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*Case No*  
**COMP/M.5335-**  
**LUFTHANSA/ SN**  
**AIRHOLDING**

Only the English text is authentic.

**REGULATION (EC) No 139/2004**  
**MERGER PROCEDURE**

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Article 8 (2)  
Date: 22/06/2009



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.06.2009

C (2009) 4608 final

**PUBLIC VERSION**

**COMMISSION DECISION**

**of 22.6.2009**

**declaring a concentration to be compatible with the common market  
and the EEA Agreement**

(Case No COMP/M.5335 – Lufthansa/ SN Airholding)

**Commission Decision**  
**of 22.6.2009**  
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**and the EEA Agreement**

**(Case No COMP/M.5335 – Lufthansa/ SN Airholding)**

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to the bilateral Agreement between the European Community and the Swiss Confederation on Air Transport,<sup>1</sup>

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings,<sup>2</sup> and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 26 January 2009 to initiate proceedings in this case,

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<sup>1</sup> OJ L 114, 30.4.2002, p. 73.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1.

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,<sup>3</sup>

Having regard to the final report of the Hearing Officer in this case,<sup>4</sup>

WHEREAS:

## INTRODUCTION

- (1) On 26 November 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Deutsche Lufthansa AG ("LH", Germany) acquires sole control within the meaning of Article 3(1)(b) of the Merger Regulation of the undertaking SN Airholding SA/NV ("SNAH", Belgium) by way of purchase of shares ("the transaction").
- (2) After examination of the notification, the Commission concluded on 26 January 2009 that the transaction fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and the EEA Agreement. The Commission therefore initiated proceedings in accordance with Article 6(1)(c) of the Merger Regulation.
- (3) The Commission sent LH a Statement of Objections on 24 March 2009. An Oral Hearing took place at LH's request on 15 April 2009. On 28 April 2009 the Commission sent LH a Supplementary Statement of Objections, which LH replied to on 5 May 2009.

## I. THE PARTIES

- (4) **LH** is the largest German airline. It provides scheduled passenger and cargo transport and related services (maintenance, repair and overhaul services ("MRO"), in-flight catering, and IT services). In 2007 LH carried 45 million passengers to 206 destinations with its 272 aircraft. It has hubs at Frankfurt International Airport and Munich airport, and a base at Düsseldorf airport. LH also controls Swiss International Air Lines Ltd. ("LX")<sup>5</sup>, based at Zürich airport, Air Dolomiti, Eurowings, and the low-cost carrier Germanwings. LH is in the process of acquiring control over the British carrier British Midland ("BMI").<sup>6</sup> In addition, LH holds 19% of the shares of Jet Blue, a low-cost

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<sup>3</sup> OJ 2009 C295/08

<sup>4</sup> OJ 2009 C295/09

<sup>5</sup> See case COMP/M.3770 – Lufthansa/Swiss.

<sup>6</sup> See case COMP/M.5403 – Lufthansa/British Midland. Although this latter transaction was cleared by the Commission on 14 May 2009, it was notified on 3 April 2009 after the notification of the LH/SN transaction. According to the "first come, first served" principle, the overlaps between BMI and SN have been investigated in the Lufthansa/British Midland case and are not investigated for the purpose of this case.

airline active in the United States of America Both LH and LX are members of the Star Alliance.

- (5) **SNAH** is the holding company of SN Brussels Airlines ("SN"). SNAH currently has 35 shareholders including the Brussels and the Walloon governments. The "Brussels Airlines" brand results from the combination of the former "SN Brussels Airlines" and Virgin Express in 2004/2005. SN Brussels Airlines was formed in 2002, after Sabena became insolvent at the end of 2001. In 2007 SN carried 6 million passengers to 61 destinations with its 51 aircraft. SN has its hub at Brussels airport. SN is not a member of any alliance. SN also has limited air cargo and charter services.

## II. THE OPERATION AND THE CONCENTRATION

- (6) Pursuant to the Acquisition Agreement signed by LH and SNAH on 15 September 2008, LH would initially acquire 45 % of SNAH's shares, with call options on the remaining shares which can be exercised as of the first quarter of 2011. Although the present transaction would be completed in two stages, LH would exercise direct sole control over SNAH upon completion of the first stage, that is, after the acquisition of 45% of SNAH's share capital. The two-stage procedure is due to [*description of strategic rationale*]\*.
- (7) LH would be the only shareholder with veto rights, and no strategic business decisions such as the approval of the budget, major investments or the appointment of senior management would be possible without LH's affirmative vote. The main minority shareholder is the Virgin group with [...]\*. Pursuant to the shareholding agreement, Virgin does not have any special voting rights. The rest of SNAH's shareholding is fragmented; none of the remaining [...]\* shareholders owns more than [...]\*% of shares and there is no commonality of interests among SNAH's shareholders. Accordingly, LH would have through the transaction sole control over SNAH.
- (8) The transaction would bring SN into the Star Alliance and into LH's frequent flyer programme ("FFP") while leaving SN largely responsible for its own management (the LH/LX "decentralised management" model).
- (9) As a result of the transaction, LH would acquire sole control over SNAH, and ultimately of SN. The transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (LH EUR [...]\*million; SN EUR [...]\* million)<sup>7</sup>. Both LH and SNAH have a Community-wide turnover in excess of

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\* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

<sup>7</sup> Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation.

EUR 250 million each (LH: EUR [...] million; SNAH: EUR [...] million), but neither achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The methodology used for calculating the parties' turnover is the "point of sale" methodology, although in any event the thresholds would also be met under the "point of origin" method or "50/50 split" method.<sup>8</sup> The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

#### **IV. COMPETITIVE ASSESSMENT**

- (11) The transaction as initially proposed by the notifying party would lead to a significant impediment of effective competition within the EEA. The transaction would significantly impede effective competition on the market for scheduled air transport of passengers, and in particular on a number of short-haul routes. The notifying party however submitted a set of commitments susceptible to restore effective competition. It is therefore concluded that the transaction would not lead to significant impediment of effective competition, subject to compliance with the commitments submitted by the notifying party.

##### **A. SCHEDULED AIR TRANSPORT OF PASSENGERS**

###### **1. RELEVANT MARKET DEFINITION**

###### ***1.1 Point of origin/point of destination city pairs***

- (12) The Commission has in the past defined the relevant market for scheduled passenger air transport services on the basis of the "point of origin/point of destination" (O&D) city-pair approach.<sup>9</sup> This market definition reflects the demand-side perspective whereby customers consider all possible alternatives of travelling from a city of origin to a city of destination which they do not consider substitutable to a different city-pair. On this basis, every combination of a point of origin and a point of destination is considered to be a separate market. While it can be argued that there is a certain degree of supply-side substitutability between different O&Ds, this remains limited as the decision to operate a route is a strategic business choice depending on various factors, such as existence of a base at one end of a route, customer mix in the relevant

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<sup>8</sup> These three methodologies are defined in COMP/M.4439 Ryanair/Aer Lingus, paragraph 13 et seq.

<sup>9</sup> See case COMP/M.3280 – Air France/KLM, paragraph 9 et seq.; case COMP/M.3770 – Lufthansa/Swiss, paragraph 12 et seq and case COMP/M.4439 – Ryanair/Aer Lingus. The O&D approach was also confirmed by the European courts. See also Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, at paragraph 56; and Case T-358/94 *Air France v Commission* [1996] ECR II-2109.

catchment area, yield, fit in the network etc. As a general rule, carriers tend to operate routes where they have a base or a hub at either end.<sup>10</sup>

- (13) The market investigation conducted in the case at hand largely confirmed the O&D approach as, according to the respondents, the competitive landscape prevailing on each route – for instance in terms of the number of players, frequencies offered and resulting available fares – is specific to each O&D. However, some respondents, in particular corporate customers, indicated that the O&D approach fails to take into account the hub and spoke function of major airports and the ensuing network effects. Similarly, traditional network carriers tend to believe that the market should be defined on a network basis as the scope of the network is the main branding and marketing tool that incites confidence amongst passengers and allows for a wider coverage of the needs of time-sensitive passengers in particular. It should also be noted that several carriers, in particular low-cost airlines, pointed out that while the O&D approach is the most appropriate one as it best reflects the demand-side perspective, both the point of origin and the point of destination should include all airports that are substitutable in the eyes of passengers. This is in line with past Commission practice whereby in instances where multiple airports serve a single point of origin or destination, such airports may be included in the same relevant market provided that they are indeed perceived as substitutes by travellers.<sup>11</sup>
- (14) The effects of the transaction will therefore be assessed on the basis of various affected city-pair O&Ds while all substitutable airports will be included in the respective points of origin and destination.

## ***1.2 Time-sensitive v. non time-sensitive passengers***

- (15) The Commission has previously considered that passengers travelling on unrestricted tickets (so-called *time-sensitive passengers*) may be in a different market from passengers with restricted tickets (so-called *non-time sensitive*).<sup>12</sup> On the one hand, time-sensitive customers tend to travel for business purposes, require significant flexibility with their tickets (such as cost-free cancellation and modification of the time of departure, etc...) and tend to pay higher prices for this flexibility. On the other hand, non time-sensitive customers travel predominantly for leisure purposes or to visit friends and relatives, book long

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<sup>10</sup> See for example case COMP/M.3280 – Air France/KLM, paragraph 17. The market investigation in the present case shows that the vast majority of routes are operated from a base. Moreover, the majority of airlines who responded to the Commission's question on this point stated that they do not operate any route away from a base. Some low-cost carriers operate routes on a triangular or "W" basis, that is to say where they have no base at either end of the route. These operations remain nevertheless very limited as they involve higher operational risks.

<sup>11</sup> See cases COMP/M.3280 – Air France/KLM, paragraph 24 et seq. and COMP/M.4439 – Ryanair/Aer Lingus, paragraph 69 et seq.

<sup>12</sup> See Commission Decision of 11 August 1999, in Case No. COMP/JV.19 – *KLM/Alitalia*, OJ C 96, 05.04.2000, p. 5, point 21; case COMP/M.3280 – Air France/KLM, paragraph 19, case COMP/M.3770 – Lufthansa/Swiss, paragraph 15.

in advance and do not require flexibility with their booking. Non time-sensitive customers tend to be more price-sensitive than time sensitive passengers.<sup>13</sup> Time-sensitive passengers have therefore different requirements than non-sensitive ones and normally prefer to fly with airlines offering a high number of frequencies in a given O&D pair and the possibility to use unrestricted tickets.

- (16) In previous cases, the distinction between time sensitive and non time-sensitive passengers was mainly based on the *types of tickets* purchased by passengers. The Commission considered that non time-sensitive passengers tend to purchase restricted (economy) tickets while time sensitive passengers tend to buy business class tickets (both restricted and unrestricted) and unrestricted (economy class) tickets. In a 2007 decision,<sup>14</sup> the Commission found that the segmentation between time-sensitive and non time-sensitive customers had become blurred due to the fact that corporate customers have become more price-sensitive and are also booking flights with low-cost airlines that do not offer unrestricted tickets (in that 2007 decision,, the Commission also considered other reasons such as the fact that the airlines did not price-discriminate among passengers by offering restricted tickets and unrestricted tickets and that Ryanair and Aer Lingus did not offer a business class). Yet, even low cost carriers allow for changes in bookings (the date or time for example) against a fee. This provides for the flexibility that corporate customers often need. Furthermore, the fact that some corporate customers might have more rigid policies as to procurement of airline tickets does not necessarily indicate that passengers cannot be segmented according to their broad characteristics and requirements.
- (17) The main purpose of the market definition is to identify in a systematic way the competitive constraints that the undertakings concerned face.<sup>15</sup> In doing so, the Commission takes into account a range of evidence permitting an assessment of the extent to which substitution would take place. Moreover, the Commission considers the characteristics and specificity of the industry and products or services that are being examined.<sup>16</sup> Specific requirements of different customer groups might result in differences in competitive constraints prevailing on the markets. The requirements and characteristics of customers concerned by this transaction must therefore be examined.
- (18) The investigation of the present case has confirmed that there exist broadly two categories of passengers with different needs and different price sensitivities. The purpose of travel provides a useful first indication of whether passengers belong to one of these categories given that time-sensitive passengers are expected – in view of their characteristics – to be predominantly travelling for

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<sup>13</sup> See Case COMP/M.4439, *Ryanair/Air Lingus*, paragraph 36 and paragraph 99.

<sup>14</sup> Case COMP/M.4439, *Ryanair/Air Lingus*, paragraph 316 and paragraph 329.

<sup>15</sup> Commission Notice on the definition of relevant market for the purpose of Community competition law, OJ C 372, 9.12.1997 p. 5, paragraph 1.

<sup>16</sup> Commission Notice on the definition of relevant market for the purpose of Community competition law, paragraph 25.



business while non-business passengers (leisure passengers or passengers visiting friends and relatives) tend to be non time-sensitive. However, some business passengers do not necessarily require flexibility or can be very price sensitive, or both. Hence, they can behave like non time-sensitive passengers. Facing groups of passengers with significantly different price sensitivities, airlines have developed yield management systems aimed at identifying time-sensitive passengers and charging them higher prices. Such price discrimination may take various forms. First, some airlines offer different products corresponding to the different needs of both passenger categories (restricted versus unrestricted tickets for example). Time-sensitive passengers valuing flexibility will then pay a premium to purchase an unrestricted ticket. Second, airlines also price discriminate on the basis of booking behaviour as such behaviour provides information on the type of passenger. For example, non time-sensitive passengers are more likely to book long in advance of the departure date. In past cases, the Commission has mainly focused on the differences in ticket types: airlines sell certain ticket types (business class and flexible economy class for example) to time-sensitive passengers at higher prices than non flexible economy class tickets mostly sold to non time-sensitive passengers. However, airlines also discriminate between time-sensitive and non time-sensitive passengers by charging different prices at different times of booking. Ticket types therefore provide a useful but imperfect approximation for the distinction between time-sensitive and non time-sensitive passengers.

#### *Characteristics of time-sensitive and non time-sensitive passengers*

- (19) Most airlines and rail operators responding to the market questionnaires confirmed that time-sensitive customers have specific requirements with respect to a series of parameters such as: time of departure and time of return, airport location and flight frequency. In particular, most respondents considered that time-sensitive passengers need to maximise their time at destination and minimise their travel time. Hence, for the majority of respondents this segment of passengers requires early morning and late afternoon flights (between 6:30 and 8:00 and between 16:00 and 19:30), a minimum number of flight frequencies (at the very least two daily flights to allow for a same-day return) and a convenient airport location (most respondents indicated that primary airports located close to business centres were important). With respect to the quality of on-board services, views are more mixed though the majority of respondents tend to consider that on-board services have become less important. Regarding services at airports, the views are also mixed but most respondents tend to consider that fast process (check-in and access to gate) is important.
- (20) Travel agents<sup>17</sup> also confirmed that time-sensitive customers have special needs with respect to the location of airports (mostly primary), the need for a same-day return and the need for sufficient flight frequencies. Regarding the preference for full-service/network carriers or low-cost carriers, the views are

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<sup>17</sup> The majority of travel agents responding to the market investigation had corporate customers representing more than 50% of their customer base.

balanced with some travel agents considering that corporate customers prefer full-service airlines while others believe that both types of carriers will be considered (given the price and flight frequencies offered). Most travel agents also believe that the frequent flyer programs are important for the choice of an airline.

- (21) Corporate customers have also confirmed those special needs with respect to early morning and late afternoon/evening flights, the need for airlines departing from the airport closest to their offices and final destination (usually primary airports) and a certain number of flight frequencies. The majority of corporate customers indicated that the service on-board was not important or just needed to be basic (for short-haul). With respect to the services at the airport, most customers value rapid and efficient check-in services and quick access to the gate. Virtually all corporate customers responding to the market investigation indicated that same-day return was important (mostly in view of saving time and costs) and the majority are even prepared to pay a slight premium for the possibility to benefit from same-day return. Yet the percentage of same-day return trips in the travel budget varies substantially across respondents (from 5% to 80%).
- (22) Those descriptions of the requirements and characteristics of time-sensitive passengers indicates that such passengers tend to travel for business as opposed to non time-sensitive passengers that travel mostly for non-business reasons (either leisure, holidays or visiting friends and relatives). There is therefore a relation between the type of passengers (time-sensitive vs. non time-sensitive) and the purpose of their travel. This is also confirmed by easyJet who indicated that "*We view time-sensitive passengers (those acting like business passengers) as those who want to travel at a specific time; who choose to book near to departure of the outbound and (any) return flight; and who are likely to be travelling for business.*"<sup>18</sup> However, there is no exact connection between the two segmentations, in particular as some leisure passengers or passengers visiting friends and relatives ("VFR") can be time-sensitive (for instance for week-end trips) and some business passengers can behave like non time-sensitive passengers due to their high price sensitivity.

#### *Price discrimination of time-sensitive and non time-sensitive passengers*

- (23) The existence of two categories of customers with different needs appears to be widely recognised. The market investigation indicates that airlines offer different products to respond to these different requirements and their pricing policy is to a large extent able to discriminate between them.
- (24) The great majority of competitors (carriers and rail operators) recognise that their pricing policies aim at identifying and pricing accordingly time-sensitive passengers whose sensitivity to price is lower than that of non time-sensitive passengers and whose tendency is to either require flexible conditions or to book close to departure date, or both. Price discrimination can be achieved through different means such as pre-determining specific fare classes with

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<sup>18</sup> See easyJet's reply to question 1 in Phase II questionnaire.

different prices and different flexibility characteristics for the ticket (for example, restricted/unrestricted) but also by discriminating over time (yield management systems are generally structured so as to increase price as the date of departure approaches). While network carriers use both means, most low-cost airlines offer a single one-way fare and price-discriminate on the basis of the time of booking. Through this price discrimination time-sensitive passengers tend to pay higher fares for their tickets than non time-sensitive passengers.

- (25) Only a few carriers responded that price discrimination between time-sensitive and non time-sensitive passengers is not possible. The reasons put forward are that some restricted tickets can be transferred at a fee so that time-sensitive passengers can foil the price discrimination by buying a restricted ticket (conceived for non time-sensitive passengers) and changing the ticket for a fee if needed. Even in the case of restricted tickets that cannot be changed at all, some time-sensitive customers may buy them but then pay for a second ticket if necessary instead of paying a premium for flexibility upfront. While this kind of tactic is feasible in theory, the market investigation has provided no indication that they are commonly used by time-sensitive passengers. Indeed, the complexity and the risk involved by these strategies represent a disadvantage for time-sensitive passengers.
- (26) During its investigation, the Commission commissioned a passenger survey<sup>19</sup>. The survey provided evidence of price discrimination between business and leisure passengers. On the one hand, both categories tend to purchase different ticket types: business passengers purchase business class tickets and flexible economy class tickets to a larger extent than leisure passengers and VFR passengers. About half (51%) of business passengers interviewed had a business class or a flexible economy class ticket compared with 34% of leisure passengers and 33% of VFR passengers.<sup>20</sup> On the other hand, all categories of passengers purchase, to a significant extent, non flexible economy class tickets. However, the survey provides a very interesting finding suggesting that despite the fact that airlines do not know the purpose of travel at the time of booking, their yield management systems are rather successful in charging higher prices to passengers travelling for business even if they purchase the same ticket type (that is, non-flexible economy class tickets) as passengers travelling for non-business purposes. Indeed, 64% of business passengers paid more than EUR 200 for their non-flexible economy class ticket (on return trips) compared with just 18% for leisure passengers and 16% for VFR passengers. Similarly, a third of leisure passengers (33%) and VFR passengers (34%) paid less than EUR 100 for their non-flexible economy class ticket (for a return trip) compared with just 7% for business passengers.<sup>21</sup>

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<sup>19</sup> See Annex III for a detailed description of the survey.

<sup>20</sup> See Annex III, paragraph 25, answers to Q14 (answers for passengers who knew which type of ticket they had).

<sup>21</sup> See Annex III, paragraph 35 et seq., answers to Q15 (answers for passengers who knew the price of their ticket for a return trip).

### *Time-sensitive passengers and low cost carriers*

- (27) The Commission also enquired whether time-sensitive passengers were likely to travel with low cost carriers ("LCCs"). The overwhelming majority of carriers responding to the market investigation considered that time-sensitive passengers do fly with LCCs although a third of respondents indicated that the degree of substitution varies across routes depending on the airport locations to/from which the LCC flies or the number of frequencies offered. According to the route, LCCs can therefore be considered as competitive constraints to network carriers for time-sensitive customers as well. While most corporate respondents to the market investigation indicated that they did use LCCs on short-haul flights, the percentage of LCCs represented in their travel budget is at most 10% for the majority of respondents.
- (28) The responses of travel agents to the market investigation also confirmed that low-cost airlines can be a competitive constraint. While most travel agents confirmed that corporate customers also tend to use LCCs, only a few travel agents systematically check for fares and schedules with LCCs as it depends on the customers travel policy given that not all corporate customers wish to use LCCs.
- (29) The fact that LCCs can be substitutes for time-sensitive customers illustrates the fact that business customers have become more price-sensitive and their preferences towards comfort or other services offered by network carriers have waned to some extent. Yet the competitive pressure of LCCs will depend on what they offer on any route (in terms of airport location and/or number of frequencies). Although network carriers and LCCs are therefore competitors in time-sensitive markets, the extent of the competitive constraint exerted by LCCs on network carriers for time-sensitive passengers needs to be assessed on a route-by-route basis and cannot be determined *a priori*.

### *Distinction according to the ticket types*

- (30) Airlines are able to price discriminate between time-sensitive and non time-sensitive passengers by offering different ticket types (with non-flexible, restricted tickets being the cheapest). Thus, ticket types also provide a useful proxy for the distinction between the two categories of passengers. However, the market investigation in this case has revealed that airlines are also able to price discriminate within a single ticket category, for instance according to the time of booking (which can be correlated with the purpose of travel for example). Therefore, ticket types only provide an imperfect representation of the segmentation between time-sensitive and non time-sensitive passengers.
- (31) The Commission's investigation has provided evidence that the distinction between types of tickets (non flexible economy class tickets as opposed to business class and flexible economy class tickets) is still useful. Indeed, fare data gathered by the Commission show that fares of business class and flexible economy class tickets have different levels than fares of non-flexible economy class tickets and also evolve independently of fares of non-flexible economy class tickets (see Annex I on product market definition).

- (32) In its reply to the Statement of Objections, LH opposes the distinction between time-sensitive and non time-sensitive passengers arguing that demand cannot sensibly be segmented in this way.<sup>22</sup> Demand for air transport services would represent a continuum, without any clear lines segmenting different groups of passengers. There would be no clear way of dividing different tickets or fares in any clear or meaningful way between relevant markets. Moreover, a market definition distinguishing between time-sensitive and non time-sensitive passengers is ambiguous as it seems to be making two only partially overlapping distinctions: (a) between types of tickets and (b) between different types of customers (with customers purchasing the same non-flexible economy class ticket type despite being of a different type). A market definition distinguishing between time-sensitive and non time-sensitive passengers would not be operational as it does not describe with any specificity the characteristics of the products (ticket or fare types) or customers that are claimed to be in one market.
- (33) The Commission's investigation has shown that restricted and unrestricted tickets possess significant differences in terms of characteristics and intended use and therefore are purchased by different types of passengers. It is very doubtful that there could be a chain of substitution between different types of tickets so as to justify the inclusion of all types of tickets in the same relevant market. The complicated pricing structures and sophisticated yield management systems aim at and allow the carriers to segment demand so as to extract high prices from time-sensitive passengers whose price elasticity is considerably lower than non time-sensitive passengers. This is an important specificity of the airline industry which the Commission cannot disregard. Moreover, the Commission can only accept the existence of a chain of substitution leading to wider relevant markets when such a chain is corroborated by actual evidence, for instance related to price levels and price interdependence at the extremes of the chains of substitution<sup>23</sup>. In the case at hand, the price analysis conducted by the Commission (see Annex I on product market definition) shows that prices at the extremes of the alleged chain of substitution (namely prices of business class tickets and prices of non flexible economy class tickets) have very different levels and are not interdependent. This finding is not compatible with the argument of chain of substitution put forward by LH.
- (34) Furthermore, the distinction between time-sensitive and non time-sensitive passengers is based on the existence of different categories of passengers with different needs and on the existence of different products offered by airlines to these different categories. While the distinction according to travel purpose (that is, between passengers travelling for business purposes and VFR passengers) can also provide useful insights, the segmentation according to tickets types is the best approximation available for these differences of products.

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<sup>22</sup> Reply to the Statement of Objections, paragraphs 15-42.

<sup>23</sup> Commission Notice on the definition of relevant market for the purpose of Community competition law, paragraph 58.

## *Conclusion*

- (35) The evidence gathered from competitors, customers and travel agents in the market investigation, the fare analysis and the survey indicate that time-sensitive and non time-sensitive passengers belong to different product markets. These are passengers with different price sensitivities and airlines are able (through various means) to discriminate between them, charging higher prices to time-sensitive passengers. Ticket types provide a useful approximation of this possible distinction. However, it is not necessary for the Commission to reach a conclusion as to the existence of two distinct product markets for time-sensitive as opposed to non time-sensitive passengers since the Commission's assessment of the routes affected by the present transaction does not differ regardless of the existence of such a distinction.

### ***1.3 Substitutability of direct and indirect flights***

- (36) As regards the substitutability of direct and indirect flights, direct flights generally constrain indirect flights for all types of flights. In contrast, the level of substitutability of indirect flights to direct services largely depends on the duration of the flight. As a general rule, the longer the flight, the higher the likelihood that indirect flights exert a competitive constraint on direct services. The following analysis therefore focuses on the constraint exerted by indirect flights on direct flights.

#### **a. For short- and mid-haul routes**

- (37) With respect to short-haul routes, the Commission has considered in its practice that indirect services generally do not provide a competitive constraint to direct services absent exceptional circumstances (for example the direct flight does not allow for a one-day return trip which is convenient for business travellers in particular).<sup>24</sup> The Commission has sometimes distinguished mid-haul routes,<sup>25</sup> which are short-haul routes of more than three hours, for which the direct flight normally does not allow for a one-day return trip so that indirect flights may be able to compete with direct flights.
- (38) The notifying party submits that no exceptional circumstances arise with respect to any of the short-haul routes affected by the present transaction. Even with respect to short-haul routes where the direct service does not allow for a same-day return trip, indirect services should not be included in the relevant market as all these routes are typical leisure routes where the same-day return trip is irrelevant (for example Brussels-Florence and Brussels-Naples) or because passengers clearly prefer the direct service (Brussels-Krakow). The

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<sup>24</sup> Cases COMP/M.2041 – United/US Airways and COMP/M.2672 – SAS/Spainair.

<sup>25</sup> Case COMP/M.3770 – Lufthansa/Swiss, paragraph 17. Case COMP/M.4439 Ryanair/Aer Lingus, paragraph 288 et seq.

notifying party submits that direct and indirect services belong to separate markets also for mid-haul routes.

- (39) The market investigation confirmed that for short-haul flights (less than three hours), indirect services do not generally constitute a competitive alternative to direct flights, as customers indeed prefer direct services. However, with respect to four routes concerned by the present transaction, namely Brussels-Florence, Brussels-Naples, Brussels-Porto and Brussels-Krakow, a substantial proportion of passengers ([20-30]\*% in the case of Florence, [30-40]\*% in the case of Naples, up to [30-40]\*% in the case of Porto and [30-40]\*% in the case of Krakow) use indirect services. This very fact could indicate the presence of exceptional circumstances as it seems that customers consider these indirect flights as an alternative.
- (40) On the Brussels-Florence ("BRU-FLR") route, indirect services account for a significant share ([20-30]\*%) of the overall number of passengers transported on the route.<sup>26</sup> Furthermore, SN's direct service does not allow for a same-day return trip on several days of the week. The market investigation has however indicated that indirect services are not substitutable with direct services for time-sensitive passengers and does not allow to reach a conclusion for non time-sensitive passengers. Travel time by indirect service is significantly longer (between 3h30 and 4h30) than by direct service (1h55), which is a disadvantage for time-sensitive passengers and implies that same-day return trips are also not convenient with indirect flights. Although very few corporate customers have replied to the questions relative to this route, the majority of those who did confirmed that neither LH's nor Alitalia's<sup>27</sup> indirect services on BRU-FLR provide an effective competitive constraint on SN's direct services on BRU-FLR. Competitors also tend to consider that LH's indirect services do not constraint SN on this route and this view is shared by the large majority of travel agents. It can therefore be concluded that indirect services are not substitutable for time-sensitive passengers. As to non time-sensitive passengers, the question can be left open as it would not change the conclusion of the competitive assessment. On a hypothetical market including all types of passengers, the question of the substitutability of indirect flights on this route can also be left open.
- (41) On the Brussels-Naples ("BRU-NAP") route, indirect services account for a significant share ([30-40]\*%) of the overall number of passengers transported on the route. This is due to the fact that direct services are only seasonal on this route. While LH's indirect flight allows for one-day return trip, the direct services only have a low frequency (five weekly for SN and two weekly for Jetairfly) and do not allow for a single day return trip. It is however not necessary to determine whether direct and indirect flights are part of the same market as it would not change the conclusion of the competitive assessment.

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<sup>26</sup> The share of indirect services only amounts to [5-10]\*% if Ryanair services from Charleroi to Pisa are included in the relevant market.

<sup>27</sup> In this Decision, the term "Alitalia" refers to "Alitalia – Linee Aeree Italiane S.p.A." for the period before 12 December 2008 (that is to say for the 2008 market share figures) and to "Alitalia – Compagnia Aerea Italiana S.p.A." from 12 December 2008 (that is to say for the prospective competitive assessment).

- (42) On the Brussels-Porto ("BRU-OPO") route, indirect services account for a significant share ([30-40]\*% in 2007, although this figure decreased to [10-20]\*% in 2008) of the overall number of passengers transported on the route.<sup>28</sup> This is due to the fact that SN's and TAP Portugal ("TAP") services only have one daily frequency on this route and do not allow for a same-day return trip. It is however not necessary to determine whether direct and indirect flights are part of the same market as it would not change the conclusion of the competitive assessment.
- (43) On the Brussels-Krakow ("BRU-KRK") route, indirect services account for a significant share ([30-40]\*%) of the overall number of passengers transported on the route. This is due to the fact that direct services only have a low frequency (four times a week) on this route and do not allow for a single-day return trip while LH's indirect flight allows for one-day return trip. It is however not necessary to determine whether direct and indirect flights are part of the same market as it would not change the conclusion of the competitive assessment.
- (44) The investigation has not indicated any exceptional circumstance in favour of the substitutability between direct and indirect services on any other short-haul routes of less than three hours affected by the present transaction.
- (45) As concerns mid-haul routes (short haul routes of more than three hours), indirect services seem to be more credible alternatives and some respondents indicated that indirect flights, under certain circumstances, constitute a competitive alternative. These circumstances are mainly related to price, level of frequencies and the alternative services offered. This is in line with the Commission's previous practice.
- (46) In the light of these factors, it can be concluded for the purpose of the present decision that indirect services do not constitute competitive constraint on direct services as concerns short-haul routes except for the routes BRU-FLR, BRU-NAP and BRU-KRK. For BRU-FLR, indirect services do not constraint direct services for time-sensitive passengers. For non time-sensitive passengers (as well as for all passengers if the market were defined on this basis) on BRU-FLR and for all passengers on BRU-NAP, BRU-OPO and BRU-KRK, it can be left open whether indirect services should be included in the relevant market. Concerning mid-haul routes, the issue of substitutability of indirect services can also be left open for the purpose of the present decision as the transaction does not significantly impede effective competition with respect to any of these routes.

**b. For long-haul routes**

- (47) With respect to long-haul flights, the Commission found in past cases that indirect flights constitute a competitive alternative to non-stop services under

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<sup>28</sup> The share of indirect services only amounts to [5-10]\*% (in 2008) if Ryanair services from Charleroi to Porto are included in the relevant market.



certain conditions, in particular when (a) they are marketed as connecting flights on the O&D pair in the computer reservation systems/global distribution systems, (b) they operate on a daily basis and (c) they only result in a limited increase of travelling time (maximum 150 minutes).<sup>29</sup>

- (48) The notifying party concurs that indirect services should be included into the relevant product market with regard to routes of over 6 hours and a distance of over 5 000 km.
- (49) According to the results of the market investigation, virtually all customers consider that indirect flights constitute a competitive alternative to direct flights when it comes to flights above six hours, and the vast majority of the respondents find them substitutable.
- (50) In light of these factors, it can be concluded for the purpose of the present case that as concerns long-haul flights with flight duration of over six hours, a distance of over 5 000 km and resulting in an increase in travel time below 150 minutes that indirect flights together with direct flights constitute part of the same relevant market.

#### ***1.4 Analysis of airport substitutability in Brussels***

- (51) The present transaction affects a number of routes out of Brussels. The main Brussels airport in Zaventem ("BRU") is located 15 km from Brussels city centre and can be reached in 16 minutes by car, 31-32 minutes by bus and 16-22 minutes by train. Brussels airport is a base for the Belgian home carrier Brussels Airlines (SN) as well as for some charter airlines (Jetairfly, Thomas Cook Airlines) and for the long-haul Indian carrier Jet Airways. While some LCCs such as easyJet or SkyEurope serve some markets out of Brussels, to date no scheduled LCC is based at Brussels airport.<sup>30</sup>
- (52) Several secondary airports are located in the Brussels catchment area, namely Charleroi (Brussels South), where low-cost carrier Ryanair has a base, Antwerp (Brussels North), where business carrier VLM Airlines ("VLM") has a base, and Liège.
- (53) In its previous decision in the Ryanair/Aer Lingus case, the Commission indicated that secondary airports are likely to be in the catchment area of a city if they are within 100 km or one hour of travel time of the city centre.<sup>31</sup> In their reply to the Statement of Objections, LH submits that the Commission's own well-established benchmark of distance and travel time clearly indicate that BRU and ANR are substitutable.<sup>32</sup> From the outset, it is important to note that

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<sup>29</sup> See, for example, cases COMP/M.2041 – United/US Airways and COMP/M.2672 – SAS/Spainair.

<sup>30</sup> This may change in the future with the planned opening of a low cost terminal at Zaventem.

<sup>31</sup> See case COMP/M.4439 – Ryanair/Aer Lingus, paragraph 99.

<sup>32</sup> Reply to the Statement of Objections, paragraphs 48-49.

the 100 km/1 hour criterion was viewed in the Ryanair/Aer Lingus decision as a first "proxy" to define a catchment area, as the Commission aggregated information that it received from 50 different airports (the Antwerp airport was not one of them) that it asked about the "commercial arguments and material that they use for the purpose of marketing airport services towards air carriers and attracting them on their tarmac."<sup>33</sup> Far from limiting its analysis to this rule-of-thumb, the Commission has listed in the Ryanair/Aer Lingus decision a number of different factors, including the travel time, and has explicitly stated that "It is the combination of these factors that drives passengers' choice for the one or the other airline service. [...] This does not depend only on journey time, however, but also on timing and frequency."<sup>34</sup> Also, the 100km/1h was defined by the Commission in the specific case of routes served out of Dublin by two low-cost airlines. This "rule" is not necessarily valid for other cases, for instance for routes served by two network carriers. Besides, in other cases involving network carriers, the Commission has not used at all the 100km/1 hour proxy.<sup>35</sup>

- (54) This specific proxy thus cannot be automatically substituted for a more detailed analysis that takes into consideration the characteristics of the case at hand. For example, the radius of Brussels' catchment area in this particular case could be smaller than 100 km and one hour travel time of the city centre, given the overall short travelling time of point-to-point short haul flights on routes affected by this transaction. The Commission has thus undertaken a detailed analysis as to whether the airports in the vicinity of Brussels can be considered as substitutable with Brussels Zaventem for the purposes of this investigation, and the results from this analysis are reported below.

**a. Charleroi Brussels South ("CRL")**

- (55) Charleroi airport is located 46 km from the centre of Brussels and is reachable by car in 45 minutes, by bus in 45 minutes or by train in 50 minutes. While Charleroi airport has its own IATA code (CRL), it markets itself as Brussels South and is marketed by some travel agents under the IATA city code for Brussels (BRU).
- (56) Charleroi is an important base for the biggest European LCC, Ryanair, which has five aircraft operating 39 routes based at this airport. While Ryanair is currently not active on any of the routes affected by the present transaction, according to the notifying party Ryanair is a potential entrant on a number of affected markets.
- (57) Irrespective of whether the relevant product market is divided into finer markets depending on customer characteristics, or whether there is a single product market, since (i) no airline is currently serving any of the routes that raise competition concerns out of Charleroi, and (ii) the Commission has found

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<sup>33</sup> See case COMP/M.4439 – Ryanair/Aer Lingus, paragraph 82.

<sup>34</sup> See case COMP/M.4439 – Ryanair/Aer Lingus, paragraph 74.

<sup>35</sup> See case COMP/M.3280 – Air France/KLM, paragraphs 24-35.

no evidence that an airline would do so in the near future, it is not necessary to determine for the purpose of the present case whether Charleroi airport is substitutable with Brussels airport.

**b. Antwerp Brussels North ("ANR")**

- (58) Similarly to Charleroi airport, Antwerp airport is located 53 km from Brussels city centre and can be reached by car in 41 minutes, by bus in 53 minutes or by train in 55 minutes. While Antwerp airport has its own IATA code (ANR), it markets itself as Brussels North and is marketed by some travel agents under the IATA city code for Brussels (BRU). ANR only offers three scheduled routes (London City, Manchester, and, since May 2009, Frankfurt) accounting for a total of 107,000 passengers in 2008.<sup>36</sup>
- (59) In a previous decision regarding an antitrust case, the Commission has found that ANR was in a different market than BRU on grounds that *"the great majority of answers to the requests for information consider that Antwerp is not substitutable to Brussels National for the purpose of this case. Antwerp would appear to attract local business passengers mainly. This seems to be corroborated by the facts, as VLM operates between Brussels National and London City (five two-way flights on weekdays), as well as between Antwerp and London City (six two-way flights on weekdays). On their website, a clear distinction is made between these two routes, which seems to indicate that the Antwerp-London route indeed constitutes a market of its own"*<sup>37</sup>.
- (60) The market investigation in the present case came to a similar conclusion: the degree of substitutability between Antwerp and Brussels Zaventem airports is limited so that Antwerp does not exert significant competitive pressure on Brussels Zaventem. This conclusion is based on an in-depth investigation conducted by the Commission that included (i) the analysis of responses to market questionnaires sent to corporate customers, travel agents, competitors, (ii) the analysis of actual passenger responses from a survey commissioned by the Commission, and (iii) a pricing analysis based on fare data submitted by SN.
- (61) In its reply to the Statement of Objections, LH however submits that BRU and ANR should be considered substitutable for the purpose of the present case.<sup>38</sup> The reasons why LH's claims cannot be accepted are explained in paragraphs 62 to 103. It should moreover be noted that while LH submitted in its initial submission that Charleroi airport and even Liège airport (located 98 kilometres from Brussels and is served mostly by leisure/charter carriers) are substitutable with Brussels airport, Antwerp airport is not mentioned at all in the initial submission of LH. This omission as such already contradicts the alleged strength of competition between Antwerp and Brussels airports and the alleged scope for development of the Antwerp airport as described in the Reply to the

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<sup>36</sup> See <http://www.antwerp-airport.be/bijlagen/StatisticalYearbook2008.pdf>

<sup>37</sup> Case 38.477 British Airways/SN Brussels Airlines.

<sup>38</sup> Reply to the Statement of Objections, paragraphs 48-95.

Statement of Objections. Indeed, the initial submission of LH indicated that "*Lufthansa provides an assessment for all airports for which a substitutability is relevant for the case at hand. On the routes Brussels-Berlin and Brussels-London, some of the parties' competitors are using alternative airports.* (emphasis added)".<sup>39</sup> Even though VLM flies to London from ANR, the airport is not mentioned. At the Oral Hearing, LH's legal representative justified this omission on grounds that no competing flights were departing from ANR. However, VLM does offer flights from ANR to London but these flights were not taken into account by LH in its assessment of the Brussels-London route. It is thus clear from the outset that even LH itself does not consider ANR/VLM to be a strong competitive constraint on the services from Brussels.

#### *Results from the Commission's market questionnaires*

- (62) The market investigation has revealed that the only scheduled airline flying from Antwerp airport is VLM, a wholly owned subsidiary of Air France/KLM (since 2008) which is a niche European regional airline primarily focused on business customers flying to the UK.<sup>40</sup> Although VLM's largest activities still relate to London City airport ("LCY"), VLM has pursued in the past years a strategy to expand outside its LCY market: in 2003 VLM added to its network flights between Rotterdam and Hamburg, in 2005 Brussels-Southampton and in 2006 Rotterdam-Manchester and Antwerp-Manchester. While VLM has not been present on any of the routes that raise competition concerns during most of the investigation, the substitutability between ANR and BRU was examined to gauge whether VLM could be considered as a potential entrant on the affected routes. Moreover, on 11 March 2009, VLM announced that it would enter the ANR-Frankfurt route on 4 May 2009 with three frequencies per day.<sup>41</sup> Consequently, the Commission considered it necessary to determine whether the entry by VLM from ANR would exert a sufficient competitive constraint on the merged entity on the BRU-Frankfurt route.
- (63) First and foremost, ANR is a regional airport with limited services and infrastructure. Its runway is only suitable for small 50 passenger-airplanes and not for type A310-330 or Boeing 737 planes.<sup>42</sup> Since the Flemish government has decided that ANR would exclusively serve business travellers, ANR is not likely to become an alternative to BRU for leisure passengers.<sup>43</sup> It should be noted that ANR cannot accommodate large aircraft typically used for transporting leisure passengers. Furthermore, even for business travellers, ANR's growth prospects are limited.

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<sup>39</sup> Form CO, paragraph 95.

<sup>40</sup> On 28 May 2009, VLM announced that the VLM brand would progressively disappear and be replaced by the CityJet brand (CityJet is another subsidiary of the Air France/KLM group).

<sup>41</sup> Press release by VLM of 11 March 2009.

<sup>42</sup> Minutes of call with Antwerp Airport Authority.

<sup>43</sup> Minutes of meeting with VLM of 18.02.09.

- (64) In its reply to the Statement of Objections, LH argues that ANR has significant potential for further development pointing to VLM's declared intention to add new routes out of ANR.<sup>44</sup> However, LH does not dispute in this regard VLM's statement that with current installations, only three or four new routes can be opened out of ANR.<sup>45</sup> This statement is confirmed by the Antwerp Airport Authority which estimates that with the current infrastructure ANR can only accommodate two new routes (on top of the Frankfurt route).<sup>46</sup> Furthermore, the Antwerp Airport Authority has indicated that there are no concrete expansion plans concerning ANR airport for the time being.
- (65) For corporate passengers, the market investigation has pointed to a strong geographic differentiation between BRU and ANR airports. Both Brussels and Antwerp are large agglomerations, home to a substantial number of businesses. Given that time-sensitive corporate passengers wish to minimise their travelling time, especially in light of the rather short travelling time overall of point-to-point short haul flights on the affected routes, they have a strong preference for departing from the airport closest to their home or office (depending on where they start their journey from). Hence, if passengers had the choice to travel to a destination from either BRU or ANR, the main factor of choice would be their own location relative to the airport. This is evidenced by the fact that the majority of respondents did not consider that ANR was substitutable to BRU in terms of service, mainly because of its location (and distance from the customers' premises)<sup>47</sup> though some respondents (based in the North of Belgium) appreciate its convenient location relative to their premises and the fact that check-in and boarding are quick given the small size of the airport. For those corporate customers that fly to LCY (about half of respondents), it appears that the choice of departure airport will depend on the location of the offices or on the employee's preference (so that he/she would be able to choose a more convenient airport according to where he/she lives).<sup>48</sup>
- (66) The investigation further indicates that while ticket price is one of many factors in corporate passengers' choice of airport, it does not play a decisive role. Indeed, although the majority of corporate customers indicated that the price of a ticket is one of the elements taken into account when determining the airport to/from which their employees depart/arrive with respect to short-haul business trips,<sup>49</sup> only a small proportion of passengers on the London route would

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<sup>44</sup> Reply to the Statement of Objections, paragraphs 60-62.

<sup>45</sup> Minutes of meeting with VLM of 18.02.09. This statement was made before VLM's opening of the ANR-Frankfurt route.

<sup>46</sup> Minutes of call with Antwerp Airport Authority.

<sup>47</sup> According to responses to Q19 of the Phase II questionnaire for corporate customers, 13 out of 20 corporate customers who responded to this question do not consider the airport of ANR substitutable with BRU in terms of overall level of service.

<sup>48</sup> However the majority of those corporate customers flying from both airports indicate that they systematically compare prices for similar flights.

<sup>49</sup> According to responses to Q 18 of the Phase II questionnaire for corporate customers, 17 corporate customers out of 19 who responded to this question take price into account for BRU. Airport location is another factor cited by nearly all respondents: respectively 18 and 19 out of the 19 corporate customers who responded to this question take into account departure/arrival airport location for BRU.

switch from BRU to ANR and vice versa as a reaction to a 5-10% price rise at a given airport.<sup>50</sup> In addition, it also appears from the market investigation that corporate passengers are more interested in convenient schedules than price: a number of respondents indicated that they would switch from BRU to ANR and vice versa as a reaction to a 5-10% price rise under the condition that a similar flight schedule is available at ANR.<sup>51</sup> As pointed out in paragraph 63, ANR has limited potential for further development of new routes with a sufficient number of frequencies. It follows that the condition requested by a number of corporate customers thus cannot realistically be met in the near future.

- (67) Rather than a substitution driven by price, the substitution between ANR and BRU can be characterised as a "one-off" substitution. When a destination is only available from BRU, all passengers fly from BRU, including passengers with a strong preference for flying from ANR due to their proximity with the airport. When a new service is offered from ANR (that was previously only available from BRU), passengers with a strong preference for flying from ANR are willing to transfer to ANR, which means that a certain number of BRU passengers will switch to ANR. However, this is not to say that once both products are available (namely flights from BRU and flights from ANR), they significantly constrain each other or that passengers would switch in case of a 5-10% price increase, which is the relevant test for antitrust purposes. A significant number of corporate passengers who are currently not interested in ANR, for instance because they work in Brussels City, would not switch to ANR if flying from BRU became 5-10% more expensive. This is evidenced by a past example on the Manchester route (as described in more detail in paragraphs 100 to 102), where an additional route from ANR captured only a small proportion of the market previously served by BRU.
- (68) A few corporate customers have indicated that they have employees travelling from both BRU and ANR. It appears that most of these customers have offices either in Antwerp, in the North of Brussels or Flanders (Mechelen, Leuven). Many corporate customers do *not* compare prices of flights from the various airports in Belgium and only some check flights from ANR. Out of eight corporate customers who indicated that they compare airfares between ANR and BRU, merely two have their Belgian offices located in Brussels, whereas three have offices in Antwerp. The remaining three respondents' offices are located in Brussels as well as elsewhere in Belgium.
- (69) Travel agents seem to have a more negative view with regard to travel for corporate purposes out of ANR. First, none of the respondents indicated that they systematically compare prices for similar flights departing from Brussels

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<sup>50</sup> According to responses to Q26 of the Phase II questionnaire for corporate customers, none of the 13 corporate customers who responded to this question indicated that they would *definitely* travel out of ANR on the London route in case that air fares from Brussels Zaventem were to increase by 5-10 %.

<sup>51</sup> According to responses to Q26 of the Phase II questionnaire for corporate customers 8 out of 13 corporate customers who responded to this question would travel out of ANR on the London route only if a similar schedule is available.

and Antwerp for their corporate customers.<sup>52</sup> Secondly, only a few of them propose flights from ANR,<sup>53</sup> and yet only a minority consider that there are practical obstacles to flying from ANR. Furthermore, only few travel agents believe that their corporate customers would definitely switch to ANR if the price of flying from BRU was to increase by 5-10%.<sup>54</sup> While a larger number of travel agents expect their leisure passengers to switch to ANR if the price of flying from BRU was to increase by 5-10% to the same destination,<sup>55</sup> ANR does not have the potential to develop into a large-scale airport that would cater to leisure passengers due to the runway restrictions, as is also evidenced by the business model of VLM that targets business passenger.<sup>56</sup>

- (70) On the "supply-side", few competitors provided input into the questions about substitutability of airports in Belgium. Of those who responded, only a minority considered that ANR was substitutable in terms of technical capacities.<sup>57</sup>
- (71) In its reply to the Statements of Objections, LH submits that VLM, the only competitor with first-hand knowledge of the situation at ANR, makes a compelling case for substitution with BRU although it would not be in its interest to do so.<sup>58</sup> This is however not the case. First, VLM's views are consistent with the one-off substitution argument, as evidenced by VLM's views on the example of the ANR-Manchester route (analysed below). VLM has indicated that "a large number of Belgian businesses are located in Flanders and are therefore closer to ANR than to BRU, or in between ANR and BRU. When offered the possibility to fly from ANR, these business passengers

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<sup>52</sup> According to responses to Q16 of the Phase II questionnaire for travel agents, 6 out of 10 travel agents who responded to this question indicate that they do not systematically compare prices for similar flights departing from Brussels and Antwerp for their corporate customers while 4 indicate that they only compare prices if customers are indifferent between the two airports.

<sup>53</sup> According to responses to Q12 of the Phase II questionnaire for travel agents, only 4 out of 16 travel agents who responded to the Commission's questionnaire indicated that they offer to their customers tickets for flights originating in Antwerp Airport in addition to Zaventem flights, when their customers ask to travel out of Brussels.

<sup>54</sup> According to responses to Q15 of the Phase II questionnaire for travel agents, 1 out of 10 travel agents who responded to this question, expect that their corporate customers would definitely switch to ANR if air fares on Brussels-London route from Brussels Zaventem were to increase by 5-10%. 2 respondents indicated that they would expect their corporate customers to switch only if ANR offered a similar schedule as BRU. 7 indicated that they would not expect their corporate customers to switch in this hypothetical situation.

<sup>55</sup> According to responses to Q15 of the Phase II questionnaire for travel agents, 3 out of 8 travel agents who responded to this question, expect that their leisure customers would definitely switch to ANR if air fares on Brussels-London route from Brussels Zaventem were to increase by 5-10%. 1 respondent indicated that they would expect their leisure customers to switch only if ANR offered a similar schedule as BRU and 1 only if the same airline was flying from ANR and from BRU. 3 indicated that they would not expect their leisure customers to switch in this hypothetical situation.

<sup>56</sup> The diverging answers of travel agents with regard to corporate and leisure travel however also indicate that travel agents appear to have some familiarity with the Antwerp Airport.

<sup>57</sup> According to Q8 of the Phase II questionnaire for competitors, 1 out of 8 competitors who responded to this question considered ANR substitutable to BRU in terms of technical capacities (e.g. terminals, runways, ground-handling, turnarounds, type of aircraft that can land etc.

