted by the Parties confirms this as the transportation time is estimated to be one to a few days for air cargo service but could take six to eight weeks depending on the routing and place of departure, destination and possible transhipment points on the way between Europe and South Korea.[222]

(176) Customers also do not consider multi-modal transport including a combination of air and sea freight to be close substitutes with air cargo transport between Europe and South Korea. Such multi-modal transport is not considered as a valid alternative by most of the respondents to the market investigation as they are usually interested in a timely delivery of their shipments for which they accept to pay a higher price but which would be slowed down by a combination of air and sea freight.[223] Accordingly for example a competitor stated that "*[t]herefore, a flight to another East Asian airport and then a transhipment by other modes of transport (i.e. sea freight) to a final destination in South Korea does in* [the competitor]*'s view not seem to be in the commercial interest of a shipper, given that this would combine high rates for air cargo with delayed delivery times due to the combination of air transport with other modes of transport"*.[224]

(177) In addition, customers fear the risk of complications in the transhipment phase such as loss or damage to cargo or additional delays.[225] Furthermore, such multi-modal transport would need to be organised by the customers themselves as air cargo carriers do not offer multi-modal services,[226] resulting in further complexity that makes such service unattractive.

(178) On the basis of the above, the Commission agrees with the Parties that air cargo services constitute a separate product market from other modes of transport and considers that any out-of-market competitive pressure is marginal at best.

7.2.1.3. Potential sub-segmentation based on the type of air cargo service/type of aircraft

7.2.1.3.1. Commission's decisional practice

(179) Another 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.[227] [228] In its previous decisions, the

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221 Non-confidential minutes of the conference call with [a customer].

222 Non-confidential minutes of the conference call with [a customer].

223 The Parties do not claim the possibility of multi-modal cross-border land transport, see Form CO, paragraphs 267.

224 Minutes of a conference call with [a competitor].

225 Replies to question C.B.1 of Questionnaire Q5 to cargo customers Replies to question C.B.1 of Questionnaire 2 to cargo competitors. Non-confidential minutes of the conference call with [a customer]. Non-confidential minutes of the conference call with [an integrator].

226 Non-confidential minutes of the conference call with [a competitor].

227 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.

228 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). In their capacity as airport-to-airport cargo carriers, integrators are taken into account by the Commission in the present case as part of the market for air cargo services, and their offering of spare capacity on the market for air cargo services is taken into consideration in the competitive assessment of the Transaction. However, the Commission also acknowledges that the

Commission has not sub-segmented the market according to the type of services the air cargo carriers provide.[229]

7.2.1.3.2. Korean Air's views

(180) According to Korean Air, the vast majority of air cargo services providers compete with each other for the same business in so far as they all offer air transport of cargo services since air freight integrators, combination airlines, cargo airlines with dedicated freighter aircraft and passenger airlines with belly space cargo capacity are all capable of transporting all types of goods.[230]

7.2.1.3.3. Commission assessment

(181) The market investigation in the present case has highlighted that services on dedicated aircraft freighters and in the belly-hold of passenger aircraft and in consequence also the services of combination airlines offering both, are mainly substitutable. However, the results of the market investigation have also highlighted some differences between those types of services.

(182) Most competitors responding to the Commission's market investigation found that their customers consider transport per belly-hold in passenger aircraft and in designated freighter aircraft as close substitutes.[231] Those holding that view explained that the majority of exports from Korea can utilise both passenger and freighter aircraft and that customers desire timely delivery of their cargo irrespective of itinerary or aircraft characteristics. Others disagreed and referred to the fact that this question depended on the type of cargo and that larger or heavier shipments always require a freighter aircraft.[232] In this respect, the majority of competitors responding to the Commission's investigation confirmed that physically or economically particular goods (perishables, dangerous goods, large goods, high-tech, high-value goods, etc.) would rather be transported by freighters rather than in the belly-hold of passenger aircraft.[233] As an example, two competitors replied that "*Goods with dimensions beyond the maximum size of a belly hold aircraft and certain dangerous goods which are only permitted on freighter aircraft, would require a freighter aircraft. Otherwise either freighters or belly-hold passenger aircraft may be used*.";[234] and "*Perishables require frequency over capacity when it comes to transportation, hence belly-hold is opted. Oversized shipments and CAO require freighter capacity*."[235]

(183) Several respondents also pointed to differences in service quality between belly-hold of passenger aircraft and freighter aircraft offering a superior quality. Two customers

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activities of integrators in air cargo services are limited, as their primary focus lies on the shipment of small packages and they only provide air cargo services to fill any remaining available capacity in their aircraft (See Cases M.7630 – FEDEX / TNT EXPRESS, paragraphs 20-22; M.6570 – UPS / TNT Express, paragraph 23-25). Therefore, the integrators' main offering of capacity for their door-to-door services is excluded from the market, and it is only discussed as part of an indirect out-of-market constraint to the Parties' activities in the competitive assessment of the Transaction. For more information regarding the segmentation between airport-to-airport air cargo services and door-to-door small package delivery services, please see section 7.2.1.4 below.

229 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.

230 Form CO, paragraph 208; Response to the 6(1)(c) Decision, paragraph 24; Response to the Statement of Objections, paragraph 148.

231 Replies to question C.A.5. of Questionnaire Q2 to cargo competitors.

232 *Ibid*.

233 Replies to question C.A.6 of Questionnaire Q5 to cargo competitors.

234 Response of a competitor to Question C.A.6 of Questionnaire Q2 to cargo competitors (ID 9522).

235 Response of a competitor to Question C.A.6 of Questionnaire Q2 to cargo competitors (ID 9716).

described the advantages of freighter aircraft as follows in this context: *"in general, it is always more efficient to use Freighter schedule service (cargo flights) rather than pax belly space.- there are several restrictions on pax belly space - weight and balance, weather on route, amount of passengers and luggag and size of lower deck uld that impose limitation.- Belly space is useful, but freighter service are critical for the volumes of the trade";*[236]and *"Moving goods on freighters is more economic as we can build the cargo on main deck units with a better utilization of space. Nevertheless, there is also a regular use of lower deck capacity in case the nature of the goods allow."*[237]A competitor concurred by explaining: "*In the majority of instances forwarders prefer using dedicated freigthers in respect of the days of the week the capacities are made available to facilitate the transportation of the volumes of cargo (either for a single customer or consolidations) that they need to transport."*[238]

(184) With respect to integrators, the Commission's market investigation has indicated that both competitors and customers perceive the integrators' offering on the market for air cargo services as substitutable only to a certain extent, "*as a back-up option to other air carriers*", from whom they can purchase capacity "*from time to time*".[239] For a better overview between the Parties' and other air carriers' offering versus the integrators' offering, please refer to section 7.2.1.4 below.

(185) Based on these results, and in line with its precedents[240], the Commission finds that it is not necessary to segment the market for air cargo services by type of aircraft used as most cargo can be transport on either aircraft type. Actually the cargo that can be only transported on freighter aircraft represents a very small share of the overall cargo volumes.[241] Nevertheless, the market investigation indicates that the type of aircraft does matter and that the product market is differentiated. Therefore, as far as the specificities of certain types of aircraft used for the air cargo service would have an impact on the competitive dynamics – for instance in terms of capacity and frequency offered – these will be taken into consideration in the competitive assessment, in particular when assessing how closely the different air cargo carriers compete with each other.

7.2.1.4. Segmentation between airport-to-airport air cargo services and door-to-door small package delivery services

7.2.1.4.1. Commission's decisional practice

(186) In its decisional practice,[242] the Commission has assessed separate markets for air cargo transport, where the Parties operate, and for small package delivery services, where air freight integrators mainly operate.

(187) Air cargo is typically transported by different types of carriers, namely cargo airlines and integrators. The integrators generally combine cargo with small package volumes

236 Response of a customer to question C.A.4 of Questionnaire Q5 to cargo customers (ID 8606).

237 Response of a customer to question C.A.4 of Questionnaire Q5 to cargo customers (ID 7858).

238 Response of a competitor to question C.A.6 of Questionnaire Q2 to cargo competitors (ID 9508).

239 Replies to questions C.A.7-C.A.8 of Questionnaire Q2 to cargo competitors; Replies to questions C.A.7 and D.B.B.4 of Questionnaire Q5 to cargo customers.

240 See Cases M.6447 IAG/BMI, para 89; M.6828 Delta Airlines/Virgin Group/Virgin Atlantic Limited, para 75, M.5747 Iberia/British Airways, para 38.

241 Less than [0-5]% of the Parties' total volumes must be transported by dedicated air freighter aircraft, see Form CO, footnote 118.

242 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraphs 14-22 and 78-80; M.6570 – UPS / TNT Express, paragraphs 17-25 and 152-164.

in their air network but can also operate dedicated aircraft for cargo services.[243] However, in its decisional practice, the Commission concluded in both cases that the activities of integrators in air cargo services are limited, "*as their primary focus lies on the shipment of small packages and they only provide air cargo services to fill any remaining available capacity in their aircraft*".[244]

(188) The Commission has found in previous cases that the market for small package delivery services – defined according to weight and comprising consignments under 31.5 kg[245] – is the core door-to-door business of the integrators and constitutes a separate market from air cargo services and freight forwarding. Customers of small package delivery services have different requirements (in particular door-to-door transportation, assured transit time, track&trace) and expectations (reliability, security, global or at least EEA-wide coverage). As a result, carriers also handle the small package shipments differently. Heavier shipments typically require specific handling equipment (for example pallet jacks and forklifts) and special van/trucks for pick-up and delivery.[246]

7.2.1.4.2. Korean Air's views

(189) According to Korean Air, the vast majority of air cargo services providers compete with each other for the same business in so far as they all offer air transport of cargo services. Thus, air freight integrators and air cargo carriers would all be capable of transporting all types of goods.[247]

(190) In particular with respect to air freight integrators, Korean Air further submits that their business activities overlap with those of more traditional air cargo service providers because integrators transport all types of cargo and offer meaningful capacity to the overall market which they can flexibly increase whenever profitable. Moreover, air cargo service providers, including the Parties, have entered the segment of express shipment. According to Korean Air, air cargo service providers ultimately offer the same service as integrators by combining their air transport services with the door-to-door services from freight forwarders and therefore, integrators' capacities compete with the Parties' and other air cargo service providers' capacities for the same customers.[248]

(191) In its Responses to the Commission's Statement of Objections and Letter of Facts, Korean Air reiterates that the Parties and integrators compete on the same product market as they compete for the same customers. In Korean Air's view, this is also substantiated by the results of the Commission's market investigation. More importantly, for Korean Air, supply-side substitution is both effective and immediate, given that (i) the shipping of the product to the end customer does not alter based on whether the shipping services are integrated to the air cargo services or not, and (ii) it

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243 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 17; M.6570 – UPS / TNT Express, paragraph 18; M.5141 – KLM / Martinair, paragraph 27.

244 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraphs 20-22; M.6570 – UPS / TNT Express, paragraph 23-25.

245 31.5 kg being the estimated weight that can be handled by a single person. See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 78 and footnote 55; M.6570 – UPS / TNT Express, paragraphs 36-43 and 153-164.

246 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 79; M.6570 – UPS / TNT Express, paragraph 159-164.

247 Form CO, paragraph 208.

248 Response of Korean Air to the Article 6(1)(c) decision, paragraphs 35-50.

would take air cargo carriers little time and no significant investment to set up freight forwarding services.[249]

7.2.1.4.3. Commission assessment

(192) The Commission's market investigation has confirmed its previous decisional practice, according to which the integrators' primary focus lies on the shipment of small packages (or else door-to-door business), which is a separate market from air cargo services. The latter are only provided by integrators in order to fill any remaining available capacity in their aircraft.[250]

(193) First, most respondents to the Commission's market investigation replied that there is no demand-side substitutability between the services typically provided by air cargo carriers and the services of integrators in the sense that integrators do not compete on the same market as the Parties but rather follow a completely different business model.[251]

(194) In the first place, and contrary to Korean Air's submission in its Response to the Commission's Statement of Objections,[252] integrators themselves explain[253] that their product offering is totally different to that of air cargo carriers in terms of (i) the type of cargo transported, i.e. mainly small packages and documents, (ii) the service offered, namely a door-to-door service which is inherent to the integrators' business model in contrast to the airport-to-airport service of air carriers, (iii) the time commitment, as the integrators' services are time definite, and (iv) the customers targeted. […] integrators, […] confirmed that their main focus is their door-to-door business, while all strategic decisions are being made on this basis and not on the basis of the market for general air cargo services.[254]

(195) According to [an integrator],[255] integrators mainly transport parcels and documents as opposed to larger general cargo transported by dedicated freighter services and by airlines with belly space capacity in passenger flights. In addition, the integrators' pricing for their core door-to-door business is classically higher than air cargo carriers' pricing, further suggesting that the two services belong to different markets. To the extent there is some leftover capacity in its aircraft, which – according to [an integrator] – is "*rather the exception than the rule*",[256] air cargo services are indeed sold on the market for general cargo at lower rates. However, in such cases, [the integrator] does not give guaranteed shipment or delivery time in order to be able to always prioritise the loading of its core door-to-door business. Therefore, [the integrator's] focus is on its core door-to-door business, which [the integrator]

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249 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 114-146, and to the Commission's Letter of Facts, paragraphs 21-26.

250 See Case M.7630 – FEDEX / TNT EXPRESS, paragraph 20.

251 A customer: "*It is generally a different offering*" (ID 8004) and the majority of competitors and customers in response to questions C.A.7-C.A.8 of Questionnaire Q2 to cargo competitors and question C.A.6 of Questionnaire Q5 to cargo customers.

252 Response of Korean Air to the Commission's Statement of Objections, paragraphs 119 and 133-134.

253 Non-confidential minutes of the conference call with [an integrator]; Reply of an integrator to questions C.A.7-C.A.8 and D.B.B.3-2 of Questionnaire Q2 to cargo competitors (ID 8457); Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2 (ID 11438); Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2 (ID 11459); Non-confidential minutes of the conference call with [an integrator].

254 Response of [an integrator] to RFI 2 – […]; Response of an integrator to RFI 2, question 10.2 (ID 11438); Response of [an integrator] to RFI 2, questions 8 *et seq* (ID 11459).

255 […].

256 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

considers separately from the ancillary air cargo services. [The integrator] expects its ancillary air cargo services to represent less and less of its overall business in the future. In fact, [the integrator] does not provide any dedicated or scheduled flights for general cargo between Europe and South Korea, as it only considers it "*a filler product*", and therefore not relevant for its capacity and network planning decisions.[257]

(196) In the same vein, [an integrator] and [an integrator] do not consider themselves as competitors to the Parties and do not operate dedicated aircraft for general air cargo services. [An integrator][258] differentiates between airport-to-airport air cargo services, which is a special product to fill spare capacity, and its main door-to-door business. As [an integrator] explained "[the integrator] *focuses on providing a door-to-door service to its customers. The parties offer direct flights from Europe to South-Korea but do not offer door to door service.* [The integrator]*' business model therefore is different*".[259] In situations in which [the integrator] has spare capacity on its lanes, which – according to [the integrator] – is "*the exception rather than the rule*",[260] [the integrator] will indeed offer airport-to-airport services to the general cargo market. However, in such cases, "[the integrator] *would always prioritize its own express product with regard to the boarding priority on the flight*".[261]

(197) [An integrator][262] explained that it provides customers with time-definite delivery services for express letters, documents, packages, and palletized freight. Typically, the packages that [the integrator] handles in its small package business are 31.5 kg or less in weight. [The integrator's] small package business also handles high-value time-sensitive palletized shipments over 68 kg. [The integrator's] aircraft supports [the integrator's] small package business with a route network and flight operations that are optimized for it and not for general air cargo services. [The integrator] offers some limited air cargo services to third parties on a 'space available' basis, but priority is always given to [the integrator's] own small package business. As [the integrator] stated, *"[the integrator] cannot provide a meaningful comparison between its door to door cargo services and those of general airport to airport air cargo carriers because those services are completely different.* [The integrator] *does not view general air cargo carriers as operating in the same product space as* [the integrator]. *For example,* [the integrator]*'s small package business requires an extensive network for pick-up, delivery, and sortation of small packages. General air cargo airlines do not have such infrastructure and therefore cannot provide comparable service* […] *Accordingly,* [the integrator] *does not compare its pricing, service levels, delivery time, quality of service, or product characteristics to those of general air cargo carriers*".[263]

(198) In the second place, other air cargo carriers, competitors of the Parties, responding to the Commission's market investigation have widely confirmed that integrators compete on a different market, that of door-to-door delivery services of small packages and e-Commerce parcels.[264] In particular, providers of air cargo services

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257 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

258 Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2 (ID 11438); Non-confidential minutes of the conference call with [an integrator].

259 Response of [an integrator] to RFI 2, question 2.2 (ID 11438).

260 *Ibid*.

261 Non-confidential minutes of the conference call with [an integrator].

262 Response of [an integrator] to RFI 2 (ID 11459); Non-confidential minutes of the conference call with [an integrator].

263 Non-confidential minutes of the conference call with [an integrator].

264 Replies to questions C.A.7-C.A.8 of Questionnaire Q2 to cargo competitors; Responses to questions 35 and 36 of Phase II RFIs to cargo competitors.

differentiate between their own airport-to-airport business model and the integrators' door-to-door business model, on the basis of different cargo being transported, *i.e.* mostly small shipments with little weight, different pricing, different profile, different level of services in terms of time commitment and door-to-door delivery, as well as different costs, revenues and operations.[265] As further acknowledged by Korean Air in paragraphs 127-131 of its Response to the Commission's Statement of Objections, air cargo carriers do describe the two services as belonging to different business models and markets, albeit with some similarities mainly stemming from the limited airport-to-airport activities of the integrators.

(199) For example, as [a competitor] explained, "*integrators' business model is built around the express/parcel business, with high frequency, low flexibility network. Thus, would not directly be substitutable for network cargo carrier with a range of specific products catered for different operational requirements of various shipments*".[266] "*For network cargo carriers, the customer is a freight forwarder, with an ability to manage door-to-door transportation depending on the end customer requirements. Integrators do this themselves so their pricing will be different. Also, time sensitive shipments command a premium to guarantee on time delivery. This is an important service element of integrators*".[267] According to [a competitor], "[i]*ntegrators offer an all-in-one package including door to door service, documentation and possibly customs in their product. Air cargo service cannot offer this without the use of freight forwarders*".[268] [A competitor]further explained that "[s]*mall shipments which are being carried by airlines can be switched to integrators. But it is very small share of volume carried by airlines. Rather than that, these are totally different products and can not be switched*".[269] Moreover, [a competitor] noted that "*airport-to-airport air cargo services and door-to-door delivery services are different services serving different market segments. Generally speaking, door-to-door delivery services offered by integrators are priced much higher, coupled with higher service commitments to customers*".[270] [A competitor] also explained that integrators compete on a different market, that of door-to-door delivery services: "*Integrators' market is different market from ours – regular airline offering airfreight service*"; "*It is a different market – with different cost, revenue and operations. Not comparable*"; "*Different target groups, different prices and business model*".[271]

(200) Air cargo carriers responding to the Commission's market investigation have also pointed out the differences between their own customers and the integrators' customers. For example, [a competitor] explained that " [the competitor's] *customers include predominantly freight forwarders* […]. [The competitor] *never contracts directly with end customers. However, it sometimes deals with freight integrators such DHL Express, UPS and Fedex* [as customers]. *According to* [the competitor]*, air cargo carriers and freight integrators have a different business model. Freight integrators' core business is focused on parcels, packages and e-commerce products.*

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265 Response of a competitor to RFI 1, questions 35 and 36 (ID 11084); Response of a competitor to RFI 2 (ID 11132), question 36; Response of a competitor to RFI 1, question 36 (ID 11675); Response of a competitor to RFI 1, question 36 (ID 11755); Response of a competitor to RFI 1, questions 35 and 36 (ID 11106); Response of a competitor to RFI 1, question 35 (ID 11689); Response of a competitor to RFI 2, question 36 (ID 11863); Response of a competitor to RFI 2, question 36 (ID 11692); Non-confidential Minutes of the conference call with [a competitor].

266 Response of [a competitor] to RFI 2, question 37 (ID 11132).

267 Response of [a competitor] to RFI 2, question 36 (ID 11132).

268 Response of [a competitor] to RFI 2, question 37 (ID 11863).

269 Response of [a competitor]to RFI 2, question 37 (ID 11692).

270 Response of [a competitor] to RFI 1, question 36 (ID 11675).

271 Response of [a competitor]to RFI 1, questions 35-37 (ID 11689).

However, freight integrators occasionally offer their excess capacity (not used for their own business) on the market and, thus, they can also be in competition with cargo carriers".[272]

(201) In paragraph 119 of Korean Air's Response to the Commission's Statement of Objections, Korean Air argues that the Parties and other air cargo carriers contract with freight forwarders who offer door-to-door services to customers, eventually making the two services the same from their point of view. As evidence of this statement, Korean Air cites paragraph 27 of the non-confidential Minutes of the conference calls with [a competitor] and explains that "[the competitor] *and other air cargo carriers deliver cargo to freight forwarders, who, in turn, offer door-to-door services to end-customers*". In its entirety, the relevant paragraph that Korean Air cites reads as follows: "*As regards competition from integrators (such as FedEx, UPS or DHL),* [the competitor] *explained that integrators have a different business model than air cargo carriers as they focus on e-commerce and express services. They can also handle general cargo but this is not their core business. They normally do not handle any special cargo, such as outsized shipments. Furthermore, in contrast to air cargo carriers, they provide door-to-door services.* [The competitor] *and other air cargo carriers in contrast deliver cargo to freight forwarders, who, in turn, offer door-to-door services and deal with end-customers themselves. Integrators nevertheless offer their services on the air cargo transport market to freight forwarders when they have spare capacity and would then compete with other air cargo carriers, such as* [the competitor]*, in that respect. However, in that case,* [the competitor] *would see itself and other air cargo carriers to be at an advantage compared to integrators, as they are more experienced and better equipped when it comes to the handling of special cargo*".[273]

(202) In essence, [the competitor] has explained the exact opposite of what Korean Air claimed. In particular, [the competitor] explained that the air carriers' general air cargo services do not form part of the same market with the integrators' door-to-door services, as these are completely different business models targeting different customers (end customers *vs* freight forwarders). The integrators can then offer some of their capacity for general air cargo services, and therefore compete with the air carriers, but "*this is not their core business*".

(203) The differences in terms of customers targeted have also been explained by [an integrator]. The core small package delivery service represents a premium service with higher pricing due to the door-to-door delivery and the time commitment, addressed to "*thousands of customers with single (smaller) shipments*".[274] By contrast, the ancillary general air cargo services are addressed to freight forwarders and typically come at a lower quality of that of the Parties and other traditional air cargo carriers, given that (a) they will only be an *ad hoc* product that can only be booked a few weeks in advance, and (b) they will be on a deferred stand-by basis with longer lead times, due to boarding priority given to the core-door-to-door business.[275]

(204) In the third place, the majority of customers of air cargo services replying to the Commission's market investigation have widely confirmed the demand-side differences between the services offered by the Parties and other general air cargo

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272 Non-confidential Minutes of the conference call with [a competitor].

273 Non-confidential Minutes of the conference calls with [a competitor].

274 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

275 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

carriers on the one hand, and integrators on the other.[276] In Korean Air's view, the Commission's market investigation has confirmed that there is some competitive constraint exerted on the Parties by integrators, and therefore the Commission's presentation of results is selective and the integrators' offering should be considered part of the same market of air cargo services altogether.[277] On the contrary, the Commission clarifies that this section of the product market definition rather focuses on pointing out the existence of two separate markets, those of (i) airport-to-airport air cargo services, which is the main focus market of the Parties, and (ii) door-to-door small package delivery services, which is the main focus market of the integrators. At the same time, the integrators' limited airport-to-airport air cargo activities are included in the same market of the Parties, and the limited extent to which integrators do exert some competitive pressure to the Parties is taken into account for the competitive assessment of the present case. The Commission uses the following examples of customers, as firstly cited by Korean Air, to illustrate and clarify the dynamics between the integrators' product offering and the Parties' (and other traditional air cargo carriers') product offering:

(a) [A customer] has indeed indicated that integrators compete closely with air cargo carriers. However, in response to a small but significant and non-transitory increase in price (5-10%), [a customer] would not switch to integrators. In addition, [a customer] considers purchasing capacity on flights by integrators only "*as a back-up option to other air carriers*".[278]

(b) In the same vein, [a customer] would not switch to integrators in response to a small but significant and non-transitory increase in price (5-10%) and does not purchase any capacity from integrators.[279]

(c) [A customer]considers purchasing capacity on flights by integrators only "*as a back-up option to other air carriers*".[280]

(d) [A customer] would not switch to integrators in case of a small but significant and non-transitory increase in price (5-10%) because "[i]*ntegrators prioritize space to their own courier service and* […] *general cargo* […] *by forwarders is often suffering offloads, partial shipments and other irregularities*". In fact, [the customer] does not even purchase capacity on flights by integrators.[281]

(e) [A customer] explained that integrators compete with air cargo carriers only to a very limited extent because they offer most of their capacity for "*express cargo*" and only limited capacity for general cargo.[282]

(f) [A customer] do not consider integrators as competitors to the Parties and they do not use their services.[283]

(g) [A customer] may see the services as interchangeable but nevertheless explain that they only purchase integrators' capacity "*from time to time*".[284]

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276 Replies to question C.A.7 of Questionnaire Q5 to cargo customers, in combination with their replies to questions D.B.B.3 and/or D.B.B.4 of Questionnaire Q5 to cargo customers.

277 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 120-126 and 145, and to the Commission's Letter of Facts, paragraphs 23-26.

278 [A customer's] reply to questions C.A.7, D.B.B.3 and D.B.B.4 of questionnaire Q5 to cargo customers (ID 7835).

279 [A customer's] reply to questions C.A.7 and D.B.B.4 of questionnaire Q5 to cargo customers (ID 8444).

280 [A customer's] reply to question D.B.B.4 of questionnaire Q5 to cargo customers (ID 8682).

281 [A customer's] reply to questions C.A.7 and of questionnaire Q5 to cargo customers (ID 8606).

282 [A customer's] reply to questions C.A.7 and D.B.B.3 of questionnaire Q5 to cargo customers (ID 11654).

283 [A customer's] reply to question D.B.B.3 of questionnaire Q5 to cargo customers (ID 8391).

(h) [A customer] explained that integrators are only an alternative to the general air cargo services of the Parties for spot rates. "*While this means that the prices for these spot rates are considerably cheaper than for those of any other air cargo carriers, this also means that their volumes are less predictable and tied to a specific flight. In the experience of* [the customer]*, integrators do sometimes leave goods behind in favour of their own door-to-door express cargo. However, this is less likely to happen outside of the peak periods (such as Christmas)*".[285]

(i) As pointed out by Korean Air,[286] a specific customer uses the services of integrators when they are available on an opportunistic basis. This specific customer's relevant quote (which Korean Air only cites in part) reads as follows: "*Integrators always prioritise their door-to-door business and therefore when freight forwarders book some of the integrators' capacity, they know (and their clients know) that their cargo will stay behind in order for the integrators' door-to-door business to fill the aircraft first. Overall,* [this specific customer] *would indeed book some of the integrators' capacity on an opportunistic basis (i.e., whenever available and for non-time-sensitive customers) but this cannot be considered an alternative to the Parties' offering because (i) there is not a lot of capacity offered for general cargo, and (ii) the quality of the service and lead times are much lower.* [This specific customer's] *clients themselves would not switch to integrators either in case* [this specific customer] *had to increase its prices due to an increase of price in the air cargo services market. The reason for that is that the integrators' door-to-door services only concern smaller packages and parcels and cannot really accommodate the needs of end cargo customers, such as the ones of* [this specific customer]".[287] Seen in its entirety, this customer's explanations are in line with the Commission's finding that integrators' main focus is on their door-to-door delivery of smaller packages, which is a different in nature market than the airport-to-airport transport of general cargo. To the extent integrators have some spare capacity available, they offer it on the latter market, where they compete with the Parties.

(j) [A customer] may have replied that they would switch to integrators in case of a small but significant and non-transitory increase in price (5-10%) but at the same time explained that they do not at all purchase capacity on flights by integrators and that in any event integrators compete with other air cargo carriers only to some extent.[288]

(k) [A customer] noted that customers are just interested in capacity. However, at the same time, [the customer]considers integrators to compete only to some extent with air cargo carriers, while it does not at all purchase capacity on flights by integrators.[289]

(l) Further, as acknowledged by Korean Air in paragraph 125 of its Response to the Commission's Statement of Objections, other customers, such as […], have made it even more explicit that integrators compete with air cargo carriers only to a limited extent. And finally, as cited by Korean Air itself in paragraph 126 of its Response to the Commission's Statement of Objections, [a customer] regards

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284 [A customer's] reply to question D.B.B.4 of questionnaire Q5 to cargo customers (ID 8063).

285 Non-confidential Minutes of the conference call with [a customer].

286 Response of Korean Air to the Commission's Statement of Objections, paragraph 124.

287 Non-confidential Minutes of the conference call with [a customer].

288 [A customer's] reply to questions C.A.7, D.B.B.3 and D.B.B.4 of questionnaire Q5 to cargo customers (ID 7863).

289 [A customer's] reply to questions C.A.7, D.B.B.3 and D.B.B.4 of questionnaire Q5 to cargo customers (ID 7979).

integrators as an alternative to the Parties but only "*depending on weight of goods*" and "*especially for express deliveries*".[290]

(m) To illustrate further, […], a global freight forwarder, explained that they do not contract with integrators and the Parties do not compete with them for the services that [the freight forwarder] would be interested in. In their view, "*integrators have a different business model as they do in principle not offer capacities on the general air cargo market but focus on their own customers and mainly transport small shipments below 30 kg.* [The freight forwarder] *in contrast deals with large boxes and pallets. In low seasons, however, integrators might also try to sell spare capacities on their flights to customers on the general air cargo market. In that case,* [the freight forwarder] *would, however, still prefer not to buy capacities from integrators as* [the freight forwarder] *considers integrators as less reliable partners due to the fact that they usually prioritize their own shipments: If integrators are able to fill their planes with cargo of their own customers, they would usually leave the cargo of other customers, such as* [the freight forwarder]*, behind*".[291] In the same vein, another customer, […], added that "[f]*orwarders don't use integrators if they don't have to. They are considered competitors (all integrators are also forwarders). Furthermore air cargo will always have low priority compared to parcels/express cargo, meaning a low service level. If the rate difference is large enough or no other carrier can match the transit time, they will use it of course*".[292]

(205) The differences in the two business models between the Parties' and other general air cargo carriers' airport-to-airport services and the integrators' door-to-door services were further substantiated by end cargo customers, *i.e.* customers of freight forwarders. In particular, while [a customer] acknowledges that they may use integrators for some small or urgent items (as part of their high-quality door-to-door services), it would be highly unlikely that they would switch to an integrator for their general cargo volumes due to the overall delivery quality and services provided. [The customer] added that integrators generally compete for the transport of smaller cargo, while air cargo carriers mostly compete for larger cargo.[293] Another major end customer also submitted that integrators do not provide similar services to those of the Parties.[294]

(206) On the basis of the above considerations, the Commission considers that there is no demand-side substitution between the market for air cargo services, where the Parties mainly compete, and the market for small package door-to-door delivery services, where integrators mostly compete.

(207) Second, the Commission's market investigation has revealed that there is no supply-side substitutability between the general air cargo carriers' airport-to-airport services on the one hand, and the integrators' door-to-door services on the other hand. In particular, [integrators], have confirmed that even though they do offer general air cargo services to a limited extent, their strategic decisions are not based on those and they do not intend to change their focus from their core door-to-door business to the

290 [A customer's]' reply to question D.B.B.4 of questionnaire Q5 to cargo customers (ID 9305).
291 Non-confidential minutes of the conference call with [a customer].
292 Reply of [a customer] to question C.A.7-2 of Questionnaire Q5 to cargo customers (ID 8244).
293 Response of [a customer] to RFI on Integrators, questions 1-3 (ID 10918).
294 Response of [a customer] to RFI on Integrators, question 3 (ID 10884).

air cargo services.[295] As explained above, the integrators' pricing for their core door-to-door business is classically higher than the air cargo carriers' pricing for their airport-to-airport services, and therefore the cost and revenue structure makes it far less appealing for door-to-door service providers, such as the integrators, to use their capacity on the airport-to-airport market.

(208) To illustrate, contrary to Korean Air's views in its Responses to the Commission's Statement of Objections and Letter of Facts,[296] [integrators] agreed that there is no reason to consider any supply-side substitutability: (i) "[an integrator] *only grows on the basis of demand for door-to-door and not for general cargo*", "[an integrator] *explained that its core door-to-door business has always been the basis of its network planning and [the integrator's airport to airport service] contribution on* [the integrator]*'s flights is expected to be less and less over time, assuming underlying growth of its door-to-door business*";[297] (ii) "[The integrator's airline]*, supports* [the integrator's] *small package business.* [The integrator's airline] *route network and flight operations are optimized for its small package operations.* [The integrator's airline] *does offer [limited] air cargo services to third parties on a space available basis. Third party air cargo (and air cargo for* [the integrator's] *freight forwarding subsidiary) is only carried when there is space available on a* [the integrator's airline] *plane [priority is given to* [the integrator's] *small package business]*";[298] (iii) "*Our* [integrator's aircraft] *flights to and from South Korea do not have spare capacity on a structural basis. We do sometimes open up a special product to fill spare capacity and to cope with seasonality in our business. This product can be used by freight forwarders but is not a standard network product, which means it is airport-to-airport only and not door-to-door. At the moment our CDG to CAN to ICN is operating at full capacity. In sum, we are very unlikely to be able to respond to higher prices caused by the proposed transaction by opening significant additional capacity*".[299]

(209) On the other hand, air cargo carriers are not able to switch to door-to-door delivery services in the short term and without incurring significant additional costs or risks. The majority of air cargo carriers that expressed a view on the issue has confirmed that starting providing comparable services to those provided by integrators would not be effective and immediate, given that it would entail significant changes, investment and time.[300]

(210) In any event, whether the Parties and/or other air cargo carriers have entered the market of the integrators' business activities, as Korean Air argues in its Responses to

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295 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2 (ID 11438); Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2 (ID 11459).

296 Response of Korean Air to the Commission's Statement of Objections, paragraphs 118 and 140-143; Response of Korean Air to the Commission's Letter of Facts, paragraph 22. In the same paragraphs, Korean Air uses the integrators' transportation of Covid19 vaccines from the EEA to South Korea as a concrete example of integrators competing with air cargo carriers. However, having a chance to comment on this in its Response to question 45 of RFI 2 (ID 11459), [an integrator] confirmed that shipping Covid19 vaccines was actually part of its small package (door-to-door) business, and not part of its rather exceptional airport-to-airport cargo transportation.

297 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

298 Response of [an integrator] to RFI 2 (ID 11459).

299 Response of [an integrator] to RFI 1 (ID 11447).

300 Response of [a competitor] to RFI 2, question 38 (ID 11132); Response of [a competitor] to RFI 1, question 38 (ID 11675); Response of [a competitor] to RFI 1, question 38 (ID 11106); Response of [a competitor] to RFI 2, question 38 (ID 11863).

the Commission's Statement of Objections and Letter of Facts,[301] can only (if at all) serve as evidence of general air cargo carriers competing against the integrators in the latter's market for door-to-door small package delivery services. In other words, it is not relevant for the market that is the focus of the current investigation, *i.e.* the airport-to-airport air cargo services, where the Parties' activities overlap and where they compete strongly.

(211) Especially with regard to general air cargo carriers entering "*the segment of express shipment*", as Korean Air submits, even the Parties themselves do not have "*a sizeable presence in the segment*". In 2019, Korean Air's share of sales related to any express / parcel / e-commerce business was [0-5]% from South Korea to the EEA and [5-10]% from the EEA to South Korea, whereas Asiana's respective share was [0-5]% from South Korea to the EEA and [10-20]% from the EEA to South Korea.[302] Both Parties' shares have gotten higher during Covid19 but as the Parties submit, "*as the air cargo sector is now returning to the pre-Covid situation, […]*.[303] In any event, however, the Commission notes that there is still the inherent door-to-door element missing between the two services. This point was further substantiated by [an integrator], which noted that "*in recent years general cargo carriers also offer express services, mainly entailing the guarantee of delivery by a certain day, within their product range. However, what would still differentiate the airline carriers from the integrators would be the door-to-door service that is inherent in the business model of the latter*".[304] Moreover, [an integrator] explained that "*the unique selling point of integrators is that the entire journey of a single package is done across the same network, which is owned and operated by the integrator. A one-stop-shop with end-to-end tracking capabilities*", further adding that unless air cargo carriers can offer door-to-door last-mile pick-up and delivery services, they cannot compete on the same market with integrators.[305]

(212) On the basis of the above considerations, the Commission's market investigation has revealed that there is no supply-side substitutability on either side; neither integrators are willing to switch to airport-to-airport air cargo services due to the cost structure of their own market, nor air cargo carriers are able to switch to door-to-door delivery services in the short term and without incurring significant additional costs or risks.

(213) Third, the Commission notes that the above considerations are also in line with considerations made by the Parties in their internal business documents.

(214) In the first place, and further corroborating the supply-side considerations made above, Korean Air assesses the door-to-door services provided by integrators as a separate market, where it aspires to enter by using the capabilities of its group company Hanjin ("*first mile and last mile solutions*" / "*mutual capabilities*" / "*by expanding the existing port-to-port transportation service*"), and therefore implying that its airport-to-airport service is not in itself enough to compete against the business model of integrators.[306] The various steps considered further suggest that supply-side substitution is far from being effective and immediate. In particular, Korean Air needs to invest in "*long-term management system*", which includes reservation/tracking, in what is called a "*phased expansion*" in order to reach "*integrator-level integration*

301 Response of Korean Air to the Commission's Statement of Objections, paragraphs 116-117 and 137-139; Response of Korean Air to the Commission's Letter of Facts, paragraph 22.

302 Form CO, tables 14-17.

303 Form CO, footnote 97.

304 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

305 Response of [an integrator] to RFI 2, questions 4.3 and 2.3 (ID 11438).

306 Response of Korean Air to RFI 14, M. 10149 - KE - OZ - Annex RFI14.Q5c.1.

services".[307] The fact that Korean Air's (and any other air cargo carrier's) airport-to-airport air cargo services cannot in themselves be comparable to the integrated door-to-door services provided by integrators, is further corroborated by Korean Air's efforts to win end customers, such as […], that can only be realised through Hanjin's network and door-to-door services. It is Hanjin bidding for […]'s volumes on the routes between Europe and South Korea and not Korean Air with its airport-to-airport air cargo services.[308]

(215) In the second place, in its internal documents, Asiana seems to be observing integrators as […],[309] while it also acknowledges that integrators, […], are focused on high volumes of smaller packages.[310]

(216) In the third place, Asiana considers that there is a separate market for e-Commerce deliveries, which has different market characteristics. In the Figure 1 below, Asiana observes […]. Asiana adds that one of its core market characteristics is the "[…]", […].

Figure 1: [Figure redacted]

Response of Asiana to RFI 10, M.10149 - RFI 10 – […].

7.2.1.4.4. Conclusion

(217) In light of the above, for the purposes of the present Decision, the Commission considers that the Parties' airport-to-airport air cargo services and the integrators' core door-to-door small package delivery services between Europe and South Korea belong to separate product markets. However, the limited extent to which integrators offer spare capacity on the market for air cargo services will be taken into consideration in the competitive assessment of the present Transaction (see sections 8.11.3.2 and 8.12.3.2 below).

7.2.1.5. Substitutability between direct and indirect flights with and without transhipment

(218) Air cargo can be transported in direct flights (which cover non-stop flights and multi-stop flights without transhipment, where the cargo stays on the same plane during the stop-over) and in indirect flights (or transhipment flights, where the cargo is moved from one plane to another during the stop-over).

7.2.1.5.1. Commission's decisional practice

(219) 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.[311]

307 *Ibid*.

308 Response of Korean Air to RFI 14, M.10149 - KE - OZ - Annex RFI14.Q5a.3; M.10149 - KE - OZ - Annex RFI14.Q5a.6.

309 Response of Asiana to RFI 10, RFI 10- Part 01 […].

310 Response of Asiana to RFI 10, RFI 10- Part 01 […]; RFI 10- Part 01 […].

311 M.5841 - Cathay Pacific Airways/ Air China/ ACC, paragraph 15; M.5141 - KLM/Martinair, paragraph 43; M.5747 - Iberia/British Airways, paragraph 37.

7.2.1.5.2. Korean Air's views

(220) The Parties agree with that approach and consider that customers' choice for a specific air carrier or connection does mainly rely on price, and that therefore the number of stops and/or duration of the flight[312] is irrelevant for customers.[313]

7.2.1.5.3. Commission assessment

(221) The Commission's investigation indicates that non-stop flights, multi-stop flights without transhipment and transhipment flights are substitutable to a certain extent. Many respondents found that customers would switch between the services being confronted with a permanent price increase of 5-10% while only a minority of respondents found that customers would not switch.[314] One competitor explained in this context: *"[t]his is common practice. Customers will consider this option based on price, journey time, solution offered and commodity type."*[315]

(222) That said, the market is differentiated because non-stop flights, multi-stop flights and transhipment flights differ in the quality of service offered to the customer and different customers value their service levels in different ways.

(223) This is reflected in the responses to the Commission's market investigation where most respondents considered that the substitutability ultimately depends on a variety of factors, for instance on the nature of the goods transported, the urgency and transit time required, the rates compared to the service level offered, or the type of customer.[316] Against that background, respondents explained that many customers prefer direct services (non-stop flights and multi-stop flights without transhipment). In particular, direct flights appear to be more suitable in certain cases in which the total transport time should be as short as possible such as for very time-sensitive products (such as e.g. animals, perishable goods or pharmaceuticals). More generally, however, many customers would avoid services with transhipment for risk of delays, damage or loss of cargo. The following quotes[317] illustrate these considerations:

> *"[customer] explained that even though there is a possibility to fly to ICN indirectly through Hong Kong (i.e. FRA-HKG-ICN using Cathay Pacific) it does not prefer this alternative as compared to direct flights between EU and Korea. According to [customer], even though such transit does not entail customs clearance or significant formalities, transhipment requires good operation control for re-directing the goods as even a two-hour delay might make a difference. The risk of delays due to mistakes at the transit hub (e.g. cargo*

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312 According to the Parties the duration of non-stop flights in the Korea - EEA trade was equal to approx. 11 hours in 2019, while in 2022, due to Korean Air and other airlines avoiding the airspace of Russia, the duration of non-stop flights is approx. 13 hours. The duration of non-stop flights in the EEA - Korea trade was equal to approx. 10 hours in 2019, while in 2022, due to Korean Air and other airlines avoiding the airspace of Russia, the duration of non-stop flights is equal to approx. 11 hours, see Form CO, paragraph 241 f.

313 Form CO, paragraph 240; Response to the 6(1)(c) Decision, paragraph 53 and 55; Response to the Statement of Objections, paragraph 154 f.

314 Replies to questions C.A.1 and C.A.2 of Questionnaire Q2 to cargo competitors; replies to questions C.A.1 and C.A.2 of Questionnaire Q5 to cargo customers. Non-confidential minutes of the call with [a competitor].

315 [A competitor] in response to Question C.A.1 of the Questionnaire 02_Competitors - Air cargo transport services (ID 9522).

316 Replies to questions C.A.1 and C.A.2 of Questionnaire Q2 to cargo competitors; replies to questions C.A.1 and C.A.2 of Questionnaire Q5 to cargo customers. Non-confidential minutes of the call with [an integrator].

317 For further feedback on this issue see also non-confidential minutes of the call with [a customer]; non-confidential minutes of the call with [an integrator].

getting lost in transhipment of cargo getting loaded on wrong flights) or due to capacity constraints is very high. As a result, in order to avoid such situations which might negatively affect [customer]'s performance vis a vis its customers, [customer] primarily chooses direct flights."[318]

"[…], what distinguishes indirect flights (with transhipment) from direct flights according to [customer] is the significantly higher risk of facing problems with the handling of cargo (e.g. in the Middle Eastern airports) such as the risk of goods getting lost or damaged or the risk of delays during the transhipment phase that could potentially result in missing connecting flights."[319]

"[competitor] noted that direct flights may be preferable for customers, compared to other options, such as transhipment. However, [competitor] highlighted that transit time is not the sole and most important element that factors in before entering an agreement with a carrier. Direct flights are superior to transhipment when it comes to time-sensitive cargo due to the temperature control requirement. […] Therefore, transhipment is also a viable alternative when it comes to general cargo, however to a lesser degree for specialized or time- sensitive cargo."[320]

"Transhipment cargo via cargo hubs increases the travel time due to unloading and loading processes. Such routings are less attractive for time critical products compared to direct services"[321]

"Customers will rather not consider indirect cargo transportation with transhipment of cargo which is time critical or for products like Cool, Avi, PER, Pharma/cool as a close substitute. For other cargo they might consider this as a substitute. Transhipments always face the risk of operational problems at the stopover point. Whether a customer considers an indirect flight as a close substitute to a direct flight, very much depends on the fact, how much longer an indirect transportation requires."[322]

"[f]or fresh perishables a non-stop route is preferred, but stopover flights are also being used/considered as a substitute if prices are in balance with the options / the comparisons."[323]

(224) The preference for flights without transhipment is also reflected in the fact that direct flights represent a high and stable share of at least around two-thirds of the air cargo transport volumes on the routes between Europe and South Korea while flights with transhipment represent only around one-third of air cargo transport volumes at most, as set out in Table 7 and Table 8.

318 Non-confidential minutes of the call with [a customer].
319 Non-confidential minutes of the call with [a customer].
320 Non-confidential minutes of the call with [a competitor].
321 Reply by [a competitor] to question C.A.2 of Questionnaire Q2 to Cargo competitors (ID 9508).
322 Reply by [a competitor] to question C.A.2 of Questionnaire Q2 to Cargo competitors (ID 9623).
323 Reply by [a customer] to question C.A.1 of Questionnaire Q5 to Cargo customers (ID 8682).

Table 7 - Market size (in tons) for all flights and direct flights on the route Europe – South Korea

	2018	**2019**	**2020**	**2021**
All flights	[…]	[…]	[…]	[…]
Direct flights	[…]	[…]	[…]	[…]
% of direct flights	[60-70]%	[60-70]%	[70-80]%	[70-80]%

Source: Form CO, Annex QP10.Q28.1

Table 8 - Market size (in tons) for all flights and direct flights on the route South Korea – Europe

	2018	**2019**	**2020**	**2021**
All flights	[…]	[…]	[…]	[…]
Direct flights	[…]	[…]	[…]	[…]
% of direct flights	[70-80]%	[60-70]%	[70-80]%	[70-80]%

Source: Form CO, Annex QP10.Q28.1

(225) Against that background, the Commission considers it appropriate, on a conservative basis, to assess the effects of the Transaction on the overall market for air cargo services, not distinguishing separate product markets for direct (non-stop and multi-stop without transhipment) and transhipment flights. Nevertheless, the Commission will take the differentiated nature of that product market into account in its competitive assessment, namely the different service proposition that direct and transhipment flights offer to customers.

7.2.1.6. Substitutability between scheduled / regular flights and unscheduled / charter flights

7.2.1.6.1. Commission's decisional practice

(226) In the context of air transport services, the Commission has previously considered[324] that most of the services offered by charter companies are not in the same market as scheduled services. Charter flights, as opposed to scheduled flights, are usually defined as taking place outside normal schedules, normally through a hiring arrangement with a particular customer. However, the Commission has left open whether a certain part of charter services should form part of the same market due to being available for customers on the open market.

(227) In the context of air cargo services, the Commission has also assessed overlaps in charter services separately.[325]

7.2.1.6.2. Korean Air's views

(228) In its submissions, Korean Air seems to be including all unscheduled flights, *i.e.* both air cargo carriers' extra flights and charter flights, in the same product market with scheduled cargo operations.[326]

(229) In its Responses to the Commission's Statement of Objections and Letter of Facts, Korean Air maintains that unscheduled/charter flights do not have an "exceptional"

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324 See Cases M.9287 – Connect Airways / Flybe, footnote 266; M.8964 – Delta / Air France-KLM / Virgin Group / Virgin Atlantic, paragraphs 64-68; M.6663 – Ryanair / Aer Lingus III, paragraphs 418 *et seq*.

325 See Case M.8361 – Qatar Airways / Alisarda / Meridiana, footnote 7.

326 Form CO, Tables 160 and 161.

character but form an integral part of the market, albeit to a lesser extent than scheduled flights.[327]

7.2.1.6.3. Commission assessment

(230) With regard to charter cargo flights, the Commission considers that they mostly represent a different market segment because (i) they are only offered on an opportunistic basis and therefore customers cannot rely on them for their entire demand, (ii) they are typically booked through a hiring arrangement with a particular customer, thus other customers do not have access to their capacity, and (iii) they have different pricing.[328]

(231) On the demand side, customers replying to the Commission's market investigation explained that due to their higher pricing, charter cargo flights are mostly used exceptionally, either for a specific big project with high volumes where the customer would in any event book the entire capacity of the aircraft or during the Covid19 pandemic due to the irregularities it brought to the market.[329] As one freight forwarder, customer of the Parties, explained, "[c]*harter flights are much more expensive than commercial scheduled flights and are therefore not a substitute*" for the latter.[330] Other customers noted that charter cargo flights come at considerably higher rates and therefore it only makes sense to book them for large volumes that need to be moved at once or for specific large projects. In such case, the customer would then need to book the entire aircraft for its own needs.[331] Finally, according to one customer, "*charter flights* [are] *an entirely different market and business*".[332]

(232) On the supply side, air cargo carriers also confirmed that they provide charter cargo services only (if at all) in exceptional situations, when there is a specific demand by a customer, in which case the customer must book the entirety of the aircraft capacity.[333] As explained by [a competitor], "[c]*harter fligts only make sense if the aircraft capacity is fully used by one customer. Scheduled and non-scheduled markets are not the same*".[334] [The competitor] raises additional supply-side substitution considerations with regard to differences in the business model between carriers providing scheduled services and carriers offering unscheduled and charter flights: "*Although* [the competitor] *would have the ability to operate unscheduled flights, its business model is mainly built around scheduled flights.* […] [The competitor]

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327 Response of Korean Air to the Commission's Statement of Objections, paragraphs 704-710; Response of Korean Air to the Commission's Letter of Facts, paragraphs 27-29.

328 Replies to question C.A.3-2 of Questionnaire Q2 to cargo competitors; Replies to question C.A.3-2 of Questionnaire Q5 to cargo customers; Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, questions 39-40 and 44 (ID 11863); Response of [a competitor] to RFI 2, question 42 (ID 11680); Response of [a competitor] to RFI 1, questions 38-40 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

329 Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

330 Non-confidential minutes of the call with [a customer].

331 Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

332 Non-confidential minutes of the call with [a customer].

333 Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, question 40.1 (ID 11863).

334 Reply of [a competitor] to question C.A.3-2 of Questionnaire Q2 to cargo competitors (ID 9623).

considers charter flights rather as another business in which other operators are specialised".[335] In the same vein, [another competitor] submits that it operates charter flights (but to date none from South Korea) on a rather exceptional basis and typically with the entire capacity booked by a single customer.[336] [The competitor] has then further explained that "*infrequent unscheduled operations (i.e., Charters) would have a specific demand driver behind them and would be considered as a separate business segment from the customers using frequent scheduled services*".[337]

(233) As regards other unscheduled flights operated by air cargo carriers additionally to their usual schedule and which Korean Air claims to be part of the same market[338], these have also not been widely confirmed as being regularly offered on the market.[339] However, to the extent they are indeed offered to freight forwarders on the open market for air cargo services, they should form part of the same market as scheduled operations. As a customer explained, "*unscheduled flights are not something that should be viewed as a regular part of the market, as it is an option on the side, that may or may not be offered each time.* [The customer] *noted that Korean Air does offer unscheduled flights, which* [the customer] *indeed uses*".[340]

(234) On the basis of the above considerations, for the purposes of the present decision, the Commission considers that the question of whether all charter cargo flights should be part of the same market, irrespective of whether they are booked by single customers or spare capacities are also offered on the open market, can be left open, as the Transaction would give rise to a significant impediment to effective competition even in the wider market comprising of all scheduled and unscheduled / charter services. With regard to unscheduled additional flights of air cargo carriers in particular, these should form part of the same market as scheduled services, to the extent that they are offered and made accessible to customers on the open market.

7.2.2. Relevant Geographic Market

7.2.2.1. Commission's decisional practice

(235) 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.[341] 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.

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335 Non-confidential minutes of the call with [a competitor].

336 Non-confidential minutes of the call with [a competitor].

337 Response of [a competitor] to RFI 2, question 42 (ID 11132).

338 Response to the Statement of Objections, paragraph 107 f.; Response to the Letter of Facts, paragraph 28.

339 Response of [a competitor] to RFI 2, question 42 (ID 11132); Response of [a competitor] to RFI 2, question 6.4 (ID 11863); Response of [a competitor] to RFI 1, question 6 (ID 10676); Response of [a competitor] to RFI 1, question 9.2 (ID 11203); Response of [a competitor] to RFI 1, question 9 (ID 11084); Response of [a competitor] to RFI 1, question 6.4 (ID 11106); Response of [a competitor] to RFI 1, question 12.1 (ID 11689); Response of [a competitor] to RFI 1, question 21 (ID 11626); Response of [a competitor] to RFI 1, question 38 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer] […].

340 Non-confidential minutes of the call with [a customer] […].

341 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.

(236) 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[342] or Asia[343]), the Commission in contrast found that the catchment area should be limited to the countries of destination.[344]

(237) As regards air cargo transport between Europe and Asia specifically, the Commission analysed the markets in past cases on a continent (Europe)-to-country basis. The fact that the respective Asian countries where considered as separate geographic markets in the Commission's previous decisions was mainly due to complicated customs facilities, insufficient infrastructure and restricted air feed capacity between Asian countries.[345]

7.2.2.2. Korean Air's views

(238) As regards the European end of the route, Korean Air agrees with the Commission's practice that the geographic scope of an airport competing against airports in Europe should not be limited to the country in which the airport is located but should be considered as the entire continent of Europe.[346] According to Korean Air this is because Europe has a well-developed land transport network, and it is easy to tranship between airports.[347]

(239) In contrast, as regards the South Korean end of the route, Korean Air considers that the geographic market should not cover Asia as a whole continent, but rather the region of East Asia comprising South Korea, China, Japan, Hong Kong and Taiwan.[348]

(240) In that respect the Parties refer among others to the Commission's decision in *IAG/ BMI*, where the Commission had considered that the geographic scope of the market could be wider than national covering Saudi Arabia and neighbouring countries or even wide enough to cover the whole Middle Eastern region because of recent improvements of the local road networks and free movement agreements entered into by some countries of that region.[349] Against that background, Korean Air states that the geographic scope of the market has to be analysed on a case-by-case basis[350] and is of the opinion that in the present case a wider catchment area including not only South Korea as a country but East Asia as a region should be covered by the geographic market, for the following reasons[351]:

(241) First, Korean Air is of the opinion that the major East Asian airports are significant transhipment hubs for air cargo.[352] In that respect Korean Air claims that among Korean Air's volumes bound for Europe in 2018 and 2019, only [30-40]% originated from Korea, while [40-50]% originated from China and [10-20]% from Japan. Among the volumes from Europe, the volumes finally destined to Korea accounted for

342 M.5403 – Lufthansa/BMI, paragraph 18.
343 M.5841 - Cathay Pacific Airways/ Air China/ ACC, paragraph 13.
344 M.5141 – KLM/ Martinair – paragraphs 37 – 39; M.5440- Lufthansa/ Austrian Airlines, paragraph 30.
345 For Hong Kong: M.5841 - Cathay Pacific Airways/ Air China/ ACC, paragraph 13; for Asia in general: M.5141 – KLM/Martinair, paragraph 37 and M.5440- Lufthansa/ Austrian Airlines, paragraph 30.
346 Response to the Statement of Objections, paragraph 164; Response to the Letter of Facts, paragraph 30.
347 Form CO, paragraph 262; Response to the 6(1)(c) Decision, paragraph 61, 65; Response to the Statement of Objections, paragraph 162 and 165.
348 Form CO, paragraph 266 f. Response to the 6(1)(c) Decision, paragraph 69; Response to the Statement of Objections, paragraph 169; Response to the Letter of Facts, paragraph 30 f.
349 Case M.6446 - IAG/BMI, paragraph 95.
350 Response to the 6(1)(c) Decision, paragraph 69.
351 Form CO, paragraphs 262 f.
352 Form CO, paragraphs 274, 276 f.

approximately [60-70]% to [70-80]%, while the remaining [30-40]% to [40-50]% were destined to China, Japan and other Asian countries.[353]

(242) Second, according to Korean Air, the fact that their customers choose their air cargo shipments to be transhipped in Korea even though they could choose alternative cargo carriers that operate non-stop flights between Europe and the East Asian country in which the cargo originates, shows that transportation on the Korea-Europe route is from a demand-side perspective largely substitutable to transportation on the routes between other East Asian countries and Europe and vice-versa.[354]

(243) Third, in the Parties' view, the hub airports in East Asia compete with one another for cargo originating outside of the East Asian region.[355] In that respect Korean Air claims that if the Parties were to increase cargo rates post-Transaction, the inbound/outbound volumes would rather be transhipped in Japan, China, Hong Kong or Taiwan on their way to Europe instead of ICN and vice versa.[356] Accordingly, the Parties claim that similar to the Commission's findings in previous airline cases, the geographic scope of an airport competing against airports in East Asia should not be limited to the country in which the airport is located but should be considered as the entire East Asian region.[357]

(244) Fourth, Korean Air is of the opinion that transportation on the South Korea-Europe route is largely substitutable to transportation on the East Asia-Europe route and vice-versa from a supply-side perspective. According to Korean Air this is mainly due to the fact that Korean Air's capacity out of South Korea is used not only for cargo from South Korea but also for cargo from China and Japan and others to a lesser extent to fill their aircraft since the cargo that originates from Korea is not sufficient to sustain the Parties' operations. According to the Parties, Korean Air therefore actively competes for transhipment cargo sales on the East Asia - Europe route which accounts for a significant portion of Korean Air's sales.

(245) Fifth, Korean Air claims that sea transportation infrastructure is highly developed in East Asia to connect the various countries which are also mutual trading partners. According to Korean Air, entities at which the goods originate, also known as consignors, ("shippers") in China, Japan and Taiwan use sea transportation to Incheon Port from different ports in East Asia. Thus, cargo bound for Europe originating all over East Asia is shipped via Incheon Port, and subsequently transported by air to Europe or elsewhere. According to Korean Air, approximately [10-20]% of the transported volumes from South Korea to Europe is originally transported from East Asian countries by sea to South Korea.[358]

(246) Sixth, according to the Parties the fact that prices in East Asia fluctuate symmetrically is reflected in the way that air rates are set in the region. In the Parties' view this is mainly due to the fact that the air carriers active in the EEA - South Korea trades make their capacity available in the entire East Asia region. It is therefore the Parties' view that any price-related strategies need to take into account the entire region and that any price change in one trade has a direct impact on the prices on the other trades.

353 Response to the 6(1)(c) Decision, paragraph 72; Form CO, paragraphs 276 f.
354 Response to the 6(1)(c) Decision, paragraph 73.
355 Response to the 6(1)(c) Decision, paragraph 74.
356 Response to the 6(1)(c) Decision, paragraph 75.
357 Response to the 6(1)(c) Decision, paragraph 75.
358 Response to the 6(1)(c) Decision, paragraph 81.

Consequently, East Asia would need to be considered as one single geographic market.[359]

(247) Seventh, Korean Air is of the opinion that low barriers to trade and facilitated customs procedures favour cooperation between the different nations and cross border transportation of cargo within the East Asia region.[360]

7.2.2.3. Commission assessment of the South Korean end of the routes

(248) 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.[361] In that context, the Commission assesses the ability on the supply- and demand-side to switch to purchasing or selling services in other areas[362] as also the Parties seem to suggest.[363] In the following, the Commission will therefore assess (i) customer's possibilities to switch to air cargo services from or to East Asian countries other than South Korea from a demand-side perspective (7.2.2.3.1), (ii) the possibilities of air cargo service providers to switch to the offering of air cargo services from or to East Asian countries other than South Korea from a supply-side perspective (7.2.2.3.2) as well as additional elements which show (iii) that in the case at present the conditions of competition cannot be considered as sufficiently homogeneous in East Asian countries to define the geographic scope of the air cargo transport market as wide as an East Asian region (7.2.2.3.3) and (iv) that the relevant geographic market (South Korea) can be distinguished from neighbouring areas (East Asia) because the conditions of competition are appreciably different in those areas (7.2.2.3.4).

(249) Against that background, the Commission is of the view that for the purposes of the present decision and in line with its precedents the continent-to-country approach should also be used in the present case for assessing cargo air transport services on the routes between Europe and South Korea.

7.2.2.3.1. No switching to air cargo services to or from outside of South Korea from a demand-side perspective

(250) As regards demand-side factors in respect to the geographic market definition, the Commission essentially examines customers' ability to source the relevant product or service from a broader geographic area than the one in question. In the case at present, the relevant service is the air cargo transport service between Europe and South Korea as point of origin and point of destination and vice versa. The Commission therefore assesses whether customers could switch to air cargo transport services to or from a third country outside South Korea as the relevant point of origin or point of destination in response to a hypothetical small and permanent price increase (SSNIP). In other words, customers would need to consider air cargo transport services to another geographic area than to South Korea as a valid alternative for air cargo transport services to or from South Korea. That is not the case.

(251) First, the Parties claim that for customers, transporting goods between Europe and South Korea is largely substitutable with cargo air transport services for routes

359 Response to the 6(1)(c) Decision, paragraph 79.
360 Response to the 6(1)(c) Decision, paragraph 83 f.
361 Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5–13, ("Market Definition Notice of 1997"), paragraph 8.
362 Market Definition Notice of 1997, paragraphs 13 f. and 28 f.
363 Response to the 6(1)(c) Decision, paragraph 73 and 77.

between Europe and other East Asian countries. According to the Parties, this claim is based on the observation that customers prefer to use transhipment flights through ICN instead of direct flights to or from airports in other East Asian countries to where the cargo is destined or from where it originates.[364] However, this claim disregards the Commission's product market definition. As outlined above (see 7.2.1.5), the Commission in its precedents has established an approach to assess the effects of the Transaction on the overall market for air cargo transport services without distinguishing separate product markets for direct flights (which cover non-stop flights and multi-stop flights without transhipment, where the cargo stays on the same plane during the stop-over) and indirect flights (or transhipment flights, where the cargo is moved from one plane to another during the stop-over). This concerns cargo air transport services within a certain O&D route, meaning that the relevant service (product) remains the air cargo transport service between a certain point of origin and a certain point of destination irrespective of whether the aircraft arrives at its point of destination via direct or indirect flight. In consequence, the final destination of such an indirect flight would always be South Korea and not another East Asian country, limiting the product market definition of air cargo transport services to flights between a certain airport in Europe (e.g. Barcelona) and ICN in South Korea. In a second step, for the purpose of the delimitation of the geographic scope of that product market, it has to be assessed what catchment area around the point of origin and the point of destination can be accepted by customers to tranship the cargo from its initial point of origin to the airport of departure and/or to its final point of destination from the airport of arrival by trans-modal means (that is to say by sea or land transport (road and rail) but not by air transport, as transhipment by air would be covered by the same product market[365]). This transhipment would therefore go beyond the airport of departure and the airport of destination of the relevant cargo air transport service itself. In the present case, the relevant service that needs to be substitutable from a customer's perspective is the cargo air transport service between a point of origin at a specific European airport (e.g. Frankfurt, Paris, Barcelona or Rome) and the point of destination at ICN airport in South Korea and vice versa. The Parties' reasoning around the airport at ICN being a transhipment hub for cargo destined to points of destination in other East Asian countries than South Korea[366] is therefore not relevant for the definition of the geographic scope of the cargo air transport service market in the present case as this would concern other product markets than cargo air transport services between specific airports in Europe (e.g. Frankfurt, Paris, Barcelona or Rome) and ICN in South Korea (such as e.g. cargo air transport services from Frankfurt/ Germany to Taipei/Taiwan, operated by indirect flights (with transhipment) at ICN airport).[367]

(252) Second, apart from suggesting transhipment flights to and from other East Asian countries (which would be covered by another product market as stated above ((251)), the Parties do not substantiate how cargo air transport services between specific European airports (e.g. Frankfurt, Paris, Barcelona or Rome) and specific airports in East Asian countries other than ICN in South Korea as point of origin and point of

364 Form CO, paragraph 276; Response to the 6(1)(c) Decision, paragraph 70 f., 65; Response to the Statement of Objections, paragraph 176 f.

365 As explained in section 7.2.1.5, transhipment by air would be covered by the respective product market of the cargo air transport service to or from a specific indirect O&D route with transhipment.

366 Form CO, paragraphs 285 and 287; Response to the Statement of Objections, paragraph 191.

367 In the same vein, also the Parties' claim that larger airports in East Asia compete with each other for transhipment traffic and should therefore be part of the same geographic market (see Response to the 6(1)(c) Decision, paragraph 70 – 75) is not of relevance for the present decision as the relevant service in the case at present is the air cargo transport service between Europe and South Korea and not the transhipment services of ICN as an airport.

destination could substitute cargo air transport services between specific European airports and ICN. In order to acknowledge the claimed substitutability, transhipment by land (rail and/or truck) or sea would need to be possible and accessible. That is, however, not the case:

(a) In the first place, customers consider that airports in other East Asian countries are not valid substitutes for ICN due to the lack of acceptable multi-modal transportation options between other East Asian countries and ICN. In contrast, the vast majority of respondents to the market investigation considered that the relevant framework for assessing the impact of the Transaction in air cargo services should be South Korea[368]:

"*In* [a customer's] *view it is also not an option for customers to use flights between Europe and other East Asian countries to arrive at a final destination in South Korea with multi modal transport. Even though it would theoretically be possible to fly for example to Japan and then use sea transport to arrive at a final destination in South Korea, the shortest routing is always the preferred option for customers, among others due to the high fuel costs.*"[369]

"*Further,* [a competitor] *does not consider multi-modal transport as a close substitute for direct or indirect flights (except in exceptional circumstances). For* [the competitor]*, the combination of air transport with other modes of transport such as flying to another East Asian country and then transhipping cargo by rail, truck or ship to South Korea is not competitive on the routes from Europe to South Korea. In particular by using sea freight the shipper would lose too much time compared to direct or indirect flights."*[370]

"[A customer's] *view on the catchment area for ICN is circumscribed to South Korea."*[371]

"Intermodal or multimodal transportation is not an option for [a customer] *in many cases neither as speed is crucial for their business model and the use of different modes of transport would take too long.* [The customer's] *products need to arrive in the shops worldwide at the same time.* [The customer] *therefore needs the quickest possible options which are direct flights from Spain to Korea. It would therefore not be a valid alternative for [the customer] to first fly to e.g. Japan and then to ship the cargo through sea freight to Korea."*[372]

"In terms of geographic scope of the market, [a customer] *does not consider first transporting goods to other destinations in Asia (such as Japan or Taiwan) by air cargo transport and to then use other modes of transport (likely shipping) to transport the goods to South Korea. The primary reason for this is the time sensitivity of the goods being transported.* [A customer] *reports that the customers are very demanding and that their first and foremost concern is transit time […]."*[373]

"*Regarding intermodal transport and transhipment at other airports in Asia, it is not feasible for* [a customer] *for a number of reasons. Japan is a higher price market compared to Korea. And going to Korea via China cannot be considered*

368 Replies to question C.B.9 of Questionnaire Q2 to cargo competitors and question C.B.8 of Questionnaire Q5 to cargo customers.

369 Non-confidential minutes of a call with [a customer].

370 Non confidential minutes of the conference call with [a competitor].

371 Non-confidential minutes of the call with [a customer].

372 Non-confidential minutes of the conference call with [a customer].

373 Non-confidential minutes of the conference call with [a customer].

since the customers would not agree to the extended transit time. In addition, China would be more complex due to additional requirements/customs."[374]

"[*A customer] notes that Japan, China, Hong Kong are all further away or bigger markets on their own than Korea and therefore, there would be no business reason for the European cargo to first be shipped there and then travel to Korea.*"[375]

"[A customer] *does not consider air cargo transport from/to another East Asian airport (e.g. in Japan) combined with shipment by sea vessel to South Korea as an alternative to air transport from/to a South Korean airport directly. This would require too much time and be unfeasible, in particular given the time-sensitivity of customers in South Korea.*"[376]

"*On the side of Asia,* [a customer] *does not think it would make sense to substitute with flights to China and Japan, as this would add extra time and would also again risk the safety of the cargo.*"[377]

(b) In the second place, as regards land transport, even the Parties seem to acknowledge the difficulties of road and rail transport between South Korea and other East Asian countries when they state that "*Korea is a peninsula and Japan and Taiwan are island countries, therefore land transportation between the different East Asian countries is not available, and therefore intracontinental land infrastructure cannot be further developed*."[378] This has been confirmed by the market investigation which has shown that market participants do not consider cargo air transport between Europe and other East Asian countries as close substitutes to air cargo transport services between Europe and South Korea.[379] This is mainly due to the geographical and geopolitical situation of South Korea, which makes land transport (by truck or rail) between South Korea and other East Asian countries difficult if not impossible.[380] To illustrate the difficulties of getting to South Korea by truck or rail, several respondents to the market investigation stated that "*South Korea is an island*"[381].

(c) In the third place, as far as the Parties claim that instead of land transportation, sea transport infrastructure is highly developed to connect other East Asian countries with South Korea, most respondents to the market investigation replied that transporting cargo by air to another East Asian country and then by ship to South Korea (or vice versa) would not be an option for them.[382] This is mainly due to the fact that it was not considered to be a commercially valid option to first use the usually expensive but fast air cargo transport services to East Asia and then to switch to the slower transport by ship for the last leg, even though this was theoretically possible. [A customer] stated in that respect that

374 Non-confidential minutes of the call with [a customer].

375 Non-confidential minutes of the call with [a customer] […].

376 Non-confidential minutes of the conference call with [a customer].

377 Non-confidential minutes of the conference call with [a customer].

378 Form CO, paragraphs 267.

379 Replies to question C.B.1 of Questionnaire Q2 to cargo competitors and question C.B.1 of Questionnaire Q5 to cargo customers. Non-confidential minutes of the conference call with [an integrator].

380 See e.g. [a customer's] and [a customer's] replies to question C.A.8.-2 of Questionnaire Q5 to cargo customers (ID 8004 and ID 8063); non-confidential minutes of the conference call with [a competitor].

381 Non-confidential minutes of a conference call with [a customer]; non-confidential minutes of a conference call with [a competitor].

382 Replies to question C.B.1.-1 of Questionnaire Q5 to cargo customers. Replies to question C.B.1 of Questionnaire 2 to cargo competitors. Non-confidential minutes of the conference call with [a customer]. Non-confidential minutes of the conference call with [an integrator].

"*[t]herefore, a flight to another East Asian airport and then a transhipment by other modes of transport (i.e. sea freight) to a final destination in South Korea does in*[the customer's] *view not seem to be in the commercial interest of a shipper, given that this would combine high rates for air cargo with delayed delivery times due to the combination of air transport with other modes of transport"*.[383] In the same vein, [a customer] explained that "*flying to Japan is roughly the same airfreight rate as going to Korea. Adding the maritime shipping between Korean and Japan would mean adding cost in addition to the additional time needed for the maritime leg.*"[384]

(d) In the fourth place, the Parties claim that trade barriers and customs obligations are very low between East Asian countries The market investigation has, however, shown, that no customer was concerned about trade barriers or customs obligations, in particular as facilitated obligations exist for transhipped and transit cargo. In contrast, market participants did not consider transporting their cargo to other East Asian countries because of longer transportation times and the risks that are linked with the transhipment from one mode of transport to another (such as delays or the loss/ damage of the cargo).

(253) Third, that the use of multimodal transport with a combination of air and sea freight is rather the exception can also be deduced from the numbers provided by the Parties[385]: if [10-20]% of the overall transhipment volumes at ICN[386] are shipped to ICN by sea from other East Asian countries as claimed by the Parties[387], the share of volumes bound for Europe are not clear and might be rather minor. In fact, the Parties submitted additional data at the request of the Commission which appears to indicate that the volumes on the South Korea - Europe routes using sea and air transport are very low from East Asia to Europe and even negligible in the other direction from Europe to East Asia.[388]

Table 9 - Ratio of transhipment by sea via ICN – from East Asia to Europe

	Total volume (2019)	**Total volume (2020)**	**Total volume (2021)**	**to Incheon Port by ship & to ICN by truck (2019)**	**to Incheon Port by ship & to ICN by truck (2020)**	**to Incheon Port by ship & to ICN by truck (2021)**
Metric tons of cargo with a transhipment						
East-Asia to Europe	1,220,630	1,109,461	1,218,604	9,419	18,260	13,416
Percentage of type of transhipment at ICN						
East Asia				1%	2%	1%

Source: Response to the 6(1)(c) Decision, paragraph 81 and Reply to RFI14, Question 19 f), Table 31

383 Minutes of a conference call with [a customer].

384 Non-confidential minutes of a call with [a customer].

385 Form CO, paragraphs 278 f., Response to the 6(1)(c) Decision, paragraph 81 f.

386 See Form CO, paragraphs 278: "*The table below shows the air cargo volume (in metric ton) departing from East Asia (China, Japan and Taiwan) with a transhipment at ICN, either directly via air or arriving first at the Incheon Port by ship and then being transported from ICN to other regions, such as Europe or North America."*

387 Form CO, paragraphs 278 f., Response to the 6(1)(c) Decision, paragraph 81 f.

388 Reply to RFI16, question 9.

Table 10 - Ratio of transhipment by air via ICN – from Europe to East Asia

	Total volume (2019)	Total volume (2020)	Total volume (2021)	to ICN by air & to Incheon Port by truck for sea transhipment (2019)	to ICN by air & to Incheon Port by truck for sea transhipment (2020)	to ICN by air & to Incheon Port by truck for sea transhipment (2021)
Metric tons of cargo with a transhipment						
Europe to East Asia	1,608,018	1,271,095	1,444,704	5	15	18
Percentage of type of transhipment at ICN						
East Asia				0%	0%	0%

Source: Response to the 6(1)(c) Decision, paragraph 81 and Reply to RFI14, Question 19 f), Table 32

7.2.2.3.2. No switching to offering air cargo services from or to outside of South Korea from a supply-side perspective

(254) Relevant supply side considerations relate to the possibility of other suppliers, located outside the geographic area in question, to start supplying that area in the short term and without incurring significant additional costs or risks. More precisely, it would need to be possible for other air cargo carriers to easily offer air cargo transport services between Europe and South Korea when already operating air cargo transport services between Europe and another East Asian country. Even though it might theoretically be possible to move the relevant airplanes from one route to another,[389] the Commission has identified a series of barriers to entry (such as necessary traffic rights and opportunity costs, see below sections 8.11.4.3 and 8.12.4.3) which would hinder an airline from another East Asian country to start offering air cargo transport services between Europe and South Korea in the short term and without incurring significant additional costs or risks.

7.2.2.3.3. No sufficiently homogeneous conditions of competition

(255) Besides the missing demand- and supply-side substitutability, the conditions of competition in providing air cargo services between Europe and South Korea appear to differ significantly from providing cargo air transport services between Europe and Taiwan/China/Japan.

(256) First, the market position of the different air carriers, and therefore the identity and relative strength of the largest suppliers, differ considerably between those routes, as set out in Table 11 and Table 12. While the Parties play a marginal or moderate role on the routes between Europe and China and Japan respectively, they are the two strongest suppliers on the routes between Europe and South Korea with sizeable market shares. This finding is reinforced by the fact that, according to the Parties, the Parties' market shares on the routes between Europe and China and between Europe and Japan are in fact overstated.[390] These stark differences in market success by the

389 This has been acknowledged by some of the competitors in reply to question C.B.3 of Questionnaire Q2 to cargo competitors. While several competitors considered that an airline that only offers air cargo services between Europe on the one hand and China (including Hong-Kong), Taiwan or Japan on the other hand would be able to start providing cargo services between Europe and South Korea quickly and without significant investments, a larger number of competitors considered that this would not be possible, would be possible only with time delays and/or with significant investments or would depend on factors such as the availability of aircraft, traffic rights and landing slots as well as the company's specific business strategy.

390 Reply to RFI 14, question 16, Annex RFI14.Q.16.

Parties and their competitors on the different routes implies that customers on the routes make different choices as to their preferred suppliers and implies that competitors put different emphasis on winning business on the different routes – resulting in divergent conditions of competition.

Table 11 – The Parties' cargo volume shares on the routes from Europe to China, Japan and South Korea

	Europe-China		**Europe-Japan**		**Europe-South Korea**	
	2018	2019	2018	2019	2018	2019
Korean Air	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Asiana	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
Combined	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[40-50]%	[40-50]%
Others	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[50-60]%	[50-60]%

Source: Form CO, Annex QP10.Q28.1[391]*; reply to RFI 14, question 16, Annex RFI14.Q.16*

Table 12 - The Parties' cargo volume shares on the routes from China, Japan and South Korea to Europe

	China-Europe		**Europe-Japan**		**Europe-South Korea**	
	2018	2019	2018	2019	2018	2019
Korean Air	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Asiana	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
Combined	[5-10]%	[5-10]	[5-10]%	[5-10]%	[30-40]%	[30-40]%
Others	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[60-70]%	[60-70]%

Source: Form CO, Annex QP10.Q28.1; reply to RFI 14, question 16, Annex RFI14.Q.16

(257) Second, the price levels on the different routes are appreciably different and such differences do not seem to relate to the duration of the flight or the distance covered.[392]

Table 13 - Average price – From Europe to Korea, China and Japan (in USD per ton)*

To EUR	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
CHN	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
JPN	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
KOR	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Response to the 6(1)(c) Decision, Chart 1 and Reply to RFI14, Question 18, a)

(258) This implies that customer face markedly differing offers depending on whether they purchase air cargo services between Europe and South Korea or between Europe and China, Taiwan or Japan (and the other way round) and that there is insufficient arbitrage between the routes to sufficiently homogenize the conditions of competition.

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391 The Commission did not modify the market shares to account for the market exit of any carriers on any of the routes in order to allow for a comparability of the data sets.

392 Response to the 6(1)(c) Decision, paragraph 79; Reply to RFI14, Question 18 a).

* Should read: '(in USD)'

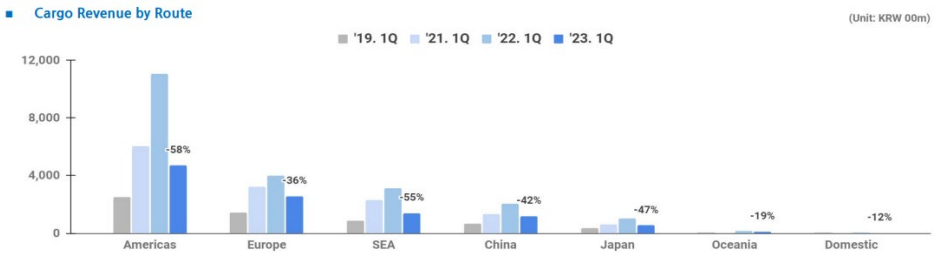
(259) Third, the Parties' claim that price movements between China, Taiwan, Japan and South Korea seem to be symmetric does not justify the finding that these countries are part of the same geographic market as long as the offered services are not substitutable. For example, the price for air cargo transport from Europe to Shanghai does not impact a customer who needs to transport cargo from Europe to South Korea if transporting cargo to Shanghai is not a valid alternative to air cargo transport between Europe and South Korea, which is the case here. Furthermore, many different factors unrelated to demand substitution can cause pre co-movements, such as common costs. Therefore, analyses of price co-movements are in principle more informative when they indicate that two products or services are not in the same market.

7.2.2.3.4. South Korea as a distinguished market from East Asia

(260) In addition to the above assessment, South Korea can be distinguished from East Asia as a separate geographic market because the conditions of competition are appreciably different in South Korea compared to East Asia.

(261) First, each of the Parties regularly assesses the relevant market as Europe-South Korea and not Europe-East Asia in their internal documents when tracking the activities of competitors, calculating market shares and when assessing trends in terms of demand and supply.[393] As an example, in publicly available Financial Reports on the homepage of Korean Air, Korean Air refers to the cargo business and sales for those countries which they claim being covered by East Asia as a regional geographic air cargo market (in particular Korea, Japan and China, including Taiwan and Hong Kong) separately.[394] That is to say, Korean Air considers revenues and sales for each of these countries / regions separately (and for Korea as domestic market) and therefore considers each of these countries as separate geographic markets:

Figure 2 - Cargo revenue by route

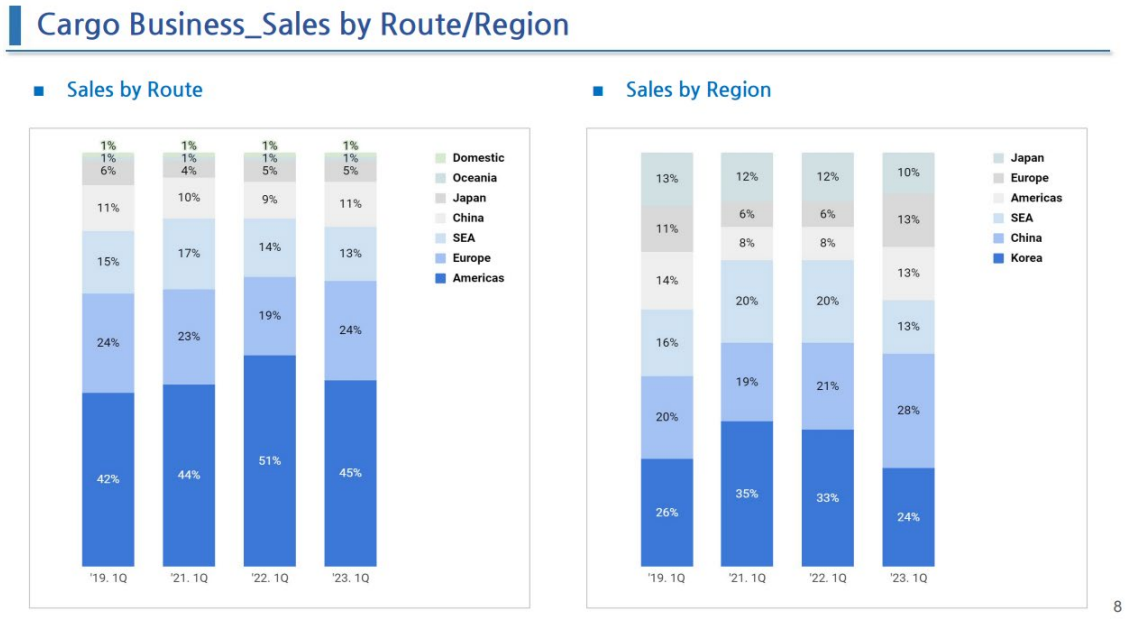


Source: Financial Report of Q1/2023, page 7

393 i.e Benchmarking, See Korean Air's reply to question 7 of RFI9. Korean Air "[…]", (ID7567-23).

394 Publicly available Financial Reports on the homepage of Korean Air (please see screen shot from the Financial Report of Q1/2023 below as an example for e.g. Financial Report of Q1/2023 (page 7 and 8), Financial Report of Q4/2022 (page 7 and 8), Financial Report of Q3/2022 (page 7 and 8); Financial Report of Q2/2022 (page 7 and 8), Financial Report of Q1/2022 (page 7 and 8); Financial Report of Q4/2021 (page 8 and 10), Financial Report of Q3/2021 (page 7 and 8), Financial Report of Q2/2021 (page 7 and 9), Financial Report of Q3/2022 (page 7 and 8).

Figure 3 - Cargo business sales by route/region (both covering separate information for Domestic routes/ Korea, Japan, Europe, China, Southeast Asia)



Source: Financial Report of Q1/2023, page 87

(262) Also the Parties' internal documents show that Korean Air assesses the market on a country basis, […][395]:

Figure 4 - [Figure redacted]

Source: Annex QP9.Q51.1 - Korean Air freight sales meeting in Europe (2021), page 18

Figure 5 - [Figure redacted]

Source: Annex QP9.Q51.1 – […]

Figure 6 - [Figure redacted]

Source: Annex QP9.Q51.1 – […]

Table 14 - [Table redacted]

Source: Annex QP6.Q5g.a.ii.4 – […]

Table 15 - [Table redacted]

Source: Korean Air's […], Cargo Business Department

7.2.2.4. Commission assessment of the European end of the routes

(263) As regards the European end of the routes, the Commission considers it appropriate to evaluate the impact of the Transaction on a European-wide market. While the Commission recognizes that regional differences within Europe do exist, making it probable for customers to switch air cargo services among some, but not among all,

395 Form CO, paragraph 266 f. Response to the 6(1)(c) Decision, paragraph 69; Form CO, paragraph 266.

airports in Europe, the overall competitive conditions across Europe appear to be sufficiently homogeneous to consider in the present case the whole of Europe as the relevant geographic market for cargo air transport services at the European end of the routes.

7.2.2.4.1. Switching to air cargo services to or from outside of South Korea from a demand-side perspective

(264) As regards the question whether customers could use any airport in Europe for cargo air transport services between ICN and Europe or whether the choice would be limited to certain inner-European regions, the Commission's market investigation resulted in somewhat mixed results:

(265) On the one hand the majority of competitors who expressed a view on the issue considered that the catchment area by land or sea transportation for European airports for air cargo services from/to South Korea is all of Europe.[396] As one competitor explained: "*This is how it's done, cargo gets consolidated at a central location (Hub) to which the material is trucked or flown into.*"[397] This was confirmed by a customer who explained that: "*[customer] transports cargo easily by trucks from various Member States to the airport in which the cargo would be then loaded onto the aircraft. There is a common concept of "low flying" planes where cargo is loaded on trucks and may even be screened and cleared in one airport for it then to be trucked to a major airport hub under an Airway bill to be flown out*".[398]

(266) On the other hand, the majority of customers considered that the catchment area by land or sea transportation for European airports for cargo air transport services from/to South Korea is an inner-European regional area, rather than all of Europe.[399] Accordingly, several customers would not switch to other European airports, or explained that such switching decision would depend on various factors, such as the type of cargo and the distance to the airport as well as the additional trucking costs and transit time.[400] As an example, a customer claims that regional differences within the EU exist mainly in terms of preferences and convenience:

"As regards airports in Europe, [a customer] *considers all airports as being substitutable as long as they are in central Europe as this mainly makes a slight difference of about 15 minutes flight time. However, as regards e.g. Norway, the 2 – 3 extra hours flight time would make that option less attractive. The longer flight time from Norway is partly due to the restrictions of the Russian airspace following the Russian invasion in Ukraine."*[401]

(267) In the same vein, other customers claim that they would first look for the nearest airport and only under certain circumstances consider using airports that are further away:

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396 Replies to question C.B.8 of Questionnaire Q2 to cargo competitors.

397 Reply by [an integrator] to question C.B.8 of Questionnaire Q2 to cargo competitors (ID 8457). See also the non-confidential minutes of the conference call with [an integrator]. Non-confidential minutes of the conference call with [an integrator].

398 Non-confidential minutes of the conference call with [a customer].

399 Replies to question C.B.7 of Questionnaire Q5 to cargo customers. See also non-confidential minutes of the conference call with [a competitor], where [the competitor] refers to "*shorter distance cross-border trucking in Europe*" (ID 943); non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor],; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor].

400 Replies to question C.B.3 of Questionnaire Q5 to cargo customers. These views are also partially reflected in the replies to question C.B.4 of Questionnaire Q2 to cargo competitors.

401 Non-confidential minutes of a call with [a customer].

"Using trucks to transport cargo to other European airports and to fly cargo to Korea from there is also not an option for [a customer] *due to the time sensitivity of its services. However, if no sufficient capacities were available on flights from Spain to Korea, trucking for up to 24h for example to Frankfurt or Amsterdam would be a possibility as a back-up plan."*[402]

(268) For again other customers, all European airports would be interchangeable without any restriction:

"As for European airports, their catchment area is the whole of Europe as European airports can be easily changed."[403]

7.2.2.4.2. Sufficiently homogeneous conditions of competition

(269) As regards the competitive conditions of cargo air transport services within Europe, the market investigation has revealed that the vast majority of respondents see regional differences in the competitive conditions within Europe as regards the number and identity of suppliers, prices, reliability of the service and speed of transport.[404]

(270) Also the internal documents of the Parties show that the Parties monitor the European market, including in terms of […]:

Figure 7 - [Figure redacted]

Source: […]

Figure 8 – [Figure redacted]

Source: […]

(271) In the same vein, the Parties' internal documents also show that Korean Air […].

Figure 9 - [Figure redacted]

Source: Annex to RFI 14 M.10149 – KE – OZ – RFI14.Q23b.6 – […].

Figure 10 - [Figure redacted]

Source: Annex QP6.Q5g.a.ii.14 – […].

(272) However, the Parties' internal documents in contrast to the regional and even airport-specific approach also show that the Parties consider Europe as one single geographic market. As an example, Korean Air groups its cargo revenue by route into "Europe" as a region in contrast to China or Japan as countries in its annual financial reports.[405]

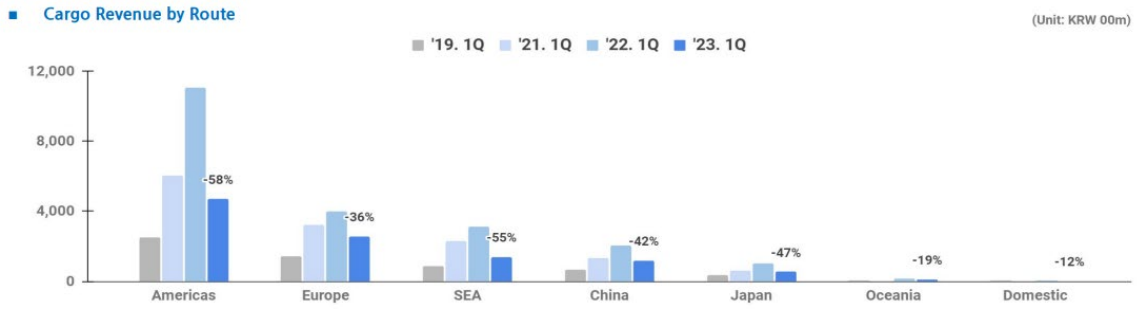
402 Non-confidential minutes of the conference call with [a customer].

403 Non-confidential minutes of the call with [a customer].

404 Replies to question C.B.4 of Questionnaire Q5 to cargo customers and to question C.B.5 of Questionnaire Q2 to cargo competitors. See also non-confidential minutes of the conference call with [a competitor].

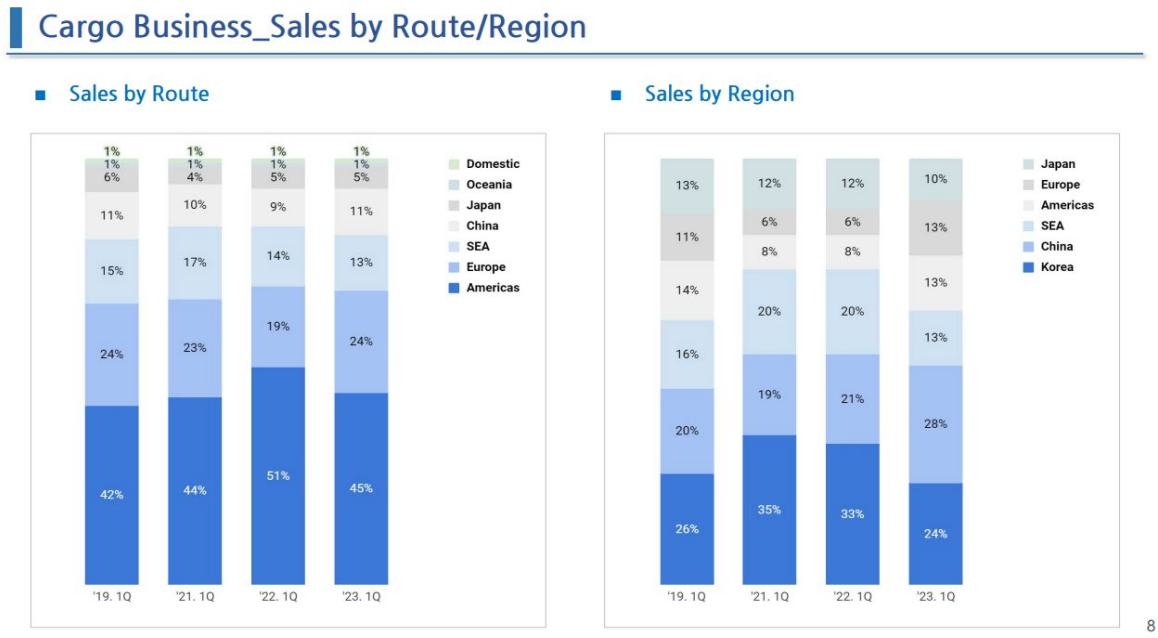
405 E.g. Financial Report of Q1/2023 (page 7 and 8), Financial Report of Q4/2022 (page 7 and 8), Financial Report of Q3/2022 (page 7 and 8); Financial Report of Q2/2022 (page 7 and 8), Financial Report of Q1/2022 (page 7 and 8); Financial Report of Q4/2021 (page 8 and 10), Financial Report of Q3/2021 (page 7 and 8), Financial Report of Q2/2021 (page 7 and 9), Financial Report of Q3/2022 (page 7 and 8).

Figure 11 - Cargo revenue per route



Source: Financial Report of Q1/2023, page 7

Figure 12 - Cargo business sales by route/ region



Source: Financial Report of Q1/2023, page 87

Figure 13 [Figure redacted]

Source: Korean Air's […], Cargo Business Department

7.2.2.4.3. Europe as a distinguished market compared to an inner-European regional approach

(273) Even though the market investigation has mixed results, it also shows that the regional differences do in the present case not seem to be significant enough to trigger a separation of geographic markets within Europe. In addition, as every market participant seems to have different views and preferences regarding the geographic area in which cargo air transport services could be considered as substitutable, the identification of appropriate boundaries for regional markets within Europe might be problematic. For the purpose of this decision, the Commission will therefore define the geographic market as Europe-wide. Potentially diverging competitive conditions in different countries and regions within Europe will, however, be taken into consideration in the competitive assessment, in particular when assessing how closely the different air cargo carriers compete with each other (see sections 8.11.2 and 8.12.2).

(274) As regards the geographical coverage of "Europe", the Commission has in particular investigated whether the relevant geographic market should cover only the European Economic Area ("EEA")[406] or in addition also the UK and Switzerland. Even though the market investigation showed a tendency among customers to limit the geographic market to the EEA[407], others were of the view that the geographic market definition should cover all of Europe:

"With respect to geographical markets, [a competitor] *considers the whole EEA as one geographic market due to the available inner-European infrastructure and transport facilities.* [The competitor] *is of the opinion that Switzerland is certainly part of this geographic market on the European side due to the road feeder services and the narrow body aircraft with belly hold capacities connecting different destinations within the EU.* [The competitor] *would also consider the UK as part of the same geographic market. However,* [the competitor] *is of the view that due to BREXIT and the different regulations that since apply between the EEA and the UK, the use of multi modal transport has become less attractive than flying directly to or from an EEA destination. According to* [the competitor]*, this is particularly true regarding time sensitive cargo (express or temperature controlled)."*[408]

"As regards Switzerland, it does not make a difference for [a customer] *whether an air carrier lands there or at another airport in the EEA."*[409]

(275) However, the difference between the two approaches seems to be of limited importance for the assessment of the present case so that the geographic market definition on the European side of the routes can be left open. The Commission will therefore carry out its competitive assessment on the basis of a European-wide geographic market including the EEA, the UK and Switzerland.

7.2.2.5. Conclusion on the geographic scope of the market

(276) In light of the above, for the purposes of the present decision, the Commission will follow the continent – to country approach. In this case, the relevant geographic scope of the market is air cargo transport services between Europe (i.e. the EEA, the UK and Switzerland) and South Korea.

7.2.2.6. Unidirectional nature of the air transport of cargo

(277) In addition, given the differences in demand on each end of the route, the Commission has in past cases assessed the relevant markets for air cargo transport as unidirectional.[410] Korean Air agrees with this approach due to differences in demand at each end of the route, differences in prices and difference in capacity.[411] This approach is confirmed by Korean Air's submission that cargo flights from South Korea to Europe are more expensive than those from Europe to South Korea because demand for consumer goods is higher in Europe than in South Korea. According to Korean Air, this is due to the fact that Europe is a consumer destination whereas South Korea is a manufacturing area and the South Korea - Europe direction is therefore characterized by higher demand for cargo space and, subsequently, by higher prices.[412]

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406 The EEA covers the states of the European Union together with Iceland, Norway, and Liechtenstein.

407 Replies to questions C.B.5 and C.B.6 of Questionnaire Q5 to cargo customers. See also the mixed replies by competitors to questions C.B.6 and C.B.7 of Questionnaire Q2 to cargo competitors.

408 Non confidential minutes of the conference call with [a competitor].

409 Non-confidential minutes of the conference call with [a customer].

410 M.5181 – Delta Air Lines/Northwest Airlines, paragraph 19; M.5141 – KLM/Martinair, paragraph 38.

411 Form CO, paragraph 254.

412 Form CO, paragraph 220.

7.2.3. Conclusion on market definition for air cargo services

(278) The Commission concludes that the relevant markets for the purpose of the present decision are the markets for air cargo transport on a unidirectional basis from Europe (i.e. the EEA, the UK and Switzerland) to South Korea and from South Korea to Europe, including direct and indirect connections and all types of planes, but excluding door-to-door services of integrators. Furthermore, the Commission leaves open whether that market should be sub-segmented into scheduled/regular and unscheduled/charter flights. The Commission also concludes that these markets are differentiated in different ways from both a product and a geographic perspective, namely whether the carriers operate freighter aircraft or passenger aircraft, whether they offer direct services or services with transhipment and from which airports in Europe they offer their services at which frequencies. The Commission will take that differentiation into account in the competitive assessment, in particular when assessing how closely the different carriers compete.

7.3. Other activities

7.3.1. Maintenance, Repair and Overhaul ("MRO") services

7.3.1.1. Relevant product market

(279) 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.[413]

(280) The Parties agree with the Commission's previously established product market definition.

(281) As both Korean Air and Asiana currently only provide line maintenance services to third Parties at ICN, the assessment in the present case will be limited to the market for line maintenance services.

7.3.1.2. Relevant geographic market

(282) With regard to the geographic scope of the market for line maintenance services, the Commission has in its previous decisions found that the geographic market could be regional or even local in scope.[414]

(283) For the purposes of this Decision, the assessment will be limited to the narrowest possible market for line maintenance services locally at ICN airport, as in the present case only MRO services to third parties at ICN airport are of relevance.

7.3.2. Ground handling services

7.3.2.1. Relevant product market

(284) 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

413 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, para 37; M.5830, Olympic/Aegean, para 320; M.6447 – IAG / BMI, para. 105; M.7541 – AIG/ Aer Lingus, para.119, M.6554 – EADS/STA/Elbe Flugzeugwerke, M.6410 – UTC/Goodrich, para. 174, M.8658 - UTC/Rockwell, paras 129, M.8985 - BOEING / KLX, para. 10.

414 M.3280 – Air France/KLM, para 40; M.3374 – SR Technics/FLS Aerospace, para 12, M.3280 - Air France/KLM; M.3374 – SR Technics/FLS Aerospace; M.5399 – Mubadala/Rolls Royce/JV, p. 4, and Case M.5403 – Lufthansa/BMI.

Association ("IATA") Standard Ground Handling Agreement or the EU Directive on ground handling services.[415] [416] 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).[417]

(285) In 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.[418] 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.[419]

(286) It is not necessary for the purposes of this Decision to determine an exact market definition, as the transaction would not significantly impede effective competition under any possible product or geographic market definition.

7.3.2.2. Relevant geographic market

(287) The Commission considered in 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.[420] 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.[421] 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.[422]

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415 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.

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

417 M.6447 – IAG / BMI, paragraph 97; M.5747 - Iberia/British Airways, paragraph 45; M.5830 - Olympic/Aegean, paragraph 311.

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

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

420 See Case M.1913 – Lufthansa/Menzies/LGS/JV.

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

422 M.2315 – The Airline Group/NATS, para 20.

(288) However, the precise definition of the geographic market for ground handling services can be left open as the Transaction does not raise serious doubts irrespective of the precise geographic market definition adopted.

8. COMPETITIVE ASSESSMENT

(289) Based on the market investigation, the Commission finds:

- The Transaction would significantly impede effective competition with respect to passenger air services on the routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN ("the Overlap Routes") because the Transaction would create a dominant position in the relevant markets.[423]
- The Transaction would significantly impede effective competition in relation to air cargo services on the route Europe-South Korea and the route South Korea-Europe because the Transaction would create a dominant position in the relevant markets. In any event, the Transaction would also give rise to horizontal non-coordinated effects in relation to air cargo services on the route Europe-South Korea and the route South Korea-Europe, resulting from the elimination of an important competitive constraint.

(290) This section of the decision details the competitive assessment of the Transaction, and is structured as follows: Section 8.1 sets out the legal framework for the competitive assessment; Section 8.2 discusses the limited evidentiary value of some of the Parties' submissions; Section 8.3 discusses the Parties' failing firm defence; Section 8.4 outlines the Commission's approach to the determination of the relevant counterfactual; Section 8.5 sets out general considerations concerning the competitive analysis of the Transaction regarding passenger air transport services and Section 8.7 analyses the impact of the Transaction on passenger air transport services on the relevant O&Ds on a route by route basis. Section 8.8 sets out general considerations concerning the competitive analysis of the Transaction regarding cargo air transport services Sections 8.11 and 8.12 set out the Commission's assessment of the Transaction regarding cargo air transport services markets on the markets Europe-South Korea and South Korea-Europe respectively.

8.1. Legal framework for the assessment

(291) 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.

(292) The notion of "significant impediment to effective competition" must be interpreted as extending, beyond the concept of dominance, to the anti-competitive effects of a concentration resulting from the non-coordinated behaviour of undertakings which do not have a dominant position on the market concerned. Accordingly, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may result in a significant impediment of effective competition

[423] As explained in sections 7.1.4.3.1, 7.1.4.3.4 and 7.1.4.3.5, for the purpose of this decision the Commission leaves open the question whether other airports in the cities of Seoul, Paris and Rome are part of the market. As currently no flights to South Korea are operated from other airports besides ICN, CDG and FCO, and the market shares remain unchanged under either market definition, in this decision, the Commission will refer to the routes using airport names (ICN, CDG, FCO) rather than cities (Seoul, Paris, Rome).

even if the concentration does not result in the creation or strengthening of a dominant position.[424]

(293) As concerns the assessment of horizontal overlaps (meaning when the undertakings concerned are active in the same relevant markets), the Horizontal Merger Guidelines[425] distinguish between two main ways in which mergers between actual or potential competitors may significantly impede effective competition, namely non-coordinated and coordinated effects.[426]

(294) Non-coordinated effects 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. In particular, 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 that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition.[427]

(295) 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.[428] 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.[429]

(296) Not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list such that other factors may also be relevant.[430]

(297) Based on the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive

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424 Recital 25 of the Merger Regulation.

425 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), Official Journal C 31, 05.02.2004, p. 5-18.

426 The competitive concerns identified in this case concern non coordinated effects. Coordinated effects will therefore not be discussed further in this Decision.

427 Horizontal Merger Guidelines, paragraphs 22 to 25.

428 Horizontal Merger Guidelines, paragraphs 27 et seq.

429 Horizontal Merger Guidelines, paragraph 36.

430 Horizontal Merger Guidelines, paragraph 26.

importance of both the merging parties and their competitors.[431] The larger the market share, the more likely a firm is to possess market power. 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.[432]

(298) The European Courts have consistently held that there is a presumption of dominance when an undertaking enjoys a market share of 50% or more.[433] 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*".[434]

(299) 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*."[435] The General Court has noted 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*."[436] The 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*".[437]

(300) 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*."[438]

(301) The Horizontal Merger Guidelines clarify that the Commission normally uses current market shares in its competitive analysis. However, current market shares may be adjusted to reflect reasonably certain future changes, for instance in light of exit, entry or expansion. In any event, the Commission interprets market shares in 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.[439]

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431 Horizontal Merger Guidelines, paragraph 14.

432 Horizontal Merger Guidelines, paragraph 27.

433 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 to the merger 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.

434 Horizontal Merger Guidelines, paragraph 17.

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

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

437 See Case T-342/07 – Ryanair v Commission, paragraph 53.

438 See Case IV/M.68 – Tetra Pak/Alfa-Laval, paragraph 4.

439 Horizontal Merger Guidelines, paragraph 15. See also C-413/06 P, Bertelsmann v. Impala, [2008] ECLI:EU:C:2008:392.

(302) While market shares are an important factor, the Commission is also required to analyse the competitive constraints the merged entity will be subject to post-transaction. Specifically in this case, the Commission analyses constraints notably from actual competitors and from future competition due to entry or expansion, as well as constraints from other one-stop itineraries and from regional/other airports. Further details on the framework applied by the Commission with respect to the analysis of potential entry and expansion are set out in section 8.6.3.

(303) Furthermore, concentrations where an undertaking already active on a relevant market merges 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 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 a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.[440]

8.2. The evidentiary value of the Parties' submissions

(304) In its assessment of mergers, the Commission routinely relies on internal documents that undertakings prepare in the ordinary course of business. Those documents allow the Commission to gain a quicker and better insight into the relevant markets as viewed by the market participants themselves.

(305) Internal documents can prove to be an especially useful source of evidence in relation to specific areas of investigation. For example, they often allow the Commission to verify factual claims made by the parties and verify data they submit. Internal documents are frequently crucial to understanding the factors which affect the incentives and business strategies of the parties before and after the proposed merger.

(306) Undertakings are well aware of the importance of internal documents as a source of evidence which is likely to be requested by competition authorities during a merger review.

(307) In line with its established practice,[441] the Commission considers that in attributing the probative value to specific internal documents, the Commission should take into account the timing and context in which they were prepared. In particular, internal documents prepared in the ordinary course of business (for example, before the proposed merger was agreed upon or without the knowledge of the preliminary competition concerns), would usually have higher probative value than internal documents that have been prepared for the Commission or that have been or may have been influenced by the Commission's review of the proposed merger. As the former type of internal documents usually reflects the information independently of the merger control procedure, the evidentiary value of such documents is comparatively higher than the evidentiary value of documents prepared for the purpose of or during merger proceedings.

(308) As a result, to reach conclusions on the most likely developments absent the Transaction, the Commission adopted a holistic approach, interpreting the results of the various complementary analyses in light of the overall evidence on the file.

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440 Horizontal Merger Guidelines, paragraphs 58 and 60.

441 See Case M.7932 – *Dow/DuPont*, paragraph 46.

8.3. Failing Firm Defence

8.3.1. Framework of assessment

(309) In line with the case law[442] and the Horizontal Mergers Guidelines,[443] the Commission may decide that an otherwise problematic merger is nevertheless compatible with the internal market if one of the merging parties is a failing firm. The basic requirement of a failing firm defence is that the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger. This will arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger.

(310) This requirement is consistent with the concept of causal connection set out in Article 2(2) of the Merger Regulation, pursuant to which if the significant impediment to effective competition is not caused by the concentration, the latter shall be declared compatible with the internal market.

(311) The burden of proof of a failing firm defence is on the notifying parties. More specifically, it is for the notifying parties to provide in due time all the relevant information necessary to demonstrate that the deterioration of the competitive structure that follows the merger is not caused by the merger.[444]

(312) According to the Horizontal Merger Guidelines, the Commission considers the following three criteria to be especially relevant for the application of a "failing firm defence".[445]

(313) First, the allegedly failing firm would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking.[446] In the past, the Commission has concluded that such criterion was met for instance in cases where the company had not been profitable for years and was unlikely to become profitable in the future,[447] and/or was likely to enter into insolvency proceedings in the near future.[448]

(314) Second, there should be no less anti-competitive alternative purchase than the notified merger.[449] In the past, the Commission has concluded that such criterion was met for instance in cases where (i) the only potential alternative purchaser that initially manifested an interest, subsequently declined to re-negotiate a possible acquisition;[450] (ii) the only potential alternative purchaser that expressed possible interest was not a credible alternative purchaser;[451] or (iii) no alternative buyer had manifested any concrete interest.[452]

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442 Judgment of 31 March 1998, *France and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC)* v. *Commission* ("Kali und Salz"), Joined Cases C-68/94 and C-30/95, EU:C:1998:148, paragraph 115.

443 Horizontal Mergers Guidelines, paragraph 89.

444 Horizontal Merger Guidelines, paragraph 91.

445 Horizontal Merger Guidelines, paragraph 90.

446 Horizontal Merger Guidelines, paragraph 90.

447 M.6796 - *Aegean/Olympic II*, 9 October 2013, paragraphs 699 and 707; M.4381 - *JCI/Fiamm*, 10 May 2007, paragraph 693. See also on incurred losses that would likely lead to site closure, M.6360 - *Nynas/Shell*, 2 September 2013, paragraphs 315-316.

448 M.4381 - *JCI/Fiamm*, 10 May 2007, paragraphs 717-721. See also Case M.2314 - *BASF/Eurodiol/Pantochim*, 11 July 2001, paragraphs 144-145.

449 Horizontal Mergers Guidelines, paragraph 90.

450 M.6360 - *Nynas/Shell*, 2 September 2013, paragraph 344.

451 M.6796 – *Aegean/Olympic II*, 9 October 2013, paragraphs 809-815.

452 M.4381 - *JCI/Fiamm*, 10 May 2007, paragraph 734.

(315) In contrast, the Commission has concluded that such criteria was not met, for instance, in cases where (i) the parties had not actively tried to find less anti-competitive solutions than the merger;[453] (ii) other potential purchasers expressed an interest in a possible acquisition of the company (although this did not materialise into any formal offer), and there was no sufficient evidence to exclude that the company may have been acquired by another interested purchaser;[454] and (iii) there were competing bidders at the time when the transaction was entered into.[455]

(316) Furthermore, the Commission has specified that the existence of alternative purchasers should include an assessment at the time of the Commission's decision as well as at the time when the choice of the acquirer is made, since the risk taken with the choice of a potentially anti-competitive acquisition, instead of other available less anti-competitive alternatives, cannot be shifted on the Commission.[456] Therefore, the parties to a transaction cannot rely on a failing firm defence if the lack of an alternative less anti-competitive purchase is the result of their own choice.

(317) Third, in the absence of a merger, the assets of the failing firm would inevitably exit the market.[457] The Horizontal Merger Guidelines also clarify that the inevitability of the assets of the failing firm leaving the market may underlie a finding that the market share of the failing firm would in any event accrue to the other merging party.[458]

(318) In the past, the Commission has considered that such criterion was met, for instance, where no party had substantiated an interest in taking over the target's assets (i.e. brand and leased aircraft).[459] On the other hand, the Commission considered that such criterion was not met when airport slots could be reallocated to other carriers that could use them on the problematic routes.[460]

8.3.2. Korean Air's view

(319) Korean Air submits that Asiana has been having severe financial difficulties for a number of years independently of the Covid19 pandemic.[461] Due to these financial difficulties, the South Korean government, through its state-owned banks, had to bail out Asiana on several occasions.[462] In return for the financial support, Asiana entered into two agreements with the Korea Development Bank ("KDB") and Export-Import Bank of Korea ("KEXIM") which conferred on these creditors significant rights with respect of Asiana's management.[463] As explained by Korean Air, Asiana is currently controlled by KDB and KEXIM.[464]

(320) Korean Air argues that, in the absence of the Transaction, KDB will cease providing the financial support which currently allows Asiana to continue its operations. According to Korean Air, in this case, it is likely that Asiana will be forced out of the

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453 M.2876 - *NewsCorp/Telepiù*, 2 April 2003, paragraph 217.

454 M.9287 - *Connect Airways/Flybe*, 14 May 2019, paragraphs 250-251.

455 M.8444 - *ArcelorMittal/Ilva*, 8 May 2018, paragraphs 417-422.

456 M.8444 - *ArcelorMittal/Ilva*, 8 May 2018, paragraph 424.

457 Horizontal Mergers Guidelines, paragraph 90.

458 Horizontal Mergers Guidelines, footnote 111, and Joined Cases C-68/94 and C-30/95, Kali and Salz, paragraphs 115-116.

459 M.6796 – *Aegean/Olympic II*, 9 October 2013, paragraph 831.

460 M.9287– *Connect Airways/Flybe*, 14 May 2019, paragraph 256; M.6447 – *IAG/bmi*, 30 March 2012, paragraph 624.

461 For instance, Asiana had a negative operating margin for the period 2018-2020. Form CO, Annex 39, paragraphs 23-29, 34 and Table 14.

462 Form CO, Annex 39, paragraphs 30, 38 and 40.

463 Special Agreement dated 23 April 2019 and a Supplementary Agreement to the Special Agreement dated 14 September 2020, see Form CO, paragraph 40.

464 Response of Korean Air to RFI 5, question 13.

market either due to bankruptcy or restructuring.[465] In the Form CO, Korean Air submitted that Asiana is a failing firm and that all three failing firm defence criteria established in the Horizontal Merger Guidelines were met.[466] However, in its more recent submissions to the Commission, Korean Air submitted that there were "*sufficient grounds to argue a failing firm defence*", but explained that it reserved the right to raise a failing firm defence at a later stage.[467] The Commission notes that Korean Air chose not to put forward a full-fledged failing firm defence at the later stages of the Commission's investigation and did not provide a substantiated failing firm defence neither in its Response to the Statement of Objections nor in its Response to the Letter of Facts.[468]

(321) Even though Korean Air has not raised a full-fledged failing firm defence, in the following paragraphs the Commission summarizes Korean Air's arguments which relate to a potential failing firm defence that were submitted by Korean Air in its various submissions in the course of the Commission's investigation.[469]

(322) As regards the first criterion of a failing firm defence, Korean Air argues that absent the Transaction, Asiana would be required to pay back loans totalling more than EUR […] and would not be able to meet its financial obligations or independently obtain funding from the open market necessary to cover its debt.[470] As a result, absent the Transaction, Asiana would likely exit the market because of its financial difficulties.[471] In the alternative, Korean Air claims that the government of South Korea would likely seize control of Asiana, leading to a restructuring of Asiana's operations, including exiting Asiana's long-haul passenger services to the EU.[472]

(323) As regards the second criterion of a failing firm defence, Korean Air claims that no other potential purchaser had expressed interest in acquiring Asiana and more broadly that there was no other viable alternative to the Transaction given the context of the Covid19 pandemic and Asiana's deteriorating financial condition.[473] Following a public bid process in 2019, the HDC-Mirae Asset consortium was selected as the preferred purchaser for Asiana. However, in September 2020, the transaction was terminated by Kumho Group, Asiana's largest shareholder, due to a disagreement *inter*

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465 Response to the 6(1)(c) Decision, paragraph 145. See also Response to the Statement of Objections, paragraph 197 et seq.

466 Form CO, Annex 39, section 4.

467 Korean Air submits that "*Asiana will be forced to leave the market for the long-haul passenger air transport services, at minimum*". It further explains that "*at minimum*" reflects Korean Air's understanding that should the Transaction not materialise, Asiana will "*at the very least*" exit the EU routes. See Response of Korean Air to RFI 14, question 25 and response of Korean Air to RFI 16, question 14. See also Response to the 6(1)(c) Decision, paragraphs 145 and 147.

468 See Response to the Statement of Objections, paragraphs 197-223 and Response to the Letter of Facts, paragraphs 35-62 and 64-66.

469 For instance, Form CO, Annex 39; Response to the 6(1)(c) Decision; Seabury Report of 17 April 2023; White Paper to the US Department of Justice of 13 April 2023; response of Korean Air to RFI 14; response of Korean Air to RFI 16; response of Korean Air to RFI 18 and others.

470 Form CO, Annex 39, paragraph 28; Response to the 6(1)(c) Decision, paragraph 105.

471 Response to the 6(1)(c) Decision, paragraph 103. See also Response to the Statement of Objections, paragraph 197.

472 Form CO, Annex 39, paragraphs 21 and 66; Response to the 6(1)(c) Decision, section B. See also response of Korean Air to RFI 16, question 14. Korean Air submits that "*Asiana will be forced to leave the market for the long-haul passenger air transport services, at minimum*". It further explains that "*at minimum*" reflects Korean Air's understanding that should the Transaction not materialise, Asiana will "*at the very least*" exit the EU routes. See response of Korean Air to RFI 14, question 25 and response of Korean Air to RFI 16, question 14. See also Response to the 6(1)(c) Decision, paragraphs 145 and 147, and Response to the Statement of Objections, paragraphs 197-198.

473 Response to the 6(1)(c) Decision, paragraphs 128-130. See also Response to the Statement of Objections, paragraphs 202-203.

alia pertaining to Asiana's financial status, the accuracy of the financial information provided by Asiana and other due diligence related issues.[474] KDB, Asiana's largest creditor, […]. Therefore, KDB selected Korean Air as the only suitable purchaser with financial capability to purchase Asiana.[475]

(324) As regards the third criterion of the failing firm defence, Korean Air argues that Asiana's main assets, such as its brand, traffic rights, and owned and leased aircrafts, will likely leave the market, unless acquired by Korean Air.[476] Korean Air submits that since no potential buyer is interested in purchasing Asiana, it is difficult to think that any buyer would contemplate the possibility of buying certain assets (e.g. aircraft) to use them on the overlapping routes. It further claims that no potential buyer has seriously shown interest or committed to purchase the aircraft or Asiana's brand, therefore the only way for Asiana's assets to remain on the relevant markets is through a potential remedy.[477] Moreover, Korean Air argues that it is not likely that airlines would acquire Asiana's slots at EU airports to utilize them on the Overlap Routes.[478]

8.3.3. Commission assessment

(325) Even though Korean Air does not raise a full-fledged failing firm defence, the Commission has analysed, in any event, whether the conditions for invoking a failing firm defence as set out in the Horizontal Merger Guidelines would be fulfilled. On the basis of its assessment in this Section, the Commission considers that the conditions for invoking a failing firm defence would not be fulfilled.

8.3.3.1. Asiana's exit from the market absent the Transaction is unlikely

(326) Based on the information in the Commission's file, the Commission finds that Asiana is in severe financial difficulty, is controlled by its creditor KDB following the restructuring of its debt in 2019[479] and does not have a stable basis to develop its business due to its debt structure. […].

(327) The Commission acknowledges Asiana's deteriorating financial position. Nevertheless, based on the results of the market investigation, the Commission cannot conclude that the most likely scenario absent the Transaction would be that Asiana would completely and definitively exit the market for air transport services in the near future, for the following reasons.

(328) First, Asiana's exit from the market is unlikely as even Korean Air does not argue it. As explained in section 8.3.2 above, Korean Air does not submit that Asiana would be forced out of the market because of financial difficulties completely. Korean Air only claims that Asiana would most likely cease its passenger services to the EU (as it would exit those markets).[480] Furthermore, Korean Air does not submit that Asiana would cease its cargo operations carried out by freighter aircraft between Europe and South Korea.

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474 Korean Air also submits that "*[…]*." Form CO, Annex 39, paragraph 69.

475 Form CO, Annex 39, paragraphs 41; 67, 72 - 73; Response to the 6(1)(c) Decision, paragraphs 128; 130, et seq; Response to the Statement of Objections, paragraphs 202-209.

476 Response to the 6(1)(c) Decision, paragraph 137.

477 Form CO, Annex 39, paragraphs 90-92; Response to the 6(1)(c) Decision, paragraph 142; Response to the Statement of Objections, paragraph 216.

478 Response to the 6(1)(c) Decision, paragraphs 141 and 144; Response to the Statement of Objections, paragraph 219.

479 […].

480 Form CO, Annex 39, paragraphs 21, 61, 63, 66 and 94. See also Response to the Statement of Objections, paragraphs 197-198.

(329) Second, Asiana's current difficulties appear to be related to its debt structure and financing costs rather than its operations. Asiana reported operating profits in 2021 and 2022 of EUR […] and EUR […][481] respectively,[482] mainly thanks to its profitable cargo operations due to higher cargo prices.[483] Asiana's cargo operations have generated positive operating profit throughout the Covid19 pandemic,[484] systematically helping Asiana to cover losses incurred on the passenger side of the business.[485] Overall, Asiana also recorded net accounting profit of EUR […] in 2022 for the first time since 2017,[486] while Earnings Before Interest and Taxes have been positive since 2021: EUR […] in 2021, EUR […] in 2022, and EUR […] in the first half of 2023.[487]

(330) The Commission rejects Korean Air's claim that the contribution level of Asiana's cargo business to its overall revenues during the Covid19 pandemic will not be sustained[488] […].[489]

(331) Furthermore, the airline industry is a low margin industry and airlines regularly record fluctuating and cyclical profits and losses. As shown in terms of net income Table 16 below, both Korean Air and Asiana's track record in terms of creating value for shareholders is mixed.

Table 16 - Summary of the years when Asiana and Korean Air were profitable and loss-making since 2011 (net income).

	Asiana	Korean Air
2022	PROFIT	PROFIT
2021	LOSS	PROFIT
2020	LOSS	LOSS
2019	LOSS	LOSS
2018	LOSS	LOSS
2017	PROFIT	PROFIT
2016	PROFIT	PROFIT
2015	LOSS	LOSS
2014	LOSS	LOSS
2013	LOSS	PROFIT
2012	PROFIT	PROFIT
2011	PROFIT	LOSS

Source: Annual reports of Korean Air for the respective years; annual reports of Asiana for the respective years.

(332) Moreover, Asiana does not seem to display prior to the Covid19 pandemic, and with the exception of 2019, a significantly lower operating efficiency than Korean Air, although Asiana is […]. Figure 14 below compares the past operating profitability of Asiana and Korean Air, […].

481 Average 2021 rate of EUR/KRW 1354.06; average 2022 rate or EUR/RKW 1358.07 2022; according to ECB euro reference exchange rate.

482 Response of Korean Air to RFI 18, Annex RFI18.Q8 – 2022 Auditor Report, page 10.

483 Form CO, Annex 39, Table 14. Response of Korean Air to RFI 8, question 1 and Annex QP9.Q101.

484 Response of Korean Air to RFI 13, Annex RFI13-Q2 – […]).

485 Response of Korean Air to RFI 8, question 1 and Annex QP9.Q101.

486 See Asiana's financial accounts for 2022 provided as response of Korean Air to RFI 18, Annex RFI18.Q8 - 2022 Auditor Report. Even though publicly Asiana announced a [...] figure for its 2022 net income of EUR 129.6 million (KRW 188 billion), […].

487 Response of Korean Air to RFI 4 Remedies, Annex Remedy RFI4.Q6.a.

488 Response to the 6(1)(c) Decision, paragraphs 162; 168-170.

489 Asiana's […].

(333) In addition, the financial difficulties of 2019 were not due to the ordinary operations of Asiana in 2019. The reasons for those difficulties are explained in detail by the […].[490] In that letter, the Parties refer to […].

(334) The Commission considers that […].

(335) However, in terms of operating profitability, (as opposed to financial difficulties), Asiana recorded […] the level of Korean Air, except in […]. As explained, 2019 was a year where the company encountered difficulties and therefore recorded higher losses.

(336) In 2021 and 2022, […].

Figure 14: [Figure redacted]

Source: […]

(337) This indicates that Asiana […].

(338) This is also the case in relation to Asiana's cargo business. […]. […] as illustrated in Figure 15. This confirms the Commission's assessment that Asiana […].

Figure 15: [Figure redacted]

Source: […]

(339) The revenue recorded from its cargo operations balanced out the effect of the Covid19 pandemic on Asiana's passenger business. The overall revenue recorded in 2022 was around the same level as in 2019, approximately […] KRW. […].[491] […].

Figure 16: –[Figure redacted]

Source: […]

(340) However, the financing costs of Asiana are […] of Korean Air's financing costs in relative terms. In fact, in 2022, Asiana's financial cost amounted to […]% of its sales,[492] compared to […]% for Korean Air's level of financing cost to sales.[493] […].

(341) Second, even though KDB submits that […],[494] the results of the market investigation show that […]. .

(342) In the first place, despite its deteriorated financial condition, Asiana has so far avoided bankruptcy proceedings because its main creditors KDB and KEXIM (both state-owned financial institutions) continue to finance it. To date, KDB and KEXIM together have invested in Asiana […].[495]

(343) In the second place, KDB has been providing financial support to Asiana since at least […] and together with the other state-owned creditors […].[496] For instance, […] due to Asiana's liquidity difficulties, KDB and KEXIM injected around EUR […] ([…])

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490 […], response of KDB to RFI 1, supporting document 5.

491 Based on Annex RFI13-Q2 - […].

492 […] KRW financial cost compared to the sales of […] KRW, in Asiana's Auditor Report. See response of Korean Air to RFI 18, Annex RFI18.Q8 – 2022 Auditor Report.

493 433,107 million KRW financial cost compared to sales of 14,096,095 million KRW, in Korean Airlines consolidated financial statements for 2022, https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/financial-information/details/2022_consolidated.pdf .

494 Response of KDB to RFI 1, paragraph 14; response of KDB to RFI 2, questions 5 and 12.

495 Response of KDB to RFI 1, footnote 14; Seabury Report of 17 April 2023, Table C; Form CO, Annex 39, paragraph 40 and Table 11; response of Korean Air to RFI 20, question 9.

496 Response of KDB to RFI 3, question 1.

funds into Asiana.[497] […], KDB and KEXIM […] provided additional financing consisting of approximately EUR […] in perpetual convertible bonds and EUR […] in credit line.[498]

(344) Furthermore, […], in the context of Asiana's first sales process, which later failed,[499] KDB was […]. In that internal analysis KDB argued that […].[500] KDB further emphasised that […].[501] Among the measures for stabilising Asiana […], KDB mentioned […], financing from the South Korean Key Industry Stabilization Fund, as well as […].'"[502] […].[503] Such evidence shows that in the past KDB and other state-owned creditors […].

(345) In addition, KDB has […]. For instance, […].[504] In its Response to the Statement of Objections, Korean Air confirmed that KDB and […].[505]

(346) Finally, Asiana was […] beneficiary from the Key Industry Stabilization Fund created by the South Korean government to help companies impacted by the Covid19 pandemic.[506] In September 2020, the Key Industry Stabilization Fund agreed to provide up to EUR […]. Between 2020 and 2022, Asiana received approximately EUR […] funding, […], which illustrates the high value that the South Korean government attaches to Asiana's survival.[507]

(347) The above shows that the South Korean government is effectively shielding Asiana from its financial obligations. […] .[508]

(348) In the third place, KDB acknowledged that […]. In KDB's words, […].[509] […][510] […],[511] […][512] […].

(349) This finding is also supported by other KDB's statements to the Commission, according to which […].[513] […].

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497 Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 9. See also response of KDB to RFI 1, footnote 14; Asiana CEO's […] Statement to European Commission, 24 April 2023, page 2.

498 Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 11. See also response of KDB to RFI 1, footnote 14; Asiana CEO's […] Statement to European Commission, 24 April 2023, page 2.

499 As will be explained further in this Decision, before the present Transaction, Asiana has undergone another sales process. See explanation in paragraph (371) and its footnote below.

500 Internal document prepared by KDB, "[…]", […], page 3, Form CO, Annex Q.70.c. (human translation submitted in response to question 1(a) of RFI29 to the Parties).

501 Internal document prepared by KDB, "[…]", […], page 3, Form CO, Annex Q.70.c. (human translation submitted in response to question 1(a) of RFI29 to the Parties).

502 Internal document prepared by KDB, "[…]", […], page 3, Form CO, Annex Q.70.c. (human translation submitted in response to question 1(a) of RFI29 to the Parties).

503 Internal document prepared by KDB, "[…]", […], page 16, Form CO, Annex Q.70.d.

504 Response of KDB to RFI 2, question 12. See also […], response of KDB to RFI 1, supporting document 2, page 5.

505 Response to the Statement of Objections, paragraphs 197 and 240.

506 […]. See Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, footnote 5.

507 […]. See Form CO, paragraphs 80-86; Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 11 and Form CO, Annex 39, paragraph 38; response of Korean Air to RFI 20, question 8; […], response of KDB to RFI 1, supporting document 2, question 3.

508 Response of Korean Air to RFI 18, question 10.

509 Response of KDB to RFI 1, paragraph 15.

510 Response of KDB to RFI 1, paragraph 17.

511 Response of KDB to RFI 1, paragraph 15.

512 Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 39. See also Response to the Letter of Facts, paragraph 62.

513 Response of KDB to RFI 1, paragraph 16.

(350) This is largely in line with KDB's explanations […]. As noted by KDB, "*[…]*"[514] In […], while discussing the first sales process of Asiana, […][515] This shows that KDB has a proven track record of looking for ways to […] and provide support to it and therefore the Commission considers that […].

(351) Korean Air criticizes the Commission for relying on KDB's internal document that was prepared […] (i.e. the document titled "[…]") by suggesting that this document is "*outdated and cannot have any evidentiary value concerning KDB's current intentions*".[516] The Commission rejects such argument. In drawing its conclusions regarding […] the Commission bases its assessment on a large body of evidence, which includes not only the analysis of KDB's past behaviour as documented in […], but also a number of other evidence, including KDB's replies to the Commission's requests for information and KDB's submissions to […]. Therefore, the Commission disagrees with Korean Air's submission that this document cannot have "any evidentiary value".

(352) In the fourth place, letting Asiana fail would mean that KDB […].[517] KDB's public filings with the US Securities and Exchange Commission show that Asiana ranks third among the largest risk exposures of KDB to Korean troubled companies,[518] the first one being DSME, the shipbuilding company – which KDB decided to continue financing after the Commission's prohibition decision of January 2022 in case M.9343 - Hyundai Heavy Industries Holdings/Daewoo Shipbuilding & Marine Engineering[519] and which was sold to the Korean Hanwha group at the end of 2022.[520] On several instances, Korean Air also acknowledged that […].[521]

(353) In the fifth place, the evidence provided by Korean Air and Asiana that […]. Neither Korean Air nor Asiana provided to the Commission any documents or communication exchanges with KDB which would show that […]. They also did not refer to any public statements by KDB which would indicate […][522] Instead, in its submissions to the Commission, Korean Air presents inaccurate statements of KDB which are taken from KDB's submissions to the Commission or […]. Similarly, during a meeting with the Commission, […].[523]

(354) Moreover, Korean Air's submissions on KDB's statements […] appear even to be misleading. For instance, in its failing firm defence submission annexed to the Form CO, Korean Air claims that "*[…]*"" and provides a reference to KDB's submission

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514 Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 9.

515 KDB further noted that Asiana […]. See internal document prepared by KDB, "[…]", […], page 2, Form CO, Annex Q.70.c. (human translation submitted in response to question 1(a) of RFI29 to the Parties).

516 Response to the Letter of Facts, paragraphs 59-61.

517 Response of KDB to RFI 1, paragraph 15.

518 See KDB's preliminary prospectus supplement dated 8 February 2023 to the prospectus of 16 August 2022 filed with the US SEC, page S-12 available: https://www.sec.gov/Archives/edgar/data/869318/000119312523027567/d454293d424b5.htm; See also KDB's reply to RFI 3, question 1(b).

519 For more detail, see Commission's press release available: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_343.

520 See M.11028 – *The Hanwha Group/ Daewoo Shipbuilding Marine Engineering*.

521 Response to the 6(1)(c) Decision, paragraph 182. See also Response to the Statement of Objections where Korean Air stated that extending maturity of Asiana's debt […], Response to the Statement of Objections, paragraph 240.

522 In its annual report of 2021, KDB stated only that it "*allocated money from the Key Industry Stabilization Fund toward Asiana Airlines while supporting its merger with Korean Air to minimize potential impact on the national economy and has undertaken restructuring measures to restore the airline's competitiveness*". KDB's annual report 2021, page 26.

523 Asiana CEO's […] Statement to European Commission, 24 April 2023, page 3.

[…].[524] However, in that specific paragraph of KDB's submission […], KDB was explaining Asiana's situation […].

(355) In the sixth place, it appears that Asiana itself believes that […]. In this regard, Korean Air admits that Asiana has not made […].[525] In addition, […].[526] Moreover, as is further discussed in section 8.4.3.1, the Commission's analysis of Asiana's internal documents shows that […].[527]

(356) In the seventh place, according to the Seabury Report,[528] "[…]"[529] […].

(357) Third, the results of the market investigation show that Asiana has not taken steps to prepare for liquidation or exit from the market but has rather taken all the necessary steps to continue operating.

(358) In the first place, in August/September 2022, Asiana re-entered the EEA-South Korea routes it had suspended following the start of the Covid19 pandemic and plans to […][530] Moreover, on the CDG-ICN route Asiana even plans to […]. Based on its network planning available in April 2023, Asiana was expected to operate all four Overlap Routes in winter 2023/2024 with similar frequencies as before the Covid19 pandemic.[531]

(359) Korean Air argues that Asiana's continued operations are the result of […][532] However, Korean Air did not provide any evidence which would show that these considerations are the reason for Asiana's current operations and future plans. Moreover, none of the internal network planning documents of Asiana nor Asiana's […][533] state that Asiana intends to continue its operations in order to […].

(360) In its Response to the Statement of Objections, Korean Air seems to concede […].[534]

(361) However, upon investigation, the Commission cannot accept such arguments as they contradict the evidence on the Commission's file. Indeed, several pieces of evidence show that Asiana's decision to re-enter the suspended routes after the Covid19 pandemic was not a result of the […], but with an aim to improve its competitiveness and profitability.

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524 Form CO, Annex 39, paragraph 28. See also paragraph 42 of the same document where Korean Air makes similar statement relying on KDB's submission to […].

525 Response to the 6(1)(c) Decision, paragraph 121.

526 See White Paper of 13 April 2023, page 40.

527 More specifically see paragraph (416) et seq.

528 The Seabury Report, submitted to the Commission by Asiana on 18 April 2023, was produced by Asiana's external financial advisors during the course of the Phase II proceedings. The Seabury Report *inter alia* argues that […]. On 5 May 2023, Asiana submitted a supplemental submission prepared by the same financial advisors, namely Seabury Supplemental Report of 5 May 2023, in which it reiterates that […]. The Seabury Report and the Seabury Supplemental Report were prepared in the context of the Commission's merger review and not in the regular course of Asiana's business. It was commissioned by Asiana's external competition counsel and were prepared by Seabury taking into account Asiana's and the KDB's prior submissions to the Commission and the US Department of Justice as respectively the relevant merger control authorities of the Union and the United States. Indeed, Asiana's financial advisors at Seabury had access to […] with the Commission as well as to the Commission's questions on Asiana's operations. Therefore, the Commission considers that the findings provided in the reports are subjective, prepared with […].