<sup>58</sup> Reply to the Statement of Objections, paragraphs 63-67.

prefer to fly from ANR rather than from BRU.”<sup>59</sup> The fact that ANR can be a credible or even preferred alternative to BRU for some passengers does not imply that ANR and BRU exert an on-going constraint on each other.<sup>60</sup> Furthermore, contrary to LH’s assertion, VLM’s interest is clearly to defend the substitution between BRU and ANR, not only because its whole business model is to promote flights out of ANR but also because if ANR were found to be substitutable to BRU in the present case, commitments would allow a new entrant to serve the affected routes out of ANR, which would be VLM’s preferred option.<sup>61</sup>

(72) In its reply to the Statement of Objections, LH also submits that Antwerp is part of the most economically dynamic business area in Belgium and that the particularities of the Flemish region support the substitutability between ANR and BRU.<sup>62</sup> More specifically, ANR is as close as BRU to Belgium’s business and population centres. In support of their claim, LH has submitted a table comparing driving distances and travel time by car from some cities in the North of Belgium and Southern Netherlands to ANR and BRU and submits that even where the travel time to ANR is longer, this is compensated by the shorter check-in time at ANR. The Commission disagrees with this analysis. First, since other important agglomerations like Leuven, Namur, Charleroi were not included in the table, the Commission asked LH to complete the table so as to include the largest Belgian cities. The Commission then notes that this table shows that out of the 10 largest Belgian cities in terms of population,<sup>63</sup> travelling time to ANR is shorter than to BRU only if coming from Antwerp. Moreover, LH assumptions regarding check-in times in ANR and BRU are not realistic<sup>64</sup> and any difference in check-in times is likely to be compensated by the longer flight time from ANR. Most importantly, the Commission does not contest that ANR is more convenient than BRU for a number of passengers located in Flanders. However, this fact is fully consistent with the one-off substitution: a number of passengers located closer to ANR would fly to/from ANR if flights were offered on the affected German and Swiss routes in this case, but these flights would not constrain flights from BRU after this one-shot switch. The Commission notes that LH has not appropriately addressed this one-off substitution argument in its reply to the Statement of Objections.

(73) More generally, it is important to note that the distance or the travel time between Brussels and Antwerp is not necessarily indicative of the competitive

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<sup>59</sup> Minutes of meeting with VLM of 18 February 09.

<sup>60</sup> In a later submission, VLM nevertheless added that in the current market conditions, the price sensitivity of business customers is higher and that if prices in BRU were significantly lower than prices in ANR, passengers preferring ANR may switch back to BRU. This assertion does not change the overall conclusion of the Commission on airport substitutability in the present case.

<sup>61</sup> Minutes of meeting with VLM of 18 February 09.

<sup>62</sup> Reply to the Statement of Objections, paragraphs 50-59.

<sup>63</sup> Antwerp, Ghent, Charleroi, Liège, Bruxelles-ville, Brugge, Schaerbeek, Namur, Anderlecht, Mons.

<sup>64</sup> Antwerp Airport indicates a minimal check-in time of 20 minutes while Brussels Airport offers on-line check-in and a fast lane for security controls, so that the difference between check-in times is likely to amount to no more than 15 minutes.



interaction between the two airports and that the distribution of population in the concerned areas is much more relevant. In the particular case at hand, each airport is located within an important agglomeration (the Brussels and the Antwerp agglomerations are the two largest Belgian agglomerations) while there is no third agglomeration in between the two airports. In accordance with economic theory, such a bi-modal distribution of population will likely lead to a low degree of substitutability between both airports.

- (74) In its reply to the Statements of Objections, LH further claims that the replies from the market investigation are not consistent with the conclusion of a limited substitutability between BRU and ANR airports.<sup>65</sup> LH quotes statistics drawn from the market investigation to support its claim. These statistics are not reliable because (i) LH only had access to some replies due to confidentiality reasons so that the statistics calculated by LH are not representative of the overall market investigation,<sup>66</sup> (ii) some replies have not been included by LH even though they were accessible to LH and (iii) the statistics submitted by LH contain a large number of mistakes. As evidenced in paragraphs 62 to 73, the results of the market investigation clearly support the Commission's conclusions. LH also believes that negative responses of corporate customers and travel agents might have been motivated by the limited number of connections currently offered out of ANR. In this respect, the Commission notes that the fact that ANR offers a limited number of connections is unlikely to change in near future. The Commission thus considers that its evidence is credible and reliable for the purpose of the assessment of the substitutability between BRU and ANR.

#### *Results from the customer survey*

- (75) The passenger survey investigated the question of substitution between ANR and BRU airport from three perspectives: first, the existing substitution for passengers flying with VLM to LCY from either BRU or ANR; second, the potential substitution on routes where there is no flight from ANR available today (Berlin, Frankfurt, Hamburg, Munich, Geneva and Zurich); and third, the substitution between SN flying to London Gatwick ("LGW") from BRU and VLM flying to LCY from ANR. The survey results indicate that there is some substitution between the two airports, predominantly based on the location of passengers at time of departure and the schedule. Those who would switch are in the geographic vicinity of the airport. The price is not a major competitive variable for the choice of the airport. These survey results summarised below are valid for all categories of passengers and the detailed results can be found in Annex III to this decision.
- (76) With respect to customers that are flying to LCY with VLM today from either ANR or BRU, the survey indicates that some passengers do look at flights from both airports (30% of those who booked themselves)<sup>67</sup> but the choice of

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<sup>65</sup> Reply to the Statement of Objections, paragraphs 68-79.

<sup>66</sup> To remedy this issue, the Commission has given access to LH to an anonymised summary table of all replies to Phase II questionnaires.

<sup>67</sup> Annex III, paragraph 46.

the airport is rarely based on price.<sup>68</sup> The main reasons for choosing a given airport are: the location (55%) and the schedule (28%).<sup>69</sup> The price is cited by 8% of passengers only.<sup>70</sup> Only 13% of respondents indicated that they would switch to the other airport if the price was to rise by 5-10% (17% when excluding "don't know" answers).<sup>71</sup> The survey identifies that about a third of passengers to LCY from either BRU or ANR have flown from the other airport in the past.<sup>72</sup> The main reasons cited for choosing the other airport are the schedule (36%) followed by airport location (21%).<sup>73</sup> The price is cited only by 10% of respondents.<sup>74</sup> Other reasons cited include the impossibility of flying from the other airport (due to bad weather conditions or the flight being full or cancelled).<sup>75</sup>

- (77) With respect to passengers on the German and Swiss routes (potential switchers), the survey revealed that 16% of passengers would switch if their flight were available from ANR at the same price and the same time (17% when excluding "don't know" answers) and the overwhelming majority of these passengers live in the provinces of Antwerp, East Flanders and West Flanders.<sup>76</sup> Very few residents of Brussels capital and Flemish Brabant would switch to ANR (2% and 3% respectively compared with 75% of those living in the province of Antwerp).<sup>77</sup> About 11% of respondents have already flown with VLM<sup>78</sup> and these passengers are more likely to switch (42% of passengers having flown with VLM indicate that they would switch).<sup>79</sup> Again, the overwhelming majority of these passengers live in the provinces of Antwerp, East Flanders and West Flanders.<sup>80</sup> These results are valid for all passengers independent of their segmentation according to the travel purpose (business, leisure, visiting friends and relatives) or according to the ticket category (business class, flexible economy class, non flexible economy class).
- (78) With respect to SN customers flying to LGW, the survey indicates that only 16% passengers did look at flights from ANR to LCY (20% of those who

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<sup>68</sup> Annex III, paragraph 47.

<sup>69</sup> Annex III, paragraph 47.

<sup>70</sup> Annex III, paragraph 47.

<sup>71</sup> Annex III, paragraph 48.

<sup>72</sup> Annex III, paragraph 49.

<sup>73</sup> Annex III, paragraph 51.

<sup>74</sup> Annex III, paragraph 51.

<sup>75</sup> Note that 87% of passengers on the LCY routes are business passengers (there were just 67 respondents for leisure, visiting friends or relatives or other reasons). See Annex III, paragraph 12.

<sup>76</sup> Annex III, paragraphs 52-53.

<sup>77</sup> Annex III, paragraph 54.

<sup>78</sup> Annex III, paragraph 56.

<sup>79</sup> Annex III, paragraph 57. Note that the respondents that have flown with VLM and would switch only represent 4% of the total sample.

<sup>80</sup> Annex III, paragraph 58.

booked themselves)<sup>81</sup> compared with 55% of passengers that looked at the fares and schedules of other airlines flying to London (mostly BA flights to LHR).<sup>82</sup> Only 15% indicate that they would switch to ANR-LCY if the price was to rise by 5-10% (18% when excluding "don't know" answers).<sup>83</sup> The survey identifies that 15% of passengers to LGW have flown from ANR to LCY before.<sup>84</sup> For these passengers (only 27 responses), the LCY location was the main reason cited for choosing to fly from there.<sup>85</sup>

(79) In its reply to the Statement of Objections, LH submitted a number of comments about the interpretation of these results by the Commission<sup>86</sup>. The main focus of the critique is on the "switching questions". LH claims that *"the SO does not contain any indication as to the minimum percentage of customers that would have to respond positively so the "SSNIP" question for the SO to recognize the fact that the flights from BRU and ANR to the same destination do compete with each other"*.<sup>87</sup> It is true that the Commission did not evaluate quantitatively whether the percentages obtained from the survey to the switching question were "enough" to conclude on the basis on a SSNIP test that ANR and BRU are in the same market. There are several reasons for this, all of which are explained in detail in paragraphs 85 to 95 when discussing the validity of using a critical loss analysis in this case. Rather the Commission evaluated the survey results with respect to the switching question in conjunction with the responses to the other questions relating to *actual* past behaviour (comparison of prices, having travelled before...). This fact is recognised by LH in the Reply to the Statement of Objections in another context: *"Responses to survey questions about actual past or current consumer behaviour inherently tend to yield more reliable responses than questions about hypothetical scenarios"*<sup>88</sup>. In view of all these results, the Commission concludes that the order of magnitude of responses with respect to the ANR/BRU substitution is sufficiently different compared with responses evaluating competition between airlines flying from the same airport to demonstrate that the constraint exerted by flights from ANR was weak (at least considerably weaker than flights departing from BRU to a given destination). This conclusion is also consistent with the other evidence available in the file.

(80) In the reply to the Statement of Objections, LH also tried to rebut the fact that price did not seem an important factor in the choice of airport for passengers to LCY because the Commission overlooked a *"basic and crucial fact"*, which is that *"VLM's published fares are virtually identical for flights on the BRU-LCY*

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<sup>81</sup> Annex III, paragraph 68.

<sup>82</sup> Annex III, paragraph 59.

<sup>83</sup> Annex III, paragraph 69.

<sup>84</sup> Annex III, paragraph 70.

<sup>85</sup> The LCY location was cited by 12 respondents out of 27 (while eight respondents cited the schedule and just five cited the price).

<sup>86</sup> Reply to the Statement of Objections, paragraphs 80-87.

<sup>87</sup> Reply to the Statement of Objections, paragraph 84.

<sup>88</sup> Reply to the Statement of Objections, paragraph 123.

and ANR-LCY routes"<sup>89</sup>. The Commission however does not reach the same conclusion. First, LH's argument is misleading because published fares are not at all indicative of the real prices paid by travellers. Published fares indicate the price of each booking class but booking classes are opened and closed on an on-going basis within the framework of yield management. Second, LH's claims can be very easily rebutted through simple checks on the VLM website. Random checks conducted by the Commission<sup>90</sup> suggest that VLM prices on ANR-LCY are significantly higher than for BRU-LCY, which is consistent with the different competitive environment of both markets as described in paragraphs 96 to 99.

- (81) In its reply to the Statement of Objections, LH also submitted a critique of the switching questions in the survey<sup>91</sup> and also provided a critical loss analysis using the survey results which was undertaken by its economic advisors CRA International.<sup>92</sup> These two points are discussed in paragraphs 82 to 95.

#### *Issues with the switching questions*

- (82) First, in its reply to the Statement of Objections LH submitted that "the switching question asked in the passenger survey to assess substitutability between ANR and BRU was not properly drafted to measure customers' propensity to switch in case of SSNIP".<sup>93</sup> It is noted that, as explained in Annex III of this decision, the parties had the opportunity to comment twice on the passenger survey questions and did not bring up this issue.<sup>94</sup> In any event, the Statement of Objections recognised that point and provided an explanation<sup>95</sup>: in surveys, the usual SSNIP question is always easily prone to criticism as it involves a hypothetical behaviour in case of a *relative* price increase (that is, would the customer switch in case of a 5-10% price increase of product A *relative* to candidate product B whose price remains constant). In

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<sup>89</sup> Reply to the Statement of Objections, paragraph 82.

<sup>90</sup> For example for tentative bookings made on 22 April 2009, the following results came up: for a BRU-LCY flight on 14 May 2009, departing at 17h10, the price for a VLM Value ticket (all included) was EUR 75.21 while a ANR-LCY VLM Value ticket on the same date departing at 17h30 cost (all included) EUR 154 (that is to say the double). The flights departing at the same times but on 25 May 2009 cost respectively EUR 75.21 for BRU-LCY and EUR 94 for ANR-LCY (more than 20% difference). The flights departing at the same times but on the 23<sup>rd</sup> of July 2009 cost respectively EUR 75.21 for BRU-LCY and EUR 124 for ANR-LCY (almost a 40% difference). For a closer departure date to the booking date (that is to say departure on 27 April 2009), the VLM Value fares were both EUR 160 but the actual price (including fees and taxes) was EUR 200.21 on BRU-LCY compared with EUR 187 on ANR-LCY (still a 7% difference).

<sup>91</sup> See Annex 4 of the reply to the Statement of Objections.

<sup>92</sup> See Annex 6 of the reply to the Statement of Objections: Lufthansa/SNAH; Critical loss analysis, ANR/BRU and Intermodal substitution, 7 April 2009 (hereafter, "the CRA Report").

<sup>93</sup> See Annex 4 of LH's reply to the Statement of Objections.

<sup>94</sup> In an email of 9 February 2009 commenting on the survey questions, LH's legal representative suggested that this question should be split into two sub-questions: first, ask whether the traveller would consider flying to the destination from ANR if the flight became available and then, ask in a second sub-question the main criteria the respondent would take into account. Obviously, this suggestion was not a SSNIP question either and thus suffered from the same criticism that LH addressed to the Commission in its reply to the Statement of Objection.

<sup>95</sup> See Annex III, paragraph 52.

the present case, there were no flights from ANR to the affected German and Swiss routes when the survey was launched. It was impossible to word a SSNIP question given that one of the two candidate products (flights from ANR in this case) did not exist and therefore, no hypothetical relative price change could be envisaged. However, in order to test for the (potential) scope for substitution if such flights existed while at the same time keeping the questions simple and short, the Commission used an intermediate solution which was to ask whether passengers would switch to ANR if their flight had the same price and the same schedule. This seemed a reasonable compromise to elicit some information on the potential for switching but this is not to say that the answers are a correct approximation of the actual switching that would occur when such flights became available, because the extent of switching between the two airports depends on the type of service (frequencies, timing) that the airlines would offer, which is something that is not known until the entry occurs.

- (83) Second, in its reply to the Statement of Objections LH submitted that "the airport switching question in the passenger survey is not comparable with the airport switching question asked to corporate customers, travel agents and competitors in the Commission's requests for information." It is first worth noting that the switching questions in the market questionnaire were in fact slightly different in that they offered multiple choice answers. In addition, these hypothetical questions were asked in an entirely different context than the survey which was carried out at boarding gates with passengers about to embark on a flight. Besides, the answers from corporate customers to the hypothetical switching questions on the German and Swiss routes have not been used in the analysis of replies of corporate customers. The Commission focused on the answers from corporate customers that already have the choice between flights from ANR and BRU, as indicated in paragraph 66.
- (84) Finally, with respect to the different wording in the switching questions, the Commission recognises this issue and the fact that the switching question to passengers flying to Berlin ("BER") or LGW were more hypothetical ("would you have considered") than those asked to LCY passengers and on the German and Swiss routes ("would you have travelled" or "would you have decided to travel"). This should of course be kept in mind when analyzing the results of the switching questions but the Commission's analysis did not concentrate on the replies to the switching questions only. Rather, based *both* on the replies to the hypothetical switching questions and the questions on past behaviour (which are consistent across questionnaires), the evidence from the survey, coupled with the other evidence from the investigation, pointed to the conclusion that flights from ANR are likely to be a weak substitute to flights departing from BRU.

#### *The critical loss analysis*

- (85) The CRA Annex on critical loss analysis claims to assess the issue of substitution between ANR and BRU using this technique which is a "*standard tool for assessing market definition and related issues of competitive*

*assessment on the basis of switching data*".<sup>96</sup> Critical loss analysis is indeed a simple and appealing methodology to assess the SSNIP question. However, because of its simplicity, critical loss analysis relies on numerous assumptions and its use has been subject to significant debate (notably for industries with high fixed costs like the airline industry), for instance in the US where it has been widely used over the years.<sup>97</sup>

- (86) The critical loss analysis involves the calculation of the loss of sales of a product Y that would make an X% price increase unprofitable ("the critical loss") and the comparison of this figure with the actual loss (i.e. the expected real loss in sales in case of an X% price increase). If the actual loss is above the critical loss, then the conclusion is that it would not be profitable to raise prices by X% (because of substitution towards competing products) and that the market should be defined in a broader way than only product Y (and hence include the products to which sales are lost).
- (87) The critical loss depends on two variables: the % price increase and the gross margin (namely the value of a unit of sales lost). For a given price increase, the critical loss decreases as the margin increases. This is due to the fact that when margins are high, one unit lost affects profits more significantly than when margins are low. In industries with very high fixed costs (and low variable costs), the gross margin will be high and hence, the critical loss will be low. This means that in markets where gross margins are high, markets tend to be defined as wide because a price increase would be unprofitable with few lost sales. However, high margins also tend to indicate that firms have a certain degree of market power and that in fact, price elasticity may be rather low. Not only would this suggest that *actual* loss would in fact be low as well but it would also suggest that markets may possibly be narrow (as firms can charge high prices, because customers would not switch). Indeed, firms are expected to set prices that maximise profits and price is inversely related with the demand elasticity faced by the firm. Hence, low price elasticity tends to lead to high prices (and high margins). This point was already raised by the Commission in a previous airline decision where the parties had put forward a critical loss analysis.<sup>98</sup>
- (88) Other methodological issues include the calculation of costs with a short run perspective. While in the short run, most costs are essentially fixed in this industry, a hypothetical monopolist could – in case of a permanent price increase – find it profitable to increase prices if the loss in sales was accompanied by a modification of frequencies, of flight schedules, or by using different (smaller) aircraft. This would lead to the gross margin (based on avoidable costs) being lower than those based on short-run variable costs.

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<sup>96</sup> CRA Report, p. 1.

<sup>97</sup> See for example two recent papers: *Beyond Critical Loss: Properly Applying the Hypothetical Monopolist Test*, Gregory Werden, Global Competition Review, February 2008, and *Improving Critical Loss Analysis*, Joseph Farrell and Carl Shapiro, 17 December 2007, Competition Policy Center, Paper CPC07-079.

<sup>98</sup> See M.5141 KLM/Martinair. In Paragraphs 296 to 299, the Commission discussed some of the reasons why a critical loss analysis was not instructive in that airline case.

- (89) The calculation of the critical loss is highly dependent on the margin and therefore, dependent on how the price and the variable cost are calculated. In an industry where price discrimination is as prominent as in the airline industry (the main purpose of yield management systems is to charge higher prices to high yield, less price-sensitive passengers), the application of critical loss analysis poses number of additional problems. Indeed, the critical loss analysis assumes that a single price is charged to all customers. The use of an average price and a single price increase across the board to calculate the critical loss is not consistent with the way a hypothetical monopolist would price in this industry. It is possible that a 5-10% *average* price increase could profitably be achieved through a large price increase for high yield, less price-sensitive passengers and a very small (or even no) price increase for low yield, price sensitive passengers.
- (90) In view of these methodological problems, the Commission does not consider the use of critical loss analysis to be appropriate in an industry in which price discrimination is a major feature and where the calculation of avoidable costs can be very complex. In addition to these general issues about the methodology, the implementation of the critical loss analysis by CRA to investigate the ANR/BRU substitution issue is unsatisfactory.
- (91) First, LH formulates a number of criticisms against the wording of the switching questions in the reply to the Statement of Objections, in particular that "*The question asked by the Commission is by its nature unable to capture the propensity to switch in response to a change in relative terms, or the price elasticity of demand in reaction to a small but significant and non-transitory increase in price*".<sup>99</sup> Yet, the responses to this question are used in the CRA paper to evaluate the likely "actual loss" in case of a price increase of the average fare on the German routes. This calculation is deemed "*merely illustrative*" but still relied upon heavily to conclude that ANR and BRU are in the same market.
- (92) In order to calculate the gross margins, CRA has used the 2008 average fare across all the affected Germany routes (BER, FRA, HAM, MUC) for both SN and LH. The average price is evaluated at EUR [...] on the BRU-Germany routes (for one-way) and EUR [...] on the BRU-FRA route (for one-way). For the cost measure, CRA has used an average variable cost for business class passengers on the BER route which includes on-board catering and fuel (estimated at EUR [...]) as well as the departure taxes which are a direct pass-through. In footnote 6, the CRA report recognises that this cost measure is only valid if one assumes that the loss in traffic volume implied by the price increase would not imply any change in frequency or aircraft redeployment. While this may be a valid assumption for the FRA route (as claimed in the footnote in view of the fact that the majority of traffic on that route is for connecting passengers), this may not necessarily be the case for the other affected routes. Based on these assumptions, the CRA report calculates the critical loss based on an [...] % gross margin on BRU-Germany routes and an [...] % gross margin on the BRU-FRA route. However, the survey shows how

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<sup>99</sup> See reply to the Statement of Objections, Annex 4. The same argument is made at paragraph 80 of the reply.

prices vary significantly across passengers. On the BRU-FRA route for example, 6% of passengers in the survey had paid less than EUR 100 for a round-trip and 19% had paid between EUR 101 and EUR 200 for a round-trip. For these passengers, the gross margin would therefore be significantly lower than the 86% used by the parties and the critical loss considerably higher.

- (93) Not only is the measure of gross margins calculated as an average across all passengers when in fact these margins vary substantially across passengers, but the actual loss is based on the responses to a question deemed by the reply to the Statement of Objections itself unable to capture the price elasticity of demand. In addition, even if the switching question had been a typical SSNIP question, the replies by all passengers across all routes represents an aggregate response, irrespective of the fact that different passengers have different price elasticities (as suggested by the fact that prices, and hence gross margins, vary significantly by passengers and routes).
- (94) Finally, the CRA report uses on the one hand the LH/SN data on the Germany routes to evaluate the gross margins (and hence the critical loss) and on the other hand, the replies from passengers to LCY to the SSNIP question in order to evaluate the actual loss. On the one hand, in the Reply to the Statement of Objections, LH refers (and adheres) to the caution expressed in the Statement of Objection with respect to inferences on substitutability on one route based on evidence gathered on other routes.<sup>100</sup> On the other hand, the critical loss analysis uses the replies to the switching question on the LCY route to evaluate the actual loss on the German routes. As CRA recognises, the use of LCY replies are subject to additional assumptions, in particular that "*actual or potential competing services from ANR are regarded by passengers as broadly equivalent in terms of price, service, convenience of schedule etc. to the parties' services from BRU to Germany*".<sup>101</sup>
- (95) To sum up, it is concluded that the critical loss analysis, whilst appealing in certain cases, is not an appropriate tool for the evaluation of the SSNIP test in the context of the airline industry in view of the extent of price discrimination and the difficulties in evaluating appropriately gross margins. Moreover, the implementation of the critical loss analysis in this case is subject to further caveats in view of the fact that the questions in the survey were not appropriate to evaluate the actual loss (this was because flights from ANR on the affected routes did not exist at the time of the survey). Therefore, the Commission does not consider that the evidence provided by the CRA report shows in any convincing way that ANR and BRU would be in the same relevant market.

#### *Examples of limited competition between BRU and ANR*

- (96) In addition to evaluating responses from the market investigation and the survey, the Commission also considered the evidence provided by two examples of past competition between ANR and BRU. These two examples are informative regarding the competitive environments in which ANR and BRU

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<sup>100</sup> See reply to the Statement of Objections, paragraph 89.

<sup>101</sup> See the CRA Report, Section 2.2.a.



operate: first, the entry of VLM on the MAN route in 2006 (in competition with SN flights to MAN departing from BRU) and second, the impact that the reduction in the Eurostar journey to London has had on flights to London from either BRU or ANR.

- (97) The Commission recognises that past examples of competition between ANR and BRU on other routes than the affected routes should be used with caution and that the assessment should ideally be undertaken route-by-route with data from the affected routes. In the present case, at the time of the investigation, no flights from ANR on the affected routes existed. Past or present examples of competition between these airports on other routes therefore remain the sole source of evidence on the strength of actual competition between flights from these two airports. The evidence points towards weak competition between these two airports and LH has provided no justification as to why competition between ANR and BRU would be stronger on the affected routes.
- (98) With respect to the MAN route, internal documents submitted by SN and VLM provide on the one hand, evidence that both airlines see a certain degree of competition between the two airports. For example, when VLM entered the MAN route, SN did carefully consider the impact that such entry would have on its own flights to MAN [*SN's strategic consideration and implementation thereof*]\*.<sup>102</sup> But, on the other hand, internal documents also suggest that the competitive pressure may be limited. A few months after VLM's entry on the ANR-MAN route, SN assessed the impact that VLM's entry had on its business and indicated that [*SN's assessment*]\*. This suggests that the ANR-MAN route does not exert a significant constraint on SN flying from BRU to MAN.
- (99) With respect to the second example, it is noteworthy that VLM flies to LCY from both BRU and ANR. Information provided by VLM on its margins on the two routes suggests that the two routes are subject to considerably different competitive environments, particularly since the introduction of the improved Eurostar service in November 2007.<sup>103</sup> The evidence shows that the Eurostar is a strong substitute for flights to London departing from BRU while it is a very weak substitute for flights to London departing from ANR and that ANR flights and BRU flights to the same destination can be subject to very different competitive constraints and thus evolve in entirely independent ways. This finding is indicative of both airports being in different markets or at least it is consistent with both airports being at best distant substitutes.

#### *Data analysis: ANR-MAN example*

- (100) SN's conclusion that [...] is also confirmed by the analysis of SN's behaviour after VLM's entry. Figure 1 below plots SN's average fares by class for the BRU-MAN route from January 2004 to December 2008 (with the red line indicating VLM's entry on the ANR-MAN route).<sup>104</sup> VLM's entry had no effect

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<sup>102</sup> See Annex Q3 to RFI Q17 by SN. [*title of SN's internal document*]\*.

<sup>103</sup> See the minutes of the meeting with VLM of 18.02.09.

<sup>104</sup> Since the plot of average fares is very similar for both directions (MAN-BRU and BRU-MAN), only the average fares for the direction BRU-MAN are presented.

on either SN's flexible economy class fares or SN's non-flexible economy class fares, as SN's flexible economy class fares [*description of SN's fare evolution*]\* (once the seasonal effects are adjusted for). In addition, SN also did not react to this change by [*description of SN's reaction with regard to capacity*]\*. In terms of passenger numbers, the number of SN's non-flexible economy class passengers was very similar in 2006 and 2007 (around [...]\*), although VLM transported more than [...]\* passengers in 2007.<sup>105, 106</sup> The number of SN's flexible economy class passengers increased by about [...]\*%. It is also noteworthy that, in 2007, VLM transported only about one tenth the number of SN's passengers that bought flexible economy class fares. Thus, it seems that VLM's entry on the ANR-MAN route has not created a significant constraint on SN's BRU-MAN service.

Figure 1: SN's average net fares by class on the BRU-MAN route

[CONFIDENTIAL]\*

Note: ENS fares are non-flexible economy class fares, ETS fares are flexible economy class fares and BTS fares are flexible business class fares.

(101) In its reply to the Statement of Objections, LH submits that these two examples are in fact "*not instructive*".<sup>107</sup> First, it submits that VLM was in fact already competing on the BRU-MAN route because it offered an indirect flight to MAN via LCY. It is noted that this is also consistent with passengers flying from ANR having a strong preference for that airport due to its location. That passengers would prefer to take off and land twice and fly via LCY rather than take a direct flight from BRU is quite telling regarding the preferences that those passengers have regarding the proximity of the departure airport. This is consistent with the survey results that the location of the airport is a major element of choice for passengers flying to LCY. Second, LH submits that the graph in Figure 1 cannot be properly analysed in view of the fact that a code share relationship with BA ended a few months after (in Summer 2007) and this may have "*cushioned*" the impact of VLM's direct offering. The Commission fails to see why these elements would explain that the introduction by a competitor of a product competing more directly (namely a direct flight) would have hardly any impact on SN if such competing product was indeed a strong constraint. In fact, both the existence of the indirect flight and the lack of impact of the introduction of VLM's direct service on SN are both consistent with flights from BRU and flights from ANR to a given destination not being in the same market.

(102) Regarding the impact of the Eurostar service on margins, in the reply to the Statement of Objections, LH claims that "*the suggestion that the Eurostar may be a closer substitute to flights from BRU than from ANR does not in itself rule*

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<sup>105</sup> The passenger analysis rests on the assumption that BA Connect's/FlyBe's sales were fairly flat throughout the period, which is suggested by [*title and content of SN's internal document*]\*.

<sup>106</sup> VLM's Value fares are considered to be equivalent to SN's non-flexible economy class fares, while VLM's Plus fares are considered to be equivalent to SN's flexible economy class fares.

<sup>107</sup> Reply to the Statement of Objections, paragraphs 90-95.

*out substitutability between ANR and BRU".*<sup>108</sup> While it is indeed correct that the higher impact of Eurostar on BRU-LCY fares does not rule out substitutability between ANR and BRU, it is indeed the case that this higher impact implies that both ANR and BRU are subject to different competitive conditions, which is not consistent with BRU and ANR being in the same market when interpreted along with the other evidence that is presented in the decision. The simple fact that VLM has offered flights to LCY from both BRU and ANR with high frequencies over the past eight years is already an indication that BRU and ANR are likely to be in different markets. As mentioned in paragraph 99, fares and margins can be substantially different on both routes. Moreover, the reduction of the time for the Eurostar service at the end of 2007 is particularly instructive in this regard: while the total number of VLM flights from ANR between 2008 and 2007 dropped by around 10% (most likely due to the general decrease in air travel due to the economic crisis), the number of VLM flights out of BRU (to LCY) dropped by almost 40%, as VLM reacted to Eurostar's time reduction by reducing its services out of BRU.

### *Conclusion*

- (103) There are therefore strong indications that flights from ANR are not substitutable with flights from BRU both for time-sensitive and for non time-sensitive passengers. In any event, even if flights from BRU and ANR were considered to be part of the same market, they would only be remote competitors in this market. Furthermore, the evidence shows that VLM flights from ANR do not exert a significant competitive constraint on SN flights from BRU. The entry of VLM on ANR-Frankfurt as well as a potential entry of VLM from ANR on the other routes that raise competition concerns would therefore not counteract the anti-competitive effects of the merger on these routes. It is thus not necessary to decide whether flights from ANR and flights from BRU belong to the same market.

#### **c. Liège Airport (LGG)**

- (104) Liège airport is located at a distance of 98 kilometres from Brussels. Currently only six – mostly leisure/charter – destinations are offered from the airport. Given that none of the routes that raise competition concerns in the present case meets these characteristics, the Commission considers that for the purpose of the present case, Liège airport is not substitutable to Brussels airport.

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<sup>108</sup> Reply to the Statement of Objections, paragraphs 93-95.

## 2. TREATMENT OF LH'S ALLIANCE PARTNERS

### 2.1 *The position of the notifying party*

- (105) The notifying party submits that it would be inappropriate to treat any of its alliance partners as if they were parties to the proposed transaction. First, there would be no legal basis for such a treatment as the Merger Regulation does not provide for an assessment of "spill-over effects" between companies that remain independent. Second, alliance relationships in question would not change the merging parties' incentives to compete because the overlap routes between SN and LH's alliance partners are not covered by the respective joint venture agreements. In addition, these agreements would not automatically extend to SN. SN's entry into any of the agreements would be assessed on a case-by-case basis in the future. Besides, if and when SN joins these agreements, they could be reviewed under Article 81 EC.

### 2.2 *The Commission's position*

#### *Determination of affected markets*

- (106) With respect to the determination of affected markets, horizontally affected markets consist of relevant product markets where the parties to the concentration are engaged in business activities and hence on which the transaction produces merger-specific effects.<sup>109</sup> Accordingly, product markets where one party and a third party's activities overlap are, in principle, outside of the scope of the investigation as the transaction is not likely to produce merger-specific effects on these markets. However, a transaction may also have a significant impact on other markets in which case the effects on competition on such market should also be assessed.
- (107) In the airline sector, this is the case in particular where a factual inquiry indicates that, as a direct result of the merger or as its foreseeable consequence, close links are to be established between a merging party and a close partner of the other merging party, as was the case for instance between KLM and Alitalia in *Air France/KLM*. In such cases, the incentives to compete would indeed be altered as a result of the merger.
- (108) In the case at hand, [*Nothing in the cooperation agreements between Lufthansa and its alliance partners SAS, LOT and Austrian Airlines raises a concern that the merger would lessen the incentives for these airlines to compete with SNAH post merger*]\*. As a result, no merger-specific spillover effects are expected to arise concerning the relationships between SN and LH's partner Austrian Airlines.

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<sup>109</sup> See Annex I, Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1), – paragraph III (a).

- (109) In the light of the above, LH's partners should not be considered for the determination of affected markets.

### *Competitive assessment*

- (110) With respect to the competitive analysis on the affected markets, the relationship between the airlines and its consequence for their incentive to compete post-merger ought to be assessed on a route-by-route basis. If it is found that a merging party and a third party will have a lower incentive to compete as a consequence of the merger, this fact has to be taken into account qualitatively in the assessment.
- (111) In the case at stake, LH has extensive cooperation agreements with a number of Star Alliance partners. The most integrated cooperation is found in the case of Austrian Airlines and SAS, with which LH coordinates fares and schedules on a large number of routes. In contrast, the agreements between LH and other European Star Alliance partners do not provide for intra-European fare coordination.
- (112) The degree of competition between LH and its alliance partners will therefore be taken into account in the competitive assessment below on a case-by-case basis.

## **3. ROUTE-BY-ROUTE ASSESSMENT**

### **3.1 *The Belgium-Germany routes***

#### **a. Brussels-Frankfurt**

- (113) The Brussels-Frankfurt (BRU-FRA) route is a rather thick route if all airline passengers are taken into account ([450 000-500 000]\* passengers in 2008) but the large majority of these passengers are connecting passengers and BRU-FRA is only an O&D route of [100 000-150 000]\* passengers in 2008. According to the results of the passenger survey, this route has a very strong business orientation, with [80-90]\*% of all O&D passengers travelling for business purposes. The approximate market value of the O&D market is EUR [0-50]\* million.
- (114) LH operates eight daily frequencies and SN operates two daily frequencies on this route. SN entered the BRU-FRA route in April 2006. There is no competing service by another airline on this route. The combined market share of the parties on this route therefore amounts to 100% of direct flights.
- (115) Deutsche Bahn operates direct as well as indirect train services between Brussels and Frankfurt so the question arises whether these train services

should be included in the relevant market. The table 1 below provides market shares for the two alternative market definitions for both time-sensitive and non time-sensitive passengers. Indirect train services are not included in these figures as there is no reliable estimate of the number of passengers travelling with these indirect services. In any case, taking into account indirect train services would not change the conclusion of the competitive assessment as it is based on the elimination of the closeness of competition between the merging parties.

**Table 1: BRU-FRA O&D traffic - 2008**

	2008 figures on BRU-FRA					
	Excluding train			Including train		
	Time-sensitive	Non time-sensitive	All passengers	Time-sensitive	Non time-sensitive	All passengers
	[60 000-70 000]* passengers	[80 000-90 000]* passengers	[100 000-150 000]* passengers	[50 000-100 000] passengers	[100 000-200 000] passengers	[200 000-300 000] passengers
SN	[10-20]*%	[30-40]*%	[20-30]*%	[10-20]%	[10-20]%	[10-20]%
LH (incl. LX)	[80-90]*%	[60-70]*%	[70-80]*%	[60-70]%	[30-40]%	[40-50]%
<b>Combined</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>[80-90]%</b>	<b>[50-60]%</b>	<b>[60-70]%</b>
Deutsche Bahn				[10-20]%	[40-50]%	[30-40]%

Source: Sales figures provided by the parties and Deutsche Bahn<sup>110</sup>

#### *Airport substitutability*

- (116) Frankfurt is served by two airports: Frankfurt International Airport (FRA) and Frankfurt-Hahn (HHN). Both SN and LH fly from BRU to FRA. Ryanair has bases in CRL and in HHN but since it does not serve the CRL-HHN route and there are no indications that it would start operating that route, it is not necessary for present purposes to determine whether HHN is substitutable to FRA.

#### *Inter-modal competition*

- (117) According to the parties, train services provide a competitive alternative on this route given that [30-40]\*% of the travelling public on this city-pair travels by train. If train services were included in the market, the parties' combined market share would amount to [80-90]\*% for time-sensitive passengers and to [50-60]\*% for non time-sensitive passengers. Thus, even with the train being part of the same market, the parties' post-merger market share would remain very high on both segments. Moreover, train and plane services are differentiated products and, therefore, market shares may not appropriately

<sup>110</sup> For Deutsche Bahn passengers, passengers travelling in first class are considered as time-sensitive while passengers travelling in second class are considered as non time-sensitive.

illustrate the degree to which each of the merging parties constrain each other (that is to say, if LH and SN are particularly close substitutes, the market shares on a plane plus train market may underestimate the degree of competition between the parties).

- (118) Deutsche Bahn offers three direct train connections per day while Thalys and Deutsche Bahn also offer six indirect connections via Cologne each day. When considering only the travel time, the train journey is today approximately 3h30 for direct services and between 3h48 and 4h18 for indirect services.<sup>111</sup> However, this travel time will be reduced in the near future thanks to new high-speed railways. As of July 2009, Deutsche Bahn direct services will cover Brussels-Frankfurt in slightly more than 3 hours<sup>112</sup> while the duration of Thalys/Deutsche Bahn indirect services will also be reduced by around 30 min from the end of 2009. The total flight time by air is 60-70 mins.
- (119) In order to compare the total journey time from city center to city center, the journey to/from the airport, the check-in time, etc. need to be taken into account. As shown in the table 2 below, the Commission has estimated that the journey time by air amounts to approximately 2h30-3h<sup>113</sup>. This is clearly less than the train journey alone (even ignoring the journey to/from the train station, boarding the train etc...).

**Table 2: Total journey time by air on BRU-FRA**

<b>Segment</b>	<b>Duration</b>
Brussels city center to Brussels airport	20 min
Check-in/boarding	30-60 min
Flight	60-70 min
Arrival/disembarking	15 min
Frankfurt airport to Frankfurt city center	20 min
<i>Total</i>	<i>2h25-3h05</i>

- (120) In its reply to the Statement of Objections, LH submits that the train service has a clear advantage in terms of total travel time, especially for business-focused time-sensitive passengers<sup>114</sup>. LH submits that the Commission's calculation of the total travel time by air is unrealistic because it underestimates (i) city-centre to airport travel time, (ii) check-in times for time-

<sup>111</sup> One should furthermore distinguish between indirect services with only one connection at Cologne and indirect services with two connections at Cologne and Frankfurt Airport. Schedules are such that the indirect services with two connections are usually faster (3h48) than the services with only one connection (4h05-4h18).

<sup>112</sup> The exact travel time will be between 3h06 and 3h12 as of July 2009.

<sup>113</sup> According to a Brussels-based corporate customer, the total travel time to FRA by air plane only amounts to 2h15.

<sup>114</sup> Reply to the Statement of Objections, paragraphs 99-103.

sensitive passengers, (iii) arrival/departure delays. LH estimates that the total travel time by air amounts to 3h15.

- (121) Even if one were to accept LH's estimate that the total travel time by air is 3h15, the Commission's conclusion that air travel will still have an advantage over rail travel when the journey time is reduced remains valid. Indeed, while LH is very cautious in assessing each element of the journey by plane, it does not take into account any other element than pure travelling time for train travel. Since for most travellers the train station is not their real point of origin or destination, a realistic total travel time by train should also include the average travel time between the train station and the real point of origin and destination. In a large city like Brussels or Frankfurt, this travel time is likely to amount to at least 20 minutes. Equally, LH does not take into account boarding/arrival times for train services. Although there is no check-in for Thalys or ICE services, travellers need around 10 minutes to go from the station entrance to the train and also around 10 minutes to disembark and reach the station exit. As far as delays are concerned, LH mentions flight delays but does not factor in possible train delays. Train delays can be very significant in particular for indirect train services where a delay on one leg of the journey can cause the traveller to miss the second train and incur a delay of several hours. Thus, a minimum of 60 minutes should be added to the pure train travel time to obtain a total travel time by direct train of 4 hours between a traveller's real points of origin and destination as of July 2009 (and of around 4 hours 30 minutes by indirect train).
- (122) Competitors responding to the Commission's market investigation generally consider that there is a certain degree of substitutability between train and plane services for BRU-FRA but make a clear distinction between time-sensitive and non time-sensitive passengers. Most competitors consider that train services do not offer a viable alternative to air transportation on the BRU-FRA route for time-sensitive passengers while the overwhelming majority considers that the train is a viable alternative for non time-sensitive passengers.<sup>115</sup> The low-cost carrier easyJet indicated that it has no interest in operating this route due to the "possible train competition" from Deutsche Bahn.<sup>116</sup> Deutsche Bahn has indicated that it considers train services as substitutable with air travel on the BRU-FRA route for both time-sensitive and non time-sensitive passengers<sup>117</sup>. Public presentations by Deutsche Bahn indicate that air carriers and Deutsche Bahn monitor each other.<sup>118</sup> When asked

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<sup>115</sup> According to Q19 of the Phase I questionnaire for competitors, 7 competitors out of the 13 competitors who replied to this question considered that train services do not offer a viable alternative to air transportation on the BRU-FRA route for time-sensitive passengers, while 3 competitors considered that they do offer a viable alternative and 3 competitors gave a mixed answer. According to the same question, 10 competitors out of the 12 competitors who replied to this question considered that train services offer a viable alternative to air transportation on the BRU-FRA route for non time-sensitive passengers, while 2 competitors considered that they do not offer a viable alternative.

<sup>116</sup> See easyJet's reply to question 35 of Phase I questionnaire.

<sup>117</sup> See Deutsche Bahn's reply to question 19 of Phase I questionnaire.

<sup>118</sup> See for example a 2006 presentation by Deutsche Bahn on slide 8 which compares the travelling time of the train with the plane on several routes including Frankfurt-Brussels: [http://www.uic.asso.fr/html/gv/cv-formagv2006/docs/jeudi/4\\_2206\\_osellnick\\_en.pdf](http://www.uic.asso.fr/html/gv/cv-formagv2006/docs/jeudi/4_2206_osellnick_en.pdf).



about the generic conditions under which train can compete with air travel, competitors indicate that train services usually compete with direct flights for time-sensitive passengers when the train trips last less than 3-4 hours and a sufficient number of frequencies is available. For non time-sensitive passengers, trains and planes are substitutable when the trips last less than 5-6 hours. While these generic observations about the strength of competition between the train and the plane depending on the travel time are useful, they cannot substitute for a thorough competitive assessment of a merger on a given route. Indeed, there are other relevant factors to take into consideration such as the characteristics of the offering of each airline and the train provider for example, in terms of schedules/frequencies) as well as evidence of competition in the past between the merging undertakings and the train.

(123) Only a minority of respondents to the market investigation (in particular corporate customers and travel agents) consider the train as a credible alternative to the plane for time-sensitive passengers. For instance, a large majority of corporate customers use the train for a very limited proportion of their BRU-FRA trips (less than 10%) and usually only in exceptional circumstances (for example, at the traveller's specific request).<sup>119</sup> The majority of corporate customers do not compare fares between train travel and flights and the great majority of corporate customers indicated that they would not switch to train in the event of a price increase of 5-10%.<sup>120</sup> Travel agents have also indicated that the large majority of corporate customers specifically request travel by plane on this route as opposed to customers who specifically request travel by train and customers who wish to compare fares between plane and train or do not specify.<sup>121</sup>

(124) In its reply to the Statement of Objections, LH submits that responses to the market investigation actually reveal that the train is already a significant

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<sup>119</sup> According to Q33 of the Phase II questionnaire for corporate customers, 12 corporate customers out of 24 replied they use the train on FRA (of these 12 customers, 1 replied that some of its employees had a preference for the train and 1 replied that the train was used only in exceptional circumstances when the destination is close to the train station), 10 customers out of 24 replied they do not use the train on FRA and 2 customers did not reply. According to Q34 of the Phase II questionnaire for corporate customers, of those 12 corporate customers that use the train on FRA, 6 replied that the train represented up to 5% of the ticket purchased on the route while 5 replied that the train represented more than 5% of their budget travel (the customer that uses the train on exceptional circumstances did not reply to this question). Hence, of the 22 corporate customers who responded, 16 either do not use the train at all on FRA or only to a limited extent (that is to say, no more than 5% of purchased tickets). The main reason provided for not using the train is the duration of the train journey.

<sup>120</sup> According to Q36 of the Phase II questionnaire for corporate customers, 13 corporate customers out of 24 do not compare plane and train for their BRU-FRA trips while 9 out of 24 do compare them and 2 out of 24 have not replied to this question. According to Q37 of the Phase II questionnaire for corporate customers, 17 corporate customers out of 24 would not switch to train in the event of a price increase of 5-10% for their BRU-FRA trips while only 3 out of 24 would switch and 4 out of 24 have not replied to this question. Amongst the 12 corporate customers that currently use the train (even if to a limited extent), 8 replied that they would not switch in the event of a 5-10% price increase.

<sup>121</sup> According to the 4 reliable replies available for Q20 of the Phase II questionnaire for travel agents, an average of 95% of corporate customers specifically request a travel by plane, 5% specifically request a travel by train, and no corporate customer wishes to compare fares between plane and train or does not specify .

competitive constraint in respect of all categories of travellers.<sup>122</sup> As far as competitors are concerned, the examples quoted by LH are consistent with the Commission's assessment that these responses support the inclusion of train in the relevant market for non time-sensitive passengers but only partially support the inclusion of train in the relevant market for non time-sensitive passengers. As to the responses of corporate customers, LH only mentions the small number of replies from corporate customers that support its claims. It does not contest that corporate customers rarely use train services or would not switch to train in case of a price increase of air travel services. Furthermore the statistics calculated by LH are not representative because they are only based on the responses to which LH had access.<sup>123</sup>

- (125) Corporate customers indicated that while train connections allow for the same day return trip, they have a preference for air travel as it offers better schedules and frequencies. Indeed, the first morning train arrives at 10:30 in Frankfurt and at 11:00 in Brussels while two LH flights and one SN flight have already landed at each airport by that time. Accordingly, from the perspective of business travellers, air services offer a more convenient schedule to attend any business meeting in the morning. Also in the evening, the last direct trains leave Frankfurt at 18:29 and Brussels at 17:59 respectively, whereas the last flights leave Frankfurt at 21:05 and Brussels at 20:20. A number of corporate customers have also mentioned that they only consider direct train services.
- (126) In its reply to the Statement of Objections, LH submits that the train provides adequate schedules for the vast majority of time-sensitive passengers.<sup>124</sup> LH submits that the schedule advantage of air travel is smaller than found by the Commission because the Commission has not considered total travel times and because the reduced travel time as of July 2009 will allow the high-speed train to optimise schedules. LH also submits that the passenger survey confirms the absence of any schedule disadvantage for train services and that airlines are at any rate unable to discriminate against customers that need specific schedules.
- (127) However, as mentioned in paragraph 126, LH only considers total travel time for air travel and does not take into account any disembarking and travel time after the arrival of the train, which is not realistic. In any event, LH does not contest that air travel has a schedule advantage over train services. As to the reduction of train travel time, it will at best only bring forward the arrival of the first trains by 30 min (10:00 in Frankfurt and 10:30 in Brussels) and will not alter the conclusion.<sup>125</sup> Furthermore, the passenger survey actually shows that 45% of the plane passengers have chosen the plane because of the more convenient schedule as opposed to only 19% of the train passengers, which is consistent with the schedule advantage. Finally, the fact that airlines cannot

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<sup>122</sup> Reply to the Statement of Objections, paragraphs 113-120.

<sup>123</sup> The Commission has since given access to LH to an anonymised summary table of all replies to Phase II questionnaires.

<sup>124</sup> Reply to the Statement of Objections, paragraphs 108-112.

<sup>125</sup> According to the timetable of Deutsche Bahn as of July 2009, only the Frankfurt-Brussels train will arrive in Brussels at 10:30 while the first Brussels-Frankfurt train will leave Brussels 30 minutes later and still arrive in Frankfurt at 11:00.

discriminate passengers who have a preference for early morning or late evening flights is not relevant: the relevant fact is that the train represents a considerably weaker alternative compared with the plane, in particular for time-sensitive passengers.

- (128) In its reply to the Statement of Objections, LH also submits that train services offer greater comfort than air travel because most of the train travel time can be used as working time meaning that train services should therefore be more convenient for time-sensitive passengers.<sup>126</sup> First, the Commission notes that only the three daily direct train services can offer this alleged greater comfort while the comfort of the other indirect services is clearly lower than comfort of air travel: indirect train services have up to two connections and up to 35 min waiting time between two trains, and passengers run the risk of missing the connection and incurring a delay of several hours. Second, the results of the market investigation show that this allegedly greater comfort does not compensate for the inconvenience caused by the longer travel time and the schedules. It is true that some corporate customers mention comfort as an advantage of high-speed train.<sup>127</sup> However, the same customers only use the train for a very limited share of their BRU-FRA trips, which shows that comfort is not an important criterion for their choice.
- (129) In its reply to the Statement of Objections, LH also submits that the Commission has recognised intermodal competition in previous cases (M.3940 Lufthansa/Eurowings and 38.477 British Airways/SN Brussels) despite longer train travel times and frequency disadvantages.<sup>128</sup> First, it should be noted again that inter-modal competition must be assessed on a case-by-case basis and that there is no general rule regarding the substitutability between air travel and high-speed train simply based on the duration of the journey. In this case, the Commission has conducted a thorough investigation within the framework of proceedings in accordance with Article 6(1)(c) of the Merger Regulation, the results of which are necessarily more reliable than a more succinct investigation like the one conducted in the Lufthansa/Eurowings case. Second, the precedents mentioned by LH are consistent with the Commission's analysis in this case. In the Lufthansa/Eurowings merger case,<sup>129</sup> the high-speed direct train had a higher number of frequencies than both parties together and therefore offered more flexibility to time-sensitive passengers in spite of a longer travel time. This situation is not comparable with that of the BRU-FRA route where air travel has a clear advantage over direct trains in terms of travel time and frequencies.

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<sup>126</sup> Reply to the Statement of Objections, paragraphs 104-105.

<sup>127</sup> According to Q35 of the Phase II questionnaire for corporate customers, 12 corporate customers out of 24 mention comfort (in different formulations) as an advantage of the train while one out of 24 does not mention comfort in its reply and 11 out of 24 have not indicated any advantage or have not replied to this question.

<sup>128</sup> Reply to the Statement of Objections, paragraphs 106-107.

<sup>129</sup> Case M.3940 Lufthansa/Eurowings, paragraph 61.

- (130) In the British Airways/SN Brussels antitrust case,<sup>130</sup> the travel time with the high-speed direct train was 2h25 and therefore much shorter than in this case. Furthermore, the train offered more daily frequencies than each of the airlines serving the route, meaning that the train was competitive with air travel both in terms of travel time and frequency. The Commission therefore correctly concluded that high-speed train should be part of the same relevant market as air travel, but that conclusion has little bearing on the analysis of this case.
- (131) The customer survey results indicate that the strength of the competitive constraint exerted by the train on airfares is weaker than that exerted by airlines on each other. Since the survey did not directly test the closeness of competition between LH and SN on the BRU-FRA route, closeness of competition between airlines which was tested on the BRU-BER and BRU-LGW routes can be used as a rough benchmark. The survey indicates<sup>131</sup> that about 29% of plane passengers to FRA looked at train fares/schedules when booking their ticket, which can be compared with more than 60% of passengers that looked at prices/schedules across airlines on the LGW and BER routes.<sup>132</sup> Only 7% (9% if "Don't knows" are excluded) of plane passengers to FRA said they would switch to train in the event of a price increase, which can be compared with more than 25% of passengers that replied that they would consider switching to another airline in the event of 5-10% rise in the price of their air ticket on the LGW and BER routes.<sup>133</sup> Finally, 23% of plane passengers to FRA had already travelled with the train to FRA in the previous twelve months, which can also be compared with 47-55% of passengers that had already travelled to their destination with another airline on the LGW and BER routes.<sup>134</sup>
- (132) In its reply to the Statement of Objections, LH submits that the passenger survey reveals that even today 7% (9% if excluding "Don't Knows") of passengers of all categories would switch to the train in response to a SSNIP test, which implies that the train is a strong competitive constraint.<sup>135</sup> First, in order to support this view, a critical loss analysis is presented by LH's economic advisors CRA. The analysis allegedly supports a wide market definition including both the plane and the train. Second, given that a rather low number of plane passengers indicated that they would switch to the train in the event of a SSNIP, the reliability of the replies to the switching question is put into question and deemed to underestimate switching. Third, the use of

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<sup>130</sup> Case 38.477 British Airways/SN Brussels, paragraph 21.

<sup>131</sup> Annex III, paragraph 78.

<sup>132</sup> Annex III, paragraph 86.

<sup>133</sup> Annex III, paragraph 82 and paragraph 86. In its reply to the Statement of Objections, LH submits that any benchmarking against the results from the BER survey is "*meaningless*" because the wording of the switching question was not the same (see paragraph 129). First, the Commission considers the reply to all the relevant questions in its benchmarking (that is to say not only the switching question). Second, the order of magnitude is such that the share of passengers that would switch is four times as high on BER and five times as high on LGW. Even considering the fact that the different wording of the question may bias the responses on BER and LGW upwards, these are significantly different orders of magnitude.

<sup>134</sup> Annex III, paragraph 84 and paragraph 86.

<sup>135</sup> Reply to the Statement of Objections, paragraphs 121-129.

intra-airline competition as a benchmark is also put into question. These points are discussed in paragraphs 133 to 136.

- (133) With respect to the critical loss analysis, the Commission has already explained in paragraphs (85) to (95) the conceptual problems from which the critical loss analysis suffers in this industry, in particular, the difficulty in evaluating appropriately whether a price discriminating hypothetical monopolist could profitably raise average prices and the difficulties in properly assessing the cost used in the calculation of margins. Even despite these serious caveats – which may underestimate the critical loss – the survey replies indicate that the actual loss on the BRU-FRA route for a market including all passengers is such that a 10% price increase would be profitable as only very few passengers would switch to the train. The CRA report concludes that "*this scenario can therefore be regarded as borderline as regards passing the critical loss test*".<sup>136</sup>
- (134) In view of this result which did not fully support the inclusion of the train in the same market, the CRA Report then goes on to evaluate the critical loss for sub-groups of customers (namely those travelling on non-flexible economy and those travelling for non-business reasons). These sub-groups are expected to comprise the passengers with the highest price elasticity and hence, their responses should indicate a greater propensity to switch thus leading to a higher actual loss. Given that the Reply to the Statement of Objections repeatedly and strongly refutes any segmentation of the market either by ticket types or passenger types, it is hard to understand the relevance of undertaking the critical loss analysis for only a single sub-group of passengers. Finally, the results based on the survey responses by the 47 non-business passengers on the BRU-FRA route that replied either Yes or No to the switching question cannot reasonably be relied upon as it is not statistically significant.<sup>137</sup> It should also be stressed that LH has not conducted the same analysis for the different proxies available for time-sensitive passengers, for example business passengers and flexible tickets, although for example business passengers account for more than three quarters of all the passengers on this route (see paragraph 113). When that analysis was carried out by the Commission, the results again suggested that a price increase of 10% for business passengers would be profitable, which again implies that the critical loss analysis – as presented by LH's economic advisor – does not fully support the inclusion of the train in the same market for business passengers.
- (135) With respect to the reliability of the replies to the switching question on the train, LH submits that the 9% switching response by plane travellers on the FRA route is in fact "*extremely conservative*" and that a more realistic figure, based on past consumer behaviour would be "*more in the region of 10-20%*".<sup>138</sup> This argument cannot be accepted as it is pure speculation. More

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<sup>136</sup> See the CRA Report, section 3.3.

<sup>137</sup> In fact, if one considers the "non-business" travellers (leisure plus VFR plus others), the share of passengers that would switch is 16% (9 passengers out of 56). Given the low number of responses, the 95% confidence interval for this result varies between 6% and 29%. This means that in view of the sample size, there is a 95% probability that the actual value of lost passengers would fall within a minimum value of 6% and a maximum value of 29%.

<sup>138</sup> See reply to the Statement of Objections, paragraph 124.

importantly, the fact that a number of travellers have already travelled on the train but still indicate they would not switch could on the contrary give more weight to the switching question. Indeed, having experienced the train journey in the past, such passengers may have considered it a weak substitute and having experienced both the plane and the train, there is no reason to claim that their response carries less weight, rather the contrary. It is also important to note that the survey did not explore the purpose of travel on those past train journeys. The choice of a travel option (plane or train) may be different for the same person depending on the circumstances of the trip (for example, whether for a business meeting or just leisure). In other words, a plane passenger to FRA may have used the train in the past for a leisure journey but would not have switched to the train for the business journey he was making at the time of the survey.

- (136) With respect to the benchmarking, LH submits that the Commission's "*vague benchmarking*" cannot substitute for conducting a "*transparent and logically coherent analysis of its findings on the routes at issue – e.g. by means of critical loss analysis*".<sup>139</sup> First the fact that the critical loss analysis is a quantitative methodology does not necessarily make it appropriate to analyse the results of the survey in this case. As already discussed, such an analysis relies on very strict assumptions that do not correspond to the way pricing is undertaken in the airline industry. The benchmarking approach that the Commission used was also transparent and did not claim – in itself – to provide an answer to the SSNIP question. The Commission relied on an array of evidence, including the survey responses (and not only the replies to the switching questions). The survey responses relating to competition with the train were compared with those on other routes, relating to competition between airlines. The orders of magnitude in the answers are significantly different to the extent that the Commission considered the evidence consistent with the train being a weaker constraint (even considering the fact that the wording differed for the switching question).
- (137) The evidence described in paragraphs 133 to 136 relates to the competitive constraint exerted by the train services today, that is before the reduction of the travel time to 3h. This reduction should increase, to a certain extent, the level of substitutability of train services with air travel but is not likely to reverse the conclusion of the analysis for time-sensitive passengers. The reduction in travel time is unlikely to eliminate the competitive disadvantages of the train in terms of total travel time, frequency and schedules. It is worthwhile noting in this context that the reduction in travel time has been postponed by a number of years due to problems in the infrastructure works. Indeed, when SN decided in [...] to enter the route in April 2006, it was expected that the new three hour travel time would already be on stream in 2006. [...] SN still took the decision to enter, which suggests that it did not expect the train to grow into a significant constraint on air travel. Corporate customers were asked whether the reduction of travel time to three hours on the BRU-FRA route would make

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<sup>139</sup> See reply to the Statement of Objections, paragraph 126.

them consider the train as a competitive alternative. The answers were mixed and do not allow any firm conclusion.<sup>140</sup>

(138) In its reply to the Statement of Objections, LH submits that the Commission wrongly dismisses the significant impact that the reduction in train travel time will have on customer behaviour as of July 2009.<sup>141</sup> LH submits in particular that as long as the Commission cannot positively show that the reduction in travel time will not change the pre-merger situation, uncertainty should benefit LH and the train should be considered as part of the same market as air travel. LH claims that there are in any event sufficient elements in the file to show that the reduction in travel time will have a significant impact on air transport passengers. In particular, a large number of plane passengers quote speed as one of the reasons for which they have chosen the plane. LH also quotes a Deutsche Bahn presentation, which states that a 10% improvement in travel time leads to a 10% increase in demand for train services.

(139) First, it should be noted that the Commission has to decide whether it is more likely than not that a concentration would result in a significant impediment of effective competition and that the burden of proof is not higher for finding that train is not a constraint on LH/SN's services than for finding the opposite.<sup>142</sup> Second, in its analysis the Commission takes into account the current market situation and changes to the market that can reasonably be predicted.<sup>143</sup> The reduction in train travel time as of July 2009 is obviously such a predictable change and is thus taken into account in the analysis. Based on the elements outlined in paragraphs 133 to 138, it is concluded that it is more likely than not that the reduction in travel time will not increase the constraint exerted by train on air travel sufficiently to counteract the impact of the merger on the BRU-FRA route. In particular, the fact that a large number of passengers chose the plane because of its speed is fully consistent with the Commission's analysis in

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<sup>140</sup> The Commission received 26 replies from corporate customers to this questionnaire. Out of these 26 customers:

- 1 is only using the train already now.
- 7 replied that the train would be a competitive alternative.
- 1 replied that it depends.
- 1 replied that train would only be a competitive alternative if prices were competitive.
- 7 replied that train would only be a competitive alternative if schedules were competitive.
- 3 replied that the train would not be a competitive alternative except in very specific cases.
- 6 replied that the train would not be a competitive alternative.

Given that train schedules will not significantly be altered, one can consider that 16 replies are negative or rather negative and 8 positive or rather positive.

<sup>141</sup> Reply to the Statement of Objections, paragraphs 130-134.

<sup>142</sup> Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala*, judgment of 10 July 2008, not yet reported, paragraphs 48-52.

<sup>143</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 5.2.2004, p.5, paragraph 9.

terms of total travel time: plane travel will continue to have a speed advantage over train travel, meaning that these passengers will continue to fly and will not switch to the train. As to the rule of thumb extracted from Deutsche Bahn's presentation, the Commission first notes that the rule is based on a rough extrapolation of past examples of reductions in travel time and that the reliability of this extrapolation is contestable: for instance, a 15% reduction in train travel time (which corresponds to this case) has led in past examples to demand variations of -3%, +23% or +55% according to the case. This shows that travel time is only one of several factors determining inter-changeability between plane and train. Schedule is another element (it is the second most cited reason in the survey for choosing the plane) and the train (with the late morning arrival) will remain at a competitive disadvantage with respect to the plane, despite the reduction in travel time. This conclusion is valid within the framework of the time horizon relevant for merger control and does not rule out the possibility that, in the longer term, travel time by high speed train could be further reduced and that the competitive constraint exerted by the train on air travel could further grow as has been the case for other routes (for example, Brussels-London).

- (140) The market investigation has therefore shown that the train on the BRU-FRA route only provides a weak constraint on air travel and is a rather remote competitor to the parties. In the next section, the Commission investigates the impact of the transaction on the BRU-FRA route under alternative market definitions, that is to say, for separate markets for time-sensitive and non time-sensitive passengers and for an overall market including all passengers. The Commission has identified competition concerns in all of these market definitions.

### *Impact of the transaction*

#### Impact for non time-sensitive passengers

- (141) On a market for non time-sensitive passengers, even if Deutsche Bahn was considered to be part of the same market as LH and SN, the merger would create a duopoly between LH/SN and Deutsche Bahn, with the merged entity having a [50-60]\*% market share. Moreover, the merger would bring together the two closest competitors.
- (142) The results of the survey for plane passengers travelling with non-flexible economy class tickets show that the constraint exerted by the train on the plane is limited. Indeed, the survey indicates that only 10% of passengers with non-flexible economy class tickets said they would switch to the train in the event of a price increase.<sup>144</sup> The fact that inter-modal competition is less strong than intra-modal competition is also consistent with the fact that 38% of passengers with non-flexible economy class tickets to FRA looked at train fares/schedules when booking their ticket while 64% of passengers compared airfares across

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<sup>144</sup> Annex III, paragraph 83.



airlines on the BRU-BER route and 66% on the BRU- LGW route<sup>145</sup>. Also, 28% of passengers with non-flexible economy class tickets to FRA had already travelled with the plane to FRA in the previous twelve months while 47% of passengers to BER had already travelled with another airline to BER in the previous twelve months and 55% had travelled to LGW with another airline in the previous twelve months.<sup>146</sup>

- (143) The fact that the parties are each other's closest competitor (while the train is a more remote competitor) is also documented by the impact of SN's entry onto the Frankfurt route, to which LH responded by decreasing its non-flexible economy class fares, as shown by Figure 2 below: while the LH net fare on the route was above EUR [...] until SN's entry, it fell to approximately EUR [...] following SN's entry.<sup>147</sup> Over the period following SN's entry, LH's non flexible economy class fares were on average [...] lower compared with the average fare in the period prior to SN's entry. During the entire period of the analysis, Deutsche Bahn offered train services on the route. The significant reduction in fare as a result of SN's entry thus illustrates that the competitive constraint that SN exerts on LH is stronger than the constraint exerted on LH by the train. This constraint would be eliminated by the merger so that non-flexible economy class fares are likely to go back up to the levels prior to SN's entry.

Figure 2: LH's and SN's average net non-flexible economy class (ENS) fares on BRU – FRA<sup>148</sup>

[CONFIDENTIAL]\*

Source: LH and SN data

- (144) The Commission also obtained pricing data from Deutsche Bahn on the BRU-FRA route that suggests that LH's average non-flexible economy fares are more than three times as expensive as Deutsche Bahn's average second-class *refundable* fares, and SN's average non-flexible economy class fares are about twice as expensive as Deutsche Bahn's average second-class *refundable* fares. While price differences are not in themselves indicative that two products are in different markets, significant price differences (such as observed in this case) can be indicative of the extent of product differentiation. This observation is consistent with the view that Deutsche Bahn is not as close a competitor to SN and LH, as SN and LH are to each other.

- (145) In its reply to the Statement of Objections, LH submits that the Commission's analysis is biased because it ignores that [*the comparison of LH's yield*

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<sup>145</sup> Annex III paragraph 76. Since the survey did not directly test the closeness of competition between LH and SN on the FRA route, closeness of competition between SN and LH which was tested on the BER route can be used as a benchmark.

<sup>146</sup> Annex III, paragraph 84.

<sup>147</sup> This assumes that the non-flexible economy class fares are representative of the fares that non time-sensitive passengers pay.

<sup>148</sup> The Figure as well as the conclusions would be the same if average net fares on the FRA-BRU route were considered.

*evolution on BRU-FRA with LH's yield evolution on the other German overlap routes shows that there were similar general trends on all four routes resulting from a specific LH strategic measure unrelated to SN's market entry on BRU-FRA<sup>149</sup>]\*. LH also submits that after SN's entry, the subsequent evolution of yields and passenger shares on the route differed significantly between LH and SN, which shows the limited competitive interaction between them.*

- (146) The Commission does not agree with LH's arguments. First, it is important to note that the appropriate group of routes against which the fares on the BRU-FRA route should be compared with are the BRU-HAM and BRU-MUC routes. At the time when SN entered the BRU-FRA route, the BRU-BER route was already subject to competition between Virgin Express and LH (rather than only between LH and SN like on the other routes) and thus it seems sensible to focus the analysis on routes that have similar market structures. Second, as is clearly shown in Figure 3 below, *[there is a difference in LH's average fare evolution on BRU-FRA compared to its average fare evolution on BRU-HAM and BRU-MUC before and after SN's entry on BRU-FRA showing that SN's presence on BRU-FRA had an effect on LH's pricing. Given that LH's specific strategic measure was introduced on all routes, the long-term evolution of LH's fares on BRU-FRA in relation to BRU-HAM and BRU-MUC cannot clearly be attributed to that measure]\*.*
- (147) Moreover, prior to SN's entry the average fare on the BRU-FRA route was *[different]\** than the average fares on the BRU-MUC and BRU-HAM routes where LH was already competing with SN. This observation is also consistent with the view that prior to SN's entry, the train was not exerting a significant constraint on LH's non-flexible economy class fares.

**Figure 3: Non-flexible economy class yields on BRU to FRA compared to BRU to HAM and BRU to MUC**

[CONFIDENTIAL]\*

- (148) In conclusion, even if the train is considered to be part of the same market for non time-sensitive passengers, the merger would bring together the two closest competitors, SN and LH. Thus, the constraint exerted by the train alone is not likely to be sufficient to compensate for the elimination of the close competition between the parties. This is not likely to change within the time horizon of merger control due to the reduction in travel time to 3h. The merger is therefore likely to lead to a significant impediment of effective competition on a market for non-time sensitive passengers.

#### Impact for time-sensitive passengers

- (149) On a market for time-sensitive passengers, train services are not part of the relevant market, meaning that the transaction would lead to a monopoly on this route. However, even if the train was considered to be part of the relevant market, the parties would still have a market share of *[80-90%]\** post-merger

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<sup>149</sup> Reply to the Statement of Objections, paragraphs 137-140.

and thus the train would not pose any significant competitive constraint on the parties.

- (150) Most respondents to the market investigation (corporate customers as well as competitors) consider that SN and LH are each other's closest competitors on the BRU-FRA route<sup>150</sup>. A majority of corporate customers and a number of competitors also consider that SN is an effective competitive constraint on LH because SN operates two flights and is therefore a credible alternative for time-sensitive passengers<sup>151</sup>. The minority of respondents who disagree with this view point to the limited number of flights offered by SN and to the much larger feeder traffic enjoyed by LH on this route. In its reply to the Statement of Objections, LH does not contest that corporate customers and travel agents clearly consider LH and SN as the closest competitors on this route<sup>152</sup>.
- (151) Pricing data however suggest that the competitive constraint exerted by SN on LH prior to the merger may not be as high as indicated by the market shares alone. [*description of the impact of SN's entry on LH's yields for time-sensitive passengers*]\*, as shown by Figure 4 below.<sup>153</sup> This is probably due to LH offering significantly more flights than SN on this route, which means that the quality of LH's offering is greater compared with SN. Also most corporate customers are linked to LH through global corporate deals, which make offers from another carrier less attractive in the short term.
- (152) It could therefore be argued, purely based on the evidence from the pricing data, that LH behaves independently of SN for time-sensitive passengers, meaning that the merger would not lead to significant price increases for LH flights. However, after SN entered, LH reduced the number of frequencies on this route from 9 flights to 8 flights per day, which may be one of the reasons for [*description of LH's fare evolution*]\* and would be consistent with SN exerting a competitive constraint on LH for time-sensitive passengers. At any rate, the fact that LH behaves independently of its only competitor SN also shows that LH is in a dominant position for time-sensitive passengers. The merger would then strengthen LH's dominant position and, therefore, it would create a significant impediment of effective competition even if it only marginally strengthened LH's dominant position.

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<sup>150</sup> According to Q32 of the Phase II questionnaire for corporate customers, 11 corporate customers out of the 16 that answered the question considered LH and SN are each other's closest competitors while only 2 out of 16 consider that Deutsche Bahn was LH's and SN's closest competitor (the other 3 replies were as follows: no close competitor, LX (via ZRH) and easyJet even though easyJet does not operate).

<sup>151</sup> According to Q40 of the Phase II questionnaire for corporate customers, 11 corporate customers out of 17 who replied consider that SN is an effective competitive constraint on LH on this route while 6 out of 17 disagreed. According to Q32 of the Phase II questionnaire for competitors, the answers were more mixed: 4 competitors out of 9 that answered the question consider that SN is an effective competitive constraint on LH on this route while 5 out of 9 disagree.

<sup>152</sup> Reply to the Statement of Objections, paragraph 135.

<sup>153</sup> This assumes that the flexible economy class (ETS), non-flexible business class (BNS) and flexible business class (BTS) fares are representative of the fares that time-sensitive passengers pay.

**Figure 4: LH's and SN's average net ETS, BNS and BTS fares on BRU – FRA**

[CONFIDENTIAL]\*

Source: LH and SN data. ETS fares are flexible economy class fares, BNS fares are non-flexible business class fares and BTS are flexible business class fares.

- (153) LH clearly exerts a strong competitive constraint on SN due to the large number of frequencies it offers, and this constraint would be removed by the merger. After the merger the merged entity could increase the price of SN fares for time-sensitive passengers significantly since the only other credible alternative for time-sensitive passengers would be LH's own time-sensitive products. [*the merged entity's post-transaction plans with regard to frequencies*]\*.
- (154) In its reply to the Statement of Objections, LH submits that [*LH's explanation for a strategic measure*]\*. LH also submits that the analysis of the Commission in terms of strengthening of dominant position is formalistic and erroneous<sup>154</sup>. In particular, it claims that the evidence gathered by the Commission shows that the train, not SN, is currently the principal competitive constraint on LH on the BRU-FRA route. The Commission is not convinced by these arguments. First, LH's number of connecting passengers increased steadily on a yearly basis between 2004 and 2007 from [300 000-350 000]\* passengers to [300 000-350 000]\* passengers. Thus, rather than being driven by the reduction in the number of connecting passengers, LH's frequency reduction in 2006 was probably triggered by SN's entry on the route. Second, the creation or strengthening of a dominant position is a core concept of merger control, as stated both in the Merger Regulation and in the Horizontal Merger Guidelines<sup>155</sup> and established in case-law of the Community Courts. Even if one accepts LH's view that the competitive constraint exerted by SN is weak due to LH's dominant position, it is still the strongest existing constraint and would be removed by the merger, leading to a strengthening of LH's position. LH's statement that Deutsche Bahn exerts a stronger constraint on LH than SN is not substantiated and is not consistent with the fare analysis conducted by the Commission: [*Comparison of LH's, DB's and SN's fares*]\*. Finally, LH does not contest that the merger would lead to the elimination of the strong constraint exerted by LH on SN.

#### Impact for all passengers

- (155) On a market that comprises all passengers, as evoked by LH in its reply to the SO, the merged entity would have a market share of [60-70]\*%. On that market, the transaction also gives rise to competition concerns because SN is considered to be the closest competitor to LH, and the transaction would lead to its elimination.<sup>156</sup> This is also corroborated by the critical loss analysis

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<sup>154</sup> Reply to the Statement of Objections, paragraph 136 and paragraphs 141-142.

<sup>155</sup> Merger Regulation, recitals 25-26. Horizontal Merger Guidelines, paragraph 4.

<sup>156</sup> Since the market for all passengers is composed of two segments (time-sensitive and non time-sensitive), and as the transaction gives rise to competition concerns on each segment, the Commission can also conclude that it necessarily follows that the transaction gives rise to competition concerns on the overall market.

submitted on behalf of LH that suggests that the actual passenger loss on the BRU-FRA route for a market that comprises all passengers would be profitable in the event of a 10% price increase, which implies that the critical loss analysis does not fully support the inclusion of the train in the same market for all passengers.

- (156) Moreover, it is clear that, after the merger, the combined entity would have incentives to reduce capacity (and hence increase fares for *both* types of passengers): [*LH's post-transaction plans with regard*<sup>157</sup>]\*.

### *Barriers to entry*

- (157) The merger is therefore likely to have anti-competitive effects on the BRU-FRA route for non time-sensitive and for time-sensitive passengers. In the current situation, these competition concerns are not likely to be alleviated by potential entry on this route. Indeed, the BRU-FRA route is characterised by significant entry barriers.

- (158) A first type of barriers to entry is the congestion of the airports at both ends of the BRU-FRA route. Both BRU and FRA are coordinated airports with a significant level of congestion. FRA is congested throughout the day and competitors have unanimously indicated that access to slots at FRA is one of the largest entry barriers on this route.

- (159) The investigation has also shown that BRU is congested to some extent at peak times. More precisely, Brussels Airport has indicated that BRU is congested from 08:00 to 10:00 and from 18:00 to 20:00. The BRU slot coordinator has indicated to the Commission that congestion exists from 08:40 to 09:40 and from 18:30 to 20:35 for all movements and from 06:20 to 07:10, from 08:30 to 10:00 and from 18:40 to 21:00 for departures.<sup>158</sup> In its reply to the Statement of Objections, LH reiterates its claim that BRU is not a congested airport because slots can be allocated within 30 minutes of the requested time and capacity could be easily increased.<sup>159</sup> The Commission does not agree that there is no congestion at all. The data provided by the slot coordinator show that a small number of slot requests were not accommodated within +/- 20 minutes of the requested time.<sup>160</sup> Furthermore, the slot coordinator has indicated that capacity at BRU is limited by environmental constraints on the number of night movements and these limitations are becoming more stringent as of 2009. The slot coordinator therefore foresees a shortage of slots available for night movements from 2010 onwards. On the other hand, the coordinator considers that congestion in the day will not increase in the coming years. Brussels Airport has indicated that the runway capacity could be increased from 74 to

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<sup>157</sup> Annex 10 to the reply to the Statement of Objections, paragraph 27.

<sup>158</sup> See the slot utilisation graphs in document no. 2375 in the file.

<sup>159</sup> Reply to the Statement of Objections, paragraphs 159-162.

<sup>160</sup> In Winter 2007/08 and Summer 2008, 2.3% of slot requests for departures/arrivals throughout the day were not accommodated within 20 minutes and another 6.0% were accommodated within exactly 20 minutes.

80 movements per hour but this would require “some works such as rapid exits” and this expansion would only be possible after authorisation by the Air Traffic Control Authorities.<sup>161</sup> Also, several competitors have stated that BRU is congested at peak times.<sup>162</sup>

(160) Second, the BRU-FRA route is a hub-to-hub-route, that is a route joining the hubs of two network carriers.<sup>163</sup> Although the relevant market is limited to the O&D passengers on the BRU-FRA route, the fact that BRU and FRA are, respectively, SN and LH hubs is relevant when assessing the potential entry of other airlines. [70-80]\*% of the traffic on this route is composed of connecting passengers feeding mainly LH hub in FRA but also to a lesser extent SN hub in BRU. Thus, the overall profitability of the parties on this route is to a very significant extent determined by the connecting traffic, in contrast to a point-to-point carrier that would enter this route for its O&D passengers. Such an entrant would therefore be discouraged from entering the route in view of the established player’s inherent cost and profitability advantage due to the hub effect. Although barriers on a route including one major hub at one end are already high, the situation is obviously still worse for a hub-to-hub route where both ends of the route are controlled by a home carrier, especially where both ends are actually controlled by the same carrier as would be the case for the BRU-FRA route after the merger. In this case, the merged entity would be able to coordinate the response of LH and SN to the entry of a competitor in order to drive it out of the market. Competitors have confirmed that an entrant on such a hub-to-hub route is very likely to suffer losses for a long period due to the reaction of the home carriers. In its reply to the Statement of Objections, LH submits that SN is a weak network carrier which has only a limited share of its business at its hub.<sup>164</sup> For instance, SN's O&D offering from BRU only covers [0-5]\* of the 10 thickest long haul O&D and [15-25]\* of the 25 thickest short haul O&D out of BRU. However, even if SN is a weaker network carrier than LH, it is still by far the largest player at BRU, where it controls 32% of the slots.<sup>165</sup> In terms of number of passengers, SN transports 35% of all passengers from and to BRU airport on short-haul routes. Furthermore, LH does not address the core of the hub-to-hub argument, which is that a new entrant will find it very difficult, if not impossible, to compete against a player who controls both ends of the route as a result of its hubs.

(161) A third barrier to entry is the necessity to operate the route out of a base. Both LH and SN operate the BRU-FRA route thanks to a base at one end of the route. The existence of a base at one end allows for significant cost

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<sup>161</sup> Brussels Airport's response to question 14 of the phase I questionnaire.

<sup>162</sup> For instance, easyJet states that BRU is congested, notably between 05:00-07:00 and 19:00-20:00.

<sup>163</sup> A base is an airport where an airline (network or point-to-point) bases a number of aircraft and crew and from which the airline operates a number of routes, creating a certain market presence. A hub is a large base that a network airline uses as a transfer point to get passengers to their intended destination (so-called hub-and-spoke system). Point-to-point carriers have no hub.

<sup>164</sup> Reply to the Statement of Objections, paragraph 163.

<sup>165</sup> Summer 2008 figures, see Brussels slot coordinator's website ([www.brucord.org](http://www.brucord.org)). LH/LX is actually the second largest airline in terms of slots at BRU with 10% of the slots in the Summer 2008 season. The third largest airline is Jet Air Fly with 5%.

efficiencies. The investigation has shown that it is very rare for a carrier to enter a route without a base at least at one end. Most competitors have indicated that they do not operate any route without a base at least at one end. Only few short-haul carriers other than SN are based in BRU (mainly charter airlines like Jetairfly and Thomas Cook Airlines)<sup>166</sup> or in FRA (Air Berlin). In its reply to the Statement of Objections, LH submits that the Commission wrongly insists on the need to operate a base at either end of the route as a prerequisite to entry.<sup>167</sup> LH mentions the cases of VLM and Air Berlin that operate routes without a base at either end and of Flybe and KLM that would be ready to enter routes without a base at either end. However, all these examples are either erroneous or irrelevant. It is true that Air Berlin operates a small number of routes without a base at either end but such routes represent less than 8% of the number of routes operated by Air Berlin.<sup>168</sup> VLM only operates one route out of BRU (and not two as claimed by LH) and has one aircraft based in BRU. Flybe has clearly indicated to the Commission that they would open routes between BRU and Germany only if they opened a base in BRU.<sup>169</sup> KLM has equally clearly indicated that as a network hub carrier, it does not operate routes without a base at one end and that it does not intend to open a base at BRU or at either end of an affected route.<sup>170</sup>

- (162) A fourth barrier to entry is the market presence. SN and LH have a large market presence in BRU and FRA respectively. SN operates flights for 61 routes out of BRU and LH operates flights for 159 routes<sup>171</sup> out of FRA. Both parties have at their disposal a well-known brand in their home market and have competitive advantages for marketing and advertisement in the Belgian and German markets. Both parties also have global corporate deals with the major Belgian and German corporate customers, which might render offers from other competitors on BRU-FRA route less attractive.<sup>172</sup> A competitor with little or no market presence in BRU and FRA would therefore be dissuaded from entering this route. In its reply to the Statement of Objections, LH submits that SN is weak even in its home market and at any rate much weaker than LH in Germany.<sup>173</sup> However, SN still enjoys a very significant market presence in Belgium that no potential entrant can match. In addition in the analysis of the hub-to-hub obstacle, the entry barrier is not constituted by SN's market presence alone but by the combination of the market presence of SN and LH in both countries.

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<sup>166</sup> The Indian carrier Jet Airways has a base in BRU for its long haul operations. VLM also has a small base of one aircraft in BRU.

<sup>167</sup> Reply to the Statement of Objections, paragraph 172.

<sup>168</sup> See Air Berlin's reply of 23 April 2009.

<sup>169</sup> See the minutes of the meeting with Flybe of 18.02.09.

<sup>170</sup> See KLM's reply to Q42 and Q48 of the Phase I questionnaire.

<sup>171</sup> 111 short-haul routes and 48 long-haul routes.

<sup>172</sup> For instance, SN has a corporate deal with 27 out of the 50 largest Belgian companies while LH has a corporate deal with 45 out of the 50 largest German companies.

<sup>173</sup> Reply to the Statement of Objections, paragraph 164.

*Potential entry of other carriers on BRU-FRA*

- (163) No carrier has indicated to the Commission that it intends to enter the BRU-FRA route in the current circumstances due to the entry barriers mentioned in paragraphs 157 to 162.
- (164) The parties submit that Air Berlin is a likely entrant on this route. Air Berlin is a German "hybrid" carrier, that is to say, a point-to-point carrier which has adopted some features of a network carrier. Air Berlin has a base in FRA with several aircraft based there and 17 routes operated from FRA.
- (165) However, the Commission did not find any convincing evidence that Air Berlin intended to enter the BRU-FRA route. Air Berlin in particular stated that it had never made a case for entry on the BRU-FRA route<sup>174</sup> and that it will not enter the BRU-FRA route.<sup>175</sup> The Commission requested and received from Air Berlin a large number of internal documents regarding this issue, which confirm Air Berlin's statements.
- (166) Air Berlin's statements are also confirmed by the Commission's analysis of Air Berlin's incentives. First, entering the BRU-FRA route would not correspond to Air Berlin's business model. As a low-cost carrier, Air Berlin operates relatively large aircraft (typically 150-seaters like Airbus 319 or Boeing 737) and offers low fares in order to reach high load factors. Although Air Berlin is a hybrid carrier with a (limited) network, FRA is not an Air Berlin hub, meaning that Air Berlin would only be a point-to-point player on this route if it were to enter. Due to its business model, Air Berlin is therefore not likely to enter on routes like BRU-FRA which O&D traffic is not very thick, especially when these routes are business-oriented and therefore require more than one daily frequency.<sup>176</sup> Second, Air Berlin only has a limited market presence in FRA and has no activity at all in BRU. Air Berlin operates less than 1.5% of its total number of flights out of FRA, compared with more than 63% of flights operated by LH/LX.<sup>177</sup> Information submitted by Air Berlin show that Air Berlin is barely known by Belgian travellers, in contrast to SN and LH: less than 10% of Belgian travellers know Air Berlin's name, compared with 96% for SN and 88% for LH.<sup>178</sup> Third, Air Berlin previously attempted to enter a hub-to-hub route where both hubs belong to the LH/LX group (ZRH-FRA) and withdrew after one season.<sup>179</sup>

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<sup>174</sup> See Air Berlin's reply to question 29 in Phase II questionnaire.

<sup>175</sup> See the minutes of the meeting with Air Berlin of 11 March 2009.

<sup>176</sup> For instance, if one assumes that Air Berlin would enter with two daily frequencies and would reach a 70% load factor (which seems very conservative), it would need 153 000 passengers a year.

<sup>177</sup> Source: Paxis data.

<sup>178</sup> See Air Berlin's document entitled "Slide 7" (document n°2245).

<sup>179</sup> In the summer 2006 season, Air Berlin entered the ZRH-FRA route, bringing a 30 % capacity increase on the route. LH/LX was not allowed to increase frequency due to the commitments submitted in the framework of the LH/LX merger but all the same increased capacity by 8 % by changing aircraft. Air Berlin withdrew at the end of the season. Source: OAG data.



- (167) In its reply to the Statement of Objections, LH submits that the Commission has accepted, without questioning them, Air Berlin's unsubstantiated allegations as to its inability and lack of plans to enter this route.<sup>180</sup> However the Commission has paid particular attention to the question of potential entry by Air Berlin on the affected routes. In order to ascertain whether Air Berlin's statements were accurate, the Commission required Air Berlin to provide internal documents by decision pursuant to Article 11(3) of the Merger Regulation rather than by a simple request for information, thus triggering a liability for fines pursuant to Article 14 of that Regulation if Air Berlin supplied incomplete information. Moreover, the Commission does not base its conclusion only on Air Berlin's statements but also on the factual analysis presented in paragraphs 163 to 166.
- (168) The parties also submit that easyJet is a likely entrant on this route. However, the Commission did not find any convincing evidence that easyJet intended to enter the BRU-FRA route. easyJet does not have a base either in BRU or in FRA, its market presence in BRU is rather limited (four routes served) and easyJet has no activity in FRA. easyJet is not a network carrier and would not benefit from any feeder traffic if it entered the route.
- (169) The business airline VLM has indicated that in the past, it had considered entering the BRU-FRA route but had been unable to do so because of the high entry barriers on the route, in particular due to the absence of slots at FRA<sup>181</sup>. In VLM's words, there is "a virtual impossibility to obtain slots at FRA". VLM has a small base in BRU with one aircraft based there and only a limited market presence in BRU (one route served) and no market presence in FRA. On 11 March 2009, VLM announced that it would enter on the ANR-FRA route as of May 2009. However, VLM indicated to the Commission that it was only able to enter the ANR-FRA route as a result of FRA slots lent to VLM by its mother company Air France for the duration of the economic crisis. Air France is closing the Lyons-Frankfurt route as of May 2009 due to the current economic situation but needs to use the slots in FRA because they would otherwise be returned to the slot pool, which would be a significant loss given the economic value of FRA slots. On 10 March 2009 the Commission adopted a proposal for a Regulation intended temporarily to modify the "use-it-or-lose-it" rules for slots in European airports.<sup>182</sup> It is therefore likely that Air France has lent the slots to VLM mainly in order to keep the grandfathering rights on these slots. When the crisis is over, Air France is likely to take back the slots lent to VLM and VLM will then have to close the ANR-FRA route. At any rate, VLM flying from ANR is not likely to exert a sufficient constraint on the merged entity flying from BRU.
- (170) A number of charter carriers have a base in BRU. However, most seats on their flights are sold as part of a holiday package. The Commission has found in

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<sup>180</sup> Reply to the Statement of Objections, paragraphs 167-171.

<sup>181</sup> See minutes of meeting with VLM of 18 February 2009.

<sup>182</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (COM/2009/0121 final COD 2009/0042).

previous cases<sup>183</sup> that holiday packages including seats on charter flights were not part of the same product market as scheduled flights. In any event, the Commission did not find any convincing evidence that these charter carriers intended to enter the BRU-FRA route. Given that the BRU-FRA route is mainly a business route, it obviously does not correspond to their profile.

- (171) According to the parties, Ryanair, having a base at both ends of the BRU-FRA route, namely at Brussels-Charleroi (CRL) and at Frankfurt-Hahn (HHN), is a likely entrant on this route. However, even if such entry were to occur, a service between Charleroi and Hahn could be considered as a competitive alternative to the service between two main airports only in the eyes of some non time-sensitive passengers, because the services between two secondary airports are generally even less substitutable than services connecting one main and one secondary airport. Besides, the Commission did not find any convincing evidence that Ryanair intended to enter the CRL-HHN route.
- (172) In its reply to the Statement of Objections, LH submits that the combined effect of VLM's entry and the improved train service will vastly exceed the minimal competitive pressure exercised by SN's current two frequencies.<sup>184</sup> However, LH does not contest that VLM's access to slots in FRA is only temporary and linked to the current crisis and the "use-it-or-lose-it" rule. It is therefore not necessary to assess whether the combined constraint exerted by VLM from ANR and the high-speed train would be sufficient to counteract the impact of the merger through the elimination of the close competition between LH and SN. In any event, the Commission considers that the addition of these two very weak constraints is not likely to create sufficient pressure on the merged entity which would be the only airline flying from BRU to FRA.
- (173) The Commission's investigation has also examined whether an expansion of the train services is likely in reaction to the merger. Contrary to air travel, train services involve lumpy capacity. The high-speed ICE trains operating Brussels-Frankfurt typically have a capacity of 454 passengers, that is more than 9 times the capacity of the Fokker 50 planes operated by VLM. Thus, adding a new train frequency would mean adding a capacity of 330 000 seats into the market and would lead to sharp yield decreases for all market players. It is therefore very unlikely that Deutsche Bahn would adopt such a strategy. Besides, the timetables announced by Deutsche Bahn as of July 2009 maintain the same number of frequencies as before the reduction in travel time.

### *Conclusion*

- (174) The transaction would therefore lead to a monopoly on the BRU-FRA route for time-sensitive passengers. It would also eliminate the close competition between LH and SN for non time-sensitive passengers and although the merged entity would face competition from the train, the constraint of the train would not be sufficient to compensate for this loss of competition. Barriers to entry are high and the Commission did not find any convincing evidence that

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<sup>183</sup> M.4439 – Ryanair/Aer Lingus.

<sup>184</sup> Reply to the Statement of Objections, paragraphs 143-146.

other airlines would enter this route in the short or medium term and thus exert a competitive constraint on the parties, under the conditions currently prevailing on the market. For these reasons, it is concluded that the transaction would significantly impede effective competition in relation to the route BRU-FRA under any alternative market definition, that is to say, for time-sensitive, non time-sensitive and thus also for all passengers.

**b. Brussels-Munich**

- (175) The Brussels-Munich (BRU-MUC) route is an O&D route with [200 000-250 000]\* passengers in 2008; it also hosts a significant number of connecting passengers, leading to an overall number of passengers of [350 000-400 000]\* in 2008. According to the results of the passenger survey, this route has a very strong business orientation, with [70-80]\*% of all O&D passengers travelling for business purposes. The approximate market value of O&D travel on this route is EUR [0-50]\* million. There is only one airport in Munich.<sup>185</sup>
- (176) LH operates 8 daily frequencies and SN operates 3 daily frequencies. There is no competing direct service by another airline. The combined market share of the parties on this route therefore amounts to 100% of direct flights.
- (177) The table 3 below provides market shares for time-sensitive, non time-sensitive passengers and all passengers:

**Table 3: BRU-MUC O&D traffic - 2008**

	2008 figures on BRU-MUC		
	Time-sensitive	Non time-sensitive	All passengers
	[40 000-50 000]* passengers	[150 000-200 000]* passengers	[200 000-250 000]* passengers
SN	[40-50]*%	[30-40]*%	[30-40]*%
LH (incl. LX)	[50-60]*%	[60-70]*%	[60-70]*%
<b>Combined</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Sales figures provided by the parties.

<sup>185</sup> Memmingen airport (FMM) is sometimes considered as a potential secondary airport for Munich. FMM is located 119 km from Munich city centre and can be reached in 80 minutes by car. There is no direct train/bus connection to Munich. FMM is currently only used by the low-cost/charter airline TUIfly for a limited number of domestic flights and flights to leisure destinations. On 18 March 2009, Ryanair announced that they would open a base in FMM and operate seven routes as of end of April 2009. FMM is unlikely to be substitutable to MUC, except for a very limited number of particularly non time sensitive passengers. In any event, there is no indication that an airline could serve BRU from FMM in the near future.

### *Inter-modal competition*

- (178) The parties argue that train services offer a competing alternative to air travel on BRU-MUC route. However, train travel takes almost twice as long as air travel (7h as compared to 4h) and a very small number of passengers (less than 4% of all passengers travelling on this O&D in 2007) actually travel by train between Brussels and Munich. While an isolated amount of respondents indicated that the train could be an alternative for some non time-sensitive, price focused travellers, the general results of the market investigation in this case showed that train services do not constitute a competitive alternative to air travel on the BRU-MUC route. This applies to both time-sensitive and non time-sensitive passengers.
- (179) In response to the passenger survey carried out by the Commission on the BRU-MUC route, only 16% of passengers indicated that they had also checked the fares for the train when booking their flight on the BRU-MUC route.<sup>186</sup> Only 4% of airline passengers responded that they would have decided to travel by train if the plane ticket had been 5-10% more expensive.<sup>187</sup> Only 12% of passengers indicated that they had already travelled on this route by train.<sup>188</sup>

### *Impact of the transaction*

- (180) The transaction would lead to a monopoly on this route for both time-sensitive and non time-sensitive passengers, and therefore also on a market for all passengers.
- (181) In its reply to the Statement of Objections, LH submits that the Commission has not properly analysed the competitive constraints on the BRU-MUC route. LH notes that "*in light of these obvious and significant differences between the parties' respective situations, it was incumbent on the Commission to undertake a serious investigation of the degree of competitive interaction between the parties. It is therefore surprising that the passenger survey commissioned by the case team did not include any questions to help determine whether and to what extent the two airlines are (close) competitors on BRU-MUC, for example such as the one included in the questionnaire for BRU-BER and BRU-GVA.*"<sup>189</sup>
- (182) LH had the opportunity to comment twice on the passenger survey questions, and its comments were taken into account to the extent deemed appropriate. None of the comments that LH submitted included any of the criticism referred to in paragraph 181. Until the reply to the Statement of Objections, LH had in fact argued that no competition concerns would arise on this route because of the threat of potential entry by Air Berlin or easyJet and the constraint that

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<sup>186</sup> Annex III, paragraph 78.

<sup>187</sup> Annex III, paragraph 82.

<sup>188</sup> Annex III, paragraph 84.

<sup>189</sup> Reply to the Statement of Objections, paragraph 153.

such threat would place on LH/SN.<sup>190</sup> Until the reply to the Statement of Objections, LH did not ever argue that LH and SN were, at best, distant competitors.

- (183) Indeed, LH displayed a complete lack of interest in undertaking any empirical analysis on the Munich route in the beginning of Phase II. This is illustrated by the comments from LH's economic adviser in response to the Commission's request for fare data on this route: "*here the parties have not made any argument to the effect that third party air carriers act as a current constraint, but have pointed inter alia to potential entry from various carriers. It would therefore appear that the data you have requested would not allow any conclusions about these arguments, although the data may of course be useful to double check to what extent there really is strong pre-merger competitive interaction between the parties on this route. Perhaps the analysis for this route (which would not relate directly to the parties' arguments) is therefore less of a priority than on some other routes?*"<sup>191</sup> The fare data on the BRU-MUC route was thus seen by LH's economic advisor as merely useful to "double-check" the strength of the competitive constraint imposed by LH and SN on each other, which in any event was not the parties' argument, and thus such analysis was not a priority. It therefore seems very surprising that LH argues that the Commission "*had access to detailed yield and passenger data from both parties. But the SO chose not to consider this source of empirical evidence either, despite relying heavily on it for conclusions reached in relation to competitive interaction on other routes. Had the Commission taken even a superficial look at the yield data, it would have become apparent that the simple hypothesis of "strong competitive constraint" finds little support in the facts.*"<sup>192</sup>
- (184) In reply to the Statement of Objections, LH further submits that the degree of competition between LH and SN on this route prior to the merger is low due to the differences in the respective positioning of the parties in the eyes of customers. Indeed, LH considers that SN is essentially a "low-frills" airline with a much more basic customer proposition than LH. Also, whereas [50-60]\*% of LH's traffic on the BRU-MUC route consists of connecting passengers, [90-100]\*% of SN's traffic is O&D. Lastly, SN has a much weaker brand, and its customers have little brand loyalty, as indicated by the lower use of SN's FFP program by its customers on this route compared to that of LH's FFP by its customers. LH bases the conclusion that LH and SN exert a very weak competitive constraint on each other on the following two observations. [*comparison of LH's and SN's fares*]\*. Second, LH and SN's monthly yields are evolving very differently, which shows the lack of interdependence between the parties' commercial behaviour.
- (185) The type of pricing evidence presented in the reply to the Statement of Objections (and in particular the analysis of price differences) does not

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<sup>190</sup> See Form CO, paragraph 240.

<sup>191</sup> E-mail "M.5335 Lufthansa/SNAH - follow-up on call re. data request to parties" of 20 January 2009, 4:20 PM.

<sup>192</sup> Paragraph 154 of the reply to the Statement of Objections.

constitute *on its own* a decisive factor for a particular market delineation or the analysis of the degree of competition of two products, because pricing analysis can only be considered as an approximation to the SSNIP. Instead, a demand model estimating own- and cross-price elasticities of two products would be the only empirical tool able to evaluate with any degree of precision the degree of competition between products (if the data permits). Thus, any conclusions from the pricing analysis must be supplemented by other evidence from the market investigation or the passenger survey (in much the same way as has been done by the Commission for the BRU-FRA route or for the delineation of the product market).

- (186) Indeed, when requested to provide detailed information on whether SN's yield management system monitors LH on the BRU-MUC route, SN noted that although [*description of SN's yield management system and strategy*<sup>193</sup>]\* Given that LH is SN's only competitor on the Munich route, it thus follows that changes in LH's behaviour will directly impact SN. Moreover, SN also notes that [*description of SN's yield management system and strategy*]\* It is thus clear that SN at least takes into account LH's behaviour and clearly competes with LH. A simple graph that contains diverging yields of two airlines thus cannot *on its own* be used to argue that the two airlines are not competing with each other, if SN's own submission clearly suggests that SN is at least taking into account LH's behaviour.
- (187) Second, even if SN is a weak constraint on LH, it is the sole constraint on the leading airline, and the merger would thus create a monopoly. It is thus likely that capacity would be removed after the merger, as the two airlines internalise their capacity decisions, and consumers would be expected to face higher average fares. [*LH's post-transaction plans with regard to capacity*<sup>194</sup>]\*. The merged entity could also decide that SN should exit the BRU-MUC route altogether as an operating carrier and that SN should be only a marketing carrier on LH's flights.
- (188) Third, the market investigation has in any case confirmed that there is an effective competitive constraint exerted by SN on LH.<sup>195</sup> Whatever the difference in network models of SN and LH, as highlighted by LH in its reply to the Statement of Objections,<sup>196</sup> almost all corporate customers have indicated that they fly with both airlines and that they compare prices between LH and SN for this route.<sup>197</sup> A majority of corporate customers believes that

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<sup>193</sup> Answer to question 6 of Questionnaire Q33.

<sup>194</sup> Annex 10 to the reply to the Statement of Objections, paragraph 37.

<sup>195</sup> According to Q50 of the Phase II questionnaire for corporate customers, nine out of 24 corporate customers responded that they considered SN to exert an effective competitive constraint whilst seven felt it did not but mostly due to reasons of lesser frequency/schedule (and no mentioning of "the difference in positioning of the airlines" as the explanation for their choice). Eight out of 24 did not reply to this question.

<sup>196</sup> Reply to the Statement of Objections, paragraph 152.

<sup>197</sup> According to Q46 of the Phase II questionnaire for corporate customers, 20 corporate customers out of 24 use both companies to fly on the BRU-MUC route, while one out of 24 uses LH but not SN and three have not replied to this question. According to Q47 of the Phase II questionnaire for corporate customers, 20

SN exerts an effective competitive constraint on LH because it offers the number of frequencies needed by time-sensitive passengers (although some corporate customers tend to have a preference for LH because of its better frequencies).<sup>198</sup>

- (189) In conclusion, whatever the degree of competition between the flights of LH and SN prior to the merger, the fact remains that it is the only constraint exerted on both competitors at present and it is precisely that constraint which would be eliminated by the merger. The merger is therefore likely to have anti-competitive effects on the BRU-MUC route for non time-sensitive and for time-sensitive passengers as well as for a possible market encompassing all passengers.

#### *Barriers to entry*

- (190) These competition concerns are not likely to be alleviated by potential entry on this route. Indeed, the BRU-MUC route is characterised by significant entry barriers.
- (191) A first type of entry barrier is linked to the significant congestion at both ends of the BRU-MUC route. As shown in paragraphs 158 and 159 in the analysis of the BRU-FRA route, BRU is congested to some extent at peak times. MUC is also a coordinated airport and slot constrained during peak hours, namely between 7:00 and 11:00 and 17:00 and 20:00, according to figures from the German slot coordinator. Competitors have indicated that access to slots in MUC is a very significant entry barrier on this route.
- (192) Second, the BRU-MUC route is a hub-to-hub-route, that is a route joining the hubs of two network carriers. Although the relevant market is limited to O&D passengers on the BRU-MUC route, the fact that BRU and MUC are, respectively, SN and LH hubs is relevant when assessing the potential entry of other airlines. Around [40-50]\*% of the traffic on this route is currently composed of connecting passengers feeding mainly the LH hub in MUC, which makes it more difficult for a point-to-point carrier such as Air Berlin to enter the route for O&D passengers. In its reply to the Statement of Objections, LH submits that SN is a weak network carrier which has only a limited share of its business at its hub and [90-100]\*% of SN traffic on BRU-MUC is composed of O&D passengers.<sup>199</sup> As explained in paragraph 160, LH does not address the core of the hub-to-hub argument, which is that a new entrant would find it very difficult, if not impossible, to compete against a player who controls both ends of the route as a result of its hubs. In any event, even if SN is a weaker network carrier than LH, it is still by far the largest player at BRU.

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corporate customers out of 24 compare both companies to fly on the BRU-MUC route, while one out of 24 does not compare and three have not replied to this question.

<sup>198</sup> LH offers eight daily flights and SN offers three daily flights but both offer at least one flight in the morning, afternoon and evening in both directions.