529 Seabury Report of 17 April 2023, paragraph 13.

530 Form CO, Annex 39, paragraph 1151.

531 Response of Korean Air to RFI 20, Annex RFI20.Q3b. See also Form CO, Annex QP9.Q23.

532 Response to the 6(1)(c) Decision, paragraphs 117-119 and 151-152. Similar arguments were repeated in the Response to the Statement of Objections, paragraphs 199 and 261.

533 See Asiana's […].

534 Response to the Statement of Objections, paragraph 262.

(362) In the first place, Asiana's internal documents show that Asiana planned to re-enter the suspended routes on FRA-ICN, CDG-ICN and FCO-ICN […],[535] due to "[…]". The same internal document further notes that […] by explaining that "[…]".[536]

(363) In the second place, an internal document prepared by Asiana's main creditor KDB shows that, in the view of KDB, […].[537]

(364) In the third place, Korean Air's argument that the SSA's obligations were the driver for the restart of Asiana's operations on the Overlap Routes post-Covid19 are further contradicted by the fact that in its […], Asiana plans […]. For example, Asiana projects to […].[538] Additionally, […].[539]

(365) Asiana's passenger services appear to have traction with its customers and its planes for passenger operations on BCN-ICN, FCO-ICN, CDG-ICN and FRA-ICN for summer 2023 were filling up quickly. Indeed, according to Asiana's forward booking data as provided by Asiana to the Commission in April 2023, its booking rates on BCN-ICN, FCO-ICN, CDG-ICN and FRA-ICN for summer 2023 were between [40-50]% and [50-60]%.[540] The forward booking data for winter 2023/2024 as of 6 April 2023 indicates that the booking rate was between [0-5]% and [5-10]%.[541] This is highly in line with the forward bookings that Asiana had on 6 April 2019 (i.e. before the Covid19 pandemic) as its forward booking rate on the same routes for summer 2019 at that time was between [40-50]% and [50-60]%.[542] The forward booking rate for winter 2019/2020 on some of the routes was actually lower, between [0-5]% an [5-10]% as compared to the forward booking rate for winter 2023/2024.[543]

Table 17 - Booking of Asiana flights as of 6 April 2023 v. as of 6 April 2019

Route	Summer 2023	Winter 2023/2024	Summer 2019	Winter 2019/2020
FRA-ICN	[30-40]%	[0-5]%	[30-40]%	[0-5]%
CDG-ICN	[50-60]%	[5-10]%	[40-50]%	[0-5]%
BCN-ICN	[40-50]%	[5-10]%	[40-50]%	[5-10]%
FCO-ICN	[40-50]%	[5-10]%	[40-50]%	[5-10]%

Source: Response of Korean Air to RFI 18, question 11 and Annex RFI18.Q11; response of Korean Air to RFI 20, question 10 and Annex RFI20.Q10

(366) In the third place, in terms of staff necessary to operate the suspended EEA-South Korea routes, Asiana retained a comparable level of service on two out of three routes (adding one more staff on the FCO-ICN route), whereas only on the CDG-ICN route it

535 In slide 43 of the internal document […]. Asiana's internal document "[…]", Slide 43, Form CO, Annex Q14.a.

536 Asiana's internal document "[…]", Slide 44, Form CO, Annex Q14.a.

537 Internal document prepared by KDB "[…]", […], page 10, Form CO, Annex Q.70.c. (human translation submitted in response to question 1(a) of RFI29 to the Parties).

538 […], tab 41.

539 […], tab 38.

540 Forward booking data as of 6 April 2023. See response of Korean Air to RFI 18, question 11. See also Annex RFI18.Q11.

541 Response of Korean Air to RFI 18, question 11. See also Annex RFI18.Q11.

542 Response of Korean Air to RFI 20, question 10. See also Annex RFI20.Q10.

543 Forward booking data as of 6 April 2019. See response of Korean Air to RFI 20, question 10. See also Annex RFI20.Q10.

reduced staff by 5 members compared to the operations before the Covid19 pandemic.[544]

(367) In the fourth place, Asiana confirmed that […].[545]

(368) Fourth, an analysis of Asiana's internal documents, including its more recent […] that was prepared in the beginning of […], suggests that […]. As highlighted in Asiana's […], Asiana plans to *"*[…]*"*.[546] The same document indicates that […].[547] The Commission notes that in its submissions Asiana maintains that it did not have […].[548] […].[549]

(369) The Commission therefore concludes that Korean Air failed to establish that absent the Transaction Asiana will, in the near future, be forced out of the market.

8.3.3.2. Other potential buyers may have existed at the time of the Transaction

(370) The results of the market investigation do not allow the Commission to conclude that there would not be a less anti-competitive alternative purchaser.

(371) First, Asiana's sales process in 2020 ("2020 Sales Process")[550] presents several issues in terms of transparency and openness, which calls into question whether the South Korean government (through KDB) and Asiana's largest shareholder Kumho Group tried sufficiently to find an alternative purchaser. Rather, it appears that the Transaction was designed in order to achieve the South Korean government's industrial policy goals.

(372) In the first place, the 2020 Sales Process was not competitive and there were no other bids submitted besides the bid of Korean Air. The acquisition price agreed during the 2019 Sales Process was determined after a bidding process, whereas the acquisition price in the present Transaction was determined by KDB and other relevant branches of the South Korean government.[551] Moreover, the 2020 Sales Process was highly selective and […].[552]

(373) In the second place, […]. Moreover, already back in 2019, some of these […] had withdrawn their participation in the 2019 Sales Process due to […].[553] Therefore, with this pool of bidders, it seems that the potential sales process was prone to fail.

(374) In the third place, at the outset of the 2020 Sales Process, KDB […]. There were at least […] companies that were shortlisted in the 2019 Sales Process,[554] […].[555] […].

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544 Form CO, Annex 39, Table 5.

545 Response of Asiana to RFI 1, question 1, RFI 2, questions 2 and 4.

546 Response of Asiana to RFI 3, Annex RFI3.Q3a, Slide 22.

547 Response of Asiana to RFI 3, Annex RFI3.Q3a, Slide 22.

548 Response of Asiana to RFI 4, question 1.

549 […]. See Response of Asiana to RFI 4, Annex RFI4.Q3, Slide 50.

550 Asiana's first sales process took place in 2019. In December 2019, after a competitive bidding process Asiana's largest shareholder Kumho Group entered into an agreement to sell its Asiana shares to the HDC-Mirae Asset consortium, which won the bidding process with the highest price offered. […] ("2019 Sales Process"). The 2019 Sales Process was terminated in September 2020. After the termination, Asiana filed a lawsuit against the HDC-Mirae Asset consortium […]. See Form CO, Annex 39, paragraphs 57-71. See also response of […] to RFI 1, questions 3-4, 6-7 (ID11699); response of […] to RFI 2, questions 1 and 4 (ID11701); response of […] to RFI 1, question 7 (ID11711).

551 Response of Korean Air to RFI 18, question 12.

552 […]. See response of […] to RFI 1, question 3 (ID11711); response of […] to RF1, question 3 (ID11699); response of […] to RFI 1, question 6 (ID11496).

553 For instance, […]. […]. Form CO, Annex 39, paragraph 86; […], response of KDB to RFI 1, supporting document 2, page 9; […], response of KDB to RFI 1, supporting document 4, page 5.

554 Form CO, Q.70.a-[…].

555 Response of […] to RFI 1, questions 3-6 (ID10063); Response of […] to RFI 1, questions 3-5 (ID11496).

(375) Indeed, according to KDB, […] (which were shortlisted in the 2019 Sales Process) were no longer viable acquirers. KDB did not […] .[556] Similar considerations were reiterated in Korean Air's Response to the Statement of Objections.[557] The Commission notes that the allegation that […] is not supported by any evidence.[558]

(376) In its Response to the Statement of Objections, Korean Air further submitted that KDB ruled out […] also because (i) it did not have the requisite executive experience to manage Asiana through the pandemic and (ii) […] was suspected of having a disingenuous intent in the acquisition.[559] As for the first argument, the Commission notes that similar observations could be made not only about […] but also about […] participants in the 2020 Sales process (i.e. […]). Korean Air did not provide any evidence distinguishing how […] "executive experience" made them more suited to manage Asiana through the Covid19 pandemic, especially considering that before the pandemic, arguably no one had the experiencee of managing an airline through a pandemic of such a scale as Covid19. Korean Air did not provide any additional details in relation to its submission that […]. This statement was also not supported by concrete evidence.

(377) As for […], Korean Air submitted that […] was not invited to participate in the 2020 Sales Process because it did not have the size or capacity due to its smaller scale and alleged financial difficulties. However, KDB also explained that […].[560] In its reply to a request for information by the Commission, […] did not confirm that KDB and […] had discussed an acquisition of Asiana in 2020.[561] Therefore, the market investigation could not confirm Korean Air and KDB's submissions in this respect.

(378) As regards […] financial situation, Korean Air received the South Korean government's funds in order to help weather the effects of the Covid19 pandemic, similar to […]. However, […] was disqualified from participating in the 2020 Sales Process on this ground while Korean Air was not. In its Response to the Statement of Objections, Korean Air suggested that in the eyes of KDB it was better placed to acquire Asiana as compared to […] because "*unlike* […]*, Korean Air is a full service carrier with a different financial and operating structure that could achieve synergies through a merger with Asiana*".[562] This further reinforces the Commission's finding that when arranging the sale of Asiana, KDB (and the South Korean government in general) were focused on attaining industrial policy goals rather than searching for a least anti-competitive option.

(379) In the fourth place, the 2020 Sales Process was highly private and brief. The winner of the 2019 Sales Process, HDC-Mirae Asset consortium, was notified about the termination of the 2019 Sales Process on 11 September 2020, whereas the SSA between Asiana and Korean Air was entered into only 2 months later, i.e. on 17 November 2020. Neither Asiana or its senior management,[563] nor other companies that

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556 KDB also submitted that in its view, […]. See response of KDB to RFI 2, question 8; […], response of KDB to RFI 1, supporting document 2, page 9.

557 Response to the Statement of Objections, paragraph 205.

558 Response of […] to RFI 1, questions 3-6 (ID10063).

559 Response to the Statement of Objections, paragraph 205.

560 Response of KDB to RFI 2, questions 7-9.

561 Response of […] to RFI 1, question 8 (ID11496).

562 Response to the Statement of Objections, paragraph 204.

563 The current CEO of Asiana (who at the time of the 2020 Sales Process was on Asiana's Board of Directors) explained that […] it was announced on the news. See Asiana CEO's […] Statement to European Commission, 24 April 2023, page 1. […]. See response of Korean Air to RFI 11, Annex RFI11-Q1.9.d.

participated in the 2019 Sales Process were aware of the 2020 Sales Process until the Transaction was publicly announced.[564]

(380) In its Response to the Statement of Objections, Korean Air disagrees with the Commission's findings and argues that the termination of the 2019 Sales Process was covered in the South Korean press, therefore, there were sufficient opportunities given to other companies to inform Asiana about their willingness to make acquisition offers.[565] In the view of the Commission, however, a mere public announcement of a 2019 Sales Process termination in the context of which it was noted that the creditors "*will soon relauch Asiana's sale*"[566] is insufficient to rebut the Commission's finding that the 2020 Sales Process was organised in a non-public selective manner leaving out a number of potential bidders who had showed interest in acquiring Asiana in the past, while at the same time concentrating efforts on the […] whose interests in Asiana or potential synergies with the aviation sector would be questionable at best. Indeed, as noted in the case law, it is for Korean Air to demonstrate that the Parties had actively tried to find less anti-competitive solutions than the Transaction and the arguments put forward by Korean Air in its Response to the Statement of Objections do not discharge such burden of proof.[567]

(381) The Commission is also not convinced by Korean Air's argument that had there been an interested alternative buyer, it would have "*actively intervened in* [these merger] *proceedings as it is the case in many merger reviews*".[568] The mere absence of an opposing person in these merger proceedings does not in itself allow to deduce that no alternative buyer is interested in acquiring Asiana. Therefore, this argument does not affect the Commission's analysis.

(382) Second, there appear to be other companies which could have been interested in acquiring Asiana at the time of the 2020 Sales Process and if the present Transaction does not complete. […] and […] explained that they had […] been interested in acquiring Asiana at the time of the 2020 Sales Process […].[569] […] also explained that if the Transaction does not proceed and Asiana is for sale, it could be interested in partnering with a strategic investor in such potential acquisition.[570]

(383) In its Statement of Objections, Korean Air criticises the Commission's findings and submits that […] and […] could not be considered as plausible alternative purchasers for Asiana due to […].[571] In the view of the Commission, however, Korean Air's arguments do not alter the evidence that […] and […] would have been interested in acquiring Asiana at the time of the 2020 Sales Process.[572] The fact that […], […] or

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564 Response of […] to RFI 1, question 9 (ID11699); response of […] to RFI 1, questions 7 and 8 (ID11496); response of […] to RFI 1, questions 7-9 (ID10523); response of […] to RFI 1, questions 7-9 (ID10063); response of […] to RFI 1, question 9 (ID11711); response of […] to RFI 1, question 7 and 8 (ID10284).

565 Response to the Statement of Objections, paragraphs 206-207.

566 Response to the Statement of Objections, paragraph 206 and press articles referred therein, including Hyundai Development's Proposed Acquisition of Asiana Airlines Falls Apart, AEROSPACE TECH. (Sept. 14, 2020), https://aerospacetechnology.com/news/hyundai-development-asiana-airlines ("Lead creditor state-owned Korea Development Bank said the creditors will soon relaunch Asiana's sale.").

567 See, for example, M.2876 - *NewsCorp/Telepiù*, 2 April 2003, paragraph 217.

568 Response to the Statement of Objections, paragraph 209.

569 Response of […] to RFI 1, questions 8 and 10 (ID11699); response of […] to RFI 1, questions 8 and 10 (ID11711). See also response of […] to RFI 2, questions 2 and 3 (ID11006).

570 Response of […] to RFI 2, question 3 (ID11006). See also response of […] to RFI 1, question 11a (ID11711).

571 Response to the Statement of Objections, paragraph 208.

572 Whereas if the Transaction does not proceed and Asiana were for sale again, […] submitted that it could be interested in partnering with a strategic investor in a potential acquisition. See response of […] to RFI 2, question 3 (ID11006); response of […] to RFI 1, question 11a (ID11711).

any other purchaser would not be a preferred option for Asiana and/or its creditors (as compared to Korean Air) does not negate the fact that alternative purchasers could have potentially existed at the time of the agreement to sell Asiana to Korean Air or in case of the failure of the present Transaction.

(384) Third, Korean Air's argument that it is the only suitable buyer with necessary funds is questionable as KDB is in fact financing the Transaction. In November 2020, Korean Air's main shareholder Hanjin KAL secured approximately EUR […] in capital funds through KDB which in turn was loaned to Korean Air on the basis of a shareholder loan agreement.[573] As explained by KDB, […].[574] As a result, KDB is providing […] funds necessary for the Transaction (the total purchase price in the present Transaction is approximately EUR […], out of which EUR […] is provided by KDB).[575] Moreover, it appears that the Transaction value compared to the 2019 transaction with HDC-Mirae Asset is considerably reduced.[576] Korean Air did not provide any evidence showing that none of the potential buyers that participated in the 2019 Sales Process or any other undertakings […] would not have been interested to acquire Asiana under the reduced sales price and with KDB's financing […] of the potential purchase. No such evidence was submitted in the Response to the Statement of Objections and the Response to the Letter of Facts. Therefore, the Commission cannot conclude that no alternative buyers exited at the time of the Transaction and the 2020 Sales Process at the reduced Asiana valuation.

(385) Fourth, there is legal uncertainty in relation to the termination of the 2019 Sales Process and damages award […].[577] In addition, depending on the outcome […].

(386) The Commission therefore concludes that it cannot find that, absent the Transaction, there would not be a less anti-competitive alternative purchaser for Asiana.

8.3.3.3. Asiana's assets would not inevitably exit the market absent the Transaction

(387) The Commission considers that the third criterion of the failing firm defence is not met because Korean Air has not adduced sufficient – or even any – evidence to show that Asiana's assets would inevitably exit the market absent the Transaction and that the market share of the failing firm would in any event accrue to Korean Air.

(388) First, Korean Air's claims in relation to this criterion are not accompanied by any evidence. Korean Air's arguments are provided in abstract using generic phrases such as "*assets will likely leave the market*", "*the Parties do not consider that Asiana's assets would be used by potential buyers*", "*it is not likely that airlines will acquire Asiana's slots*" without any concrete substantiation or evidence.[578]

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573 In addition, in March 2021, Korean Air raised paid-in capital of approximately EUR […] by offering to issue new shares (the aggregate value of which is KRW […] to its existing shareholders, during which process the Hanjin KAL Loan was converted into equity. Korean Air used and will use part of the newly raised capital to finance the Transaction. Form CO, paragraphs 67-69. See also […], response of KDB to RFI 1, supporting document 2, page 14, response of Korean Air to RFI 18, question 12.

574 […], response of KDB to RFI 1, supporting document 2, page 14.

575 Response of Korean Air to RFI 18, question 12.

576 The purchase price in 2019 was approximately EUR […], whereas in 2020, the purchase price was reduced to approximately EUR […] plus KDB finances the acquisition by providing EUR […]. Response of Korean Air to RFI 18, question 12.

577 Form CO, Annex 39, paragraphs 69-71; […], response of KDB to RFI 1, supporting document 4, pages 3-4; response of […] to RFI 1, question 10 (ID11699); response of […] to RFI 2, question 1 (ID11701).

578 See, for instance, Form CO, Annex 39 and Response to the 6(1)(c) Decision. Korean Air maintained similar arguments in its Response to the Statement of Objections without providing any supporting evidence. See Response to the Statement of Objections, paragraphs 219-220 and 223.

(389) In a similar vein, Korean Air claims that the remedy proposal "*confirms that potential remedy takers are not willing to commit to purchase any assets of Asiana*" and that during the remedy discussions with the potential remedy takers "*none of them indicated that they needed to purchase any assets of Asiana*" is not substantiated.[579] Korean Air did not provide any evidence to show that potential buyers or potential remedy takers were aware that they had a possibility to acquire Asiana's assets in the context of such discussions.

(390) Second, the results of the market investigation show that in the event that Asiana would enter into liquidation, some market participants would be interested in acquiring Asiana's assets such as slots at the relevant EEA airports and ICN as well as aircraft.[580] Korean Air disagrees with this finding and argues that it is unlikely that airlines that expressed interest in Asiana's slots at BCN, FRA, CDG and FCO would utilize them on the routes between South Korea and the EEA. In the first place, Korean Air did not provide any evidence showing that market participants that showed interest in these assets of Asiana would not have intentions to use these assets on the Overlap Routes. In the second place, evidence in the Commission's file shows that interested carriers would intend to use such assets on the Overlap Routes. For instance, […] and […] indicated that they would be interested in using slots on all four Overlap Routes.[581] Moreover, as will be discussed in section 8.7.2 8.7.2 below, […], one of the market participants that responded to the market investigation, explained that it would be interested in acquiring Asiana's assets and using them on FRA-ICN and CDG-ICN,[582] was expected to launch its services on the EEA-South Korea routes as of June 2023, offering 4 weekly services on ICN-FRA. This further shows that if Asiana were to enter into liquidation and its assets become available they could be used on the Overlap Routes.

(391) Third, the Commission rejects Korean Air's argument that the policy goal that KDB would be pursuing with the Transaction (i.e. to maintain the South Korean aviation industry) will not be served by Asiana's assets being used on unrelated routes.[583] The Commission notes that the policy goals of the South Korean government may be well reasoned but do not play a role in the Commission's assessment of whether the Transaction would impede effective competition in the internal market.

(392) The Commission therefore concludes that Korean Air failed to establish that in a situation where Asiana would enter into liquidation, its assets would inevitably exit the market.

(393) In conclusion, the Commission considers that the conditions for invoking a failing firm defence set out in the Horizontal Merger Guidelines would not be fulfilled.

8.4. Counterfactual

8.4.1. Framework of assessment

(394) Under the Horizontal Merger Guidelines the Commission is required to evaluate the foreseeable impact of a merger on the relevant markets.[584]

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579 Form CO, Annex 39, paragraph 91; Response to the 6(1)(c) Decision, paragraph 138.

580 Replies to question E.1 and question E.2 of Questionnaire Q1 to competitors and to question E.1 and E.2 of Questionnaire Q3 to potential entrants.

581 Replies to questions E2 and E3 of Questionnaire Q3 to potential entrants and Replies to questions E2 and E3 of Questionnaire Q1 to competitors.

582 See [a potential entrant's] reply to questions E2 and E3 of Questionnaire 3 to potential entrants (ID8691).

583 Response to the 6(1)(c) Decision, paragraph 139.

584 Horizontal Merger Guidelines, paragraph 12.

(395) In assessing the competitive effects of a concentration, the Commission compares the competitive conditions that would result from the Transaction with the conditions that would have prevailed absent the Transaction.[585]

(396) In most cases the competitive conditions existing at the time of the Transaction constitute the relevant comparison for evaluating its effects. However, in some circumstances, the Commission may take into account future changes to the market to the extent that they can be *"reasonably predicted*".[586] *A contrario*, 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*."[587]

8.4.2. Korean Air's views

(397) Korean Air submits that absent the Transaction, Asiana will be forced to reduce its long-haul operations and most likely exit the EU market with passenger air transport services.[588] In some parts of the Response to the 6(1)(c) Decision, the Parties argue that Asiana will likely exit <u>all</u> of its long haul operations (which could include flights to the US, Europe (including the UK and Turkey) and Australia) and become a short-haul/medium-haul airline,[589] whereas in other parts of the Response to the 6(1)(c) Decision, Korean Air claims that Asiana would be restructured by exiting the EU routes.[590] In certain recent submissions the Parties explain that in the counterfactual, Asiana would most likely cease its passenger services to the EU and US.[591] Korean Air did not provide clarifications in its Response to the Statement of Objections, where it submitted that absent the Transaction, "*the only possible scenario is a restructuring of Asiana into an airline flying short to mid-haul routes in Asia*" without clarifying which specific routes Asiana would be intending to exit and by when.[592] Whereas in another place of the Response to the Statement of Objections, Korean Air argued that any restructuring of Asiana absent the Transaction "*would entail exiting EU routes*".[593]

(398) As previously explained, Korean Air does not submit that Asiana will exit cargo services to/from the EEA with freighter aircraft.

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585 Horizontal Merger Guidelines, paragraph 9.

586 Horizontal Merger Guidelines, paragraph 9. For example, the Commission may take account of the likely entry or exit of firms if the merger did not take place when considering what constitutes the relevant comparison. *Ibid*. See also Case M.7932 – *Dow/DuPont*, paragraph 137.

587 Case T-2/93 – *Société Anonyme à Participation Ouvrière Compagnie National Air France v. Commission,* paragraph 70.

588 Form CO, Annex 39, paragraphs 3, 21 and 66.

589 "*Although there may be other long-haul routes (e.g., US routes) in Asiana's portfolio that would, when taken in isolation, be better conditioned for Asiana to exit to improve its dire financial condition, Asiana will exit <u>all of its long-haul operations</u> as only then a material positive change in Asiana's financial situation will occur. By exiting <u>all of its long-haul routes</u>, Asiana would avoid the operating costs associated with those routes and therefore improve its finances.* […] *Asiana would need to exit all its long-haul routes should it want to materially improve its financial condition*." (emphasis added), see Response to the 6(1)(c) Decision, paragraphs 172-174. See also Response to the 6(1)(c) Decision, paragraph 189 where Korean Air submits that Asiana will be restructured into a short-haul/medium-haul airline.

590 Response to the 6(1)(c) Decision, paragraph 154.

591 Seabury Report of 17 April 2023, paragraph 108; see also Response to the 6(1)(c) Decision, paragraph 186 where Korean Air also submits that Asiana would be restructured by eliminating long-haul routes to the EU and US.

592 Response to the Statement of Objections, paragraph 241.

593 Response to the Statement of Objections, paragraph 253.

(399) In the alternative, Korean Air submits that, absent the Transaction, Asiana will become an insignificant competitor as it will be unlikely to be financially capable of adopting an aggressive commercial strategy in the long-term.[594]

(400) In the view of Korean Air, the conditions prevailing before the Covid19 pandemic do not constitute an appropriate benchmark for assessing the effects of the Transaction because (i) since the Covid19 pandemic the demand has significantly dropped, (ii) many airlines went bankrupt whereas the airlines that survived are unlikely to expand to their previous levels of operation in the short term and (iii) the future market conditions cannot be reasonably predicted.[595] Therefore Korean Air submits that the relevant timeframe for the counterfactual is the present day.[596] In support of its arguments, Korean Air discusses the market situation in passenger air transport services and does not provide its view on cargo services.[597]

8.4.3. Commission assessment

8.4.3.1. Asiana's exit from the EEA-South Korea passenger operations is not sufficiently likely

(401) At the outset of its assessment, the Commission notes that Korean Air has provided a variation of claims on Asiana's future operations absent the Transaction (namely that Asiana may exit all EU routes, all EU and US routes or cease all long-haul operations with passenger services).[598] However, in its reply to the Commission's request to clarify its submission on Asiana's future operations Korean Air explained that Asiana will "*at the very least*" exit the EU routes.[599] Therefore, in the following analysis the Commission will concentrate its assessment on whether Asiana's exit from the EU routes is the most likely development.

(402) The Commission finds that Asiana's exit from the EEA-South Korea routes with passenger air transport services is not sufficiently likely. There are other scenarios that would be more likely to materialize.

(403) First, Asiana has already re-entered the EEA-South Korea routes on which it had suspended its operations due to the Covid19 pandemic, namely on CDG-ICN, FCO-ICN and BCN-ICN and at the time of the investigation explained that it expects to gradually return to pre-Covid19 flight frequencies on all four Overlap Routes by 2024.[600] Moreover, according to its plans for summer 2023 submitted in the Form CO, on CDG-ICN Asiana planned to operate at a higher frequency than before the Covid19 pandemic (i.e. 6 weekly flights in summer 2023 as compared to 5 weekly flights in summer 2019).[601] Based on its more recent network planning, Asiana is expected to continue flying on all four Overlap Routes in winter 2023/2024 with similar frequencies as before the Covid19 pandemic.[602] Asiana explained that it does not yet

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594 Form CO, Annex 39, paragraphs 3, 95 and 96.

595 Form CO, Annex 39, paragraphs 8, 10, 12-15, 18-19. See also Response to the 6(1)(c) Decision, paragraphs 194-206.

596 Form CO, Annex 39, paragraphs 8, 9, 15; Response to the 6(1)(c) Decision, paragraph 206.

597 Form CO, Annex 39, paragraphs 8-19; Response to the 6(1)(c) Decision, paragraphs 192-206.

598 See paragraph (397) above.

599 See response of Korean Air to RFI 14, question 25 and response of Korean Air to RFI 16, question 14. See also Response to the 6(1)(c) Decision, paragraphs 145 and 147. Nevertheless, in the Seabury Report and the Seabury Supplemental Report, Asiana still claims that in the [...]. See Seabury Report of 17 April 2023, paragraph 108 and Seabury Supplemental Report of 5 May 2023, paragraphs 2 and 10.

600 Form CO, paragraph 1151.

601 Form CO, Table 63.

602 Response of Korean Air to RFI 20, Annex RFI20.Q3b. See also Form CO, Annex QP9.Q23.

have a network plan for summer 2024, but does not argue that such a plan would foresee terminating operations on FCO-ICN, FRA-ICN, CDG-ICN or BCN-ICN.[603]

(404) Korean Air argues in this respect that Asiana's continued operations on the Overlap Routes are the result of the conditions of the SSA according to which Asiana has to continue its business to avoid triggering the termination clause under the SSA as well as in order to maintain slots at certain key airports.[604] As already explained in section 8.3.3.1, Korean Air did not provide any evidence which would show that these considerations are the reason for Asiana's current operations and future plans. Indeed, none of the internal network planning documents of Asiana nor Asiana's […][605] state that Asiana intends to […]. As further explained in paragraphs (361)-(364) above, Asiana restarted its operations on the Overlap Routes with an aim […]. As for Korean Air's argument that Asiana cannot afford to make the investments it needs to compete effectively, such as […],[606] the Commission notes that the analysis of Asiana's internal documents shows that […].[607]

(405) As shown in Table 17 above, Asiana's passenger services appear to have traction with its customers. Based on Asiana's forward booking data, as provided by Asiana to the Commission in April 2023, its booking rates on BCN-ICN, FCO-ICN, CDG-ICN and FRA-ICN for summer 2023 were between [40-50]% and [50-60]%.[608] The forward booking data for winter 2023/2024 indicates that the booking rate is between [0-5]% and [5-10]%.[609] This is highly in line with the forward bookings that Asiana had on 6 April 2019 (i.e.before the Covid19 pandemic) as its the forward booking rate on the same routes for summer 2019 at that time was between [40-50]% and [50-60]%.[610] The forward booking rate for winter 2019/2020 on some of the routes was actually […], between [0-5]% and [5-10]% as compared to the forward booking rate for winter 2023/2024.[611]

(406) Second, Asiana explained that [...].[612] Moreover, according to Asiana, its future decision […].[613] […].[614] This lack of any plans or calculations in itself calls into question that […]. This is further reinforced by the fact that the SSA was entered into in November 2020, giving KDB and Asiana more than three years to analyse the […].

(407) Furthermore, the Commission's findings contradict KDB's and Asiana's submissions and show not only that Asiana […].[615] Moreover, Asiana's own analysis shows that […].[616]

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603 Response of Korean Air to RFI 20, question 3.

604 Response to the 6(1)(c) Decision, paragraphs 117-119 and 151-152. See also Response to the Letter of Facts, paragraph 52.

605 […], Annex RFI4.Q3.

606 Response to the Statement of Objections, paragraphs 226 and 265.

607 More specifically, as noted in Asiana's […]. See Asiana's […], Slide 22, Form CO, Annex 16.ii.

608 Forward booking data as of 6 April 2023. See response of Korean Air to RFI 18, question 11. See also Annex RFI18.Q11.

609 Response of Korean Air to RFI 18, question 11. See also Annex RFI18.Q11.

610 Response of Korean Air to RFI 20, question 10. See also Annex RFI20.Q10.

611 Forward booking data as of 6 April 2029. See response of Korean Air to RFI 20, question 10. See also Annex RFI20.Q10.

612 Response of Asiana to RFI 1, reply to question 1 and summary of the reply on page 1. See also response of Korean Air to RFI 14, question 28.

613 Response of Asiana to RFI 2, question 2. See also response of Asiana to RFI 1, question 1.

614 Response of KDB to RFI 1, question 1; response of KDB to RFI 2, questions 2 and 3.

615 See, for instance, Asiana's internal documents provided as response of Asiana to RFI 11, Annex RFI11-Q1.23.f; Annex RFI11-Q1.10.d; Annex RFI11-Q1.22.c.

616 See for, instance, response of Asiana to RFI 11, Annex RFI11-Q1.10.d and Annex RFI11-Q1.23.f. See also Form CO, Annex QP2.Q1c3, Slides 41-46; Annex QP2.Q1c4, Slides 13; 22-24.

(408) In the first place, several internal documents show that Asiana was […] for several reasons.

(409) In an internal document titled […], Asiana provided a number of reasons […]. For instance, Asiana makes a strong argument […]: "[…]".[617] Moreover, […] is important due to the following considerations, according to Asiana:

– […];

– […];

– […].[618]

(410) In addition, Asiana sets out in that document that it […].[619]

(411) Indeed, the market investigation shows that Asiana has had […]. As a result, Asiana has […].[620] In Figure 2 at paragraph 25 of the Seabury Report, Asiana's financial analysts take as indication of the past commitment of Asiana […].[621] This validates the understanding that the […].

(412) In another communication between Asiana's […] and Asiana's […] (see an excerpt provided as Figure 17 below), Asiana examines […].

Figure 17: [Figure redacted]

Source: […]

(413) In an excel file titled […] that is attached to this email correspondence, Asiana analyses […].[622] The analysis, which was developed based on Asiana's 2019 figures, shows that […]. The impact is broken down into the impact on […]. Such impact would result in […]. Additionally, a loss would be incurred by Asiana […], this loss is estimated at KRW […]. […].[623] This effect is confirmed in the tab […] which reports a change […].

Figure 18: [Figure redacted]

Source: […]

Figure 19: [Figure redacted]

Source: […]

(414) Korean Air argues that there are several shortcomings in Asiana's […] analysis, and that, if this analysis had been done correctly, Asiana would have found […].[624] Korean Air shows that the impact on operating income becomes positive for about KRW […]

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617 Response of Asiana to RFI 11, Annex RFI11-Q1.23.f, page 2.

618 Response of Asiana to RFI 11, Annex RFI11-Q1.23.f, page 2.

619 Response of Asiana to RFI 11, Annex RFI11-Q1.23.f, page 2.

620 Response of Asiana to RFI 1, summary of reply to question 2 and question 2; Form CO, Annex QP2.Q1c3, Slides 41-46; Annex QP2.Q1c4, Slides 13; 22-24; Seabury Report of 17 April 2023, paragraphs 25-26.

621 Seabury Report of 17 April 2023, paragraph 25.

622 Commission notes that this email correspondence contains a word document titled "[…]" for which the parties claimed legal professional privilege and therefore the Commission did not analyse this document.

623 Response of Korean Air to RFI 18, Annex RFI18.Q8 - 2022 Auditor Report.

624 See Response to the Statement of Objections, paragraphs 275-280 and Annex 1 - SO reply - Seabury supplemental analysis, and Response to the Letter of Facts, paragraphs 64-66, and Annex 2 – LoF Response.

once […]. The Commission notes that, even if these cost savings may have been indeed reasonable to predict as Korean Air argues, Asiana's own assessment of the effects of […]. Moreover, the loss expected by Asiana […].

(415) Another email exchange between Asiana and KDB that took place between […] shows that […]. The […] data provided by Asiana […] included information on […].[625] According to the information provided in this internal document, […].[626]

(416) Furthermore, another internal document of Asiana prepared on […] shows that Asiana had […]. The excel file prepared […].[627] […].[628]

(417) On the basis of the Commission's assessment of this Asiana's internal document, it appears that Asiana projected […].

(418) In the second place, the Commission rejects KDB's arguments that the above described documents (i.e. see paragraphs (409) to (416) above)[629] have been prepared solely in the context of […].[630] Neither the email correspondence to which the relevant assessments were attached[631] nor the contents of the assessments themselves[632] allow the Commission to accept KDB's explanations. Moreover, in its earlier submissions to the Commission Asiana explained that the purpose of its internal document provided as Annexes RFI11-Q1.23.d[633] was […].[634]

(419) In a similar vein, Asiana's argument that correspondence and analysis contained in Annexes RFI11-Q1.10.c and RFI11-Q1.10.d (as discussed in paragraphs (412) to (414)) do not relate to Asiana's […] and that it "was not prepared in Asiana's normal course of business but was rather prepared by Asiana representatives in the conte*xt of the European Commission's and the US DOJ's review of the proposed transaction*" cannot be accepted.[635] Firstly, when submitting this document to the Commission, Asiana explained that the purpose of this excel file was "[…]".[636] Secondly, the cover email to which the assessment […] is attached does not provide any indications […] (see, for instance, the opening line of the […] email which states "[…]"[637]).

(420) Furthermore, the Commission considers that the financial status evaluation prepared by Asiana […][638] qualifies as […]. Based on the Commission's assessment of this excel spreadsheet, it appears that Asiana […]. The consequences on the financial

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625 Response of Korean Air to RFI 18, Annex RFI18.Q13a and Annex RFI18.Q13b.

626 Response of Korean Air to RFI 18, Annex RFI18.Q13b.

627 Response of Asiana to RFI 11, Annex RFI11-Q1.22.c. See also explanation in response of Asiana to RFI 11, Annex RFI11-Q2.

628 Response of Asiana to RFI 11, Annex RFI11-Q1.22.c.

629 Namely, Annex RFI11-Q1.23.f; response of Korean Air to RFI 18, Annex RFI18.Q13a and Annex RFI18.Q13b.

630 Response of KDB to RFI 2, question 3.

631 See Response of Asiana to RFI 11, Annex RFI11-Q1.23.c and Response of Korean Air to RFI 18, Annex RFI18.Q13a.

632 Response of Asiana to RFI 11, Annex RFI11-Q1.23.f and Response of Korean Air to RFI 18, Annex RFI18.Q13b.

633 At a later stage, Asiana provided a revised English translation of this Annex, namely Annex RFI11-Q1.23.f.

634 Response of Asiana to RFI 11, Annex RFI11-Q2.

635 Response of Korean Air to RFI 14, question 28.

636 Response of Asiana to RFI 11, Annex RFI11-Q2.

637 Response of Asiana to RFI 11, Annex RFI11-Q1.10.c.

638 Response of Korean Air to RFI 14, Annex RFI14.Q28.1.

situation of Asiana differ depending on the level of inflation (CPI). In case of no inflation, […].[639]

(421) In its Response to the Statement of Objections and Response to the Letter of Facts, Korean Air criticises the Commission for relying on Asiana's projections provided in its business plans arguing that such plans are aimed at […].[640] In the view of Korean Air, Asiana's business or any future plans should be "[…]".[641] The Commission disagrees with this argumentation and considers that Asiana's business, management or other future plans are an important source of evidence to […]. This is because those future plans have been prepared in the ordinary course of business in order to project Asiana's operations in the short to medium future, in line with the specific timeframe stated in the given business, strategy or management plan. This conclusion is supported by the following findings.

(422) In the first place, the results of the market investigation show that Asiana's internal projections and business plans have […]. Indeed, Asiana has a […].[642] Korean Air confirmed that Asiana's business plans have […],[643] whereas in certain instances […].[644]

(423) In the second place, Asiana prepares its business plans to […]. According to Korean Air, the […] business plans established at the end of […] present […].[645]

(424) In the third place, Asiana shares its business plans with its financial advisors. As explained by Asiana's financial advisor Seabury International Corporate Finance LLC ("Seabury"), it has been retained by Asiana in order "[…]"[646] In the past, Asiana's business plans were also shared with […] for the preparation of […].[647]

(425) Third, the Commission's analysis of Asiana's future network plans does not support Korean Air's claims in relation to Asiana's exit from the EEA routes. On the contrary, it follows from Asiana's well documented strategy that it planned .

(426) In the first place, Asiana's […] strategy sets out the main goal of […]. In order to achieve this, Asiana's plan is a *"*[…]*."*[648] According to another slide Asiana plans to "[…]".[649]

(427) In another document Asiana discusses the re-start of its flights to the EEA and increased demand by noting: *"*[…]*"*.[650]

(428) In the second place, the findings of the market investigation show that in the past Asiana appears to have considered […]. For instance, in its tentative route operation plan for […], Asiana considered that in […] it would "[…]". In the same slide Asiana

639 Response of Korean Air to RFI 14, question 28. See also response of Korean Air to RFI 14, Annex RFI14.Q28.1.

640 Response to the Statement of Objections, paragraphs 199, 255-259, Response to the Letter of Facts, paragraphs 36-40.

641 Response to the Statement of Objections, paragraphs 254 et seq., Response to the Letter of Facts, paragraphs 36-40.

642 Supplementary Agreement to the Special Agreement, Article 5(5) provided as Annex RFI12.Q1.2.

643 Response of Korean Air to RFI 27, question 6(d). See also Response of Korean Air to RFI 14, question 30.

644 Response of KDB to RFI 2, question 3(a).

645 Response of Korean Air to RFI 27, question 6(a).

646 Seabury Report of 17 April 2023, paragraph 1.

647 […], Response of Asiana to RFI2, Annex RFI1.Q4.b, Slides 8 and 20.

648 Asiana Airlines […], Slide 25.

649 Asiana Airlines […], Slide 27.

650 Form CO, Annex QP6.Q5g.b.i.55, Slide 15. The Commission notes that the translated version of this document that was provided to the Commission by the Parties does not contain a date.

noted that in […] it should […].[651] Also, as already explained in section 8.3.3 above on the failing firm defence, Asiana's […].[652]

(429) As for Asiana's argument that […][653] or […],[654] the Commission notes that, […].[655]

(430) Fourth, Asiana's internal plans in terms of its […] also do not support the view […]. From the end of […] to […], Asiana […],[656] without any apparent effect on […]. According to Asiana's […].[657] Indeed, Asiana's management plan prepared in […] notes the need […].[658] As already explained in section 8.3.3.1, since […] Asiana has been […].[659]

(431) Fifth, Korean Air's argument that […] remains unsupported by evidence.[660] Rather, in the light of the evidence available to it, the Commission is not convinced by the reliability of the Parties' submissions in this respect.[661] The evidence on file shows that Asiana […].[662]

(432) In the first place, out of its planned acquisition of […] units of […] aircraft […] that are expected to be delivered by […],[663] Asiana has already received (and fully paid for) […] units of […] aircraft. In the second place, Asiana confirmed that by the end of […], it expected to receive […] additional units of […] aircraft ([…]).[664] Asiana has further confirmed that […] aircraft that were expected to be delivered by the end of […]. In the third place, Asiana has already […] aircraft that are scheduled to be delivered to Asiana […]. The combined pre-delivery payment for such aircraft was approximately USD […], whereas the outstanding amount that remains to be paid is USD […].[665] This shows that Asiana […] (see paragraph ((430) above).[666]

(433) Korean Air further submits that (i) Asiana has made […] and (ii) […].[667] The Commission disagrees with Korean Air's arguments due to the following evidence.

(434) In the first place, the Commission considers that Asiana's negotiations […]. Indeed, in the past Asiana had made changes to […].[668] In the second place, […].[669] In the third place, contrary to the arguments of Korean Air, […]. On the contrary, the need to agree on the […].[670] Moreover, Korean Air does not submit that the […].[671]

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651 Response of Asiana to RFI 3, Annex RFI3.Q3b – Annex 19, Slide 3.

652 Response of Asiana to RFI 3, Annex RFI3.Q3a, Slide 22.

653 Response of Asiana to RFI 3, question 2 and Asiana's reply to RFI 4, question 2.

654 Response of Asiana to RFI 3, question 2.

655 […]. See response of Asiana to RFI 4, Annex RFI4.Q3, Slide 50.

656 Form CO, Annex 39, paragraph 16.

657 Asiana's […]; Slide 2. See also Form CO, Annex 39, paragraph 16; Annex QP9.Q106.1, slide 2.

658 Asiana Airlines […], Annex RFI4.Q3, Slide 19.

659 Response of Asiana to RFI 2, question 1; Response of Asiana to RFI 1, summary of reply to question 2 and question 2. […] Response of KDB to RFI 1, paragraph 2 and Table 3.

660 Response to the 6(1)(c) Decision, paragraph 160; Response to the Statement of Objections, paragraph 245 et seq.

661 Asiana CEO's […] Statement to European Commission, 24 April 2023, page 3.

662 Asiana's […].

663 Asiana explained that […]. Response of Korean Air to RFI 20, question 7.

664 It should be noted that […]. Response of Korean Air to RFI 20, question 7.

665 Response of Korean Air to RFI 20, question 7.

666 Asiana's […]. See response of KDB to RFI 2, supporting document 1.

667 Response of Korean Air to RFI 27, question 14(b). It should be noted that […]. See Asiana's […], Slide 2, and Response of Korean Air to RFI 20, question 7(a).

668 As explained by Korean Air, Asiana […]. See Response of Korean Air to RFI 20, question 7(a).

669 Seabury Report of 17 April 2023, paragraph 54.

670 For instance: (a) The first and the second […]; (b) The third […] was agreed because of […]; (c) The fourth […], was due to the change […]; (d) The fifth and the sixth […] were related to […]. See Response of Korean Air to RFI 20, question 7(a) and Tables 4 and 5.

(435) Sixth, Korean Air's argument that Asiana in the absence of the Transaction would most likely exit its long-haul routes to Europe and […] is contradictory to Asiana's ongoing strategy […].[672] In the first place, in reaction to intensified competition from the LCCs in the domestic South Korean market and short-haul flights Asiana […].[673] In other words, due to the intense competition on domestic and regional markets, Asiana's plan was […]. In the second place, KDB explained that […].[674] Neither Korean Air nor Asiana explained […]. The fact that neither Party submitted evidence showing […]. Lastly, Asiana has not […]. As explained by […].[675]

(436) Seventh, in order to further show that Asiana's exit from the European long-haul routes is not sufficiently likely, the Commission will assess the profitability of Asiana's operations with a focus on its European routes. In the first place, the Commission will consider the contribution margins, which display the profitability of different routes based on the revenue from the routes and the variable costs of each route such as fuel. Further, the Commission will analyse profitability including indirect costs and costs for plane amortisation. In the second place, the Commission will analyse Asiana's ordinary profitability by region. In the third place, the Commission will analyse Asiana's ordinary profitability by plane type and finally, the Commission will analyse Asiana's ordinary profitability by route. In undertaking this analysis, the Commission will also analyse the need of diversification of risks for Asiana's business that has come forth during the pandemic and will rebut the Parties' arguments in respect of the profitability of the business of Asiana, at regional and route level, as well as in respect the associated aircrafts.

(437) In the first place, as introduced above in paragraph (436), the Commission's analysis of Asiana's passenger air service profitability at a contribution margin level[676] shows that […]. Table 18 below presents the contribution margins of Asiana's passenger air services for all long-haul routes. Based on Asiana's profitability data it appears that its operations on the […] route is one of the most profitable EEA-South Korea routes, whereas Asiana's operations on the […] and […] routes have been profitable but below average profitability (but in any case not the least profitable). There are other long-haul routes in Asiana's portfolio that would be better suited for Asiana to exit, should it decide to shrink its long-haul operations. This suggests that if Asiana remains to operate long-haul intercontinental routes and does not reduce its wide-body fleet size, then there is no objective reason why Asiana should not continue operating the overlapping routes to the EEA.

Table 18 - Contribution Margins by Route – Asiana's Air Passenger Services

Route	Region	Contribution Margin in KRW million	
		IATA Summer season 2022	IATA Summer season 2019
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

671 Response of Korean Air to RFI 27, question 14(b).
672 Response to the 6(1)(c) Decision, paragraphs 172-174 and 189.
673 "[…]." See […], response of KDB to RFI 1, supporting document 5, page 2.
674 Form CO, Annex QP8.Q48 – KDB opinion on the Proposed Transaction, paragraph 29.
675 […], paragraphs 14 and 17. (ID12410).
676 Response of Asiana to QP9, question 24b.

Route	Region	Contribution Margin in KRW million	
		IATA Summer season 2022	IATA Summer season 2019
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

Source: Response of Asiana to QP5, response of Asiana to QP9, question 24 and response of Asiana to QP10, question 9.

(438) The Parties put forward that referring to the contribution margins as indication of strategic decisions of Asiana to keep operating individual routes was not appropriate because contribution margins do not factor in the financing costs and costs of amortisation of aircrafts which if not covered through profits in the long term cannot be sustained and therefore would drive the company to discontinue routes with negative overall profitability even if the contribution margins are positive. The Commission maintains that contribution margins are a relevant indicator for airline companies when taking decisions over allocating planes to routes for a given level of fixed assets. This is confirmed by internal documents […].[677]

(439) That said, as airlines can adapt their asset base in the long term, the Commission has also examined the profit of the individual routes, where aircraft financing costs were allocated to the routes. As according to the information provided by Asiana, the level of profit that factors in the aircraft specific financing costs is labelled as ordinary route profit,[678] this is the indicator the Commission has retained to further develop its assessment of route profitability. The Seabury Report submitted by Asiana on 18 April 2023,[679] retains the operating profitability as an indicator, which reflects a certain number of fixed costs but does not reflect the aircraft specific financing costs according to Asiana's information. For this reason, the operating profit is higher than the ordinary route profit and the Commission is taking the most conservative approach to appreciate the profitability by referring to the ordinary route profit.

(440) From the outset, the Commission notes that the Seabury Report puts forward that Asiana's long-haul passenger aircraft service to the EU […] would be eliminated or at the very least materially reduced in any restructuring, if Asiana were a standalone carrier. This conclusion is reached based on the profitability prospects of Asiana.[680]

(441) The profitability of the passenger operations by region that underlie the conclusions of the Seabury Report are presented in Figure 6 at paragraph 41. The Commission takes issue with the proposed analysis because of the choice of regional segmentation. The segments presented in the Seabury report do not correspond to the segments provided in documents on route profitability submitted by Asiana and they blur the assessment

677 For example, Annex RFI18Q13a and Annex RFI18Q13b contain information on […].
678 Annex RFI13-Q2 - Asiana's […].
679 See footnote 528.
680 Seabury Report of 17 April 2023, paragraph 5.

of profitability by adding regions that display very different profitability. This is the case for the *Other* category which combines domestic and regional flights. As illustrated in Figure 20 to Figure 23 below, the performance of the two segments differs over the years.

(442) In a second place, as announced above in paragraph (436), based on the figures provided by Asiana, the Commission[681] presents below its own analysis of the profitability at ordinary profit level by region. In this analysis the errors in the approach of the Seabury report are corrected.

(443) For the purpose of the analysis, the Commission takes as reference the three years before the Covid19 pandemic (i.e. 2017 to 2019). The Commission notes that […],[682] in which year the flights in many regions […].

Figure 20: [Figure redacted]

Source: […].

Figure 21: [Figure redacted]

Source: […].

Figure 22: [Figure redacted]

Source: […].

Figure 23: [Figure redacted]

Source: […].

(444) […]

(445) In a third place, as explained in paragraph (436), the Commission will assess ordinary profitability by plane type. This is in order to respond to the argument by the Parties that Asiana would reduce its fleet to the planes flown regionally, the Commission also assessed which type of plane most contributed to the losses of Asiana in […] and […].[683]

Figure 24: [Figure redacted]

Source: […].

(446) In […], the planes […] were exclusively used for domestic flights while the planes […] were exclusively flown on long haul routes. In […] planes were flown across regions, while only the planes […] were flown exclusively on long haul routes.[684]

(447) The analysis shows that at no point over the two years used as illustration ([…] and […]), […]. To the contrary, the largest losses were associated […].

(448) The Seabury Supplemental Report of 5 May 2023 also breaks down the performance of the domestic and regional segment into the two respective components. This information was not presented in the Seabury Report. Figure 3 of the Seabury

681 Annex RFI13-Q3 – Asiana's […].
682 2022 is the latest year where data is fully available.
683 […].
684 Based on Annex RFI13-Q3 – Asiana's [...].

Supplemental Report shows that […]. The Seabury Supplemental Report contends that domestic and regional flights […].

(449) This conclusion however is not supported by a further breakdown of the regional figures of Asiana, as […], was […] even before the Covid19 pandemic and […]. The South East Asia sub-region includes Thailand, Vietnam and Philippines, that the Seabury Supplemental Report classified among the five main components of the regional routes, along with China and Japan.[685]

(450) In respect to the ability of the long-haul flights during the pandemic to mitigate the risk of passenger restrictions with the business from the belly hold cargo, the Seabury report falls short of presenting this diversification of the risks inherent to the long-haul business as an advantage of the long-haul business. The Seabury Supplemental Report report does not explain either why a company would deprive itself from the benefits of this diversification going forward, given that it has proven to be an effective risk mitigation mechanism in very recent past.

(451) Regional flights are presented as profitable in a misleading manner in the Seabury Supplemental Report by adding up the profitability of routes that displayed very different performances. This is confirmed by the route by route analysis below, which shows that […].[686]

(452) In the fourth place, in the […],[687] […][688] […].

(453) In Figure 25 to Figure 28 below, the Commission identifies the 5 most unprofitable routes for the years […]. The Commission also identified the three most profitable routes for comparison purposes.

Figure 25: [Figure redacted]

Source: […].

Figure 26: [Figure redacted]

Source: […].

Figure 27: [Figure redacted]

Source: […].

Figure 28: [Figure redacted]

Source: […].

(454) The […]. This analysis again confirms that the assertion by KDB that […].

(455) The Parties put forward different variations of the […].[689] However there seems to be confusion about the […]. First, over the period 2017-2019 and in 2022, flight to destinations that are classified as South East Asia by Asiana,[690] […]. Additionally, the

685 Seabury Supplemental Report of 5 May 2023, Figure 1.
686 […].
687 […] See email of Asiana's external legal counsel of 18 April 2023.
688 White Paper of 13 April 2023, page 2.
689 See summary of Korean Air's submissions in section 8.4.2 above.
690 Annex RFI13-Q3 – Asiana's […].

South East Asian routes (demoted as SEA by Asiana) are classified internally by Asiana […].[691] Therefore the Commission is not in a position to examine […].

(456) The Commission also observes that among the most profitable routes in 2017-2019 were routes to […]. Additionally the largely profitable […]. In 2022, Asiana's losses on the route to […] represents the single largest loss on a route. In view of the volatility of the profitability and the uncertainly in respect of the operations of the routes that were among the most profitable pre-pandemic, one reason for Asiana to retain its long-haul routes is to maintain risk diversification in respect of the individual routes.

(457) The mere fact that a route is loss making even in the medium term does not lead airlines companies to close the routes. For example, Korean Air recorded a loss at ordinary profit level of its flight to […] every year from 2015 till 2020, it did not operate the flight in […] and resumed in […], again recording a loss.[692] Moreover, Korean Air explained that other reasons than just profitability have impact on its network planning. For instance, among the factors that Korean Air considers when making network planning decisions are […].[693] […].

(458) In its Response to the Statement of Objections and Response to the Letter of Facts,[694] Korean Air submitted a revised financial analysis that relies on an alternative profit indicator, labelled "Operating profit (Seabury)" and specifically constructed by Seabury as a combination of elements of both Asiana's operating profit and Asiana's ordinary route profit to evaluate scenarios of routes restructuring. Figure 29 shows Asiana's […] least profitable passenger routes in 2019 according to such analysis as submitted by Seabury. The Commission acknowledges that, should Asiana's routes be ranked based on the absolute level of profit as defined by Seabury, of Asiana's EU routes […]. The Commission reiterates, however, that Asiana's EU routes […] in the context of the Commission's merger review, and not on the basis of measures actually relied upon by Asiana in the course of business. Furthermore, for the reasons explained in paragraphs (436) to (440), the Commission deems profit indicators that account for variable costs only as the most appropriate measures to assess Asiana's intentions over its long haul routes and, based on the internal documents discussed in paragraphs (407) and (420), Seabury's analysis also appears at odds with Asiana's own assessment.

Figure 29: [Figure redacted]

Source: […].

(459) Eighth, as already explained in section 8.3.3 on the failing firm defence above, Asiana's cargo business has been overall profitable throughout the Covid19 crisis, systematically helping Asiana to cover losses incurred in its passenger business. The market investigation did not present evidence of Asiana's plans for a business reorientation on the cargo side.

(460) The Commission considers that Asiana's situation absent the Transaction would not require a reduction of the European operations due to its financial situation.

691 Annex RFI13-Q3 – Asiana's […].

692 OZ - Annex RFI13.Q8 - Korean Air […].

693 Response of Korean Air to RFI 14, question 20; Response of Korean Air to RFI 16, question 10.

694 See Response to the Statement of Objections, paragraphs 275-280 and Annex 1 - SO reply - Seabury supplemental analysis, and Response to the Letter of Facts, paragraphs 64-66, and Annex 2 – LoF Response.

8.4.3.2. Asiana becoming an insignificant competitor is not the most likely development

(461) The Commission finds that, contrary to Korean Air's submissions, Asiana becoming an insignificant competitor is not sufficiently likely to be taken into account as the relevant counterfactual.

(462) First, as already explained in detail in section 8.3.3 on the failing firm defence (see paragraphs (341)-(356) above), the Commission is of the view that Asiana's main creditors, namely KDB and KEXIM, would not let Asiana fail absent the Transaction and, for instance, initiate bankruptcy proceedings – which could weaken Asiana's competitiveness temporarily or in the long run. Korean Air's argument that there is a limit to KDB and other state-owned creditors' willingness and ability to continue financing Asiana is unsubstantiated by evidence (see paragraph (320) above).[695] Indeed, Korean Air simply made statements in this regard, […].

(463) Second, Korean Air did not provide any evidence in support to its claim that *"it would be uneconomical and practically impossible for* [Asiana] *creditors to continue to provide financial support"* to Asiana.[696] Korean Air's Response to the 6(1)(c) Decision, Response to the Statement of Objections and Response to the Letter of facts also do not contain any substantiation for this argument.

(464) […],[697] […].

(465) Fourth, the market investigation did not indicate and Korean Air has not provided evidence that Asiana's debt burden would impact its operational competitiveness in the future. In the first place, the Commission's investigation shows that Asiana has been competing head-to-head with Korean Air in both passenger and cargo air services between the EEA and South Korea in the last years – despite Asiana's financial difficulties. In the second place, Asiana admitted that […].[698] In the third place, as already explained in section 8.3.3.1 above, Asiana sold tickets on its long-haul flights to Europe for summer 2023 and has been selling them for winter 2023/2024 […]. In the fourth place, the results of the market investigation show that passengers do not attribute great importance to the financial strength of a carrier when deciding with which airline to book a flight on a route between the EEA and South Korea.[699] This suggests that the financial strength (or weakness for that matter) has limited impact on passenger choices between airlines.

(466) Short of a market or route exit, the Commission therefore does not see reasons to conclude that absent the Transaction Asiana would be less competitive going forward. As long as Asiana is active on the relevant routes and maintains its quality levels, which appears to be the most likely counterfactual, it is likely to remain an important competitor to Korean Air.

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695 See also response to the 6(1)(c) Decision, paragraph 186; Response to the Statement of Objections, paragraph 197.

696 Form CO, Annex 39, paragraph 95.

697 Asiana plans to operate all four Overlap routes in summer 2023, winter 2023/2024 and did not provide any indications that it plans to cease operations on any of these routes in the following seasons. See response of Korean Air to RFI 20, question 3.

698 Response of Korean Air to RFI 18, question 10.

699 Financial strength of an airline on average was rated below 3 on a scale from 1 to 5, which in comparison to the other criteria is one of the lowest criteria. See replies to question D.A.1 of Questionnaire Q4 to customers; replies to question D.A.1 of Questionnaire Q6 to travel agents and tour operators; replies to question D.B.A.1 of Questionnaire Q1 to competitors.

8.4.3.3. Conditions prevailing before the Covid19 pandemic constitute an appropriate benchmark for assessing the effects of the Transaction

(467) The Commission undertook an in-depth review of various pieces of evidence submitted by the Parties, stemming from third-party submissions as well as the Parties' internal documents. The results of the market investigation indicate that airlines have been restoring their positions on the routes after the effects of the Covid19 pandemic, for both cargo and passenger operations, with some limited exceptions.

(468) First, the results of the market investigation confirm that the Parties and their competitors have been in the process of restoring their passenger and cargo air transport positions on the EEA-South Korea routes. Korean Air and Asiana have already re-entered all EEA-South Korea passenger Overlap Routes on which their operations were suspended during the Covid19 pandemic[700] and according to their plans submitted in the Form CO, expected to restore their pre-pandemic level of frequencies in summer 2023 (for Korean Air)[701] and by 2024 (for Asiana).[702] Based on the Parties' network planning, both Korean Air and Asiana are expected to operate all four Overlap Routes in […] with similar frequencies as before the Covid19 pandemic.[703] Furthermore, they continued serving the Europe-South Korea-Europe cargo routes throughout the pandemic.

(469) Second, industry experts project a return to 2019 levels for EEA-South Korea passenger traffic by around 2024/2025. In contrast, demand for cargo transport has remained strong throughout the Covid19 pandemic. Further information on this will be set out in sections 8.5.1 and 8.10.1 below.

(470) Third, Asiana's external financial analysts also confirm that using 2019 data as a benchmark to predict future operating performance in a stabilized post-Covid19 environment is a standard in the aviation industry.[704] In their supplemental submission, Asiana's financial analysts submit that after the extraordinary Covid19 pandemic effects dissipate, it is likely that Asiana's operational performance will be "*more similar to its 2019 performance than its 2020-2022 performance*".[705] This is further supported by the evidence provided in the Parties' internal documents that have been prepared in the regular course of business (see sections 8.5.1 and 8.10.1 below).

(471) The Commission will take therefore as a starting point the market situation before the Covid19 pandemic, in particular, in air passenger services. Accordingly, the Commission will assess the impact of the Transaction on passenger services taking into account data from the last four IATA seasons before the outbreak of the Covid19 pandemic (IATA seasons Summer 2018, Winter 2018/2019, Summer 2019 and Winter 2019/2020). By contrast, since it is difficult to interpret market share data in passenger services between 2020 and 2022 due to the extremely low passenger numbers and the fact that at time the recovery had just started, the Commission will not put much weight on the market shares between the IATA Summer season 2020 and Winter season 2022/2023. Market shares since the beginning of the Covid19 pandemic are

700 Asiana resumed operations in August/September 2022. See Form CO, Annex 39, paragraph 14.

701 Form CO, paragraph 1139.

702 Form CO, paragraph 1151.

703 Response of Korean Air to RFI 20, question 3. See also response of Korean Air to RFI 20, Annex RFI20.Q3b, response of Korean Air to RFI 10, […], […] and […]; Form CO, Annex QP9.Q23.

704 "*To predict future operating performance in a stabilised post-Pandemic environment, airlines generally measure their future prospects as compared to 2019, which is the most recent year unaffected by the Pandemic*." See Seabury Report of 17 April 2023, paragraph 20.

705 Seabury Supplemental Report of 5 May 2023, paragraphs 2 and 10.

therefore provided in this decision only for completeness. In any event, for both passenger and cargo services, the Commission will take into account any structural changes that have occurred in the market since the Covid19 pandemic or that can reasonably be expected, such as the lasting entry or exit of competitors or structural shifts in competitiveness.

8.5. Background to Passenger air transport services

8.5.1. The impact of the Covid19 pandemic and Russia's war against Ukraine on passenger air transport services

(472) The Covid19 pandemic had a tremendous impact on the airline industry. In particular, due to travel restrictions and public health concerns, demand for passenger air transport services significantly decreased. As a result, the aviation industry suffered severe losses. All airlines had to temporally suspend and/or significantly reduce operations on the vast majority of their routes (sometimes re-focusing on cargo).

(473) Russia's war against Ukraine has also had an impact on the European aviation sector and especially on the EEA-South Korea routes. Following the start of Russia's war against Ukraine in February 2022, the closure of Russian and Ukrainian airspaces for European airlines has shifted traffic south,[706] leading to longer flight times between the EEA and South Korea, whereas Russian airlines have ceased offering flights to the EEA customers.

(474) That said, the market investigation did not provide evidence that the decline in demand caused by the Covid19 pandemic would be structural or permanent. Rather, based on industry reports and the results of the Commission's investigation, the industry consensus seems to be that demand will gradually recover. The following evidence shows that the aviation industry's recovery from the Covid19 pandemic has accelerated in 2022 and the upward recovery trend has continued in 2023.

(475) First, the general industry projections by Eurocontrol and IATA – of June and October 2022, which therefore take account of the start of the Russian war on Ukraine – anticipate international travel recovery to at least 90% of pre-pandemic traffic in around 2023/2024.[707] As noted by Eurocontrol, "[l]*ong-haul flows recovering well in 2022, apart from the China (Asia/Pacific region) and South Atlantic flows. Full restoration is expected to occur in 2023*."[708] According to IATA, since 2022 the number of air passengers continued to grow worldwide and approached pre-pandemic levels, demonstrating the eagerness of travellers to fly again.[709] Indeed, in March 2023, the international traffic recovery reached 81.6% of March 2019 levels.[710]

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706 Eurocontrol Forecast Update 2022 – 2028, October 2022, available at: https://www.eurocontrol.int/sites/default/files/2022-10/eurocontrol-seven-year-forecast-2022-2028-october-2022.pdf, p. 9.

707 IATA Global Outlook for Air Transport – Times of Turbulence (June 2022), available at https://www.iata.org/en/iata-repository/publications/economic-reports/airline-industry-economic-performance---june-2022---report/, page 13; Eurocontrol Forecast Update 2022 – 2028, October 2022, available at: https://www.eurocontrol.int/sites/default/files/2022-10/eurocontrol-seven-year-forecast-2022-2028-october-2022.pdf, pages 10 and 12.

708 Eurocontrol Forecast Update 2022 – 2028, October 2022, available at: https://www.eurocontrol.int/sites/default/files/2022-10/eurocontrol-seven-year-forecast-2022-2028-october-2022.pdf, page 10.

709 IATA 2023 Annual Review, https://www.iata.org/contentassets/c81222d96c9a4e0bb4ff6ced0126f0bb/annual-review-2023.pdf, page 14. [ID12913]

710 IATA 2023 Annual Review, https://www.iata.org/contentassets/c81222d96c9a4e0bb4ff6ced0126f0bb/annual-review-2023.pdf, page 14. [ID12913]

(476) While looking specifically at Asia-Pacific, IATA noted that this region is expected to reach its pre-pandemic traffic levels by 2024, due to the earlier-than-anticipated reopening of China.[711]

(477) IATA notes that passenger willingness to travel is demonstrated globally by the rapid increase in international revenue per passenger kilometres ("RPKs"). Industry-wide revenue per RPKs increased significantly from 41.7% of 2019 RPKs in 2021 to 68.5% in 2022.[712] Routes between Asia-Pacific and the rest of the world have experienced significant growth in international traffic, with RPKs within Asia in Q1 2023 growing by 703.8% compared to Q1 2022, and Asia-North America by 251.3%.[713] According to IATA, in the first quarter of 2023, the available seat capacity, measured in available seat-kilometres ("ASKs"), continued to ramp up in line with demand for air traffic, rising to 89.5% of 2019 levels in March and 79.8% over the quarter (globally), whereas passenger load factors, which indicate the level of demand expressed by consumers relative to capacity, were close to the 2019 levels for all regions.[714]

(478) Korean Air challenges IATA and Eurocontrol projections and submits that they are unreliable and too optimistic.[715] More specifically, Korean Air submits that IATA's forecasts may be biased because it is an association of industry players, therefore it might have an underlying economic incentive.[716] As for Eurocontrol's forecasts, Korean Air considers that the "low" scenario[717] which predicts a full recovery from Covid19 to take place in 2028 is more probable.[718] The Commission rejects such arguments as unsubstantiated.

(479) In the first place, Korean Air itself heavily relies on various IATA reports and market forecasts throughout the Form CO and its public projections to the market. Indeed, the Commission observed a number of instances where Korean Air cites IATA's forecasts in support of its arguments in the submissions to the Commission.[719] Korean Air also relies on IATA outlook for passenger demand in presentations to investors. For instance, in its Investor Relations presentation discussing the results of Q4 2022, Korean Air remarks that on the basis of IATA outlook for passenger demand,

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711 IATA Quarterly Air Transport Chartbook, IATA Sustainability & Economics, Q1 2023, https://www.iata.org/en/iata-repository/publications/economic-reports/quarterly-air-transport-chartbook---q1-2023/, pages 13 and 14. [ID12911]

712 IATA 2023 Annual Review, https://www.iata.org/contentassets/c81222d96c9a4e0bb4ff6ced0126f0bb/annual-review-2023.pdf, page 14. [ID12913]

713 IATA Quarterly Air Transport Chartbook, IATA Sustainability & Economics, Q1 2023, https://www.iata.org/en/iata-repository/publications/economic-reports/quarterly-air-transport-chartbook---q1-2023/, page 11. [ID12911]

714 IATA Quarterly Air Transport Chartbook, IATA Sustainability & Economics, Q1 2023, https://www.iata.org/en/iata-repository/publications/economic-reports/quarterly-air-transport-chartbook---q1-2023/, page 11. [ID12911]

715 Response to the 6(1)(c) Decision, paragraphs 2021-205; response of Korean Air to RFI 14, question 27; Form CO, Annex 39, paragraphs 18-19.

716 Response to the 6(1)(c) Decision, paragraph 205.

717 The "low" scenario is the most pessimistic scenario used by Eurocontrol, see Eurocontrol Forecast Update 2022 – 2028, October 2022, available at: https://www.eurocontrol.int/sites/default/files/2022-10/eurocontrol-seven-year-forecast-2022-2028-october-2022.pdf, page 12

718 Response of Korean Air to RFI 14, question 27.

719 See, for example, (i) Korean Air's submissions in relation to its claims that the e-commerce sector is expected to grow exponentially in the coming years which are based on references to two IATA forecasts Form CO paragraph 202; (ii) Korean Air's submission in relation to cargo industry's decline in profitability before Covid19, based on references *inter alia* on two articles of IATA, Form CO, paragraph 475; (iii) Korean Air's arguments in relation to the effects of the war in Ukraine, Form CO, paragraph 515, and many other instances in Form CO, paragraphs 133; 140, 517 etc.

"[i]*ndustry recovers to 2019 in 2024*" and that "*steep increase of Asia form 2024*" could be expected.[720]

(480) In the second place, Korean Air conceded that it does not use Eurocontrol's "low" scenario in its ordinary course of business and relies on it only for the purposes of the Response to the Statement of Objections.[721]

(481) In the third place, IATA and Eurocontrol forecasts are only one source of evidence in the Commission's file. In drawing its conclusions with respect to recovery after the Covid19 pandemic, the Commission reviewed not only third party sources such as IATA and Eurocontrol forecasts, but also replies to the market investigation as well as the Parties' internal documents and their submissions.

(482) In the fourth place, Korean Air did not provide any internal documents which would indicate that Asiana and/or Korean Air projects the recovery from the Covid19 pandemic will take longer than forecasted by IATA or Eurocontrol. On the contrary, in their internal documents, both Korean Air and Asiana rely on various forecasts by IATA.[722] Moreover, in its submissions to the Commission, Korean Air explained that passenger demand on the EEA-South Korea routes is continuing to increase gradually. On the basis of the DDS data, total passenger volume on the EEA-South Korea routes was more than three times higher in April 2023 than in April 2022, whereas passenger volume in January-March 2023 was around 72% of the volume in January-March 2019.[723]

(483) Second, the majority of air carriers expressing a view during the market investigation believe that passenger demand on the EEA-South Korea routes will recover to 90% of pre-Covid19 levels by 2024 both under optimistic and realistic scenarios.[724] Several travel agents and tour operators submitted that the demand for travel between the EEA and South Korea has already recovered to pre-Covid19 levels.[725]

(484) This is largely in line with the Parties' own network planning. For instance, in an internal document setting out its corporate strategy for […], Asiana noted that *"[…]"*.[726] As demonstrated in the excerpt provided as Figure 30 below, Asiana's recent strategic management plan prepared in […] anticipates that recovery of Asiana's routes to Europe will […].

Figure 30: [Figure redacted]

Source: […]

(485) Whilst in one internal document Asiana estimates […],[727] nevertheless by […] it expects […]% of demand recovery for its European routes.[728] In another recent strategic management plan Asiana notes that […].[729][…].[730]

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720 Korean Air Investor Relations Report Q4 2022, Slide 11 available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_4Q.pdf

721 Response of Korean Air to RFI 27, question 5(b). See also Response to the Letter of Facts, paragraph 63.

722 Korean Air internal document "[…]", Slides 20, 21 et seq, DOC ID 9780-8341; Korean Air internal document […], Slide 26 et seq, DOC ID 7567-1071. See also Korean Air's internal document […], in which it states that "*[…]*" (emphasis added). Korean Air's internal document […], Slide 22.

723 Response of Korean Air to RFI 27, question 5(a).

724 Replies to question D.A.1 of Questionnaire Q1 to competitors; replies to question C.10 of Questionnaire Q2 to potential entrants.

725 Replies to questions B.10 and B.11 of Questionnaire Q6 to TA/TO.

726 Asiana Airlines […], Slide 9.

727 Asiana Airlines […], Slide 5.

(486) The Parties' internal documents forecast an increased travel demand after the Covid19 restrictions are lifted. For instance, Korean Air's internal document of September 2022 that was prepared by Korean Air's Business Strategy division, discusses the outlook for […] business environment and notes […] .[731] When discussing the future outlook, this document notes that "[…]" is expected.[732] Whereas in its internal assessment prepared on […], Asiana explained that it expects a "[…])".[733] In another internal document Asiana notes that "[…]."[734]

(487) Moreover, Asiana's internal document shows that the introduction of passenger aircraft should have reached 2019 levels in […]: […]."[735] In addition to network planning, […].[736]

(488) Third, Korean Air's argument that the airlines which currently operate have been significantly reducing their flights is not correct.[737] Both Parties as well as their competitors have been gradually recovering their frequencies on the Overlap Routes (close to) and in some cases even beyond the pre-Covid19 pandemic levels.

(489) For instance, according to its plans for summer 2023, Asiana planned […], whereas on […] it anticipated to operate at a higher frequency than before the pandemic […]. On […] and […], Asiana planned to operate at a reduced frequency compared to pre-Covid19 in […].[738] Korean Air expected to resume its pre-Covid19 frequencies […].[739]

(490) This is also the case for the Parties' competitors that offer direct services on the Overlap Routes. For example, in summer 2019 Lufthansa operated on FRA-ICN at a weekly frequency of […], in summer 2022 the frequency of its operation on this route was […], whereas in summer 2023 the weekly frequency of its operation was expected to reach […].[740] In summer 2019 Air France operated on CDG-ICN at a weekly frequency of […]; in summer 2022 the frequency of its operation on this route was […], whereas in summer 2023 the weekly frequency of its operation was expected […].[741]

(491) Fourth, market shares for summer 2022 and part of winter 2022/2023 provided by Korean Air and discussed in section 8.7.1 to 8.7.4 also show the gradual return to the pre-Covid19 market structure as the Merged Entity appears to have been increasing its presence on each of the Overlap Routes, whereas its competitors decrease their market share to pre-Covid19 pandemic levels.[742]

(492) Fifth, Korean Air argues that in its assessment of the counterfactual the Commission can take into account changes to the market in the near future which can be reasonably predicted and cannot take into what "*will happen in more than 5 years from now*", i.e.

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728 Asiana Airlines […], Slides 21 and 23.
729 Asiana Airlines […], Annex RFI4.Q3, Slide 5.
730 Asiana Airlines […], Annex RFI4.Q3, Slide 7.
731 Korean Air internal document […], Slides 12 and 20.
732 Korean Air internal document […], Slide 14.
733 Response of Asiana to RFI 11, Annex RFI11-Q1.23.f, page 2.
734 Annex QP6.Q5g.b.i.38 – […], Slide 4.
735 Asiana Airlines […], Annex RFI4.Q3, Slide 6.
736 Asiana Airlines […], Slide 24.
737 Response to the 6(1)(c) Decision, paragraph 195.
738 Reply to RFI25, question 1, Annex RFI25.Q1.
739 Ibid.
740 Form CO, Annex QP9.
741 Form CO, Annex QP9.
742 Response of Korean Air to RFI 22, Annex RFI22.Q6.

when recovery of the airline industry is expected by Eurocontrol, according to Korean Air.[743] The Commission disagrees with Korean Air's view.

(493) In the first place, even though the relevant stakeholders' thinking on the possible recovery plans for air travel in general and for the EEA-South Korea operations specifically have been adjusted since the start of the post-Covid19 recovery, none of the evidence in the Commission's file suggest that demand recovery cannot be reasonably predicted in the foreseeable future. As already extensively explained above in paragraphs (474) et seq., the results of the market investigation show that the aviation industry is in consensus that the recovery of the passenger operations albeit gradual is the most likely outcome after all of the travel restrictions are lifted.[744]

(494) In the second place, Korean Air itself publicly noted that in Q4 2022 it experienced expansion of demand due to border opening in major countries.[745] Moreover, in its passenger business outlook Korean Air forecasts that "[g]*lobal travel demand to recover despite the concerns about economic downturn*".[746] It further notes that "*passenger demand is to increase with the transition into the endemic period* […] [p]*assenger demand to increase with the improved mobility between countries – Amerias/Europe: strong demand travelling to Korea* [,] *gradually increasing business/leisure demand from Korea*".[747] In its Q3 2022 presentation to investors, Korean Air noted that passenger "[d]*emand to grow with the relief of international travel restrictions*" and added that it has experienced "[s]*trong demand in long-haul &* [g]*radual recovery of mid/short-haul – Americas/Europe: strong visits to Korea due to the weak WON*".[748] Finally, Korean Air explained that it "[r]*estored capacity on leisure routes in Europe & SEA etc. (QoQ increase +67%)*".[749]

(495) In the Commission's view, the uncertainties brought by the recent events of Covid19 require the Commission to look beyond the temporary effects of the pandemic. As a result, in line with the provisions of the Horizontal Merger Guidelines, in making its assessment in this Decision, the Commission will not take into account any short-term effects of the pandemic, but will, first, assess the market situation pre-Covid19 as a reference for the market positions of the Parties' and their competitors, while, second, taking 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.

(496) As for the effects of Russia's war against Ukraine, the Commission notes that without the possibility of a reasonable prediction of the end of the war, the only structural

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743 Korean Air's Response to the Article 6(1)(c) Decision, paragraph 196.

744 Replies to question D.A.1 of Questionnaire eQ1 to competitors; replies to question C.10 of Questionnaire eQ2 to potential entrants; replies to questions B.10 and B.11 of Questionnaire Q6 to TA/TO.

745 Korean Air Investor Relations Report Q4 2022, Slide 5 available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_4Q.pdf.

746 Korean Air Investor Relations Report Q4 2022, Slide 10 available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_4Q.pdf.

747 Korean Air Investor Relations Report Q4 2022, Slide 10 available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_4Q.pdf.

748 Korean Air Investor Relations Report Q3 2022, Slide 10, available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_3Q.pdf.

749 Korean Air Investor Relations Report Q3 2022, Slide 5 available https://www.koreanair.com/content/dam/koreanair/en/footer/about-us/inverstor-relations/ir-report/2022_3Q.pdf.

effect on the relevant market is the exit of the Russian carriers from the Overlap Routes as well as the increased flight time for carriers that have to or choose to avoid Russian air space. For this reason, in its competitive assessment the Commission will exclude the Russian carriers from the analysis and take the extended flight times into account in its analysis.

8.5.2. Passenger air transport services between the EEA and South Korea

(497) The market structure on the South Korea-EEA routes (comprising of all routes between South Korea and the EEA) in terms of passengers transported point-to-point is set out in Table 19 and Table 20.

Table 19 - Market shares South Korea-EEA (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020[750]

Airline	**S17**	**W17/18**	**S18**	**W18/19**	**S19**	**W19/20**
Korean Air	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
Asiana	[10-20]%	[10-20]%	[10-20]	[20-30]%	[10-20]%	[20-30]%
Combined[751]	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[50-60]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Air France – KLM	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Lufthansa	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%
Finnair	[5-10] %	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Turkish Airlines	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Emirates	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Qatar Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Aeroflot	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
LOT	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Other competitors[752]	[5-10]%[753]	[5-10]%[754]	[5-10]%[755]	[5-10]%[756]	[5-10]%[757]	[5-10]%[758]
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51

750 Response of Korean Air to RFI5, question 3, Annex QP4.Q51.

751 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

752 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

753 Comprises 4 carriers each with market shares below[0-5]%: Czech Airlines, Alitalia, International Airlines Group, and Etihad.

754 Comprises 4 carriers each with market shares below [0-5]%: Czech Airlines, Alitalia, International Airlines Group, and Etihad.

755 Comprises 4 carriers each with market shares below [0-5]%: Czech Airlines, Alitalia, International Airlines Group, and Etihad.

756 Comprises 4 carriers each with market shares below [0-5]%: Czech Airlines, Alitalia, International Airlines Group, and Etihad.

757 Comprises 4 carriers each with market shares below [0-5]%: Czech Airlines, Alitalia, International Airlines Group, and Etihad.

758 Comprises 4 carriers each with market shares below [0-5]%: Czech Airlines, Alitalia, International Airlines Group, Etihad.

Table 20 - Market shares South Korea-EEA (non-stop and one-stop operations, TS + NTS) since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Summer 2022[759]

Airline	**S20**	**W20/21**	**S21**	**W21/22**	**S22**	**W22/23[760]**
Korean Air	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%
Asiana	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Combined[761]	**[30-40]%**	[20-30]**%**	[20-30]**%**	[20-30]**%**	**[30-40]%**	**[40-50]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Air France – KLM	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Lufthansa	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Finnair	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%
Turkish Airlines	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Emirates	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Qatar Airways	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Aeroflot	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
LOT	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Etihad	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Other competitors[762]	[0-5]**%**	[0-5]**%**	[0-5]**%**	[0-5]**%**	[0-5]**%**	[0-5]**%**
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; to RFI 22, question 6, Annex RFI22.Q.6; and to RFI 24, question 1, Annex RFI24.Q1a

(498) The Parties are the number 1 and number 2 carriers offering passengers connectivity between the EEA and South Korea. Together, Korean Air and Asiana accounted for [50-60]% of all (direct and indirect) passenger traffic between the EU and South Korea and for [70-80]% of direct passenger traffic between the EEA and South Korea before the pandemic in Winter 2019/2020.[763] Between Summer 2020 and Winter 2022/2023 the Parties' market shares range between [20-30]% and [40-50]%. Several competitors, such as Alitalia and Aeroflot (that used to offer indirect flights from the EEA to Korea through Moscow) have exited the market since 2019 and no longer offer air passenger services between the EEA and South Korea.[764] Thus while market share data from before the Covid19 pandemic is the appropriate reference for the Parties' current market position, structural changes since then mean that those data likely understate the Parties' joint market position at present.

759 Response of Korean Air to RFI5, question 3, Annex QP4.Q51. As explained in paragraph (471) market shares since the beginning of the Covid19 pandemic are provided in this decision for completeness.

760 The date for the winter 2022/2023 IATA season includes the months November to February and thus missing the month of February 2023.

761 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

762 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

763 IATA winter season 2019/2020, Form CO, Tables 47 and 49.

764 Due to the Covid19 pandemic, passengers numbers have dropped significantly. In IATA winter season 2021/2022 and summer season 2022 only 200 000 and 1 million passengers accordingly travelled between the EEA and South Korea. The Parties' combined market share in IATA winter season 2021/2022 were [20-30]% for all passengers and [40-50]% for direct services. (Form CO, tables 47, 47).

(499) Prior to the Covid19 pandemic, competitors' market shares on routes between South Korea and the EEA were stable or reducing over time, while Asiana's market share was growing, as demonstrated in the charts below.

Figure 31: Market shares on -South Korea-EEA routes [Figure redacted]

Source: Korean Air's reply to QP9, annex QP4.Q51 – Market share information

(500) In a similar way, between 2016 and winter 2019/2020, capacity shares of most competitors operating direct services between South Korea and the EEA were stable or reducing, whilst both Parties expanded their seat capacity continuously over this period, leading to an increase in the Parties' combined capacity shares until end 2019, as demonstrated in the capacity chart below. The outbreak of the Covid19 pandemic led to a dramatic drop in passenger numbers, to the suspension of services by the Parties and some of their competitors and, as a result, to an upheaval of the market and capacity shares.

Figure 32: Seat capacity of direct flights between the South Korea and EEA [Figure redacted]

Source: Korean Air's reply to QP9, Table 14 - Seat capacity of airlines operating direct flights from Korea to the EEA.

(501) The data summarized in this section above indicates that the market structure for the air transport of passengers between the EEA and South Korea would change considerably after the Transaction by combining the leading air carriers. It also indicates that there are few competitors with significant passenger volumes between the EEA and South Korea.

(502) Overall, passenger traffic between the EEA and South Korea appears to be characterized by (i) the presence of two large carriers – the Parties –, the presence of two smaller competitors as well as a large number of much smaller air passenger carriers and (ii) a market structure where the Parties have been able to gain share over time by expanding in a growing market. This shows that the Parties are the strongest competitors in passenger traffic between the EEA and South Korea and that there is no significant competitor to the Parties, even at that aggregated level. Furthermore, the market development over time casts doubt on the likelihood of considerable expansion by a competitor in the supply of air passenger services between the EEA and South Korea in the future.

8.6. Passenger air transport services – General considerations relating to the Overlap Routes

(503) This section sets out general considerations concerning the competitive analysis of the Transaction regarding passenger air transport services. These general remarks are relevant, sometimes to different degrees, for each of the Overlap Routes.

8.6.1. Closeness of competition on the Overlap Routes

(504) In light of the results of the market investigation, the Commission considers the Parties to be close competitors on the Overlap Routes.

(505) First, when making commercial decisions, the Parties take into account each other's behavior and react to it to be closer to, match or surpass the other's offer. In the first place, when setting prices, the Parties always benchmark against each other and sometimes also against other carriers.[765] In the second place, when conducting its

765 Form CO, tables 110, 111.

network planning and deciding to re-enter European routes, Asiana took into account Korean Air's […].[766] In this review of route operations,[767] Korean Air's frequencies are […] reviewed by Asiana. In the third place, when Korean Air considered in 2019 that Asiana was about to be acquired by HDC-Mirae Asset consortium, Korean Air prepared […].[768] […].[769] Korean Air considers that "*[...]*".[770] This document also shows the close competition between the Parties: […].

(506) Second, market participants view the Parties as close competitors, competing with each other head-to-head.

(507) In the first place, several market participants describe the Parties as close competitors.[771]

(508) In the second place, the majority of respondents to the Commission's questionnaires expressing a view consider that the Parties are each other's closest or second closest competitor on all four Overlap Routes.[772]

(509) In the third place, several market participants consider that Asiana competes more aggressively on prices. For example:

- A competitor considers that "*Asiana is leading the market in terms of the lowest price offering. Asiana is more aggressive than other competitors in terms of prices […]*";[773]
- "*[…] Asiana is more a challenger on the FCO-ICN route by offering more aggressive prices to both leisure and business segments*";[774]
- "*Asiana is more aggressive when it comes to pricing whereas Korean Air is more conservative regarding its pricing policy*."[775]
- Asiana is "*especially proactive in terms of pricing*"[776]
- "*Asiana has been more price-aggressive than Korean Air in the past*";[777]
- *"Korean Air seems to be more focussed on business customers with special service but higher rates compared to Asiana, which in general terms seems to be less expensive/more competitive in terms of fare"*[778]

(510) A market participant provided a possible explanation for Asiana's price aggressiveness: "*Korean Air was the national carrier and, as such, traditionally benefits from having contracts with the main companies and with the government. When Asiana entered the market as the second national carrier, it failed to enter the business segment and was therefore forced to focused on leisure and offer more*

766 Form CO, Annex QP6.Q5g.b.i.55 - […]. Slide 11
767 Form CO, Annex QP6.Q5g.b.i.55 - […]. Slide 11
768 "[…]", […](ID009780-007527)
769 "[…]", […], pages 18-19 (ID009780-007527)
770 "[…]", […], pages 20-21 (ID009780-007527)
771 See, for example: Non-confidential minutes of a call with [a competitor]; Non confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a travel agent]; Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor]; Non confidential minutes of a call with [a customer]; Non-confidential minuets of a call with [a competitor].
772 Replies to question D.B.C.2, D.B.C.3 of Questionnaire Q1 to competitors; replies to questions D.C.1, D.C.2 of Questionnaires Q4 to customers and Q5 to TO/TA.
773 Non confidential minutes of a call with [a competitor].
774 Non confidential minutes of a call with [a competitor].
775 Non confidential minutes of a call with [a competitor].
776 Non confidential minutes of a call with [a competitor].
777 Non confidential minutes of a call with [a competitor].
778 Non confidential minutes of a call with [a customer].

aggressive pricing".[779] A similar explanation was provided by another market participant with respect to Asiana's high quality service: "*whereas Lufthansa and Korean Air are more focused on safety and security, Asiana is more service oriented. This could be explained by the fact that Asiana is the second national carrier in Korea and had to offer high quality in order to gain market shares*".[780]

(511) According to the market feedback set out in paragraphs (509) and (510), Asiana offers its high-quality direct air passenger service on each of the four Overlap Routes at attractive prices. In the Commission's view, this makes Asiana a close competitor to other high-quality direct air services on the Overlap Routes, including notably those offered by Korean Air. The aggressive strategy of Asiana led to particular competitive pressure by Asiana on Korean Air, which […] the Overlap Routes, as described in paragraph (505).

(512) In their response to the Statement of Objections, the Parties argued that Asiana's pricing strategy is not aggressive compared to that of its competitors.[781] The Parties supported this claim with a pricing comparison of the fares charged by Asiana and its competitors,[782] operating direct flights between ICN and each of BCN, CDG, FRA and FCO and stated that the comparison shows that in many cases, it is not Asiana but one of its competitors that offers the lowest fares.[783]The Commission does not consider that the Parties' arguments in this respect change the conclusion that Asiana is price aggressive and competes closely with Korean Air. In the first place, the sample used by the Parties for the price comparison is not representative and cannot serve to demonstrate the general pricing strategy of the airlines: Rather than providing average prices, the data provided by the Parties contains prices searched on only two specific dates (January 2, 2019 and August 2, 2019) for flights departing in the following month (January 2019 and August 2019 respectively).[784] In the second place, contrary to the Parties' claims, the information provided by the Parties shows that, according to the data set, Asiana did offer the lowest fares on a significant number of occasions. For example, Asiana offered the lowest fares for the majority of departures in January on the FRA route. In the third place, the Commission considers that in order to compete fiercely one does not have to always offer the lowest prices. It is enough that a competitor stimulates competition and causes others to reduce their prices as well. In the fourth place, overall, the data set provided by the Parties does not invalidate the qualitative findings from the market investigation described above.

(513) Third, the Parties' internal documents confirm that they view each other as close competitors.

(514) In the first place, a Korean Air document analysing the competitiveness of the Korean aviation industry and the need for restructuring emphasizes the close competition between the Parties and the impact this competition has on the profitability of each of the companies.[785] The document contains the following statements:

– *"[...]";*[786]

– *"[...]";*[787]

779 Non confidential minutes of a call with [a competitor].
780 Non-confidential minutes of a call with [a travel agent].
781 Parties' response to the Statement of Objections, paragraph 314.
782 Parties' response to the Statement of Objections, Annex 2 – […].
783 Parties' response to the Statement of Objections, paragraph 314.
784 Response to the Statement of Objections, paragraph 314; Korean Air's reply to question 1of RFI26.
785 Form CO, Annex 16.a. dated September 2020.
786 Form CO, Annex 16.a. slide 129.

– *"[…]".*[788]

(515) In the second place, in Asiana's presentation to its board of directors, in the section reporting Asiana's business results for the second quarter of 2022, two slides (out of 12) are devoted to comparing Asiana's and Korean Air's performance, including in terms of operating profit, revenues and market shares, demonstrating that Asiana considers Korean Air as its point of reference.[789]

(516) Fourth, being the only South Korean carriers on the Overlap Routes, the Parties enjoy the same advantage with certain passenger groups, which is different compared to other, non-Korean carriers on the route. During the market investigation, several market participants explained that passengers generally prefer their own national carriers to other competitors on the route.[790] The Parties therefore compete closely with each other compared to other carriers on the routes on passengers originating in South Korea, who represent the large majority of passengers of the Overlap Routes. However, this does not mean that the Parties do not compete closely also for European customers; the Parties do compete closely also for European customers, for the reasons set out in this section.

(517) Fifth, arguments made by the Parties in their response to the 6(1)(c) Decision do not change the Commission's conclusion that the Parties are close competitors.

(518) In the first place, the fact that market participants identify additional competitors active on the Overlap Routes does not mean that these other competitors exert similar competitive pressure on the Parties. The example brought by the Parties in their response to the 6(1)(c) Decision demonstrate this.[791] While [a competitor] considers itself as a competitor to the Parties, [the competitor] clearly identifies the Parties as each other's closest competitors.[792] When asked to list the three closest competitors to each of the Parties, [the competitor] lists the Parties as each other's first closest competitor on each of the Overlap Routes. Despite its statement that it competes with the Parties, [the competitor] does not list itself as the first, second or third closest competitor of any of the Parties on the Overlap Routes.[793]

(519) In the second place, the Parties do compete closely also in terms of schedule and frequencies. The Parties argue that close competition only exists between airlines offering flights on the same day and that airlines not offering flights on the same days of the week are not considered as alternatives. These arguments cannot stand with respect to long haul flights of over 12 hours. Had this been correct, market shares of indirect competitors offering daily (i.e. 7 weekly) services on the BCN-ICN and FCO-ICN routes should have been higher than those of Asiana (and Korean Air on BCN), which offers only 3-4 weekly services on these routes. While the number of frequencies is relevant for passengers' choice, it is only one of a number of criteria considered by passengers when booking flights. Market participants rated several other factors as important when booking flights, such as price of the ticket (rated on average, on a scale from 1 to 5, 4.9 by customers, 4.47 by travel agents and tour operators and 4.71 by competitors), total flight duration (rated on average, on a scale

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787 Form CO, Annex 16.a. slide 130.

788 Form CO, Annex 16.a. slide 131.

789 Form CO, Annex 16.ii, slides 54-55.

790 See, for example: Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a travel agent]; Non-confidential minutes of a call with [a travel agent].

791 Korean Air's Response to the Article 6(1)(c) Decision, paragraphs 258, 291, 327 and 357.

792 Non-confidential minutes of a call with [a competitor].

793 Reply of [a competitor] to questions D.B.C.2 and D.B.C.3 of Questionnaire Q1 to competitors in passenger air services (ID7674).

from 1 to 5, 4.42 by customers, 3.76 by travel agents and tour operators and 3.86 by competitors), direct or indirect flight (rated on average, on a scale from 1 to 5, 4.39 by customers, 4.24 by travel agents and tour operators and 4.33 by competitors), and time of departure/arrival (rated on average on a scale from 1 to 5, 4.3 by customers, 4 by travel agents and tour operators and 3.57 by competitors).[794] In this respect, both Parties offer direct flights and the total elapsed time of their flights, as well as departure and arrival times are very similar, with almost no (and anyway less than two hours) difference, on all Overlap Routes.[795]

(520) In the third place, with respect to the Parties' argument that brand awareness does not distinguish them from other competitors, the Commission notes that customers of passenger air services who responded to the Commission phase I questionnaires do not attribute great importance to the airline's brand when deciding with which airline to book a flight on a route between the EEA and South Korea, and have rated it 2.47 (on average) on a scale from 1 to 5.[796] In addition, as explained in paragraph (519) above, passengers take several factors into account when choosing with which airline to book their flights, and the Parties compete closely with respect to several of these factors.

(521) Sixth, as described in the following paragraphs, the Commission finds that the Korean Air's econometric model is not reliable. In particular, the model does not fully capture the competitive interaction between the Parties or the competitive pressure by Asiana on Korean Air.[797] To the contrary, if anything, the data seem to indicate that Asiana's presence on routes negatively affect each Korean Air's prices, and Asiana may even be the only pricing constraint to Korean Air, if a minimally modified approach is adopted.

(522) In particular, Korean Air submitted an econometric analysis investigating the relationship between the Parties' fares and the number of nonstop carriers active on the route. According to Korean Air, this analysis does not find systematic evidence of fare effects from additional carriers beyond two.[798]

(523) Korean Air's proposed methodology uses pooled data across both Parties, all routes worldwide, and all cabin classes together. The methodology attempts to address all differences across routes and cabin classes by using (linear) fixed effects.[799] This means that it is taken as given that the differences between routes cabin classes are fixed in magnitude, e.g. a percentage difference that can be estimated and that is fixed over time, i.e. never changes during the timeframe of analysis, and are linear, meaning equal distanced between categories, e.g. the price difference between business and economy class on short-haul routes is equal to the percentage difference on long-haul routes. The implication of these assumptions and the critical assessment are laid out in the following paragraphs.

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794 Replies to question D.A.1 of Questionnaire Q4 to customers of passenger air services; Replies to question D.B.A.1 of questionnaire Q1 to competitors; replies to question D.A.1 of questionnaire Q6 to tour operators/travel agents.

795 Parties' reply to RFI 16, annex RFI16.Q19, schedule convenience for Summer 2023.

796 Replies to question D.A.1 of Questionnaire Q4 to customers of passenger air services.

797 The model only finds that price increases are associated to reductions in the number of competitors only where the number of competitors on a route drops from two to one, while no significant effect on prices is found where the number of competitors on a route is greater than two (for example, when the number of competitors on a route drops from three to two).

798 See Annex QP4.Q26 - Compass Lexecon analysis.

799 That is, indicator variables defined at the level of month, airport pair, and the interaction between region and month. See paragraph (538)(b) for an illustrative example of fixed effects.

(524) The Commission considers that pooling all data across carriers, routes and cabin classes implies a number of very strong assumptions, which may lead to misleading results.

(525) First assumption: Pooling data across the two Parties and using carrier-specific fixed effects assumes that differences in pricing between Korean Air and Asiana are linear and constant over time for all routes and cabin classes. Carrier-specific (fixed) effects describe and measure permanent structural differences in the outcome variable, ticket prices in this case, between carriers. In other words, these effects capture if one airline consequently/permanently (structurally) offers lower fares that are *x*% (fixed) lower than the fares of another carrier. This assumption and the usage of carrier fixed effects largely disregards the possibility of different dynamic pricing strategies that can change over time.

(526) Second assumption: Pooling all routes worldwide may risk not to account adequately for opposing seasonality patterns. For example, the effects of seasonality on flights from Seoul to Europe can differ from inner-Asian short-haul flights or flights from Seoul to the Southern Hemisphere (e.g. Auckland, Brisbane).

(527) Third assumption: Pooling observations across cabin classes in the proposed model is problematic as it implies that the price differences between economy, business and first class ticket prices are constant and equal for short-haul and intercontinental long-haul routes, and fully disregards any non-linear relationship.

(528) The Parties' submission does not provide any complementary analysis supporting these assumptions, which appear particularly daring for an econometric analysis. A more robust econometric analysis would focus on for example Korean Air or Asiana ticket prices separately; would consider sub-sets of routes that feature similar characteristics, for example, those of the Northern hemisphere long-haul routes; and would focus on economy class travellers only, as it can be assumed that economy class travellers are the most price-sensitive group of customers.

(529) The Korean Air's proposed methodology is not in line with the econometric methodology carried out and employed by the Commission in previous cases in the aviation industry.[800] In the Commission's view, the Parties' proposed methodology in this case is unable to identify the competitive constraints that the Parties exert on each other.

(530) If Korean Air were competitively constrained by the presence of Asiana, it can be expected that Korean Air would have to offer lower fares on average when Asiana is active on the same airport or city pair. Conversely, if Korean Air imposes a competitive constraint on Asiana one should expect that Asiana fares are negatively affected by Korean Air's continued presence. Korean Air's proposed methodology relies on the number of competitors in its analysis, but this measure does not capture the closeness of competition between the Parties and implicitly assumes that all non-stop carriers are similarly close competitors.

(531) In contrast, it is very likely that competitors are different and some are perceived as closer than others. Such heterogeneity across competitors, and especially the effect of the Parties' activities on each other's average fares on given routes, cannot be captured by the design of the Parties' econometric analysis.

(532) The Commission has therefore tested the Parties' econometric model by using a simple alternative econometric specification. The Commission's testing methodology asks whether the presence of Asiana has an impact on Korean Air's fares, and attempts

800 M.4439 Ryanair/Aer Lingus; M.6663 Ryanair/Aer Lingus III.

to quantify the magnitude of such an impact (if any). Specifically, the Commission tests the following hypothesis: Is Asiana's presence associated with a statistically and economically significant reduction in Korean Air's fares on the non-stop long-haul routes where the Parties overlap (subject to controlling for demand and supply factors)?

(533) Starting from the Parties' econometric methodology, the Commission's test uses variation in Asiana's or other carriers' presence on a route to assess whether entry or exit and different levels of competition are associated with a change in the Korean Air's fares. The Commission regards this methodology as the most suitable to assess the competitive constraint exerted by Asiana.

(534) The Commission's price quantitative analysis confirms significant competitive interaction between Korean Air and Asiana and is indicative of close competition between them. Should this competitive pressure disappear as a result of the Transaction, the analysis indicates that the Merged Entity would have an incentive to increase prices on the routes where they overlap.

(535) For its econometric analysis, the Commission relied on the same dataset used by Korean Air,[801] which essentially consists of the Parties' ticketing data, plus additional information on all flights by other airlines, based on the OAG flight data[802] for the same period, as well as fuel prices.[803] The combined dataset is a panel data set with airline, month and route identifier for the period January 2013 – December 2019.[804]

(536) In order to avoid problems of pooled data, the Commission's analysis uses a sub-set of the data to allow for estimating a more clearly identified potential effect of the competitive pressure the Parties exert on each other. That sub-set of data provides for: (i) separate estimation for each of the Parties' fare data; (ii) only Economy-class observations; and (iii) separate estimations for all non-stop routes only as well as sub-sets of those routes (that is, non-stop routes connecting South Korea with Europe and North America, as well connecting South Korea and the EEA only).

(537) These reductions of data dimensions allow for better identification of the estimates, especially when non-linear effects may influence results, and may help to test the above stated hypotheses.

(538) With respect to the econometric model, the Commission's methodology relies on the following reduced-form specification,

$$p_{it} = \alpha_i + \beta \cdot dPRESENCE_{it} + \sum_t \theta_t \cdot Y_t + \delta_j X_{it} + e_{it}$$

Where:

(a) The dependent variable is the merging party's average monthly fares on route *i* in month *t*.[805]

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801 Form CO, Annex QP4.Q26.

802 Form CO, Annex QP4.Q26.

803 Based on the Jet Fuel Spot Price Index from the U.S. Energy Information Administration on the U.S. Gulf Coast Kerosene-Type.

804 The Notifying Party claimed that the competitive conditions pre-Covid19 are not reflective of the competitive conditions that will prevail post-Transaction because it '*considers that the effects of Covid19 in the passenger sector have a more long-term effect*' (see Response to the Statement of Objections, paragraph 288). This argument is flawed: see section 8.4.3.3 for a detailed discussion.

805 This variable is expressed as a natural logarithm; As a result, estimates of impact from explanatory variables can be approximately interpreted as impact of the respective variables in percentage of the monthly fares.

(b) The term α_i is the route fixed effect, that is, an indicator variable equal to 1 for route *i* and zero otherwise. The α_i indicator variable accounts for systematic but unobserved or non-measurable differences in supply or demand factors affecting prices across routes. Routes are defined as origin and destination pairs, for example, FRA-ICN and ICN-FRA constitute a unique fixed effect.

(c) The term $dPRESENCE_{it}$ is a variable indicating the presence of the other merging Party on a given route in a given month, that is, it is equal to one if Korean Air (Asiana) is operating route *i* in month *t* and zero otherwise. This variable is the explanatory variable of interest.

(d) The term Y_t is a monthly indicator variable, that is, a route invariant indicator variable equal to 1 for the given month and zero otherwise. The Y_i indicator variable accounts for systematic but unobserved or non-measurable differences in supply or demand factors within a given month.

(e) X_{it} represents time-varying and partially route-specific supply and demand factors that can affect fares, such as whether other competitors are present, the Parties' load factors, and fuel costs.

(539) A large part of the effects that demand factors may have on fares is captured by the month effects (for example, an event that draws a significant number of passengers to Europe in a given month), as well as by the route-specific fixed effects (for example, the type of destination, different routes having different levels of popularity, route-specific fees and others). As airlines are generally interested in ensuring their planes are full, they may seek to adapt prices to fluctuations in demand. To control for this feature, the load factor[806] variable is included as a proxy for demand. It has to be noted that including demand factors as explanatory variables may cause a so-called endogeneity problem in the regression: It might happen that lower prices increased demand which leads to higher load factors, rather than the other way around where high load factors lead to high prices. Hence, the Commission tested the estimation robustness of the coefficient of interest by excluding the potentially endogenous variables in some specifications. The results show that excluding the load factor has no significant effect on the estimation of the effect of the other Party' presence.

(540) Similarly to the demand factors, a large part of the effects that supply factors may have on fares are captured by the month fixed effects (for example, labour or equipment costs), as well as by the route-specific fixed effects (for example, airport fees). Fuel costs may vary over time and affect routes differently depending on the fuel consumption for the route in question. Therefore, fuel costs are interacted with the fixed distance between the two airports of a route, and included as an additional control for supply factors. As fuel may be bought and tickets sold at different points in time, a lag in fuel costs of one month is used.[807]

(541) It is important to point out that the econometric analysis rests on a limited number of "entry or exit events": There are a number of routes where there is no change in the presence of air carriers over the entire time period and, therefore, under the Commission's modelling strategy of assessing variation within a route, these observations do not contribute to the estimation of the effect of presence on prices. When restricting the analysis to Europe and North America, because there are no instances where Korean Air entered or exited a route where Asiana was already active,

806 Defined as the ratio of (boarded) passengers and capacity.

807 Given that air travel distance between the two airports of a route was not readily available in the datasets, the great-circle distance (one-way, in km) from the OAG dataset is used as an approximation.

it is not possible to estimate the separate effect of Korean Air's presence on Asiana's prices.

(542) The Commission's results are presented in Table 21 below, which shows the effect of Asiana's presence on Korean Air's prices: Specifications (1) and (2) consider all non-stop routes worldwide, specification (3) consider non-stop routes in Europe and North America; and specification (4) consider non-stop routes in the EEA.[808] Specification (1) only controls for the presence of the other merging Party and competitors, while specifications (2) to (4) also controls for load factor, and fuel costs.

(543) The results from the Commission's econometric tests suggest that the presence of Asiana is associated with on average [0-5]-[5-10]% lower fares charged by Korean Air. With respect to the other explanatory variables, (i) The entry of other competitors does not have a consistently significant effect on Korean Air's prices; (ii) The coefficients for the load factor and for fuel are generally positive when short-haul routes are included, which indicate that prices are on average higher as aircrafts are full and as fuel becomes more expensive, but tend to be negative when only long haul routes are included.

Table 21 – [Table redacted]

	(1)	(2)	(3)	(4)
Asiana's presence	[…]***	[…]**	[…]***	[…]***
	[…]	[…]	[…]	[…]
Number of other competitors: 1	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]
Number of other competitors: 2 or more	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]
Korean Air's load factor		[…]***	[…]***	[…]
		[…]	[…]	[…]
Proxy for fuel costs		[…]*	[…]***	[…]
		[…]	[…]	[…]
Constant	[…]***	[…]***	[…]***	[…]***
	[…]	[…]	[…]	[…]
Number of observation	[…]	[…]	[…]	[…]
Number of clusters (routes)	[…]	[…]	[…]	[…]
R-squared adjusted	[…]	[…]	[…]	[…]
Route fixed effects	[…]	[…]	[…]	[…]
Time effects (monthly)	[…]	[…]	[…]	[…]
Regions included	[…]	[…]	[…]	[…]

Sources: […].

(544) Korean Air argued that the regression model used by the Commission to test the competitive interaction between Korean Air and Asiana is not reliable enough to support conclusions on closeness of competition, pricing constraints and pricing incentives post-Transaction. In particular, the Korean Air points out that the number of

[808] In the EEA, only BCN-ICN (two entry and one exit events) and FCO-ICN (one entry event) display sufficient variation for the econometric model to estimate an effect of Asiana's presence on Korean Air's prices.

entry/exit events is insufficient to reliably estimate effects of the interaction between Korean air and Asiana with respect to prices.[809]

(545) The Commission is aware of the limited variation in the data that identified the negative effects of Asiana's presence on Korean Air's price, and acknowledges that generalisations of the effects can only cautiously be taken into account, as the identification only relies on four entry/exit events in total. Nevertheless, the Commission considers that, in principle, the estimated effect is statistically identified such that the results hint that prices are more likely to increase post-Transaction than being unaffected, although being cautious on any broad generalisation.

(546) To conclude, the results of the Commission's analysis show that (i) Korean Air's econometric model does not fully capture the competitive interaction between the Parties, (ii), to the contrary, the data hints that the Parties' presence on routes negatively affect each other's prices, and Asiana may even be the only pricing constraint to Korean Air. Nevertheless, the limited variation identifying the price effect has to be taken into account such that the Commission considers the results of the quantitative analysis as auxiliary secondary evidence.

8.6.2. Limited constraints from indirect flights on the Overlap Routes

(547) Generally, there is no strict measure or threshold that could predict whether an indirect flight competes with a direct flight on the Overlap Routes. As explained in section 7.1.5, the Commission considers that a cut-off of 150-minute lay-over time cannot be applied mechanically. In particular, the relevance of one-stop flights also depends on other criteria such as the time during the day of the stop-over, of the ticket price and of demand composition on the route. However, together with other factors such as the market shares and availability of one-stop and non-stop flights, the added travel time of one-stop flights still provides a useful indication as to the competitive constraint they exercise.

(548) Based on its market investigation, the Commission considers that competitors offering one-stop flights exert only limited competitive constraints on the Parties' direct operations on the Overlap Routes.

(549) First, as explained in section 8.6.3.1, most of the competitors offering indirect services on the Overlap Routes are in any event unable to expand their services on these routes due to the exhaustion of traffic rights between their hubs and Seoul. As explained in section 8.7, the presence of any remaining competitors offering indirect services is insignificant and unlikely to be able to restrain the merged entity.

(a) Second, Korean Air generally benchmarks its prices against airlines operating direct flights.[810]

(550) Third, the Parties' internal documents show that the Parties consider indirect competitors as a weaker competitive constraint.

(551) For example, in a request for amendment to Korean Air's Benchmarking Scheme for Routes from Europe of April 2018,[811] […],[812],[813]In this document, Korean's pricing revenue management department asks to "[…],[814] […].

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809 Response of Korean Air to the Commission's Statement of Objections, paragraphs 300-311.

810 Form CO, paragraph 532.

811 Form CO, Annex 21 – Korean Benchmarking pricing Scheme.

812 The routes included in the list are: […].

813 The routes included in the list are: […]. In one place the route […] is included in the list in brackets, however a price redaction is not requested for this route. At the time the document was prepared […].

814 EUR […].

(552) […]

Figure 33: [Figure redacted]

Source: Reply to RFI 11, Annex RFI11 – Q.1.1.d, page 3.

(553) In another request for approval of Korean Air's Benchmarking Scheme for routes from Europe to Korea of July 2022,[815] Korean Air considers its competitiveness to be strong on routes […] flights. Where Korean Air is offering […]. In this document Korean Air's proposed benchmarking strategy is "*[…]*". It is proposed that Korean Air […] than […] fare. In addition, the document notes that "*when responding to non-direct flight/offline O&D, among the current* […][816] […][817] […][818] […][819] […] *of the operation system*", meaning that […]. This too demonstrates Korean Air does not consider indirect flights to be competitive with Korean Air's direct flights. Not only does Korean Air […], a price reduction in response to an indirect competitor is […].

Figure 34: [Figure redacted]

Source: Form CO, Annex QP8.Q7i.2.

(554) The use of similar terminology, i.e. weak/strong/competitive to describe Korean Air's positioning against other carriers on the route is used in other internal documents of Korean related to benchmarking and pricing.[820]

(555) In this respect, the fact that, as argued by Korean Air,[821] in some of their internal documents they also monitor the activity of competitors operating indirect flights, does not mean that the competitive pressure exerted by competitors operating indirect flights and competitors operating direct flights is similar. In the first place, Korean Air's internal document used by the Parties to show that Korean Air also monitors the activity of competitors offering,[822] […].[823] See, for example, the analysis for the ICN-FCO route below […]. In the second place, this […] does not lead to a similar effect on Korean Air's prices, as evidenced by the benchmarking scheme referred to in paragraph (553) above.

Figure 35: [Figure redacted]

Source: Form CO, Annex QP4.Q10

(556) Korean Air further refers to another internal document where it reduced its fares also for […] and argues that this demonstrates the competitive constraint from one-stop competition.[824] However, even the internal document referred to by Korean Air shows the different competitive pressure exerted by direct and indirect flights. The benchmarking scheme clearly differentiates between […] Korean Air should […] there is room to charge a fare of up to EUR […] higher.

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815 Form CO, Annex QP8.Q7i.2

816 i.e. […], See Korean Air's reply to question 7 of RFI9.

817 i.e. […], See Korean Air's reply to question 7 of RFI9.

818 i.e. […], See Korean Air's reply to question 7 of RFI9.

819 i.e […], See Korean Air's reply to question 7 of RFI9.

820 See for example: Form CO Annex QP8.Q7b.1; Korean Air's reply to RFI 10 […] (ID 10106-000203); […] (ID10106-006659); […] (ID 9780-007329).

821 Parties' reply to the Commission's decision to open proceedings, paragraphs 223-224.

822 Form CO, annex QP4.Q10, pages 27, 55.

823 Form CO, annex QP4.Q10, pages 20, 22, 24 and 26.

824 Parties' reply to the Commission decision to open proceedings, paragraph 232.

Figure 36: [Figure redacted]

Source: Form CO, Annex QP6.Q5g.a.i.2

(557) Fourth, the view that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services is shared by market participants.

(558) In the first place, the majority of competitors expressing a view consider that indirect services exert a lower level of competitive pressure on the Parties' services compared to direct services.[825]

(559) In the second place, whether a flight is direct or indirect was rated as one of the three most important criteria when choosing with which airline to book a flight on routes between the EEA and South Korea by market participants replying to the Commission phase I questionnaires. On average, the importance of this criteria was rated (on a scale from 1 to 5) 4.35 by customers,[826] 4.24 by travel agents and tour operators[827] and 4.33 by competitors.[828] Market participants considered price of the flight as the most important criteria. Customers rated the total flight duration as the second most important criteria (rated 4.39 on average, on a scale from 1 to 5),[829] which is affected by whether a flight is direct or includes a stop.

(560) In the third place, market participants explain that direct flights are generally preferred by passengers, that, where available, business passengers would almost always choose direct flights over indirect flights and that while leisure passengers might opt for indirect flights, they would do so only if the indirect flight is offered at a considerably lower price and the total flight time is not significantly longer.[830] While competitors operating indirect flights consider themselves to some extent part of the competition, this is conditional on their ability to offer prices at lower prices, short connecting time and overall travel time, and limited capacity of direct services.[831]

(561) Fifth, the very limited market share that each of the competitors with indirect connections have been able to achieve demonstrate that one-stop flights represent a different value proposition and would only be an alternative to a subset of passengers. The market shares of competitors offering indirect flights on the Overlap Routes are significantly lower than those of the competitors offering direct services on the same route. Pre-Covid19 market shares of individual competitors offering indirect services on the Overlap Routes were generally lower than [5-10]% for the routes FRA-ICN, CDG-ICN and FCO-ICN and lower than [10-20]% for BCN-ICN (where only the Parties offered direct services).

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825 Replies to question D.B.B.5 of Questionnaire Q1 to competitors.

826 Replies to question D.A.1 of Questionnaire Q4 to customers.

827 Replies to question D.A.1 of Questionnaire Q6 to travel agents and tour operators.

828 Replies to question D.B.A.1 of Questionnaire Q1 to competitors.

829 Replies to question D.A.1 of Questionnaire Q4 to customers.

830 Replies to questions C.E.1, C.E.3, C.E.4 and D.A.1-2 of Questionnaire Q4 to customers; Replies to question C.F.3 of Questionnaire Q6 to tour operators and travel agents; Non-confidential minutes of a call with [a travel agent]; Non confidential minutes of a call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of a call with [a customer]; Non confidential minutes of a call with [a customer]; Non-confidential minutes of a call with [a customer]; Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor]; Non confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor].

831 See, for example: Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor].

(562) Sixth, contrary to the Parties' claim that indirect flights are generally less expensive and therefore more attractive for passengers,[832] the Commission market investigation shows that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria.

(563) In the first place, the ticket price affects the customer's choice. Market participants have rated the ticket price as the most important criteria (on average) when choosing an airline for a flight between the EEA and South Korea.[833] However, market participants note that the ticket price has to be considerably lower to be attractive, and that business passengers are generally more likely to opt for a direct flight (even if the indirect alternative is significantly cheaper).[834] In the second place, the total elapsed time of the trip, as well as the length and time of day of a stop-over affect the attractiveness of indirect flights and are likely to make them less attractive and therefore less competitive compared to direct flights. Both criteria were rated highly (above 3.5 on average, on a scale from 1 to 5) by market participants replying to the Commission questionnaires.[835] Market participants explained that considerably longer travel time or transit time, as well as stop-over during the night would make indirect flights less attractive.[836] Other criteria considered as important by market participants are the time of departure/arrival and distance to the starting point and final destination of the trip, overall passenger experience and frequency offered per week.[837]

(564) The competitive pressure exerted by indirect competitors will be further assessed, inter alia based on these criteria on a route by route basis in sections 8.7.1 to 8.7.4.

8.6.3. Entry and expansion on the Overlap Routes

(565) This section contains some general remarks with respect to the likelihood of new entry or expansion by existing carriers and the conditions for it to be considered sufficient to constrain the Merged Entity, which to varying degrees are relevant for all routes covered by this Decision. In addition, this section describes barriers to entry and expansion on each of the Overlap Routes.

(566) According to the Horizontal Merger Guidelines, the entry or expansion of a competitor in a relevant market may provide a sufficient competitive constraint on the merging parties. Therefore, entry and expansion analysis constitutes an important element of the Commission's competitive assessment. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.[838]

(567) 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*

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832 Parties' reply to the Commission decision to open proceedings paragraph 253.

833 Replies to question D.A.1 of Questionnaire Q4 to customers; Replies to question D.A.1 of Questionnaire Q6 to travel agents and tour operators; Replies to question D.B.A.1 of Questionnaire Q1 to competitors.

834 Replies to questions C.E.1, C.E.3, C.E.4 and D.A.1-2 of Questionnaire Q4 to customers; Replies to question C.F.2-2 and C.F.2-4 of Questionnaire Q1 to competitors; Non-confidential minutes of the conference call with [a competitor]; Non-confidential minutes of a call with [a competitor]; Minutes of a call with [a competitor]; Non-confidential minutes of a call with [a travel agent]; Non-confidential minutes of a call with [a customer].

835 Replies to question D.A.1 of Questionnaire Q4 to customers; Replies to question D.A.1 of Questionnaire Q6 to travel agents and tour operators; Replies to question D.B.A.1 of Questionnaire Q1 to competitors.

836 See, for example, Non-confidential minutes of a call with [a customer]; Non-confidential minutes of a call with [a competitor].

837 Top rated criteria in the replies to question D.A.1 of Questionnaire Q4 to customers, replies to question D.A.1 of Questionnaire Q6 to travel agents and tour operators, replies to question D.B.A.1 of Questionnaire Q1 to competitors.

838 Horizontal Merger Guidelines, paragraphs 33-35 and 68.

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."[839] 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 anti-competitive effects specifically established in the contested decision at that stage of the assessment*."[840]

(568) To determine the likelihood of new entry, one consideration is that entry must be sufficiently profitable, taking into account the price effects of that entry and possible responses of the incumbents.[841] The attractiveness of the route in terms of size and geography is another relevant factor to assess the new entrant's incentives. 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 merging parties 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, barriers to entry may exist because of the established position of the incumbent firms on the market.[842]

(569) 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.[843]

(570) Based on the framework for the assessment of entry and expansion described above, the Commission's assessment of entry and expansion in the current case is presented in the following paragraphs.

(571) Based on the Commission's market investigation, the most important criteria for an airline to decide to enter or expand operations on any of the Overlap Routes are the overall level of profitability of the route, slot availability and traffic size/demand.[844] The number of competitors on the route is rated on average as the eighth criterion in order of importance.[845] As such, the number of competitors on the route does not appear as the primary criterion to decide on entry or expansion on a route. This implies that a reduction in the number of competitors is unlikely on its own to trigger market entry. Market entry will rather be determined by the attractiveness of the route and the existence of barriers to entry.

(572) The market investigation did not identify new entry or expansion on any of the Overlap Routes by existing carriers that could be considered as likely, timely and

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839 See Case T-342/07 – *Ryanair v Commission*, paragraphs 238-239.

840 *Ibid.*

841 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.

842 Horizontal Merger Guidelines, paragraphs 70-71.

843 Horizontal Merger Guidelines, paragraph 72.

844 Replies to question D.C.2 of Questionnaire Q1 to competitors and to question D.2 of Questionnaire Q3 to potential entrants.

845 Other criteria rated on average higher than the number of competitors on the route are aircraft availability, impact on existing network, crew availability, potential for business passengers and availability of traffic rights (the last criterion was rated by potential entrants only). Replies to question D.C.2 of Questionnaire Q1 to competitors and to question D.2 of Questionnaire Q3 to potential entrants.

sufficient to restrain any potential anti-competitive effects of the Transaction. As explained in section 8.7.2, Air Premia's entry to the ICN-FRA route is now confirmed to be likely and timely, however not sufficient.

(573) The market investigation confirmed the existence of a number of barriers to entry and expansion for the Overlap Routes.

(574) These barriers and others are described below. To the extent that barriers to entry and expansion are route specific, they will be further assessed on a route-by-route basis in sections 8.7.1 to 8.7.4.

8.6.3.1. Availability of traffic rights

(575) In order for an airline to operate flights outside its home jurisdiction and enter another country's airspace, an air-services agreement ('ASA') needs to be in place for traffic rights between the two countries and the airline would have to obtain the rights to operate services between the two countries. ASAs can grant different degrees of freedoms/rights to airlines and can limit the number of services operated between the countries, the type of services these carriers can provide and the number of carriers allowed to operate these services.

(576) The market investigation shows that the exhaustion of traffic rights granted to carriers according to existing ASAs may constitute a barrier to entry and expansion on the Overlap Routes.

(577) First, air carriers consider that the availability of traffic rights is an important factor in the decision whether to enter or expand on a new route.[846] In a similar way, air carriers consider the lack of availability of traffic rights to be a barrier to entry and expansion on routes between the EEA and South Korea.[847]

(578) Second, as explained in the route by route assessment in sections 8.7.1 and 8.7.4 below, the limited availability of traffic rights according to the ASAs between South Korea and each of Germany, France and Italy may limit the ability of Korean (and to some extent EU) carriers from entering or expanding passenger air services on routes between these countries.

(579) Third, the market investigation shows that the exhaustion of traffic rights also constitutes a barrier to expansion for carriers providing indirect flights and wishing to expand their services on the Overlap Routes. In several cases, competitors offering indirect services on the Overlap Routes cannot increase the frequencies operated between their hubs and South Korea, as all the traffic rights provided for in the ASA between their countries and South Korea are used and no additional traffic rights are available.

(580) There are currently no available traffic rights allowing for entry or expansion on routes between Seoul and the following countries: Qatar, United Arab Emirates, Turkey and Poland, as well as on the route Helsinki-Seoul.[848] Competitors offering indirect services between the EEA and South Korea through hubs in these countries explained that the lack of traffic rights on routes between their hubs and Seoul does not allow them to expand on the routes.[849]

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846 Replies to questions D.C.1 and D.C.2 of Questionnaire Q1 to competitors; Replies to questions D.1 and D.2 of Questionnaire Q3 to potential entrants.

847 Replies to questions D.C.3 to D.C.6 of Questionnaire Q1 to competitors; Replies to questions D.3 to D.6 of Questionnaire Q3 to potential entrants.

848 Form CO annex 37 table 1.

849 Replies to questions D.C.3 to D.C.6, D.C.8 and D.C.11 of Questionnaire Q1 to competitors; Non confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor];

(581) Air carriers confirm that their ability to influence the availability of traffic rights on routes connecting the EEA and South Korea is limited as traffic rights are negotiated between countries. While the airline could ask its government to initiate such negotiations, it cannot influence the result of such discussions.[850]

(582) Fourth, […].

(583) For example, in a letter from Korean Air's CEO to the Ministry of Land, Infrastructure and Transport dated 14 November 2019, Korean Air urges MOLIT […], in order to protect Korean national carriers from competition on routes between Korea and Europe.[851] Korean also asks MOLIT not to allow […] currently allowed by traffic rights allocated to it due to the impact this would have on the routes to Europe.[852]

(584) In another document, Korean Air states that "*traffic rights are assets […] and must be maximally utilized*",[853] acknowledging the importance of traffic rights to airline's competitiveness.

(585) Asiana's internal document […].[854]

(586) Fifth, Korean Air acknowledges that traffic rights serve as a barrier to entry to the ICN-CDG route.[855]

8.6.3.2. Availability of slots

(587) The market investigation shows that slot constraints at relevant airports constitute a barrier to entry and expansion on the Overlap Routes.

(588) First, air carriers consider that the availability of slots for take-off and landing is one of the most important criteria when deciding to enter a new long-haul route between the EEA and South Korea.[856]

(589) Second, all the airports on the Overlap Routes (ICN, BCN, CDG, FCO and FRA) are categorized by IATA as "level 3 airports".[857] Typically, level 3 airports are considered as airports with congested slots. The IATA Worldwide Airport Slot Guidelines (WASG) defines a level 3 airport as one where demand for airport infrastructure significantly exceeds the airport's capacity during the relevant period. The categorization of these airports as "level 3 airports" indicates therefore that they might be slot congested, at least during some hour bands.[858]

(590) Third, the market investigation shows that ICN airport is highly congested. In the first place, ICN slot coordinator confirms that every day of the week,*"[t]he whole day time periods (0505-2400 Local […]) are highly congested*"; that "*[t]he whole day time periods are considered as peak times*" and that "*[d]uring peak times, the amount of slots requested in the initial coordination always exceed the capacity […]*".[859] ICN slot coordinator therefore considers that "*[i]t is not easy for any airline (both*

Non confidential minutes of a call with [a competitor]; non-confidential minutes of a call with [a competitor].

850 Replies to question D.C.12 of Questionnaire Q1 to competitors.

851 Parties' reply to RFI10, […], page 4 (ID009780-014082)

852 Parties' reply to RFI10, […], page 5 (ID009780-014082)

853 Form CO, Annex 16.l, slide 105.

854 Parties' reply to RFI21, Annex RFI21.Q5 dated 30 March 2023, slide 5.

855 Draft Form RM dated 14 February 2023.

856 Replies to question D.C.2 of Questionnaire Q1 to competitors and of question D.2 of Questionnaire Q3 to potential entrants.

857 Form CO, paragraphs 617, 677, 722, 734.

858 Parties' reply to question 6 of RFI 20.

859 ICN slot coordinator revised replies to question C.11 and C.12 of Questionnaire Q8 to slot coordinators (ID7634).

incumbent and new entrant) to obtain new slots during the day time".[860] The slot coordinator explains that the number of available slots per hour is dictated by the capacity of Air Traffic Control ('ATC') and Customs, Immigration and Quarantine ('CIQ'), which is constrained.[861] According to the slot coordinator, while MOLIT is working closely with other ministries in regards to increasing the ATC and CIQ capacities, there is no expected timeline for such a capacity increase.[862] Consequently, while noting that "*[d]aytime slot shortage issues are not a newly-rising problem*" at ICN airport and that capacity reduction is not expected over the next 3-5 years, ICN slot coordinator confirms that it expects slot shortages to arise over the next 3 to 5 years at ICN airport.[863] Contrary to the Parties claim that the expansion of ICN airport "*supports the conclusion that the availability of slots at ICN does not constitute a barrier to entry*",[864] ICN slot coordinator explains that the expansion of the airport facilities "*does not mean there will also be an improvement in the other areas of airport capacities such as the ATC and the CIQ capacities*".[865]

(591) In the second place, the fact that ICN airport is slot congested is further confirmed by market participants and MOLIT explains that before Covid19, ICN airport was highly congested throughout the year and that following the allocation of slots with historic rights, a very limited number of slots remained available to be allocated every season.[866] Several airlines specifically mention that slots at ICN airport are difficult to obtain at the preferred time or report that they experienced difficulties in getting slots at ICN at the requested time slot.[867]

(592) In the third place, slot congestion of ICN airport is confirmed by the information provided by the Parties: the airport was highly slot congested during all daytime periods, every day of the week.[868] Despite the Parties' claim in their response to the Commission decision to open proceedings, that ICN airport is not highly slot congested,[869] Korean Air acknowledges that slots at ICN serve as a barrier to entry to the Overlap Routes in a draft Form RM submitted to the Commission.[870]

(593) In the fourth place, Korean Air's claim that more slots will be available at ICN airport due to the remedies accepted by the Korean Fair Trade Commission ('KFTC'), according to which the Parties will return slots at ICN to potential entrants, cannot change the Commission's assessment. The remedies accepted by the KFTC are not enforceable by the Commission and could be waived or left unenforced.

(594) Third, as explained in the route-by-route assessment (section 8.7), the EEA airports on the Overlap Routes are slot congested, at least at peak hours.

(595) Korean Air's claim that slot availability at EEA airports is not a barrier to entry for EEA carriers as many of the potential entrants on the Overlap Routes already have significant slot holdings at the relevant EEA airports and could use their slots interchangeably for different routes is not convincing as it ignores the opportunity

860 ICN slot coordinator replies to question C.10.4 of Questionnaire Q8 to slot coordinators, (ID11552)
861 ICN slot coordinator revised replies to question C.11 of Questionnaire Q8 to slot coordinators (ID7634).
862 ICN slot coordinator reply to questions 1 and 2 of RFI1 to ICN slot coordinator (ID11000)
863 ICN slot coordinator revised reply to question C.13 of Questionnaire Q8 to slot coordinators (ID7634).
864 Parties' response to the Commission decision to open proceedings, paragraph 244.
865 ICN slot coordinator reply to question 3 of RFI1 to ICN slot coordinator (ID11000)
866 Minutes of a call with MOLIT dated 9 November 2021, paragraph 9 (ID931).
867 Replies to questions D.C.7 to D.C.9 of Questionnaire Q1 to competitors; replies to question D.11 to Questionnaire Q3 to potential entrants; Non confidential minutes of a call with [a competitor]; Non confidential minutes of a call with [a competitor].
868 Form CO, Annex 38, paragraph 7.
869 Parties' response to the Commission decision to open proceedings, paragraph 245.
870 Draft Form RM dated 14 February 2023, paragraphs 106, 219, 327, 435.

costs to the EEA carrier that would have to stop operating one route in order to use the slots for services on the Overlap Routes. In this respect an internal document of Asiana refers to […].[871]

(596) Further details concerning the availability of slots are provided below in section 8.7.

(597) Fourth, Korean Air confirms that the airports on the relevant routes are slot congested. When asked whether implementing the remedies (including slots corresponding to Asiana's frequencies in all relevant airports) is likely to force the merged entity to reduce its flights on any of the Overlap Routes, Korean Air explained that: "*even though the remedy taker will first need to apply for slots under the General Slot Allocation Procedure, in practice,* ***due to the congestion at most of the relevant airports, it is expected that the slots will come out of the portfolio of the merged entity****. In order to reacquire slots, the merged entity would itself need to go through the General Slot Allocation Procedure.* ***Due to the congestion, it will be very difficult to obtain slots in the relevant time bands*** *(corresponding to the current schedules). In absence of newly acquired slots, the merged entity will hence evidently have to reduce its frequencies in line with the number of slots granted to the remedy taker*" (emphasis added),[872] thus confirming that slots availability constitutes a barrier to entry on each of the Overlap Routes.

8.6.3.3. The strong position of the Merged Entity

(598) The market investigation shows that the strong competitive position of the Merged Entity post-Transaction constitutes a barrier to entry.

(599) First, this view is shared by several competitors and potential entrants. When asked to rate to what extent different elements constitute a barrier to entry for air passenger services (from 1: does not constitute a barrier at all to 5: constitutes an important barrier), potential entrants rated the strong position of competitors on the route between 4 and 5 on all Overlap Routes.[873] When asked what impact, if any, the Transaction will have on barriers to entry and expansion, competitors and potential entrants refer to the advantage the Merged Entity will have in terms of slots and frequencies.[874] Some carriers explained that the Merged Entity could deter entry or expansion on the routes by engaging in a 'price war'.[875]

(600) Second, as is evident from its internal documents, Korean Air considers that post-Transaction the Merged Entity would hold [40-50]% of the slots at ICN (taking into account affiliate companies) and states an aim to obtain more than [50-60]% of the slots at ICN, as this would strengthen its position.[876] Korean Air considers that the Parties' combined slot holdings at ICN airport, as well as their combined traffic rights, could strengthen and promote the Merged Entity's competitiveness and the use of slots at ICN airport and of traffic rights should therefore be maximised.[877] As both slots and traffic rights are constrained resources, maximization of their usage by the Merged Entity would strengthen its position, allow it to respond easily to competition from new entrants and limit the ability of competitors to use such resources, which are

871 Asiana's reply to RFI11, Annex RFI11-Q1.1d, page 3.

872 Korean's reply to question 13 of RFI1 on remedies.

873 Replies to questions D.3 to D.6 of Questionnaire Q3 to potential entrants.

874 Replies to question D.C.7 of Questionnaire Q1 to competitors; Replies to question D.8 of Questionnaire Q3 to potential entrants. See also non-confidential minutes of a call with [a potential entrant]; Non confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor].

875 Non confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a potential entrant].

876 Form CO, Annex 16.l […], pages 105-110.

877 Form CO, Annex 16.l […], pages 105-110.

necessary for entry and expansion. For example, the Merged Entity could increase frequencies and/or retime them to target specifically the times when an entrant is offering its flights, thus making its entry less profitable and more difficult and eventually deter entry altogether.

Figure 37: [Figure redacted]

Source: Form CO, Annex 16.l […].

Figure 38: [Figure redacted]

Source: Form CO, Annex 16.l […].

8.6.3.4. Other barriers to entry and expansion

(601) First, the market investigation shows that the profitability of the route is an important factor when deciding to enter a new route[878] and therefore limited profitability can be as a barrier to entry. Profitability of the route is affected by various factors, such as the level of demand on the route, the passenger mix on the route and the share of business demand, the air carrier's ability to attract connecting passengers and more. Each of these elements could serve as a barrier to entry on its own due to its effect on the profitability of the route.

(602) In the first place, the market investigation shows that the level of demand and the passenger mix on the route can be a barrier to entry to the Overlap Routes.[879] The passenger mix may include visiting friends and family, tourists and business and premium travellers. The mix and share of each group would affect the ability of air carriers to operate the route profitably. For example, business passengers provide higher revenue to air carriers (if the air carrier is able to offer premium services).[880] In this respect, the share of TS/premium passengers on some of the Overlap Routes is significant: during IATA seasons Winter 2018/2019, Summer 2019 and Winter 2019/2020, the share of TS passengers was around [5-10]% on the ICN-BCN route, [10-20]%-[10-20]% on the ICN-FRA route, [5-10]%-[10-20]% on the ICN-CDG route and [5-10]%-[5-10]% on the ICN-FCO route.[881] A market participant explained that "*FRA and CDG are considered as the largest O&D market with MICE (Meetings, Incentives, Conferences & Exhibitions) infrastructure and events, FCO and BCN are recognized as highly leisure-driven destinations with cultural heritage and sight-seeing spots*".[882]

(603) In the second place, the market investigation shows that economies of scale and scope are important to operate the routes profitably and can be a barrier to entry on routes between the EEA and South Korea. Competitors consider that economies of scale and scope at origin and/or destination airport constitute a barrier to entry and expansion on all Overlap Routes (rated, on average, above 3 on a scale from 1 to 5 on all Overlap

878 Replies to questions D.1 and D.2 of Questionnaire Q3 to potential entrants; replies to questions D.C.1 and D.C.2 of Questionnaire Q1 to competitors.

879 Replies to questions D.1 and D.2 of Questionnaire Q3 to potential entrants; replies to questions D.C.1 and D.C.2 of Questionnaire Q1 to competitors.

880 Replies to questions D.1 and D.2 of Questionnaire Q3 to potential entrants; replies to questions D.C.1 and D.C.2 of Questionnaire Q1 to competitors.