<sup>199</sup> Reply to the Statement of Objections, paragraphs 163-166.

- (193) A third barrier to entry is the necessity to operate the route out of a base. Both LH and SN operate the BRU-MUC by means of a base at one end of the route. Apart from LH, Air Berlin also has a base in MUC. As explained in paragraph 161 in the analysis of the BRU-FRA route, most competitors have confirmed that it is very rare for a carrier to enter a route when it does not have a base at least at one end and the majority of airlines normally operate routes where they have a base at one end.
- (194) A fourth barrier to entry is market presence. SN and LH have a large market presence in BRU and MUC respectively. SN operates flights for 61 routes out of BRU and LH operates 118 routes<sup>200</sup> out of MUC. Both parties have at their disposal a well known brand in their home market and have competitive advantages for marketing and advertisement in the Belgian and German markets. Both parties also have global corporate deals with the major Belgian and German corporate customers, which would tend to render offers from other competitors on BRU-MUC route less attractive, especially since this route caters mainly to business passengers. A competitor with little or no market presence in BRU and MUC would therefore be dissuaded from entering this route.

*Potential entry of other carriers on BRU-MUC*

- (195) The parties argue that Air Berlin and easyJet are both potential entrants on this route. While the parties claim that Air Berlin, which has a base in Munich, would be a natural potential entrant on this route, easyJet could also start flying this route as it already flies from both Brussels and Munich to other destinations.
- (196) No carrier has indicated to the Commission that it intends to enter the BRU-MUC route in the current circumstances due to the entry barriers mentioned in paragraphs 190 to 194.
- (197) Air Berlin has a large base in MUC airport with several aircraft based there and 36 short-haul routes operated. While the possibility cannot be completely ruled out that Air Berlin might start operating the route BRU-MUC after the merger has been implemented, and once LH and SN have rationalised their frequencies, the Commission did not find any evidence that development of this route is part of Air Berlin's strategy at this stage. Air Berlin in particular submitted that it had never made a case for entry on the BRU-MUC route<sup>201</sup> and that it will not enter the BRU-MUC route.<sup>202</sup> As explained in paragraph 167 for the BRU-FRA route, the Commission has not uncritically accepted Air Berlin's statements but has conducted a thorough investigation in this respect.
- (198) First, entering the BRU-MUC route would not correspond to Air Berlin's business model. Second, even though Air Berlin has a certain market presence

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<sup>200</sup> 100 short-haul routes and 18 long-haul routes.

<sup>201</sup> Air Berlin's reply to question 33 in Phase II questionnaire.

<sup>202</sup> Minutes of meeting with Air Berlin of 11 March 2009.



in MUC, it is much smaller than LH: Air Berlin only operates 9% of the total number of flights out of MUC, compared with more than 66% of flights operated by the LH group.<sup>203</sup> Third, Air Berlin currently has no operations in BRU and has no market presence in Belgium. Fourth, Air Berlin previously attempted to enter a hub-to-hub route where both hubs belong to the LH/LX group (ZRH-FRA) and withdrew after one season.

- (199) Equally, the Commission did not find any convincing evidence that easyJet intends to enter the BRU-MUC route. easyJet does not have a base either in BRU or in MUC and only has a limited market presence in BRU (4 routes served) and in MUC (3 routes served). easyJet is not a network carrier and would not benefit from any feeder traffic if it entered the route.
- (200) Finally, there is nothing to suggest that any other carrier that currently has a base at one end of the route is likely to enter. In particular, given that BRU-MUC is mainly a business route, it is not likely that the charter airlines based in BRU (for example Jetairfly) would enter the route.

### *Conclusion*

- (201) The transaction would therefore lead to a monopoly on the BRU-MUC route, barriers to entry are high and the Commission did not find any convincing evidence that other airlines would enter this route in the short or medium term and thus exert a competitive constraint on the parties, under the conditions currently prevailing on the market. For these reasons, it is concluded that the transaction would significantly impede effective competition in relation to the route BRU-MUC for both time-sensitive and non time-sensitive passengers, and hence also for a market encompassing all passengers.

#### **c. Brussels-Berlin**

- (202) The Brussels-Berlin (BRU-BER) route is an O&D route with [200 000-300 000] passengers in 2008. Only approximately [0-10] % of passengers connect at one end or both ends. According to the results of the customer survey, 54% of all O&D passengers travel on this route for business purposes. The approximate total market value of this market is EUR [0-50] million.
- (203) LH operates four daily frequencies and SN operates five daily frequencies. easyJet, a low-cost carrier, entered this route at the end of October 2007 and currently operates one daily frequency in the late afternoon albeit with a larger aircraft that achieves a higher load factor than the parties.
- (204) The combined market shares of the parties on this route, excluding train services (see the paragraphs 207 and 208 on train substitutability), amounted to [60-70] % in 2008 for all passengers while easyJet, with its once-daily frequency, achieved a market share of [30-40] %.

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<sup>203</sup> Source: Paxis data.

Table 4: BRU-BER O&D traffic - 2008

	2008 figures on BRU-BER		
	Time-sensitive Passengers ([50 000-100 000] passengers)	Non time-sensitive Passengers ([200 000-300 000] passengers)	All passengers ([200 000-300 000] passengers)
SN	[60-70] %	[50-60] %	[50-60] %
LH	[10-20] %	[10-20] %	[10-20] %
<b>Combined</b>	<b>[70-80] %</b>	<b>[60-70] %</b>	<b>[60-70] %</b>
easyJet	[20-30] %	[30-40] %	[30-40] %

Source: Sales figures provided by the parties and easyJet.

### *Airport substitutability*

- (205) There are currently two operational airports in the Berlin catchment area, namely Tegel (TXL) and Schönefeld (SXF). The third airport in the Berlin area, Tempelhof (THF), closed on 31 October 2008. SN flew to Tempelhof until October 2008 but then transferred its operations to Tegel. While both LH and SN now operate out of Tegel, easyJet, the remaining competitor on this route, operates out of Schönefeld. Tegel airport is located 8 km from Berlin city centre and can be easily reached by car or by bus in a relatively short time – approximately a quarter of an hour. Schönefeld airport is located 19 km from Berlin city centre and can be reached by car or suburban train in less than half an hour. Tegel is scheduled to close when all Berlin flights move to the newly expanded Schönefeld airport (renamed Berlin-Brandenburg International Airport), which is scheduled to open in 2011.
- (206) The market investigation conducted in this case confirmed previous Commission findings<sup>204</sup> that Tegel and Schönefeld are substitutable for both time-sensitive and non time-sensitive passengers. This implies that the two airports are substitutable even under the assumption that there is a single market for all passengers.

### *Intermodal competition*

- (207) The notifying party submits that train services are not a significant constraint on air travel on the BRU-BER route.
- (208) The Commission found that train services take more than twice as long as air services (approximately seven to eight hours compared to approximately three hours). Train services are even less attractive now that Deutsche Bahn has discontinued direct services during the Winter 2008/2009 season. The route now requires a change of trains in Cologne. The very small minority of O & D passengers on this route who use train services is not sufficient to demonstrate the existence of substitutability between train services and air services. The Commission's market investigation confirmed that train services are not

<sup>204</sup> See case COMP/M.3940 – Lufthansa/Eurowings and case COMP/M. 3770 – Lufthansa/Swiss.

substitutable when compared to flights. In conclusion, there is no significant train service on this route. This is true for both time-sensitive and non time-sensitive passengers (and therefore also on a market including all passengers).

### *Impact of the transaction*

- (209) The transaction would therefore lead to a duopoly on this route between LH/SN and easyJet, irrespective of whether the market is defined separately for time-sensitive and non time-sensitive passengers, or whether there is a single market including all passengers.
- (210) According to the parties, competition concerns are unlikely to arise on this route given that the parties would continue to face vigorous competition from easyJet, which proved to be a successful entrant on this route and whose market share is constantly growing. The evidence gathered by the Commission suggests that, until now, easyJet has primarily constituted a competitive constraint on the parties for non time-sensitive passenger traffic. This conclusion is confirmed both by the customer survey and the pricing analysis.
- (211) The survey shows that LH and SN attract most business passengers on this route. 66 % and 70 % of LH and SN passengers respectively travel for business purposes, compared to just 29 % for easyJet. Of all surveyed business passengers on the BRU-BER route, 40 % were travelling with SN, 39 % with LH and 20 % with easyJet, while of all passengers travelling for other purposes (leisure, visiting friends and relatives, and other), 24 % were travelling with SN, 19 % with LH and 56 % with easyJet. This is also confirmed by the market investigation, in which the majority of corporate customers indicated that they do not travel with easyJet on this route<sup>205</sup>. A number of them cite the lack of frequency as a reason for not flying with easyJet. Of those corporate customers that do use easyJet to travel on the BRU-BER route, easyJet's share is at most 10 % (with one single exception: for one customer, easyJet is the main airline used on this route).
- (212) The passenger survey confirmed that LH and SN are each other's closest substitutes across all passengers. In the event of a 5-10 % price rise, SN passengers to BER who would consider switching to another airline are most likely to switch to LH (14 %) compared to 8 % who would consider switching to easyJet<sup>206</sup>. LH passengers to BER who would consider switching to another airline are most likely to choose SN (16 %) compared with 8 % that would consider switching to easyJet. Moreover, SN passengers to BER mainly travelled with LH (43 %) the last time they flew with another airline and LH passengers to BER mainly travelled with SN (54 %) the last time they flew with another airline.<sup>207</sup> For SN and LH, more convenient schedules are the first

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<sup>205</sup> According to Q53 of the Phase II questionnaire for corporate customers, 15 out of 24 corporate customers responded that they do not use easyJet on this route while seven replied that they do use easyJet. Two out of 24 did not reply to this question.

<sup>206</sup> Annex III, paragraph 96. Respondents could name several airlines to which they would consider switching so the percentages do not add to 100%.

<sup>207</sup> Annex III, paragraph 98.

reason cited for choosing another airline on the previous occasion (52 % and 62 % respectively) while price is the second main reason (46 % for both).<sup>208</sup>

- (213) The Commission's pricing analysis suggests that easyJet's entry at the end of October 2007 had some impact on SN's non-flexible economy class fares as well as to some extent on LH's non-flexible economy class fares, but it had no effect on either of the parties' fares for time-sensitive passengers.<sup>209</sup> As Figures 5 and 6 suggest, both SN's and LH's average non-flexible economy class fares dropped following easyJet's entry, although LH's average non-flexible economy class fares returned to the levels prior to easyJet's entry by the end of 2008. At the same time, easyJet's entry had no impact on LH's flexible business class and flexible economy class average fares and at most a marginal impact on SN's flexible economy class fares. Annex II examines these data in more detail using econometric techniques and confirms that the entry of easyJet had no impact on LH and SN's fares for time-sensitive customers, while it had some effect on SN's non-flexible economy class fares and to some extent on LH's fares, although this effect is more ambiguous.

**Figure 5: LH's average net fares by class on the BRU-BER route**

[CONFIDENTIAL]\*

Source: LH. ENS fares are non-flexible economy class fares, ETS fares are flexible economy class fares, and BTS are flexible business class fares.

**Figure 6: SN's average net fares by class on the BRU-BER route**

[CONFIDENTIAL]\*

Source: SN. ENS fares are non-flexible economy class fares, ETS fares are flexible economy class fares.

### Impact for non time-sensitive passengers

- (214) The market investigation has shown that easyJet's services on this route are sufficient to provide a competitive alternative for non time-sensitive passengers. easyJet has a large base at SXF with eight aircraft and a significant city presence in the Berlin area (30 routes operated or about to be operated).
- (215) Respondents to the Commission's market investigation indicated that easyJet exerts competitive pressure for non time-sensitive passengers. The majority of travel agents considered that if the merging undertakings were to raise the price by 5-10% on the BRU-BER route, a significant number of leisure customers would switch.<sup>210</sup> Few competitors responded to the questions on BRU-BER but those who did respond were split as to whether the parties and easyJet were targeting the same customers, with some of them clearly indicating they

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<sup>208</sup> Annex III, paragraph 99.

<sup>209</sup> Since the plot of the average fares is very similar for both directions (from and to Brussels), only the average fares for the direction from Brussels are presented.

<sup>210</sup> According to Q30 of the Phase II questionnaire for travel agents, 7 out of 16 travel agents responded that a significant number of leisure customers would switch to easyJet if the merging firms were to raise prices by 5-10% on the BRU-BER route while 4 replied that it would not be the case. 5 out of 16 did not reply to this question.

thought easyJet was more focused on leisure.<sup>211</sup> As to the question of whether non time-sensitive passengers would switch to easyJet in the event of a price increase following the merger, the views of competitors were also varied: a few believed that none would switch while others believed that 15% or more of non time-sensitive LH/SN passengers would switch.<sup>212</sup> easyJet itself considers that some LH/SN non time-sensitive passengers would switch in the event of a price increase.<sup>213</sup>

- (216) Taking into account the evidence from the survey, the results from the pricing analysis, easyJet's significant market share on this route as well as easyJet's focus on non time-sensitive passengers, it can be concluded that easyJet's presence is likely to be sufficient to preserve competition on this route for non time-sensitive passengers, thus constraining the parties' incentives to increase prices following the merger.

#### Impact for time-sensitive passengers

- (217) As regards time-sensitive passengers, easyJet currently only operates one daily frequency in the late afternoon and is therefore unable to offer the same-day return trips that are valued by a significant proportion of time-sensitive passengers.<sup>214</sup> The fact that easyJet does not constrain LH and SN for time-sensitive passengers is also documented by the lack of impact of easyJet's entry on the evolution of LH/SN time-sensitive fares (see Figure 5 and 6 above).
- (218) Furthermore, SN's operations to both the SXF and THF airports during the summer season of 2007 serve as a useful event study that further documents this. While SN's services to/from SXF only started with an early afternoon service that departed at 12:20, SN's services to/from THF started with a 6:30 flight. SN transported (on around 400 flights) almost [20 000-30 000]\* non-flexible economy class revenue-paying passengers to/from SXF but only around [0-1 000]\* flexible economy class passengers. At the same time, SN transported (on close to 2 000 flights) around [90 000-100 000]\* non-flexible economy class passengers and [20 000-30 000]\* flexible economy class passengers to/from THF. This event study thus suggests that time-sensitive passengers clearly prefer a service that offers morning departure/evening return rather than afternoon-only flights. At the same time, however, this does not appear to be true for the non time-sensitive passengers (given that more than [20 000-30 000]\* non time-sensitive passengers travelled on the SXF services),

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<sup>211</sup> According to Q43 of the Phase II questionnaire for competitors, 5 out of 18 competitors responded that the parties and easyJet are targeting the same customers while 3 replied that they are not targeting the same customers. 10 out of 18 did not reply to this question or gave a mixed answer.

<sup>212</sup> According to Q45 of the Phase II questionnaire for competitors, 6-7 out of 18 competitors responded that at least some of LH and SN non time-sensitive passengers would switch to easyJet while 1-2 replied that it would not be the case. 10 out of 18 did not reply to this question.

<sup>213</sup> See easyJet's answer to question 45 in Phase II questionnaire: easyJet considers that "less than 10%" of LH and SN non time-sensitive passengers would switch in the event of a price increase.

<sup>214</sup> easyJet announced in May 2009 that it will start operating a second daily frequency as of the Winter 2009/2010 IATA season.

which would be consistent with the finding that easyJet, with its single frequency, poses some competitive constraint on SN and LH.

- (219) In its response to the market investigation, easyJet itself recognised that its product offering may not currently be "particularly attractive for time-sensitive passengers". This is confirmed by the market investigation: when asked to rank LH, SN and easyJet by order of preference, all corporate customers ranked easyJet as third or did not rank easyJet at all<sup>215</sup>. Most competitors (including easyJet)<sup>216</sup> considered that time-sensitive passengers are unlikely to switch to easyJet in the of a price increase following the merger<sup>217</sup>.
- (220) The market investigation indicates that SN and LH are the closest competitors on the BRU-BER route for time-sensitive passengers. In particular, the majority of corporate customers consider that SN is LH's closest competitor and vice-versa<sup>218</sup>. Almost all travel agents considered that if the merging undertakings were to raise the price by 5-10% on the BER route, most corporate customers would *not* switch to easyJet<sup>219</sup>. Moreover, the majority of corporate customers replying to the market investigation indicated that if LH increased its prices by 5-10% on the BER route, they would most likely switch to SN (provided that schedules are appropriate)<sup>220</sup>. If SN increased its price, most would switch to LH (provided that schedules are appropriate)<sup>221</sup>. In addition, the passenger survey indicates that 39% of SN business passengers to BER looked at the prices/schedules of LH compared with 16% that looked at easyJet while 43% of LH business passengers looked at SN's prices/schedules compared with 14% that looked at easyJet.

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<sup>215</sup> According to Q55 of the Phase II questionnaire for corporate customers, 12 out of 24 corporate customers ranked easyJet as third while 7 did not rank easyJet at all. 5 out of 24 did not reply to this question.

<sup>216</sup> easyJet indicates that it is unlikely that time-sensitive passengers would do so given its current offering that is not optimized for time-sensitive passengers.

<sup>217</sup> According to Q45 of the Phase II questionnaire for competitors, 3 out of 18 competitors responded that at least some of LH time-sensitive passengers would switch to easyJet while 6 replied that it would not be the case. 9 out of 18 did not reply to this question. According to the same question, 4 out of 18 competitors responded that at least some of SN time-sensitive passengers would switch to easyJet while 4 replied that it would not be the case. 10 out of 18 did not reply to this question.

<sup>218</sup> According to Q32 of the Phase II questionnaire for corporate customers, 11 out of 24 corporate customers consider that SN is LH's closest competitor and that LH is SN's closest competitor while 5 out of 24 consider that U2 is LH's and SN's closest competitor and 1 considers that the three are equally close. 7 out of 24 did not reply to this question.

<sup>219</sup> According to Q30 of the Phase II questionnaire for travel agents, 12 out of 16 travel agents responded that a significant number of corporate customers would not switch to easyJet if the merging firms were to raise prices by 5-10% on the BRU-BER route while none replied that it would be the case. 4 out of 16 did not reply to this question.

<sup>220</sup> According to Q58 of the Phase II questionnaire for corporate customers, 8 out of 24 corporate customers would switch to SN, 4 would switch to SN if it offers similar flight schedules, 2 would switch to SN or easyJet, 1 would switch to easyJet if it offers similar flight schedules, 3 would stay with LH and 6 did not reply to this question.

<sup>221</sup> According to Q58 of the Phase II questionnaire for corporate customers, 9 out of 24 corporate customers would switch to LH, 3 would switch to LH if it offers similar flight schedules, 3 would switch to LH or easyJet, 1 would switch to easyJet if it offers similar flight schedules, 3 would stay with SN and 5 did not reply to this question.

- (221) However, in the course of the procedure in this case, easyJet announced the increase in frequency of its BRU-BER services to a twice daily service from the coming Winter season (2009-2010), as it often does after entering a route with a once-daily service. easyJet's twice-daily BRU-BER services were made available for sale on its website on 1 May 2009: easyJet will operate an early-morning BER-BRU flight in direct competition with LH/SN's flights (07:00 for easyJet compared to 06:45 AM for LH/SN), and with a larger aircraft (156-seat A319 for easyJet compared to LH/SN's 96-seat Avro RJ85s). Moreover, easyJet's past punctuality performance on the BRU-BER route has been comparable to LH/SN's, which is clearly an important consideration for time-sensitive passengers.
- (222) This frequency increase will thus address the main obstacle to attracting time-sensitive passengers on easyJet flights, as a significant proportion of these passengers either value same-day return trips or the increased time flexibility that two frequencies offer. This is also recognised by easyJet, and thus it is likely that easyJet is adding a second frequency precisely to make easyJet's offering attractive to this type of passengers. Moreover, as seen in the case of the Geneva route (see Annex IV that quantifies the impact of easyJet's entry on the Geneva route), easyJet with two daily frequencies (one in the morning and one later on in the day) appears to be a clear constraint to the merged entity for both time-sensitive and non time-sensitive passengers. In these circumstances, it is concluded that easyJet's expansion will meet the test laid down in paragraphs 74 and 75 of the Horizontal Merger Guidelines, since easyJet's expansion will take place within a reasonable timeframe and will be of sufficient scope and magnitude.
- (223) It is therefore concluded that the transaction would not lead to competition concerns for time-sensitive passengers.

#### Impact for a market of all passengers

- (224) Given that the transaction would not lead to competition concerns for time-sensitive passengers nor for non time-sensitive passengers, it follows that no competition concern would arise on a hypothetical market encompassing all passengers. Taking into account the competitive pressure already exerted by easyJet today for non time-sensitive passengers and the opening of a second frequency as of the coming season, it can be concluded that easyJet's presence is likely to be sufficient to preserve competition on this route for all passengers, thus constraining the parties' incentives to increase prices after the merger.

#### *Conclusion*

- (225) Since easyJet already sufficiently constrains the parties' market behaviour for non time-sensitive passengers and will sufficiently constrain the parties' market behaviour for time-sensitive passengers from next season onwards, it is concluded that the concentration would not lead to a significant impediment of effective competition on this route, irrespective of whether the market is defined as a single wide market for all passengers, or is delineated into time-sensitive and non time-sensitive passengers.

#### d. Brussels-Hamburg

- (226) The Brussels-Hamburg (BRU-HAM) route is an O&D route with [90 000-100 000]\* passengers in 2008 with a number of connecting passengers (leading to a total of [100 000-150 000]\* passengers in 2008). According to the results of the customer survey, this route has a very strong business orientation, with [80-90]\*% of all O&D passengers travelling for business purposes.<sup>222</sup>
- (227) LH operates four daily frequencies and SN three daily frequencies. There is no competing direct service by another airline, and therefore the transaction would lead to the creation of a monopoly on this route. The approximate market value for the O&D market is EUR [0-50]\* million.

Table 5: BRU-HAM O&D traffic - 2008

	2008 figures on BRU-HAM		
	time-sensitive ([20 000-30 000]* passengers)	non time-sensitive ([70 000-80 000]* passengers)	All passengers ([90 000-100 000]* passengers)
SN	[70-80]*%	[50-60]*%	50-60]*%
LH (incl. LX)	[30-40]*%	[40-50]*%	[40-50]*%
<b>Combined</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Sales figures provided by the parties

#### *Airport substitutability*

- (228) Two airports are located within 100 km of Hamburg, namely Hamburg airport (HAM) and Lübeck airport (LBC) situated 75 km from Hamburg. Both SN and LH fly from Brussels to Hamburg airport. Lübeck airport is served by Ryanair and Wizzair, both low cost carriers, but none of these airlines operates a route from LBC to BRU (nor to Charleroi airport), nor has plans to start such operations. Therefore it is not necessary to assess the substitutability of LBC and HAM for the purposes of this Decision.

#### *Inter-modal competition*

- (229) The parties argue that train services compete with air travel on the BRU-HAM city-pair at least with respect to the transport of non time-sensitive passengers. However, train travel takes almost twice as long as air travel (six hours and 24 minutes, as compared to three hours and 35 minutes) and a limited number of travellers (8% of all passengers travelling on this O&D in 2007) actually travel by train between Brussels and Hamburg. While an isolated amount of respondents indicated that train could be an alternative for price-sensitive and non time-sensitive travellers, the results of the market investigation in this case generally showed that train services do not constitute a competitive alternative to air travel on the BRU-HAM route for time-sensitive or for non time-

<sup>222</sup> Annex III, paragraph 12.



sensitive passengers, and therefore do not constitute an alternative for all passengers either.

- (230) In response to the passenger survey carried out by the Commission on the BRU-HAM route, only 17% of passengers indicated that they had also checked the fares for the train when booking their flight on the BRU-HAM route.<sup>223</sup> Only 7% of airline passengers responded that they would have decided to travel by train if the plane ticket had been 5-10% more expensive.<sup>224</sup> Around 13% of passengers indicated that they had already travelled on this route by train.<sup>225</sup>

#### *Impact of the transaction*

- (231) The transaction would therefore lead to a monopoly on this route for all categories of passengers (both time-sensitive and non time-sensitive passengers).
- (232) As for the BRU-MUC route, LH submits in its reply to the Statement of Objections that, "the competitive interaction between LH and SN is limited" on the BRU-HAM route also, in particular in view of [*comparison of parties' yields*]\*<sup>226</sup>. The Commission does not find this argument convincing on the same grounds as those discussed on the BRU-MUC route in paragraphs 184 to 189. In particular, the competitive constraint exerted by LH on SN and vice-versa, is the only constraint exerted on both competitors and the transaction would lead to the elimination of this constraint.
- (233) It was confirmed by the market investigation that LH and SN both exert a strong competitive constraint on each other on this route and that this constraint would be removed by the merger. Although in its reply to the Statement of Objections LH submits that SN and LH have different network models, almost all corporate customers have indicated that they fly with both airlines and that they compare prices between LH and SN for this route<sup>227</sup>. A majority of corporate customers believes that SN exerts an effective competitive constraint on LH because it offers the number of frequencies needed by time-sensitive passengers<sup>228</sup>.

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<sup>223</sup> Annex III, paragraph 78.

<sup>224</sup> Annex III, paragraph 82.

<sup>225</sup> Annex III, paragraph 84.

<sup>226</sup> Reply to the Statement of Objections, paragraphs 202-211.

<sup>227</sup> According to Q64 of the Phase II questionnaire for corporate customers, 13 corporate customers out of 24 use both companies to fly on the BRU-MUC route, while 1 out of 24 uses LH but not SN and 10 have not replied to this question. According to Q66 of the Phase II questionnaire for corporate customers, 13 corporate customers out of 24 compare both companies to fly on the BRU-MUC route, while none of them do not compare and 11 have not replied to this question.

<sup>228</sup> According to Q68 of the Phase II questionnaire for corporate customers, 9 corporate customers out of 24 consider SN as exerting a competitive constraint on LH on the BRU-HAM route as opposed to only 1 explicitly stating the opposite view and 14 have not replied to this question.

- (234) During the market investigation however, it was argued that the BRU-HAM route could be considered as a natural monopoly because it is too thin to support two competing carriers, and that it could be expected that either LH or SN would exit the route even in the absence of the transaction. However, neither LH nor SN appears to have verifiable and credible plans to exit the BRU-HAM route. Furthermore, some elements in the characteristics of the route suggest that this route would not be a natural monopoly. First, [*important number*]\*% of comparable short-haul routes operated by LH in Europe support two or more operating carriers.<sup>229</sup> Similarly when considering routes operated by SN, [*important number*]\*% of comparable short-haul routes in Europe support two or more operating carriers.<sup>230</sup> Although each route presents specific characteristics, this benchmark indicates that it cannot be inferred from the size of the route that it would be a natural monopoly. Second, [*considerations regarding the profitability of the route*]\*.
- (235) The merger is therefore likely to have anti-competitive effects on the BRU-HAM route for non time-sensitive and for time-sensitive passengers, and therefore also for a market encompassing all passengers. Following the merger the merged entity would have the incentives to reduce capacity (and hence increase fares) given that the merger would remove the sole competitive constraint on each other's capacity setting (and pricing). [*LH's post-transaction plans with regard to capacity*]\*<sup>231</sup>.

#### *Barriers to entry*

- (236) These competition concerns are not likely to be alleviated by potential entry on this route. Indeed, the BRU-HAM route is characterised by significant entry barriers.
- (237) Firstly, the level of congestion of Brussels airport constitutes a barrier to entry. However, neither Hamburg airport nor Lübeck airport are congested.
- (238) Secondly, the BRU-HAM route is a hub-to-spoke-route, which is a route where one end is a hub of a network carrier. Although the relevant market is limited to the O&D passengers on the BRU-HAM route, the fact that BRU is SN's hub is relevant when assessing the potential entry of other airlines. [20-30]\*% of SN passengers on this route are actually connecting passengers feeding SN's hub in BRU<sup>232</sup>. [*considerations regarding the profitability of the route*]\*. A point-to-point carrier entering this route for its O&D passengers would therefore have an inherent cost and profitability disadvantage on the route compared to the incumbent carrier operating the hub at one end of the route.

<sup>229</sup> LH operates 48 routes between 75 000 and 125 000 O&D passengers (MIDT data 2008). 12 are operated in monopoly by LH, 36 are operated by LH and at least one other operating carrier.

<sup>230</sup> SN has reported 10 routes with O&D passengers/year between 75 000 and 125 000. For two of them SN is the only competitor, for three of them there is another competitor, and for five of them there are more than three competitors including SN.

<sup>231</sup> Annex 10 to the reply to the Statement of Objections, paragraph 32.

<sup>232</sup> In its reply to the Statement of Objections, LH submits that the "combined entity's future share of connecting passengers will be only about 20%".

The Commission therefore does not agree with LH's submission in its reply to the Statement of Objections that the volume of connecting passengers is not a barrier to entry<sup>233</sup>.

- (239) Thirdly, another barrier to entry relates to the necessity to operate the route out of a base. Both LH and SN operate the BRU-HAM route by virtue of a base at one end of the route. The existence of a base at one end allows for significant cost efficiencies. In its reply to the Statement of Objections, LH again submits that "there are no tangible elements showing that a base is a prerequisite to active competition on a specific route"<sup>234</sup>. However as explained in paragraph 161, most competitors have confirmed that it is very rare for a carrier to enter a route when it does not have a base at least at one end and the majority of airlines normally operate routes where they have a base at one end. Only a few short-haul carriers are based in BRU (Jetairfly<sup>235</sup>) or in HAM (Air Berlin).
- (240) Fourthly, the lack of an established market presence also constitutes a barrier to entry. SN and LH have a large market presence in BRU and HAM respectively. SN operates flights for 61 routes out of BRU and LH operates 38 short-haul routes out of HAM<sup>236</sup>. In its reply to the Statement of Objections, LH claims that Air Berlin operates 30 routes out of Hamburg and that TUIfly operates 25 routes out of Hamburg<sup>237</sup>. However a strong market presence is not only explained by the number of routes operated from Brussels and Hamburg airports, but also by the general market presence in the respective countries. Both parties have at their disposal a well known brand in their home market and have competitive advantages for marketing and advertisement in the Belgian and German markets. Both parties have, for instance, global corporate deals with the major Belgian and German corporate customers, which might render offers from other competitors on the BRU-HAM route less attractive<sup>238</sup>. Similarly, in its reply to the Statement of Objections LH claims that the strength of its Frequent Flyer Program brings "a substantial core of loyal FFP members among the local traffic on the route"<sup>239</sup>. In contrast, potential entrants have either no FFP (like easyJet) or only a weak FFP (like Air Berlin). A competitor with little or no market presence in BRU and HAM would therefore be likely to be dissuaded from entering this route.

#### *Potential entry of other carriers on BRU-HAM*

- (241) The parties claim that Air Berlin, easyJet and Ryanair are all potential entrants on this route. According to the parties, Air Berlin, which has a base in Hamburg, could start operating the BRU-HAM route. Similarly, easyJet could

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<sup>233</sup> Reply to the Statement of Objections, paragraphs 214-217.

<sup>234</sup> Reply to the Statement of Objections, paragraph 218.

<sup>235</sup> The Indian carrier Jet Airways has a base in BRU for its long haul operations.

<sup>236</sup> LH's reply of 17 March 2009, Q4.

<sup>237</sup> Reply to the Statement of Objections, paragraph 219.

<sup>238</sup> For instance, SN has a corporate deal with 27 out of the 50 largest Belgian companies while LH has a corporate deal with 45 out of the 50 largest German companies.

<sup>239</sup> Reply to the Statement of Objections, paragraph 207.

start flying this route as it already flies from both Brussels and Hamburg to other destinations. Ryanair, having a base in Charleroi (CLR), and a significant presence at Lübeck (LBC) could also start flying this route according to the parties.

- (242) In its reply to the Statement of Objections, LH submits that potential entry is a realistic prospect after the merger.<sup>240</sup> Before analysing in depth the potential entry of each carrier, the Commission notes that according to the Horizontal Merger Guidelines, potential entry can only be taken into account as a countervailing factor when it is shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.<sup>241</sup> Merely showing that entry is a “realistic prospect” does not meet this standard of proof.
- (243) While Air Berlin has a base at Hamburg airport,<sup>242</sup> it considers that there is insufficient demand on the BRU-HAM route to sustain profitable operations of another carrier prior to the merger and has not envisaged entering this route.<sup>243</sup> Considering that Air Berlin has a strong presence at Hamburg airport, the possibility cannot be ruled out that it might start operating the BRU-HAM route after the merger has been implemented and once LH and SN have rationalised their frequencies, notably in the context of a more general strategy of development of Air Berlin’s presence in Hamburg or/and Brussels. However, Air Berlin submitted that it had never made a case for entry on the BRU-HAM route<sup>244</sup> and that it is not likely to enter the BRU-HAM route.<sup>245</sup> The Commission analysed Air Berlin's internal documents which confirm these statements.
- (244) In its reply to the Statement of Objections, LH submits that Air Berlin applied for slots at Brussels for operating the Brussels-Berlin route, and that this demonstrates Air Berlin's general interest in operating various routes to Brussels.<sup>246</sup> LH also submits that Air Berlin did not deny that it might enter the BRU-HAM route but indicated that at this stage BRU-HAM was not one of the most attractive routes given the current over-capacity. Since LH plans to reduce capacity on this route after the merger, Air Berlin would in LH’s view be likely to decide to enter the route. The Commission cannot agree with these arguments. First, irrespective of the fact that Air Berlin eventually decided not to operate the Brussels-Berlin route, a potential interest in operating a route between Brussels and Berlin is not relevant with regard to other routes as each route is a distinct market with its own characteristics. Second, the Commission asked Air Berlin to explain the meaning of its statement on the BRU-HAM

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<sup>240</sup> Reply to the Statement of Objections, paragraphs 221-227.

<sup>241</sup> paragraph 68.

<sup>242</sup> Air Berlin serves about 30 destinations from Hamburg and has several aircrafts stationed overnight.

<sup>243</sup> Air Berlin’s reply to question 51 in the Phase II questionnaire.

<sup>244</sup> Air Berlin’s reply to question 47 in Phase II questionnaire.

<sup>245</sup> Minutes of meeting with Air Berlin of 11 March 2009.

<sup>246</sup> Reply to the Statement of Objections, paragraphs 222-224.

route. Air Berlin replied that they consider this market as rather small and shrinking and that with the current capacity, they do not see any potential for a profitable operation in the absence of remedies.<sup>247</sup> [*LH's post-transaction plans with regard to capacity*]\*. Given Air Berlin's business model described in paragraph 166, Air Berlin's entry with two daily frequencies would add an annual capacity of 219 000 seats, [*LH's post-transaction plans with regard to capacity*]\*. Even when taking into account the possible stimulation due to Air Berlin's lower fares, the Commission finds that overall there is insufficient evidence in the file to conclude that Air Berlin would enter the route after the merger, in the absence of remedies, in a likely, timely and sufficient manner to compensate for the significant impediment of effective competition brought about by the merger.

- (245) Equally, the Commission did not find any convincing evidence that easyJet intended to enter the BRU-HAM route. EasyJet has no base in BRU or in HAM and has only limited market presence both in BRU (4 routes served) and in HAM (2 routes served).
- (246) The low-cost carrier Ryanair serves numerous destinations out of Lübeck but currently has no base at this airport. The Commission did not find any convincing evidence that Ryanair intended to enter this route in particular and to expand its activities at LBC airport in general. In any event a Ryanair service on CRL-LBC would connect two secondary airports which would make it even less substitutable to a flight between two primary airports.
- (247) In its reply to the Statement of Objections, LH claims that the file demonstrates that VLM may well consider entering ANR-HAM once economic conditions improve<sup>248</sup>. The Commission's investigation in this case has, however, shown that flights from ANR do not exert a sufficient competitive constraint on flights from BRU. Therefore, not only is a potential entry on the ANR-HAM route unlikely on the basis of the clear statement by VLM in the document referred to by LH that VLM does not consider entering this route in the next two years<sup>249</sup>, but such an entry could not in any event alleviate the competitive concerns identified on the BRU-HAM route.
- (248) In its reply to the Statement of Objections, LH submits that TUIfly could also be a likely entrant, in particular in view of the 25 routes it operates from Hamburg<sup>250</sup>. However the Commission considers that TUIfly would not be a likely entrant on this route because this does not correspond to its business model. Brussels-Hamburg is more a business-route whereas TUIfly serves

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<sup>247</sup> Air Berlin's reply of 23 April 2009.

<sup>248</sup> Reply to the Statement of Objections, paragraph 225.

<sup>249</sup> VLM has attributed a probability of "maximum 20%" to this entry, which clearly does not meet the likelihood criterion of the Horizontal Merger Guidelines.

<sup>250</sup> Reply to the Statement of Objections, paragraph 226.

leisure route<sup>251</sup>. Moreover, TUIfly is partially a charter airline and a significant proportion of seats on TUIfly flights are sold as part of a holiday package.<sup>252</sup>

- (249) Similarly, in its reply to the Statement of Objections, LH submits that OLT should be regarded as a potential competitor<sup>253</sup>. However, OLT has a minimal presence in Hamburg where it operates a single route with only one frequency per week<sup>254</sup>. In addition OLT has an agreement with SN to serve eleven African destinations from Bremen, which also limits the incentive of OLT to enter routes currently operated by SN because it could fear the termination of this agreement in retaliation from SN. The Commission therefore considers that OLT would not be a likely entrant on the route Brussels-Hamburg.
- (250) In its reply to the Statement of Objections, LH also submits that FlyBE indicated that "it has considered entering several routes between Brussels and Germany, including Brussels-Hamburg"<sup>255</sup>. However, FlyBE has no base in Brussels nor in Hamburg, and does not serve any route between Belgium and Germany. The Commission therefore considers that FlyBE would not be a likely entrant on the route Brussels-Hamburg.
- (251) Finally, there is no evidence to suggest that any other carrier that currently has a base at one end of the route is likely to enter either. In particular, given that BRU-HAM is mainly a business route, it is not likely that the charter airlines based in BRU (for example, Jetairfly) would enter the route.

### *Conclusion*

- (252) The transaction would therefore lead to a monopoly on the BRU-HAM route, barriers to entry are high and the Commission did not find any convincing evidence that other airlines would enter this route in the short or medium-term and thus exert a competitive constraint on the parties. For these reasons, it is concluded that the transaction would significantly impede effective competition in relation to the route BRU-HAM for both time-sensitive and non time-sensitive passengers, and hence also for a market encompassing all passengers.

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<sup>251</sup> From Hamburg TUIfly principally serves Canarias Islands, Portugal, South Spain, Balears Islands, Sicily, Italy (Venice and Naples), Greek Islands, Turkey, Israel, Egypt and Austria.

<sup>252</sup> The recently announced partnership between Air Berlin and TUIfly does not affect this analysis.

<sup>253</sup> Reply to the Statement of Objections, paragraph 226.

<sup>254</sup> OLT flies Hamburg-Toulouse every Sunday at 20h00, and flies Toulouse-Hamburg every Friday at 19h00.

<sup>255</sup> Reply to the Statement of Objections, paragraph 226.

## 3.2 *The Belgium-Switzerland routes*

### a. **Background and analytical framework**

- (253) The bilateral Agreement between the European Community and the Swiss Confederation on Air Transport ("the ATA")<sup>256</sup> gives the Commission the power to assess routes between Switzerland and the Community in this case. According to Article 11(1) of the ATA, "concentrations between undertakings shall be controlled by the Community institutions in accordance with Community legislation as set out in the annex of the agreement".
- (254) Until 1995, Sabena and Swissair were independent undertakings. They were both active in competition with each other on the Brussels-Basel, Brussels-Geneva and Brussels-Zürich routes.
- (255) In 1995, Swissair acquired a controlling stake in Sabena.<sup>257</sup> Swissair then concluded a code-share agreement with its subsidiary Sabena on these three routes whereby Sabena operated the Brussels-Geneva route and Swissair operated Brussels-Zürich and Brussels-Basel.
- (256) Between October 2001 and March 2002, Swissair was gradually liquidated while Crossair (later renamed Swiss) started operations as the new flag carrier. Operations across the network and specifically at Geneva airport were significantly reduced.
- (257) Meanwhile, in November 2001, Sabena also went into liquidation and Delta Air Transport (trading as SN Brussels Airlines, later renamed Brussels Airlines) took over Sabena's fleet of regional jets. The perimeter of the airline was also significantly reduced. SN's capacity at the time of launch was about 40 % of Sabena's capacity in terms of number of aircraft<sup>258</sup> and about 28 % in terms of available seat kilometres.<sup>259</sup> In terms of the number of short-haul aircraft specifically, SN's fleet was approximately 47 % of Sabena's.<sup>260</sup>

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<sup>256</sup> OJ L 114, 30.4.2002, p. 73.

<sup>257</sup> Case COMP/M.616 – Swissair/Sabena.

<sup>258</sup> Minutes of the meeting at SN on 4 February 2009.

<sup>259</sup> Case 38.477 British Airways/SN Brussels Airlines, paragraph 5.

<sup>260</sup> At the time of its bankruptcy in October 2001, Sabena had 68 short-haul aircraft (Avros, A319s, A320s and A321s, and B737s), while SN started with 32 of these Avros. Source: "*Rapport fait au nom de la commission d'enquête parlementaire visant à examiner les circonstances qui ont conduit à la mise en faillite de la Sabena, de déterminer les éventuelles responsabilités et de formuler des recommandations pour l'avenir*", Chambre des représentants de Belgique, 29 January 2003, document number 50 1514/003, page 89, and SN internal documents.

- (258) LX is Swissair's successor as the Swiss flag carrier. Likewise, SN is Sabena's successor as the largest Belgian airline.<sup>261</sup>
- (259) On 25 March 2002, SN and LX concluded a free-flow code-share agreement in respect of "the routes between the home countries of the Parties over which one or both of the Parties are operating."<sup>262</sup> The agreement perpetuated the code-share arrangement that was in place at the time of the intra-group relationship between their predecessors, although the code-share agreement of 25 March 2002 does not restrict the parties from entering any route. In practice, ever since, SN has continued to operate the Brussels-Geneva route while LX has operated Brussels-Zürich and Brussels-Basel.
- (260) In 2005, LH acquired LX<sup>263</sup> and SN acquired Virgin Express.<sup>264</sup>
- (261) Therefore, today, on all three routes between Belgium and Switzerland (Brussels-Basel, Brussels-Geneva and Brussels-Zürich), one of the parties is an operating carrier while the other party is a marketing carrier under their code-share agreement.
- (262) Paragraph 9 of the Horizontal Merger Guidelines states that in assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted."
- (263) When assessing a proposed concentration under the Merger Regulation, the Commission cannot be required to accept as a counterfactual cooperation between the parties prior to the merger that is contrary to Article 81 of the Treaty.<sup>265</sup> Nonetheless, in this case, it is not necessary for the Commission to consider this issue further in respect of each route.

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<sup>261</sup> When the Commission refers to the relationship of predecessor/successor between Swissair and LX and between Sabena and SN, the use of these terms does not carry any legal implications. They are used purely for practical purposes.

<sup>262</sup> Article 1 of the code-share agreement of 25 March 2002.

<sup>263</sup> Case COMP/M.3770 – Lufthansa/Swiss.

<sup>264</sup> Decision no. 2004-C/C-69 of the Belgian Conseil de la concurrence of 24 December 2004 in case CONC-C/C-04/0064 SN Airholding II/Virgin Express.

<sup>265</sup> See also COMP/M.5403 – Lufthansa/British Midland, footnote 30: "In the context of merger control, if the illegality of a pre-merger agreement between the parties could not be taken into account, the parties could argue that there would only be a small reduction or even no reduction of competition as a result of the merger. A merger decision in such circumstances would effectively incorporate and perpetuate the pre-merger illegality for ever, since mergers that are approved under the ECMR are no longer challengeable under Article 81 of the Treaty".



**b. Brussels-Basel**

(264) The Brussels-Basel (BRU-EAP) route is an O&D route with [20 000-30 000]\* passengers in 2008. LX operates two daily frequencies, and SN acts as a marketing carrier under the code-share agreement.

**Table 6: BRU-EAP O&D traffic - 2008**

	2008 figures on BRU-EAP		
	Time-sensitive ([1 000-5 000]* passengers)	Non time-sensitive ([20 000-30 000]* passengers)	All passengers ([20 000-30 000]* passengers)
SN	[10-20]* %	[10-20]* %	[10-20]* %
LX	[80-90]* %	[80-90]* %	[80-90]* %
<b>Combined</b>	<b>100 %</b>	<b>100 %</b>	<b>100 %</b>

Source: MIDT data adjusted by the parties' direct sales.

(265) The parties claim that this route is too thin to profitably sustain two operating carriers. To support this claim, SN asserts that it does not operate in competition with another carrier on any route where O & D traffic is less than 100 000 passengers per year, and that it has never evaluated the possibility of starting operating this route.

(266) Since Basel is not a European capital or one of the main European business centres, SN would probably not consider it as a strategic destination that should be served from Brussels in the framework of SN's general strategy. Furthermore, responses to the market investigation from the parties' competitors indicated that the O & D volume on BRU-EAP is indeed insufficient to justify a direct service by two independently operating carriers. This shows that it is very unlikely that a carrier would enter BRU-EAP while it is already served by LX.

(267) It is therefore concluded that the transaction would not lead to a significant impediment of effective competition on this route, irrespective of the counterfactual. This applies to time-sensitive as well as non time-sensitive passengers on this route as well as to the overall market for all passengers, regardless of which market definition is adopted.

**c. Brussels-Geneva**

(268) The Brussels-Geneva route (BRU-GVA) route is an O&D route with [400 000-500 000] passengers in 2008. SN operates six daily frequencies on this route. LX acts as a marketing carrier under the code-share agreement. easyJet entered this route in June 2007 with one daily frequency. It then increased its presence to two daily frequencies in October 2007.

**Table 7: BRU-GVA O&D traffic - 2008**

	2008 figures on BRU-GVA		
	Time-sensitive ([100 000-200 000] passengers)	Non time-sensitive ([300 000-400 000] passengers)	All passengers ([400 000-500 000] passengers)
SN	[50-60]%	[60-70]%	[60-70]%
LX	[0-10]%	[0-10]%	[0-10]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>
easyJet	[30-40]%	[30-40]%	[30-40]%

Source: MIDT data adjusted by the parties' direct sales.

### *Impact of the concentration*

- (269) Since LX is not an actual operating carrier on the route, the question is whether the transaction meets the test laid down in paragraph 60 of the Horizontal Merger Guidelines, which concerns mergers between potential competitors. According to the Guidelines, 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."
- (270) As regards the first prong of the first condition, the Commission's investigation has shown that the marketing carrier does not exert a significant constraint on the operating carrier with whom it has a code-share agreement. Indeed, the data provided by the parties [*description of the fare level*]\*. This is because although the marketing carrier has direct access to booking classes of the operating carrier, the operating carrier can close booking classes at will. The marketing carrier therefore has no control on the inventory policy. In addition, if the marketing carrier started to offer fares substantially lower than the operating carrier, the latter could terminate the code-share agreement and thus deprive the marketing carrier of any benefit of an aggressive pricing policy. Not only does LX's pricing not constrain SN's pricing on this route, but the market investigation also confirmed that the threat of LX's entry does not constrain SN's pricing on BRU-GVA at least in the short term<sup>266</sup>. Consequently, LX does not "already exert a significant constraining influence" on SN's BRU-GVA operations.
- (271) As regards the second prong of the first condition, there is no "significant likelihood" that, with or without the code-share agreement in place, LX "would grow into an effective competitive force" for these reasons:
- the fact that LX significantly downscaled its GVA operations in favour of its ZRH hub;

<sup>266</sup> In response to a question asking whether the existence of a potential competitor on a route affects their pricing strategy on that route and how this is taken into account in their yield management, eight out of nine competitors replied that a mere potential entrant does not constrain their pricing, and this was confirmed by the parties.

- the fact that easyJet entered the route in June 2007; and
  - the fact that LX is not the largest airline at either end of the route.
- (272) Each of these three points is explored in more detail in paragraphs 273 to 275.
- (273) Swissair's strategy from 1995 was to favour ZRH airport as a hub and to limit its activities out of GVA. From 2002 (LX's first full year of operation) to 2006 (LX's first profitable year, following its acquisition by LH and turnaround), LX further downscaled operations at GVA. The overall number of LX's planes was reduced by [50-60]\* %, the number of intra-European routes from GVA was reduced by [60-70]\* %, and the number of GVA flights was cut by [60-70]\* %. By way of example, the Commission's Lufthansa/Swiss decision of 2005<sup>267</sup> states that "in view of the fact that Swiss following their financial difficulties has drastically scaled down its hub operations in Geneva, Swiss cannot be considered a potential direct entrant on this city pair anymore [Geneva-Düsseldorf]". Overall, LX was still significantly smaller in 2008 than the pre-crisis Swissair.
- (274) In February 2007, easyJet announced that it would start serving the Brussels-Geneva route from 29 June 2007 with one daily frequency. easyJet then increased capacity to a twice daily frequency in October 2007. Even though LX slightly expanded its GVA operations from 2007<sup>268</sup>, compared to the low point reached in 2006, the small scale of its GVA operations and the additional competition from easyJet on this route were probably a strong disincentive to operate the BRU-GVA route against the eight existing frequencies (six SN frequencies and two easyJet frequencies).
- (275) In addition, LX does not have a strong position at either end of the route, which therefore reduces its advertising exposure and commercial presence. SN is the largest airline in Brussels and easyJet is the largest airline in Geneva both in terms of number of routes operated and number of passengers transported. easyJet's presence in Geneva has also steadily increased over recent years. As an illustration, easyJet accounted for 26 % of passengers transported to and from Geneva in 2004 (18 % for LX), and 34 % in 2007 (12 % for LX). Today, LX has only [0-10]\* aircraft based in Geneva (out of 100 LX aircraft based in Switzerland, principally in Zürich). LX maintains a minimal level of activity at Geneva airport – [*considerations on profitability of LX's intra-European routes from GVA and the base on GVA*]\*.
- (276) On the basis of the above, and despite arguments to the contrary,<sup>269</sup> the Commission finds that LX would not be likely to enter the market in the absence of the merger.

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<sup>267</sup> Case M.3770, Lufthansa/Swiss, paragraph 82.

<sup>268</sup> For example by adding opportunistic flights, like a night flight to and from Istanbul.

<sup>269</sup> Specifically, a benchmarking of LX's typical route planning would tend to show that it would be unusual for LH/LX not to operate a route of this size (before the entry of easyJet) when there is only one other operating airline. Out of 73 routes above 150 000 annual O & D passengers in LH/LX's route portfolio, only two are monopolies. Similarly, there is not a single route above 150 000 annual O & D passengers in SN's route

- (277) Since the two conditions in paragraph 60 of the Horizontal Merger Guidelines are cumulative, and since the first condition is not met, there is no need to explore the second condition.

### Conclusion

- (278) For the purpose of this case, LX is not considered as a potential competitor on the Brussels-Geneva route. It is therefore concluded that the transaction would not lead to a significant impediment of effective competition on this route. This applies to time-sensitive as well as non-time-sensitive passengers on this route, and it thus follows that such conclusion would be reached even if there was to be a single wide market for all passengers.