881 Form CO tables 55, 60, 65 and 70.

882 Reply of [a market participant] to question 19 of RFI4, paragraph 33 (ID12310).

Routes).[883]A competitor explained that "*Without economics of scale, it's not possible to justify entering a market or expanding an already [existing] presence*".[884]

(604) In the third place, several market participants noted that passengers tend to prefer carriers of their own nation.[885] Considering that the large majority of passengers on the routes between the EEA and South Korea originate in South Korea,[886] this preference could be seen as a barrier to entry for EEA carriers as it makes entry less profitable.[887]

(605) In the fourth place, on routes where the share of business passengers is significant, the ability to offer business class/premium services will affect the carriers' profitability and therefore could serve as a barrier to entry on the route.[888] In this respect, the share of TS/premium passengers on some of the Overlap Routes is significant, making the ability to offer business class important especially on the routes ICN-CDG and ICN-FRA: […].[889] A market participant explained that "*FRA and CDG are considered as the largest O&D market with MICE (Meetings, Incentives, Conferences & Exhibitions) infrastructure and events*".[890]

(606) In the fifth place, the market investigation shows that network and the ability to offer connecting flights, as well as access to feeder traffic are important to profitability and can therefore constitute a barrier to entry. Insufficient demand on the route means that air carriers will have difficulty to fill their planes and the route could only be operated profitably if the air carrier can fill its planes on the route by relying on feeder traffic and transporting connecting passengers to supplement its profitability. […],[891] […]. During the market investigation competitors were asked to rate the importance, for the viability and competitiveness of operations, of the ability to offer connecting flights at either or both ends of the Overlap Routes from 1 (not important at all) to 5 (very important). The average rating for each end of each of the Overlap Routes ranges between 3 and 4, implying that competitors consider this ability to be important at least to some extent and at least on some of the routes.[892] While the responses of competitors to the Commission's questionnaires do not provide a conclusive view on importance of feeder traffic at either end of the Overlap Routes it seems that at least for some competitors this is important.[893] In this respect, the majority of competitors consider that the Merged Entity would have the ability and incentive to stop or reduce providing or sourcing feed traffic to or from their airline.[894]

(607) Second, the market investigation shows that the availability of aircrafts and crews is crucial for the ability of airlines to enter or expand on the Overlap Routes and therefore serves as a barrier to entry. The aircraft has to be suitable for flying the long-haul Overlap Routes and the crew has to be trained to operate the specific aircraft used on the route. Market participants note that when deciding how to utilise their fleet and crews, they also look at opportunity costs, meaning, the profitability of the route compared to other routes on which the aircraft and crew are currently used or could be

883 Replies to questions D.C.3 to D.C.6 of Questionnaire Q1 to competitors.
884 Replies to questions D.C.3 to D.C.6 of Questionnaire Q1 to competitors.
885 See, for example: Non-confidential minutes of the conference call with [a competitor]; Non-confidential minutes of a call with [a travel agent]; Non-confidential minutes of a call with [a travel agent].
886 Form CO, paragraph 121.
887 See for example: Non-confidential minutes of a call with [a competitor].
888 Replies to questions C.C.2 and D.C.2 of Questionnaire Q1 to competitors.
889 Form CO tables 55, 60, 65 and 70.
890 Reply of [a market participant] to question 19 of RFI4, paragraph 33 (ID12310).
891 Form CO, annex QP6 Q21.
892 Replies to question D.C.16 of Questionnaire Q1 to competitors.
893 Replies to question D.C.15 of Questionnaire Q1 to competitors.
894 Replies to question F.6 of Questionnaire Q1 to competitors.

used.[895] One competitor explained: "*If there aren't any aircraft available in your fleet, it is highly unlikely you would consider entering a new market. Unless, of course, the new market provided [profitability] above and beyond other opportunities and current routes in your network. In which case, you would cancel a route in order to enter a new one*".[896] Another competitor explained that "*Internally crew and aircraft [resources] are typically [allocated] to most profitable routes*".[897] One competitor referred to crews as "*scarce capacities*".[898]

(608) Third, the market investigation shows that the closure of Russian airspace may constitute a barrier to entry and expansion into the Overlap Routes. The closure of Russian airspace extends the length of the routes between South Korea and the EEA. Longer routes require longer usage time of aircrafts and crews. In addition for some of the Overlap Routes, the extension of travel times requires larger aircrafts as not all wide-body long-haul aircrafts are suitable for routes lasting over 10 hours.[899] All potential entrants expressing a view consider that the closure of Russian airspace constitutes a barrier to entry as it increases travel time, aircraft usage and operational costs.[900] One competitor confirms that it did not expand services between the EEA and South Korea because of EEA sanctions and the closure of Russian airspace due to similar reasons.[901]

(609) Fourth, the market investigation shows that, should Russian airspace re-open, the availability of Trans-Siberian overflight rights is important for airlines ability to enter or expand services on the Overlap Routes and therefore serves as a barrier to entry and expansion on these routes. Flying over Russia allows for the shortest routes between South Korea and the EEA, and therefore for shorter travel time and lower costs. Trans-Siberian overflight rights are rights granted by Russia to air carriers, allowing them to travel in its airspace. Market participants note that, should Russian air space re-open, the availability of such overflight rights is crucial for their ability to enter or expand on the route.

(610) Under the current Air Service Agreement (ASA) between Russia and Korea, Korean carriers can use up to […] frequencies, which are split between Korean Air ([…] frequencies) and Asiana ([…] frequencies). There are currently no unallocated TSR overflight rights.[902] When asked whether implementing the remedies is likely to force the Merged Entity to reduce its flights on any of the Overlap Routes, Korean Air explained that "*Similar to traffic rights, there is only a limited number of TSR overflight rights available. Therefore, the ones that will be reallocated to the remedy taker cannot be replaced by Korean Air. The political nature of the ASA and the current situation with Russia make it very unlikely that the ASA will be amended in the near future, whereby there would be an increase in the number of TSR overflight rights. However, there is the same sanction mechanism for TSR overflight rights as for traffic rights, in case the remedy taker does not sufficiently use the TSR overflight rights, they will revert to MOLIT. Korean Air can then apply to MOLIT for these unused rights and the standard process as explained above in response to question 8 will be used. Nevertheless, also in this case there is no guarantee that they will be allocated to Korean Air, especially since many Korean airlines are interested in TSR*

895 Replies to questions D.C.3-D.C.6 to questionnaire Q1 to competitors.
896 Reply of [a competitor] to question D.C.2 of Questionnaire Q1 to competitors (ID7715)
897 Reply of [a competitor] to question D.C.1 of Questionnaire Q1 to competitors (ID8288)
898 Reply of [a competitor] to question D.A.2-2 of Questionnaire Q1 to competitors (ID8288)
899 Non-confidential minutes of a call with [a potential entrant].
900 Replies to question D.17 of Questionnaire Q3 to potential entrants.
901 Replies to question D.A.2 of Questionnaire Q1 to competitors.
902 Korean Air's reply to question 8 of RFI1 on remedies.

overflight rights to Europe and there might be more potential for use than the traffic rights, since they can be used for all routes to Europe".[903] A market participant explained that "*TSRs are one of the key factors in achieving price competitiveness in South Korean-European operations. MOLIT recognizes the vested rights of airlines to TSRs and does not recover TSRs which have already been allocated to airlines except in cases such as abandonment or non-use. This means that there is no way for new airlines to secure Russian airspace access unless the number of TSRs is increased through bilateral aviation agreements or voluntarily relinquished by existing holders*".[904]

8.6.4. Limited competitive constraints from other one-stop itineraries from other airports

(611) According to the Notifying Party, it is necessary to look at indirect flights from other airports and the possibility of self-connecting passengers to appropriately take into account the competitive constraint faced by the Parties. The Notifying Party argues that (i) a substantial portion of passengers on Overlap Routes do not have the O&D airports as origin or final destination; and (ii) market shares without due recognition of self-connecting behind or beyond the O&D pair would assess the competitive constraints on a given route incompletely.[905]

(612) More specifically, Korean Air claims that the large proportion of passengers who may fly alternatively from regional airports on one-stop itineraries after a price increase for the Parties' services, prevents the Parties to independently increase prices at hub airports.

(613) Korean Air argues that country-wide market shares would better represent the competitive situation than market shares based on O&D pairs.[906]

(614) Korean Air based its analysis on redirect data from Skyscanner,[907] instead of billing address data on the Parties' customers as the Parties do not retain credit card billing information for booking via their website or sales offices, nor do they receive such information from travel agents. Korean Air argues that looking at the Parties' data only would reduce the sample size and would not allow for a complete picture of the market. Korean Air also argues that information on the other airlines is an integral part of the analysis as Skyscanner data also reveals information about the options passengers weigh.[908]

(615) Korean Air argues that the redirect data show that a significant proportion of travellers living closer to an airport (e.g. a regional airport in Germany) self-connect to a farther away hub airport (e.g. the hub airport in Frankfurt) because they prefer to fly directly from the hub airport rather than to fly indirectly from their local airport. Korean Air argues that these self-transferring passengers would constraint the Parties from increasing prices or worsening any parameter of competitor post Transaction because, should prices at the hub airport increase post-merger, passengers would no longer self-

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903 Korean Air's reply to question 13 of RFI1 on remedies

904 Reply of [a potential entrant] to question 21 of RFI4, paragraph 37 (ID12310).

905 Form CO, paragraphs 579-580.

906 Form CO, paragraphs 648, 705, and 749.

907 Skyscanner is an online search tool to compare flights and fares. The Parties purchased Skyscanner "redirect data" giving information on when consumers were redirected from Skyscanner to the suppliers' website for specific O&D routes. Consumers are geo-tagged based on their IP addresses. Redirection from Skyscanner website means that a user is sent from one website/URL (Uniform Resource Locator) to another one, usually by selecting/clicking a "link". In the case of Skyscanner, this means the user is sent (redirected) from the search results on Skyscanner to a merchant's website where the user has the option to purchase the flight ticket of the chosen search result.

908 Form CO, paragraph 559.

transfer to the hub airport but rather choose to fly indirectly from the nearby airport, hence making the price increase not profitable in the first place.

(616) Korean Air did not submit any analysis connecting leakage patterns, aircraft load factor[909] and prices for EEA - South Korea routes. Also, Korean Air did not submit a critical loss analysis that would support its claim that passenger leakage on those specific EEA - South Korea routes would be of a scale that would make increasing prices.

(617) Despite the absence of such analyses, the Commission investigated the Notifying Party's claims and the subsequent sections describe the Commission's views with respect to passenger leakage separately for Germany, France, and Italy. The case of Spain is not discussed in further detail as the Notifying Party acknowledges that its analysis does not indicate much substitution between Barcelona and most other airports in Spain.[910]

(618) The Commission acknowledges that market shares on O&D level may not fully reflect the competitive constraints faced by the Parties: some self-connecting passengers may consider one O&D substitutable for another O&D, and hence for these self-connecting passengers market shares at a wider level (e.g. country-wide) might reflect more accurately the competitive constraints faced by the Parties. However, the Commission does not consider that the Parties' submission on self-connecting itineraries provide sufficient evidence that one-stop itineraries significantly constrain the Parties' ability to increase prices at hub airports, for several reasons:

(619) First, the Commission's market investigation shows that market participants consider that passengers do not typically self-connect and do not book flights between the EEA and South Korea from an airport that is not the closest to the passenger's location, or they do so only to a very limited extent for passengers leakage to represent a competitive constraint.[911]

(620) Korean Air argues that the phase I questionnaires rely on an erroneous definition for leakage that represents a misunderstanding of the leakage analysis, where *'leakage refers to passengers who currently do not fly from their nearest airport, but who would switch to their closest airport if the flight became relatively cheaper (i.e., in the event of a price increase at their current airport, which is further away). Without making reference changes in price or customer switching, the market investigation question may fail to capture how to correctly assess the amount of passenger leakage'*.[912] The Commission notes, however, that the definition of leakage used in the phase 1 questionnaires to corporate customers[913] and to travel agents and tour operators[914] refers precisely to the '*airport that is not the closest to the passenger's*

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909 Ratio of the number of passengers' flying over the total capacity of an aircraft.

910 Form CO, paragraph 591.

911 Replies to question C.E.1 of Questionnaire Q1 to competitors; replies to question C.D.1 of Questionnaire Q4 to corporate customers; replies to question C.E.1 of Questionnaire Q6 to TA/TO.

912 Response to the Statement of Objections, paragraphs 383-385.

913 Question C.D.1 of Questionnaire Q4 to corporate customers: '*To what extent would your company/employees typically book flights between the EEA and South Korea from an airport that is not the closest to the passenger's location but rather book from another airport and would self-connect (for example, the passenger was located in Frankfurt in Germany, however the flight to Seoul for that passenger was booked from Munich even if there were offers for that route at both airports)? Please rate between 1 – this never happens to 5- this happens often'*.

914 Question C.E.1 of Questionnaire Q6 to TA/TO: '*To what extent would your company/customers typically book flights between the EEA and South Korea from an airport that is not the closest to the passenger's location but rather book from another airport and would self-connect (for example, the passenger was*

location' and hence fully identifies customer leakages as intended by the Notifying Party. The definition of leakage used in the phase 1 questionnaires to competitors[915] instead refers to '*passengers would typically decide not to go to the airport(s) that is/are geographically closest to the point of origin or destination but rather book the trip from/to another airport that is located in another city that offers a similar flight itinerary as is available from the geographically closer airport, and self-connect, e.g. by train, bus, flight or car,* ***if the flight ticket is cheaper*** (emphasis added)'. Even though this definition differs, it permits to fully identify customer leakage as intended by the Notifying Party because the question clearly relates changes in price and customer switching.

(621) Korean Air also notes that the term 'self-connection' was used in two different contexts in the phase 1 questionnaires: (i) Passengers travelling by means other than aircraft to an airport not closest to their location; and (ii) Passengers booking individual tickets from different airlines, and that this mixing could confuse survey respondents, reducing the reliability of their responses and the weight that can be placed on them as evidence.[916] The Commission disagrees with this argument as the wording used in the phase 1 questionnaires to competitors, corporate customers, and tour operators and travel agents provides sufficiently detailed instructions with respect to the definition of leakage used. Moreover, these respondents are experts in their respective fields that would very unlikely misinterpret these two distinct meanings. Furthermore, if respondents had actually misinterpreted these terms, this would imply that the market investigation would have likely overestimated the extent of customer leakage, thus implying the Commission's conclusions were even conservative. Lastly, Korean Air argues that, failing to ask passengers directly via a survey, the market investigation was further limited in its ability to gather meaningful information. The Commission notes that corporate customers, competitors and travel agents and tour operators are all market experts with direct access to end customers. If customer leakage were such a strong and important driver of competitive interactions as portrayed by the Notifying Party, these market participants would have surely flagged its relevance during the phase 1 investigation, and the subsequent interactions.

(622) Second, Skyscanner redirections, which occur when a user is sent from the search result of a given flight on Skyscanner to a merchant's website, by selecting to inspect the offer of a specific merchant on its website, are not equivalent to actual bookings. The majority of redirections does not result in a purchase of a ticket.[917] Results based on redirection data are not necessarily representative for the actual purchase behaviour. Moreover, compared to actual bookings, Skyscanner redirect data may not adequately reflect passengers' location, and thus provides a biased picture of initial place of origination or start of itinerary. A comparison between actual market shares

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located in Frankfurt in Germany, however the flight to Seoul for that passenger was booked from Munich even if there were offers for that route at both airports)?'

915 Question C.E.1 of Questionnaire Q1 to competitors: '*Please explain whether, based on your experience, there is meaningful passenger leakage on the EEA-South Korea routes. Passenger leakage refers to a situation where a meaningful number of passengers would typically decide not to go to the airport(s) that is/are geographically closest to the point of origin or destination but rather book the trip from/to another airport that is located in another city that offers a similar flight itinerary as is available from the geographically closer airport, and self-connect, e.g. by train, bus, flight or car, if the flight ticket is cheaper.'*

916 Response to the Commission's Statement of Objections, paragraphs 386-387.

917 One redirection from Skyscanner to a merchant website is created when a user selects to inspect an offer by the merchant to purchase a specific flight. The user does not make a purchase decision with the choice of leaving Skyscanner to visit a merchant's website. Skyscanner's conversion rate from redirections, the switch from Skyscanner's search result to the merchants' website, to ticket purchase is between […] and […] per cent, see QP11 question 3e.

based on actual bookings from DDS data[918] and shares based on Skyscanner redirection data yields significant discrepancies such that both representativeness and reliability of Skyscanner redirection data is at least questionable.

(623) Third, considering that the large majority of passengers originate in South Korea, it is questionable whether the extent of passengers self-connecting in Europe is sufficiently large to generate critical loss and constrain a price increase.[919]

(624) Fourth, the analysis submitted by the Notifying Party does not provide evidence for the reasons that drive the passengers' choice of airport. The Notifying Party suggests that lower prices at the hub airport would spur self-connecting passengers. However, the analysis does not demonstrate that price is a decisive factor in the choice of airport as the study itself does not use pricing data but merely the geo-location of internet users. Any other factor can equally or even more likely induce self-connection, such as a strong preference for non-stop flight itineraries. The study fails to demonstrate that the elasticity of substitution between non-stop and one-stop itineraries is price driven, nor demonstrates how many passengers would potentially not self-connect in case of a likely price increase. Hence, the existence of some self-connecting passengers in redirection data does not allow to conclude that a price increase at the hub airport will lead self-connecting passengers to divert to one-stop flights. It might well be that a majority of self-connecting passengers strongly prefer direct flights from a hub airport over indirect flights from a closer airport.

(625) Fifth, even if the Parties' arguments related to passengers leakage were fully accepted, the Parties' country-wide market shares remain high nonetheless (ranging between [50-60]% and [60-70]%) for each of South Korea-Germany, South Korea-France, South Korea-Italy and South Korea-Spain.[920]

(626) Korean Air argues that the interpretation based on results of the leakage analysis should allow valid conclusions, as long as Skyscanner data is representative of total customer bookings as regards the geographic distribution and airport choice of passengers flying to Seoul.

(627) The Commission agrees in principle, if and only if Skyscanner data would be representative. As explained in the above, the Commission doubts that Skyscanner data can probably be considered as representative given the discrepancies between market shares based on Skyscanner data, representing website redirection or at best intentions to buy, and market shares based on DDS data, that represents actual purchase behaviour. Hence, the discrepancies suggest that Skyscanner is precisely not representative of total customer bookings of passengers flying to Seoul. The Commission contemplates that representativeness of any data set is essential for the reliability of any quantitative analysis and consequently for its interpretation. Given that in the case of Skyscanner data there are several reasonable concerns regarding representativeness, the Commission concludes that the analysis based on Skyscanner data is insufficient to eliminate its concerns.

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[918] Direct Data Solutions (DDS) data is a global dataset of actual tickets purchased, as well as passenger figures globally. It is offered by the International Air Transport Association (IATA) and is considered as a standard for passenger data globally. Both the Notifying Party and the Commission rely on market share figures based on DDS data.

[919] Form CO, Tables 8 and 9.

[920] See Annex 54 - Route-by-Route Competitive Assessment – RBB.

8.6.5. MOLIT price regulation will not constrain the merged entity

(628) The Commission does not consider that the price regulation applied by the South Korea Ministry of Land Infrastructure and Transport ('MOLIT') will exert sufficient constrains on the Merged Entity prices post-Transaction.

(629) Korean Air argues that the Parties are currently not able to freely increase prices on at least one leg of the overlapping routes, as prices charged for flights originating in Korea are strictly controlled by the South Korean government.[921] The Commission considers that these claims cannot be accepted for several reasons.

(630) First, MOLIT's control over prices only concerns outbound flights from Korea, which is only one part of the price passengers on the Overlap Routes are required to pay. MOLIT's price ceiling does not concern inbound flights.[922]

(631) Second, MOLIT's price ceiling is significantly higher than the Parties' average prices, especially with respect to economy and business class where the gaps between MOLIT's price ceiling and each of the Parties' average prices are as high as […]%, implying that the Parties could […] increase their prices before being constrained by MOLIT's price ceiling.[923]

(632) Third, the Parties internal documents confirm that MOLIT's price regulation does not constrain their ability to increase prices. An internal document of […].

Figure 39: [Figure redacted]

Source: reply to RFI11, Annex RFI11 – Q1.1.d, pages 3,4.

(633) Fourth, the Commission considers that a regulatory price ceiling, which requires that "*fares must be reasonable in light of expenses and profits*"[924] is unlikely to constrain the Merged Entity prices to a level that is similar to the pressure exerted by the competitive process. Korean Air confirms that "*MOLIT's control over prices is not however the main driver of Korean Air's pricing policy*".[925] As explained in Section 8.6.1, closeness of competition, the main driver of the Parties' pricing is the other party's prices.

(634) Fifth, Korean Air's claim that the behavioural remedies accepted by the KFTC regulating the price the merged entity will be able to charge on the Overlap Routes cannot change the Commission's assessment. The remedies accepted by the KFTC are not enforceable by the Commission and could be waived or left unenforced.

8.6.6. Effect of the Transaction

(635) The Commission's market investigation shows that the Transaction is likely to have a negative impact on competition in passenger air services on the Overlap Routes.

(636) First, the Parties' internal documents show that they consider the Transaction is meant to eliminate price competition between them, would allow them to increase prices and to reduce the number of services on the Overlap Routes, and would lead to consumer harm.

921 From CO, paragraph 527.
922 Form CO, annex 44, paragraph 12.
923 Form CO, Annex QP6.Q16d.1 – Korean Air Average Fares and Annex QP6.Q16d.2 – Asiana Average Fares.
924 Form CO, Annex 44 paragraph 6.
925 Form CO, Annex 44, paragraph 16.

(637) In the first place, an internal document of Asiana titled "[…]".[926]

(638) […].[927]

(639) […],[928] […].

(640) In the second place, a Korean Air's internal document lists as one of the reasons for the "[…]".[929] Meaning that Korean Air considers that the competition with Asiana on the Overlap Routes […]. Another Korean Air document states that "[…]",[930] […].

(641) In the third place, an internal document of Korean Air analysing the potential benefits of the Transaction quantifies the different synergies the integration of the two carriers is expected to achieve.[931] The document refers to the possibility of "[…]" as one of the potential synergies that will be achieved by the Transaction.[932] As the Parties' services on the routes between ICN and BCN, CDG, FCO and FRA are overlapping, according to this document […]. This synergy is quantified: "[…]".[933]

(642) Additional similar references to the possibility to […] can be found in several of Korean Air internal documents. For example:

– "[…]";[934]
– "[…]."[935]
– "[…]"[936]
– "[…]"[937]
– "[…]"[938]

(643) In the fourth place, in a presentation prepared for Korean Air's board of directors meeting of […] discussing […] notes: "*[…]*".[939] This shows that Korean Air considers that […].

(644) In the fifth place, internal documents of Korean Air illustrate that post-Transaction Korean Air would be […]. In one document[940] Korean Air […] based on […][941] […]:

Figure 40 - [Figure redacted]

Source: Form CO Annex QP8.Q7b.3, page 27

926 Annex RFI11-Q1.1.d, dated 19 November 2020, page 4.
927 Annex RFI11-Q1.1.d, page 4.
928 Annex RFI11-Q1.1.d, page 4.
929 Form CO Annex 16.a slide 157
930 Form CO, Annex 16.f dated October 2020, slide 56.
931 Form CO, Annex 16.a. dated September 2020.
932 Form CO, Annex 16.a, slide 162.
933 Form CO, Annex 16.a. slide 167.
934 Form CO, Annex 16f, slide 61.
935 Form CO, Annex 16.l, slide 105.
936 Form CO, Annex 16.n, slide 76.
937 Form CO, Annex 16.v, slide 30.
938 Form Co, Annex 16.v slide 34.
939 Form CO, Annex 16.v, slide 31.
940 Form CO Annex QP8.Q7b.3, page 27. A similar table is included in Form CO Annex QP6.Q9b, page 22.
941 Prior to the Covid19 pandemic the Parties had combined markets shares above [60-70]% on the routes ICN-FCO and ICN-FRA in a market comprising of TS and NTS passengers, one stop and nonstop flights. In a market comprising of non-stop flights only the Parties' combined markets shares were above [60-70]% on all overlap routes.

(645) In the sixth place, a Korean Air internal document analysing the potential benefits of the Transaction lists […].[942] […][943] […].[944]

(646) In the seventh place, a KDB document shows that […].[945] In this document, KDB discussed a […][946] […] [947] […].[948]

(647) Second, market participants consider that the Transaction could have a negative impact on competition in the markets for passenger air services on the Overlap Routes, depending on the merged entity's actions and at least on some customer groups.[949] Market participants said that:

– "*The reduction in competition on the direct routing will allow the merged entity to increase prices, thus negatively impacting passenger demand. The consolidation of slot holdings at both airports would also restrict the ability of other airlines to acquire better slot holdings in order to compete with the merged entity thereby encouraging monopolistic and predatory [behaviour]*";[950]

– "*the transaction will cause the competition to become less causing the prices in the market to surge*";[951]

– "*[…] if KE becomes the only home carrier (if OZ brand and slots disappear) KE might make use of its leading market position and increase prices. […] In addition, KE might also control access to the inventory in a way that only higher booking classes are available […]*";[952]

(648) Third, the Parties' arguments in their Response to the Statement of Objections do not change the conclusion of the Commission that the Transaction is likely to have a negative impact on competition in passenger air services on each of the Overlap Routes.

(649) In the first place, while the Parties argue that the Transaction will not have appreciable impact on passengers based in the EU,[953] the Commission considers that (i) where the service is provided (at least partially) in the EU, the Commission should not limit its assessment to the impact on EU based passengers, and (ii) even when looking only at EU passengers, the Transaction is likely to have a negative impact on competition on the Overlap Routes.

(650) With respect to (i), the Parties provide no basis for their claim that the focus of the Commission's assessment should be EU based passengers. The air passenger services on the Overlap Routes are provided and consumed (in part) in the EU as passengers

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942 Form CO, Annex 16.a. slide 164. See also

943 Draft Form CO Annex 5.4 document 4 – […], slide 283.

944 Form CO, annex 16.f, slide 62; Form CO Annex 16.l, slide 167; Form CO, Annex 16.m, slide 51; Form CO Annex 16.n, slide 77.

945 Form CO Annex Q.70.c – […], Similar statements appear in Form CO Annex Q.70.d – […], page 16. All quotes are taken from the human translation of the document submitted in response to question 1(a) of RFI29 to the Parties.

946 Form CO Annex Q.70.c – […], page 39. Reply to question 1(a) of RFI29, Annex Q.70.c – […], page 2.

947 For completeness, […]. Human translation of Form CO Annex Q.70.c – […], submitted in reply to question 1(a) of RFI29, page 2.

948 *"Human translation"* of Form CO Annex Q.70.c – […], submitted in response to question 1(a) of RFI29 to the Parties, page 3.

949 Replies to question F.1 of Questionnaire Q1 to competitors; See also: Non-confidential minutes of a call with [a competitor]; Non-confidential minutes of a call with [a competitor]; non-confidential minutes of a call with [a competitor]; non-confidential minutes of a call with [a competitor].

950 Reply of [a competitor] to question F1 of Questionnaire Q1 to competitors (ID7715).

951 Reply of [a competitor] to question F1 of Questionnaire Q1 to competitors (ID8510)

952 Reply of [a competitor] to question F1 of Questionnaire Q1 to competitors (ID8288)

953 Response to the Statement of Objections, paragraphs 404-406.

disembark and embark flights in the territory of the EU that connect South Korea and the EU. The air passenger services provided are inherently cross-border in nature and any negative effects on the consumption of these services will occur (in part) in the territory of the EU and accordingly in the internal market – independently of whether the customer starts the journey at the South Korean or the European end of the route and independently of the place of residence of the customer. Negative effects on the provision of air passenger services between South Korea and the EU can have also follow-on effects, such as more general economic effects resulting from a reduction in the number of passengers flying between the two territories and affecting the exchange between the two territories. Therefore the Commission considers it relevant to assess the impact of the Transaction on all passengers consuming the cross-border air passenger services linking the EU and South Korea, rather than solely on those customers based in the EU.

(651) With respect to (ii), the Commission considers that the reasons detailed in this Decision, leading to the conclusion that the Transaction is likely to have a negative impact on competition in passenger air services on each of the Overlap Routes would lead to the same conclusion also should the analysis be focused only on EU based passengers, if the Commission were to follow the Parties' view that the assessment should distinguish between passengers based in the EU and in South Korea, *quod non*. The Parties market shares are high and stable over time also when looking only at passengers starting their trip in the EU. In IATA seasons Summer 2019 and Winter 2019/2020, the Parties' combined market shares (non-stop and one-stop operations, TS + NTS)[954] were [50-60]% with an increment of [20-30]% and [50-60]% with an increment of [20-30]% respectively on the ICN-BCN route,[955] [60-70]% with an increment of [20-30]% and [70-80]% with an increment of [20-30]% on the ICN-FRA route,[956] [40-50]% with an increment of [10-20]% and [50-60]% with an increment of [10-20]% on the ICN-CDG[957] route and [60-70]% with an increment of [20-30]% and [50-60]% with an increment of [10-20]% on the ICN-FCO route.[958]

(652) All remaining parts of the Commission's assessment remain unaffected by whether the assessment focuses on passengers based in South Korea or based in the EU: In the first place, as described in section 8.6.1, the Parties are close competitors - when making commercial decisions, the Parties take into account each other's behaviour and react to it; market participants view the Parties as close competitors; the Parties' internal documents confirm that they view each other as close competitors; Asiana is considered by several market participants as competing aggressively on the price; the

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954 Non-stop and one-stop operations, TS + NTS, adjusted for the exit of Alitalia, Czech Airlines and Russian airline. Parties reply to RFI 27, Annex RFI27.Q3.3.

955 The Parties combined market shares for POO EU on the ICN-BCN route were [30-40]% with an increment of [0-5]% in Summer 2017, [30-40]% with an increment of [0-5]% in Winter 2017/2018, [40-50]% with an increment of [10-20]% in Summer 2018 and [60-70]% with an increment of [20-30]% in Winter 2018/2019.

956 The Parties combined market shares for POO EU on the ICN-FRA route were[60-70]% with an increment of [20-30]% in Summer 2017, [60-70]% with an increment of [20-30]% in Winter 2017/2018, [70-80]% with an increment of [20-30]% in Summer 2018 and [70-80]% with an increment of [30-40]% in Winter 2018/2019.

957 The Parties combined market shares for POO EU on the ICN-CDG route were [50-60]% with an increment of [20-30]% in Summer 2017, [50-60]% with an increment of [10-20]% in Winter 2017/2018, [40-50]% with an increment of [10-20]% in Summer 2018 and [50-60]% with an increment of [20-30]% in Winter 2018/2019.

958 The Parties combined market shares for POO EU on the ICN-FCO route were [40-50]% with an increment of [10-20]% in Summer 2017, [50-60]% with an increment of [20-30]% in Winter 2017/2018, [50-60]% with an increment of [10-20]% in Summer 2018 and [50-60]% with an increment of [10-20]% in Winter 2018/2019.

Parties are the only competitors offering direct services on the route. In the second place, as described in section 8.6.2, the Parties face limited constraints from indirect flights on the Overlap Routes: the Parties' internal documents show that the Parties consider indirect competitors as a weaker competitive constraint; market participants share the view that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services; the limited market share that each competitor with indirect connections has been able to achieve demonstrates that one-stop flights represent a different value proposition and would only be an alternative to a subset of passengers, and; the fact that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria, and not only price. In the third place, as described in section 8.6.3, barriers to entry and expansion such as availability of slots, availability of traffic rights, the strong position of the Merged Entity on the route, the profitability of the route, availability of aircrafts and crews and the closure of Russian airspace, are high, also when focusing the assessment on EU based passengers, and no sufficient entry is expected on the Overlap Routes.

8.6.7. The Parties' high market shares on each of the Overlap Routes indicate that the Merged Entity would hold a dominant position after the Transaction on each of the routes

(653) As explained in section 8.7, the Transaction would lead to the Merged Entity holding a very strong market position on each of the Overlap Routes. The Commission considers that the Parties' combined markets shares on the Overlap Routes indicate that the Merged Entity would hold a dominant position after the Transaction.

(654) In their Response to the Statement of Objections, the Parties argue that high market shares in the airline industry are not indicative of market power.[959] The Commission disagrees with that reasoning and instead finds that market shares are a useful first indicator for the existence of market power on each of the routes, for the following reasons.

(655) In the first place, as explained in section 8.1 (paragraph (298)), the European courts have confirmed that high market shares are indicative of market power in the aviation industry.

(656) In the second place, the markets for air passenger services on different O&Ds are not characterised by lumpy consumption or infrequent purchases but rather by daily purchases by hundreds, if not thousands of customers. In such circumstances, customer constantly reveal their purchasing preferences in each of their purchasing decisions, which reflect the competitive strength of the offers available on the market. Therefore, there is no reason to assume that market shares are not representative of market power.

(657) In the third place, contrary to the Parties' claim that market shares are volatile, significant variations in market shares are limited to the period of the Covid19 pandemic due to the pandemic's specific effects on supply and demand. By contrast, prior to the Covid19 pandemic, the market shares of the Parties and their competitors were relatively stable over time.[960]

(658) In the fourth place, the Parties themselves use market shares as an indicator of market power. In an internal document related to the […],[961] Korean Air decides […].

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959 Response to the Statement of Objections, paragraphs 420-424, 467-471, 519-523, 576-580.

960 Parties reply to RFI22, Annex RFI22.Q6 market share information.

961 Form CO Annex QP8.Q7b.3, page 27. A similar table is included in Form CO Annex QP6.Q9b, page 22.

Figure 41 - [Figure redacted]

Source: Form CO Annex QP8.Q7b.3, page 27

(659) In other documents, Korean considers […] on routes where it has market share of over [70-80]%.[962]

(660) Korean Air explained that it generally benchmarks its prices against the airlines operating direct flights "*and/or the top two airlines in terms of market share (in 2021 – 2022) on each route*", [963] demonstrating, that Korean Air considers market shares to be indicative of market power. Consequently, in many of its documents related to pricing and benchmarking, Korean Air […].[964]

(661) In the fifth place, as evident from Sections 8.6 and 8.7, the Commission's assessment does not rely solely on market shares and the mere fact of the reduction of the number of players on a given market. The Commission has notably carefully considered the closeness of competition between the Parties, the competitive constraint exerted by existing competitors, as well as the probability of additional competitive constraint exerted by likely, timely and sufficient entry or expansion and the likely and significant impact of the Transaction on competition in each relevant market. Furthermore, as explained in more detail in section 8.5.1, the Commission has taken into account changes that have occurred since the start of the Covid19 pandemic, as well as future changes to the markets that can be reasonably predicted, to the extent they will likely continue to be relevant also after demand will have recovered from the temporary Covid19 shock. These changes for instance cover duly documented entry or exit plans or changes in competitiveness that will have lasting and structural effects. At the same time, the Commission has also given due importance – both in the description of the framework of its assessment and in each route-by-route assessment taking into account the facts of this case – to the often very high combined market shares of the Parties over several IATA seasons, in line with established case law and Commission practice.

8.7. Passenger air transport services – route by route assessment

8.7.1. Seoul-Barcelona (ICN-BCN)

(662) The market structure on the route Seoul-Barcelona (ICN-BCN) in terms of passengers transported point-to-point and weekly flight frequencies is set out in Table 22 to Table 25.

Table 22 - Market shares ICN-BCN (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020

Airline	**S17**	**W17/18**	**S18**	**W18/19**	**S19**	**W19/20**
Korean Air	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Asiana	[0-5]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%
Combined[965]	**[30-40]%[966]**	**[40-50]%[967]**	**[40-50]%[968]**	**[50-60]%[969]**	**[50-60]%[970]**	**[60-70]%[971]**

962 See: Form CO annex QP8.Q7b.1; "[…]" (ID 9780-007329); "[…]", (ID10106-003681);

963 Form CO paragraph 532.

964 See, for example: Form CO Annexes: QP6.Q5g.a.i.2, page 8; QP8.Q7b.1 page 17 et seq; QP6.Q9.b, page 23; QP8.Q7b.3, page 27 et seq; QP8.Q7i.2 page 7; QP10.Q8a and QP10.Q8b.

965 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

Airline	S17	W17/18	S18	W18/19	S19	W19/20
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Qatar	[10-20]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Air France – KLM	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Finnair	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%
Emirates	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Lufthansa	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Aeroflot	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Turkish Airlines	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cathay Pacific Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[972]	[5-10]%[973]	[5-10]%[974]	[5-10]%[975]	[5-10]%[976]	[5-10]%[977]	[5-10]%[978]
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 387

966 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [30-40]% (for non-stop and one-stop operations/NTS traffic) and [50-60]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments of non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%..

967 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [30-40]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%.

968 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [40-50]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%.

969 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%.

970 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%.

971 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), as well as on the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]%.

972 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

973 Comprises 3 carriers each with market shares below [0-5]%: IAG, Alitalia, and Air China.

974 Comprises 3 carriers each with market shares below [0-5]%: IAG, Alitalia and Air China.

975 Comprises 3 carriers each with market shares below [0-5]%: IAG, Alitalia, and Air China.

976 Comprises 4 carriers each with market shares below [0-5]%: IAG, Etihad, Alitalia, and Air China.

977 Comprises 4 carriers each with market shares below [0-5]%: IAG, Etihad, Alitalia, and Air China.

978 Comprises 4 carriers each with market shares of or below [0-5]%: IAG, Etihad, Alitalia, and Air China.

Table 23 – Market shares ICN-BCN (non-stop and one-stop operations, TS + NTS) since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023[979]

Airline	**S20**	**W20/21**	**S21**	**W21/22**	**S22**	**W22/23[980]**
Korean Air	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[20-30]%	[30-40]%
Asiana	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[20-30]%	[20-30]%
Combined[981]	**[5-10]%**	**[5-10]%**	**[10-20]%**	**[10-20]%**	**[40-50]%**	**[50-60]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Qatar	[40-50]%	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Air France – KLM	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%
Finnair	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%
Emirates	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Lufthansa	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Turkish Airlines	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%
Etihad	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Other competitors[982]	[0-5]**%**[983]	[0-5]**%**[984]	[0-5]**%**[985]	[0-5]**%**[986]	[0-5]**%**	[0-5]**%**
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 387; Reply to RFI24: Annexes RFI24.Q1a and RFI24.Q1b.

Table 24 – Market structure ICN_BCN in terms of weekly frequencies in the IATA seasons Summer 2017 to Winter 2019/2020 (non-stop flights)

Airline	**S17**	**W17/18**	**S18**	**W18/19**	**S19**	**W19/20**
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Share	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Annex QP9.Q23

979 As explained in paragraph (471) market shares since the beginning of the Covid19 pandemic are provided in this decision for completeness.

980 November 2022-February 2023.

981 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

982 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

983 Comprises 2 carriers each with market share below [0-5]%: IAG and Aeroflot.

984 Comprises Aeroflot with market share below [0-5]%.

985 Comprises 2 carriers each with market share below [0-5]%: Cathay Pacific Airways and Aeroflot.

986 Comprises Aeroflot with market share below [0-5]%.

Table 25 – Market structure ICN-BCN in terms of weekly frequencies since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023 (non-stop flights)

Airline	S20	W20/21	S21	W21/22	S22	W22/23
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Share	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Reply to RFI 25, Annex RFI25.Q1

(663) For the reasons set out below, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-BCN.

(664) First, the Transaction would lead to the Merged Entity holding a very strong market position on the route. Asiana entered this route in 2018 and has acquired a considerable share of that market. As set out in Table 22, the Parties combined have held market shares between [40-50]% and [60-70]% on the route between Winter 2018 (the year Asiana started offering direct flights on the route) and 2019, which indicates that the Merged Entity would hold a dominant position after the Transaction.[987] When redistributing the market shares of competitors who have since then exited the market, the Parties combined market shares are even higher (up to [60-70]%).[988] The Parties have also been the only two carriers with direct flights between 2018 and 2019, giving them a share of weekly frequencies for direct flights of [90-100]% for the entire period.

(665) In their Response to the Statement of Objections, the Parties argue that high market shares in the airline industry are not indicative of market power.[989] The Commission disagrees and considers that the Parties' high market shares are indicative of market power, for the reasons listed in section 8.6.7. Namely, the European courts have confirmed that high market shares are indicative of market power in the aviation industry; the markets are characterised by daily purchases, constantly revealing customers' purchasing preferences and reflecting the competitive strength of the offers available on the market; following the entry of Asiana on the route in Summer 2018 and prior to the Covid19 pandemic, market shares of the Parties and their competitors were stable over time, apart for the variation related to Asiana's entry on the route (as evident in Table 22), and the Parties themselves use market shares as an indicator of market power.

(666) Second, the increment brought about by the Transaction would be particularly large based on figures for the years 2018 (the year Asiana started offering direct flights on the route) to 2019: at [10-20]% (in Summer 2018) [20-30]%-points (in Winter 2018/2019) to [30-40]%-points due to Asiana. This results in a high increase in the HHI of more than […]. The large level and increment in the Parties' joint market position is a clear indicator that the Transaction would create a dominant position.

(667) Third, while the Covid19 pandemic has had a temporary significant impact on demand and supply, the Commission does not expect the competitive dynamics on the route to change significantly in the long-term.

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987 Horizontal Merger Guidelines, paragraph 17.

988 Korean Air's reply to RFI6, Annex RFI6.Q1 - Passenger market shares adjusted for Alitalia, Czech Airlines and Russian airlines, IATA Summer 2017 to IATA Summer 2022 seasons.

989 Response to the Statement of Objections, paragraphs 420-424.

(668) In the first place, the identity of the competitors active on the route has changed only somewhat. Air France-KLM, Qatar Airways, and Emirates did not cease operations even during the peak of the Covid19 pandemic,[990] while several carriers providing indirect services on the route such Aeroflot, Alitalia and British Airways have suspended their operations on the route and did not resume them.[991] As explained in paragraph (664), redistributing the market shares of these competitors has led only to a small increase in the Parties' combined market shares.

(669) In the second place, Korean Air and Asiana plan to continue operating on the route. Both Parties have expanded their weekly frequencies to […] in IATA Summer 2023 season.[992] The Commission observes that pre-Covid19, both Korean Air and Asiana had weekly frequencies of […] and […] in IATA Winter 2018/2019 and Summer 2019 seasons respectively.[993]

(670) Fourth, the remaining competitors would likely be insufficient to constrain the Merged Entity on the route.

(671) In the first place, the market shares of the remaining competitors pre-Covid19 are smaller by a large margin than those of each of the Parties and of the Merged Entity (*i.e.,* following Asiana's entry on the route in Summer 2018, market shares of all other carriers on the route did not exceed [10-20]% each and many of them remained well below [5-10]%, see Table 22).

(672) In the second place, all other competitors apart from the Parties offer only one-stop flights between ICN and BCN. While one-stop flights may compete with non-stop flights for long-haul travel, they represent a different value proposition, and would only be an alternative to a subset of passengers, for the reasons set out in section 8.6.2. Namely, as explained in section 8.6.2, the Parties' internal documents show that the Parties […]; market participants […] that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services; the limited market share that each competitor with indirect connections has been able to achieve demonstrate that one-stop flights represent a different value proposition and would only be an alternative to a subset of passengers, and; the fact that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria, and not only price.

(673) In the third place, Asiana has entered the route during IATA season Summer 2018, and within the following IATA season Winter 2018/2019, the first season in which it completed ramping up its frequencies, Asiana already achieved a market share of [20-30]%, which is larger than the market share of any other competitor offering indirect services on the route (see Table 22). This shows the superior value proposition of direct flights and customer preference for them, if offered at competitive conditions.

(674) In the fourth place, the majority of one-stop flights on the ICN-BCN route significantly extend travel time and reduce travel convenience as compared to direct flights and therefore exert only limited competitive constraint on the Parties' operations on the route ICN-BCN. During IATA season Summer 2023, the vast majority of one-stop flights on the ICN-BCN route are at least 3 and up to 6 hours (i.e. 22% to 43%) longer than the Parties' direct services on the route, with flights offered by Cathay Pacific, Emirates, Qatar and Turkish Airlines having a stop-over during

990 Form CO, footnote 302.
991 Response to question 5 of RFI 5.
992 Form CO, Annex QP9.Q23
993 Form CO, Annex QP9.Q23

night time at least on one way of the route.[994] Similarly, during IATA season Winter 2023/2024, the vast majority of one-stop flights on the ICN-BCN route will be at least 3.5 and up to 9 hours (i.e. 25%-60%) longer than the Parties' direct services on the route, with flights offered by AF/KLM, Emirates, Qatar and Turkish Airlines having a stop-over during night time at least on one way of the route.[995] These indirect competitors will have at most a very limited ability to restrain the Merged Entity.

(675) In the fifth place, the majority of passengers on the ICN-BCN route have demonstrated their strong preference to non-stop over one-stop flights, allowing the Parties to exert market power on the route. In 2019, over [50-60]% of the passengers preferred the Parties' direct services on the route over all indirect flights available on the route,[996] despite the fact that, according to Korean Air, the price of these direct services was [40-50]% higher than the price of indirect services on the route.[997] This shows the inability of indirect flights to restrain the Parties' direct services sufficiently. The Parties already exerted market power on the route and would be able to do so more easily post-Transaction.

(676) In the sixth place, and as explained further below (paragraph (684), the majority of competitors offering one-stop services on the ICN-BCN route cannot expand their services on the route due to exhaustion of traffic rights.

(677) Fifth, for the reasons set out in section 8.6.1, the Parties are close competitors on the route.

(678) In the first place, as explained in section 8.6.1, when making commercial decisions, […]. […]. In this respect, when assessing whether to enter the ICN-BCN route, Asiana noted that […].[998] This shows the similarity in the Parties' business model and close benchmarking.

(679) In the second place, market participants view the Parties as close competitors. The majority of market participants expressing a view consider that the Parties are each other's closest competitor on the ICN-BCN route.[999]

(680) In the third place, as explained in section 8.6.1, the Parties' internal documents confirm that they view each other as close Competitors.

(681) In the fourth place, as explained in section 8.6.1 Asiana is considered by several market participants as competing aggressively on the price, which makes Asiana a close competitor to other high-quality direct air services on the Overlap Routes, including notably those offered by Korean Air. The aggressive strategy of Asiana led to particular competitive pressure by Asiana on Korean Air, which […]. One competitor stated that on the ICN-BCN route "*Asiana […] is more aggressive on pricing. Korean Air is more competitive on business travel but the fact that Barcelona is mainly a leisure destination gives an advantage to Asiana*".[1000]

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994 Parties' reply to RFI 16, Annex RFI16.Q19.

995 Parties' reply to RFI 28, Annex RFI28.Q1; Competitors' offers were compared to Asiana's scheduled, which assumes TSR is detoured. Should flying the TSR be possible, the gaps may be even larger.

996 Table 22: Market shares ICN-BCN (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020.

997 Average lowest fare of direct and indirect flights, Form CO paragraph 145.

998 Asiana's reply to RFI14, annex RFI14.Q42b.1, page 46.

999 Replies to question D.B.C.2 and D.B.C.3 of Questionnaire Q1 to competitors; replies to questions D.C.1 and D.C.2 of Questionnaires Q4 to corporate customers and Q5 to TO/TA.

1000 Non-confidential minutes of a call with [a competitor].

(682) In the fifth place, the Parties are the only competitors offering direct services on the route.

(683) In the sixth place, the Parties compete closely on Korean based passengers traveling on the route.[1001] As explained in section 8.6.1, being the only South Korean carriers on the Overlap Routes, the Parties enjoy the same advantage with certain passenger groups which is different compared to other, non-Korean carriers on the route.

(684) Sixth, based on the Commission's market investigation no timely, likely and sufficient entry or expansion of competitors is expected on the route. In the first place, as explained in section 8.6.3, the market investigation identified several barriers to entry and expansion, including availability of slots, availability of traffic rights, the strong position of the Merged Entity on the route, the profitability of the route, availability of aircrafts and crews, the closure of Russian airspace and TSR overflight rights.

(685) In the second place, as regards traffic rights on the BCN-ICN route, while traffic rights do not constrain the ability of Korea or EEA based carriers wishing to operate direct services on the route, the following competitors offering indirect services on the route cannot expand these services due to exhaustion of traffic rights between their hubs and Seoul: [a competitor],[1002] [a competitor],[1003] [a competitor],[1004] [a competitor][1005] and [a competitor].[1006] Meaning that, out of the competitors offering indirect services on the route,[1007] only [names of competitors] could expand their services on the route. However, in 2019 each of these competitors had [0-5]-[5-10]% market shares, which shows their marginal significance on the route. In their Response to the Statement of Objections the Parties identify p[…] airlines as additional airlines with available traffic rights on the route ICN-BCN. However, [names of competitors] are not operating any services on the route and do not have concrete plans to operate such services in the next three years.[1008]

(686) In the third place, as regards the availability of slots, the market investigation shows that BCN airport is slot constrained, at least at peak hours, when slot requests cannot be accommodated. The BCN slot coordinator expects slot availability may deteriorate over the next […].[1009] As explained in section 8.6.3.2 above, Korean Air confirms that all the airports on the Overlap Routes are slot congested and that slot availability constitutes a barrier to entry on all the Overlap Routes.[1010]

(687) In the fourth place, based on the Commission's market investigation, no competitors active on the route, nor potential entrants that are not restricted by traffic rights, have concrete plans to enter or expand scheduled services on the ICN-BCN route over the next 3 years, independently of the Transaction.[1011] While [a competitor] and [a

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1001 See paragraph (516) above.

1002 Non confidential minutes of a call with [a competitor].

1003 Non-confidential minutes of a call with [a competitor]; Reply of [a competitor] to question D.B.B.6 of Q1 to competitors (ID7674).

1004 Reply of [a competitor] to question D.B.B.6 and D.B.B.7 of Q1 to competitors (ID7715).

1005 Non-confidential minutes of a call with [a competitor].

1006 Form CO annex 37 table 1. In addition, [a competitor], who's market share on the route did not exceed [0-5]% since IATA season Summer 2017, cannot expand its services between ICN and its hub. See Non-confidential minutes of a call with [a competitor].

1007 Competitors appearing in the market share tables above, i.e. with a market share exceeding [0-5]% in at least one IATA season.

1008 Replies to question B.13 of Questionnaire Q3 to potential entrants.

1009 Replies to questions C.10 to C.13 of Questionnaire Q8 to slots coordinators.

1010 Korean's reply to question 13 of RFI1 on remedies.

1011 Replies to question D.B.B.6 of QP1 to competitors; Replies to question B.13 of Questionnaire Q3 to potential entrants.

competitor] express a general intention to expand services, both cannot expand their services between ICN and their hubs. [A competitor] confirms that the intention to expand is a general aim "*to expand its network in every winter and summer season occasionally due to destinations performances, however frequency, aircraft type and etc. details cannot be confirmed yet for the next three years*".[1012] In this respect, the Parties claim that [a competitor] considers that traffic rights do not hinder its ability to enter or expand capacity on the ICN-BCN route.[1013] In support of this claim, the Parties bring a partial quote of [the competitor], without indicating that the quote is partial and skips a few words in the middle of the quote.[1014] The part of the quote that was removed by the Parties reads "*For South Korea and [the competitor's hub] capacity there are limitations.*",[1015] thus, confirming that traffic rights limit [the competitor's] ability to expand on the route. The fact that [the competitor] could expand its services on the leg between […] and the EEA does not allow an increase of [the competitor's] capacity on the ICN-BCN route.

(688) Seventh, several market participants expressing a view consider that the Transaction will have a negative impact on passenger air transport services on the BCN-ICN route, with some referring to negative impact only on time sensitive passengers and others saying that negative impact is possible but depends on the Merger Entity decision to reduce frequencies.[1016]

(689) In their Response to the Statement of Objections, the Parties argue that customers had an overwhelmingly positive or neutral response concerning the impact of the Transaction[1017] and that, on balance, the feedback from the market investigation indicated that the Transaction would have positive or no effects.[1018] The Commission disagrees and considers that the majority of customers, travel agents, tour operators and competitors who express a view, consider the Transaction will have negative impact on air passenger services on the ICN-BCN route, or at least do not exclude a negative impact. Out of 19 customers who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services, the vast majority (14 replies, 74%) say they do not know,[1019] demonstrating that customers generally do not feel informed about the likely impact of the Transaction. Out of the five customers who express a view, two customers (40%) expect positive or no impact, two customers (40%) expect a negative impact and one customer (20%) thinks "it depends", which means negative impact is not excluded. Thus, a majority (60%) of customers expressing a view expect, or at least do not exclude, negative impact. Out of 16 travel agents ("TA") and tour operators ("TO") who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services on the ICN-BCN route, seven (44%) say they do not know. Out of nine TA and TO who replied to the Commission questionnaire expressing a view, three (33%) consider the Transaction will have positive or no impact, three (33%) consider the Transaction will have negative impact and three (33%) replied "it depends", meaning that they at

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1012 Reply of [a competitor]to question D.B.B.6 of QP1 to competitors (ID8510).

1013 Response to the Statement of Objections, paragraph 442.

1014 The quote as brought by the Parties is: "*[b]etween […] and EEA, there are enough capacity allocation to serve. From [the competitor's] perspective, the merger should not affect the opportunity to increase or remain same the number of flights between two countries*".

1015 Reply of [a competitor]to question D.C.11 of QP1 to competitors (ID8510).

1016 Replies to question F.1 of Questionnaire Q1 to competitors; replies to question F.1 of Questionnaire Q3 to potential entrants; replies to question E.1 of Questionnaire Q4 to corporate customers; replies to question E.1 of Questionnaire Q6 to TA/TO.

1017 Response to the Statement of Objections, paragraph 452.

1018 Response to the Statement of Objections, paragraph 459.

1019 Replies to question E.1 of Questionnaire Q4 to corporate customers.

least do not exclude negative impact. Thus, the majority (67%) of TA and TO who replied to the Commission questionnaire expressing a view expect, or do not exclude, negative impact.[1020] Out of seven competitors who provided a non-confidential reply to the question on the likely impact of the Transaction on the ICN-BCN route, two (29%) say they do not know. Out of the five competitors expressing a view, all (100%) expect (two competitors) a negative impact, or replied "it depends" (three competitors), meaning that they at least do not exclude a negative impact.[1021]

(690) Eighth, post Transaction the Parties intend to reduce the number of services on the route, meaning that the Transaction would have a negative effect in terms of frequencies offered on the BCN-ICN route. In 2019, each of the Parties operated […] weekly flights on the ICN-BCN route ([…] weekly flights combined),[1022] and according to their plans, the Parties will go back to this level ([…] weekly flights on the route combined) in IATA Summer 2023 season.[1023] However, post-Transaction, the Parties intend to offer […] weekly flights ([…]) on the route.[1024]

(691) In their Response to the Statement of Objections […].[1025] […][1026] […].

Table 26 - Days of the week the Parties provided services on the ICN-BCN route prior to Covid19

Party	Summer 2018	Winter 2018/2019	Summer 2019	Winter 2019/2020
Korean Air	**[…]**	**[…]**	**[…]**	**[…]**
Asiana	**[…]**	**[…]**	**[…]**	**[…]**

Source: Parties' reply to question 3 of RFI29.

(692) In view of the above, the Commission concludes, that the Transaction would lead to a significant impediment to effective competition on the route ICN-BCN due to the creation or strengthening of a dominant position under any plausible market definition. This is likely to lead to increased prices, a lower level of service and reduced choice for passengers travelling on this route.

8.7.2. Seoul-Frankfurt (ICN-FRA)

(693) The market structure on the route Seoul-Frankfurt (ICN-FRA) in terms of passengers transported point-to-point and weekly flight frequencies is set out in Table 27 to Table 30.

Table 27 - Market shares ICN-FRA (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
Asiana	[40-50]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%	[50-60]%
Combined[1027]	**[70-80]%[1028]**	**[80-90]%[1029]**	**[80-90]%[1030]**	**[80-90]%[1031]**	**[80-90]%[1032]**	**[80-90]%[1033]**

1020 Replies to question E.1 of Questionnaire Q6 to TA/TO.
1021 Replies to question F.1 of Questionnaire Q1 to competitors.
1022 Form CO, footnote 523.
1023 Form CO, Annex QP9.Q23.
1024 Form CO, Table 194.
1025 Response to the Statement of Objections, paragraphs 460-464.
1026 Parties' reply to question 4 of RFI29.
1027 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

Airline	S17	W17/18	S18	W18/19	S19	W19/20
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Lufthansa	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Qatar	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Air France – KLM	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[1034]	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 396

1028 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [80-90]% (NTS).

1029 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [90-100]% (NTS).

1030 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [90-100]% (NTS).

1031 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1032 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1033 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1034 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures. In addition, the Parties do not specify which other competitors are included.

Table 28 – Market shares ICN-FRA (non-stop and one-stop operations, TS + NTS) since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023[1035]

Airline	S20	W20/21	S21	W21/22	S22	W22/23[1036]
Korean Air	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%
Asiana	[60-70]%	[50-60]%	[40-50]%	[40-50]%	[40-50]%	[50-60]%
Combined[1037]	**[80-90]%**	**[70-80]%**	**[60-70]%**	**[60-70]%**	**[70-80]%**	**[80-90]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Lufthansa	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Qatar	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Air France – KLM	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[1038]	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 396; Reply to RFI24: Annexes RFI24.Q1a and RFI24.Q1b.

Table 29 – Market structure ICN-FRA in terms of weekly frequencies in the IATA seasons Summer 2017 to Winter 2019/2020 (non-stop flights)

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Share	**[60-70]%**	**[70-80]%**	**[60-70]%**	**[70-80]%**	**[60-70]%**	**[70-80]%**

Source: Form CO, Annex QP9.Q23

Table 30 – Market structure ICN-FRA in terms of weekly frequencies since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023 (non-stop flights)

Airline	S20	W20/21	S21	W21/22	S22	W22/23
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Share	**[90-10]%**	**[60-70]%**	**[60-70]%**	**[60-70]%**	**[60-70]%**	**[80-90]%**

Source: Reply to RFI 25, Annex RFI25.Q1

(694) For the reasons set out below, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-FRA.

1035 As explained in paragraph (471) market shares since the beginning of the Covid19 pandemic are provided in this decision for completeness.

1036 November 2022-February 2023.

1037 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

1038 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures. In addition, the Parties do not specify which other competitors are included.

(695) First, the Transaction would lead to the Merged Entity holding a very strong market position on the route. As set out in Table 27, the Parties combined have held market shares between [70-80]% and [80-90]% on the route between 2017 and 2019, which indicates that the Merged Entity would hold a dominant position after the Transaction.[1039] When redistributing the market shares of competitors who have since then exited the market, the Parties' combined market shares are even higher (up to [80-90]%).[1040] The Parties as well as Lufthansa have also been the only carriers with direct flights between 2017 and 2019, giving them a share of weekly frequencies ranging from [60-70]% to [70-80]% for the entire period.

(696) In their Response to the Statement of Objections, the Parties argue that high market shares in the airline industry are not indicative of market power.[1041] The Commission disagrees and considers that the Parties' high market shares are indicative of market power, for the reasons listed in section For the reasons listed in section 8.6.7. Namely, the European courts have confirmed that high market shares are indicative of market power in the aviation industry; prior to the Covid19 pandemic, market shares of the Parties and their competitors were stable over time (as evident in Table 27, and the Parties themselves use market shares as an indicator of market power.

(697) Second, the increment brought about by the Transaction would be particularly large based on figures for the years 2017 to 2019 at [20-30]%-points to [30-40]%-points due to Korean Air. This results in a high increase in the HHI of more than […]. The large level and increment in the Parties' joint market position is a clear indicator that the Transaction would create a dominant position.

(698) Third, while the Covid19 pandemic has had a significant impact on demand and supply, the Commission does not expect the competitive dynamics on the route to change in the long-term.

(699) In the first place, the identity of the competitors active on the route has not changed materially, as only Lufthansa ceased operations in this route in IATA Summer 2020 season, but resumed operations in December 2020.[1042] While several carrier providing indirect services on the route, such as Aeroflot, suspended their services and did not resume them, such competitors had very small market shares on the route in the first place. As explained in paragraph (695), redistributing the market shares of these competitors has led only to a small increase in the Parties' combined market shares.

(700) In the second place, Korean Air and Asiana plan to continue operating on the route and have expanded their flight frequencies to their pre-covid levels. Korean Air plans to expand its weekly frequencies to […] during IATA Summer 2023 season and to maintain this level in the subsequent Winter 2023/2024 season. Asiana has expanded to […] weekly frequencies in Summer 2023 and will maintain this level in Winter 2023/2024.[1043] Pre-Covid19, both Korean Air and Asiana had weekly frequencies of […] and […] in IATA Winter 2018/2019 and Summer 2019 seasons respectively.[1044]

(701) Fourth, the remaining competitors would likely be insufficient to constrain the Merged Entity on the route.

1039 Horizontal Merger Guidelines, paragraph 17.

1040 Korean Air's reply to RFI6, Annex RFI6.Q1 - Passenger market shares adjusted for Alitalia, Czech Airlines and Russian airlines, IATA Summer 2017 to IATA Summer 2022 seasons.

1041 Response to the Statement of Objections, paragraphs 467-471.

1042 Form CO, paragraph 654.

1043 Parties' reply to RFI 20, Annex RFI20.Q3a and […] revised translation.

1044 Form CO, Annex QP9.Q23.

(702) In the first place, the market shares of the remaining competitors pre-Covid19 are smaller by a large margin than those of the Merged Entity. Between Summer 2017 and Winter 2019/2020 Lufthansa's market share did not exceed [10-20]% and all other indirect competitors had market shares of only up to [0-5]%, and up to [5-10]% when combined together (See Table 27 above) In fact, since IATA Summer season 2017, the only two competitors besides Lufthansa, who had a market share exceeding [0-5]% in at least one IATA season are Air France and Qatar Airways, and their market share exceeded [0-5]% only during the Covid19 pandemic.[1045]

(703) In the second place, the market investigation shows that [a competitor] is unlikely to expand its services on the route in the next […] years. […].[1046] Moreover, […]. In 2019, […]% of [the competitor's] passengers on the route were connecting passengers,[1047] meaning that the capacity to compete with the Parties on the O&D is limited and therefore their incentive to compete for passengers traveling on the O&D by expanding frequencies is lower. As […], the competitive conditions affecting its network, rather than the specific O&D ICN-FRA, are more likely to affect its decision whether to expand services on the route.

(704) In their Response to the Statement of Objections, the Parties claim that [the competitor's] market presence on the ICN – FRA route could substantially increase should it become more profitable to use its existing capacity on the route for non-stop itineraries, instead of one-stop itineraries as it currently does.[1048] However, this claim ignores the opportunity costs [the competitor] would face should it pursue such a strategy. These costs concerns giving up capacity on another route, which it currently prioritizes over the ICN-FRA route. Market participants confirmed the importance of opportunity costs to their network planning.[1049] One competitor explained: "*If there aren't any aircraft available in your fleet, it is highly unlikely you would consider entering a new market. Unless, of course, the new market provided [profitability] above and beyond other opportunities and current routes in your network. In which case, you would cancel a route in order to enter a new one*".[1050] Another competitor explained that "*Internally crew and aircraft [resources] are typically [allocated] to most profitable routes*".[1051] In this respect, the Horizontal Merger Guidelines[1052] clarify that an output expansion by competitors is unlikely when competitors face binding capacity constraints and the expansion of capacity is costly or if existing excess capacity is significantly more costly to operate than capacity currently in use.

(705) In the third place, apart from the Parties and [a competitor], all other competitors currently active on the route offer only one-stop flights between ICN and FRA. While one-stop flights generally may compete with non-stop flights for long-haul travel, they represent a different value proposition, and would only be an alternative to a subset of passengers, for the reasons set out in section 8.6.2. Namely, as explained in section 8.6.2, the Parties' internal documents show that […]; market participants […] that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services; the limited market share that each competitor with indirect connections has been able to achieve demonstrate that one-stop flights

1045 See market share tables above, and Form CO Annex 34, paragraph 6 describing the methodology used to calculate market shares.
1046 [A competitor's] reply to questions D.B.B.6 and D.B.B.7 of Questionnaire Q1 to competitors (ID8288)
1047 Minutes of a call with [a competitor]; Parties' reply to RFI 16, Annex RFI16.Q19.
1048 Response to the Statement of Objections, paragraph 475.
1049 Replies to questions D.C.3-D.C.6 to questionnaire Q1 to competitors.
1050 Reply of [a competitor] to question D.C.2 of Questionnaire Q1 to competitors (ID7715).
1051 Reply of [a competitor] to question D.C.1 of Questionnaire Q1 to competitors (ID8288).
1052 Paragraph 34.

represent a different value proposition and would only be an alternative to a subset of passengers, and; the fact that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria, and not only price.

(706) In the fourth place, during IATA Summer 2023 season, one-stop flights on the ICN-FRA route were at least 3 and up to 8.5 hours (i.e. 22%-61%) longer than the Parties' direct services on the route, with the flights offered by Etihad, Qatar and Turkish Airlines having a stop-over during night time at least on one way of the route.[1053] Similarly, during IATA Winter 2023/2024 season, the vast majority of one-stop flights on the ICN-FRA route will be at least 3 and up to 8 hours (i.e. 21%-58%) longer than the Parties' direct services on the route, with flights offered by AF/KLM, Emirates, Qatar and Turkish Airlines having a stop-over during night time at least on one way of the route.[1054] These indirect competitors will only exert limited competitive constraint at most on the Parties' operations on the route ICN-FRA.

(707) In the fifth place, the vast majority of passengers on the ICN-FRA route have demonstrated their preference to non-stop over one-stop flights, allowing the Parties to exert market power on the route. In 2019, over [90-100]% of the passengers preferred the direct services on the route over all indirect flights available on the route,[1055] despite the fact that, according to Korean Air, the price of these direct services was between [10-20]-[20-30]% higher than the price of indirect services on the route.[1056] This shows the inability of indirect flights to restrain the Parties' direct services sufficiently.

(708) In the sixth place, and as explained further below (paragraph (684)(719)), the majority of competitors offering one-stop services on the ICN-FRA route cannot expand their services on the route due to exhaustion of traffic rights.

(709) Fifth, Air Premia's expected entry to the ICN-FRA route is likely to be insufficient to constrain the merged entity sufficiently.

(710) The market investigation shows that Air Premia, a Korean low-cost carrier that has recently launched its first long haul services between Korea and the US, has started selling tickets on the route ICN-FRA recently and is expected to launch its services on the route on 23 June 2023, offering 4 weekly services. Air Premia states that it plans to […].

(711) In the first place, the Parties' market shares will remain high. In 2019, prior to the pandemic, the Parties combined weekly frequency share was [60-70]%-[70-80]% and their combined share of seasonal seat capacity was [70-80]%. Air Premia's entry is expected to reduce the Parties' combined frequency and seat capacity shares to [50-60]% (frequencies) and [50-60]% (seats) in Winter 2023-2024, and possibly to [50-60]% (frequencies) and [50-60]% (seats) by 2025, […].[1057] The Parties estimate that their combined market share following Air Premia's entry would range between [60-70]% and [50-60]% for a market comprising of direct and indirect services, and between [60-70]% and [50-60]% in a market for direct services only.[1058] However,

1053 Parties' reply to RFI 16, Annex RFI16.Q19.

1054 Parties' reply to RFI 28, Annex RFI28.Q1; Competitors' offers were compared to Asiana's scheduled, which assumes TSR is detoured. Should flying the TSR be possible, the gaps may be even larger.

1055 See Table 27 above: Market shares ICN-FRA (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020).

1056 Average lowest fare of direct and indirect flights, Form CO paragraph 145.

1057 Parties' reply to RFI20, annex RFI20.Q1

1058 Parties' reply to RFI20, annex RFI20.Q1.

these market shares estimates are based on the assumption that […]. […].[1059] Should Air Premia be able to generate new demand, the Parties' market shares could be even higher, because when providing market share estimates, the Parties have fully subtracted the volumes attributed to Air Premia from the incumbent carriers' market shares.[1060]

(712) In the second place, Air Premia's […].[1061]

(713) In the third place, Air Premia explained that its entry on the ICN-FRA route […][1062] […].[1063]

(714) In the fourth place, currently Air Premia's […]. In this respect, a significant share of the traffic on the route comes from connecting passengers. In 2019, [30-40]% of the passengers on the route were connecting passengers.[1064] The Parties have both relied on connecting traffic on the route to support its profitability. In 2019 [10-20]% of Korean's passengers and [10-20]% of Asiana's passengers on the route were connecting.[1065]

(715) In the fifth place, Air Premia, which is a low-cost carrier, […]. In its internal documents Korean Air notes that […].[1066] Similarly, in its response to the Commission questionnaire, [a competitor] noted "[…] *sustainability of Low Cost/Hybrid Carrier business model on longhaul routes remains to be proven*".[1067] In this respect, it is not clear whether Air Premia will be able to attract TS/premium passengers,[1068] whereas the majority of competitors replying to the Commission questionnaire consider that traffic from time sensitive/premium passengers significantly contributes to the profitability and viability of the route ICN-FRA.[1069]

(716) In the sixth place, […].[1070]

(717) Sixth, for the reasons set out in section 8.6.1, the Parties are close competitors on the route. In the first place, as explained in section 8.6.1, […]. In the second place, the majority of market participants expressing a view consider that the Parties are each other's closest competitor on the FRA-ICN route.[1071] In the third place, as explained in section 8.6.1, the Parties internal documents confirm that they view each other as close competitors. In the fourth place, as explained in section 8.6.1 Asiana is considered by several market participants as competing aggressively on the price, which makes Asiana a close competitor to other high-quality direct air services on the Overlap Routes, including notably those offered by Korean Air. The aggressive strategy of Asiana led to particular competitive pressure by Asiana on Korean Air, which […]. In the fifth place, besides Lufthansa, all other competitors on the route offer only one-

1059 Reply of [a potential entrant] to RFI 2, question 2 (ID11832)
1060 Parties reply to question 1 of RFI20.
1061 Reply of [a potential entrant] to RFI 1(ID11831); Reply of [a potential entrant] to question 23 of RFI4 to [a potential entrant] (ID12310).
1062 [A potential entrant] reply to question 8 of RFI 4 to [a potential entrant] (ID12310).
1063 [A potential entrant] reply to question 23 of RFI 4 to [a potential entrant] (ID12310).
1064 Form CO, annex QP6.Q21.
1065 Form CO, annex QP6.Q21.
1066 Korean Air's reply to RFI 16, Annex RFI16.Q35.a, page 3.
1067 Reply of [a competitor] to question D.B.B.8-2 of Q1 to competitors (ID8288)
1068 In their reply to question 1 of RFI 20 the Parties explain that Air Premia's volumes are all assumed to be non-time sensitive passengers in line with the standard applied to other airlines' premium economy offerings.
1069 Replies to question C.C.2 of Questionnaire Q1 to competitors.
1070 Annex RFI21.Q5 dated 30 March 2023, slide 5.
1071 Replies to question D.B.C.2 and D.B.C.3 of Questionnaire Q1 to competitors; replies to questions D.C.1 and D.C.2 of Questionnaires Q4 to corporate customers and Q5 to TO/TA.

stop flights. In the sixth place, the Parties both compete closely on Korean based passengers traveling on the route.[1072] As explained in section 8.6.1, being the only South Korean carriers on the Overlap Routes, the Parties enjoy the same advantage with certain passenger groups which is different compared to other, non-Korean carriers on the route.

(718) Seventh, based on the Commission's market investigation no timely, likely and sufficient entry or expansion of competitors is expected on the route. In the first place, as explained in section 8.6.3, the market investigation identified several barriers to entry and expansion, including availability of slots, availability of traffic rights, the strong position of the Merged Entity on the route, the profitability of the route, availability of aircrafts and crews, the closure of Russian airspace and TSR overflight rights.

(719) In the second place, as regards traffic rights on the FRA-ICN route, while some traffic rights are still available for EU based carriers wishing to operate direct services on the route, […], traffic rights for […] additional weekly frequencies are available for Korea based carriers wishing to enter the route. In addition, the following competitors offering indirect services on the route cannot expand these services due to exhaustion of traffic rights between their hubs and Seoul: [a competitor],[1073] [a competitor],[1074] [a competitor],[1075] [a competitor],[1076] [a competitor][1077] and [a competitor].[1078] Meaning that, out of the competitors offering indirect services on the route,[1079] only [a competitor] could expand their services on the route. However, the Commission notes that in 2019 [the competitor's] one-stop services on the route had less than [0-5]% market shares,[1080] showing it is of marginal significance on the route and would need to increase its activities tremendously to have an impact on market conditions. In their Response to the Statement of Objections the Parties list […] carriers as additional airlines with available traffic rights on the route ICN-FRA, however [competitors] are not operating any services on the route and do not have concrete plans to operate such services in the next three years.[1081]

(720) The Parties further claim that [a competitor] considers that traffic rights do not hinder its ability to enter or expand capacity on the ICN-FRA route.[1082] In support of this claim, the Parties bring a partial quote of [the competitor], without indicating that the quote is partial and skips a few words in the middle of the quote.[1083] The part of the quote that was removed by the Parties reads "*For South Korea and […] capacity there*

1072 See paragraph (516) above.

1073 Non confidential minutes of a call with [a competitor].

1074 Non-confidential minutes of a call with [a competitor]; Reply of [a competitor] to question D.B.B.6 of Q1 to competitors (ID7674).

1075 Reply of [a competitor] to question D.B.B.6 and D.B.B.7 of Q1 to competitors (ID7715).

1076 Non-confidential minutes of a call with [a competitor].

1077 Form CO annex 37 table 1.

1078 Non-confidential minutes of a call with [a competitor]. Out of these competitors, only [a competitor's] market share on the route exceed [0-5]% during at least one IATA season since IATA season Summer 2017.

1079 Competitors appearing in the market share tables above, i.e. with a market share exceeding [0-5]% in at least one IATA season.

1080 Form CO annex QP4.Q51. This is correct also with respect to [a competitor's] indirect market share on the route.

1081 Replies to question B.13 of Questionnaire Q3 to potential entrants.

1082 Response to the Statement of Objections, paragraph 498.

1083 The manipulated quote as brought by the Parties in paragraph 442 of their response to the Statement of Objections is: "*[b]etween […] and EEA, there are enough capacity allocation to serve. From [the competitor's] perspective, the merger should not affect the opportunity to increase or remain same the number of flights between two countries".*

are limitations.",[1084] thus, confirming that traffic rights limit [the competitor's] ability to expand on the route. The fact that [the competitor] could expand its services on the leg between […] and the EEA does not allow an increase of [the competitor's] capacity on the ICN-FRA route.

(721) In the third place, as regards the availability of slots, the market investigation shows that FRA airport is slot constrained, at least at peak hours, when slot requests cannot be accommodated.[1085] As explained in section 8.6.3.2 above, Korean confirms that all the airports on the Overlap Routes are slot congested and that slots' availability constitutes a barrier to entry on all the Overlap Routes.[1086]

(722) Eighth, several market participants expressing a view consider that the Transaction will have a negative impact on passenger air transport services on the FRA-ICN route, with some referring to negative impact only on time sensitive passengers and others saying that negative impact is possible but depends on the Merger Entity decision to reduce frequencies.[1087]

(723) In their Response to the Statement of Objections, the Parties argue that customers had an overwhelmingly positive or neutral response concerning the impact of the Transaction[1088] and that, on balance, the feedback from the market investigation indicated that the Transaction would have positive or no effects.[1089] The Commission disagrees and considers that the majority of travel agents, tour operators and competitors who express a view, consider the Transaction will have negative impact on air passenger services on the ICN-FRA route, or at least do not exclude negative impact. Views of customers are split. Out of 21 customers who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services, nine customers (43%) say they do not know, demonstrating that many customers do not feel informed about the likely impact of the Transaction. Out of the 12 customers who express a view, one customer (8%) expects positive impact, five customers (42%) expect no impact, four customers (33%) expect a negative impact and two customers (17%) think "it depends", which means negative impact is not excluded, thus, views of customers expressing a view are split.[1090] Out of 16 travel agents and tour operators who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services on the ICN-FRA route, seven (44%) say they do not know. Out of nine TA and TO who replied to the Commission questionnaire expressing a view, three (33%) consider the Transaction will have positive or no impact, two (22%) consider the Transaction will have negative impact and four (44%) replied "it depends", meaning that they at least do not exclude negative impact. Therefore, the majority (67%) of TA and TO who replied to the Commission questionnaire expressing a view expect, or do not exclude, negative impact.[1091] Out of seven competitors who provided a non-confidential reply to the question on the likely impact of the Transaction on the IC-FRA route, two (29%) say they do not know. All (100%) competitors expressing a view expect (two competitors)

1084 Reply of [a competitor] to question D.C.11 of QP1 to competitors (ID8510).

1085 Replies of FRA slot coordinator to questions C.10 and D.1-2 of Questionnaire Q8 to slot coordinators.

1086 Korean's reply to question 13 of RFI1 on remedies.

1087 Replies to question F.1 of Questionnaire Q1 to competitors and of Questionnaire Q3 to potential entrants; replies to question E.1 of Questionnaire Q4 to corporate customers and of Questionnaire Q6 to TA/TO.

1088 Response to the Statement of Objections, paragraph 508.

1089 Response to the Statement of Objections, paragraph 515.

1090 Replies to question E.1 of Questionnaire Q4 to corporate customers.

1091 Replies to question E.1 of Questionnaire Q6 to TA/TO.

or replied "it depends" (three competitors), meaning that they at least do not exclude negative impact.[1092]

(724) Finally, as explained below (paragraphs (725) to (733)), the market investigation does not enable the Commission to conclude that passengers' leakage to/from FRA airport would be sufficient to constrain the Parties post-Transaction nor that Germany-wide market shares would provide a more accurate representation of the competitive constraints faced by the Parties than standard market shares based on FRA-ICN O&D city-pair.

(725) Korean Air argues that self-connecting passengers who could travel via one-stop itineraries from/to regional airports across Germany constrain the Parties' prices on direct flights from FRA.[1093]

(726) Korean Air argues that (i) The results of the closer-airport analysis indicate that around half of the users choosing direct flights from Frankfurt to Seoul were located closer to another major German airport than to FRA;[1094] (ii) The review of available flight options from other German airports compared to the travel time by train or car to Frankfurt paired with a direct flight to Seoul shows similar total travel time between the two itineraries and thus supports the view that passengers from these regions can substitute between direct flights from FRA and an indirect flights from their respective local airport;[1095] and (iii) the catchment-area analysis does not suggest that a specific catchment area can be defined for Frankfurt airport but that all areas of Germany contribute significant numbers of marginal passengers flying on the FRA-ICN route.[1096]

(727) Korean Air argues that the Parties will be constrained from increasing prices, or worsening any other parameter of competition post-merger because around half of the passengers choosing flights from Frankfurt to Seoul were located closer to another major German airport than to Frankfurt. These passengers contribute significantly to the total number of direct flight passengers from Frankfurt and, in the Notifying Party's view, should be considered as "marginal" passengers to the FRA-ICN route, that is, in a position to switch to other airports which are closer to them. In the Commission's view, this argument implies that all passengers not located nearby Frankfurt who choose a direct flight from/to Frankfurt would likely choose an indirect flight from a regional airport over a direct flight from Frankfurt in case of an increase in prices. The Commission acknowledges that some passengers located in proximity of regional airports may change their preferred itinerary from direct flights from Frankfurt to indirect flights from regional airports, but it is unlikely that all passengers would deviate from Frankfurt. The Notifying Party fails to demonstrate that the diversion may reach a critical level such that unilateral increases in prices or reduction of service quality in Frankfurt post-transaction would make a price increase unprofitable.

(728) Additionally, the mere existence of a group of passengers who pre-Transaction decided to self-connect to fly directly from Frankfurt rather than flying indirectly from other airports located nearby does not imply that post-Transaction these passengers would all switch away from Frankfurt, if prices charged by the Parties post-Transaction were to increase. Even though in theory passengers may self-connect less should prices at FRA be higher, the extent to which passengers would actually switch

1092 Replies to question F.1 of Questionnaire Q1 to competitors.
1093 Response to the Statement of Objections, paragraphs 380-402.
1094 Form CO, Table 121.
1095 Form CO, Table 123.
1096 Form CO, Table 122.

away from FRA in response to higher prices is not known, and not demonstrated by the Notifying Party to be sufficient to constrain the Parties from increasing prices post-Transaction.

(729) On the contrary, as explained in section 7.1.4 the evidence does not support the Notifying Party's claim that all self-connecting passengers would switch away from FRA.

(730) Even though alternative travel itineraries may display similar total travel time as shown by the Notifying Party, total travel time is not the only factor passengers take into account as shown by the Commission's market investigation.[1097] The review of available travel itineraries submitted by the Notifying Party does not provide any indication that passengers consider these different travel itineraries as actual alternatives to direct connections on FRA-ICN, nor that the additional travel costs associated with the transfer would generally make these itineraries attractive alternatives.

(731) Based on the available evidence, the Commission considers that the large majority of passengers that pre-Transaction self-connect to FRA would likely continue using FRA in in case prices would increase.

(732) Furthermore, contrary Korean Air's claim,[1098] as described in paragraph (622) above, the Skyscanner data does not prove to be an adequate proxy for competitive interactions in the market. This can be seen in Table 31, which compares market shares for FRA-ICN calculated following the appropriate methodology using booking sales data against (redirection) shares for FRA-ICN implied by the Skyscanner data. Significant discrepancies can be observed, in particular with respect to the Parties' shares and the share of other airlines, which disproves the Parties' claim that redirection data is necessarily representative of the actual purchase behaviour.

Table 31 - Comparison between market shares and shares implied by Skyscanner data

ICN-FRA route	Booking sales data (S19 + W19/20)		Skyscanner data	
Carriers	**Passenger number**	**Passenger share**	**Passenger number**	**Passenger share**
Korean Air	[…]	[30-40]%	[…]	[10-20]%
Asiana	[…]	[50-60]%	[…]	[30-40]%
Combined	**[…]**	**[80-90]%**	**[…]**	**[50-60]%**
Lufthansa	[…]	[10-20]%	[…]	[5-10]%
Qatar Airways	[…]	[0-5]%	[…]	[0-5]%
Air France – KLM	[…]	[0-5]%	[…]	[…].
Others	[…]	[5-10]%	[…]	[30-40]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51 and Skyscanner redirect data.
Notes: Both non-stop and one-stop operations (TS + NTS).

[1097] Replies to questions C.E.2 and D.A.1 of Questionnaire Q4 to corporate customers; Replies to questions C.F.1 and D.A.1 of Questionnaire Q6 to TA/TO; replies to question D.B.A.1 of Questionnaire Q1 to competitors.

[1098] Response of Korean Air to the Commission's Statement of Objections, paragraphs 391-392.

(733) In view of the above, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-FRA due to the creation or strengthening of a dominant position under any plausible market definition. This is likely to lead to increased prices, a lower level of service and reduced choice for passengers travelling on this route.

8.7.3. Seoul-Paris (ICN-CDG)

(734) The market structure on the route Seoul-Paris (ICN-CDG) in terms of passengers transported point-to-point and weekly flight frequencies is set out in Table 32 to Table 35.

Table 32 - Market shares ICN-CDG (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Asiana	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Combined[1099]	**[50-60]%**[1100]	**[60-70]%**[1101]	**[50-60]%**[1102]	**[50-60]%**[1103]	**[50-60]%**[1104]	**[60-70]%**[1105]

1099 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

1100 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [60-70]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [60-70]% (NTS).

1101 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [70-80]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [70-80]% (NTS).

1102 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [60-70]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [60-70]% (NTS).

1103 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [70-80]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [70-80]% (NTS).

1104 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [50-60]% (for non-stop and one-stop operations/NTS traffic) and [60-70]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [60-70]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [60-70]% (NTS).

1105 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [70-80]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [70-80]% (TS) and [70-80]% (NTS).

Airline	S17	W17/18	S18	W18/19	S19	W19/20
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Air France – KLM	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
China Eastern	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
EVA Air	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[1106]	[10-20]%[1107]	[5-10]%[1108]	[5-10]%[1109]	[5-10]%[1110]	[5-10]%[1111]	[5-10]%[1112]
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 407

Table 33 - Market shares ICN-CDG (non-stop and one-stop operations, TS + NTS) since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023[1113]

Airline	S20	W20/21	S21	W21/22	S22	W22/23[1114]
Korean Air	[40-50]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%
Asiana	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Combined[1115]	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[50-60]%**	**[50-60]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Air France – KLM	[30-40]%	[40-50]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
Lufthansa	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Qatar	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Etihad	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Finnair	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Emirates	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
LOT	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Turkish Airlines	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

1106 Where the sums of all market shares do not appear to add up to [90-100]%, this is due to the rounding of the individual market share figures.

1107 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1108 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1109 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1110 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1111 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1112 Comprises 8 carriers each with market shares below [0-5]%: Lufthansa, Qatar, Air China, Etihad, Finnair, Emirates, LOT, and Turkish Airlines.

1113 As explained in paragraph (471) market shares since the beginning of the Covid19 pandemic are provided in this decision for completeness.

1114 November 2022-February 2023.

1115 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

Airline	S20	W20/21	S21	W21/22	S22	W22/23[1114]
Other competitors[1116]	[0-5]%[1117]	[0-5]%	[0-5]%[1118]	[0-5]%[1119]	[0-5]%[1120]	[0-5]%
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51; Form CO, paragraph 407; Reply to RFI24: Annexes RFI24.Q1a and RFI24.Q1b.

Table 34 – Market structure ICN-CDG in terms of weekly frequencies in the IATA seasons Summer 2017 to Winter 2019/2020 (non-stop flights)

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Asiana	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Combined	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Share	**[60-70]%**	**[60-70]%**	**[50-60]%**	**[60-70]%**	**[50-60]%**	**[60-70]%**

Source: Form CO, Annex QP9.Q23

Table 35 – Market structure ICN-CDG in terms of weekly frequencies since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023 (non-stop flights)

Airline	S20	W20/21	S21	W21/22	S/22	W22/23
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Share	**[60-70]%**	**[40-50]%**	**[40-50]%**	**[50-60]%**	**[60-70]%**	**[60-70]%**

Source: Reply to RFI 25, Annex RFI25.Q1

(735) For the reasons set out below, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-CDG.

(736) First, the Transaction would lead to the Merged Entity holding a very strong market position on the route. As set out in Table 32, the Parties combined have held market shares between [50-60]% and [60-70]% on the route between 2017 and 2019, which indicates that the merged entity would hold a dominant position after the Transaction.[1121] When redistributing the market shares of competitors who have since then exited the market, the Parties combined market shares are even higher (ranging between [50-60]% and [60-70]%).[1122] The Parties, as well as Air France-KLM, have also been the only carriers with direct flights between 2017 and 2019, giving them a share of weekly frequencies of more than [50-60]% for the entire period.

(737) In their Response to the Statement of Objections, the Parties argue that high market shares in the airline industry are not indicative of market power.[1123] The Commission disagrees and considers that the Parties' high market shares are indicative of market

1116 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

1117 Comprises 3 carries each with market shares below [0-5]%: China Eastern, EVA Air, and Air China.

1118 Comprises EVA Air with market share below [0-5]%.

1119 Comprises EVA Air with market share below [0-5]%.

1120 Comprises EVA Air with market share below [0-5]%.

1121 Horizontal Merger Guidelines, paragraph 17.

1122 Korean Air's reply to RFI6, Annex RFI6.Q1 - Passenger market shares adjusted for Alitalia, Czech Airlines and Russian airlines, IATA Summer 2017 to IATA Summer 2022 seasons.

1123 Response to the Statement of Objections, paragraphs 519-523.

power, for the reasons listed in section For the reasons listed in section 8.6.7, the Commission disagrees. Namely, the European courts have confirmed that high market shares are indicative of market power in the aviation industry; prior to the Covid19 pandemic, market shares of the Parties and their competitors were stable over time (as evident in Table 32), and the Parties themselves use market shares as an indicator of market power.

(738) Second, the increment brought about by the Transaction would be particularly large based on figures for the years 2017 to 2019 at [20-30]%-points to [20-30]%-points due to Asiana. This results in a high increase in the HHI of more than […]. The large level and increment in the Parties' joint market position is a clear indicator that the Transaction would create a dominant position.

(739) Third, while the Covid19 pandemic has had a significant impact on demand and supply, the Commission does not expect the competitive dynamics on the route to change in the long-term.

(740) In the first place, the identity of the competitors active on the route has not changed materially. Asiana had ceased operations from March 2020 until June 2022.[1124] To the extent any indirect competitors suspended their operations on the route and did not resume them, such competitors had very small market shares on the route in the first place. As explained in paragraph (695), redistributing the market shares of these competitors has led only to a small increase in the Parties' combined market shares.

(741) In the second place, Korean Air and Asiana plan to continue operating on the route. Korean Air is operating […] on the route in IATA season Summer 2023 and plans to maintain this level in Winter 2023/2024.[1125] Asiana has expanded its weekly frequencies to […] in Summer 2023, which is […] than the weekly frequencies it operated pre-Covid19, and plans to maintain this level in Winter 2023/2024.[1126] Pre-Covid19, Korean Air had weekly frequencies of […] and […] in IATA Winter 2018/2019 and Summer 2019 seasons respectively, while Asiana had weekly frequencies of […] and […] for the same seasons.[1127]

(742) Fourth, remaining competitors would likely be insufficient to constrain the Merged Entity on the route.

(743) In the first place, the market shares of the remaining competitors pre-Covid19 are smaller than those of the Merged Entity by a large margin (*i.e.,* between Summer 2017 and Winter 2019/2020 Air France KLM had a market share of up to [20-30]% while all other carriers offering indirect services on the route had a market share lower than [0-5]% each and up to [20-30]% when combined together, see Table 32).

(744) In the second place, apart from the Parties and Air France, all other competitors offer only one-stop flights between ICN and CDG. While one-stop flights generally do compete with non-stop flights for long-haul travel, they represent a different value proposition, and would only be an alternative to a subset of passengers, for the reasons set out in section 8.6.2. Namely, as explained in section 8.6.2, the Parties' internal documents show that the Parties […]; market participants […] that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services; the limited market share that each competitor with indirect connections has been able to achieve demonstrate that one-stop flights represent a different value

1124 Form CO, paragraph 735.

1125 Form CO, Annex QP9.Q23, Korean Air's reply to RFI20, annex "[…]"; Parties' reply to RFI 25, annex RFI25.Q1.

1126 Form CO, Annex QP9.Q23, Parties' reply to RFI25, annex RFI25.Q1.

1127 Form CO, Annex QP9.Q23.

proposition and would only be an alternative to a subset of passengers, and; the fact that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria, and not only price.

(745) In the third place, during IATA season Summer 2023, the vast majority of one-stop flights on the ICN-CDG route were at least 2h45 and up to 6.5 hours (i.e. 19%-45%) longer than the Parties' direct services on the route, with the flights offered by Etihad, Emirates, Turkish Airlines and EVA air having a stop-over during night time at least on one way of the route.[1128] Similarly, during IATA season Winter 2023/2024, all one-stop flights on the ICN-CDG route will be at least 3 and up to 8.5 hours (i.e. 24%-68%) longer than the Parties' direct services on the route, with flights offered by AF/KLM, Emirates, and Turkish Airlines having a stop-over during night time at least on one way of the route.[1129] These indirect competitors will exert at most a very limited competitive constraint on the Parties' operations on the route ICN-CDG.

(746) In the fourth place, the majority of passengers on the ICN-CDG route have demonstrated their strong preference for non-stop over one-stop flights, allowing the Parties to exert market power on the route. In 2019, over [80-90]% of the passengers preferred the Parties' direct services on the route over all indirect flights available on the route, (see Table 32) despite the fact that, according to Korean Air, the price of these direct services was [10-20]-[20-30]% higher than the price of indirect services on the route.[1130] This shows the inability of indirect flights to sufficiently restrain the Parties' direct services.

(747) In the fifth place, and as explained further below (paragraph (753)), the majority of competitors offering one-stop services on the ICN-CDG route cannot expand their services on the route due to exhaustion of traffic rights.

(748) In the sixth place, Air France is not expected to exert strong competitive concerns on the merged entity. Korean Air and Air France are part of the same alliance and had a codeshare agreement in place on the ICN-CDG-route, under which Korean Air and Air France can sell seats (up to a pre-set cap) on each other's flights on the ICN-CDG. The code share agreement was suspended during the Covid19 period,[1131] and was resumed in October 2022.[1132] Several market participants explained that this means the competition between them on the route is limited:[1133]

(749) Out of six competitors who replied to the question whether the fact that Korean Air and other airlines active on the Overlap Routes are part of the SkyTeam Alliance has any impact on competition between Korean Air and the Alliance partner on the routes, three competitors, including one carrier who is a member of the SkyTeam alliance, consider that the fact that Air France-KLM and Korean Air are part of the same alliance reduces the level of competition between them: "*assumption is that they compete less as KE and AF have codeshare on SEL-PAR*";[1134] "*Alliance partners compete less fiercely and look more to complementary behaviour. Alliance partners*

1128 Parties' reply to RFI 16, Annex RFI16.Q19.

1129 Parties' reply to RFI 28, Annex RFI28.Q1; Competitors' offers were compared to Asiana's scheduled, which assumes TSR is detoured. Should flying the TSR be possible, the gaps may be even larger.

1130 Average lowest fare of direct and indirect flights, Form CO paragraph 145.

1131 Form CO paragraph 723.

1132 https://www.aviation24.be/airlines/korean-air/korean-air-strengthens-its-cooperation-with-air-france-on-the-paris-seoul-route/ (ID12927).

1133 Non confidential minutes of a call with [a customer] Reply of [a competitor] to question B.C.1 of Questionnaire Q1 to competitors (ID7715); reply of [a competitor] to question B.C.1 of Questionnaire Q1 to competitors (ID8256).

1134 Reply of [a competitor] to question D.B.C.1 of Questionnaire Q1 to competitors (ID8288).

may codeshare or look to offer complementary timings on direct routes to maximise network connectivity at both ends of the route - for example Korean Air, Air France to/from CDG and Korean Air, KLM to/from Amsterdam";[1135] *"Yes it does have an impact as they will be able to actively sell and market all flights under the alliance structure as if they are their own flights. This gives all airlines within the alliance, including Korean Air, a [stronger] position and results in a lower likelihood of needing to compete against each other as they all benefit from the alliance. They would only be forced to compete in the market place against non-alliance members. This would have an impact on routes between Seoul and Amsterdam, Paris, Prague and Rome*".[1136] One competitor does not answer the question directly and only explains that a strong alliance can boost a carrier's presence.[1137] The two remaining competitors, including [a competitor], say that same alliance membership has no, or limited impact on the level of competition between them.[1138] Therefore, majority of competitors expressing a view consider competition level between Air Franc-KLM and Korean Air is reduced due to their same alliance membership.

(750) A customer explained that "*code-sharing agreements influence the rates available on the dedicated O&D route, as the rates would typically be higher compared to a situation where the airlines serving the route do not have a code sharing agreement on the O&D route*" and that "*Air France-KLM and Korean Air both belong to the SkyTeam alliance and have a code share agreement, therefore competition between these two carriers is limited*".[1139]

(751) Fifth, for the reasons set out in section 8.6.1, the Parties are close competitors on the route. In the first place, as explained in section 8.6.1, […]. In the second place, the majority of market participants expressing a view consider that the Parties are each other's closest or second closest competitor on the CDG-ICN route.[1140] In the third place, as explained in section 8.6.1, the Parties internal documents confirm that they view each other as close competitors. In the fourth place, as explained in section 8.6.1 Asiana is considered by several market participants as competing aggressively on the price, which makes Asiana a close competitor to other high-quality direct air services on the Overlap Routes, including notably those offered by Korean Air. The aggressive strategy of Asiana led to particular competitive pressure by Asiana on Korean Air, which […]. In the fifth place, besides Air France, all other competitors on the route offer only one-stop flights. In the sixth place, the Parties both compete closely on Korean based passengers.[1141] As explained in section 8.6.1, being the only South Korean carriers on the Overlap Routes, the Parties enjoy the same advantage with certain passenger groups which is different compared to other, non-Korean carriers on the route.

(752) Sixth, based on the Commission's market investigation no timely, likely and sufficient entry or expansion of competitors is expected on the route. In the first place, as explained in section 8.6.3, the market investigation identified several barriers to entry and expansion, including availability of slots, availability of traffic rights, the strong position of the Merged Entity on the route, the profitability of the route, availability of

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1135 Reply of [a competitor] to question D.B.C.1 of Questionnaire Q1 to competitors (ID8256).

1136 Reply of [a competitor] to question D.B.C.1 of Questionnaire Q1 to competitors (ID7715).

1137 Reply of [a competitor] to question D.B.C.1 of Questionnaire Q1 to competitors (ID7674).

1138 Replies of [a competitor] and [a competitor] to to question D.B.C.1 of Questionnaire Q1 to competitors (ID8346, ID8394).

1139 Non confidential minutes of a call with [a customer].

1140 Replies to question D.B.C.2 and D.B.C.3 of Questionnaire Q1 to competitors; replies to questions D.C.1 and D.C.2 of Questionnaires Q4 to corporate customers and Q5 to TO/TA.

1141 See paragraph (516) above

aircrafts and crews, the closure of Russian airspace and TSR overflight rights and other barriers.

(753) In the second place, as regards traffic rights on the CDG-ICN route, while some traffic rights are still available for EEA based carriers wishing to operate direct services on the route, no traffic rights are available for Korea based carriers wishing to enter the route. In addition, the following competitors offering indirect services on the route cannot expand on the route due to exhaustion of traffic rights between their hubs and Seoul: [a competitor],[1142] [a competitor],[1143] [a competitor],[1144] [a competitor],[1145] [a competitor][1146] and [a competitor].[1147] All other carriers offering indirect services on the route had market shares lower than [0-5]% each between Summer 2017 and Winter 2019/2020, showing they are of marginal significance on the route and would need to increase their activities tremendously to have an impact on market conditions.[1148]

(754) In their Response to the Statement of Objections the Parties list […] carriers as additional airlines with available traffic rights on the route ICN-CDG, however [competitors] are not operating any services on the route and do not have concrete plans to operate such services in the next three years.[1149]

(755) The Parties claim that [a competitor] considers that traffic rights do not hinder its ability to enter or expand capacity on the ICN-CDG route.[1150] In support of this claim, the Parties bring a partial quote of [the competitor], without indicating that the quote is partial and skips a few words in the middle of the quote.[1151] The part of the quote that was removed by the Parties reads "*For South Korea and […] capacity there are limitations*.",[1152] thus, confirming that traffic rights limit [the competitor's] ability to expand on the route. The fact that [the competitor] could expand its services on the leg between […] and the EEA does not allow an increase of [the competitor's] capacity on the ICN-CDG route.

(756) In the third place, as regards the availability of slots, the market investigation shows some indications that CDG airport is slot constrained, at least at peak hours and that ORY airport is highly slot congested.[1153] As explained in section 8.6.3.2 above, Korean confirms that all the airports on the Overlap Routes are slot congested and that slots' availability constitutes a barrier to entry on all the Overlap Routes.[1154]

1142 Non confidential minutes of a call with [a competitor].

1143 Non-confidential minutes of a call with [a competitor]; Reply of [a competitor] to question D.B.B.6 of Q1 to competitors (ID7674).

1144 Reply of [a competitor] to question D.B.B.6 and D.B.B.7 of Q1 to competitors (ID7715).

1145 Non-confidential minutes of a call with [a competitor].

1146 Form CO annex 37 table 1.

1147 Non-confidential minutes of a call with [a competitor].

1148 Form CO annex QP4.Q51.

1149 Replies to question B.13 of Questionnaire Q3 to potential entrants.

1150 Response to the Statement of Objections, paragraph 546.

1151 The quote as brought by the Parties in paragraph 442 of their Response to the Statement of Objections is: "*[b]etween […] and EEA, there are enough capacity allocation to serve. From [the competitor's] perspective, the merger should not affect the opportunity to increase or remain same the number of flights between two countries".*

1152 Reply of [a competitor] to question D.C.11 of QP1 to competitors (ID8510).

1153 Reply of CDG slot coordinator to question C.11 and D.1-2 of Questionnaire Q8 to slot coordinators; replies to question D.C.5 of Questionnaire Q1 to competitors; replies to question D.5 of Questionnaire Q3 to potential entrants; reply of Aeroports de Paris to questions E.5 and E6 of Questionnaire Q7 to airport manager (ID9683).

1154 Korean's reply to question 13 of RFI1 on remedies.

(757) In the fourth place, the market investigation shows that [a competitor], does not intend to expand its services on the route in […] years.[1155] While in 2019, [the competitor] operated […] on the route ICN-CDG from May to October, in Summer 2023 [the competitor] is only operating […] and did not go back to its pre-covid19 level of service.[1156] Moreover, […]. In 2019, [50-60]% of [the competitor's] passengers on the route were connecting passengers,[1157] meaning that the capacity to compete with the Parties on the O&D is limited and therefore their incentive to compete for passengers traveling on the O&D is lower.

(758) Eighth, several market participants expressing a view consider that the Transaction will have a negative impact on passenger air transport services on the CDG-ICN route, with some referring to negative impact only on time sensitive passengers and others saying that negative impact is possible but depends on the Merger Entity decision to reduce frequencies.[1158]

(759) In their Response to the Statement of Objections, the Parties argue that customers had an overwhelmingly positive or neutral response concerning the impact of the Transaction[1159] and that, on balance, the feedback from the market investigation indicated that the Transaction would have positive or no effects.[1160] The Commission disagrees and considers that the majority of customers, travel agents, tour operators and competitors who express a view, consider the Transaction will have negative impact on air passenger services on the ICN-CDG route, or at least do not exclude negative impact. Out of 19 customers who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services, majority of customers (11 customers, 58%) say they do not know, demonstrating that customers generally do not feel informed about the likely impact of the Transaction. Out of the eight customers who express a view, three customers (37%) expect positive or no impact, three customers (37%) expect negative impact and two customers (25%) think "it depends", which means negative impact is not excluded. Therefore, the majority (62%) of customers expressing a view expect or do not exclude negative impact.[1161] Out of 16 travel agents and tour operators who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services on the ICN-CDG route, six (38%) say they do not know. Out of nine TA and TO who replied to the Commission questionnaire expressing a view, four (44%) consider the Transaction will have positive or no impact, one (11%) considers the Transaction will have negative impact and five (56%) replied "it depends", meaning they at least do not exclude negative impact. Therefore, the majority (67%) of TA and TO who replied to the Commission questionnaire expressing a view expect, or do not exclude, negative impact.[1162] Out of seven competitors who provided a non-confidential reply to the question on the likely impact of the Transaction on the ICN-CDG route, one (14%) says it does not know. Out of the competitors expressing a view, one (17%) considers the Transaction will have no impact, and the majority (83%) expect (two competitors)

1155 Reply of [a competitor] to question D.B.B.6 of Questionnaire Q1 to competitors (ID8346)

1156 Parties' reply to RFI25, annex RFI25Q1, [a competitor's] non confidential replies to questions 2 and 4 of RFI2 (ID10878)
Form CO Annex QP9.Q23.

1157 Annex RFI16.Q19

1158 Replies to question F.1 of Questionnaire eQ1 to competitors and of Questionnaire Q3 to potential entrants; replies to question E.1 of Questionnaire Q4 to corporate customers and of Questionnaire Q6 to TA/TO.

1159 Response to the Statement of Objections, paragraph 563.

1160 Response to the Statement of Objections, paragraph 572.

1161 Replies to question E.1 of Questionnaire Q4 to corporate customers.

1162 Replies to question E.1 of Questionnaire Q6 to TA/TO.

or replied "it depends" (three competitors), meaning that they at least do not exclude negative impact.[1163]

(760) Finally, as explained (paragraphs (617) to (627) above and (763) to (766) below), the market investigation does not enable the Commission to conclude that passengers' leakage to/from CDG airport would be sufficient to constraint the Parties post-Transaction nor that France-wide market shares would provide a more accurate representation of the competitive constraints faced by the Parties than standard market shares based on CDG-ICN O&D city-pair.

(761) Korean Air argues that self-connecting passengers who could travel via one-stop itineraries from/to regional airports across France constrain the Parties' prices on direct flights from CDG.

(762) Korean Air argues that: (i) The results of the closer-airport analysis indicate that around a third of users choosing direct flights from Paris to Seoul were located closer to another major French airport than to CDG;[1164] (ii) The review of available flight options from other French airports compared to the travel time by train or car to Paris paired with a direct flight to Seoul shows similar total travel time between the two itineraries and thus supports the view that passengers from these regions can substitute between direct flights from CDG and an indirect flights from their respective local airport;[1165] and (iii) The catchment-area analysis does not suggest that a specific catchment area can be defined for Paris CDG airport but that all areas in France contribute significant numbers of marginal passengers flying on the CDG-ICN route. [1166]

(763) In line with the discussion related to passengers leakage in Germany (paragraphs (725) to (733) above), it is unlikely that all passengers not located nearby Paris who choose a direct flight from/to Paris would likely choose an indirect flight from a regional airport over a direct flight from Paris in case of an increase in prices. Korean Air fails to demonstrate that the diversion may reach a critical level such that unilateral increases in prices or reduction of service quality on CDG-ICN post-transaction would make a price increase unprofitable. Even though in theory passengers may self-connect less should prices at CDG be higher, the extent to which passengers would actually switch away from CDG in response to higher prices is not known, and not demonstrated by Korean Air to be sufficient to constrain the Parties from increasing prices post-Transaction.

(764) As explained in section 7.1.4 the evidence does not support the Notifying Party's claim that all self-connecting passengers would switch away from CDG. Similarly, even though alternative travel itineraries may display similar total travel time as shown by the Notifying Party, total travel time is not the only factor passengers take into account.[1167]

(765) Based on the available evidence, the Commission considers that the large majority of passengers that pre-Transaction self-connect to CDG would likely continue using CDG in case prices would increase.

1163 Replies to question F.1 of Questionnaire Q1 to competitors.

1164 Form CO, Table 126.

1165 Form CO, Table 128.

1166 Form CO, Table 127.

1167 Replies to questions C.E.2 and D.A.1 of Questionnaire Q4 to corporate customers; Replies to questions C.F.1 and D.A.1 of Questionnaire Q6 to TA/TO; replies to question D.B.A.1 of Questionnaire Q1 to competitors.

(766) Furthermore, contrary Korean Air's claim,[1168] the Skyscanner data does not prove to be an adequate proxy for competitive interactions in the market. Table 36 compares market shares for CDG-ICN based on booking sales data against (redirection) shares for CDG-ICN implied by the Skyscanner data. Significant discrepancies can be observed, in particular with respect to the Parties' shares and the share of other airlines, which disproves the Parties' claim that redirection data is necessarily representative of the actual purchase behaviour.

Table 36 - Comparison between market shares and shares implied by Skyscanner data

ICN-CDG route	Booking sales data (S19 + W19/20)		Skyscanner data	
Carriers	**Passenger number**	**Passenger share**	**Passenger number**	**Passenger share**
Korean Air	[…]	[30-40]%	[…]	[10-20]%
Asiana	[…]	[20-30]%	[…]	[10-20]%
Combined	**[…]**	**[50-60]%**	**[…]**	**[20-30]%**
Air France – KLM	[…]	[20-30]%	[…]	[10-20]%
Lufthansa	[…]	[0-5]%	[…]	[5-10]%
Qatar Airways	[…]	[0-5]%	[…]	[0-5]%
China Eastern Airlines	[…]	[0-5]%	[…]	[10-20]%
EVA Air	[…]	[0-5]%	[…]	[…].
Etihad	[…]	[0-5]%	[…]	[5-10]%
Air China	[…]	[0-5]%	[…]	[5-10]%
Finnair	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…].	[…]
Emirates	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[5-10]%	[…]	[10-20]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51 and Skyscanner redirect data.
Notes: Both non-stop and one-stop operations (TS + NTS).

(767) In view of the above, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-CDG due to the creation or strengthening of a dominant position under any plausible market definition. This is likely to lead to increased prices, a lower level of service and reduced choice for passengers travelling on this route.

8.7.4. Seoul-Rome (ICN-FCO)

(768) The market structure on the route Seoul-Rome (ICN-FCO) in terms of passengers transported point-to-point and weekly flight frequencies is set out in Table 37 to Table 42.

[1168] Response of Korean Air to the Commission's Statement of Objections, paragraphs 391-392.

Table 37 - Market shares ICN-FCO (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%
Asiana	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Combined[1169]	**[60-70]%**[1170]	**[70-80]%**[1171]	**[70-80]%**[1172]	**[60-70]%**[1173]	**[70-80]%**[1174]	**[60-70]%**[1175]
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Alitalia	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Air France – KLM	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Qatar	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

1169 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

1170 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and[70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1171 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1172 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1173 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

1174 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [90-100]% (TS) and [90-100]% (NTS).

1175 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [60-70]% (for non-stop and one-stop operations/NTS traffic) and [70-80]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [80-90]%. On the potential narrower market segments for non-stop operations (TS) and non-stop operations (NTS), the Parties would hold combined market shares of [80-90]% (TS) and [80-90]% (NTS).

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Cathay Pacific Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[1176]	[10-20]%[1177]	[10-20]%[1178]	[10-20]%[1179]	[10-20]%[1180]	[5-10]%[1181]	[10-20]%[1182]
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51 – Market share information; Form CO, paragraph 418

Table 38 – Market shares ICN-FCO (non-stop and one-stop operations, TS + NTS) since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023[1183]

Airline	S20	W20/21	S21	W21/22	S22	W22/23[1184]
Korean Air	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[30-40]%
Asiana	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%
Combined[1185]	**[0-5]%**	**[5-10]%**	**[10-20]%**	**[10-20]%**	**[50-60]%**	**[60-70]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Air France – KLM	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[0-5]%	[5-10]%
Qatar	[40-50]%	[40-50]%	[20-30]%	[20-30]%	[10-20]%	[0-5]%
Etihad	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%
Emirates	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Lufthansa	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Turkish Airlines	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%
Finnair	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%

1176 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

1177 Comprises 6 carriers each with market shares below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1178 Comprises 6 carriers each with market shares below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1179 Comprises 6 carriers each with market shares below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1180 Comprises 6 carriers each with market shares below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1181 Comprises 6 carriers each with market shares below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1182 Comprises 6 carriers each with market shares of or below [0-5]%: Etihad, Emirates, Lufthansa, Turkish Airlines, Finnair, and Aeroflot.

1183 As explained in paragraph (471) market shares since the beginning of the Covid19 pandemic are provided in this decision for completeness.

1184 November 2022-February 2023.

1185 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

Airline	S20	W20/21	S21	W21/22	S22	W22/23[1184]
Other competitors[1186]	[0-5]%[1187]	[0-5]%[1188]	[0-5]%[1189]	[0-5]%[1190]	[0-5]%	[0-5]%
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51 – Market share information; Form CO, paragraph 418; Reply to RFI24: Annexes RFI24.Q1a and RFI24.Q1b

Table 39 – Market structure ICN-FCO in terms of weekly frequencies in the IATA seasons Summer 2017 to Winter 2019/2020 (non-stop flights)

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Share	**[70-80]%**	**[70-80]%**	**[70-80]%**	**[60-70]%**	**[70-80]%**	**[70-80]%**

Source: Form CO, Annex QP9.Q23

Table 40 – Market structure ICN-FCO in terms of weekly frequencies since the beginning of the Covid19 pandemic in the IATA seasons Summer 2020 to Winter 2022/2023 (non-stop flights)

Airline	S20	W20/21	S21	W21/22	S/22	W22/23
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Share	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[90-100]%**	**[90-100]%**

Source: Reply to RFI 25, Annex RFI25.Q1

Table 41 - Market shares ICN-FCO (non-stop and one-stop operations, TS + NTS) in the IATA seasons Summer 2017 to Winter 2019/2020 adjusted for the exit of Alitalia, Czech Airlines and Russian airlines

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[30-40]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[30-40]%
Asiana	[30-40]%	[40-50]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Combined[1191]	**[70-80]%[1192]**	**[80-90]%[1193]**	**[80-90]%[1194]**	**[70-80]%[1195]**	**[80-90]%[1196]**	**[70-80]%[1197]**

1186 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

1187 Comprises Aeroflot with market share below [0-5]%.

1188 Comprises Aeroflot with market share below [0-5]%.

1189 Comprises 2 carriers each with market shares below [0-5]%: Aeroflot and Cathay Pacific Airways.

1190 Comprises Aeroflot with market share below [0-5]%.

1191 Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures.

1192 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

1193 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

Airline	S17	W17/18	S18	W18/19	S19	W19/20
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Qatar	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Air France - KLM	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Eithad	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Lufthansa	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Turkish Airlines	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Finnair	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cathay Pacific Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other competitors[1198]	[0-5]%[1199]	[0-5]%[1200]	[0-5]%[1201]	[0-5]%[1202]	[0-5]%[1203]	[0-5]%[1204]
# of passengers	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Response of Korean Air to RFI6, question 1, Annex RFI6.Q1; response of Korean Air to RFI9, question 5, Annex RFI9.Q5.1

Table 42 – Market structure ICN-FCO in terms of weekly frequencies in the IATA seasons Summer 2017 to Winter 2019/2020 adjusted for the exit of Alitalia, Czech Airlines and Russian airlines (non-stop flights)

Airline	S17	W17/18	S18	W18/19	S19	W19/20
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Share	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Response of Korean Air to RFI9, question 5, Annex RFI9.Q5.2

1194 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

1195 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

1196 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [80-90]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

1197 On potential narrower market segments for NTS and TS traffic only, the Parties would hold combined market shares of [70-80]% (for non-stop and one-stop operations/NTS traffic) and [80-90]% (for non-stop and one-stop operations/TS traffic). In addition, on potential narrower market segment for non-stop operations (TS + NTS), the Parties would hold combined market shares of [90-100]%.

1198 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

1199 Comprises Emirates with market share below [0-5]%.

1200 Comprises Emirates with market share below [0-5]%.

1201 Comprises Emirates with market share below [0-5]%.

1202 Comprises Emirates with market share below [0-5]%.

1203 Comprises Emirates with market share below [0-5]%.

1204 Comprises Emirates with market share below [0-5]%.

(769) For the reasons set out below, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-FCO.

(770) First, the Transaction would lead to the Merged Entity holding a very strong market position on the route.

(771) In the first place, as set out in Table 37, the Parties combined have held market shares between [60-70]% and [70-80]% on the route between 2017 and 2019, which indicates that Korean Air would hold a dominant position after the Transaction.[1205] The Parties (as well as Alitalia) have also been the only two carriers with direct flights between 2017 and 2019, giving them a share of weekly frequencies of more than [60-70]% for the entire period.

(772) In the second place, as set out in Table 41, when adjusting the market shares to take account of the exit of Alitalia and additional indirect competitors such as Aeroflot from the market, the Parties' combined market shares are even higher and range between [70-80]% and [80-90]%. When taking into account the exit of Alitalia from the market, the Parties are the only two carriers still operating direct flights on the route, giving them a share of weekly frequencies of [90-100]%.

(773) In their Response to the Statement of Objections, the Parties argue that high market shares in the airline industry are not indicative of market power.[1206] For the reasons listed in section 8.6.7, the Commission cannot accept this claim. Namely, the European courts have confirmed that high market shares are indicative of market power in the aviation industry; prior to the Covid19 pandemic, market shares of the Parties and their competitors were relatively stable over time (as evident in Table 37 above), and the Parties themselves use market shares as an indicator of market power.

(774) Second, the increment brought about by the Transaction would be particularly large based on figures for the years 2017 to 2019 at [30-40]%-points to [30-40]%-points due to Asiana ([30-40]%-[40-50]% adjusted to take account of Alitalia's exit). This results in a high increase in the HHI of more than […] ([…] when adjusted to take account of Alitalia's exit). The large level and increment in the Parties' joint market position is a clear indicator that the Transaction would create a dominant position.

(775) Third, the Covid19 pandemic has deteriorated the competitive dynamics on the route in the long-term.

(776) In the first place, Alitalia, the only other competitor on the route offering direct services pre-Covid19 has exited the route since October 2021.[1207] Several carriers providing indirect services on the route such Aeroflot have suspended their operations on the route and did not resume them.

(777) In the second place, Korean Air and Asiana plan to continue operating on the route and have expanded flight frequencies recently. In Summer 2023 Korean Air has expanded its services to […] on the route and Asiana has expanded from […] to […] weekly services in Summer 2023.[1208] Pre-Covid19, Korean Air had weekly frequencies of […] and […] in IATA Winter 2018/2019 and Summer 2019 seasons respectively, while Asiana had weekly frequencies of […] and […] for the same seasons.[1209]

1205 Horizontal Merger Guidelines, paragraph 17.
1206 Response to the Statement of Objections, paragraphs 576-580.
1207 Form CO, paragraph 660.
1208 Parties' reply to RFI 25, annex RFI25.Q1.
1209 Form CO, Annex QP9.Q23.

(778) Fourth, the constraint from the remaining competitors would likely be insufficient to constrain the Merged Entity on the route.

(779) In the first place, the market shares of the remaining competitors pre-Covid19 are much smaller than those of the Parties by a large margin (*i.e.,* between Summer 2017 and Winter 2019/2020, Alitalia's market share per season did not exceed [10-20]% and the market share of all other carriers offering indirect services on the route were lower than [0-5]% each and up to [20-30]% when combined together (per season), see Table 37).

(780) In the second place, all other competitors apart from the Parties offer only one-stop flights between ICN and FCO. While one-stop flights generally do compete with non-stop flights for long-haul travel, they represent a different value proposition, and would only be an alternative to a subset of passengers, for the reasons set out in section 8.6.2. Namely, as explained in section 8.6.2, the Parties' internal documents show that […]; market participants […] that one-stop flights are less preferred by customers and exert lower competitive pressure on the Parties' direct services; the limited market share that each competitor with indirect connections has been able to achieve demonstrate that one-stop flights represent a different value proposition and would only be an alternative to a subset of passengers, and; the fact that the relevance of one-stop flights and their ability to exert competitive constraints on direct services depends on various criteria, and not only price.

(781) In the third place, during IATA season Summer 2023, all of the one-stop flights on the ICN-FCO route are at least 3 and up to 8 hours (26%-73%) longer than the Parties' direct services on the route, with the flights offered by Emirates and Etihad having a stop-over during night time at least on one way of the route.[1210] Similarly, during IATA season Winter 2023/2024, the vast majority of one-stop flights on the ICN-FCO route are at least 3.5 and up to 10 hours (26%-74%) longer than the Parties' direct services on the route, with the flights offered by Emirates, Qatar Airways, Turkish Airlines, AF-KLM and Singapore Airlines having a stop-over during night time at least on one way of the route. [1211] These indirect competitors will exert at most a very limited competitive constraint on the Parties' operations on the route ICN-FCO.

(782) In the fourth place, majority of passengers on the ICN-FCO route have demonstrated their strong preference for non-stop over one-stop flights, allowing the Parties to exert market power on the route. In 2019, above [70-80]% of the passengers preferred the Parties' direct services on the route over all indirect flights available on the route, (see Table 37 above) despite the fact that, according to Korean Air, the price of these direct services was [10-20]%-[30-40]% higher than the price of indirect services on the route. [1212] This shows the inability of indirect flights to restrain the Parties' direct services.

(783) In the fifth place, and as explained further below (paragraph (786)), the majority of competitors offering one-stop services on the ICN-FCO route cannot expand their services on the route due to exhaustion of traffic rights.

(784) Fifth, for the reasons set out in section 8.6.1, the Parties are close competitors on the route. In the first place, as explained in section 8.6.1, […]. In the second place, the majority of market participants expressing a view consider that the Parties are each

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1210 Annex RFO16.Q19.

1211 Parties' reply to RFI 28, Annex RFI28.Q1; Competitors' offers were compared to Asiana's scheduled, which assumes TSR is detoured. Should flying the TSR be possible, the gaps may be even larger.

1212 Average lowest fare of direct and indirect flights, Form CO paragraph 145.

other's closest competitor on the FCO-ICN route.[1213] In the third place, as explained in section 8.6.1, the Parties internal documents confirm that they view each other as close competitors. In the fourth place, as explained in section 8.6.1 Asiana is considered by several market participants as competing aggressively on the price, which makes Asiana a close competitor to other high-quality direct air services on the Overlap Routes, including notably those offered by Korean Air. The aggressive strategy of Asiana led to particular competitive pressure by Asiana on Korean Air, which […]. In the fifth place, the Parties both compete closely on Korean based passengers.[1214] As explained in section 8.6.1, being the only South Korean carriers on the Overlap Routes, the Parties enjoy the same advantage with certain passenger groups which is different compared to other, non-Korean carriers on the route.

(785) Sixth, based on the Commission's market investigation no timely, likely and sufficient entry or expansion of competitors is expected on the route. In the first place, as explained in section 8.6.3, the market investigation identified several barriers to entry and expansion, including availability of slots, availability of traffic rights, the strong position of the Merged Entity on the route, the profitability of the route, availability of aircrafts and crews, the closure of Russian airspace and TSR overflight rights.

(786) In the second place, as regards traffic rights on the FCO-ICN route, while traffic rights are available for an EEA carrier wishing to offer direct services on the route, there are no available traffic rights for Korea based carriers wishing to enter the route. In addition, the following competitors offering indirect services cannot expand on the route due to exhaustion of traffic rights between their hubs and Seoul: [a competitor],[1215] [a competitor],[1216] [a competitor],[1217] [a competitor][1218] and [a competitor].[1219] All other carriers offering indirect services on the route, including [a competitor] and [a competitor], had market shares lower than [0-5]% each between Summer 2017 and Winter 2019/2020, showing they are of marginal significance on the route and would need to increase their activities tremendously to have an impact on market conditions.[1220]

(787) In their Response to the Statement of Objections the Parties list […] carriers as additional airlines with available traffic rights on the route ICN-FCO, however [competitors] are not operating any services on the route and do not have concrete plans to operate such services in the next three years.[1221]

(788) In the third place, as regards the availability of slots, based on the market investigation there are some indications that FCO airport is slot constrained, at least at peak hours.[1222] As explained in section 8.6.3.2 above, Korean confirms that all the airports

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1213 Replies to question D.B.C.2 and D.B.C.3 of Questionnaire Q1 to competitors; replies to questions D.C.1 and D.C.2 of Questionnaires Q4 to corporate customers and Q5 to TO/TA.

1214 See paragraph (516) above.

1215 Non confidential minutes of a call with [a competitor].

1216 Non-confidential minutes of a call with [a competitor]; Reply of [a competitor] to question D.B.B.6 of Q1 to competitors (ID7674).

1217 Reply of [a competitor] to question D.B.B.6 and D.B.B.7 of Q1 to competitors (ID7715).

1218 Non-confidential minutes of a call with [a competitor].

1219 Form CO annex 37 table 1. In addition, [a competitor], who's market share on the route did not exceed 2% since IATA Season Summer 2017, cannot expand its services between ICN and its hub. See Non-confidential minutes of a call with [a competitor].

1220 Form CO annex QP4.Q51.

1221 Replies to question B.13 of Questionnaire Q3 to potential entrants; as confirmed in [a competitor's] reply to RFI1 to [a competitor] (ID16522).

1222 Reply of FCO slot coordinator to question D.1-2 and D.2of Questionnaire Q8 to slot coordinators; replies to question D.C.6 of Questionnaire Q1 to competitors; replies to question D.6 of Questionnaire Q3 to potential entrants.

on the Overlap Routes are slot congested and that slots' availability constitutes a barrier to entry on all the Overlap Routes.[1223]

(789) In the fourth place, based on the Commission's market investigation, […] have concrete plans to enter or expand scheduled services on the ICN-FCO route over the next 3 years, independently of the Transaction.[1224] While [a competitor] express a general intention to expand services, it confirms that the intention to expand is a general aim "*to expand its network in every winter and summer season occasionally due to destinations performances, however frequency, aircraft type and etc. details cannot be confirmed yet for the next three years*".[1225] In this respect, the Parties claim that [a competitor] considers that traffic rights do not hinder its ability to enter or expand capacity on the ICN-FCO route.[1226] In support of this claim, the Parties bring a partial quote of [the competitor], without indicating that the quote is partial and skips a few words in the middle of the quote.[1227] The part of the quote that was removed by the Parties reads "*For South Korea and […] capacity there are limitations*.",[1228] thus, confirming that traffic rights limit [the competitor's] ability to expand on the route. The fact that [the competitor] could expand its services on the leg between […] and the EEA does not allow an increase of [the competitor's] capacity on the ICN-FCO route.

(790) Eighth, several market participants expressing a view consider that the Transaction will have a negative impact on passenger air transport services on the FCO-ICN route, with some referring to negative impact only on time sensitive passengers and others saying that negative impact is possible but depends on the Merger Entity decision to reduce frequencies.[1229]

(791) In their Response to the Statement of Objections, the Parties argue that customers had an overwhelmingly positive or neutral response concerning the impact of the Transaction.[1230] and that, Competitors provided mixed feedback, not an overwhelmingly negative feedback.[1231] The Commission disagrees and considers that the majority of customers, travel agents, tour operators and competitors who express a view, consider the Transaction will have negative impact on air passenger services on the ICN-FCO route, or at least do not exclude negative impact. Out of 19 customers who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services, the vast majority (14 replies, 74%) say they do not know, demonstrating that customers generally do not feel informed about the likely impact of the Transaction. Out of the five customers who express a view, two customers (40%) expect positive or no impact, two customers (40%) expect a negative impact and one customer (20%) thinks "it depends", which means negative impact is not excluded. Thus, the majority (60%) of customers expressing a view expect, or at

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1223 Korean's reply to question 13 of RFI1 on remedies.

1224 Replies to question D.B.B.6 of QP1 to competitors; Replies to question B.13 of Questionnaire Q3 to potential entrants.

1225 Reply of [a competitor] to question D.B.B.6 of QP1 to competitors (ID8510).

1226 Response to the Statement of Objections, paragraph 598.

1227 The manipulated quote as brought by the Parties in paragraph 442 of their Response to the Statement of Objections is: "*[b]etween […] and EEA, there are enough capacity allocation to serve. From [the competitor's] perspective, the merger should not affect the opportunity to increase or remain same the number of flights between two countries".*

1228 Reply of [a competitor] to question D.C.11 of QP1 to competitors (ID8510).

1229 Replies to question F.1 of Questionnaire Q1 to competitors and of Questionnaire Q3 to potential entrants; replies to question E.1 of Questionnaire Q4 to corporate customers and of Questionnaire Q6 to TA/TO.

1230 Response to the Statement of Objections, paragraph 610.

1231 Response to the Statement of Objections, paragraph 612.

least do not exclude, negative impact.[1232] Out of 16 travel agents and tour operators who provided a non-confidential reply to the question on the likely impact of the Transaction on air passenger services on the ICN-FCO route, seven (44%) say they do not know. Out of nine TA and TO who replied to the Commission questionnaire expressing a view, three (33%) consider the Transaction will have positive or no impact, three (33%) consider the Transaction will have negative impact and three (33%) replied "it depends", meaning they at least do not exclude negative impact. Thus, the majority (67%) of TA and TO who replied to the Commission questionnaire expressing a view expect, or do not exclude, negative impact. Out of seven competitors who provided a non-confidential reply to the question on the likely impact of the Transaction on the ICN-BCN route, two (29%) say they do not know.[1233] All (100%) competitors expressing a view expect (two competitors) or replied "it depends" (three competitors), meaning that they at least do not exclude negative impact.[1234]

(792) Finally, as explained below, the market investigation does not enable the Commission to conclude that passenger leakage to/from FCO airport would be sufficient to constraint the Parties post-Transaction nor that Italy-wide market shares would provide a more accurate representation of the competitive constraints faced by the Parties than standard market shares based on FCO-ICN O&D city-pair.

(793) The Notifying Party argues that self-connecting passengers who could travel via one-stop itineraries from/to regional airports across Italy constrain the Parties' prices on direct flights from FCO.

(794) The Notifying Party argues that (i) The results of the closer-airport analysis indicate that around half of users choosing direct flights from Rome to Seoul were located closer to another major Italian airport than to Rome;[1235] (ii) The review of available flight options from other Italian airports compared to the travel time by train or car to Rome paired with a direct flight to Seoul shows similar total travel time between the two itineraries and thus supports the view that passengers from these regions can substitute between direct flights from FCO and an indirect flight from their respective local airport;[1236] and (iii) the catchment-area analysis does not suggest that a specific catchment area can be defined for FCO but that all areas in Central and Southern Italy contribute significant numbers of passengers flying on the FCO-ICN route. [1237]

(795) In line with the discussion related to passengers leakage in Germany and France (paragraphs (725) to (733) and (763) to (767)), it is unlikely that all passengers not located nearby Rome who choose a direct flight from/to Rome who would likely choose an indirect flight from a regional airport over a direct flight from Rome in case of an increase in prices on FCO-ICN. The Notifying Party fails to demonstrate that the diversion may reach a critical level such that unilateral increases in prices or reduction of service quality on FCO-ICN post-transaction would make a price increase unprofitable. Even though in theory passengers may self-connect less should prices at FCO be higher, the extent to which passengers would actually switch away from FCO in response to higher prices is not known, and no not demonstrated by the Notifying Party to be sufficient to constrain the Parties from increasing prices post-transaction.

1232 Replies to question E.1 of Questionnaire Q4 to corporate customers.
1233 Replies to question E.1 of Questionnaire Q6 to TA/TO.
1234 Replies to question F.1 of Questionnaire Q1 to competitors.
1235 Form CO, Table 130.
1236 Form CO, Table 132.
1237 Form CO, Table 131.

(796) As explained in section 7.1.4, the evidence does not support the Notifying Party's claim that a sufficient number of self-connecting passengers would switch away from FCO. Similarly, even though alternative travel itineraries may display similar total travel time as shown by the Notifying Party, total travel time is not the only factor passengers take into account.[1238]

(797) Based on the available evidence, the Commission considers that the large majority of passengers that self-connect to FCO pre-Transaction would likely continue using FCO in case prices would increase.

(798) Furthermore, contrary to Korean Air's claim,[1239] the Skyscanner data does not prove to be an adequate proxy for competitive interactions in the market. Table 43 compares market shares for FCO-ICN based on booking sales data against (redirection) shares for FCO-ICN implied by the Skyscanner data. Significant discrepancies can be observed, in particular with respect to the Parties' shares and the share of other airlines, which disproves the Parties' claim that redirection data is necessarily representative of the actual purchase behaviour.

Table 43 – Comparison between market shares and shares implied by Skyscanner data

ICN-FCO route	Booking sales data (S19 + W19/20)		Skyscanner data	
Carriers	**Passenger number**	**Passenger share**	**Passenger number**	**Passenger share**
Korean Air	[…]	[30-40]%	[…]	[10-20]%
Asiana	[…]	[30-40]%	[…]	[10-20]%
Combined	[…]	**[70-80]%**	[…]	**[20-30]%**
Qatar Airways	[…]	[0-5]%	[…]	[0-5]%
Air France – KLM	[…]	[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%
Emirates	[…]	[0-5]%	[…]	[0-5]%
Lufthansa	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[5-10]%
Finnair	[…]	[0-5]%	[…]	[0-5]%
Aeroflot	[…]	[0-5]%	[…]	[10-20]%
Cathay Pacific Airways	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[40-50]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**

Source: Response of Korean Air to RFI5, question 3, Annex QP4.Q51 and Skyscanner redirect data.
Notes: Both non-stop and one-stop operations (TS + NTS).

(799) In view of the above, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the route ICN-FCO due to the creation or strengthening of a dominant position under any plausible market definition. This is likely to lead to increased prices, a lower level of service and reduced choice for passengers travelling on this route.

1238 Replies to questions C.E.2 and D.A.1 of Questionnaire Q4 to corporate customers; Replies to questions C.F.1 and D.A.1 of Questionnaire Q6 to TA/TO; replies to question D.B.A.1 of Questionnaire Q1 to competitors.

1239 Response of Korean Air to the Commission's Statement of Objections, paragraphs 391-392.

8.8. Passenger air transport services – direct/ indirect overlaps

(800) In relation to overlaps with respect to routes where one of the Parties offers a direct flight and the other offers an indirect flight[1240], the Parties have identified the following relevant overlapping O&Ds with origin/destination in the EEA[1241]:

- Seoul (ICN) - Prague (PRG)
- Seoul (ICN) - Madrid (MAD)
- Seoul (ICN) - Amsterdam (AMS)
- Seoul (ICN) - Vienna (VIE)
- Seoul (ICN) - Zagreb (ZAG)
- Seoul (ICN) - Lisbon (LIS)
- Seoul (ICN) - Milan (MXP)
- Seoul (ICN) - Venice (VCE)

(801) A summary of the market shares is provided in the tables below, which shows the combined passenger volume of the Parties for all passengers, regardless of the POO[1242]:

Table 44 - Summary of market shares on each direct/indirect overlapping route (direct + one-stop flights, all PoO)

IATA Season / Route	Summer 2020		Winter 2020/2021		Summer 2021		Winter 2021/2022		Summer 2022		Winter 2022/2023	
	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment
ICN-AMS	[20-30]%	[0-5]%	[30-40]%	[0-5]%	[20-30]%	[0-5]%	[20-30]%	[0-5]%	[50-60]%	[0-5]%	[50-60]%	[0-5]%
ICN-LIS	[10-20]%	[0-5]%	[20-30]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%
ICN-MAD	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%
ICN-MXP	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[50-60]%	[0-5]%	[60-70]%	[0-5]%
ICN-PRG	[20-30]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%

1240 There is also one indirect/indirect overlap between the Parties (Phnom Phen (PNH) – Paris (CDG)). However, the Parties had a very small share pre-pandemic (generally below [0-5]%) and they did not overlap on that route between the Winter 2020/2021 and Summer 2021 seasons. The route is only technically affected as the combined share of the Parties in the Summer 2020 season was [20-30]%. However, the increment was only [0-5]% as Asiana only […]. Therefore, the Commission does not consider this would give rise to any competition concerns and will not discuss this overlap further.

1241 In order to identify overlapping routes with respect to indirect/direct and/or indirect/indirect flights, the Parties have considered the filters consistently applied by the Commission in previous decisions. In line with the Commission's precedents, the Parties (1) first analyzed on which of the overlapping O&Ds with origin/destination in the EU the total market demand exceeded 30,000 passengers in 2019 and then (2) proceeded to filter the routes according to where the Parties' combined market share was above [20-30]% in any of the seasons between Summer 2018 and Winter 2021. Neither Korean Air nor Asiana operate direct flights between Europe and Korean airports other than ICN.

1242 Form CO, paragraph 574.

IATA Season / Route	Summer 2020		Winter 2020/2021		Summer 2021		Winter 2021/2022		Summer 2022		Winter 2022/2023	
	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment	Combined share	Increment
ICN-VCE	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%
ICN-VIE	[20-30]%	[5-10]%	[30-40]%	[5-10]%	[20-30]%	[0-5]%	[20-30]%	[0-5]%	[50-60]%	[0-5]%	[70-80]%	[0-5]%
ICN-ZAG	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%

Source: Reply to RFI31, Question 4, Table 1

(802) As indicated above in section 7.1 on market definition, the Commission has considered that for long-haul connections, 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 (see above paragraph (159)).