#### d. Brussels-Zürich

- (279) The BRU-ZRH route is an O & D route with [150 000-200 000]\* passengers in 2008 with a significant number of connecting passengers (leading to a total of [250 000-300 000]\* passengers in 2008). According to the results of the customer survey, 80 % of all O & D passengers on this route travel for business purposes. The total annual value of this market is approximately EUR [0-50]\* million.
- (280) LX operates six daily frequencies on this route. SN acts as a marketing carrier under the code-share agreement. No other airline operates direct services on this route. Air Berlin has a small base at ZRH, whereas easyJet does not. Based on the tickets sold by SN on LX flights, the market shares are as follows:

Table 8: BRU-ZRH O&D traffic - 2008

	2008 figures on BRU-ZRH		
	Time-sensitive ([60 000-70 000]* passengers)	Non time-sensitive ([100 000-150 000]* passengers)	All passengers ([150 000-200 000]* passengers)
SN	[10-20]*%	[5-10]*%	[5-10]*%
LX	[80-90]*%	[90-100]*%	[90-100]*%
<b>Combined</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: MIDT data adjusted by the parties' direct sales.

- (281) There is currently only one realistic commercial airport in Zürich.
- (282) LH submits, and the Commission accepts, that inter-modal competition should not be included in the relevant market for this route.

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plan which is a monopoly. In isolation, this could be interpreted as suggesting that LX would probably have challenged SN's monopoly on the Brussels-Geneva route in the absence of their agreement.

### *Counterfactual analysis*

- (283) The Commission considers that the code-share agreement is likely to be discontinued in the absence of the merger because SN would join the oneworld alliance and British Airways ("BA") and for this reason the code-share would be terminated.
- (284) As a result of the termination of the code-share, SN would be likely to enter the BRU-ZRH route. Therefore, the merger would eliminate competition between LX as the currently operating carrier and SN as a likely potential competitor (paragraph 60 of the Horizontal Merger Guidelines).
- (285) Each step of the reasoning is explored in more detail in paragraphs 286 to 333.
- (286) **SN is likely to join oneworld/BA in the absence of the merger.** In the first step of the analysis, the Commission notes that [*reference to SN's internal documents discussing alliance strategies*]\*. In the absence of the merger, it can then reasonably be predicted that SN would join the oneworld alliance in the foreseeable future.
- (287) In its reply to the Supplementary Statement of Objections, LH argues in this respect that [*SN had a different alliance strategy*]\*.
- (288) These arguments should be rejected. [*The Commission discusses its interpretation of SN's internal documents on alliance strategy*]\*.
- (289) Third, finding an investor for SN does not rule out joining an alliance, and joining oneworld in times of economic crisis is not unattractive: on the contrary, SN would improve its position in the interim by joining an alliance (via FFP reciprocity, more connecting traffic, and joint purchasing, for instance) regardless of the search for an investor going on in parallel. Since LH is the only realistic European Star member that would be willing and able to acquire SN, and since Skyteam carrier Air France/KLM has not confirmed any interest in SN (possibly due to the proximity of its own hubs at Paris Charles de Gaulle and Amsterdam Schiphol), developments in the absence of the merger would most probably involve the oneworld alliance and/or a oneworld investor. This would also be in line with the current SN/BA code-share and SN's current code-share and antitrust immunity with American Airlines on transatlantic routes. [*The Commission describes the content and discusses its interpretation of SN's internal documents on acquisition offers*]\*.
- (290) On this basis, SN would most probably have joined oneworld, and would most probably have become a BA subsidiary, had the LH operation not gone through.
- (291) **As a result of SN joining oneworld, the code-share agreement between LX and SN would be terminated.** In the second step of the analysis, the Commission finds that the code-share would most likely be discontinued – either at SN's initiative or at LX's initiative – as a result of SN joining oneworld. Although LH has submitted in its reply to the Statement of

Objections that [*the facts allow for a different conclusion, the Commission concludes from SN's internal documents that the code share agreement is likely to be terminated after SN would have joined oneworld*]\*.

- (292) In its reply to the Supplementary Statement of Objections and other submissions, LH argues that [*LH's interpretation of SN's internal documents discussing alliance strategies*]\*.
- (293) The Commission notes in this respect that, first, the SN presentation itself states that [*content and assessment of SN's internal documents discussing alliance strategies*]\*.
- (294) Second, a code-share between a oneworld member and a Star Alliance member (in this scenario) would need to be compatible with both the oneworld alliance agreement and the Star Alliance agreement. In any event, [*content of oneworld alliance agreement and Star Alliance agreement*]\* is not in itself decisive. Even if both the oneworld rules and the Star rules allowed such a code-share agreement, a number of additional factors indicate that in practice the SN/LX code-share would be discontinued.
- (295) Third, [*The Commission further discusses why the code share agreement would have been terminated and refers to the possibility of a more general oneworld strategy for traffic to Switzerland*]\*.
- (296) Fourth, the Commission has analysed the impact of LX's acquisition by LH in 2005 and LX's membership of Star Alliance from 2006. All code-share agreements that existed between LX and oneworld airlines prior to 2005 were terminated shortly after the LH's acquisition of LX or after LX joined Star Alliance [*assumptions regarding the termination of the agreement*]\*. Today, LX does not have any code-share in place with any oneworld airline. LX only code-shares with (a) current Star members and airlines that are set to join Star in the near future, such as Air India and TAM; (b) non-aligned airlines such as El Al and Air Malta; and (c) Air France, a Skyteam member, pursuant to an exception in the Star Alliance agreement and in the context of LX's withdrawal from the GVA-Paris route.<sup>270</sup> Furthermore, past experience shows that LX is ready to terminate a code-share even at the cost of service deterioration (for example, ZRH-HEL, GVA-MAD, where there was a direct service under the code-share and only an indirect service after termination) or at the cost of having to enter the route to fill the gap (for example, BUD-GVA, BSL-BCN).
- (297) Finally, the likely termination of code-shares between oneworld members and Star Alliance airlines is illustrated by the reaction of BA, a oneworld member, [*content of confidential communication*]\*. This shows that in the specific scenario where SN not only joined oneworld but also became a BA subsidiary, its code-share with LX would be very unlikely to survive.

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<sup>270</sup> First, the Paris-GVA route is not a hub-to-hub route, second, LX withdrew from the route in the face of strong competition from Air France's high number of frequencies, from the French TGV train, and due to LX's policy of scaling down its GVA operations, and third, the policy of not code-sharing with rival alliance members such as Skyteam members is confirmed by the termination of code-shares with CSA (a Skyteam member) and Air One (once it was merged into the new Alitalia, a Skyteam member).

- (298) It is therefore concluded that in the absence of the transaction, it is more likely that SN would have joined oneworld and that the SN/LX code-share would have been terminated. The Commission therefore has to assess SN's incentive to enter the BRU-ZRH route after the termination of the agreement under paragraph 60 of the Horizontal Merger Guidelines, which concerns mergers between potential competitors.

*Impact of the concentration*

- (299) According to paragraph 60 of the Horizontal Merger Guidelines, for a merger with a potential competitor to have significant anti-competitive effects, 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" absent the merger, and second, "there must not be a sufficient number of other potential competitors which could maintain sufficient competitive pressure after the merger."
- (300) **There is a significant likelihood that SN would grow into an effective competitive force.** The Commission has come to the conclusion that the first condition is met (there is a significant likelihood that SN would grow into an effective competitive force in the absence of the merger) for the following reasons. While each reason, taken on its own, may not be sufficient to conclusively prove that SN would enter the BRU-ZRH route, it is the combination of all these reasons that shows that there would be a significant likelihood that SN would enter the route.
- (301) *Benchmarking.* The Commission's benchmarking exercise in this case shows that it is unusual for an airline that has a base at one end to not operate a route of this size. In its reply to the Statement of Objections, LH submits that SN would not operate the Brussels-Zürich route because of LX's well-established presence on this route. However, the Commission's benchmarking shows that out of [60-70]\* comparable routes in the LH/LX network (between 100 000 and 200 000 passengers per year), only [0-5]\* are monopolies. The corresponding proportion is [0-5]\* out of [10-20]\* for SN. This means that on [80-90]\* % of comparable routes ([10-20]\* out of [10-20]\*) in SN's network, SN faces an established competitor.
- (302) In its reply to the Statement of Objections, LH also submits that there are many intra-European hub-to-hub routes where at least one of the carriers operating a hub at one end of the route does not operate the route itself, and that therefore it would be entirely plausible for SN not to operate BRU-ZRH. To support this claim, LH provided a list of 44 intra-European routes with such characteristics (that is to say, where one of the carriers operating a hub at one end of the route does not operate the route).
- (303) However, the 44 routes on that list are generally smaller than BRU-ZRH in terms of annual O & D volume (the average O & D traffic in 2008 for these 44 routes is 54 106 passengers, compared to [150 000-200 000]\* passengers on BRU-ZRH). Out of these 44 routes, only one route has an annual O & D volume which is comparable to BRU-ZRH (Copenhagen-Prague – [150 000-

200 000]\* passengers/year) and six have between 100 000 and 150 000 passengers/year.<sup>271</sup> The data provided by the parties therefore rather support the Commission's view that it is unusual for an airline that has a hub/base at one end of a route comparable to BRU-ZRH in size to not operate this route, especially if it is operated by a single other carrier. Moreover, many of the 44 routes referred to by LH are not comparable to the BRU-ZRH route because one or both of the cities they link are smaller or economically less important than Brussels or Zürich, extremely short-haul routes (for example, BRU-AMS), routes where there is a powerful low-cost carrier (for example, the Dublin routes), routes where there are significant indirect possibilities (for example, Warsaw-Lisbon), or routes served by a code-share.

- (304) *Price.* This route has a particularly high yield (EUR [...]\*, compared to EUR [...]\* for BRU-GVA, for instance).<sup>272</sup> LH also provided LX's average yield on 20 routes from Zürich. Apart from routes to Moscow and Tel Aviv, for which travel time is substantially longer than on BRU-ZRH, the average yield on all routes is below [...]\* EUR. This would suggest that there is some room for a second operator to compete.
- (305) LH submits that the only relevant price indicator should be SN's price estimate if it were to enter the route, namely EUR [...]\*, which according to LH is "a normal price, not particularly attractive". The Commission does not contest that if a second airline operated the route, prices would decrease, to the benefit of consumers. However, the particularly high level of prices on the BRU-ZRH route in the current monopoly situation is appealing to some degree for any potential entrant, and in particular for SN.
- (306) *Strategic destination.* Zürich is a large European business centre and one of the top 25 O & D routes from BRU.<sup>273</sup> The fact that SN has the "objective"<sup>274</sup> of serving the top business centres in Europe would tend to show that it would be plausible for SN to serve ZRH. Moreover, SN indicated that [*content of SN's internal document*]\*<sup>275 276</sup>.

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<sup>271</sup> Budapest-Amsterdam, Budapest-Madrid, Copenhagen-Rome, Warsaw-Milan, Warsaw-Stockholm and Zürich-Helsinki.

<sup>272</sup> The passenger survey provides additional evidence on particularly high level of prices on the ZRH route: 68% of passengers on the ZRH route in the survey paid more than EUR 400 for tickets (on return trips). This is by far the highest percentage of tickets in that price category across the routes covered by the survey (for example, the second highest percentage is 33% of passengers having paid more than EUR 400 on the FRA route).

<sup>273</sup> SN's efficiencies presentation of 3 March 2009, slide 16.

<sup>274</sup> SN network planning presentation of 4 February 2009.

<sup>275</sup> SN submission of 3 March 2009.

<sup>276</sup> While the Commission does not claim that the classification of ZRH as a [*content of SN's internal document*]\*, it is an additional element that shows that it would be at least plausible for SN to operate BRU-ZRH in the absence of the code-share.



- (307) *Profitability*. [*The Commission discusses the hypothetical profitability of SN operating the route*]\*.<sup>277, 278, 279, 280</sup>
- (308) LH submits that [*Description of SN's entry strategy and observations regarding SN's recent entry*]\*.<sup>281, 282</sup>
- (309) *Aircraft availability*. In order to compete with LX's six daily frequencies, SN would need to start [0-5]\* daily frequencies<sup>283</sup> (one in the early morning and one in the evening to attract business passengers who want to purchase same-day return trips, [*SN's strategic considerations*]\*). This means that SN would have to redeploy [0-5]\* aircraft from another route [*SN's strategic considerations*]\*. The parties have argued that fleet planning is a long-term process and that they have so far not planned to acquire or lease an aircraft to operate this route, and that redeploying an aircraft from another route would either be materially impossible because some aircraft operate several routes or economically unsound because it would entail losing the revenues from the abandoned route [*content of SN's internal document*]\*. Finally, the parties have argued that SN is currently in cautious mode rather than expansionist mode and would actually be more inclined to close routes rather than start new routes.
- (310) SN operates many routes that did not reach a RODOC of [...] % in 2008, and [examples of SN's routes in comparison to BRU-ZRH]\*.<sup>284</sup> Since opportunity costs are low, it would be possible for SN to switch one aircraft operating one or several of these less profitable routes to the Brussels-Zürich route instead.
- (311) LH submits that the [...] % RODOC on BRU-ZRH was calculated in 2007, before the crisis in the airline industry which severely affected route profitability and that in 2008 the profitability of BRU-ZRH would have been lower. The profitability of BRU-ZRH on a basis of [...] % RODOC should then be compared to the profitability of other routes in 2007 (before the crisis) as the crisis should affect the profitability of most routes in a similar way. In 2007, the BRU-MAD RODOC was [...] % and the fleet profit<sup>285</sup> was EUR [...] million, to be compared to [...] % and EUR [...] million respectively on BRU-ZRH. On BRU-Vienna, RODOC was [...] % and fleet profit was EUR

<sup>277</sup> SN's document entitled [...]\*

<sup>278</sup> "RODOC" stands for return on direct operating costs. This percentage is a relative measure. It shows what percentage of the variable and fixed operating costs attributable to the route is covered by the passenger contribution earned on the route. The passenger contribution is defined as gross passenger revenues including fuel surcharges, corrected for the passenger related costs (meal, booking cost, commissions, etc).

<sup>279</sup> Although SN competes with LH on the BRU-FRA route with only two daily frequencies.

<sup>280</sup> [*Commission discusses SN's entry and exit on routes between 2002 and 2007 and their profitability*]\*.

<sup>281</sup> [*Commission discusses the profitability of SN's in 2007*]\*.

<sup>282</sup> Critical aircraft capacity can be defined as the use of a committed aircraft for the whole day or almost the whole day, that is to say, with at least three or four daily frequencies on the route.

<sup>283</sup> [*Commission discusses the content of a business case with regard to frequencies*]\*.

<sup>284</sup> 2008 RODOC on [...]\*

<sup>285</sup> "Fleet profit" is the contribution to overhead costs from a route's revenues, after deduction of all fixed and variable costs attributable to the route. Fleet profit is the absolute version of RODOC, expressed in euros.

[...]\* million. On BRU-Athens, the data were similar to expectations on BRU-ZRH. On BRU-Oslo, RODOC was [...]\* % and fleet profit was EUR [...]\* million. The 2007 financial results of several routes operated by SN therefore confirm that it would be plausible for SN to operate BRU-ZRH and that opportunities would exist for SN to switch aircraft from a less profitable route to BRU-ZRH.

- (312) Finally, as regards LH's argument in its reply to the Supplementary Statement of Objections that SN is in "cautious managing mode" rather than expansionist mode, which according to LH would militate against entry on a new route such as BRU-ZRH, it should be noted that SN is [*description of SN's current fleet situation*]\*. The fact that BRU-ZRH would likely not be part of this group is corroborated by the fact that SN's routes earmarked for cancellation if the merger does not materialise almost all have a current RODOC far below [...]\* %.
- (313) In conclusion on this point, since SN is unable to cut capacity across the board in the short term, it is effectively left to arbitrate between the different route options to ensure that aircraft are employed in the best possible way. From this perspective, redeploying aircraft to a route that produces an expected [...]\* % of RODOC (plus feed), like BRU-ZRH, would seem likely despite SN's cautious mode.<sup>286</sup>
- (314) *Entry strategy.* The Commission analysed SN's route entries since 2003. It appears that in the majority of cases SN took the decision to enter a new route despite the fact that the expected profitability of the route was lower than the expected profitability of the BRU-ZRH route. In particular, [*observations on SN's profitability targets for new routes*]\*. This suggests that entering the BRU-ZRH route would be a profitable and rational move for SN in the absence of the merger, or at least that it would be more profitable than entering many of the routes SN has entered since 2003.

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<sup>286</sup> SN argued at the hearing that its priority was to [*SN's strategic considerations*]\*, which would militate against entry on BRU-ZRH. However, SN would serve a short-haul route such as BRU-ZRH and [*SN's strategic considerations*]\*, so there is no need to arbitrate between both types of routes. The relevant question is whether SN would cancel another short-haul route to operate BRU-ZRH.

Table 9: SN route entries

Route	Date of SN's entry	O&D traffic in 2008	Fleet profit target when assessing entry (M of EUR)	Target RODOC in year one
Brussels - Sevilla	2002	[40 000-50 000]*		[...]*%
Brussels - Budapest	2003	[150 000-200 000]*	[...]*	
Brussels - Casablanca	2003	[90 000-100 000]*	[...]*	
Brussels - London	2003	[20 000-30 000]*	[...]*	
Brussels - Istanbul	2004	[150 000-200 000]*	[...]*	
Brussels - St Petersburg	2004	[30 000-40 000]*	[...]*	[...]*%
Brussels - Naples	2004	[50 000-60 000]*	[...]*	
Brussels - Porto	2004	[60 000-70 000]*	[...]*	
Brussels - Glasgow	2005	[5 000-10 000]*	[...]*	[...]*%
Brussels - Sofia	2005	[40 000-50 000]*	[...]*	[...]*%
Brussels - Dubrovnik	2006	[5 000-10 000]*	[...]*	[...]*%
Brussels - Frankfurt	2006	[150 000-200 000]*	[...]*	[...]*% to [...]*%
Brussels - Cagliari	2007	[10 000-20 000]*	[...]*	[...]*%
Brussels - Ljubljana	2007	[40 000-50 000]*	[...]*	[...]*%
Brussels - Vilnius	2009	[10 000-20 000]*	[...]*	[...]*%
<b>Brussels - Zürich</b>	<b>n/a</b>	<b>[150 000-200 000]*</b>	[...]*	[...]*%

(315) Several routes entered by SN since 2003 are similar to BRU-ZRH in at least some respects. Some of these routes are routes to a rival hub (BUD, FRA, LON), routes operated with more than one daily frequency (LON, FRA) or routes requiring critical capacity at the time (LON, FRA). Interestingly, all these routes are still in operation today. LH argues in its reply to the Supplementary Statement of Objections that none of these routes present *all* the entry-discouraging aspects of BRU-ZRH. While the Commission indeed accepts that these routes are not fully similar in all aspects to BRU-ZRH, table 9 indicates that SN has often entered routes that were similar to BRU-ZRH but were expected to bring in a RODOC of less than [...]\* % (that is to say, [*comparison to BRU-ZRH*]\*).

(316) *Code-share agreement.* [*Commission discusses the content and its interpretation of SN's internal documents*]\*.<sup>287</sup>

(317) *Connecting passengers.* The parties have raised the argument that Brussels airport is not as strong a hub for SN as Zürich is for LX. The MIDT figures in this case for the BRU-ZRH route show that connecting passengers at ZRH outnumber connecting passengers at BRU by a large factor,<sup>288</sup> which means

<sup>287</sup> Brussels Airlines document entitled "Sign-Off – Europe – SUTT 2008. Joint Session Commercial Planning. Monday 17 December 2007".

<sup>288</sup> According to MIDT data, SN had [...]\* connecting passengers on the route in 2008 and LX [...]\*. The parties have not been able to provide the Commission with the total number of SN connecting passengers

that (a) LX would probably enjoy higher load factors than SN would with an equivalent number of frequencies and (b) SN has less of an incentive to operate this route than LX does, since SN would be operating BRU-ZRH mainly on a point-to-point basis. Moreover, LH argues in its reply to the Supplementary Statement of Objections and in other submissions that SN would lose connecting traffic by operating its own flights compared to the situation with the code-share in place.

- (318) These arguments disregard the fact that the number of O&D passengers may in itself be sufficiently attractive and that SN could reasonably put in place an attractive offer of at least [0-5]\* daily frequencies, especially since the introduction of price competition is likely to expand the market and therefore increase O & D passenger volumes.<sup>289</sup>
- (319) Furthermore, a network airline operating a feeder route with its own aircraft is likely to get more connecting passengers than when merely code-sharing on another carrier's flights, thanks to the convenience and cost savings from an "online" seamless connection. SN's traffic figures show that [*description of SN's traffic figures*]\*. Therefore, if SN were to operate the BRU-ZRH route on its own, it would probably increase the number of connecting passengers, [*description of SN's business plan*]\*.<sup>290</sup> This is an [50-100]\* % increase, which would make BRU-ZRH comparable, in terms of feed, to the current SN routes that have a RODOC of less than [...]\* % and that require critical capacity [*examples of routes*]\*.
- (320) Finally, it must be stated that the question for the purposes of this Decision is whether SN would enter the BRU-ZRH route in the absence of the code-share and in the absence of the merger. From this perspective, the importance of capturing feed passengers (compared to no feed at all) should rather be seen as an incentive to enter.
- (321) *Impact of the current economic downturn.* While the current economic conditions severely affect the airline business, the effect of the downturn on the present analysis is threefold: first, cutting feed from SN's short-haul network affects the profitability of its long-haul network (namely the African routes). Therefore, SN would presumably want to ensure that it retains sufficient feed, including by capturing ZRH feed.
- (322) Second, the economic crisis, regardless of its duration, does not affect the profitability of the BRU-ZRH route more than the profitability of other routes, meaning that SN's incentive to operate the BRU-ZRH route instead of other less profitable routes is not affected. In other words, while SN's expected

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on this route (including MIDT and direct bookings). The discrepancy between MIDT data and total number of connecting passengers can be significant: for instance, direct bookings of connecting passengers on BRU-GVA represent 20 % of the MIDT bookings.

<sup>289</sup> Even if SN has higher costs than LX and even though SN is not a low-cost/low-fare airline, as LH notes, the level of demand from the 80 % of business passengers and 20 % of leisure and "visiting friends and relatives" passengers is by definition elastic to some extent, and [*SN's assumptions regarding yield*]\*.

<sup>290</sup> SN document entitled [...]\*.

[...]\* % RODOC on the BRU-ZRH route [*assessment of the impact of the crisis on SN's entry decisions*]\*<sup>291</sup>.

- (323) Third, [*SN's current fleet situation*]\*. In circumstances where an airline suffers high costs from not operating its aircraft, it would be likely to find it more profitable – or less loss-making – to operate the aircraft in order to bring in some revenue. Fourth, even if the current economic downturn were to negatively affect SN's incentive to start its own operations on the BRU-ZRH route, the possibility cannot be ruled out that the economic crisis will lessen during the time horizon for analysing the future effects of a merger (typically three years).
- (324) *Alliance network coverage*. In the present hypothetical counterfactual where the code-share is terminated because SN joins the oneworld alliance, it is likely that SN will transport a number of additional connecting passengers thanks to the alliance.<sup>292</sup> As no oneworld airline serves the Brussels-Zürich route, but several oneworld airlines serve either Brussels or Zürich airports, it is likely that SN will gain at least some additional BRU-ZRH connecting passengers from its oneworld membership.
- (325) *Relevance of airport congestion as an entry barrier for SN*. Finally, SN's ability to obtain slots at ZRH does not seem insurmountable in view of the fact that (a) although ZRH slots at peak times are in high demand, they are not impossible to obtain via normal slot applications, as SN has done at Frankfurt airport in the recent past, for example; (b) [*content of SN's internal document*]\*. This could be explained by the fact that ZRH slots are less of a barrier for SN because it already has a slot portfolio at BRU that it can match with the slots it obtains from the ZRH coordinator, whereas a new entrant who has no slots at BRU and ZRH would need not only to obtain slots at both airports, but also to ensure that they match.
- (326) LH argues that [*LH's interpretation of SN's business case and Commission's assessment of this interpretation*]\*.
- (327) It is therefore concluded that, in the absence of the merger, it is more likely that SN would grow into an effective competitive force on the Brussels-Zürich route after joining oneworld/BA and after the code-share is terminated. SN's entry on the route is all the more likely considering that it could also terminate the code-share even without joining oneworld/BA, as LH concedes in its reply to the Supplementary Statement of Objections,<sup>293</sup> and that SN could also decide to enter the route in the presence of the code-share, [*reference to SN's internal document*]\*. All in all, the likelihood of SN entry would be entirely eliminated by the merger. In effect, the fact that SN does not currently operate on the BRU-ZRH route (although there is a significant likelihood that it would

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<sup>291</sup> Jet fuel accounts for [...] % of the direct cost of operations on a route (based on the overall costs of SN's European network in 2008).

<sup>292</sup> A net addition of [...] \* passengers, according to [*content of SN's internal document*]\*.

<sup>293</sup> At paragraph 21: "it cannot be excluded that, like any other agreement, the LX/SN code-share agreement could be terminated in the future."

do so in the absence of the merger) would be made stable and permanent by the merger.

- (328) **There is no other potential competitor which could maintain sufficient competitive pressure.** As regards the condition that there must not be another potential competitor which could maintain sufficient competitive pressure after the merger, the Commission finds that there is no such other airline for the following reasons.
- (329) *Entry barriers.* First, subject to the analysis in paragraph 325, the level of congestion of the airports at both ends of the BRU-ZRH route constitutes a barrier to entry. Both BRU and ZRH are coordinated airports with a significant level of congestion. They are both congested at peak times, and the difficulty of obtaining workable slots constitutes an entry barrier on this route.
- (330) Second, the BRU-ZRH route is a hub-to-hub route between the hubs of two network carriers. As explained in paragraph 160 in the analysis of the BRU-FRA route, an entrant faces significant barriers when entering a hub-to-hub route. Approximately [50-60]\* % of the traffic on this route is actually composed of passengers connecting at ZRH or at BRU. Thus, SN and LX would be able to rely on connecting traffic as an additional revenue stream while a new entrant would only be able to rely on O&D/point-to-point passengers. In this case, the merged entity would be able to coordinate the defensive tactics of SN and LX in response to new entry. Competitors have confirmed that entering a rival's hub-to-hub route is very difficult.
- (331) Third, another barrier to entry relates to operating the route out of a base or hub. Both SN and LX would operate BRU-ZRH by virtue of a hub at one end of the route. The existence of a base/hub at one end allows for significant cost efficiencies. Most competitors have confirmed that it is very rare for a carrier to enter a route (in particular with two or more frequencies per day) when it does not have a base at least at one end. Only a few short-haul carriers are based in BRU (SN and some charter airlines) or in ZRH (LX and Air Berlin).
- (332) Fourth, the lack of an established market presence also constitutes a barrier to entry. SN and LX have a large market presence in BRU and ZRH respectively. SN operates 61 routes out of BRU and LX operates 76 routes out of ZRH. Both parties have a well-known brand in their home markets and therefore have a competitive advantage in terms of marketing and advertising in the Belgian and Swiss markets. Thanks to this "city presence effect", the two parties are best placed to capture the Belgian and Swiss corporate customer base, which would make operations by a new competitor more difficult.<sup>294</sup> A competitor with little or no market presence in BRU and ZRH would therefore find it difficult to enter this route.
- (333) *Potential entry on the BRU-ZRH route.* In these circumstances, Air Berlin is not considered a potential entrant that would be able to deter or defeat a price

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<sup>294</sup> For instance, SN has corporate deals with [20-30]\* out of the 50 largest Belgian companies while LX has corporate deals with [40-50]\* out of the 50 largest Swiss companies.

increase by the merged entity through likely, timely and sufficient entry. First, Air Berlin only has a limited market presence in ZRH. Air Berlin has a small base at Zürich airport which only serves German and Mediterranean destinations,<sup>295</sup> and the Commission did not find any evidence that Air Berlin's growth strategy out of ZRH would include entering the BRU-ZRH route.<sup>296</sup> This is consistent with Air Berlin's current strategy of flying from ZRH to German and Mediterranean destinations, while SN flies to both leisure destinations and European business centres. While LH argues that Air Berlin is the number 2 airline at ZRH, Air Berlin is a very distant "number 2": it only operates 6 % of the total number of flights out of ZRH, compared with 60 % of flights operated by LH/LX.<sup>297</sup> Air Berlin has no hub in ZRH with a dedicated hub structure and its share of connecting passengers on Air Berlin flights in ZRH is below 5 %. Furthermore, Air Berlin has corporate contracts with less than 20 of the 50 largest Swiss corporate customers, compared with [40-50]\* out of 50 for LX.<sup>298</sup> Second, Air Berlin is not present at all in the Belgian market. Information submitted by Air Berlin shows that Air Berlin is barely known by Belgian travellers, in contrast to SN and LH: less than 10% of Belgian travellers have heard of Air Berlin, compared with 96 % for SN and 88 % for LH. By contrast, SN has been selling BRU-ZRH tickets in both the Belgian market and the Swiss market for many years. Third, Air Berlin may be dissuaded from entering the BRU-ZRH route by its previous experience on a hub-to-hub route where both hubs belong to the LH/LX group (FRA-ZRH), where it withdrew after one season.<sup>299</sup> Finally, the Commission's viewpoint that Air Berlin would not be a likely potential entrant is based not only on the Commission's investigative measures intended to clarify Air Berlin's intentions, but also on the Commission's objective assessment of Air Berlin's position and of the entry barriers in this market.

- (334) Ultimately, there is insufficient evidence in the file to suggest that another carrier would be likely to enter sufficiently quickly and on a sufficient scale to deter or defeat the exercise of market power by the merged entity. Consequently, the Commission finds that there is no "other potential competitor which could maintain sufficient competitive pressure" on the merged entity. The test laid down in paragraph 60 of the Horizontal Merger Guidelines is then satisfied.

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<sup>295</sup> Four aircraft and 32 routes, many of which are operated with a very low number of frequencies, for example subdaily (less than daily) frequencies.

<sup>296</sup> Air Berlin in particular submitted that it has never made a business case for entry on the BRU-ZRH route and that it will not enter the BRU-ZRH route.

<sup>297</sup> Source: Paxis data.

<sup>298</sup> While 20 out of 50 does not seem very different from SN's [20-30]\* contracts with the top 50 Belgian corporate customers, it is clear from this section that Air Berlin is a distant number 2 at ZRH airport and therefore corporate customers are likely to be using Air Berlin as a supplemental/secondary contract carrier rather than as their main contract carrier. This contrasts with SN, which is the largest intra-European operator from BRU and is therefore the best-placed carrier in the corporate market.

<sup>299</sup> In the Summer 2006 season, Air Berlin entered the FRA-ZRH route, increasing capacity on the route by 30 %. Since LH/LX was not allowed to increase frequencies due to the frequency freeze remedy decided in the Lufthansa/Swiss merger decision, it increased capacity by another 8 % by using larger aircraft. Air Berlin withdrew at the end of the season. Source: OAG data.

## *Conclusion*

- (335) The Commission concludes that the transaction would eliminate the significant likelihood of SN's entry and would therefore lead to a significant impediment of effective competition on the BRU-ZRH route for both time-sensitive and non time-sensitive passengers.

### **3.3 *Other short- and mid-haul routes***

- (336) Several other short-haul routes are affected by the transaction. The Commission has examined the competitive impact of the concentration on each of these routes separately for time-sensitive and non-time-sensitive passengers, and found that the result of the assessment is the same irrespective of the type of passengers, and therefore also for a market encompassing all passengers. As a result, due to the large number of routes involved, only aggregated market shares for all passengers are presented in this section, unless specified otherwise.

#### **a. *Direct-direct overlaps***

##### *Brussels-London*

- (337) The Brussels-London route is an O&D route with [2-3]\* million passengers per year. SN operates flights from Brussels to London Gatwick and markets seats on British Airways' flights between Brussels and London Heathrow on a code-share basis. LH markets seats on British Midland flights between Brussels and London Heathrow. Both SN's code-share agreement with British Airways and LH's code-share agreement with British Midland are standard freeflow agreements that do not provide for price-coordination between the marketing carrier and the operating carrier.
- (338) More than [2-3]\*million passengers travel between Brussels and London each year, of which more than three quarters use the Eurostar train service allowing for a shorter overall travelling time than air services (the total check-in and travelling time from city centre to city centre by train is 2 hours and 20 minutes, compared to around 3 hours for air services). The results of the market investigation in this case clearly confirmed that train services on the Brussels-London city-pair are substitutable with respect to both time-sensitive and non time-sensitive passengers.
- (339) The market shares of the different competitors in 2008 are as follows:



**Table 10: Market shares in 2008 on the Brussels-London route**

SN	[0-5]*%
LH	[0-5]*%
<b>Combined</b>	[0-5]*%
Eurostar	[70-80]*%
British Airways	[5-10]*%
Ryanair	[5-10]*%
British Midland	[5-10]*%
VLM	[0-5]*%

- (340) The parties' combined market share for all passengers on this city pair only amounts to [0-5]\*% while Eurostar's share is [70-80]\*%. Furthermore, other competitors such as British Airways and VLM also serve this route with air travel services<sup>300</sup>. Given the constraint exerted by train services, it is not necessary for the purpose of this case to determine whether the services operated by competitors from different London airports exert a competitive constraint on the services operated by the parties.
- (341) In the light of the above, the transaction would not significantly impede effective competition on the BRU-LON route.

#### *Brussels-Milan*

- (342) The Brussels-Milan route (BRU-MIL) would be affected by the transaction. SN is present on this route and LH entered the market in March 2009 through a newly founded subsidiary Lufthansa Italia.
- (343) Milan is served by three airports: Malpensa (MXP), Linate (LIN) and Bergamo (BGY). In the *Ryanair/Aer Lingus* case, the Commission concluded that the three airports are substitutable for Ryanair and Aer Lingus passengers from Dublin.<sup>301</sup> The notifying party submits that the three airports are substitutable for both time-sensitive and non time-sensitive passengers.
- (344) The issue whether the airports are substitutable or not does not need to be addressed since the merger would not lead to competition concerns under any alternative market definition.
- (345) SN and Alitalia are currently engaged in a code-share agreement for the BRU-MIL route. Following this agreement BRU-MXP is currently only operated by SN and BRU-LIN by Alitalia, while each airline is marketing carrier on the flights operated by the other code-share partner. The parties submit that the current code-share agreement between SN and Alitalia would be discontinued after the integration of SN into Star Alliance. As a consequence, the parties

<sup>300</sup> Ryanair exited the route in March 2008.

<sup>301</sup> Case COMP/M.4439 Ryanair / Aer Lingus, paragraph 262 et seq.

recognise that SN may enter the BRU-LIN route. This entry is all the more likely as SN has slots in LIN, which are currently operated by Alitalia within the framework of the code-share agreement. Alitalia stopped operating flights from BRU to MXP in May 2008 due to its economic difficulties and is likely to re-enter this route, especially if the code-share is discontinued. However, in order to assess the impact of the transaction in the worst case scenario, only SN's entry on the BRU-LIN route is considered in the capacity shares of table 11 below.

- (346) As the market structure has considerably changed in recent months (economic difficulties of Alitalia and merger between Alitalia and Air One, creation of Lufthansa Italia), market shares for the past year are not informative. The expected frequencies and capacities for the Summer 2009 are as follows:

**Table 11: Capacity shares in Summer 2009 on the Brussels-Milan route**

Airline	Origin	Destination	Freq. per week	Seats per week	Capacity share MXP only	Capacity share MXP-LIN	Capacity share MXP-LIN-BGY
AZ	BRU	LIN	18	2 754		23	18%
SN	BRU	LIN	13	1 209		10	8%
LH	BRU	MXP	18	2 268	32	19	15%
SN	BRU	MXP	29	2 708	39	22	18%
U2	BRU	MXP	13	2 028	29	17	14%
FR	CRL	BGY	21	3 969		-	27%
<b>SN</b>			<b>42</b>	<b>3 917</b>		<b>32</b>	<b>26%</b>
<b>LH</b>			<b>18</b>	<b>2 268</b>		<b>19</b>	<b>15%</b>
<b>Merged entity</b>			<b>60</b>	<b>6 185</b>	<b>71</b>	<b>51</b>	<b>41%</b>
<b>Total</b>						<b>12 176</b>	<b>14 936</b>

Note: AZ is Alitalia, U2 is easyJet.

- (347) On a global market including all three Milan airports, the merged entity would have a moderate market share (41% of the overall capacity) and face the competition of several airlines (Alitalia, easyJet, Ryanair). On a market restricted to BRU-MXP and BRU-LIN, the merged entity would have a 51% capacity share and would be constrained by easyJet and Alitalia. Alitalia has a strong presence on BRU-LIN. EasyJet operates two daily frequencies from MXP and therefore offers a credible alternative for time-sensitive as well as for non time-sensitive passengers. The same applies to a market restricted to BRU-MXP. Furthermore, as mentioned in paragraph 345, Alitalia is a likely entrant on the BRU-MXP route. This analysis is valid for time-sensitive as well as for non time-sensitive passengers.
- (348) It is therefore concluded that the transaction would not significantly impede effective competition on the BRU-MIL route.

## **b. Direct-indirect overlaps for short-haul routes**

- (349) The parties' activities overlap on some short-haul routes served directly by one party and indirectly by the other. If direct and indirect services were substitutable on these routes, this would lead to a number of affected markets<sup>302</sup>. As already indicated in the market definition section, indirect services may constitute a competitive constraint on direct short-haul services (of less than three hours) with respect to four routes, namely Brussels-Florence, Brussels-Naples, Brussels-Porto and Brussels-Krakow.

### *Brussels-Florence*

- (350) The Brussels-Florence route (BRU-FLR) is an O&D route with [30 000-40 000]\* passengers per year. SN is the only carrier offering a direct service on this route with 10 weekly frequencies while LH/LX offers indirect services via one of its hubs (Frankfurt, Munich or Zürich). Alitalia also offers an indirect service via Rome. The low-cost carrier Ryanair offers direct services from Charleroi airport (CRL) to Pisa (PSA).
- (351) As discussed in paragraph 40, indirect services on the BRU-FLR route are not substitutable to direct services for time-sensitive passengers. As regards non time-sensitive passengers and an overall market including all passengers, the question can be left open as it would not change the conclusion of the competitive assessment.
- (352) Indeed, the market investigation has indicated that direct services from CRL to PSA are constraining direct services from BRU to FLR for non time-sensitive passengers (but not for time-sensitive passengers). When asked whether Ryanair's services on CRL-PSA provide an effective competitive constraint on SN's direct services on the BRU-FLR route, the majority of corporate customers replying to this question answered positively. Travel agents confirmed that Ryanair is an alternative for leisure passengers but not for corporate passengers. The parties claim that FLR and PSA airports are substitutable for non time-sensitive passengers. In particular, they submit that PSA airport is less than 100 km and approximately 1 hour drive from the centre of Florence. Furthermore, the parties submit that many passengers on this route are leisure passengers who go not only to Florence but also to other locations in Tuscany. Internal documents submitted by LH show that the catchment areas of FLR and PSA overlap to a very significant extent and both include a large part of Tuscany. It can therefore be concluded that Ryanair's services on the CRL-PSA route belong to the same market as SN's BRU-FLR flights for non time-sensitive passengers. Given that the route is mainly a leisure route where non time-sensitive passengers represent the bulk of the passengers, the same conclusion holds for a market encompassing all passengers.

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<sup>302</sup> For direct-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds 25% and (ii) LH and SN each have a market share exceeding 2%. The affected routes not fulfilling these two conditions are not deemed to raise competition concerns.

- (353) For time-sensitive passengers, SN and LH therefore offer services in two separate markets (direct services vs. indirect services) and there would thus be no overlap and no anti-competitive effect of the merger. For non time-sensitive passengers or for a market including all passengers, either there would be no overlap, or the services of SN and LH would overlap in the larger market of services from Belgium to Florence-Pisa (including direct and indirect services from BRU to FLR and services from CLR to PSA).

**Table 12: Market shares in 2008 on the Belgium-Florence/Pisa route**

<b>2008 figures on BE-FLR/PSA for all passengers</b>	
SN (direct BRU-FLR)	[10-20]*%
LH/LX (indirect BRU-FLR)	[0-5]*%
<b>Combined</b>	<b>[20-30]*%</b>
Alitalia (indirect BRU-FLR)	[0-5]*%
Ryanair (direct CRL-PSA)	[70-80]*%
Total	[100 000-150 000]* passengers

Source: MIDT figures completed by the parties

- (354) SN offers 10 weekly frequencies for its direct flights while LH/LX offer together 10 daily frequencies with connections in MUC, FRA or ZRH. The merged entity has a [20-30]\*% market share on the market Belgium/Florence-Pisa for all passengers (the market share is likely to be still lower for non time-sensitive passengers) and would be constrained by several competitors. Alitalia is offering indirect services on the BRU-FLR route via Rome (FCO). Alitalia's market share has decreased from the second quarter of 2008 due to economic difficulties of Alitalia. However, Alitalia offers a significant number of frequencies (3 daily frequencies) and is very likely to increase its market share again in 2009. Ryanair is offering flights from CRL to PSA (9 weekly frequencies) and would also constrain the merged entity's behaviour. Furthermore, the market investigation did not point to any competition concern with respect to this route.
- (355) In the light of the above, the transaction would not significantly impede effective competition on the Brussels-Florence route.

### *Brussels-Naples*

- (356) The Brussels-Naples route (BRU-NAP) is an O&D route with [40 000-50 000]\* passengers per year. Market shares for 2008 are as follows:

**Table 13: Market shares in 2008 on the Brussels-Naples route**

<b>Carrier</b>	<b>Market share</b>
SN (direct, seasonal)	[50-60]*%
LH/LX (indirect, all year)	[5-10]*%
<b>Combined</b>	<b>[60-70]*%</b>
Alitalia (indirect, all year)	[20-30]*%
Jetairfly (direct and indirect, seasonal)	[10-20]*%

Source: notifying parties

- (357) It can be left open whether direct and indirect flights are part of the same market for the BRU-NAP route as it would not change the conclusion of the competitive assessment. If direct and indirect flights were considered as two separate markets, there would be no overlap between LH and SN.
- (358) If direct and indirect flights are in the same market, the transaction would lead to an overlap but would not give rise to any competition concern. The combined market share of the parties would amount to [60-70]\*%. Two other competitors are present. In March 2008 Jetairfly started scheduled operations on this route, which are however also seasonal amounting to 2 weekly frequencies from April to September. Alitalia, the Italian national carrier, is also present offering indirect services throughout the year. While Alitalia's market share decreased from above [20-30]\*% to [20-30]\*% in 2008, Jetairfly gained a [10-20]\*% market share in one year. The market shares presented in table 13 overstate the extent of the overlap since the parties' activities overlap only during the summer season when two other competitors are also present. Furthermore, the market investigation did not indicate competition concerns with respect to this route. This analysis is valid for time-sensitive as well as for non time-sensitive passengers.
- (359) In the light of the above, the transaction would not significantly impede effective competition on the BRU-NAP route.

### *Brussels-Porto*

- (360) The Brussels-Porto route (BRU-OPO) is an O&D route with [50 000-60 000]\* passengers (in 2008). SN provides direct services with five weekly frequencies while LH/LX serve the route indirectly through their respective hubs. TAP is also active on the route through direct and indirect services. In addition [40 000-50 000]\* passengers fly annually to Porto from Charleroi airport on Ryanair flights. It is not necessary to determine whether Ryanair flights should be included in the relevant market as the transaction does not significantly

impede effective competition under any alternative market definition. Market shares for 2008 are as follows:

**Table 14: Market shares in 2008 on the Brussels-Porto route**

<b>Carrier</b>	<b>Without CRL-OPO</b>	<b>With CRL-OPO</b>
SN (direct)	[50-60]*%	[30-40]*%
LH/LX (indirect)	[0-5]*%	[0-5]*%
<b>Combined</b>	<b>[50-60]*%</b>	<b>[30-40]*%</b>
TAP (direct and indirect)	[40-50]*%	[20-30]*%
Iberia (indirect)	[0-5]*%	[0-5]*%
Ryanair (direct)	-	[40-50]*%

Source: notifying parties

(361) As shown in paragraph 42, it can be left open whether direct and indirect flights are part of the same market for the BRU-OPO route as it would not change the conclusion of the competitive assessment. If direct and indirect flights were considered as two separate markets, there would be no overlap between LH and SN. If direct and indirect flights are in the same market, the merger would lead to an overlap but would not give rise to any competition concern. The combined market share of the parties would amount to [50-60]\*% in the worst case and the increment brought by the merger would be insignificant. The merged entity would be constrained by the strong presence of TAP. Although TAP is a member of Star Alliance and code-shares with LH on a number of routes, LH does not have any bilateral cooperation agreement with TAP meaning that TAP can be deemed for the purpose of this case to compete against LH on the BRU-OPO route.

(362) In the light of the above, the transaction would not significantly impede effective competition on the BRU-OPO route.

#### *Brussels-Krakow*

(363) The Brussels-Krakow route (BRU-KRK) is an O&D route with [20 000-30 000]\* passengers in 2008. SN is the only carrier providing direct services via four weekly frequencies. A number of carriers, including LH, provide indirect services via their respective hubs. Market shares for 2008 are as follows:

**Table 15: Market shares in 2008 on the Brussels-Krakow route**

<b>Carrier</b>	<b>Market share</b>
SN (direct)	[60-70]*%
LH/LX (indirect)	[10-20]*%
<b>Combined</b>	<b>[70-80]*%</b>
LOT (indirect)	[10-20]*%
Czech Airlines (indirect)	[5-10]*%
Austrian Airlines (indirect)	[5-10]*%

Source: notifying parties

- (364) As shown in paragraph 43, it can be left open whether direct and indirect flights are part of the same market for the BRU-KRK route as it would not change the conclusion of the competitive assessment. If direct and indirect flights were considered as two separate markets, there would be no overlap between LH and SN.
- (365) If direct and indirect flights are in the same market, the merger would lead to an overlap but would not give rise to any competition concern. Even though the market share of the merged entity would amount to [70-80]\*%, there are three other competitors (LOT, Czech Airlines and Austrian Airlines) that provide indirect services and that would exert a similar or higher level of competitive constraint on SN as that exerted on SN by LH before the merger. Their collective market share is higher than that of LH, which would constitute the increment from the concentration on the present route. Finally, the competitive constraint exercised by LH prior to the merger was weak and was similar to that exerted by LOT, or even lower, considering LOT's prominent market presence in Poland. In other words, LH's [10-20]\*% market share increment is largely replicated by LOT's [10-20]\*% share and the transaction would not significantly impede effective competition on this route.
- (366) LOT is a member of Star Alliance, code-shares with LH on a number of routes and has signed a number of bilateral cooperation agreements with LH. However, the market investigation has indicated that LOT can be deemed for the purpose of this case to compete against LH on the BRU-KRK route. Austrian Airlines is also a member of Star Alliance and has entered into several bilateral agreements with LH. It is not necessary to determine whether Austrian Airlines competes with LH on the BRU-KRK route since the presence of other competitors is already sufficient to constrain the merged entity.
- (367) Furthermore, the market investigation did not indicate competition concerns with respect to this route. This analysis is valid for time-sensitive as well as for non time-sensitive passengers, and therefore also on a market encompassing all passengers. In the light of the above, the transaction would not significantly impede effective competition on the BRU-KRK route.

### **c. Direct-indirect overlaps for mid-haul routes**

- (368) The parties' activities overlap on some mid-haul routes served directly by one party and indirectly by the other. If direct and indirect services were substitutable on these routes, this would lead to a number of affected markets<sup>303</sup>. As mentioned in paragraph 45, the market investigation in this case showed that indirect flights can provide a competitive constraint on direct services on mid-haul routes, especially when direct flights do not allow for same-day return flights. That is the case amongst the routes Brussels-Kiev, Hamburg-Lisbon, Hamburg-Madrid, and Brussels-Tel Aviv. For the other

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<sup>303</sup> For direct-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds 25% and (ii) LH and SN each have a market share exceeding 2%. The affected routes not fulfilling these two conditions are not deemed to raise competition concerns.

hypothetical affected markets, indirect flights are less likely to provide a constraint.

*Brussels-Kiev ([30 000-40 000]\* passengers per year)*

- (369) SN markets this route under a code-share agreement with Ukraine International Airlines. This is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier. SN's market share on this route in 2008 amounted to approximately [5-10]\*% of overall traffic. LH (including LX) offers an indirect service between Brussels and Kiev and has a market share of approximately [10-20]\*%. Ukraine International Airlines, the only carrier operating direct flights between Brussels and Kiev, has a market share of [50-60]\*%.
- (370) The parties' combined market share for all passengers remains limited, amounting to [10-20]\*%. Even on the narrower time-sensitive passengers market, the parties' combined market share remains relatively low ([20-30]\*%) while the parties would continue to face competition from the market leader Ukraine International Airlines having [30-40]\*% of the market.
- (371) In the light of the above, the transaction would not significantly impede effective competition on the Brussels-Kiev route.

*Hamburg-Madrid ([40 000-50 000]\* passengers per year)*

- (372) LH's market share of overall traffic (direct and indirect, and including LX) is [70-80]\*%, while SN, which serves this route indirectly, has a market share of [0-5]\*% of overall traffic. Air France offers an indirect service with a significant market share ([10-20]\*%).
- (373) In view of the small increment (from [70-80]\*% to [70-80]\*%) and the presence of a significant competitor (Air France), the transaction would not significantly impede effective competition on this route.

*Brussels-Tel Aviv ([100 000-150 000]\* passengers per year)*

- (374) SN and Israel's national airline El Al both operate direct flights between Brussels and Tel Aviv and code-share on each other's flights. This reciprocal code-share agreement is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier. SN has a market share of approximately [30-40]\*% of overall traffic between Brussels and Tel Aviv, while LH (including LX) has a market share of approximately [10-20]\*% of overall traffic (indirect). El Al has a market share of [40-50]\*% of overall traffic. Austrian Airlines and Malev each have a market share of [0-5]\*%.
- (375) Despite the parties' high combined market shares, the market is expected to remain competitive because El Al is a strong competitor and LH only operates indirect services and is therefore not SN's closest competitor.



- (376) In the light of the above, the transaction would not significantly impede effective competition on the Brussels-Tel Aviv route.

*Other direct-indirect overlaps on mid-haul routes*

- (377) On other direct-indirect overlaps on mid-haul routes, same-day direct return trips are possible with direct services, meaning that it is less likely that indirect services compete with direct services. For the sake of completeness, the Commission has in any event analysed the impact of the transaction on these markets. If indirect services were considered as part of the relevant market, two routes, Brussels-Athens and Brussels-Moscow, would be affected by the transaction.<sup>304</sup> It is, however, not necessary to decide whether indirect services constrain direct services on these routes, since the parties are not the closest competitors and would continue to face competitive constraints from competitors such as Aeroflot, which has a [40-50]\*% market share for all passengers on Brussels-Moscow, and Olympic Airways, which has a [50-60]\*% share of all passengers on the Brussels-Athens route. Furthermore, the market investigation did not point to any competition concerns with respect to any of these routes.
- (378) In the light of the above, the transaction would not significantly impede effective competition on the Brussels-Athens and Brussels-Moscow routes.

**d. Indirect-indirect overlaps**

- (379) The activities of the parties also overlap on routes where both operate indirect flights. As mentioned in paragraph 36, direct flights should also be included in the relevant market in such cases. Consequently, in this case, Lisbon-Vienna, Athens-Manchester and Helsinki-Nice are affected markets.<sup>305</sup>
- (380) As table 16 shows, on each of those three routes, the increment brought about by the transaction would be small and passengers would have a choice between a number of other competitors after the merger.

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<sup>304</sup> As mentioned in footnote 303, for direct-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds 25% and (ii) LH and SN each have a market share exceeding 2%.

<sup>305</sup> For indirect-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds [20-30]\*% and (ii) LH and SN each have a market share exceeding [0-5]\*% and (iii) total annual traffic exceeds [30 000-40 000]\* passengers. The affected routes not fulfilling these three conditions do not raise competition concerns.