(803) In any event, in the present case it can be left open whether non-stop and one-stop flights are substitutable on the routes mentioned above as the conclusion of the competitive assessment would not change: If non-stop and one-stop flights were considered as two separate markets there would be no overlap between Korean Air and Asiana on the routes listed in paragraph (800). If non-stop and one-stop flights were deemed to belong to the same market, the Transaction would lead to an overlap but would not give rise to a significant impediment to effective competition on any of these routes as most of them are characterised by relatively low combined market shares (below the dominance threshold) and a very low increment in market shares as Asiana is offering only indirect flights and not attracting many customers (see table below).

Table 45 - Summary passenger volumes on direct/indirect overlapping routes (direct + one-stop, all PoO)

IATA Season / Route	Summer 2020	Winter 2020/2021	Summer 2021	Winter 2021/2022	Summer 2022	Winter 2022/2023
	Passengers (combined Korean Air and Asiana)	Passengers (combined Korean Air and Asiana)	Passengers (combined Korean Air and Asiana)	Passengers (combined Korean Air and Asiana)	Passengers (combined Korean Air and Asiana)	Passengers (combined Korean Air and Asiana)
ICN-AMS	[…]	[…]	[…]	[…]	[…]	[…]
ICN-LIS	[…]	[…]	[…]	[…]	[…]	[…]
ICN-MAD	[…]	[…]	[…]	[…]	[…]	[…]
ICN-MXP	[…]	[…]	[…]	[…]	[…]	[…]
ICN-PRG	[…]	[…]	[…]	[…]	[…]	[…]
ICN-VCE	[…]	[…]	[…]	[…]	[…]	[…]
ICN-VIE	[…]	[…]	[…]	[…]	[…]	[…]
ICN-ZAG	[…]	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 31, Question 4, Table 2

(804) In addition, the Parties are facing important competition from competitors on relevant routes.[1243] Also, the market investigation has not revealed either any complaints from customers or competitors.[1244]

(805) As a conclusion, the Transaction would not significantly impede effective competition with respect to the direct/ indirect Overlap Routes identified above.

8.9. Passenger air transport services – potential competition

(806) As mentioned in section 5 above, in the 6(1)(c) Decision the Commission preliminarily concluded that Transaction could eliminate potential competition in passenger air transport services between the EEA and South Korea, because (i) Korean Air holds a strong position on a number of EEA-South Korea passenger routes on which Asiana is currently not active;[1245] (ii) the preliminary market investigation indicated that Asiana might be likely to add additional EEA destinations to its long-haul network in the short term and (iii) there are unlikely to be a sufficient number of other actual or potential competitors, which could maintain sufficient competitive pressure after the Transaction.

(807) During its in-depth market investigation, the Commission assessed whether Asiana would likely enter new routes between South Korea and the EEA, on which Korean Air is already active with direct services. Based on Korean Air's replies to the Commission's request for information and the Commission's assessment of Asiana's internal documents containing its plans for future operations,[1246] […].

(808) As a result, the Commission concludes that the Transaction does not lead to a significant impediment to effective competition by eliminating a potential competitor on any of the EEA-South Korea routes.

8.10. Cargo air transport services – general considerations

8.10.1. The impact of the Covid19 pandemic and the Russian war against Ukraine on cargo air transport services

(809) The Covid19 pandemic has had a severe impact on the cargo air transport services across the globe. Due to travel restrictions and public health concerns, the demand for passenger air transport services had significantly decreased since the beginning of the pandemic in 2020. Airlines reacted to this dramatic decrease in demand by reducing or even suspending part of their services. Therefore, without the belly-hold capacity of

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1243 For IATA SS 2022:
ICN-PRG: Parties combined: [20-30]% (Asiana: [0-5]%); Lufthansa [20-30]%; Turkish Airlines: [10-20]%;
ICN-MAD: Parties combined: [10-20]% (Asiana: [0-5]%); Etihad [20-30]%; Emirates: [20-30]%;
ICN-AMS: Parties combined: [50-60]% (Asiana: [0-5]%); Air France/KLM: [20-30]%; Lufthansa: [0-5]%;
ICN-VIE: Parties combined: [50-60]% (Asiana: [0-5]%); Qatar Airways: [5-10]%; Lufthansa: [5-10]%;
ICN-ZAG: Parties combined: [30-40]% (Asiana [5-10]%); Turkish Airlines: [20-30]%; LOT Polish Airlines: [10-20]%;
ICN-LIS: Parties combined: [20-30]% (Asiana [0-5]%); Emirates: [20-30]%; Lufthansa: [20-30]%;
ICN-MXP: Parties combined: [50-60]% (Asiana: [0-5]%); Etihad: [10-20]%; Lufthansa: [5-10]%;
ICN-VCE: Parties combined: [10-20]% (Asiana: [5-10]%); Emirates: [20-30]%; Lufthansa: [20-30]%;
CDG-PNH: Parties combined: [5-10]% (Asiana: [0-5]%); Singapore Airlines: [40-50]%; Thai Airways International: [30-40]%.

1244 Replies to question F.9 and of Questionnaire Q1 to competitors; replies to question C.E and E.3 of Questionnaire Q4 to corporate customer.

1245 For instance, Korean Air operates direct services between Seoul and Amsterdam, Madrid, Milan, Prague, Vienna and Budapest (operations tarted as of 3 October 2022), whereas ICN-Zagreb is currently suspended. See Form CO, paragraphs 345-346 and 337 and response of Korean Air to RFI9, question 2.

1246 See, for instance, response of Korean Air to RFI 20 and Annex RFI20.Q3b – Asiana's […].

passenger air transport aircrafts available on the market, the overall supply of cargo air transport services declined significantly. At the same time, the increased consumer demand for certain goods caused a significant imbalance between demand and supply (of cargo services), with demand significantly exceeding supply. Therefore, rates for air cargo services soared, bringing more profitability to cargo carriers and helping combination carriers to offset the losses incurred by their passenger air transport activities.[1247]

(810) Similarly, the Russian war against Ukraine has also had an impact on the European aviation sector and in particular on the routes between Europe and South Korea. Since the beginning of the war in February 2022, European and other carriers which operate flights between Europe and South Korea have been facing longer flight times due to the closure of the Russian airspace. Furthermore, the capacity of Russian carriers on the routes between Europe and South Korea is no longer available.[1248] […].[1249]

(811) In the Commission's view, the uncertainties brought about by the Covid19 pandemic and the Russian war against Ukraine war require the Commission to look beyond any temporary effects of these developments. As a result, in line with the provisions of the Horizontal Merger Guidelines, the Commission will not take into account the short-term effects of these developments in making its assessment, and will only 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.

(812) As explained below, the investigation has not provided sufficient evidence that the extreme fluctuations in demand and supply and the effects on the prices in air cargo services between Europe and South Korea caused by the Covid19 pandemic and in particular the lack of available belly-hold capacity on the routes, constitutes a structural change. Indeed, as the emergency of the Covid19 pandemic seems to have abated, its effects on the air cargo transport sector do not seem to be lasting – although price levels have not yet come down and may still need time to reach levels comparable to the situation before the Covid19 pandemic. However, the Commission considers that for the assessment of the Transaction, the effects of the Russian war against Ukraine on the cargo routes between Europe and South Korea, namely the exit of Russian carriers from the routes as well as the increase of flight times between Europe and South Korea for many carriers (and the effects that this has on capacity and prices), should be treated as structural changes as those effects are not likely to disappear in the foreseeable future.

(813) On the one hand, the market investigation has not provided evidence that the imbalance between demand and supply caused by the Covid19 pandemic has been structural or permanent. Rather, based on the results of the Commission's investigation, the industry consensus seems to be that this imbalance is normalising, albeit with still higher cargo rates.[1250]

(814) First, as the Covid19 restrictions have started to ease, a significant part of the suspended passenger air transport services has been resumed. Therefore, even though

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1247 Replies to question D.A.1 of Questionnaires Q2 to cargo competitors and Q5 to cargo customers; Non-confidential minutes of the conference call with [an integrator].

1248 Replies to questions D.A.2 and D.A.3 of Questionnaire Q2 to cargo competitors and to question D.A.2 of Questionnaire Q5 to cargo customers; Non-confidential minutes of the conference call with [an integrator].

1249 Response of Asiana RFI4, Annex RFI4.Q3 – […] - English human translation, slide 13.

1250 Replies to question D.A.1 of Questionnaires Q2 to cargo competitors and Q5 to cargo customers; Non-confidential minutes of the conference call with [an integrator].

the overall available belly-hold capacity on the market may be at a lower level compared to the pre-Covid19 period, the overall supply of cargo services is increasing again.[1251] Furthermore, apart from increased supply of cargo services, the results of the Commission's market investigation indicate that the market has been experiencing a somewhat weaker consumer demand.[1252] The decline in consumer demand is due to various factors, including the worsening of the macroeconomic conditions, but may constitute a cyclical rather than a long-term development.

(815) Second, the Commission's investigation indicates that as demand and supply on the markets have started to rebalance, prices for air cargo transport services have followed the same trend and have dropped since the second half of 2022. However, prices are still higher than they were before the start of the Covid19 pandemic, as is illustrated […]. That […] analyses the global freight rate trends, […], as shown in the Figure below.

Figure 42: [Figure redacted]

Response of Asiana to RFI4, Annex RFI4.Q3 – […], slide 13

(816) This price trend has […] been confirmed by market participants during the course of the Commission's market investigation.[1253] The majority of the participants in the Commission's market investigation predicted that the downward pressure in prices will continue in 2023. In the same vein, the profit margins of cargo carriers, which increased at the peak of the Covid19 pandemic, have become smaller.[1254]

(817) On the other hand, with respect to the Russian war against Ukraine, the Commission's market investigation indicates that European carriers as well as the Parties have been affected by the longer flight time, higher costs and lower payload on the routes between Europe and South Korea due to the closure of the Russian airspace. Although the majority of the competitors participating in the Commission's market investigation replied that they have kept the same level of services on the investigated routes, certain carriers replied that they have reduced their services.[1255]

(818) The impact of the closure of the Russian airspace is considerable even for those European and other carriers that have kept the same level of services. Unable to fly over Russia, European and South Korean carriers have been forced to fly via the southern route, resulting in longer flight times. The additional distance generates additional costs (mainly for fuel), impacting, in turn, the flight payload and leading to an increase in costs and rates. According to one competitor, capacity on each flight has been also reduced due to longer flight times.[1256]

(819) In any event, the Commission notes that without a reasonable prediction or indication over the end of the Russian war against Ukraine, the exit of the Russian carriers from the routes of concern should also be considered as a structural effect on the relevant

1251 See also section 8.5.1 above.

1252 Replies to question D.A.1 of Questionnaires Q2 to cargo competitors and Q5 to cargo customers; non-confidential minutes of the conference call with [a competitor].

1253 Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator].

1254 Replies to question D.A.1 of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.

1255 Replies to question D.A.2.3 of Questionnaire Q2 to cargo competitors.

1256 Replies to question D.A.2.3 of Questionnaire Q2 to cargo competitors and DA2 of Questionnaire Q5 to cargo customers.

market.[1257] For this reason, the Commission will exclude the Russian carriers from the analysis.

8.10.2. Cargo air transport services from and to South Korea

(820) Each of the Parties has a strong focus on air cargo activities, each operating a fleet of dedicated freighter aircraft as well as passenger aircraft that transport cargo in the belly of the aircraft, in and out of Incheon airport. The Parties are by far the two most significant air cargo carriers operating from/to South Korea. As shown in Table 46 below, all other competitors globally are significantly smaller when looking at transport into and out of South Korea overall.

(821) The market structure on all cargo routes in and out of South Korea in terms of tons transported is set out in Table 46 below.

Table 46 – Market shares in and out of Korea 2016-2021 in volume (including all integrator volumes)

Airline	**2016**		**2017**		**2018**		**2019**		**2020**		**2021**	
	Out	**In**	**Out**	**In**	**Out**	**In**	**Out**	**In**	**Out**	**In**	**Out**	**In**
Korean Air	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Asiana	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%
Combined	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[40-50]%**	**[50-60]%**	**[40-50]%**	**[40-50]%**	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[50-60]%**
HHI post-merger	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
HHI Δ	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Atlas Air Worldwide/ DHL[1258]	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%
UPS	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Qatar Airways	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
China Eastern	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
FedEx	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Volga-Dnepr Group	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cathay Pacific	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cargolux	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Lufthansa	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Silk Way	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Air Incheon	[0-5]%	<[0-5]%	[0-5]%	<[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Turkish Airlines	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others[1259]	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Volume (in k tons)	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Form CO, Annex QP9.Q47; RFI9, question 8, Annex RFI9.Q8

Notes: (1) Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures. (2) Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

1257 Replies to question D.A.2 of Questionnaire Q5 to cargo customers.

1258 DHL operates […]. DHL is the carrier that sells the cargo volumes to the customers.

1259 Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures.

(822) The Parties are the number 1 and number 2 carriers offering cargo air transport from and to South Korea. Together, Korean Air and Asiana accounted for around [40-50]%-[50-60]% of all cargo traffic coming in and out of South Korea. While Asiana is smaller than Korean Air, the Transaction would lead to a sizable increment of around [10-20]%-[20-30]%. That indicates that the market structure for the global air cargo transport in and out of Korea would change considerably after the Transaction by combining the leading air carriers. It also indicates that there are few competitors globally with significant traffic volumes in and out of South Korea. Indeed, the second player, DHL, only has a share of [10-20]% and, as an integrator, operates a different business model.

(823) The market structure was relatively stable until 2019, as illustrated in Table 46. As of 2020, the beginning of the Covid19 pandemic, the Parties' market position further increased due to the continued use of their freighter capacity throughout the pandemic, while competitors relying on passenger planes to transport cargo in and out of South Korea reduced or suspended their operations. The overall size of the market has fluctuated but overall remained roughly stable as well. Overall, air cargo traffic in and out of South Korea appears to be characterized by (i) the presence of two large carriers – the Parties – as well as a large number of much smaller air cargo carriers and (ii) a very stable market environment in terms of market sizes and relative size of the competitors without significant shifts in competitive strength over time. This shows that the Parties are by far the strongest competitors in cargo traffic in and out of South Korea globally and that there is no significant competitor to the Parties. Furthermore, the market structure has remained remarkably stable over time, casting doubt on the likelihood of considerable entry or expansion in the supply of air cargo services in and out of South Korea in the near future.

8.10.3. Description of the Parties' and the competitors' activities

8.10.3.1. The Parties

(824) Korean Air has a fleet of 23 freighter aircraft (expected to remain stable in the foreseeable future)[1260] and its cargo route network consists of 45 destinations in 27 countries.[1261] Korean Air holds fifth place among the 100 most important air cargo carriers globally.[1262] Korean Air holds the right to operate and operates two cargo terminals at Incheon airport as well as one cool cargo centre owned by the Incheon airport authority. Korean Air has in the last five years operated air cargo services between South Korea and Europe by serving the airports of Incheon, Amsterdam, Basel, Barcelona, Budapest, Frankfurt, Helsinki, London, Madrid, Milan, Munich, Oslo, Paris, Prague, Rome Stockholm, Venice, Vienna, Warsaw, Zagreb, Zaragoza and Zurich.[1263]

(825) Asiana currently operates a fleet of 11 freighter aircraft, which it expects to remain stable in 2023[1264] and beyond.[1265] Asiana leases and operates one cargo terminal at Incheon airport, which includes a special cargo warehouse.[1266] Asiana has in the last

1260 Form CO, paragraph 355, Table 45.
1261 Form CO, paragraph 354.
1262 Form CO, paragraph 477.
1263 Form CO, paragraph 357.
1264 Response of Asiana to RFI4, Annex RFI4.Q3 - Asiana […] - English human translation, slide 19. The slide reports […].
1265 Form CO, paragraph 365 and Table 46.
1266 Form CO, paragraph 369.

five years operated air cargo services between South Korea and Europe by serving the airports of Incheon, Brussels, Frankfurt, Milan, London and Vienna.[1267]

8.10.3.2. The air cargo carrier competitors active on the routes between Europe and South Korea

8.10.3.2.1. Direct carriers

8.10.3.2.1.1. Dedicated freighter or combined carriers

8.10.3.2.1.1.1. Lufthansa

(826) Lufthansa is an airline which combines both passenger and cargo transport services by means of mainly scheduled flights.[1268] It has its main hub in Frankfurt (FRA), with a secondary hub in Munich (MUC). Lufthansa has a fleet of […] aircraft for passenger transport services and […] freighter aircraft for cargo transport services.[1269] Lufthansa, itself a member of the Star Alliance, […].[1270]

(827) Lufthansa operates direct flights on the routes FRA – ICN and MUC – ICN. It uses both belly-hold capacity as well as its own freighter fleet in its cargo operations destined for Korea. On these routes, Lufthansa offers dedicated freighter services […] times a week.[1271]

8.10.3.2.1.1.2. Cargolux

(828) Cargolux operates as a competitor offering direct flights to ICN. It is a Luxembourg-based airline that specializes in cargo transportation with Luxembourg (LUX) as its hub. According to IATA's 2021 global cargo transport record, Cargolux is the seventh largest cargo air carrier globally. It is operating […] freight aircraft, offering both scheduled and unscheduled charter flights.[1272] […].[1273]

(829) As regards the itinerary, Cargolux operates freighter aircraft from its main hub in LUX […] week directly to ICN and back. Additionally, Cargolux operates […] weekly frequencies from Milan (MXP) to ICN.[1274]

8.10.3.2.1.1.3. Ethiopian Airlines

(830) Ethiopian Airlines is a state-owned airline with its headquarters in Addis Ababa. It uses Addis Ababa Bole (ADD) as its hub. Ethiopian Airlines is a combination airline with a fleet of […] aircraft, of which […] are freighter aircraft. It offers scheduled and unscheduled (extra and charter) flights.[1275]

(831) Regarding the Korean itinerary, Ethiopian Airlines operates […] dedicated cargo freighter […] frequencies per week on the route Oslo (OSL) to Seoul (ICN). […].[1276]

1267 Form CO, paragraph 367.
1268 Response of [a competitor] to RFI 2, question 9 (ID 11863).
1269 Form CO, paragraph 854.
1270 Non confidential minutes of the conference call with [a competitor].
1271 Non confidential minutes of the conference call with [a competitor].
1272 Form CO, paragraph 854.
1273 Non confidential minutes of the conference call with [a competitor].
1274 Non confidential minutes of the conference call with [a competitor].
1275 Form CO, paragraph 854.
1276 Non confidential minutes of the conference call with [a competitor].

8.10.3.2.1.2. Belly space capacity only carriers

8.10.3.2.1.2.1. Air France - KLM

(832) Air France - KLM is a carrier providing air passenger and cargo services. It is a member of the SkyTeam alliance, of which Korean Air is also a member. It has a code share agreement with Korean Air.[1277]

(833) Air France KLM's cargo activities destined for ICN are carried out exclusively by means of belly-hold capacity in passenger flights. As regards the itinerary, it operates direct flights on the route out of Paris on CDG – ICN with […] weekly frequencies.[1278] […].[1279]

8.10.3.2.1.2.2. Finnair

(834) Finnair is a state-owned carrier which provides air passenger transport services through scheduled and unscheduled flights. It maintains a fleet of […] passenger aircraft with no dedicated freighter aircraft. It is a member of the Oneworld alliance and has no code sharing agreements in place with either of the Parties. It does, however, have an interline agreement and a special prorate agreement with the Parties.[1280]

(835) Finnair's cargo transport services are provided exclusively through passenger flights' belly-hold capacity. As regards the itinerary between Europe and South Korea, Finnair, through its main hub in Helsinki (HEL), provides […] flights to and from ICN.[1281]

8.10.3.2.1.2.3. LOT Polish Airlines

(836) LOT is a state-owned carrier with a hub in Warsaw (WAW). It offers air passenger transport services through scheduled and unscheduled flights. It maintains a fleet of […] aircraft.[1282] LOT and Asiana are both part of the Star Alliance. Additionally, LOT […].[1283]

(837) The cargo transport services offered by LOT are limited to passenger aircraft belly-hold capacity, as LOT does not own dedicated freighter aircraft. Therefore, LOT's cargo services are limited to the […] weekly frequencies […].[1284]

8.10.3.2.2. Transhipment carriers

8.10.3.2.2.1. Turkish Airlines

(838) One of the main shareholders of Turkish Airlines is the Turkish State. It uses mainly Istanbul (IST) as its hub. Turkish Airlines is a combination airline operating both passenger transport services as well as air cargo transport services. It offers scheduled and unscheduled flights. Its fleet size is […] aircraft, of which […] is freighter aircraft. According to IATA's 2021 global cargo transport record, Turkish Airlines is the sixth largest cargo air carrier globally.[1285] Moreover, Turkish Airlines, itself a member of Star Alliance, […].[1286]

1277 Form CO, paragraph 854.
1278 Non confidential minutes of the conference call with [a competitor].
1279 Non confidential minutes of the conference call with [a competitor].
1280 Form CO, paragraph 854.
1281 Non-confidential minutes of the conference call with [a competitor].
1282 Form CO, paragraph 854.
1283 Non confidential minutes of the conference call with [a competitor].
1284 Non confidential minutes of the conference call with [a competitor].
1285 Form CO, paragraph 854.
1286 Non confidential minutes of the conference call with [a competitor].

(839) As a network carrier, Turkish Airlines transports its cargo to and from ICN and Europe via a stop-over in Istanbul with transhipment.[1287] To this end, it utilizes both belly-hold capacity on its passenger flights and the cargo capacity of […] weekly frequencies with dedicated freighter aircraft.[1288]

8.10.3.2.2.2. Emirates

(840) Emirates is a carrier headquartered in Dubai, United Arab Emirates. It mainly uses Dubai Airport (DXB) as its hub, offering both passenger and cargo transport services on scheduled and unscheduled flights. It currently operates a fleet of […] aircraft, […] of which are dedicated freighter aircraft.[1289] […].[1290]

(841) Emirates offers indirect flights from Europe via DXB to ICN through its feeder network of *inter alia* FRA, CDG, FCO and BCN. […].[1291] Thus, the cargo activities destined for Korea […][1292] and a frequency of […] flights per week.[1293]

8.10.3.2.2.3. Silk Way West

(842) Silk Way West is a dedicated cargo airline which uses Baku (GYD) as its hub. It offers both scheduled and unscheduled flights by utilizing its fleet of […] freighter aircraft.[1294]

(843) As regards the Korean itinerary, Silk Way West operates indirect flights through its European network […].[1295]

8.10.3.2.2.4. Etihad Airways

(844) Etihad Airways is a state-owned airline headquartered in Abu Dhabi, United Arab Emirates. It mainly uses Abu Dhabi International Airport (AUH) as its hub. It provides both passenger and cargo transport services through scheduled and unscheduled flights. It has a total fleet of […] aircraft, […] of which are freighter aircraft. According to IATA's 2021 global cargo transport record, Etihad Airways is the fourth largest air carrier globally.[1296]

(845) Etihad Airways' itinerary destined for ICN is restricted via its hub, i.e. AUH. Thus, it offers its air cargo services on this route […].[1297]

8.10.3.2.2.5. Qatar Airways

(846) Qatar Airways is a state-owned carrier with a base in Qatar. It mainly uses Doha (DOH) airport as a hub for its cargo operations. It is a full-service airline, offering both passenger and cargo transport services. Qatar Airways maintains a fleet of […] aircraft, […] of which are freighter aircraft. It offers both scheduled and unscheduled flights. According to IATA's 2021 global cargo transport record, Qatar Airways is the second largest cargo air carrier globally.[1298]

1287 Reply of [a competitor] to question B.6.3 of Questionnaire Q2 to Competitors. (ID 964)
1288 Non confidential minutes of the conference call with [a competitor].
1289 Form CO, paragraph 854.
1290 Non confidential minutes of the conference call with [a competitor].
1291 Non confidential minutes of the conference call with [a competitor].
1292 Reply of [a competitor] to question B.6.3 of Questionnaire Q2 to Competitors. (ID 7715)
1293 Non confidential minutes of the conference call with [a competitor].
1294 Form CO, paragraph 854.
1295 Reply of [a competitor] to questions B.6.1 and B.6.3 of Questionnaire Q2 to Competitors. (ID 9405)
1296 Form CO, paragraph 854.
1297 Reply of [a competitor] to questions B.6.1 and B.6.3 of Questionnaire Q02 to Competitors. (ID 8596)
1298 Form CO, paragraph 854.

(847) Qatar Airways, itself a member of Oneworld alliance, […].[1299]

(848) As for the itinerary, Qatar Airways operates on routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN […].[1300] It offers air cargo services […].[1301]

8.10.3.2.2.6. Singapore Airlines

(849) Singapore Airlines is a state-owned airline company of Singapore, using Singapore Changi Airport (SIN) as its main hub. It is a combination airline providing passenger and cargo transport services. Singapore Airlines offers scheduled and unscheduled flights. Its fleet amounts to […] aircraft of which […] are freighter aircraft.[1302]

(850) The cargo transport services of Singapore Airlines are provided by means of both freighter and belly-hold capacity. However, […].[1303]

8.10.3.3. Integrators

(851) In its decisional practice,[1304] the Commission has defined integrators' door-to-door offering by reference to five basic characteristics: first, ownership of or full operational control over all transportation assets, including an air network with scheduled flights, through which a large proportion of the volumes handled by the company is carried; second, a sufficient geographic coverage on a global level; third, a hub and spoke operating model; fourth, a proprietary IT network, such that all relevant data runs across one network; fifth, integrators have the reputation of reliably delivering parcels on time (so-called 'end-to-end' credibility). In this regard, there are three integrators in the world, all of whom also operate within the EEA: DHL, FedEx and UPS.

(852) The main differentiating factor of an integrator is that it has operational control over the logistical chain of cargo (mainly small package) delivery from origin to destination (including air transport) so that it can ensure delivery in accordance with a time commitment.[1305]

(853) The interplay between freight forwarders that use airport-to-airport air cargo services as an input on the one hand, and the vertically integrated offering of the integrators on the other, is presented in the figure below. As analysed in section 7.2.1.4 above, the Parties' airport-to-airport air cargo services and the integrators' core door-to-door small package delivery services belong to separate product markets. The limited extent to which the integrators' spare capacity offered for airport-to-airport air cargo services poses a competitive constraint to the Parties will be assessed in sections 8.11.3.2 and 8.12.3.2 below. In addition, any indirect out-of-market constraint to the Parties posed by the integrators' door-to-door services, to the extent these compete for end cargo customers / shippers, will be assessed in sections 8.11.5 and 8.12.5 below.

1299 Non confidential minutes of the conference call with [a competitor].

1300 Non confidential minutes of the conference call with [a competitor].

1301 Non confidential minutes of the conference call with [a competitor].

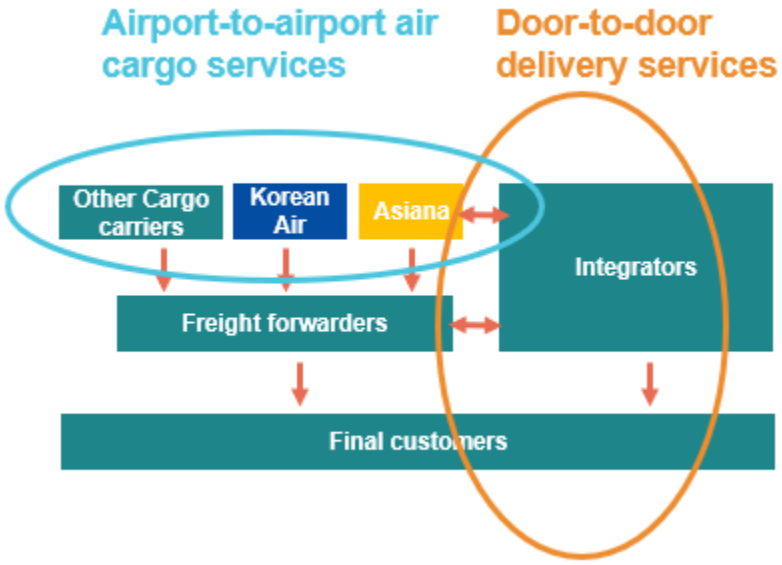
1302 Form CO, paragraph 854.

1303 Non confidential minutes of the conference call with [a competitor].

1304 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 40; M.6570 – UPS / TNT Express, paragraph 62.

1305 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 41; M.6570 – UPS / TNT Express, paragraph 63.

Figure 43: Air cargo services vs door-to-door delivery services



(854) With regard to the services provided by integrators on the routes between Europe and South Korea,[1306]

– DHL operates […] frequencies per week between its main hub in Europe, namely […], and Incheon airport in Seoul;

– FedEx […] operate […] flights between Europe and South Korea […]; and

– UPS, on the route Europe to South Korea, did not provide services in […]. In 2022, UPS [...] flights in total.[1307] On the route South Korea to Europe, UPS offers […] flights. However, according to UPS, […].

8.11. Cargo air transport services – assessment of the route Europe to South Korea

(855) Based on its investigation and all the evidence available to it, the Commission finds that:

(a) The Transaction would change the market structure significantly and lead to high combined market shares with a high increment in a stable market environment which has shown little variation over time (section 8.11.1).

(b) The Parties are close – if not the closest – competitors as well as the most competitive suppliers in the market (section 8.11.2).

(c) The competing air cargo carriers and integrators provide only a limited competitive constraint in the air cargo market (section 8.11.3).

(d) The Parties' competitors face barriers to expand their services in reaction to potential negative effects of the Transaction (section 8.11.4).

(e) There is no or at best a limited indirect constraint on the Parties' activities from the integrators' sales to shippers (section 8.11.5).

(f) The customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction (section 8.11.6).

1306 Reply of [an integrator] to question B.1 of Questionnaire Q2 to cargo competitors (ID 8457); Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2, introduction and Annex II (ID 11459).

1307 The years 2020 and 2021 are not taken into consideration due to the irregularities in the schedule of airlines caused by the Covid19 pandemic.

(g) There is insufficient evidence of timely, likely and sufficient market entry to offset the effects of the Transaction (section 8.11.7).

(h) Several market participants have expressed concerns about the strong market position of the Merged Entity and the potential negative effects on competition as a result of the Transaction (section 8.11.8).

(856) The Horizontal Merger Guidelines state that according to well-established case-law, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant position. A merger involving a firm whose market share will remain below 50% after the merger may also raise competition concerns, due to the creation of a dominant position, in view of other factors such as the strength and number of competitors and the presence of capacity constraints.[1308] As set out in section 8.11.1, the merged entity would have a high share in terms of sales (around [50-60]%) and capacity (around [40-50]%) in the relevant market. Moreover, as discussed in sections 8.11.3 to 8.11.7, the relevant market is characterised by limited competitive pressure exerted by competitors, substantial barriers to expansion as well as a lack of likely, timely and sufficient market entry or countervailing buyer power. Therefore, the Commission considers that the Transaction would create a dominant position in relation to air cargo services on the route Europe-South Korea.

(857) In any event, paragraphs 26 to 38 of the Horizontal Merger Guidelines list factors which may influence whether significant non-coordinated effects are likely to result from a merger. "*Paragraph 26 of those 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.*"[1309]

(858) Considering the overall assessment of the findings in sections 8.11.1 to 8.11.8 and in light of the merged entity's high share in air cargo services on the route Europe-South Korea, the Commission concludes that the Transaction would, in any event, give rise to horizontal non-coordinated effects on the relevant market as a result of the elimination of an important competitive constraint.

8.11.1. Market Structure

8.11.1.1. Data on the market structure

(859) This section describes the market structure on the route from Europe to South Korea.

(860) The Parties have provided market shares for air cargo transport on the routes Europe-South Korea and South Korea-Europe. This methodology is described in Annex I. The market structure on the route Europe-South Korea in terms of cargo volume transported, following the Parties' methodology, is set out in Table 47 below. The Parties' combined value-based market shares, set out in Table 48 below, are generally slightly larger than their volume-based market shares. Table 47 and Table 48 also set out concentration levels on the route between Europe and South Korea in terms of HHI, and by how much the HHI would increase as a result of the Transaction.

1308 Horizontal Merger Guidelines, paragraph 17.

1309 C-376/20 P - Commission v CK Telecoms UK Investments, [2023] ECLI:EU:C:2023:561, paragraphs 259-261.

Table 47 – Europe to South Korea market shares by volume (based on the Parties' market share data)

Airline	2018		2019		2020		2021		2022	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[50-60]%**	**[…]**	**[40-50]%**	**[…]**	**[50-60]%**
Qatar Airways	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
DHL	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Volga-Dnepr Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Air France-KLM	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Lufthansa Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Singapore Airlines Group	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Aeroflot Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Ethiopian Airlines	[…]	[0-5]%	[…]	<[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Thai Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	<[0-5]%	[…]	<[0-5]%	[…]	[…]
Others	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[…]
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Form CO, Annex QP10.Q28.1, Annex RFI9.Q9. Annex RFI6.Q3.

Notes: (i) Where the sums of all market shares do not appear to add up to 100%, this is due to the rounding of the individual market share figures. (ii) Where the joint market share does not seem to follow from the sum of the individual market shares, this is due to rounding of the individual figures. (iii) "Others" comprises airlines with market shares below 1% in each year from 2018 to 2021. (iv) Competitors' share estimates are not available for 2022 because the main data sources relied upon to compute competitors' market shares in the previous years are no longer available, see Annex I for details. (v) The Parties' estimates incorrectly assume that [a competitor] is directly active, whereas all of [the competitor's] capacity on the routes between Europe and South Korea is on dedicated wet lease or charter basis, see the non-confidential version of RFI 1 to [a competitor] dated 31 March 2023 (ID 1255).

Table 48 – Europe to South Korea market shares by value (based on the Parties' market share data)

Airline	2018		2019		2020		2021		2022	
	Value ('000 EUR)	Share (%)	Value ('000 EUR)	Share (%)	Value ('000 EUR)	Share (%)	Value ('000 EUR)	Share (%)	Value ('000 EUR)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	**[40-50]%**	[…]	**[40-50]%**	[…]	**[50-60]%**	[…]	**[40-50]%**	[…]	**[40-50]%**
Qatar Airways	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[…]
DHL	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Volga-Dnepr Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Air France-KLM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Lufthansa Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Singapore Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Aeroflot Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]%	[…]	[…]
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%		[0-5]%	[…]	[…]
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Ethiopian Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Thai Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Others	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[…]
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Form CO, Annex QP10.Q28.2, Annex RFI9.Q9. Annex RFI6.Q3. Annex RFI24.Q64.

(861) In order for market shares and additions of market share to provide first indications of market power and increases in market power, market shares ought to reflect the entry of competitors expected to exert significant competitive pressure in the future on the other firms in the market and the exit of competitors no longer expected to exert any competitive pressure. This approach is aligned with the Horizontal Merger Guidelines, paragraph 15, which provide that "*current market shares may be adjusted to reflect reasonably certain future changes, for instance in the light of exit, entry or expansion*"[1310]. The following paragraphs and tables thus show how market shares would look like once the exit of both competitors like the Russian-based carriers which stopped operating cargo air services between Europe and South Korea in 2022 and operators like Alitalia and Czech Airlines which ceased their operations, as well as the entry of competitors expected to exert significant competitive pressure in the future like MSC Air Cargo and Air Premia is accounted for. In the absence of more accurate

[1310] Horizontal Merger Guidelines, paragraph 15.

information as to which competitors would win and lose the most from the exit and entry of these operators, sales volumes have been allocated to all other carriers in proportion to their market shares.

(862) As set out in Table 47, according to the market shares data provided by the Parties without adjustment as to the market exit of some suppliers, the Parties are the first and second largest providers of cargo transportation services on the route Europe-South Korea: Korean Air had a market share of [20-30]% in 2018, [20-30]% in 2019, [30-40]% in 2020, [30-40]% in 2021, [30-40]% in 2022; while Asiana had a market share of [10-20]% in 2018, [10-20]% in 2019, [20-30]% in 2020 [10-20]% in 2021, and [10-20]% in 2022.[13111312] Qatar Airways followed with a market share of [5-10]-[10-20]%. DHL with [5-10]-[5-10]%, AirFrance KLM with [0-5]-[5-10]%, Singapore Airlines Group with [0-5]-[5-10]%, Volga-Dnepr Group with [0-5]-[0-5]%, Silk Way Group with [0-5]-[0-5]%, Turkish Airlines with [0-5]-[0-5]%, Aeroflot Group with [0-5]%, Lufthansa with [0-5]-[0-5]%, and Cargolux with [0-5]-[0-5]%. All other competitors had market shares below [0-5]% in each year.

(863) All Russian-based carriers stopped operating cargo air services between Europe and South Korea in 2022. Alitalia and Czech Airlines have also ceased operations on the routes. Alitalia stopped all its flight operations in October 2021 and the Parties stated that Czech Airlines is not expected to fly again on the routes in the foreseeable future.([1313]) To account for the market exit of those carriers, Table 49 shows the market shares of the Parties and their competitors for the years 2018-2021 where the sales volumes of the Russian carriers, Alitalia and Czech Airlines have been allocated to all other carriers in proportion to their market shares.

Table 49 – Europe to South Korea market shares by volume adjusted for the market exit of Alitalia, Czech Airlines and Russian airlines (based on the Parties' market share data)

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**
Qatar Airways	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[10-20]%
DHL	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air France-KLM	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Lufthansa Group	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Singapore Airlines Group	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%

1311 Including integrators, Russian carriers, Alitalia and Czech Airlines.

1312 As set out in Annex I, market share estimates for 2022 follow a different methodology than market share estimates for 2018-2021, and are therefore deemed less reliable.

1313 Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1.

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Ethiopian Airlines	[…]	[0-5]%	[…]	<[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Thai Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	<[0-5]%	[…]	<[0-5]%
Others	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**	

Source: Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1, Annex RFI9.Q9. Notes: see Table 47

(864) Should Russian carriers, Alitalia and Czech Airlines be excluded, and their volumes re-allocated across all other carriers proportionally as set out in Table 49, the Parties would equally be the two largest providers with slightly higher market shares, reaching [40-50]-[50-60]% combined, with Qatar Airways and DHL having market shares of [5-10]-[10-20]% and [5-10]-[5-10]% respectively and with a large number of other competitors with market shares below [5-10]% each.

(865) As discussed in section 8.11.7 below, MSC Air Cargo and Air Premia began operating on the route as of 2022 and 2023, respectively. To account for the market entry of those carriers, Table 50 shows the market shares of the Parties and their competitors for the years 2018-2021 taking into account the sales volumes of carriers that entered the market. Sales volumes of existing competitors were scaled down so that market totals did not change. Sales volumes of the Russian carriers, Alitalia and Czech Airlines have been allocated to all other carriers in proportion to their market shares.

(866) Should the Russian carriers, Alitalia and Czech Airlines be excluded and should Air Premia and MSC Air Cargo be included, the Parties would equally be the two largest providers with slightly higher market shares, reaching [40-50]-[50-60]% combined, with Qatar Airways and DHL having market shares of [5-10]% and [5-10]-[5-10]% respectively and with a large number of other competitors with market shares below [5-10]% each.

Table 50 – Europe to South Korea market shares by volume adjusted for the market exit of Alitalia, Czech Airlines and Russian airlines and for the (expected) market entry of MSC Cargo and Air Premia (based on the Parties' market share data)

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%
Combined	[…]	**[40-50]%**	[…]	**[40-50]%**	**[…]**	**[50-60]%**	[…]	**[40-50]%**
Qatar Airways	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
DHL	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air France-KLM	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Lufthansa Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Singapore Airlines Group	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Ethiopian Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air Premia	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Thai Airways International	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
Total	**[…]**	**[90-10]%**	**[…]**	**[90-10]%**	**[…]**	**[90-10]%**	**[…]**	**[90-10]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**	

Source: Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1, Annex RFI9.Q9. Annex RFI21.Q1 Notes: see Table 47. To reflect the entry of MSC Cargo and Air Premia, the Parties assumed the volumes and revenues of other carriers are to be scaled down so that the market total stays constant.

(867) The results of the Commission's market reconstruction, described in Annex I, broadly confirmed the market share estimates provided by the Parties. Table 51 shows the outcome of that market reconstruction in terms of the Parties' combined market share, both according to the Commission's methodology and according to Korean Air's methodology, compared to the market shares provided by the Parties. Further detail on those market shares are provided to the external advisors of Korean Air in the data room.

(868) A comparison of the Parties' combined market shares according to the Commission's market reconstruction and the Parties' submissions, as also set out in Table 51 below, shows that any deviations in market shares are very limited at [0-5]-[0-5] percentage points. Furthermore, the Commission's analysis shows that, although some competitors' shares may be overestimated and some others may be underestimated, these discrepancies were not substantial and mostly tended to cancel each other out, therefore not affecting the Parties' combined market shares significantly. The Commission's analysis also confirms the significantly fragmented structure of competition to the Parties, with very few competitors (thus except for the Parties) with a market share between 5-10%, and a long tail of smaller competitors. Therefore, the Commission will base its assessment on the market share estimates provided by the Parties.

Table 51 – Europe to South Korea market shares by volume (based on the competitors' data)

Carrier	Original volume-based market shares			Revised volume-based market shares Market sizes adjusted according to the Commission's methodology			Revised volume-based market shares Market sizes adjusted according to the Notifying Party's methodology		
	2019 (%)	2020 (%)	2021 (%)	2019 (%)	2020 (%)	2021 (%)	2019 (%)	2020 (%)	2021 (%)
Korean Air	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Asiana	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Combined	***[40-50]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission calculations based on sales data in terms of volumes received from the competitors. Additional details in Annex 1.

8.11.1.2. The Commission's assessment of the market structure

(869) The Transaction would change the market structure on the route Europe to South Korea significantly and lead to high combined market shares with a high increment in a stable market environment which has shown little variation over time.

(870) First, the Transaction would lead to the Merged Entity holding a very strong position on the route between Europe to South Korea. As set out in Table 47, the Parties combined have held market shares of [40-50]% in 2018, [40-50]% in 2019, [50-60]% in 2020, [40-50]% in 2021, and [50-60]% in 2022, with increments of [10-20]-[20-30]%. The Parties' market shares in 2020 and 2021 and to a certain extent also 2022 appear to have been influenced by potentially temporary effects of the Covid19 pandemic.

(871) Should Russian carriers, Alitalia and Czech Airlines be excluded and their volumes re-allocated across all other carriers proportionally, the Parties would remain the two largest providers with combined market shares of [40-50]-[50-60]%, with increments of [10-20]-[20-30]%. Should the entry of MSC Air Cargo and Air Premia be reflected, the Parties would remain the two largest providers with combined market shares of [40-50]-[50-60]%, with increments of [10-20]-[20-30]%. Under any of those methodologies, the Parties are the first and second largest providers of cargo air services on the route Europe to South Korea and would be the undisputed market leader after the Transaction, reinforcing Korean Air's already strong position.

(872) Second, as illustrated already above, the Transaction entails a significant increment in volume market shares of [10-20]-[20-30]%, which is indicative of a significant increase in market power due to the Transaction.

(873) Third, the merged entity's market position would be significantly larger than that of its next largest competitors: Qatar Airways and DHL would follow with significantly smaller shares with respectively around [5-10]% and between [5-10]% and [5-10]% from 2018 to 2021. All other competitors, including Lufthansa, Cargolux, Air France-KLM, Turkish Airlines and Finnair each have market shares below [5-10]% in each year.

(874) Fourth, with the exception of the impact of the Covid19 pandemic and of the Russian war against Ukraine (see section 8.10.1), the market structure has shown little variation over time which indicates that this concentrated market structure characterised by the Parties and a long fringe of smaller competitors is likely to persist in the future. Market shares between 2018 and 2021 have varied little: Korean Air's market share (excluding Russian carriers, Alitalia and Czech Airlines) has […]

between 2018 and 2021, while Asiana's market share has […] within the same timeframe. At the same time, Qatar Airways' market share, which is the third largest air carrier on the route, has remained stable from 2018 to 2021, and DHL's market share has […].([1314])

8.11.2. Closeness of Competition between the Parties

(875) The market investigation has shown that the most important factors for customers' choice for the purchase of air cargo transport services on the route between Europe and South Korea are offered frequencies (4.76)[1315], the reliability (4.64) and quality (4.43) of the offered services, the price (4.29) and main deck space availability on freighter aircraft (4.11). In particular for these factors of choice, Korean Air and Asiana are largely perceived as each other's closest competitor by market participants. Against that background and in light of the results of the market investigation, the Commission considers the Parties to be close competitors on the air cargo routes between Europe and South Korea for the following reasons:

(876) First, the Commission's market investigation also shows that market participants consider the Parties to be the two most competitive air cargo carriers on the routes between Europe and South Korea.[1316] The Parties are ranked as the number 1 and number 2 most competitive carriers on the routes by both competitors and customers.[1317] As regards the competitiveness of the Parties, both Asiana and Korean Air received the highest rates respectively for their overall competitiveness, the frequencies offered per week, the overall duration of the flights, the reliability in terms of flight times, the quality of the service in terms of cargo handling and the capacity offered on the route.[1318]

(877) Second, the Commission's market investigation shows that both customers and competitors overwhelmingly recognize the Parties as each other's closest competitor: The vast majority of competitors who replied to the Commission's market investigation questionnaire consider Asiana as Korean Air's closest competitor[1319] and Korean Air as Asiana's closest competitor.[1320] As regards customers, the majority of customers who have expressed their views in response to the Commission's market investigation questionnaire consider Asiana as Korean Air's closest competitor[1321] and Korean Air as Asiana's closest competitor.[1322] The results of the Commission's market investigation questionnaire also show that no other carrier is perceived as competing closely with either of the Parties.[1323] The air cargo customers the Commission spoke to as part of its market investigation widely confirmed that the Parties are each other's closest competitors.[1324] As an example, [a customer] explained that they currently still

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1314 Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1;

1315 Ranking: 1 = not important, 5 = very important, see replies to questions D.B.A.1 of Questionnaire 5 to customers.

1316 See e.g. Non-confidential minutes of the conference call with [a competitor].

1317 Replies to question D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1318 Replies to question D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1319 Replies to questions D.B.C.1-1 and D.B.C.1-2 of Questionnaire 2 to competitors.

1320 Replies to questions D.B.C.2-1 and D.B.C.2-2 of Questionnaire 2 to competitors.

1321 Replies to questions D.B.C.1-1 and D.B.C.1-2 of Questionnaire 5 to customers.

1322 Replies to questions D.B.C.2-1 and D.B.C.2-2 of Questionnaire 5 to customers.

1323 Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1324 See e.g. non-confidential minutes of the conference call with [a customer]; non-confidential minutes of a conference call with [a customer]; non-confidential minutes of a call with [a customer]; non-confidential minutes of a call with [a customer]; non-confidential minutes of a conference call with [a customer].

have a certain degree of bargaining power because they can switch between Korean Air and Asiana as needed, fearing that this will not be the case anymore post-Transaction when both Korean Air and Asiana – as the dominant providers on the Europe – South Korea route and each other's closest competitors – become one.[1325] […].[1326] Another customer considers the Parties to be each other's closest competitor due to (i) the frequencies of the flights with high capacity volumes being offered in both passenger flights and dedicated freighters, (ii) the quality of their service and (iii) the direct flights, which ensure quick deliveries and minimise the risks for the safety of the cargo.[1327]

(878) Third, the Parties […]. The Commission's review of internal documents has shown […]. For instance, in its […], Asiana […]. In that document, […].[1328]

(879) More precisely, market participants view the Parties as closest competitors and as the two most competitive air cargo carriers on the route Europe-South Korea for the following reasons:

(880) In the first place, the Parties' offer is very similar, in contrast to the Parties' claim that the majority of air cargo service providers offer services which do not significantly differ from the Parties' offer.[1329] Both offer scheduled, high-frequency, high-capacity air cargo flights in both freighter and passenger aircraft between Incheon and several European airports. Considering the airports they serve, the Parties closely compete from a geographic perspective. Asiana serves Brussels, Frankfurt, Milan, London and Vienna with regular scheduled dedicated cargo flights (in addition to cargo transportation in the belly-hold of its passenger flights from Frankfurt, Paris, Rome and Barcelona). Korean Air also serves Frankfurt, Milan, London and Vienna with dedicated cargo flights, among other European destinations, (in addition to cargo transportation in the belly-hold of its passenger flights from Frankfurt, Paris, Rome and Barcelona) and serves Amsterdam in the vicinity of Brussels. Accordingly the Parties state that "*Korean Air operates a long-haul network to Europe which covers several destinations throughout Europe. It covers Northern, Western, Southern, Middle and Eastern Europe. Neither Korean Air nor Asiana focuses on one specific region within Europe*".[1330] Which makes their offer similarly interesting for the same scope of customers in all European regions, in particular when considering that the vast majority of respondents to the market investigation indicated that they see some regional differences in the competitive conditions at the European end of the routes (see above, section 7.2.2).[1331]

(881) Due to the Parties' focus on similar airports and regions in Europe, their share of sales are very high when looking at specific countries in Europe. As set out in Table 52 by way of example for the year 2019, the Parties achieved a high combined share of the sales in certain geographic segments of the relevant market, namely in […].

1325 Non-confidential minutes of the conference call with [a customer].

1326 Non-confidential minutes of a conference call with [a customer].

1327 Non-confidential minutes of a call with [a customer]. See also in the same spirit non-confidential minutes of a call with [a customer].

1328 […], slide 12, Annex RFI3.Q3a – Annex QP8.Q4b.1.

1329 Korean Air's Response to the Commission's Statement of Objections, paragraph 633.

1330 Korean Air's Response to the Article 6(1)(c) Decision, paragraph 65.

1331 Replies to question C.B.4 of Questionnaire Q5 to cargo customers and to question C.B.5 of Questionnaire Q2 to cargo competitors. See also non-confidential minutes of the conference call with [a competitor].

Table 52 – Share of air cargo traffic to Korea in 2019

	Austria	Belgium	France	Germany	Italy	Spain
Korean Air	[20-30]%	[0-5]%	[30-40]%	[20-30]%	[30-40]%	[50-60]%
Asiana	[40-50]%	[40-50]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%
Combined	[60-70]%	[50-60]%	[40-50]%	[40-50]%	[60-70]%	[60-70]%
First competitor	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[0-5]%
Second competitor	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Third competitor	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Market size (tons)	[…]	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 18, question 1, Annex RFI18.Q.1.1

(882) In the second place, the Parties each offer direct (non-stop) services between Europe and South Korea whereas most competitors offer only indirect flights which are a less preferred option for customers.[1332] As an example, the market investigation reveals that *"[i]t depends on the specific customer needs, flying direct is the fastest option and most preferable option for time critical shipments"*.[1333] The Parties both offer direct freighter services between Europe and South Korea and are besides Lufthansa the only air cargo carriers who offer at the same time direct belly hold capacities and direct freighter capacities on the routes between Europe and South Korea. The Parties can therefore both offer to ship high volumes without transhipment at once and thus compete closely with each other compared to other carriers for direct air cargo transport services between Europe and South Korea. This is also reflected in very high shares in the market segment for direct air cargo transport volumes only, due to limited alternative offerings.

Table 53 - Volume market shares – Both direct freighter and belly-hold Services without transhipment – EEA-UK-CH – Korea, 2018 to 2021

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
Asiana	[…]	[30-40]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%
Combined	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**

1332 Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator]; Replies to question C.A.1 of Questionnaire Q2 to cargo competitors; Replies to questions C.A.1 of Questionnaire Q5 to cargo customers. See also Non-confidential minutes of a conference call with [an integrator].

1333 [An integrator's] reply to questions C.A.1 of Questionnaire Q2 to cargo competitors (ID9508).

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Air France-KLM	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Lufthansa Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Ethiopian Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air Premia	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Kalitta Air	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Parties' estimate in response to RFI24 (AnnexRFI24.Q5 – Sheet 51 - Additional cargo volume shares adjusted according to recent entry and exit)

(883) Contrary to the Parties' claim[1334], several customers explained during the market investigation that direct air cargo services are by far the preferred option for freight forwarders and their customers as stopover or transhipment flights carry the risk of cargo being damaged or delayed, which according to market participants is not an option for time-sensitive customers who would rather accept a higher rate in exchange for safety of goods and time effectiveness.[1335] In that respect, for example [a customer] explained that "*Other players on the air cargo market between Europe and South Korea are the Middle-Eastern (Etihad, Emirates and Qatar) and the Turkish carriers. However, they do not offer direct connections between Europe and East Asia, but only transhipment with a stop-over in their respective hubs. In the view of* [the customer]*, they all appear to be less relevant competitors due to the lack of direct services."*[1336] In contrast, Korean Air and Asiana compete closely with each other. This can be illustrated by the example of the customer […].[1337]

1334 Response to the Statement of Objections, paragraph 635 f.

1335 Non-confidential version of the minutes of a call with [a customer], in the same spirit, non-confidential minutes of a call with [a customer]; non-confidential minutes of a conference call with [a customer], non-confidential minutes of a call with [a customer].

1336 Non-confidential minutes of a call with [a customer].

1337 Non-confidential minutes of a conference call with [a customer].

(884) In the third place, the Parties are the two most important alternatives for freighter flights capable of transporting high volumes at once and of transporting all types of cargo which makes them compete very closely for such services.[1338] Thus, the Parties have very high shares at around or more than [50-60]% in the market segments for only freighter services as only a limited number of alternative carriers offering the same type of services are available:

Table 54 - Volume market shares – Freighter Services – EEA-UK-CH – Korea, 2018 to 2021

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Combined	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**
DHL	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Qatar Airways	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Atlas Air Worldwide	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Singapore Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Lufthansa Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Ethiopian Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
FedEx	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**

Source: Parties' estimate in response to RFI24 (AnnexRFI24.Q5 – Sheet 9 - Additional cargo volume shares adjusted according to recent entry and exit)

(885) In opposition to the Parties's assertion[1339], direct freighter services are the preferred option for some customers for various reasons: […] for example mainly uses Korean Air's freighter services because of the big volumes they need to ship out of Paris (CDG), and Korean Air is the only air carrier offering direct freighter services besides the next closest option with Asiana's freighter services departing from […].[1340] Also [a customer] prefers freighter aircraft, mainly due to the fact that available capacities and

1338 Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator].

1339 Response to the Statement of Objections, paragraph 639.

1340 Non-confidential minutes of a conference call with […].

the possible dimensions for cargo are limited in the belly-hold of passenger aircraft whereas in freighter aircraft larger, heavier and longer cargo can be loaded. According to [the customer], using the belly-hold of passenger aircraft also entails additional risks for freight forwarders, as passenger luggage has always priority over cargo for the airlines.[1341] [a customer's] customers are very often obliged to use freighter flights because a lot of their goods are classified as dangerous goods/cargo, which can only be transported on dedicated freighters or because the dimensions and weight of a large share of the goods transported for [the customer's] customers require dedicated freighter main deck capacity.[1342]

(886) In the fourth place and in opposition to the Parties' claim[1343], the Parties also compete relatively closely with each other regarding the high frequencies they are able to offer to customers[1344] as compared to their competitors:

Table 55 – Example of flight frequencies in a representative week between Europe and South Korea in summer 2019 (week of 5th August) and winter 2019/2020 (week of 2nd December)

Carrier	Summer 2019 w/c 5th August			Winter 2019/2020 w/c 2nd December		
	Belly	Freighter	Overall	Belly	Freighter	Overall
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Cathay Pacific Airways	[…]	[…]	[…]	[…]	[…]	[…]
Thai Airways International	[…]	[…]	[…]	[…]	[…]	[…]
Singapore Airlines Group	[…]	[…]	[…]	[…]	[…]	[…]
Lufthansa Group	[…]	[…]	[…]	[…]	[…]	[…]
Air France-KLM	[…]	[…]	[…]	[…]	[…]	[…]
Turkish Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Qatar Airways	[…]	[…]	[…]	[…]	[…]	[…]
Emirates	[…]	[…]	[…]	[…]	[…]	[…]
Etihad	[…]	[…]	[…]	[…]	[…]	[…]
Finnair	[…]	[…]	[…]	[…]	[…]	[…]
International Airlines Group	[…]	[…]	[…]	[…]	[…]	[…]
LOT Polish Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Cargolux Group	[…]	[…]	[…]	[…]	[…]	[…]
Philippine Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Silk Way Group	[…]	[…]	[…]	[…]	[…]	[…]
Delta Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Smart Wings	[…]	[…]	[…]	[…]	[…]	[…]
Total (excl. integrators)	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

1341 Non-confidential minutes of a conference call with [a customer].
1342 Non-confidential minutes of the conference call with [a customer].
1343 Response to the Statement of Objections, paragraph 640.
1344 Non-confidential minutes of the conference call with [an integrator].

Carrier	Summer 2019 w/c 5th August			Winter 2019/2020 w/c 2nd December		
	Belly	Freighter	Overall	Belly	Freighter	Overall
DHL	[…]	[…]	[…]	[…]	[…]	[…]
FedEx Express	[…]	[…]	[…]	[…]	[…]	[…]
UPS Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Total (incl. integrators)	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Parties' estimates. Notes: Airlines no longer active or unable to fly (e.g. Russian carriers) were excluded. The following airlines had no weekly scheduled flight in 2019: […]

(887) Accordingly, a customer stated that the Parties are the preferred option on the routes between Europe and South Korea as they have the most frequencies.[1345] Another customer explained that they have a long-lasting relationship with both Korean Air (35 years) and Asiana (20 years) and that in the past, Korean Air was more often used, while more recently he has more often relied on Asiana's services: "*Whether one or the other is chosen mostly depends on their frequency: Korean Air operates […] freighter services weekly compared to […] freighters of Asiana.*"[1346]

(888) In the fifth place, the market perceives the Parties as each other's closest competitors due to the high quality of their respective services.[1347] The market investigation reveals that the market's understanding of the concept "quality" mainly concerns the timeliness and reliability of the air cargo transport services which seem to be comparable between the Parties.[1348] Accordingly, a customer explained that "*they possess superior service and quality. The customs clearance is done before the shipment arrives – it allows for the cargo to be picked up very quickly. There are no delays with pick-ups as well. The Parties dominate in terms of quality of service.*"[1349] Another customer noted that "*when purchasing air cargo services from cargo carriers on the routes between Europe and South Korea, [a customer] prefers to purchase from Korean Air and Asiana, as they provide better services on the route than any other carrier*".[1350] According to this customer, the Parties have in particular an advantage with regard to their cargo terminal at ICN airport, which allows them to handle arriving cargo considerably faster and more efficient than any competitor.[1351] In addition, a market participant stated in relation to competitors who are offering indirect services that "*not all of them are of the same level of quality as Korean Air and Asiana as they offer longer connection times due to transshipment and some of them are considered as less reliable (e.g. cargo is not flown due to canceled flights)".*[1352] Moreover, the Parties' internal documents emphasize […], page 56). In contrast to the Parties' claim in their Response to the Letter of Facts[1353], both Korean Air and Asiana, as South Korean flag carriers, have a particular position in customers' perception and provide a similar level of quality that customers seem to value. Even though the Parties in their Response to the Letter of Facts uphold that as regards air cargo transport services brand loyalty is not a decisive factor,[1354] a customer is of the

1345 Non-confidential minutes of a call with [a customer].
1346 Non-confidential minutes of a call with [a customer].
1347 Non-confidential minutes of the conference call with [an integrator].
1348 Non-confidential minutes of the conference call with [an integrator].
1349 Non-confidential version of the minutes of a call with [a customer].
1350 Non-confidential minutes of the conference call with [a customer].
1351 Non-confidential minutes of the conference call with [a customer].
1352 Non-confidential minutes of the conference call with [a competitor].
1353 Response to the Letter of Facts, paragraph 139.
1354 Response to the Letter of Facts, paragraph 139.

opinion that "*If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand*".[1355] "*Korea is where Korean Air and Asiana have their hub and where they are strong*". "[Our] *customers have a preference for Korean air carriers, that is to say for Korean Air and Asiana, due to their nationality and high service level*".[1356] "[A customer] *predominantly opts for Korean Air or Asiana for air transport services between Europe and South Korea since both receive preferred operation handling in Korean airports. This is based on the placing of their aircraft within the ICN airport. Lufthansa and other carriers are placed further away from the operational headquarters on ICN airport grounds. This is a significant advantage that Korean Air and Asiana can offer, unlike all of their competitors*".[1357]

(889) In the sixth place, the Parties also seem to be competing closely in terms of prices: a competitor has indicated that the Parties have been "*fiercely competing in terms of pricing over the last years*" on the routes between Europe and South Korea.[1358] A customer describes these similarities between Korean Air and Asiana as follows: "*Korean Air and Asiana are very similar in that they offer direct and first in class services between Europe and Korea. Their "flown as booked" rating is very high, close to [90-100]% or [90-100]%; the average of the other carriers is lower at 87% or 88%. Korean Air in particular offers the highest-priced service for air cargo between Europe and Korea. Both Korean Air and Asiana do not negotiate much on the prices they offer and are well aware that they have a captive market in Korea. Accordingly, they charge high prices for their high quality service. While other air carriers have announced that they expect their yield to increase by around 30% in 2023, Korean Air and Asiana have only reduced their prices […] so far. The trade between Europe to Korea is their market, they are controlling it. The customers today accept that.*"[1359] "*[...] Other airlines, such as […] and […], immediately pass on fuel price increases or decreases to their customers. […]. They have loyal customers so they do not need to be flexible.*"[1360]

(890) Based on the above, the Commission considers the rivalry between the Parties as an important source of competition on the market and therefore concludes that the Parties are close – if not the closest – competitors on the market for air cargo services on the route from Europe to South Korea.[1361]

8.11.3. Competitive Constraints from competitors and ability of customers to switch suppliers

8.11.3.1. Competitive constraints from air cargo competitors

(891) Post-Transaction, customers of the Parties would have difficulties switching suppliers, as there are insufficient alternatives and the existing competitors' cargo operations only provide a limited competitive constraint on the Parties on the route from Europe to South Korea.

(892) First, as shown in section 8.11.1, the Parties are the first and second largest providers of air cargo transportation services on the route from Europe to South Korea. Besides the Parties, the market is highly fragmented, with no other carrier having market shares of 10% or above and only Qatar Airways and DHL consistently having market

1355 Minutes of call with [a customer].
1356 Minutes of call with [a customer].
1357 Minutes of call with [a customer].
1358 Non-confidential minutes of the conference call with [a competitor].
1359 Non-confidential minutes of a conference call with [a customer].
1360 Non-confidential minutes of a conference call with [a customer].
1361 Horizontal Merger Guidelines, paragraph 28.

shares above [5-10]%, between 2018 and 2021. These significantly smaller competitors are unlikely to provide a significant competitive constraint on the Parties post-Transaction.

(893) Contrary to what Korean Air argues in its Responses to the Commission's Statement of Objections and Letter of Facts,[1362] the Commission notes that its Phase I market investigation has only generated mixed results with regard to the customers' switching options. For example, among the eight customers replying that they would be able to easily switch to other air cargo carriers on the relevant routes, (i) there is one customer explaining that they do not in any event have influence on the choice of the air cargo carrier (which is rather decided by the freight forwarder),[1363] (ii) there is one customer expressing a wish to switch but nevertheless expecting the Transaction to have a negative impact on prices, capacity, quality of service and level of competition, and considering that post-Transaction "*it will be only one carrier (direct service) to ICN*",[1364] (iii) there is [a customer] which is in any event the biggest customer of [a competitor] and therefore does have a preferred alternative,[1365] (iv) there are two shippers of […] and […] who are both nevertheless excluding transhipment as a choice and considering the market being under-supplied,[1366] and finally (v) there is one customer with "*extremely high volumes*" who considers the Parties expensive, especially Korean Air that "*does not really move*" in pricing, but is nevertheless using them as "*the preferred option*".[1367]

(894) In view of the above mixed results, during Phase II, the Commission contacted and held conference calls with 10 of the Parties' largest customers, nine of whom have indicated that they use dual sourcing, *i.e.* sourcing between the two Parties either exclusively or for the far largest part of their volumes in order to obtain competitive prices:[1368]

(a) The first customer believes it has some bargaining power only because it can switch between Korean Air and Asiana as needed, while post-Transaction it will be impossible for freight forwarders to negotiate prices. According to the customer, the two Parties are the dominant providers on the Europe-South Korea route and the closest competitors with superior service and quality. The customer's major concern is that the Parties effectively own the market. If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand. Therefore, freight forwarders will have to pass-on the price increase or absorb it internally. The customer considers to absorb a price increase until it reaches a painful level and then pass on the price difference to its customers. At the same time, the customer is concerned that post-Transaction the Parties might decrease capacity and lower their quality, something that freight forwarders will have to accept.[1369]

1362 Responses of Korea Air to the Commission's Statement of Objections, paragraphs 662 *et seqq.*, and to the Commission's Letter of Facts, paragraph 141.

1363 Reply of [a customer] to question B.6-2 of Questionnaire Q5 to cargo customers (ID 9305).

1364 Reply of [a customer]to questions E.2 and E.4 of Questionnaire Q5 to cargo customers (ID 8391).

1365 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1366 Replies of [names of customers] to questions C.A-2, C.B-2 and D.B.B.6 of Questionnaire Q5 to cargo customers (IDs 8682 and 8444).

1367 Reply of [a customer] to question E.4 of Questionnaire Q5 to cargo customers (ID 7858), in conjunction with Minutes of call with [a customer].

1368 Horizontal Merger Guidelines, paragraph 31.

1369 Minutes of call with [a customer].

(b) The second customer used to be working with Korean Air. However, ever since Asiana started operating in Italy, the customer has been conducting business with Asiana (for about 80% of its volumes). The reason for switching was that Asiana offered a more attractive rate and an overall more competitive product. According to the customer, the only carriers offering the frequencies and capacity necessary for its requirements are the two Parties. The customer expects the Parties to decrease their frequencies, leading to price increases from / to South Korea. None of the other carriers will be able to fill up the retired capacity of the Parties.[1370]

(c) The third customer mainly uses Korean Air and Asiana to fly cargo from Europe to South Korea. South Korea is where Korean Air and Asiana have their hub and where they are strong. The customer mainly uses freighters for its shipments due to the larger capacity they offer. It is not therefore about the dimensions of the cargo but rather about the large volumes the customer needs to transport. The belly-hold capacity alone would be insufficient. At the same time, the customer's end customers prefer direct flights, i.e. without transhipment, for security reasons. Both Korean Air and Asiana do not negotiate much on the prices they offer and are well aware that they have a captive market in South Korea. Accordingly, they charge high prices for their high-quality service. The customers accept that and the Parties know they have loyal customers so they do not need to be flexible. The customer's main volumes is with Korean Air because it offers both freighter and belly-hold capacity out of Paris. When Korean Air does not have sufficient volumes available, the customer considers Asiana, but also Cargolux and Lufthansa.[1371] These appear to be the only alternatives the customer has on the route from Europe to South Korea.

(d) The fourth customer has a long-lasting relationship with both Korean Air (35 years) and Asiana (20 years). In the past, Korean Air was more often used, while more recently the customer has been relying on Asiana's services more often. Whether one or the other is chosen mostly depends on their frequency: Korean Air operates […] freighter services weekly compared to […] freighters of Asiana.[1372] The Commission notes that, in any event, and as shown in Table 55 above, no other air cargo carrier operates as many weekly frequencies of freighter aircraft as the Parties, and therefore the customer's choice besides the two Parties is extremely limited.

(e) The fifth customer uses Korean Air, Asiana, Cargolux and DHL. However, ever since DHL […], the customer has not used DHL. The customer mainly needs direct flights and dedicated freighter capacity as it primarily ships goods on closed ULD pallets, which necessitate main-deck capacity and cannot be shipped in the belly-hold of passenger aircraft. Given its strong preference for direct flights and its need for high frequencies, the customer regards Korean Air as the best carrier, with Asiana and Cargolux following, yet with an insufficient number of frequencies. DHL Aviation could also be a choice in the past but, in any event, it only offers leftover capacity in no comparable service or quality level. For the customer, Cargolux is therefore the only possible substitute to the Parties, even though its capacity cannot meet the customer's demand. In the past, the customer had tried to use other carriers, such as Qatar Airlines, Emirates,

1370 Minutes of call with [a customer].
1371 Minutes of call with [a customer].
1372 Minutes of call with [a customer].

Singapore Airlines, China Eastern, Air China or Silk Way West Airlines, but the choice was not satisfactory.[1373]

(f) The sixth customer moves significant volumes of cargo from Germany to South Korea, mainly with the two Parties. Lufthansa, Cargolux, MSC, DHL Aviation and Silk Way West Airlines are also used but to a lesser extent. The customer has at hand some other carriers in case the market changes drastically, including Turkish Airlines, or the Gulf carriers. The customer does not consider Singapore Airlines, Thai Airways International or any of the Chinese airlines as important options, as they can only provide belly-hold capacity between Europe and South Korea and they actually transport very few volumes given that they are focused on their own markets in Asia. Given that the two Parties offer both passenger and dedicated freighter flights on a direct basis and with daily frequencies, they are the closest competitors and the best option available on the market. Therefore, the customer mainly ships its cargo to South Korea with the Parties, and to a lesser extent with Cargolux, Lufthansa, DHL Aviation and MSC because these are also direct services. However, (i) Cargolux is only flying from Luxembourg (as opposed to Germany), (ii) Lufthansa has much less capacity as it divides it between South Korea and Japan, (iii) DHL Aviation's product is offered on a deferred basis, where the cargo will be transported to South Korea with longer lead times due to DHL prioritising its door-to-door business, and (iv) MSC only has […] flights per week. All in all, having the two Parties in particular gives a lot of flexibility to the customer, which is important for its quality of service.[1374]

(g) The seventh customer uses mainly the Parties and considers transhipment carriers as "*not a viable option*". The customer considers the Parties to be each other's closest competitor due to (i) the frequencies of the flights with high capacity volumes being offered in both passenger flights and dedicated freighters, (ii) the quality of their service, and (iii) the direct flights, which ensure quick deliveries and minimise the risks for the safety of the cargo. Second-tier choices are Cargolux, DHL Aviation and Air France/KLM. However, (i) Cargolux only flies from Luxembourg, (ii) DHL Aviation has a lower quality of service as it always prioritises its door-to-door business and in any event cannot be considered an alternative to the Parties due to its limited capacity offering for airport-to-airport general cargo transport, and (iii) Air France/KLM has limited capacity, as well. "*The scale offered by other carriers is simply not enough for forwarding big volumes*" (emphasis added). In addition, "*Lufthansa is more focused on Japan rather than South Korea, as rates to Japan are much higher. Thus, the freight aircraft destined to Japan (and South Korea) is made up of […]. The only reason Lufthansa flies to South Korea is to pick up cargo meant for export to Europe, because Japan itself has no export shipment. It follows that Lufthansa cannot be relied on since the capacity of Lufthansa's cargo aircraft for ICN is massively limited*". Overall, the customer is concerned that post-Transaction, the Parties may discontinue the 7 freighter aircraft of Asiana currently serving Frankfurt. In such case, the customer is concerned that all second-tier choice carriers together would not have the necessary scale to replace that.[1375]

1373 Minutes of call with [a customer].

1374 Minutes of call with [a customer].

1375 Minutes of call with [a customer].

(h) The eighth customer predominantly opts for Korean Air or Asiana for air transport services between Europe and South Korea since both receive preferred operation handling in South Korean airports. Lufthansa and other carriers are placed further away from the operational headquarters on ICN airport grounds. Overall, the customer considers DHL, Lufthansa, Air France/KLM or the Chinese carriers as somewhat less good alternatives to the Parties.[1376]

(i) The ninth customer ships cargo between Germany and Incheon. To this end, the customer uses Korean Air and Asiana for 90% of its freight volumes, and Lufthansa, Cargolux, Etihad and Turkish Airlines for the remaining 10%. The customer mainly uses direct flights for its freight forwarding services since that is what customers seek out first and foremost. "*Accordingly, around 90% of* [the customer]*'s business constitute direct flights, 70% of which are handled by Asiana and 30% by Korean Air*". According to the customer, Korean Air and Asiana dominate the offer of direct flights from Germany. Lufthansa also offers direct flights but with less frequencies and capacity, whereas Cargolux is not a good option due to limited capacity and its service being offered only from Luxembourg. The customer has indicated to the Commission that Korean Air is well aware of the fact that post-Transaction there will be much less options available. According to the customer, "*[…]*". Finally, the customer considers that Korean Air's prices have been kept lower exactly "*because of the counter-offer from Asiana*" (emphasis added).[1377]

(895) Second, the Commission's market investigation shows that most other air cargo carriers are perceived as rather distant competitors to the Parties. Only a small share of respondents named any other carrier as Korean Air's closest competitors on the route, with Asiana receiving the overwhelming majority of mentions. Amongst the Parties' competitors, Lufthansa and Cargolux were most often named as Korean Air's closest competitor on the route.[1378] Similarly, the overwhelming majority of respondents named Korean Air as Asiana's closest competitors, with Lufthansa being the only other competitor named more than once by competitors or customers.[1379]

(896) Third, the Parties' competitors are not able to provide a similar service of non-stop, high-frequency and high capacity air cargo transport on dedicated freighters and passenger carriers from a significant number of European destinations at a reliable quality to ICN airport, that would be similar to the service both Asiana and Korean Air are currently providing.

(897) In the first place, and contrary to Korean Air's submission in its Response to the Commission's Statement of Objections,[1380] all other competitors compete with much fewer frequencies than the Parties combined and/or from fewer airports in Europe and accordingly offer significantly less capacity and less choice of airports. Table 55 above shows the flight frequencies in a representative week in summer 2019 (week of 5th August) and winter 2019/2020 (week of 2nd December). The considerable difference between the Parties' high-frequency and high-capacity proposition and that of their competitors can be observed for both the carriers that most closely resemble the Parties' offer, like Cargolux and Lufthansa, as well as passenger belly-hold carriers

1376 Minutes of call with [a customer].
1377 Minutes of call with [a customer].
1378 Replies to questions D.B.C.1 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.
1379 Replies to questions D.B.C.2 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.
1380 Response of Korean Air to the Commission's Statement of Objections, paragraphs 664-665.

and transhipment carriers. Moreover, the carriers with the most frequencies are those with a proposition somewhat inferior to that of the Parties, like Cathay Pacific Airways, Thai Airways, and Singapore Airlines. The closest competitors have significantly fewer frequencies than the Parties.

(898) For instance, the Parties combined offer [...] times more weekly frequencies than Lufthansa and […] times more than Cargolux. If only freighters are considered, the Parties combined offer […] times more weekly frequencies than Cathay Pacific Airways, […] times more than Lufthansa, […] times more than Turkish Airlines, […] times more than Qatar, […] times more than Cargolux, and […] times more than Silk Way. If only non-freighter carriers are considered, the Parties combined offer […] more weekly frequencies than Cathay Pacific Airways, […] times more weekly frequencies than Thai Airways, […] times more than Singapore Airlines, […] times more than Lufthansa, […] times more than Air France/KLM, […] times more than Turkish Airlines, […] times more than Qatar, Emirates, Etihad, Finnair and IAG, […] times more than LOT Polish Airlines, and […] times more than Philippine Airlines.

(899) Competitors responding to the phase I market investigation confirmed that frequency is very important for customers, rating frequency of regularly scheduled flights as the third most important criterion for customers when choosing an air cargo carrier on the route (out of 14).[1381] Furthermore, customers rated frequency of regularly scheduled flights as the single most important criterion when choosing an air cargo carrier on the route.[1382] As one customer states, "*the more flights, the shorter the total lead time from moment of availability of the cargo. Plus more back up flights in case cargo is off loaded*".[1383]

(900) Competitors and customers responding to the market investigation have both ranked Korean Air and Asiana as the most and second most competitive air carriers on the route in terms of frequencies offered per week. Respondents considered Lufthansa and Qatar Airways as the most competitive competitors of the Parties in terms of frequencies. However, in view of the available evidence presented in section 8.11.2 above, Lufthansa and Qatar Airways are not particularly close competitors to either of the Parties. Cathay Pacific and Singapore Airlines, which according to the Parties estimates offer the most frequencies of competitors on the route were ranked as considerably less competitive in terms of frequencies on the route than the Parties and a significant number of competitors,[1384] indicating that respondents to the market investigation did not consider them to be competing particularly closely, even in this regard.

(901) The advantage of Korean Air and Asiana over their competitors due to the higher frequencies offered is confirmed by competitors. According to [a competitor], "[t]*he more frequencies we offer our customers the higher the attractiveness which in turn drives higher demand for our services*".[1385] Similarly, according to [a competitor], "*airlines which have more frequencies into South Korea have more advantages as they can be more flexible in terms of pricing*".[1386]

1381 Replies to question D.B.A.1. of Questionnaire Q2 to cargo competitors.
1382 Replies to question D.B.A.1. of Questionnaire Q5 to cargo customers.
1383 Reply of a customer to question D.B.A.1. of Questionnaire Q5 to cargo customers (ID: 8244).
1384 Replies to questions D.B.B.2. of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.
1385 Non-confidential version of RFI 2 to [a competitor].
1386 Non-confidential version of RFI 2 to [a competitor].

(902) According to the market investigation and as shown in section 8.11.2, customers prefer carriers which offer a high frequency on the route.[1387] According to one competitor "*frequency is paramount*".[1388] As shown above, the Parties' competitors are unable to provide a similar service to the Parties in this regard.

(903) In the second place, despite Korean Air's submissions in its Responses to the Commission's Statement of Objections and Letter of Facts,[1389] the service offered by transhipment carriers, namely the ones that are unable to offer direct flights on the route, is considered an inferior – to some extent – service compared to flights without transhipment, such as those of the Parties.

(904) On the route from Europe to South Korea, carriers which exclusively transport air cargo with transhipment flights are Qatar Airways, Turkish Airlines, Singapore Airlines, Silk Way Group, Emirates, Etihad, Cathay Pacific, China Southern Airlines, China Airlines and Thai Airways International.

(905) As shown in sections 7.2.1.5 and 8.11.2, respondents to the market investigation explained that many customers prefer direct services or multi-stop services without transhipment. In particular, given the delay involved with transhipment, direct flights appear to be more suitable in certain cases in which the total transport time should be as short as possible such as for very time-sensitive products (*e.g.* animals, perishable goods or pharmaceuticals). Many customers would avoid services with transhipment in general, in view of risks of delays, damage or loss of cargo.

(906) Consequently, except for Qatar Airways, transhipment carriers have been rated as considerably less competitive than the Parties by respondents to the market investigation on the route from Europe to South Korea.[1390] According to competitors having responded to the market investigation, the Parties' overall competitiveness was rated as 4.89/5 (Korean Air) and 4.67/5 (Asiana) on the route Europe-South Korea, with 1 being considered 'very weak' and 5 being considered 'very strong'. Except for Qatar Airways (4.38/5), other transhipment carriers were rated as considerably less competitive by their competitors, namely Turkish Airlines (3.86/5), Silk Way Group (3.57/5), Emirates (3.5/5), Etihad (3.5/5), Cathay Pacific (2.5/5), China Southern Airlines (2.4/5) and China Airlines (2.2/5).[1391] Similarly, customers having responded to the market investigation rated the Parties as the most competitive carriers on the route, also vis-à-vis other transhipment carriers, with the following ratings having been given: Korean Air (4.06/5), Asiana (3.83/5), Qatar Airways (3.71/5), Turkish Airlines (3/5), Silk Way Group (2.86/5), Emirates (3.12/5), Etihad (3.18/5), Cathay Pacific (2.38/5), China Southern Airlines (2.23/5) and China Airlines (2.27/5).[1392]

(907) The majority of competitors responding to the phase I market investigation confirmed that multi-stop flights with transhipment exert a lower competitive pressure on flights not involving transhipment on the route.[1393] Similarly, the majority of customers responding to the phase I market investigation also confirmed that multi-stop flights with transhipment exert somewhat or significantly lower competitive pressure on

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1387 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a competitor].

1388 Non-confidential minutes of the conference call with [a competitor].

1389 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 666-691, and to the Commission's Letter of Facts, paragraph 145.

1390 Replies to questions D.B.B.2 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.

1391 Replies to question D.B.B.2 of Questionnaire Q2 to cargo competitors.

1392 Replies to question D.B.B.2 of Questionnaire Q5 to cargo customers.

1393 Replies to question D.B.C.4. of Questionnaire Q2 to cargo competitors.

flights not involving transhipment on the route.[1394] One customer stated that "*the level of comeptitive* [sic] *by stop over service with transipment* [sic] *VS direct non stop is low. customers much prefer direct flight*[s]".[1395] Another customer stated that [m]*ulti stop flights with trans shipping are little less competitive because of longer transport duration*".[1396]

(908) The competitive advantage of being able to offer direct flights on the route was confirmed by the Parties' competitors and other market participants. Specifically, [a competitor] remarked that due to their need to use their hub to tranship goods between Europe and South Korea "[w]*e are a small player in this market*."[1397] [A competitor] which also offers direct flights on the route confirms that "*direct flights are preferred by customers and are presumably premium priced*".[1398] [A competitor] stated that as a rule of thumb, "*direct carriers have more advantages over non-direct carriers*".[1399] In addition, [a competitor] does not consider itself to be a significant competitive constraint on the Parties on the route from Europe to South Korea because they do not operate direct flights between Europe and South Korea.[1400] According to [an integrator], "*direct flights between Europe and South Korea (both directions) tend to be faster and more secure than indirect flights and therefore more appropriate for time-sensitive cargo*", adding that indirect cargo involving transhipment "*faces the issues of missing the connecting leg of the transport or losing the shipment at the transit location*" and concluding that "[d]*ue to the superior service offered, direct flights between Europe and South Korea are more expensive than indirect flights with transhipment*".[1401] Furthermore, [a competitor], which only operates transhipment flights, indicates that "*carriers offering nonstop service between ICN and European cities will have an advantage as they can offer a single flight/trucking solution",* further specifying that "[t]*he more time-sensitive the cargo, the more acute this advantage is*", whereas for less time-sensitive cargo, [the competitor's] offer may be competitive "*subject to a quality-adjusted price*".[1402] [A competitor] also confirms this, stating that "[d]*irect operators are usually the preferred choice given shortest flying time (point to point) & offer a better speed to market versus transhipment operators*."[1403]

(909) Customers have also confirmed their preference for flights not involving transhipment in the market investigation.[1404] In addition to the customers quoted in section 7.2.1.5 and as quoted in section 8.11.2., one customer remarked that carriers offering transhipment connections on the route, such as Etihad, Emirates, Qatar Airways and Turkish Airlines "*all appear to be less relevant competitors due to the lack of direct services."*[1405]

(910) In paragraphs 670-671 of its Response to the Commission's Statement of Objections, Korean Air uses feedback from customers to show that the two services, *i.e.* direct

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1394 Replies to question D.B.C.4. of Questionnaire Q5 to cargo customers.
1395 Reply of a customer to question D.B.C.4. of Questionnaire Q5 to cargo customers. (ID: 8606)
1396 Reply of a customer to question D.B.C.4. of Questionnaire Q5 to cargo customers (ID: 7944).
1397 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID: 11675).
1398 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID: 11863).
1399 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).
1400 Non-confidential minutes of the conference call with [a competitor].
1401 Non-confidential minutes of the conference call with [an integrator].
1402 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1403 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).
1404 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].
1405 Non-confidential minutes of a call with [a customer].

flights and flights with transhipment, are substitutable. The Commission notes that indeed transhipment carriers compete on the same market with direct-service carriers, such as the Parties. This is also reflected in the market definition, section 7.2.1.5, above. However, they are not as close competitors as the Parties are to each other, given that direct and transhipment services typically cater for different customers' needs. [A customer's] full quote gives a more clear picture: "*According to [the customer], when it comes to transport of goods between Europe and South Korea, direct flights, indirect flights and also transhipment flights are all valid options. It, however, hugely depends on clients' preferences and pricing which of all available options is in the end the most suitable. [The customer] therefore makes its choice on a case-by-case basis according to its customers' needs. Given that airfreight is quite expensive, it is mostly used for time-sensitive goods and for high-value cargo (e.g. server racks). Pharmaceuticals are a characteristic example in this regard, because clients look for short transit time, leaving direct flights (without stopover or with stopover but without transhipment) as the only realistic option. Also for high value products or sensitive cargo customers prefer to avoid transhipment. In contrast, customers will opt for (usually cheaper) indirect connections with transhipment when the cargo consists of low-value and no time-sensitive goods*".[1406] In paragraph 145 of its Response to the Commission's Letter of Facts, Korean Air insists that [the customer's] quote confirms Korean Air's view that direct and transhipment flights compete as closely because all options are viable alternatives and ultimately a choice is made on a case-by-case basis. The Commission notes that indeed all such options compete on the same market, albeit many times catering for different needs. Therefore, transhipment carriers are of a somewhat different nature of that of the Parties.

(911) Last but not least, the Commission's market investigation clearly contradicts Korean Air's submission in its Responses to the Commission's Statement of Objections and Letter of Facts that price – and not the number of stops – is the key driver for customers when choosing an air cargo carrier.[1407] The Commission notes in this respect that price was actually ranked fourth (4.29) by customers, after the frequencies (4.76), the reliability in terms of flight times (4.64) and the quality of cargo handling (4.43).[1408]

(912) In the third place, and contrary to what Korean Air argues in its Responses to the Commission's Statement of Objections and Letter of Facts,[1409] passenger carriers which transport air cargo only in the belly-hold of the passenger aircraft are more distant competitors and only exert a limited competitive constraint on the Parties (offering both freighter and belly space capacity). On the route from Europe to South Korea, carriers which only transport belly-hold cargo are […], […], […], […], […][1410] […],[1411] and […].

(913) As indicated in section 8.11.2, there are significant downsides of carriers carrying only belly-hold cargo, compared to those offering dedicated freighter flights. Some goods cannot be transported in the belly-hold of a passenger aircraft, such as dangerous or

1406 Minutes of call with [a customer].

1407 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 669 *et seqq.*, and to the Commission's Letter of Facts, paragraph 144.

1408 See replies to question D.B.A.1 of questionnaire Q5 to cargo customers.

1409 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 692-700, and to the Commission's Letter of Facts, paragraph 146.

1410 Replies to question B.1. of Questionnaire Q2 to cargo competitors (IDs 8577, 7692, 7951, 9444, 8596).

1411 Non-confidential minutes of the conference call with [a competitor].

oversized goods.[1412] In addition, the belly-hold of a passenger aircraft offers a significantly lower capacity (maximum load: 25 tons) than freighter (maximum load: 100 tons).[1413] This makes belly-hold air cargo transport services less attractive in particular for larger customers (such as major freight forwarders), which often need to transport significant volumes at a time.[1414] Furthermore, if necessary, passenger airlines will prioritize passenger baggage over air cargo, which means that capacity available on passenger aircraft is not always predictable and will depend on the amount of passenger baggage on the respective aircraft. This may also mean that passenger airlines leave behind cargo in order to transport passenger baggage. As [a competitor] states, "[f]*or passenger aircraft, passenger baggage takes priority over any belly cargo*."[1415] This is confirmed by [a competitor] with regard to its own passenger flights between South Korea and […], by which all cargo between Europe and South Korea is being transported, stating that "[a competitor] *cargo needs to share available capacity with passengers' baggage. Subject to space availability wherein the passengers' baggage takes precedence, cargo is uplifted only on an ad-hoc basis and there is no specific or fixed cargo allocation. Accordingly,* [they] *are unable to determine the cargo capacity due to the fact that* [their] *passenger flights could be full because of belly-hold space constraints rather than weight*".[1416]

(914) In the same vein, [a competitor] considers that "*the operation of freighters has an advantage as it is less limited than belly hold*" and "*Flight Flight times for passenger services are optimized to fit passenger demand/requirements, the transport of cargo on such services is a resulting by-product*",[1417] which confirms how operators only relying on belly-hold capacity tend to be less competitive than operators that can also rely on freighters and that cargo-related considerations are generally subordinated to passengers-related considerations for passenger carriers.

(915) [A competitor] confirmed that only being able to transport belly-hold constitutes a competitive disadvantage on the route, due the difference in payload of a dedicated freighter and the inability to transport certain larger goods on passenger aircraft.[1418] [The competitor] actually considers freighter capacity and belly-hold capacity as "*different sectors of the air freight market. It is caused by different aircraft capacity, payload vs. operating costs. We have less ability to transport huge parcels if they require all-cargo aircraft.* […] *Usually all cargo transportation is more expensive than belly cargo due to cost & revenue structure*".[1419]

(916) [A competitor] further submits that being able to offer both belly space and freighter capacity makes them more competitive because they are able to offer cost-efficient and tailor-made solutions to customers as long as there is no restriction on capacity being offered.[1420] Therefore, being able to offer both freighter and belly space capacity, like the Parties do, is a significant competitive advantage over carriers offering just the belly.

1412 Form CO, paragraphs 192, 232. see also: Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (11106); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential Minutes of the conference call with [a competitor].

1413 Form CO, paragraph 362.

1414 See for example paragraph (894).

1415 Response of [a competitor] to RFI 2, question 28 (ID 11132).

1416 Response of [a competitor] to RFI 1, question 8 (ID 11203).

1417 Response of [a competitor] to RFI 2, questions 46 and 50 (ID 12886).

1418 Response of [a competitor] to RFI 1 (ID 11689).

1419 Response of [a competitor] to RFI 1, questions 40-41 (ID 11689).

1420 Response of [a competitor] to RFI 2, question 46 (ID 11147).

(917) Furthermore, [a competitor] states that "*Operating only passenger aircraft, where cargo is transported in the belly of the aircraft, will limit the flexibility in where to deploy the aircraft. The booking window for passengers is longer than for cargo. As such the flight schedules for the passenger aircraft are already set up well before the cargo booking window opens. The limited flexibility will limit the competitiveness. Furthermore the destinations within the network will depend both on the passenger demand and the cargo demand. As such operating passenger flights only will in practice limit the ability to deploy these aircraft into cargo hubs where there is limited passenger demand. Additionally different cargo may be able to be carried on the upper deck, further limiting the competitiveness of carriers operating only passenger aircraft*." And again, "[d]*ifferent cargo may be carried on the upper deck or in freighters than purely in the belly hold of passenger aircraft, possibly impacting the price*".[1421]

(918) In addition, Boeing confirms the Commission's views in its World Air Cargo Forecast 2022-2041.[1422] In page 10, it is explained that (i) belly-hold capacity cannot serve all types of cargo or all freight forwarders' needs, and that (ii) payload-range considerations on passenger airplanes may limit cargo carriage, increasing the risk that cargo will fail to arrive on time.

(919) It should be noted that a customer has indicated as part of the market investigation, that it perceives the often higher frequency of passengers flights compared to freighters favourably.[1423] However, as shown in this section, the Parties together are able to offer a higher frequency than all passenger carriers on the route, not least because they also operate a significant number of passenger flights on the route, in addition to their dedicated freighter flights.

(920) For the reasons stated above, carriers which only transport belly-hold cargo on the route have been rated as considerably less competitive than the Parties by respondents to the market investigation on the route from Europe to South Korea.[1424] Competitors having responded to the market investigation rated the Parties as the most competitive carriers on the route, also vis-à-vis pure belly-hold carriers. Competitors have given the following competitiveness ratings: Korean Air (4.89/5), Asiana (4.67/5), AirFranceKLM (3.75/5), Finnair (2.67/5), LOT Polish Airlines (2.83/5), Emirates (3.5/5), Etihad (3.5/5), and China Airlines (2.2/5).[1425] Similarly, customers having responded to the market investigation rated the Parties as the most competitive carriers on the route, also vis-à-vis belly-hold carriers, namely: Korean Air (4.06/5), Asiana (3.83/5), AirFranceKLM (3.13/4), Finnair (2.77/5), LOT Polish Airlines (2.31/5), Emirates (3.12/5), Etihad (3.18/5), and China Airlines (2.27/5).[1426]

(921) On the basis of the above considerations, the Commission notes that the few alternatives that can provide services similar to the Parties to a certain extent taking

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1421 Response of [a competitor] to RFI 1, questions 40-41 (ID 11106).

1422 Available online (https://www.boeing.com/resources/boeingdotcom/market/assets/downloads/Boeing_World_Air_Cargo_Forecast_2022.pdf) (ID 12795).

1423 Non-confidential minutes of the conference call with [a market participant].

1424 The Commission also notes that Korean Air has misinterpreted the results of the market investigation by making the following submission in paragraph 699 of its Response to the Commission's Statement of Objections: "many competitors rated the factor "access to passenger aircraft with belly-hold capacity" highly in response to the Commission's questionnaires". The Commission clarifies that competitors' rating of "access to passenger aircraft with belly-hold capacity" is only relevant for the assessment of barriers to entry or expansion. See question D.B.D.1 of questionnaire Q2 to cargo competitors.

1425 Replies to question D.B.B.2 of Questionnaire Q5 to cargo customers.

1426 Replies to question D.B.B.2 of Questionnaire Q5 to cargo customers.

into account the nevertheless low frequencies, *i.e.* freighter capacity with direct flights, namely [names of competitors], are in any event of limited constraint to the Parties because (i) [a competitor's] capacity is shared with cargo destined to […],[1427] (ii) [a competitor's] capacity is restricted due to traffic rights limitations affecting its hub in […], (iii) [a competitor] cannot be considered a sufficient or credible competitive constraint given its extremely low market share on the route Europe to Korea being below or equal to 1% throughout the years 2018, 2019, 2020 and 2021, and (iv) [an integrator's] airport-to-airport offering is only a "*filler product*",[1428] while most of its capacity is dedicated to its core door-to-door small package business.

(922) The Table below therefore provides an illustration of the alternatives the Parties' customers would have post-Transaction. Contrary to Korean Air's submissions in its Responses to the Commission's Statement of Objections and Letter of Facts,[1429] it appears that virtually no other competitor can imitate the Parties' competitive offering, *i.e.* high frequency, high capacity (both freighter and belly-hold), and direct service without transhipment.

Table 56 - Air cargo carriers' overview

Cargo carrier	Market share in 2019[1430]		Frequencies (illustrative example from a representative week in 2019)[1431]		Route type
	Europe to South Korea	South Korea to Europe	Freighter	Belly-hold	
Korean Air	[20-30]%	[20-30]%	[…]	[…]	[…]
Asiana	[10-20]%	[10-20]%	[…]	[…]	[…]
Qatar Airways	[5-10]%	[10-20]%	[…]	[…]	[…]
DHL	[5-10]%	[0-5]%	[…]	[…]	[…]
Lufthansa Group	[0-5]%	[5-10]%	[…]	[…]	[…]
Cargolux Group	[0-5]%	[5-10]%	[…]	[…]	[…]
Ethiopian Airlines[1432]	<[0-5]%	[…]	[…]	[…]	[…]
Air France-KLM	[5-10]%	[5-10]%	[…]	[…]	[…]
Singapore Airlines Group	[5-10]%	<[0-5]%	[…]	[…]	[…]
Silk Way Group	[0-5]%	[0-5]%	[…]	[…]	[…]
Turkish Airlines	[0-5]%	[5-10]%	[…][1433]	[…]	[…]
Finnair	[0-5]%	[0-5]%	[…]	[…]	[…]
Emirates	[0-5]%	[0-5]%	[…][1434]	[…]	[…]
Etihad	[0-5]%	[0-5]%	[…]	[…]	[…]
LOT Polish Airlines	<[0-5]%	[0-5]%	[…]	[…][1435]	[…]

1427 This is also observed by Asiana in its internal business documents, *e.g.* "[…]".

1428 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1429 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 663 *et seqq.*, and to the Commission's Letter of Facts, paragraphs 142-143.

Cargo carrier	Market share in 2019[1430]		Frequencies (illustrative example from a representative week in 2019)[1431]		Route type
	Europe to South Korea	South Korea to Europe	Freighter	Belly-hold	
Thai Airways International	[0-5]%	[0-5]%	[…]	[…]	[…]
MSC Cargo[1436]	[0-5]%	[…]	[…]	[…]	[…]
International Airlines Group[1437]	<[0-5]%	[0-5]%	[…]	[…]	[…]
All Nippon Airways	<[0-5]%	[0-5]%	[…]	[…]	[…]
FedEx	<[0-5]%	[0-5]%	[…]	[…]	[…]
UPS	<[0-5]%	[0-5]%	[…]	[…]	[…]

Source: Summary of the Parties' market shares and frequencies estimates and the results of market investigation, sections 8.11 and 8.12.

(923) In the fourth place, and contrary to Korean Air's submission in paragraphs 701-710 of its Response to the Commission's Statement of Objections, the Commission's market investigation shows that unscheduled cargo flights represent a weak constraint on the Parties' cargo operations. Customers still favour scheduled cargo flights which provide a more stable as well as more reliable option.[1438]

(924) With regard to charter cargo flights, the Commission considers that they only pose a weak competitive constraint on the Parties, given that (i) they are only offered on an opportunistic basis and therefore customers cannot rely on them for their entire demand, (ii) they are typically booked through a hiring arrangement with a particular customer, thus other customers do not have access to their capacity, and (iii) they have different pricing.[1439] On the demand side, customers replying to the Commission's market investigation explained that due to their higher pricing, charter cargo flights are mostly used exceptionally, either for a specific big project with high volumes where the customer would in any event book the entire capacity of the aircraft or during the Covid19 pandemic due to the irregularities it brought to the market.[1440] On the supply

1430 SO, tables 42 and 57.

1431 SO, tables 45 and 62.

1432 [A competitor's] reply to questions 5 and 27.1 of the Commission's RFI 1 (ID 10129); Minutes of call with [a competitor].

1433 Non confidential minutes of the conference call with [a competitor].

1434 Non confidential minutes of the conference call with [a competitor].

1435 Non confidential minutes of the conference call with [a competitor].

1436 Minutes of call with [a competitor].

1437 [A competitor's] reply to questions 2, 12, 21 and 30 of the Commission's RFI 1 (ID 11626).

1438 Replies to questions C.A.3 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.

1439 Replies to question C.A.3-2 of Questionnaire Q2 to cargo competitors; Replies to question C.A.3-2 of Questionnaire Q5 to cargo customers; Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, questions 39-40 and 44 (ID 11863); Response of [a competitor] to RFI 2, question 42 (ID 11680); Response of [a competitor] to RFI 1, questions 38-40 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1440 Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call

side, air cargo carriers also confirmed that they provide charter cargo services only (if at all) in exceptional situations, when there is a specific demand by a customer, in which case the customer must book the entirety of the aircraft capacity.[1441]

(925) With regard to other unscheduled flights operated by air cargo carriers additionally to their usual schedule, these have not been widely confirmed as being regularly offered on the market.[1442] One customer explained that "*unscheduled flights are not something that should be viewed as a regular part of the market, as it is an option on the side, that may or may not be offered each time.* [The customer] *noted that Korean Air does offer unscheduled flights, which* [the customer] *indeed uses*".[1443] Another customer also noted: "*It is exceptional that there would be additional unscheduled flights*".[1444]

(926) [A competitor] sums it up in its quote "*ad-hoc additional flights during the covid period cannot be treated as a cargo strategy*".[1445] In the same vein: (a) "*unscheduled or charter flights are a very small niche of the global air cargo market, only attractive to customers for very specific use cases and not as replacement for regular scheduled services*";[1446] (b) "*No unscheduled cargo flights have been performed in 2019 and 2022*";[1447] (c) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] stated that it "*only has belly-hold cargo space on the Europe – South Korea route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*";[1448] (d) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] replied that "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*";[1449] (e) "*2019 No unscheduled cargo. In 2022 we operated 29 cargo flights with scheduled passenger service flight number but only cargo load and 9 dedicated and unscheduled cargo flights. In 2023 so far, no dedicated cargo flights and expectation we continue with scheduled pax/cargo flights only this year*";[1450] (f) "*As* [we do not] *control any capacity directly, and* [rely on our] *Operating Companies for passenger belly capacity and third party interline capacity, this question does not apply*";[1451] and (g) "*All our flights are scheduled*".[1452]

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with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1441 Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, question 40.1 (ID 11863).

1442 Response of [a competitor] to RFI 2, question 42 (ID 11132); Response of [a competitor] to RFI 2, question 6.4 (ID 11863); Response of [a competitor] to RFI 1, question 6 (ID 10676); Response of [a competitor] to RFI 1, question 9.2 (ID 11203); Response of [a competitor] to RFI 1, question 9 (ID 11084); Response of [a competitor] to RFI 1, question 6.4 (ID 11106); Response of [a competitor] to RFI 1, question 12.1 (ID 11689); Response of [a competitor] to RFI 1, question 21 (ID 11626); Response of [a competitor], question 38 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1443 Non-confidential minutes of the call with [a customer].

1444 Minutes of call with [a customer].

1445 Response of [a competitor] to RFI 1, question 12.4 (ID 11689).

1446 Response of [a competitor] to RFI 2, question 42 (ID 11132).

1447 Response of [a competitor] to RFI 2, question 6.4 (ID 12886).

1448 Response of [a competitor] to RFI 1, question 9.2 (ID 11203).

1449 Response of [a competitor] to RFI 1, question 9 (ID 11084).

1450 Response of [a competitor] to RFI 1, question 6.4 (ID 11106).

1451 Response of [a competitor] to RFI 1, question 21 (ID 11626).

1452 Response of [a competitor] to RFI 1, question 38, (ID 10129).

(927) In addition, the Commission notes that even the Parties themselves do not offer a considerable number of unscheduled flights.[1453] For example, in 2018 and 2019,[1454] Korean Air offered […] unscheduled cargo flight frequencies between the EEA and Korea per direction, respectively. In the same years, Asiana offered […] and […] flights, respectively.

(928) Therefore, the Commission cannot consider unscheduled flights as a significant competitive constraint to the Parties, given that these are only offered – if at all – on a clearly opportunistic basis. As put by [a competitor], "*depending on the market demand for charter-flights and lead-times we do not see charter-/non scheduled flights as an appropriate counterweight to any potential market power*".[1455]

(929) In the fifth place, and contrary to Korean Air's submission in paragraphs 711-714 of its Response to the Commission's Statement of Objections, the Parties' competitors for direct air cargo flights are each providing air cargo services to ICN from a significantly smaller number of European airports and have a significantly smaller geographical coverage of Europe than the Parties do. The fact that the Parties serve more European airports than any competitor for direct air cargo flights on the Europe to South Korea route gives them a competitive advantage that further limits the competitive constraint that these competitors can impose on the Parties.

(930) As indicated in section 7.2.2, and despite the Commission's conclusion to assess the effects of the Transaction on a European-wide market, the majority of customers considered that the catchment area by land or sea transportation for European airports for air cargo services from/to South Korea is an inner-European regional area, rather than all of Europe.[1456] Accordingly, several customers claim that they would not switch to other European airports, or explained that such a switching decision would depend on various factors, such as the type of cargo and the distance to the airport as well as the additional trucking costs and transit time.[1457] Similarly, according to [a competitor], the primary catchment area for their cargo flights to South Korea from […] and […] is at most one day of trucking away from these airports. This statement is confirmed by the fact that according to [the competitor], 95% of the cargo on [the competitor's] flights from […] to ICN in 2022 originated from [the airport's country].[1458]

(931) In this regard, in the course of the market investigation, several customers have indicated their preference for air cargo transport to South Korea from a European airport as close as possible to their base of operations. Competitors responding to the phase I market investigation rated the criteria of the location of the airport in Europe where the air cargo carrier can land/the proximity to the origin or final destination of the cargo in Europe with an importance of 3.75/5, with 1 being "not important" and 5 being "very important". Similarly, customers rated this criterion's importance in choosing an air cargo carrier as 3.68/5. In addition, several customers during the phase

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1453 Response of Korean Air to RFI 14, question 49.

1454 The years 2020, 2021 and 2022 indicate significantly more unscheduled services for Korean Air. However, these years are not taken into consideration due to the irregularities caused in the air cargo market by the Covid19 pandemic.

1455 Response of [a competitor] to RFI 2, question 44 (ID 11863).

1456 Replies to question C.B.7 of Questionnaire Q5 to cargo customers. See also non-confidential minutes of the conference call with [a competitor], where [the competitor] refers to "*shorter distance cross-border trucking in Europe*" (ID 943); non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor].

1457 Replies to question C.B.3 of Questionnaire Q5 to cargo customers.

1458 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132).

II market investigation have further confirmed their strong preference for the European airport being as close as possible to their (or the end customer's) place of business and their hesitancy to accept longer trucking times than absolutely necessary.[1459]

(932) As shown in section 8.10.3 the Parties are providing non-stop air cargo transport services from a significantly higher number of European locations to ICN than any other competitor. Concretely, Korean Air operates services from […][1460] and Asiana operates services from […] different European Airports. By comparison, no other competitor operates direct flights between more than two European airports and South Korea. While competitors which offer indirect flights involving transhipment, such as Qatar Airways, Turkish Airlines, Emirates, Etihad and Silk Way West are able to transport cargo to South Korea from more European airports, this service is inferior to that of the Parties for the reasons stated above.

(933) In the sixth place, and contrary to Korean Air's submission in paragraphs 715-716 of its Response to the Commission's Statement of Objections, competitors are unable to offer the same high level of quality of service as the Parties do and are therefore more distant competitors and only exert a limited competitive constraint on the Parties.

(934) Competitors responding to the phase I market investigation confirmed that quality and reliability are very important, rating quality of the service as the most important criterion, while rating reliability of the air carrier in terms of flight times as the fifth most important criterion when choosing an air cargo carrier on the route (out of 14).[1461] Furthermore, customers rated quality of the service as the third and reliability of the air carrier in terms of flight times as the second most important criterion for customers when choosing an air cargo carrier on the route (out of 14).[1462]

(935) Competitors and customers responding to the market investigation have furthermore both ranked Korean Air and Asiana as the most and second most competitive air carriers on the route in terms of reliability of flight times, as well as quality of service in terms of cargo handling.[1463] Customers which were contacted as part of the Phase II market investigation have furthermore confirmed that the Parties both have a very high quality of services[1464] and one has indicated that competitors such as Qatar Airways, Emirates, Singapore Airlines, China Eastern Airlines, Air China and Silk Way West are more likely to experience delays, lose cargo or damage cargo.[1465]

(936) In summary, as shown above, all competitors have one, or in most cases several, shortcomings compared to the Parties, namely that they offer less frequencies, only offer transhipment flights, do not offer freighter flights, do not have the same geographic coverage of European airports, have a lower quality of service.

(937) On the basis of the above, the Commission concludes that the existing competitors' cargo operations only provide a limited competitive constraint on the Parties on the route from Europe to South Korea

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1459 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1460 Form CO, paragraph 357.

1461 Replies to question D.B.A.1. of Questionnaire Q2 to cargo competitors.

1462 Replies to question D.B.A.1. of Questionnaire Q5 to cargo customers.

1463 Replies to questions D.B.B.2. of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.

1464 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1465 Non-confidential minutes of the conference call with [a customer].

8.11.3.2. Competitive constraints from integrators in their airport-to-airport offering

(938) The Commission concludes that, contrary to Korean Air's submissions in paragraphs 722-725 of its Response to the Commission's Statement of Objections and paragraphs 147-153 of its Response to the Commission's Letter of Facts, integrators only exert a limited competitive constraint on the Parties in general air cargo services on the route from Europe to South Korea, as (i) they mostly compete on a different market, that of door-to-door delivery services,[1466] and therefore offer spare capacity on the air cargo market on an exceptional basis, (ii) air cargo carriers do not consider them as their competitors or only consider them to a limited extent, (iii) customers of the Parties do not see them as close alternatives but rather as limited available options for only parts of their volumes, and (iv) end cargo customers[1467] of freight forwarders do not consider their services comparable due to the risk of delay entailed in the integrators' airport-to-airport cargo offering.

(939) First, integrators submit that they only offer extremely limited spare capacity on the general air cargo market and therefore compete with the Parties to a limited extent, including a different quality of service, lower capacity, different pricing considerations and different targeted customers. [An integrator] noted[1468] that its general air cargo offering is very different to the one provided by the Parties, as it is less certain and only open to the market after filling-up the aircraft with all door-to-door business. As demand for integrators in their core door-to-door business can be extremely volatile, their filler air cargo product is only offered on a deferred stand-by basis, with a 3-to-5-day transit time in case of South Korea. This is because [the integrator's] core door-to-door business is always prioritised over the general cargo, which will be left behind until there is some capacity left after all door-to-door demand has been loaded to the aircraft. Therefore, the space made available in [the integrator's] aircraft for freight forwarders typically comes at lower rates because of the lower quality of the service deriving from the fact that customers are not given guaranteed shipment / delivery time. Therefore, [the integrator] expects to compete with the Parties in general airport-to-airport air cargo services only for a marginal part of the market, for customers, *i.e.* freight forwarders (i) that are not as time-sensitive, (ii) that do not need to book their air cargo services well in advance or plan ahead the entire season, and

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1466 In paragraphs 118 *et seqq.* of its Response to the Commission's Statement of Objections, Korean Air allegedly provides some "*concrete examples of integrators and air cargo carriers competing*". The Commission notes that those examples do not in fact show strong competitive constraints exerted by integrators on the Parties: (i) In its reply to question 45, in conjunction with the introduction of RFI 2 (ID 11459), [an integrator] confirmed that shipping Covid19 vaccines was part of their small package business and therefore not part of its "[limited] *air cargo services to third parties on a space available basis*". Therefore, this is rather an example of the limited indirect out-of-market constraint posed to the Parties by the integrators, which has been acknowledged by the Commission and will be further analysed in section 8.11.5 below. This example does not in any event mean that all general cargo can be transported by the integrators' door-to-door delivery of small parcels and packages, but it rather confirms that integrators compete with freight forwarders for only a marginal part of end customers. (ii) The fact that Korean Air aspires to enter the market of door-to-door services as provided by integrators does not mean that the Parties' airport-to-airport services compete with the integrators' (different in nature) door-to-door services. To the contrary, as indicated by Korean Air's internal documents, *e.g.* Response of Korean Air to RFI 14, "M.10149 - KE - OZ - Annex RFI14.Q5a.3"; "M.10149 - KE - OZ - Annex RFI14.Q5a.6", Korean Air can only compete for customers like […] by integrating in its offering Hanjin's door-to-door services. It is Hanjin bidding for […] volumes on the routes between Europe and South Korea and not Korean Air with its airport-to-airport cargo services.

1467 Reply of [a customer] to question D.B.B.3-2 of Questionnaire Q5 to cargo customers (ID 8140); Response of [a customer] to RFI on Integrators, question 3 (ID 10918); Response of [a customer] to RFI on Integrators, question 3 (ID 10884).

1468 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

(iii) that would not need to move high volumes. Finally, [the integrator] clarified that it does not operate flights dedicated to general air cargo services on the route Europe to South Korea. [The integrator's] door-to-door business has always been the basis of its network planning and the contribution of airport-to-airport cargo services is expected to decrease over time, assuming underlying growth of the door-to-door business.[1469]

(940) In the same vein, [an integrator] submits that they only offer airport-to-airport services on space available for spot rates, which is done only in cases they have spare capacity, "*which is the exception rather than the rule*".[1470] The "*special*" airport-to-airport product offering of [the integrator] is not in general open to customers, *i.e.* freight forwarders, but it is turned "*on and off to balance supply and demand*", meaning that it is only made available if the aircraft is not fully used by [the integrator's] own door-to-door business.[1471] In case [the integrator] does sell capacity on the market for air cargo services, it would still always prioritise its own door-to-door business in terms of boarding priority and therefore freight forwarders would not typically approach it looking for capacity.[1472]

(941) Furthermore, [an integrator's] airline also offers airport-to-airport cargo services to third parties, but only to a limited extent, and to a level that is not comparable to the Parties on the route Europe to South Korea, as small packages have priority over any other shipment.[1473] In any event, the Commission notes that [the integrator] is not as present on this route, as it did not provide services in 2019. In 2022, [the integrator] only offered […] flights in total.[1474]

(942) All three main integrators responding to the Commission's market investigation confirmed that they do not consider the Parties as their competitors but rather only the other integrators.[1475] On the contrary, integrators can rather be considered customers of the Parties – not competitors – as they integrate the Parties' air cargo services in their door-to-door offer.[1476]

(943) Therefore, the Commission considers that the integrators' airport-to-airport product is much less reliable than that of the Parties and can satisfy only a limited part of the customers' demand. As a consequence, the integrators can only represent a weak competitive constraint to the merged entity post-Transaction.

(944) Second, integrators have been ranked low or even amongst the least competitive providers of air cargo services on the route Europe to South Korea by the majority of air cargo carriers responding to the Commission's market investigation.[1477] The majority of air cargo carriers responding to the Commission's market investigation has also indicated that they only compete to a limited extent (if at all) to integrators.[1478]

1469 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1470 Response of [an integrator] to RFI 2, question 2.2 (ID 11438).

1471 Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2, question 10.2 (ID 11438).

1472 Non-confidential Minutes of the conference call with [an integrator].

1473 Response of [an integrator] to RFI 2, introduction and question 2 (ID 11459).

1474 Response of [an integrator] to RFI 2, Annex II (ID 11459). The years 2020 and 2021 are not taken into consideration due to irregularities in the schedule of airlines caused by the Covid19 pandemic.

1475 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2, question 4.2 (ID 11438); Non-confidential minutes of the conference call with [an integrator].

1476 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2, question 3 (ID 11459).

1477 Replies to question D.B.B.2 of Questionnaire Q2 to cargo competitors.

1478 Response of [a competitor] RFI 1, question 35 (ID 11084); Response of [a competitor] to RFI 2, question 35 (ID 11132); Non-confidential minutes of the conference call with [a competitor]; Response of

When asked about competition with integrators in their airport-to-airport services, [a competitor] explained that integrators "*address a different customer base compared to the network of cargo carriers and therefore would not be considered as immediate direct competitors*", [1479] while [a competitor] indicated that they do not encounter feedback from their customers on more attractive offers from integrators.[1480] [A competitor] further noted that it would be "[v]*ery uncommon to compete directly with the integrators as the profile of their shipments is so different*".[1481] [A competitor] added that "*integrators operate on the basis of a different business model and their overlap with air cargo transport is too small to be considered in competition with airlines*".[1482]

(945) Third, the majority of customers responding to the Commission's phase I market investigation has ranked integrators low or even among the least competitive alternatives to the Parties on the route Europe to South Korea,[1483] raising issues of limited capacity, lower service due to priority given to door-to-door, and differences on the type of services.[1484] In particular, [a customer] explained that to the extent that integrators offer to freight forwarders in the general air cargo market some spare capacity on their flights, "[The customer] *would* […] *still prefer not to buy capacities from integrators as* [it] *considers integrators as less reliable partners due to the fact that they usually prioritize their own shipments: If integrators are able to fill their planes with cargo of their own customers, they would usually leave the cargo of other customers, such as* [the customer]*, behind*".[1485]

(946) During a second round of conference calls with freight forwarders as customers of the Parties in the context of the Commission's Phase II investigation, similar concerns were raised by the majority of them. In particular, [a customer] explained that "*integrators are not an option for the type of shipments* [the customer] *needs to make between Europe and South Korea as they cannot ship the volumes* [the customer] *needs in the short timeframe they need. Also,* [the customer] *usually only knows three days in advance what the cargo volumes will be that need to be shipped which is not enough time to get access to capacities through DHL, UPS or FedEx*".[1486] [A customer] further indicated that prices for integrators' spot rates may be considerably cheaper but their volumes are less predictable and tied to a specific flight. "*In the experience of* [a customer]*, integrators do sometimes leave goods behind in favour of their own door-to-door express cargo*".[1487] [A customer] also describes DHL Aviation offering general air cargo services as a "*service usually offer*[ing] *leftover capacity on their aircraft*".[1488]

[a competitor] to RFI 1, question 34 (ID 10129); Response of [a competitor] to RFI 1, question 35 (ID 11106); Response of [a competitor] to RFI 1, question 35 (ID 11689); Response of [a competitor] to RFI 2, question 35 (ID 11863); Response of [a competitor] to RFI 2, questions 35 and 36 (ID 11692); Non-confidential minutes of the conference call with [a competitor]; Reply of [a competitor] to question D.B.B.3-2 of Questionnaire Q2 to cargo competitors (ID 9716).

1479 Response of [a competitor] to RFI 2, question 35 (ID 11132).

1480 Response of [a competitor]to RFI 1, question 34 (ID 10129).

1481 Response of [a competitor] to RFI 1, question 35 (ID 11106).

1482 Non-confidential minutes of the conference call with [a competitor]

1483 Replies to question D.B.B.2 of Questionnaire Q5 of cargo customers.

1484 Replies of [names of customers] to question D.B.B.3 of Questionnaire Q5 to cargo customers; Non-confidential minutes of the conference call with [a customer].

1485 Non-confidential minutes of the conference call with [a customer].

1486 Non-confidential minutes of the conference call with [a customer].

1487 Non-confidential minutes of the conference call with [a customer].

1488 Minutes of call with [a customer].

(947) In the same vein, [a customer] noted that DHL, in its ancillary airport-to-airport cargo services, "*is known as a low-cost carrier with lower quality of service that the majority of* [our] *customers would not choose*",[1489] while [ar customer] characterised DHL Aviation "*as an 'incidental supplement' to the services offered by the Parties, for emergencies where it has to ship particularly large capacities* […] *DHL Aviation does not offer a comparable service or quality level to that of the Parties. Lastly, since DHL Aviation […] from […] to ICN (and only did so during Covid19* […]*,* [we] *would not consider DHL Aviation anymore for their Europe-Korea air cargo needs, as it would not want to transport its goods to […] by truck instead of booking flights from […] directly*".[1490] Another freight forwarder, […], added that "[i]*f there is limited demand for integrators, their services are more reliable. However, if there is a lot of demand, they may offload cargo from other customers and prioritise their own express parcels*", while also noting that "*there is very little space left for the market*".[1491] Other customers have also pointed out the difference of service between the integrators' core door-to-door business on the one hand, and their ancillary air cargo services on the other hand, which cannot be used by all freight forwarders and/or for all their volumes due to lower reliability and limited capacity.[1492]

(948) Lastly, the Commission notes that Korean Air […]: "RFI 10 – […]". In particular, Korean Air […].

Figure 44: [Figure redacted]

Source: RFI 10 – […]

(949) On the basis of the above considerations, the Commission considers that integrators, to the extent they handle some limited general airport-to-airport cargo services, can only pose a limited competitive constraint on the Parties on the route from Europe to South Korea.

8.11.4. Expansion – Competitors are unlikely to increase supply if prices increase

(950) Market conditions in the market for air cargo transport services between Europe and South Korea are such that the Merged Entity is likely to have an incentive to reduce its capacity below the combined pre-Transaction level, thereby increasing prices within the meaning of paragraph 32 of the Horizontal Merger Guidelines. Competitors are unlikely to increase supply in response. This is mainly because of the following reasons:

(a) The Parties have higher capacity shares than what they have estimated and have by far the highest individual and combined capacity shares on the market. High combined capacity shares indicate that the merged entity may have *post-merger* a greater incentive to increase prices.

(b) The spare capacity of competitors is too limited to be used to offset the effects of the Transaction: the Commission was not able to confirm Korean Air's claim of existing significant excess capacity in the market.[1493] The capacity available in the market as a whole is limited in the sense that all competitors' excess capacity taken together would only be a fraction of the Parties' combined supply.

1489 Non-confidential minutes of the conference call with [a customer].
1490 Non-confidential minutes of the conference call with [a customer].
1491 Non-confidential minutes of the conference call with [a customer].
1492 Non-confidential Minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].
1493 Response of Korean Air to the Article 6(1)c decision, paragraphs 456 to 472.

Furthermore, capacity has to be assessed in the light of the findings on closeness of competition analyzed above in section 8.11.2. Air cargo services are differentiated on the basis of different factors from both a product and geographic perspective, expressed, among other factors, in delivery times, frequencies and reliability. Therefore, the excess capacity provided by numerous competitors would in any event be inferior in many instances to the services offered by the Parties.

(c) Essentially all competitors face barriers to expand their supply either by increasing aircraft utilization or increasing frequencies post-Transaction. These barriers can be due to unavailability of traffic rights, network considerations (in particular in the case of passenger carriers), or access to aircraft and personnel.

(d) Competitors have limited or no incentives to shift available capacity to the route between Europe and South Korea by diverting it from other uses between East Asia and Europe.

8.11.4.1. The Parties hold high capacity shares

(951) The Parties have provided capacity shares for the route Europe-South Korea, as set out in Table 57.

Table 57: Capacity shares on Europe-South Korea-Europe, 2018 to 2021

Carrier	2018		2019		2020		2021	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
DHL	[…]	**[20-30]**%	[…]	**[20-30]**%	[…]	**[20-30]**%	[…]	**[20-30]**%
Lufthansa Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]	[…]	[10-20]%
FedEx Express	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
UPS Airlines	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Volga-Dnepr Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Qatar Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air France-KLM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Cathay Pacific Airways	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
Atlas Air Worldwide	[…]	<[0-5]%	[…]	<[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
All Nippon Airways	[…]	<[0-5]%	[…]	<[0-5]%	[…]	<[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Singapore Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Thai Airways International	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	<[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Form CO, QP12-Qs 12, 17 and 21.

(952) The Commission' investigation revealed that – also contrary to Korean Air's submission in paragraphs 727-741 of its Response to the Commission's Statement of

Objections – the capacity shares provided by the Parties are likely erroneous. This is because of the following reasons.

(953) First, the Parties' estimates of available capacity appear to be inflated, not reflecting actual capacities. The Parties included in their capacity calculations flights that did not carry cargo between Europe and South Korea, but rather simply touched down at Incheon airport to avoid Covid19 restrictions in China. Both [an integrator] (through its operating airline […]) and [a competitor] used such flights with technical stops over the last years. As [an integrator] explained, it would be erroneous to include such flights with technical stops in any capacity calculations.[1494]

(954) In paragraphs 730-732 of its Response to the Commission's Statement of Objections, and in paragraph 170 of its Response to the Commission's Letter of Facts, Korean Air argues that technical stops should actually be taken into account because competitors can easily turn technical stops into proper stops for cargo. The Commission considers that this has not been confirmed by the market investigation. For example, as explicitly put by [a competitor]: "*Scheduled technical stops mean that the crew is changed and/or refueling takes place. Therefore, scheduled technical stops do not change the capacity of the respective market*".[1495]

(955) Second, according to the Parties' capacity estimates reported in Table 57, the integrators DHL, UPS, and FedEx represent around [40-50]% of the available capacity on the two routes, but this estimate fails to recognize that integrators' capacity is for the most part reserved for the integrators' own door-to-door business (see section 8.11.3.2 above for additional details on the role played by integrators in the general air cargo market). Therefore, if the capacity share estimates took into account that most of the integrators' capacity is used captively for their door-to-door business and is not available to the general market, the extent of excess capacity available to the general cargo market would be significantly reduced. Furthermore, integrators also rely on the Parties' aircrafts for their own express cargo business,[1496] which would question how much spare capacity they have and how strong a competitive constraint they would exert on the merged entity post-Transaction. For instance, [an integrator] consistently appears as one of the largest customers of both Parties.[1497]

(956) Third, the 2020 and 2021 capacity data appears to reflect temporary effects of the Covid19 pandemic. [A competitor] was granted an exceptional additional weekly frequency for the route […]-South Korea during the Covid19 pandemic by MOLIT, which was then discontinued in 2022 without immediate prospects of being granted again.[1498]

(957) Fourth, capacity utilization does not appear to be uniform throughout the year. The market investigation indicates – and the Parties have confirmed – that there are demand peaks before Christmas, before the Lunar New Year and in early summer.[1499] Data at the annual level might suggest that the available capacity is evenly spread throughout the year, while instead capacity may be more restricted at certain times of

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1494 Non-confidential minutes of the conference call with [a competitor]. Non-confidential minutes of the conference call with [an integrator].

1495 Response of [a competitor] to RFI 2, question 49 (ID 12886).

1496 Non-confidential minutes of the conference call with [an integrator]. Non-confidential minutes of the conference call with [an integrator].

1497 Form CO, Tables 169 to 172 about the Parties' top 10 customers.

1498 Non-confidential minutes of the conference call with [a competitor]

1499 Replies to question D.B.B.8 of Questionnaire Q2 to cargo competitors and to question D.B.B.6 of Questionnaire Q5 to cargo customers. Non-confidential minutes of the conference call with [a competitor].

the year. The evolution of the Parties' load factors on a monthly basis also appears indicative of seasonal factors capable of affecting the available capacity at certain times of the year.[1500]

(958) Fifth, the capacity estimates provided by the Parties represent the overall theoretical maximum amount of cargo that can be transported on the routes, not the capacity actually available. In its responses,[1501] Korean Air defines the difference between capacity and volume estimates as excess capacity and argue that the sum of Lufthansa's, DHL's and Turkish Airlines' excess capacity is greater than the total volume carried by Asiana from the EEA to South Korea in 2021. Further, the Parties claim that these excess capacity estimates suggest that customers would be able to switch to competitors in the event of a price increase by the Parties, and that the Merged Entity would be severely constrained in its ability to increase prices post-Transaction. This reasoning is flawed. The difference between capacity and volume estimates cannot be defined as excess capacity because it is actually composed of two distinct elements: (i) excess capacity in the sense of unused space on the aircraft; and (ii) capacity already used to transport cargo on the same aircraft on other routes. For example, carriers fly the same aircraft out of Europe with cargo bound for South Korea as well as cargo bound for other destinations, like Japan or China, where they may stop in on their way to/from South Korea. The Parties' analysis does not take account of the fact that capacity already used for other destinations is not available, and thus substantially overestimates the amount of excess capacity in the market.

(959) Given those deficiencies, the Commission has endeavoured to collect more accurate data on capacities from market participants through the market reconstruction exercise described in Annex I. Table 58 below shows the result of those calculations for Europe to South Korea between 2019 and 2021 based on data provided by the main market participants. It is worth noting that, in order to show that, contrary to Korean Air's claim,[1502] the Commission's conclusions do not depend on the methodology followed, the Commission assessed whether capacity shares would differ if market sizes and competitors' capacity estimates were calculated as suggested by Korean Air. Table 58 thus shows capacity shares and market sizes both adjusted according to the Commission's methodology and according to Korean Air's methodology. Differences are very negligible.

(960) The Commission's analysis shows that the Parties significantly underestimated their own capacity shares, while overestimating their competitors' capacity shares.

(961) For the reasons discussed in sections 7.2.1.4 and 8.11.3.2, integrators' capacities play a role only to the extent they serve the general cargo market, and not their entire door-to-door business. Therefore, the Parties have significantly overestimated the integrators' capacities.[1503]

(962) Both because of the Parties' handling of technical stop-over and because of general data limitations of the sources available on carriers' capacity on the route between Europe and South Korea, the Parties tended to overestimate the capacities of a number of their competitors.

1500 Replies to RFI 9, Q10.

1501 Responses of Korean Air to the Article 6(1)c decision, paragraphs 468 to 472, and to the Commission's Statement of Objections, paragraphs 764 to 767.

1502 RBB Economics Second Data Room Report, pages 3-5.

1503 The extent of these revisions will be made available to Korean Air's external advisors in the data room procedure.

(963) Once these corrections are accounted for, the total amount of capacity on the Europe to South Korea route is significantly lower than estimated by the Parties. This also implies that the Parties' actual capacity shares estimates are more than [10-20] percentage points larger than what the Parties estimated: combined capacity shares are [30-40]% in 2019 and not [20-30]%, [40-50]-[40-50]% in 2020 and not [20-30]%, and [40-50]% in 2021 and not [20-30]%.[1504] The increment brought about by the Transaction is also higher: [10-20]-[10-20]% and not [5-10]-[10-20]% as provided by the Parties.

(964) Moreover, competitors' capacity shares are significantly smaller than those provided by the Parties, and particular only two competitors have a capacity share between [5-10]% and [10-20]%, only seven have capacity shares between [0-5]% and [5-10]%, and all other competitors have capacity shares below [0-5%]%. This means that the market is very fragmented, with a long tail of small competitors.

Table 58 – Europe to South Korea capacity shares

Carrier	Original capacity shares			Revised capacity shares Market sizes adjusted according to the Commission's methodology			Revised capacity shares Market sizes adjusted according to the Notifying Party's methodology		
	2019	2020	2021	2019	2020	2021	2019	2020	2021
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Korean Air	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Asiana	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]*%*	[20-30]*%*	[20-30]*%*	***[30-40]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report. Notes: Methodology described in Annex I. All details are accessible only to Korean Air's external advisors in the data room procedure.

8.11.4.2. No significant spare capacity for competitors on the route, taking into account closeness of competition

(965) The Phase II investigation focused on investigating further the Parties' claim that the current market situation is characterized by overcapacity due to available excess capacity on existing flights. The results of the Phase II investigation indicate that – also contrary to Korean Air's submission in paragraphs 742-770 of its Response to the Commission's Statement of Objections – competitors already active on these routes do not appear to have enough capacity or incentive to be able to expand supply sufficiently to counteract an increase in prices *post-merger*, nor to deter it in the first place.

(966) First, the market investigation did not confirm Korean Air's claim that there is structural excess capacity[1505] on the route Europe-South Korea. Only a small minority of respondents having expressed a view stated that the air cargo markets between Europe and South Korea are characterized by overcapacity (defined as supply exceeding demand).[1506] In fact, the Commission's market investigation has indicated neither over-capacity nor under-capacity on the routes between Europe and South Korea. The majority of respondents has replied that "*demand and supply are*

1504 Annex I provides additional details about the comparison between the Notifying Party's and the Commission's capacity estimates: Whether market sizes are adjusted to reflect the use of third party data or not has only a very marginal impact on market shares.

1505 Form CO, paragraphs 472, 806.

1506 Replies to question D.B.B.7 of Questionnaire Q2 to cargo competitors and to question D.B.B.6 of Questionnaire Q5 to cargo customers.

balanced".[1507] Therefore, there is no structural excess capacity on the route, contrary to what Korean Air argues in paragraphs 744-748 of its Response to the Commission's Statement of Objections, and in paragraphs 154 and 172 of its Response to the Commission's Letter of Facts.

(967) Interestingly, Korean Air's arguments on the availability of excess capacity on the market are not confirmed by its own internal business documents. For example, Korean Air considers that flights from Europe to Asia are generally characterized by limited supply.[1508] In addition, Korean Air confirms in its documents that the Russian war against Ukraine has further decreased the available capacity on the market.[1509]

(968) Second, the likely absence of overcapacity is demonstrated by the fact that the Parties' own capacity utilization, as indicated by their load factor, has been constantly at least or above [80-90]% between 2018 and 2021 in both trade directions of the Europe-South Korea routes.[1510] Thus, even pre-Covid19, the Parties did not have much excess capacity on the routes between Europe and South Korea, which are thus characterized by high capacity utilization. By comparison, the global load factor for cargo transport of all suppliers was [40-50]% in 2019 and [60-70]% in 2021 and thus much lower than the load factor of the Parties.[1511] In addition, the Parties' overall load factor for all worldwide cargo trade between 2018-2021 was also consistently lower each year than that on the routes between the EEA and South Korea. This further indicates that by comparison, the routes between Europe and South Korea rather have a higher capacity utilization and lower excess capacity than average air cargo transport routes.

(969) In its responses,[1512] Korean Air argues that the load factor cannot be used as a reliable indicator to determine if there is excess capacity in the market because, among other reasons, the load factor is manipulated by carriers in order to achieve as high load factors as possible. Feedback from competitors, however, suggests that carriers do rely on the load factor as a proxy for their utilization rate.[1513] Moreover, most competitors have stated that they do not cancel flights to maximize their load factor on the route, thus the load factor does not appear to be generally manipulated to achieve as high load factors as possible.[1514] Furthermore, even if carriers were indeed systematically manipulating the load factor by cancelling flights to maximise the load factor, the load factor would still provide a reasonable approximation of the aircrafts' utilization rate. For example, this issue might be relevant on routes where adding more flights to cater for the additional demand is not possible, for example, because of traffic rights limitations (this is explained further in the below). Furthermore, the Parties themselves relied on the load factor to quantify the amount of additional capacity currently unused by other trades that they could add to the route between Europe and South Korea.[1515]

1507 See replies to question D.B.B.7 of questionnaire Q2 to cargo competitors and question D.B.B.6 of questionnaire Q5 to cargo customers.

1508 "[…]", page 11.

1509 "Annex to RFI 14, M.10149 - KE - OZ - Annex RFI14.Q9.1 – […]".

1510 Form CO, tables 150 and 151. Reply to RFI 21, question 2(a).

1511 Form CO, footnote 360.

1512 Response of Korean Air to the Article 6(1)(c) Decision, paragraphs 462 to 467. Responses of Korean Air to the Commission's Statement of Objections, paragraphs 749-756, and to the Commission's Letter of Facts, paragraphs 155-156.

1513 Response of [a competitor] to RFI 2, question 14 (ID 11132); Response of [a competitor] to RFI 1, question 14 (ID 11675); Response of [a competitor] to RFI 2, question 14 (ID 11337); Response of [a competitor] to RFI 2, question 14 (ID 11147).

1514 Response of [a competitor] to RFI 2, question 14 (ID 11132); Response of [a competitor] to RFI 1, question 14 (ID 11675); Response of [a competitor] to RFI 2, question 14 (ID 11337); Response of [a competitor] to RFI 2, question 14 (ID 11147).

1515 Reply to RFI 21, question 2(a).

The Commission therefore deems the load factor as a relevant and reliable indicator to determine if there is excess capacity in the market, also taking into account the following considerations:

(970) If anything, the load factor as used by the Commission can indicate a higher level of excess capacity in the market than is in fact available and is therefore in any event likely to overestimate the spare capacity that is available on the market. A competitor has explained in this respect: "*Many flights on this route tend to be volume-restricted, meaning the volumetric space runs out before the weight capacity of the aircraft. As such the numbers are highly dependent on the density of the cargo carried. Many flights on this route tend to be volume-restricted, meaning the volumetric space runs out before the weight capacity of the aircraft. As such the numbers are highly dependent on the density of the cargo carried*".[1516] Another competitor has further noted the following: "*A load factor of 100 % is only a theoretical limit, in reality we see a maximum at approx. 90 % as other factors like volume consumption, product characteristics or handling restrictions limit the way pallets or containers can be build up*".[1517] In the same vein, [an integrator] has explained that a weight load factor might reflect available space but in reality, all positions in any given flight will be utilised when the percentage is above [80-90]%.[1518]

(971) With regard to Korean Air's argument that the load factor is manipulated by carriers in order to achieve as high load factors as possible, a competitor has explained that at least when it comes to belly-hold carriers, this is not possible: "*As passengers are carried on the same flights individual flights are seldomly cancelled purely due to a lack of cargo demand on that flight. In general the optimization is done for the profitability, rather than load factor.* […] *The passenger / belly-hold cargo service is operated regularly to protect valuable slot positions in ICN. Cancellations may only result due to exceptional operative circumstances*".[1519] This was also substantiated by another competitor.[1520] Therefore, for at least the belly-hold carriers, load factor cannot be manipulated even if they wanted to.