**Table 16: Market shares on short-haul, indirect-indirect overlaps**

	LH's market share	SN's market share	Merged entity's market share	Competitors (all indirect unless specified otherwise)
Lisbon-Vienna ([30 000-40 000]* passengers)	[50-60]*%	[0-5]*%	[50-60]*%	TAP ([10-20]*%), Air France ([0-5]*%)
Athens-Manchester ([30 000-40 000]* passengers)	[20-30]*%	[0-5]*%	[20-30]*%	Olympic (direct, [40-50]*%), Air France ([10-20]*%)
Helsinki-Nice ([30 000-40 000]* passengers)	[20-30]*%	[5-10]*%	[30-40]*%	SAS (direct/indirect, [30-40]*%), <sup>306</sup> Finnair (direct/indirect, [10-20]*%), Air France ([5-10]*%)

Source: Form CO

(381) In the light of the above, the transaction would not significantly impede effective competition on the Lisbon-Vienna, Athens-Manchester and Helsinki-Nice routes.

### 3.4 Long-haul routes

(382) There is no long-haul direct-direct overlap that would constitute a market affected by this transaction.

(383) As far as long-haul direct-indirect overlaps are concerned, several of these routes are too thin to be considered as a substantial part of the common market. Therefore, the Commission has limited its investigation to three affected markets.<sup>307</sup>

(384) As far as long-haul indirect-indirect overlaps are concerned, the Brussels-Los-Angeles route is affected by the transaction.<sup>308</sup>

(385) Again, the Commission has examined the competitive impact of the concentration on each of these routes separately for time-sensitive and non-time-sensitive passengers, and found that the result of the assessment was the same for both kinds of passengers. As a result, due to the number of routes

<sup>306</sup> SAS is a member of Star Alliance and has entered into several bilateral agreements with LH. It is however not necessary to determine whether SAS competes with LH on the Helsinki-Nice route since the presence of other competitors is already sufficient to constrain the merged entity.

<sup>307</sup> For direct-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds [20-30]\*% and (ii) LH and SN each have a market share exceeding [0-5]\*%. The affected routes not fulfilling these two conditions do not raise competition concerns.

<sup>308</sup> For indirect-indirect overlaps, this analysis focuses on routes where (i) the combined market share of LH and SN exceeds [20-30]\*% and (ii) LH and SN each have a market share exceeding [0-5]\*% and (iii) total annual traffic exceeds [30 000-40 000]\* passengers. The affected routes not fulfilling these three conditions do not raise competition concerns.

involved, only aggregated market shares for all passengers are presented in this section.

**a. Direct-indirect overlaps**

*Brussels-Beijing ([30 000-40 000]\* passengers per year)*

- (386) SN markets seats on Hainan Airlines' direct flights between Brussels and Beijing. This is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier. SN has a market share of [10-20]\*% of overall traffic on the basis of this code-share, while LH offers an indirect service on this route and has a market share of 10%. Hainan Airlines is the only carrier operating a direct service on this route. It has a market share of [40-50]\*%. Other competitors offering indirect services on this route include Air France ([10-20]\*%), British Airways ([0-5]\*%) and Finnair ([0-5]\*%).
- (387) The parties' combined market share of [20-30]\*% is fairly limited. In view of the parties' low market share and the presence of several strong competitors, the transaction would not significantly impede effective competition on this route.

*Brussels-Delhi ([40 000-50 000]\* passengers per year)*

- (388) SN markets direct flights on this route on the basis of a code-share with Jet Airways. This is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier.
- (389) SN has a market share of [0-5]\*% of all passengers in 2008, while LH (including LX) offers indirect services and had a market share of [20-30]\*% of all passengers in 2008. The main competitors are Jet Airways ([50-60]\*%), British Airways and Air France (each [0-5]\*%).
- (390) In view of the low increment brought about by the transaction and the presence of several competitors, including a very strong competitor (Jet Airways), the transaction would not significantly impede effective competition on this route.

*Brussels-Chicago ([30 000-40 000]\* passengers per year)*

- (391) SN does not operate flights on this route but merely markets this route under a code-share agreement with American Airlines. This is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier. United Airlines is the only other carrier operating a direct service between Brussels and Chicago, albeit with a stopover in Washington D.C. which increases the journey time by three hours.
- (392) SN has a market share of [10-20]\*% while LH (including LX) has a market share of [0-5]\*%. Internal documents submitted by LH and SN show that the code-share agreement between SN and American Airlines will be discontinued once the transaction is completed and SN joins Star Alliance. American

Airlines has confirmed in response to the market investigation that it also expects the code-share to be terminated after the merger. The overlap between the two merging parties would therefore disappear.

- (393) In view of the above, the transaction would not significantly impede effective competition on this route.

**b. Indirect-indirect overlaps**

*Brussels-Los Angeles ([40 000-50 000]\* passengers per year)*

- (394) SN markets seats on this route under a code-share agreement with American Airlines, which operates an indirect service. This is a standard code-share agreement that does not provide for price-coordination between the marketing carrier and the operating carrier.
- (395) SN has a market share of [0-5]\*% while LH (including LX) has a market share of [5-10]\*%. As mentioned in paragraph 392, the code-share is likely to be terminated after the merger and the overlap between the two parties would therefore disappear.
- (396) In view of the above, the transaction does not significantly impede effective competition on this route.

**3.5 Conclusion**

- (397) It is therefore concluded that the transaction, as originally proposed by the notifying party, would lead to a significant impediment of effective competition on the Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg and Brussels-Zürich routes, both for time-sensitive passengers and non-time-sensitive passengers, and therefore also for a market including all passengers. The transaction would not lead to competition concerns on the other routes affected by the transaction.

**B. AIR TRANSPORT OF CARGO**

**1. RELEVANT MARKET DEFINITION**

- (398) With respect to air cargo transport markets, the Commission previously found the O&D approach to market definition inappropriate given that cargo is generally less time-sensitive than passengers and that cargo is usually transported by transmodal means of transport "behind" and "beyond" the origin and destination points. Accordingly, the relevant geographic market should be defined more broadly. As regards intercontinental routes, the corresponding catchment areas broadly correspond to continents, at least for those continents

where adequate transport infrastructure allows for onward connections (for example, by train, truck, inland waterways, etc).<sup>309</sup> In line with the previous Commission decisions and the notifying party's submission, the market investigation in this case confirmed that the transport infrastructure across Africa is insufficient to consider Africa as a single catchment area. Therefore, air cargo transport towards Africa should be assessed on continent to country basis.

- (399) In addition, as air cargo transport markets are by nature unidirectional, given the differences in demand on each end of the route, the relevant markets have to be assessed on this basis.<sup>310</sup>
- (400) The Commission in previous cases left open the question whether the market for air cargo transport should be further subdivided according to the nature of the cargo. The Commission, however, indicated that some types of goods, such as dangerous goods, may require special handling, meaning that they can be transported only on full-freighter aircraft.<sup>311</sup> In this case, on some affected markets, approximately 80-90 % of the cargo transported by the parties is perishable cargo (fish, meat and vegetables, fresh cut flowers, etc). The notifying party submits that it is not appropriate to subdivide air cargo markets into segments depending on the nature of the cargo. The market investigation confirmed that subdivisions according to the nature of cargo are not appropriate. In any event, the existence of possible sub-markets for perishable cargo or other types of cargo can be left open in this case, as no competition concerns would arise on any alternative market definition.

## **2. COMPETITIVE ASSESSMENT**

- (401) The parties' activities overlap on the routes between Europe and Cameroon and Europe and Senegal. As mentioned in paragraph 399, air cargo markets are unidirectional and, as regards the African continent, must be assessed on a continent to countries basis.
- (402) As there are no public sources offering reliable market data for transport of cargo towards African countries, the market shares in table 17 are based on the parties' best estimates.

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<sup>309</sup> See case COMP/M.3280 – Air France/KLM, paragraph 36, and case COMP/M.3770 – Lufthansa/Swiss, paragraph 19.

<sup>310</sup> Case COMP/M.5181 – Delta Air Lines/Northwest Airlines, paragraph 19.

<sup>311</sup> Case COMP/M.3280 – Air France/KLM, paragraph 37.

**Table 17: Market shares on the three affected air cargo markets**

	LH's market share (including LX)	SN's market share	Merged entity's market share	Competitors (all indirect unless specified otherwise)
Cameroon to Europe	[10-20]*%	[0-5]*%	[20-30]*%	Air France/KLM ([40-50]*%), Africa West ([10-20]*%), several other competitors with at least [5-10]*% each
Europe to Cameroon	[0-5]*%	[5-10]*%	[10-20]*%	Air France/KLM ([40-50]*%), Africa West ([10-20]*%), several other competitors with at least [5-10]*% each
Senegal to Europe	[10-20]*%	[20-30]*%	[30-40]*%	Air France/KLM ([50-60]*%), several other competitors with at least [5-10]*% each
Europe to Senegal	[0-5]*%	[20-30]*%	[20-30]*%	Air France/KLM ([50-60]*%), several other competitors with at least [5-10]*% each

Source: Form CO

(403) The parties' combined market shares remain limited, reaching maximum [30-40]\*% with respect to the Senegal to Europe route. While with respect to all the routes, Air France/KLM is the clear market leader having approximately [50-60]\*% of the market, there are several other competitors present. Moreover, according to the market investigation the barriers to entry are low which can be demonstrated by the fact that several entries have occurred over the last few years. Finally, customers in this business are large, well-informed, customers enjoying a significant degree of bargaining power.

(404) In the light of the above and the fact that the market investigation did not point to any competition concerns with respect to any of these routes, the transaction would not significantly impede effective competition with respect to any of the air transport of cargo markets.

### **C. EFFICIENCIES**

(405) On 3 March 2009, the parties made a presentation to the Commission which described, in very general terms, the rationale for the transaction and the expected synergies. A paper on efficiencies was then submitted as an Annex to the reply to the Statement of Objections.<sup>312</sup>

<sup>312</sup> See Annex 10 to the reply to the Statement of Objections "Lufthansa/SN: Efficiencies and customer benefits" (hereafter, "the Efficiency paper").

## 1. THE NOTIFYING PARTY'S CLAIMS

(406) According to the parties, there are broadly four types of efficiencies and benefits to consumers generated by the transaction. First, SN would benefit from lower fixed and variable costs through LH's financial strength and purchasing power. Second, on the overlap routes, SN and LH would optimise the networks and frequencies, thus leading to cost reductions and more convenient schedules. Third, SN's loyalty programme would be improved through its integration into LH's "Miles & More" FFP. Fourth, the merger would also bring network benefits by keeping a number of routes that SN might have discontinued while ensuring that new direct services from BRU are developed. These four efficiencies/benefits are discussed in greater detail in the remainder of this paragraph:

- Reduction of SN's overall cost base: SN's integration in the LH group would lead to a reduction in fixed and variable costs of around EUR [...] million or more per year, if and once all potential savings are implemented. These savings stem from lower aircraft purchasing and financing costs, lower fuel procurement costs, and lower costs of MRO services (maintenance, repair and overhaul), outstation staff and ground-handling operations.
- Route-specific scheduling benefits and cost reductions: The transaction would allow the parties to optimise their capacity utilisation and/or scheduling on the overlap routes. More convenient schedules would be offered to consumers on the BRU-MUC and BRU-BER routes, whereas capacity optimisation would lead to substantial cost savings on the BRU-HAM and BRU-FRA routes. In total, cost reductions on the overlap routes could be in the range of EUR [...] million to EUR [...] million per annum depending on the final chosen schedules. These savings would amount to EUR [...] per passenger on the BRU-FRA route, EUR [...] per passenger on the BRU-HAM route and EUR [...] per passenger on the BRU-MUC route.
- Increased value of SN's FFP from merging with LH's FFP: Because of its vastly smaller network, SN's Privilege FFP offers "earn and burn" opportunities that are clearly inferior to LH's Miles & More (M&M) FFP program, [*comparison of LH's and SN's FFP*]\*. By merging SN's Privilege program into M&M, SN's customers are likely to increase their use of the FFP in line with usage rates for existing LH customers, which in turn means that the FFP would become a more effective tool in terms of granting rebates by awarding free flights and allowing FFP members to gain higher status tiers more rapidly.
- Direct services out of Brussels would be started/maintained: The transaction would allow SN to safeguard its current offering of routes and services and to offer new direct services out of BRU. In a standalone

scenario, SN would be likely to [*SN's network strategy in a standalone scenario*]\*. At the same time, the transaction would allow for the opening of [...] additional long-haul routes and [...] additional mid-haul routes that would be used by around [700 000-800 000]\* passengers and would add around EUR [...] million per year to SN's total revenues. The incremental effect of the transaction would thus be [...] passengers and around EUR [...] million in revenues.

(407) According to LH, all of the efficiencies identified in the previous paragraph are acceptable under the Merger Regulation and the Horizontal Merger Guidelines:

- Verifiability: The projected efficiencies would be consistent with pre-merger business plans and projections of the parties and LH's experience with integrating LX. To the extent that they are readily quantifiable, those benefits would vastly exceed any potential losses to consumers on the overlap routes.
- Merger specificity: In the absence of the merger, LH would have no interest in allowing SN to benefit from LH's lower cost base, LH's sales force and LH's corporate customer base. Capacity rationalisation and schedule optimisation on overlap routes could not be achieved either. SN would be unable to enter (or maintain) the routes mentioned in paragraph 406 without access to the cost and revenue synergies brought by LH, and LH would have no incentive to enter these routes out of Brussels either.
- Consumer benefits: In LH's view, many of the benefits such as optimised schedules on overlap routes, FFP extension and more direct services out of Brussels would accrue immediately and inevitably to consumers. Other cost savings that are generally variable with the number of routes/seats offered would lower SN's threshold for offering additional services out of Brussels. These benefits accrue to customers in the catchment areas of BRU, HAM, FRA, BER and MUC and thus the same group of customers as those travelling on overlap routes.

## 2. THE COMMISSION'S ASSESSMENT

(408) As set out in the Horizontal Merger Guidelines, the three following cumulative conditions apply: (i) the efficiencies will bring benefits to consumers, (ii) the efficiencies are merger specific and (iii) the efficiencies are verifiable. These general principles are clearly recognised by LH, as indicated in paragraph 407.

(409) The Commission's view is that the efficiencies are not verifiable and, to a large extent, are not merger specific, and it is not likely that they would benefit consumers on the affected routes to the extent that the efficiencies would counter-balance the competitive harm.



## 2.1 Verifiability

- (410) LH's efficiency claims appear to be largely based on documents that were produced for the purposes of this investigation rather than on business documents that were prepared while contemplating the transaction and could objectively and independently assess the scope for efficiency gains from acquiring SN. For example, in the Annex to the efficiency paper, [*SN's network strategy in a standalone scenario and in a post-transaction scenario*]\*. This document was created on [...] (well into the Phase II investigation) and is not supported by detailed analyses. LH has not submitted any document pre-dating its merger plans that would support its claims.
- (411) LH's statements about lower aircraft financing and purchasing costs are based on questionable estimates, and no "hard" evidence is provided in support of these claims.<sup>313</sup> The Commission's inability to independently verify LH's claims also applies to the estimates of the operating costs, for which no evidence is presented but for the experience of LX's integration.
- (412) The fact that the integration of LX by LH has produced operating cost synergies is of course relevant in indicating that certain types of cost savings and operating efficiencies can be achieved through an airline merger and in particular through integration with LH's network. However, it does not seem appropriate to apply the operating cost synergies achieved through the LH/LX merger to the LH/SN merger without any further explanation or description. LH claims that cost synergies of EUR [...] per annum were reached in the [...] year after integration, which amounts to [...]% of LX's turnover in 2008 and, based on this example, argues that the operational cost savings of EUR [...] that are expected for SN are realistic. The Commission does not find this comparison convincing given the absence of (i) any assessment of LX's cost base before the merger, (ii) any discussion of the drivers of the achieved synergies and (iii) any discussion of the similarities between the synergies expected through the SN acquisition and those achieved through the LX acquisition.
- (413) LH also uses its experience with LX in support of its argument regarding the likelihood that new routes would be opened (although LH itself noted that "it is of course difficult to project in detail the boost that LH would give to SN").<sup>314</sup> It is however important to note that LH took over LX under very different market conditions, and LX's business model is based on a Zürich hub that is supported by two other bases (Geneva and Basel) rather than a single Brussels hub, and thus in general there seem to be important differences between these two airlines. This simple comparison without further analysis and justification thus does not seem to be convincing.

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<sup>313</sup> The capital cost savings section of the Efficiency paper contains extremely simplified calculations to evaluate the cost savings arising from access to capital on better terms and discounts on new aircraft purchased (see pages 4-5 of the Efficiency paper). [*SN's strategic plans regarding its fleet*]\*. The calculations are not discounted, and the lack of reasonable estimates of the flow of annual cost savings over time and of sensitivity analyses regarding the strong underlying assumptions is problematic.

<sup>314</sup> See paragraph 53 of LH's Efficiency paper.

- (414) In conclusion, LH's efficiency paper in general does not allow the Commission to verify the claimed efficiencies.

## 2.2 *Merger specificity*

- (415) The Commission has evaluated the range of efficiencies claimed by LH in terms of their merger-specificity. While some efficiencies may be deemed merger-specific (for example, certain cost savings like the aircraft purchasing costs), other efficiencies such as the FFP benefits but also the network expansion claims do not appear to meet the criterion of merger-specificity in this case.
- (416) In the efficiency paper, LH bases its analysis of merger specificity on [*basis of LH's analysis*]\*. This does not correspond to the merger specificity test foreseen by the Horizontal Merger Guidelines. When assessing the merger specificity of efficiencies, the Commission evaluates whether SN and LH could achieve the same efficiencies through other, less anti-competitive means. The Commission only considers alternatives that are reasonably practical in the business situation faced by the merging parties having regard to established business practices in the industry concerned<sup>315</sup>. It is furthermore for the notifying party to provide in due time the relevant evidence necessary to demonstrate that there are no less anticompetitive, realistic and attainable alternatives than the transaction that could preserve the claimed efficiencies. The Commission notes that LH has not provided any evidence in this respect.
- (417) The Commission finds that some of the efficiencies claimed could be achieved by SN and LH through the participation of SN in less anti-competitive cooperation agreements with LH or other airlines than the transaction. This is in particular the case for the efficiencies linked to the FFP programs. Participation in FFPs is a very low level of cooperation between airlines, which does not even require that the airlines are members of the same alliance. For instance, SN's own FFP program allows its members to collect and spend miles not only on SN flights, but also on flights operated by several other airlines such as American Airlines, British Airways, Etihad, Jet Airways and Hainan Airlines. LH's own FFP program Miles & More also includes many airlines which are not members of Star Alliance. Of the 41 Miles & More members, 17 are not Star Alliance members, including large airlines such as Air India, Ethiopian, Jet Airways and Mexicana. A joint FFP or FFP reciprocity without any merger or alliance membership is therefore a common practice in the airline industry. Furthermore, this type of agreement is much less far-reaching than an alliance or a merger, and is therefore less anti-competitive than the transaction. SN has been a member of Miles & More since March 2009, although it is not a member of Star Alliance and the transaction has not been implemented. Therefore in this case, FFP efficiencies, if any, are not merger specific.

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<sup>315</sup> See Horizontal Merger Guidelines, paragraph 85.

- (418) The same conclusion holds for the optimisation of networks. SN and LH could optimise their network without the transaction through a series of code-share agreements. Network extension code-share agreements for the purpose of being able to offer a route that one would otherwise not operate are less anti-competitive than a merger. These agreements are used very frequently in the airline industry, as indeed SN currently does for both short-haul and long-haul (for instance U.S. routes with American Airlines). LH and SN have already signed code-share agreements in March 2009 on cross-border flights between Germany and Belgium and to other destinations in Europe. As a consequence, the network optimisation efficiencies in this case are not merger specific.
- (419) Finally, with respect to operating cost savings, LH's efficiency claims seem to suggest that SN could not undertake any of these savings on its own. Indeed, the efficiency paper does not even mention operating cost savings that SN could undertake as a stand-alone company. In current conditions, in which almost every carrier is subject to important cost saving overhauls due to the current economic crisis, it seems likely that SN could undertake a number of cost cutting measures on its own.
- (420) It is thus concluded on the basis on the available evidence that the claimed efficiencies are not merger-specific (with the exception of certain cost savings in terms of the cost of financing, which in any event do not meet the other conditions set out in the Horizontal Merger Guidelines).

### **2.3 Benefits to consumers**

- (421) To counteract the anticompetitive effects of a merger, efficiencies must be likely to benefit consumers. Efficiencies should in principle benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.<sup>316</sup>
- (422) As noted in paragraph 406, LH claims that LH's FFP and the start of more direct services out of Brussels would accrue immediately and inevitably to consumers.
- (423) With regard to FFP efficiencies, LH has not provided concrete elements demonstrating that those efficiencies would be sufficient to compensate the harm to competition derived from the transaction<sup>317</sup>. In particular, the monetary value of FFP miles is low when compared to the price movements that are attributable to the presence or absence of competition on a route. For instance, on the route Brussels-Frankfurt, the entry of SN resulted in a decrease of prices charged by LH for economy non flexible tickets by [15-20]\*% (see paragraph 143). In conclusion on this point, apart from the fact that FFP efficiencies fail

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<sup>316</sup> See Horizontal Merger Guidelines, paragraph 79.

<sup>317</sup> Moreover, in its analyses of FFPs, LH has not included basic facts like the differences in the number of miles to be spent to get a free ticket on LH and SN routes. Beside the arguments put forward in paragraphs 410-414, this shows in itself that the verifiability criterion of the alleged efficiencies relating to FFP is not met in this case.

the merger specificity test and that the parties have not provided any sufficient quantification of FFP efficiencies, the benefits of FFPs are clearly of a much smaller order of magnitude than the anti-competitive effects of the transaction.

- (424) With regard to the direct services that would be started or maintained, it is also important to note that it is not clear how the customers on the affected routes would benefit from the opening of new routes such that it would counter-balance the competitive harm caused by the transaction on these markets. LH seems to argue that even if there were hypothetical price increases on the affected routes, SN's customers would be compensated for these price increases by these new services. LH submits in support of this argument the spend of SN's largest corporate customers on the overlap routes as opposed to their total spend, which suggests that the spend on the overlap routes is fairly small.<sup>318</sup> It is however important to note that this does not rule out the possibility that there would be a large proportion of customers (such as some corporate customers or leisure passengers) that primarily travel on the overlap routes, and thus would not benefit from these alleged efficiencies, and LH has not submitted any evidence that would refute this. Additionally, even if one were to accept that passengers in the catchment area of Brussels may benefit from these efficiencies, it is not clear how passengers in the catchment areas at the other end of the route (FRA, MUC, HAM and BER) would benefit from the opening of new routes out of Brussels. For example, both MUC and FRA are large LH hubs, and it is likely that any new destinations opened from Brussels (which would be new indirect services from the point of view of passengers in the catchment areas of FRA and MUC) can already be reached today either with direct or indirect services from these large LH hubs.
- (425) As to lower aircraft purchasing and financing costs, it is not clear how these cost savings that can in general be considered as fixed cost savings would be passed onto consumers in terms of fare reductions. Similarly, cost savings due to maintenance, repair and overhaul (MRO) or IT platform savings can all be considered as fixed cost savings. Indeed, as paragraph 80 of the Horizontal Merger Guidelines states "*cost efficiencies that lead to reductions in variable or marginal costs are more likely to be relevant to the assessment of efficiencies than reductions in fixed costs; the former are, in principle, more likely to result in lower prices for consumers.*"
- (426) In connection with paragraph 80 of the Horizontal Merger Guidelines, LH notes that "the cost savings in question are predominantly variable with respect to the number of flights and/or routes operated or seats (capacity) offered, whether in the short-run (for instance fuel costs) or in the medium or longer run (e.g. crew costs, fleet costs, MRO costs etc)."<sup>319</sup> LH also notes that "in Ryanair/Aer Lingus, the Commission accepted the principles that in the airline industry, lower fixed costs into a route lower the yield levels at which entry becomes profitable, and that such entry tends to increase competition for a given route. In other words, reductions in costs that vary with the routes (or flights) offered allow the operation of marginal routes that are currently not

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<sup>318</sup> See Annex 3 to the Efficiency paper.

<sup>319</sup> See paragraph 67 of LH's Efficiency paper.

viable, because the yield required to justify the route falls as a result of the cost savings.”<sup>320</sup> While LH’s argument is indeed correct, the Aer Lingus/Ryanair decision also noted that “the claimed fixed cost efficiencies would not affect Ryanair’s price setting decisions on existing flights. Any consumer benefit would materialise only when and if Ryanair opted to increase frequencies on existing routes...or if and when it opened a new route that was not viable before the fixed-cost reduction but became so after the merger. Even if the claimed efficiencies were realized, any consumer benefit would therefore not be immediate but conditional on a chain of event and thus considerably less certain than the price effect of a marginal cost reduction (which would create immediate incentives for price reductions).”<sup>321</sup>

- (427) As explained by LH in its efficiency paper, the merged entity plans [*LH's efficiency claims and post-transaction plans with regard to frequencies/capacity*]\*<sup>322</sup> Thus, the possible consumer benefits foreseen in the Ryanair/Aer Lingus decision as a consequence of the fixed cost efficiencies (that is to say, an increase of frequencies) would not materialise for the routes at stake. On the contrary, the reduction in capacity would be likely to lead to increased fares after the merger, all other things remaining equal.
- (428) [*LH's efficiency claims and post-transaction plans with regard to frequencies and their impact on fares*]\*<sup>323</sup> it is thus likely that non-flexible economy class fares on the Brussels-Frankfurt route would return to at least the levels prior to SN’s entry [*LH's efficiency claims and post-transaction plans with regard to frequencies/capacity*]\*.
- (429) [*LH's efficiency claims and post-transaction plans with regard to frequencies/capacity*]\* As is clear from Paragraph 80 of the Horizontal Merger Guidelines, “*cost reductions, which merely result from anti-competitive reductions in output, cannot be considered as efficiencies benefiting consumers*”. These cost savings thus cannot be taken into account.<sup>324</sup> The Commission notes that, with the exception of the [...] route, the cost savings expected from reducing capacity are surprisingly low and [*LH's efficiency claims*]\*.
- (430) In short, paragraph 84 of the Horizontal Merger Guidelines states that “the incentive on the part of the merged entity to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in the market and from potential entry.” Given that (i) the transaction would lead to a monopoly on at least the Brussels-Munich and Brussels-Hamburg routes and would remove the closest competitor on the Brussels-Frankfurt route, (ii) many of the savings that the notifying party

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<sup>320</sup> See paragraph 67 of LH’s Efficiency paper.

<sup>321</sup> See paragraph 1148 of the Ryanair/Aer Lingus decision.

<sup>322</sup> See section 1.2 of LH’s Efficiency paper.

<sup>323</sup> Two flights are called “wingtip to wingtip” when they leave and arrive almost at the same time and are therefore in direct competition.

<sup>324</sup> In the reply to the Statement of Objections, [*assumptions for LH's efficiency*].

identified are fixed cost savings, and (iii) the notifying party has not identified a mechanism of how any of the savings could be applied to passengers on the affected overlap routes, it is concluded that it is unlikely that the merged entity would pass enough of the claimed efficiency gains on to consumers to outweigh the competitive harm.

### **3. CONCLUSION**

- (431) It is concluded, on the basis of the information submitted by the notifying party, that the efficiencies are not verifiable and to a large extent are not merger-specific, and that it is not likely that they would benefit consumers on the affected routes to such an extent that they could counter-balance the competitive harm. Indeed, paragraph 84 of the Horizontal Merger Guidelines notes that *“it is highly unlikely that a merger leading to a market position approaching that of a monopoly, or leading to a similar level of market power, can be declared compatible with the common market on the ground that efficiency gains would be sufficient to counteract its potential anti-competitive effects.”*

### **D. COMMITMENTS**

#### **1. COMMITMENTS SUBMITTED BY THE PARTIES**

- (432) In order to address the significant impediment of effective competition identified by the Commission on the Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg and Brussels-Zürich routes, the Parties submitted commitments ("the Commitments") on 29 April 2009. On 30 April 2009 the Commission launched a market test in order to gather the opinion of competitors and customers on the Commitments. In the light of the results of the said market test, the Parties presented a revised version of the Commitments on 28 May 2009, which addressed weaknesses identified in their first proposal.
- (433) The commitments submitted by the Parties aim at reducing the barriers to entry and facilitating entry for a new entrant<sup>325</sup> on the Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg and Brussels-Zürich routes.
- (434) The Commitments proposed by the Parties comprise a number of measures aiming at facilitating entry of a new entrant. The Commitments consist, in

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<sup>325</sup> Defined in the Commitments as "Any airline, or airlines that are each members of the same alliance (other than the Parties), including all airlines controlling it/them or controlled by it/them, able to offer a new or additional Competitive Air Service individually or collectively by codeshare and needing a slot or slots to be made available by Lufthansa in accordance with the Commitments to operate a Competitive Air Service."

particular, of the release and transfer of a number of slots at the airports in Brussels, Frankfurt, Munich, Hamburg and Zürich, as well as several ancillary measures.

## **1. Commitments concerning slots**

### **a) Slot release on city pairs with competition concerns**

- (435) The Parties commit to make slots<sup>326</sup> available, according to a specific procedure, at the airports in Brussels, Frankfurt, Munich, Hamburg and Zürich, in order to facilitate entry by one or more new entrants on the four routes on which the Commission identified a significant impediment of effective competition<sup>327</sup> (hereafter the "Identified City Pairs").
- (436) The number of slots to be made available enables a new entrant to operate up to three frequencies per day on the Brussels-Hamburg and Brussels-Munich city pairs and up to two frequencies per day on the Brussels-Frankfurt and Brussels-Zürich city pair. The number of slots will be reduced by the number of slots already transferred to a new entrant, unless these slots cease to be operated by the new entrant and revert subsequently to the Parties. The number of frequencies allowed by the slot transfer will also be reduced by the number of frequencies that a new entrant already operates on a given city pair.

### **b) Conditions pertaining to the slot transfer**

- (437) The slot transfer procedure foreseen by the Commitments will run in parallel with the normal slot allocation procedure. An airline wishing to obtain slots on one of the Identified City Pairs will request slots through the normal slot allocation procedure and apply for a slot transfer under the Commitments at the same time. If the applicant's slot request to the slot coordinator is not satisfied as a result of the IATA Scheduling Conference, the Commitments provide that the Parties must offer to transfer the requested slots to the applicant within one week following the applicant's commitment to operate them. The Slot Transfer Agreement between the Parties and the applicant must be signed and the transfer performed within three weeks after the Slot Handback Deadline, that is to say, 15 January for the IATA Summer period and 15 August for the IATA Winter Period. The Slot Transfer Agreement will have a duration equal to the Utilization Period of the relevant Identified City Pair (as defined in paragraph 439) but the new entrant will have the right to terminate the agreement at the end of each IATA season without penalty. Finally, the Commitments provide that the new entrant who decides to operate the maximum number of routes from Brussels will be favoured.

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<sup>326</sup> That is to say a permission given to an aircraft to use infrastructure at a given airport on a specific date and time for the purpose of landing or take-off.

<sup>327</sup> These are on routes between the following city pairs: Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg, Brussels-Zürich.

- (438) Slots must be released free of charge and within 20 minutes of the time requested by the applicant if either one of the Parties has such slots available. Otherwise, the Parties must offer the slots closest in time to the applicant's request.

**c) Grandfathering rights**

- (439) The Commitments also provide for the possibility to acquire grandfathering rights in relation to slots obtained from the Parties. The new entrant will obtain grandfathering rights over these slots, that is to say, will be entitled to use the slots transferred from the parties for a different intra-European city pair than the Identified City Pairs, once it has operated the relevant Identified City Pair during two full consecutive IATA Seasons for the Brussels-Hamburg route, four full consecutive IATA Seasons for the Brussels-Munich and Brussels-Zürich routes, and eight full consecutive IATA Seasons for the Brussels-Frankfurt route (respectively, the Utilization Period). After the end of the Utilization Period, the new entrant can use the slots transferred to operate European routes other than the Identified City Pair. In contrast, if the new entrant ceases to operate the slots transferred in the relevant Identified City Pair before the end of the Utilization Period, these slots will be handed back to LH and will be made available for another new entrant.

**d) Star Alliance members as new entrants**

- (440) The provisions described in paragraphs 437 to 439 are only fully applicable for new entrants which are not members of Star Alliance. Star Alliance members can also obtain slots in the framework of the commitments but non Star Alliance members will be given a higher priority if different potential entrants apply for slots in the same route under the Commitments. Furthermore, a Star Alliance entrant will not have the possibility to acquire grandfathering rights in relation to slots obtained from the Parties and the duration of the Slot Transfer Agreement can be freely determined by the Star Alliance entrant and the Parties. A Star Alliance entrant will not be able to enter into code-share agreements or revenue-sharing/profit-sharing joint ventures with the Parties or other Star Alliance partners on the Identified City Pairs. When the Star Alliance member ceases operating in the relevant Identified City Pair slots released under the Commitments, the Parties have to offer these slots to new entrants again.

**2. Other commitments and other provisions**

**a) Special prorated and code-share agreements**

- (441) The commitments offer a new entrant the possibility to enter into a special prorated and code-share agreement allowing the new entrant to place its codes on flights with a true origin and destination in either Germany, Switzerland and/or Belgium, provided part of the journey involves the Brussels-Hamburg,



Brussels-Frankfurt, Brussels-Zürich, or Brussels-Munich routes. The conditions of such a special prorated agreement shall be such that the new entrant is treated in the same way as LH's Star Alliance partners on the same Identified City Pair.

- (442) In addition, the new entrant on the Brussels-Hamburg route can request to enter into a special prorated and code-share agreement with the Parties to place its codes on flights operated by the Parties from Brussels for the purpose of offering a connecting service to/from Hamburg. Through such an agreement the new entrant on the Brussels-Hamburg route will for instance have the possibility to sell tickets on the Hamburg-Brussels-Toulouse route (see, in that regard, paragraph 457).

**b) Other provisions**

- (443) The slot release commitments are supplemented by other commitments such as the possibility for a new entrant to conclude interlining and Frequent Flyer Programme access agreements with the Parties as well as intermodal agreements with a railway or other surface transport company.
- (444) The Commitments foresee the appointment of a Monitoring Trustee who will monitor the Parties' compliance with the Commitments and will be in charge of the slot transfer procedure provided for by the Commitments.
- (445) The Commitments also contain provisions on fast-track dispute resolution according to which the new entrant can decide to settle any dispute with the Parties in relation to the Commitments through arbitration. Both the new entrant and the Parties will then be bound by the arbitration decision. The burden of proof in any dispute requires the new entrant to provide *prima facie* evidence of its case and the Parties to provide evidence to the contrary.
- (446) The Commitments, in particular the obligation of slot transfer, are indefinite in time but contain a review clause.

**2. ANALYSIS OF THE COMMITMENTS**

- (447) Concerning the suitability of commitments aiming at facilitating entry of a new competitor, the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004<sup>328</sup> ("the Commission notice on remedies") states the following:

"Often, a sufficient reduction of entry barriers is not achieved by individual measures, but by ... a commitments package aimed at overall facilitating entry of competitors by a whole range of different measures. [Footnote: In air transport mergers, a mere reduction of barriers to entry by a commitment

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<sup>328</sup> OJ C 267, 22.10.2008, p. 1.

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.] "<sup>329</sup>

- (448) The Commitments submitted by the Parties constitute a comprehensive package which takes into consideration past experience with commitments in merger cases in the aviation sector. The Commitments have generally received a positive evaluation from the competitors and customers who replied to the market test.

## 1. Slots

- (449) The Commitments take account of the fact that slot congestion is one of the main entry barriers on the problematic routes in this case. In effect, with the sole exception of Hamburg, all the airports concerned by the Identified City Pairs are congested (and in some cases heavily so). In the light of this, the Commitments are designed to remove this barrier and foster entry on the routes where competition concerns were identified. Although Hamburg airport is not congested, Brussels airport is congested to some extent: thus, the slot pairs offered on the Brussels-Hamburg route will serve to facilitate entry on this route and, more generally, in Brussels airport.

### *Number of slots*

- (450) The slots made available by the Parties will enable one or more new entrants to operate the same number of frequencies currently operated or offered by SN on the Identified City Pairs, therefore ensuring that the new entrant has the potential to fully replace the competitive pressure that the Parties currently exercise on each other.
- (451) Concerning the Brussels-Munich, Brussels-Hamburg and Brussels-Zürich routes the market test has confirmed that the number of slots offered in the Commitments is sufficient for a New Air Service Provider to effectively compete with the Parties.<sup>330</sup> This is in line with the Commission's findings in this Decision that SN constrains LH with two frequencies on the BRU-FRA route, that easyJet constrains SN with two frequencies on the BRU-GVA route and that easyJet will constrain LH/SN with two frequencies on the BRU-BER route.
- (452) As regards the Brussels-Frankfurt route, during the market test of the Commitments approximately half of the customers/travel agencies indicated that two frequencies on the Brussels-Frankfurt route were appropriate to operate the route competitively, whereas the other half submitted that more

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<sup>329</sup> Paragraph 63.

<sup>330</sup> Market test, questionnaires 41-42, question n°2. BRU-MUC: 19 customers/travel agencies/ airports out of 26 consider the number of slots as appropriate. BRU-HAM: 22 customers/travel agencies/ airports out of 26 consider the number of slots as appropriate. BRU-ZRH: 18 customers/travel agencies/ airports out of 26 consider the number of slots as appropriate.

frequencies would be needed on this particular route.<sup>331</sup> More than half of the competitors indicated that two frequencies on the Brussels-Frankfurt route are sufficient to compete efficiently with the Parties.<sup>332</sup> In spite of the somewhat mixed views of customers, given the positive view of competitors and the fact that, as shown in the competitive analysis of the BRU-FRA route (paragraph 150), SN exerts a competitive constraint on LH with two daily frequencies, it is concluded that the two slot pairs offered on the Brussels-Frankfurt route in the Commitments will be sufficient for a New Air Service Provider to eliminate the competition concerns.

#### *Allocation of slots*

- (453) The slots must be allocated within only 20 minutes from the initial request which takes account of the business strategy of "point-to-point" carriers which require tightly adjusted schedules in order to ensure short turnaround times. Furthermore, the Commitments contain no limitations concerning the transfer of slots in peak times, which increases the attractiveness of the slots offered. Moreover, the Commitments contain more convenient and efficient procedures for the allocation of slots than the procedures foreseen by remedies in previous airline merger cases. The enhanced slot allocation mechanism in this case anticipates that slot allocation requests will take place significantly early in the season, thus giving the new entrant or entrants sufficient time to launch and market its new services. Moreover, for the duration of the slot transfer agreement or once it has acquired grandfathering rights, the new entrant will not have to go through the slot allocation request provided for in the Commitments every season. The market test has confirmed the efficiency of the slot allocation mechanism proposed: when asked whether they "consider that the procedure foreseen by the proposed remedies for the slot release will allow a Prospective New entrant to obtain the needed slots in a timely and satisfactory manner", ten competitors replied broadly "yes" while one replied broadly "no", arguing that LH/SN would still have too many frequencies after the merger, which was not related to the question.

#### *Grandfathering rights*

- (454) The attractiveness of the Commitments is also enhanced by the prospect of acquiring grandfathering rights after a Utilization Period of only two full consecutive IATA Seasons for slots on the Brussels-Hamburg route, four full consecutive IATA Seasons for the Brussels-Munich and Brussels-Zürich routes, and eight full consecutive IATA Seasons for the Brussels-Frankfurt route. Granting of grandfathering rights represents an additional incentive for new entrants to enter on the Identified City Pairs as slots are particularly valuable assets especially in Frankfurt, Munich and Zürich due to considerable slot constraints at these airports. As regards the Brussels-Frankfurt route, the

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<sup>331</sup> Market test, questionnaires 41-42, question n°2. 12 customers/travel agencies/ airports out of 26 have reported that two frequencies on BRU-FRA are appropriate to compete with the Parties, whereas 14 have indicated that more frequencies would be necessary.

<sup>332</sup> Market test, questionnaire 40, question n°2. 8 competitors out of 12 have reported that two frequencies on BRU-FRA are appropriate to compete with the Parties, whereas 4 have indicated that more frequencies would be necessary.

longer Utilisation Period is justified by the higher value of the slots in Frankfurt, which in turn increases the risk that an entrant would enter on the Brussels-Frankfurt route merely to obtain these valuable slots.

- (455) During the market test, competitors globally expressed a positive view on the Utilization Period after which grandfathering rights will be granted to the New Air Service Provider. A majority of competitors indicated that the Utilization Period in respect of the Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg and Brussels-Zürich routes was adequate.<sup>333</sup>

## **2. Other commitments and other provisions**

### *Special prorata and code-share agreement*

- (456) The possibility offered to the new entrant to enter into a special prorata and code-share agreement with the Parties was regarded by the majority of competitors as an additional incentive to enter on the Identified City Pairs.<sup>334</sup>
- (457) In particular, the special code-share agreement offered in relation to the Brussels-Hamburg route will substantially increase the number of passengers to whom the Prospective New Entrant will be in a position to offer adapted services. [95 000-105 000] O&D passengers fly annually between Brussels and Hamburg, and [15 000-25 000] additional passengers fly on this route to connect in Brussels. Among the connecting passengers [8 000-12 000] fly between Hamburg and Toulouse via Brussels. Thanks to the code-share agreement the new entrant on the Brussels-Hamburg route will be in a position to capture approximately 20% more passengers than the O&D traffic.

### *Other provisions*

- (458) The other provisions of the Commitments, such as participation in Frequent Flyer Programs, interlining agreements or intermodal agreements have been generally seen as additional, although not critical, incentives for a Prospective New Entrant.

## **3. OVERALL ASSESSMENT OF THE COMMITMENTS**

- (459) The Commission notice on remedies states the following: “If those commitments actually make the entry of sufficient new competitors timely and likely, they can be considered to have a similar effect on competition in the market as a divestiture. If it cannot be concluded that the lowering of the entry

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<sup>333</sup> Market test, questionnaire 40, question n°11. Seven competitors out of 11 have reported that the Utilization Period in relation to the routes BRU-MUC, BRU-HAM and BRU-ZRH was appropriate. Six competitors out of 11 have reported that the Utilization Period in relation to the routes BRU-FRA was appropriate.

<sup>334</sup> Market test, questionnaire 40, questions n°6-7-8. 8 competitors out of 12 have reported that the special prorata and code-share agreements should incentivise a Prospective New Entrant to enter on the Identified City Pairs.

barriers by the proposed commitments will likely lead to the entry of new competitors in the market, the Commission will reject such a remedies package.”<sup>335</sup>

- (460) In this case, the market investigation has confirmed that the proposed Commitments will make entry likely and timely on the Identified City Pairs.
- (461) VLM has expressed a direct interest in slots on the Brussels-Frankfurt, Brussels-Munich and Brussels-Zürich routes. Croatia Airlines has expressed a direct interest in the Brussels-Munich and Brussels-Zürich routes. As it will be explained in paragraphs 463 to 468, the likelihood that these companies will actually enter those routes as a result of the Commitments is confirmed by a number of additional factors.
- (462) Furthermore, Air Berlin and easyJet have expressed an interest in all the Identified City Pairs, although this interest is conditional on a substantial improvement of the Commitments such as an increase in the number of slots offered, a reduction of the Utilization Period before grandfathering rights are granted, and a commitment of the Parties not to increase the number of frequencies they operate on the Identified City Pairs ("frequency freeze"). Air Berlin has bases in Frankfurt, Munich, Hamburg and Zürich, and Brussels airport will set up a low cost terminal in the short term.<sup>336</sup> Consequently the possibility cannot be ruled out that these two airlines will decide to operate the Identified City Pairs in the future. In particular considering the difficulties in obtaining slots in Frankfurt, and to a lesser extent in Munich, Zürich and Brussels, the Commitments might be considered an appealing opportunity for these two companies to enter the relevant routes, although the Commitments do not include all the improvements required by these companies.

#### *Brussels-Frankfurt*

- (463) The market investigation has confirmed that Frankfurt is one of the most congested airports in Europe, after London Heathrow. Consequently slots in Frankfurt are highly valuable, therefore rendering the remedy on this route very appealing for a Prospective New Entrant.
- (464) With regard to the Brussels-Frankfurt route, VLM entered the route Antwerp-Frankfurt in May 2009 with three frequencies by virtue of slots lent by its mother company Air France-KLM. Therefore, VLM is establishing a market presence in FRA. Although VLM's preference is to operate flights from Antwerp, VLM has indicated that it would consider opening routes from Brussels if the only way to obtain slots were to fly out of Brussels. Therefore if VLM decided to increase the number of frequencies operated to Frankfurt and considering the difficulties in obtaining slots in Frankfurt, it is likely that VLM would take advantage of the Commitments to operate the Brussels-Frankfurt route. Given that the business model of VLM is to operate small aircraft with high frequencies, it is likely that VLM will be interested in increasing the

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<sup>335</sup> Commission notice on remedies, at paragraph 63.

<sup>336</sup> The Brussels low cost terminal is expected to be operational for the IATA winter season 2009-2010.

number of frequencies. Although VLM stated that it could compete with LH on Frankfurt with the daily frequencies possible by virtue of Air France's slots, VLM also indicated that it typically offers 4-5 frequencies a day for business destinations. For example, VLM offers 4-5 daily frequencies on the Antwerp-London City route and 8 daily frequencies on the Amsterdam-London and Rotterdam-London routes.

- (465) Moreover, VLM only obtained slots in Frankfurt from Air France-KLM because the latter discontinued the Lyon-Frankfurt route for the duration of the economic crisis. Currently Air France-KLM only serves its hubs Paris and Amsterdam from Frankfurt and there is no evidence that Air France-KLM has any intention to terminate or reduce frequencies on one of these hub-to-hub routes. It is therefore unlikely that VLM could obtain more slots in Frankfurt from Air France-KLM at least in the short term, even in the current context of economic crisis.
- (466) In addition VLM has indicated that the provision of slots by Air France-KLM in Frankfurt is only temporary and due notably to the fact that Air France-KLM does not want to operate Lyon-Frankfurt for the time being while wishing to hold on the grandfathering rights of the Frankfurt slots (within the framework of the "use it or lose it" rule). When the crisis is over, Air France is likely to take back the slots lent to VLM. Once this happens, the only realistic possibility for VLM to continue operating the Frankfurt route will be to use the slot transfer mechanism provided for in the Commitments, and it is therefore likely that VLM will do so and operate the Brussels-Frankfurt route. Not only will the Commitments allow VLM to have slots in Frankfurt, but they will also enable VLM to have slots at the best time thanks to the slot window of +/- 20 minutes guaranteed by the Commitments.

#### *Brussels-Munich and Brussels-Zürich*

- (467) VLM has indicated its interest in entering the Brussels-Munich and Brussels-Zürich routes. Considering the level of congestion of Munich and Zürich it is unlikely that VLM could obtain all the slots necessary to operate the routes with a sufficient number of frequencies from the first IATA season. In addition, a new entrant at Munich and Zürich airports would have no guarantee of obtaining the slots at the best times, allowing for an optimised level of rotation of aircraft. By contrast, the slot allocation mechanism in the Commitments ensures that the Prospective New Entrant will in all probability receive the requested slots in a window of +/-20 minutes.
- (468) Croatia Airlines has also indicated that it would be willing to take advantage of the Commitments to start operating the Brussels-Munich and Brussels-Zürich routes on a fifth-freedom basis, although Croatia Airlines' fifth-freedom rights would depend on the steps taken by the Croatian government to secure compliance with the requirements under the European Common Aviation Area ("ECAA") agreement and would therefore be realistic from the Summer 2010 season from the perspective of Croatia Airlines. As Croatia Airlines is a member of Star Alliance, the Commitments allow it to apply for slots in the

framework of the Commitments but preference will be given to a non Star Alliance entrant such as VLM if both apply.

### *Brussels-Hamburg*

- (469) With regard to the Brussels-Hamburg route, the market investigation has confirmed that the Commitments will be likely to lead to entry on the route, because they will substantially decrease barriers to entry and because the prorate and code-share agreements together substantially increase the attractiveness of this route. In particular the large majority of customers/travel agencies/airports<sup>337</sup> and the majority of competitors<sup>338</sup> have confirmed that the Commitments will, overall, facilitate entry on the Brussels-Hamburg route.
- (470) The commitments provide that the new entrant who decides to operate the maximum number of routes from Brussels will be favoured. Considering the interest raised by the routes to Frankfurt, Munich and Zürich, it is likely that a new airline will install a base in Brussels as a consequence of the Commitments. Two airlines would then have a base at one end of the route (the new entrant in Brussels, and Air Berlin in Hamburg), therefore increasing the likelihood of entry on the Brussels-Hamburg route.
- (471) In addition, thanks to the prorate and the code-share agreement, the new entrant on the Brussels-Hamburg route will have the possibility to capture not only the O&D traffic but also part of the connecting traffic. In this respect, the Prospective New Entrant will for instance be in a more comfortable position than LH was before the merger, because LH can essentially only capture O&D traffic<sup>339</sup> on this route.
- (472) Air Berlin has indicated that it could consider operating the Identified City Pairs provided the Commitments were improved. Several of the improvements requested by Air Berlin have been made for the Brussels-Hamburg route. Air Berlin considers that the reduction to two IATA seasons of the Utilization Period before grandfathering rights are granted to the Prospective New Entrant renders the slots on Brussels-Hamburg sufficiently attractive. In addition, Air Berlin has acknowledged that "*Depending on the situation/market position of the new entrant [the prorate and code-share agreement on Brussels-Hamburg] might incentivize entry or expansion*". While some other improvements desired by Air Berlin have not been included in the Commitments and the Commitments only partly solve the problem of the thinness of the route, given Air Berlin's business model, the Commitments on the Brussels-Hamburg route address most conditions imposed by Air Berlin to consider starting operations on this route.

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<sup>337</sup> Market test, questionnaires 41-42, question n°9. 19 customers/travel agencies/ airports out of 25 have reported that the remedies will facilitate entry on the route Brussels-Hamburg.

<sup>338</sup> Market test, questionnaire 40, question n°14. 7 competitors out of 11 have reported that the remedies will facilitate entry on the route Brussels-Hamburg.

<sup>339</sup> No more than [500-1 500]\* passengers connect in Hamburg after flying Brussels-Hamburg.

- (473) easyJet also confirmed that both the number of frequencies and the Utilization Period of two IATA seasons before obtaining grandfathering rights are adequate for the Brussels-Hamburg route.

#### *Air transport crisis*

- (474) In its assessment the Commission has also taken into account the fact that the air transport industry was facing a dire crisis at the time of the market test (April-May 2009), which was reputed to have seriously reduced the entry plans of many airlines. In particular the Commission considers that expressions of interest in entering the Identified City Pairs in these particular circumstances are more cautious than they would have been before the crisis or will be when it is over, and that the period necessary to enter on an Identified City Pair is likely to be longer.
- (475) This was for instance stressed by Air France-KLM: "Besides, it should be taken into account in the overall analysis that the present economical crisis is probably not the best timing for competitors to declare their interest for entering new routes but that the situation may well evolve once the crisis is over".

#### *Conclusion*

- (476) Considering all these elements together, and on the basis of the information available to the Commission, in particular considering the interest demonstrated by several airlines in entering these routes, it is concluded that the Commitments are very likely to lead to entry by one or several airlines on the Identified City Pairs in a timely manner and that this entry will suffice to resolve the competition concerns identified on these markets.