(972) In its internal business documents, Korean Air puts […]. In fact, it considers [80-90]% as the relevant threshold for a "good" load factor.[1521]

(973) Third, data gathered from third parties during the Phase II investigation allowed the Commission to estimate the amount of excess capacity available on the route and compare it against the Parties' combined volumes. Excess capacity in this regard is defined as the additional volumes a carrier could transport by filling up the unused capacity on aircraft (equal to the difference between overall capacity and volume transported). The underlying assumption of that analysis is that *post-merger*, if all the Parties' customers find an alternative to the Parties, then it is unlikely that the Parties would be able to increase prices. If, however, only a fraction of the Parties' customers could find an alternative supplier, the Parties are expected to have at least some incentive to increase prices.[1522] This is because, if capacity is scarce, competitors can enjoy some degree of market power, and could be thus able to increase prices to customers. Moreover, competitors could in turn also find profitable to follow price increases. If competitors are not able to cover the entirety of market demand, the

1516 Response of [a competitor] to RFI 1, questions 8 and 17 (ID 11106).
1517 Response of [a competitor] to RFI 2, questions 14 and 23 (ID 12886).
1518 Response of [an integrator] to RFI 2, question 15 (ID 12834).
1519 Response of [a competitor] to RFI 1, question 14 (ID 11106).
1520 Response of [a competitor] to RFI 1, questions 14 and 15 (ID 110840).
1521 Form CO, Annex QP6.Q5g.a.ii.15, "[…]".
1522 The Commission previously used similar excess capacity analysis, for example, in Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay*.

merger would enable the merged entity to enjoy an increased degree of market power, and be thus capable of increasing prices to customers. This market power-increasing effect of a *post-merger* increase of the merged entity's excess capacity (relative to the rivals, who are capacity-constrained) would arise even if the rivals' capacity would be perfect substitutes of the merged entity's capacity. As will be further evidenced below, the rivals' capacity is not of the same quality as that of the Parties, who are each other's close – even the closest – competitors. This quality differential reinforces the capacity-based effect.

(974) This approach is aligned with the Horizontal Merger Guidelines, paragraphs 32 to 34, which provide that "*(32) When market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging firms may have an incentive to reduce output below the combined pre-merger levels, thereby raising market prices. The merger increases the incentive to reduce output by giving the merged firm a larger base of sales on which to enjoy the higher margins resulting from an increase in prices induced by the output reduction. (33) Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition. (34) Such output expansion is, in particular, unlikely when competitors face binding capacity constraints.*"[1523] Also, paragraph 24 of the Horizontal Merger Guidelines provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[1524]

(975) **Annex I** provides a description of the methodology followed and the data used for this analysis. Table 59 provides the Commission's estimates for the sum of all competitors' excess capacities. The detailed estimates for each individual competitor's excess capacity were only available to Korean Air's external advisors in the context of a data room procedure. The figures relied upon by the Commission in this Decision are based on the figures included in the RBB Economics Second Data Room Report.

(976) The sum of all competitors' excess capacities is around [30-40]% of the Parties' combined volumes on the route Europe to South Korea. This implies that less than half of the Parties' customers could find an alternative supplier other than the Parties. Competitors face severely binding capacity constraints and are therefore unlikely to be able to increase their supply sufficiently if prices increase, which implies that the merging firms may have an incentive to increase prices.

(977) Table 59 also contains two sensitivities where excess capacity is calculated based on the load factor, and falls in the range [40 - 50]% and [60 - 70]%, respectively. As explained further in Annex I and above in paragraph (970), the load factor as used by the Commission can indicate a higher level of excess capacity in the market than is in fact available and is therefore in any event likely to overestimate spare capacity that is available on the market.

1523 Horizontal Merger Guidelines, paragraphs 32 to 34.

1524 Horizontal Merger Guidelines, paragraph 24.

Table 59 – Excess capacity faced by each of the Parties before and after the merger on Europe to South Korea

	Excess capacity (all competitors, parties excluded)	Excess capacity faced by the Parties post-merger	Excess capacity faced by Korean Air pre-merger	Excess capacity faced by Asiana pre-merger
Main estimate based on third-party data (and the load factor otherwise)	[50 000 - 60 000]	[30 - 40]%	[80 - 90]%	[120 - 130]%
Sensitivities:				
1. Sensitivity based on the third-party data where available, and the minimum load factor otherwise	*[60 000 - 70 000]*	*[40 - 50]%*	*[130 - 140]%*	*[190 - 200]%*
2. Sensitivity based exclusively on the load factor	*[80 000 - 90 000]*	*[60 - 70]%*	*[120 - 130]%*	*[180 - 190]%*

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report. Notes: Methodology described in Annex I. Exact numbers are confidential. All details are accessible only to Korean Air's external advisors in the data room procedure.

(978) This analysis also shows the excess capacity faced by each of the Parties individually *pre-merger*, *e.g.* how much the competitors' excess capacity was from Korean Air's point of view, where Asiana is also considered a competitor, and vice versa. In fact, a reduction in the excess capacity faced by each of the merging parties also reflects to what extent the merger softens the competitive pressure. *Pre-merger,* Korean Air's competitors including Asiana had excess capacity on Europe to South Korea equivalent to [80-90]% of Korean Air's volumes, which implies that competitors' (including Asiana) excess capacity already could not fully accommodate all Korean Air customers on Europe to South Korea, while Asiana's competitors including Korean Air had excess capacity equivalent to around [120-130]% of Asiana's volumes. As a constrast, *post-merger*, the Parties will face less than half of the excess capacity faced *pre-merger* by Korean Air and less than a quarter that faced by Asiana. Therefore, the sum of all rivals' excess capacity will not be sufficient to fully cover the Merged Entity's sales volume, and the Transaction also substantially reduces how much excess capacity each of the Parties was facing *pre-merger*. The Merged Entity would then likely have an incentive to raise prices *post-merger*.

(979) Fourth, the Phase II investigation also confirms that customers regard capacity in cargo as differentiated (see also sections 8.11.2 and 8.11.3 above). For example, […] with air cargo carriers like the Parties', [names of competitors] generally represent a higher value proposition than […]. Should therefore only [names of competitors] excess capacity be considered, […], then the available excess capacities would be much lower: about [0-20]% of the Parties' combined volumes on Europe to South Korea.[1525] On the route from Europe to South Korea, no competitor's excess capacity exceeds [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%.

(980) In fact, as explained in section 8.11.2 above, the Parties are close – even the closest – competitors of each other. Contrary to Korean Air's submission in paragraph 157 of its

[1525] Further detail will be made available to the Parties' external advisors in the data room procedure. Note that […], these figure are therefore likely to overestimate the amount of excess capacity available […].

Response to the Commission's Letter of Facts, virtually, no other competitor can imitate the Parties' competitive offering, i.e. high frequency, high capacity (both freighter and belly-hold), and direct service without transhipment – indicating that the offer in the market is highly differentiated and that accordingly also the available capacity is differentiated. This means that, in the event of a price increase *post-merger*, a large share of the Parties' customers would likely not switch to an alternative supplier capable of offering an inferior type of capacity (as compared to that offered by the Parties) at the same *pre-merger* prices. These customers will then be worse-off because they will either endure the increased prices or switch to a less favorite type of connection (for example, with transhipment or via integrators). Moreover, customers switching away from the Parties would present a windfall demand for the Parties' competitors, who themselves will also then have an incentive to raise their prices. These post-merger pricing incentives of the Parties and their rivals stemming from the close competition between the Parties could be present even in the absence of the rival capacity constraints. The capacity constraints explained above and the closeness based arguments are then reinforcing each other.

(981) A closer examination of the results below further clarify how limited excess capacity actually is in both relevant markets, well beyond the aggregate results. In fact, about [10-20]% of excess capacity on the route from Europe to South Korea are due to a single competitor. Despite the numerous attempts, the Commission could not reach out to this competitor, and the excess capacity estimates are therefore exclusively based on the Parties' volume and capacity estimates and on the average load factors. On the route between Europe and South Korea, this competitor had market shares between [0-5]% and [0-5]% in 2019, between [0-5]% and [0-5]% in 2020, and close to [0-5]% in 2021: It is highly unlikely this competitor could suddenly decide to dedicate their excess capacity to the affected markets considering how limited their current involvement is.

Table 60 – Excess capacity estimates by competitor – Europe to South Korea

Carrier	Excess capacity	(% of the parties' customer base)
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Other competitors	[0 - 5 000]	[0 - 10]%
Total	**[50 000 - 60 000]**	**[30 - 40]%**

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report. Notes: Methodology described in Annex I. Exact numbers are confidential. All details are accessible only to Korean Air's external advisors in the data room procedure.

(982) In response to this analysis, Korean Air argued that on the route from Europe to South Korea, prices would have to increase by approximately 20-30% before rivals' excess capacity is exhausted.[1526] This statement is flawed for several reasons, these are explained in the below.

(983) First, of all, the Commission notes that paragraph 24 of the Horizontal Merger Guidelines unambiguously provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices*."[1527] This follows from standard economic theories of non-coordinated horizontal competition: The merging parties' competitors, faced with an increase in demand following a price increase by the merged entity, will in general respond by both increasing their price and by expanding their output. In a differentiated product setting, such reactions by rivals can generally not be expected to make a price increase unprofitable for the merged entity. In fact, both the merged entity and its rivals might enjoy some price increase with the former increasing its price more than the latter. Such price changes may also involve relative output changes with the merged entity's volume decreasing relative to its rivals'.[1528] The exact amounts that prices could increase or relative outputs change ultimately depend on the characteristics of the market, and in particular on (i) the strength of differentiation between the merged entity and its rivals, and (ii) the rivals' available spare capacity.

(984) It is only in the extreme case, referred to as "pure" or "standard" Bertrand competition, where there is no product differentiation (each firm's capacity being a perfect substitute of all others'), and there are no capacity constraints (each individual firm's volume can be covered by the rivals' combined spare capacity), that the merged entity cannot profitably raise its price as the rivals' reactions would defeat any price increase attempt: In this case, the post-merger price equilibrium is the same as that in the absence of the merger.[1529] None of the conditions necessary for this extreme case to prevail are met: (i) capacity is differentiated, and (ii) the rivals' spare capacity is not unambiguously sufficient to cover the merged entity's combined volume, with the spare capacity clearly being insufficient on the Europe to South Korea route.

(985) Furthermore, while individually the volumes of each Korean Air and Asiana can easily be covered by the rivals' spare capacity, the impact of the Transaction is such that this would no longer hold *post-merger* for the merged entity. Moreover, excess capacity is also very strongly fragmented, which means that essentially all competitors would be needed to replace the Parties, even if the differentiation issue is put aside. Hence, such fragmentation might adversely affect customers with large shipments.[1530] However, Korean Air's claims on rivals defeating any price increase of the merged entity heavily depend on the implicit assumption of capacity being homogenous and

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1526 Response of Korean Air to the Commission's Statement of Objections, Annex 5, page 6. Response of Korean Air to the Commission's Letter of Facts, paragraphs 174-181, 191.

1527 Horizontal Merger Guidelines, paragraph 24.

1528 All these changes are meant relative to the counterfactual, that is, the market situation in absence of the merger.

1529 This extreme case is referred to as pure Bertrand competition. In addition to the conditions listed, the following should also hold: customers have no switching costs, firms have no fixed costs, there are at least two firms (post-merger). The first two of the additional conditions does not hold in the current case, neither are the two conditions mentioned in the main text. It is also important that these conditions are cumulative for pure Bertrand competition to emerge. If, for example, products are differentiated a merger might lead to price increases. If, in addition, rivals face some capacity constraints competition is further dampened that in turn further supports the merger price effects.

1530 See sections 8.11.3.1 and 8.12.3.1.

undifferentiated, and the rivals having ample spare capacity. As these assumptions are not supported by the evidence, the setting in the relevant cargo markets in this case is better characterised as differentiated markets with capacity constraints as opposed to standard Bertrand competition. Hence, it is incorrect to apply the insights of the standard Bertrand competition framework without capacity constraints as done by Korean Air.

(986) Fifth, as discussed in paragraph (978) above, the amount of excess capacity faced by the merged entity is also substantially smaller than what each of the Parties faced *pre-merger*. As discussed in section 8.11.2, rivalry between the parties has been an important source of competition on the market, and the merged entity will face significantly less rival excess capacity *post-merger* than each of the merging firms is facing *pre-merger.* This reduction in the countervailing spare capacity held by rivals thus indicates that the competitive pressure on the merged entity is lower relative to the competitive pressure faced by each of the merging firms *pre-merger*. As a result, this merger-induced consolidation of levels of capacities a will, in general, increase the market power of the merged entity.

(987) Sixth, Korean Air notes that previous cases such as *Outokumpu / INOXUM* and *INEOS / Solvay*[1531] do not serve as appropriate guides in the case at hand because capacity is much more fixed in industrial markets such as steel and chemical products than in airline cargo.[1532] The Commission agrees with Korean Air that capacity in airline cargo is possibly significantly more flexible than in steel and chemical industries, however, as explained in the following sections, expansion is not likely: competitors face significant barriers to expansion and are unlikely to expand their activity sufficiently to prevent any potential anti-competitive effects of the Transaction.

(988) Lastly, Korean Air argues that the Commission should have also considered excess capacity stemming from swing capacity, from increased utilisation rates, and from deploying additional aircraft. Korean Air claims that, had the Commission also considered these other sources of excess capacity, the rivals' excess capacity as a proportion of the Parties' sales would be materially greater than indicated in Table 59.[1533] A more detailed discussion on competitors shifting capacity across routes follows in section 8.11.4.4. The Commission notes, however, that, in the case when swing capacity would come from capacity already on the market but committed to other trades (for example, capacity on Europe-South Korea currently allocated to transport goods from Europe to Japan on a multi-stop route without transhipment), this swing capacity would imply two inter-related effects: (i) on the routes of concern, post-merger prices increased enough to prompt some competitors to consider re-allocating capacity away from their most profitable trade pre-merger; and (ii) Post-merger prices on the other trades would also increase as supply becomes smaller and demand has not changed (competitors would not have the incentive to offer customers a lower price if other competitors put less capacity on the trade).[1534]

(989) Korean Air states[1535] on the one hand that it does not believe it is likely that competitors would respond to price rises by the Merged Entity by increasing their own

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1531 Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay*

1532 Response of Korean Air to the Commission's Letter of Facts, paragraph 185.

1533 Response of Korean Air to the Commission's Statement of Objections, Annex 5, page 6. Response of Korean Air to the Commission's Letter of Facts, paragraphs 187-190.

1534 The Commission also notes that passenger belly-hold capacity is less likely to be swung: passenger carriers prioritize their passenger-business, and cargo-related considerations are generally subordinated to passengers-related considerations. See section 8.11.3.1 above.

1535 Response of Korean Air to the Commission's Statement of Objections, paragraph 819, and Response of Korean Air to the Commission's Letter of Facts, paragraphs 174-182.

prices (following demand switching to competitors). On the other hand, however, this mechanism is clearly well understood and visually very well identified by Korean Air itself in Annex 5 of the response to the Commission's Statement of Objections. As shown in Figure 6 of Annex 5 and replicated in Figure 45 below, […] is expected on both the relevant market itself as well as on adjacent markets which […] (for example, […] in the illustrative chart). As capacity devoted to adjacent relevant markets decreases in favour of the affected markets, prices increase on that market too.

(990) The Commission also notes that Korean Air's overall argumentation is contradictory. First, the rivals' reaction of raising the price on the market of concern is fully consistent with the logic explained in the Commission's Merger Guidelines.[1536] Second, as explained above, this logic is also consistent with Korean Air's explanations given to its Figure 6 of page 9 of Annex 5 of its Response to the Commission's Statement of Objections: "*For example, if a competitor increases its price (or, equivalently, decreases its volume), then the* [rival] *carrier's individual demand curve shifts outwards.* […] *Since the alternatives for customers have become more expensive, demand for the* [rival] *carrier's services increases, i.e. customers are willing to pay that carrier more for each unit that they transport. This is represented by an upward shift in the demand curve.* […] [T]*his new demand curve is represented by the blue line in Figure 6.*" The new price levels are those at the intersection of […]. Finally, this rival reaction logic contradicts Korean Air's other argument on the rivals defeating any price increase of the merged entity. In contrast, as explained above, the Commission's argumentation about the merged entity's and its rivals' pricing incentives is consistent with both economic theory, as put forward by the Horizontal Merger Guidelines, and with the evidence on file.

Figure 45 – [Figure redacted]

Source: Replication of Figure 6 of Annex 5 of Korean Air's Response to the Commission's Statement of Objections

(991) The alternative case, when swing capacity would come from capacity not already committed on the market, would relate to competitors' expansion. The Commission refers to the next section for a more detailed discussion with respect to the barriers to expansion.

8.11.4.3. Competitors are unable and/or unlikely to expand

(992) The market investigation has revealed that contrary to the Parties' claims[1537] and Korean Air's submission in paragraphs 771-803 of its Response to the Commission's Statement of Objections, current competitors face significant barriers to expansion and are unlikely to expand their activity sufficiently to prevent any potential anti-competitive effects of the Transaction, either by increasing the amount or capacity of aircraft on the route or by increasing frequencies post-Transaction.

(993) First, many competitors are unable to increase their frequencies or add additional aircraft to the route, because they have maximized the traffic rights available under the respective air service agreement (ASA) concluded between their home country and South Korea.[1538] According to information provided by the Parties, [a competitor], [a

1536 "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices.*" Horizontal Merger Guidelines, paragraph 24.

1537 Response of Korean Air to the Article 6(1)c decision, paragraphs 473 to 508.

1538 For carriers carrying air cargo via dedicated freighter aircraft, traffic rights for freighters are considered. For carriers carrying air cargo via passenger aircraft, traffic rights for passenger aircraft are considered.

competitor] for its operations in […], [names of competitors], [a competitor] (for the Incheon-[…] route), [a competitor] (for the Incheon-[…] route) and [a competitor], would not be able to add frequencies and are therefore unable to expand in reaction to negative effects of the Transaction.[1539] Contrary to Korean Air's submissions in paragraphs 773-778 of its Response to the Commission's Statement of Objections, and in paragraphs 158 and 160 of its Response to the Commission's Letter of Facts, later evidence produced by the Parties have again confirmed that the abovementioned air cargo carriers are in any event constrained in increasing their supply due to traffic rights limitations.[1540]

(994) Carriers consider that the availability of traffic rights is an important factor in the decision whether to enter or expand on a new route.[1541] The market investigation shows that the exhaustion of traffic rights granted to carriers constitutes a barrier to entry and expansion for carriers providing direct as well indirect flights and potentially wishing to expand their services on the Overlap Routes.[1542]

(995) According to [a competitor], even if it was interested in increasing its frequencies between Europe and South Korea, it would currently be unable due to a lack of traffic rights. Concretely, "[a]*t this stage* [the competitor] *utilizes the maximum frequencies available so it is already maximizing loads within the constraints of the limited frequencies it can offer its customers*."[1543] While [the competitor] would be able to increase frequencies between […] and ICN, this is currently not an option for the carrier, as it would not result in a competitive offer for potential customers. According to [the competitor], "*customers in […] using* […] *would impose a significant increase of end-to-end travel time and operating costs. Thus, making the option as such uncompetitive compared against options available from the […] hubs*."[1544] This assessment appears reasonable given the fact that according to [a competitor], [90-100]% of the cargo on [its] flights from […] to ICN in 2022 originated from […].[1545] In addition, as the additional demand that [the competitor] would be addressing would come from the area around its […] hub, expansion via […] would involve additional road transport, which would increase costs and constitute a less attractive service for customers.[1546]

(996) [A competitor], stated that from their main hub in […]"*we use all frequencies for passenger flights and cannot fly more often*".[1547] According to [a competitor], "[a]*dditional slots and bilateral rights would be required for us to be able to expand the volume*".[1548] Furthermore, [a competitor] has confirmed that any increase in frequencies or the number of aircraft active on the route "depends on granting of further traffic rights".[1549] [A competitor] has also confirmed that the existing air

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1539 Form CO, Annex 37 on "General Information about the Aviation Industry", tables 1, 3 and 4, and RFI 7, Table 2.

1540 Response of Korean Air to RFI 26, Tables 1 and 2.

1541 Replies to question D.B.D.4 of Questionnaire 2 to cargo competitors; Replies to question D.B.D.3 of Questionnaire 5 to cargo Customers.

1542 Replies to question D.B.D.1 of Questionnaire Q2 to cargo competitors and to question D.B.D.2 of Questionnaire Q5 to cargo customers; Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [a competitor], Non-confidential minutes of the conference calls with [a competitor]; [a competitor]; [a competitor]; and [a competitor].

1543 Response of [a competitor] to RFI 2, question 14 (ID 11132).

1544 Response of [a competitor] to RFI 2, question 51 (ID 11132).

1545 Response of [a competitor] to RFI 2, question 50 (ID 11132).

1546 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 10118).

1547 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1548 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).

1549 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).

service agreement prevents them from increasing the number of flights on the route and that for this reason, it has not done so within the last five years.[1550] [The competitor] also stated that "*the cargo traffic between the EU and South Korea – via* […] - *is `bottlenecked´ due to this limitation*" of lack of available traffic rights.[1551] [The competitor] further expresses its view that "*there is no development expected in regards to an ASA revision on this regard*."[1552]

(997) The Parties are well aware of this barrier to entry. As shown in paragraph (583), the Parties have previously urged MOLIT not to increase the traffic rights allocated to competitors also carrying air cargo on the route.[1553] In fact, Korean Air's internal documents indicate that […].[1554] In addition, […].[1555] […].

(998) Moreover, according to the Parties, European carriers which have maximized the traffic rights from their country could expand services on the route by providing flights from/to an airport in a different EEA country, which still has available traffic rights from/to South Korea.[1556] And indeed, [a competitor] is currently operating passenger flights between […] and ICN, in addition to flights from its hub in […], for this reason. However, expanding sizeable cargo operations to airports different from a carrier's hub airport itself requires significant investments and time.[1557] The costs and operational changes associated with such a move - as well as the time delay it would require - suggest it is highly unlikely that cargo carriers would freely and rapidly switch between airports.[1558] In addition, many of these carriers operate hub and spoke models for their passenger business. These carriers are unlikely to shift operations to a smaller airport that is not their hub in a different country for one route.[1559] As [a competitor] states: "[o]*ur operation is based on combined passenger and cargo service and requires the* […] *hub as a base of the European operation, to get passengers to the service, as provided by our passenger feeder network*" and furthermore adding that "*the smaller European airports would not allow getting the passenger loads required for the combined passenger / cargo service*".[1560] In addition, as shown below, in addition to traffic rights, expansion for passenger carriers which transport belly-hold cargo is limited by the passenger demand from the respective airports.[1561]

(999) On the other hand, non-European carriers, such as [competitors], have only limited activities on the route Europe to South Korea despite the fact that they face no significant limitations in terms of traffic rights[1562] in their expansion. To illustrate, their market share appears considerably limited throughout the years 2018, 2019, 2020 and 2021. This is indicative of their different geographic focus, while it further supports that – contrary to Korean Air's submission in paragraph 161 of its Response to the Commission's Letter of Facts – they would not have the incentive to expand

1550 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).
1551 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).
1552 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).
1553 Parties' reply to RFI10, […], page 4 & 5 (ID 009780-014082)
1554 "RFI 10 – […]" and "M.10149 - KE - OZ - Annex QP6.Q5g.a.ii.2 – […]".
1555 "M.10149 - KE - OZ - Annex QP6.Q5g.a.ii.11 – […]", pages 4-5.
1556 Response of Korean Air to the Article 6(1)(c) Decision, paragraphs 477 to 485.
1557 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID: 10118).
1558 Non-confidential version of RFI 1 to [a competitor] dated 31 January 2023 (ID: 10118).
1559 See: Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).
1560 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).
1561 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1562 Response of Korean Air to RFI 26, Table 2.

significantly on the routes in question in case of a price increase post-Transaction – as they have not expanded in the past but have focussed their activities on other routes. Even the Parties agree with the Commission's understanding that all those competitors have in any event a different geographic focus.[1563]

(1000) In addition, and contrary to Korean Air's arguments in paragraphs 779-781 of its Response to the Commission's Statement of Objections, and in paragraph 162 of its Response to the Commission's Letter of Facts, unscheduled flights are unlikely to be used to circumvent traffic right restrictions as the application process for them would entail additional delays that make such solutions uneconomical.[1564] According to [a competitor], "*authorities are also vigilant that charters are not used by airlines to circumvent traffic rights restrictions*"[1565] (emphasis added), while [a competitor] points out that MOLIT would require ten working days for traffic right applications for unscheduled flights and that the latter "*always bring the risk that traffic rights or slots are not approved*"[1566] (emphasis added). Therefore, carriers that have exhausted their traffic rights cannot substantially rely on expansion through unscheduled flights.

(1001) In any event, the Commission notes that unscheduled flights have not been confirmed by the Commission's market investigation as being regularly offered on the market, and therefore cannot serve as a counterbalance to traffic rights limitations. One customer explained that "*unscheduled flights are not something that should be viewed as a regular part of the market, as it is an option on the side, that may or may not be offered each time*".[1567] Another customer also noted: "*It is exceptional that there would be additional unscheduled flights*".[1568]

(1002) [A competitor] sums it up in its quote "*ad-hoc additional flights during the covid period cannot be treated as a cargo strategy*".[1569] In the same vein: (a) "*unscheduled or charter flights are a very small niche of the global air cargo market, only attractive to customers for very specific use cases and not as replacement for regular scheduled services*";[1570] (b) "*No unscheduled cargo flights have been performed in 2019 and 2022*";[1571] (c) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] stated that it "*only has belly-hold cargo space on the Europe – South Korea route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*";[1572] (d) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] replied that "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*";[1573] (e) "*2019 No unscheduled cargo. In 2022 we operated 29 cargo flights with scheduled passenger service flight number but only cargo load and 9 dedicated and unscheduled cargo flights. In 2023 so far, no dedicated cargo flights and expectation we continue with scheduled pax/cargo flights only this year*";[1574] (f) "*As* [a competitor] *does not*

1563 Response of Korean Air to RFI 27, question 26.
1564 Non-confidential minutes of the conference call with [a competitor].
1565 Response of [a competitor] to RFI 2, question 43 (ID 11132).
1566 Response of [a competitor] to RFI 2, questions 40.5 and 43 (ID 11863).
1567 Non-confidential minutes of the call with [a customer].
1568 Minutes of call with [a customer].
1569 Response of [a competitor] to RFI 1, question 12.4 (ID 11689).
1570 Response of [a competitor] to RFI 2, question 42 (ID 11132).
1571 Response of [a competitor] to RFI 2, question 6.4 (ID 12886).
1572 Response of [a competitor] to RFI 1, question 9.2 (ID 11203).
1573 Response of [a competitor] to RFI 1, question 9 (ID 11084).
1574 Response of [a competitor] to RFI 1, question 6.4 (ID 11106).

control any capacity directly, and relies on the [competitor's] Operating Companies for passenger belly capacity and third party interline capacity, this question does not apply";[1575] and (g) "*All our flights are scheduled*".[1576]

(1003) Second, competitors transporting cargo between Europe and South Korea only in the belly-hold of passenger aircraft would not expand their frequencies of passenger flights due to price increases in cargo, but would only expand if such an expansion is justified by a prospect of carrying more passengers. This consideration acts as a barrier to entry preventing expansion on the route by [competitors].

(1004) Korean Air concedes this fact stating that "*The Parties agree with the Commission's finding that aircraft providing belly-hold capacity are scheduled based on demand for passenger services*".[1577] Korean Air furthermore states that: "*For cargo transported by passenger aircraft air carriers do not have the same flexibility as passenger flights operate regardless of the cargo demand*".[1578] In its Response to the Statement of Objections, Korean Air submits that "*the fact [a competitor] does not operate freighter aircraft limits [the competitor's] possibility to shift significant capacity on these routes*".[1579]

(1005) In the course of the market investigation, competitors have confirmed that the capacity of belly-hold cargo is dependent on demand for passenger services.[1580] Specifically, [a competitor] has stated that for belly-hold "*the allocation of capacity is mostly driven by passenger demand*."[1581] [A competitor] added that "*Our network is driven by passenger demand and cargo capacity is generally subordinate to this*."[1582] According to [a competitor], "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*" and also "[c]*argo is always incorporated in the business case however the relevance compared to passenger is limited*".[1583] Furthermore, [a competitor] states that during network planning "[the competitor] *would give primary consideration to passenger demand* […]. *While freight may play a role, it will not be the primary or most substantial factor in determining a new route or service*."[1584] [The competitor] also states that "[c]*argo demand alone would never drive a decision to expand passenger services*".[1585]

(1006) Similarly, [a competitor] indicated that "[i]*f the prices* [on the route] *were to increase post-Transaction, this would not affect* [the competitor]*'s operation*", the reason for this being that [the competitor's] cargo business in South Korea is entirely opportunistic and not a focus of the company.[1586] This has been confirmed for [the competitor], as the airline has not increased its number of aircraft or frequencies on the routes between Europe and South Korea in the last five years, regardless of any price

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1575 Response of [a competitor] to RFI 1, question 21 (ID 11626).

1576 Response of [a competitor] to RFI 1, question 38, (ID 10129).

1577 Response of Korean Air to the Article 6(1)(c) Decision, paragraphs 476.

1578 Form CO, paragraph 987.

1579 Korean Air's Response to the Commission's Statement of Objections, paragraph 817. See also Korean Air's Response to the Commission's Letter of Facts, paragraph 163.

1580 Reply of [a competitor] to Question D.B.D.1 (ID 8596) and reply of [a competitor] (ID 7812) to question D.B.D.3 of Questionnaire Q2 to cargo Competitors; Non-confidential minutes of the conference call with [a competitor]. Non-confidential version of RFI 1 to [a competitor].

1581 Response of [a competitor] to RFI 1, questions 1 and 11.2 (ID 11675).

1582 Response of [a competitor] to RFI 1, question 1 (ID 11689).

1583 Response of [a competitor] to RFI 1, questions 9 and 39 (ID 11084).

1584 Response of [a competitor] to RFI 1, question 6 (ID 10676).

1585 Response of [a competitor] to RFI 1, question 9 (ID 10676).

1586 Non-confidential minutes of the conference call with [a competitor].

developments.[1587] In addition, "[a competitor] *only has belly-hold cargo space on the Europe – South Korea route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*".[1588]

(1007) Third, two competitors allegedly active on the routes between Europe and South Korea cannot in any event expand as (i) the first one does not control any capacity directly, and relies on other operating companies for passenger belly capacity and […], while (ii) the second one is not actually active: "[the competitor] *does not currently provide scheduled service on any routes between Europe and South Korea and has no current plans to provide such scheduled service on those routes in the future*".[1589] The competitor's capacity is exclusively provided via dedicated wet lease or charter basis to other carriers active on the routes between Europe and South Korea (it is therefore already reflected in the data of the provider that actually operates the aircrafts, see Annex I for additional details).[1590]

(1008) Fourth, the closure of the Russian airspace to European competitors has added a barrier to entry and expansion to all affected carriers. In terms of existing competitors, this barrier to entry affects [competitors].

(1009) As they are not able to enter the Russian airspace, carriers face longer flight times, resulting in lower payloads and a less efficient operation on the routes between Europe and South Korea in general.[1591]

(1010) Another issue related to the closure of Russian airspace is that due to the additional flight time, the slots an airline has previously used to fly back and forth between Europe and South Korea with maximized efficiency/minimized grounded time of aircraft may not be appropriate anymore to operate the route. While ICN airport does have available slots outside of peak hours, the adjustment of slots to the new flight schedules may require the respective carrier to request daytime slots or slots during a constrained time.[1592] This may further complicate the operation of the existing frequencies on the route, let alone any further expansion.

(1011) In paragraph 786 of its Response to the Commission's Statement of Objections, and in paragraph 166 of its Response to the Commission's Letter of Facts, Korean Air agrees that both routes, (i) Europe to South Korea and (ii) South Korea to Europe, have been affected by the closure of the Russian airspace, but the effects are greater on the South Korea to Europe direction, due to the additional limitation on the capacity that aircraft can carry. However, Korean Air contests that the closure of the Russian airspace has added a barrier to entry and expansion on either of the routes due to the fact that there has been no example of discontinuation of operations of air cargo carriers who need to bypass the Russian airspace.

(1012) The Commission nevertheless considers that the closure of the Russian airspace to European competitors has added a barrier to entry and expansion to all affected carriers, namely [competitors], and in both routes:

1587 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11532).

1588 Response of [a competitor] to RFI 1, question 9.2 (ID 11203).

1589 Response of [a competitor]to RFI 1, question 3 (ID 11255).

1590 Response of [a competitor] to RFI 1, questions 2, 12, 21 and 30 (ID 11626).

1591 See e.g. Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106), Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).

1592 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11863).

(a) [A competitor] did not distinguish between the two routes: "*The Russia bypass has increased flight times, making aircraft less efficient. At the same time, the payload ex ICN with a direct flight to […] is greatly reduced. The fact that not all airlines fly around Russian airspace leads to a distortion of competition, as these airlines can operate at lower costs and spread fixed costs over more production through shorter flight times. We expect that those effects persist*".[1593]

(b) In the same context and without distinguishing between the two routes, [a competitor] submits that it "*has to circumvent Russian airspace, making it more costly and affecting the available payload*".[1594]

(c) [A competitor] explained that "*all EU airlines have been forced to fly longer routes into NE Asia, including South Korea* […] [the competitor] *does not expect the situation to revert back to the previous status before the war any time soon, certainly at least not for the next 5 years and possibly even for the next decade at least*".[1595]

(d) According to [a competitor], "*the schedule* […] *since Russia airspace closure is different, as longer routings do not enable a 24 hour total rotation concept*";[1596] "[A competitor] *has unlimited number of frequencies for cargo-only operations without any conditions on route schedule agreed between the Ministries of Transport. However, the air services to South Korea are not governed only by the agreement between* […] *and Korean authorities on traffic rights and frequencies. Should the Russian airspace be open, operating carrier would also need to have overflight rights to access short trans-Siberian route to Asia. The amount of overflight rights and routes are governed by the agreements between* […] *and Russian authorities*."[1597] This also shows that even if there are available traffic rights on the South Korean end, this is not enough to prove that competitors can actually expand their operations, as there may be limitations on the side of third countries that would also need to grant further rights or approval in order for the air carrier to expand, *e.g.* in [a competitor's] case, that third country would be Russia. On the other hand, not having traffic rights from South Korea serves as evidence that a competitor cannot in any event expand on the routes between South Korea and Europe without such additional traffic rights, even if they had an incentive to, *e.g.* [a competitor].

(e) [A competitor] submitted the following: "*Southern route with avoidance over Siberia route – additional 2-2,5 block hours impacting final payload*".[1598] In addition, [the competitor] explained: "*For the time being, due to the Russian invasion of Ukraine, we are unable to use Russian airspace for flights to Korea, Japan and China, where we have to use the so- called Southern Route, which makes the journey much longer*"; "*Increasing direct operation costs. Lower payload. – it will persist until re-opening Over Siberia route*".[1599]

(f) In the same vein, [a competitor] noted the following: "*As a result of the closure of vast Russian airspace, some European and Asian carriers have been badly affected. Flight routes became longer and average flight times between South Korea and Europe (vice versa) increased nearly 2 hours. Due to longer routes*

1593 Response of [a competitor] to RFI 2, question 31 (ID 12886).
1594 Response of [a competitor] to RFI 1, question 31 (ID 11084).
1595 Response of [a competitor] to RFI 2, question 31 (ID 11132).
1596 Response of [a competitor] to RFI 1, question 28 (ID 11106).
1597 [A competitor's] reply to question D.B.D.4 of questionnaire Q2 to cargo competitors (ID 7692).
1598 Response of [a competitor] to RFI 1, questions 9-10 (ID 11689).
1599 Response of [a competitor] to RFI 1, questions 13.1 and 31 (ID 11689).

and higher flight times, fuel costs of carriers operating on South Korea-Europe market increased. These effects are expected to continue in 2023".[1600]

(1013) In addition, the Commission notes that, for the reasons set out in section 8.10.1 above, the effects of Russia's war against Ukraine are considered structural for the competitive assessment of the present case, and therefore, the increased flight time for carriers that have to or choose to avoid the Russian airspace is also considered a barrier to entry and expansion which is expected to last.

(1014) Fifth, access to aircraft and personnel constitutes a further barrier to expansion. These limitations affect both established players like [names of competitors] and as well as smaller operators like [a competitor].[1601] According to the market investigation, the acquisition of an aircraft suitable for cargo operations between Europe and South Korea would currently require lead times up to three years.[1602] The lead time to lease such aircraft is likely going to be between a few months and two years.[1603]

(1015) The Commission further notes that the non-timely availability of relevant assets necessary for air cargo carriers' expansion, *i.e.* aircraft, seems to be a consideration also in Korean Air's internal documents,[1604] where […].[1605]

(1016) Sixth, several competitors have confirmed that they have no plans or have not confirmed their plans to increase their capacity on the route in the near future, namely [a competitor],[1606] [a competitor] and [1607] [a competitor].[1608]

(1017) According to [a competitor], "[the competitor] *does not plan to offer regular and scheduled all cargo capacity to/from ICN in the next 3-5 years*." While the carrier would be interested in increasing passenger flights on the route, it is currently unable to do so due to the lack of traffic rights.[1609] [A competitor] states that "[…] *does not have any plan to increase the cargo flights / capacity on this route*."[1610]

(1018) In addition, one of the Parties' largest customers on the route Europe to South Korea has also provided their perspective by explaining the different focus of certain competitors making them uninterested in expanding their operations on the relevant routes between Europe and South Korea. The customer believes that the other large markets of Asia, such as Hong Kong, China or Singapore have their own freighters serving them, which would not be interested in serving the South Korean routes, because they have to serve their own markets first. The same case is applicable to

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1600 Response of [a competitor] to RFI 2, questions 31 (ID 11147).

1601 Replies to questions D.B.D.1, D.B.D.2, D.B.D.3 and D.B.D.4 of Questionnaire 2 to competitors (IDs 9623, 9589, 8596, 9405).

1602 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10129).

1603 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10129).

1604 "M.10149 - KE - OZ - Annex 16.a – […]", page 155.

1605 Korean Air contests this finding in paragraph 171 of its Response to the Commission's Letter of Facts. The Commission refers to paragraphs 71 and 74 of the Horizontal Merger Guidelines, where the difficulty to obtain essential input materials in a timely manner is explained.

1606 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1607 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).

1608 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).

1609 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1610 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).

carriers such as [competitors]. This is also true for China – it has no capacity to book other destinations since Chinese carriers are fully booked already.[1611]

(1019) Seventh, in response to the market investigation, three current competitors on the route have indicated that they plan to expand existing services, namely [competitors].[1612]

(1020) In the first place, as stated above and as acknowledged by the Parties, [a competitor] is currently restricted by existing traffic rights and has confirmed traffic rights constituting a barrier to entry on the route.[1613] Expansion by [the competitor] can therefore not be considered timely or likely. In the second place, while [a competitor] is expecting the delivery of additional Boeing 777F aircraft between 2023 and 2027 (and further aircraft post 2027), the carrier has confirmed that "[d]*etails of the potential expansion are not concrete and are being evaluated*".[1614] In addition, [the competitor] has not added any frequencies/flights on the route from/to South Korea in the last five years.[1615] This does not, fulfil the criteria of timely, likely and sufficient entry. In the third place, [a competitor] has stated that "[s]*ince we are planning to acquire additional freighter aircrafts the existing market requires additional frequency and we can serve it with the additional supply of capacity".*[1616] Similarly, this statement also does not fulfil the criterion of timely, likely and sufficient entry.

(1021) Lastly, given that integrators have an entirely different business model and focus, as described in detail in section 7.2.1.4 above, it is unlikely that they would respond to a hypothetical price increase post-Transaction by adding more capacity to their airport-to-airport general cargo services, which is only considered a filler product for leftover capacities. Boeing's World Air Cargo Forecast 2022-2041[1617] projects that the e-commerce / express market will significantly expand (even double) in the near future. Therefore, contrary to what Korean Air argues in paragraph 168 of its Response to the Commission's Letter of Facts, integrators – whose main focus and business model is the e-commerce / express delivery market, as opposed to airport-to-airport transport of general cargo – will be having less and less capacity available for their filler product of airport-to-airport transport. This is in line with [an integrator]'s submission: "*its core door-to-door business has always been the basis of its network planning and* [...] *contribution on* [our] *flights is expected to be less and less over time, assuming underlying growth of its door-to-door business*".[1618]

(1022) On the basis of the above considerations, the table below provides an illustration of the Parties' competitors' ability and/or incentive to expand. Contrary to Korean Air's submission in paragraph 169 of its Response to the Commission's Letter of Facts, it appears that […] competitors could practically expand their service on the route, namely [competitors]. However, no concrete plans have been confirmed during the Commission's market investigation, whereas their incentive can only be seen as highly speculative.

1611 Minutes of call with [a customer].

1612 Replies to question D.B.D.4 of Questionnaire 2 to Cargo competitors (ID 9717, 8596, 9405).

1613 Non-confidential minutes of the conference call with [a competitor] dated 22 November 2021 (ID 1412).

1614 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 5911).

1615 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11680).

1616 Reply of a competitor to question D.B.B.4. of Questionnaire Q2 to cargo competitors (ID 9596).

1617 Available online (https://www.boeing.com/resources/boeingdotcom/market/assets/downloads/Boeing_World_Air_Cargo_Forecast_2022.pdf) (ID 12795).

1618 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

Table 61: Overview of competitors' ability and incentives to expand

Cargo carrier	Ability	Incentive
[…]	No – traffic rights limitations	Yes
[…]	Yes	No – integrator / focused on a different market
[…]	Yes	Unlikely, but it depends on market developments, for example the opening of the Russian airspace,[1619] and other destinations are more profitable
[…]	No – traffic rights limitations	No – hub considerations
[…][1620]	Yes	Potentially, but no concrete plans[1621]
[…]	No – traffic rights limitations	No – network decisions are driven by PAX
[…]	Yes	No – network decisions are driven by PAX
[…]	Yes	Potentially, but no concrete plans[1622]
[…]	No – traffic rights limitations	No plans[1623]
[…]	No[1624]	No – network decisions are driven by PAX
[…]	No – traffic rights limitations	It depends on granting of further traffic rights[1625]
[…]	No – traffic rights limitations	No – network decisions are driven by PAX
[…]	No – traffic rights limitations[1626]	No – network decisions are driven by PAX[1627]
[…]	Yes	No – network decisions are driven by PAX
[…][1628]	Yes	Not foreseen – recent entrant
[…][1629]	No – no own capacity	No – no own capacity
[…]	Yes	No[1630]
[…]	Yes	No – integrator / focused on a different market
[…]	Yes	No – integrator / focused on a different market

Source: the Commission's analysis in section 8.11.4.3

(1023) Based on the above, the Commission concludes that current competitors face significant barriers to expansion and are unlikely to expand their activity sufficiently to prevent any potential anti-competitive effects of the Transaction, either by increasing the amount or capacity of aircraft on the route or by increasing frequencies post-Transaction.

1619 Reply of [a competitor] to question D.B.B.4 of Q2 to cargo competitors (ID 9623).

1620 [A competitor's] reply to questions 5 and 27.1 of the Commission's RFI 1 (ID 10129); Minutes of call with [a competitor].

1621 [A competitor's] reply to question D.B.B.4 of Q2 to cargo competitors (ID 9561). Also see paragraph (1020) above.

1622 [A competitor's] replies to question D.B.B.4 of Q2 to cargo competitors (ID 9405), in conjunction with its responses to RFI 1 and RFI 2. Also see paragraph (1020) above.

1623 [A competitor's] reply to question 2 of the Commission's RFI 1 (ID 11147).

1624 [A competitor's] reply to question 10 of the Commission's RFI 1 (ID 11106).

1625 [A competitor's] reply to questions 13 and 22 of the Commission's RFI 1 (ID 11755).

1626 [A competitor's] reply to question 24 of the Commission's RFI 1 (ID 11689): "*We are operating the maximum number of weekly services and would be interested to increase our frequency, but due to ASA limitations we are unable to do this*".

1627 [A competitor's] reply to questions 1 and 12.6 of the Commission's RFI 1 (ID 11689): "*Our network is driven by passenger demand and cargo capacity is generally subordinate to this"; "*[our company] *is not a typical cargo carrier – our offer is calculated based on passenger capacity*".

1628 Minutes of call with [a competitor].

1629 [A competitor's] reply to questions 2, 12, 21 and 30 of the Commission's RFI 1 (ID 11626).

1630 Reply of [a competitor] to questions B.8 and D.B.B.4 of Questionnaire Q2 to cargo competitors (ID 7902).

8.11.4.4. Competitors are unlikely to shift available capacity within the routes between East Asia and Europe

(1024) The Commission's market investigation has not confirmed the Parties' claim – reiterated by Korean Air in paragraphs 804-823 of its Response to the Commission's Statement of Objections, and in paragraph 167 of its Response to the Commission's Letter of Facts – that competitors are able and likely to increase sales volumes on the route from Europe to South Korea by shifting available capacity within the routes between East Asia and Europe. According to the Parties, all the capacity that is used between East Asia and Europe can and would at any point in time become available for the routes between the EEA and South Korea.[1631] Competitors responding to the Commission's market investigation have for the most part not confirmed this claim.

(1025) First, this strategy could not be pursued by carriers which only transport point-to-point air cargo on direct non-stop flights from Europe to South Korea, with the exception of potential behind and beyond routes. The reason for this is that these carriers carry cargo from Europe to South Korea or the other way around, without having the ability to offload or on-board other cargo on the way. The only way these carriers could pursue such a shifting strategy would be, if they had a hub at the East Asian end of the route, or if they had interlining agreements in place, between this end of the route and South Korea. This was confirmed by [a competitor], when stating that the only way they could shift their capacity would be by using interline-partners in ICN, which would connect their flights to other East Asian directions.[1632] Neither the Parties, nor the market investigation has presented sufficient evidence for the Commission to assume that these carriers would adopt such an approach.

(1026) Second, any competitor that would pursue such a strategy would face the opportunity costs of giving up capacity on another route, which it currently prioritizes over the route from Europe to South Korea.[1633] Concretely, [a competitor] currently operates all […] flights between Europe and ICN […]. [The competitor] would therefore have to forego transporting cargo between Europe and […] in order to increase capacity on the Europe-South Korea routes by way of replacement. To the degree that such a strategy would be profitable, this capacity shifting is already conducted by [the competitor] on this route. However, according to [the competitor], "[b]*usiness to […] is historically more important for* [our company] *than business to South Korea*". [1634] [The competitor] therefore stated that "*a further increase is not possible*". [1635] It is therefore unlikely that [a competitor] would pursue such a strategy.

(1027) Similarly, according to [a competitor], "*there are opportunity costs of giving up cargo trade on other routes. We also have commitments to existing customers. These will prevent us from re-allocating more freighter capacity to the Europe-South Korea route*."[1636]

(1028) Furthermore, [a competitor] is also unlikely to shift capacity in this way. According to [the competitor], the South Korean market is not important for its business and therefore not a focus. This is exemplified by the fact that they do not operate freighter aircraft on the route between […] and South Korea.[1637] Consequently, despite stating that it expects the Transaction to increase barriers to entry on the route for

1631 Response of Korean Air to the Article 6(1)(c) Decision, paragraph 458.
1632 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).
1633 See e.g. Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1634 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1635 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1636 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11675).
1637 Non-confidential minutes of the conference call with [a competitor].

competitors, [the competitor] does not believe that the Transaction will have a significant impact on its air cargo business, for the reason that the routes between Europe and South Korea are not of any significance to them.[1638]

(1029) Also, [a competitor] indicated that a diverse portfolio of destinations allows them to deal with market seasonality and to manage capacity more efficiently, indicating that they would likely not dramatically shift their capacities across routes in response to potential price increases post-Transaction.

(1030) According to [a competitor], for them, "*a reallocation* [of volume from other destinations to the Europe-South Korea route] *would be less optimal*" for their network.[1639]

(1031) [A competitor] confirmed however that generally carriers "*consider substation in the manner suggested*". [1640] When asked about re-allocating capacity in this way, [the competitor] however replied that "[i]*n practice,* [a competitor] *has never done this nor would it, as it would result in non-ICN belly hold space not being used. Moreover, as a network carrier, it is important to maintain a presence and service in all our markets*".[1641]

(1032) [A competitor], which is also active on adjacent routes, has indicated that these "*are either equally or more important as compared Europe to South Korea*".[1642]

(1033) Third, some competitors have confirmed that they see other routes which they operate between Europe and East Asian countries as separate markets to the Europe to South Korea route.[1643] The Parties have not sufficiently shown that the capacity available in these markets will affect the capacity available for the route between Europe and South Korea, beyond the fact that they require the same main resources (namely cargo capacity on aircraft). Concretely, [a competitor] indicated that whether capacity is currently used on a route between East Asia and Europe does not make it easier to move this capacity to the Europe – South Korea route, than it would for any other air cargo capacity.[1644] In addition, [a competitor] stated that "*China and Japan are different markets. It has no impact on volumes to/from South Korea".*[1645]

(1034) Fourth, some competitors have confirmed that they have not employed such a strategy in the past. In particular, [a competitor] indicated that "*we have not transported by re-allocating"* and that *"an answer* [to the question how much capacity [the competitor] could add by means of re-allocation] *is "0"*".[1646] The carrier confirmed that such re-allocation of capacity between routes is not practiced and has not been practiced. In addition, as indicated above, [a competitor] has stated that "[a competitor] *has never done this nor would it".*[1647]

(1035) Fifth, as shown in sections 8.11.2 and 8.11.3, customers regard capacity in air cargo services on the route from Europe to South Korea as a differentiated product. For example, non-stop connections generally represent a higher value proposition than connections with transhipment. In markets with differentiated products, it is especially

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1638 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).
1639 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).
1640 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1641 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1642 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).
1643 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1644 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1645 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1646 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1647 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).

likely that competitors may respond to a price rise by the merged entity by increasing their own prices.[1648] Paragraph 24 of the Horizontal Merger Guidelines provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market*."[1649]

(1036) In addition, several customers have indicated that the quality and type of service of the carrier is more important than rates or that such alternatives would only be considered for less important cargo.[1650] Therefore, should the Parties reduce supply and/or increase prices on the routes *post-merger,* we would rather expect competitors to increase prices as well.

(1037) Lastly, and contrary to what Korean Air submits in paragraphs 806-808 of its Response to the Commission's Statement of Objections, and in paragraph 173 of its Response to the Commission's Letter of Facts, the Commission notes that the threat of additional capacity being put in the EEA-Korea trades by other competitors is not reflected in the internal business documents of either of Korean Air and/or Asiana. The Parties rather only refer to a vague monitoring of capacity on a worldwide basis, which is of limited evidentiary value for the purpose of evaluating the availability of spare capacity on the routes between Europe and South Korea.[1651]

(1038) In light of the above and because, as shown in sections 8.11.2 and 8.11.3, many customers have a preference for direct, freighter flights at high frequencies and also perceive a quality difference between the Parties and many of their competitors, even if competitors would pursue a strategy of shifting available capacity towards the Europe to South Korea route in response to a capacity decrease by the Merged Entity post-Transaction, that would not constitute an adequate alternative to the Parties' services for customers.

8.11.5. Indirect out-of-market constraint from integrators

(1039) Korean Air submits that there are further indirect constraints that integrators pose on the Parties' airline cargo pricing. End customers/shippers can obtain door-to-door delivery services from freight forwarders and integrators. Air cargo services can be considered as an upstream input into the service provided by freight forwarders. Integrators, on the other hand, are vertically integrated and rely on in-house airline cargo services. If prices of general air cargo services as an upstream input increase, this increases the cost for freight forwarders. According to Korean Air, this is likely to cause freight forwarding customers to switch to integrators. These customers would no longer use air cargo services as provided by the Parties, but instead use those provided in-house by integrators – resulting in a disincentive for the Parties to increase prices.[1652]

(1040) In paragraphs 825-838 of its Response to the Commission's Statement of Objections, Korean Air reiterates that integrators actually pose significant indirect competitive constraints on the Parties' business as they offer similar services as the Parties offer in

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1648 See, for example, the Bertrand-Edgeworth framework discussed in Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay.*

1649 Horizontal Merger Guidelines, paragraph 24.

1650 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1651 Response of Korean Air to RFI 26, question 9.

1652 Response of Korean Air to RFI 14, question 5.

cooperation with freight forwarders, in particular with the freight forwarding arm of Korean Air's parent company Hanjin KAL.

(1041) The Commission considers that to a certain extent the integrators' core door-to-door services as analysed in section 7.2.1.4 above, may be in competition with freight forwarders' services (using air cargo services as an input). However, such competition is only limited and can only pose a limited indirect constraint – at best – to the upstream market for airport-to-airport air cargo services, where the Parties are active.

(1042) First, the Commission notes that the integrators' core business consists in the door-to-door delivery of mainly small packages and parcels, as opposed to larger general cargo, *i.e.* freight, which is the core focus of freight forwarders. As integrators explain,[1653] their product offering is different to that of freight forwarders using air cargo services as an input, in terms of the type of cargo mainly transported and the service offered, namely a door-to-door service which is inherent to the integrators' business model and not always a given for the freight forwarders' business model. [...] integrators, […] confirmed that their main focus is their door-to-door business, for which they make all their strategic decisions.[1654]

(1043) Therefore, from the outset, the overlap of activities between integrators and freight forwarders is only limited; integrators mainly deliver small packages requiring little to no special handling,[1655] whereas freight forwarders focus on heavy consignments and typically outsource small package delivery services to third parties.[1656] This is also probably the reason why the integrators are mostly seen as customers of the Parties in their internal business documents[1657] – if not as third-tier competitors, as further explained in paragraph (948) above. The two are not contradictory as Korean Air argues in paragraph 192 of its Response to the Commission's Letter of Facts, but rather complementary. As analysed in section 7.2.1.4 above, the Parties' airport-to-airport air cargo services and the integrators' core door-to-door small package delivery services belong to separate product markets. The limited extent to which the integrators' spare capacity offered for airport-to-airport air cargo services poses a competitive constraint to the Parties is assessed in section 8.11.3.2 above. There, integrators are evaluated in their capacity as airport-to-airport general air cargo carriers, and they are considered rather distant competitors to the Parties. On the contrary, in this section the Commission assesses any indirect out-of-market constraint to the Parties posed by the integrators' door-to-door services, and therefore takes into account that, exactly because of the difference in their activities, integrators are rather seen as customers of the Parties.

(1044) The different focus between integrators and freight forwarders has been investigated and confirmed in the Commission's prior decisional practice.[1658] Freight and small packages are usually transported via different infrastructures which are designed in a

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1653 Non-confidential minutes of the conference call with [an integrator]; Reply of [an integrator] to questions C.A.7-C.A.8 and D.B.B.3-2 of Questionnaire Q2 to cargo competitors (ID 8457); Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2 (ID 11438); Non-confidential Minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2 (ID 11459); Non-confidential Minutes of the conference call with [an integrator].

1654 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2, question 10.2; Response of [an integrator] to RFI 2, questions 8 *et seq*.

1655 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 78 and footnote 55.

1656 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraphs 47 and 257; M.6570 – UPS / TNT Express, paragraph 87.

1657 "M.10149 - RFI 19 – […]", "M.10149 - RFI 19 – […]", "RFI 10 - FileList-RFI 10 – […]".

1658 M.6570 – UPS / TNT Express, paragraphs 159-163.

different way. The handling of freight necessitates special equipment that is not needed for small package delivery, such as forklifts; whereas the sorting of palletised goods is done manually. Freight forwarders usually deliver palletised goods to a more limited number of clients arranging the transport of their goods on a more point-to-point basis. As the number of items is significantly smaller and the items are much heavier, the freight forwarding model does not involve a hub-and-spoke system such as the one used by integrators. Small package networks are characterised by a significantly higher level of automation than freight networks, notably at the level of sorting centres, which are based on conveyor belts and scanners. Every day, the (local) sorting centres accumulate a high number of packages which are usually channelled via hubs and again sorted and dispatched to the delivery hubs and sorting centres. Furthermore, in order to deliver small packages efficiently, operators need a dense network. These features allow companies operating small package networks to ship high numbers of units between points of origin and points of destinations spread over wide geographic areas and within relatively limited timeframes compared to those prevailing in the freight forwarding sector. Due to the different characteristics of freight and small package networks, it is commonly agreed that there is a weight threshold below which small package delivery companies like the integrators are more competitive than freight forwarders and above which freight should be considered as a cost effective alternative.

(1045) The above considerations from the Commission's prior decisional practice have been confirmed by the Commission's market investigation in the present case. According to [an integrator], the business model of integrators is different to the one of freight forwarders in four core elements:[1659] (i) the speed of delivery and time commitment that comes at a higher price. In other words, according to [the integrator], at least non-time-sensitive customers would never switch from a freight forwarder to an integrator because the integrator would charge them with the premium door-to-door pricing that they would not need; (ii) the door-to-door service, which is not inherent in the business model of freight forwarders. As [an integrator] explained, what is inherent in the integrators' business model is the pick-up and delivery which will happen at the specific address the customer will indicate. Freight forwarders do not have such a capillary distribution network and therefore they do not typically sell a door-to-door element, at least not within their standard product offering; (iii) the different customers targeted. As [an integrator] explained, integrators would typically target thousands of customers with single (smaller) shipments, whereas freight forwarders would typically target a few customers with high volumes/quantities, *e.g.* heavy car parts; (iv) the different nature of the service. If for example [an integrator's] aircraft has a capacity of 100 tons and a customer wishes to transport 120 tons, [the integrator] would not turn away the customer. On the contrary, freight forwarders sell out their capacity against their inventory and do not accept any more shipments after that point. According to [the integrator], the difference lies on the fact that integrators' customers order pick-ups, whereas customers of freight forwarders (using air cargo carriers as an input) book capacity.

(1046) In addition, [an integrator] explained that "*the unique selling point of integrators is* [the] *one-stop-shop with end-to-end tracking capabilities. This is something that a freight forwarder cannot offer. Freight forwarders typically offer lower rates but there*

[1659] Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

is a higher risk of something breaking across the chain resulting in a delay. The one-stop-shop integrators offer is lower-risk for the customer".[1660]

(1047) However, the Commission acknowledges that to the extent that end cargo customers may have smaller shipments to make and they would be willing to pay the typically higher pricing of the door-to-door service of integrators, as well as to the extent that integrators themselves may be able to also handle some heavier consignments,[1661] integrators indeed compete to freight forwarders for end cargo customers. Such competition remains limited, however. To this end, [an integrator] indicated that the extent to which door-to-door services of integrators are substitutable to the services typically offered by freight forwarders "*depends on the customer. Some customers are price-sensitive, others time-sensitive. Typically, a time-sensitive is looking for security long-term that a package will arrive at a certain time or date, which integrators are more likely to be able to offer because they control their capacity and their network*".[1662]

(1048) Second, similar considerations were made by freight forwarders expressing a view on the issue during the Commission's market investigation. [A customer] explained that its "*business model is very different from that of integrators such as DHL, UPS or FedEx that focus on express services. For instance,* [the customer] *is not active at all in e-commerce where express services play a more important role.* [The customer's] *customers do not usually need express services. That is why they contract work with* [a customer]*, not with integrators.* [The customer] *has general cargo customers that would not purchase express services from the integrators. For general cargo, the cargo has to arrive 6 hours before departure, for express 2 hours. The service and price level are different*" (emphasis added).[1663] On a similar note, [a customer] submits that it "*does not offer "express-services" similar to those offered by integrators to their customers. In their view, such express services are different product from what freight forwarders offer. These express services involve door-to-door delivery and a guaranteed shipment on the day after the pick-up from the customer. In* [the customer's] *view, such services work only for smaller products and volumes (from the same customers), such as packets and parcels. In contrast,* [the customer] *moves* […] *main deck capacities every week from* […] *to South Korea. This makes it impossible for them to handle "true" express services. In addition, ICN actually has a different airport infrastructure for express services, to allow faster processing. For the shipments made by* [the customer]*, ICN requires them to clear every good/customer individually at ICN, which is not required for express services such as offered by integrators*".[1664]

(1049) In the same vein, [a customer] explained that the integrators have an entirely different business model, that of small packages, compared to freight forwarders. "*This is the reason why* [the customer] *does not even consider the integrators as its competitors. End cargo customers that contract with* [the customer] *may also have accounts with integrators, but for small packages, which is different to what* [the customer] *offers. This is the reason why* [the customer] *does not consider that its customers would switch to integrators in case of a price increase*".[1665]

1660 Response of [an integrator] to RFI 2, question 4.3 (ID 11438).
1661 Response of [an integrator] to RFI 2, introduction (ID 11459).
1662 Response of [an integrator] to RFI 2, question 4.4 (ID 11438).
1663 Non-confidential minutes of the conference call with [a customer].
1664 Non-confidential minutes of the conference call with [a customer].
1665 Non-confidential minutes of the conference call with [a customer].

(1050) Freight forwarders also do not seem to be concerned about the risk of losing end cargo customers/shippers to integrators. For example, [a customer] explains that it does not compete with integrators, as the latter have their own network and aircraft and five times higher the volumes. According to [the customer], "*most customers are time-sensitive and (and therefore would not necessarily go for DHL freight forwarding as they would not be sure for the time of delivery) but also price-sensitive (and therefore would not necessarily be willing to pay the higher price of DHL core express business).* [The customer] *offers a different product, which tries to retain a better balance between the two*".[1666]

(1051) In the same vein, [a customer] "*is convinced that its customers would not use integrator's services instead of* [the customer's] *freight forwarding services – even if* [the customer] *would raise its prices – as most of the services offered by* [the customer] *are business to business freight forwarding services and not courier cargo services. In contrast,* [the customer] *is of the opinion that its customers consider the vertically integrated (door-to-door) services offered by integrators (such as DHL, FedEx or UPS) not as a substitute to freight forwarding services which use air carriers to transport the cargo of their customers, but as a different type of service*".[1667]

(1052) Another customer further noted that its clients "*would not switch to integrators* [even] *in case* [the customer] *had to increase its prices due to an increase of price in the air cargo services market. The reason for that is that the integrators' door-to-door services only concern smaller packages and parcels and cannot really accommodate the needs of end cargo customers, such as the ones of* [the customer]".[1668]

(1053) Other freight forwarders acknowledge being in competition with integrators, but only to a certain extent or for a certain category of customers.[1669] For example, [a customer] explained that it offers two types of services, namely express and regular. "*For the express business,* [the customer] *functions in a somewhat similar manner to integrators, in the sense that they pick up the cargo with the customers and deliver it to the airport in the destination-country (rather than the regular airport-to-airport service). For certain types of customers (specifically […] customers), freight forwarders and integrators therefore compete in their business. In their view, if* [the customer] *were to increase prices for this service, customers would switch to integrators. At the same time,* [the customer's] *regular, "deferred" freight forwarding product, which is geared towards "regular" business customers, is unlike that of integrators. Both types of service however use the same input, namely flights by air carriers. The difference between the two is the process and services around it (including pick-up and handling of the customs-process in South Korea)*".[1670]

(1054) Third, end cargo customers of freight forwarders, responding to the Commission's market investigation confirmed the above considerations. In particular, [a customer] explained that it mostly uses freight forwarders for its transport requirements, while integrators are only used for "*some small or urgent items*".[1671] [The customer] further indicated that if a price increase in the air cargo market upstream resulted in price increases in the services provided by freight forwarders, [the customer] could consider

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1666 Non-confidential minutes of the conference call with [a customer].

1667 Non-confidential minutes of the conference call with [a customer].

1668 Non-confidential minutes of the conference call with [a customer].

1669 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1670 Non-confidential minutes of the conference call with [a customer].

1671 Response of [a customer] to RFI on Integrators, question 1 (ID 10918).

using integrators if it was only a matter of price. However, taking into account also the quality of the service, it would be highly unlikely that they would indeed switch. From [the customer's] point of view, "*there is no significant competition between integrators and freight forwarders* […] *integrators are useful for smaller cargo, and they provide door-to-door services*".[1672] Another major end customer also submitted that it applies different considerations between the airline service (of integrators) and the capabilities of freight forwarders.[1673]

(1055) Fourth, the Parties also did not provide internal documents that would show that they take into account the indirect constraints imposed by integrators in sales to end customers/shippers in their internal business decisions. The evidence provided by the Parties does not cover such indirect constraint but rather shows that integrators, in particular DHL, offer some air cargo services on the market, as acknowledged in this Decision, and that integrators are customers of the Parties.[1674]

(1056) In paragraph 837 of Korean Air's Response to the Commission's Statement of Objections, Korean Air reiterates that the Parties have provided several documents showing how Korean Air and the freight forwarding arm of Korean Air's parent company offer services to cargo end customers which ship small packages and/or express. The Commission notes that the mere fact that Korean Air aspires to enter the market of door-to-door services as provided by integrators does not mean that the indirect competitive pressure exerted by the integrators' vertically integrated offering to the Parties' airport-to-airport services is getting higher. To the contrary, as indicated by Korean Air's internal documents, […].[1675] In other words, […]

(1057) On the basis of the above considerations, the Commission considers that integrators compete with freight forwarders for only a marginal part of end customers / shippers. Therefore, the Commission acknowledges that integrators might pose an indirect out-of-market competitive constraint to the Parties, but this is only to a very limited extent and cannot in any event substantially constrain the merged entity post-Transaction.

8.11.6. Countervailing buyer power

(1058) Customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction on the route Europe to South Korea.

(1059) First, the customers are unlikely to have bargaining strength due to their size or commercial significance for the Parties on the route Europe to South Korea.

(1060) In the first place, the customer base on the route Europe-South Korea is fragmented. The largest customer of Korean Air – […]– accounted for only about [5-10]-[10-20]% of Korean Air's volumes on the route Europe-South Korea in 2018-2022. The second and third largest customers – whose identity varied in 2018-2022 – each accounted for only about [5-10]-[5-10]% and [5-10]-[5-10]% in 2018-2022 respectively. Similarly, Asiana's largest customer – […] – accounted for only about [5-10]-[10-20]% of Asiana's volumes on the route Europe-South Korea in 2018-2022 while the second and third largest customers – whose identity varied in 2018-2022 – accounted for only about [5-10]% and [0-5]-[5-10]% of Asiana's volumes respectively. Already among the ten largest customers of each of the Parties, there are several customers that represent only [0-5]% or [0-5]% of each of the Parties' sales volumes on the route. As a consequence, the bottom [50-60]% of the Parties' sales volumes is characterized by

1672 Response of [a customer] to RFI on Integrators, question 4 (ID 10918).
1673 Response of [a customer] to RFI on Integrators, question 4 (ID 10884).
1674 Replies to RFI 14, question 5a; replies to RFI 16, question 1.
1675 Response of Korean Air to RFI 14, "M.10149 - KE - OZ - Annex RFI14.Q5a.3"; "M.10149 - KE - OZ - Annex RFI14.Q5a.6".

customers that each represent less than [0-5]% or even less than [0-5]% of each of the Parties' sales volumes on the route. The same would therefore hold true for the merged entity. The purchase ratios of each of the Parties' ten largest customers in 2018-2022 are set out in Table 62 and Table 63.

Table 62 - Korean Air – Purchase volumes by top 10 customers – Europe to Korea

#	Customer	2018	Customer	2019	Customer	2020	Customer	2021	Customer	2022
1	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
2	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
3	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
4	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
5	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
6	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
7	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
8	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
9	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
10	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Sum	**---**	**[40-50]%**	**---**	**[40-50]%**	**---**	**[50-60]%**	**---**	**[40-50]%**	**---**	**[50-60]%**

Source: Reply to RFI 23, question 1, Table 169

Table 63 - Asiana – Purchase volumes by top 10 customers – Europe to Korea

#	Customer	2018	Customer	2019	Customer	2020	Customer	2021	Customer	2022
1	[…]	[5-10]%	[…]	[5-10]%	[…]t	[5-10]%	[…]	[10-20]%	[…]	[5-10]%
2	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
3	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
4	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
5	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
6	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
7	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
8	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
9	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
10	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Sum	**---**	**[40-50]%**	**---**	**[30-40]%**	**---**	**[40-50]%**	**---**	**[40-50]%**	**---**	**[40-50]%**

Source: Reply to RFI 23, question 1, Table 171[1676]

(1061) In the second place, the customer base on the route Europe to South Korea is much more fragmented than the supply of air cargo services from Europe to South Korea would be after the Transaction. This can be illustrated by comparing the concentration measured in HHI levels. While the demand-side HHI would be around […] for the merged entity, the supply-side HHI would be around […] to […] as shown in Table 64.

1676 Where the sum of the individual purchase share does not add up to the total sum, this is due to rounding of the individual figures.

Table 64 - Concentration of demand and supply on the route Europe to South Korea

	2018	2019	2020	2021	2022
Concentration of demand on the route (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of supply on the route (HHI level)	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 23, question 5, Annex RFI23.Q5; Annex RFI9.Q9; see section 8.11.1 for the differences in the quoted HHI levels on the route. Note: No HHI Index could be computed for 2022 as competitors' estimates not available for 2022, see Annex I for details.

(1062) Second, the customers are also unlikely to be able to exercise bargaining strength by refusing to buy other air cargo services offered by the Parties on other routes. The customer base of each of the Parties in air cargo transport globally and in transporting cargo from Europe to East Asia is much more fragmented than the supply of air cargo services from Europe to South Korea would be after the Transaction. Furthermore, these are not necessarily the same customers, or if they are, the volumes they represent on other routes are not such that they can retaliate effectively.

Table 65 - Concentration of demand and supply for the merged entity

	2018	2019	2020	2021	2022
Concentration of demand globally (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of demand on routes from Europe to East Asia (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of supply on the route (HHI level)	[…]	[…]	[…]	[…]	[…]

Sources: Demand globally: Reply to RFI 23, question 11, Annex RFI23.Q11. Annex RFI9.Q9; Demand on routes from Europe to East Asia: reply to RFI 23, question 5, Annex RFI 23.Q.5; Supply on the route: Annex RFI9.Q9. see section 8.11.1 for the differences in the quoted HHI levels on the route. No HHI Index could be computed for 2022 as competitors' estimates not available for 2022, see Annex I for details.

(1063) Third, the recent significant increases in the Parties' rates for air cargo services on the route from Europe to South Korea indicate that customers are not able to resist price increases by means of countervailing buyer power. The average price charged by Korean Air for cargo transported from the EEA to South Korea increased from USD […] per ton in 2019 to USD […] per ton, USD […] per ton and USD […] in 2020, 2021 and 2022 respectively.[1677] The average price charged by Asiana for cargo transported from the EEA to South Korea increased from USD […] per ton in 2019 to USD […] per ton, USD […] per ton and USD […] per ton in 2020, 2021 and 2022 respectively.[1678] This development was also confirmed by customers in the market investigation. All customers who replied to the relevant question in the Commission's phase I questionnaire described that prices increased dramatically after 2019,[1679] implying that they could not use any bargaining strength to prevent paying those higher prices. In the words of one of those customers: "*since passage* [sic] *flight has been reduced, therefor* [sic] *we do not have any other option than using freighter. and*

1677 Reply to RFI23, question 7, Table 18.
1678 Reply to RFI23, question 7, Table 22.
1679 Replies to question DA1 of Questionnaire 5 to Cargo customers.

korean airline and asiana airline suddenly increase the rate."[1680] While the increase in prices over the last four years is related to the circumstances brought about by the Covid19 pandemic and the Russian war against Ukraine, it shows that customers do not have structural countervailing buyer power by which they can resist price increases by carriers on the route from Europe to South Korea.

(1064) Fourth, the results of the Commission's market investigation did not confirm that customers exert sufficient buyer power in the air cargo transport market from Europe to South Korea to prevent any negative effects of the Transaction.

(1065) In the first place, only a minority of customers responding to the relevant question of the Commission's phase I questionnaire considered that customers exert significant buyer power. The clear majority of customers considered that there is no buyer power, that customers do not exert much buyer power or that they exert only a small degree of buyer power. Others considered that it depends, for instance on the specific market conditions, including the season.[1681] A customers explained its views on this also in a phone call with the Commission.[1682]

(1066) In the second place, the competitors responding to the relevant question of the Commission's phase I questionnaire did not provide a clear view and therefore did not confirm that there is sufficient buyer power on the route Europe to South Korea. While a limited number (3) of competitors considered that customers exert significant buyer power, a slightly larger number of competitors (4) considered that there is no buyer power, that customers do not exert much buyer power or that they exert only a small degree of buyer power.[1683] Others considered that it depends, for instance on the supply-demand balance in the different seasons or on the volume purchased. This was confirmed during the Commission's phase II investigation where an integrator (and former customer) explained that *"currently, neither the air carriers nor the customers (be it freight forwarders, integrators or other customers) have any particularly strong bargaining power over the other side"*.[1684] This notion was further confirmed by competitors. Some (2) competitors consider that there are no customers present at the moment who have the ability to exercise their buyer power to a significant degree. Other competitors (2) stated that customers' buyer power is contingent on the actual supply/demand situation on a particular route.[1685] It is notably explained that it is only the "*large and global market players with significant and consistent volumes throughout the year"* that indeed do possess buyer power.[1686]

(1067) Fifth, several customers of air cargo services indicated in their responses to the market investigation that they would likely pass on price increases for air cargo services to their end-customers.[1687] This ability would further limit the incentive of customers to resist industry-wide price increases by air cargo carriers on the route from Europe to South Korea.

(1068) Sixth, independently of how strong the bargaining power is that customers may currently enjoy, the Transaction not only reduces the number of providers active on

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1680 Reply by [a customer] to question DA1 of Questionnaire 5 to Cargo customers (ID 7726).

1681 Replies to question E6 of Questionnaire 5 to Cargo customers.

1682 Non-confidential minutes of the conference call with [an integrator].

1683 Replies to question DBD8 of Questionnaire 2 to Cargo competitors.

1684 Non-confidential minutes of the conference call with [an integrator].

1685 Response of [a competitor] to RFI 1, question 33 (ID 11689); Response of [a competitor] to RFI 1, question 33 (ID 11106); Response of [a competitor] to RFI 1, question 33 (ID 11084); Response of [a competitor] to RFI 1, question 33 (ID 11675); Response of [a competitor] to RFI 2, question 34 (ID 11132).

1686 Response of [a competitor] to RFI 1, question 34 (ID 11689).

1687 Replies to question E5 of Questionnaire 5 to Cargo customers.

the route from Europe to South Korea but it eliminates the second best alternative customers have (as explained in section 8.11.2). Furthermore, other competitors exert a more limited constraint (as explained in section 8.11.3). This means that customers' choice of alternative suppliers on the route Europe to South Korea would be limited after the Transaction and that they would not be able to switch easily to alternative suppliers.[1688] This implies that post-Transaction customers' bargaining power will be inevitably reduced by removing a credible alternative, thus making more likely a price increase, or another type of worsening of parameters of competition.

(1069) Seventh, there is no evidence to suggest that customers could credibly threaten to vertically integrate into supplying air cargo services, in particular in the light of the barriers to entry as set out in section 8.11.4. There is no example of such entry of the last five years. In particular, and contrary to Korean Air's claims regarding [names of customer], both freight forwarders replied to the Commission's market investigation that they have not vertically integrated into providing general air cargo services on the route Europe to South Korea.[1689] The Parties appear to refer to instances where those freight forwarders cooperate with cargo airlines to offer charter flights[1690] or block space agreements[1691] to end customers. In addition to the fact that charter flights exert only a remote constraint on the Parties' operations for the reasons set out in section 7.2.1.6, this does not constitute vertical integration by freight forwarders as they do not invest in flight capacity but cooperate with existing airlines – precisely by purchasing capacity from cargo airlines as described in this Decision as the relevant market on which the Transaction is likely to have negative effects, based on the outcome of the investigation.

(1070) Eighth, (as explained in section 8.11.4) the Parties have achieved high load factors in recent years on the route Europe to South Korea: Korean Air's load factor varied from[80-90]% in 2018 to [90-100]% in 2022, while Asiana's varied from [80-90]% in 2018 to [90-100]% in 2022.[1692] Therefore, the Parties' arguments according to which the customers hold buyer power because the Parties need business with all of them to achieve a sufficiently high load factor[1693] is unfounded.

(1071) Ninth, buyer power cannot be found to sufficiently off-set potential adverse effects of the Transaction if it only ensures that a particular segment of customers with particular bargaining strength is shielded from significantly higher prices or deteriorated considerations after the Transaction.[1694] Therefore, the Parties' argument that several of the customers are global companies with a strong presence in the European cargo market, such as […], […] or […],[1695] is in any event irrelevant because there are many other customers that are smaller and do not share those characteristics.

(1072) For all these reasons, the Commission, therefore, deems that customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction on the route Europe to South Korea.

1688 Horizontal Merger Guidelines, paragraphs 65 and 67.

1689 Response of [a customer] to RFI on vertical integration, questions 1 and 2 (ID 11558); Response of [a customer] to RFI on vertical integration, question 1 (ID 11582).

1690 As acknowledged by the Parties in their reply to RFI23, questions 9 and 10.

1691 As described by [a customer] in their brochure on their service: "*Use space contracted by* [the customer]", available on their website.

1692 Based on data submitted as part of the Reply to RFI 9, Question 10.

1693 Response of Korean Air to the Article 6(1)(c) Decision, paragraph 528.

1694 Horizontal Merger Guidelines, paragraph 67.

1695 Response of Korean Air to the Article 6(1)(c) Decision, paragraph 520.

8.11.7. Market entry

(1073) The Commission's market investigation did not identify any potential entry by a carrier not currently active on the Europe – South Korea route that could be considered as likely, timely and sufficient to prevent any potential anti-competitive effects of the Transaction.[1696]

(1074) The Commission has contacted the potential entrants identified by the Parties, namely [names of potential entrants], as well as […], who was identified as a new entrant. [Names of potential entrants] replied to the Commission's market investigation by confirming that they do not have any concrete plans to start offering air cargo services on the route between Europe and South Korea in the next three years.[1697] No concrete plans of entry on the relevant routes have been confirmed by [names of potential entrants], either.[1698]

(1075) Concretely, only [a potential entrant] has indicated that it would be willing to enter the air cargo transport service routes between Europe and South Korea independently of the Transaction, by offering direct passenger flights on the route ICN-FRA and providing belly-hold air cargo services on this route.[1699] However, in addition to the considerations made with regard to the entry of [a potential entrant] […] the Commission considers that an entry by […] on this route with […] or […] weekly frequencies[1700] would not be sufficient to prevent any anti-competitive effects of the Transaction in air cargo transport, given the significantly higher volume and frequency offered by the Parties and the increment brought about by Asiana on this route. […], [a potential entrant] is planning […]. [A potential entrant] has already […]. Should [a potential entrant] reach its target […] tons of cargo per flight, its entry would initially correspond to [0-5]% on Europe – South Korea. While timely and likely, this entry would not by itself alter the competitive landscape sufficiently in order to prevent a significant impediment to effective competition, also taking into account the considerations made under section 8.11.4 above with regard to competitors being unlikely to increase supply if prices increase.

(1076) The Commission also notes that even Korean Air in paragraph 867 of its Response to the Commission's Statement of Objections agrees that the entry of [a potential entrant] […] not lead to [a potential entrant] gaining significant market presence on the EEA-Korea trade routes.

1696 This is contrary to paragraphs 865-872 of Korean Air's Response to the Commission's Statement of Objections.

1697 Response of [a potential entrant] to RFI on Potential Entry, "[the potential entrant does not] *have any plans to offer air cargo transport services between Europe and South Korea within the next 3-5 years*" (ID 11726); Response of [a potential entrant] to RFI on Potential Entry, "*we have no plans to open cargo business between Europe and South Korea for the time being*" (ID 11722); Response of [a potential entrant] to RFI on Potential Entry, "[the potential entrant] *is currently not operating own air cargo services between Europe and South Korea but offers air cargo services with […] own* […] *freighter aircraft on other routes. In the near future,* [the potential entrant] *is not planning to operate own air cargo aircraft on the routes between Europe and South Korea*" (ID 10420); Response of [a potential entrant] to RFI on Potential Entry, "[the potential entrant] *is currently not operating air cargo services between Europe and South Korea and does not intend to offer such services on these routes in the near future*" (ID 10606).

1698 Reply of [a potential entrant] to question B.14-1 of Questionnaire Q3 to potential entrants (ID 8019); Reply of [a potential entrant] to questions B.13-1 and B.14-1 of Questionnaire Q3 to potential entrants (ID 8216).

1699 Replies of [a potential entrant] to questions B.9. and B14.1. of Questionnaire Q3 to potential entrants (ID 8691).

1700 Reply of [a potential entrant] to questions C.2.6. of Questionnaire Q3 to potential entrants (ID 8691).

(1077) Finally, as a new entrant, […] replied to the Commission's market investigation that "[a potential entrant] *has recently entered the air cargo services market and thus considers itself a marginal player.* [A potential entrant] *aircraft is provided through a ACMI lease from* […]*. It operates a scheduled direct, non-stop flight* […] *a week from* […] *to South Korea, and from there, also to* […] *and then to the* […] *and* […]*. From there, the aircraft flies back to* […]".[1701] The Commission considers that an entry on this route with just […] weekly frequencies from one location in Europe is not sufficient to prevent any possible anti-competitive effects brought about by the Transaction in air cargo transport on the Europe – South Korea route, given the significantly higher volume and frequency offered by the Parties and the increment brought about by Asiana on this route.

(1078) In particular, the significance of the number of frequencies – as also analysed in section 8.11.2 above – has been raised by customers of the Parties during the Commission's market investigation. According to [a customer], [a potential entrant] entry is of limited service, with a lower quality of service and "*too unreliable compared to companies that offer daily flights or flights several times per week.* [The customer's] *customers would not accept* [a potential entrant's] *lower service level*".[1702] To that, [a customer] added that "*freight forwarders are still hesitant about* [a potential entrant]*, as it is a new player and is perceived as a […]*".[1703]

(1079) Therefore, the market investigation did not reveal timely, likely and sufficient entry on the air cargo routes between Europe and South Korea in order to prevent any potential anti-competitive effects of the Transaction. The Commission notes that this is also due to the barriers to entry and expansion that were identified and described in detail in section 8.11.4.3 above.

8.11.8. Effect of the Transaction

(1080) Although the results of the Commission's market investigations were mixed overall, several market participants have expressed concerns about (i) the strong market position of the Merged Entity, (ii) potential negative effects of the Transaction on competition and (iii) potential negative effects of the Transaction on their own business model.

(1081) First, the market investigation has shown that several market participants fear the strengthening of the Parties' already strong market position following the Transaction. As an example, one customer's major concern is that post-Transaction the Parties "*effectively own the market*".[1704] One competitor explained that "*the merger would weaken [competitor's] position on the market – basically due to the important capacities the Partis have following extensive traffic rights. Korean Air and Asiana will have more than 200 aircrafts and a large fleet of freighters enabling them to dominate the market even more than they currently do. When the Parties dominate the market from a market share perspective, it is in [competitor's] view possible that they also use their dominant position in terms of pricing*."[1705]Another competitor explained that "*it seemed highly likely that the Parties would be in a position to control a large part of the market post-Transaction*".[1706] Another competitor concurred by stating "*As for air cargo services, [competitor] noted that the merged entity will become by far the largest player between Europe and Korea which will lead to a dominant*

1701 Non-confidential minutes of the conference call with [a potential entrant].
1702 Non-confidential minutes of the conference call with [a customer].
1703 Non-confidential minutes of the conference call with [a customer].
1704 Non-confidential minutes of the conference call with [a customer].
1705 Non-confidential minutes of the conference call with [a competitor].
1706 Non-confidential minutes of the conference call with [a competitor].

position."[1707] Furthermore, a competitor stated that "[t]*he Transaction will make it even more difficult to compete given the combined size of the merged entity from a cargo perspective*" and that "*we are of the opinion that it will be even more complicated for smaller competitors to enter the market or maintain their current position*".[1708] One of the integrators, which is also a significant customer of the Parties, explained "*the Transaction might have a negative impact on competition as the number of the main air cargo priders will be reduced from 3 to 2. […] it would be anticipated the mered entity to reduce services between Europe and Korea and increase capacity on transpacific routes where the yields are better. This in turn would have a negative effect on prices between Europe and Korea as the remaining players would be able to charge higher rates*."[1709] Another customer explained "*the Parties will control post-merger a large part of the market for air cargo transport services and would the ability to influence the market by increasing or decreasing capacities between Europe and South Korea. In consequence, they would be in the position to dictate prices*."[1710]

(1082) Second, 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,[1711] and/or worse quality on the route Europe to South Korea.[1712] As an example, one customer explained that they currently still have some bargaining power as they can switch from Korean Air's to Asiana's air cargo services in particular between […] and South Korea but that the Parties are the dominant providers on the Europe-Korea route. The customer fears that post-merger "*it will be impossible for freight forwarders to negotiate prices, as [customer] currently does. If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand. […] At the same time, [customer] is concerned that post-Transaction the Parties might decrease capacity and lower their quality, something that freight forwarders will have to accept and therefore become less competitive on their quality of service*".[1713] Another customer maintained that "*the merged company will have monopoly powers of the routes between ICN and […] and will be able to increase or decrease capacity and through that influence the prices. In that respect [customer] explained that if the demand will be low, the merged entity can decrease capacity and increase price. […] [A customer] is of the opinion that Korean Air and Asiana will certainly increase their rates between Europe and ICN after the merger and that all other airlines will follow as Korean Air is the price-maker on the market*".[1714] Another customer explained that the Transaction could lead to fewer suppliers and it is presumed that this could mean lower capacities and higher rates. In that case, that customer is of the opinion that the merged entity could be able to have greater influence on the market due to the limited remaining competition.[1715]

(1083) Third, some customers fear negative consequences of the Transaction for their business due to the fact that they will no longer have the choice between two different air cargo transport service providers but will depend on the prices, available capacities

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1707 Non-confidential minutes of the conference call with [a competitor].

1708 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023.

1709 Non-confidential minutes of the conference call with [an integrator].

1710 Non-confidential minutes of the conference call with [a customer]. While [the customer] explain that other carries would have an incentive to or expand, that would depend on the availability of traffic rights. That aspect is discussed in section 8.11.4.

1711 Non-confidential minutes of the conference call with [a customer].

1712 Replies to question E.2 and E.5 of Questionnaire 5 to Cargo Customers.

1713 Non-confidential minutes of the conference call with [a customer].

1714 Non-confidential minutes of the conference call with [a customer].

1715 Non-confidential minutes of the conference call with [a customer].

and frequencies of the merged entity as only remaining option available. As an example, one customer stated that "*they expect the Transaction to impact their business significantly. Both Parties are the only air carriers which are able to provide the air cargo services that* [the customer] *needs between* […] *and South Korea.* [The customer] *states that they expect that post-Transaction, the Parties will decrease the frequency from/to […], and so the prices for air cargo services from/to South Korea will increase. […]. Overall, some carriers could increase their capacity but, none of them is able to fill up the retired capacity.*"[1716] Another customer has a negative view on the Transaction since "*it will be very hard for freight forwarders to conduct business afterwards*" as there are not many options to South Korea, even though the market itself is significant and as "*second-tier-choice carriers*" together would not have the necessary scale in case […] will be discontinued following the Transaction.[1717]

(1084) Fourth, […].[1718] […]."[1719]

8.12. Cargo air transport services – assessment of the route South Korea to Europe

(1085) Based on its investigation and all the evidence available to it, the Commission finds that:

(a) The Transaction would change the market structure significantly and lead to high combined market shares with a high increment in a stable market environment which has shown little variation over time (section 8.12.1).

(b) The Parties are close – if not the closest – competitors as well as the most competitive suppliers in the market (section 8.12.2).

(c) The competing air cargo carriers and integrators provide only a limited competitive constraint in the air cargo market (section 8.12.3).

(d) The Parties' competitors face barriers to expand their services in reaction to potential negative effects of the Transaction (section 8.12.4).

(e) There is no or at best a limited indirect constraint on the Parties' activities from the integrators' sales to shippers (section 8.12.5)

(f) The customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction (section 8.12.6).

(g) There is insufficient evidence of timely, likely and sufficient market entry to off-set the effects of the Transaction (section 8.12.7).

(h) Several market participants have expressed concerns about the strong market position of the Merged Entity and the potential negative effects on competition as a result of the Transaction (section 8.12.8).

(1086) As set out in paragraph (856)(856) above, the Horizontal Merger Guidelines state that according to well-established case-law, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant position. A merger involving a firm whose market share will remain below 50% after the merger may also raise competition concerns, due to the creation of a dominant position, in view of other factors such as the strength and number of competitors and the presence of capacity constraints.[1720] As set out in section 8.12.1, the merged entity would have a high share

1716 Non-confidential minutes of the conference call with [a customer].
1717 Non-confidential minutes of a call with [a customer].
1718 […].
1719 […].
1720 Horizontal Merger Guidelines, paragraph 17.

in terms of sales (around [40-50]%) and capacity (around [40-50]%) in the relevant market. Moreover, as discussed in sections 8.12.3 to 8.12.7, the relevant market is characterised by limited competitive pressure exerted by competitors, substantial barriers to expansion as well as a lack of likely, timely and sufficient market entry or countervailing buyer power. Therefore, the Commission considers that the Transaction would create a dominant position in relation to air cargo services on the route South Korea-Europe.

(1087) In any event, paragraphs 26 to 38 of the Horizontal Merger Guidelines list factors which may influence whether significant non-coordinated effects are likely to result from a merger. "*Paragraph 26 of those 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*."[1721]

(1088) Considering the overall assessment of the findings in sections 8.12.1 to 8.12.8 and in light of the merged entity's high share in air cargo services on the route South Korea-Europe, the Commission concludes that the Transaction would, in any event, give rise to horizontal non-coordinated effects on the relevant market as a result of the elimination of an important competitive constraint.

8.12.1. Market Structure

8.12.1.1. Data on the market Structure

(1089) This section describes the market structure on the route from South Korea to Europe.

(1090) As indicated in section 8.11, the Parties' market shares methodology is described in Annex I. The market structure on the route South Korea-Europe in terms of cargo volume transported is set out in Table 66, while in terms of value is set out in Table 67. Table 66 and Table 67 also set out concentration levels on the route between South Korea and Europe in terms of HHI, and by how much the HHI would increase as a result of the Transaction.

[1721] C-376/20 P - Commission v CK Telecoms UK Investments, [2023] ECLI:EU:C:2023:561, paragraphs 259-261.

Table 66 – South Korea to Europe market shares by volume (based on the Parties' market share data)

Carrier	2018		2019		2020		2021		2022	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Volume (tonnes)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**
Qatar Airways	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[…]
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Lufthansa Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Air France-KLM	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[…]
Volga-Dnepr Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Aeroflot Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Turkish Airlines	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
DHL	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
FedEx	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
IAG	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
All Nippon Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Thai Airways International	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Others	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[…]
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Form CO, Annex QP10.Q28.1, Annex RFI9.Q9. Annex RFI6.Q3 Notes: see Table 47.

Table 67 – South Korea to Europe market shares by value (based on the Parties' market share data)

Airline	2018		2019		2020		2021		2022	
	Value ('000 EUR)	**Share (%)**	**Value ('000 EUR)**	**Share (%)**	**Value ('000 EUR)**	**Value ('000 EUR)**	**Value ('000 EUR)**	**Share (%)**	**Value ('000 EUR)**	**Share (%)**
Korean Air	[…]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Asiana	[…]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	**[…]**	**[40-50]%**	[...]	**[30-40]%**	[...]	**[50-60]%**	[...]	**[40-50]%**	[...]	**[50-60]%**
Qatar Airways	[…]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[...]
Cargolux Group	[…]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[...]
Lufthansa Group	[…]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[...]
Silk Way Group	[…]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[...]
Air France-KLM	[…]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Volga-Dnepr Group	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Finnair	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Aeroflot Group	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Turkish Airlines	[…]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
LOT Polish Airlines	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
UPS Airlines	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Etihad	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Emirates	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
DHL	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
FedEx	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
International Airlines Group	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
All Nippon Airways	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Thai Airways International	[…]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Others	**[…]**	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]
Total	[…]	**[90-100]%**	[...]	**[90-100]%**	[...]	**[90-100]%**	[...]	**[90-100]%**	[...]	**[90-100]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Form CO, Annex QP10.Q28.1, Annex RFI9.Q9. Annex RFI6.Q3 Notes: see Table 47.

(1091) In order for market shares and additions of market share to provide first indications of market power and increases in market power, market shares ought to reflect the entry of competitors expected to exert significant competitive pressure in the future on the other firms in the market and the exit of competitors no longer expected to exert any competitive pressure. This approach is aligned with the Horizontal Merger Guidelines, paragraph 15, which provide that "*current market shares may be adjusted to reflect reasonably certain future changes, for instance in the light of exit, entry or expansion*"[1722]. The following paragraphs and tables thus show how market shares would look like once the exit of both competitors like the Russian-based carriers

[1722] Horizontal Merger Guidelines, paragraph 15.

which stopped operating cargo air services between South Korea and Europe in 2022 and operators like Alitalia and Czech Airlines which ceased their operations, as well as the entry of competitors expected to exert significant competitive pressure in the future is accounted for. In the absence of more accurate information as to which competitors would win and lose the most from the exit and entry of these operators, sales volumes have been allocated to all other carriers in proportion to their market shares.

(1092) All Russian-based carriers stopped operating cargo air services between South Korea and Europe in 2022. Alitalia and Czech Airlines have also ceased operations on the routes. Alitalia stopped operating all its flights in October 2021 and Czech Airlines has been identified by the Parties as not expected to fly again on the routes in the foreseeable future. To account for the market exit of those carriers, Table 68 shows the market shares of the Parties and their competitors for the years 2018-2021 where the sales volumes of the Russian carriers, Alitalia and Czech Airlines have been allocated to all other carriers proportionally to their market shares.

Table 68 – South Korea to Europe market shares by volume adjusted for the market exit of Alitalia, Czech Airlines and Russian airlines

Airline	2018		2019		2020		2021	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30--40]%	[…]	[30-40]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	**[40-50]%**	[…]	**[30-40]%**	[…]	**[40-50]%**	[…]	**[40-50]%**
Qatar Airways	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Lufthansa Group	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Air France-KLM	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DHL	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
FedEx	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
All Nippon Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Thai Airways International	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others[1723]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**
Pre-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
Post-merger HHI	**[…]**		**[…]**		**[…]**		**[…]**	
HHI Δ	**[…]**		**[…]**		**[…]**		**[…]**	

Source: Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1, Annex RFI9.Q9. Notes: see Table 47

(1093) As set out in Table 66 above, the Parties are the first and second largest providers of cargo transportation services on the route South Korea-Europe: Korean Air had a

[1723] Comprises airlines with market shares below 1% in each year from 2018 to 2021.

market share of [20-30]% in 2018, [20-30]% in 2019, [30-40]% in 2020, [30-40]% in 2021, [30-40]% in 2022, and [20-30]% in Q1-Q3 2023; while Asiana had a market share of [10-20]% in 2018, [10-20]% in 2019, [10-20]% in 2020 [10-20]% in 2021, [10-20]% in 2022, and , and [10-20]% in Q1-Q3 2023.[1724] Qatar Airways followed with a market share of approximately [5-10]-[10-20]%. Lufthansa Group, Cargolux, and Air France KLM had a market share of approximately [5-10]-[5-10]%, [5-10]-[5-10]%, and [5-10]-[10-20]% respectively. Silk Way Group had a market share of approximately [0-5]-[5-10]% in 2018-2021, Volga-Dnepr Group of [0-5]-[0-5]% and Finnair of [0-5]-[0-5]%. Turkish Airlines had a market share of [0-5]-[5-10]% in that period, and Aeroflot Group had a market share of [0-5]-[0-5]%. All other competitors had market shares below [0-5]% in each year.

(1094) Should Russian carriers, Alitalia and Czech Airlines be excluded and their volumes re-allocated across all other carriers proportionally, the Parties would equally be the two largest providers with slightly higher market shares, reaching [30-40]-[40-50]% combined, with a handful of competitors with market shares of [5-10]-[10-20]% and with a large number of competitors with market shares below [5-10]%.

(1095) As discussed in section 8.12.7 below, Air Premia began operating on the route as of 2022 and 2023, respectively. To account for its market entry, Table 69 shows the market shares of the Parties and their competitors for the years 2018-2021 taking into account the sales volumes of carriers that entered the market. Sales volumes of existing competitors were scaled down so that market totals did not change. Sales volumes of the Russian carriers, Alitalia and Czech Airlines have been allocated to all other carriers in proportion to their market shares.

(1096) Should the Russian carriers, Alitalia and Czech Airlines be excluded and should Air Premia be included, the Parties would equally be the two largest providers with slightly higher market shares, reaching [30-40]-[40-50]% combined.

Table 69 – South Korea to Europe market shares by volume adjusted for the market exit of Alitalia, Czech Airlines and Russian airlines and for the (expected) market entry of Air Premia (based on the Parties' market share data)

Airline	2018		2019		2020		2021	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	**[40-50]%**	[…]	**[30-40]%**	[…]	**[40-50]%**	[…]	**[40-50]%**
Qatar Airways	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Lufthansa Group	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Air France-KLM	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Turkish Airlines	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Air Premia	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

[1724] Including integrators, Russian carriers, Alitalia and Czech Airlines.

Airline	2018		2019		2020		2021	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
DHL	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
FedEx	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Etihad	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Emirates	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
China Southern	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
All Nippon Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Thai Airways International	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**
Pre-merger HHI	[…]		[…]		[…]		[…]	
Post-merger HHI	[…]		[…]		[…]		[…]	
HHI Δ	[…]		[…]		[…]		[…]	

Source: Response of Korean Air to RFI6, question 2, Annex RFI6.Q2.1, Annex RFI9.Q9. Annex RFI21.Q1 Notes: see Table 47. To reflect the entry of MSC Cargo and Air Premia, the Parties assumed the volumes and revenues of other carriers are to be scaled down so that the market total stays constant.

(1097) The results of the Commission's market reconstruction, described in Annex I, broadly confirmed the market share estimates provided by the Parties.

(1098) Table 70 shows the outcome of that market reconstruction in terms of the Parties' combined market share, compared to the market shares provided by the Parties. Further detail on those market shares are provided to the external advisory of Korean Air in the data room.

(1099) A comparison of the Parties' combined market shares according to the Commission's market reconstruction and the Parties' submissions, as also set out in

(1100) Table 70 shows that any deviations in market shares are very limited at [0-5]-[0-5] percentage points. Furthermore, the Commission's analysis shows that, although some competitors' shares were overestimated and some others were underestimated, these discrepancies were not substantial and mostly tended to cancel each other out, therefore not affecting the Parties' combined market shares significantly. This complementing methodology is conservative because it starts from the Parties' own estimates, and updates them with more reliable information whenever available. The Commission's analysis also confirms the significantly fragmented structure of the market, with very few competitors with a market shares between 5-10%, and long tail of smaller competitors. Therefore, the Commission will base its assessment on the market shares estimates provided by the Parties.

Table 70 – South Korea to Europe market shares by volume (based on the competitors' data)

Carrier	Original volume-based market shares			Revised volume-based market shares Market sizes adjusted according to the Commission's methodology			Revised volume-based market shares Market sizes adjusted according to the Notifying Party's methodology		
	2019	2020	2021	2019	2020	2021	2019	2020	2021
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Korean Air	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Asiana	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission calculations based on sales data in terms of volumes received from the competitors.

8.12.1.2. The Commission's assessment of the market structure

(1101) The Transaction would change the market structure on the route South Korea to Europe significantly and lead to high combined market shares with a high increment in a stable market environment which has shown little variation over time.

(1102) First, the Transaction would lead to the Merged Entity holding a very strong position on the route between South Korea and Europe. As set out in Table 66, the Parties combined have held market shares of [30-40]% in 2018, [30-40]% in 2019, [40-50]% in 2020, [40-50]% in 2021, and [40-50]% in 2022, with increments of [10-20]-[10-20]%. The Parties' market shares in 2020 and 2021 and to a certain extent also 2022 appear to have been influenced by potentially temporary effects of the Covid19 pandemic.

(1103) Should Russian carriers, Alitalia and Czech Airlines be excluded and their volumes re-allocated across all other carriers proportionally, the Parties would remain the two largest providers with combined market shares of [30-40]-[40-50]%, with increments of [10-20]-[10-20]%. Should the entry of Air Premia be reflected, the Parties would remain the two largest providers with combined market shares of [30-40]-[40-50]%, with increments of [10-20]-[10-20]%. Under any of those methodologies, the Parties are the first and second largest providers of cargo air services on the route Europe to South Korea and would be the undisputed market leader after the Transaction.

(1104) Second, as illustrated already above, the Transaction entails a significant increment in volume market shares of [10-20]-[10-20]%, which is indicative of a significant increase in market power due to the Transaction.

(1105) Third, the Merged Entity's market position would be significantly larger than that of its next largest competitors: Qatar Airways and Cargolux would hold market shares of around [10-20]% and [5-10]-[5-10]% respectively. Lufthansa Group, Silk Way Group and Air France KLM would hold [5-10]-[10-20]%, [0-5]-[5-10]% and [5-10]-[10-20]% respectively.

(1106) Fourth, with the exception of the impact of the Covid19 pandemic and of the Russian war against Ukraine (see section 8.10.1), the market structure has shown little variation over time which indicates that this concentrated market structure characterised by the Parties and a long fringe of smaller competitors is likely to persist in the future. Market shares between 2018 and 2021 have varied little: Korean Air's market share (excluding Russian carriers, Alitalia and Czech Airlines) has […] between 2018 and 2021, while Asiana's market share has […] within the same timeframe. At the same time, Qatar Airways' market share (the Parties' largest competitor on the route), has […].

8.12.2. Closeness of Competition between the Parties

(1107) The market investigation has shown that the most important factors for customers' choice for the purchase of air cargo transport services on the route between South Korea and Europe are offered frequencies (4.76)[1725], the reliability (4.64) and quality (4.43) of the offered services, the price (4.29) and main deck space availability on freighter aircraft (4.11). In particular for these factors of choice, Korean Air and Asiana are largely perceived as each other's closest competitor by market participants. Against that background and in light of the results of the market investigation, the Commission considers the Parties to be close competitors on the air cargo routes between South Korea and Europe for the following reasons:

(1108) First, the Commission's market investigation shows that both customers and competitors overwhelmingly recognize the Parties as each other's closest competitor: The vast majority of competitors who replied to the Commission's market investigation questionnaire consider Asiana as Korean Air's closest competitor[1726] and Korean Air as Asiana's closest competitor.[1727] As regards customers, the majority of customers who have expressed their views in response to the Commission's market investigation questionnaire consider Asiana as Korean Air's closest competitor[1728] and Korean Air as Asiana's closest competitor.[1729] The results of the Commission's market investigation questionnaire also show that no other carrier is perceived as competing closely with either of the Parties.[1730]

(1109) Second, the Commission's market investigation also shows that market participants consider the Parties to be the two most competitive air cargo carriers on the routes between South Korea and Europe.[1731] The Parties are ranked as the number 1 and number 2 most competitive carriers on the routes by both competitors and customers.[1732] As regards the competitiveness of the Parties, both Asiana and Korean Air received the highest rates respectively for their overall competitiveness, the frequencies offered per week, the overall duration of the flights, the reliability in terms of flight times, the quality of the service in terms of cargo handling and the capacity offered on the route.[1733] The air cargo customers the Commission spoke to as part of its market investigation widely confirmed that the Parties are each other's closest competitors.[1734] As an example, [a customer] explained that they currently still have a certain degree of bargaining power because they can switch between Korean Air and Asiana as needed, fearing that this will not be the case anymore post-Transaction when both Korean Air and Asiana – as the dominant providers on the South Korea-Europe route and each other's closest competitors – become one.[1735] […].[1736] Another

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1725 Ranking: 1 = not important, 5 = very important, see replies to questions D.B.A.1 of Questionnaire 5 to customers.

1726 Replies to questions D.B.C.1-1 and D.B.C.1-2 of Questionnaire 2 to competitors.

1727 Replies to questions D.B.C.2-1 and D.B.C.2-2 of Questionnaire 2 to competitors.

1728 Replies to questions D.B.C.1-1 and D.B.C.1-2 of Questionnaire 5 to customers.

1729 Replies to questions D.B.C.2-1 and D.B.C.2-2 of Questionnaire 5 to customers.

1730 Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1731 See e.g. Non-confidential Minutes of the conference call with [an integrator].

1732 Replies to question D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1733 Replies to question D.B.B.1 and D.B.B.2 of Questionnaire Q2 to cargo competitors; Replies to questions D.B.B.1 and D.B.B.2 of Questionnaire Q5 to cargo customers.

1734 See e.g. non-confidential minutes of the conference call with [a customer]; non-confidential minutes of a conference call with [a customer]; non-confidential minutes of a call with [a customer]; non-confidential minutes of a call with [a customer]; non-confidential minutes of a conference call with [a customer].

1735 Non-confidential minutes of the conference call with [a customer].

1736 Non-confidential minutes of a conference call with [a customer].

customer considers the Parties to be each other's closest competitor due to (i) the frequencies of the flights with high capacity volumes being offered in both passenger flights and dedicated freighters, (ii) the quality of their service and (iii) the direct flights, which ensure quick deliveries and minimise the risks for the safety of the cargo.[1737]

(1110) Third, the Parties […]. The Commission's review of internal documents has shown that […]. For instance, in […], Asiana […]. In that document, Asiana […].[1738]

(1111) More precisely, market participants view the Parties as closest competitors and as the two most competitive air cargo carriers on the route South Korea-Europe for the following reasons:

(1112) In the first place, the Parties' offer is very similar, in contrast to the Parties' claim that the majority of air cargo service providers offer services which do not significantly differ from the Parties' offer. [1739] Both offer scheduled, high-frequency, high-capacity air cargo flights in both freighter and passenger aircraft between Incheon and several European airports. Considering the airports they serve, the Parties closely compete from a geographic perspective. Asiana serves Brussels, Frankfurt, Milan, London and Vienna with regular scheduled dedicated cargo flights (in addition to cargo transportation in the belly-hold of its passenger flights from Frankfurt, Paris, Rome and Barcelona). Korean Air also serves Frankfurt, Milan, London and Vienna with dedicated cargo flights, among other European destinations, (in addition to cargo transportation in the belly-hold of its passenger flights from Frankfurt, Paris, Rome and Barcelona) and serves Amsterdam in the vicinity of Brussels. Accordingly the Parties state that "*Korean Air operates a long-haul network to Europe which covers several destinations throughout Europe. It covers Northern, Western, Southern, Middle and Eastern Europe. Neither Korean Air nor Asiana focuses on one specific region within Europe*".[1740] Which makes their offer similarly interesting for the same scope of customers in all European regions, in particular when considering that the vast majority of respondents to the market investigation indicated that they see some regional differences in the competitive conditions at the European end of the routes (see above, section 7.2.2).[1741]

(1113) Due to the Parties' focus on similar airports and regions in Europe, their share of sales are very high when looking at specific countries in Europe. As set out in Table 71 by way of example for the year 2019, the Parties achieved a high combined share of the sales in certain geographic segments of the relevant market, namely in […].

Table 71 – Share of air cargo traffic from Korea in 2019

	Austria	**France**	**Germany**	**Italy**	**Spain**
Korean Air	[40-50]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%
Asiana	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Combined	[80-90]%	[30-40]%	[40-50]%	[30-40]%	[30-40]%

1737 Non-confidential minutes of a call with [a customer]. See also in the same spirit non-confidential minutes of a call with [a customer].

1738 […] Annex RFI3.Q3a – Annex QP8.Q4b.1.

1739 Response to the Statement of Objections, paragraph 633.

1740 Korean Air's response to the 6(1)(c) Decision, paragraph 65.

1741 Replies to question C.B.4 of Questionnaire Q5 to cargo customers and to question C.B.5 of Questionnaire Q2 to cargo competitors. See also non-confidential minutes of the conference call with [a competitor].

	Austria	France	Germany	Italy	Spain
First competitor	[0-5]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%
Second competitor	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Third competitor	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Market size (tons)	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 18, question 1, Annex RFI18.Q.1.1

(1114) In the second place, the Parties each offer direct (non-stop) services between South Korea and Europe whereas most competitors offer only indirect flights which are a less preferred option for customers.[1742] As an example, the market investigation reveals that *"[i]t depends on the specific customer needs, flying direct is the fastest option and most preferable option for time critical shipments"*.[1743] The Parties both offer direct freighter services between South Korea and Europe and are besides Lufthansa the only air cargo carriers who offer at the same time direct belly hold capacities and direct freighter capacities on the routes between South Korea and Europe. The Parties can therefore both offer to ship high volumes without transhipment at once and thus compete closely with each other compared to other carriers for direct air cargo transport services between South Korea and Europe. This is also reflected in very high shares in the market segment for direct air cargo transport volumes only, due to limited alternative offerings.

Table 72 - Volume market shares – Both direct freighter and belly-hold Services - Korea - EEA-UK-CH, 2018 to 2021

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	[30-40]%	[…]	[30-40]%	[…]	[40-50]%	[…]	[40-50]%
Asiana	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**	**[…]**	**[60-70]%**	**[…]**	**[50-60]%**
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%
Lufthansa Group	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Air France-KLM	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

1742 Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator]; Replies to question C.A.1 of Questionnaire Q2 to cargo competitors; Replies to questions C.A.1 of Questionnaire Q5 to cargo customers. See also Non-confidential Minutes of a conference call with [an integrator].

1743 [A competitor's] reply to questions C.A.1 of Questionnaire Q2 to cargo competitors (ID9508).

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Air Premia	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Parties' estimate in response to RFI24 (AnnexRFI24.Q5 – Sheet 52 - Additional cargo volume shares adjusted according to recent entry and exit)

(1115) Contrary to the Parties' claim[1744], several customers explained during the market investigation that direct air cargo services are by far the preferred option for freight forwarders and their customers as stopover or transhipment flights carry the risk of cargo being damaged or delayed, which according to market participants is not an option for time-sensitive customers who would rather accept a higher rate in exchange for safety of goods and time effectiveness.[1745] In that respect, for example [a customer] explained that "*Other players on the air cargo market between Europe and South Korea are the Middle-Eastern (Etihad, Emirates and Qatar) and the Turkish carriers. However, they do not offer direct connections between Europe and East Asia, but only transhipment with a stop-over in their respective hubs. In the view of* [the customer]*, they all appear to be less relevant competitors due to the lack of direct services."*[1746]In contrast, Korean Air and Asiana compete closely with each other. This can be illustrated by the example of the customer […].[1747]

(1116) In the third place, the Parties are the two most important alternatives for freighter flights capable of transporting high volumes at once and of transporting all types of cargo which makes them compete very closely for such services[1748]:Thus, the Parties have very high shares at around or more than [50-60]% in the market segments for only freighter services as only a limited number of alternative carriers offering the same type of services are available:

1744 Response of Korean Air to the Commission's Statement of Objections, paragraph 635 f.

1745 Non-confidential version of the minutes of a call with [a customer], in the same spirit, non-confidential minutes of a call with [a customer]; non-confidential minutes of a conference call with [a customer], non-confidential minutes of a call with [a customer].

1746 Non-confidential minutes of a call with [a customer].

1747 Non-confidential minutes of a conference call with [a customer].

1748 Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [an integrator].

Table 73 - Volume market shares – Freighter Services – Korea - EEA-UK-CH, 2018 to 2021

	2018		2019		2020		2021	
Airline	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**	**Volume (tonnes)**	**Share (%)**
Korean Air	[…]	**[30-40]%**	[…]	**[30-40]%**	[…]	**[30-40]%**	[…]	**[30-40]%**
Asiana	[…]	**[20-30]%**	[…]	**[10-20]%**	[…]	**[10-20]%**	[…]	**[10-20]%**
Combined	**[…]**	**[50-60]%**	**[…]**	**[40-50]%**	**[…]**	**[50-60]%**	**[…]**	**[50-60]%**
Cargolux Group	[…]	**[5-10]%**	[…]	**[10-20]%**	[…]	**[5-10]%**	[…]	**[10-20]%**
Qatar Airways	[…]	**[10-20]%**	[…]	**[10-20]%**	[…]	**[10-20]%**	[…]	**[10-20]%**
Lufthansa Group	[…]	**[10-20]%**	[…]	**[5-10]%**	[…]	**[5-10]%**	[…]	**[5-10]%**
Silk Way Group	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[5-10]%**	[…]	**[5-10]%**
MSC Cargo	[…]	**[0-5]%**	[…]	**[5-10]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
UPS Airlines	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
Turkish Airlines	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
DHL	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
FedEx	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
All Nippon Airways	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
Others	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**	[…]	**[0-5]%**
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Parties' estimate in response to RFI24 (AnnexRFI24.Q5 – Sheet 10 - Additional cargo volume shares adjusted according to recent entry and exit)

(1117) In opposition to the Parties's assertion[1749], direct freighter services are the preferred option for some customers for various reasons: […] for example mainly uses Korean

[1749] Response of Korean Air to the Commission's Statement of Objections, paragraph 639.

Air's freighter services because of the big volumes they need to ship out of Paris (CDG), and Korean Air is the only air carrier offering direct freighter services besides the next closest option with Asiana's freighter services departing from […].[1750] Also [a customer] prefers freighter aircraft, mainly due to the fact that available capacities and the possible dimensions for cargo are limited in the belly-hold of passenger aircraft whereas in freighter aircraft larger, heavier and longer cargo can be loaded. According to [the customer], using the belly-hold of passenger aircraft also entails additional risks for freight forwarders, as passenger luggage has always priority over cargo for the airlines.[1751] [A's] customers are very often obliged to use freighter flights because a lot of their goods are classified as dangerous goods/cargo, which can only be transported on dedicated freighters or because the dimensions and weight of a large share of the goods transported for [the customer's] customers require dedicated freighter main deck capacity.[1752]

(1118) In the fourth place, and in opposition to the Parties' claim[1753], the Parties also compete relatively closely with each other regarding the high frequencies they are able to offer to customers[1754] as compared to their competitors:

Table 74 – Example of flight frequencies in a representative week between Europe and South Korea in summer 2019 (week of 5th August) and winter 2019/2020 (week of 2nd December)

Carrier	Summer 2019 w/c 5th August			Winter 2019/2020 w/c 2nd December		
	Belly	**Freighter**	**Overall**	**Belly**	**Freighter**	**Overall**
Korean Air	[…]	[…]	[…]	[…]	[…]	[…]
Asiana	[…]	[…]	[…]	[…]	[…]	[…]
Combined	[…]	[…]	[…]	[…]	[…]	[…]
Cathay Pacific Airways	[…]	[…]	[…]	[…]	[…]	[…]
Thai Airways International	[…]	[…]	[…]	[…]	[…]	[…]
Singapore Airlines Group	[…]	[…]	[…]	[…]	[…]	[…]
Lufthansa Group	[…]	[…]	[…]	[…]	[…]	[…]
Air France-KLM	[…]	[…]	[…]	[…]	[…]	[…]
Turkish Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Qatar Airways	[…]	[…]	[…]	[…]	[…]	[…]
Emirates	[…]	[…]	[…]	[…]	[…]	[…]
Etihad	[…]	[…]	[…]	[…]	[…]	[…]
Finnair	[…]	[…]	[…]	[…]	[…]	[…]
International Airlines Group	[…]	[…]	[…]	[…]	[…]	[…]
LOT Polish Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Cargolux Group	[…]	[…]	[…]	[…]	[…]	[…]
Philippine Airlines	[…]	[…]	[…]	[…]	[…]	[…]

1750 Non-confidential minutes of a conference call with [a customer].
1751 Non-confidential minutes of a conference call with [a customer].
1752 Non-confidential minutes of the conference call with [a customer]
1753 Response of Korean Air to the Commission's Statement of Objections, paragraph 640.
1754 Non-confidential minutes of the conference call with [an integrator].

Carrier	Summer 2019 w/c 5th August			Winter 2019/2020 w/c 2nd December		
	Belly	Freighter	Overall	Belly	Freighter	Overall
Silk Way Group	[…]	[…]	[…]	[…]	[…]	[…]
Delta Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Smart Wings	[…]	[…]	[…]	[…]	[…]	[…]
Total (excl. integrators)	[…]	[…]	[…]	[…]	[…]	[…]
DHL	[…]	[…]	[…]	[…]	[…]	[…]
FedEx Express	[…]	[…]	[…]	[…]	[…]	[…]
UPS Airlines	[…]	[…]	[…]	[…]	[…]	[…]
Total (incl. integrators)	[…]	[…]	[…]	[…]	[…]	[…]

Source: Parties' estimates. Notes: Airlines no longer active or unable to fly (e.g. Russian carriers) were excluded. The following airlines had no weekly scheduled flight in 2019: […]

(1119) Accordingly, a customer stated that the Parties are the preferred option on the routes between Europe and South Korea as they have the most frequencies.[1755] Another customer explained that they have a long-lasting relationship with both Korean Air (35 years) and Asiana (20 years) and that in the past, Korean Air was more often used, while more recently he has more often relied on Asiana's services: "*Whether one or the other is chosen mostly depends on their frequency: Korean Air operates […] freighter services weekly compared to […] freighters of Asiana.*"[1756]

(1120) In the fifth place, the market perceives the Parties as each other's closest competitors due to the high quality of their respective services.[1757] The market investigation reveals that the market's understanding of the concept "quality" mainly concerns the timeliness and reliability of the air cargo transport services which seem to be comparable between the Parties.[1758] Accordingly, a customer explained that "*they possess superior service and quality. The customs clearance is done before the shipment arrives – it allows for the cargo to be picked up very quickly. There are no delays with pick-ups as well. The Parties dominate in terms of quality of service.*"[1759] Another customer noted that "*when purchasing air cargo services from cargo carriers on the routes between Europe and South Korea,* [the customer] *prefers to purchase from Korean Air and Asiana, as they provide better services on the route than any other carrier*".[1760] According to this customer, the Parties have in particular an advantage with regard to their cargo terminal at ICN airport, which allows them to handle arriving cargo considerably faster and more efficient than any competitor.[1761] In addition, a market participant stated in relation to competitors who are offering indirect services that "*not all of them are of the same level of quality as Korean Air and Asiana as they offer longer connection times due to transshipment and some of them are considered as less reliable (e.g. cargo is not flown due to canceled flights)"*.[1762] Moreover, the Parties' internal documents emphasize […], page 56). As South Korean flag carriers and in contrast to the Parties' claim in their Response to the

1755 Non-confidential minutes of a call with [a customer].
1756 Non-confidential minutes of a call with [a customer].
1757 Non-confidential minutes of the conference call with [an integrator].
1758 Non-confidential minutes of the conference call with [an integrator].
1759 Non-confidential version of the minutes of a call with [a customer].
1760 Non-confidential minutes of the conference call with [a customer].
1761 Non-confidential minutes of the conference call with [a customer].
1762 Non-confidential minutes of the conference call with [a competitor]

Letter of Facts[1763], both Korean Air and Asiana have a particular position in customers' perception and provide a similar level of quality that customers seem to value: Even though the Paties in their Response to the Letter of Facts uphold that as regards air cargo transport services brand loyalty is not a decisive factor,[1764] a customer is of the opiniomn that "*If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand*".[1765] "*Korea is where Korean Air and Asiana have their hub and where they are strong*". "[A customer's] *customers have a preference for Korean air carriers, that is to say for Korean Air and Asiana, due to their nationality and high service level*".[1766] "[A customer] *predominantly opts for Korean Air or Asiana for air transport services between Europe and South Korea since both receive preferred operation handling in Korean airports. This is based on the placing of their aircraft within the ICN airport. Lufthansa and other carriers are placed further away from the operational headquarters on ICN airport grounds. This is a significant advantage that Korean Air and Asiana can offer, unlike all of their competitors*".[1767]

(1121) In the sixth place, the Parties also seem to be competing closely in terms of prices: a competitor has indicated that the Parties have been "*fiercely competing in terms of pricing over the last years*" on the routes between South Korea and Europe.[1768] A customer describes these similarities between Korean Air and Asiana as follows: "*Korean Air and Asiana are very similar in that they offer direct and first in class services between Europe and Korea. Their "flown as booked" rating is very high, close to [90-100]% or [90-100]%; the average of the other carriers is lower at [80-90]% or [80-90]%. Korean Air in particular offers the highest-priced service for air cargo between Europe and Korea. Both Korean Air and Asiana do not negotiate much on the prices they offer and are well aware that they have a captive market in Korea. Accordingly, they charge high prices for their high quality service. While other air carriers have announced that they expect their yield to increase by around 30% in 2023, Korean Air and Asiana have only reduced their prices […] so far. The trade between Europe to Korea is their market, they are controlling it. The customers today accept that*."[1769] "*[…]. Other airlines, such as […] and […], immediately pass on fuel price increases or decreases to their customers. […]. They have loyal customers so they do not need to be flexible*."[1770]

(1122) Based on the above, the Commission considers the rivalry between the Parties as an important source of competition on the market and therefore concludes that the Parties are close – if not the closest – competitors on the market for air cargo services on the route from South Korea to Europe.[1771]

8.12.3. Competitive Constraints from competitors and ability of customers to switch suppliers

8.12.3.1. Competitive constraints from air cargo competitors

(1123) Post-Transaction, customers of the Parties would have difficulties switching suppliers, as there are insufficient alternatives and the existing competitors' cargo operations

1763 Response of Korean Air to the Commission's Letter of Facts, paragraph 139.
1764 Response of Korean Air to the Commission's Letter of Facts, paragraph 139.
1765 Minutes of call with [a customer].
1766 Minutes of call with [a customer].
1767 Minutes of call with [a customer].
1768 Non-confidential minutes of the conference call with [a competitor]
1769 Non-confidential minutes of a conference call with [a customer].
1770 Non-confidential minutes of a conference call with [a customer].
1771 Horizontal Merger Guidelines, paragraph 28.

only provide a limited competitive constraint on the Parties on the route from Europe to South Korea.

(1124) First, as shown in section 8.12.1, the Parties were the first and second largest providers of air cargo transportation services on the route from South Korea to Europe in 2019. Besides the Parties, the market is very fragmented. In addition, the only other carriers which were able to obtain market shares of [10-20]% or above were Qatar Airways from 2019-2021 and AirFranceKLM in 2018. Most other competitors have market shares below 5%. These significantly smaller competitors are unlikely to provide a significant competitive constraint on the Parties post-Transaction.

(1125) Contrary to what Korean Air argues in its Responses to the Commission's Statement of Objections and Letter of Facts,[1772] the Commission notes that its Phase I market investigation has only generated mixed results with regard to the customers' switching options. For example, among the eight customers replying that they would be able to easily switch to other air cargo carriers on the relevant routes, (i) there is one customer explaining that they do not in any event have influence on the choice of the air cargo carrier (which is rather decided by the freight forwarder),[1773] (ii) there is one customer expressing a wish to switch but nevertheless expecting the Transaction to have a negative impact on prices, capacity, quality of service and level of competition, and considering that post-Transaction "*it will be only one carrier (direct service) to ICN*",[1774] (iii) there is [a customer] which is in any event the biggest customer of [an integrator] and therefore does have a preferred alternative,[1775] (iv) there are two shippers of […] and […] who are both nevertheless excluding transhipment as a choice and considering the market being under-supplied,[1776] and finally (v) there is one customer with "*extremely high volumes*" who considers the Parties expensive, especially Korean Air that "*does not really move*" in pricing, but is nevertheless using them as "*the preferred option*".[1777]

(1126) In view of the above mixed results, during Phase II, the Commission contacted and held conference calls with 10 of the Parties' largest customers, several of which have indicated that they use dual sourcing *i.e.* sourcing between the two Parties either exclusively or for the far largest part of their volumes in order to obtain competitive prices:[1778]

(a) The first customer believes it has some bargaining power only because it can switch between Korean Air and Asiana as needed, while post-Transaction it will be impossible for freight forwarders to negotiate prices. According to the customer, the two Parties are the dominant providers on the Europe-South Korea route and the closest competitors with superior service and quality. The customer's major concern is that the Parties effectively own the market. If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand. Therefore, freight forwarders will have to pass-on the price increase or absorb it internally. The customer considers to

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1772 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 662 *et seqq.*, and to the Commission's Letter of Facts, paragraph 141.

1773 Reply of [a customer] to question B.6-2 of Questionnaire Q5 to cargo customers (ID 9305).

1774 Reply of [a customer] to questions E.2 and E.4 of Questionnaire Q5 to cargo customers (ID 8391).

1775 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1776 Replies of [a customer] and [a customer] to questions C.A-2, C.B-2 and D.B.B.6 of Questionnaire Q5 to cargo customers (IDs 8682 and 8444).

1777 Reply of [a customer] to question E.4 of Questionnaire Q5 to cargo customers (ID 7858), in conjunction with Minutes of call with [a customer].

1778 Horizontal Merger Guidelines, paragraph 31.

absorb a price increase until it reaches a painful level and then pass on the price difference to its customers. At the same time, the customer is concerned that post-Transaction the Parties might decrease capacity and lower their quality, something that freight forwarders will have to accept.[1779]

(b) The second customer expects the Parties to decrease their frequencies, leading to price increases from / to South Korea. None of the other carriers will be able to fill up the retired capacity of the Parties.[1780]

(c) The third customer has a long-lasting relationship with both Korean Air (35 years) and Asiana (20 years). In the past, Korean Air was more often used, while more recently the customer has been relying on Asiana's services more often. Whether one or the other is chosen mostly depends on their frequency: Korean Air operates […] freighter services weekly compared to […] freighters of Asiana.[1781] The Commission notes that, in any event, and as shown in Table 74 above, no other air cargo carrier operates as many weekly frequencies of freighter aircraft as the Parties, and therefore the customer's choice besides the two Parties is extremely limited.

(d) The fourth customer uses mainly the Parties and considers transhipment carriers as "*not a viable option*". The customer considers the Parties to be each other's closest competitor due to (i) the frequencies of the flights with high capacity volumes being offered in both passenger flights and dedicated freighters, (ii) the quality of their service, and (iii) the direct flights, which ensure quick deliveries and minimise the risks for the safety of the cargo. Second-tier choices are Cargolux, DHL Aviation and Air France/KLM. However, (i) Cargolux only flies from Luxembourg, (ii) DHL Aviation has a lower quality of service as it always prioritises its door-to-door business and in any event cannot be considered an alternative to the Parties due to its limited capacity offering for airport-to-airport general cargo transport, and (iii) Air France/KLM has limited capacity, as well. "*The scale offered by other carriers is simply not enough for forwarding big volumes*" (emphasis added). In addition, "*Lufthansa is more focused on Japan rather than South Korea, as rates to Japan are much higher. Thus, the freight aircraft destined to Japan (and South Korea) is made up of […]. The only reason Lufthansa flies to South Korea is to pick up cargo meant for export to Europe, because Japan itself has no export shipment. It follows that Lufthansa cannot be relied on since the capacity of Lufthansa's cargo aircraft for ICN is massively limited*". Overall, the customer is concerned that post-Transaction, the Parties may discontinue the 7 freighter aircraft of Asiana currently serving Frankfurt. In such case, the customer is concerned that all second-tier choice carriers together would not have the necessary scale to replace that.[1782]

(e) The fifth customer predominantly opts for Korean Air or Asiana for air transport services between Europe and South Korea since both receive preferred operation handling in South Korean airports. Lufthansa and other carriers are placed further away from the operational headquarters on ICN airport grounds. Overall, the customer considers DHL, Lufthansa, Air France/KLM or the Chinese carriers as somewhat less good alternatives to the Parties.[1783]

1779 Minutes of call with [a customer].
1780 Minutes of call with [a customer].
1781 Minutes of call with [a customer].
1782 Minutes of call with [a customer].
1783 Minutes of call with [a customer].

(f) The sixth customer ships cargo between Germany and Incheon. To this end, the customer uses Korean Air and Asiana for 90% of its freight volumes, and Lufthansa, Cargolux, Etihad and Turkish Airlines for the remaining 10%. The customer mainly uses direct flights for its freight forwarding services since that is what customers seek out first and foremost. "*Accordingly, around 90% of* [the customer]*'s business constitute direct flights, 70% of which are handled by Asiana and 30% by Korean Air*". According to the customer, Korean Air and Asiana dominate the offer of direct flights from Germany. Lufthansa also offers direct flights but with less frequencies and capacity, whereas Cargolux is not a good option due to limited capacity and its service being offered only from Luxembourg. The customer has indicated to the Commission that Korean Air is well aware of the fact that post-Transaction there will be much less options available. According to the customer, "*[…]*". Finally, the customer considers that Korean Air's prices have been kept lower exactly "*because of the counter-offer from Asiana*" (emphasis added).[1784]

(1127) Second, the Commission's market investigation shows that most other air cargo carriers are perceived as rather distant competitors to the Parties. Only a small share of respondents named any other carrier as Korean Air's closest competitors on the route, with Asiana receiving the overwhelming majority of mentions. Amongst the Parties' competitors, only Emirates was one time individually named as Korean Air's closest competitor on the route, apart from that, only Asiana received mentions.[1785] Similarly, the overwhelming majority of respondents named Korean Air as Asiana's closest competitor. Amongst competitors, Emirates being the only other competitor named even once as Asiana's top competitor. Amongst customers, Lufthansa was the only other carrier named more than once.[1786]

(1128) Third, the Parties' competitors are not able to provide a similar service of non-stop, high-frequency and high capacity air cargo transport on dedicated freighters and passenger carriers to a significant number of European destinations at a reliable quality from ICN airport, that would be similar to the service both Asiana and Korean Air are currently providing.

(1129) In the first place, and contrary to Korean Air's submission in its Response to the Commission's Statement of Objections,[1787] all other competitors compete with much fewer frequencies than the Parties combined and/or to fewer airports in Europe and accordingly offer significantly less capacity and less choice of airports. Table 74 above shows the flight frequencies in a representative week in summer 2019 (week of 5th August) and winter 2019/2020 (week of 2nd December). The considerable difference between the Parties' high-frequency and high-capacity proposition and that of their competitors can be observed for both the carriers that most closely resemble the Parties' offer, like Cargolux and Lufthansa, as well as passenger belly-hold carriers and transhipment carriers. Moreover, the carriers with the most frequencies are those with a proposition somewhat inferior to that of the Parties, like Cathay Pacific Airways, Thai Airways, and Singapore Airlines. The closest competitors have significantly fewer frequencies than the Parties.

1784 Minutes of call with [a customer].

1785 Replies to questions D.B.C.1 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers

1786 Replies to questions D.B.C.2 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers

1787 Response of Korean Air to the Commission's Statement of Objections, paragraphs 664-665.

(1130) For instance, the Parties combined offer […] times more weekly frequencies than Lufthansa and […] times more than Cargolux. If only freighters are considered, the Parties combined offer […] times more weekly frequencies than Cathay Pacific Airways, […] times more than Lufthansa, […] times more than Turkish Airlines, […] times more than Qatar, […] times more than Cargolux, and […] times more than Silk Way. If only non-freighter carriers are considered, the Parties combined offer […] more weekly frequencies than Cathay Pacific Airways, […] times more weekly frequencies than Thai Airways, […] times more than Singapore Airlines, […] times more than Lufthansa, […] times more than Air France/KLM, […] times more than Turkish Airlines, […] times more than Qatar, Emirates, Etihad, Finnair and IAG, […] times more than LOT Polish Airlines, and […] times more than Philippine Airlines.

(1131) Competitors responding to the phase I market investigation confirmed that frequency is very important for customers, rating frequency of regularly scheduled flights as the third most important criterion for customers when choosing an air cargo carrier on the route (out of 14).[1788] Furthermore, customers rated frequency of regularly scheduled flights as the single most important criterion when choosing an air cargo carrier on the route.[1789] As one customer states, "*the more flights, the shorter the total lead time from moment of availability of the cargo. Plus more back up flights in case cargo is off loaded*".[1790]

(1132) Competitors and customers responding to the market investigation have furthermore both ranked Korean Air and Asiana as the most and second most competitive air carriers on the route in terms of frequencies offered per week. Competitors considered Lufthansa and Qatar Airways as the most competitive competitors of the Parties in terms of frequencies, with customers rating Qatar Airways and Turkish Airlines as such. However, in view of the available evidence presented in section 8.12.2, Lufthansa, Turkish Airways and Qatar Airways are not particularly close competitors to either of the Parties. Cathay Pacific and Singapore Airlines, which according to the Parties' estimates offer the most frequencies of competitors on the route were ranked as considerably less competitive by customers in terms of frequencies on the route than the Parties,[1791] indicating that respondents to the market investigation did not consider them to be competing particularly closely, even in this regard.

(1133) The advantage of Korean Air and Asiana over their competitors due to the higher frequencies offered is confirmed by competitors. According to [a competitor], "[t]*he more frequencies we offer our customers the higher the attractiveness which in turn drives higher demand for our services*".[1792]

(1134) According to the market investigation and as shown in section 8.12.2, customers prefer carriers which offer a high frequency on the route.[1793] According to one competitor "*frequency is paramount*".[1794] As shown above, the Parties' competitors are unable to provide a similar service to the Parties in this regard.

1788 Replies to question D.B.A.1. of Questionnaire Q2 to cargo competitors.

1789 Replies to question D.B.A.1. of Questionnaire Q5 to cargo customers.

1790 Reply of a customer to question D.B.A.1. of Questionnaire Q5 to cargo customers (ID: 8244)..

1791 Replies to questions D.B.B.1. of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.

1792 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132).

1793 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].[1793]

1794 Non-confidential minutes of the conference call with [a customer].

(1135) In the second place, despite Korean Air's submissions in its Responses to the Commission's Statement of Objections and Letter of Facts,[1795] while transhipment carriers, which are unable to offer direct flights on the route, can provide alternative solutions to the Parties' non-stop services, their offer is considered an inferior service to some extent compared to flights without transhipment. On the route from South Korea to Europe, carriers which exclusively transport air cargo with transhipment flights are Qatar Airways, Turkish Airlines, Singapore Airlines, Silk Way Group, Emirates, Etihad, Cathay Pacific, China Southern Airlines, China Airlines and Thai Airways International.

(1136) As shown in sections 7.2.1.5 and 8.12.2, respondents to the market investigation explained that many customers prefer direct services or multi-stop services without transhipment. In particular, given the delay involved with transhipment, direct flights appear to be more suitable in certain cases in which the total transport time should be as short as possible such as for very time-sensitive products (*e.g.* animals, perishable goods or pharmaceuticals). Many customers would avoid services with transhipment in general, in view of risks of delays, damage or loss of cargo.

(1137) Consequently, except for Qatar Airways, transhipment carriers have been rated as considerably less competitive than the Parties by respondents to the market investigation on the route from South Korea to Europe.[1796] According to competitors having responded to the market investigation, the Parties' overall competitiveness was rated as 4.8/5 (Korean Air) and 4.4/5 (Asiana) on the route South Korea-Europe, with 1 being considered 'very weak' and 5 being considered 'very strong'. Except for Qatar Airways (4.25/5), other transhipment carriers were rated as considerably less competitive by their competitors, namely Turkish Airlines (3.57/5), Silk Way Group (3.57/5), Emirates (3.5/5), Etihad (3.67/5), Cathay Pacific (2.83/5), China Southern Airlines (2.8/5) and China Airlines (2.8/5).[1797] Similarly, customers having responded to the market investigation rated the Parties as the more competitive than all transhipment carriers, with the following ratings having been given: Korean Air (3.79/5), Asiana (3.93/5), Qatar Airways (3.57/5), Turkish Airlines (3.15/5), Silk Way Group (2.73/5), Emirates (3.21/5), Etihad (3.07/5), Cathay Pacific (2.82/5), China Southern Airlines (2.36/5) and China Airlines (2.46/5).[1798]

(1138) The majority of competitors responding to the phase I market investigation confirmed that multi-stop flights with transhipment exert a lower competitive pressure on flights not involving transhipment on the route.[1799] Similarly, the majority of customers responding to the phase I market investigation also confirmed that multi-stop flights with transhipment exert somewhat or significantly lower competitive pressure on flights not involving transhipment on the route.[1800] One customer stated that "*the level of comeptitive* [sic] *by stop over service with transipment* [sic] *VS direct non stop is low. customers much prefer direct flight*[s]".[1801] Another customer stated that [m]*ulti stop flights with trans shipping are little less competitive because of longer transport duration*".[1802]

1795 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 666-691, and to the Commission's Letter of Facts, paragraph 145.

1796 Replies to questions D.B.B.1 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.

1797 Replies to question D.B.B.2 of Questionnaire Q2 to cargo competitors.

1798 Replies to question D.B.B.2 of Questionnaire Q5 to cargo customers.

1799 Replies to question D.B.C.4. of Questionnaire Q2 to cargo competitors.

1800 Replies to question D.B.C.4. of Questionnaire Q5 to cargo customers.

1801 Reply of a customer to question D.B.C.4. of Questionnaire Q5 to cargo customers (ID: 8606).

1802 Reply of a customer to question D.B.C.4. of Questionnaire Q5 to cargo customers (ID: 7944).

(1139) The competitive advantage of being able to offer direct flights on the route was confirmed by the Parties' competitors and other market participants. Specifically, [a competitor] remarked that due to their need to use their hub to tranship goods between Europe and South Korea "[w]*e are a small player in this market*."[1803] [A competitor] which also offers direct flights on the route confirms that "*direct flights are preferred by customers and are presumably premium priced*".[1804] [A competitor] stated that as a rule of thumb, "*direct carriers have more advantages over non-direct carriers*".[1805] In addition, [a competitor] does not consider itself to be a significant competitive constraint on the Parties on the route from South Korea to Europe because they do not operate direct flights between Europe and South Korea.[1806] According to [an integrator], "*direct flights between Europe and South Korea (both directions) tend to be faster and more secure than indirect flights and therefore more appropriate for time-sensitive cargo*", adding that indirect cargo involving transhipment "*faces the issues of missing the connecting leg of the transport or losing the shipment at the transit location*" and concluding that "[d]*ue to the superior service offered, direct flights between Europe and South Korea are more expensive than indirect flights with transhipment*".[1807] Furthermore, [a competitor], which only operates transhipment flights, indicates that "*carriers offering nonstop service between ICN and European cities will have an advantage as they can offer a single flight/trucking solution",* further specifying that "[t]*he more time-sensitive the cargo, the more acute this advantage is*", whereas for less time-sensitive cargo, [the competitor's] offer may be competitive "*subject to a quality-adjusted price*".[1808] [A competitor] also confirms this, stating that "[d]*irect operators are usually the preferred choice given shortest flying time (point to point) & offer a better speed to market versus transhipment operators*."[1809]

(1140) Customers have also confirmed their preference for flights not involving transhipment in the market investigation.[1810] In addition to the customers quoted in section 7.2.1.5 and in section 8.12.2, one customer remarked that carriers offering transhipment connections on the route, such as Etihad, Emirates, Qatar Airways and Turkish Airlines "*all appear to be less relevant competitors due to the lack of direct services."*[1811]

(1141) In paragraphs 670-671 of its Response to the Commission's Statement of Objections, Korean Air uses feedback from customers to show that the two services, *i.e.* direct flights and flights with transhipment, are substitutable. The Commission notes that indeed transhipment carriers compete on the same market with direct-service carriers, such as the Parties. This is also reflected in the market definition, section 7.2.1.5, above. However, they are not as close competitors as the Parties are to each other, given that direct and transhipment services typically cater for different customers' needs. [A customer's] full quote gives a more clear picture: "*According to* [the customer]*, when it comes to transport of goods between Europe and South Korea, direct flights, indirect flights and also transhipment flights are all valid options. It,*

1803 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11675).
1804 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1805 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).
1806 Non-confidential minutes of the conference call with [a competitor] .
1807 Non-confidential minutes of the conference call with [an integrator].
1808 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1809 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).
1810 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].
1811 Non-confidential minutes of a call with [a customer].

however, hugely depends on clients' preferences and pricing which of all available options is in the end the most suitable. [The customer] *therefore makes its choice on a case-by-case basis according to its customers' needs. Given that airfreight is quite expensive, it is mostly used for time-sensitive goods and for high-value cargo (e.g. server racks). Pharmaceuticals are a characteristic example in this regard, because clients look for short transit time, leaving direct flights (without stopover or with stopover but without transhipment) as the only realistic option. Also for high value products or sensitive cargo customers prefer to avoid transhipment. In contrast, customers will opt for (usually cheaper) indirect connections with transhipment when the cargo consists of low-value and no time-sensitive goods*".[1812] In paragraph 145 of its Response to the Commission's Letter of Facts, Korean Air insists that [the customer's] quote confirms Korean Air's view that direct and transhipment flights compete as closely because all options are viable alternatives and ultimately a choice is made on a case-by-case basis. The Commission notes that indeed all such options compete on the same market, albeit many times catering for different needs. Therefore, transhipment carriers are of a somewhat different nature of that of the Parties.

(1142) Last but not least, the Commission's market investigation clearly contradicts Korean Air's submission in its Responses to the Commission's Statement of Objections and Letter of Facts that price – and not the number of stops – is the key driver for customers when choosing an air cargo carrier.[1813] The Commission notes in this respect that price was actually ranked fourth (4.29) by customers, after the frequencies (4.76), the reliability in terms of flight times (4.64) and the quality of cargo handling (4.43).[1814]

(1143) In the third place, and contrary to what Korean Air argues in its Responses to the Commission's Statement of Objections and Letter of Facts,[1815] passenger carriers which transport air cargo only in the belly-hold of the passenger aircraft are more distant competitors and only exert a limited competitive constraint on the Parties (offering both freighter and belly space capacity). On the route from South Korea to Europe, carriers which only transport belly-hold cargo are […], […], […], […], […],[1816] […],[1817] and […].

(1144) As indicated in section 8.12.2, there are significant downsides of carriers carrying only belly-hold cargo, compared to those offering dedicated freighter flights. Some goods cannot be transported in the belly-hold of a passenger aircraft, such as dangerous or oversized goods.[1818] In addition, the belly-hold of a passenger aircraft offers a significantly lower capacity (maximum load: 25 tons) than freighter (maximum load: 100 tons).[1819] This makes belly-hold air cargo transport services less attractive in particular for larger customers (such as major freight forwarders), which often need to

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1812 Minutes of call with [a customer].

1813 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 669 *et seqq.*, and to the Commission's Letter of Facts, paragraph 144.

1814 See replies to question D.B.A.1 of questionnaire Q5 to cargo customers.

1815 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 692-700, and to the Commission's Letter of Facts, paragraph 146.

1816 Replies to question B.1. of Questionnaire Q2 to cargo competitors (IDs 8577, 7692, 7951, 9444, 8596).

1817 Non-confidential minutes of the conference call with [a competitor].

1818 Form CO, paragraphs 192, 232. see also: Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (11106); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential minutes of the conference calls with [a competitor].

1819 Form CO, paragraph 362.

transport significant volumes at a time.[1820] Furthermore, if necessary, passenger airlines will prioritize passenger baggage over air cargo, which means that capacity available on passenger aircraft is not always predictable and will depend on the amount of passenger baggage on the respective aircraft. This may also mean that passenger airlines leave behind cargo in order to transport passenger baggage. As [a competitor] states, "[f]*or passenger aircraft, passenger baggage takes priority over any belly cargo*."[1821] This is confirmed by [a competitor] with regard to its own passenger flights between South Korea and […], by which all cargo between Europe and South Korea is being transported, stating that "[the competitor's] *cargo needs to share available capacity with passengers' baggage. Subject to space availability wherein the passengers' baggage takes precedence, cargo is uplifted only on an ad-hoc basis and there is no specific or fixed cargo allocation. Accordingly,* [they] *are unable to determine the cargo capacity due to the fact that* [their] *passenger flights could be full because of belly-hold space constraints rather than weight*".[1822]

(1145) In the same vein, [a competitor] considers that "*the operation of freighters has an advantage as it is less limited than belly hold*" and "*Flight Flight times for passenger services are optimized to fit passenger demand/requirements, the transport of cargo on such services is a resulting by-product*",[1823] which confirms how operators only relying on belly-hold capacity tend to be less competitive than operators that can also rely on freighters and that cargo-related considerations are generally subordinated to passengers-related considerations for passenger carriers.

(1146) [A competitor] confirmed that only being able to transport belly-hold constitutes a competitive disadvantage on the route, due the difference in payload of a dedicated freighter and the inability to transport certain larger goods on passenger aircraft.[1824] [The competitor] actually considers freighter capacity and belly-hold capacity as "*different sectors of the air freight market. It is caused by different aircraft capacity, payload vs. operating costs. We have less ability to transport huge parcels if they require all-cargo aircraft.* […] *Usually all cargo transportation is more expensive than belly cargo due to cost & revenue structure*".[1825]

(1147) Furthermore, [a competitor] states that "*Operating only passenger aircraft, where cargo is transported in the belly of the aircraft, will limit the flexibility in where to deploy the aircraft. The booking window for passengers is longer than for cargo. As such the flight schedules for the passenger aircraft are already set up well before the cargo booking window opens. The limited flexibility will limit the competitiveness. Furthermore the destinations within the network will depend both on the passenger demand and the cargo demand. As such operating passenger flights only will in practice limit the ability to deploy these aircraft into cargo hubs where there is limited passenger demand. Additionally different cargo may be able to be carried on the upper deck, further limiting the competitiveness of carriers operating only passenger aircraft*."[1826] And again, "[d]*ifferent cargo may be carried on the upper deck or in freighters than purely in the belly hold of passenger aircraft, possibly impacting the price*".[1827]

1820 See for example paragraph (894).
1821 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132).
1822 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).
1823 Response of [a competitor] to RFI 2, questions 46 and 50 (ID 12886).
1824 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1825 Response of [a competitor] to RFI 1, questions 40-41 (ID 11689).
1826 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).
1827 Response of [a competitor] to RFI 1, questions 40-41 (ID 11106).

(1148) In addition, Boeing confirms the Commission's views in its World Air Cargo Forecast 2022-2041.[1828] In page 10, it is explained that (i) belly-hold capacity cannot serve all types of cargo or all freight forwarders' needs, and that (ii) payload-range considerations on passenger airplanes may limit cargo carriage, increasing the risk that cargo will fail to arrive on time.

(1149) It should be noted that a customer has indicated as part of the market investigation, that it perceives the often higher frequency of passengers flights compared to freighters favourably.[1829] However, as shown in this section, the Parties together are able to offer a higher frequency than all passenger carriers on the route, not least because they also operate a significant number of passenger flights on the route, in addition to their dedicated freighter flights.

(1150) For the reasons stated above, carriers which only transport belly-hold cargo on the route have been rated as considerably less competitive than the Parties by respondents to the market investigation on the route from South Korea to Europe. Competitors having responded to the market investigation rated the Parties as more competitive than belly-hold carriers on the route. Competitors have given the following overall competitiveness ratings: Korean Air (4.8/5), Asiana (4.4/5), AirFranceKLM (3/5), Finnair (2.83/5), LOT Polish Airlines (2.83/5), Emirates (3.5/5), Etihad (3.67/5), and China Airlines (2.8/5).[1830] Similarly, customers having responded to the market investigation rated the Parties as the most competitive carriers on the route, also vis-à-vis belly-hold carriers, namely: Korean Air (3.79/5), Asiana (3.93/5), AirFranceKLM (3.42/4), Finnair (2.5/5), LOT Polish Airlines (2.42/5), Emirates (3.21/5), Etihad (3.07/5), and China Airlines (2.46/5).[1831]

(1151) On the basis of the above considerations, the Commission notes that the few alternatives that can provide services similar to the Parties to a certain extent taking into account the nevertheless low frequencies, *i.e.* freighter capacity with direct flights, namely [names of competitors] are in any event of limited constraint to the Parties because (i) [a competitor's] capacity is shared with cargo destined to […],[1832] (ii) [a competitor's] capacity is restricted due to traffic rights limitations affecting its hub in […], and (iii) [an integrator's] airport-to-airport offering is only a "*filler product*",[1833] while most of its capacity is dedicated to its core door-to-door small package business.

(1152) The Table below therefore provides an illustration of the alternatives the Parties' customers would have post-Transaction. Contrary to Korean Air's submissions in its Responses to the Commission's Statement of Objections and Letter of Facts,[1834] it appears that virtually no other competitor can imitate the Parties' competitive offering, *i.e.* high frequency, high capacity (both freighter and belly-hold), and direct service without transhipment.

1828 Available online (https://www.boeing.com/resources/boeingdotcom/market/assets/downloads/Boeing_World_Air_Cargo_Forecast_2022.pdf) (ID 12795).

1829 Non-confidential minutes of the conference call with [an integrator].

1830 Replies to question D.B.B.1 of Questionnaire Q5 to cargo customers.

1831 Replies to question D.B.B.1 of Questionnaire Q5 to cargo customers.

1832 This is also observed by Asiana in its internal business documents, *e.g.* "Request for Information 10 - RFI-10 - OZM_0001000-Materials from the 2023 Q1 European Sales Meeting".

1833 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1834 Responses of Korean Air to the Commission's Statement of Objections, paragraphs 663 *et seqq.*, and to the Commission's Letter of Facts, paragraphs 142-143.

Table 75: Air cargo carriers' overview

Cargo carrier	Market share in 2019[1835]		Frequencies (illustrative example from a representative week in 2019)[1836]		Route type
	Europe to South Korea	South Korea to Europe	Freighter	Belly-hold	
Korean Air	[20-30]%	[20-30]%	[…]	[…]	[…]
Asiana	[10-20]%	[10-20]%	[…]	[…]	[…]
Qatar Airways	[5-10]%	[10-20]%	[…]	[…]	[…]
DHL	[5-10]%	[0-5]%	[…]	[…]	[…]
Lufthansa Group	[0-5]%	[5-10]%	[…]	[…]	[…]
Cargolux Group	[0-5]%	[5-10]%	[…]	[…]	[…]
Ethiopian Airlines[1837]	[0-5]%	[...]	[…]	[…]	[…]
Air France-KLM	[0-5]%	[5-10]%	[…]	[…]	[…]
Singapore Airlines Group	[0-5]%	[0-5]%	[…]	[…]	[…]
Silk Way Group	[0-5]%	[0-5]%	[…]	[…]	[…]
Turkish Airlines	[0-5]%	[5-10]%	[…][1838]	[…]	[…]
Finnair	[0-5]%	[0-5]%	[…]	[…]	[…]
Emirates	[0-5]%	[0-5]%	[…][1839]	[…]	[…]
Etihad	[0-5]%	[0-5]%	[…]	[…]	[…]
LOT Polish Airlines	[0-5]%	[0-5]%	[…]	[…][1840]	[…]
Thai Airways International	[0-5]%	[0-5]%	[…]	[…]	[…]
MSC Cargo[1841]	[0-5]%	[...]	[…]	[…]	[…]
International Airlines Group[1842]	[0-5]%	[0-5]%	[…]	[…]	[…]
All Nippon Airways	[0-5]%	[0-5]%	[…]	[…]	[…]
FedEx	[0-5]%	[0-5]%	[…]	[…]	[…]
UPS	[0-5]%	[0-5]%	[…]	[…]	[…]

Source: Summary of the Parties' market shares and frequencies estimates and the results of market investigation, sections 8.11 and 8.12.

(1153) In the fourth place, and contrary to Korean Air's submission in paragraphs 701-710 of its Response to the Commission's Statement of Objections, the Commission's market investigation shows that unscheduled cargo flights represent a weak constraint on the

1835 SO, tables 42 and 57.
1836 SO, tables 45 and 62.
1837 [A competitor's] reply to questions 5 and 27.1 of the Commission's RFI 1 (ID 10129); Minutes of call with [a competitor] […].
1838 Non confidential minutes of the conference call with [a competitor] […].
1839 Non confidential minutes of the conference call with [a competitor] […].
1840 Non confidential minutes of the conference call with [a competitor] […].
1841 Minutes of call with [a competitor] […].
1842 [A competitor's] reply to questions 2, 12, 21 and 30 of the Commission's RFI 1 (ID 11626).

Parties' cargo operations. Customers still favour scheduled cargo flights which provide a more stable as well as more reliable option.[1843]

(1154) With regard to charter cargo flights, the Commission considers that they only pose a weak competitive constraint on the Parties, given that (i) they are only offered on an opportunistic basis and therefore customers cannot rely on them for their entire demand, (ii) they are typically booked through a hiring arrangement with a particular customer, thus other customers do not have access to their capacity, and (iii) they have different pricing.[1844] On the demand side, customers replying to the Commission's market investigation explained that due to their higher pricing, charter cargo flights are mostly used exceptionally, either for a specific big project with high volumes where the customer would in any event book the entire capacity of the aircraft or during the Covid19 pandemic due to the irregularities it brought to the market.[1845] On the supply side, air cargo carriers also confirmed that they provide charter cargo services only (if at all) in exceptional situations, when there is a specific demand by a customer, in which case the customer must book the entirety of the aircraft capacity.[1846]

(1155) With regard to other unscheduled flights operated by air cargo carriers additionally to their usual schedule, these have not been widely confirmed as being regularly offered on the market.[1847] One customer explained that "*unscheduled flights are not something that should be viewed as a regular part of the market, as it is an option on the side, that may or may not be offered each time.* [The customer] *noted that Korean Air does offer unscheduled flights, which* [the customer] *indeed uses*".[1848]

(1156) [A competitor] sums it up in its quote "*ad-hoc additional flights during the covid period cannot be treated as a cargo strategy*".[1849] In the same vein: (a) "*unscheduled or charter flights are a very small niche of the global air cargo market, only attractive to customers for very specific use cases and not as replacement for regular scheduled services*";[1850] (b) "*No unscheduled cargo flights have been performed in 2019 and*

1843 Replies to questions C.A.3 of Questionnaire Q2 to cargo competitors and of Questionnaire Q5 to cargo customers.

1844 Replies to question C.A.3-2 of Questionnaire Q2 to cargo competitors; Replies to question C.A.3-2 of Questionnaire Q5 to cargo customers; Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, questions 39-40 and 44 (ID 11863); Response of [a competitor] to RFI 2, question 42 (ID 11680); Response of [a competitor] to RFI 1, questions 38-40 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1845 Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1846 Response of [a competitor] to RFI 2, questions 40-43 (ID 11132); Response of [a competitor] to RFI 2, question 40.1 (ID 11863).

1847 Response of [a competitor] to RFI 2, question 42 (ID 11132); Response of [a competitor] to RFI 2, question 6.4 (ID 11863); Response of [a competitor] to RFI 1, question 6 (ID 10676); Response of [a competitor] to RFI 1, question 9.2 (ID 11203); Response of [a competitor] to RFI 1, question 9 (ID 11084); Response of [a competitor] to RFI 1, question 6.4 (ID 11106); Response of [a competitor] to RFI 1, question 12.1 (ID 11689); Response of [a competitor] to RFI 1, question 21 (ID 11626); Response of [a competitor], question 38 (ID 10129); Non-confidential minutes of the call with [a customer]; Non-confidential minutes of the call with [a customer].

1848 Non-confidential minutes of the call with [a customer].

1849 Response of [a competitor] to RFI 1, question 12.4 (ID 11689).

1850 Response of [a competitor] to RFI 2, question 42 (ID 11132).

2022";[1851] (c) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] stated that it "*only has belly-hold cargo space on the Europe – South Korea route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*";[1852] (d) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] replied that "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*";[1853] (e) "*2019 No unscheduled cargo. In 2022 we operated 29 cargo flights with scheduled passenger service flight number but only cargo load and 9 dedicated and unscheduled cargo flights. In 2023 so far, no dedicated cargo flights and expectation we continue with scheduled pax/cargo flights only this year*";[1854] and (f) "*As* [a competitor] *does not control any capacity directly, and relies on the [competitor's] Operating Companies for passenger belly capacity and third party interline capacity, this question does not apply*".[1855]

(1157) In addition, the Commission notes that even the Parties themselves do not offer a considerable number of unscheduled flights.[1856] For example, in 2018 and 2019,[1857] Korean Air offered […] and […] unscheduled cargo flight frequencies between the EEA and Korea per direction, respectively. In the same years, Asiana offered […] and […] flights, respectively.

(1158) Therefore, the Commission cannot consider unscheduled flights as a significant competitive constraint to the Parties, given that these are only offered – if at all – on a clearly opportunistic basis. As put by [a competitor], "*depending on the market demand for charter-flights and lead-times we do not see charter-/non scheduled flights as an appropriate counterweight to any potential market power*".[1858]

(1159) In the fifth place, and contrary to Korean Air's submission in paragraphs 711-714 of its Response to the Commission's Statement of Objections, the Parties' competitors offering direct air cargo flights are each providing air cargo services from ICN to a significantly smaller number of European airports and have a significantly smaller geographical coverage of Europe than the Parties do. The fact that the Parties serve more European airports than any competitor offering direct air cargo flights on the South Korea to Europe route gives them a competitive advantage that further limits the competitive constraint that these competitors can impose on the Parties.

(1160) As indicated in section 7.2.2 and despite the Commission's conclusion to assess the effects of the Transaction on a European-wide market, the majority of customers considered that the catchment area by land or sea transportation for European airports for air cargo services from/to South Korea is an inner-European regional area, rather than all of Europe.[1859] Accordingly, several customers would not switch to other

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1851 Response of [a competitor] to RFI 2, question 6.4 (ID 12886).

1852 Response of [a competitor] to RFI 1, question 9.2 (ID 11203).

1853 Response of [a competitor] to RFI 1, question 9 (ID 11084).

1854 Response of [a competitor] to RFI 1, question 6.4 (ID 11106).

1855 Response of [a competitor] to RFI 1, question 21 (ID 11626).

1856 Response of Korean Air to RFI 14, question 49.

1857 The years 2020, 2021 and 2022 indicate significantly more unscheduled services for Korean Air. However, these years are not taken into consideration due to the irregularities caused in the air cargo market by the Covid19 pandemic.

1858 Response of [a competitor] to RFI 2, question 44 (ID 11863).

1859 Replies to question C.B.7 of Questionnaire Q5 to cargo customers. See also non-confidential minutes of the conference call with [a competitor], where [the competitor] refers to "*shorter distance cross-border*

European airports, or explained that such a switching decision would depend on various factors, such as the type of cargo and the distance to the airport as well as the additional trucking costs and transit time.[1860] Similarly, according to [a competitor], the primary catchment area for their cargo flights to South Korea from […] and […] is at most one day of trucking away from these airports.

(1161) In this regard, in the course of the market investigation, several customers have indicated their preference for air cargo transport from South Korea to a European airport as close as possible to their base of operations. Competitors responding to the phase I market investigation rated the criteria of the location of the airport in Europe where the air cargo carrier can land/the proximity to the origin or final destination of the cargo in Europe with an importance of 3.75/5, with 1 being "not important" and 5 being "very important". Similarly, customers rated this criterion's importance in choosing an air cargo carrier as 3.68/5.[1861] In addition, several customers during the phase II market investigation have further confirmed their strong preference for the European airport being as close as possible to their (or the end customer's) place of business and their hesitancy to accept longer trucking times than absolutely necessary.[1862]

(1162) As shown in section 8.10.3, the Parties are providing non-stop air cargo transport services to a significantly higher number of European locations from ICN than any other competitor. Concretely, Korean Air operates services to […][1863] and Asiana operates services to […] different European Airports. By comparison, no other competitor operates direct flights between more than two European airports and South Korea. While competitors which offer indirect flights involving transhipment, such as Qatar Airways, Turkish Airlines, Emirates, Etihad and Silk Way West are able to transport cargo from South Korea to more European airports, this service is inferior to that of the Parties for the reasons stated above.

(1163) In the sixth place, and contrary to Korean Air's submission in paragraphs 715-716 of its Response to the Commission's Statement of Objections, competitors are unable to offer the same high level of quality of service as the Parties do and are therefore more distant competitors and only exert a limited competitive constraint on the Parties.

(1164) Competitors responding to the phase I market investigation confirmed that quality and reliability are very important, rating quality of the service as the most important criterion, while rating reliability of the air carrier in terms of flight times as the fifth most important criterion when choosing an air cargo carrier on the route (out of 14).[1864] Furthermore, customers rated quality of the service as the third and reliability of the air carrier in terms of flight times as the second most important criterion for customers when choosing an air cargo carrier on the route (out of 14).[1865]

(1165) Competitors responding to the market investigation have furthermore ranked Korean Air as the most competitive air carrier on the route in terms of reliability of flight times, as well as quality of service in terms of cargo handling. In addition, competitors

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trucking in Europe" (ID 943); non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor]; non-confidential minutes of the conference call with [a competitor].

1860 Replies to question C.B.3 of Questionnaire Q5 to cargo customers.

1861 Replies to questions D.B.A.1. of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.

1862 Non-confidential minutes of the conference call with [a customer][…]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1863 Form CO, paragraph 357.

1864 Replies to question D.B.A.1. of Questionnaire Q2 to cargo competitors.

1865 Replies to question D.B.A.1. of Questionnaire Q5 to cargo customers.

ranked Asiana as number 5 and number 6 (out of 22) in terms of reliability and quality on the route respectively. Customers have in turn ranked Asiana as the most reliable carrier in terms of flight times as well as the highest in quality of service in terms of cargo handling, with Korean Air each rated as the second best on the route from South Korea to Europe.[1866] Customers which were contacted as part of the Phase II market investigation have furthermore confirmed that the Parties both have a very high quality of services[1867] and one has indicated that competitors such as Qatar Airways, Emirates, Singapore Airlines, China Eastern Airlines, Air China and Silk Way West are more likely to experience delays, lose cargo or damage cargo.[1868]

(1166) In summary, as shown above, all competitors have one, or in most cases several, shortcomings compared to the Parties, namely that they offer less frequencies, only offer transhipment flights, do not offer freighter flights, do not have the same geographic coverage of European airports, have a lower quality of service.

(1167) For these reasons, the Commission concludes that the existing competitors' cargo operations only provide a limited competitive constraint on the Parties on the route from South Korea to Europe.

8.12.3.2. Competitive constraints from integrators in their airport-to-airport offering

(1168) The Commission concludes that, contrary to Korean Air's submissions in paragraphs 722-725 of its Response to the Commission's Statement of Objections and paragraphs 147-153 of its Response to the Commission's Letter of Facts, integrators only exert a limited competitive constraint on the Parties in general air cargo services on the route from South Korea to Europe, as (i) they mostly compete on a different market, that of door-to-door delivery services,[1869] and therefore offer spare capacity on the air cargo market on an exceptional basis, (ii) air cargo carriers do not consider them as their competitors or only consider them to a limited extent, (iii) customers of the Parties do not see them as close alternatives but rather as limited available options for only parts of their volumes, and (iv) end cargo customers[1870] of freight forwarders do not

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1866 Replies to questions D.B.B.1. of Questionnaires Q2 to cargo competitors and Q5 to cargo customers.

1867 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

1868 Non-confidential minutes of the conference call with [a customer].

1869 In paragraphs 118 *et seqq.* of its Response to the Commission's Statement of Objections, Korean Air allegedly provides some "*concrete examples of integrators and air cargo carriers competing*". The Commission notes that those examples do not in fact show strong competitive constraints exerted by integrators on the Parties: (i) In its reply to question 45, in conjunction with the introduction of RFI 2 (ID 11459), [an integrator] confirmed that shipping Covid19 vaccines was part of their small package business and therefore not part of its "[limited] *air cargo services to third parties on a space available basis*". Therefore, this is rather an example of the limited indirect out-of-market constraint posed to the Parties by the integrators, which has been acknowledged by the Commission and will be further analysed in section 8.12.5 below. This example does not in any event mean that all general cargo can be transported by the integrators' door-to-door delivery of small parcels and packages, but it rather confirms that integrators compete with freight forwarders for only a marginal part of end customers. (ii) The fact that Korean Air aspires to enter the market of door-to-door services as provided by integrators does not mean that the Parties' airport-to-airport services compete with the integrators' (different in nature) door-to-door services. To the contrary, as indicated by Korean Air's internal documents, *e.g.* Response of Korean Air to RFI 14, "M.10149 - KE - OZ - Annex RFI14.Q5a.3"; "M.10149 - KE - OZ - Annex RFI14.Q5a.6", Korean Air can only compete for customers like […] by integrating in its offering Hanjin's door-to-door services. It is Hanjin bidding for […] volumes on the routes between Europe and South Korea and not Korean Air with its airport-to-airport cargo services.

1870 Reply of [a customer] to question D.B.B.3-2 of Questionnaire Q5 to cargo customers (ID 8140); Response of [a customer] to RFI on Integrators, question 3 (ID 10918); Response of [a customer] to RFI on Integrators, question 3 (ID 10884).

consider their services comparable due to the risk of delay entailed in the integrators' airport-to-airport cargo offering.

(1169) On the route from South Korea to Europe, [an integrator's] flights are higher utilised than flights on the opposite route. Therefore, [the integrator's] free capacity for general airport-to-airport cargo services will be sporadic at best as their key Asia outbound markets are filling those flights to Europe with their core door-to-door business. As [the integrator] explained, [the integrator] tries to optimise every route in the best possible way in order to mirror trade flows. While on Europe – South Korea [the integrator] flies directly, on South Korea – Europe it flies indirectly from […] and […], with the former being [the integrator's] major consolidation point and hub location in Asia. Therefore, [the integrator's] capacity booked for Europe is likely all door-to-door, with only limited space for loading at Incheon, and thus only minimal space for general airport-to-airport cargo services. As a result, [the integrator] does not even offer cargo […].[1871] Therefore, the Commission notes that in any event, [the integrator] is not as relevant on the route South Korea to Europe.

(1170) Similar considerations apply for [an integrator]. [The integrator] submits that even though it operates flights from Incheon to […] on a non-stop basis, these flights actually originate in […] and stop at Incheon for crew staffing purposes due to Covid19 restrictions in China. [The integrator] only rarely carries third-party air cargo originating in Incheon to […] on that flight.[1872]

(1171) In the same vein, [an integrator] submits that they only offer airport-to-airport services on space available for spot rates, which is done only in cases they have spare capacity, "*which is the exception rather than the rule*".[1873] The "*special*" airport-to-airport product offering of [the integrator] is not in general open to customers, *i.e.* freight forwarders, but it is turned "*on and off to balance supply and demand*", meaning that it is only made available if the aircraft is not fully used by [the integrator's] own door-to-door business.[1874] In case [the integrator] does sell capacity on the market for air cargo services, it would still always prioritise its own door-to-door business in terms of boarding priority and therefore freight forwarders would not typically approach it looking for capacity.[1875]

(1172) Therefore, integrators do not play an important role on the route from South Korea to Europe, at least as regards their aiport-to airport offering. In any event, the Commission considers that the same considerations analysed in section 8.11.3.2 above with respect to the route Europe to South Korea are equally applicable on the route from South Korea to Europe, and that integrators, to the extent they handle general airport-to-airport cargo services, can only pose a weak competitive constraint on the Parties on this route.

(1173) In particular, integrators have been ranked low or even amongst the least competitive providers of air cargo services on the route South Korea to Europe by the majority of air cargo carriers responding to the Commission's market investigation.[1876] The majority of air cargo carriers responding to the Commission's market investigation has

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1871 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1872 Response of [an integrator] to RFI 2, introduction (ID 11459).

1873 Response of [an integrator] to RFI 2, question 2.2 (ID 11438).

1874 Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2, question 10.2 (ID 11438).

1875 Non-confidential Minutes of the conference call with [an integrator].

1876 Replies to question D.B.B.1 of Questionnaire Q2 to cargo competitors.

also indicated that they only compete to a limited extent (if at all) to integrators.[1877] When asked about competition with integrators in their airport-to-airport services, [a competitor] explained that integrators "*address a different customer base compared to the network of cargo carriers and therefore would not be considered as immediate direct competitors*", [1878] while [a competitor] noted that it would be "[v]*ery uncommon to compete directly with the integrators as the profile of their shipments is so different*".[1879] [A competitor] added that "*integrators operate on the basis of a different business model and their overlap with air cargo transport is too small to be considered in competition with airlines*".[1880]

(1174) On their side, the majority of customers responding to the Commission's phase I market investigation has ranked integrators low or even among the least competitive alternatives to the Parties on the route South Korea to Europe,[1881] raising issues of limited capacity, lower service due to priority given to door-to-door, and differences on the type of services.[1882] In particular, [a customer] explained that to the extent that integrators offer to freight forwarders in the general air cargo market some spare capacity on their flights, "[the customer] *would* […] *still prefer not to buy capacities from integrators as* [the customer] *considers integrators as less reliable partners due to the fact that they usually prioritize their own shipments: If integrators are able to fill their planes with cargo of their own customers, they would usually leave the cargo of other customers, such as* [the customer]*, behind*".[1883] [A customer] further indicated that prices for integrators' spot rates may be considerably cheaper but their volumes are less predictable and tied to a specific flight. "*In the experience of* [the customer]*, integrators do sometimes leave goods behind in favour of their own door-to-door express cargo*".[1884]

(1175) Lastly, the Commission notes that Korean Air […]. In particular, Korean Air […].

Figure 46: [Figure redacted]

[…]

Source: RFI 10 – […]

(1176) On the basis of the above considerations, the Commission considers that integrators, to the extent they handle some limited general airport-to-airport cargo services, can only pose a limited competitive constraint on the Parties on the route from South Korea to Europe.

8.12.4. Expansion – *Competitors are unlikely to increase supply if prices increase*

(1177) Market conditions in the market for air cargo transport services between South Korea and Europe are such that the Merged Entity is likely to have an incentive to reduce its

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1877 Response of [a competitor] to RFI 1, question 35 (ID 11084); Response of [a competitor] to RFI 2, question 35 (ID 11132); Non-confidential minutes of the conference call with [a competitor]; Response of [a competitor] to RFI 1, question 34 (ID 10129); Response of [a competitor] to RFI 1, question 35 (ID 11106); Response of [a competitor] to RFI 1, question 35 (ID 11689); Response of [a competitor] to RFI 2, question 35 (ID 11863); Response of [a competitor] to RFI 2, questions 35 and 36 (ID 11692); Non-confidential minutes of the conference call with [a customer]; Reply of [a competitor] to question D.B.B.3-2 of Questionnaire Q2 to cargo competitors (ID 9716).

1878 Response of [a competitor] to RFI 2, question 35 (ID 11132).

1879 Response of [a competitor] to RFI 1, question 35 (ID 11106).

1880 Non-confidential minutes of the conference call with [a competitor]

1881 Replies to question D.B.B.1 of Questionnaire Q5 of cargo customers.

1882 Replies of [a customer], [a customer], [a customer] and [a customer] to question D.B.B.3 of Questionnaire Q5 to cargo customers; Non-confidential minutes of the conference call with [a customer].

1883 Non-confidential minutes of the conference call with [a customer].

1884 Non-confidential minutes of the conference call with [a customer].

capacity below the combined pre-Transaction level, thereby increasing prices within the meaning of paragraph 32 of the Horizontal Merger Guidelines. Competitors are unlikely to increase supply in response. This is mainly because of the following reasons:

(a) The Parties have higher capacity shares than they have estimated and have by far the highest individual and combined capacity shares on the market. High combined capacity shares indicate that the merged entity may have *post-merger* a greater incentive to increase prices.

(b) The spare capacity of competitors is too limited to be used to offset the effects of the Transaction: the Commission was not able to confirm Korean Air's claim of existing significant excess capacity in the market.[1885] The capacity available in the market as a whole is limited in the sense that all competitors' excess capacity taken together would only marginally equal the Parties' combined supply. Furthermore, capacity has to be assessed in the light of the findings on closeness of competition summarized above in section 8.12.2. Air cargo services are differentiated according to different factors from both a product and geographic perspective, expressed, among other factors, in delivery times, frequencies and reliability. Therefore, the excess capacity provided by numerous competitors would in any event be inferior in many instances to the services offered by the Parties.

(c) Essentially all competitors face barriers to expand their supply either by increasing aircraft utilization or increasing frequencies post-Transaction. These barriers can be due to unavailability of traffic rights, network considerations (in particular in the case of passenger carriers), or access to aircraft and personnel.

(d) Competitors have limited or no incentives to shift available capacity to the route between South Korea and Europe by diverting it from other uses between East Asia and Europe.

8.12.4.1. The Parties hold high capacity shares

(1178) Capacity is the same on both the route from Europe to South Korea and the route from South Korea to Europe, therefore the arguments presented in section 8.11.4.1 with respect to Europe-South Korea also fully apply to the route South Korea – Europe.[1886]

8.12.4.2. No significant spare capacity for competitors on the route, taking into account closeness of competition

(1179) The Phase II investigation focussed on investigating further the Parties' claim that the current market situation is characterized by overcapacity due to available excess capacity on existing flights. The results of the Phase II investigation indicate that competitors already active on these routes do not appear to have enough capacity or incentive to be able to expand supply sufficiently to counteract an increase in prices *post-merger*, nor to deter it in the first place.

(1180) First, the market investigation did not confirm Korean Air's claim that there is structural excess capacity[1887] on the route South Korea-Europe. Only a small minority

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1885 Korean Air's response to the Article 6(1)(c) Decision, paragraphs 456 to 472.

1886 According to [an integrator] (through its operating airline […]) and [a competitor], technical stops due to Covid19 restrictions in China appeared mostly a feature of the route Europe to South Korea, and not of the route South Korea to Europe. However, because the Parties defined capacity as being equal over the two routes, also the Parties' capacity calculations for South Korea to Europe are biased because of technical stops.

1887 Form CO, paragraphs 472, 806.

of respondents having expressed a view stated that the air cargo markets between South Korea and Europe are characterized by overcapacity (defined as supply exceeding demand).[1888]

(1181) Second, the likely absence of overcapacity is demonstrated by the fact that the Parties' own capacity utilization, as indicated by their load factor, has been constantly at least or above [80-90]% between 2018 and 2021 in both trade directions of the EEA-South Korea routes.[1889] Thus, even pre-Covid19, at least the Parties did not have a lot of excess capacity on the routes between South Korea and Europe and. By comparison, the global load factor for cargo transport was [40-50]% in 2019 and [60-70]% in 2021 – indicating that the route between South Korea and Europe are characterized by high capacity utilization.[1890] In addition, the Parties' overall load factor for all worldwide cargo trade between 2018-2021 was also consistently lower each year than that on the routes between South Korea and the and. This further indicates that by comparison, the routes between South Korea and Europe rather have a higher capacity utilization and lower excess capacity than average air cargo transport routes.

(1182) In its responses,[1891] Korean Air argues that the load factor cannot be used as a reliable indicator to determine if there is excess capacity in the market because, among other reasons, the load factor is manipulated by carriers in order to achieve as high load factors as possible. Feedback from competitors, however, suggests that carriers do rely on the load factor as a proxy for their utilization rate.[1892] Moreover, most competitors have stated that they do not cancel flights to maximize their load factor on the route, thus the load factor does not appear to be generally manipulated to achieve as high load factors as possible.[1893] Furthermore, even if carriers were indeed systematically manipulating the load factor by cancelling flights to maximise the load factor, the load factor would still provide a reasonable approximation of the aircrafts' utilization rate. Furthermore, the Parties themselves relied on the load factor to quantify the amount of additional capacity currently unused by other trades that they could add to the route between Europe and South Korea.[1894] The considerations made under paragraphs (969)–(972) above also apply here, therefore, the Commission deems the load factor as a relevant indicator to determine if there is excess capacity in the market.

(1183) Third, data gathered from third parties during the Phase II investigation allowed the Commission to estimate the amount of excess capacity available on the route and compare it against the Parties' combined volumes. Excess capacity in this regard is defined as the additional volumes a carrier could transport by filling up the unused capacity on aircraft (equal to the difference between overall capacity and volume transported). The underlying assumption of that analysis is that *post-merger*, if all the Parties' customers find an alternative to the Parties, then it is unlikely that the Parties

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1888 Replies to question D.B.B.7 of Questionnaire Q2 to cargo competitors and to question D.B.B.6 of Questionnaire Q5 to cargo customers.

1889 Form CO, tables 150 and 151.

1890 Form CO, footnote 360.

1891 Korean Air's response to the 6(1)(c) Decision, paragraphs 462 to 467. Responses of Korean Air to the Commission's Statement of Objections, paragraphs 749-756, and to the Commission's Letter of Facts, paragraphs 155-156.

1892 Response of [a competitor] to RFI 2, question 14 (ID 11132); Response of [a competitor] to RFI 1, question 14 (ID 11675); Response of [a competitor] to RFI 2, question 14 (ID 11337); Response of [a competitor] to RFI 2, question 14 (ID 11147).

1893 Response of [a competitor] to RFI 2, question 14 (ID 11132); Response of [a competitor] to RFI 1, question 14 (ID 11675); Response of [a competitor] to RFI 2, question 14 (ID 11337); Response of [a competitor] to RFI 2, question 14 (ID 11147).

1894 Reply to RFI 21, question 2(a).

would be able to increase prices. If, however, only a fraction of the Parties' customers could find an alternative supplier, the Parties are expected to have at least some incentive to increase prices.[1895] This is because, if capacity is scarce, competitors can enjoy some degree of market power, and could be thus able to increase prices to customers. Moreover, competitors could in turn also find profitable to follow price increases, If competitors are not able to cover the entirety of market demand, the merger would enable the merged entity to enjoy an increased degree of market power, and be thus capable of increasing prices to customers. This market power-increasing effect of a *post-merger* increase of the merged entity's excess capacity (relative to the rivals, who are capacity-constrained) would arise even if the rivals' capacity would be perfect substitute of the merged entity's capacity. As will be further evidenced below, the rivals' capacity is not of the same quality as that of the Parties, who are each other's close competitors. This quality differential reinforces the capacity-based effect.

(1184) This approach is aligned with the Horizontal Merger Guidelines, paragraphs 32 to 34 provide that "*(32) When market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging firms may have an incentive to reduce output below the combined pre-merger levels, thereby raising market prices. The merger increases the incentive to reduce output by giving the merged firm a larger base of sales on which to enjoy the higher margins resulting from an increase in prices induced by the output reduction. (33) Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition. (34) Such output expansion is, in particular, unlikely when competitors face binding capacity constraints.*"[1896] Also, paragraph 24 of the Horizontal Merger Guidelines provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[1897]

(1185) **Annex I** provides a description of the methodology followed and the data used for this analysis. Table 76 provides the Commission's estimates for the sum of all competitors' excess capacities, while the estimates for each individual competitor's excess capacity are instead only available to Korean Air's external advisors in the data room procedure. The figures relied upon by the Commission in this Decision are based on the figures included in the RBB Economics Second Data Room Report.

(1186) The sum of all competitors' excess capacities is around [90-100]% of the Parties' combined volumes on the route South Korea to Europe. Although the overall excess capacity faced by the Parties *post-merger* is higher than on the route from Europe to South Korea, competitors' excess capacity is limited nonetheless, as shown further below. And, as also discussed more in detail in section 8.11.4, competitors face binding capacity constraints and are therefore unlikely able to increase their supply sufficiently if prices increase, which implies that the merging firms may have an incentive to increase prices.

1895 The Commission previously used similar excess capacity analysis, for example, in Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay*.

1896 Horizontal Merger Guidelines, paragraphs 32 to 34.

1897 Horizontal Merger Guidelines, paragraph 24.

(1187) Table 76 also contains two sensitivities where excess capacity is calculated based on the load factor and falls in the range [100 - 110]% and [150 - 160]%, respectively. As already indicated in section 8.11.4.2, however, the Commission notes that these two sensitivities based on the load factor indicate a significantly higher level of excess capacity in the market than is in fact available and likely overestimate spare capacity that is available on the market. First, excess capacity measured as capacity multiplied by the difference between 100% and the load factor implies that 100% is the benchmark for cargo airlines to be considered fully utilized. However, this is not the case. As discussed in section 8.11.4, cargo airlines are deemed already fully utilized when load factors are around 80-90%. Should a benchmark of 90% be used instead of 100%,[1898] then excess capacity would be substantially lower: [90-100]% on the route from South Korea to Europe instead of [150-160]%. Second, as detailed in the Appendix, some carriers measured the load factor using actual weights, which can be even up to 10 percentage points lower than load factors measured using chargeable weights. This implies that these carriers' excess capacity is also significantly overestimated.

Table 76 – Excess capacity faced by each of the Parties before and after the merger on South Korea to Europe

	Excess capacity (all competitors, parties excluded)	**Excess capacity faced by the Parties post-merger**	**Excess capacity faced by Korean Air pre-merger**	**Excess capacity faced by Asiana pre-merger**
Main estimate based on third-party data (and the load factor otherwise)	[50 000 - 60 000]	[90 - 100]%	[170 - 180]%	[400 - 410]%
Sensitivities:				
1. Sensitivity based on the third-party data where available, and the minimum load factor otherwise	*[50 000 - 60 000]*	*[100 - 110]%*	*[250 - 260]%*	*[580 - 590]%*
2. Sensitivity based exclusively on the load factor	*[80 000 - 90 000]*	*[150 - 160]%*	*[270 - 280]%*	*[600 - 610]%*

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report. Notes: Methodology described in Annex I. Exact numbers are confidential. All details are accessible only to Korean Air's external advisors in the data room procedure

(1188) This analysis also shows the excess capacity faced by each of the Parties individually *pre-merger*, e.g. how much was competitors' excess capacity from Korean Air's point of view, where Asiana is also considered a competitor, and vice versa. In fact, a reduction in the excess capacity faced by each of the merging parties also reflects to what extent the merger softens the competitive pressure. *Pre-merger,* Korean Air's competitors including Asiana had excess capacity on South Korea to Europe equivalent to [170-180]% of Korean Air's volumes, which implies that competitors' excess capacity already could more than fully accommodate all Korean Air customers on South Korea to Europe, and Asiana's competitors including Korean Air had excess capacity equivalent to around [400-410]% of Asiana's volumes. As a constrast, *post-merger*, the Parties will face about half the excess capacity faced *pre-merger* by Korean Air and less than a quarter that faced by Asiana. The sum of all rivals' excess

[1898] If the carrier's load factor is greater than 90%, that carrier's load factor is used as threshold instead of 90%.

capacity will only marginally be sufficient to fully cover the Merged Entity's sales volume, however, the merger substantially reduces how much excess capacity each of the Parties faced *pre-merger*. The Merged Entity would then likely have an incentive to raise prices *post-merger*.

(1189) Fourth, furthermore, the Phase II investigation confirms that customers regard capacity in cargo as differentiated (see also sections 8.12.2 and 8.12.3). For example, non-stop connections with air cargo carriers like the Parties', [names of competitors] generally represent a higher value proposition […]. Should therefore only [names of competitors] excess capacity be considered, […], then the available excess capacities would be much lower: about [10-20]% on South Korea to Europe.[1899] On the route from South Korea to Europe, six competitors have excess capacity exceeding [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%. In fact, as explained in section 8.12.2 above, the Parties are close competitors of each other. This means that, in the event of a price increase *post-merger*, a large share of the Parties' customers would likely not switch to an alternative supplier capable of offering an inferior type of capacity (as compared to that offered by the Parties) at the same *pre-merger* prices. These customers will then be worse-off because they will either endure the increased prices or switched to a less favorite types of connection (for example, with transhipment or via integrators). Moreover, customers switching away from the Parties would present a windfall demand for the Parties' competitors, who themselves will also have then an incentive to raise their prices. These post-merger pricing incentives of the Parties and their rivals stemming from the close competition between the Parties could be present even in absence of the rival capacity constraints. The capacity constraints explained above and the closeness based arguments are then reinforcing each other.

(1190) A closer examination of the results below further clarifies how limited excess capacity actually is in both relevant markets, well beyond the aggregate results. In fact, about [10-20]% of excess capacity on the route from South Korea to Europe are due to a single competitor. Despite the numerous attempts, the Commission could not reach out to this competitor, and the excess capacity estimates are therefore exclusively based on the Parties' volume and capacity estimates and on the average load factors. On the route between South Korea and Europe, this competitor had market shares between [0-5]% and [0-5]% in 2019, between [0-5]% and [0-5]% in 2020, and close to [0-5]% in 2021: It is highly unlikely this competitor could suddenly decide to dedicate their excess capacity to the affected markets considering how limited their current involvement is.

Table 77 – Excess capacity estimates by competitor – South Korea to Europe

Carrier	Excess capacity	(% of the parties' customer base)
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%

[1899] Further detail will be made available to the Parties' external advisors in the data room procedure. Note that […], these figure are therefore likely to overestimate the amount of excess capacity available on […].

Carrier	Excess capacity	(% of the parties' customer base)
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Other competitors	[0 - 5 000]	[0 - 10]%
Total	**[50 000 - 60 000]**	**[90 - 100]%**

(1191) *Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report. Notes: Methodology described in Annex I. Exact numbers are confidential. All details are accessible only to Korean Air's external advisors in the data room procedure.*

(1192) In response to this analysis, Korean Air argued that on the route from South Korea to Europe, prices would have to increase by approximately 740% before rivals' excess capacity is exhausted.[1900] This statement is flawed for the same reasons already explained in section 8.12.4.2.

8.12.4.3. Competitors are unable and/or unlikely to expand

(1193) The market investigation has revealed that, contrary to the Parties' claims[1901] and Korean Air's submission in paragraphs 771-803 of its Response to the Commission's Statement of Objections, current competitors face significant barriers to expansion and are unlikely to expand their activity sufficiently to prevent any potential anti-competitive effects of the Transaction, either by increasing the amount or capacity of aircraft on the route or increasing frequencies post-Transaction.

(1194) First, many competitors are unable to increase their frequencies or add additional aircraft to the route, because they have maximized the traffic rights available under the respective air service agreement (ASA) concluded between their home country and South Korea.[1902] According to information provided by the Parties, [names of competitors], would not be able to add frequencies and are therefore unable to expand in reaction to negative effects of the Transaction.[1903] Contrary to Korean Air's submissions in paragraphs 773-778 of its Response to the Commission's Statement of Objections, and in paragraphs 158 and 160 of its Response to the Commission's Letter of Facts, later evidence produced by the Parties have again confirmed that the abovementioned air cargo carriers are in any event constrained in increasing their supply due to traffic rights limitations.[1904]

(1195) Carriers consider that the availability of traffic rights is an important factor in the decision whether to enter or expand on a new route.[1905] The market investigation shows that the exhaustion of traffic rights granted to carriers constitutes a barrier to

1900 Response of Korean Air to the Commission's Statement of Objections, Annex 5, page 6. Response of Korean Air to the Commission's Letter of Facts, paragraph 191.

1901 Korean Air's response to the Article 6(1)(c) Decision, paragraphs 473 to 508.

1902 For carriers carrying air cargo via dedicated freighter aircraft, traffic rights for freighters are considered. For carriers carrying air cargo via passenger aircraft, traffic rights for passenger aircraft are considered.

1903 Form CO, Annex 37 on "General Information about the Aviation Industry", tables 1, 3 and 4, and RFI 7, Table 2.

1904 Response of Korean Air to RFI 26, Tables 1 and 2.

1905 Replies to question D.B.D.4 of Questionnaire 2 to cargo competitors; Replies to question D.B.D.3 of Questionnaire 5 to cargo Customers.

entry and expansion for carriers providing direct as well indirect flights and potentially wishing to expand their services on the Overlap Routes.[1906]

(1196) According to [a competitor], even if it was interested in increasing its frequencies between Europe and South Korea, it would currently be unable due to a lack of traffic rights. Concretely, "[a]*t this stage* [the competitor] *utilizes the maximum frequencies available so it is already maximizing loads within the constraints of the limited frequencies it can offer its customers*."[1907] While [the competitor] would be able to increase frequencies between […] and ICN, this is currently not an option for the carrier, as it would not result in a competitive offer for potential customers. According to [the competitor], "*customers in […] using […] would impose a significant increase of end-to-end travel time and operating costs. Thus, making the option as such uncompetitive compared against options available from […] hubs*."[1908]

(1197) [A competitor], stated that from their main hub in […] "*we use all frequencies for passenger flights and cannot fly more often*".[1909] According to [a competitor] "[a]*dditional slots and bilateral rights would be required for us to be able to expand the volume*".[1910] Furthermore, [a competitor] has confirmed that any increase in frequencies or the number of aircraft active on the route "*depends on granting of further traffic rights*".[1911] [A competitor] has also confirmed that the existing air service agreement prevents them from increasing the number of flights on the route and that for this reason, it has not done so within the last five years.[1912] [The competitor] also stated that "*the cargo traffic between the EU and South Korea – via […] - is `bottlenecked´ due to this limitation*" of lack of available traffic rights.[1913] [The competitor] further expresses its view that "*there is no development expected in regards to an ASA revision on this regard*."[1914]

(1198) The Parties are well aware of this barrier to entry. As shown in paragraph (583), the Parties have previously urged MOLIT not to increase the traffic rights allocated to competitors also carrying air cargo on the route.[1915] In fact, Korean Air's internal documents indicate that […].[1916] […].[1917] […].

(1199) Moreover, according to the Parties, European carriers which have maximized the traffic rights from their country could expand services on the route by providing flights from/to an airport in a different EEA country, which still has available traffic rights from/to South Korea.[1918] And indeed, [a competitor] is currently operating passenger flights between […] and ICN, in addition to flights from its hub in […], for this reason. However, expanding sizeable cargo operations to airports different from a

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1906 Replies to question D.B.D.1 of Questionnaire Q2 to cargo competitors and to question D.B.D.2 of Questionnaire Q5 to cargo customers; Non-confidential minutes of the conference call with [an integrator]; Non-confidential minutes of the conference call with [a competitor], Non-confidential minutes of the conference call with [a competitor]; [a competitor]; [a competitor]; [a competitor].

1907 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132).

1908 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132).

1909 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1910 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).

1911 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).

1912 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).

1913 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).

1914 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).

1915 Parties' reply to RFI10, […].

1916 "RFI 10 – […]" and "[…]".

1917 "M.10149 - KE - OZ - Annex QP6.Q5g.a.ii.11 – […]", pages 4-5.

1918 Korean Air's response to the Article 6(1)(c) Decision, paragraphs 477 to 485.

carrier's hub airport itself requires significant investments and time.[1919] The costs and operational changes associated with such a move - as well as the time delay it would require - suggest it is highly unlikely that cargo carriers would freely and rapidly switch between airports.[1920] In addition, many of these carriers operate hub and spoke models for their passenger business. These carriers are unlikely to shift operations to a smaller airport that is not their hub in a different country for one route.[1921] As [a competitor] states: "[o]*ur operation is based on combined passenger and cargo service and requires the* […] *hub as a base of the European operation, to get passengers to the service, as provided by our passenger feeder network*" and furthermore adding that "*the smaller European airports would not allow getting the passenger loads required for the combined passenger / cargo service*".[1922] In addition, as shown below, in addition to traffic rights, expansion for passenger carriers which transport belly-hold cargo is limited by the passenger demand from the respective airports.[1923]

(1200) On the other hand, non-European carriers, such as [competitors], have only limited – if any – activities on the route South Korea to Europe despite the fact that they face no significant limitations in terms of traffic rights[1924] in their expansion. To illustrate, their market share appears considerably limited throughout the years 2018, 2019, 2020 and 2021. This is indicative of their different geographic focus, while it further supports that – contrary to Korean Air's submission in paragraph 161 of its Response to the Commission's Letter of Facts – they would not have the incentive to expand significantly on the routes in question in case of a price increase post-Transaction – as they have not expanded in the past but have focussed their activities on other routes. Even the Parties agree with the Commission's understanding that all those competitors have in any event a different geographic focus.[1925]

(1201) In addition, and contrary to Korean Air's arguments in paragraphs 779-781 of its Response to the Commission's Statement of Objections, and in paragraph 162 of its Response to the Commission's Letter of Facts, unscheduled flights are unlikely to be used to circumvent traffic right restrictions as the application process for them would entail additional delays that make such solutions uneconomical.[1926] According to [a competitor], "*authorities are also vigilant that charters are not used by airlines to circumvent traffic rights restrictions*"[1927] (emphasis added), while [a competitor] points out that MOLIT would require ten working days for traffic right applications for unscheduled flights and that the latter "*always bring the risk that traffic rights or slots are not approved*"[1928] (emphasis added). Therefore, carriers that have exhausted their traffic rights cannot substantially rely on expansion through unscheduled flights.

(1202) In any event, the Commission notes that unscheduled flights have not been confirmed by the Commission's market investigation as being regularly offered on the market, and therefore cannot serve as a counterbalance to traffic rights limitations.

1919 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 10118).

1920 Non-confidential version of RFI 1 to [a competitor] dated 31 January 2023 (ID 11132).

1921 See: Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).

1922 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106).

1923 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1924 Response of Korean Air to RFI 26, Table 2.

1925 Response of Korean Air to RFI 27, question 26.

1926 Non-confidential minutes of the conference call with [a competitor].

1927 Response of [a competitor] to RFI 2, question 43 (ID 11132).

1928 Response of [a competitor] to RFI 2, questions 40.5 and 43 (ID 11863).

(1203) [A competitor] sums it up in its quote "*ad-hoc additional flights during the covid period cannot be treated as a cargo strategy*".[1929] In the same vein: (a) "*unscheduled or charter flights are a very small niche of the global air cargo market, only attractive to customers for very specific use cases and not as replacement for regular scheduled services*";[1930] (b) "*No unscheduled cargo flights have been performed in 2019 and 2022*";[1931] (c) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] stated that it "*only has belly-hold cargo space on the Europe – South Korea route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*";[1932] (d) when asked about increasing the utilization rates of the aircraft already active on the route beyond the usual schedule, [a competitor] replied that "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*";[1933] (e) "*2019 No unscheduled cargo. In 2022 we operated 29 cargo flights with scheduled passenger service flight number but only cargo load and 9 dedicated and unscheduled cargo flights. In 2023 so far, no dedicated cargo flights and expectation we continue with scheduled pax/cargo flights only this year*";[1934] and (f) "*As* [a competitor] *does not control any capacity directly, and relies on the [competitor's] Operating Companies for passenger belly capacity and third party interline capacity, this question does not apply*".[1935]

(1204) Second, competitors transporting cargo between South Korea and Europe only in the belly-hold of passenger aircraft would not expand their frequencies of passenger flights due to price increases in cargo, but would only expand if such an expansion is justified by a prospect of carrying more passengers. This consideration acts as a barrier to entry preventing expansion on the route by [competitors].

(1205) Korean Air concedes this fact stating that "*The Parties agree with the Commission's finding that aircraft providing belly-hold capacity are scheduled based on demand for passenger services*".[1936] Korean Air furthermore states that: "*For cargo transported by passenger aircraft air carriers do not have the same flexibility as passenger flights operate regardless of the cargo demand*".[1937] In its Response to the Statement of Objections, Korean Air submits that "*the fact* [a competitor] *does not operate freighter aircraft limits* [the competitor's] *possibility to shift significant capacity on these routes*".[1938]

(1206) In the course of the market investigation, competitors have confirmed that the capacity of belly-hold cargo is dependent on demand for passenger services.[1939] Specifically, [a competitor] has stated that for belly-hold "*the allocation of capacity is mostly driven*

1929 Response of [a competitor] to RFI 1, question 12.4 (ID 11689).
1930 Response of [a competitor] to RFI 2, question 42 (ID 11132).
1931 Response of [a competitor] to RFI 2, question 6.4 (ID 12886).
1932 Response of [a competitor] to RFI 1, question 9.2 (ID 11203).
1933 Response of [a competitor] to RFI 1, question 9 (ID 11084).
1934 Response of [a competitor] to RFI 1, question 6.4 (ID 11106).
1935 Response of [a competitor] to RFI 1, question 21 (ID 11626).
1936 Korean Air's response to the Article 6(1)(c) Decision, paragraphs 476.
1937 Form CO, paragraph 987.
1938 Korean Air's Response to the Commission's Statement of Objections, paragraph 817. See also Korean Air's Response to the Commission's Letter of Facts, paragraph 163.
1939 Reply of [a competitor] to Question D.B.D.1 (ID 8596) and reply of [a competitor] (ID 7812) to question D.B.D.3 of Questionnaire Q2 to cargo Competitors; Non-confidential minutes of the conference call with [a competitor]. Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).

by passenger demand."[1940] [A competitor] added that "*Our network is driven by passenger demand and cargo capacity is generally subordinate to this*."[1941] According to [a competitor], "*Korea has been over the past years and is currently served with passenger-belly aircraft. Therefore, this question is from our perspective not relevant as capacity on route is defined for this service type primarily by passenger business outcome*" and also "[c]*argo is always incorporated in the business case however the relevance compared to passenger is limited*".[1942] Furthermore, [a competitor] states that during network planning "[the competitor] *would give primary consideration to passenger demand* […]. *While freight may play a role, it will not be the primary or most substantial factor in determining a new route or service*."[1943] [The competitor] also states that "[c]*argo demand alone would never drive a decision to expand passenger services*".[1944]

(1207) Similarly, [a competitor] indicated that "[i]*f the prices* [on the route] *were to increase post-Transaction, this would not affect* [the competitor's] *operation*", the reason for this being that [the competitor's] cargo business in South Korea is entirely opportunistic and not a focus of the company.[1945] This has been confirmed for [the competitor], as the airline has not increased its number of aircraft or frequencies on the routes between Europe and South Korea in the last five years, regardless of any price developments.[1946] In addition, "[the competitor] *only has belly-hold cargo space on the* [South Korea-Europe] *route, and therefore the utilization rate for cargo space depends on the passenger aircraft and availability*".[1947]

(1208) Third, two competitors allegedly active on the routes between Europe and South Korea cannot in any event expand as (i) the first one does not control any capacity directly, and relies on other operating companies for passenger belly capacity and […], while (ii) the second one is not actually active: "[the competitor] *does not currently provide scheduled service on any routes between Europe and South Korea and has no current plans to provide such scheduled service on those routes in the future*".[1948] The competitor's capacity is exclusively provided via dedicated wet lease or charter basis to other carriers active on the routes between Europe and South Korea (it is therefore already reflected in the data of the provider that actually operates the aircrafts, see Annex I for additional details).[1949]

(1209) Fourth, the closure of the Russian airspace to European competitors has added a barrier to entry and expansion to all affected carriers. In terms of existing competitors, this barrier to entry affects [competitors].

(1210) As they are not able to enter Russian airspace, carriers face longer flight times, resulting in lower payloads and a less efficient operation on the routes between Europe and South Korea in general.[1950] When asked about obstacles to increase the frequencies on the route or add additional aircraft on the route, one competitor listed

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1940 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11675).
1941 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1942 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).
1943 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1944 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1945 Non-confidential minutes of the conference call with [a competitor].
1946 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11532).
1947 Response of [a competitor] to RFI 1, question 18.2 (ID 11203).
1948 Response of [a competitor] to RFI 1, question 3 (ID 11255).
1949 Response of [a competitor] to RFI 1, questions 2, 12, 21 and 30 (ID 11626).
1950 See e.g. Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11106); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084).

the additional flight times caused by the closure of Russian airspace and the related reduction of final payload that this would allow to transport.[1951]

(1211) Another issue related to the closure of Russian airspace is that due to the additional flight time, the slots an airline has previously used to fly back and forth between Europe and South Korea with maximized efficiency/minimized grounded time of aircraft may not be appropriate anymore to operate the route. While ICN airport does have available slots outside of peak hours, the adjustment of slots to the new flight schedules may require the respective carrier to request daytime slots or slots during a constrained time.[1952] This may further complicate the operation of the existing frequencies on the route, let alone any further expansion.

(1212) In paragraph 786 of its Response to the Commission's Statement of Objections, and in paragraph 166 of its Response to the Commission's Letter of Facts, Korean Air agrees that both routes, (i) Europe to South Korea and (ii) South Korea to Europe, have been affected by the closure of the Russian airspace, but the effects are greater on the South Korea to Europe direction, due to the additional limitation on the capacity that aircraft can carry. However, Korean Air contests that the closure of the Russian airspace has added a barrier to entry and expansion on either of the routes due to the fact that there has been no example of discontinuation of operations of air cargo carriers who need to bypass the Russian airspace.

(1213) The Commission nevertheless considers that the closure of the Russian airspace to European competitors has added a barrier to entry and expansion to all affected carriers, namely [competitors], and in both routes:

(a) [A competitor] did not distinguish between the two routes: "*The Russia bypass has increased flight times, making aircraft less efficient. At the same time, the payload ex ICN with a direct flight to* […] *is greatly reduced. The fact that not all airlines fly around Russian airspace leads to a distortion of competition, as these airlines can operate at lower costs and spread fixed costs over more production through shorter flight times. We expect that those effects persist*".[1953]

(b) In the same context and without distinguishing between the two routes, [a competitor] submits that it "*has to circumvent Russian airspace, making it more costly and affecting the available payload*".[1954]

(c) [A competitor] explained that "*all EU airlines have been forced to fly longer routes into NE Asia, including South Korea* […] [the competitor] *does not expect the situation to revert back to the previous status before the war any time soon, certainly at least not for the next 5 years and possibly even for the next decade at least*".[1955]

(d) According to [a competitor], "*the schedule* […] *since Russia airspace closure is different, as longer routings do not enable a 24 hour total rotation concept*";[1956] "[A competitor] *has unlimited number of frequencies for cargo-only operations without any conditions on route schedule agreed between the Ministries of Transport. However, the air services to South Korea are not governed only by the agreement between* […] *and Korean authorities on traffic rights and frequencies. Should the Russian airspace be open, operating carrier would also*

1951 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
1952 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11863).
1953 Response of [a competitor] to RFI 2, question 31 (ID 12886).
1954 Response of [a competitor] to RFI 1, question 31 (ID 11084).
1955 Response of [a competitor] to RFI 2, question 31 (ID 11132).
1956 Response of [a competitor] to RFI 1, question 28 (ID 11106).

need to have overflight rights to access short trans-Siberian route to Asia. The amount of overflight rights and routes are governed by the agreements between […] *and Russian authorities*."[1957] This also shows that even if there are available traffic rights on the South Korean end, this is not enough to prove that competitors can actually expand their operations, as there may be limitations on the side of third countries that would also need to grant further rights or approval in order for the air carrier to expand, *e.g.* in [a competitor's] case, that third country would be Russia. On the other hand, not having traffic rights from South Korea serves as evidence that a competitor cannot in any event expand on the routes between South Korea and Europe without such additional traffic rights, even if they had an incentive to, *e.g.* [a competitor].

(e) [A competitor] submitted the following: "*Southern route with avoidance over Siberia route – additional 2-2,5 block hours impacting final payload*".[1958] In addition, [the competitor] explained: "*For the time being, due to the Russian invasion of Ukraine, we are unable to use Russian airspace for flights to Korea, Japan and China, where we have to use the so- called Southern Route, which makes the journey much longer*"; "*Increasing direct operation costs. Lower payload. – it will persist until re-opening Over Siberia route*".[1959]

(f) In the same vein, [a competitor] noted the following: "*As a result of the closure of vast Russian airspace, some European and Asian carriers have been badly affected. Flight routes became longer and average flight times between South Korea and Europe (vice versa) increased nearly 2 hours. Due to longer routes and higher flight times, fuel costs of carriers operating on South Korea-Europe market increased. These effects are expected to continue in 2023*".[1960]

(1214) In addition, the Commission notes that, for the reasons set out in section 8.10.1, the effects of Russia's war against Ukraine are considered structural for the competitive assessment of the present case, and therefore, the increased flight time for carriers that have to or choose to avoid the Russian airspace is also considered a barrier to entry and expansion which is expected to last.

(1215) Fifth, access to aircraft and personnel constitutes a further barrier to expansion. These limitations affect both established players like [names of competitors] and as well as smaller operators like [a competitor].[1961] According to the market investigation, the acquisition of an aircraft suitable for cargo operations between Europe and South Korea would currently require lead times up to three years.[1962] The lead time to lease such aircraft is likely going to be between a few months and two years.[1963]

1957 [A competitor's] reply to question D.B.D.4 of questionnaire Q2 to cargo competitors (ID 7692).

1958 Response of [a competitor] to RFI 1, questions 9-10 (ID 11689).

1959 Response of [a competitor] to RFI 1, questions 13.1 and 31 (ID 11689).

1960 Response of [a competitor] to RFI 2, questions 31 (ID 11147).

1961 Replies to questions D.B.D.1, D.B.D.2, D.B.D.3 and D.B.D.4 of Questionnaire 2 to competitors (IDs 9623, 9589, 8596, 9405).

1962 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10129).

1963 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11132); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11084); Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10129).

(1216) The Commission further notes that the non-timely availability of relevant assets necessary for air cargo carriers' expansion, *i.e.* aircraft, seems to be a consideration also in Korean Air's internal documents,[1964] where […].[1965]

(1217) Sixth, several competitors have confirmed that they have no plans or have not confirmed their plans to increase their capacity on the route in the near future, namely [a competitor],[1966] [a competitor],[1967] and [a competitor].[1968]

(1218) According to [a competitor], "[the competitor] *does not plan to offer regular and scheduled all cargo capacity to/from ICN in the next 3-5 years*." While the carrier would be interested in increasing passenger flights on the route, it is currently unable to do so due to a lack of traffic rights.[1969] [A competitor] states that "*[…] does not have any plan to increase the cargo flights / capacity on this route*."[1970]

(1219) Seventh, in response to the market investigation, two current competitors on the route have indicated that they plan to expand existing services, namely [competitors].[1971]

(1220) In the first place, as stated above and as acknowledged by the Parties, [a competitor] is currently restricted by existing traffic rights[1972] and has confirmed traffic rights constituting a barrier to entry on the route.[1973] Expansion by [the competitor] can therefore not be considered timely or likely. In the second place, while [a competitor] is expecting the delivery of additional Boeing 777F aircraft between 2023 and 2027 (and further aircraft post 2027), the carrier has confirmed that "[d]*etails of the potential expansion are not concrete and are being evaluated*".[1974] In addition, [the competitor] has not added any frequencies/flights on the route from/to South Korea in the last five years.[1975] This does not fulfil the criterion of timely, likely and sufficient entry.

(1221) Lastly, given that integrators have an entirely different business model and focus, as described in detail in section 7.2.1.4, it is unlikely that they would respond to a hypothetical price increase post-Transaction by adding more capacity to their airport-to-airport general cargo services, which is only considered a filler product for leftover capacities. Boeing's World Air Cargo Forecast 2022-2041[1976] projects that the e-commerce / express market will significantly expand (even double) in the near future. Therefore, contrary to what Korean Air argues in paragraph 168 of its Response to the Commission's Letter of Facts, integrators – whose main focus and business model is the e-commerce / express delivery market, as opposed to airport-to-airport transport of general cargo – will be having less and less capacity available for their filler product of airport-to-airport transport. This is in line with [an integrator's] submission: "*its core door-to-door business has always been the basis of its network planning and* […]

1964 "M.10149 - KE - OZ - Annex 16.a – […]", page 155.

1965 Korean Air contests this finding in paragraph 171 of its Response to the Commission's Letter of Facts. The Commission refers to paragraphs 71 and 74 of the Horizontal Merger Guidelines, where the difficulty to obtain essential input materials in a timely manner is explained.

1966 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1967 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11692).

1968 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).

1969 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).

1970 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 11697).

1971 Replies to question D.B.D.4 of Questionnaire 2 to Cargo competitors (IDs 9717, 8596, 9405).

1972 See in this section above.

1973 Non-confidential minutes of the conference call with [a competitor] dated 22 November 2021 (ID 1412).

1974 Non-confidential version of RFI 1 to [a competitor] dated 30 January 2023 (ID 5911).

1975 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11680).

1976 Available online (https://www.boeing.com/resources/boeingdotcom/market/assets/downloads/Boeing_World_Air_Cargo_Forecast_2022.pdf) (ID 12795).

contribution on [the integrator's] *flights is expected to be less and less over time, assuming underlying growth of its door-to-door business*".[1977]

(1222) On the basis of the above considerations, the table below provides an illustration of the Parties' competitors' ability and/or incentive to expand. Contrary to Korean Air's submission in paragraph 169 of its Response to the Commission's Letter of Facts, it appears that […] competitors could practically expand their service on the route, namely [competitors]. However, no concrete plans have been confirmed during the Commission's market investigation, whereas their incentive can only be seen as highly speculative.

Table 78: Overview of competitors' ability and incentives to expand

Cargo carrier	Ability	Incentive
[…]	No – traffic rights limitations	Yes
[…]	Yes	No – integrator / focused on a different market
[…]	Yes	Unlikely, but it depends on market developments, for example the opening of the Russian airspace,[1978] and other destinations are more profitable
[…]	No – traffic rights limitations	No – hub considerations
[…][1979]	Yes	Not active on this route
[…]	No – traffic rights limitations	No – network decisions are driven by PAX
[…]	Yes	No – network decisions are driven by PAX
[…]	Yes	Potentially, but no concrete plans[1980]
[…]	No – traffic rights limitations	No plans[1981]
[…]	No[1982]	No – network decisions are driven by PAX
[…]	No – traffic rights limitations	It depends on granting of further traffic rights[1983]
[…]	No – traffic rights limitations	No – network decisions are driven by PAX
[…]	No – traffic rights limitations[1984]	No – network decisions are driven by PAX[1985]
[…]	Yes	No – network decisions are driven by PAX
[…][1986]	Yes	Not foreseen – recent entrant
[…][1987]	No – no own capacity	No – no own capacity

1977 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator].

1978 Reply of [a competitor] to question D.B.B.4 of Q2 to cargo competitors (ID 9623).

1979 [A competitor's] reply to questions 5 and 27.1 of the Commission's RFI 1 (ID 10129); Minutes of call with [a competitor].

1980 [A competitor's] replies to question D.B.B.4 of Q2 to cargo competitors (ID 9405), in conjunction with its responses to RFI 1 and RFI 2. Also see paragraph (1220) above.

1981 [A competitor's] reply to question 2 of the Commission's RFI 1 (ID 11147).

1982 [A competitor's] reply to question 10 of the Commission's RFI 1 (ID 11106).

1983 [A competitor's] reply to questions 13 and 22 of the Commission's RFI 1 (ID 11755).

1984 [A competitor's] reply to question 24 of the Commission's RFI 1 (ID 11689): "*We are operating the maximum number of weekly services and would be interested to increase our frequency, but due to ASA limitations we are unable to do this*".

1985 [A competitor's] reply to questions 1 and 12.6 of the Commission's RFI 1 (ID 11689): "*Our network is driven by passenger demand and cargo capacity is generally subordinate to this"; "*[the competitor] *is not a typical cargo carrier – our offer is calculated based on passenger capacity*".

1986 Minutes of call with [a competitor].

1987 [A competitor's] reply to questions 2, 12, 21 and 30 of the Commission's RFI 1 (ID 11626).

Cargo carrier	Ability	Incentive
[…]	Yes	No[1988]
[…]	Yes	No – integrator / focused on a different market
[…]	Yes	No – integrator / focused on a different market

Source: the Commission's analysis in section 8.12.4.3

(1223) Based on the above, the Commission concludes that current competitors face significant barriers to expansion and are unlikely to expand their activity sufficiently to prevent any potential anti-competitive effects of the Transaction, either by increasing the amount or capacity of aircraft on the route or by increasing frequencies post-Transaction.

8.12.4.4. Competitors are unlikely to shift available capacity within the routes between East Asia and Europe

(1224) The market investigation has not confirmed the Parties' claim that competitors are able and likely to increase sales volumes on the route from South Korea to Europe by shifting available capacity within the routes between East Asia and Europe. According to the Parties, all the capacity that is used between East Asia and Europe can and would at any point in time become available for the Korea – EEA routes.[1989] Competitors responding to the Commission's market investigation have for the most part not confirmed this claim.

(1225) First, this strategy could not be pursued by carriers which only transport point-to-point air cargo on direct flights from Europe to South Korea, with the exception of potential behind and beyond routes. The reason for this is that these carriers carry cargo from Europe to South Korea or the other way around, without having the ability to offload or on-board other cargo on the way. The only way these carriers could pursue such a shifting strategy would be, if they have a hub at the East Asian end of the route, or if they have interlining agreements in place, between this end of the route and South Korea. This was confirmed by [a competitor], when stating that the only way they could shift their capacity would be by using interline-partners in ICN, which would connect their flights to other East Asian directions.[1990] Neither the Parties, nor the market investigation has presented sufficient evidence for the Commission, to assume that these carriers would adopt such an approach.

(1226) Second, any competitor that would pursue such a strategy would face the opportunity costs of giving up capacity on another route, which it currently prioritizes over the route from South Korea to Europe.[1991] Concretely, [a competitor] currently operates […] freighter flights between ICN and Europe […]. [The competitor] would therefore have to forego transporting cargo between Europe and […] in order to increase capacity on the South Korea-Europe route by way of replacement. To the degree that such a strategy would be profitable, this capacity shifting is already conducted by [the competitor] on this route. However, according to [the competitor], "[b]*usiness to […] is historically more important for* [the competitor] *than business to South Korea*".[1992]

1988 Reply of [a competitor] to questions B.8 and D.B.B.4 of Questionnaire Q2 to cargo competitors (ID 7902).

1989 Korean Air's response to the Article 6(1)(c) Decision, paragraph 458.

1990 Non-confidential version of RFI 1 to [a competitor] (ID 11106).

1991 See e.g. Non-confidential version of RFI 2 to [a competitor] (ID 11863).

1992 Non-confidential version of RFI 2 to [a competitor] (ID 11863).

[The competitor] therefore stated that "*a further increase is not possible*".[1993] It is therefore unlikely that [a competitor] would pursue such a strategy.

(1227) Similarly, according to [a competitor], "*there are opportunity costs of giving up cargo trade on other routes. We also have commitments to existing customers. These will prevent us from re-allocating more freighter capacity to the South Korea-Europe route*."[1994]

(1228) Furthermore, [a competitor] is also unlikely to shift capacity in this way. According to [the competitor], the South Korean market is not important for its business and therefore not a focus. This is exemplified by the fact that they do not operate freighter aircraft on the route between […] and South Korea.[1995] Consequently, despite stating that it expects the Transaction to increase barriers to entry on the route for competitors, [the competitor] does not believe that the Transaction will have a significant impact on its air cargo business, for the reason that the routes between Europe and South Korea are not of any significance to them.[1996]

(1229) Also, [a competitor] indicated that a diverse portfolio of destinations allows them to deal with market seasonality and to manage capacity more efficiently, indicating that they would likely not dramatically shift their capacities across routes in response to potential price increases post-Transaction.

(1230) According to [a competitor], for them, "*a reallocation* [of volume from other destinations to the South Korea - Europe route] *would be less optimal*" for their network.[1997]

(1231) [A competitor] confirmed however that generally, carriers "*consider substation in the manner suggested*". [1998] When asked about re-allocating capacity in this way, [the competitor] however replied that "[i]*n practice,* [the competitor] *has never done this nor would it, as it would result in non-ICN belly hold space not being used. Moreover, as a network carrier, it is important to maintain a presence and service in all our markets*".[1999]

(1232) [A competitor], which is also active on adjacent routes, has indicated that these "*are either equally or more important as compared South Korea to Europe*".[2000]

(1233) Third, some competitors have confirmed that they see other routes which they operate between Europe and East Asian countries as separate markets to the South Korea to Europe route.[2001] The Parties have not sufficiently shown that the capacity available in these markets will affect the capacity available for the route between Europe and South Korea, beyond the fact that they require the same main resources (namely cargo capacity on aircraft). Concretely, [a competitor] indicated that whether capacity is currently used on a route between East Asia and Europe does not make it easier to move this capacity to the South Korea - Europe route, than would any other air cargo

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1993 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
1994 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11675).
1995 Non-confidential minutes of the conference call with [a competitor].
1996 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11203).
1997 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023, see response to Q11.2 and Q20 (ID 11084).
1998 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
1999 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
2000 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11755).
2001 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689); Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).

capacity.[2002] In addition, [a competitor] stated that "*China and Japan are different markets. It has no impact on volumes to/from South Korea".*[2003]

(1234) Fourth, some competitors have confirmed that they have not employed such a strategy in the past. In particular, [a competitor] indicated that "*we have not transported by re-allocating"* and that *"an answer* [to the question how much capacity [the competitor] could add by means of re-allocation] *is "0"*".[2004] The carrier confirmed that such re-allocation of capacity between routes is not practiced and has not been practiced. In addition, as indicated above, [a competitor] has stated that "[a competitor] *has never done this nor would it".*[2005]

(1235) Fifth, as shown in sections 8.12.2 and 8.12.3, customers regard capacity in air cargo services on the route from South Korea to Europe as a differentiated product. For example, non-stop connections generally represent a higher value proposition than connections with transhipment. In markets with differentiated products, it is especially likely that competitors may respond to a price rise by the merged entity by increasing their own prices.[2006] Paragraph 24 of the Horizontal Merger Guidelines provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market*."[2007]

(1236) In addition, several customers have indicated that the quality and type of service of the carrier is more important than rates or that such alternatives would only be considered for less important cargo.[2008] Therefore, should the Parties reduce supply and/or increase prices on the routes *post-merger,* we would rather expect competitors to increase prices as well.

(1237) In light of the above and as shown in sections 8.12.2 and 8.12.3 many customers have a preference for direct, freighter flights at high frequencies and also perceive a quality difference between the Parties and many of their competitors. For this reason, even if competitors would pursue a strategy of shifting available capacity towards the South Korea to Europe route in response to a capacity decrease by the Merged Entity post-Transaction, that would not constitute an adequate alternative to the Parties' services for customers.

8.12.5. Indirect out-of-market constraint from integrators

(1238) Korean Air submits that there are further indirect constraints that integrators pose on the Parties' airline cargo pricing. End customers/shippers can obtain door-to-door delivery services from freight forwarders and integrators. Air cargo services can be considered as an upstream input into the service provided by freight forwarders. Integrators, on the other hand, are vertically integrated and rely on in-house airline cargo services. If prices of general air cargo services as an upstream input increase, this increases the cost for freight forwarders. According to Korean Air, this is likely to cause freight forwarding customers to switch to integrators. These customers would no

2002 Non-confidential version of RFI 2 to [a competitor] dated 22 March 2023 (ID 11863).
2003 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
2004 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 11689).
2005 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023 (ID 10676).
2006 See, for example, the Bertrand-Edgeworth framework discussed in Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay.*
2007 Horizontal Merger Guidelines, paragraph 24.
2008 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

longer use air cargo services as provided by the Parties, but instead use those provided in-house by integrators – resulting in a disincentive for the Parties to increase prices.[2009]

(1239) In paragraphs 825-838 of its Response to the Commission's Statement of Objections, Korean Air reiterates that integrators actually pose significant indirect competitive constraints on the Parties' business as they offer similar services as the Parties offer in cooperation with freight forwarders, in particular with the freight forwarding arm of Korean Air's parent company Hanjin KAL.

(1240) The Commission considers that to a certain extent the integrators' core door-to-door services as analysed in section 7.2.1.4 above, may be in competition with freight forwarders' services (using air cargo services as an input). However, such competition is only limited and can only pose an indirect constraint, at best, to the upstream market for airport-to-airport air cargo services, where the Parties are active.

(1241) First, the Commission notes that the integrators' core business consists in the door-to-door delivery of mainly small packages and parcels, as opposed to larger general cargo, *i.e.* freight, which is the core focus of freight forwarders. As integrators explain,[2010] their product offering is different to that of freight forwarders using air cargo services as an input, in terms of the type of cargo mainly transported and the service offered, namely a door-to-door service which is inherent to the integrators' business model and not always a given for the freight forwarders' business model. […] integrators, […] confirmed that their main focus is their door-to-door business, for which they make all their strategic decisions.[2011]

(1242) Therefore, from the outset, the overlap of activities between integrators and freight forwarders is only limited; integrators mainly deliver small packages requiring little to no special handling,[2012] whereas freight forwarders focus on heavy consignments and typically outsource small package delivery services to third parties.[2013] This is also probably the reason why the integrators are mostly seen as customers of the Parties in their internal business documents[2014] – if not as third-tier competitors, as further explained in paragraph (1175) above. The two are not contradictory as Korean Air argues in paragraph 192 of its Response to the Commission's Letter of Facts, but rather complementary. As analysed in section 7.2.1.4 above, the Parties' airport-to-airport air cargo services and the integrators' core door-to-door small package delivery services belong to separate product markets. The limited extent to which the integrators' spare capacity offered for airport-to-airport air cargo services poses a competitive constraint to the Parties is assessed in section8.12.3.2 above. There, integrators are evaluated in their capacity as airport-to-airport general air cargo carriers, and they are considered rather distant competitors to the Parties On the contrary, in this section the Commission assesses any indirect out-of-market constraint

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2009 Response of Korean Air to RFI 14, question 5.

2010 Non-confidential minutes of the conference call with [an integrator]; Reply of [an integrator] to questions C.A.7-C.A.8 and D.B.B.3-2 of Questionnaire Q2 to cargo competitors (ID 8457); Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator], question 1 (ID 12834); Response of [an integrator] to RFI 1 (ID 11447); Response of [an integrator] to RFI 2 (ID 11438); Non-confidential Minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2 (ID 11459); Non-confidential Minutes of the conference call with [an integrator].

2011 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator]; Response of [an integrator] to RFI 2, question 10.2 (ID 11438); Response of [an integrator] to RFI 2, questions 8 *et seq* (ID 11459).

2012 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraph 78 and footnote 55.

2013 See Cases M.7630 – FEDEX / TNT EXPRESS, paragraphs 47 and 257; M.6570 – UPS / TNT Express, paragraph 87.

2014 "M.10149 - RFI 19 – […]", "M.10149 - RFI 19 – […]", "RFI 10 – […]".

to the Parties posed by the integrators' door-to-door services, and therefore takes into account that, exactly because of the difference in their activities, integrators are rather seen as customers of the Parties.

(1243) The different focus between integrators and freight forwarders has been investigated and confirmed in the Commission's prior decisional practice.[2015] Freight and small packages are usually transported via different infrastructures which are designed in a different way. The handling of freight necessitates special equipment that is not needed for small package delivery, such as forklifts; whereas the sorting of palletised goods is done manually. Freight forwarders usually deliver palletised goods to a more limited number of clients arranging the transport of their goods on a more point-to-point basis. As the number of items is significantly smaller and the items are much heavier, the freight forwarding model does not involve a hub-and-spoke system such as the one used by integrators. Small package networks are characterised by a significantly higher level of automation than freight networks, notably at the level of sorting centres, which are based on conveyor belts and scanners. Every day, the (local) sorting centres accumulate a high number of packages which are usually channelled via hubs and again sorted and dispatched to the delivery hubs and sorting centres. Furthermore, in order to deliver small packages efficiently, operators need a dense network. These features allow companies operating small package networks to ship high numbers of units between points of origin and points of destinations spread over wide geographic areas and within relatively limited timeframes compared to those prevailing in the freight forwarding sector. Due to the different characteristics of freight and small package networks, it is commonly agreed that there is a weight threshold below which small package delivery companies like the integrators are more competitive than freight forwarders and above which freight should be considered as a cost effective alternative.

(1244) The above considerations from the Commission's prior decisional practice have also been confirmed by the Commission's market investigation in the present case. According to [an integrator], the business model of integrators is different to the one of freight forwarders in four core elements:[2016] (i) the speed of delivery and time commitment that comes at a higher price. In other words, according to [the integrator], at least non-time-sensitive customers would never switch from a freight forwarder to an integrator because the integrator would charge them with the premium door-to-door pricing that they would not need; (ii) the door-to-door service, which is not inherent in the business model of freight forwarders. As [an integrator] explained, what is inherent in the integrators' business model is the pick-up and delivery which will happen at the specific address the customer will indicate. Freight forwarders do not have such a capillary distribution network and therefore they do not typically sell a door-to-door element, at least not within their standard product offering; (iii) the different customers targeted. As [an integrator] explained, integrators would typically target thousands of customers with single (smaller) shipments, whereas freight forwarders would typically target a few customers with high volumes/quantities, *e.g.* heavy car parts; (iv) the different nature of the service. If for example [an integrator's] aircraft has a capacity of 100 tons and a customer wishes to transport 120 tons, [the integrator] would not turn away the customer. On the contrary, freight forwarders sell out their capacity against their inventory and do not accept any more shipments after that point. According to [the integrator], the difference lies on the fact that integrators' customers

2015 M.6570 – UPS / TNT Express, paragraphs 159-163.

2016 Response of [an integrator] to RFI 2 – Non-confidential minutes of the conference call with [an integrator] […].

order pick-ups, whereas customers of freight forwarders (using air cargo carriers as an input) book capacity.

(1245) In addition, [an integrator] explained that "*the unique selling point of integrators is that the entire journey of a single package is done across the same network, which is owned and operated by the integrator. A one-stop-shop with end-to-end tracking capabilities. This is something that a freight forwarder cannot offer. Freight forwarders typically offer lower rates but there is a higher risk of something breaking across the chain resulting in a delay. The one-stop-shop integrators offer is lower-risk for the customer*".[2017]

(1246) However, the Commission acknowledges that to the extent that end cargo customers may have smaller shipments to make and they are willing to pay the typically higher pricing of the door-to-door service of integrators, as well as to the extent that integrators themselves may be able to also handle some heavier consignments,[2018] integrators indeed compete to freight forwarders for end cargo customers. Such competition remains limited, however. To this end, [an integrator] indicated that the extent to which door-to-door services of integrators are substitutable to the services typically offered by freight forwarders "*depends on the customer. Some customers are price-sensitive, others time-sensitive. Typically, a time-sensitive is looking for security long-term that a package will arrive at a certain time or date, which integrators are more likely to be able to offer because they control their capacity and their network*".[2019]

(1247) Second, similar considerations were made by freight forwarders expressing a view on the issue during the Commission's market investigation. [A customer] explained that its "*business model is very different from that of integrators such as DHL, UPS or FedEx that focus on express services. For instance,* [the customer] *is not active at all in e-commerce where express services play a more important role.* [The customer's] *customers do not usually need express services. That is why they contract work with* [a customer]*, not with integrators.* [The customer] *has general cargo customers that would not purchase express services from the integrators. For general cargo, the cargo has to arrive 6 hours before departure, for express 2 hours. The service and price level are different*".[2020] On a similar note, [a customer] submits that it "*does not offer "express-services" similar to those offered by integrators to their customers. In their view, such express services are different product from what freight forwarders offer. These express services involve door-to-door delivery and a guaranteed shipment on the day after the pick-up from the customer. In* [the customer's] *view, such services work only for smaller products and volumes (from the same customers), such as packets and parcels.*".[2021]

(1248) In the same vein, [a customer] explained that the integrators have an entirely different business model, that of small packages, compared to freight forwarders. "*This is the reason why* [the customer] *does not even consider the integrators as its competitors. End cargo customers that contract with* [the customer] *may also have accounts with integrators, but for small packages, which is different to what* [the customer] *offers. This is the reason why* [the customer] *does not consider that its customers would switch to integrators in case of a price increase*".[2022]

2017 Response of [an integrator] to RFI 2, question 4.3 (ID 11438).
2018 Response of [an integrator] to RFI 2, introduction (ID 11459).
2019 Response of [an integrator] to RFI 2, question 4.4 (ID 11438).
2020 Non-confidential minutes of the conference call with [a customer].
2021 Non-confidential minutes of the conference call with [a customer].
2022 Non-confidential minutes of the conference call with [a customer].

(1249) Freight forwarders also do not seem to be concerned about the risk of losing end cargo customers/shippers to integrators. For example, [a customer] explains that it does not compete with integrators, as the latter have their own network and aircraft and five times higher the volumes. According to [the customer], "*most customers are time-sensitive and (and therefore would not necessarily go for DHL freight forwarding as they would not be sure for the time of delivery) but also price-sensitive (and therefore would not necessarily be willing to pay the higher price of DHL core express business).* [The customer] *offers a different product, which tries to retain a better balance between the two*".[2023]

(1250) In the same vein, [a customer] "*is convinced that its customers would not use integrator's services instead of* [the customer's] *freight forwarding services – even if* [the customer] *would raise its prices – as most of the services offered by* [the customer] *are business to business freight forwarding services and not courier cargo services. In contrast,* [the customer] *is of the opinion that its customers consider the vertically integrated (door-to-door) services offered by integrators (such as DHL, FedEx or UPS) not as a substitute to freight forwarding services which use air carriers to transport the cargo of their customers, but as a different type of service*".[2024]

(1251) Another customer further noted that its clients "*would not switch to integrators* [even] *in case* [the customer] *had to increase its prices due to an increase of price in the air cargo services market. The reason for that is that the integrators' door-to-door services only concern smaller packages and parcels and cannot really accommodate the needs of end cargo customers, such as the ones of* [the customer]".[2025]

(1252) Other freight forwarders acknowledge being in competition with integrators, but only to a certain extent or for a certain category of customers.[2026] For example, [a customer] explained that it offers two types of services, namely express and regular. "*For the express business,* [the customer] *functions in a somewhat similar manner to integrators, in the sense that they pick up the cargo with the customers and deliver it to the airport in the destination-country (rather than the regular airport-to-airport service). For certain types of customers (specifically consumer retail customers), freight forwarders and integrators therefore compete in their business. In their view, if* [the customer] *were to increase prices for this service, customers would switch to integrators. At the same time,* [the customer's] *regular, "deferred" freight forwarding product, which is geared towards "regular" business customers, is unlike that of integrators. Both types of service however use the same input, namely flights by air carriers. The difference between the two is the process and services around it (including pick-up and handling of the customs-process in South Korea)*".[2027]

(1253) Third, end cargo customers of freight forwarders responding to the Commission's market investigation confirmed the above considerations. In particular, [a customer] explained that it mostly uses freight forwarders for its transport requirements, while integrators are only used for "*some small or urgent items*".[2028] [The customer] further indicated that if a price increase in the air cargo market upstream resulted in price increases in the services provided by freight forwarders, [the customer] could consider

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2023 Non-confidential minutes of the conference call with [a customer].

2024 Non-confidential minutes of the conference call with [a customer].

2025 Non-confidential minutes of the conference call with [a customer].

2026 Non-confidential minutes of the conference call with [a customer]; Non-confidential minutes of the conference call with [a customer].

2027 Non-confidential minutes of the conference call with [a customer].

2028 Response of [a customer] to RFI on Integrators, question 1 (ID 10918).

using integrators if it was only a matter of price. However, taking into account also the quality of the service, it would be highly unlikely that they would indeed switch. From [the customer's] point of view, "*there is no significant competition between integrators and freight forwarders* […] *integrators are useful for smaller cargo, and they provide door-to-door services*".[2029] Another major end customer also submitted that it applies different considerations between the airline service (of integrators) and the capabilities of freight forwarders.[2030]

(1254) Fourth, the Parties also did not provide internal documents that would show that they take into account the indirect constraints imposed by integrators in sales to end customers/shippers in their internal business decisions. The evidence provided by the Parties does not cover such indirect constraint but rather shows that integrators, in particular DHL, offer some air cargo services on the market, as acknowledged in this Decision, and that integrators are customers of the Parties.[2031]

(1255) In paragraph 837 of Korean Air's Response to the Commission's Statement of Objections, Korean Air reiterates that the Parties have provided several documents showing how Korean Air and the freight forwarding arm of Korean Air's parent company offer services to cargo end customers which ship small packages and/or express. The Commission notes that the mere fact that Korean Air aspires to enter the market of door-to-door services as provided by integrators does not mean that the indirect competitive pressure exerted by the integrators' vertically integrated offering to the Parties' airport-to-airport services is getting higher. To the contrary, as indicated by Korean Air's internal documents, […].[2032] In other words, […].

(1256) On the basis of the above considerations, the Commission considers that integrators compete with freight forwarders for only a marginal part of end customers / shippers. Therefore, the Commission acknowledges that integrators might pose an indirect out-of-market competitive constraint to the Parties, but this is only to a very limited extent and cannot in any event substantially constrain the merged entity post-Transaction.

8.12.6. Countervailing buyer power

(1257) Customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction on the route South Korea to Europe.

(1258) First, the customers are unlikely to have bargaining strength due to their size or commercial significance for the Parties on the route South Korea to Europe.

(1259) In the first place, the customer base on the route South Korea-Europe is fragmented. Already among the ten largest customers of each of the Parties, there are several customers that represent only about [0-5]% or [0-5]% of each of the Parties' sales volumes on the route South Korea to Europe. As a consequence, the bottom [20-30]-[30-40]% of the Parties' sales volumes is characterized by customers that each represent less than [0-5]% of each of the Parties' sales volumes on the route. The same would therefore hold true for the merged entity. The purchase ratios of each of the Parties' ten largest customers in 2018-2022 are set out in Table 79 and Table 80Table 80 - Asiana – Purchase volumes by top 10 customers – Korea to Europe.

2029 Response of [a customer] to RFI on Integrators, question 4 (ID 10918).
2030 Response of a customer to RFI on Integrators, question 4 (ID 10884).
2031 Replies to RFI 14, question 5a; replies to RFI 16, question 1.
2032 Response of Korean Air to RFI 14, "M.10149 - KE - OZ - Annex RFI14.Q5a.3"; "M.10149 - KE - OZ - Annex RFI14.Q5a.6".

Table 79 - Korean Air – Purchase volumes by top 10 customers – Korea to Europe

#	Customer	2018	Customer	2019	Customer	2020	Customer	2021	Customer	2022
[…]	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
[…]	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
[…]	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[0-5]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
[…]	[…]	[50-60]%	[…]	[50-60]%	[…]	[60-70]%	[…]	[70-80]%	[…]	[80-90]%

Source: Reply to RFI 23, question 1, Table 170

Table 80 - Asiana – Purchase volumes by top 10 customers – Korea to Europe

#	Customer	2018	Customer	2019	Customer	2020	Customer	2021	Customer	2022
[…]	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%
[…]	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
[…]	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
[…]	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
[…] [2033]	**[…]**	**[70-80]%**	**[…]**	**[60-70]%**	**[…]**	**[70-80]%**	**[…]**	**[80-90]%**	**[…]**	**[80-90]%**

Source: Reply to RFI 23, question 1, Table 172

(1260) In the second place, the customer base on the route South Korea to Europe is much more fragmented than the supply of air cargo services from South Korea to Europe would be after the Transaction. This can be illustrated by comparing the concentration measured in HHI levels. While the demand-side HHI would be below […] for the merged entity, the supply-side HHI would be around […] to […], as shown in Table 81.

[2033] Where the sum of the individual purchase share does not add up to the total sum, this is due to rounding of the individual figures.

Table 81 - Concentration of demand and supply on the route South Korea to Europe

	2018	2019	2020	2021	2022
Concentration of demand on the route (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of supply on the route (HHI level)	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 23, question 5, Annex RFI23.Q5; Annex RFI9.Q9; see section 8.12.1 for the differences in the quoted HHI levels on the route. No HHI Index could be computed for 2022 as competitors' estimates not available for 2022, see Annex I for details.

(1261) Second, the customers are also unlikely to be able to exercise bargaining strength by refusing to buy other air cargo services offered by the Parties on other routes. The customer base of each of the Parties in air cargo transport globally and in transporting cargo from East Asia to Europe is much more fragmented than the supply of air cargo services from South Korea to Europe would be after the Transaction. Furthermore, these are not necessarily the same customers, or if they are, the volumes they represent on other routes are not such that they can retaliate effectively.

Table 82 - Concentration of demand and supply for the merged entity

	2018	2019	2020	2021	2022
Concentration of demand globally (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of demand on routes from East Asia to Europe (HHI level)	[…]	[…]	[…]	[…]	[…]
Concentration of supply on the route (HHI level)	[…]	[…]	[…]	[…]	[…]

Sources: Demand globally: Reply to RFI 23, question 11, Annex RFI23.Q11. Annex RFI9.Q9; Demand on routes from Europe to East Asia: reply to RFI 23, question 5, Annex RFI 23.Q.5; Supply on the route: Annex RFI9.Q9. see section 8.12.1 for the differences in the quoted HHI levels on the route. No HHI Index could be computed for 2022 as competitors' estimates not available for 2022, see Annex I for details.

(1262) Third, the recent significant increases in the Parties' rates for air cargo services on the route from South Korea to Europe indicate that customers are not able to resist price increases by means of countervailing buyer power. The average price charged by Korean Air for cargo transported from South Korea to the EEA increased from USD […] per ton in 2019 to USD […] per ton, USD […] per ton and USD […] per ton in 2020, 2021 and 2022 respectively.[2034] The average price charged by Asiana for cargo transported from South Korea to the EEA increased from USD […] per ton in 2019 to USD […] per ton, USD […] per ton and USD […] per ton in 2020, 2021 and 2022 respectively.[2035] This development was also confirmed by customers in the market investigation. All customers who replied to the relevant question in the Commission's

2034 Reply to RFI23, question 7, Table 19.

2035 Reply to RFI23, question 7, Table 23.

phase I questionnaire described that prices increased dramatically after 2019,[2036] implying that they could not use any bargaining strength to prevent paying those higher prices. In the words of one of those customers: "*During Covid 19 Pandemic the volume, Revenue are ambivalent. In volume and revenue is decreasing but in Prices it's increasing. Reason on it has beenthe* [sic] *downgrading in aircraft availability.*"[2037] While the increase in prices over the last four years is related to the circumstances brought about by the Covid19 pandemic and the war in Ukraine, it shows that customers do not have structural countervailing buyer power by which they can resist price increases by carriers on the route from South Korea to Europe.

(1263) Fourth, the results of the Commission's market investigation did not confirm that customers exert sufficient buyer power in the air cargo transport market from South Korea to Europe to prevent any negative effects of the Transaction.

(1264) In the first place, only a minority of customers responding to the relevant question of the Commission's phase I questionnaire considered that customers exert significant buyer power on the route South Korea to Europe. The clear majority of customers considered that there is no buyer power, that customers do not exert much buyer power or that they exert only a small degree of buyer power. Others considered that it depends, for instance on the specific market conditions, including the season.[2038] Two customers, namely the purchasing arms of integrators, explained their views on this also in phone calls with the Commission.[2039]

(1265) In the second place, the competitors responding to the relevant question of the Commission's phase I questionnaire did not provide a clear view and therefore did not confirm that there is sufficient buyer power on the route South Korea to Europe. While a limited number (3) of competitors considered that customers exert significant buyer power, a slightly larger number of competitors (4) considered that there is no buyer power, that customers do not exert much buyer power or that they exert only a small degree of buyer power.[2040] Others considered that it depends, for instance on the supply/demand balance in the different seasons or on the volume purchased. This was confirmed by competitors during the Commission's phase II investigation. Some competitors (2) consider that there are no customers present at the moment who have the ability to exercise their buyer power to a significant degree. Other competitors (2) stated that customers' buyer power is contingent on the actual supply/demand situation on a particular route.[2041] It is notably explained that it is only the "*large and global market players with significant and consistent volumes throughout the year"* that indeed do possess buyer power.[2042]

(1266) Fifth, several customers of air cargo services indicated in their responses to the market investigation that they would likely pass on price increases for air cargo services to their end-customers.[2043] This ability would further limit the incentive of customers to

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2036 Replies to question DA1 of Questionnaire 5 to Cargo customers.

2037 Reply by [a customer] to question DA1 of Questionnaire 5 to Cargo customers (ID 8405).

2038 Replies to question E6 of Questionnaire 5 to Cargo customers.

2039 Non-confidential minutes of the conference call with [an integrator]; non-confidential minutes of the conference call with [an integrator].

2040 Replies to question DBD8 of Questionnaire 2 to Cargo competitors.

2041 Response of [a competitor] to RFI 1, question 33 (ID 11689); Response of [a competitor] to RFI 1, question 33 (ID 11106); Response of [a competitor] to RFI 1, question 33 (ID 11084); Response of [a competitor] to RFI 1, question 33 (ID 11675); Response of [a competitor] to RFI 2, question 34 (ID 11132).

2042 Response of [a competitor] to RFI 1, question 34 (ID 11689).

2043 Replies to question E5 of Questionnaire 5 to Cargo customers.

resist industry-wide price increases by air cargo carriers on the route from South Korea to Europe.

(1267) Sixth, independently of how strong the bargaining power is that customers may currently enjoy, the Transaction does not only reduce the number of providers active on the route from South Korea to Europe but it eliminates the second best alternative customers have (as explained in section 8.12.2). Furthermore, other competitors exert a more limited constraint (as explained in section 8.12.3). This means that customers' choice of alternative suppliers on the route South Korea to Europe would be limited after the Transaction and that they would not be able to switch easily to alternative suppliers.[2044] This implies that post-Transaction customers' bargaining power will be inevitably reduced by removing a credible alternative, thus making more likely a price increase, or another type of worsening of parameters of competition.

(1268) Seventh, there is no evidence to suggest that customers could credibly threaten to vertically integrate into supplying air cargo services, in particular in the light of the barriers to entry as set out in section 8.12.4.3. There is no example of such entry of the last five years. In particular, and contrary to Korean Air's claims regarding […] and […], both freight forwarders replied to the Commission's market investigation that they have not vertically integrated into providing general air cargo services on the route Europe to South Korea.[2045] The Parties appear to refer to instances where those freight forwarders cooperate with cargo airlines to offer charter flights[2046] or block space agreements[2047] to end customers. In addition to the fact that charter flights exert only a remote constraint on the Parties' operations for the reasons set out in section 7.2.1.6, this does not constitute vertical integration by freight forwarders as they do not invest in flight capacity but cooperate with existing airlines – precisely by purchasing capacity from cargo airlines as described in this Decision as the relevant market on which the Transaction is likely to have negative effects, based on the outcome of the investigation.

(1269) Eighth (as explained in section 8.12.4), the Parties have achieved high load factors in recent years on the route South Korea to Europe: Korean Air's load factor varied from [80-90]% in 2018 to [80-90]% in 2022, while Asiana's varied from [90-100]% in 2018 to [90-100]% in 2022.[2048] Therefore, the Parties' arguments according to which the customers hold buyer power because the Parties need business with all of them to achieve a sufficiently high load factor[2049] is unfounded.

(1270) Ninth, buyer power cannot be found to sufficiently off-set potential adverse effects of the Transaction it if only ensures that a particular segment of customers with particular bargaining strength is shielded from significantly higher prices or deteriorated considerations after the Transaction.[2050] Therefore, the Parties' argument that several of the customers are global companies with a strong presence in the European cargo market, such as […], […] or […],[2051] is in any event irrelevant because there are many other customers that are smaller and do not share those characteristics.

2044 Horizontal Merger Guidelines, paragraphs 65 and 67.

2045 Response of [a customer] to RFI on vertical integration, questions 1 and 2 (ID 11558); Response of [a customer] to RFI on vertical integration, question 1 (ID 11582).

2046 As acknowledged by the Parties in their reply to RFI23, questions 9 and 10.

2047 As described by [a customer] in their brochure on their service: "*Use space contracted by* [the customer]", available on their website.

2048 Based on data submitted as part of the Reply to RFI 9, Question 10.

2049 Korean Air's response to the Article 6(1)(c) Decision, paragraph 528.

2050 Horizontal Merger Guidelines, paragraph 67.

2051 Korean Air's Response to the Article 6(1)(c) Decision, paragraph 520.

(1271) For all these reasons, the Commission, therefore, deems that customers are unlikely to have sufficient buyer power to off-set the negative effects of the Transaction on the route South Korea to Europe.

8.12.7. Market entry

(1272) The Commission's market investigation did not identify any potential entry by a carrier not currently active on the South Korea - Europe route that could be considered as likely, timely and sufficient to prevent any potential anti-competitive effects of the Transaction.[2052]

(1273) The Commission has contacted the potential entrants identified by the Parties, namely [names of potential entrants], as well as […], who was identified as a new entrant on the opposite route, that of Europe to South Korea. [Names of potential entrants] replied to the Commission's market investigation by confirming that they do not have any concrete plans to start offering air cargo services on the route between South Korea and Europe in the next three years.[2053] No concrete plans of entry on the relevant routes have been confirmed by [names of potential entrants], either.[2054]

(1274) Concretely, only [a potential entrant] has indicated that it would be willing to enter the air cargo transport service routes between Europe and South Korea independently of the Transaction, by offering direct passenger flights on the route ICN-FRA and providing belly-hold air cargo services on this route.[2055] However, in addition to the considerations made with regard to the entry of [a potential entrant] […] the Commission considers that an entry by [a potential entrant] on this route with […] or […] weekly frequencies[2056] would not be sufficient to prevent any anti-competitive effects of the Transaction in air cargo transport, given the significantly higher volume and frequency offered by the Parties and the increment brought about by Asiana on this route. […], [a potential entrant] is planning […]. [A potential entrant] has […]. Should [a potential entrant] reach its target […] tons of cargo per flight, its entry would initially correspond to [0-5]% on South Korea – Europe. While timely and likely, this entry would not by itself alter the competitive landscape sufficiently to prevent a significant impediment to effective competition, also taking into account the considerations made under section 8.12.4 above with regard to competitors being unlikely to increase supply if prices increase.

(1275) The Commission also notes that even Korean Air in paragraph 867 of its Response to the Commission's Statement of Objections agrees that the entry of [a potential entrant]

2052 This is contrary to paragraphs 865-872 of Korean Air's Response to the Commission's Statement of Objections.

2053 Response of [a potential entrant] to RFI on Potential Entry, "*neither* […] *nor* […] *have any plans to offer air cargo transport services between Europe and South Korea within the next 3-5 years*" (ID 11726); Response of [a potential entrant] to RFI on Potential Entry, "*we have no plans to open cargo business between Europe and South Korea for the time being*" (ID 11722); Response of [a potential entrant] to RFI on Potential Entry, "[the potential entrant] *is currently not operating own air cargo services between Europe and South Korea but offers air cargo services with* […] *own* […] *freighter aircraft on other routes. In the near future,* [the potential entrant] *is not planning to operate own air cargo aircraft on the routes between Europe and South Korea*" (ID 10420); Response of [a potential entrant] to RFI on Potential Entry, "[the potential entrant] *is currently not operating air cargo services between Europe and South Korea and does not intend to offer such services on these routes in the near future*" (ID 10606).

2054 Reply of [a potential entrant] to question B.14-1 of Questionnaire Q3 to potential entrants (ID 8019); Reply of [a potential entrant] to questions B.13-1 and B.14-1 of Questionnaire Q3 to potential entrants (ID 8216).

2055 Replies of [a potential entrant] to questions B.9. and B14.1. of Questionnaire Q3 to potential entrants (ID 8691).

2056 Reply of [a potential entrant] to questions C.2.6. of Questionnaire Q3 to potential entrants (ID 8691).

[…] would not lead to [a potential entrant] gaining significant market presence on the EEA-Korea trade routes.

(1276) Finally, as a new entrant on the opposite route, that of Europe to South Korea, […] replied to the Commission's market investigation that "[a potential entrant] […] *operates a scheduled direct, non-stop flight* […] *week from* […] *to South Korea, and from there, also to* […] *and then to the* […] *and* […]. *From there, the aircraft flies back to* […]. *Flying around the world, rather than back and forth between* […] *and* […] *made more sense commercially, as there is no cargo transported from* […] *to Europe, via* […]".[2057] Therefore, [the air carrier] does not appear interested in entering the route South Korea to Europe.

(1277) On the basis of the above considerations, the market investigation did not reveal timely, likely and sufficient entry on the air cargo route South Korea – Europe, due to the barriers to entry which are identical to the barriers to expansion described in section 8.12.4.3, as well as a lack of willingness to enter or insufficient entry.

8.12.8. Effect of the Transaction

(1278) Although the results of the Commission's market investigations were mixed overall, several market participants have expressed concerns about (i) the strong market position of the Merged Entity, (ii) potential negative effects of the Transaction on competition and (iii) potential negative effects of the Transaction on their own business model.

(1279) First, the market investigation has shown that several market participants fear the strengthening of the Parties' already strong market position following the Transaction. As an example, one customer's major concern is that post-Transaction the Parties "*effectively own the market*".[2058] One competitor explained that "*the merger would weaken [competitor's] position on the market – basically due to the important capacities the Partis have following extensive traffic rights. Korean Air and Asiana will have more than 200 aircrafts and a large fleet of freighters enabling them to dominate the market even more than they currently do. When the Parties dominate the market from a market share perspective, it is in [competitor's] view possible that they also use their dominant position in terms of pricing*."[2059]Another competitor explained that "*it seemed highly likely that the Parties would be in a position to control a large part of the market post-Transaction*".[2060] Another competitor concurred by stating "*As for air cargo services, [competitor] noted that the merged entity will become by far the largest player between Europe and Korea which will lead to a dominant position*."[2061] Furthermore, a competitor stated that "[t]*he Transaction will make it even more difficult to compete given the combined size of the merged entity from a cargo perspective*" and that "*we are of the opinion that it will be even more complicated for smaller competitors to enter the market or maintain their current position*".[2062] One of the integrators, which is also a significant customer of the Parties, explained "*the Transaction might have a negative impact on competition as the number of the main air cargo priders will be reduced from 3 to 2. […] it would be anticipated the mered entity to reduce services between Europe and Korea and increase capacity on transpacific routes where the yields are better. This in turn would have a negative effect on prices between Europe and Korea as the remaining players*

2057 Non-confidential minutes of the conference call with [a potential entrant].
2058 Non-confidential minutes of the conference call with [a customer].
2059 Non-confidential minutes of the conference call with [a competitor].
2060 Non-confidential minutes of the conference call with [a competitor].
2061 Non-confidential minutes of the conference call with [a competitor].
2062 Non-confidential version of RFI 1 to [a competitor] dated 22 March 2023.

would be able to charge higher rates."[2063] Another customer explained "*the Parties will control post-merger a large part of the market for air cargo transport services and would [have] the ability to influence the market by increasing or decreasing capacities between Europe and South Korea. In consequence, they would be in the position to dictate prices*."[2064]

(1280) Second, 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,[2065] and/or worse quality on the route South Korea to Europe.[2066] As an example, one customer explained that they currently still have some bargaining power as they can switch from Korean Air's to Asiana's air cargo services in particular between […] and South Korea but that the Parties are the dominant providers on the South Korea-Europe route. The customer fears that post-merger "*it will be impossible for freight forwarders to negotiate prices, as [customer] currently does. If the Parties raise their prices, customers will still have to choose them because of their quality and their Korean brand. […] At the same time,* [the customer] *is concerned that post-Transaction the Parties might decrease capacity and lower their quality, something that freight forwarders will have to accept and therefore become less competitive on their quality of service*".[2067] Another customer maintained that "*the merged company will have monopoly powers of the routes between ICN and* […] *and will be able to increase or decrease capacity and through that influence the prices. In that respect [customer] explained that if the demand will be low, the merged entity can decrease capacity and increase price. […]* [A customer] *is of the opinion that Korean Air and Asiana will certainly increase their rates between Europe and ICN after the merger and that all other airlines will follow as Korean Air is the price-maker on the market*".[2068] Another customer explained that the Transaction could lead to fewer suppliers and it is presumed that this could mean lower capacities and higher rates. In that case, that customer is of the opinion that the merged entity could be able to have greater influence on the market due to the limited remaining competition.[2069]

(1281) Third, some customers fear negative consequences of the Transaction for their business due to the fact that they will no longer have the choice between two different air cargo transport service providers but will depend on the prices, available capacities and frequencies of the merged entity as only remaining option available. As an example, one customer stated that "*they expect the Transaction to impact their business significantly. Both Parties are the only air carriers which are able to provide the air cargo services that* [the customer] *needs between* […] *and South Korea.* [The customer] *states that they expect that post-Transaction, the Parties will decrease the frequency from/to* […]*, and so the prices for air cargo services from/to South Korea will increase. […]. Overall, some carriers could increase their capacity but, none of them is able to fill up the retired capacity.*"[2070] Another customer has a negative view on the Transaction since "*it will be very hard for freight forwarders to conduct business afterwards*" as there are not many options on the routes between South Korea and EUrope, even though the market itself is significant and as "*second-tier-choice*

2063 Non-confidential minutes of the conference call with [an integrator].

2064 Non-confidential minutes of the conference call with [a customer]. While [the customer] explain that other carries would have an incentive to or expand, that would depend on the availability of traffic rights. That aspect is discussed in section 8.12.4.

2065 Non-confidential minutes of the conference call with [a customer].

2066 Replies to question E.2 and E.5 of Questionnaire 5 to Cargo Customers.

2067 Non-confidential minutes of the conference call with [a customer].

2068 Non-confidential minutes of the conference call with [a customer].

2069 Non-confidential minutes of the conference call with [a customer].

2070 Non-confidential minutes of the conference call with [a customer].

carriers" together would not have the necessary scale in case […] will be discontinued following the Transaction.[2071]

(1282) Fourth, the KDB […].[2072] Accordingly, […].[2073]

8.13. Other activities

8.13.1. Maintenance, Repair and Overhaul services

8.13.1.1. Horizontal relationships

(1283) Both Parties are active in the provision of MRO services at airports outside of the EEA. However, both Parties use the heavy maintenance, engine maintenance and components maintenance services they provide only captively and do not provide these services to third parties.[2074] As regards line maintenance services, the Parties offer such services only to a limited extent to third parties in Korea.[2075]

(1284) In relation to the heavy maintenance, engine maintenance and components maintenance segment, the Transaction does not give rise to horizontally affected markets.

(1285) With regard to line maintenance services, both Korean Air and Asiana offer such services to third parties at ICN airport.[2076] If a geographic market definition limited to individual airports is considered, ICN airport would be horizontally affected, as the Parties have an estimated combined market share of between [30-40]% and [40-50]%[2077], when considering MRO services for third party air carriers at ICN airport (captive services for Korean Air and Asiana excluded)[2078].

8.13.1.2. Vertical relationships

(1286) There are no existing service provider/customer relationships between the Parties to the concentration, as neither Party provides MRO services to the other.

(1287) There are, however, potential vertical relationships between the Parties since both Parties provide line maintenance services (upstream) to third parties at ICN airport and at the same time use MRO services for their air passenger and air cargo services (downstream).

8.13.1.3. No competition concerns

(1288) However, neither the horizontal nor vertical relationships existing between the Parties' activities on the MRO market at ICN airport would significantly impede effective competition for the following reasons:

2071 Non-confidential minutes of a call with [a customer].

2072 […].

2073 […].

2074 Annex 47 to the Form CO, paragraph 31.

2075 Annex 47 to the Form CO, paragraph 32.

2076 Korean Air owns and operates one hangar to accommodate […] or […] at ICN airport. Asiana leases one hangar at ICN airport to […] and owns one hangar to accommodate […].

2077 [40-50]% in 2018, [40-50]% in 2019, [30-40]% in 2020 and [30-40]% in 2021.

2078 The market shares including captive services range between [60-70]% and [70-80]% in 2018 – 2021 at ICN airport as the Parties' hub hosts most of the MRO services for the Parties' fleet. When only considering services provided to EEA, Swiss and UK carriers at ICN airport, the market shares would be significantly lower, ranging between [0-5]% and [10-20] % ([0-5]% in 2018, [0-5]% in 2019, [10-20]% in 2020 and [10-20]% in 2021, whereas, according to the Parties, the increase in market shares in 2020 and 2021 is due to the fact that the number of flights in and out of ICN decreased during the COVID19-pandemic).

8.13.1.3.1. From a horizontal perspective

(1289) First, the provision of MRO services to third parties generated very limited turnover for the Parties:

Table 84* - Korean Air turnover for MRO and ground handling services delivered to third party airlines

Table 1 - Korean Air turnover for MRO and ground handling services delivered to third party airlines		
Year	**Approximate turnover (mil EUR)**	
	MRO	**Ground handling services[2079]**
2022	[…]	[…]
2023	[…]	[…]

Source: Korean Air; Response to Question 3, RFI on Turnover of 22 December 2023

Table 85 - Asiana turnover for MRO and ground handling services delivered to third party airlines**

Table 2 - Asiana turnover for MRO and ground handling services delivered to third party airlines		
Year	**Approximate turnover (mil EUR)**	
	MRO	**Ground handling services[2080]**
2022	[…]	[…]
2023	[…]	[…]

Source: Asiana; Response to Question 3, RFI on Turnover of 22 December 2023

(1290) Second, Post-Transaction, the Parties remain subject to competitive pressure at ICN airport from other major players, such as Sharp Aviation K[2081] and Swissport.[2082]

(1291) Third, the entry of new market players or the potential increase of supply of MRO services by other service providers does not appear to be subject to high barriers. According to the Parties, the main barrier would be the acquisition of the relevant equipment. The Parties do in particular not hold any significant degree of control or influence over the supply of MRO services at ICN airport and do not control inputs for those services.

(1292) Fourth, the nature of the MRO service contracts could prevent the Parties from exploting any market power. As the Parties depend on MRO and other services provided by other air carriers at the non-Korean airports, such strategy would hamper the Parties' ability to negotiate MRO service contracts at non-Korean airports and in consequence to effectively compete in the air transport industry.

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* Should read: 'Table 83'

2079 Figures for 2023 reflect the performance between January 2023 and September 2023 (inclusive).

** Should read: 'Table 84'

2080 Figures for 2023 reflect the performance between January 2023 and September 2023 (inclusive).

2081 Market shares of ground handling services for passenger flights at ICN airport excluding own flights (Korean Air and Asiana flights) for Sharp Aviation K in 2023 according to Korean Air's internal estimates: [20-30]% on turnover and market share data of 22 December 2023.

2082 Market shares of ground handling services for passenger flights at ICN airport excluding own flights (Korean Air and Asiana flights) for Swissport in 2023 according to Korean Air's internal estimates: [5-10]%; see Response to Question 4 of the RFI on turnover and market share data of 22 December 2023.

8.13.1.3.2. From a vertical perspective

(1293) In addition to the arguments stated under Section 8.13.1.3.1, even in the hypothetical scenario where Korean Air increases its prices post-Transaction, the impact on Air Passenger service providers would likely be limited. This is due to the fact that Maintenance, Repair, and Overhaul (MRO) services for passenger aircraft constitute only a small fraction—approximately 2.5%—of the total global costs associated with air passenger transport services. Therefore, any price changes in this sector are expected to have a relatively small effect on the overall expenses of these service providers.

8.13.1.4. Conclusion on MRO services

(1294) In view of the foregoing, the Transaction would not significantly impede effective competition with respect to the market for MRO services.

8.13.2. Ground handling

8.13.2.1. Horizontal relationships

(1295) Korean Air[2083] and Asiana[2084] both offer ground handling services to third party air carriers (for air passenger and air cargo flights) at ICN airport. As regards services provided to airlines operating to and from the EEA, from 2018 to 2020, Korean Air offered ground handling services for passengers to Air France-KLM, Czech Airlines and Alitalia and for cargo to Air France-KLM and Czech Airlines. As of December 2021, it only offers ground handling services for passengers to Air France-KLM. Asiana does not offer any ground handling services for passengers to EEA carriers but offers ground handling services for cargo to Cargolux Airlines, Cargolux Italia and LOT Polish Airlines.

(1296) As far as the supply of ground handling services is concerned, the merged entity's market shares at ICN airport range between [60-70]% and [70-80]% in the years from 2018 to 2021 for third party passenger flights[2085] and between [40-50]% and [50-60]% for the years from 2018 to 2021 for third party cargo flights[2086].

8.13.2.2. Vertical relationships

(1297) There are no existing supplier/customer relationships between the Parties to the concentration, as Korean Air does not provide any ground handling services to Asiana and Asiana does not provide any ground handling services to Korean Air at ICN airport.

(1298) There are however potential vertical relationships between the Parties since both Korean Air and Asiana provide ground handling services (upstream) to third parties at ICN airport and at the same time use ground handling services for their air Passenger and air Cargo services (downstream) at ICN airport.

8.13.2.3. No competition concerns

(1299) The Commission deems that the Transaction would not significantly impede effective competition for the following reasons:

2083 Korean Air uses ground handling services provided by its subsidiary Korea Airport Service Co., Ltd.

2084 Asiana uses ground handling services provided by its subsidiary Asiana Airport Inc.

2085 Between [50-60]% and [60-70]% market shares in the years between 2018 and 2021 when only considering services for passenger flights to EEA, Swiss and UK airlines at ICN airport and +/- [80-90]% market shares in the years between 2018 and 2021 for all flights at ICN airport, also own flights included.

2086 Between [40-50]% and [50-60]% market shares in the years between 2018 and 2021 when only considering services for passenger flights to EEA, Swiss and UK airlines at ICN airport and between [80-90]% and [80-90]% market shares in the years between 2018 and 2021 own flights included.

8.13.2.3.1. From a horizontal perspective

(1300) First, the provision of ground handling services to third parties generated very limited turnover for the Parties (see (1289).

(1301) Second, it is common for FSCs to have affiliates providing captive ground handling services in their hub airports and providing ground handling services to other airlines. In the same way, Korean Air and Asiana use other FSCs' ground handling services at EEA airports, where other FSCs have their hubs.

(1302) Third, the Parties are subject to competitive pressure from other ground handling services providers, such as Sharp Aviation K, Cathay Pacific, Lufthansa Technik and Swissport.[2087]

(1303) Fourth, the entry of new market players or the potential increase of supply of ground handling services by other service providers does not appear to be subject to high barriers. According to the Parties, the main barrier would be the acquisition of the relevant equipment. The Parties do in particular not hold any significant degree of control or influence over the supply of ground handling services at ICN airport and do not control inputs for those services.

(1304) Fifth, the nature of the ground handling contracts could prevent the Parties from exploting any market power. As the Parties depend on ground handling and other services provided by other air carriers at the non-Korean airports, such strategy would hamper the Parties' ability to negotiate ground handling service contracts at non-Korean airports and in consequence to effectively compete in the air transport industry.

8.13.2.3.2. From a vertical perspective

(1305) In addition to the arguments stated under Section 8.13.2.3.1, even in the hypothetical scenario where Korean Air after the Proposed Transaction raised its prices, this would likely have a limited impact on Air Passenger Services providers as ground handling services account for a small proportion of the overall costs for Air Passenger Services (approximately [0-5]%).

8.13.2.4. Conclusion on ground handling services

(1306) In view of the foregoing, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for ground handling services.

9. EFFICIENCIES

(1307) Korean Air submits that the Transaction will bring efficiencies to the market. Such efficiencies are based on three main claims: (1) increased connectivity and frequencies for air passengers with better customer experience on Overlap Routes as well as on other routes from/to Europe, (2) cost efficiencies in the form of savings resulting from increased seat capacity, improved aircraft utilization, reduction of purchase unit cost, reduced training costs, more optimal fleet structure and more efficient aircraft configuration, and (3) a more efficient operation of the cargo aircraft fleet.

[2087] Market shares of the Parties in MRO for all air carriers at ICN airport (excl. Korean Air / Asiana) according to Korean Air's estimate: [20-30]% in 2023, [20-30] in 2022, [30-40] in 2021, see Response to Question 5 of the RFI on turnover and market share data of 22 December 2023. The Parties claim that they do not have access to MRO services of competitors nor are they aware of any industry report including such information and can therefore not provide any market share data for competitors.

9.1. Korean Air's view

(1308) First, Korean Air submitted an analysis of supply synergies describing how the transaction would allow for a joint schedule planning with departure times more evenly spread throughout the day. Scheduling improvements, including a diversification of overlapping flight schedules and expansion of the number of routes operated, would create a more convenient and better quality services for customers in Korean Air's view. Scheduling efficiencies created by the optimized flight planning and expansion of operated routes are considered by Korean Air to spill-over to passengers flying on other routes from/to the EU and would equally apply to several other destinations in East Asia and Oceania. A better customer experience would consist of streamlined check-in and baggage handling and merged rewards programmes.([2088])

(1309) Second, Korean Air submits that the Transaction would generate significant annual cost savings and annual cost efficiencies through an improved aircraft utilization, increased operational efficiency of the cockpit crew and ground handling services, reduction of purchase unit cost, reduction of overlapping functions and reduced training costs through sharing the aviation training resources, as well increased seating capacity that allows to actively respond to the fluctuating demand by operating various configurations of the same aircraft. Economies of scale realized would lead to a decline in production costs according to Korean Air. Korean Air provided the Commission with an analysis prepared by Compass Lexecon which quantifies – allegedly on a conservative basis – the total merger specific consumer benefits on all routes between Korea and the EU and UK at more than USD […] per year.([2089])

(1310) Third, Korean Air argues that the Transaction would lead to significant efficiencies in relation to air cargo through reduced fixed costs (financial costs), synergies derived from an integrated cargo fleet thereby reducing transportation, repair and staffing costs as well as increasing the operational efficiency of cockpit crew and ground handling services. Rationalization of routes (including overlapping routes) would free capacity to pioneer new routes.([2090])

9.2. The Commission's assessment

(1311) On the basis of the documents submitted, the Commission sought to assess (1) whether the efficiencies described are specific to the proposed transaction, (2) whether these efficiency gains would be passed-on to the end customers, and (3) whether the efficiency claims are verifiable.

(1312) Paragraph 78 of the Horizontal Merger Guidelines provides that "*For the Commission to take account of efficiency claims in its assessment of the merger and be in a position to reach the conclusion that as a consequence of efficiencies, there are no grounds for declaring the merger to be incompatible with the common market, the efficiencies have to benefit consumers, be merger-specific and be verifiable. These conditions are cumulative.*"[2091] The Commission will then in principle only take account of those efficiencies that offset the harm suffered by the consumer groups that are adversely

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2088 Form CO, Annex QP6.Q23 – "[…]" and Response of Korean Air to the Commission's Statement of Objections, paragraphs 887-902.

2089 Form CO, Annex QP6.Q23 – "[…]" and Response of Korean Air to the Commission's Statement of Objections, paragraphs 887-902.

2090 Form CO, Annex QP6.Q23 – "[…]" and Response of Korean Air to the Commission's Statement of Objections, paragraphs 887-902.

2091 Horizontal Merger Guidelines, paragraph 78.

affected by the merger. This implies only efficiencies generated in the market in which the competitive harm occurs and that can be relied upon to offset that harm.

(1313) The Commission's assessment finds that the efficiencies claimed do not fulfil the aforementioned criteria in this case for several reasons.

(1314) First, with respect to the non-price parameters such as better customer experience and prospective more efficient operations, Korean Air does not sufficiently explain why these efficiencies are (i) a direct consequence of the merger and (ii) cannot be achieved by less anti-competitive means than the merger, e.g. interlining and codeshare agreements. Effects from network combinations, which are the majority of the quantified efficiencies in form of consumer benefits, can in principle be achieved by interlining and code-sharing agreements between the two airlines. Hence, effects from network combination are not necessarily merger-specific such that the Commission cannot consider them as offsetting potential consumer harm.

(1315) Second, the submission quantifies consumer benefits using results from a "Quality of Service Index" model, which estimates the improvement in quality of the network by adding additional potential route-combinations and predicts the additional passengers in the network and on given routes when holding prices fixed. The Commission acknowledges that increased connectivity is to the benefit of the consumer. Nevertheless, as described, only efficiencies that offset the harm to consumer adversely affected by the merger can be accepted. Increased connectivity by combining networks generally benefits consumers that use the increased network reach but not passengers that fly the affected O&D pairs between Seoul and the four European destinations. Korean Air claims to quantify the consumer benefits by estimating the price reduction necessary to attract the equal number of passengers while maintaining the same network of routes. This implies that the efficiencies benefitting consumers are due to an expansion of the network and the resulting increase in passenger numbers. However, this also implies that these efficiencies are neither equivalent nor connected to ticket fares or other parameters of competition on affected and existing routes. These efficiencies would, therefore, more likely be 'out of market' efficiencies as they would not provide benefits to the same category of consumers that would be negatively affected by the Transaction. Benefits to consumers using an increased network cannot be allocated as monetary equivalent to existing routes and can therefore not offset adverse effects caused by the Transaction on the Overlap Routes.

(1316) Third, as table 3 of the analysis prepared by Compass Lexecon shows, almost all benefits from the network combination are associated with benefits and positive changes in passenger numbers in the high yield segment, i.e. business and first class passengers. Hence, even if network connectivity benefits could be taken into account by the Commission, the submission itself explains that low yield (economy class) passengers would minimally or not benefit at all from them on the Overlap Routes. Hence, the efficiencies also cannot offset any detrimental effect to those passengers. Table 3 actually even shows that combining the Parties' networks would lead to a decrease in the number of passengers flying over the routes CDG-ICN, FCO-ICN and BCN-ICN.

(1317) Fourth, and as acknowledged by the Parties, many of the claimed efficiencies primarily relate to routes in East Asia and Oceania. Freed air cargo capacity would also mainly be employed on new routes in East Asia and Oceania. However, as set out in paragraph (1315), only efficiencies that offset the harm to the consumers adversely affected by the merger can be accepted.

(1318) Fifth, as to cost savings, most of the savings related to cargo are on fixed costs for which there is a reduced likelihood of these being passed on to consumers rather than simply boosting the profits of the merged entity. Cost savings that lead to a reduction of variable or marginal costs are more likely to be passed on to consumers. Whilst a number of the alleged cost savings for air passengers – and to a lesser degree air cargo services – could be qualified as variable, Korean Air has also submitted that these savings will only materialize in the medium to long term. In addition, Korean Air has submitted that it considers operating Asiana independently from Korean Air for a period of time. Without integration, the alleged cost savings and efficiencies cannot materialize. The longer the time needed for the variable cost savings to materialize, the greater must be the efficiencies to compensate also for the loss to consumers during the period preceding their generation.

(1319) Sixth, even if the Commission would take all cost savings as efficiencies into account (EUR […] per year allocated to routes between Seoul and Europe, including UK routes), which it cannot for the reasons outlined in paragraph (1318), this amounts to only EUR […] up to […] EUR per passenger, based on approximately […] million passengers on the four overlapping routes in 2019 which is unlikely to be (i) fully passed on to consumers, in particular in the light of the limited competitive constraint the merged entity would face as explained in section 8, and (ii) sufficient to offset adverse price effects as it amounts to only approximately [0-5]-[0-5]% of the average ticket fare in economy class. Korean Air did not provide a similar quantified assessment of the expected cost savings as efficiencies for cargo. In any case, the fact remains that most of the savings related to cargo are on fixed costs and are therefore less likely to be passed on to consumers rather than simply boosting the profits of the merged entity.

(1320) Finally, as to the verifiability of the efficiency claims, whilst the Parties have provided quantified cost savings and efficiencies for air passengers, these are aggregated either on a worldwide basis or for all Overlap Routes between Korea and the EU as well as the UK. No quantification is provided solely for the EU air passenger routes of concern. As to cargo services, no quantification is provided at all.

9.3. Conclusion on efficiencies

(1321) The Commission concludes that consumer benefits related to network combinations are neither merger-specific, as they are likely to be at least widely achievable by less anti-competitive alternatives, nor offset the adverse effects on passengers on the Overlap Routes.

(1322) With respect to the cost savings indicated by Korean Air, the Commission acknowledges that some cost savings may be merger-specific and could benefit affected consumers, to the extent these would be passed-on. However, these cost savings are likely to only materialize in the medium to long run, which makes them inherently less likely to be passed on to affected consumers.[2092] In any event, these cost savings are unlikely to be sufficient to offset the harm caused by the Transaction.