## **V. CONDITIONS AND OBLIGATIONS**

- (477) 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 common market.
- (478) The fulfilment of the measures that give 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 common market no longer stands. 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 Article 14(2) and Article 15(1) of the Merger Regulation.
- (479) In accordance with the distinction between conditions and obligations, this Decision should be made conditional on full compliance by the notifying party



with Sections 1.1.1, 1.1.2, 1.2.2, 1.2.5, 1.2.8, 1.3.1, 2, 4.1, 5.1, 5.2, 6.1 and 7.1 of the Commitments submitted by the notifying party on 28 May 2009. All other Sections of the Commitments should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Commitments is set out in Annex V.

## **VI. CONCLUSION**

- (480) It is concluded that the transaction as originally proposed by the notifying party would significantly impede effective competition in the common market or in a substantial part of the common market within the meaning of Article 2(3) of the Merger Regulation.
- (481) However, the notifying party submitted a set of commitments susceptible to restore effective competition. It is therefore concluded that the transaction would not lead to a significant impediment of effective competition, subject to the implementation of the Commitments submitted by the notifying party.
- (482) Therefore, it is concluded that the transaction is compatible with the common market and the EEA Agreement pursuant to Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, subject to compliance with the Commitments set out in Annex V.

HAS ADOPTED THIS DECISION:

*Article 1*

The notified concentration whereby Deutsche Lufthansa AG acquires control of SN Airholding SA/NV within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the common market and the EEA Agreement.

*Article 2*

Article 1 is subject to compliance with the conditions set out in Sections 1.1.1, 1.1.2, 1.2.2, 1.2.5, 1.2.8, 1.3.1, 2, 4.1, 5.1, 5.2, 6.1 and 7.1 of Annex V.

*Article 3*

Deutsche Lufthansa AG shall comply with the obligations set out in the sections of the Annex V not referred to in Article 2.

*Article 4*

This decision is addressed to:

Deutsche Lufthansa AG  
Von-Gablenz-Strasse, 2-6  
D-50679 Köln  
Germany

Done at Brussels, 22/06/2009

For the Commission  
(*signed*)  
Neelie KROES  
Member of the Commission

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## ANNEX I: PRODUCT MARKET DEFINITION

### A. SUMMARY

1. The Commission obtained daily flight-level pricing data for local passenger traffic only from LH, LX and SN for the period January 2004 to December 2008 for the following affected routes: BRU – FRA, BRU – MUC, BRU – HAM, BRU – BER, BRU – ZRH and BRU – GVA. The dataset contained information on the total number of passengers per class, and the total net revenue per class amongst other information. The four classes that the Commission defined were as follows: (i) non-flexible economy class fares (ENS), (ii) flexible economy class fares (ETS), (iii) non-flexible business class fares (BNS), and (iv) flexible business class fares (BTS).
2. The Commission was thus able to create monthly average net fares per class to examine whether pricing to non time-sensitive (NTS) passengers (as proxied by ENS fares) differs in any way from pricing to time-sensitive (TS) passengers that primarily purchase flexible fares.<sup>1</sup> The Commission used net fares rather than total fares in its analysis. This is because total fares also include fuel and airport surcharges that are common across all four fare classes, which may result in spuriously high correlations.
3. As LH is the notifying party, the results below contain analysis based on LH's and LX' data, although the findings are broadly similar with the use of SN's data.<sup>2</sup> In addition, as the results are essentially the same for travel originating out of Brussels or ending in Brussels, only the fares out of Brussels are considered in the analysis below.
4. The results of the pricing analyses reported in this annex are all consistent with the view that (flexible) fares (i.e. BTS and ETS) evolve independently from (non-flexible) fares (i.e. ENS). These results are consistent across the five routes examined by the Commission and provide empirical evidence that passengers purchasing flexible tickets are in a separate market from passengers purchasing non-flexible tickets. This is a distinction that the Commission had made in a number of past airline decisions as discussed in Section IV.A.1.2 of the Decision.

#### 1. BRUSSELS-FRANKFURT

5. Figure 7 below plots LH's average net fares by class on the BRU-FRA route and shows that [*comparison of fares for TS passengers and the ENS fare over time and as a result of SN's entry on the BRU-FRA route in March 2006*]\*. Moreover, as described in Section 4.1a of the Decision, it is clear that the development of LH's ENS fares post-entry is entirely different from the development of LH's BTS/ETS fares. This is again consistent

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<sup>1</sup> This analysis disregards the BNS class, as it is by far the smallest category. For example, only [0-5]\*% of LH's passengers purchased BNS tickets in 2008 on the Berlin route, and there were no sales of BNS tickets on the Hamburg or Munich routes in some months.

<sup>2</sup> It may also be argued that SN's data is somewhat less well-suited for this type of analysis for two reasons. First, SN's fare data also includes some connecting passengers. Second, over the period covered by the dataset, SN has undergone a major structural change in its product offering in March 2007, when it abolished its business class offering and started to offer only the b.flex and b.light products. Thus, there may be additional "noise" in the SN data (compared to LX and LH) that may affect the results of the analysis.

with the hypothesis that passengers on the BRU – FRA route that are purchasing BTS/ETS tickets are likely to be in a different market from those passengers that are buying economy non-flexible tickets.

## **2. BRUSSELS-MUNICH**

6. Figure 8 below plots LH's average net fares by class on the BRU-MUC route and shows that [*comparison of fares for TS passengers and the ENS fare over time*]<sup>3</sup> This pricing evidence implies that passengers on the BRU – MUC route that are purchasing BTS/ETS tickets are likely to be in a different market from those passengers that are buying economy non-flexible tickets.

## **3. BRUSSELS-BERLIN**

7. Figure 10 below plots LH's average net fares by class on the BRU-BER route and shows that [*comparison of fares for TS passengers and the ENS fare over time*]\*. The finding that there is no stable long-run relationship between the TS fares and the NTS fares is also confirmed in Figure 11 below that plots the TS fares *relative* to the NTS fare. Both relative prices tend to slope upwards, which is also confirmed by the stationarity tests that find the relative fares to be trend-stationary. This pricing evidence thus implies that passengers on the BRU – BER route that are purchasing BTS/ETS tickets are likely to be in a different market from those passengers that are buying economy non-flexible tickets.

## **4. BRUSSELS-HAMBURG**

8. Figure 12 below plots LH's average fares by class on the BRU-HAM route and shows that [*comparison of fares for TS passengers and the ENS fare over time and its implications*]\*. Nonetheless, the development of the relative prices over time that is depicted in Figure 13 suggests that the relative prices have been subject to important upward trends that are not consistent with the BTS/ETS fares being in the same product market as ENS fares. This pricing evidence thus implies that passengers on the BRU – HAM route that are purchasing BTS/ETS tickets are likely to be in a different market from those passengers that are buying economy non-flexible tickets.

## **5. BRUSSELS-ZÜRICH**

9. Figure 14 below plots LX's average fares by class on the BRU-ZRH route and shows that [*comparison of fares for TS passengers and the ENS fare over time*]\*. The finding that there is no stable long-run relationship between the TS fares and the NTS fares is also confirmed in Figure 15 below that plots the TS fares relative to the non time-sensitive fare. Both relative prices tend to slope upwards, which is also confirmed by the stationarity tests that find the relative fares to be trend-stationary. This pricing evidence thus implies that passengers on the BRU – ZRH route that are purchasing BTS/ETS tickets are likely to be in a different market from those passengers that are buying economy non-flexible tickets.

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<sup>3</sup> If the relative prices were found to be stationary, this would be consistent with the BTS/ETS and ENS products being in the same product market, as the prices can deviate from each other only for short period of time.

## B. GRAPHS AND TABLES

### 1. BRUSSELS-FRANKFURT

Figure 7: LH's net fares on BRU-FRA by class

[CONFIDENTIAL]\*

Source: LH

Table 1: Correlations between LH's fare types

	BTS	ENS	ETS
BTS	[0.8-1.00]*		
ENS	-[0.6-0.8]*	[0.8-1.00]*	
ETS	[0.8-1]*	-[0.6-0.8]*	[0.8-1.00]*

Source: LH

### 2. BRUSSELS-MUNICH

Figure 8: LH's net fares on BRU-MUC by class

[CONFIDENTIAL]\*

Source: LH

Table 2: Correlations between LH's fare types

	BTS	ENS	ETS
BTS	[0.8-1.00]*		
ENS	-[0.2-0.4]*	[0.8-1.00]*	
ETS	[0.6-0.8]*	-[0.4-0.6]*	[0.8-1.00]*

Source: LH

Figure 9: LH's TS fares relative to LH's ENS fares

[CONFIDENTIAL]\*

Source: LH

### 3. BRUSSELS-BERLIN

Figure 10: LH's net fares on BRU-BER by class

[CONFIDENTIAL]\*

Source: LH

Table 3: Correlations between LH's fare tyoes

	BTS	ENS	ETS
BTS	[0.8-1.00]*		
ENS	-[0.6-0.8]*	[0.8-1.00]*	
ETS	[0.8-1.00]*	-[0.6-0.8]*	[0.8-1.00]*

Source: LH

Figure 11: LH's TS fares relative to LH's ENS fares

[CONFIDENTIAL]\*

Source: LH

## 4. BRUSSELS-HAMBURG

Figure 12: LH's net fares on BRU-HAM by class

[CONFIDENTIAL]\*

Source: LH

Table 4: Correlations between LH's fare types

	BTS	ENS	ETS
BTS	[0.8-1.00]*		
ENS	-[0.2-0.4]*	[0.8-1.00]*	
ETS	[0.8-1.00]*	[0.0-0..2]*	[0.8-1.00]*

Source: LH

Figure 13: LH's TS fares relative to LH's ENS fares

[CONFIDENTIAL]\*

Source: LH

## 5. BRUSSELS-ZÜRICH

Figure 14: LX's net fares on BRU-ZRH by class

[CONFIDENTIAL]\*

Source: LX

Table 5: Correlations between LX' fare types

	BTS	ENS	ETS
BTS	[0.8-1.00]*		
ENS	[0.0-0.2]*	[0.8-1.00]*	
ETS	[0.8-1.00]*	[0.2-0.4]*	[0.8-1.00]*

Source: LX

Figure 15: LX's TS fares relative to LX's ENS fares

[CONFIDENTIAL]\*

Source: LX

## ANNEX II: ECONOMETRIC ESTIMATION OF THE IMPACT OF EASYJET'S ENTRY ON THE BERLIN ROUTE

1. Section IV.A.3.1.c of the Decision includes figures that plot SN's and LH's fares over time. The development of these fares suggested that easyJet's entry in the end of October 2007 had a negative impact on SN's ENS fares as well as to some extent on LH's ENS fares, but it had no effect on either of the parties' fares for TS passengers.
2. To examine this issue formally, the Commission used the daily flight-level pricing data provided by the parties.<sup>4</sup> The Commission used the data for the BRU-MUC and BRU-HAM routes as controls in its analysis, given that only LH and SN are flying on these two routes, and there are no other credible transport alternatives. Thus, comparing the developments of fares on these routes with the development of fares on the BRU-BER route can provide additional insights as to whether the development on the BRU-BER route is route-specific and therefore can likely be attributed to the entry of easyJet.<sup>5</sup>
3. Of course, one would ideally want to capture this in a regression framework with a "full-blown" fixed-effects model that would however have to take into account all the routes on which SN and LH operate, which may be an undue burden on the merging parties in terms of data gathering. But the decision to not use the full databases carries a cost as well. This is because a finding that LH's and SN's fares decreased post easyJet entry may also be consistent with other general developments that the "full-blown" fixed effects model could account for and thus could precisely identify any "easyJet effect". In this respect, the data for the Munich and Hamburg routes may only be viewed as imperfect substitutes in their role of control routes.
4. The collected data contained information on the total number of passengers per class, and the total net revenue per class amongst other information. As explained in Annex I, the four classes that the Commission defined were as follows: (i) economy non-flexible fares (ENS), (ii) economy flexible fares (ETS), (iii) business non-flexible fares (BNS), and (iv) business flexible fares (BTS). The Commission was thus able to create monthly average net fares per class to examine the impact that easyJet's entry may have had on SN's and LH's fares by class of travel and, in particular, for flexible and non-flexible fares respectively.<sup>6</sup>
5. The regression analysis uses the log of SN's and LH's net fares of a particular class as a "dependent variable", as one would expect SN's and LH's fares to be negatively affected by easyJet's presence on the BRU-BER route if easyJet exerts a competitive pressure on either SN or LH. Net rather than total fares are used for two reasons. First, total fares include fuel surcharges that are the same for all of SN's European routes,

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<sup>4</sup> See Annex I. SN's fare data also includes some connecting passengers. However, particularly on the Berlin route that is the key route for the empirical modeling, the connecting passengers account for only about [5-10]\*% according to SN.

<sup>5</sup> As SN flew to THF until October 2008 and then transferred its operations to TXL, the fare data on these two routes are combined for SN.

<sup>6</sup> The analysis in this Annex disregards the BNS class, as one may not expect TS passengers to generally purchase these types of tickets, and passengers that purchase LH's BNS tickets account for only about [0-5]\*% of LH's passengers on the Berlin route.



and thus are not directly related to competitive conditions on any single route. Second, total fares also include airport surcharges that are levied by the operators of the airports rather than SN or LH. One could then imagine a situation, in which easyJet enters on the route, and SN or LH lower their net fares, but the airport operators at the same time increase airport surcharges. As a result, one may not identify the impact that easyJet had on either of the two merging parties.

6. To explain the variation in the log of SN's and LH's fares, competition and control factors were included in the regressions as "explanatory variables". The role of the competition variables is to capture easyJet's presence as well as the presence of all other competitors of the merging parties. In particular, a dummy variable that equals 1 during the months that easyJet was present on the route and 0 otherwise is included in the regressions. In addition, as Virgin Express was also present on this route until its merger with SN, a dummy variable that equals 1 during the months that Virgin Express was present on the route and 0 otherwise is also included in the regressions.<sup>7</sup>
7. The role of the control variables is to capture all other effects that are unrelated to the level of competition. That is, including these variables in the regressions ensures that effects that are independent of easyJet's presence on the route are not assigned to easyJet, and thus the effect of easyJet on the merging parties is neither overestimated, nor underestimated. The Commission experimented a number of control variables, including (i) a trend variable to account for general developments on the route over time, (ii) a winter IATA season effect to allow for differences between the summer and winter seasons, (iii) LH'S and SN's fuel costs to allow for the impact of changing fuel prices on the fares, and (iv) the total number of passengers/total number of seats available on the route to allow for a demand proxy for air travel. In the end, the preferred specification that is reported in this Annex only includes a trend variable and a winter season dummy, as the specifications that included demand proxies produced broadly similar results, although it became apparent that these specifications may suffer from important endogeneity problems.<sup>8,9</sup>
8. The Commission estimated two types of regressions for each direction separately. First, the Commission pooled across all classes of fares and estimated one single econometric model. In order to allow for the competition and control variables to differ for each type of fare separately, the competition and control variables were interacted with the fare types. Second, the Commission estimated the regression model for each fare class separately (the "separate regressions" hereafter).

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<sup>7</sup> Virgin Express entered the Berlin route in September 2005, at which point it was already part of the SNAH holding much like SN. It may thus not be appropriate to include a dummy for Virgin Express airlines in SN's regressions. On the other hand, Virgin Express' entry provided another alternative to SN's passengers, which may have had an effect on SN's fares. Models with and without the Virgin Express dummy were estimated. As the regressions without the Virgin Express dummy seemed to behave poorly particularly for the ETS category (e.g. the robust regression technique dropped all observations from April 2007 to October 2007 for the BER-BRU route, this suggests that the model may not fit the data very well, and thus the Virgin Express dummy was included in the regressions.

<sup>8</sup> For example, the relationship between the total number of seats available and the fares was estimated to be statistically significant and positive, which would imply that higher capacity offering on a given route results in higher fares.

<sup>9</sup> Similarly, as regards fuel costs, as Annex I described, the average net fares in the BTS/ETS segment are behaving differently from the ENS fares. It is thus not surprising to find that fuel costs do not have much explanatory power, and therefore their exclusion from the regressions does not have a large effect.

9. As is clear from Figure 16 through Figure 19 below, both SN's as well as LH's fares are subject to important seasonal effects such as for example the month of [...]\*, during which fares on the business routes [...] as a result of the business traffic being considerably reduced. To deal with these effects, the regressions were estimated using the "robust regression" technique that uses a pre-set computational algorithm to determine how much weight should be placed on each observation in the data.<sup>10</sup>

### C. ANALYSIS OF SN FARES

10. Table 6 below contains the results of the pooled regressions, while Table 7 and Table 8 below contain the results of the regressions by direction for each fare class separately. The pooled regressions suggest that when easyJet entered the route, SN's fares fell by [50-60]\*% on the Berlin route for passengers departing from BRU and by [40-50]\*% for passengers departing from BER. If the regressions are estimated separately for ENS fares, the regression results suggest that SN's ENS fares dropped by [40-50]\*% for passengers departing from BRU and by [30-40]\*% for passengers departing from BER. All of these results are statistically significant.
11. In order to ensure that such effect on SN's fares can be attributed purely to easyJet, it is important to compare the evolution of SN's ENS fares on the BRU-BER route with the development of SN's ENS fares on other routes. The Hamburg and Munich routes lend themselves particularly well for this comparison, as LH and SN are the only two carriers on these two routes, and there are no other transportation alternatives (i.e. the competitive situation is similar to the competitive situation on BER before easyJet's entry and has remained stable with no entry or exit, or any other shock over the period considered). Thus, if one sees that the fares on the Berlin route behaved differently from the fares on the Hamburg and Munich routes once easyJet enters, this provides evidence that the drop in SN's ENS fares (or at least some portion of it) can likely be attributed to easyJet's entry.
12. Figure 20 and Figure 21 show the evolution of SN's ENS fares on the three routes and suggest that the fares on the Hamburg and Munich routes also [...] around the time of easyJet's entry on the Berlin route. It is particularly visible that the fares on the Berlin and Hamburg routes are moving closely together after November 2007. Given that easyJet did not enter on the Hamburg route, this would at a face value suggest that the effect that is estimated in the regressions may not be attributed to easyJet. At the same time, however, prior to easyJet's entry on the Berlin route, SN's average net fares on the Berlin route were higher than the average net fares on the Hamburg route in a large majority of the months. Once easyJet entered the Berlin route, SN's fares on that route were either lower or of a similar magnitude compared with Hamburg. This would thus suggest that, on balance, some portion of the [40-50]\*% drop in fares that the regressions are estimating can be attributed to easyJet, and thus easyJet likely poses a competitive constraint on SN.<sup>11</sup>
13. With regard to SN's ETS fares, both the pooled regressions as well as the regressions that are estimated separately however suggest that easyJet's entry had no effect. If

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<sup>10</sup> Alternatively, a dummy variable for each of the months could be included in the regression.

<sup>11</sup> It is important to note that a fixed-effects model that would take into account the developments of SN's fares on all routes is precisely what would have been needed to correctly assign the drop in SN's fares on the Berlin route to easyJet and to the general pricing policies of SN.

anything, the pooled regressions suggest that SN's ETS fares went up by about [0-5]\*% after easyJet entered, while the regressions that take into account ETS fares only suggest that easyJet had no effect on SN's ETS fares, as the effects are estimated to not be statistically different from zero.<sup>12</sup> This is also confirmed by Figure 22 and Figure 23 that plot SN's ETS fares on the Berlin, Hamburg and Munich routes and suggest that SN's ETS fares were developing the same way on the Berlin route as they were on the Hamburg and Munich routes on which the competitive situation remained stable. Thus, easyJet's entry had no impact on SN's ETS fares. This finding is consistent with the fact that easyJet offers only a single afternoon frequency and is therefore a lower quality "product" for business passengers who value the combination of at least a morning frequency with an evening frequency.

**Table 6: Pooled regression results (p-value in parentheses)**

	<b>BRU-BER</b>	<b>BER-BRU</b>
ETS dummy	[1.0-1.2]* (0.00)	[1.0-1.2]* (0.00)
<b>easyJet dummy</b>	<b>-[0.4-0.6]* (0.00)</b>	<b>-[0.4-0.6]* (0.00)</b>
<b>easyJet dummy*ETS dummy</b>	<b>[0.4-0.6]* (0.00)</b>	<b>[0.4-0.6]* (0.00)</b>
Trend	0.00 (0.40)	0.00 (0.77)
Trend*ETS dummy	0.00 (0.00)	-[0.0-0.2]* (0.00)
Virgin dummy	-[0.0-0.2]* (0.00)	-[0.2-0.4]* (0.02)
Virgin dummy*ETS dummy	[0.2-0.4]* (0.00)	[0.2-0.4]* (0.00)
Winter season dummy	[0.0-0.2]* (0.07)	[0.0-0.2]* (0.09)
Winter season dummy*ETS dummy	-[0.0-0.2]* (0.01)	-[0.0-0.2]* (0.00)
Constant	4.49 (0.00)	4.46 (0.00)
R <sup>2</sup>	97.6%	98.1%
Number of observations	120	120

Source: Commission calculations

**Table 7: Regression results by fare class for BRU-BER (p-value in parentheses)**

	<b>ETS</b>	<b>ENS</b>
<b>easyJet dummy</b>	<b>[0.0-0.2]* (0.34)</b>	<b>-[0.4-0.6]* (0.00)</b>
Trend	-[0.0-0.2]* (0.00)	0.00 (0.42)
Virgin dummy	[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.00)
Winter season dummy	-[0.0-0.2]* (0.30)	[0.0-0.2]* (0.06)
Constant	5.60 (0.00)	4.49 (0.00)
R <sup>2</sup>	79.9%	65.4%
Number of observations	60	60

Source: Commission calculations

<sup>12</sup> Clearly, one would not expect easyJet to have a positive effect on fares, and this finding suggests that the trend variable in the regression likely does not fully capture the upward trends that are apparent in Figure 17 and Figure 19.

**Table 8: Regression results by fare class for BER-BRU (p-value in parentheses)**

	ETS	ENS
easyJet dummy	[0.0-0.2]* (0.17)	-[0.2-0.4]* (0.00)
Trend	-[0.0-0.2]* (0.00)	0.00 (0.51)
Virgin dummy	[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.00)
Winter season dummy	-[0.0-0.2]* (0.35)	[0.0-0.2]* (0.01)
Constant	5.60 (0.00)	4.45 (0.00)
R <sup>2</sup>	84.6%	60.6%
Number of observations	60	60

Source: Commission calculations

**D. ANALYSIS OF LH FARES**

14. Table 9 below presents the results of the pooled regressions, while Table 10 and Table 11 below present the results of the regressions by direction for each fare class separately. The pooled regressions suggest that further to easyJet's entry, LH's fares fell by [10-20]\*% on the Berlin route for passengers departing from BRU and by [5-10]\*% for passengers departing from BER. Both of these effects are estimated to be significant. However, if the regressions are estimated separately for ENS fares, although the regression results suggest that LH's ENS fares dropped by [5-10]\*% on the BRU-BER route and [0-5]\*% on the BER-BRU route, neither of these effects are estimated to be significant. When the Commission examined whether the pooled or the separate regressions were more appropriate, it was noticed that while the "robust regression" technique drops no or very few observations for the separate regressions (it essentially assigns a weight of zero to the observations), the "robust regression" technique dropped more than [20-30]\*% of observations of the ENS category for the pooled regressions. This however implies that the separate regressions for the ENS fare category only are more appropriate than the pooled regressions, as the fit of the pooled regressions results in some large residuals that in turn cause the "robust regression" technique to drop some observations. This is also consistent with Figure 24 and Figure 25 that suggest only a marginal drop in LH's ENS fares compared to the Hamburg and Munich routes, although it does appear that the average fares on the Berlin route are somewhat lower in comparison to the other routes after easyJet's entry. Thus, while easyJet's entry likely had some effect on LH's ENS fares, the extent of this effect is more ambiguous when compared with the effect on SN's ENS fares.

15. Regarding ETS and BTS fares, the results suggest that easyJet's entry had no negative effect on these fares, as is also clear from Figure 16 and Figure 18. Specifically, the results from the pooled regressions suggest that easyJet's entry had a statistically significant and marginally positive effect on LH's ETS and BTS fares, while the results from the separate regressions suggest that the entry of easyJet had no effect on the ETS fares and some marginal positive effect on the BTS fares.<sup>13</sup> This finding is also consistent with Figure 26 through Figure 29 that show the ETS and BTS fares are increasing in line with the Hamburg and Munich fares. There is thus no evidence that would be consistent with easyJet constraining LH's BTS/ETS fares. This is again in line with easyJet offering only a single afternoon frequency that cannot cater to

<sup>13</sup> Clearly, one would not expect easyJet to have a positive effect on fares, and this finding suggests that the trend variable in the regression likely does not fully capture the upward trends that are apparent from Figure 16 and Figure 18.

business passengers who value the combination of at least a morning frequency with an evening frequency.

**Table 9: Pooled regression results (p-value in parentheses)**

	BRU-BER	BER-BRU
BTS dummy	[1.0-1.2]* (0.00)	[1.0-1.2]* (0.00)
ETS dummy	[0.6-0.8]* (0.00)	[0.8-1.0]* (0.00)
<b>easyJet dummy</b>	<b>-[0.0-0.2]* (0.00)</b>	<b>-[0.0-0.2]* (0.00)</b>
<b>easyJet dummy*BTS dummy</b>	<b>[0.0-0.2]* (0.00)</b>	<b>[0.0-0.2]* (0.00)</b>
<b>easyJet dummy*ETS dummy</b>	<b>[0.0-0.2]* (0.00)</b>	<b>[0.0-0.2]* (0.00)</b>
Trend	-[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.00)
Trend*BTS dummy	[0.0-0.2]* (0.00)	[0.0-0.2]* (0.00)
Trend*ETS dummy	[0.0-0.2]* (0.00)	[0.0-0.2]* (0.00)
Virgin dummy	[0.0-0.2]* (0.00)	[0.0-0.2]* (0.02)
Virgin dummy*BTS dummy	-[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.08)
Virgin dummy*ETS dummy	-[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.00)
Winter season dummy	[0.0-0.2]* (0.07)	[0.0-0.2]* (0.09)
Winter season dummy*BTS dummy	-[0.0-0.2]* (0.15)	-[0.0-0.2]* (0.17)
Winter season dummy*ETS dummy	-[0.0-0.2]* (0.00)	[0.0-0.2]* (0.00)
Constant	5.05 (0.00)	5.01 (0.00)
R <sup>2</sup>	99.9%	99.9%
Number of observations	180	180

Source: Commission calculations

**Table 10: Regression results by fare class for BRU-BER (p-value in parentheses)**

	BTS	ETS	ENS
<b>easyJet dummy</b>	<b>[0.0-0.2]* (0.00)</b>	<b>0.00 (0.638)</b>	<b>-[0.0-0.2]* (0.21)</b>
Trend	0.00 (0.00)	0.00 (0.00)	-[0.0-0.2]* (0.00)
Virgin dummy	[0.0-0.2]* (0.15)	-[0.0-0.2]* (0.00)	[0.0-0.2]* (0.03)
Winter season dummy	0.00 (0.00)	[0.0-0.2]* (0.05)	[0.0-0.2]* (0.19)
Constant	6.15 (0.00)	5.85 (0.00)	5.02 (0.00)
R <sup>2</sup>	80.7%	83.7%	74.7%
Number of observations	60	60	60

Source: Commission calculations

**Table 11: Regression results by fare class for BER-BRU (p-value in parentheses)**

	BTS	ETS	ENS
<b>easyJet dummy</b>	<b>[0.0-0.2]* (0.00)</b>	<b>[0.0-0.2]* (0.28)</b>	<b>-[0.0-0.2]* (0.34)</b>
Trend	0.00 (0.00)	0.00 (0.00)	[0.0-0.2]* (0.00)
Virgin dummy	0.00 (0.84)	-[0.0-0.2]* (0.00)	[0.0-0.2]* (0.14)
Winter season dummy	0.00 (0.46)	[0.0-0.2]* (0.05)	[0.0-0.2]* (0.11)
Constant	6.17 (0.00)	5.85 (0.00)	5.03 (0.00)
R <sup>2</sup>	63.6%	81.7%	79.2%
Number of observations	60	60	60

Source: Commission calculations

**Figure 16: LH's average net fares by class on the BRU-BER route**

[CONFIDENTIAL]\*

Source: LH

**Figure 17: SN's average net fares by class on the BRU-BER route**

[CONFIDENTIAL]\*

Source: SN

**Figure 18: LH's average net fares by class on the BER-BRU route**

[CONFIDENTIAL]\*

Source: LH

**Figure 19: SN's average net fares by class on the BER-BRU route**

[CONFIDENTIAL]\*

Source: SN

**Figure 20: SN's average net ENS fares on BRU-BER, BRU-HAM & BRU-MUC**

[CONFIDENTIAL]\*

Source: SN

**Figure 21: SN's average net ENS fares on BER-BRU, HAM-BRU & MUC-BRU**

[CONFIDENTIAL]\*

Source: SN

**Figure 22: SN's average net ETS fares on BRU-BER, BRU-HAM & BRU-MUC**

[CONFIDENTIAL]\*

Source: SN

**Figure 23: SN's average net ETS fares on BER-BRU, HAM-BRU & MUC-BRU**

[CONFIDENTIAL]\*

Source: SN

**Figure 24: LH's average net ENS fares on BRU-BER, BRU-HAM & BRU-MUC**

[CONFIDENTIAL]\*

Source: LH

**Figure 25: LH's average net ENS fares on BER-BRU, HAM-BRU & MUC-BRU**

[CONFIDENTIAL]\*

Source: LH

**Figure 26: LH's average net ETS fares on BRU-BER, BRU-HAM & BRU-MUC**

[CONFIDENTIAL]\*

Source: LH

**Figure 27: LH's average net ETS fares on BER-BRU, HAM-BRU & MUC-BRU**

[CONFIDENTIAL]\*

Source: LH

**Figure 28: LH's average net BTS fares on BRU-BER, BRU-HAM & BRU-MUC**

[CONFIDENTIAL]\*

Source: LH

**Figure 29: LH's average net BTS fares on BER-BRU, HAM-BRU & MUC-BRU**

[CONFIDENTIAL]\*

Source: LH

## **ANNEX III – THE PASSENGER SURVEY**

### **A. PURPOSE OF THE SURVEY**

- (1) In order to undertake its in-depth investigation, the Commission launched a tender procedure to identify a suitable contractor<sup>14</sup> with the aim to obtain a representative sample of passengers departing from Brussels and Antwerp airports on certain routes as well as passengers on the Brussels-Frankfurt train services. The Commission's objective was to gather the views of passengers as well evidence of passenger behaviour that would inform the investigation on a number of competition issues raised by the transaction. These questions included:
  - (a) The evaluation of the degree of substitution (actual and potential) between Brussels airport and Antwerp airport;
  - (b) The evaluation of the degree of competition of the plane and the train on three of the affected routes; and
  - (c) The evaluation of the degree of competition between the parties and between the parties and easyJet on two of the affected routes.
  
- (2) The survey was carried out at Brussels airport, Antwerp airport and on trains between Frankfurt and Brussels using the following 7 questionnaires prepared by the Commission:
  - (a) One questionnaire for passengers from Brussels airport to Frankfurt, Munich and Hamburg investigating the degree of (potential) substitution between Brussels and Antwerp airports as well as the competitive constraint exerted by the train;
  - (b) One questionnaire for passengers from Brussels airport to Berlin and Geneva investigating the degree of (potential) substitution between Brussels and Antwerp airports as well as the competitive constraint exerted by the parties and easyJet on each other;
  - (c) One questionnaire for passengers from Brussels airport to Zürich investigating the degree of (potential) substitution between Brussels and Antwerp airports;
  - (d) One questionnaire for train passengers between Brussels and Frankfurt (both ways) investigating the competitive constraint exerted by the train;
  - (e) One questionnaire for passengers from Brussels airport to London City (and flying with VLM as it is the sole operator on this route) to investigate the (actual) degree of competition between Brussels and Antwerp airports;
  - (f) One questionnaire for passengers from Antwerp airport to London City (and flying with VLM as it is the sole operator on this route) to investigate the (actual) degree of competition between Brussels and Antwerp airports; and

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<sup>14</sup> Antwerp and Brussels Airport Customer Survey (COMP/2009/Chief Economist Team/04/SI2.525936).



- (g) One questionnaire for passengers flying from Brussels Airport to London Gatwick (with SN as it is the sole operator on this route) to investigate the (actual) degree of competition between Brussels airport (SN flights) and Antwerp airport (VLM flights).
- (3) Following the tender procedure, on 5 February 2009, market research company Gfk Significant was commissioned to undertake the survey. Gfk is a global market research company with extensive and relevant experience in conducting surveys at airports.<sup>15</sup> Under the contract, Gfk was to provide a minimum of 250 replies to the questionnaires per carrier per route while at the same time ensuring a fair distribution of flights per day of the week and time of the day.<sup>16</sup> For the train, Gfk was to provide a minimum of 400 replies.<sup>17</sup> A number of conditions applied on each of the routes:
- (a) All carriers providing direct or stop-over flights have to be covered, indirect flights should not be covered;
  - (b) Only point to point passengers (i.e. excluding passengers connecting to another flight at one end of the flight) should be included;
  - (c) For the flights where this distinction exists, the survey should include passengers in economy and business classes. The responses should be representative of the share of each passenger category.

## **B. TIMING OF THE SURVEY**

- (4) The parties provided comments on the questionnaires on 4 February 2009 and 9 February 2009. The Commission took into consideration these comments – to the extent possible.<sup>18</sup>

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<sup>15</sup> Gfk is currently in charge of a continuous profiling survey at Brussels Airport and has conducted numerous other surveys for Brussels Airport and transport companies (such as SN for example).

<sup>16</sup> See the Commission email to Gfk of 9 February 2009. The Commission had discussions with the parties regarding the need to reflect the variations in traffic by time per day and day of the week. In agreement with Gfk, the surveyed passengers cover to the extent possible a large number of flights evenly distributed across days of the week and time of the day.

<sup>17</sup> Note that in the tender the Commission had requested a minimum of 150 answers per carrier per route and 200 answers for the train. Gfk offered to increase the sample size to 250 per carrier per route and 400 for the train. The parties commented that while the survey should have been carried out at both ends of the routes (e.g. not only in Brussels or Antwerp airports but also in Berlin, Frankfurt, Geneva, etc.), the high number of surveyed passengers by carrier by route should ensure a sufficiently representative sample of passengers departing from either ends of the route. As reported in paragraph (20) about half of the respondents to this question in the survey were starting their journey (55%) while the other half (45%) was on the return leg of their journey (there were about 15% of missing answers). If we consider the country of residence of the passengers, paragraph (9) reports that 46% of respondents live in Belgium (i.e. starting their journey) while 54% live abroad (i.e. probably on their return journey). These figures confirm that the survey has a balanced coverage of passengers who started their journey at both ends of the routes.

<sup>18</sup> For example, it was ensured that Gfk would check the flight numbers, minors were excluded from the survey, most questionnaires were altered to request the two main reasons for a given choice (instead of just the main reason), the wording of a number of questions was clarified as per the parties' suggestion.

- (5) The Commission also worked with Gfk on the final wording of the questionnaires (available in 4 languages – in English, French, Dutch and German). The surveys at Brussels and Antwerp airports were launched during the week 9-13 February 2009 while due to issues relating to the security clearance, the survey on the train only started one week later. For two weeks, Gfk handed out the questionnaires at the departure gates of the routes/carriers covered by the survey.<sup>19</sup>
- (6) An (almost) complete dataset of answers was provided by Gfk on 26 February 2009 (i.e. the official deadline for the end of the survey). Given that the replies on some carrier-routes were below the agreed number (i.e. 250 per carrier per route and 400 per train), the Commission agreed with Gfk that interviews would continue on these routes for a further 5 days. On 3 March 2009, the Commission received the final datasets from Gfk.
- (7) Overall, the Commission received 4,290 responses from Gfk. On the BRULCY route, the number of responses gathered was 125, on the ANRLCY route, the number of answers was 409 and on the BRULGW route, the number of answers was 188. The table below summarise the sample size of the other carrier/routes and the train:

destination	SN	DB	LH	LX	easyJet	Total
BER	282	0	258	0	314	854
FRA	152	0	268	0	0	420
FRA by train	0	277	0	0	0	277
GVA	320	0	0	0	269	589
HAM	258	0	281	0	0	539
MUC	273	0	302	0	0	575
ZRH	13	0	0	301	0	314
Total	1,297	277	1,108	301	583	3,568

- (8) As can be seen, out of the 17 carrier/routes, the samples achieved were above expectations for all but 4 carrier/routes (BRULCY, BRULGW, BRUFRA for SN and FRA by train). The problems encountered by the market research company were that on the train, the majority of passengers were travelling further (i.e. they were not O&D passengers), on the BRUFRA route with SN and the BRULGW route, SN has many connecting passengers and low load factors.<sup>20</sup> On the BRULCY route, the issue was that most (business) passengers would arrive at the departure gate at the last moment and were therefore not in a position to fill in the questionnaires. It proved difficult to locate these passengers in the business lounges.<sup>21</sup> Yet despite these issues, on 3 of these 4 carrier/routes, the number of replies received exceeded the sample size that

<sup>19</sup> Gfk also received a permission from the parties to access their business lounges. However, the practical difficulty associated with identifying the relevant passengers for the survey in lounges that cater for passengers to many destinations proved a hurdle. Overall, 5% of the surveyed passengers had a business class ticket.

<sup>20</sup> On these two routes, this issue had been anticipated by the parties in their comments of 9 February 2009 in which they indicated that BRULGW is mainly a feeder route for SN's African destination (hence, there are few O&D passengers) and the fact that passenger numbers have generally shrunk due to the economic crisis, with BRUFRA being particularly affected with a 35% drop in traffic January 2009 compared with January 2008

<sup>21</sup> See footnote 19.

had initially been requested by the Commission (i.e. 250). Overall the sample size was satisfactory and as expected.

### C. GENERAL DESCRIPTIVE STATISTICS

- (9) This section provides basic descriptive statistics on the entire dataset. About half of the respondents live in Belgium, followed by Germany (28%), Switzerland (8%) and Great Britain (6%).<sup>22</sup>

/\* Q4 - IN WHICH COUNTRY DO YOU CURRENTLY LIVE? \*/

Q4	Freq.	Percent	Cum.
Belgium	1,975	46.41	46.41
Germany	1,173	27.56	73.97
Great Britain	249	5.85	79.82
Other	515	12.10	91.92
Switzerland	344	8.08	100.00
Total	4,256	100.00	

- (10) The majority of Belgian residents in the survey come from the three main regions of Belgium: Brussels Capital (26%), Antwerpen (25%) and Flemish Brabant (17%).

/\* Q5 - IN WHICH PROVINCE DO YOU LIVE IN BELGIUM? \*/

Q5	Freq.	Percent	Cum.
Antwerpen	488	24.90	24.90
Brabant Wallon	96	4.90	29.80
Brussels Capital region	504	25.71	55.51
Hainaut	38	1.94	57.45
Liege	44	2.24	59.69
Limburg	59	3.01	62.70
Luxemburg	13	0.66	63.37
Namur	31	1.58	64.95
Oost-Vlaanderen	217	11.07	76.02
Vlaams Brabant	329	16.79	92.81
West-Vlaanderen	141	7.19	100.00
Total	1,960	100.00	

<sup>22</sup> The tables usually report the results without missing answers because there are generally few missing answers. When this is not the case, results are reported both with and without missing answers.

- (11) On the routes covered by the survey, the main purpose of travel is business (67%), followed by visiting friends and relatives (VFR, 16%) and leisure (14%).

/\* Q6 - WHAT IS THE MAIN PURPOSE OF YOUR TRIP TODAY? \*/

	Q6	Freq.	Percent	Cum.
Business		2,859	67.40	67.40
Leisure		602	14.19	81.59
Other: please specify:		104	2.45	84.04
VFR		677	15.96	100.00
Total		4,242	100.00	

- (12) The share of business passengers varies by route. The highest share of business passengers can be found on the routes to LCY (from Brussels, 97% and from Antwerp, 84%) as well as the FRA (83%) and HAM (82%) routes. The routes with the lowest share of business passengers are BER (54%) and GVA (45%). The lowest share of business passengers can be found in the train to/from FRA (44%).

destination	Q6				Total
	Business	Leisure	Other: pl	VFR	
ANRLCY	341 84.41	36 8.91	2 0.50	25 6.19	404 100.00
BER	455 53.97	213 25.27	21 2.49	154 18.27	843 100.00
BRULCY	121 96.80	1 0.80	2 1.60	1 0.80	125 100.00
FRA	346 83.37	30 7.23	7 1.69	32 7.71	415 100.00
FRAttrain	119 43.75	60 22.06	20 7.35	73 26.84	272 100.00
GVA	261 45.00	110 18.97	20 3.45	189 32.59	580 100.00
HAM	435 82.08	23 4.34	13 2.45	59 11.13	530 100.00
LGW	121 65.05	33 17.74	6 3.23	26 13.98	186 100.00
MUC	409 71.25	68 11.85	11 1.92	86 14.98	574 100.00
ZRH	251 80.19	28 8.95	2 0.64	32 10.22	313 100.00
Total	2,859 67.40	602 14.19	104 2.45	677 15.96	4,242 100.00

(13) The majority of business passengers (53%) indicated the absence of any corporate travel policy that would restrict their flight choice.

/\* Q7 - DOES YOUR COMPANY HAVE A CORPORATE TRAVEL POLICY THAT RESTRICTS YOUR FLIGHT CHOICE? \*/

Q7	Freq.	Percent	Cum.
Don't know	249	8.83	8.83
No	1,481	52.50	61.33
Yes	1,091	38.67	100.00
Total	2,821	100.00	

(14) The majority of passengers on these routes are repeat passengers. Only 38% were first-time travellers and 23% had travelled to their destination more than 5 times before.

/\* Q8 - HOW MANY TIMES HAVE YOU TRAVELLED (BY PLANE/BY TRAIN) FROM BRUSSELS TO THIS DESTINATION IN THE PAST 12 MONTHS BEFORE TODAY? PLEASE COUNT A RETURN TRIP AS ONE TIME ONLY. \*/

Q8	Freq.	Percent	Cum.
Between 1-5 times	1,616	37.98	37.98
Don't know	25	0.59	38.57
More than 5 times	980	23.03	61.60
This is the first time	1,634	38.40	100.00
Total	4,255	100.00	

- (15) The greater proportion of frequent travellers can be found on the more business-oriented routes. On the LCY routes (from BRU and ANR), about a third of passengers had already travelled more than 5 times on the route. On the FRA, HAM and LGW routes, a quarter of passengers had already travelled more than 5 times.

/\* Q8 - HOW MANY TIMES HAVE YOU TRAVELLED (BY PLANE/BY TRAIN) FROM BRUSSELS TO THIS DESTINATION IN THE PAST 12 MONTHS BEFORE TODAY? PLEASE COUNT A RETURN TRIP AS ONE TIME ONLY. \*/  
BY DESTINATION

destination	Q8				Total
	1-5 times	Don't know	+5 times	First time	
ANRLCY	136 33.50	1 0.25	131 <b>32.27</b>	138 33.99	406 100.00
BER	305 35.92	6 0.71	164 19.32	374 44.05	849 100.00
BRULCY	46 37.10	0 0.00	41 <b>33.06</b>	37 29.84	124 100.00
FRA	157 37.83	4 0.96	104 <b>25.06</b>	150 36.14	415 100.00
FRAttrain	90 32.73	1 0.36	68 24.73	116 42.18	275 100.00
GVA	261 44.69	3 0.51	130 22.26	190 32.53	584 100.00
HAM	193 36.35	2 0.38	127 <b>23.92</b>	209 39.36	531 100.00
LGW	76 40.64	3 1.60	48 <b>25.67</b>	60 32.09	187 100.00
MUC	232 40.63	3 0.53	106 18.56	230 40.28	571 100.00
ZRH	120 38.34	2 0.64	61 19.49	130 41.53	313 100.00
Total	1,616 37.98	25 0.59	980 23.03	1,634 38.40	4,255 100.00

(16) The passengers travelling for leisure are the least likely to have travelled more than 5 times to their destination (6%) compared with business passengers (27%) and VFR (21%).

/\* Q8 - HOW MANY TIMES HAVE YOU TRAVELLED (BY PLANE/BY TRAIN) FROM BRUSSELS TO THIS DESTINATION IN THE PAST 12 MONTHS BEFORE TODAY? PLEASE COUNT A RETURN TRIP AS ONE TIME ONLY. \*/  
BY PURPOSE OF TRAVEL

	Q6	Q8			
		1-5 times	Don't know	+5 times	First time
Total					
-----					
---					
Business	1,101	17	773	965	
2,856					
	38.55	0.60	27.07	33.79	
100.00					
-----					
---					
Leisure	167	2	35	393	
597					
	27.97	0.34	5.86	65.83	
100.00					
-----					
---					
Other: please specify	40	2	28	32	
102					
	39.22	1.96	27.45	31.37	
100.00					
-----					
---					
VFR	296	3	139	235	
673					
	43.98	0.45	20.65	34.92	
100.00					
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---					
Total	1,604	24	975	1,625	
4,228					
	37.94	0.57	23.06	38.43	
100.00					

(17) The majority of passengers did choose their flight/train ticket themselves (74%).

/\* Q9 - DID YOU CHOOSE YOUR FLIGHT/TRAIN TICKET YOURSELF? \*/

Q9	Freq.	Percent	Cum.
No	1,113	26.10	26.10
Yes	3,152	73.90	100.00
Total	4,265	100.00	

(18) Leisure and VFR passengers were more likely than business passengers to have chosen their flight/train ticket themselves (85% and 92% respectively compared with 67% for business passengers).

/\* Q9 - DID YOU CHOOSE YOUR FLIGHT/TRAIN TICKET YOURSELF? \*/  
BY PURPOSE OF TRAVEL

Q6	Q9		Total
	No	Yes	
Business	943 33.03	1,912 66.97	2,855 100.00
Leisure	93 15.47	508 84.53	601 100.00
Other: please specify	19 18.27	85 81.73	104 100.00
VFR	54 7.98	623 92.02	677 100.00
Total	1,109 26.17	3,128 73.83	4,237 100.00

(19) The majority of passengers were on a round-trip (87%).

/\* Q10 - IS THIS TRIP A ROUND-TRIP? \*/

Q10	Freq.	Percent	Cum.
No	561	13.19	13.19
Yes	3,691	86.81	100.00
Total	4,252	100.00	

(20) There were lots of missing answers to the question of whether passengers were starting their journey or returning (14% of missing answers). Of those who answered, about half of the passengers (45%) were on the return journey and about half (55%) were starting their journey at the time of the interview.

/\* Q11 - ARE YOU STARTING YOUR JOURNEY NOW OR IS THIS YOUR RETURN TRIP? \*/  
(including missing answers)

Q11	Freq.	Percent	Cum.
Starting journey now	613	14.29	14.29
This is the return flight	2,018	47.04	61.33
Total	1,659	38.67	100.00
Total	4,290	100.00	



/\* Q11 - ARE YOU STARTING YOUR JOURNEY NOW OR IS THIS YOUR RETURN TRIP? \*/  
 (excluding missing answers)

Q11	Freq.	Percent	Cum.
Starting journey now	2,018	54.88	54.88
This is the return flight	1,659	45.12	100.00
Total	3,677	100.00	

(21) There were also lots of missing answers to the question of whether passengers were travelling back on the same day (15% of missing answers). Overall, almost two-thirds of respondents were not travelling on the same day.

/\* Q12 - ARE YOU TRAVELLING BACK ON THE SAME DAY YOU STARTED YOUR JOURNEY? \*/  
 (including missing answers)

Q12	Freq.	Percent	Cum.
No	2,813	65.57	80.09
Yes	854	19.91	100.00
Total	4,290	100.00	

/\* Q12 - ARE YOU TRAVELLING BACK ON THE SAME DAY YOU STARTED YOUR JOURNEY? \*/  
 (excluding missing answers)

Q12	Freq.	Percent	Cum.
No	2,813	76.71	76.71
Yes	854	23.29	100.00
Total	3,667	100.00	

(22) When considering the extent of same day return by purpose of travel, the survey shows that of those who answered, business passengers are more likely to return on the same day. Indeed, 58% of business respondents indicated that they would fly on the same day (27% were returning on the same day and 14% did not reply). This result can be compared with 82% of leisure passengers indicating that they would not return on the same day and 84% for VFR passengers. If considering only those passengers that replied (i.e. excluding missing answers), almost a third of business passengers were returning on the same day (32%), compared with less than 6% for leisure and 4% for VFR. These results are consistent with the view that same day returns are important for business travellers.

/\* Q12 - ARE YOU TRAVELLING BACK ON THE SAME DAY YOU STARTED YOUR JOURNEY?  
\*/

(including missing answers)  
BY PURPOSE OF TRAVEL

Q6	Q12		Total
	No	Yes	
	29	18	48
	60.42	37.50	100.00
Business	411	1,664	2,859
	14.38	58.20	100.00
Leisure	76	491	602
	12.62	81.56	100.00
Other: please specify	27	69	104
	25.96	66.35	100.00
VFR	80	571	677
	11.82	84.34	100.00
Total	623	2,813	4,290
	14.52	65.57	100.00

/\* Q12 - ARE YOU TRAVELLING BACK ON THE SAME DAY YOU STARTED YOUR JOURNEY?  
\*/

(excluding missing answers)  
BY PURPOSE OF TRAVEL

Q6	Q12		Total
	No	Yes	
Business	1,664	784	2,448
	67.97	32.03	100.00
Leisure	491	35	526
	93.35	6.65	100.00
Other: please specify	69	8	77
	89.61	10.39	100.00
VFR	571	26	597
	95.64	4.36	100.00
Total	2,795	853	3,648
	76.62	23.38	100.00

(23) Regarding the type of ticket held by the passenger for the trip, again there were many missing answers (15%) and passengers who did not know (8%). Of those who knew, the majority had one return ticket (73%) while 27% had two one-ways.

/\* Q13 - WHAT KIND OF TICKET DO YOU HAVE FOR THIS ROUND-TRIP? \*/  
 (including missing answers)

Q13	Freq.	Percent	Cum.
	642	14.97	14.97
Don't know	342	7.97	22.94
One return ticket	2,407	56.11	79.04
Two one-way tickets	899	20.96	100.00
Total	4,290	100.00	

/\* Q13 - WHAT KIND OF TICKET DO YOU HAVE FOR THIS ROUND-TRIP? \*/  
 (excluding missing answers and Don't knows)

Q13	Freq.	Percent	Cum.
One return ticket	2,407	72.81	72.81
Two one-way tickets	899	27.19	100.00
Total	3,306	100.00	

(24) On the plane, the most represented ticket type in the sample is Economy non-flexible (48%) followed by Economy Flexible (36%). There are only 5% of business tickets in the sample.

**PLANE ONLY**

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/

Q14	Freq.	Percent	Cum.
Business	203	5.08	5.08
Don't know	427	10.69	15.78
Economy flexible	1,440	36.06	51.84
Economy non-flexible	1,923	48.16	100.00
Total	3,993	100.00	

(25) Leisure and VFR are more likely to have Economy non-flexible tickets (56% and 57% respectively) compared with business passengers (45%) but less likely to have Economy flexible tickets (25% and 24% respectively) compared with business passengers (41%). If excluding the "Don't Know" answers, two-thirds of leisure and VFR purchased non-flexible economy tickets (66% and 67%) while about half (49%) of business passengers had purchased non-flexible economy tickets.