(1323) With respect to the efficiencies related to air cargo, the Commission acknowledges that some of these efficiencies can be in principle merger-specific, but concludes that these efficiencies are unlikely to benefit the affected consumers, as they mostly relate to fixed costs that are less likely to be passed on, and are not verifiable, as the Commission cannot be reasonably certain that these efficiencies are likely to

[2092] Horizontal Merger Guidelines, paragraph 86: '*In general, the longer the start of the efficiencies is projected into the future, the less probability the Commission may be able to assign to the efficiencies actually being brought about.*'

materialise and be substantial enough to offset the adverse effects of the Transaction on the affected markets.

(1324) In sum, the Commission concludes that the efficiencies claimed do not sufficiently fulfil all criteria of merger-specificity, to the benefit of affected consumers and verifiability, as well as are not sufficient, such that these efficiencies can be considered as offsetting the adverse effects of the Transaction.

10. OTHER ASPECTS

10.1. Delayed integration of the Parties' businesses

(1325) Korean Air has explained that it will take approximately two years to fully integrate the Parties' operations. In addition, Korean Air would avoid a substantial corporate income tax burden if closing is delayed. Accordingly, Korean Air intends to operate Asiana as a separate subsidiary for two years. According to Korean Air, unless Korean Air and Asiana are regarded as a single business unit under the Korean laws, Korean Air and Asiana will be prohibited from anti-competitively coordinating their fare, seat capacity, transaction terms vis-à-vis consumers and business partners even after the closing of the Transaction until the two entities are fully integrated.[2093] Korean Air implies that there cannot be anti-competitive effects for two years because the Korean competition authority could intervene against collusive behaviour between Korean Air and Asiana during that period, leading to "*significant legal risk including potential criminal penalties*".[2094]

(1326) The Commission considers that any delayed integration of the Parties' business operations has no bearing on its findings of competition concerns in this case. Upon closing of the Transaction, Korean Air will hold sole control over Asiana. Moreover, it will take part in the profits of Asiana in proportion with its shareholding and therefore benefit also from profit achieved with customers that switch away from Korean Air to Asiana. This would align their commercial incentives and lead to a dampening of competition between them, irrespective of any collusive acts. In addition, Korean Air has not substantiated further how high the likelihood is of the Korean competition authority initiating antitrust proceedings against the two parties of a merger that it has just approved – which *prima facie* appears to be low. Korean Air has not been able to identify a precedent case by the Korean competition authority in this respect.[2095] Furthermore, the Korean competition authority itself has identified competition concerns in this case, indicating that the Korean competition authority itself does not consider any antitrust powers it may have over the Parties before full integration of their business activities to be sufficient to eliminate all competitive harm from the Transaction.

(1327) Furthermore, even if there was delay in bringing about the full negative effects of the Transaction, which is unlikely to be the case for the reasons set out in paragraph (1326), the Transaction would nonetheless impede effective competition at that delayed time and accordingly be incompatible with the internal market and the functioning of the EEA Agreement.

10.2. Comity considerations

(1328) The principle of comity is part of the agreement between the European Community and the Government of Korea concerning cooperation on anti-competitive activities

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2093 Form CO, paragraph 2.

2094 Form CO, footnote 3.

2095 Reply to RFI9, question 1.

(EC-Korean Agreement (ECKA))[2096]. It reflects the broad concept of mutual respect among equal sovereign entities[2097] and enshrines the principle that the competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities.[2098]

(1329) In that respect, Article 5(2) ECKA foresees that if a specific enforcement activity envisaged by a competition authority of one Party may affect the important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours: (a) to provide to the other Party timely notice of significant developments relating to the interests of the latter; (b) to give the other Party an opportunity to provide comments; and (c) to take into consideration the comments of the other Party, while fully respecting the independence of each Party to make its own decision. The Commission in line with these procedural obligations has (i) given the Government of Korea the opportunity to provide comments in meetings before the issuing of this Decision; has (ii) taken note of a briefing paper submitted by Korean Air which "explains the Korean public interests which are driving the proposed acquisition by Korean Air Lines Co., Ltd (Korean Air) of sole control of Asiana Airlines Incas"[2099] and has (iii) taken note of "KDB's Opinion on Korean Air's Acquisition of Asiana Airlines" which has also been submitted by Korean Air.[2100]

(1330) According to Article 5(3) ECKA, where either Party considers that enforcement activities by its competition authority may adversely affect the important interests of the other Party, the Parties should consider the relative significance of the effects of the anti-competitive activities on the enforcing Party's important interests as compared to the effects on the other Party's important interests in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests. The Commission confirms that the effects of possible enforcement measures on the interests of the Korean Government have been considered as part of the competitive assessment of the Transaction, in particular with respect to (i) the counterfactual[2101], and (ii) the efficiencies stemming from the Transaction[2102].

11. CONCLUSION

(1331) For the reasons set out above, the Commission concludes that the Transaction would significantly impede effective competition with respect to passenger air services on the routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN because the Transaction would create a dominant position in the relevant markets.

(1332) Furthermore, the Commission concludes that the Transaction would significantly impede effective competition in relation to air cargo services on the route Europe-South Korea and the route South Korea-Europe because the Transaction would create a dominant position in the relevant markets. In any event, the Transaction would also give rise to horizontal non-coordinated effects in relation to air cargo services on the

2096 Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities, OJ L 202, 4.8.2009, p. 36–4/.

2097 https://www.oecd.org/daf/competition/mou-inventory-provisions-on-negative-comity.pdf. For a recent reference made by the Commission to the comity principle, see Case T-399/19, Polskie Górnictwo Naftowe i Gazownictwo S.A./Commission, 2 February 2022, paras. 68 and 70.

2098 Article 5(1) ECKA.

2099 See Annex 53 to the Form CO – Comity Briefing Paper.

2100 „KDB's Opinion on Korean Air's Acquisition of Asiana Airlines" submitted to the Commission by Korean Air per e-mail of 19 September 2022.

2101 See section 8.4.

2102 See section 9.

route Europe-South Korea and the route South Korea-Europe, resulting from the elimination of an important competitive constraint.

12. COMMITMENTS

(1333) In order to render the Transaction compatible with the internal market in relation to both (i) the markets for passenger air services on the routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN, and (ii) the markets for air cargo services on the routes Europe-South Korea and South Korea-Europe, Korean Air submitted commitments pursuant to Article 8(2) of the Merger Regulation.

(1334) In order to address the concerns related to the markets as indicated above, those commitments are divided into the "Passenger Commitments" and the "Cargo Commitments". The two different sets of commitments will be assessed separately in sections 12.2 and 12.2.5 below.

12.1. Analytical framework

12.1.1. Overview

(1335) When a concentration raises competition concerns because it would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger. The commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective in all respects. In assessing whether proposed commitments are likely to eliminate the competition concerns identified, the Commission considers all relevant factors including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the markets in which the competition concerns arise, including the position of the parties and other participants on the markets.[2103]

12.1.2. Elimination of all identified competition concerns

(1336) The Commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view.

(1337) Regarding the exact form of the commitments, the General Court has pointed out that, while the Merger Regulation lays down the principle whereby the Commission may authorise a merger only if the proposed commitments address the competition concerns identified, it "*leaves it a wide discretion as to the form which the commitments in question may take.*"[2104] Commitments may be structural in nature, such as the commitment to divest a certain business unit. It may also be however, that other types of commitments are capable of preventing the significant impediment to effective competition.[2105] In particular, other types of structural commitments may be

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2103 See Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("the Remedies Notice"), paragraphs 5, 9, and 12 (OJ 2008/C 267/01).

2104 Case T-177/04 easyJet v Commission [2006] ECR II-1913, paragraph 197: "Article 6(2) of Regulation No 4064/89 provides that the Commission may authorise a merger if the commitments proposed by the parties dispel the serious doubts as to the compatibility of the merger with the common market. Regulation No 4064/89 thus lays down the objective to be achieved by the Commission, but leaves it a wide discretion as to the form which the commitments in question may take."

2105 Remedies Notice, paragraph 15.

suitable to resolve all types of concerns if they are equivalent to divestitures in their effects.[2106]

(1338) As regards divestitures, the Remedies Notice sets out that the divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the Merged Entity on a lasting basis and that is divested as a going concern. For the business to be viable, it may also be necessary to include activities which are related to markets where the Commission did not identify competition concerns if this is required to create an effective competitor in the affected markets.[2107] The business has to include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which is currently employed or which is necessary to ensure the business' viability and competitiveness.[2108] In the description of the business, the Parties also have to set out the arrangements for the supply of products and services by them to the divested business or by the divested business to them. Such on-going relationships of the divested business may be necessary to maintain the full economic viability and competitiveness of the divested business on a transitional basis.[2109] The business to be divested has to be viable as such. Therefore, the resources of a possible or even presumed future purchaser are not taken into account, in principle, by the Commission at the stage of assessing the remedy. The situation is different if already during the procedure a sale and purchase agreement with a specific purchaser is concluded whose resources can be taken into account at the time of the assessment of the commitments.[2110] A divestiture consisting of a combination of certain assets which did not form a uniform and viable business in the past creates risks as to the viability and competitiveness of the resulting business. Such an approach may be accepted by the Commission only if the viability of the business is ensured notwithstanding the fact that the assets did not form a uniform business in the past.[2111]

(1339) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market.[2112] In general, there are three ways to ensure that the business is transferred to a suitable purchaser. First, the business is transferred within a fixed time-limit after adoption of the decision to a purchaser which is approved by the Commission on the basis of purchaser requirements set out in the commitments. Second, in addition to the conditions set out for the first category, the commitments may foresee that the parties cannot complete the notified operation before having entered into a binding agreement with a purchaser for the business, approved by the Commission (so-called 'upfront buyer'). Third, the parties identify a purchaser for the business and enter into a binding agreement already during the Commission's procedure (so-called 'fix-it-first' remedy).[2113] The Commission welcomes fix-it-first remedies in particular in cases where the identity of the purchaser is crucial for the effectiveness of the proposed remedy. This concerns cases where, given the circumstances, only very few potential purchasers can be considered suitable, in particular as the divested business is not a viable business in itself, but its viability will

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2106 Remedies Notice, paragraph 17. In its judgment in Case T-177/04 easyJet v. Commission [2006] ECR II-1931, paragraph 183, the Court held that with regard to the divestiture of slots, Commitments offered by the parties "*may be regarded as structural*".

2107 Remedies Notice, paragraph 23.

2108 Remedies Notice, paragraph 25.

2109 Remedies Notice, paragraph 28.

2110 Remedies Notice, paragraph 30.

2111 Remedies Notice, paragraph 37.

2112 Remedies Notice, paragraph 47.

2113 Remedies Notice, paragraph 50.

only be ensured by specific assets of the purchaser, or where the purchaser needs to have specific characteristics in order for the remedy to solve the competition concerns.[2114]

(1340) For mergers in the air transport sector, the Commission has previously clarified that "*in air transport mergers, a mere reduction of barriers to entry by a commitment of the parties to offer slots on specific airports may not always be sufficient to ensure the entry of new competitors on those routes where competition problems arise and to render the remedy equivalent in its effects to a divestiture*".[2115] Rather, the Commission has found in previous assessments of airline mergers that: "*In airline cases, commitments are acceptable to the Commission where it is sufficiently likely that actual entry by new competitors will occur and where such entry would eliminate any serious doubts as to the compatibility of the concentration with the internal market*." This principle corresponds to the assessment of entry as a competitive constraint on the merging parties. As stated in paragraph 68 of the Horizontal Merger Guidelines, "*for entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.*"[2116]

(1341) Concerning the sufficient likelihood of entry, in the case of air transport mergers, the Court previously held that "*the mere threat of an entry […] is not sufficient. […] What counts is the prospect of an entrant which offsets the anti-competitive effects specifically established in the contested decision […].*"[2117] As to a timely entry, what constitutes an appropriate time period may depend on the characteristics and dynamics of the market, as well as specific capabilities of potential entrants.[2118] While in its past airline cases, the Commission held that an entry occurring within the next two years may be considered as timely,[2119] what constitutes a "timely entry" has to be assessed for each case individually.

12.1.3. Capable of being implemented effectively within short period of time

(1342) Commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.[2120] The Commission has to be able to conclude with the requisite degree of certainty that it will be possible to implement the commitments and that it is likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise.[2121]

(1343) The requisite degree of certainty concerning the implementation of the proposed commitments may in particular be affected by risks in relation to the transfer of a business to be divested, such as conditions attached by the parties to the divestiture, third party rights in relation to the business or the risks of finding a suitable purchaser, as well as risks in relation to the degradation of the assets in the time before the divestiture has taken place.[2122]

2114 Remedies Notice, paragraph 57.

2115 See Case M.7541 – *IAG/Aer Lingus*, footnote 458.

2116 The three characteristics of entry, i.e. likely, timely and sufficient are cumulative.

2117 Case T-342/07 – *Ryanair Holdings plc v. Commission*, paragraph 239.

2118 Horizontal Merger Guidelines, paragraph 74.

2119 See e.g. Cases M.6796 – *Aegean/Olympic II*, paragraph 243; M.6447 – *IAG/bmi*, paragraph 271, where an entry in the next IATA season on the London-Basel route was deemed timely.

2120 Remedies Notice, paragraph 9.

2121 Remedies Notice, paragraph 10.

2122 Remedies Notice, paragraph 11.

12.2. Passenger Commitments

12.2.1. Description of the Commitments

(1344) In order to render the Transaction compatible with the internal market in relation to the markets for air passenger services on the routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN, Korean Air submitted first passenger commitments pursuant to Article 8(2) of the Merger Regulation on 3 November 2023, while the time limit for a decision set in Article 10(3) of the Merger Regulation was suspended. The Commission did not market test those commitments during the period when the time limits were suspended.

(1345) On 5 December 2023, the day on which the deadline suspension expired, Korean Air submitted second passenger commitments ("the Passenger Commitments of 5 December 2023"). The Commission proceeded to market test the Passenger Commitments of 5 December 2023 on 6 December 2023. The Passenger Commitments of 5 December 2023 contained the following provisions:

(1346) With regards to air passenger transport services, Korean Air committed to make available several assets necessary to procure the entry by a passenger remedy taker on the four Passenger Overlap Routes ('Passenger Remedy Routes'). These assets include (i) slots for take-off and landing at Incheon airport and at BCN, FRA, CDG and FCO airports; (ii) traffic rights required to operate the Passenger Remedy Routes, and (iii) Trans-Siberian ('TSR') overflight rights. The number of slots, traffic rights and TSR rights Korean Air committed to make available would allow the remedy taker to operate the same level of services as Asiana's level of services pre-Covid19 (i.e. 20 weekly frequencies in the IATA Winter seasons and 23 weekly frequencies in the IATA Summer seasons on all Overlap Routes together).

(1347) In addition, Korean Air committed to conclude with the remedy taker agreements for (i) […] ('Remedy Aircraft') for a transitional period of […] years with a possibility to extend the lease for another […] years, and sublease to the passenger remedy taker up to […] ('Sublease Aircraft') for a period that would be discussed and agreed between the Remedy Taker and Korean Air, provided that the passenger remedy taker fails to procure such aircraft independently; (ii) the temporary secondment of trained flight crew with a licence to operate the Remedy Aircraft for a transitional period of […] (and a possible extension for […]) as well as access to […] model aircraft flight simulators for training, (iii) maintenance, repair and overhaul ('MRO') support for the Remedy Aircraft during the leasing period of such aircraft.

(1348) Korean Air proposed the South Korean low-cost carrier T'way Air Co., Ltd ('T'way') as the passenger remedy taker. T'way has a primary hub at ICN and operational hubs at Gimpo International Airport and Daegu International Airport. It was founded in 2010, acquiring the assets of the bankrupt Hansung Airlines (which operated between 2005 and 2008).[2123] T'way's fleet comprises of more than 30 aircraft. Currently T'way operates approximately 60 short- and mid-haul routes to a number of countries that include Japan, China, Hong-Kong, Taiwan, Thailand, Philippines, Vietnam, Laos, Guam (USA), Saipan (USA), Mongolia, and Singapore. In 2022, T'way also started long-haul operations, its first destination being Sydney (Australia), and since June 2023 it started operations to Bishkek (Kyrgyzstan). T'way is willing to enter all Passenger Remedy Routes with direct air passenger services as part of its strategy to become a global network carrier that operates multiple aircraft models.

[2123] Briefing paper submitted by T'way on T'way as a remedy taker, page 1.

(1349) On 7 December 2023,[2124] Korean Air and T'way entered into an Entry Commitment Agreement, pursuant to which T'way committed to enter the Passenger Remedy Routes in accordance with an agreed entry schedule for 20 weekly frequencies in IATA Winter seasons and 23 weekly frequencies in IATA Summer seasons, and to remain operating on the Passenger Remedy Routes for a period of at least four IATA seasons as of IATA Winter season 2024-2025 until the last day of the IATA Summer season 2026 ('Entry Commitment Agreement').

(1350) According to the Commitments of 5 December 2023, completion of the Transaction can only take place after T'way has entered on all Passenger Remedy Routes, meaning that (i) it operates a specific number of services on the basis of the entry schedule on each of the Passenger Remedy Routes; (ii) is selling tickets in relation to all Passenger Remedy Routes for at least the ongoing IATA season, the IATA Winter season 2024/2025 and the IATA Summer season 2025.

(1351) Korean Air also proposed to appoint an independent external advisor, the costs of which will be borne by Korean Air, to assist the Commission in the assessment of the Commitments, the Entry Commitment Agreement, and the viability and suitability of T'way as the passenger remedy taker. On 9 November 2023, the advisory services firm Mazars LLP was appointed as the independent advisor ('Independent Advisor').

(1352) Following the market test and the Independent Advisor's report, on 9 January 2024, Korean Air submitted a final set of commitments related to passenger air transport services, in which it made limited revisions, based on issues identified by the Independent Advisor, including, for example a commitment to offer […];[2125] a commitment to prioritise the Passenger Remedy Taker over any other new customers seeking flight simulator access, and a commitment allowing for a shorter […] notice period for the Passenger Remedy Taker to request an extension of the duration of the Remedy Aircraft Lease. On the same date (i.e. 9 January 2024), Korean Air and T'way amended the Entry Commitment Agreement to take account of these revisions.[2126]

12.2.2. Commission's assessment of the Passenger Commitments

(1353) For the reasons set out below, the Commission considers that the Passenger Commitments submitted by Korean Air, as amended on 9 January 2024 ('the Passenger Commitments' or 'the Proposed Passenger Commitments'),[2127] are suitable to eliminate the competition concerns identified in relation to the passenger air transport services.

(1354) First, the Proposed Passenger Commitments ensure the timely and likely entry of the Passenger Remedy Taker.

(1355) In the first place, similar to a fix-it-first remedy,[2128] the Parties identify the Passenger Remedy Taker and entered into a binding agreement with it already during the Commission's procedure. This allowed the Commission to assess and ensure that the Passenger Remedy Taker is suitable and will be able to enter and operate as a competitive force on the Passenger Overlap Routes, pursuant to the standards set in the

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2124 This Entry Commitment Agreement constituted an amendment to and restatement of the existing agreement between Korean Air and T'way dated 2 November 2023, and the execution of this Entry Commitment Agreement would replace the 2 November 2023 agreement.

2125 […].

2126 This agreement constitutes an amendment to and restatement of the existing agreement between Korean Air and T'way dated 2 November 2023 and 7 December 2023, and with the execution of this agreement, this agreement will replace the previous agreements in their entirety.

2127 As explained in paragraph (1352), the changes between the Passenger Commitments of 5 December and the Passenger Commitments of 9 January were limited, they are assessed together.

2128 Remedies Notice, paragraph 50 et seq.

Remedies Notice and the Passenger Commitments (see further detail in section 12.2.3 below). As explained in section 12.2.3, the Commission, with the assistance of the Independent Advisor, assessed T'way's financial viability and the viability of its business plan for the Passenger Remedy Routes, and considers that T'way has sufficient financial resources, proven relevant expertise and the incentive and ability to operate as a competitive force on the Overlap Routes. The Commission considers that T'way's proven relevant expertise and the fact it has a viable business plan in place for the Overlap Routes considerably increases the likelihood of a timely entrance by T'way. Contrary to commitments accepted in some of the previous airline mergers assessed by the Commission, where despite interest in the remedies expressed by market participants during the Commission's market test, the slots offered as part of the commitments were not taken by any applicants, or were taken only partially,[2129] in the current case, the Passenger Remedy Taker is not only identified and confirmed as a viable entrant, but has also entered into a binding agreement with Korean Air in which it commits to enter and operate on the Overlap Routes for a duration of at least four IATA seasons, thus demonstrating its strong commitment to enter and compete on the Passenger Remedy Routes.

(1356) Indeed, the majority of airlines as well as slot coordinators and airport managers expressing a view in reply to the Commission's market test consider that the identification of the Passenger Remedy Taker increases the likelihood of timely and sufficient entry of the Passenger Remedy Taker on the Passenger Remedy Routes.[2130]

(1357) In the second place, the Passenger Commitments go beyond traditional fix-it-first or upfront-buyer remedies as the closing of the Transaction between Korean Air and Asiana is subject to the Passenger Remedy Taker (i) operating a minimum level of services on all four routes for one month and (ii) selling tickets on all Passenger Remedy Routes for at least the ongoing IATA season, the IATA Winter season 2024/2025 and the IATA Summer season 2025. Korean Air has also committed to enforce the Entry Commitment Agreement with T'way, which provides Korean Air with means to enforce that the Overlap Routes will be operated for a minimum defined set of frequencies over at least four IATA seasons. The Commission considers that this provides further comfort that the Passenger Remedy Taker's start of operations on all Passenger Remedy Routes should be sufficiently robust. Moreover, under the Passenger Commitments, the Commission will assess whether the completion conditions were fulfilled appropriately and adopt a decision before the Transaction can close. In this respect, the Passenger Commitments shift the risk of T'way's non-entry to the Parties.

(1358) In this respect, the majority of slot coordinators and airport managers expressing a view in reply to the Commission's market investigation consider that making the closing of the Transaction conditional on the Passenger Remedy Taker operating and selling tickets on all Passenger Remedy Routes increases the likelihood of timely and sufficient entry of the Passenger Remedy Taker on the Passenger Remedy Routes, while the majority of airlines expressing a view in reply to the Commission's market investigation consider that the likelihood of timely and sufficient entry of the Passenger Remedy Taker on the Passenger Remedy Routes has increased due to making the closing of the Transaction conditional on the Passenger Remedy Taker

2129 See, for example, case M.3280 - Air France/KLM.

2130 Replies to questions B.11-B.12 of market test questionnaire MT1 to competitors and potential entrants; replies to question B.14 of market test questionnaire MT3 to slot coordinators and airport managers.

selling tickets on all Passenger Remedy Routes or the Passenger Remedy Taker signing a binding commitment to operate the remedy routes.[2131]

(1359) Second, the Passenger Commitments include a comprehensive package of rights and assets that would allow the Passenger Remedy Taker to compete effectively with the merged entity, meaning that its entry would be sufficient to eliminate the competitive concerns identified in relation to air passenger transport services.

(1360) In the first place, the number of offered slots, traffic rights and TSR overflight rights would enable the proposed remedy taker to operate air passenger transport services on each of the four Passenger Remedy Routes at the level of Asiana's pre-Covid19 operations (i.e. 23 weekly frequencies in the IATA Summer season and 20 weekly frequencies in the IATA winter season).

(1361) In the second place the transitional agreements regarding temporary aircraft lease, trained crew secondment and MRO services provide additional elements of support to the passenger remedy taker and ensure that it has the necessary aircraft and service arrangements in place to commence its air passenger transport operations on the basis of the agreed entry schedule.[2132]

(1362) In the third place, while the respondents to the Commission's market test provided mixed feedback on the effectiveness of the Passenger Commitments, the Independent Advisor carried out a thorough review of the Passenger Commitments and came to a positive conclusion. Further details are set out in the following paragraphs.

(1363) Views of market participants replying to the Commission's market test were mixed with respect to the effectiveness of the Passenger Commitments and the sufficiency of the rights and assets offered to the Passenger Remedy Taker. The majority of customers, tour operators and travel agents, as well as the majority of slot coordinators and airport managers, expressing a view in reply to the Commission's market test, considered the commitments overall suitable to effectively remove all competition concerns related to air passenger transport services, that may arise as a result of the Transaction.[2133] While all slot coordinators and airport managers expressing a view considered that the slots and traffic rights offered by Korean Air include all rights that are necessary to operate viable and competitive air passenger transport services on the Passenger Remedy Routes,[2134] a majority of customers, tour operators and travel agents did not take a firm view on whether the total number of frequencies that could be operated with the slots and traffic rights offered by Korean Air would enable the Passenger Remedy Taker to operate as a viable and competitive force on the Passenger Remedy Routes at a sufficient scale,[2135] nor whether the Remedy Aircraft, MRO support, crew support and Sublease Aircraft are appropriate so that the Passenger Remedy Taker could operate independent, viable and competitive air passenger services on the Passenger Remedy Routes.[2136] Views of airlines replying to the Commission's market test were mixed with respect to the question whether the Passenger Commitments are overall suitable to effectively remove all competition

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2131 Replies to questions B.13-B.14 of market test questionnaire MT1 to competitors and potential entrants; replies to question B.16 of market test questionnaire MT3 to slot coordinators and airport managers.

2132 See further assessment in section 12.2.4 below.

2133 Replies to question B.7 of the market test questionnaire MT2 to customers, tour operators and travel agents; replies to question B.8 of the market test questionnaire MT3 to slot coordinators and airport managers.

2134 Replies to question C.A.1 of the market test questionnaire MT3 to slot coordinators and airport managers.

2135 Replies to question C.A.1 of the market test questionnaire MT2 to customers, tour operators and travel agents.

2136 Replies to question C.B.1 of market test questionnaire MT2 to customers, tour operators and travel agents.

concerns related to air passenger transport services that may arise as a result of the Transaction, although it seems that some of the negative views were at least partially driven by the respondents' wish that the remedies should instead provide additional rights to them, rather than to the Passenger Remedy Taker.[2137] Airlines' views were also mixed with respect to the questions whether the slots and traffic rights offered by Korean Air include all rights that are necessary to operate viable and competitive air passenger transport services on the Passenger Remedy Routes, although it seems that at least with respect to slots and traffic rights, airlines expressing a view considered them to be comprehensive, with some concerns expressed with respect to the transferability of TSR overflight rights.[2138] The majority of airlines expressing a view considered that the total number of frequencies that could be operated with the slots and traffic rights offered by Korean Air would enable the Passenger Remedy Taker to operate as a viable and competitive force on the Passenger Remedy Routes at a sufficient scale.[2139] Airlines' views were mixed with respect to the question whether the Remedy Aircraft, MRO support, crew support and Sublease Aircraft are appropriate so that the Passenger Remedy Taker could operate independent, viable and competitive air passenger services on the Passenger Remedy Routes.[2140]

(1364) In light of the mixed (and sometimes lack of) views expressed by market participants in reply to the Commission's market test, the report of the Independent Advisor,[2141] appointed by Korean Air to assist the Commission in the assessment of the Commitments, the Entry Commitment Agreement, and the viability and suitability of T'way as the passenger remedy taker ('Independent Advisor's report'), provides reassurance as to the comprehensiveness of the Proposed Passenger Commitments and whether they would allow sufficient entry by the Passenger Remedy Taker. The Independent Advisor assessed the sufficiency of the different elements included in the Passenger Commitments. In its report, the Independent Advisor concluded that the Remedy Aircraft Lease, crew and MRO support from Korean Air to T'way are sufficient to support T'way's entry and operations on the Remedy Routes.[2142] In addition, in the context of its assessment of the viability and suitability of T'way as the Passenger Remedy Taker, the Independent Advisor considers that overall, the four Passenger Remedy Routes are attractive to T'way, the Passenger Remedy Taker, and likely to be sustainable (further details on the Independent Advisor's assessment in this respect are provided under section 12.2.3).[2143] In this respect, the Independent Advisor did not identify additional rights or assets that are missing from Korean Air's offer pursuant to the Passenger Commitments and would be required to allow the Passenger Remedy Taker to compete effectively with the merged entity. The Independent Advisor further concludes that the process for Slot transfers in the Passenger Commitments is conducive to T'way ability to obtain the Slots necessary to operate the Remedy Routes in accordance with the Entry Schedule.[2144] With respect to the transfer of traffic rights and TSR overflight rights, the Independent Advisor

2137 Replies to question B.7 of market test questionnaire MT1 to competitors and potential entrants.

2138 Replies to questions C.A.1 and C.A.2 of market test questionnaire MT1 to competitors and potential entrants.

2139 Replies to questions C.A.3 and C.A.4 of market test questionnaire MT1 to competitors and potential entrants.

2140 Replies to question C.B.1 of market test questionnaire MT1 to competitors and potential entrants.

2141 Independent Advisor's report to the European Commission on the sufficiency of the remedies offered by Korean Air Ltd., Co in connection with its proposed acquisition of Asiana Airlines, Inc, dated 18 December 2023.

2142 Independent Advisor's report, paragraphs 38, 39, 46.

2143 Independent Advisor's report, paragraph 18.

2144 Independent Advisor's report, paragraph 500.

considers that in principle, the proposed procedure for the Passenger Remedy Taker to obtain the necessary traffic rights and TSR overflight rights to operate the Passenger Remedy Routes is suitable, however, the transfer process is dependent on the procedures to be established by MOLIT, which are yet to be determined (see further discussion in paragraph (1366) below).[2145]

(1365) Third, the Passenger Commitments set Passenger Remedy Taker criteria which add additional requirements compared to the standard purchaser requirements set in paragraph 48 of the Remedies Notice. In addition to the three standard requirements, clause 47(c) of the Passenger Commitments adds that in order to be approved by the Commission, the Passenger Remedy Taker "*shall be an existing airline with the ability to operate a hub and spoke network from ICN*". This additional requirement strengthens the Passenger Commitments by ensuring that the remedy taker will have a suitable profile, allowing it to compete effectively with the merged entity on the Remedy Routes.

(1366) Fourth, the Ministry of Land Infrastructure and Transport ('MOLIT') of the Republic of Korea has affirmed to the Commission its position to actively support the implementation of the Passenger Commitments. While the EU Slot Regulation allows for a transfer or exchange of slots between airlines under certain conditions, including at the request of public authorities pursuant to the Merger Regulation,[2146] the Republic of Korea's rules on allocation of slots currently do not allow for a transfer of slots from the Parties to the Passenger Remedy Taker as envisaged in the Passenger Commitments. Similarly, procedures must be established to allow for the transfer of traffic rights and TSR overflight rights from the Parties to the Passenger Remedy Taker pursuant to the Passenger Commitments. MOLIT's affirmation of its position is therefore important to allow the effective implementation of the Passenger Commitments. In any event, as explained above, the closing of the Transaction is subject to the Passenger Remedy Taker operating a certain level of services on the route, meaning that the Transaction would not close until the slots and traffic rights are transferred to the Passenger Remedy Taker. Therefore, it is Korean Air who will bear the risk in case the required changes are not implemented by MOLIT.

(1367) Fifth, the Commission confirmed with the Korean Fair Trade Commission ('KFTC') the compatibility of the Commitments with the remedies imposed by the KFTC.

12.2.3. Assessment of the suitability of the Passenger Remedy Taker

(1368) In clause 47 of the Passenger Commitments Korean Air names T'way as the proposed Passenger Remedy Taker and requests the Commission to approve T'way as the Passenger Remedy Taker and to approve the Entry Commitment Agreement concluded between Korean Air and T'way in the Decision.

(1369) For the reasons set out below, the Commission considers that T'way is a suitable remedy taker, in line with the provisions of clause 48 of the Passenger Commitments of 9 January 2024. The Commission therefore approves T'way as the remedy taker for the Passenger Commitments of 9 January 2024.

12.2.3.1. Framework of the Commission's assessment of the Remedy Taker

(1370) Paragraph 56 of the Remedies Notice provides for situations when Parties identify and enter into an agreement with a buyer outlining the essentials of the purchase during the Commission procedure (fix-it-first remedy). In this case, the Commission will be able

2145 Independent Advisor's report, paragraphs 535-538.

2146 EU Regulation 95/93 on common rules for the allocation of slots at Community, ('EU Slot Regulation'), Article 8b.

to decide in the final decision whether the transfer of the divested business to the identified purchaser will remove the competition concerns. Under the fix-it-first assessment, if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.

(1371) The standard purchaser requirements are set in paragraph 48 of the Remedies Notice: (i) the purchaser is required to be independent of and unconnected to the parties, (ii) the purchaser must possess the financial resources, proven relevant expertise and have the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors, and (iii) the acquisition of the business by a proposed purchaser must neither be likely to create new competition problems nor give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested. According to paragraph 49 of the Remedies Notice, these standard requirements may have to be supplemented on a case-by-case basis.

(1372) Clause 47 of the Passenger Commitments sets the following criteria, which the Passenger Remedy taker must fulfil in order to be approved by the Commission: "*(a) The Passenger Remedy Taker shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the implementation of these Passenger Commitments). (b) The Passenger Remedy Taker shall have the financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes; (c) The Passenger Remedy Taker shall be an existing airline with the ability to operate a hub and spoke network from ICN; and (d) The operations on the Remedy Routes by the Passenger Remedy Taker must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Passenger Remedy Taker must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the operations on the Remedy Routes*".

(1373) Against this background, the Commission has assessed the suitability of T'way as the Passenger Remedy Taker and has come to the conclusion that T'way is independent of and unconnected to the Parties (section 12.2.3.2), T'way has the financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes (section 12.2.3.3), T'way is an existing airline with the ability to operate a hub and spoke network from ICN (section 12.2.3.4), the operations on the Remedy Routes by T'way do not create prima facie competition concerns nor give rise to risks of delays (section 12.2.3.5).

12.2.3.2. T'way is independent of and unconnected to the Parties

(1374) T'way Air is a private company not affiliated with any government agency. Its shareholding structure is comprised of a […]% ownership by holding company T'way Holdings and other private investors.[2147]

(1375) Korean Air submits that T'way is fully independent of and unconnected to the Parties, as (i) T'way is not part of the same corporate group as the Parties, and the Parties do not hold an equity stake in T'way; (ii) T'way is not part of the same alliance as either

[2147] As of 28 April 2023, briefing paper submitted by T'way on T'way as a remedy taker, page 1

of the Parties, and (iii) T'way and the Parties do not have existing codeshare or interline agreements.[2148]

(1376) In order to verify T'way's independence of the Parties, the Independent Advisor examined the existence of: (i) any ownership links; (ii) any participation in common joint ventures; (iii) shared executive and non-executive directors; and (iv) commercial agreements.[2149] The Independent Advisor confirms that "*in terms of investments and ownership links, T'way can be considered to be independent and unconnected to Korean Air and Asiana; T'way does not share any executive and non-executive directors with Korean Air and Asiana"*, and that "[n]*o joint-ventures have been identified in which T'way participates with the Parties*".[2150] With respect to (iv), the IA identified one commercial agreement currently in place between Asiana and T'way, […].[2151] However, the Independent Advisor did not consider that this agreement would impair T'way's independence from Asiana.[2152]

(1377) On the basis of the information made available to the Commission, the Commission is of the view that the links between T'way and Asiana are not material and, as a result, T'way is independent and unconnected to the Parties.

12.2.3.3. T'way has the financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes

(1378) Korean Air submits that T'way has the profile, financial resources, proven expertise and capabilities and incentive to maintain and develop the Passenger Remedy Routes as a viable and active competitive force in competition with the Parties and other airlines.[2153]

(1379) In its briefing paper concerning its suitability to be a remedy taker, T'way explained that it initially mainly operated short-haul routes covering Japan, China, and various countries in Southeast Asia. Prior to the Covid19 pandemic, T'way started to plan and execute a more diversified business plan, moving away from the traditional LCC model, to become an airline with a global network operating multiple types of aircraft. T'way went from short to medium haul and finally, starting in December 2022, to long-haul routes, after adding new types of aircrafts to its fleet.[2154] T'way explained that it has been developing a more nuanced approach that puts the airline into the "hybrid" business model – moving from purely "low cost" to "affordable premium" for those increasing numbers of customers with a premium demand but who are cost conscious. According to T'way, this makes the airline attractive for customers searching for a Business Class-product but unwilling to pay traditional Business Class fares.[2155] T'way explained that it has the incentive to enter the Remedy Routes, as it has been planning to expand into Europe since early 2019, and has secured traffic rights to Croatia. According to T'way, the Passenger Commitments offer T'way with a valuable opportunity to enter routes for which the required traffic rights and slots were not available to it.[2156] As explained in section 8.6.3, the lack of slots and traffic rights constitute barriers to entry on the Remedy Routes. These barriers were a major

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2148 Form RM, Annex 2.1 - The suitability of T'way as Passenger Remedy Taker, paragraph 9.
2149 Independent Advisor's report, section 6.
2150 Independent Advisor's report, paragraph 461.
2151 Independent Advisor's report, section 6.5.2.2.
2152 Independent Advisor's report, paragraphs 449 and 462.
2153 Form RM, paragraph 99.
2154 Briefing paper submitted by T'way on T'way as a remedy taker, section 1.
2155 Briefing paper submitted by T'way on T'way as a remedy taker, section 3.1.1
2156 Briefing paper submitted by T'way on T'way as a remedy taker, section 2.1.1

obstacle that prevented T'way from entering these routes, and by means of the Passenger Commitments, these (and other) important obstacles are now removed, allowing T'way to enter the Remedy Routes.

(1380) In the Commission's market test, market participants expressed some doubts with respect to the suitability of T'way as the Passenger Remedy Taker, especially considering the fact that it is a low-cost carrier, while the Parties and other airlines on the route are full service carriers. However, as further explained in the following paragraphs, the Independent Advisor has assessed in detail T'way's business plan for the Overlap Routes and found that it could operate the Overlap Routes sustainably. In addition, the Independent Advisor is well placed to assess the Passenger Remedy Taker's business plan as it has experience in providing business plan reviews in the aviation sector as part of its experience as a monitoring trustee in airline mergers. As the Independent Advisor had access to detailed information that is confidential to T'Way and was therefore not available to market participants, the Commission considers the Independent Advisor's views to be well-founded in fact and therefore reliable.

(1381) In order to verify whether T'way has the financial resources to maintain and develop its operations on the Remedy Routes as a viable and active competitive force, the Independent Advisor reviewed the financial resources of T'way. In this respect, the Independent Advisor conducted a profitability analysis of T'way's historical performance and projected performance, analysed T'way's balance sheets, net debt and cash flows and conducted a sensitivity analysis of T'way's projected margins, revenues and costs. In addition, the Independent Advisor analysed T'way's credit rating, share price, and market capitalisation.

(1382) The Independent Advisor notes that T'way has recovered well post Covid19 pandemic, with margins and profitability […] levels. Furthermore, there are no company-specific concerns or doubts on T'way's ability to generate positive operating cash flows, raise capital and service existing debt. Moreover, T'way has shown that it can successfully introduce new flight routes and expand operations (e.g., flights to Sydney in 2022).[2157] The Independent Advisor considers that T'way has adequate financial resources to implement and sustain the Remedy Routes and has not identified any particular concerns regarding the viability and suitability of T'way as a Remedy Taker. […]. However, the Independent Advisor considers that the four Remedy Routes support T'way in becoming more diversified and potentially becoming more resilient.[2158]

(1383) The Independent Advisor further reviewed T'way's proven expertise, experience and activities. In particular, the Independent Advisor assessed T'way's strategy and experience to operate long haul flights. The Independent Advisor also assessed the incentives of T'way to maintain and develop operations on the four Remedy Routes as a viable and competitive force in competition with the Parties and other competitors.

(1384) With respect to T'way's experience in operating long haul routes, the Independent Advisor notes that T'way launched its first long-haul flight from South Korea to Sydney in December 2022, which was well received by the market. Given the success of the route, T'way increased its frequencies to operate throughout the year, rather than only through the Winter season. The Independent Advisor therefore notes T'way's proven expertise in expanding successfully into new long-haul operations.[2159]

2157 Independent Advisor's report, paragraph 180.

2158 Independent Advisor's report, paragraphs 12 and 182.

2159 Independent Advisor's report, paragraphs 13-15

(1385) With respect to T'way's incentives, the Independent Advisor reviewed T'way's planned entry timing, frequency, capacity and pricing structure; reviewed the importance of network effects on the Remedy Routes, as well as T'way's projected profitability of the Remedy Routes on a combined basis; analysed T'way's business plan for each of the Remedy Routes; conducted a benchmarking analysis of contribution margin of the Remedy Routes to T'way's existing routes; reviewed T'way's incentives to offer belly space capacity; reviewed the transitional support T'way would receive from Korean Air as well as further operational functions which are required for T'way's entry into the Remedy routes. In its route-by-route analysis, the Independent Advisor analysed T'way's revenue projections, variable costs projections and contribution margins for each of the Remedy Routes. The Independent Advisor further conducted sensitivity tests to estimate the impact on contribution margins on each route under plausible downside scenarios. While the results of that analysis cannot be included in detail in this Decision, due to the confidential nature of the data on which it is based, the Independent Advisor notes that, as the market for low-cost carriers is becoming saturated in Korea, […]. […]. Overall, the Independent Advisor considers that the four Remedy Routes allow T'way to diversify its business model and create new growth opportunities and are therefore attractive to T'way and likely to be sustainable.[2160] Overall, the Independent Advisor does not identify any immediate concerns to T'way's incentives to operate the Remedy routes.

(1386) In light of the above, the Commission considers that T'way has sufficient financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes.

12.2.3.4. T'way is an existing airline with the ability to operate a hub and spoke network from ICN

(1387) As set out in paragraph (1348), T'way Air is a South Korean airline based in Incheon, Gimpo, and Daegu. T'way is operating a network of short and mid-haul routes in East Asia and beyond, with approximately 60 short- and mid-haul routes. In 2022 it started long-haul operations, its first destination being Sydney (Australia)[2161] and since June 2023 T'way started operations to Bishkek (Kyrgyzstan).

(1388) T'way confirms that it already sells integrated tickets for flights connecting at its hub at ICN airport.[2162] In addition to connections through its own hub at ICN, T'way has signed an interline agreement with […].[2163]

(1389) In light of the information made available to it, the Commission considers that T'way is an existing airline with the ability to operate a hub and spoke network from ICN.

12.2.3.5. The operations on the Remedy Routes by T'way do not create prima facie competition concerns nor give rise to risks of delays

(1390) In light of the information made available to the Commission, the Commission is of the view that the operation on the Remedy Routes by T'way will not create prima facie competition concerns. T'way is currently not active on any of the Overlap Routes, and, absent the Passenger Commitments, it does not have any concrete plans to enter any of these routes.[2164] From a vertical standpoint, there are no vertical connections between the Parties and T'way that could lead to any vertically affected

2160 Independent Advisor's report, paragraphs 16 and 18.
2161 Briefing paper submitted by T'way on T'way as a remedy taker, section 3.1.2
2162 T'way's reply to question 14 of RFI1 to T'way.
2163 T'way's reply to question 18 of RFI1 to T'way.
2164 T'way's reply to question B.13 of Questionnaire Q3 to potential entrants.

markets.[2165] Therefore, T'way's entry and operations on the Remedy Routes will not lead to any horizontal or vertical overlaps or affected markets.

12.2.3.6. Conclusion on the suitability of the Passenger Remedy Taker

(1391) In the light of the above, the Commission concludes that T'way is a suitable remedy taker for the Passenger Commitments and approves T'way as the Passenger Remedy Taker.

12.2.4. Assessment of the proposed Entry Commitment Agreement

(1392) As explained in paragraphs (1349) (1349)and (1352)(1352) above, Korean Air and T'way concluded a legally binding Entry Commitment Agreement which sets out the terms and conditions implementing the Passenger Commitments (a so called "fix-it-first" solution as described in the Remedies Notice, paragraphs 56-57).

(1393) In the view of the Commission, the Entry Commitment Agreement is compliant with the obligations that Korean Air undertook under the Passenger Commitments and is capable of facilitating the effective implementation of the Passenger Commitments for the reasons set out below.

(1394) First, the contractual object of the Entry Commitment Agreement corresponds to the object of the Passenger Commitments. In particular, Korean Air has committed in the Entry Commitment Agreement to transfer or provide to T'way the assets necessary to operate on the Passenger Remedy Routes, including slots, traffic rights, TSR overflight rights, aircraft, crew and MRO support.[2166]

(1395) Second, under the Entry Commitment Agreement, T'way has contractually committed to start operations on the Passenger Remedy Routes according to the agreed entry schedule for 23 weekly frequencies in IATA Summer seasons and 20 weekly frequencies in IATA Winter seasons.[2167] This contractual obligation of T'way corresponds to Korean Air's commitments under the Passenger Commitments. The timeframe of T'way's commitment to start operations on the Passenger Remedy Routes within the IATA Summer season 2024 and, following entry, continue operations on all four Passenger Remedy Routes for a minimum period of at least 4 IATA seasons (i.e. from the start of the IATA Winter season 2024/2025 until the last day of the IATA Summer season 2026) also corresponds to Korean Air's commitments under the Passenger Commitments.

(1396) Third, the contractual obligations arising under the Entry Commitment Agreement are robust and sufficiently binding upon T'way and Korean Air, because their implementation will be enforced by fast-track arbitration,[2168] in combination with an indemnity clause.[2169] Therefore, the Commission considers that the binding nature of the Entry Commitment Agreement mitigates the risk that the Passenger Remedy Taker does not comply with the entry schedule provided in the Passenger Commitments.

2165 As explained in section 12.2.3.2 above, the agreement between Asiana and T'way is immaterial. As explained in section 12.2.4 below, the support Korean Air will provide to T'way pursuant to the Passenger Commitments is temporary in nature and will not create dependency of T'way on Korean Air.

2166 Entry Commitment Agreement, Section 3.1.

2167 Entry Commitment Agreement, Section 3.2.

2168 Under the Passenger Commitments, Korean Air commits to take any and all steps necessary to seek the enforcement of the commitments of the Passenger Remedy Taker under the Entry Commitment Agreement to continue to operate on all Passenger Remedy Routes during the Minimum Period, in particular by using the fast-track arbitration procedure foreseen in Section E of the Passenger Commitments, and the Passenger Remedy Taker acknowledges and agrees to this in the Entry Commitment Agreement (see Entry Commitment Agreement, clause 3.2 (c)).

2169 Entry Commitment Agreement, clause 12.

(1397) Fourth, the Entry Commitment Agreement contains two types of provisions, i.e. (i) those that are fully binding and cannot be amended, namely the terms and conditions relating to the transfer of slots, traffic rights and TSR overflight rights, and (ii) provisions which relate to the key terms of transitional agreements that will be concluded at a later stage (subject to the approval of the Monitoring Trustee in consultation with the Commission),[2170] namely:

- A dry lease agreement for the Remedy Aircraft;
- A sublease agreement for the Sublease Aircraft (if required);
- A flight crew support agreement, which would include a crew secondment agreement and a simulator access agreement;
- An MRO support agreement.

(1398) The key terms of the transitional agreements as provided in the Entry Commitment Agreement and its Schedules are binding upon Korean Air and T'way. However, Korean Air and T'way are able to amend the key terms of the transitional agreements with a prior approval of the Monitoring Trustee in consultation with the Commission. Moreover, certain non-key provisions of the transitional agreements will be negotiated and agreed between Korean Air and T'way after the adoption of this Decision.

(1399) In the Commission's view, the dual nature of the provisions contained in the Entry Commitment Agreement (i.e. the legally binding provisions which cannot be amended and those that can be amended subject to the Monitoring Trustee's approval) ensures the necessary level of flexibility with regard to T'way's operations on the Passenger Remedy Routes. The fact that T'way will have the ability to propose or request changes to the transitional agreements in the course of negotiations with Korean Air will allow it to achieve the optimal conditions necessary for the effective start of operation on the Passenger Remedy Routes. At the same time, the fact that any changes to the key terms of the transitional agreements will have to be approved by the Monitoring Trustee will ensure that T'way is not put at an undue disadvantage.

(1400) Fifth, the Commission considers that the individual elements of the Entry Commitment Agreement are sufficiently clear and comprehensive in order to ensure an effective implementation of the Passenger Commitments.

(1401) In the first place, in order to ensure the implementation of the Passenger Commitments, the Entry Commitment Agreement foresees the procedures under which T'way should obtain slots, traffic rights and TSR overflight rights. Different slot transfer procedures exist on the EU and South Korea ends of the routes.[2171] The EU Slot Regulation allows for a transfer or exchange of slots between airlines under certain conditions, including at the request of public authorities pursuant to the Merger Regulation,[2172] therefore the Commission considers that the process for slot transfers at the EU airports foreseen in the Entry Commitment Agreement will allow for an effective implementation of the Passenger Commitments. As regards slot, traffic right and TSR overflight right transfer in South Korea, the Commision considers that MOLIT's affirmation to the Commission (see paragraph (1366) above) will allow to effectively implement the provisions of the Entry Commitment Agreement.

2170 Except for the sublease agreement for the Sublease Aircraft, Korean Air and T'way are committed to negotiate and enter into these specific agreements within 8 weeks after the adoption of this Decision. The sublease agreement for the Sublease Aircraft will be negotiated and agreed within […] after T'way's request for such an agreement.

2171 See Commission's explanation in section 12.2.2 above.

2172 EU Slot Regulation, Article 8b.

(1402) In the second place, the Entry Commitment Agreement foresees the key terms and conditions for the Remedy Aircraft lease agreement, which will be negotiated and entered into between Korean Air and T'way within 8 weeks after the adoption of this Decision.[2173] The Commission considers that the key terms and conditions of the Remedy Aircraft lease agreement as contained in the Entry Commitment Agreement correspond to the provisions of the Passenger Commitments and will allow for an effective implementation of the Passenger Commitments.

(1403) More specifically, under the Entry Commitment Agreement, Korean Air is obliged to reconfigure the Remedy Aircraft prior to its delivery to T'way to ensure that the Passenger Remedy Taker is able to use the Remedy Aircraft to offer a competitive passenger air transport service on the Passenger Remedy Routes. T'way will be able to conduct an inspection of each aircraft's condition and documents between the conclusion of the Remedy Aircraft lease and the delivery of the aircraft. The Independent Advisor did not identify any concerns in relation to the Remedy Aircraft reconfiguration conditions or the delivery schedule.[2174]

(1404) The Entry Commitment Agreement includes agreed lease rates for the Remedy Aircraft which T'way will be required to pay Korean Air […].[2175] In order to assess whether the proposed […] lease rates are in line with Korean Air's commitment to lease the Remedy Aircraft to T'way […],[2176] the Independent Advisor analysed the manner in which Korean Air's calculation of […] lease rates […] aligns with market aircraft lease rates. While on the basis of the available market data for similarly aged aircraft, the Independent Advisor acknowledged that the […] lease rates for the Remedy Aircraft lease extension ([…]) are […] the market suggests, on balance the Independent Advisor is of the view that the proposed […] lease rates are reasonable, especially considering (i) the time it would take T'way to source an aircraft lease from the market for operations starting in June 2024 and (ii) the uncertainty of being able to procure suitable aircraft.[2177] Furthermore, in the view of the Independent Advisor, the allotment of the Remedy Aircraft leasing rates ([…]) will provide T'way with incentives to independently source aircraft elsewhere at a better rate.[2178] The Commission therefore considers that on balance the […] lease rates foreseen in the Entry Commitment Agreement correspond to the Passenger Commitments provisions under which the leasing of the Remedy Aircraft has to be provided […]. Moreover, if T'way requests to extend the Remedy Aircraft lease for additional […] years, the extension of the Remedy Aircraft lease agreement will be subject to approval by the Monitoring Trustee, in consultation with the Commission, which then will make sure that T'way is not put at undue disadvantage.

(1405) In addition, the transitional nature of the Remedy Aircraft agreement (i.e. initial term of […] years with a possibility to extend for additional […] years upon T'way's request, subject to the Monitoring Trustee's approval) in the Commission's view does not create a disproportional dependency of T'way on Korean Air. On the contrary, as mentioned above, the […] lease rates foreseen in the entry schedule, in combination with the duration of the Remedy Aircraft lease agreement provide incentives for T'way to procure aircraft elsewhere after the initial term of the lease.

2173 Entry Commitment Agreement, Section 7 and Schedule 3.

2174 Independent Advisor's report, paragraphs 552-554, and 565.

2175 According to Schedule 3 of the Entry Commitment Agreement, the monthly lease rate […].

2176 Passenger Commitments, paragraph 34.

2177 Independent Advisor's report, paragraphs 37-38, 571 and 576-579.

2178 Independent Advisor's report, paragraphs 571, 576-579 and 587.

(1406) On balance, the Commission considers that the key provisions of the Remedy Aircraft lease not only provide T'way with the necessary support for obtaining the infrastructure needed to commence operations on the Passenger Remedy Routes but, also provides incentives to source (use of) aircraft at market rates from other sources, once T'way has established its operational capacity on the Passenger Remedy Routes.

(1407) In the third place, the Entry Commitment Agreement foresees that in order to fulfil the required ramp-up of operations, T'way may also sublease […] from Korean Air if it is unable to obtain the aircraft in the market.[2179] According to the Entry Commitment Agreement, the Sublease Aircraft will be subleased in as-is condition and the sublease rate will be based on the currently applicable lease rate but will be subject to further adjustments by Korean Air and T'way, provided that the applied sublease rate will […]. The exact duration of the sublease agreement shall be discussed and agreed between Korean Air and T'way at the time of concluding the sublease. Korean Air and T'way will negotiate and enter into the sublease on the basis of fair and reasonable terms within […] after T'way's request.

(1408) The Commission considers that the possibility to enter into a sublease for additional […] aircraft offers T'way a fall-back option in case it needs such aircraft for the viability of its operations and is not able to acquire such aircraft on the market. The Entry Commitment Agreement does not provide the key terms of this transitional agreement, therefore, once negotiated, the sublease agreement will be subject to approval by the Monitoring Trustee, in consultation with the Commission.

(1409) In the fourth place, the Entry Commitment Agreement foresees the key terms and conditions for the crew support agreements, which will be negotiated and entered into between Korean Air and T'way within 8 weeks since this Decision.[2180] The crew support consist of (i) the agreement to temporarily second to T'way up to […] flight crew licensed to operate […] aircraft and (ii) the paid rental agreement to access […] aircraft flight simulators for training. The Commission considers that the key terms and conditions of the crew support transitional agreements as contained in the Entry Commitment Agreement correspond to the provisions of the Passenger Commitments and will allow for effective implementation of the Passenger Commitments.

(1410) As for the crew secondment, Korean Air will transfer to T'way […] and […] per leased Remedy Aircraft (i.e. […] crew). This will be a temporary arrangement, i.e. […] with a possibility to extend crew support […], whilst T'way trains and develops its own crew capability internally. The crew support agreement can be terminated by T'way subject to a notice period of […]. The Independent Advisor notes that in its view the envisaged duration of the crew support will be sufficient to ensure T'way's successful entry as per the agreed entry schedule.[2181] The Commission therefore considers that the timeframe of the temporary crew support is sufficient in order to enable T'way establish its operations on the Passenger Remedy Routes. At the same time, the possibility to terminate the crew secondment agreement will ensure that T'way is not disproportionally dependent on Korean Air and if it decides to do so, is able to hire and train crew itself before the crew support agreement's term has expired.

(1411) The crew will be seconded gradually and adjustments to the transfer schedule will be possible on a weekly basis, if necessary. Moreover, T'way will be able to use the seconded crew for its operations on other routes, provided that such arrangement does not affect T'way's operations on the Passenger Remedy Routes. The Independent

2179 Entry Commitment Agreement, Section 7.
2180 Entry Commitment Agreement, Section 8 and Schedule 4.
2181 Independent Advisor's report, paragraphs 600-603, 616 and 646.

Advisor noted that "*this provision allows for (i) strengthening the viability of T'way's business and operations on the whole by providing greater flexibility to roster crews across all of T'way's […] routes*; *and (ii) achieving a more efficient crew utilisation*".[2182] The Commission therefore considers that this flexibility will ensure that T'way's operational needs are taken account of, and crew support is provided in accordance with T'way's business needs. Moreover, in the view of the Commission, the crew support would not create any dependency for T'way beyond the short transitional period.

(1412) The payment for the seconded crew will consist of […]. The Independent Advisor noted that the agreed fees do not raise major concerns regarding T'way's overall profitability on the Passenger Remedy Routes during the term of the crew secondment.[2183] Moreover, in the view of the Independent Advisor, the agreed fees will provide an incentive to T'way to recruit its own flight crew in order to reduce the reliance on the crew support from Korean Air.[2184] The Commission therefore considers that the secondment fee foreseen in the Entry Commitment Agreement correspond to the Passenger Commitments provisions.

(1413) As for the access to […] simulators, Korean Air committed to prioritise the Passenger Remedy Taker over any other new customers seeking flight simulator access.[2185] Moreover, in line with its commitment provided in the Passenger Commitments, Korean Air undertook to provide the flight simulator access […].[2186] The Commission considers that the key provisions for the access to the flight simulators as contained in the Entry Commitment Agreement will allow for effective implementation of the Passenger Commitments.

(1414) In the fifth place, the Entry Commitment Agreement foresees the key terms and conditions for the MRO support (engine and general MRO support) for the Remedy Aircraft, which will be negotiated and entered into between Korean Air and T'way within 8 weeks since this Decision.[2187] The Commission considers that the key terms and conditions of the MRO support agreement as contained in the Entry Commitment Agreement correspond to the provisions of the Passenger Commitments and will allow for effective implementation of the Passenger Commitments.

(1415) The Independent Advisor noted that the scope of the MRO support foreseen in the Entry Commitment Agreement as part of the MRO support transitional agreement is in line with industry standards and therefore sufficiently comprehensive.[2188] Moreover, the Commission considers that an in-built flexibility in relation to the types of maintenance and repair services that may be provided based on T'way's requirements, will ensure that T'way's operational needs are taken account of, and that support is provided accordingly.

(1416) The duration of the MRO support transitional agreement corresponds to the duration of the Remedy Aircraft lease agreement, i.e. initial term of […] with a possibility to extend for another […]. Even though a total term of […] could be considered a relatively long for a transitional agreement, in the view of the Commission, the fact that the provision of the MRO services is linked to the duration of the Remedy Aircraft lease will ensure that T'way has the necessary MRO support for the Remedy

2182 Independent Advisor's report, paragraph 612.
2183 Independent Advisor's supplementary report of 5 January 2024, paragraph 26-27.
2184 Independent Advisor's supplementary report of 5 January 2024, paragraphs 26- 27.
2185 Entry Commitment Agreement, Schedule 4, clause 2.3.
2186 […].
2187 Entry Commitment Agreement, Section 9 and Schedule 5.
2188 Independent Advisor's report, paragraph 670.

Aircraft in order to operate independent, viable and competitive air passenger services on the Passenger Remedy Routes. At the same time, the Entry Commitment Agreement foresees that T'way could terminate the MRO support agreement with […] notice. The possibility to terminate the MRO services agreement will ensure that T'way is not disproportionally dependent on Korean Air and if it decides to source MRO services from other providers, it will be able to do so. The Independent Advisor did not identify any major concerns related to the length and termination of the MRO support agreement.[2189]

(1417) The Entry Commitment Agreement also foresees that MRO support will be provided […] which is in line with Korean Air's obligations under the passenger Commitments. Further details on specific fee arrangements will be negotiated and agreed between Korean Air at a later date and will be subject to the approval by the Monitoring Trustee in consultation with the Commission.

(1418) Based on the above assessment, the Commission concludes that the Entry Commitment Agreement will effectively implement the Passenger Commitments. For this reason, the Commission approves the legally binding provisions of the Entry Commitment Agreement as well as the key terms of the transitional agreements.

12.2.5. Conclusion on the Passenger Commitments

(1419) Based on the assessment set out in sections 12.2.2, 12.2.3 and 12.2.4, the Commission (i) concludes that the Passenger Commitments are suitable to eliminate the competition concerns identified in relation to the passenger air transport services, (ii) approves T'way as the remedy taker for the Passenger Commitments and (iii) approves the legally binding provisions of the Entry Commitment Agreement as well as the key terms of the transitional agreements, as submitted with the Passenger Commitments.

12.3. Cargo Commitments

(1420) In order to render the Transaction compatible with the internal market in relation to the markets for air cargo services on the routes Europe to South Korea and South Korea to Europe, Korean Air submitted first cargo commitments pursuant to Article 8(2) of the Merger Regulation on 3 November 2023 (the "First Cargo Commitments"), while the time limit for a decision set in Article 10(3) of the Merger Regulation was suspended. The Commission did not market test the First Cargo Commitments during the period when the time limits were suspended.

(1421) On 5 December 2023, the day on which the deadline suspension expired, Korean Air submitted second cargo commitments (the "Second Cargo Commitments"). The Commission proceeded to market test the Second Cargo Commitments on 6 December 2023.

(1422) In order to address the issues raised in the market test and the Independent Advisor's report, Korean Air submitted a final set of cargo commitments on 9 January 2024 (the "Final Cargo Commitments").

(1423) All three cargo commitments submitted by Korean Air – the First, Second and Final Cargo Commitments – essentially consist in the divestment of the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities (the "Divestment Business"), including (i) […], (ii) the relevant slots, traffic rights and TSR overflight rights as currently used by Asiana for its global cargo freighter activities, (iii) some licences and permits related to the

[2189] Independent Advisor's report, paragraphs 676-678.

aircraft, (iv) some of the main supplier contracts and lease agreements for office space and cargo terminals, (v) all Asiana's air cargo customer contracts and all historic customer data, full customer lists and records of customers that can practically be served by the Divestment Business, (vi) approximately […] employees and some Key Personnel, and (vii) the arrangement for the continued supply by the Parties with IT support, ground-handling at ICN airport, access to simulators and hangars, for a transitional period of […] years.

(1424) The Divestment Business is not an existing stand-alone business but rather one integrated with the business which is to be retained by Korean Air post-Transaction. Therefore, the abovementioned air cargo assets and personnel would need to be 'carved-out' and the Divestment Business would not include any assets solely related to Asiana's passenger and/or belly space cargo operations. This is because, on the one hand, any competition concerns arisen on the markets for passenger air services on the routes BCN-ICN, CDG-ICN, FRA-ICN and FCO-ICN are addressed through the Passenger Commitments as described in section 12.2 above, and on the other hand, belly space cargo operations cannot be disentangled from the rest of Asiana's passenger activities.

(1425) All three cargo commitments submitted by Korean Air have an upfront buyer structure since the implementation of the Transaction can only take place after the final approval by the Commission of the purchaser and the purchase agreements.

12.3.1. First Cargo Commitments

12.3.1.1. Description of the First Cargo Commitments

(1426) According to the First Cargo Commitments, the Divestment Business consisted of all the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities that are necessary to ensure the viability and competitiveness of the Divestment Business as a provider of air cargo freighter services.

(1427) In particular, under the First Cargo Commitments, the Divestment Business would include the following.

(1428) Main tangible assets:

a. […] would also be transferred to the Divestment Business, subject to required consent by the lessors;

b. […];

c. […];

d. […];

e. […].

(1429) Main intangible assets:

a. […] weekly slots, corresponding to all slots currently used by Asiana for its global cargo freighter activities;

b. […] traffic rights, corresponding to all traffic rights used by Asiana for its global cargo freighter activities;

c. […] TSR overflight rights based on the current number of aircraft of the Divestment Business and in light of the average practice of Asiana.[2190]

[2190] Form RM of 3 November 2023, paragraph 271.

(1430) Main licences and permits: airworthiness certificates, noise certificate and operation limitations specification (issued by MOLIT or the Head of the Korean Regional Aviation Administration) of the aircraft that were included in the Divestment Business. For all other licences and permits that would be necessary for the viability and competitiveness of the Divestment Business, Korean Air commited to undertake all reasonable endeavours to ensure that the Divestment Business had obtained such licences before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing licences and permits already held by the Purchaser.

(1431) Main contracts, agreements, leases, commitments and understandings:

a. The lease agreements for the […];

b. The lease agreements of the cargo terminals at […];

c. The lease agreements of the branch offices at […];

d. The lease (or sublease) rights contained in ground handling agreements relating to offices at […];

e. Agreements with other airlines on the use of the ICN cargo terminal;

f. The freighter-exclusive ground handling contracts (representing approx. […]% of all ground handling services agreements used by Asiana in its overall activities), subject to consent by the other contracting party, if required;

g. The freighter-exclusive MRO service agreements (representing approx. […]% of all MRO services agreements used by Asiana in its overall activities), subject to consent by the other contracting party, if required;

h. Airline-to-airline BSA agreements and cargo storage agreements subject to consent by the other contracting party, if required;

i. The freighter-exclusive supplier contracts and ancillary and miscellaneous contracts, subject to consent of the other contracting party, if required. For all other supplier contracts that would be necessary for the viability and competitiveness of the Divestment Business, Korean Air commited to undertake all reasonable endeavours to ensure that the Divestment Business had obtained such contracts before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing supplier contracts to which the Purchaser is a party.

(1432) Customers, credit and other records:

a. The Parties would transfer as part of the Divestment Business all Asiana's air cargo customer contracts (incl. GPAs) existing at the moment of Divestment Closing that could be serviced with freighter operations, subject to the consent of the customer if required;

b. All historic customer data and full customer lists and records related to the Divestment Business would be transferred to the Purchaser. The Parties may retain a copy of such records to the extent that these are required for legal compliance purposes. The Parties would not use customer information, which is obtained through such retained copies, for commercial purposes.

(1433) Personnel: approx. […] employees would be transferred to the Divestment Business, subject to applicable labour laws and subject to review by the Purchaser, the Parties, the Monitoring Trustee and the Commission in the light of the ongoing negotiations and the Purchaser's resources and capabilities. The approx. […] employees that would be transferred to the Divestment Business represent […]% of all personnel of Asiana for its overall activities, and in particular: […]% of the Cargo Business Division,

[…]% of the relevant overseas branch offices and regional headquarters, […]% of the flight crew, […]% of Maintenance, […]% of Operations Control, and […]% of Support Divisions.

(1434) […] employees as Key Personnel:

a. […];

b. […];

c. […];

d. […];

e. […];

f. […];

g. […];

h. […].

(1435) The arrangements for the continued supply by the Parties, at terms […] for the Parties, with the following services for a transitional period of […] after divestment closing:

a. IT support (maintenance and repair);

b. Ground handling support at ICN;

c. Access to simulators; and

d. Access to hangars.

(1436) According to the First Cargo Commitments, the Divestment Business should not include:

a. The intellectual property rights related to the Asiana and Asiana Cargo brands;

b. The assets, rights (notably including Slots, traffic rights, TSR overflight rights) and contracts exclusively related to or exclusively used by Asiana's passenger and/or belly space operations;

c. The lease agreement for the main office building of Asiana in Osoe-Dong, Seoul, South Korea. Korean Air commited to ensure, in coordination with the Purchaser and the Hold Separate Manager, that the Divestment Business had suitable office space for its head office before the divestment closing, unless agreed otherwise with the Purchaser, in particular in view of existing office space already available to the Purchaser;

d. The lease agreements for the branch offices located in […] (as opposed to the lease agreements for the branch offices at the airports of these cities, which were intended to be transferred to the Divestment Business, as indicated above);

e. Existing rights and contracts shared between (i) Asiana's passenger and/or belly space operations and (ii) Asiana's freighter operations. These would need to be replicated or renegotiated to specifically serve the Divestment Business, *e.g.* shared licences, contracts related to the supply of fuel, non-freighter exclusive ground handling or MRO services, *etc*.

f. The licenses and permits that are tied to Asiana and are not individually transferable. These licenses notably include the air operator certificate, air transport business licence and permission for overflight of Asiana issued by MOLIT, foreign air carrier permits (also known as third country operator permits) issued by the relevant authorities in […], as well as maintenance organisation certifications in […].

(1437) The First Cargo Commitments also provided that if there is any asset or personnel which is not covered but which is both used for Asiana's global cargo business and necessary for the continued viability and competitiveness of the Divestment Business as a provider of air cargo services, that asset, personnel or an adequate substitute would be offered to the Purchaser.

(1438) According to the First Cargo Commitments, a senior member of the Key Personnel would be designated by Asiana as the primary point of contact for the Monitoring Trustee (the "Asiana Designated Representative"). The Asiana Designated Representative would assist the Monitoring Trustee in collecting and providing information for the planning of the carve-out of the Divestment Business.

(1439) Under the First Cargo Commitments, in order to be approved by the Commission, the Purchaser needed to fulfil the following criteria:

a. The Purchaser shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

b. The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. For completeness, 'proven expertise' does not necessarily require that the Purchaser is an existing airline;

c. The Purchaser and/or the Divestment Business shall have an operating license or shall be able to obtain an operating license in a timely manner before the Divestment Closing;

d. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of these Cargo Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(1440) According to the First Cargo Commitments, the Transaction could not be implemented before Korean Air or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale.

12.3.1.2. Assessment of the First Cargo Commitments

(1441) The Commission considered that the First Cargo Commitments appeared to concern the divestment of a sufficiently large part of Asiana's cargo operations, to address the competition concerns raised by the Transaction. The divestment of the global cargo freighter business of Asiana geographically extended beyond the overlap on which the Commission had identified competitive concerns. Although it did not entirely replicate the competitive constraint exerted by Asiana on Korean Air pre-Transaction, as it did not include the belly space capacity of Asiana's passenger flights to Europe, it would have provided the remedy taker with sizeable capacity to exert competitive pressure on the merged entity.

(1442) The Commission considered, however, that the First Cargo Commitments presented several risks, mainly stemming from the carve-out structure of the Divestment Business.

(1443) First, the Commission considered that Korean Air's caveat in the purchaser criteria of the First Cargo Commitments that "*proven expertise' does not necessarily require that*

the Purchaser is an existing airline" would not be appropriate in view of the complexity of the carve-out structure of the proposed divestment and the number of outstanding items that would need to be addressed by the Purchaser at a later stage, *e.g.* securing licences and permits, putting in place supply contracts, as well as obtaining third party consent for some of the aircraft, the lease agreements and all other supply agreements, including for ground handling services, MRO services and fuel services.

(1444) As designed, the Divestment Business would lack an air operator certificate and other licences, and would exclude several central assets and capabilities, as well as any assets solely related to passenger and/or passenger belly space cargo operations. Therefore, the Commission considered that the purchaser criteria entailed large risks by not ensuring that the purchaser should only be a sizeable airline with an existing air operator certificate and a hub at ICN airport in order to replicate sufficiently the network and size of pre-Transaction Asiana.

(1445) Second, the Commission noted that the Divestment Business was based on Asiana's freighter fleet, part of which is considerably aged. Out of the […] to be divested in total, the […] of Asiana are gradually moving towards the end of their lifecycle, with […] of them requiring imminent replacement. In addition, the remaining […], which exposes the Divestment Business to the risk of not securing the consent of each lessor. In light of this issue, the considerations about the identity of the Purchaser set out in paragraph (1443) became even more relevant.

(1446) Third, the Commission could only accept any cargo commitments, which require the carve-out of Asiana's global cargo freighter business, if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.[2191]

(1447) In the Commission's view, the interim period between the Commission's adopted Decision pursuant to Article 8(2) of the Merger Regulation and the Purchaser approval, which would bring about the closing of the Transaction, would create a gap where the Divestment Business would remain integrated in Asiana's overall network, including passenger and cargo (both belly space and freighter) operations. During this period, no step would be taken under the First Cargo Commitments in relation to the implementation of the carve-out, whereas the Asiana Designated Representative's role as a point of contact assisting the Monitoring Trustee in collecting and providing information for the planning of the carve-out of the Divestment Business would not be sufficient to ensure that a viable business on a stand-alone basis would be divested at the time of the Divestment Closing.

(1448) Fourth, the Commission noted that the Divestment Business would not entirely replicate the competitive constraint exerted by Asiana on Korean Air pre-Transaction, given the loss of the belly space capacity in Asiana's passenger flights to Europe.

(1449) The Commission did not market test the First Cargo Commitments during the period when the time limits referred to in Article 10 of the Merger Regulation were suspended. However, the Commission informed Korean Air about the concerns identified above.

2191 Remedies Notice, paragraph 36.

12.3.2. Second Cargo Commitments

12.3.2.1. Description of the Second Cargo Commitments

(1450) On 5 December 2023, Korean Air submitted the Second Cargo Commitments, where it introduced some limited changes to address some of the concerns expressed by the Commission as described in section 12.3.1.2.

(1451) In particular, Korean Air changed the Second Cargo Commitments compared to the First Cargo Commitments by:

a. Modifying the Purchaser criteria: the Purchaser should be […];

b. Clarifying in the inclusion of the lease agreements for the […] by Asiana in the Divestment Business' assets that any additional or alternative lease agreements for freighter aircraft entered into by Asiana by the time of signing the binding Sale and Purchase Agreement would also be included in the perimeter of the Divestment Business, subject to required consent by the lessors;

c. Adding that if the consent by the lessors of the leased freighter aircraft was not obtained for a transfer, Asiana would seek the lessors' consent for Asiana to make the aircraft available to the Purchaser through a sublease. In the alternative, if the lessors also did not consent to the subleasing by Asiana, Asiana and Korean Air would seek the consent by the lessors with an assignment of the lease agreements to Korean Air, who commited to then sublease the aircraft to the Purchaser;

d. Appointing the […] from the Key Personnel as the Asiana Designated Representative, while clarifying that the Asiana Designated Representative […] of Asiana also during the interim period between the Commission's Decision and the Purchaser approval, which would bring about the closing of the Transaction. At the same time, Korean Air also clarified that post-closing of the Transaction, the Asiana Designated Representative would be appointed by Korean Air as the Hold Separate Manager, responsible for managing the day-to-day operation of the Divestment Business under the supervision of the Monitoring Trustee, and remaining in charge until divestment closing;

e. Adding Korean Air's responsibilities in the interim period: […] from the Commission's Decision, Korean Air undertookk* to present a plan to the Monitoring Trustee on the steps to be taken until the closing of the Transaction to prepare for the carve-out and divestment process. Korean Air committed to take the preparatory steps as set out in this plan, and shall report on the progress to the Monitoring Trustee on a monthly basis;

f. Adding Asiana's responsibilities in the interim period: Asiana undertook, through the Asiana Designated Representative […], to assist Korean Air and the Monitoring Trustee as from the date of the Commission's Decision and until the closing of the Transaction in collecting and providing information for the planning of the implementation of the carve-out and divestment;

g. Adding the Monitoring Trustee's responsibility to also monitor the planning of the carve-out and divestment during the interim period;

h. Adding the word *operation* next to the viability and competitiveness of the Divestment Business in relation to the assets or personnel not covered by paragraph 2 of the Schedule of the Second Cargo Commitments text but which

* Should read: 'undertook'

would be offered to the Purchaser in case they were both used for Asiana's global cargo business and necessary for the continued *operation*, viability and competitiveness of the Divestment Business as a provider of air cargo services;

i. Clarifying that the Parties would transfer as part of the Divestment Business all Asiana's air cargo customer contracts (incl. GPAs) existing at the moment of divestment closing that could practically be served by the divestment business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft), subject to the consent of the customer if requested;

j. Clarifying that all historic customer data, full customer lists and records related to the Divestment Business that could practically be served by the Divestment Business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft) would be transferred to the Purchaser;

k. Clarifying that the transitional services agreements for (i) IT support, (ii) ground handling support at ICN airport, (iii) access to simulators, and (iv) access to hangars for a period of […] after divestment closing […].

(1452) The Commission considered that Korean Air made some progress in addressing some of the concerns expressed with respect to the First Cargo Commitments. Several issues were still not addressed, and in particular those related to the identity of the Purchaser of the Divestment Business and the Divestment Business' ageing aircraft fleet. However, the Commission decided to subject the Second Cargo Commitments to a market test, which was launched on 6 December 2023.

12.3.2.2. Results of the market test

(1453) The market test mainly aimed at assessing: (i) the suitability of the Purchaser criteria; (ii) whether the transfer of Asiana's cargo freighter fleet would affect the competitiveness and viability of the Divestment Business; (iii) the sufficiency of the scope of assets to be transferred to the Divestment Business in view of creating a viable and competitive air cargo carrier on the market; (iv) whether the divestment of only the freighter capacity (as opposed to the combined freighter and belly space cargo capacity) of Asiana would replicate sufficiently the pre-Transaction competitive constraint exerted on Korean Air; and (v) the overall suitability of the Second Cargo Commitments to effectively remove the competitive concerns identified in air cargo services on the routes Europe to South Korea and South Korea to Europe.

(1454) The market test showed that the Second Cargo Commitments could be suitable to effectively remove the competitive concerns identified[2192] but there were doubts about the effectiveness of the Purchaser criteria, the sufficiency of the divested cargo freighter fleet, the scope of the assets to be transferred to the Divestment Business, and the loss of the belly space capacity.[2193]

2192 Replies to questions C.3, C.4 and F.3, F.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers; Replies to question B.10 of market test questionnaire MT3 to slot coordinators and airport managers; Replies to question E.A.1 of market test questionnaire MT6 to Unions.

2193 See replies to questions D.1-D.4, D.25, D.26, D.29 and D.30 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; replies to questions C.3, C.4, D.9, D.10, F.3 and F.4 of market test questionnaire MT5 to cargo customers; replies to question E.7 of market test questionnaire MT3 to slot coordinators and airport managers; replies to question E.A.3 of market test questionnaire MT6 to Unions.

12.3.2.2.1. Suitability of the Purchaser criteria

(1455) The vast majority of respondents replying to the Commission's market test indicated that the Purchaser could only be an existing airline.[2194]

(1456) Especially the competitors responding to the Commission's market test were vocal about the benefits that an existing airline would bring to the Divestment Business in view of (i) the complexity of the carve-out structure of the cargo remedy and (ii) the age of the cargo freighter fleet being divested:

a. According to [a competitor/potential entrant/potential purchaser], securing all the necessary licences and permits for the Divestment Business to become operational may take 12-24 months but only if the Purchaser is an airline;[2195]

b. [A competitor/potential entrant/potential purchaser] noted that the potential Purchaser must have great records on successfully running a cargo business, while also highlighting that, given the age of the freighter fleet to be divested, the Purchaser might have difficulties if they are not a well-established player in the sector. In addition, [a competitor/potential entrant/potential purchaser] added that the Purchaser should also have experience in operating long-haul air cargo routes in order to have better chances on successfully operating the Divestment Business;[2196]

c. According to [a competitor/potential entrant/potential purchaser], "*considering the non transferred* [air operator certificate] *and other associated permits, licenses, there is inherent risk in the divestment business as well as anticipated substantial efforts to manage the transition.* [A competitor/potential entrant/potential purchaser] *believes that a Korean airline is the most suitable candidate for takeover due to these factors*";[2197]

d. [A competitor/potential entrant/potential purchaser] explained that the suitability of the Cargo Commitments would depend – among others – on who the Purchaser would be. The Purchaser of the Divestment Business would need to have measures to supplement the cargo volume and networks that the Divestment Business would lose due to the Transaction. Therefore, in [a competitor's/potential entrant's/potential purchaser's] view, suitable candidates should be (i) passenger airlines with multiple wide-body aircraft having extra belly space cargo capacity or (ii) cargo airlines with small-sized freighters flying short/mid-haul routes as a feeder carrier, which could expand the payload to long-haul flights. For capabilities, the Purchaser should have a profound understanding of the current aircraft finance/leasing market and it is also preferred that the Purchaser has an existing relationship with conversion centres and MRO companies. In addition, if the Purchaser is not an airline registered and licensed in Korea, [a competitor/potential entrant/potential purchaser] assumes that it would take more than one year at minimum in order for the Divestment

2194 See replies to questions E.3 and E.4 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; replies to questions E.3 and E.4 of market test questionnaire MT5 to cargo customers; replies to question E.7 of market test questionnaire MT3 to slot coordinators and airport managers.

2195 Reply of [a competitor/potential entrant/potential purchaser] to question D.12 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2196 Reply of [a competitor/potential entrant/potential purchaser] to questions D.2, D.6 and E.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2197 Reply of [a competitor/potential entrant/potential purchaser] to question F.2 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

Business to acquire all the necessary licenses and permits including an air carrier operator certificate by MOLIT;[2198]

e. For [a competitor/potential entrant/potential purchaser], "*other than assets scheduled to be handed over by the Cargo Commitments, the readiness, incentive, relevance, and verified capability and experience of a suitable Purchaser should be another criterion in forecasting the success of the Divestment Business*";[2199]

f. According to [a competitor/potential entrant/potential purchaser], whether the Purchaser of the Divestment Business becomes an effective competitor would depend on their identity. "*If a cargo operator (airline) is a purchaser, it would highly likely become an effective competitor, however, if the purchaser is not an active player in the market, it may not have a competitive impact*";[2200]

g. [A competitor/potential entrant/potential purchaser] noted that since the Cargo Commitments do not include the transfer of an air operator certificate, the identity of the Purchaser is inevitably limited to airline buyers;[2201]

h. [A competitor/potential entrant/potential purchaser] explained that an airline buyer bears the least amount of operational risk and could integrate such operations into its existing operations – likely with also the least amount of time and without service disruption. On the issue of the ageing freighter fleet to be divested, [a competitor/potential entrant/potential purchaser] further submitted that the Purchaser would primarily need access to capital and financing, which may be mitigated if the Purchaser was an existing airline that would have sufficient access to capital and financing readily available;[2202]

i. According to [a competitor/potential entrant/potential purchaser], "[i]*n order for the purchaser of the Divestment Business to effectively compete with the Merged Entity, the purchaser would need to obtain an international air transport business license for cargo issued by the Ministry of Land, Infrastructure and Transportation (MOLIT) under the Korean Aviation Business Act. That said, we understand that Asiana's license cannot be transferred to the purchaser and is therefore excluded from the Divestment Business. Given this, to bring about prompt and effective competition, we believe that an active airline company already holding an international air transport business license for cargo from the MOLIT would be a suitable purchaser*";[2203]

j. [A competitor/potential entrant/potential purchaser] noted that the Purchaser "*would need to have deep pockets to be able to swiftly review and carry out a fleet renewal, as well as able to manage the highly cyclical nature of running a freighter-only air cargo operation. Additionally, the Purchaser would really*

2198 Reply of [a competitor/potential entrant/potential purchaser] to questions B.6, D.2, D.6, D.12 and E.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2199 Reply of [a competitor/potential entrant/potential purchaser] to question F.2 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2200 Reply of [a competitor/potential entrant/potential purchaser] to question D.2 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2201 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2202 Reply of [a competitor/potential entrant/potential purchaser] to questions D.6 and E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2203 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

need to have some existing links in the air cargo market to become quickly known and obtain new business";[2204]

k. [A competitor/potential entrant/potential purchaser] explained that an airline buyer would be better placed to viably operate the Divestment Business due to the already existing know-how;[2205]

l. [A competitor/potential entrant/potential purchaser] considered that in order for the Purchaser to become an effective competitor, they would need to have – among others – overall competitive strength as an airline, including not only European routes but also other cargo routes and passenger routes. [A competitor] added that given the complicated nature of the air cargo business, an airline Purchaser would be most suitable;[2206]

m. [A competitor/potential entrant/potential purchaser] explained that the Divestment Business could be viable if a number of factors were also available, such as passenger aircraft and cargo belly space capacity. This is something that only an existing airline as the relevant Purchaser could offer. As put by [a competitor/potential entrant/potential purchaser]: "*investment into a new fleet would soon be necessary, the purchaser must establish the company and reputation in the market. Meaning, it is a challenging task which needs expertise*";[2207]

n. [A competitor/potential entrant/potential purchaser] submitted that airline experience will be needed in order for the Purchaser of the Divestment Business to understand the costs and lead time of the necessary restructuring;[2208]

o. [A competitor/potential entrant/potential purchaser] considered that any type of Purchaser could effectively compete with the Merged Entity but an airline Purchaser would be in a better position as it would have an existing belly hold network. In addition, for [a competitor//potential entrant/potential purchaser], an airline Purchaser would also be in a better position to deal with one of the concerns of the Divestment Business being the relatively old nature of the aircraft.[2209]

p. Lastly, [a competitor/potential entrant/potential purchaser]explained that in view of the near-future need for a fleet renewal, the Purchaser would require a strong passenger network (with widebody aircraft and already up and running) in order to sustain the high cost of operation and the required transit cargo supply for the type of aircraft in question.[2210]

2204 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2205 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2206 Reply of [a competitor/potential entrant/potential purchaser] to questions D.2 and E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2207 Reply of [a competitor/potential entrant/potential purchaser] to question F.2 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2208 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2209 Reply of [a competitor/potential entrant/potential purchaser] to question E.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2210 Reply of [a competitor/potential entrant/potential purchaser] to question D.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

(1457) The majority of customers responding to the Commission's market test also considered that the Purchaser should only be an existing airline.[2211] For example, [a customer] explained, "[t]*he capacity of the purchaser to represent a suitable alternative on a lasting basis will depend on its financial strength and its capacity to weather the highs and lows directly related to the air cargo activity*",[2212] while adding that the potential buyer "*should be an existing airline enabling economies of scale to the divested operations or a financial institution aiming at creating an Air Cargo group with the right breadth in terms of size and scale*".[2213] [A customer] also noted that it would be ideal for an airline buyer to be the Purchaser of the Divestment Business "*because air cargo transport requires sufficient experience from a mid- to long-term perspective, and skills/expertise to cope with exigent circumstances*".[2214] [A customer] mentioned that the Purchaser will need expertise in the industry (including an air operator certificate) "*to better optimize the fleet and better commercialize the resources*".[2215]

(1458) Nevertheless, the Commission's market test also indicated that competitors consider a suitable Purchaser to be able to run a viable and competitive air cargo business that can exert a sufficient competitive constraint on the merged entity post Transaction.[2216] In addition, competitors consider that the Divestment Business as envisaged is likely to attract a suitable Purchaser.[2217] Moreover, the majority of customers seem to also believe that a suitable Purchaser of the Divestment Business is likely to become an effective competitor on the market on a lasting basis.[2218]

12.3.2.2.2. Asiana's cargo freighter fleet

(1459) The majority of respondents to the Commission's market test of the Second Cargo Commitments also raised concerns over the age of the cargo freighter aircraft fleet to be transferred to the Divestment Business.[2219] However, competitors consider that it would be generally feasible for the Purchaser of the Divestment Business to renew the fleet within a reasonable timeframe to ensure its continued viability and competitiveness, albeit only if the Purchaser has specific assets and capabilities on its own.[2220]

(1460) In particular, competitors explained the challenges arising from the fact that part of Asiana's cargo freighter fleet is considerably aged, with two of the aircraft already exceeding the age of […] years. […] carriers in particular, who are among the potential purchasers for the Divestment Business as identified by Korean Air, gave their views on the issue. As put by [a competitor/potential entrant/potential purchaser], "[m]*ost of the freighters might have exceeded their economic life. Considering fuel inefficiency, maintenance costs and carbon regulations, there would be immediate*

2211 See replies to questions E.3 and E.4 of market test questionnaire MT5 to cargo customers.
2212 Reply of [a customer] to question D.2 of market test questionnaire MT5 to cargo customers.
2213 Reply of [a customer] to question E.4 of market test questionnaire MT5 to cargo customers.
2214 Reply of [a customer] to question E.4 of market test questionnaire MT5 to cargo customers.
2215 Reply of [a customer] to question E.4 of market test questionnaire MT5 to cargo customers.
2216 See replies to questions F.3 and F.4 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.
2217 See replies to questions E.7 and E.8 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.
2218 See replies to questions D.1 and D.2 of market test questionnaire MT5 to cargo customers.
2219 See replies to questions D.3 and D.4 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; and replies to questions E.B.1 and E.B.2 of market test questionnaire MT6 to Unions. See also replies of [a customer] to questions C.4 and D.2 and of [a customer] to question D.4 of market test questionnaire MT5 to cargo customers.
2220 Replies to questions D.5 and D.6 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

need to introduce a new-generation aircraft to replace, at least, some of the current fleet".[2221] As [a competitor/potential entrant/potential purchaser] further explained, "*for aircraft more than 20 years old, carriers should submit detailed descriptions of the airframe and maintenance status of major components and other safety-related information to KMOLIT periodically.* […].[2222] For [a competitor/potential entrant/potential purchaser] therefore, "*the Purchaser should have a profound understanding of the current aircraft finance/leasing market and it is preferred that the Purchase has an existing relationship with conversion centers and MRO companies*".[2223]

(1461) In the same vein, [a competitor/potential entrant/potential purchaser] noted that "[c]*onsidering the imperfect assets a suitable Purchaser can expect to receive from Asiana Airlines, including old-aged freighters, the Purchaser needs to possess its own capability to procure the needed aircraft and cargo networks as well as financial viability to maintain the cargo operations when the cargo market returns to the pre-covid environment where players can no longer enjoy the high rates for cargo*".[2224] [A competitor/potential entrant/potential purchaser] is of the same views "[t]*o renew the fleet within a reasonable time, such as through leases (a prevalent method for fleet renewal), the Purchaser should have sufficient financial capacity to pay for deposits and monthly lease payments, as well as the ability and network within the aircraft leasing market to identify potential aircrafts and successfully execute leases*"; while adding that "[p]*otential risks such as difficulties in finding suitable aircrafts in the aircraft leasing market could be mitigated if Korean Air could lease their freighters for a period of 3~5 years until the Divestment Business is fully functional and viable on its own*".[2225]

(1462) […] carriers gave similar explanations. [A competitor/potential entrant/potential purchaser] considers the fleet quite old containing the risk of defect aircraft, which might lead to cancellation and impact the quality and reliability of services in combination with high operating costs. "*However, it is a question on quality an investor must answer himself/herself. The aircraft may still operate for quite a while*".[2226] [A competitor/potential entrant/potential purchaser] mentioned that "[l]*ooking at the fleet age, it seems difficult if not impossible, for the purchaser to continue the operation without a substantial refleeting (i.e. new financing)*".[2227] [A competitor/potential entrant/potential purchaser] noted that "[t]*he operation is likely essential for a portion of the fleet within a short timeframe, but it represents a substantial investment. This would require either a substantial capital injection from*

2221 Reply of [a competitor/potential entrant/potential purchaser] to question D.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2222 Reply of [a competitor/potential entrant/potential purchaser] to question D.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2223 Reply of [a competitor/potential entrant/potential purchaser] to question D.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2224 Reply of [a competitor/potential entrant/potential purchaser] to question D.2 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2225 Reply of [a competitor/potential entrant/potential purchaser] to question D.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2226 Reply of [a competitor/potential entrant/potential purchaser] to question D.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2227 Reply of [a competitor/potential entrant/potential purchaser] to question D.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

the purchaser or could potentially lead the divested business to incur significant debt at financing rates that might fall within the higher range".[2228]

(1463) [A competitor/potential entrant/potential purchaser] made similar considerations by also linking the issue to the identity of the Purchaser: "*The feasibility of renewal of the fleet would depend on several factors, including the Purchaser's planned investment amount, its fleet and network designs, and the availability parts/materials for selected aircraft type(s). For instance, feasibility would be affected by whether the Purchaser's strategy includes maintaining the same fleet size and network*".[2229]

(1464) Competitors also highlighted the practical difficulties of acquiring new aircraft, which requires long lead times and significant capital investment, as well as of leasing aircraft, given the non-availability of suitable aircraft.[2230]

(1465) Lastly, the [union] responding to the Commission's market test commented that "[s]*ome aircrafts are over 30 years old but the life span of an aircraft really depends on how it was maintained and operated by the user. Also, aircraft age is relatively less important for cargo freighter so we do not see much issues*".[2231]

12.3.2.2.3. The sufficiency of the Divestment Business' assets

(1466) The Commission's market test of the Second Cargo Commitments aimed at understanding whether the series of assets intended to be transferred to the Divestment Business would be sufficient to create an effective competitor in the market of air cargo services on a lasting basis. The results suggest that – subject to certain changes – the scope of the assets is sufficient – without prejudice to the issue of the aged aircraft fleet discussed in section 12.3.2.2.2.

(1467) In particular, the majority of competitors and customers responding to the Commission's market test considers the scope of intangible assets, *i.e.* slots, traffic rights and TSR overflight rights, to be sufficient for the Divestment Business to become a viable and competitive air cargo transport operator in the hands of a suitable Purchaser.[2232] The majority of slot coordinators and airport managers also believes that the scope of slots, traffic rights and TSR overflight rights includes all rights necessary, while also considering that the slot transfer of Asiana's global cargo freighter business is compatible with the slot regime that applies to the airport under their management and/or slot coordination.[2233]

(1468) In addition, the majority of respondents indicated that the scope of the main licences, permits, contracts, agreements, leases, commitments and understandings, as well as the scope of the Key Personnel and the transitional services arrangements are all sufficient for the Divestment Business.[2234] At the same time, the respondents to the Commission's market test did not identify any major issues stemming from the non-

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2228 Reply of [a competitor/potential entrant/potential purchaser] to question D.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2229 Reply of [a competitor/potential entrant/potential purchaser] to question D.6 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers.

2230 See replies to questions D.6 and D.7 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers

2231 Reply of [unions] to question E.B.2 of market test questionnaire MT6 to Unions.

2232 See replies to questions D.8 and D.9 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; and replies to questions D.3 and D.4 of market test questionnaire MT5 to cargo customers.

2233 See replies to questions E.1 and E.3 of market test questionnaire MT3 to slot coordinators and airport managers.

2234 See replies to questions D.10-D.20 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

transfer to the Divestment Business of Asiana and Asiana Cargo brands, and of the main office building of Asiana in Seoul.[2235]

(1469) However, the results of the Commission's market test were mixed for competitors as to the carve-out structure of the Divestment Business, and especially the non-inclusion of assets due to the loss of Asiana's passenger and/or belly space cargo operations, and the need to replicate / re-negotiate certain licences, permits, supply agreements, *etc*, which would inevitably require additional time and effort.[2236] Nevertheless, competitors seemed to imply that all of these risks would be mitigated in case (i) the Purchaser was an existing airline with the expertise and know-how to deal with those open points in a relatively short time, and (ii) the loss of belly space cargo capacity was mitigated.[2237] In any event, competitors responding to the Commission's market test did not identify any further risks arising from the carve-out of the business itself.[2238] On their side, customers seemed to believe there are certain risks, without however further substantiating their replies. A few customers that elaborated on their answers mentioned issues related to the lack of passenger and belly space cargo operations and the effective transfer of personnel.[2239]

(1470) In addition, other feedback from the market test with the purpose of mitigating the risks arising from the carve-out structure of the Divestment Business has to do with the following:

a. Licences and permits: the Commission's market test indicated that not only the air operator certificate, which is necessary for the Divestment Business to become operational, but also all other licences and permits, which would need to be replicated, re-acquired and/or re-negotiated as they cannot (legally or practically) be transferrable, would require considerable time and effort in case of a non-airline Purchaser.[2240] For example, [a competitor/potential entrant/potential purchaser] explained the following: "[o]*n one hand, the purchaser stands to gain essential assets, a well-established fleet, organizational structure, key personnel, and expertise integral to the air cargo business for effective business operations. On the other hand, transitioning may present operational challenges, particularly concerning the acquisition of multiple operating licenses that cannot be directly transferred from Asiana. This includes the necessity for a new Air Operator Certificate (AOC) and the application for new business licenses. The administrative procedures involved in this transition poses a potential risk of operational discontinuities. Delays in administrative processes or the necessity to renegotiate may result in the withholding of traffic and overflying rights, particularly concerning third-party countries*".[2241] [A competitor/potential entrant/potential purchaser] added: "[i]*t will depend upon who will be the Purchaser of the Divestment Business. If an airline is the Purchaser, most of the licenses and permits would not need to be newly acquired*

2235 See replies to questions D.21-D.24 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; and replies to questions D.7 and D.8 of market test questionnaire MT5 to cargo customers.

2236 See replies to questions D.12, D.14, D.15, D.25 and D.26 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2237 *Ibid*.

2238 See replies to questions D.29 and D.30 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2239 See replies to questions D.9 and D.10 of market test questionnaire MT5 to cargo customers.

2240 See replies to questions D.11 and D.12 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2241 Reply of [a competitor/potential entrant/potential purchaser] to question D.2 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

and we expect it would take approximately 3 months with little capital. However, as per our understanding, if the Purchaser is not an airline registered and licensed in Korea, we assume it will take more than one year at minimum to acquire all the necessary licenses and permits including an air carrier operator certificate by KMOLIT. […] *For a timely transaction, the potential Purchaser is preferred to have its own AOC already in its hand. For potential Purchasers without AOCs, the transaction may get delayed as uncertainty lies with the new AOC issuance to such Purchasers by the Korean government*".[2242] On its side, [a competitor/potential entrant/potential purchaser] explained the difference between a "*known*" and a "*new*" Purchaser: "[s]*ince all relevant documents on the aircraft will be made available by Asiana (Korean) it should be feasible in general to obtain an AOC and operations permit from Korean authorities – dependent on a viable business plan of the purchaser, maintenance/CAMO etc. Since Korean Airlines is committed to provide best support in regards to services and suppliers (e.g. maintenance, warehouse contracts etc.) it seems feasible to become a viable air cargo transport operator. The registration processes in the countries abroad will go smoother if the purchaser is already known and maybe only adding an all-cargo fleet. If the purchaser is new in the business, more lead-times might be necessary to register in order to obtain the operations permit from other countries (e.g. China, USA etc.) but also to register commercially abroad in order to do business*".[2243]

b. Key Personnel: the Commission's market test indicated that the […] employees identified as Key Personnel may be too limited in view of the scope of the Divestment Business and the complexities arising from the carve-out structure of the cargo remedy.[2244]

c. Personnel: some limited comments were made by the respondents to the Commission's market test with regard to general shortages of experienced personnel and the difficulty of employee retention.[2245]

d. Transitional Services Agreements: although the majority of competitors considered the scope of the transitional service arrangements proposed in the Second Cargo Commitments as sufficient for the Divestment Business, the duration was not seen as long enough.[2246]

2242 Reply of [a competitor/potential entrant/potential purchaser] to questions D.12 and E.6 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2243 Reply of [a competitor/potential entrant/potential purchaser] to question D.11 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2244 See replies to question D.17 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2245 Reply of [a competitor/potential entrant/potential purchaser]to question D.26 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question D.29 market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a customer] to question D.10 market test questionnaire MT5 to cargo customers.

2246 See replies to questions D.18-D.20 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

12.3.2.2.4. The loss of belly space capacity

(1471) Several competitors and customers responding to the Commission's market test indicated that the loss of belly space cargo capacity may affect the viability and competitiveness of the Divestment Business.[2247]

(1472) In particular, competitors suggested that belly space cargo capacity be leased to the Purchaser of the Divestment Business for a transitional period of time in order to ensure effective competition on the routes between Europe and South Korea from the beginning.[2248] Alternatively, competitors also mentioned that this would depend on the identity of the Purchaser and their ability to deploy their own belly space capacity through their own network.[2249]

(1473) On the side of customers, one explained that in air cargo services the most important aspect is capacity and there is also demand for low deck space coming from the belly hold.[2250] Another customer added that the risk is "*essentially made up of the difficulty to maintain a large cargo only operation operating in healthy financial conditions overtime without benefiting from the broader base of a cargo + passenger type operation*".[2251]

12.3.2.2.5. Suitability of the Second Cargo Commitments

(1474) The risks and issues identified above notwithstanding, the Commission's market test otherwise showed that the Second Cargo Commitments could be suitable to effectively remove the competitive concerns identified on both routes between Europe and South Korea.[2252]

(1475) In particular, competitors considered a suitable Purchaser to be able to run a viable and competitive air cargo business that can exert a sufficient competitive constraint on the merged entity post Transaction.[2253] In addition, competitors considered that the Divestment Business as envisaged is likely to attract a suitable Purchaser.[2254] In fact, there were several competitors indicating their interest to acquire the Divestment

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2247 See replies to questions D.26 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; and replies to question D.10 of market test questionnaire MT5 to cargo customers

2248 Reply of [a competitor/potential entrant/potential purchaser] to questions D.26 and E.8 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question D.4 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question D.26 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question D.9 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2249 Reply of [a competitor/potential entrant/potential purchaser] to question D.2 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question F.2 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2250 Reply of [a customer] to questions D.6 and D.10 of market test questionnaire MT5 to cargo customers.

2251 Reply of [a customer] to question D.10 of market test questionnaire MT5 to cargo customers.

2252 Replies to questions C.3, C.4 and F.3, F.4 of market test questionnaire MT4 to competitors, potential entrants and potential purchasers; Replies to question B.10 of market test questionnaire MT3 to slot coordinators and airport managers; Replies to question E.A.1 of market test questionnaire MT6 to Unions.

2253 See replies to questions F.3 and F.4 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2254 See replies to questions E.7 and E.8 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

Business, including – but not limited to – all the South Korean carriers.[2255] The Commission therefore notes that, and in view of the concerns described above, large airline companies with passenger operations would seem as *prima facie* suitable Purchasers for the Divestment Business.

(1476) The majority of customers seems to also believe that a suitable Purchaser of the Divestment Business is likely to become an effective competitor on the market on a lasting basis,[2256] while also believing that the Divestment Business is likely to attract a suitable Purchaser.[2257] In addition, the majority of customers responding to the Commission's market test indicated that they would consent to transfer their customer contract to the Divestment Business[2258] and that they would consider purchasing air cargo services from the Divestment Business.[2259] As [a customer] explained, "[i]*f the purchaser offers enough service guarantees and rate level meets* [their] *requirements,* [they] *are open to purchase capacity on it*".[2260]

12.3.2.3. The Independent Advisor's report

(1477) In its report, the Independent Advisor, appointed by Korean Air to assist the Commission in the assessment of the Cargo Commitments, also assessed the Second Cargo Commitments with particular attention to the following areas: (i) the viability of the Divestment Business as a freighter-only business; (ii) the proposed perimeter of the Divestment Business following the carve-out to confirm the extent to which the Divestment Business can be considered stand-alone; (iii) the extent to which the Divestment Business is transferred with certainty; and (iv) whether the carve-out can be implemented within the proposed timeline.

(1478) The Independent Advisor concluded that the proposed carve-out broadly provides the Divestment Business with the elements required to compete in the market. However, the transfer of licences, customer contracts and service agreements would need to be monitored carefully to ensure that the transfer is timely and that any delay or required renegotiation does not result in a disruption to operations which could harm the Divestment Business, through a reduction of customers or an increase in costs.[2261]

(1479) In this respect, the Independent Advisor identified similar risks and challenges as the ones emerged through the Commission's market test, such as (i) the Purchaser criteria and the identity of the buyer of the Divestment Business, (ii) the Purchaser's position to decide on, manage and finance a fleet replacement programme, (iii) the timely transfer of all necessary assets to the Divestment Business, and (iv) the potential need for belly space cargo capacity to ensure the Divestment Business' profitability.[2262] In addition, the Independent Advisor also identified a few additional areas of improvement, namely (v) making sure that MOLIT has implemented the necessary legislative amendments and procedures in order to facilitate the transfer of the required slots, traffic rights and TSR overflight rights; (vi) Korean Air committing to use "*best efforts*" instead of "*reasonable endeavours*" in all cases where it commits to help ensure that the Divestment Business has all the necessary assets in place, *e.g.* in case of licences and permits; (vii) making sure that any required consent from any third

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2255 See replies to questions E.9 and E.10 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2256 See replies to questions D.1 and D.2 of market test questionnaire MT5 to cargo customers.

2257 See replies to questions E.7 and E.8 of market test questionnaire MT5 to cargo customers.

2258 See replies to questions D.5 and D.6 of market test questionnaire MT5 to cargo customers.

2259 See replies to questions F.1 and F.2 of market test questionnaire MT5 to cargo customers.

2260 Reply of [a customer] to question F.2 of market test questionnaire MT5 to cargo customers.

2261 Independent Advisor's report, paragraph 923.

2262 Independent Advisor's report, paragraphs 68, 821, 827 *et seqq*. and 926.

party with regard to a transfer of a contract, lease or agreement is received before the Purchaser approval; (viii) expanding the Key Personnel […]; and (ix) potentially expanding the non-solicitation clause to all personnel (as opposed to the Key Personnel) in case of concern over employee retention.[2263]

(1480) Especially in terms of the Purchaser criteria, the Independent Advisor made the following statement: "*In its assessment of the purchaser criteria the IA considers that an airline without an operating licence could not feasibly be considered as a purchaser due to the time it would take for the purchaser to be approved and receive its AOC. The IA also considers that given the lack of clarity around the perimeter of the business, and the lack of Key Personnel identified, it would be a benefit if the purchaser was already operating cargo services, with a stable operational infrastructure, and was of comparable culture*".[2264]

(1481) Lastly, in terms of Asiana's ageing aircraft fleet to be divested, the Independent Advisor agreed that some of the aircraft transferring to the Divestment Business are relatively old, namely those which will shortly reach […] years of age. According to the Independent Advisor, those aircraft are likely to need replacing within the next […] years, depending on their heavy maintenance check status. However, the Independent Advisor "*does not consider that the age of the aircraft is in itself a problem as long as the purchaser is in a position to decide on, manage and finance a fleet replacement programme*".[2265]

12.3.2.4. Assessment of the Second Cargo Commitments

(1482) The Commission found that the results of the market test and the report of the Independent Advisor highlighted a variety of risks associated with the Second Cargo Commitments.

(1483) The Commission considered that both the responses to the market test and the Independent Advisor's report suggested that the Divestment Business would be a suitable remedy to address the competitive concerns identified in relation to the cargo air transport services on the routes between Europe and South Korea, subject to, *inter alia*, (i) the identity of the Purchaser being restricted to an existing airline only, (ii) the replacement of the […] oldest aircraft reaching […] years of age before Divestment Closing, while at the same time making sure that the […] youngest aircraft that are currently leased by Asiana will also be transferred to the Divestment Business without any issues arising from third party consent requirements, (iii) taking on board all mitigating factors available for dealing with the complexities of the carve-out structure of the Divestment Business, and (iv) addressing the need for belly space cargo capacity for at least a transitional period of time post Divestment Closing.[2266]

(1484) The Commission further considered that the reservations of the respondents to the market test were mostly related to the identity of the potential Purchaser, *i.e.* the need to be an existing airline, rather than the suitability of the Divestment Business to become a sufficient competitive constraint to the merged entity post Transaction in the hands of the right Purchaser. In addition, all the remaining concerns and risks identified could also be mitigated by the relevant existing operations, expertise and

2263 Independent Advisor's report, Table 2.

2264 Independent Advisor's report, paragraph 68.

2265 Independent Advisor's report, paragraph 821.

2266 The Commission notes that the risk identified under the First Cargo Commitments and explained in paragraph (1447) above with regard to the lack of steps taken in the interim period between the Commission's Decision and the Purchaser approval, which would bring about the closing of the Transaction, had already been addressed by the Parties with the Second Cargo Commitments, as indicated in paragraph (1451), points (d) to (g) above.

know-how of the Purchaser, in case this would indeed be an existing airline with the right assets and capabilities, personnel, licences and permits, supply contracts and all other agreements already in place. In this respect, the Commission would view an existing airline with sizeable passenger operations and/or block space agreements in place with other passenger airlines as *prima facie* suitable for the purchase of the Divestment Business and would further assess that during the Purchaser approval process.

(1485) On the basis of its assessment and taking into account the results of the market test, the report of the Independent Advisor and its investigation, the Commission concluded that the Second Cargo Commitments were insufficient to remove the significant impediment to effective competition identified on the market of cargo air transport services on the routes between Europe and South Korea.

12.3.3. Final Cargo Commitments

12.3.3.1. Description of the Final Cargo Commitments

(1486) In light of the issues described in section 12.3.2 above, Korean Air submitted the Final Cargo Commitments on 9 January 2024, improving the Second Cargo Commitments in order to address the Commission's concerns that remained in the light of its evaluation of the market test and the report of the Independent Advisor.

(1487) First, […].

(1488) […].

(1489) […].

(1490) […].

(1491) […].

(1492) Sixth, Korean Air extended the non-solicitation clause to any member of the Key Personnel or the flight crew transferred to the Divestment Business.

(1493) Seventh, Korean Air extended the transitional period of the transitional services agreements by […], at the request of the Purchaser, showing good cause, at least […] before the expiration. Such extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(1494) Eighth, Korean Air agreed to the standard of "*best efforts*" in all instances where it commits to help ensure that the Divestment Business has all the necessary assets in place, *i.e.* in case of licences, permits and supplier contracts.

(1495) Lastly, Korean Air committed to further include the benefit of a Block Space Agreement for a transitional period of […] after divestment closing, if requested by the Purchaser and […]. Such Block Space Agreement shall be […]. The Block Space Agreement shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

12.3.3.2. Assessment of the Final Cargo Commitments

(1496) The Commission considers that the Final Cargo Commitments, once implemented, fully and unambiguously address the competition concerns raised and are adequate and sufficient to eliminate the significant impediment to effective competition in the markets for air cargo transportation services on the routes between Europe and South Korea.

(1497) First, the Purchaser in the Final Cargo Commitments addresses the concerns raised and the criteria appear suitable to identify a suitable buyer of the Divestment Business. The Commission considers that the reservations of the respondents to the market test

of the Second Cargo Commitments, as expressed in section 12.3.2.2 above, were mostly related to the identity of the potential Purchaser, *i.e.* the need to be an existing airline, rather than the suitability of the Divestment Business to become a sufficient competitive constraint to the merged entity post Transaction in the hands of the right Purchaser. Similarly, the Independent Advisor's report was rather positive as to the proposed cargo commitments, with the only caveat that a non-airline company could not feasibly be considered as a suitable Purchaser due to the time it would take for obtaining the air operator certificate. Therefore, the Purchaser criteria in the Final Cargo Commitments have fully addressed the concerns raised.

(1498) Second, the scope of the Divestment Business appears suitable to effectively compete on the market for air cargo services. In the first place, the inclusion of […] newer aircraft to replace the [...] aircraft that is already exceeding / approaching the age of […] years before divestment closing addresses the issue of the ageing aircraft fleet in the near future in order to ensure that the Purchaser of the Divestment Business has sufficient time to plan its network and fleet. This is in line with considerations made by both competitors in the Commission's market test of the Second Cargo Commitments, as analysed in section 12.3.2.2.2 above, and by the Independent Advisor, who did not consider the age of the aircraft itself as a problem as long as the purchaser is in a position to decide on, manage and finance a fleet replacement programme.[2267] The Commission further notes that the other considerations made during the market test with regard to the expertise and know-how of the Purchaser, as well as its own capabilities and network, have also been addressed through the amendment of the Purchaser criteria.

(1499) In the second place, all other assets and personnel included in the perimeter of the Divestment Business appear sufficient to create a stand-alone freighter cargo carrier. As analysed in section 12.3.2.2.3 above, the respondents to the Commission's market test overall found the scope of assets to be sufficient for the Divestment Business to become a viable and competitive air cargo transport operator in the hands of a suitable Purchaser. To the extent the results were mixed as to the carve-out structure of the Divestment Business, respondents seemed to imply that their concerns would be mitigated in case (i) the Purchaser was an existing airline with the expertise and know-how to deal with those open points in a relatively short time, and (ii) the loss of belly space cargo capacity was mitigated. The Commission notes that both of these issues have been addressed in the Final Cargo Commitments. In addition, the Commission notes that all other feedback from the market test with regard to (a) licences and permits, (b) Key Personnel, (c) personnel, and (d) the duration of the Transitional Services Agreements, as described in section 12.3.2.2.3 above, has also been addressed in the Final Cargo Commitments.

(1500) In any event, according to Clause 4 of the Schedule of the Final Cargo Commitments, if there is any other asset or personnel which is not covered by the scope of the Divestment Business but is used for Asiana's global cargo business and is necessary for the continued operation, viability and competitiveness of the Divestment Business as a provider of air cargo services, that asset/personnel or an adequate substitute will be offered to the Purchaser of the Divestment Business.

(1501) In the third place, the Commission considers that the transitional Block Space Agreement in passenger flights operated by Korean Air and/or Asiana on the Passenger Remedy Route(s) for a maximum of […]% of the belly space capacity of each such flight, for a transitional period of up to […] post divestment closing,

[2267] Independent Advisor's report, paragraph 821.

addresses further concerns raised by respondents to the Commission's market test of the Second Cargo Commitments with regard to the loss of belly space capacity, while at the same time keeping the necessary balance as regards the independence of the Purchaser of the Divestment Business to Korean Air and/or Asiana post-Transaction.

(1502) In addition, as described in section 12.3.2.2.4 above, competitors also mentioned that the issue of the belly space cargo capacity would further depend on the identity of the Purchaser and their ability to deploy their own belly space capacity through their own network.[2268]

(1503) In that respect, and in view of further mitigating all other risks identified by the market test and described in section 12.3.2.2 above, the Commission notes that it would view an existing airline with sizeable passenger operations and/or block space agreements in place with other passenger airlines as *prima facie* suitable Purchaser of the Divestment Business. This will be further assessed at a later stage, during the Purchaser approval process.

(1504) Lastly, the Commission notes that the Divestment Business has sizeable revenues and it would be among the largest freighter-only cargo airlines in the world.[2269] Moreover, the Divestment Business' profitability appears in line with (or even above that of) similar freighter-only cargo carriers for all the years between 2018 and 2022,[2270] with the exception of 2019 for reasons unrelated to the European routes of Asiana.[2271]

(1505) Third, the Final Cargo Commitments would allow a suitable Purchaser of the Divestment Business to replicate Asiana's competitive constraint in the market. Table 85 and Table 86 below describe the possible future market structure on the routes between Europe and South Korea following the implementation of the Passengers and Cargo Commitments. On the route Europe to South Korea, the Divestment Business is expected to acquire market shares of approx. [10-20]% by […] and [10-20]% by […], while on the route South Korea to Europe, the Divestment Business is expected to acquire market shares of approx. [5-10]% by […] and close to [10-20]% by […]. In addition, T'way will offer belly space capacity on the Remedy Routes: T'way is expected to acquire market shares of approx. [0-5]% on the route Europe to South Korea and [0-5]% on the route South Korea to Europe by […].[2272] Together, therefore, the Divestment Business' and T'way's belly-hold market shares are expected to closely approach by […] Asiana's market shares of 2019 on the routes between Europe and South Korea, which are [10-20]% on the route Europe to South Korea and [10-20]% on the route South Korea to Europe.

2268 Reply of [a competitor/potential entrant/potential purchaser] to question D.2 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers; Reply of [a competitor/potential entrant/potential purchaser] to question F.2 of market test questionnaire MT4 to cargo competitors, potential entrants and potential purchasers.

2269 Korean Air's response to RFI 3 on Remedies, Tables 4 and 5.

2270 Korean Air's response to RFI 4 on Remedies, Table 1.

2271 […], response of KDB to RFI 1, supporting document 5, question 6.

2272 Form RM, paragraphs 125-129.

Table 85: Europe to South Korea post-commitments market shares by volume (based on the Parties' market share data)

Carrier	2023		2024		2025		2026	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	20-30]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[0-5]%
Combined	[…]	**[40-50]%**	[…]	**[40-50]%**	[…]	**[30-40]%**	[…]	20-30]**%**
T'way	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Divestment Business	[…]	[0-5]%	[…]	[0-5]%	[…]	[10-20]%	[…]	[10-20]%
Qatar Airways	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Air France-KLM	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Lufthansa Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Turkish Airlines	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
All Nippon Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**

Source: Form RM, Annex 2.4. Notes: (i) Market shares are calculated assuming the TSR is not available and Air Premia is not present; and (ii) Asiana's post-remedy market shares include the belly-space cargo on the passenger flights which Asiana will continue to operate after the implementation of the remedy. […].

Table 86: South Korea to Europe post-commitments market shares by volume (based on the Parties' market share data)

Carrier	2023		2024		2025		2026	
	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)	Volume (tonnes)	Share (%)
Korean Air	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Asiana	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[0-5]%
Combined	[…]	**[30-40]%**	[…]	**[30-40]%**	[…]	**[20-30]%**	[…]	**[20-30]%**
T'way	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Divestment Business	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Qatar Airways	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Air France-KLM	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Lufthansa Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Cargolux Group	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Turkish Airlines	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Silk Way Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Finnair	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
MSC Cargo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
International Airlines Group	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LOT Polish Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
All Nippon Airways	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
UPS Airlines	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Total	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**	[…]	**[90-100]%**

Source: Form RM, Annex 2.4. Notes: see table above.

12.3.4. Conclusion on the Cargo Commitments

(1506) Based on the assessment set out in sections 12.3.1, 12.3.2 and 12.3.3, including the identity of the Purchaser and the scope of the Divestment Business, the Commission concludes that the Final Cargo Commitments of 9 January 2024 are likely to create a viable business capable of competing effectively on a lasting basis in the relevant markets. Therefore, the Final Cargo Commitments are suitable to eliminate entirely the competition concerns identified in relation to the cargo air transport services on the routes between Europe and South Korea.

12.4. Conclusion on the Proposed Commitments

(1507) In the light of the assessment set out in sections 12.2 and 12.3, the Commission concludes that the Final Commitments of 9 January 2024 are adequate and sufficient to entirely eliminate the significant impediment to effective competition in the markets for air transport and air cargo transportation services. Therefore, the Commission considers the Final Commitments of 9 January 2024 capable of rendering the Transaction compatible with the internal market and the EEA Agreement.

13. CONDITIONS AND OBLIGATIONS

(1508) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(1509) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(1510) In accordance with the basic distinction described in paragraph (1509) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the notifying party with Section B, paragraphs 2-33, of the Passenger Commitments of 9 January 2024 and Section B and the Schedule of the Cargo Commitments of 9 January 2024. All other relevant sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full texts of the final commitments are attached as Annexes 2 and 3 to this Decision and form an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Korean Air Lines Co. Ltd acquires sole control of Asiana Airlines Inc. within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B, paragraphs 2-33, of the Passenger Commitments of 9 January 2024 and Section B and the Schedule of the Cargo Commitments of 9 January 2024, as contained in Annexes 2 and 3.

Article 3

Korean Air Lines Co. Ltd shall comply with the obligations set out in Sections B, paragraphs 34-46, as well as in Sections D, E, F and G of the Passenger Commitments of 9 January 2024 and Sections C, D, E, F and G of the Cargo Commitments of 9 January 2024, as contained in Annexes 2 and 3.

Article 4

This Decision is addressed to:

Korean Air Lines Co, Ltd
260 Haneul-gil, Gangseo-gu
Seoul
Republic of Korea

Done at Brussels, 13.2.2024

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Case M.10149 – KOREAN AIR / ASIANA

Annex I to the Decision

1. INTRODUCTION

(1) This Annex describes the Notifying Party's and the Commission's air cargo market share calculation methodologies, measured in sales, capacity and frequencies (Section 2), the Commission's analysis of excess capacity in the air cargo markets (Section 3) as presented in Sections 8.11 and 8.12 of the Decision.

2. MARKET SHARE CALCULATIONS

(2) This section describes the Notifying Party's and the Commission's market share calculation methodology for the routes between Europe (i.e. the EEA plus UK and Switzerland) and South Korea.[1] This section also describes the revisions to the Commission's market shares reflecting the criticism and remarks raised by the Notifying Party in its Response to the Statement of Objections and in its response to the Letter of Facts (hereinafter, together 'the Notifying Party's remarks').

2.1. The Notifying Party's initial market shares calculation methodology

2.1.1. Introduction

(3) This section describes the Notifying Party's market share methodology, which relies on the Notifying Party's internal data as well as data from external data providers. The following sub-sections describe how the different data sources were combined together to obtain, respectively, (i) the Parties' sales volumes, (ii) market sizes, and (iii) the competitors' estimates.

(4) Table 2 below illustrates step-by-step the methodology of volume-based market shares on the route Europe to South Korea in 2019. The steps of the methodology are the following.

(a) **Step 1:** Original volume and value data from IATA's Cargo Accounts Settlement Systems ("CASS")[2] provide the starting point. These sales data are only available for the Parties and for market sizes.

(b) **Step 2**: The relative proportion of competitors' sales are estimated based on Trade Statistics Services (TRASS)[3] and Flight Operation Information System (FOIS)[4] data.

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1 For details on the Parties' market share calculations related to other geographic segmentation, see Annex QP10.Q28.3 - Methodology Note on Cargo Market Share Calculations.

2 CASS data is provided to each Party from IATA and include both the total volumes and total value settled through CASS on an O&D basis (i.e., including transhipments between origin airport and destination airport). Auxiliary volumes not settled through CASS (e.g. postal mail, internal cargo and volume settled directly with General Sales Agents) are excluded as are airlines that do not settle through CASS. No information on individual competitors is provided to the Parties. The volume unit used is chargeable weight.

3 TRASS data is based on customs information and include volumes originating and loaded in Korea showing the airport at which they are first unloaded and the final destination country of the cargo, as well as the same information in the other direction, i.e., volumes unloaded in and destined for Korea by original origin country of the cargo as well as the airport where the cargo was last loaded. All information is provided for the market total only, i.e., not by airline. The volume unit used is customs weight, i.e., weight excluding packaging and ancillary items.

(c) **Step 3**: The difference between market sizes and the Parties' sales data according to CASS is split according to the proportions from Step 2.

(d) **Step 4:** The Parties' estimates according to CASS are replaced with their internal data, and competitors' estimates are scaled up by the same proportion. This scaling is carried out (i) on the basis of the Parties' combined data, and (ii) separately for each route and year.

(e) **Step 5:** The sales data by carriers not included in CASS are estimated. This applies primarily to integrators, but also to some other airlines which appeared in FOIS but not in CASS.

(f) **Final sales data:** Estimates from Step 4 and Step 5 are added together to arrive at total market sizes.

(5) The Notifying Party's methodology for capacity and frequency shares partially differs from that for volume and value-based market shares. These differences are explained below.

2.1.2. The Parties' data

(6) Data for the Parties are based on their internal data. This applies to both volume and value market shares, as well as to capacity and frequency shares.

2.1.3. Market sizes

(7) Data from CASS provides the basis for both value and volume market sizes.

(8) CASS data does not appear to cover the Parties' whole business. Table 1 provides for a comparison between the Parties' internal volumes data and CASS estimates for the Parties. To account for these discrepancies, market sizes are scaled up in proportion to the difference between the Parties' volume and value data as reported in CASS and their own internal volume and value data.

Table 1 – Comparison of the Parties' internal volume data against data from CASS

Airline	Direction	Year	Internal	CASS	Discrepancy of the internal data compared to CASS data
Korean Air*	EEA to Korea	2018	[55 000 – 60 000]	[50 000 – 55 000]	[5-10]%
		2019	[55 000 – 60 000]	[45 000 – 50 000]	[10-20]%
		2020	[50 000 – 55 000]	[50 000 – 55 000]	[5-10]%
		2021	[55 000 – 60 000]	[50 000 – 55 000]	[5-10]%
	Korea to EEA	2018	[20 000 – 25 000]	[20 000 – 25 000]	[5-10]%
		2019	[15 000 – 20 000]	[15 000 – 20 000]	[0-5]%
		2020	[15 000 – 20 000]	[15 000 – 20 000]	[5-10]%
		2021	[15 000 – 20 000]	[15 000 – 20 000]	[5-10]%

4 FOIS data is provided by the airport authority and include information on volumes loaded at the Korean end of a route, and where those volumes were unloaded at the other end of the route, or vice versa, i.e., the volume unloaded at the Korean end and where those volumes were loaded. This information is provided by route and by airline. The volume unit used in the FOIS data is actual weight

* Should read: 'Asiana'

Airline	Direction	Year	Internal	CASS	Discrepancy of the internal data compared to CASS data
Asiana*	EEA to Korea	2018	[70 000 – 80 000]	[70 000 – 80 000]	[5-10]%
		2019	[70 000 – 80 000]	[70 000 – 80 000]	[5-10]%
		2020	[80 000 – 90 000]	[80 000 – 90 000]	[0-5]%
		2021	[90 000 – 100 000]	[90 000 – 100 000]	[0-5]%
	Korea to EEA	2018	[35 000 – 40 000]	[30 000 – 35 000]	[10-20]%
		2019	[30 000 – 35 000]	[30 000 – 35 000]	[10-20]%
		2020	[50 000 – 55 000]	[45 000 – 50 000]	[5-10]%
		2021	[55 000 – 60 000]	[45 000 – 50 000]	[10-20]%

Source: […].

(9) CASS data only covers transactions processed through or submitted to the CASS system.[5] As integrators are not covered by CASS, the Parties have added them to the market sizes separately. The following section describes how integrators' volume and value estimates are derived.

(10) Both capacity and frequency market sizes are, instead, estimated by summing the Parties' capacities and frequencies with those of competitors.

2.1.4. Competitors' estimates

2.1.4.1. Volume and value-based estimates

(11) Competitors' estimates are based on allocating the difference between market sizes and the Parties' sales data using a combination of FOIS, TRASS and Seabury.[6]

(12) First, the amounts are allocated among loading/unloading airports on the basis of TRASS data. For loading/unloading airports outside Europe, their volume/value are assigned to competitors based on the Notifying Party's best understanding of which airlines use those airports as transhipment hubs. For loading/unloading airports within Europe, their volume/value are assigned to competitors based on FOIS data.

(13) Seabury data is used to identify whether any carriers fly on behalf of integrators. If so, volume and value data are assigned partly to the airline and partly to an integrator in proportion to capacity.

(14) The split between belly and freighter aircraft is determined for each competitor based on FOIS data (where available) or Seabury capacity data. Where neither FOIS data nor Seabury capacity data is available for an airline, the proportional split between freighter and belly is assumed to be the same as the rest of the market.

(15) If any airline is encountered in the FOIS or TRASS data which is known not to be covered by CASS, the Parties have added their volume/value to market sizes

* Should read: 'Korean Air'

5 The Parties estimate approximately 87 per cent of the market between the EEA and Korea is covered by CASS. See QP10.Q28.

6 Data collated by Seabury from Flightradar24 and other sources. This data includes details on capacity and frequency of cargo flights by routing and airline, as well as an indication if the airline was operating the flight on behalf of an integrator. The data is collected on a per-flight basis, does not directly include information on transhipments, but only about non-stop and multi-stop flights. The volume unit used for the capacity is the chargeable weight.

separately. The Parties have also applied a scale factor to compensate for differences between FOIS/TRASS and the volume/value in CASS.

(16) Table 2 illustrates step-by-step the methodology of volume-based market shares on the route Europe to South Korea in 2019.

Table 2 – Step-by-step extrapolation of total cargo market shares in volume – Europe to South Korea in 2019

Airline	Step 1	Step 2	Step 3	Step 4	Step 5	Final volume
Korean Air	[70 000 – 75 000]		[70 000 – 75 000]	[75 000 – 80 000]		[75 000 – 80 000]
Asiana	[45 000 – 50 000]		[45 000 – 50 000]	[55 000 – 60 000]		[55 000 – 60 000]
Combined	**[120 000 – 130 000]**		**[120 000 – 130 000]**	**[125 000 – 135 000]**		**[125 000 – 135 000]**
Qatar Airways		[10-20]%	[25 000 – 30 000]	[25 000 – 30 000]		[25 000 – 30 000]
DHL					[15 000 – 20 000]	[15 000 – 20 000]
Volga-Dnepr Group		[5-10]%	[7 000 – 9 000]	[7 000 – 9 000]	[0 – 1000]	[5 000 – 10 000]
Cargolux Group		[0-5]%	[5 000 – 7 000]	[5 000 – 7 000]		[5 000 – 10 000]
Silk Way Group		[5-10]%	[8 000 – 10 000]	[8 000 – 10 000]		[8 000 – 10 000]
Air France-KLM		[5-10]%	[10 000 – 15 000]	[10 000 – 15 000]		[10 000 – 15 000]
Turkish Airlines		[5-10]%	[9 000 – 11 000]	[9 000 – 11 000]		[9 000 – 11 000]
Finnair		[0-5]%	[5 000 – 7 000]	[5 000 – 7 000]		[5 000 – 7 000]
Lufthansa Group		[5-10]%	[10 000 – 15 000]	[10 000 – 15 000]		[10 000 – 15 000]
Singapore Airlines Group		[5-10]%	[10 000 – 15 000]	[10 000 – 15 000]		[10 000 – 15 000]
Atlas Air Worldwide		[0-5]%	[2 000 – 3 000]	[2 000 – 3 000]		[2 000 – 3 000]
Aeroflot Group		[5-10]%	[7 000 -9 000]	[7 000 -9 000]		[7 000 -9 000]
Emirates		[0-5]%	[3 000 – 5 000]	[3 000 – 5 000]		[3 000 – 5 000]
Etihad		[0-5]%	[2 000 – 3 000]	[2 000 – 3 000]		[2 000 – 3 000]
Ethiopian Airlines		[0-5]%	[1 000 – 2 000]	[1 000 – 2 000]		[1 000 – 2 000]
LOT Polish Airlines		[0-5]%	[1 000 – 2 000]	[2 000 – 3 000]		[2 000 – 3 000]
FedEx					[2 000 – 3 000]	[2 000 – 3 000]
UPS Airlines					[2 000 – 3 000]	[2 000 – 3 000]
All Nippon Airways		[0-5]%	[0 – 1 000]	[0 – 1 000]		[0 – 1 000]
Thai Airways International		[0-5]%	[4 000 – 6 000]	[4 000 – 6 000]		[4 000 – 6 000]
International Airlines Group		[0-5]%	[1 000 – 2 000]	[2 000 – 3 000]		[2 000 – 3 000]
Philippine Airlines		[0-5]%	[1 000 – 2 000]	[1 000 – 2 000]		[1 000 – 2 000]
Czech Airlines		[0-5]%	[1 000 – 2 000]	[1 000 – 2 000]		[1 000 – 2 000]
Others		[5-10]%	[10 000 – 15 000]	[10 000 – 15 000]	154	[10 000 – 15 000]
Total	**[260 000 – 285 000]**	**100.0%**	**[260 000 – 285 000]**	**[260 000 – 285 000]**	**24 641**	**[290 000 – 315 000]**

Source: […].

(17) Table 3 provides an illustration of the different steps involved in the Notifying Party's market share calculations for a selection of competitors.

Table 3 – Step-by-step derivation of the Notifying Party's volume estimates for a selection of competitors – EEA to South Korea in 2019

Step	Description	Cargolux	Lufthansa Group	Air France-KLM	Singapore Airlines	Qatar Airways
Step 1		N/A	N/A	N/A	N/A	N/A
Step 2	Competitor's FOIS volume	6 787	7 500	7 703		
	Total FOIS volumes	174 177	174 177	174 177		
	Competitor's share of FOIS volume	4%	4%	4%		
	Total TRASS volume loaded in the EEA	105 991	105 991	105 991		
	Competitor's TRASS volume	4 130	4 851	4 687	4 782	15,866
	Total volume excluding Parties and non-CASS volume	69 086	69 086	69 086	69 086	69,086
	Share among competitors	6%	7%	7%	7%	23%
Step 3	Competitors' CASS volume	91 793	91 793	91 793	91 793	91,793
	Share among competitors	6%	7%	7%	7%	23%
	Competitor's CASS volume	5 487	6 446	6 228	6 354	21,081
Step 4	Scale factor for Parties' internal data	[1 – 1.5]	[1 – 1.5]	[1 – 1.5]	[1 – 1.5]	[1 – 1.5]
	Competitor's rescaled volume	[5 000 – 6 000]	[6 000 – 7 000]	[6 000 – 7 000]	[6 000 – 7 000]	[20 000 – 25 000]
Step 5		N/A	N/A	N/A	N/A	N/A
Notifying Party's volumes estimates		[5 000 – 6 000]	[6 000 – 7 000]	[6 000 – 7 000]	[6 000 – 7 000]	[20 000 – 25 000]
Competitor's actual volumes		See data room	See data room	See data room	See data room	See data room

Source: […]

2.1.4.2. Capacity and frequency-based estimates

(18) The capacities and frequencies provided by Seabury serve as the starting point for estimating competitors' capacities and frequencies.

(19) The Parties indicate that each row of data extracted from Seabury data is based on the flight number and then aggregated weekly or monthly by the routing. A new row is used when the flight number changes. For multi-stop flights, one direction may not be included in the data if the flight number changes at Asian airports other than ICN. The Parties argue that the frequency for the outbound is by definition the same as for the inbound as all aircrafts return to their home-base after flying a rotation, thus they use the higher value between the outbound and the inbound routes. This maximum is taken by year, week/month, carrier code, aircraft, aircraft size, belly/freighter split, and charter/regular split. The same approach of using the higher of the inbound and outbound capacities and frequencies that is used for competitors is used on the Parties' internal data.

(20) The Parties account for technical stops made in Korea owing to the COVID-19 restrictions in China by cross-checking the list of competitors seen in the Seabury data in 2020 and 2021 with those that appear in the FOIS data in the same years, and, if any airlines are included in Seabury that do not have any volume in FOIS, they assume that these airlines made a technical stop only, and exclude them from the sample. As

discussed in Sections 8.11 and 8.12 of the Decision, however, this approach results in a significant overestimation of capacity for competitors who relied on technical stops.

(21) The Parties estimate capacity and frequency for transhipment carriers based on the lower between the capacities (i) to or from Korea, and (ii) to or from Europe. Combinations of airlines and hubs with overall market shares smaller than 0.2% are excluded.

(22) Integrators are separately recorded in Seabury. Where the data indicates that another carrier's cargo space was on behalf of an integrator, these frequencies and capacities are reallocated to the relevant integrator.

2.1.5. Market share estimates for 2022

(23) Market shares for 2022 are only available to a limited extent: except for CASS, all data sources relied upon by the Parties for the period 2018-2021 are no longer available. This implies that (i) Market sizes for 2022 are not fully comparable to market sizes for 2018-2021 because integrators' data are not included; (ii) No estimate for competitors could be provided; (iii) No subdivision into belly/freighter or non-stop/multi-stop/transhipment is available. Similar issues would also affect market shares for 2023.

2.2. The Commission's market share calculation methodology

(24) This section describes the Commission's market share methodology, which relies on the Notifying Party's own methodology and combines it with data and feedback from competitors.

2.2.1. The data

(25) The Commission requested competitors to provide their own internal data on volume and value sales, as well as on capacity and spare capacity for the routes between Europe and South Korea for the years 2019, 2020, and 2021.

(26) The Commission initially reached out to 24 competitors, where 19 replied to the data request.[7] Table 4 provides an overview of the competitors contacted, and whether their data is available in the data room. The data gathered by the Commission represents close to [70-80]% of all volumes on the route Europe to South Korea in 2019 according to the Notifying Party's sales volumes and about [70-80]% on the route South Korea to Europe.

[7] The Commission interacted with a number of market participants via follow-up phone calls and via e-mails to explain the instructions for filling in the data templates, as well as to clarify any questions that market participants might have had.

Table 4 – Overview market reconstruction exercise

Competitors active on the routes between Europe and South Korea according to the Parties	Was a response to the data requests received during the Phase II investigation?	Data available in data room?
Aeroflot Group	[…]	[…]
Air Astana	[…]	[…]
Air China	[…]	[…]
Air France-KLM	[…]	[…]
Air India	[…]	[…]
Alitalia	[…]	[…]
All Nippon Airways	[…]	[…]
Atlas Air Worldwide	[…]	[…]
Cargolux Group	[…]	[…]
Cathay Pacific Airways	[…]	[…]
China Airlines	[…]	[…]
China Eastern Airlines	[…]	[…]
China Southern Airlines	[…]	[…]
Czech Airlines	[…]	[…]
DHL	[…]	[…]
Emirates	[…]	[…]
Ethiopian Airlines	[…]	[…]
Etihad	[…]	[…]
FedEx	[…]	[…]
Finnair	[…]	[…]
Hainan Airlines	[…]	[…]
International Airlines Group	[…]	[…]
Japan Airlines	[…]	[…]
Kalitta Air	[…]	[…]
LOT Polish Airlines	[…]	[…]
Lufthansa Group	[…]	[…]
Maleth Aero	[…]	[…]
National Airlines	[…]	[…]
Philippine Airlines	[…]	[…]
Qatar Airways	[…]	[…]
Silk Way Group	[…]	[…]
Singapore Airlines Group	[…]	[…]
Thai Airways International	[…]	[…]
Turkish Airlines	[…]	[…]
UPS Airlines	[…]	[…]
Uzbekistan Airways	[…]	[…]
Volga-Dnepr Group	[…]	[…]

Source: Commission. Note: The list is based on the competitors' listed in Annex

(27) The Commission further reached out to third parties to gather additional data and information to address the Notifying Party's remarks and criticisms, and used this additional data and information to revise the market share calculations and the analysis of excess capacity.

(28) The following paragraphs outline the main data-related aspects of the Notifying Party's remarks and criticisms, which can be grouped into the following themes:

(1) the measurement units used to gather data on volumes (actual weight volumes versus chargeable weight volumes) and on the load factor;

(2) respondent's interpretation of the Commission's requests for information;

(3) the approach followed to compile market shares and to define total market sizes;

2.2.1.1. On the measurement units used to gather data on volumes (actual weight volumes versus chargeable weight volumes) and on the load factor

(29) The Notifying Party argues that the Commission's questions in the market investigation questionnaires as well as the Phase II questionnaires were not precise enough to identify the measurement unit of volumes and capacity, and that the failure to specify such measurement unit could easily lead different respondents to provide data on different bases. In particular, the Commission did not specify that data should have been provided as chargeable weight for it to be consistent with the Parties' market shares methodology.[8]

(30) To address the Notifying Party's criticism, the Commission contacted all third party data providers to clarify the measurement unit used, and, in case a unit other than chargeable weight was used, asked them to submit data based on chargeable weight or alternatively to provide a 'rule of thumb' to convert the submitted data into chargeable weight. Where no information on chargeable weight could be retrieved, a rule of thumb based or the Parties' own data were used.

(31) The following tables provides for the percentage difference between chargeable weight and actual weight for Korean Air and for Asiana. The competitor-by-competitor outcome of the Commission's outreach with respect to this aspect is discussed further below, and will be made available to the Notifying Party's external advisors via the Data Room procedure.

Table 5 - Percentage difference between chargeable weight and actual weight for Korean Air

Year	Direction	Freighter	Belly	Overall
2018	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[10-20]%	[10-20]%	[10-20]%
2019	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[10-20]%	[5-10]%	[10-20]%
2020	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[10-20]%	[30-40]%	[20-30]%
2021	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[20-30]%	[30-40]%	[20-30]%

Source: […].

Table 6 - Percentage difference between chargeable weight and actual weight for Asiana

Year	Direction	Freighter	Belly	Overall
2018	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[10-20]%	[5-10]%	[10-20]%
2019	Europe to Korea	[10-20]%	[10-20]%	[10-20]%
	Korea to Europe	[10-20]%	[5-10]%	[10-20]%
2020	Europe to Korea	[10-20]%	[5-10]%	[10-20]%
	Korea to Europe	[10-20]%	[10-20]%	[10-20]%
2021	Europe to Korea	[10-20]%	[5-10]%	[10-20]%
	Korea to Europe	[10-20]%	[10-20]%	[10-20]%

Source: […].

(32) The Notifying Party argued that load factors cannot be interpreted reliably because: (i) load factors provided by third parties cannot be interpreted reliably, (ii) load factors estimated from different sources are likely to be inconsistent with each other and with data provided by the Parties, (iii) the load factor could be measured in weight (tonnes), volume (cubic metres), a combination of the two (chargeable weight); or based on the

[8] RBB Economics Data Room Report, pages 9-10. RBB Economics Second Data Room Report, pages 7-8.

number of positions used; (iv) it is unclear how to provide a load factor across multi-stop routes and for transhipment carriers, arguing that the relevant load factor when estimating spare capacity is the maximum across all legs of a route that could carry cargo between Korea and Europe.[9]

(33) The Commission disagrees with the Notifying Party's remarks for the reasons explained in Section 8.11.4 and 8.12.4 of the Decision, and notes that respondents' load factors provide helpful evidence on competitors' excess capacity even if they are measured with a certain degree of uncertainty. The load factor is widely regarded in the industry as a reliable measure for capacity utilisation.[10]

(34) Moreover, as the following tables show, load factor estimates based on alternative specifications and alternative levels of aggregation[11] do not differ to an extent that render them an invalid measure for capacity utilisation. The tables below also show that load factors measured on the basis of actual weight are generally lower than load factors measured on the basis of chargeable weight or tonne-kilometres. This means that measures of rivals' excess capacity based on 'actual weight' load factors tend to overestimate the amount of excess capacity actually available that is faced by the Parties. For Korean Air, the 'actual weight' load factor is about [10-15] percentage points lower than the 'chargeable weight' load factor for both directions, similarly for Asiana on the route from Europe to South Korea while it is about [0-5] percentage points lower on the route from South Korea to Europe. This most likely indicates that the 'actual weight' load factor is generally lower than the 'chargeable weight'. Accordingly, the Commission's analysis of excess capacity tends to be in the Notifying Party's favour (indicating there is more excess capacity than actually exists) the higher the number of competitors who relied on actual weight.

Table 7 – Sensitivity about the load factor – Korean Air

Direction	Type of sensitivity	Metric	Year				
			2018	2019	2020	2021	2022
Europe to Korea	Alternative measures	Actual weight	[70-80]%	[70-80]%	[70-80]%	[80-90]%	[80-90]%
		Chargeable weight	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
		Tonne-kilometres	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
	Alternative aggregation	Average	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
		Maximum	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
Korea to Europe	Alternative measures	Actual weight	[80-90]%	[70-80]%	[80-90]%	[80-90]%	[70-80]%
		Chargeable weight	[90-100]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
		Tonne-kilometres	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[80-90]%
	Alternative aggregation	Average	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[80-90]%
		Maximum	[80-90]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%

Source: […].

9 RBB Economics Data Room Report, pages 14-15.

10 For example, see pages 42, 105, 106, 111 Boeing's World Air Cargo Forecast 2022-2041 (Available at https://www.boeing.com/resources/boeingdotcom/market/assets/downloads/Boeing_World_Air_Cargo_Forecast_2022.pdf) (ID 12795), page 3 of Annex RFI27.Q1.18 - Global air cargo tonnage and prices continue decline.pdf, or pages 1, 2, or pages 1, 2, and 3 of Annex RFI27.Q1.20 - Air cargo market analysis_april-2023_IATA (and similarly also the previous editions).

11 See RFI 29 Q6. The Parties estimated load factors by dividing the total volume carried on the route by the total capacity (with both volume and capacity measured in tonne-kilometres), which means that the load factor is a weighted average of the load factor on each leg, instead of the load factor of the highest leg applied to the whole route.

Table 8 – Sensitivity about the load factor – Asiana

Direction	Type of sensitivity	Metric	Year				
			2018	2019	2020	2021	2022
Europe to Korea	Alternative measures	Actual weight	[70-80]%	[70-80]%	[80-90]%	[80-90]%	[80-90]%
		Chargeable weight	[80-90]%	[80-90]%	[90-100]%	[80-90]%	[90-100]%
		Tonne-kilometres	[80-90]%	[80-90]%	[90-100]%	[80-90]%	[90-100]%
	Alternative aggregation	Average	[80-90]%	[80-90]%	[90-100]%	[80-90]%	[90-100]%
		Maximum	[90-100]%	[80-90]%	[90-100]%	[90-100]%	[90-100]%
Korea to Europe	Alternative measures	Actual weight	[70-80]%	[50-60]%	[60-70]%	[70-80]%	[70-80]%
		Chargeable weight	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[70-80]%
		Tonne-kilometres	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[70-80]%
	Alternative aggregation	Average	[70-80]%	[60-70]%	[60-70]%	[70-80]%	[70-80]%
		Maximum	[80-90]%	[70-80]%	[70-80]%	[80-90]%	[70-80]%

Source: […].

2.2.1.2. On the respondent's interpretation of the Commission's requests for information

(35) The Notifying Party alleges that respondents may have misinterpreted the Commission's questions, and, instead of providing information on cargo transported between Europe and Korea, provided information on cargo transhipped behind or beyond Europe and South Korea, cargo transhipped at hubs outside Europe or South Korea, or cargo for O&Ds on multi-stop freighter flights.[12]

(36) The Commission notes that the information requested is ordinarily gathered by cargo carriers as part of their business, and the Notifying Party did not provide any evidence in support of such alleged extraordinary level of misinterpretation of the Commission's questions. Moreover, the data provided by respondents is generally close to the Parties' competitor estimates, which provides further reassurance that such startling misinterpretation has not taken place.

2.2.1.3. On the approach followed to compile market shares and to define total market sizes

(37) The Notifying Party argues that the Commission's methodology combines a top-down and bottom-up approach in way that is flawed and likely to lead to less accurate estimates for the Parties' market shares than the top-down approach originally taken by the Parties.[13]

(38) In this regard, the Notifying Party claims that the Commission's approach is incorrect because (i) the Parties based the volume and value market totals on a top-down approach using a reliable and consistent data source; (ii) differences between the Parties' potentially imprecise estimates about the distribution of the volumes between various competitors combined with their own data from competitors randomly biased the market total, and (iii) even though the Commission's approach with respect to integrators makes sense in principle, in practice the data provided by integrators are also incomplete and inconsistent, which means the market investigation failed to represent the shares of integrators accurately.[14]

(39) The Notifying Party argues that the Commission's approach would have been sensible if it had been able to collect consistent and reliable data from practically all of the market.[15] Furthermore, the Notifying Party argues that, because of the above, the Parties' market size estimates should not be adjusted to reflect the more accurate data provided by competitors.[16]

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12 RBB Economics Data Room Report, page 18. RBB Economics Second Data Room Report, pages 2-3.

13 RBB Economics Data Room Report, page 22.

14 RBB Economics Data Room Report, pages 22-23.

15 RBB Economics Data Room Report, pages 22-23.

16 RBB Economics Data Room Report, pages 22-23. RBB Economics Second Data Room Report, pages 3-5.

(40) The Notifying Party misrepresents its own market shares methodology. As summarised in Section 2 of Annex I to the SO and in Annex QP10.Q28.3 Methodology Note on Cargo Market Share Calculations, Korean Air only partially follows a top-down approach:

(a) CASS volumes data are in themselves based on aggregating information and data from cargo intermediaries, agents and airlines participating in CASS, and can thus not be regarded as a "top-down" data source.

(b) Korean Air itself recognizes that CASS does not fully reflect the Parties' own data, and thus CASS market totals need to be revised, see for example paragraph (446) of the Form CO and paragraphs (4) and (5) in Annex QP10.Q28.3: "*CASS does not cover the Parties' or competitors' whole business. To compensate for this, the market total is scaled up according to the proportional difference between the Parties' CASS volumes/revenues and their internal volumes/revenues*".

(41) The Notifying Party misrepresents the accuracy of its own methodology for taking into account integrators in the market size calculations. In fact, the Notifying Party estimates integrators' volumes (which are then added on top of the CASS-based market totals) based on combining together multiple different sources. For example, as Annex RFI5.Q10 shows, DHL's estimate is based on:

(a) Identifying in the FOIS data airlines that could be transporting cargo on behalf of integrators;

(b) Identifying in the TRASS data, volumes bound or originating from Korea loaded or unloaded in hubs where DHL is based (that is, Anchorage, Hong Kong, and Tokyo);

(c) Scaling the abovementioned estimates based on the relative difference between the Parties' internal data and the Parties' data in CASS; and

(d) Summing up the estimates obtained in the previous point.

(42) Because the Parties' methodology to estimate competitors' market shares rests on a number of assumptions and approximations, it is highly questionable that third party actual data gathered by the Commission should be deemed by the Notifying Party of lower order of consistency and accuracy.

(43) The Notifying Party misrepresents the market coverage of the Commission's exercise. For both routes between Europe and Korea, third-party data gathered by the Commission represents about [70-80]% of the volume market totals, and effectively reflects the entirety of integrators' general cargo business. Although a coverage of 100% would have clearly been a hypothetically better outcome, because of the relatively high market fragmentation, this threshold is only a theoretical possibility, and reaching a coverage of around [70-80]% means that a substantial share of the market responded to the Commission's market investigation, with almost all important market players, thus ensuring a wide coverage.

(44) Lastly, because of the aforementioned, it is reasonable to correct market sizes to take into account discrepancies between the Parties' estimates of competitors and competitors' actual data (and not just those of the integrators). For those competitors who did provide actual data, these actual sales figures *on average* were lower on the route from Europe to South Korea and higher on the route from South Korea to Europe than the estimates provided by the Parties. This implies that not using the correction would very likely overestimate the Europe to South Korea market size underestimate the market size on South Korea to Europe. This is especially striking in the latter case as the methodology proposed by the Notifying Party is inherently inconsistent insofar as the sum of the Parties' and their competitors' volumes is larger

than the market itself. To address this issue, the Notifying Party suggests to compensate for a discrepancy in one competitor's volumes by adjusting the volumes for all the airlines where there were no volumes submitted in response to the questionnaire and the volumes still rely on the Parties' estimates, including those that are named and those that are only identified as "Others".[17]

(45) As shown further below, the Commission assessed whether market shares would differ if market sizes and competitors' estimates were adjusted as suggested by the Notifying Party. This is not the case. Nonetheless, in order to show that the Commission's conclusions do not depend on the methodology followed, the Commission relies on the methodology proposed by the Notifying Party in its analysis.

2.2.2. Discrepancies between the Notifying Party's data on sales volumes and data from the market reconstruction

(46) This Section as well as the data available in the data room allow for a comparison between the Notifying Party's original data on sales volumes and the Commission's market reconstruction for volumes and capacities, for both the route Europe to South Korea and for South Korea to Europe.

(47) As the data shows, the Notifying Party's estimates are broadly accurate with respect to volumes, while discrepancies are significant for capacities.

(48) Table 9 and Table 10 provide a comparison between the Notifying Party's original market share estimates and the Commission's market shares, while Table 11 provides a comparison between the Notifying Party's and the Commission's capacity shares. As discussed in Section 8.11.1 and 8.11.2, a comparison of the Notifying Party's combined market shares according to the Commission's market reconstruction and according to the Notifying Party's submissions shows that any deviations in market shares are very limited at less than [0-5][0-5] percentage points.

(49) Furthermore, the Commission's analysis shows that, although some competitors' shares were overestimated and some others were underestimated, these discrepancies were not substantial and mostly tended to cancel each other out, therefore not affecting the Notifying Party's combined market shares significantly.

Table 9 – Discrepancy between the Notifying Party's and the Commission's market shares – Europe to South Korea – 2019-2021

Carrier	Original volume-based market shares			Revised volume-based market shares Market sizes adjusted according to the Commission's methodology			Revised volume-based market shares Market sizes adjusted according to the Notifying Party's methodology		
	2019	2020	2021	2019	2020	2021	2019	2020	2021
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Korean Air	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Asiana	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Combined	***[40-50]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission and Notifying Party's estimates.

[17] RBB Economics Second Data Room Report, pages 3-5.

Table 10 – Discrepancy between the Notifying Party's and the Commission's market shares – South Korea to Europe – 2019-2021

Carrier	Original volume-based market shares			Revised volume-based market shares Market sizes adjusted according to the Commission's methodology			Revised volume-based market shares Market sizes adjusted according to the Notifying Party's methodology		
	2019	2020	2021	2019	2020	2021	2019	2020	2021
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Korean Air	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Asiana	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[30-40]**%**	***[40-50]%***	***[40-50]%***	[30-40]**%**	***[40-50]%***	***[40-50]%***	[30-40]**%**	***[40-50]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Commission and Notifying Party's estimates.

Table 11 – Discrepancy between the Notifying Party's and the Commission's capacity shares

Carrier	Original volume-based market shares			Revised volume-based market shares Market sizes adjusted according to the Commission's methodology			Revised volume-based market shares Market sizes adjusted according to the Notifying Party's methodology		
	2019	2020	2021	2019	2020	2021	2019	2020	2021
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Korean Air	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Asiana	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]**%**	[20-30]**%**	[20-30]**%**	[30-40]**%**	***[40-50]%***	***[40-50]%***	[30-40]**%**	***[40-50]%***	***[40-50]%***
Competitors	***Only available in data room for confidentiality reasons***								
Total	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Commission and Notifying Party's estimates.

2.2.3. Conclusion

(50) As indicated in Section 8.11 and 8.12, the Commission based its assessment on the Notifying Party's data on sales volumes where these sales volumes do not substantially differ from the outcome of the market reconstruction exercise, namely for what concerns volume and value-based market shares. Where instead the Notifying Party's sales volumes differed substantially from the outcome of the market reconstruction, namely for what concerns capacity shares, the Commission primarily relied on its own market reconstruction exercise taking into account feedback received from the Notifying Party during the Phase 2 Investigation.

3. EXCESS CAPACITY ANALYSIS

(51) This section describes the Commission's analysis of excess capacity in the air cargo markets presented in Sections 8.11 and 8.12 of the Decision.

3.1. Data

(52) The Commission relied on the Notifying Party's sales volumes as well as on data collected from competitors.

3.1.1. Data from the Parties

(53) The market reconstruction exercise described in Section 2 is the starting point of the Commission's analysis.

3.1.2. Data from Competitors

(54) The Commission issued RFIs to all the major competitors (see Table 4 for an overview) to gather three types of information for each route between Europe and South Korea:

(a) Data and information on how much more cargo competitors could have transported on their aircrafts simply by filling up unused space on the aircraft (without changing flight schedules). This information was asked for 2019, 2022, and 2023.

(b) Data and information on how much more cargo competitors could have transported (i) by increasing the utilization rate of the aircraft already active on the route beyond the usual schedule, (ii) by flying additional aircraft on the route; or (iii) by re-allocating volumes from other destinations on the same flights (e.g. substituting 1,000 tons of cargo bound for China or Japan with 1,000 of cargo bound for Europe). This information was asked for 2019, 2022, and 2023.

(c) Data and information on competitors' load factor. This information was asked for the period between 2018 and 2023.

(55) As discussed above, to address the Notifying Party's criticisms, the Commission undertook to collect additional data and clarifications from third parties. Further information on the data and clarifications provided by each third party is included in Appendix I and is made available to the Notifying Party's external advisors via the Data Room Procedure.

(56) The Commission combined these data sources with the market reconstruction data described in Section 2.

3.2. Methodology

(57) Excess capacity is defined as the additional volumes a carrier could transport by filling up the unused capacity on aircraft entirely (equal to the difference between overall capacity and volume transported). This is equal to the difference between overall capacity and volume transported – also taking into account cargo destined to/originating from other destinations. For example, carriers flying from a European country to South Korea via Japan may load both cargo destined to South Korea and to Japan. Not accounting for this Japan-destined cargo will result in substantially overestimating the capacity available.

(58) The data described under paragraph (54)(a) is the primary source of information to measure each competitor's excess capacity.

(59) If such data is not available, data on the load factor is used instead. Excess capacity is thus calculated as capacity multiplied by 100% minus the load factor. For example, if competitor A on the route Europe to South Korea has capacity of 10 000 tons and a load factor of 60%, then its approximate excess capacity will be equal to (10 000) * (100% – 60%) = 4 000 tons. As discussed in Section 8.11 and 8.12 of the Decision, cargo load factors only rarely approach 100%, therefore this approach would tend to overestimate excess capacity.

(60) Where data on the load factor is not available either, excess capacity is calculated based on the weighted average load factor of all other competitors active on the route in the year excluding the Parties**.**

(61) To verify the robustness of its results to alternative measurements of excess capacity, the Commission's analysis entails two sensitivities:

(a) Sensitivity 1: Where data on excess capacity is not available, excess capacity is calculated as capacity multiplied by 100% minus the minimum load factor among all competitors active on the route in the year.

(b) Sensitivity 2: Excess capacity is calculated as capacity multiplied by 100% minus the load factor.

(62) The Commission's analysis also relies on the following assumptions:

(a) In line with Section 8.4, 2019 data is the starting point for the analysis.[18] Data for 2019 data is then revised to take into the latest changes to the market situation. This implies that:

(1) Carriers who entered the routes after 2019 are included, namely MSC Air Cargo and Air Premia.

(2) Volumes transported by carriers no longer active (e.g. Russian carriers, Alitalia, Czech Airlines) are reallocated proportionally to the other competitors.

(3) The volumes of operators no longer active are reallocated proportionally among other operators already active, while the capacities of operators no longer active are instead excluded from the markets entirely rather than being re-allocated to other competitors.[19]

(b) Excess capacity estimates cannot be greater than the available capacity. If this happens, excess capacity estimates are revised to be consistent with capacity and volume estimates.

3.3. Results

3.3.1. Overall

(63) Table 12 and Table 13 show the Commission's estimates for competitors' excess capacity for the route Europe to South Korea and South Korea to Europe, respectively, according to the main method and according to two sensitivities where excess capacity is calculated based on the load factor. These results are further discussed in Section 8.11.4.2 and 8.12.4.2 respectively for the route Europe to South Korea and South Korea to Europe. The un-redacted tables are only provided to the Parties external advisors in the data room. The figures relied upon by the Commission in this Decision are based on the figures included in the RBB Economics Second Data Room Report.

(64) The amount of excess capacity available on the route is benchmarked against the Parties' combined volumes: the Parties would unlikely be able to increase prices *post-merger* if all the Parties' customers could find an alternative to them (putting aside the issue of differentiated capacities). The Parties are expected to have at least some incentive to increase prices, however, if only a fraction of the Parties' customers could

[18] One competitor could only provide data for 2022, this was used instead of 2019.

[19] This different treatment is motivated by both qualitative and quantitative reasons: (i) it is reasonable to expect that the demand served by these carriers did not automatically disappear when these carriers could no longer serve it. It is therefore reasonable to reallocate volumes across competitors because most likely customers of operators no longer active started looking for other alternative carriers; and (ii) capacity calculations are ultimately based on frequency calculations: the disappearance of any of these operators did not automatically translate into a proportional increase in the number of frequencies competitors could operate on these routes.

find an alternative supplier.[20] This is because, if capacity is scarce, competitors can enjoy some degree of market power, and could be thus able to increase prices to customers. Moreover, competitors could in turn also find profitable to follow price increases. If competitors are not able to cover the entirety of market demand, the merger would enable the merged entity to enjoy an increased degree of market power, and be thus capable of increasing prices to customers.[21]

(65) This market power-increasing effect of a *post-merger* increase of the merged entity's excess capacity (relative to the rivals, who are capacity-constrained) would arise even if the rivals' capacity would be perfect substitute of the merged entity's capacity. Also, the rivals' capacity is not of the same quality as that of the Parties, who are each other's particularly close competitors. This quality differential reinforces the capacity-based effect.

(66) This approach is aligned with the Horizontal Merger Guidelines, paragraphs 32 to 34 provide that *"(32) When market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging firms may have an incentive to reduce output below the combined pre-merger levels, thereby raising market prices. The merger increases the incentive to reduce output by giving the merged firm a larger base of sales on which to enjoy the higher margins resulting from an increase in prices induced by the output reduction. (33) Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition. (34) Such output expansion is, in particular, unlikely when competitors face binding capacity constraints.*"[22] Also, paragraph 24 of the Horizontal Merger Guidelines provides that "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market*."[23]

(67) The sum of all competitors' excess capacities is around [30-40]% of the Notifying Party's combined volumes on the route Europe to South Korea. This implies that less than half of the Notifying Party's customers could find an alternative supplier other than the Parties. Competitors face severely binding capacity constraints and are therefore unlikely able to increase their supply sufficiently if prices increase, which implies that the merging firms may have an incentive to increase prices.

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20 The Commission previously used similar excess capacity analysis, for example, in Case M.6471 – *Outokumpu / INOXUM*, and Case M.6905 – *INEOS / Solvay*.

21 In addition, as explained above in Section 2.1, the fact that the capacities of the market players are differentiated, further increases the incentives to the raise the prices post-merger. In particular, not all of the rival spare capacity is equally good substitute of the merged entity's capacity. As also explained in the SO, the Parties are each other's close competitors (see Sections 8.11.2 and 8.12.2).

22 Horizontal Merger Guidelines, paragraphs 32 to 34.

23 Horizontal Merger Guidelines, paragraph 24.

Table 12 – Estimates for excess capacity on Europe to South Korea

	Excess capacity (all competitors, parties excluded)	**Excess capacity faced by the Parties post-merger**	**Excess capacity faced by Korean Air pre-merger**	**Excess capacity faced by Asiana pre-merger**
Main estimate based on third-party data (and the load factor otherwise)	[50 000 - 60 000]	[30 - 40]%	[80 - 90]%	[120 - 130]%
Sensitivities:				
1. Sensitivity based on the third-party data where available, and the minimum load factor otherwise	*[60 000 - 70 000]*	*[40 - 50]%*	*[130 - 140]%*	*[190 - 200]%*
2. Sensitivity based exclusively on the load factor	*[80 000 - 90 000]*	*[60 - 70]%*	*[120 - 130]%*	*[180 - 190]%*

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report.

(68) The sum of all competitors' excess capacities is around [90-100]% of the Notifying Party's combined volumes on the route South Korea to Europe. This implies that the Notifying Party's customers could only barely find sufficient alternative supply other than the Notifying Party's. Although the overall excess capacity faced by the Parties *post-merger* is thus higher than on the route from Europe to South Korea, competitors' excess capacity is limited nonetheless, as shown further below. And, as also discussed more in detail in Section 8.12.4 of the Decision, competitors face binding capacity constraints and are therefore unlikely able to increase their supply sufficiently if prices increase, which implies that the merging firms may have an incentive to increase prices.

Table 13 – Estimates for excess capacity on South Korea to Europe

	Excess capacity (all competitors, parties excluded)	**Excess capacity faced by the Parties post-merger**	**Excess capacity faced by Korean Air pre-merger**	**Excess capacity faced by Asiana pre-merger**
Main estimate based on third-party data (and the load factor otherwise)	[50 000 - 60 000]	[90 - 100]%	[170 - 180]%	[400 - 410]%
Sensitivities:				
1. Sensitivity based on the third-party data where available, and the minimum load factor otherwise	*[50 000 - 60 000]*	*[100 - 110]%*	*[250 - 260]%*	*[580 - 590]%*
2. Sensitivity based exclusively on the load factor	*[80 000 - 90 000]*	*[150 - 160]%*	*[270 - 280]%*	*[600 - 610]%*

Source: Commission and Notifying Party's estimates based on Notifying Party's and competitors' data. RBB Economics Second Data Room Report.

(69) The Commission notes that the sensitivities based on the load factor tend to overestimate excess capacity. As mentioned above and in Section 8.11.4.2 and 8.12.4.2 of the Decision, the load factor as used by the Commission can indicate a higher level of excess capacity in the market than is in fact available and is therefore in any event likely to overestimate spare capacity that is available on the market. First,

excess capacity measured as capacity multiplied by the difference between 100% and the load factor implies that 100% is the benchmark for cargo airlines to be considered fully utilized. However, this is not the case. Cargo airlines are deemed already fully utilized when load factors are around 80-90%. Should a benchmark of 90% be used instead of 100%,[24] then excess capacity would be substantially lower: [40-50]% on the route from Europe to South Korea instead of [60 – 70]% and [90-100]% on the route from South Korea to Europe instead of [150-160]%.[25] Second, as detailed in the Appendix, some carriers measured the load factor using actual weights, which can be even up to [10-20] percentage points lower than load factors measured using chargeable weights. This implies that these carriers' excess capacity is also significantly overestimated.

3.3.2. Change in excess capacity compared to the situation pre-Transaction

(70) This analysis also shows the excess capacity faced by each of the Parties individually *pre-merger*, e.g. how much was competitors' excess capacity from Korean Air's point of view, where Asiana is also considered a competitor, and vice versa.

(71) The merged entity will face significantly less rival excess capacity *post-merger* than each of the merging firms is facing *pre-merger*. A reduction in the excess capacity faced by each of the merging parties also reflects to what extent the merger softens the competitive pressure. As a result, the consolidation of levels of capacities as encountered in the present case through a merger will, in general, increase the market power of the merged entity.

(72) On Europe to South Korea, *pre-merger,* Korean Air's competitors including Asiana had excess capacity on Europe to South Korea equivalent to [80-90]% of Korean Air's volumes, which implies that competitors' (including Asiana) excess capacity already could not fully accommodate all Korean Air customers on Europe to South Korea, while Asiana's competitors including Korean Air had excess capacity equivalent to around [120-130]% of Asiana's volumes. *Post-merger*, the Parties will face less than half the excess capacity faced *pre-merger* by Korean Air and less than a quarter that faced by Asiana. The sum of all rivals' excess capacity will not be sufficient to fully cover the Merged Entity's sales volume, and the Transaction also substantially reduces how much excess capacity each of the Parties faced *pre-merger*. The Merged Entity would then likely have an incentive to raise prices *post-merger*.

(73) On South Korea to Europe, *pre-merger,* Korean Air's competitors including Asiana had excess capacity on South Korea to Europe equivalent to [170-180]% of Korean Air's volumes, which implies that competitors' (including Asiana) excess capacity already could more than fully accommodate all Korean Air customers on South Korea to Europe, while Asiana's competitors including Korean Air had excess capacity equivalent to around [400-410]% of Asiana's volumes. *Post-merger*, the Parties will face about half the excess capacity faced *pre-merger* by Korean Air and less than a

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24 If the carrier's load factor is greater than 90%, that carrier's load factor is used as threshold instead of 90%.

25 [A competitor] has explained in its reply to question 8 of the Commission's RFI 1 (ID 11106): "Many flights on this route tend to be volume-restricted, meaning the volumetric space runs out before the weight capacity of the aircraft. As such the numbers are highly dependent on the density of the cargo carried.". [A competitor] has noted in its reply to questions 14 and 23 of the Commission's RFI 2 (ID 12886) the following: "A load factor of 100 % is only a theoretical limit, in reality we see a maximum at approx. 90 % as other factors like volume consumption, product characteristics or handling restrictions limit the way pallets or containers can be build up". In the same vein, in its reply to question 15 of the Commission's RFI 2 (ID 12834), [an integrator] has explained that a weight load factor might reflect available space but in reality, all positions in any given flight will be utilised when the percentage is above [80-90] %.

fourth that faced by Asiana. The sum of all rivals' excess capacity will only marginally be sufficient to fully cover the Merged Entity's sales volume, however, the merger substantially reduces how much excess capacity each of the Parties faced *pre-merger*. The Merged Entity would then likely have an incentive to raise prices *post-merger*.

3.3.3. Differentiated capacity and fragmented supply

(74) The Phase II investigation confirms that customers regard capacity in cargo as differentiated (see also sections 8.11.2 and 8.11.3). For example, non-stop connections with air cargo carriers like the Notifying Parties, [names of competitors] generally represent a higher value […]. Should therefore only [names of competitors] excess capacity be considered, that is, only those offers that most resemble the Notifying Party's offer be considered, then the available excess capacities would be much lower. In fact, as explained above, the Parties are close (or even closest) competitors of each other. This means that, in the event of a price increase post-merger, a large share of the Notifying Party's customers would likely not switch to an alternative supplier capable of offering an inferior type of capacity (as compared to that offered by the Parties) at the same pre-merger prices. These customers will then be worse-off because they will either endure the increased prices or switched to a less favorite types of connection (for example, with transhipment or via integrators). Moreover, customers switching away from the Parties would present a windfall demand for the Notifying Party's competitors, who themselves will also have then an incentive to raise their prices. These post-merger pricing incentives of the Parties and their rivals stemming from the close (or even particularly close) competition between the Parties could be present even in absence of the rival capacity constraints. The capacity constraints explained above and the closeness based arguments are then reinforcing each other.

(75) In the event of a price increase post-merger, a large share of the Parties' customers would likely not switch to an alternative supplier capable of offering an inferior type of capacity (as compared to that offered by the Parties) at the same pre-merger prices. These customers will then be worse-off because they will either endure the increased prices or switched to a less favorite types of connection (for example, with transhipment or via integrators). Moreover, customers switching away from the Parties would present a windfall demand for the Parties' competitors, who themselves will also have then an incentive to raise their prices. These post-merger pricing incentives of the Parties and their rivals' stemming from the close (or even particularly close) competition between the Parties could be present even in absence of the rival capacity constraints.[26]

(76) Table 14 and Table 15 provide the detailed overview of excess capacity estimates by competitor. The un-redacted tables are only provided to the Parties external advisors in the data room.

[26] SO, paragraph 811.

Table 14 – Excess capacity estimates by competitor – Europe to South Korea

Carrier	Excess capacity	(% of the parties' customer base)
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Other competitors	[0 - 5 000]	[0 - 10]%
Total	**[50 000 - 60 000]**	**[30 - 40]%**

Source: Commission and Notifying Party's estimates.

Table 15 – Excess capacity estimates by competitor – South Korea to Europe

Carrier	Excess capacity	(% of the parties' customer base)
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[10 - 20]%
Competitor	[5 000 - 10 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Competitor	[0 - 5 000]	[0 - 10]%
Other competitors	[0 - 5 000]	[0 - 10]%
Total	**[50 000 - 60 000]**	**[90 - 100]%**

Source: Commission and Notifying Party's estimates.

(77) The figures in Table 14 and Table 15 confirm the extraordinary degree of fragmentation of excess capacity: on the route from Europe to South Korea, only one competitor's excess capacity exceeds [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%, while on the route from South Korea to Europe, six competitors have excess capacity exceeding [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%.

(78) Moreover, when only connections with a higher value proposition like [names of competitors] are considered, the available excess capacities are much lower: about [0-20]% of the Parties' combined volumes on Europe to South Korea and about [10-20]% on South Korea to Europe.

(79) A closer examination of the results below further clarify how limited excess capacity actually is in both relevant markets, well beyond the aggregate results. In fact, about [10-20]% of excess capacity on the route from Europe to South Korea and about [10-20]% of excess capacity on the route from South Korea to Europe are due to a single competitor. Despite the numerous attempts, the Commission could not reach out to this competitor, and the excess capacity estimates are therefore exclusively based on the parties' volume and capacity estimates and on the average load factors. On the routes between Europe and South Korea, this competitor had market shares between [0-5]% and [0-5]% in 2019, between [0-5]% and [0-5]% in 2020, and close to [0-5]% in 2021: It is highly unlikely this competitor could suddenly decide to dedicate their excess capacity to the affected markets considering how limited their current involvement is.

3.4. Conclusion

(80) As indicated in Section 8.11 and 8.12, the Commission's analysis suggests that limited excess capacity exists on the routes between Europe and South Korea: Competitors are unable to expand output sufficiently to counteract an increase in prices *post-merger*, nor to deter it in the first place.

(81) Capacity constraints are also further exacerbated by the extent to which customers perceive capacity to be differentiated. On both routes, the impact of the Transaction is such that the merged entity would face rival excess capacity not sufficient to fully cover the merged entity's sales volume, which is also substantially smaller than what each of the Parties faced *pre-merger*. The merged entity would then likely have an incentive to raise prices *post-merger*.

(82) On the route from Europe to South Korea, the impact of the Transaction is such that the merged entity would face rival excess capacity not sufficient to fully cover the merged entity's sales volume, and thus competitors are unable to expand output sufficiently to counteract an increase in prices *post-merger*, nor to deter it in the first place.

(83) On the route from South Korea to Europe, even though excess capacity is higher than on the route from Europe to South Korea, competitors are unlikely able to expand output sufficiently to counteract an increase in prices *post-merger*, nor to deter it in the first place.

(84) Capacity constraints are also further exacerbated by the extent to which capacity is differentiated and significantly fragmented across a large number of competitors. On the route from Europe to South Korea, no competitor's excess capacity exceeds [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%, while on the route from South Korea to Europe, only six competitors have excess capacity exceeding [5-10]% of the Parties' combined volumes, and a long tail of competitors has excess capacity below [0-5]%.

(85) The amount of excess capacity faced by the Parties is also substantially smaller than what each of the Parties faced *pre-merger*. This reduction in countervailing capacity reduces the competitive pressure on the merged entity relative to the competitive pressure on each of the merging firms *pre-merger*. The merged entity would then likely have an incentive to raise prices *post-merger*.

4. APPENDIX I - OVERVIEW COMPETITOR BY COMPETITOR

(86) This section provides an additional overview of the information provided by each competitor in order to address the criticisms raised in the Data Room Report to the extent not already addressed in the above. The order in which the competitors are listed reflects the order followed in the Data Room Report, which was randomised to ensure confidentiality. The following list has been made confidential, the Notifying Party has had access to all details via the Data Room procedure.

4.1. Competitor

4.1.1. The Notifying Party's view

(87) The Notifying Party highlighted that (i) the Commission did not to seek clarification on the appropriate load factor to use nor to develop an approach to identifying an appropriate load factor estimate in the case of transhipment carriers, and therefore relied on an average of all known competitors' load factors instead; and (ii) the respondent did not provide figures about the amount of volumes that could be reallocated from China and Japan to Korea, and the Notifying Party argues "*it is certain that the respondent has a sizable portion of its capacity taken up by volumes destined for China or Japan. The absence of figures in this regard is a significant omission, and may have a material effect on the analysis of competitive constraints facing the Parties*."[27]

4.1.2. The Commission's view

(88) With respect to the first remark, the respondent clarified that the load factor is calculated based on actual weight against the defined aircraft capacity and the load factor in the case of transhipment was based on applying the highest load factor between the two legs to the whole route. Section 3.2 above shows nonetheless that alternative definition for the load factors or to aggregate multiple legs would not result in a material change.

(89) With respect to the second remark, the Commission sought from the respondent the removal of a number of confidentiality claims from certain answers to permit to the Notifying Party's external advisors to understand better the absence of competitive constraints faced by the Parties as the respondent would not consider transporting additional volume on the routes between Europe and South Korea. More specifically, as the non-confidential version of the minutes now clearly shows, the respondent did not provide figures about the amount of volumes that could be reallocated from China and Japan to Korea because "*Realistically, [CONFIDENTIAL] would not make additional cargo capacity available for South Korea, even if there were additional capacity available. [redacted - Given the relative commercial positioning of other routes] [CONFIDENTIAL] is [redacted] unlikely to substitute cargo from those origins for South Korea cargo."* Furthermore, the respondent also clarified that: "*there could be a situation where we may have space on some flights, but we may not be using it on the Europe-Korea traffic route. [redacted - Given Space Utilisation] between [CONFIDENTIAL] and Europe redacted, on average, there may not be much spare capacity available for South Korea cargo."*[28]

4.2. Competitor

4.2.1. The Notifying Party's view

(90) The Notifying Party highlighted that (i) the respondent provided data for volumes, but not for their capacity or their spare capacity; (ii) the unit used for volumes was actual weight in tonnes, and since market totals are based on chargeable weight, which for

27 RBB Economics Data Room Report, pages 31-32

28 Non-confidential version of RFI [CONFIDENTIAL].

each shipment is at least as high as the actual weight, but for shipments with lower density, chargeable weight is higher than actual weight, this implies that the size of the respondent is understated; and (iii) the respondent only provided information on the load factor, but not on spare capacities.[29]

4.2.2. The Commission's view

(91) With respect to the above remarks, the Commission that (i) in follow up requests the respondent provided data on capacity; (ii) the respondent could not provide data in chargeable weight, and indicated that the percentage difference between chargeable weight and actual weight volumes was likely greater than [5-10]%. A correction based on the Notifying Party's average percentage difference for belly-hold for the two routes was applied; (iii) the respondent provided a measure of excess capacity based on the load factor, which is exactly the same approach the Notifying Party followed it its reply to RFI 21. It is unclear why the Notifying Party could deem reasonable to rely on the load factor to quantify the amount of additional capacity currently unused by other trades that they could add to the route between Europe and South Korea, while this information should be disregarded if provided by other carriers.[30]

4.3. Competitor

4.3.1. The Notifying Party's view

(92) The Notifying Party highlighted that (i) the respondent only responded to the Commission's market reconstruction questionnaire and not to the Phase II market investigation questionnaire about excess capacity; (ii) the data are likely erroneous and no sufficient commentary was provided; and (iii) the data provided by the respondent are not taken into account.[31]

4.3.2. The Commission's view

(93) The Commission note that the respondent is not treated as a competitor directly active on the affected markets because its capacity is actually offered to other carriers and not to cargo customers. Contrary to what submitted by the Notifying Party, this is indicated at note (v) under Table 42 of the Decision: "*The Parties' estimates incorrectly assume that [CONFIDENTIAL] is directly active, whereas all of [CONFIDENTIAL]'s capacity on the routes between Europe and South Korea is on dedicated wet lease or charter basis, see the non-confidential version of [CONFIDENTIAL].*" For this reason, the respondent only responded to the Commission's market reconstruction questionnaire and not to the Phase II market investigation questionnaire about excess capacity, and the respondent's data were not included in the market share calculations.

4.4. Competitor

4.4.1. The Notifying Party

(94) The Notifying Party highlighted that (i) the responses were incomplete and potentially erroneous because volumes were identical for both Europe and the EEA, the definitions used for volumes and capacity were not specified, and volumes were possibly not provided on an O&D basis; (ii) the respondent did not provide any information on capacities and spare capacities in their response to the market reconstruction questionnaire; and (iii) it is not realistic that the respondent reported

29 RBB Economics Data Room Report, page 32.
30 Non-confidential version of RFI [CONFIDENTIAL].
31 RBB Economics Data Room Report, pages 32-33.

that it could have not transported any additional volumes between Europe and Korea in 2022 as this would imply that every aircraft would have been fully utilised.[32]

4.4.2. The Commission's view

(95) The Commission note that it was not possible to reach out to the respondent to gather additional data and clarifications about their submission, which would have been helpful to address the Notifying Party's criticisms. With respect to the remarks under (i), the Commission refers to Sections 2.3, 2.5 and 2.9 above.

(96) With respect to point (iii), the Commission notes that the analysis of excess capacity is based on 2019 data, and is hence not affected by the respondent's submission for 2022. Moreover, with respect to the Commission's question about the likelihood and extent of reallocating volumes across destinations, the respondent clearly indicated that it *"[CONFIDENTIAL]"*[33] which suggests cargo space from and to South Korea can indeed be fully utilised.

4.5. Competitor

4.5.1. The Notifying Party's view

(97) The Notifying Party highlighted that (i) capacity figures are identical to volume figures for general air cargo, which suggests that the respondent has determined its capacity for general air cargo on the basis of its volume; and (ii) it is unclear whether the volume and capacity figures provided represent actual weight, chargeable weight or another measure.[34]

4.5.2. The Commission's view

(98) With respect to point (i), the Commission refers to Section 8.11.3.2 and 8.12.3.2 of the Decision. The data provided by the respondent are in line with the other evidence provided by integrators, as well as with Commission's understanding of the market.

(99) With respect to point (ii), the Commission reached out to the respondent who clarified that figures for general air cargo (that is, the figures actually relevant to these calculations), were expressed in chargeable weights, and thus fully consistent with other competitors' measures.[35]

4.6. **Competitor**

4.6.1. The Notifying Party's view

(100) The Notifying Party highlighted that (i) the respondent provided capacity not in tonnes but in available freight tonne kilometres; (ii) the respondent's volumes for the Westbound direction were very low and much lower than in the Eastbound direction; (iii) the respondent did not state whether the volumes and capacities refer to actual weight or chargeable weight; (iv) the respondent provided estimates for spare capacity for 2022 only, stating that 2019 (and 2023) were not available; and (v) The respondent stated that its average load factor from its hub to Europe was lower than 100% per cent and that it could not have loaded any additional volumes.[36]

4.6.2. Commission's view

(101) With respect to points (i), (iii), and (iv), the Commission notes that the respondent provided additional data on capacity measured in actual weight and confirmed the volumes data are measured in chargeable weight.

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32 RBB Economics Data Room Report, page 33. RBB Economics Second Data Room Report, page 8.
33 Non-confidential version of RFI [CONFIDENTIAL].
34 RBB Economics Data Room Report, pages 33-34. RBB Economics Second Data Room Report, page 8.
35 Non-confidential version of RFI [CONFIDENTIAL].
36 RBB Economics Data Room Report, pages 34-35.

(102) With respect to point (ii), the Commission notes that, in its answers to RFI 1, the respondent clearly indicated that cargo from all other origins/destinations is considered a more important source of business than cargo between Europe and Korea, which implies that Westbound capacity is for the most part devoted to other trades.[37]

(103) Finally, with respect to point (v), The Notifying Party claims that only load factors of 100% are consistent with carriers not being able to load any additional volumes. As discussed extensively in the SO and in Section 5.3 of the Letter of Facts, it is very likely that capacity becomes exhausted at considerably lower levels of the load factors, and load factors above 80% are effectively fully utilized planes.

4.7. Competitor

4.7.1. The Notifying Party's view

(104) The Notifying Party highlighted that (i) the respondent provided inconsistent numbers for the distinction between the EEA and Europe; (ii) volumes appear to have been provided in a unit other than tonnes, which the Commission assumed was kilogramme; and (iii) it is unclear whether the volume provided represents actual weight, chargeable weight or another measure.[38]

4.7.2. The Commission's view

(105) With respect to the abovementioned remarks made by the Notifying Party, the Commission notes that (i) the respondent confirmed that no distinction was made between the EEA and Europe, and the latter includes the EEA, Switzerland, and the UK. The computer codes were adjusted in line with Notifying Party's comments accordingly; (ii) it is unclear how the Notifying Party could expect the respondent to transport millions of tonnes on the routes between Europe and South Korea, and the Commission confirmed the correctness of the measurement unit; and (iii) the respondent could not provide data in chargeable weight, and indicated that the percentage difference between chargeable weight and actual weight volumes was likely greater than [5-10]%. A correction based on the Notifying Party's average percentage difference for belly-hold for the two routes was applied.[39]

4.8. Competitor

4.8.1. The Notifying Party's view

(106) The Notifying Party highlighted that (i) answers do not refer to the whole [CONFIDENTIAL], and thus not account for belly-space cargo carried on passenger flights; (ii) answers to the Commission's queries suggest that capacity estimates are not in line with the approach for transhipment carriers used (i.e. the minimum capacity to or from the hub should be taken as the carrier's capacity); (iii) the additional details provided on the construction of the load factor are not sufficient to ensure consistency across transhipment airlines; and (v) the response to the Phase II market investigation questionnaire indicates that the amount of capacity that could be added by reallocating aircraft to the route is identified as the same as the existing volumes that could be reallocated from China and Japan to service Korea.[40]

4.8.2. The Commission's view

(107) With respect to the abovementioned remarks made by the Notifying Party, the Commission notes that (i) the respondent confirmed that only the cargo services provided by [CONFIDENTIAL] does not operate flights to South Korea; (ii) the

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37 Non-confidential version of RFI [CONFIDENTIAL].

38 RBB Economics Data Room Report, page 35. RBB Economics Second Data Room Report, page 5.

39 Non-confidential version of RFI [CONFIDENTIAL].

40 RBB Economics Data Room Report, pages 35-36.

respondent confirmed the capacity figures provided correspond to the maximum amount of cargo that could be transported on the route, taking into account the minimum capacity to or from the hub; (iii) as illustrated in the above, the difference among load factors calculated under alternative definitions are negligible; (iv) the respondent confirmed that the amount of additional volumes that could have been transported by re-allocating volumes from other destinations on the same flights is not expected to differ from the amount of additional volumes that could have been transported by flying additional aircraft on the route.[41]

4.9. Competitor

4.9.1. The Notifying Party's view

(108) The Notifying Party highlighted that (i) it is unclear whether the volume provided represents actual weight, chargeable weight or another measure; and (ii) the respondent stated in their response to the Phase II market investigation questionnaire that their load factors were 100 per cent on the route from their hub to Incheon in 2021, and also 100 per cent on the route from Incheon to their hub in 2020 and 2021, while in their response to the market reconstruction questionnaire, they stated that they had spare capacity in each of these three cases.[42]

4.9.2. The Commission's view

(109) With respect to the first remark, the Commission notes that the respondent confirmed in follow up queries that volumes were reported in chargeable weight.

(110) With respect to the second remark, the Commission reiterates that the Notifying Party continues in its misrepresentation of the meaning of excess capacity: In the market reconstruction questionnaire the respondent indicated that the difference between capacity and volumes is non-zero, which does not imply that there is available capacity as under this definition of excess capacity volumes already transported from/to other origins/destinations would be automatically treated as available capacity. Furthermore, the respondent confirmed in follow up queries that all available positions for cargo uplift were fully utilised.[43]

4.10. Competitor

4.10.1. The Notifying Party's view

(111) The Notifying Party highlighted that (i) it is possible that the respondent provided information only for flights operated by one of its cargo subsidiaries, and not for the entire group, in particular as in response to the Phase II market investigation questionnaire they indicated they could have expanded capacities significantly if they had access to additional traffic rights [CONFIDENTIAL]; (ii) in the market investigation questionnaire the respondent did not provide information on capacity; and (iii) the response to the Phase II market investigation questionnaire is odd as the amount of capacity that could be added by reallocating aircraft to the route is identified as the same as the existing volumes that could be reallocated from China and Japan to service Korea.[44]

4.10.2. Commission's view

(112) With respect to the Notifying Party's above remarks, the Commission notes that (i) the respondent confirmed that the data provided relate to the entire group, including all subsidiaries, and thus the entirety of the cargo between South Korea and Europe is

41 Non-confidential version of RFI [CONFIDENTIAL].
42 RBB Economics Data Room Report, page 36.
43 Non-confidential version of RFI [CONFIDENTIAL].
44 RBB Economics Data Room Report, page 37. RBB Economics Second Data Room Report, page 8.

reflected in the data; (ii) the respondent could now also provide information on capacity, which is measured as the maximum theoretical amount that could have been transported without changing flight schedules; and (iii) the alleged inconsistency arises out of uncertainty on the exact course of action the respondent would take should the situation arise: for example, if the demand required it and additional traffic rights were available, the respondent would consider optimising their network via increasing the number of aircraft active on the route and/or via shifting capacity between stops along the route. In any event, the Commission does not deem these features of the data to affect its conclusions neither with respect to the amount of excess capacity available in the market nor with respect to the relevance of swing capacity.

4.11. Competitor

4.11.1. The Notifying Party's view

(113) The Notifying Party highlighted that the respondent (i) did not specify what year the numbers were provided for; (ii) did not specify what definitions have been used for volumes and capacity, i.e., actual weight, chargeable weight or a different measure; and (iii) the data provided in response to the Phase II market investigation questionnaire did not include all the unused space on all flights on the routes between Europe and South Korea.[45]

4.11.2. The Commission's view

(114) With respect to the above remarks, the Commission notes that (i) the data provided reflect the latest information available, and no further data could be gathered. However, because of the respondent's increasing role on the affected markets, the Commission deems these data provide an over-estimate for the excess capacity that could be offered to the market, and hence the Commission's analysis would be conservative; (ii) the respondent could not provide data in chargeable weight, and indicated that the percentage difference between chargeable weight and actual weight volumes was likely around 40-45%. A correction based on this threshold was then applied; and (iii) the respondent confirmed the provided data in response to the Phase II market investigation questionnaire reflect all the unused space on all flights on the routes between Europe and South Korea.[46]

4.12. Competitor

4.12.1. The Notifying Party's view

(115) The Notifying Party highlighted that the respondent only responded to the Market Reconstruction questionnaire and not to the Phase II market investigation questionnaire, and it is thus possible that additional information regarding swing capacity, increased utilisation rates, and additional aircraft capacity would have a material effect on the analysis of the competitive constraint faced by the Parties.[47]

4.12.2. The Commission's view

(116) The Commission notes that it was not possible to gather additional more granular information from the respondent.

(117) With respect to swing capacity, the Commission notes that the respondent's answers to the Commission's follow up queries confirms that it would not be able to constraint the Merged Entity: *"[CONFIDENTIAL]*".[48]

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45 RBB Economics Data Room Report, pages 37-38. RBB Economics Second Data Room Report, page 9.

46 Non-confidential version of RFI [CONFIDENTIAL].

47 RBB Economics Data Room Report, page 38. RBB Economics Second Data Room Report, page 8

48 Non-confidential version of RFI [CONFIDENTIAL].

4.13. Competitor

4.13.1. The Notifying Party's view

(118) The Notifying Party highlighted that the respondent (i) did not provide data on load factors because it did not understand the Commission's queries; and (ii) only provided information for the spare capacity in the Eastbound direction, and not for the Westbound direction.[49]

4.13.2. The Commission's view

(119) With respect to the first remark, the Commission notes that, in response to the Commission's follow up queries, the respondent provided data on load factors, which confirms the respondent's high utilisation and thus its limited ability to constraint the Merged Entity. The load factor is calculated as the maximum load factor between the two legs of each route. Section 4.2 above shows nonetheless that alternative definition for the load factors or to aggregate multiple legs would not result in a material change.

(120) With respect to the second remark, the Commission notes that the respondent indicated that it has no available capacity in the Westbound direction, and this was also confirmed it in the Commission's follow up queries, where the respondent also indicated that cargo from/to other destinations would be prioritised: "[*CONFIDENTIAL*]".[50]

4.14. Competitor

4.14.1. The Notifying Party's view

(121) The Notifying Party highlighted that (i) only a non-confidential range of the indicated percentage of excess capacity was made available, and (ii) responses related to increasing utilisation rate, providing additional aircraft, and reallocating volumes bound for China and Japan were redacted.[51]

4.14.2. The Commission's view

(122) With respect to the first point, the Commission notes that the non-confidential range provided fully enabled the Notifying Party's external advisors to investigate the role played by the respondent, and for the sake of the market shares and excess capacity analysis, the loss of information from the redactions is anyway negligible.

(123) With respect to the second point, the Commission notes that, for the reasons discussed above and in Sections 8.11.4.3 and 8.12.4.3 of the Decision, swing capacity would not represent an effective constraint on the Merged Entity. Furthermore, as indicated in Section 5.3 of the Letter of Facts, the respondent is severely constrained by traffic rights, and would have not been able to expand as claimed by the Notifying Party.

4.15. Competitor

4.15.1. The Notifying Party's view

(124) The Notifying Party highlighted that it is unclear whether the volume figures provided represent actual weight, chargeable weight or another measure.[52]

4.15.2. The Commission's view

(125) The Commission notes that the respondent provided revised data on volumes measured in chargeable weight.

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49 RBB Economics Data Room Report, page 38.

50 Non-confidential version of RFI [CONFIDENTIAL].

51 RBB Economics Data Room Report, pages 38-39.

52 RBB Economics Data Room Report, page 39.

4.16. Competitor

4.16.1. The Notifying Party's view

(126) The Notifying Party highlighted that (i) the respondent only provided a partial response to the Phase II questionnaire, and no capacities or spare capacities were provided, only general air cargo volumes and revenues for the Europe to Korea direction; (ii) volumes appear to have been provided in a unit other than tonnes, which the Commission assumes was kilogramme; (iii) it is unclear whether the volume provided represents actual weight, chargeable weight or another measure; (iv) the volume for the South Korea to Europe direction is taken to be [CONFIDENTIAL], and its spare capacity is taken to be [CONFIDENTIAL] tonnes on the Europe to South Korea route in 2019 and [CONFIDENTIAL] otherwise.[53]

4.16.2. The Commission's view

(127) With respect to the Notifying Party's remarks, the Commission notes that (i) the respondent provided a complete response to the Phase II market investigation questionnaire for both routes, and clearly indicated that it is not directly active on the route from South Korea to Europe: "[CONFIDENTIAL]";[54] (ii) it is unclear how the Notifying Party could expect the respondent to transport millions of tonnes on the routes between Europe and South Korea; (iii) volume data were provided in chargeable weight; (iv) the respondent provided revised data for the route between Europe to South Korea and confirmed the correctness of the data between South Korea and Europe.

4.17. Competitor

4.17.1. The Notifying Party's view

(128) The Notifying Party highlighted that (i) only a non-confidential range of the indicated percentage of excess capacity was made available, and (ii) responses related to increasing utilisation rate, providing additional aircraft, and reallocating volumes bound for China and Japan were redacted.[55]

4.17.2. The Commission's view

(129) With respect to the first point, the Commission notes that the non-confidential range provided fully enabled the Notifying Party's external advisors to investigate the role played by the respondent, and for the sake of the market shares and excess capacity analysis, the loss of information from the redactions is anyway negligible.

(130) With respect to the second point, the Commission notes that, for the reasons discussed above and in Sections 8.11.4.3 and 8.12.4.3 of the Decision, swing capacity would not represent an effective constraint on the Merged Entity. Furthermore, as indicated in Section 5.3 of the Letter of Facts, the respondent is severely constrained by traffic rights, and would have not been able to expand as claimed by the Notifying Party.

4.18. Competitor

4.18.1. The Notifying Party's view

(131) The Notifying Party highlighted that (i) it is possible that the respondent provided information only for flights operated by its cargo subsidiary, and thus not account for belly-space cargo carried on passenger flights, nor other subsidiaries; (ii) the respondent provided the same numbers irrespective of whether the geographic definition is EEA or Europe; (iii) volumes appear to have been provided in a unit other

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53 RBB Economics Data Room Report, pages 39-40.

54 Non-confidential minutes of the conference call with [CONFIDENTIAL].

55 RBB Economics Data Room Report, page 40.

than tonnes, which the Commission assumed was kilogramme; (iv) it is unclear whether the volume provided represents actual weight, chargeable weight or another measure; (v) the response to the Phase II market investigation questionnaire is inconsistent with the market reconstruction response regarding the reallocation to Korea of volumes bound for China or Japan as volumes are in excess of the capacity figures provided in their market reconstruction response, and the capacity figures provided by the respondent ought to be treated as the most conservative estimates available given the inconsistency with the volumes allocated to China and Japan.[56]

4.18.2. The Commission's view

(132) With respect to the abovementioned remarks made by the Notifying Party, the Commission notes that (i) the respondent confirmed in follow up requests that the entire company's perimeter was included; (ii) the respondent had already confirmed that no distinction was made between the EEA and Europe, and the latter includes the EEA, Switzerland, and the UK; (iii) it is unclear how the Notifying Party could expect the respondent to transport millions of tonnes on the routes between Europe and South Korea, and the Commission confirmed the correctness of the measurement unit; (iv) the respondent could not provide data in chargeable weight, and indicated that the percentage difference between chargeable weight and actual weight volumes was likely smaller than 5%.[57] A correction based on this threshold was then applied. Should instead a correction based on the Notifying Party's average percentage difference split by freighter and belly-hold for the two routes be applied, […]: the respondent's market shares would be […] and the excess capacity estimated thanks to the load factor would be […]; (v) the respondent confirmed that the figures provided as response to the Phase II market investigation questionnaire show the additional maximum capacity which could have been shifted to Korea without adding an additional frequency. These data were therefore used to refine the capacity data for 2019, which underlines the excess capacity analysis.

56 RBB Economics Data Room Report, pages 40-41. RBB Economics Second Data Room Report, page 5.

57 Non-confidential version of RFI [CONFIDENTIAL].

KOREAN AIR LINES / ASIANA AIRLINES

Case No. COMP/M. 10149

COMMITMENTS TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 8 (2) OF REGULATION (EC) No 139/2004

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9 January 2024

CASE M.10149 – Korean Air / Asiana

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Korean Air Co., Ltd ("**Korean Air**") hereby enters into the following commitments (the "**Passenger Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition of sole control by Korean Air over Asiana Airlines Inc. ("**Asiana**", and, together with Korean Air, the "**Parties**"), within the meaning of Article 3(1)(b) of the Merger Regulation (the "**Transaction**"), compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Transaction compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 (the "**Remedies Notice**").

These Passenger Commitments shall take effect upon the date of adoption of the Decision. Korean Air commits to ensuring that these Passenger Commitments will be binding on any successor company arising from the Transaction.

PASSENGER COMMITMENTS

Section A Definitions

(1) For the purpose of the Passenger Commitments, the terms below shall have the following meaning:

Affiliated Undertakings	A company controlled by any of the Parties and/or the ultimate parents of any of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004
Appropriate Use	Use of Slots in accordance with the EU Slot Regulation and other applicable Slot regulations
Asiana	Asiana Airlines Inc., incorporated under the laws of the Republic of Korea, with its registered office at 443-83, Ojeong-ro, Gangseo-gu, Seoul and registered with the Commercial/Company Register under number 110111-0562804
BCN	Josep Tarradellas Barcelona-El Prat Airport in Barcelona, Spain
Business Days	Any day except Saturdays, Sundays and public holidays in the Republic of Korea
Cargo Remedy Taker	Entity approved by the European Commission as acquirer of the cargo business, which Korean Air commits to divest pursuant to the Cargo Commitments
CDG	Paris Charles de Gaulle Airport in Roissy-en-France, France
Commitments	The Passenger Commitments and the Cargo Commitments
Competitive Air Service	A non-stop scheduled passenger air transport service operated on the Remedy Route(s)
Confidential Information	Any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain
Conflict of Interest	Any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Passenger Commitments
Crew Support Agreement	The term has the meaning given to it in paragraph (40)
Decision	The decision pursuant to Article 8(2) of the Merger Regulation by the European Commission
Effective Date	The date of adoption of the Decision
Entry	The term has the meaning given to it in paragraph (5)
Entry Commitment Agreement	The Entry Commitment Agreement between Korean Air and the Passenger Remedy Taker setting out the terms and conditions of the commitment by Korean Air to transfer or exchange Slots, traffic rights, TSR overflight rights, aircraft, crew and MRO support, necessary for the Passenger Remedy Taker to operate on the Remedy Routes and the commitment of the Passenger Remedy Taker to enter and operate on the Remedy Routes
Entry Schedule	The agreed schedule for entry and increase of weekly frequencies by the Passenger Remedy Taker on the Remedy Routes as set out Annex 1 to the Passenger Commitments
EU	European Union
EU Airport(s)	BCN, CDG, FCO and FRA
EU Slot Regulation	EU Regulation 95/93 on common rules for the allocation of slots at Community airports, as amended
FCO	Leonardo da Vinci International Airport in Fiumicino, Metropolitan City of Rome, Italy
FRA	Frankfurt Airport in Frankfurt, Germany

Frequency(-ies)	A round trip on any of the Remedy Routes
General Slot Allocation Procedure	The Slot allocation procedure as set out in the EU Slot Regulation (if applicable), applicable domestic legislation and the IATA Worldwide Airport Slot Guidelines
IATA	The International Air Transport Association
IATA Initial Submission Deadline	The relevant deadline in the IATA calendar of coordination activities
IATA Season	The IATA Summer Season begins on the last Sunday of March and ends on the Saturday before the last Sunday of October. The IATA Winter Season begins on the last Sunday of October and ends on the Saturday before the last Sunday of March
IATA Slot Conference	The twice-yearly conference relating to airport Slots organised by IATA that takes place in June and November
ICN	Incheon International Airport in Incheon, Korea
ICN-BCN	Flight routes between ICN and BCN
ICN-CDG	Flight routes between ICN and CDG
ICN-FCO	Flight routes between ICN and FCO
ICN-FRA	Flight routes between ICN and FRA
Indemnified Party	The term has the meaning given to it in paragraph (59)
Independent Advisor	Mazars LLP, a limited liability partnership organised under the laws of England and Wales, with its registered office at 30 Old Bailey, London, EC4M 7 AU
KFTC	Korea Fair Trade Commission
Korean Air	Korean Air Co., Ltd., incorporated under the laws of the Republic of Korea, with its registered office at 260 Haneul-Gil, Gangseo-Gu, Seoul and registered with the Commercial/Company Register under number 110111-0108484
Merger Regulation	Council Regulation (EEC) No. 139/2004
Minimum Period	Four (4) IATA Seasons from the start of the IATA Winter Season 2024/2025 until the last day of the IATA Summer Season 2026
MOLIT	Korean Ministry of Land, Infrastructure and Transport
Monitoring Trustee	One or more natural or legal person(s) who is / are approved by the Commission and appointed by Korean Air, and who has / have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision
MRO	Maintenance, repair and overhaul services
MRO Support Agreement	The term has the meaning given to it in paragraph (45)
Parties	Korean Air and Asiana
Passenger Commitments	The commitments described in this document
Passenger Remedy Taker	The entity approved by the Commission as beneficiary of the Passenger Commitments
Remedy Aircraft	The term has the meaning given to it in paragraph (34)
Remedy Aircraft Lease	The term has the meaning given to it in paragraph (34)
Remedy Route(s)	Each of ICN – BCN; ICN – CDG; ICN – FCO; and ICN – FRA
Requested TSR Overflight Rights	The term has the meaning given to it in paragraph (29)
Requested Traffic Rights	The term has the meaning given to it in paragraph (24)
Slot(s)	The permission (as defined by clause 1.6.1 of the IATA Worldwide Airport Slot Guidelines as amended) for an aircraft operator to land and take-off on a specific date and time in order to operate an air service at the airport, to be used in combination with the full range of airport infrastructure parking and access to gates at the airport that are necessary to operate such service
Sublease	The term has the meaning given to it in paragraph (37)

Subleased Aircraft	The term has the meaning given to it in paragraph (37)
T'way	T'way Air Co., Ltd., incorporated under the laws of the Republic of Korea, with its registered office at 10th Floor, KT Daegu Tower, 167, Dongdeok-ro, Jung-gu, Daegu and registered with the Commercial/Company Register under number 110111-2782046
Time Window	The period of 60 minutes either side of the Slot time requested by the Passenger Remedy Taker in respect of ICN and the EU Airports
Transaction	The proposed acquisition of control of Asiana by Korean Air
(Transaction) Completion	The closing of the Transaction between Korean Air and Asiana
TSR	Trans-Siberian Route

Section B Passenger Commitments

(2) In order to maintain effective competition, Korean Air commits to procure the entry and the launch of viable and sustainable operations by the Passenger Remedy Taker on the four (4) Remedy Routes by providing the Passenger Remedy Taker with all the necessary elements, including Slots, traffic rights, TSR overflight rights, aircraft, crew and MRO support. The commitments of Korean Air are set out in these Passenger Commitments.

(3) The corresponding commitments of the Passenger Remedy Taker under the Passenger Commitments are set out in the Entry Commitment Agreement. The Entry Commitment Agreement in particular provides for the commitment by the Passenger Remedy Taker to enter on the Remedy Routes in accordance with the Entry Schedule and the commitment to operate on the Remedy Routes until the end of the Minimum Period.

(4) Korean Air commits to take any and all steps necessary to seek the enforcement of the commitments of the Passenger Remedy Taker under the Entry Commitment Agreement to continue to operate on all Remedy Routes during the Minimum Period, in particular by using the fast-track arbitration procedure foreseen in Section E.

(5) Completion of the Transaction can only take place after the Passenger Remedy Taker has entered on all Remedy Routes. Entry on all Remedy Routes shall be defined as:

(a) the Passenger Remedy Taker operating (i.e., taking off and landing) […] weekly frequencies on the ICN-FRA route for four (4) weeks after the start of operations on this route, as well as […] weekly frequencies on the ICN-CDG route, […] weekly frequencies on the ICN-FCO route and […] weekly frequencies on the ICN-BCN route as of the month foreseen in the Entry Schedule for the respective route up until the end of the first four (4) weeks of flight operations on the ICN-FRA route, whereby on each individual Remedy Route the Slots are used for at least 80% of the time during the period from the initial start of operations on the respective Remedy Route until the end of the first four (4) weeks of flight operations on the ICN-FRA route, unless exceptions or waivers to the use-it-or-lose-it rule would apply to the operations by the Passenger Remedy Taker on the respective Remedy Route(s) on the basis of the EU Slot Regulation; and

(b) the Passenger Remedy Taker selling tickets for the frequencies envisaged under the Entry Schedule in relation to all Remedy Routes for at least the ongoing IATA Season, the IATA Winter Season 2024/2025 and the IATA Summer Season 2025.

The fulfilment of the Completion condition shall be subject to approval of the Commission, advised by the Monitoring Trustee.

(6) Korean Air shall be deemed to have complied with these Passenger Commitments if and when (i) the Passenger Remedy Taker receives the necessary assets to operate 23 weekly frequencies in IATA Summer Seasons and 20 weekly frequencies in IATA Winter Seasons on the Remedy Routes and (ii) Korean Air has - to the extent that this was necessary within the Minimum Period - taken the enforcement steps against the Passenger Remedy Taker as set out in paragraph (4).

<u>Slots</u>

(7) Korean Air commits to make available, either via a transfer to or an exchange with the Passenger Remedy Taker (or to make its Affiliated Undertakings transfer to or exchange with the Passenger Remedy Taker, as the case may be) Slots at ICN and the relevant EU Airports (BCN, CDG, FCO and FRA) to allow the Passenger Remedy Taker to operate 23 weekly frequencies during IATA Summer Seasons and 20 weekly frequencies during IATA Winter Seasons on the Remedy Routes in accordance with the Entry Schedule.

(8) In particular, Korean Air commits to make available:

- ICN and FRA Slots to allow the Passenger Remedy Taker to operate seven (7) weekly frequencies on the ICN-FRA route;
- ICN and CDG Slots to allow the Passenger Remedy Taker to operate five (5) weekly frequencies on the ICN-CDG route;
- ICN and BCN Slots to allow the Passenger Remedy Taker to operate four (4) weekly frequencies on the ICN-BCN route; and
- ICN and FCO Slots to allow the Passenger Remedy Taker to operate seven (7) weekly frequencies on the ICN-FCO route during IATA Summer Season and four (4) weekly frequencies on the ICN-FCO route during IATA Winter Season.

(9) Korean Air commits to make available the Slots identified by the Passenger Remedy Taker or Slots within the same Time Window as the Slots identified and applied for by the Passenger Remedy Taker, unless (i) these Slots are not available to Korean Air or its Affiliated Undertakings, or (ii) after Completion, these Slots are not available to Korean Air or Asiana or their Affiliated Undertakings. In case they are not available, Korean Air will make available the Slots closest in time to those requested by the Passenger Remedy Taker.

(10) For the IATA Summer Season 2024, to the extent that the Passenger Remedy Taker has already obtained under the General Slot Allocation Procedure any Slots within the Time Window to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, the number of Slots to be made available by Korean Air shall be reduced accordingly.[1]

(11) For the IATA Winter Season 2024/2025 and the IATA Summer Season 2025, the procedure set out in paragraphs (12) to (16) shall be followed.

(12) The Passenger Remedy Taker shall first apply for Slots under the General Slot Allocation Procedure to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments. To this end, the Passenger Remedy Taker shall, by the IATA Initial Submission Deadline of the relevant IATA Season, apply to the relevant Slot coordinators for the necessary Slots through the General Slot Allocation Procedure. In the event that the Passenger Remedy Taker is able to obtain any of the necessary Slots through the General Slot Allocation Procedure, the number of Slots to be made available by Korean Air shall be reduced accordingly.

(13) The Passenger Remedy Taker shall only be eligible to obtain the Slots under the Passenger Commitments if it can demonstrate that it has exhausted all reasonable efforts to obtain the necessary Slots to operate on the Remedy Routes through the normal workings of the General Slot Allocation Procedure. For this purpose, the Passenger Remedy Taker shall be deemed not to have exhausted all reasonable efforts to obtain the necessary Slots if:

(a) Slots were offered through the General Slot Allocation Procedure within the Time Window, but such Slots have not been accepted by the Passenger Remedy Taker; or

(b) Only in case of EU Airports, Slots were obtained through the General Slot Allocation Procedure outside the Time Window and the Passenger Remedy Taker did not give Korean Air the opportunity to exchange those Slots for Slots within the Time Window out of the portfolio from Korean Air and its Affiliated Undertakings.

[1] Even if the Passenger Remedy Taker has obtained Slots within the requested Time Window via the General Slot Allocation Procedure, the Passenger Remedy Taker can still request a Slot exchange with Korean Air for the IATA Summer Season 2024. Such voluntary Slot exchanges will require the mutual consent between the Passenger Remedy Taker and Korean Air, such consent not to be unreasonably withheld by Korean Air.

(14) For the purposes of paragraph (13), the Passenger Remedy Taker agrees to provide to the Monitoring Trustee the information required to demonstrate its exhaustion of the General Slot Allocation Procedure for obtaining the necessary Slots when requesting Slots from Korean Air under these Passenger Commitments.

(15) If the Passenger Remedy Taker is not granted the necessary Slots under the General Slot Allocation Procedure, it shall inform the Monitoring Trustee and notify it of its request for preferred Slots to operate the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments before the end of the IATA Slot Conference of the relevant IATA Season.

(16) Following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall inform the Monitoring Trustee within one (1) week after the end of the IATA Slot Conference of the relevant IATA Season about the availability of Slots to be transferred or exchanged.

(17) The transfer to or exchange of Slots with the Passenger Remedy Taker for the IATA Summer Season 2024, the IATA Winter Season 2024/2025 and the IATA Summer Season 2025, respectively, will be requested by the Passenger Remedy Taker before the IATA Historic Baseline date of the relevant IATA Season, such request to be communicated to Korean Air by the Monitoring Trustee. Within one (1) week from the request by the Passenger Remedy Taker, the Monitoring Trustee shall notify for approval or confirmation, as needed, the relevant Slot coordinators and airport managers of the requested transfer or exchange of Slots on behalf of Korean Air and the Passenger Remedy Taker.[2] These will decide in principle within 72 hours about such a request after which the Monitoring Trustee shall confirm the transfer/exchange to Korean Air and the Passenger Remedy Taker.

(18) After approval or confirmation of the transfer or exchange requested by the Passenger Remedy Taker, Korean Air commits to transfer the Slots at ICN in accordance with the procedures to be established by MOLIT and the Slots at EU Airports via a transfer or exchange in accordance with the EU Slot Regulation and the applicable local regulations.

(19) The transfer or exchange shall take effect on the day of the envisaged start of operations by the Passenger Remedy Taker, to allow the Passenger Remedy Taker to use the Slots as of entry or expansion in accordance with the Entry Schedule. In the event that the Passenger Remedy Taker prefers to accelerate the use of the Slots for operations on the Remedy Routes ahead of the envisaged Entry Schedule, it shall request this at the latest by the last day of the IATA Slot Conference for the IATA Season during which the change is set to take place.[3] Korean Air shall accommodate such requests, except where it can demonstrate to the satisfaction of the Monitoring Trustee that this is not practically feasible.[4] Any flexibility granted on this basis shall not lead to a delay in the Entry Schedule or in the increase of frequencies on another Remedy Route.

(20) As a general rule, the Slots obtained by the Passenger Remedy Taker from Korean Air shall be used only to provide a Competitive Air Service on the relevant Remedy Route for which the Slots were requested, in accordance with the EU Slot Regulation and other applicable Slot regulations ("**Appropriate Use**"). These Slots cannot be used on another route until the expiry of these Passenger

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2 The approval of a transfer or exchange of Slots for the IATA Summer Season 2024 may not be possible one (1) week after the Historic Baseline Date of 31 January 2024 because the application can only be submitted to the Slot coordinators and airport managers after the Effective Date (for Slots at EU Airports) and after MOLIT's amendments to the Rules for Adjustment and Allocation, Etc. of Slots (expected a few months after the Effective Date – for ICN Slots). The obligation for the Passenger Remedy Taker to request a transfer or exchange of Slots for the IATA Summer Season 2024 before the Historic Baseline Date of 31 January 2024 shall therefore be waived. For the IATA Summer Season 2024, the Passenger Remedy Taker shall share the request for the transfer or exchange of Slots with the Monitoring Trustee as soon as possible after the Effective Date (for Slots at EU Airports) and as soon as possible after MOLIT's amendments to the Rules for Adjustment and Allocation, Etc. of Slots (expected a few months after the Effective Date – for ICN Slots).

3 It will not be possible to accelerate the use of Slots ahead of the envisaged Entry Schedule already during IATA Summer Season 2024.

4 It will not be practically feasible to accommodate such a request if (i) the accelerated timeline does not allow for sufficient time to follow the procedures in place to make available the necessary traffic rights and TSR overflight rights; and/or (ii) the accelerated timeline does not allow for sufficient time to follow the procedures to make available the necessary aircraft and crew needed to support the accelerated operations.

Commitments pursuant to paragraph (95). If, before the expiry of these Passenger Commitments, the Passenger Remedy Taker ceases to appropriately use the obtained Slots on the Remedy Routes in accordance with the EU Slot Regulation and other applicable Slot regulations, it shall return the Slots to the relevant Slot coordinators.

(21) Until the expiry of these Passenger Commitments pursuant to paragraph (95), the Passenger Remedy Taker shall not be entitled to transfer, assign or sell in breach of these Passenger Commitments any Slots obtained from the Parties under these Passenger Commitments. The Passenger Remedy Taker shall be allowed to obtain a retiming of the Slots, e.g., through a swap or change, subject to an advance notification of the Monitoring Trustee, who will verify whether the new Slot time still allows the Passenger Remedy Taker to offer a Competitive Air Service on the Remedy Routes, and confirmation by the relevant Slot coordinators.

Traffic rights

(22) Korean Air commits to transfer (or make its Affiliated Undertakings transfer, as the case may be) the traffic rights to allow the Passenger Remedy Taker to operate on the Remedy Routes set out in paragraph (8) in accordance with the Entry Schedule.[5]

(23) The Passenger Remedy Taker shall request and take up the necessary traffic rights in accordance with the Entry Schedule. The Passenger Remedy Taker shall first apply to MOLIT for any unallocated traffic rights available under the relevant ASA in accordance with the regular traffic rights' allocation procedure. The Passenger Remedy Taker shall apply to MOLIT either within two (2) weeks after MOLIT initiates the regular traffic rights' allocation procedure or earlier if MOLIT sets a specific earlier date.[6] If the Passenger Remedy Taker obtains any of these unallocated traffic rights, the number of traffic rights that Korean Air is required to transfer to the Passenger Remedy Taker shall be reduced accordingly.

(24) To the extent that the Passenger Remedy Taker is not granted the necessary traffic rights for the operation of the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, it shall inform the Monitoring Trustee and notify it of its request for the necessary traffic rights to operate the Remedy Routes within five (5) Business Days after the results of the regular traffic rights' allocation procedure have been announced (the "**Requested Traffic Rights**").

(25) Within five (5) Business Days following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall apply to MOLIT for a traffic right transfer.[7] Subsequently, the transfer of traffic rights to the Passenger Remedy Taker shall be approved, so that they will be available for use by the Passenger Remedy Taker as of the entry or expansion in accordance with the Entry Schedule.

(26) Korean Air commits to transfer and the Passenger Remedy Taker shall obtain the Requested Traffic Rights in accordance with the procedures to be established by MOLIT.

TSR overflight rights

(27) Korean Air commits to transfer (or to make its Affiliated Undertakings transfer, as the case may be) TSR overflight rights to allow the Passenger Remedy Taker to operate on the Remedy Routes set out

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5 I.e., traffic rights for the operation of up to seven (7) weekly frequencies on ICN-FRA, for up to seven (7) weekly frequencies on ICN-FCO, and for up to five (5) frequencies ([…]) on ICN-CDG ([…]).

6 MOLIT's regular traffic rights' allocation procedure has no fixed time schedule. However, it typically takes place at the beginning of each year (January/February).

7 This is based on the assumption that the "International Traffic Rights and Overflight Rights Allocation Rules" will be revised by that time, given that Korean Air will only be able to submit a request for a transfer of the Slots based on the revised rules. In addition, in case compliance with this obligation would not be possible under the revised rules, e.g., if the revised rules include a deadline of three (3) Business Days instead of five (5) Business Days, the revised rules will take precedence.

in paragraph (8) in accordance with the Entry Schedule, upon the request of the Passenger Remedy Taker.

(28) The Passenger Remedy Taker shall request and take up the relevant TSR overflight rights in accordance with the Entry Schedule.[8] The Passenger Remedy Taker shall first apply to MOLIT in accordance with the regular overflight rights' allocation procedure. The Passenger Remedy Taker shall apply to MOLIT either within two (2) weeks after MOLIT initiates the regular overflight rights' allocation procedure or earlier if MOLIT sets a specific earlier date.[9] If the Passenger Remedy Taker obtains any TSR overflight rights, the number of TSR overflight rights that Korean Air is required to transfer to the Passenger Remedy Taker shall be reduced accordingly.

(29) To the extent that the Passenger Remedy Taker is not granted the relevant TSR overflight rights for the operation of the Remedy Routes in accordance with the Entry Schedule as set out in Annex 1 to these Passenger Commitments, it shall notify the Monitoring Trustee of this request for the relevant TSR overflight rights to operate the Remedy Routes within five (5) Business Days after the results of the regular overflight rights' allocation procedure have been announced ("the **Requested TSR Overflight Rights**").

(30) In case the regular overflight rights' allocation procedure does not take place, the Passenger Remedy Taker shall submit the request for the transfer of TSR overflight rights to the Monitoring Trustee together with the request for traffic rights as set out in paragraph (24).

(31) Within five (5) Business Days following the request of the Passenger Remedy Taker, as communicated to Korean Air via the Monitoring Trustee, Korean Air shall apply to MOLIT for a TSR overflight right transfer.[10] Subsequently, the transfer of the Requested TSR Overflight Rights to the Passenger Remedy Taker shall be approved, so that they will be available for use by the Passenger Remedy Taker as of the entry or expansion in accordance with the Entry Schedule.

(32) Korean Air commits to transfer and the Passenger Remedy Taker shall obtain the Requested TSR Overflight Rights in accordance with the procedures to be established by MOLIT.

(33) At the request of the Passenger Remedy Taker, Korean Air commits to facilitate a discussion between the Passenger Remedy Taker and Aeroflot to negotiate an agreement to be entered into between those two parties on the conditions and fees payable by the Passenger Remedy Taker to Aeroflot for using the TSR.

Aircraft

(34) Korean Air (as lessor) commits to conclude with the Passenger Remedy Taker (as lessee) a dry lease agreement for [*number and model of aircraft*] (the "**Remedy Aircraft**") for a transitional period of [*duration of transitional period*] years as of delivery (the "**Remedy Aircraft Lease**") at [*commercial terms of commercial agreement between Korean Air and the Passenger Remedy Taker*].[11] An extension of the duration of the Remedy Aircraft Lease with [*duration of the extension of the transitional period*] additional years is possible upon the request of the Passenger Remedy Taker, showing good cause,[12] at least [*notice period of extension request*] before the expiration. Such

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8 The continuation of the war in Ukraine shall not render the transfer of TSR overflight rights unnecessary.

9 MOLIT's regular overflight rights' allocation procedure has no fixed time schedule. However, if it takes place, it typically happens at the beginning of each year (January/February).

10 This is based on the assumption that the "International Traffic Rights and Overflight Rights Allocation Rules" will be revised by that time, given that Korean Air will only be able to submit a request for a transfer of the Slots based on the revised rules. In addition, in case compliance with this obligation would not be possible under the revised rules, e.g., if the revised rules include a deadline of three (3) Business Days instead of five (5) Business Days, the revised rules will take precedence.

11 [*Terms of the commercial agreement between Korean Air and the Passenger Remedy Taker*].

12 Good cause in the context of these Passenger Commitments means "denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action". Circumstances that could be considered good cause in the context of paragraph (34) include inter alia, the Passenger Remedy Taker demonstrating that the Remedy Aircraft Lease from Korean Air will be required for a longer period due to the

extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(35) The Remedy Aircraft Lease will provide for the reconfiguration/renovation by Korean Air of the Remedy Aircraft, prior to the delivery to the Passenger Remedy Taker, as requested by the Passenger Remedy Taker for it to offer a Competitive Air Service on the Remedy Routes. In addition, the Remedy Aircraft Lease will provide for the delivery of the Remedy Aircraft at the latest [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] before the start of operations with the aircraft in line with the Entry Schedule.

(36) The Remedy Aircraft Lease shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within eight (8) weeks after the Effective Date, thereby taking into account the criteria listed in paragraphs (34)-(35) and incorporating the key terms set out in Schedule 3 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the Remedy Aircraft Lease shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Remedy Aircraft Lease are fair and reasonable.[13]

(37) Korean Air also commits to sublease (as dry lease) to the Passenger Remedy Taker, upon the Passenger Remedy Taker's request after Completion, up to [*number and model of aircraft*] aircraft (the "**Subleased Aircraft**") at [c*ommercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] and for a transitional period (the "**Sublease**"). The Passenger Remedy Taker can make such request to the extent that it considers the use of [*aircraft model*] to be required for the operation of the Remedy Routes during the Minimum Period in accordance with the Entry Schedule, but it has failed to independently procure the [*aircraft model*]. If required, the Passenger Remedy Taker shall request the negotiation of a Sublease by [*date*].[14] The duration of such a Sublease shall not be limited to the rest of the Minimum Period. The exact duration of the Sublease shall be discussed and agreed between Korean Air and the Passenger Remedy Taker at the time of concluding the Sublease.

(38) The Sublease will provide for the delivery of the Subleased Aircraft in as-is condition at the latest [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] before the start of operations with the [*aircraft model*] in line with the Entry Schedule.

(39) The Sublease shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within [*term*] after the Passenger Remedy Taker's request, thereby taking into account the criteria listed in paragraphs (37)-(38). The conclusion of the Sublease shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Sublease are fair and reasonable.[15]

<u>Crew</u>

(40) Korean Air commits to conclude with the Passenger Remedy Taker a flight crew support agreement for a transitional period of [*duration of transitional period*] (the "**Crew Support Agreement**"). An extension of the duration of the Crew Support Agreement with [*duration of the extension of the transitional period*] is possible upon the request of the Passenger Remedy Taker, showing good cause,[16] [*notice period for extension request*] before the expiry of the agreement, subject to the approval by the Monitoring Trustee, in consultation with the Commission.

Passenger Remedy Taker's inability to free aircraft from its existing fleet and/or attract aircraft on the market at reasonable terms for the operation on the Remedy Routes.

13 The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

14 Provided that Completion takes place before [*date*]. This date will allow for delivery by IATA Summer Season 2025.

15 The terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

16 Good cause in the context of these Passenger Commitments means "denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action". Circumstances that could be considered good cause in the context of paragraph (40) include inter alia,

(41) The Crew Support Agreement will effect the temporary secondment, in accordance with the specific request by the Passenger Remedy Taker, of up to […] flight crew members ([…]) with a licence to operate [*aircraft model*] models to the Passenger Remedy Taker. The secondment fee payable by the Passenger Remedy Taker will consist of [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*]. Korean Air commits to ensure that the employment conditions of the seconded crew will not be worse than if they would not have been seconded.

(42) In addition, the Crew Support Agreement will provide for paid rental support, upon the request of the Passenger Remedy Taker, to the seconded flight crew for access to [*aircraft model*] flight simulators for training to operate the Remedy Routes, until the Passenger Remedy Taker is able to train the flight crew for the operation of the Remedy Routes itself, but not later than the end of the Crew Support Agreement. The flight simulator access will be provided by Korean Air to the Passenger Remedy Taker at [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*] and Korean Air commits to prioritise the Passenger Remedy Taker over any other new customers seeking flight simulator access. Korean Air shall consult with the Passenger Remedy Taker and offer sufficient flight simulator access to ensure that there will not be any delay or issue with the training of seconded crew.

(43) The Crew Support Agreement will enter into force sufficiently in advance before the start of operations by the Passenger Remedy Taker on the Remedy Routes and in any event four (4) weeks before the start of operations by the Passenger Remedy Taker on the Remedy Routes.

(44) The Crew Support Agreement shall be negotiated and entered into between Korean Air and the Passenger Remedy Taker within eight (8) weeks after the Effective Date, thereby taking into account the criteria listed in paragraphs (40)-(43) and incorporating the key terms set out in Schedule 4 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the Crew Support Agreement between Korean Air and the Passenger Remedy Taker shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the Crew Support Agreement are fair and reasonable.[17]

MRO support

(45) Korean Air commits to conclude with the Passenger Remedy Taker an agreement to provide MRO support for the Remedy Aircraft during the leasing period (the "**MRO Support Agreement**") at [*commercial terms of the agreement between Korean Air and the Passenger Remedy Taker*].

(46) The MRO Support Agreement shall be negotiated between Korean Air and the Passenger Remedy Taker and concluded within eight (8) weeks after the Effective Date thereby taking into account the criteria listed in paragraph (45) and incorporating the key terms set out in Schedule 5 of the Entry Commitment Agreement. These key terms will not be amended by Korean Air or the Passenger Remedy Taker without the prior approval by the Monitoring Trustee in consultation with the Commission. The conclusion of the MRO Support Agreement between Korean Air and the Remedy Taker shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission, based on an assessment of whether the terms of the MRO Support Agreement are fair and reasonable.[18]

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the Passenger Remedy Taker demonstrating that it has not yet been able to attract sufficient flight crew itself to operate on all Remedy Routes in accordance with the Entry Schedule without crew support by Korean Air.

17 The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

18 The non-key terms will be reviewed by the Monitoring Trustee in accordance with the industry practice.

Section C Passenger Remedy Taker Criteria

(47) In order to be approved by the Commission, the Passenger Remedy Taker must fulfil the following criteria:

(a) The Passenger Remedy Taker shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the implementation of these Passenger Commitments).

(b) The Passenger Remedy Taker shall have the financial resources, proven expertise, incentive and ability to operate a Competitive Air Service as a viable and active competitive force on the Remedy Routes;

(c) The Passenger Remedy Taker shall be an existing airline with the ability to operate a hub and spoke network from ICN; and

(d) The operations on the Remedy Routes by the Passenger Remedy Taker must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Passenger Remedy Taker must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the operations on the Remedy Routes.

(48) Korean Air has selected T'way as the proposed Passenger Remedy Taker. Korean Air requests the Commission to approve T'way as the Passenger Remedy Taker and to approve the Entry Commitment Agreement concluded between Korean Air and T'way in the Decision. Korean Air has appointed an independent external advisor, the costs of which will be borne by Korean Air, to assist the Commission in the assessment of: (i) the viability and suitability of the proposed Passenger Remedy Taker; (ii) the suitability and feasibility of the Passenger Commitments and the obligations and procedures included in the Entry Commitment Agreement; (iii) the alignment of the Passenger Commitments and the Entry Commitment Agreement with MOLIT's processes and the KFTC remedies' implementation; and (iv) upon further instruction by the Commission, the proposed carve-out in relation to the Cargo Commitments. The Commission may on its own initiative or at the request of the Independent Advisor or Korean Air, give any orders or instructions to the Independent Advisor.

Section D Monitoring Trustee

Appointment procedure

(49) Korean Air shall appoint a Monitoring Trustee to carry out the functions specified in these Passenger Commitments for a Monitoring Trustee. The Parties commit(s) not to close the Transaction before the appointment of a Monitoring Trustee.

(50) The Monitoring Trustee shall:

(a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

(b) be familiar with the airline industry, and possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker, consultant or auditor in the air transport sector; and

(c) neither have nor become exposed to a Conflict of Interest.

(51) The Monitoring Trustee shall be remunerated by Korean Air in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Korean Air

(52) No later than two (2) weeks after the Effective Date, Korean Air shall submit the name or names of one or more natural or legal persons whom Korean Air proposes to appoint as the Monitoring Trustee to the Commission for approval. Korean Air undertakes to propose the Independent Advisor as one of the candidates for the position of Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph (50) and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Passenger Commitments; and

(b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

(53) The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Korean Air shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved by the Commission, Korean Air shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Korean Air

(54) If all the proposed Monitoring Trustees are rejected, Korean Air shall submit the names of at least two (2) more natural or legal persons within one (1) week of being informed of the rejection, in accordance with paragraphs (49) to (53) of these Passenger Commitments.

Monitoring Trustee nominated by the Commission

(55) If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Korean Air shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission.

Functions of the Monitoring Trustee

(56) The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Passenger Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Korean Air, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(57) The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(b) monitor the performance of the Passenger Commitments by Korean Air;

(c) inform Korean Air promptly about any request or notification by the Passenger Remedy Taker;

(d) propose to Korean Air such measures as the Monitoring Trustee considers necessary to ensure Korean Air's compliance with the conditions and obligations attached to the Decision;

(e) review and assess the agreements and the requests for extension of agreements submitted by Korean Air for approval by the Monitoring Trustee, in consultation with the Commission;

(f) advise and make a written recommendation to the Commission as to the fulfilment of the Completion condition under paragraph (5);

(g) review and assess the progress of the procurement of the entry by the Passenger Remedy Taker and verify that, dependent on the stage of the process, the Passenger Remedy Taker receives sufficient and correct information relating to the Remedy Routes;

(h) provide to the Commission, sending Korean Air a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Remedy Routes as well as the facilitation of entry so that the Commission can assess the progress of the process until the moment of Entry on all Remedy Routes by the Passenger Remedy Taker, in accordance with the Entry Schedule, whereby after the moment of Entry on all Remedy Routes by the Passenger Remedy Taker, the Monitoring Trustee shall provide its reports on a IATA seasonal instead of a monthly basis;

(i) promptly report in writing to the Commission, sending Korean Air a non-confidential copy at the same time, if it concludes on reasonable grounds that Korean Air is failing to comply with these Passenger Commitments;

(j) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

Duties and obligations of Korean Air

(58) Korean Air shall provide and shall cause their advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of Korean Air's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Passenger Commitments and Korean Air shall provide the Monitoring Trustee upon request with copies of any document. Korean Air shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.

(59) Korean Air shall indemnify the Monitoring Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Korean Air for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Passenger Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

(60) At the expense of Korean Air, the Monitoring Trustee may appoint advisors (in particular for technological, intellectual property, corporate finance or legal advice), subject to Korean Air's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Korean Air refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard Korean Air. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph (59) of these Passenger Commitments shall apply *mutatis mutandis*.

(61) Korean Air agrees that the Commission may share Confidential Information proprietary to Korean Air with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(62) Korean Air agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform the Passenger Remedy Taker and interested third parties of the identity and the tasks of the Monitoring Trustee.

(63) For a period of 10 years from the Effective Date the Commission may request all information from Korean Air that is reasonably necessary to monitor the effective implementation of these Passenger Commitments.

Replacement, discharge and reappointment of the Monitoring Trustee

(64) If the Monitoring Trustee ceases to perform its functions under the Passenger Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Monitoring Trustee and Korean Air, require Korean Air to replace the Monitoring Trustee; or

(b) Korean Air may, with the prior approval of the Commission, replace the Monitoring Trustee.

(65) If the Monitoring Trustee is removed according to paragraph (64) of these Passenger Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs (49) to (55) of these Passenger Commitments.

(66) Unless removed according to paragraph (64) of these Passenger Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Passenger Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section E Fast-track dispute resolution procedure

(67) In the event that (i) the Passenger Remedy Taker claims that Korean Air is failing to comply with the requirements of the Passenger Commitments and/or the Entry Commitment Agreement, vis-à-vis the Passenger Remedy Taker, or (ii) Korean Air claims that the Passenger Remedy Taker is failing to comply with its obligations under the Entry Commitment Agreement, in particular the obligation to continue to operate on the Remedy Routes until the end of the Minimum Period, the fast-track dispute resolution procedure as described in this Section shall be available to the Passenger Remedy Taker or Korean Air, respectively.

(68) If the Passenger Remedy Taker or Korean Air wishes to avail itself of the fast-track dispute resolution procedure, it must notify the Monitoring Trustee in writing setting out in detail the reasons leading it to believe that the other party is failing to comply with the requirements of the Passenger Commitments or the Entry Commitment Agreement (the "**Notice**"). The Passenger Remedy Taker and Korean Air will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding 15 working days after receipt of the Notice, which may be extended by mutual consent.

(69) The Monitoring Trustee shall present its own proposal (the "**Monitoring Trustee Proposal**") for resolving the dispute within eight (8) working days after receipt of the Notice, specifying in writing the action, if any, to be taken by Korean Air or the Passenger Remedy Taker in order to ensure compliance, and shall be prepared, if requested, to facilitate the settlement of the dispute.

(70) Should the Passenger Remedy Taker and Korean Air fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph (68), the claimant shall serve a request (the "**Request**"), in the sense of a request for arbitration, to the Korean Commercial Arbitration Board (the "**KCAB**" or the "**Arbitral Institution**"), with a copy to be sent to the accused party and the Monitoring Trustee.

(71) The Request shall set out in detail the dispute, difference or claim (the "**Dispute**") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g., documents, agreements, expert reports, and witness statements. The Request shall also contain a detailed description of the action to be undertaken by the accused party and the Monitoring Trustee Proposal, including a comment as to its appropriateness.

(72) The accused party shall, within 10 working days from receipt of the Request, submit its answer (the "**Answer**"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g., documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which it proposes to undertake vis-à-vis the claimant (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Monitoring Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

(73) The Arbitral Tribunal shall in principle consist of three (3) persons. The claimant shall nominate its arbitrator in the Request; the accused party shall nominate its arbitrator in the Answer.

(74) The arbitrators nominated by the Passenger Remedy Taker and Korean Air shall, within five (5) working days of the nomination of the last appointment, nominate a chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three (3) arbitrators. Should the Passenger Remedy Taker or Korean Air wish to have the Dispute decided by a sole arbitrator they shall indicate this in the Request. In this case, the Passenger Remedy Taker and Korean Air shall agree on the nomination of a sole arbitrator within five (5) working days from the communication of the Answer, communicating this to the Arbitral Institution. Should either party fail to nominate an arbitrator, or if the two (2) arbitrators fail to agree on the chairman or should the parties to the arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "**Arbitral Tribunal**".

Arbitration Procedure

(75) The Dispute shall be finally resolved by arbitration under the rules of the KCAB, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The arbitration shall be conducted in Seoul, Korea in Korean.

(76) The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time limits under the Rules as far as admissible and appropriate in the circumstances. The parties to the arbitration shall consent to the use of e-mail for the exchange of documents.

(77) The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms

of Reference shall be drawn up and signed by the parties to the arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural timetable shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.

(78) In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.

(79) The Arbitral Tribunal shall not disclose Confidential Information. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, the Commission and outside counsel and experts of the opposing party.

(80) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the claimant must produce evidence of a *prima facie* case and (ii) if the claimant produces evidence of a *prima facie* case, the Arbitral Tribunal must find in favour of this party unless the accused party produces evidence to the contrary.

Involvement of the Commission

(81) The Commission shall be allowed and enabled to participate in all stages of the procedure by:

(a) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;

(b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including the terms of reference and procedural timetable);

(c) giving the Commission the opportunity to file amicus curiae briefs; and

(d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

(82) The Arbitral Tribunal shall forward or shall order the parties to the arbitration to forward the documents mentioned to the Commission without delay via the use of e-mail.

(83) In the event of disagreement between the parties to the arbitration regarding the interpretation of the Passenger Commitments or the Entry Commitment Agreement, the Arbitral Tribunal may seek the Commission's interpretation of the Passenger Commitments or the Entry Commitment Agreement before finding in favour of any party to the arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

(84) The Arbitral Tribunal shall decide the dispute on the basis of the Passenger Commitments, the Decision and the Entry Commitment Agreement. Issues not covered by the Passenger Commitments, the Decision or the Entry Commitment Agreement shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

(85) Upon request of either party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal.

The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.

(86) The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.

(87) The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by the accused party in order to comply with the Passenger Commitments or the Entry Commitment Agreement. The final award shall be final and binding on the parties to the arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal.

(88) The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

(89) The parties to the arbitration shall prepare a non-confidential version of the final award, without Confidential Information. The Commission may publish the non-confidential version of the award.

(90) Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Passenger Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

Section F Review clause

(91) The Commission may extend the time periods foreseen in the Passenger Commitments in response to a request from Korean Air or, in appropriate cases, on its own initiative. Where Korean Air requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one (1) month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Korean Air. Only in exceptional circumstances shall Korean Air be entitled to request an extension within the last month of any period.

(92) The Commission may further, in response to a reasoned request from Korean Air showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Passenger Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Korean Air. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G Sunset clause

(93) In the event that the Transaction lapses, these Passenger Commitments shall lapse. In this case, both Korean Air and the Passenger Remedy Taker can prematurely terminate the Entry Commitment Agreement and the Passenger Remedy Taker shall without undue delay: (i) return to Korean Air any Remedy Aircraft or crew made available pursuant to these Passenger Commitments, (ii) return to the ICN Slot coordinator, any ICN Slots made available pursuant to these Passenger Commitments, (iii) return to Korean Air (via a transfer or an exchange) any Slots at EU Airports made available pursuant

to these Passenger Commitments, and (iv) return to MOLIT, any Requested Traffic Rights and Requested TSR Overflight Rights made available pursuant to these Passenger Commitments.

(94) The obligation of Korean Air to transfer (or exchange) Slots, Requested Traffic Rights and Requested TSR Overflight Rights pursuant to Section B, shall cease to apply once the Passenger Remedy Taker receives the rights to operate 23 weekly frequencies in IATA Summer Seasons and 20 weekly frequencies in IATA Winter Seasons on the Remedy Routes. The obligation of Korean Air to take any necessary enforcement steps against the Passenger Remedy Taker as set out in paragraph (4) shall cease to apply after the end of the Minimum Period.

(95) If and when the Passenger Remedy Taker has demonstrated Appropriate Use of the Slots on the Remedy Routes (i) in accordance with the Entry Schedule during the Minimum Period, and (ii) up until five (5) years after initial entry on all Remedy Routes as defined in paragraph (5) in accordance with applicable Slot regulations, these Passenger Commitments shall cease to apply. For the avoidance of doubt, this will not affect the validity of the underlying agreements entered into pursuant to these Passenger Commitments. As long as such agreements continue to apply, the provisions in these Passenger Commitments that concern those agreements also continue to apply.

Section H Entry into force

(96) The Passenger Commitments shall take effect upon the Effective Date, with the exception of Section C (Passenger Remedy Taker Criteria) which shall take effect upon the date of entering into these Passenger Commitments.

9 January 2024

[...]

Duly authorised for and on behalf of Korean Air Co., Ltd.

ANNEX 1

TW ENTRY SCHEDULE

[...]

KOREAN AIR LINES / ASIANA AIRLINES

Case No. COMP/M. 10149

COMMITMENTS TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 8 (2) OF REGULATION (EC) No 139/2004

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9 January 2024

Case M.10149 – Korean Air / Asiana

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Korean Air Co., Ltd. ("**Korean Air**") and Asiana Airlines Inc. ("**Asiana**", and, together with Korean Air, the "**Parties**") hereby enter into the following commitments (the "**Cargo Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition of sole control by Korean Air over Asiana within the meaning of Article 3(1)(b) of the Merger Regulation (the "**Transaction**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Transaction compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 (the "**Remedies Notice**").

These Cargo Commitments shall take effect upon the date of adoption of the Decision. Korean Air commits to ensuring that these Cargo Commitments will be binding on any successor company arising from the Transaction.

Section A Definitions

(1) For the purpose of these Cargo Commitments, the terms below shall have the following meaning:

Affiliated Undertakings	Undertakings controlled by any of the Parties and/or the ultimate parents of any of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004
AOC	Air Operator Certificate
Asiana	Asiana Airlines Inc., incorporated under the laws of the Republic of Korea, with its registered office at 443-83, Ojeong-ro, Gangseo-gu, Seoul, Republic of Korea, and registered with the Commercial/Company Register under number 110111-0562804
Asiana Business	The full scope of activities currently performed by Asiana
Asiana Designated Representative	[…], designated by Asiana as the primary point of contact for the Monitoring Trustee, that shall assist the Monitoring Trustee in collecting and providing information for the planning of the Spin-Off that will be implemented after Completion
Asiana IDT	Asiana IDT Inc., incorporated under the laws of the Republic of Korea, with its registered office at Centropolis A, 23 & 25th Floor, 26, Ujeongguk-ro, Jongno-gu, Seoul, 03161 and registered with the Commercial/Company Register under number 110111-0801848
Assets	The assets that contribute to the current operation or are necessary to ensure the operation, viability and competitiveness of the Divestment Business as indicated in Section B, and described more in detail in the Schedule
BCN	Josep Tarradellas Barcelona-El Prat Airport in Barcelona, Spain
Binding Sale and Purchase Agreement	The binding master agreement to be concluded between Korean Air and the Purchaser, to be differentiated from the draft sale and purchase agreement between Asiana and the Purchaser, which will be annexed to the master agreement
BSA	Block Space Agreement
Cargo Commitments	The commitments described in this document
CDG	Paris Charles de Gaulle Airport in Roissy-en-France, France
Commission	European Commission
Completion	The closing of the Transaction
Confidential Information	Any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain
Conflict of Interest	Any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Cargo Commitments
Decision	The decision pursuant to Article 8(2) of the Merger Regulation by the European Commission
Divestiture Trustee	One or more natural or legal person(s) who is/are approved by the Commission and appointed by Korean Air and who has/have received from Korean Air the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price

Divestment Business	The business as defined in Section B and in the Schedule which Korean Air commits to divest
Divestment Closing	The transfer of the legal title to the Divestment Business to the Purchaser
Effective Date	The date of adoption of the Decision
EU	European Union
FCO	Leonardo da Vinci International Airport in Fiumicino, Metropolitan City of Rome, Italy
FRA	Frankfurt Airport in Frankfurt, Germany
First Divestiture Period	The period of […] from the Effective Date
GPA	Global Partnership Agreement
Hold Separate Manager	The Asiana Designated Representative, that will be appointed by Korean Air after Completion (unless the Commission accepts, after Korean Air submits a reasoned proposal, that a different member of the Key Personnel is appointed) to manage the day-to-day operation of the Divestment Business under the supervision of the Monitoring Trustee. This individual will remain in charge of the management of the cargo business of Asiana until Divestment Closing
ICN	Incheon International Airport in Incheon, Korea
ICN-BCN	Flight routes between ICN and BCN
ICN-CDG	Flight routes between ICN and CDG
ICN-FCO	Flight routes between ICN and FCO
ICN-FRA	Flight routes between ICN and FRA
Independent Advisor	Mazars LLP, a limited liability partnership organised under the laws of England and Wales, with its registered office at 30 Old Bailey, London, EC4M 7 AU
Key Personnel	All personnel necessary to maintain the operation, viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager
Korean Air	Korean Air Co., Ltd., incorporated under the laws of the Republic of Korea, with its registered office at 260 Haneul-Gil, Gangseo-Gu, Seoul and registered with the Commercial/Company Register under number 110111-0108484
MOLIT	Korean Ministry of Land, Infrastructure and Transport
Monitoring Trustee	One or more natural or legal person(s) who is / are approved by the Commission and appointed by Korean Air after the Effective Date, and who has / have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision
MRO	Maintenance, repair and overhaul services
Newco	A new legal entity to which the Divestment Business is transferred pursuant to paragraph (12) of these Cargo Commitments
Parties	Korean Air and Asiana
Passenger Remedy Route(s)	Each of ICN – BCN; ICN – CDG; ICN – FCO; and ICN – FRA
Personnel	All staff currently employed by the Divestment Business, including staff seconded to the Divestment Business
Purchaser	The entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D

Purchaser Criteria	The criteria laid down in paragraph (21) of these Cargo Commitments that the Purchaser must fulfil in order to be approved by the Commission
Schedule	The schedule to these Cargo Commitments describing in more detail the Divestment Business
Slot(s)	The permission (as defined by clause 1.6.1 of the IATA Worldwide Airport Slot Guidelines as amended) for an aircraft operator to land and take-off on a specific date and time in order to operate an air service at the airport, to be used in combination with the full range of airport infrastructure parking and access to gates at the airport that are necessary to operate such service
Spin-off	The spin-off of the Divestment Business from the Asiana Business
Transaction	The proposed acquisition of control of Asiana by Korean Air
Trustee(s)	The Monitoring Trustee and/or the Divestiture Trustee as the case may be
Trustee Divestiture Period	The period of […] from the end of the First Divestiture Period

Section B The commitment to divest and the Divestment Business

Commitment to divest

(2) In order to maintain effective competition, Korean Air commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph (22) of these Cargo Commitments. To carry out the divestiture, Korean Air commits to find a Purchaser and to enter into a Binding Sale and Purchase Agreement for the sale of the Divestment Business within the First Divestiture Period. If Korean Air has not entered into such an agreement at the end of the First Divestiture Period, Korean Air shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph (35) within the Trustee Divestiture Period.

(3) The Transaction shall not be implemented before Korean Air or the Divestiture Trustee has entered into a Binding Sale and Purchase Agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph (22). The Divestment Closing will only take place if, and after, the Transaction is implemented. In the event that the Transaction lapses, these Cargo Commitments shall lapse.

(4) Korean Air shall be deemed to have complied with this commitment if:

(a) by the end of the Trustee Divestiture Period, Korean Air or the Divestiture Trustee has entered into a Binding Sale and Purchase Agreement, and the Commission approves the proposed purchaser and the terms of sale as being consistent with these Cargo Commitments in accordance with the procedure described in paragraph (22); and

(b) the Divestment Closing takes place within […].

(5) In order to maintain the structural effect of these Cargo Commitments, Korean Air shall, for a period of […] after Divestment Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Korean Air showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph (73) of these Cargo Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

(6) The Divestment Business consists of the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities, as detailed below. The Divestment Business does not include any assets solely related to belly space cargo operations. The legal and functional structure of the Divestment Business is described in more detail in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the operation, viability and competitiveness of the Divestment Business as a provider of air cargo services in the hands of a purchaser, in particular:

(a) the necessary tangible and intangible assets;

(b) the necessary licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;[1]

[1] Some permits/licences are common to Asiana's passenger and cargo businesses or are linked to Asiana Airlines as specific corporate entity and are therefore either not practically or legally transferable. Depending on the preferred structuring of the Divestment by the Purchaser, either

(c) the necessary contracts, leases, commitments and customer orders of the Divestment Business;

(d) the necessary customers, credit and other records of the Divestment Business;

(e) the necessary Personnel, including the Key Personnel.

(7) A substantial part of the assets currently used by Asiana for its global cargo freighter activities is also used for Asiana's passenger and/or belly space cargo operations, and cannot be transferred as such to the Divestment Business. This relates in particular to shared licences and shared supplier contracts that will need to be duplicated, amended or newly entered into specifically for the Divestment Business. Korean Air commits to undertake, in coordination with the Hold Separate Manager and the Purchaser, all best efforts to ensure that the Divestment Business has obtained all necessary licences and supplier contracts before the Divestment Closing, unless agreed otherwise with the Purchaser, particularly in view of existing licences and supplier contracts already held by the Purchaser.

(8) Following Completion and before the Divestment Closing, Korean Air also commits to ensure, in coordination with the Purchaser and the Hold Separate Manager, that the Divestment Business has suitable office space for its head office, unless agreed otherwise with the Purchaser, particularly in view of existing office space already available to the Purchaser.

(9) In addition, the Divestment Business includes the benefit, for a transitional period of up to […] after Divestment Closing, of the current arrangements under which Asiana or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Such services shall be offered on terms […]. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such arrangements will not be shared with, or passed on to, anyone outside the divisions providing the relevant services as set out in the Schedule. For any of these individual services, the transitional period can be extended by […], at the request of the Purchaser, showing good cause, at least […] before the expiration. Such extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(10) The Divestment Business further includes the benefit of a BSA for a transitional period of […] after Divestment Closing, if requested by the Purchaser and […]. […]. Such BSA shall be […]. The BSA shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

Structuring of the Spin-Off and sequencing of corporate steps

(11) The Spin-Off will be structured as a vertical spin-off under Korean corporate law combined with a merger, in a single corporate transaction, between the Divestment Business and the business of the Purchaser. The Parties provide an overview of the expected sequencing and timeline of the steps to implement the Spin-Off as **Appendix 4**.

(12) If agreed with the Purchaser, and subject to the review by the Monitoring Trustee and approval by the Commission, as an alternative to the Spin-Off as described in paragraph (11) and Appendix 4, the Spin-Off may be structured as a transfer of the Divestment Business to a new legal entity (**Newco**) through a vertical spin-off under Korean corporate law, followed by a purchase of the shares in Newco by the Purchaser.

the to be established NewCo will have to obtain its own licences, or the existing licences of the Purchaser will have to be modified to cover Asiana's cargo activities.

Section C Related commitments

Preservation of viability, marketability and competitiveness

(13) Asiana, from the Effective Date and until Completion, and Korean Air, from Completion until Divestment Closing, shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Parties undertake, under their respective obligations during the relevant period:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, […], to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Korean Air's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

(14) […] from the Effective Date, Korean Air undertakes to present a plan to the Monitoring Trustee on the steps to be taken until Completion to prepare for the carve-out and Spin-Off process. Korean Air commits to take the preparatory steps as set out in this plan, and shall report on the progress to the Monitoring Trustee on a monthly basis. Asiana undertakes, through the Asiana Designated Representative […], to assist Korean Air and the Monitoring Trustee as from the Effective Date and until Completion in collecting and providing information for the planning of the implementation of the carve-out and Spin-Off after Completion.

Hold-separate obligations

(15) Asiana commits, from the Effective Date and until Completion, to procure that the Asiana Business is kept separate from Korean Air. Immediately after Completion, Korean Air shall appoint a Hold Separate Manager. The Hold Separate Manager shall be the same person as the Asiana Designated Representative ([…]), unless the Commission accepts on the basis of a reasoned proposal by Korean Air that a different member of the Key Personnel is appointed. The Hold Separate Manager shall oversee the process of the Spin-off and shall manage the Divestment Business independently and in the best interest of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Korean Air. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee, and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph (13)(c) of these Cargo Commitments. The Commission may, after having heard Korean Air, require Korean Air to replace the Hold Separate Manager. Before the appointment of the Asiana Designated Representative as Hold Separate Manager by Korean Air after Completion (or another member of the Key Personnel, as agreed with the Commission), the Asiana Designated Representative will already be the primary point of contact for the Monitoring Trustee, in relation to the Divestment Business as of the Effective Date. Asiana undertakes, through the Asiana Designated Representative who is in charge of the management of the cargo business of Asiana until

Divestment Closing, to assist Korean Air and the Monitoring Trustee as from the Effective Date and until Completion in collecting and providing information for the planning of the Spin-Off that will be implemented after Completion.

Ring-fencing

(16) Korean Air shall implement, or procure to implement, all necessary measures to ensure that Korean Air does not, after Completion, obtain any Confidential Information relating to the Divestment Business. Any such Confidential Information obtained by Korean Air will be eliminated and not be used by Korean Air. This includes measures vis-à-vis Korean Air's appointees on the supervisory board and/or board of directors of Asiana. Korean Air may obtain or keep information relating to the Divestment Business (i) which is reasonably necessary for the divestiture of the Divestment Business; (ii) which is reasonably required to maintain the viability of the Divestment Business until Divestment Closing; (iii) or the disclosure of which to Korean Air is required by law.

Non-solicitation clause

(17) Korean Air undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, any member of the Key Personnel or the flight crew transferred with the Divestment Business for a period of […] after Divestment Closing.

Due diligence

(18) In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business; and

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

(19) Korean Air shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten (10) days after the end of every month following the Effective Date (or otherwise at the Commission's request). Korean Air shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five (5) days of their receipt.

(20) Korean Air shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D The Purchaser

(21) In order to be approved by the Commission, the Purchaser must fulfil the following criteria at the moment of the Commission's approval:

(a) The Purchaser shall be independent of and unconnected to Korean Air and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) The Purchaser shall be […];

(d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of these Cargo Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(22) The Binding Sale and Purchase Agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Korean Air has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one (1) week to the Commission and the Monitoring Trustee. Korean Air must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and these Cargo Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with these Cargo Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the operation, viability and competitiveness of the Divestment Business after the sale, taking account of the Purchaser.

(23) The approval by the Commission of the Purchaser and the terms of sale in accordance with paragraph (22) shall be conditional upon the Commission:

(a) [...];

(b) [...]; and

(c) [...].

Section E Trustee

Appointment procedure

(24) Korean Air shall appoint a Monitoring Trustee to carry out the functions specified in these Cargo Commitments for a Monitoring Trustee. The Parties commit not to close the Transaction before the appointment of a Monitoring Trustee.

(25) If Korean Air has not entered into a Binding Sale and Purchase Agreement regarding the Divestment Business one (1) month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Korean Air at that time or thereafter, Korean Air shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

(26) The Trustee shall:

(a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

(b) be familiar with the airline industry, and possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor in the air transport sector; and

(c) neither have nor become exposed to a Conflict of Interest.

(27) The Trustee shall be remunerated by Korean Air in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Korean Air

(28) No later than two (2) weeks after the Effective Date, Korean Air shall submit the name or names of one or more natural or legal persons whom Korean Air proposes to appoint as the Monitoring Trustee to the Commission for approval. Korean Air undertakes to propose the Independent Advisor as one of the candidates for the position of Monitoring Trustee. No later than one (1) month before the end of the First Divestiture Period or on request by the Commission, Korean Air shall submit a list of one or more natural or legal persons whom Korean Air proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph (26) and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Cargo Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

(29) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Korean Air shall appoint or cause to be appointed the person

or persons concerned as Trustee in accordance with the mandate approved by the Commission. If more than one name is approved, Korean Air shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Korean Air

(30) If all the proposed Trustees are rejected, Korean Air shall submit the names of at least two more natural or legal persons within one (1) week of being informed of the rejection, in accordance with paragraphs (24) and (29) of these Cargo Commitments.

Trustee nominated by the Commission

(31) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Korean Air shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee

(32) The Trustee shall assume its specified duties and obligations in order to ensure compliance with these Cargo Commitments. The Commission may, on its own initiative or at the request of the Trustee or Korean Air, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(33) The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee, in close co-operation with the Asiana Designated Representative, who will become, as of Completion, the Hold Separate Manager (unless the Commission accepts, after Korean Air submits a reasoned proposal, that a different member of the Key Personnel is appointed), the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by Korean Air, in accordance with paragraphs (13)-(15) of these Cargo Commitments;

(ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph (15) of these Cargo Commitments;

(iii) with respect to Confidential Information:

(A) determine all necessary measures to ensure that Korean Air does not after the Effective Date obtain any Confidential Information relating to the Divestment Business, other than as permitted by paragraph (16) of these Cargo Commitments,

(B) in particular, after Completion, strive for the severing of the Divestment Business' participation in a central information technology network to the

extent possible without compromising the viability of the Divestment Business,

(C) make sure that any Confidential Information relating to the Divestment Business obtained by Korean Air before the Effective Date is eliminated and will not be used by Korean Air, and

(D) decide whether such information may be disclosed to or kept by Korean Air as the disclosure is reasonably necessary to allow Korean Air to carry out the divestment or as the disclosure is required by law;

(iv) monitor, after the Effective Date, the planning of the Spin-Off, and after Completion, the splitting of assets and the allocation of Personnel between the Divestment Business and Asiana or its Affiliated Undertakings;

(c) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business, the planning of the Spin-Off, and the non-disclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and

(ii) potential purchasers are granted reasonable access to the Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to these Cargo Commitments;

(f) provide to the Commission, sending each of the Parties a non-confidential copy at the same time, a written report within fifteen (15) days after the end of every month that shall cover the operation and management of the Divestment Business as well as the planning of the Spin-Off, the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with these Cargo Commitments and the progress of the divestiture process as well as potential purchasers;

(g) promptly report in writing to the Commission, sending each of the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Cargo Commitments;

(h) within one (1) week after receipt of the documented proposal referred to in paragraph (22) of these Cargo Commitments, submit to the Commission, sending Korean Air a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the Purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the Purchaser; and

(i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

(34) If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

(35) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the Binding Sale and Purchase Agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs (21) and (22) of these Cargo Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale of the Divestment Business. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the unconditional obligation to divest at no minimum price.

(36) In the Trustee Divestiture Period (or otherwise at the Commission’s request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within fifteen (15) days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Korean Air.

Duties and obligations of the Parties

(37) The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under these Cargo Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

(38) The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to the purchaser, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Korean Air shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

(39) Korean Air shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the Spin-Off, sale (including ancillary agreements) and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Divestment Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Korean Air shall cause the documents required for effecting the sale and the Divestment Closing to be duly executed. This obligation does not affect the ability for the Parties to retain their discretion to abandon the Transaction prior to Completion, as a result of which these Cargo Commitments terminate and, consequently, the power of attorney to the Divestiture Trustee immediately terminates, and the Divestiture Trustee immediately ceases to perform its functions under these Cargo Commitments.

(40) Korean Air shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Korean Air for any liabilities arising out of the performance of the Trustee's duties under these Cargo Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

(41) At the expense of Korean Air, the Trustee may appoint advisors (in particular for technological, corporate finance or legal advice), subject to Korean Air's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Korean Air refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Korean Air. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph (40) of these Cargo Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Korean Air during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

(42) The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(43) Korean Air agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

(44) For a period of […] from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Cargo Commitments.

Replacement, discharge and reappointment of the Trustee

(45) If the Trustee ceases to perform its functions under these Cargo Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and Korean Air, require Korean Air to replace the Trustee; or

(b) Korean Air may, with the prior approval of the Commission, replace the Trustee.

(46) If the Trustee is removed according to paragraph (45) of these Cargo Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs (24) to (31) of these Cargo Commitments.

(47) Unless removed according to paragraph (45) of these Cargo Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all these Cargo Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F Fast Track Dispute Resolution

(48) In the event that the Purchaser claims that Korean Air is failing to comply with the requirements of these Cargo Commitments, the fast-track dispute resolution procedure as described in this Section shall be available to the Purchaser.

(49) If the Purchaser wishes to avail itself of the fast-track dispute resolution procedure, it must notify Korean Air and the Monitoring Trustee in writing setting out in detail the reasons leading the Purchaser to believe that Korean Air is failing to comply with the requirements of these Cargo Commitments (the "**Notice**"). The Purchaser and Korean Air will use their best efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding fifteen (15) working days after receipt of the Notice, which may be extended by mutual consent.

(50) The Monitoring Trustee shall present its own proposal (the "**Monitoring Trustee Proposal**") for resolving the dispute within eight (8) working days after receipt of the Notice, specifying in writing the action, if any, to be taken by Korean Air in order to ensure compliance with these undertakings vis-à-vis the Purchaser, and shall be prepared, if requested, to facilitate the settlement of the dispute.

(51) Should the Purchaser and Korean Air fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph (49), the Purchaser shall serve a request (the "**Request**"), in the sense of a request for arbitration, to the Korean Commercial Arbitration Board (the "**KCAB**" or the "**Arbitral Institution**"), with a copy to be sent to Korean Air.

(52) The Request shall set out in detail the dispute, difference or claim (the "**Dispute**") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g., documents, agreements, expert reports, and witness statements. The Request shall also contain a detailed description of the action to be undertaken by Korean Air and the Monitoring Trustee Proposal, including a comment as to its appropriateness.

(53) Korean Air shall, within ten (10) working days from receipt of the Request, submit its answer (the "**Answer**"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g., documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Korean Air proposes to undertake vis-à-vis the Purchaser (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Monitoring Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

<u>Appointment of the Arbitrators</u>

(54) The arbitral tribunal shall in principle consist of three (3) persons. The Purchaser shall nominate its arbitrator in the Request; Korean Air shall nominate its arbitrator in the Answer.

(55) The arbitrators nominated by the Purchaser and Korean Air shall, within five (5) working days of the nomination of the latter, nominate a chairman, making such nomination known to the Parties and the Arbitral Institution which shall forthwith confirm the appointment of all three (3) arbitrators. Should the Purchaser wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Request. In this case, the Purchaser and Korean Air shall agree on the nomination of a sole arbitrator within five (5) working days from the communication of the Answer, communicating this to the Arbitral Institution. Should Korean Air fail to nominate an arbitrator, or if the two (2) arbitrators fail to agree on the chairman or should the parties to the arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "**Arbitral Tribunal**".

Arbitration Procedure

(56) The Dispute shall be finally resolved by arbitration under the rules of the KCAB, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The arbitration shall be conducted in Seoul, Korea in Korean.

(57) The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time limits under the Rules as far as admissible and appropriate in the circumstances. The parties to the arbitration shall consent to the use of e-mail for the exchange of documents.

(58) The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of Reference shall be drawn up and signed by the parties to the arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural timetable shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two (2) months of the confirmation of the Arbitral Tribunal.

(59) In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.

(60) The Arbitral Tribunal shall not disclose Confidential Information. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, the Commission and outside counsel and experts of the opposing party.

(61) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Purchaser must produce evidence of a prima facie case and (ii) if the Purchaser produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Purchaser unless Korean Air produces evidence to the contrary.

Involvement of the Commission

(62) The Commission shall be allowed and enabled to participate in all stages of the procedure by:

(a) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;

(b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including the terms of reference and procedural timetable);

(c) giving the Commission the opportunity to file amicus curiae briefs; and

(d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

(63) The Arbitral Tribunal shall forward or shall order the parties to the arbitration to forward the documents mentioned to the Commission without delay via the use of e-mail.

(64) In the event of disagreement between the parties to the arbitration regarding the interpretation of these Cargo Commitments, the Arbitral Tribunal may seek the Commission's interpretation of these Cargo

Commitments before finding in favour of any party to the arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

(65) The Arbitral Tribunal shall decide the dispute on the basis of these Cargo Commitments and the Decision. Issues not covered by these Cargo Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

(66) Upon request of the Purchaser, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month of the confirmation of the Arbitral Tribunal. The preliminary ruling shall be applicable immediately and, as a rule, remain in force until the final decision is issued.

(67) The final award shall, as a rule, be rendered by the arbitrators within six (6) months after the confirmation of the Arbitral Tribunal. The time frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.

(68) The Arbitral Tribunal shall, in their preliminary ruling as well as the final award, specify the action, if any, to be taken by Korean Air in order to comply with these Cargo Commitments vis-à-vis the Purchaser (e.g., specify a contract including all relevant terms and conditions). The final award shall be final and binding on the parties to the arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal.

(69) The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

(70) The parties to the arbitration shall prepare a non-confidential version of the final award, without Confidential Information. The Commission may publish the non-confidential version of the award.

(71) Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to these Cargo Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

Section G Review clause

(72) The Commission may extend the time periods foreseen in these Cargo Commitments in response to a request from Korean Air or, in appropriate cases, on its own initiative. Where Korean Air requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one (1) month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties, and to Korean Air only after Completion. Only in exceptional circumstances shall Korean Air be entitled to request an extension within the last month of any period.

(73) The Commission may further, in response to a reasoned request from Korean Air showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Cargo Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties, and to Korean Air only after Completion. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section H Entry into force

(74) These Cargo Commitments shall take effect on the Effective Date.

9 January 2024

[...]

Duly authorised for and on behalf of Korean Air Co., Ltd.

Signed for the purposes of the obligations applicable to Asiana in Sections C and E of these Cargo Commitments

[...]

Duly authorised for and on behalf of Asiana Airlines Inc.

SCHEDULE

(1) The Divestment Business consists of all the air cargo assets and personnel currently owned and employed by Asiana in the operation of its global cargo freighter activities that are necessary to ensure the operation, viability and competitiveness of the Divestment Business as a provider of air cargo freighter services. Asiana's business relating to air passenger services, as well as its belly space operations, will remain with Asiana. The organisational chart of the Divestment Business is attached as **Appendix 1**.

(2) The Divestment Business shall include, but is not limited to:

(a) the following main tangible Assets:

Tangible Assets	Number
Aircraft[2]	[10-12] aircraft
On-wing engines	[…]
Spare engines	[…]
Unit load devices	[…]
Miscellaneous cargo-related equipment	[…]

(b) the following main intangible Assets:

Intangible Assets	Number
Slots	[…][3]
Traffic rights	[…][4]
TSR overflight rights	[…]

(c) the following main licences and permits:

(i) The airworthiness certificates, noise certificate and operation limitations specification (issued by MOLIT or the Head of the Korean Regional Aviation Administration) of the aircraft that are included in the Divestment Business.

(ii) All other licences and permits that are necessary for the operation, viability and competitiveness of the Divestment Business, for which Korean Air commits to undertake all best efforts to ensure that the Divestment Business has obtained such licences before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing licences and permits already held by the Purchaser.

(d) the following main contracts, agreements, leases, commitments and understandings:

(i) The lease agreements for the […] currently leased by Asiana, and […];[5]

(ii) The lease agreements of the cargo terminals at […];

(iii) The lease agreements of the branch offices at […];

(iv) The lease (or sublease) rights contained in ground handling agreements relating to offices at [...];

(v) Agreements with other airlines on the use of the ICN cargo terminal;

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2 […]. The manufacturing date of the aircraft is provided in **Appendix 5**. […]

3 These correspond to all Slots currently used by Asiana for its global cargo freighter activities.

4 […]. These correspond to all traffic rights used by Asiana for its global cargo freighter activities.

5 If […], the mechanism described in paragraph (23)(a) of these commitments would apply.

(vi) The freighter-exclusive ground handling contracts,[6] subject to consent by the other contracting party, if required;

(vii) The freighter-exclusive MRO service agreements,[7] subject to consent by the other contracting party, if required;

(viii) Airline-to-airline BSA agreements and cargo storage agreements subject to consent by the other contracting party, if required;

(ix) The freighter-exclusive supplier contracts and ancillary and miscellaneous contracts, subject to consent of the other contracting party, if required;

(x) All other supplier contracts that are necessary for the operation, viability and competitiveness of the Divestment Business, for which Korean Air commits to undertake all best efforts to ensure that the Divestment Business has obtained such contracts before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing supplier contracts to which the Purchaser is a party; and

(xi) Korean Air commits to ensure, in coordination with the Purchaser and the Hold Separate Manager, that the Divestment Business has suitable office space for its head office before the Divestment Closing, unless agreed otherwise with the Purchaser, in particular in view of existing office space already available to the Purchaser.

(e) the following customers, credit and other records:

(i) The Parties will transfer as part of the Divestment Business all Asiana's air cargo customer contracts (incl. GPAs) existing at the moment of Divestment Closing that can practically be served by the Divestment Business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft), subject to the consent of the customer if required;

(ii) All historic customer data, full customer lists and records related to the Divestment Business that can practically be served by the Divestment Business (including in relation to customers currently serviced via the use of belly space of passenger aircraft that could also be served by freighter aircraft) will be transferred to the Purchaser. The Parties may retain a copy of such records to the extent that these are required for legal compliance purposes.[8] The Parties will not use customer information, which is obtained through such retained copies, for commercial purposes.

(f) the following Personnel as further described in **Appendix 2:**

(i) Approximately […] employees will be transferred to the Divestment Business, subject to applicable labour laws and subject to review by the Purchaser, the Parties, the Monitoring Trustee and the Commission in the light of the ongoing negotiations and the Purchaser's resources and capabilities. The actual number of employees that will

6 The freighter-exclusive ground handling service agreements represent approximately […]% of all ground handling services agreements used by Asiana, with the remainder being used by both the existing passenger / belly space cargo operations, and the air cargo freighter business of Asiana.

7 The freighter-exclusive MRO service agreements represent approximately […]% of all MRO services agreements used by Asiana, with the remainder being used by both the existing passenger operations, and the air cargo freighter business of Asiana.

8 This includes obligations under Korean commercial, tax, and customs law. For instance, companies need to keep ledgers and evidentiary documents for all transactions for a period of five (5) years after the statutory reporting period for the tax applicable to the transaction in question. Companies also need to keep export declaration certificates, return declaration certificates, documents on the price determination of exported/returned goods, contracts related to export/return transactions, etc. for a period of three (3) years from the date of the relevant declaration. These documents may contain customer data, especially in relation to the air waybill number, the goods transported (pieces, weight, size), the itinerary (flight date), the price, billing information, the shipper, the consignee, customs declaration, etc. However, the Parties will not use such data for commercial purposes.

ultimately be transferred to the Divestment Business may deviate compared to what is indicated in **Appendix 2**.

(g) the Key Personnel, as listed in **Appendix 3**.

(h) The arrangements for the continued supply by the Parties, […], with the following services for a transitional period of up to […] after Divestment Closing:

(i) IT support (maintenance and repair) to be provided by Asiana IDT;

(ii) Ground handling support at ICN;

(iii) Access to simulators; and

(iv) Access to hangars.

For any of these individual services, the transitional period can be extended by […] in total after Divestment Closing, at the request of the Purchaser, showing good cause, at least […] before the expiration. Such extension shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(i) A BSA if requested by the Purchaser, and unless [...]. The BSA will apply to passenger flights operated by Korean Air and/or Asiana on the Passenger Remedy Routes for a maximum of […]% of the belly space capacity of each such flight […], Such BSA shall be […]. The BSA shall be subject to the approval by the Monitoring Trustee, in consultation with the Commission.

(3) The Divestment Business shall not include:

(a) The intellectual property rights related to the Asiana and Asiana Cargo brands;

(b) The assets, rights (notably including Slots, traffic rights, TSR overflight rights) and contracts exclusively related to or exclusively used by Asiana's passenger and/or belly space operations;

(c) The lease agreement for the main office building of Asiana in Osoe-Dong, Seoul, South Korea;

(d) The lease agreements for the branch offices located in […];[9]

(e) Existing rights and contracts shared between (i) Asiana's passenger and/or belly space operations and (ii) Asiana's freighter operations. These will need to be replicated or renegotiated to specifically serve the Divestment Business, e.g., shared licences, contracts related to the supply of fuel, non-freighter exclusive ground handling or MRO services, etc.[10]

(f) The licences and permits that are tied to Asiana and are not individually transferable. These licences notably include the air operator certificate, air transport business licence and permission for overflight of Asiana issued by MOLIT, foreign air carrier permits (also known as third country operator permits) issued by the relevant authorities in […], as well as maintenance organisation certifications in […], which are each tied to Asiana.

(4) If there is any asset or personnel which is not covered by paragraph (2) of this Schedule but which is both used for Asiana's global cargo business and necessary for the continued operation, viability and

[9] As noted under paragraph (2)(d)(iii) of this Schedule, above, the lease agreements relating to the offices at the airports at […] are included in the Divestment Business, […]. However, there are also […].

[10] These represent approximately […]% of the supply of fuel agreements used by Asiana, approximately […]% of the ground handling services agreements used by Asiana, and approximately […]% of the MRO services agreements used by Asiana.

competitiveness of the Divestment Business as a provider of air cargo services, that asset, personnel or an adequate substitute will be offered to the Purchaser.

APPENDIX 1

ORGANISATIONAL CHART

[…]

APPENDIX 2

PERSONNEL

[…]

APPENDIX 3

KEY PERSONNEL

[…]

APPENDIX 4

INDICATIVE TIMELINE OF KEY MILESTONES AND SEQUENCING OF THE DIVESTMENT

[…]

APPENDIX 5

FLEET AGE

[…]