**PLANE ONLY**

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/  
 DISTRIBUTION OF TICKET TYPE BY PURPOSE OF TRAVEL

	Q14	Business	Leisure	Other: pl	VFR
Total					
-----					
Business	203	156	23	4	20
	5.12	5.70	4.24	4.76	3.33
-----					
Don't know	419	226	83	15	95
	10.57	8.26	15.31	17.86	15.81
-----					
Economy flexible	1,430	1,129	135	21	145
	36.08	41.26	24.91	25.00	24.13
-----					
Economy non-flexible	1,911	1,225	301	44	341
	48.22	44.77	55.54	52.38	56.74
-----					
Total	3,963	2,736	542	84	601
	100.00	100.00	100.00	100.00	100.00

**PLANE ONLY**

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/  
 DISTRIBUTION OF TICKET TYPE BY PURPOSE OF TRAVEL  
 (Excluding Don't Know answers)

	Q14	Business	Leisure	Other: pl	VFR
Total					
-----					
Business	203	156	23	4	20
	5.73	6.22	5.01	5.80	3.95
-----					

Economy flexible	1,129	135	21	145
1,430	44.98	29.41	30.43	28.66
40.35				
-----+-----+-----				
---				
Economy non-flexible	1,225	301	44	341
1,911	48.80	65.58	63.77	67.39
53.92				
-----+-----+-----				
---				
Total	2,510	459	69	506
3,544	100.00	100.00	100.00	100.00
100.00				

(26) When considering the distribution of purpose of travel by ticket type, the survey revealed that the majority of Economy non-flexible tickets in the sample were sold to business passengers (64%). The great majority of business tickets (77%) were sold to passengers travelling for business purposes.

**PLANE ONLY**

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/  
DISTRIBUTION OF PURPOSE OF TRAVEL BY TICKET TYPE

	Q14	Q6			
Total		Business	Leisure	Other: pl	VFR
203	Business	156	23	4	20
100.00		76.85	11.33	1.97	9.85
419	Don't know	226	83	15	95
100.00		53.94	19.81	3.58	22.67
1,430	Economy flexible	1,129	135	21	145
100.00		78.95	9.44	1.47	10.14
1,911	Economy non-flexible	1,225	301	44	341
100.00		64.10	15.75	2.30	17.84
3,963	Total	2,736	542	84	601
100.00		69.04	13.68	2.12	15.17

(27) On the train, the link between ticket type and purpose of travel is more pronounced. Indeed, only 16% of passengers travelling for business had the second class saving fare compared with 36% of leisure passengers and 37% of VFR. Passengers travelling for business purposes had mostly second class normal fares.

**TRAIN ONLY**

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/  
DISTRIBUTION OF TICKET TYPE BY PURPOSE OF TRAVEL

	Q14	Q6			
Total		Business	Leisure	Other: pl	VFR
18	Don't know	9	4	1	4

6.67		7.63	6.78	5.00	5.48
-----					
First class normal fa 29		23	3	0	3
10.74		19.49	5.08	0.00	4.11
-----					
First class saving fa 20		10	6	1	3
7.41		8.47	10.17	5.00	4.11
-----					
Second class normal f 123		57	25	5	36
45.56		48.31	42.37	25.00	49.32
-----					
Second class saving f 80		19	21	13	27
29.63		16.10	35.59	65.00	36.99
-----					
	Total	118	59	20	73
270		100.00	100.00	100.00	100.00
100.00					

(28) Only 24% of the second class economy (saving) fares were sold to passengers travelling for business compared with 60% sold to leisure and VFR.

#### TRAIN ONLY

/\* Q14 - WHAT TYPE OF TICKET YOU HAVE BOOKED FOR THIS FLIGHT? \*/

DISTRIBUTION OF PURPOSE OF TRAVEL BY TICKET TYPE

	Q14	Business	Leisure	Other: pl	VFR
Total					
-----					
Don't know		9	4	1	4
18		50.00	22.22	5.56	22.22
100.00					
-----					
First class normal fa 29		23	3	0	3
100.00		79.31	10.34	0.00	10.34
-----					
First class saving fa 20		10	6	1	3
100.00		50.00	30.00	5.00	15.00
-----					

Second class normal f 123	57	25	5	36
	46.34	20.33	4.07	29.27
100.00				
-----				
Second class saving f 80	19	21	13	27
	23.75	26.25	16.25	33.75
100.00				
-----				
Total	118	59	20	73
270	43.70	21.85	7.41	27.04
100.00				

(29) Descriptive statistics on the (total) prices paid are provided below for the passengers on return trips (i.e. those with a return or two one-way tickets). Almost a fifth of passengers do not know the price of their ticket. When considering only those passengers that know the price, the most represented price category is 101€ to 200€ (with 30% of tickets in this category).<sup>23</sup>

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS  
(excluding missing answers)

Q15	Freq.	Percent	Cum.
	28	0.80	0.80
0€-100€	385	11.05	11.86
101€-200€	854	24.52	36.38
201€-300€	611	17.54	53.92
301€-400€	446	12.81	66.72
401€ and more	516	14.81	81.54
Don't know	643	18.46	100.00
-----			
Total	3,483	100.00	

<sup>23</sup> Note that 83% of the passengers that do not know the price of their ticket are travelling for business purposes.



**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

Q15	Freq.	Percent	Cum.
0€-100€	385	13.69	13.69
<b>101€-200€</b>	<b>854</b>	<b>30.37</b>	<b>44.06</b>
201€-300€	611	21.73	65.79
301€-400€	446	15.86	81.65
401€ and more	516	18.35	100.00
Total	2,812	100.00	

(30) The distribution of prices varies depending on the purpose of travel. The majority of business passengers paid more than 200 euros (73%) while only 22% of leisure and 23% of VFR paid more than 200 euros. In fact, almost a third of leisure (30%) and VFR (31%) paid less than 100 euros for their ticket compared with just 5% for business passengers.

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY PURPOSE OF TRAVEL

Q15	Q6			
	Business	Leisure	Other: pl	VFR
Total				
0€-100€	92	119	6	161
378	5.05	29.75	11.54	30.84
13.52				
101€-200€	393	192	24	241
850	21.57	48.00	46.15	46.17
30.40				
201€-300€	478	49	10	70
607	26.23	12.25	19.23	13.41
21.71				
301€-400€	403	25	2	16
446	22.12	6.25	3.85	3.07
15.95				
401€ and more	456	15	10	34
515				

18.42		25.03	3.75	19.23	6.51	
-----+-----+-----						
2,796	Total	1,822	400	52	522	
100.00		100.00	100.00	100.00	100.00	

(31) The distribution of prices varies across routes as well. The most expensive route is ZRH with 68% of its tickets (for return trips) costing more than 400 euros. The least expensive routes are BER and GVA (these routes have comparatively less business passengers and easyJet also operates on these routes). On these two routes, almost a quarter of passengers (26% and 23% respectively) paid less than 100 euros. The fare categories with most observations on each route are highlighted in bold in the table.

#### PLANE ONLY

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	7 2.54	80 28.99	90 <b>32.61</b>	62 22.46	37 13.41	276 100.00
BER	160 25.52	243 <b>38.76</b>	102 16.27	65 10.37	57 9.09	627 100.00
BRULCY	1 1.47	12 17.65	26 <b>38.24</b>	17 25.00	12 17.65	68 100.00
FRA	16 5.95	51 18.96	54 20.07	59 21.93	89 <b>33.09</b>	269 100.00
GVA	97 22.51	183 <b>42.46</b>	86 19.95	32 7.42	33 7.66	431 100.00
HAM	34 8.85	108 <b>28.13</b>	106 27.60	73 19.01	63 16.41	384 100.00
LGW	11 8.09	46 <b>33.82</b>	34 25.00	27 19.85	18 13.24	136 100.00
MUC	51 12.53	115 <b>28.26</b>	98 24.08	82 20.15	61 14.99	407 100.00
ZRH	8 3.74	16 7.48	15 7.01	29 13.55	146 <b>68.22</b>	214 100.00
Total	385 13.69	854 30.37	611 21.73	446 15.86	516 18.35	2,812 100.00

- (32) The table below looks at the distribution of prices across routes for passengers travelling for **business** only. The percentage of passengers in the higher price categories is higher across all routes. Apart from the BER and GVA routes, less than 5% of passengers travelling for business paid less than 100 euros for their ticket (on return trips).

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION, BUSINESS ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	3 1.32	51 22.47	79 <b>34.80</b>	60 26.43	34 14.98	227 100.00
BER	21 6.84	109 <b>35.50</b>	66 21.50	58 18.89	53 17.26	307 100.00
BRULCY	1 1.52	12 18.18	25 <b>37.88</b>	17 25.76	11 16.67	66 100.00
FRA	7 3.17	31 14.03	43 19.46	58 26.24	82 <b>37.10</b>	221 100.00
GVA	18 10.17	56 31.64	59 <b>33.33</b>	21 11.86	23 12.99	177 100.00
HAM	21 6.75	63 20.26	99 <b>31.83</b>	70 22.51	58 18.65	311 100.00
LGW	2 2.41	22 26.51	22 26.51	25 <b>30.12</b>	12 14.46	83 100.00
MUC	12 4.53	44 16.60	78 <b>29.43</b>	75 28.30	56 21.13	265 100.00
ZRH	7 4.24	5 3.03	7 4.24	19 11.52	127 <b>76.97</b>	165 100.00
Total	92 5.05	393 21.57	478 26.23	403 22.12	456 25.03	1,822 100.00

(33) The table below looks at the distribution of prices across routes for passengers travelling for **leisure** only. Note that on most routes (except BER and GVA) the actual number of leisure passengers is extremely limited (and note that the response to this question was not available for the sole leisure passenger on the BRULCY route in the sample).

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION, LEISURE ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	3 11.54	18 69.23	3 11.54	1 3.85	1 3.85	26 100.00
BER	71 <b>42.51</b>	69 41.32	21 12.57	4 2.40	2 1.20	167 100.00
FRA	3 20.00	7 <b>46.67</b>	3 20.00	1 6.67	1 6.67	15 100.00
GVA	18 23.08	37 <b>47.44</b>	11 14.10	8 10.26	4 5.13	78 100.00
HAM	0 0.00	9 75.00	1 8.33	1 8.33	1 8.33	12 100.00
LGW	4 15.38	13 50.00	5 19.23	2 7.69	2 7.69	26 100.00
MUC	20 33.90	32 <b>54.24</b>	2 3.39	5 8.47	0 0.00	59 100.00
ZRH	0 0.00	7 41.18	3 17.65	3 17.65	4 23.53	17 100.00
Total	119 29.75	192 48.00	49 12.25	25 6.25	15 3.75	400 100.00

(34) The table below looks at the distribution of prices across routes for passengers travelling for **VFR** passengers only. Note again that on most routes (except BER and GVA) the actual number of VFR passengers is extremely limited.

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS  
(excluding missing answers and Don't knows)  
BY DESTINATION, VFR ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	1 5.00	10 50.00	6 30.00	1 5.00	2 10.00	20 100.00
BER	63 <b>47.37</b>	55 41.35	12 9.02	2 1.50	1 0.75	133 100.00
BRULCY	0 0.00	0 0.00	1 100.00	0 0.00	0 0.00	1 100.00
FRA	5 17.24	12 41.38	7 24.14	0 0.00	5 17.24	29 100.00
GVA	56 35.44	80 <b>50.63</b>	16 10.13	2 1.27	4 2.53	158 100.00
HAM	12 23.08	31 <b>59.62</b>	4 7.69	2 3.85	3 5.77	52 100.00
LGW	4 19.05	11 52.38	4 19.05	0 0.00	2 9.52	21 100.00
MUC	19 24.36	38 <b>48.72</b>	16 20.51	2 2.56	3 3.85	78 100.00
ZRH	1 3.33	4 13.33	4 13.33	7 23.33	14 46.67	30 100.00
Total	161 30.84	241 46.17	70 13.41	16 3.07	34 6.51	522 100.00

- (35) The table below shows the distribution of prices for **business** passengers that have bought an **economy non-flexible ticket** (across all routes). The most represented price category is 201€ to 300€. Very few business passengers have paid less than 100€ (7%) even if their ticket (for a return trip) was non flexible. In fact, 64% of business passengers having purchased an economy non-flexible ticket paid more than 200€

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

ECONOMY NON-FLEXIBLE AND BUSINESS ONLY

Q15	Freq.	Percent	Cum.
0€-100€	60	6.73	6.73
101€-200€	264	29.63	36.36
201€-300€	272	30.53	66.89
301€-400€	177	19.87	86.76
401€ and more	118	13.24	100.00
Total	891	100.00	

- (36) The table below shows the distribution of prices for **leisure** passengers that have bought an **economy non-flexible ticket** (across all routes). The most represented price category is 101€ to 200€ with almost half of the tickets in this category followed by the category less than 100€ (with a third of tickets are in this category). Only 18% of leisure passengers having purchased economy non-flexible tickets paid more than 200€

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

ECONOMY NON-FLEXIBLE AND LEISURE ONLY

Q15	Freq.	Percent	Cum.
0€-100€	80	32.65	32.65
101€-200€	120	48.98	81.63
201€-300€	26	10.61	92.24
301€-400€	15	6.12	98.37
401€ and more	4	1.63	100.00
Total	245	100.00	

(37) The table below shows the distribution of prices for **VFR** passengers that have bought an **economy non-flexible ticket** (across all routes). Again, the most represented price category is 101€ to 200€ with half of the tickets in this category followed by the category less than 100€ (more than a third of tickets are in this category). Only 16% of VFR passengers having purchased economy non-flexible tickets paid more than 200€

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

ECONOMY NON-FLEXIBLE AND VFR ONLY

Q15	Freq.	Percent	Cum.
0€-100€	104	34.32	34.32
101€-200€	150	49.50	83.83
201€-300€	31	10.23	94.06
301€-400€	7	2.31	96.37
401€ and more	11	3.63	100.00
Total	303	100.00	

(38) The same analysis of the price categories for **economy non-flexible tickets** by route *and* purpose of travel has also been done (though as already seen, there are generally very few leisure and VFR passengers on the individual routes). The table below shows the distribution of prices for **business** passengers by route. On all routes (except BER and GVA), the majority of passengers have paid more than 200 euros.

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION: ECONOMY NON-FLEXIBLE AND BUSINESS ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	1 0.79	37 29.37	43 <b>34.13</b>	29 23.02	16 12.70	126 100.00
BER	12 8.96	65 <b>48.51</b>	31 23.13	21 15.67	5 3.73	134 100.00
BRULCY	0 0.00	8 19.51	20 48.78	10 24.39	3 7.32	41 100.00
FRA	5 6.02	20 <b>24.10</b>	19 22.89	20 <b>24.10</b>	19 22.89	83 100.00
GVA	14 14.74	35 <b>36.84</b>	33 34.74	10 10.53	3 3.16	95 100.00
HAM	12 7.32	46 28.05	64 <b>39.02</b>	27 16.46	15 9.15	164 100.00
LGW	1 2.56	14 35.90	12 30.77	9 23.08	3 7.69	39 100.00
MUC	10 6.99	35 24.48	46 <b>32.17</b>	38 26.57	14 9.79	143 100.00
ZRH	5 7.58	4 6.06	4 6.06	13 19.70	40 <b>60.61</b>	66 100.00
Total	60 6.73	264 29.63	272 30.53	177 19.87	118 13.24	891 100.00



- (39) The table below shows the price distribution for **leisure** passengers having purchased economy non-flexible tickets (but note the low number of such passengers on each individual route).

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION: ECONOMY NON-FLEXIBLE AND LEISURE ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
<i>ANRLCY</i>	1	14	2	1	0	18
	5.56	77.78	11.11	5.56	0.00	100.00
<i>BER</i>	42	40	8	0	0	90
	<b>46.67</b>	44.44	8.89	0.00	0.00	100.00
<i>FRA</i>	3	2	2	1	0	8
	37.50	25.00	25.00	12.50	0.00	100.00
<i>GVA</i>	13	27	8	5	3	56
	23.21	<b>48.21</b>	14.29	8.93	5.36	100.00
<i>HAM</i>	0	6	0	1	0	7
	0.00	85.71	0.00	14.29	0.00	100.00
<i>LGW</i>	2	9	2	1	0	14
	14.29	64.29	14.29	7.14	0.00	100.00
<i>MUC</i>	19	19	2	4	0	44
	43.18	43.18	4.55	9.09	0.00	100.00
<i>ZRH</i>	0	3	2	2	1	8
	0.00	37.50	25.00	25.00	12.50	100.00
Total	80	120	26	15	4	245
	32.65	48.98	10.61	6.12	1.63	100.00

(40) The table below shows the price distribution for **VFR** passengers having purchased economy non-flexible tickets (but note the low number of such passengers on each individual route).

**PLANE ONLY**

/\* Q15 - HOW MUCH WAS THE TOTAL PRICE FOR THIS TICKET (AS IN QUESTIONS Q13 AND Q14)? PLEASE INCLUDE ALL TAXES AND CHARGES BUT EXCLUDE ANY TRAVEL INSURANCE COSTS

(excluding missing answers and Don't knows)

BY DESTINATION: ECONOMY NON-FLEXIBLE AND VFR ONLY

destination	Q15					Total
	0€-100€	101€-200€	201€-300€	301€-400€	401€ and	
ANRLCY	1 8.33	6 50.00	4 33.33	0 0.00	1 8.33	12 100.00
BER	42 <b>48.84</b>	36 41.86	8 9.30	0 0.00	0 0.00	86 100.00
FRA	4 23.53	7 41.18	4 23.53	0 0.00	2 11.76	17 100.00
GVA	34 37.36	49 <b>53.85</b>	6 6.59	0 0.00	2 2.20	91 100.00
HAM	7 24.14	18 62.07	2 6.90	1 3.45	1 3.45	29 100.00
LGW	2 20.00	7 70.00	1 10.00	0 0.00	0 0.00	10 100.00
MUC	14 30.43	25 54.35	5 10.87	1 2.17	1 2.17	46 100.00
ZRH	0 0.00	2 16.67	1 8.33	5 41.67	4 33.33	12 100.00
Total	104 34.32	150 49.50	31 10.23	7 2.31	11 3.63	303 100.00

(41) The table below shows the price distribution on the ICE train between Brussels and Frankfurt (for return trips). Most tickets are in the 101-200€category.

Q15	Freq.	Percent	Cum.
Less than 50€	8	3.85	95.67
51€-100€	52	25.00	87.02
101€-200€	103	49.52	49.52
201€-300€	26	12.50	62.02
More than 301€	9	4.33	100.00
Don't know	10	4.81	91.83
Total	208	100.00	

(42) The table below looks at the distribution of prices on the train by purpose of travel but note the low level of observations by category.

	Q15	Business	Leisure	Other: pl	VFR
Total					
Less than 50€	8	2	5	0	1
	4.08	2.44	11.11	0.00	1.82
51€-100€	51	17	9	7	18
	26.02	20.73	20.00	50.00	32.73
101€-200€	102	41	22	6	33
	52.04	50.00	48.89	42.86	60.00
201€-300€	26	18	7	1	0
	13.27	21.95	15.56	7.14	0.00
More than 301€	9	4	2	0	3
	4.59	4.88	4.44	0.00	5.45
Total	196	82	45	14	55
	100.00	100.00	100.00	100.00	100.00

#### **D. ANALYSIS OF RESULTS REGARDING THE SUBSTITUTION BETWEEN BRUSSELS AND ANTWERP AIRPORTS**

- (43) The survey investigates the question of substitution between ANR and BRU airports from 3 perspectives: first, the existing substitution for passengers flying with VLM to LCY from either BRU or ANR; second, the potential substitution on routes where there is no flight from ANR available today (BER, FRA, HAM, MUC, GVA, ZRH); third, the existing substitution between SN flying to LGW from BRU and VLM flying to LCY from ANR.
- (44) The survey revealed that while there is some substitution between ANR and BRU airports, the choice of airport is predominantly based on the location of passengers at time of departure and the schedule. The price is not a major competitive variable for the choice of the airport. Airport location is the main reason for LCY travellers to choose either ANR or BRU, followed by the schedule.

##### **1. ANSWERS FROM VLM PASSENGERS TO LCY**

- (45) The answers to the questions 16 to 21 of the questionnaires to passengers flying to LCY from either ANR or BRU are presented below. With respect to Q16, the survey indicates that about 26% of passengers looked at the prices of flights to LCY from the other airport (30% of those who booked themselves).

/\* Q16 - WHEN BOOKING YOUR FLIGHT TO LCY, DID YOU ALSO LOOK AT THE FLIGHT SCHEDULES AND/OR FARES FOR FLIGHTS DEPARTING FROM THE OTHER AIRPORT? \*/  
(excluding missing answers)

Q16	Freq.	Percent	Cum.
Don't know, I didn't book myself	69	13.04	13.04
No	320	60.49	73.53
Yes	140	26.47	100.00
Total	529	100.00	

/\* Q16 - WHEN BOOKING YOUR FLIGHT TO LCY, DID YOU ALSO LOOK AT THE FLIGHT SCHEDULES AND/OR FARES FOR FLIGHTS DEPARTING FROM THE OTHER AIRPORT? \*/  
(excluding missing answers and those who did not book themselves)

Q16	Freq.	Percent	Cum.
No	320	69.57	69.57
Yes	140	30.43	100.00
Total	460	100.00	

(46) From passengers departing from ANR, there is a slightly higher proportion of passengers that did look at the fares/schedules from BRU (28%) compared with passengers departing from BRU and looking at ANR fares/schedules (22%). If we only consider those who booked themselves, 32% of passengers travelling from ANR did look at the fares and schedules from BRU compared with 25% of passengers travelling from BRU who did look at the fares and schedules from ANR.

/\* Q16 - WHEN BOOKING YOUR FLIGHT TO LCY, DID YOU ALSO LOOK AT THE FLIGHT SCHEDULES AND/OR FARES FOR FLIGHTS DEPARTING FROM THE OTHER AIRPORT? \*/  
(excluding missing answers)

Q16	destination		Total
	ANRLCY	BRULCY	
Don't know, I didn't	51	18	69
	12.62	14.40	13.04
No	240	80	320
	59.41	64.00	60.49
Yes	113	27	140
	27.97	21.60	26.47
Total	404	125	529
	100.00	100.00	100.00

/\* Q16 - WHEN BOOKING YOUR FLIGHT TO LCY, DID YOU ALSO LOOK AT THE FLIGHT SCHEDULES AND/OR FARES FOR FLIGHTS DEPARTING FROM THE OTHER AIRPORT? \*/  
(excluding missing answers and those who did not book themselves)

Q16	destination		Total
	ANRLCY	BRULCY	
No	240	80	320
	67.99	74.77	69.57
Yes	113	27	140
	32.01	25.23	30.43
Total	353	107	460
	100.00	100.00	100.00

(47) Considering only the passengers who did look at fares and schedules from the other airport, the main reason for choosing a specific airport was the airport location (55%) followed by the convenience of schedule (28%). Only 8% of these passengers based their choice primarily on price. The other reasons mentioned for making the choice by ANR passengers include the free parking, the fact that the airport is smaller and hence less busy and more efficient or there was a mistake in the booking of one of the passengers.

/\* Q17 - WHAT IS THE MAIN REASON YOU ULTIMATELY CHOSE THE FLIGHT DEPARTING FROM ANTWERP/BRUSSELS? \*/  
ONLY PASSENGERS THAT COMPARED FARES/SCHEDULES

Q17	Freq.	Percent	Cum.
-			
Other, please specify:	12	8.82	8.82
The airport location is more convenient	75	55.15	63.97
The price was lower	11	8.09	72.06
The schedule was more convenient	38	27.94	100.00
Total	136	100.00	

(48) Only 13% of passengers replied they would have switched to the other airport if the price had been 5-10% more expensive (17% if excluding respondents that do not know what they would have done). The responses are almost identical across the two routes.

/\* Q18 - IF YOUR FLIGHT TO LCY FROM ANR HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE DECIDED TO TRAVEL FROM THE OTHER AIRPORT INSTEAD? \*/

Q18	Freq.	Percent	Cum.
Don't know	119	22.62	22.62
No	339	64.45	87.07
Yes	68	12.93	100.00
Total	526	100.00	

/\* Q18 - IF YOUR FLIGHT TO LCY FROM ANR HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE DECIDED TO TRAVEL FROM THE OTHER AIRPORT INSTEAD? \*/  
(excluding Don't Know answers)

Q18	Freq.	Percent	Cum.
No	339	83.29	83.29
Yes	68	16.71	100.00
Total	407	100.00	

(49) About a third of passengers have already travelled from the other airport to LCY (the percentage is roughly the same across the two routes).

/\* Q19 - HAVE YOU FLOWN BEFORE TO LCY FROM THE OTHER AIRPORT BEFORE? \*/

Q19	Freq.	Percent	Cum.
No	353	66.60	66.60
Yes	177	33.40	100.00
Total	530	100.00	

(50) About 11% of passengers having travelled to LCY from the other airport have done so more than 5 times (the percentages are roughly the same across the two routes)

/\* Q20 - HOW MANY TIMES YOU HAVE FLOWN FROM THE OTHER AIRPORT TO LCY IN THE LAST 12 MONTHS? \*/

Q20	Freq.	Percent	Cum.
Between 1-5 times	137	81.07	81.07
More than 5 times	18	10.65	100.00
Don't know	14	8.28	89.35
Total	169	100.00	

- (51) Of those who have travelled before, passengers were asked the main reason for choosing the other airport on the last time they did so. The main reason cited is the schedule (36%) followed by the location of the airport (21%). The price was only a reason for 10% of passengers. In the "Other" category which has 23% of answers, a few passengers responded that flying from their preferred airport was not possible because the flight was full, the airport was closed, the flight was cancelled, or they had to be either at ANR or BRU for other reasons (e.g. meeting or leaving from the office).

/\* Q21 - PLEASE SPECIFY THE MAIN REASON WHY YOU CHOSE TO FLY FROM THE OTHER AIRPORT ON THE LAST TIME YOU DID SO \*/  
ONLY PASSENGERS THAT ALREADY TRAVELLED BEFORE

Cum.	Q21	Freq.	Percent
-			
9.77	I don't remember	17	9.77
32.76	Other, please specify:	40	22.99
53.45	The airport location is more convenient	36	20.69
63.79	The price was lower	18	10.34
100.00	The schedule was more convenient	63	36.21
-			
	Total	174	100.00

## 2. ANSWERS FROM POTENTIAL SWITCHERS ON THE GERMAN AND SWISS ROUTES

- (52) The answers to the questions 16 to 18 of the questionnaires to passengers flying to BER, FRA, GVA, HAM, MUC and ZRH are presented below. With respect to Q16, the survey indicates that only 16% of passengers would have travelled from ANR instead of BRU if their flight had been available at the same time and the same price.<sup>24</sup> This is not the usual SSNIP question as it does not ask what passengers would have done in case of a 5-10% price increase. The main reason for not asking the usual SSNIP question to this group of passengers was that the alternative product (i.e. flights from ANR to their destination) does not exist and therefore, it would not have been possible to evaluate the impact of a 5-10% price increase of their current choice relative to the price of an alternative choice that does not exist. Still, it seemed appropriate to evaluate the passengers' view of (potential) substitutability between flights from BRU and ANR by hypothetically considering that both products were available at the same price and the same time. The appropriate SSNIP question was asked to the LCY and LGW passengers.

<sup>24</sup> The same question was asked about CRL and only 7% of passengers responded "Yes" (8% if excluding Don't Know answers), even though a large number of passengers (38%) had already traveled with Ryanair from CRL.



/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/

Q16	Freq.	Percent	Cum.
Don't know	319	9.79	9.79
No	2,433	74.65	84.44
Yes	507	15.56	100.00
Total	3,259	100.00	

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/

(excluding Don't Know answers)

Q16	Freq.	Percent	Cum.
No	2,433	82.76	82.76
Yes	507	17.24	100.00
Total	2,940	100.00	

(53) Of those who responded "Yes" and live in Belgium (54% of all "Yes" replies), the overwhelming majority live in the Antwerp province (72%) and East Flanders (13%).

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/

Distribution by Belgian province - Only **Yes** answers from Belgian residents

Q5	Freq.	Percent	Cum.
Antwerpen	196	72.32	72.32
Brussels Capital region	7	2.58	74.91
Hainaut	1	0.37	75.28
Liege	3	1.11	76.38
Limburg	8	2.95	79.34
Oost-Vlaanderen	35	12.92	92.25
Vlaams Brabant	7	2.58	94.83
West-Vlaanderen	14	5.17	100.00
Total	271	100.00	

(54) If we look at the answers by place of residence (see the three tables below), the survey reveals that 93% of those living in Brussels capital would not switch (only 2% said yes and 5% don't know). The majority of those living in the Flemish Brabant also would not have switched (89%). These figures can be compared with the answers from residents of the Antwerp province whose majority would have switched (75%).

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/  
 (only BRUSSELS residents)

Q16	Freq.	Percent	Cum.
Don't know	20	4.88	4.88
No	383	93.41	98.29
Yes	7	1.71	100.00
Total	410	100.00	

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/  
 (only FLEMISH BRABANT residents)

Q16	Freq.	Percent	Cum.
Don't know	22	8.49	8.49
No	230	88.80	97.30
Yes	7	2.70	100.00
Total	259	100.00	

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/  
 (only ANTWERPEN residents)

Q16	Freq.	Percent	Cum.
Don't know	10	3.82	3.82
No	56	21.37	25.19
Yes	196	74.81	100.00
Total	262	100.00	

(55) The answers are quite similar across passengers whatever the purpose of their trip.

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/

Q16	Q6				Total
	Business	Leisure	Other: pl	VFR	
Don't know	205 9.57	57 12.13	10 13.89	42 7.68	314 9.72
No	1,606 75.01	338 71.91	53 73.61	418 76.42	2,415 74.77
Yes	330 15.41	75 15.96	9 12.50	87 15.90	501 15.51
Total	2,141 100.00	470 100.00	72 100.00	547 100.00	3,230 100.00

/\* Q16 - IF THIS FLIGHT HAD BEEN AVAILABLE FOR DEPARTURE FROM ANR AT THE SAME TIME AND THE SAME PRICE, WOULD YOU HAVE TRAVELLED FROM ANTWERP INSTEAD OF BRUSSELS \*/

(excluding Don't Know answers)

Q16	Q6				Total
	Business	Leisure	Other: pl	VFR	
No	1,606 82.95	338 81.84	53 85.48	418 82.77	2,415 82.82
Yes	330 17.05	75 18.16	9 14.52	87 17.23	501 17.18
Total	1,936 100.00	413 100.00	62 100.00	505 100.00	2,916 100.00

(56) In the sample, only 11% of passengers have already flown with VLM.

/\* Q17 - HAVE YOU EVER FLOWN WITH THE BUSINESS AIRLINE VLM (TO ANY DESTINATION?\*/

Q17	Freq.	Percent	Cum.
No	2,896	88.94	88.94
Yes	360	11.06	100.00
Total	3,256	100.00	

(57) To those 360 respondents who have already flown with VLM, the question was asked again as to whether they would fly with VLM to their destination from ANR. A large number of these respondents (42%) indicated that they would fly from ANR with VLM if it had been flying to their destination.<sup>25</sup>

/\* Q18 - IF VLM WAS FLYING TO THIS DESTINATION FROM ANR, WOULD YOU HAVE TRAVELLED WITH VLM? \*/

Q18	Freq.	Percent	Cum.
Don't know	54	15.17	15.17
No	154	43.26	58.43
Yes	148	41.57	100.00
Total	356	100.00	

<sup>25</sup>

Those who have travelled with VLM before and would have flown with them to their destination if it had been available represent 5% of the sample. Also note that of those passengers that have already flown from CRL with Ryanair, 18% indicated that they would have flown to their destination from CRL with Ryanair if it had been available

(58) Of those who replied that they have already flown with VLM, the overwhelming majority again resides in the Antwerpen province (77%) and East Flanders (9%).

/\* Q18 - IF VLM WAS FLYING TO THIS DESTINATION FROM ANR, WOULD YOU HAVE TRAVELLED WITH VLM? \*/

(only those who answered YES and live in Belgium)

Q5	Freq.	Percent	Cum.
Antwerpen	85	77.27	77.27
Brussels Capital region	4	3.64	80.91
Limburg	2	1.82	82.73
Oost-Vlaanderen	10	9.09	91.82
Vlaams Brabant	3	2.73	94.55
West-Vlaanderen	6	5.45	100.00
Total	110	100.00	

### 3. ANSWERS FROM SN PASSENGERS TO LGW

(59) The answers to the questions 16 to 30 of the questionnaires to passengers flying to LGW with SN are presented below. These answers can provide a useful benchmark for evaluating the previous responses regarding the degree of competition between ANR and BRU. Indeed, if the answers to substitution between ANR and BRU are of a similar magnitude compared with those relating to competition between airlines flying from BRU to London, then it could be argued that ANR and BRU compete closely. If responses are of a different magnitude, then flights from BRU and flights from ANR would be deemed more distant substitutes compared with flights departing from the same airport. This is of course not a perfect exercise but in order to make a judgement on the survey responses, some benchmark is required and competition between airlines flying from the same airport appears to be a useful benchmark available from the survey.<sup>26</sup> With respect to SN customers flying to LGW, the survey indicates that 55% passengers do look at flights from other airlines (66% of those who booked themselves).

/\* Q16 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/

(excluding missing answers)

Q16	Freq.	Percent	Cum.
Don't know, I didn't book myself	31	16.67	16.67
No	53	28.49	45.16
Yes	102	54.84	100.00
Total	186	100.00	

/\* Q16 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/

(excluding missing answers and only those who booked themselves)

<sup>26</sup> Similarly, the answers from passengers to BER on the closeness of competition between the parties and easyJet will also be used as a benchmark. As will be seen, answers on competition between airlines on the LGW and BER routes are in fact quite close in showing strong competitive interactions between the airlines operating on the route (in particular SN and LH on the BER route).

Q16	Freq.	Percent	Cum.
No	53	34.19	34.19
Yes	102	65.81	100.00
Total	155	100.00	

(60) Of all the passengers to LGW in the survey, 38% looked at BA's flights to Heathrow, 24% looked at Bmi's flights to Heathrow and only 10% looked at VLM's flight to LCY (departure airport not specified).

/\* Q17 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT\*/

	q17	Freq	Perc2	total2
2.	Bmi (Heathrow)	46	24.47	188
3.	British Airways (Heathrow)	71	37.77	188
5.	Other, please specify	22	11.7	188
8.	VLM Airlines (London City)	19	10.11	188

(61) Passengers were then asked the two main reasons for choosing SN flying to LGW. Of those passengers who did look at other flights, the first most cited reason for ultimately choosing the SN flight to LGW was the schedule (69%) followed by the price (49%).<sup>27</sup>

/\* Q18 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH SN TO LGW TODAY? \*/  
ONLY PASSENGERS WHO COMPARED

	q18	Freq	Perc	Total
1.	Frequent flyer program	8	7.84	102
2.	Good Safety record	3	2.94	102
3.	<b>It was the lowest price</b>	<b>50</b>	<b>49.02</b>	<b>102</b>
4.	Other, please specify:	18	17.65	102
5.	Punctuality	1	.98	102
6.	Quality of service	7	6.86	102
7.	The schedule was most convenient	70	68.63	102

(62) More than a third of SN passengers to LGW indicate that they would have switched to another airline if the price had been 5-10% more expensive (38%). The figure is 50% if excluding passengers that did not know what they would do.

<sup>27</sup> In the "other" category (18%), the most cited reason was the location of the LGW airport.

/\* Q19 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*

Q19	Freq.	Percent	Cum.
Don't know	43	23.63	23.63
No	70	38.46	62.09
Yes	69	37.91	100.00
Total	182	100.00	

/\* Q19 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*  
(excluding Don't Know answers)

Q19	Freq.	Percent	Cum.
No	70	50.36	50.36
Yes	69	49.64	100.00
Total	139	100.00	

- (63) Of all the passengers in the sample, 24% would have switched to BA (LHR) if the price had been 5-10% higher with SN, 15% would have switched to Bmi (LHR) and only 10% indicated they would have switched to VLM (note: the departure airport was not specified).

/\* Q20 - PLEASE SPECIFY THE AIRLINES YOU WOULD HAVE CONSIDERED (only main answers not "Others")\*/

	q20	Freq	Perc2	total2
1.	Bmi (Heathrow)	28	14.89	188
2.	British Airways (Heathrow)	46	24.47	188
3.	Other, please specify	15	7.98	188
4.	VLM Airlines (London City)	19	10.11	188

- (64) The majority of SN passengers to LGW had already flown to London with another airline before (55%).

/\* Q21 - HAVE YOU FLOWN FROM BRU TO LONDON BEFORE WITH OTHER AIRLINES\*/

Q21	Freq.	Percent	Cum.
No	82	44.57	44.57
Yes	102	55.43	100.00
Total	184	100.00	

- (65) Of the SN passengers to LGW who indicated that they have flown to London with another airline before, 76% have already flown with BA to LHR, 40.2% have already flown with Bmi to LHR and 25% have already flown with VLM to LCY (note: the departure airport was not specified).

/\* Q22 - PLEASE SPECIFY WHICH AIRLINES(only main answers not "Others")\*/  
PASSENGERS THAT HAVE FLOWN WITH ANOTHER AIRLINE BEFORE ONLY

	q22	Freq	Perc	Total
1.	Bmi (Heathrow)	41	40.2	102
2.	British Airways (Heathrow)	78	76.47	102
3.	Other, please specify	13	12.75	102
4.	VLM Airlines (London City)	26	25.49	102

- (66) The last airline with which SN passengers flew to London last was most likely to be BA (LHR) with 58% of passengers having flown to London, followed by Bmi to LHR (22%) and VLM to LCY (13%).

/\* Q23 - PLEASE INDICATE THE OTHER AIRLINE WITH WHICH YOU FLEW LAST TO LONDON \*/

	Q23	Freq.	Percent	Cum.
	Bmi (Heathrow)	20	21.51	21.51
	British Airways (Heathrow)	54	58.06	79.57
	Other, please specify	7	7.53	87.10
	VLM Airlines (London City)	12	12.90	100.00
	Total	93	100.00	

- (67) The main reasons for choosing the other airline on the previous occasion were the schedule (68% of those who flew with another airline before), followed by the price (32% of those who flew with another airline) and the FFP (13%).

/\* Q24 - PLEASE INDICATE THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE ON THAT OCCASION\*/  
ONLY THOSE WHO TRAVELLED WITH ANOTHER AIRLINE

	q24	Freq	Perc	Total
1.	Frequent flyer program	13	12.75	102
2.	Good Safety record	3	2.94	102
3.	It was the lowest price	33	32.35	102
4.	Other, please specify:	10	9.8	102
5.	Punctuality	3	2.94	102
6.	Quality of service	11	10.78	102
7.	The schedule was most convenient	69	67.65	102

(68) Only 16% of SN passengers to LGW did look at flights from ANR to LCY (20% of those who booked themselves).<sup>28</sup>.

/\* Q25 - WHEN BOOKING YOUR FLIGHT TO LONDON DID YOU LOOK AT SCHEDULES /  
FARES FOR FLIGHTS DEPARTING TO LCY FROM ANR?\*/  
(excluding missing answers)

Q25	Freq.	Percent	Cum.
Don't know, I didn't book myself	30	16.85	16.85
No	119	66.85	83.71
Yes	29	16.29	100.00
Total	178	100.00	

/\* Q25 - WHEN BOOKING YOUR FLIGHT TO LONDON DID YOU LOOK AT SCHEDULES /  
FARES FOR FLIGHTS DEPARTING TO LCY FROM ANR?\*/  
(excluding missing answers and Don't knows)

Q25	Freq.	Percent	Cum.
No	119	80.41	80.41
Yes	29	19.59	100.00
Total	148	100.00	

(69) Only 15% of SN passengers to LGW said they would switch to LCY flying from ANR if the price rose by 5-10% (18% if excluding passengers who replied they did not know).

/\* Q27 - IF YOUR FLIGHT TO LGW HAD BEEN MORE EXPENSIVE BY 5-10% WOULD YOU  
HAVE DECIDED TO FLY TO LCY FROM ANR INSTEAD?\*/  
(with missing values)

Q27	Freq.	Percent	Cum.
Don't know	18	9.57	9.57
No	116	61.70	86.70
Yes	25	13.30	100.00
Total	188	100.00	

/\* Q27 - IF YOUR FLIGHT TO LGW HAD BEEN MORE EXPENSIVE BY 5-10% WOULD YOU  
HAVE DECIDED TO FLY TO LCY FROM ANR INSTEAD?\*/  
(without missing values)

Q27	Freq.	Percent	Cum.
Don't know	29	17.06	17.06
No	116	68.24	85.29
Yes	25	14.71	100.00
Total	170	100.00	

/\* Q27 - IF YOUR FLIGHT TO LGW HAD BEEN MORE EXPENSIVE BY 5-10% WOULD YOU  
HAVE DECIDED TO FLY TO LCY FROM ANR INSTEAD?\*/  
(excluding Don't Know answers)

<sup>28</sup> There are only 29 passengers who did look at VLM flying from ANR. In question 26, they were asked the reasons for their choice. The number of answers is so low that results are not reported.



Q27	Freq.	Percent	Cum.
No	116	82.27	82.27
Yes	25	17.73	100.00
Total	141	100.00	

(70) To the question of whether they had already flown to LCY from ANR, 15% did not answer while 14% indicated they had already flown from ANR to LCY.<sup>29</sup>

/\* Q28 - HAVE YOU FLOWN BEFORE FROM ANR TO LCY?\*/  
(with missing values)

Q28	Freq.	Percent	Cum.
	29	15.43	15.43
No	132	70.21	85.64
Yes	27	14.36	100.00
Total	188	100.00	

/\* Q28 - HAVE YOU FLOWN BEFORE FROM ANR TO LCY?\*/  
(without missing values)

Q28	Freq.	Percent	Cum.
No	132	83.02	83.02
Yes	27	16.98	100.00
Total	159	100.00	

(71) The table below compares the results of the answers across the various samples. In order to make a judgment on whether the responses tend towards a high degree of substitution or a low degree of (potential and actual) substitution between ANR and BRU airports, the Commission has considered as a (rough) benchmark the replies regarding competition between airlines on the Brussels-London route (from the LGW questionnaire).<sup>30</sup> In addition the replies to the questionnaire on closeness of competition between the parties and easyJet on the BER route are also provided as an alternative benchmark. As can be seen, the magnitude of replies to the LGW and BER questions on substitution are close.

<sup>29</sup> Further questions were asked to the sample of 27 passengers that have already flown to LCY from ANR but the sample is so small that results are not reported.

<sup>30</sup> Note that using the LGW results as a "benchmark" does not prejudice on whether the degree of substitution between airlines/airports to/from London is strong enough to conclude as to whether London airports are in the same market. If the degree of substitution seems weaker between BRU and ANR compared with substitution between flights to different airports in London, then it can be concluded that BRU and ANR are distant substitutes (or at least more distant than flights from BRU to different airports in London). Also note that these results can be compared with the results of the survey regarding competition between airlines on the BER and GVA routes.

**Brief comparative summary table 1: Airport substitution**

	<b>Potential switchers (BER, FRA, GVA, HAM, MUC, ZRH)</b>	<b>LCY passengers from ANR / BRU</b>	<b>LGW passengers from BRU</b>	<b>Benchmark 1 : LGW</b>	<b>Benchmark 2: BER</b>
		Fares from the other airport to LCY	Fares from ANR to LCY	Fares of other airlines to London	Fares of other airlines to BER
% of passengers that did look at fares (out of those that booked themselves)	n/a	30%	20%	66%	64%
% quoting price as a reason for their current choice out of those who compared	n/a	8% <sup>31</sup>	n/a	49%	67%
	Switch to ANR	Switch to other airport to LCY	Switch to ANR to LCY	Switch to other airlines	Switch to other airlines
% of all passengers that would switch if price rose by 5-10% [in brackets, % when excluding don't know answers]	16% [17%]	13% [17%]	15% [18%]	38% [50%]	28% [38%]
	From ANR to any destination	From the other airport to LCY	From ANR to LCY	With another airline to London	With another airline to BER
% of passengers that already travelled	11%	33%	17%	55%	47%
% that quoted price as a reason for their last choice out of those who already travelled	n/a	10% <sup>32</sup>	<i>Small sample</i>	32%	49%

<sup>31</sup> Note that in the LCY questionnaire, passengers were asked for "the main reason" for making their current choice compared with the other questionnaires where passengers were asked for the "two main reasons" for making their current choice.

<sup>32</sup> Same comment as in footnote 31.

- (72) These results show that while ANR is a substitute, flights from ANR appear as a weak substitute to flights departing from BRU. First, **in terms of comparison**, most LGW passengers that booked themselves did look at other airlines' fares and schedules (66%) compared with a minority of LCY passengers (30%) that looked at LCY flights from the other airport and a minority of LGW passengers that looked at ANR flights to LCY (20%).<sup>33</sup> With respect to **switching** in case of a 5-10% price increase on their chosen flight, more than a third of LGW passengers would switch to another airline (38%) compared with less than 20% of passengers in all samples claiming they would switch to ANR airport. **In terms of past choices**, more than half of LGW passengers had already flown with another airline to London compared with a third having flown to LCY from the other airport than the one they were departing from, and less than 20% of LGW passengers having flown from ANR to LCY in the past. The price is not a major reason for choosing the airport between ANR and BRU to go to LCY but it is an important reason for choosing an airline to go to London. All this evidence suggests that while ANR may be substitute, it is clearly a weak substitute compared with airlines flying from the same airport. Hence, any potential entrant on the affected routes that would fly from ANR would not be sufficient to restore the degree of competition eliminated by the merger.

#### **E. ANALYSIS OF RESULTS REGARDING THE SUBSTITUTION WITH THE TRAIN**

- (73) The survey investigates the question of substitution between the plane and the train on the FRA, HAM and MUC routes. To investigate this question, a survey was carried out with air passengers on the FRA, HAM and MUC routes as well as train passengers between BRU and FRA. The survey reveals that substitution is (today) quite limited for business passengers travelling on the plane. For leisure and VFR passengers (who are more price-sensitive), the train is indeed an alternative that they choose in view of its cheaper prices. However, the degree of substitution – even for VFR/leisure – appears to be below the competitive pressure exerted by intra-modal competition. In other words, while the train is a competitive alternative (for non-business travellers mainly), it is likely to exert a weaker competitive constraint on the parties relative to the competitive constraint exerted by the parties on each other.
- (74) The descriptive statistics have already revealed that business passengers travelling to FRA are much more likely to board a plane than a train. Indeed as seen in paragraph (12), the share of business passengers on these routes are 83% (FRA), 82% (HAM) and 71% (MUC) compared with just 44% of passengers travelling for business on the train to FRA.

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<sup>33</sup> On the BER route, 64% of passengers did compare prices and fares with other airlines.

(75) Overall, across the three routes, 19% of plane passengers (who are mostly business) did look at the fares and schedules of the train (21% of those who booked themselves).

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/

(excluding missing answers)

Q22	Freq.	Percent	Cum.
Don't know, I didn't book myself	138	9.15	9.15
No	1,084	71.88	81.03
Yes	286	18.97	100.00
Total	1,508	100.00	

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/

(excluding missing answers and Don't knows)

Q22	Freq.	Percent	Cum.
No	1,084	79.12	79.12
Yes	286	20.88	100.00
Total	1,370	100.00	

(76) The likelihood of having looked at the train schedules and fares is higher amongst VFR passengers (34%) compared with leisure (24%) and business (16%). Most VFRs have booked themselves. If only those that have booked themselves are considered, the percentages are as follows: 18% of business passengers did compare and 26% of leisure did so.

#### PLANE PASSENGERS

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ - BY PURPOSE OF TRAVEL

(excluding missing answers)

Q6	Q22			Total
	Don't know	No	Yes	
Business	119 10.10	871 73.94	188 <b>15.96</b>	1,178 100.00
Leisure/holidays	11 9.24	80 67.23	28 <b>23.53</b>	119 100.00
Other: please specify	4 14.81	14 51.85	9 33.33	27 100.00
Visiting friends/rela	3 1.71	113 64.57	59 <b>33.71</b>	175 100.00
Total	137 9.14	1,078 71.91	284 18.95	1,499 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ - BY PURPOSE OF TRAVEL  
(excluding missing answers and Don't knows)

Q6	Q22		Total
	No	Yes	
Business	871 82.25	188 17.75	1,059 100.00
Leisure	80 74.07	28 25.93	108 100.00
Other	14 60.87	9 39.13	23 100.00
VFR	113 65.70	59 34.30	172 100.00
Total	1,078 79.15	284 20.85	1,362 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ - BY TICKET TYPE  
**FRA** plane passengers only  
(excluding missing answers)

Q14	Don't kno	Q22		Total
		No	Yes	
Business	4 11.11	28 77.78	4 11.11	36 100.00
Don't know	8 30.77	13 50.00	5 19.23	26 100.00
Economy flexible	26 13.54	132 68.75	34 17.71	192 100.00
Economy non-flexible	15 9.55	83 52.87	59 <b>37.58</b>	157 100.00
Total	53 12.90	256 62.29	102 24.82	411 100.00

(77) In comparison, train passengers (who are travelling mostly for leisure and VFR) were more likely to have compared the fares and schedules on the plane: 35% of them did so (37% of those who booked themselves).

**TRAIN PASSENGERS**

/\* Q17 - WHEN BOOKING THIS JOURNEY DID YOU ALSO LOOK AT THE SCHEDULE/FARES FOR A TRAVEL BY PLANE? \*/  
 (without missing answers)

Q17	Freq.	Percent	Cum.
Don't know, I didn't book myself	14	5.07	5.07
No	165	59.78	64.86
Yes	97	35.14	100.00
Total	276	100.00	

/\* Q17 - WHEN BOOKING THIS JOURNEY DID YOU ALSO LOOK AT THE SCHEDULE/FARES FOR A TRAVEL BY PLANE? \*/  
 (without missing answers and Don't knows)

Q17	Freq.	Percent	Cum.
No	165	62.98	62.98
Yes	97	37.02	100.00
Total	262	100.00	

(78) Overall, the proportion of plane passengers having looked at train fares and schedules is higher for FRA passengers (25%) compared with HAM (17%) and MUC (16%). If considering only those who booked themselves, the shares are: 29% for FRA, 18% for HAM and MUC. The percentage replies are almost identical for HAM and MUC.

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY DESTINATION  
 (without missing answers)

Q22	FRA	HAM	MUC	Total
Don't know, I didn't	53 12.83	36 6.79	49 8.67	138 9.15
No	256 61.99	404 76.23	424 75.04	1,084 71.88
Yes	104 <b>25.18</b>	90 <b>16.98</b>	92 <b>16.28</b>	286 18.97
Total	413 100.00	530 100.00	565 100.00	1,508 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY DESTINATION  
(without missing answers and Don't Knows)

Q22	destination			Total
	FRA	HAM	MUC	
No	256 71.11	404 81.78	424 82.17	1,084 79.12
Yes	104 <b>28.89</b>	90 <b>18.22</b>	92 <b>17.83</b>	286 <b>20.88</b>
Total	360 100.00	494 100.00	516 100.00	1,370 100.00

(79) This conclusion is true across the 3 routes (see tables below) depending on the purpose of travel (though note that leisure and VFR passengers are in very low numbers on the plane on these routes). About 22% of business passengers to FRA have looked at train fares and schedules (26% of those who booked themselves). This can be compared with 15% of business passengers to HAM (16% of those who booked themselves) and 11% of business passengers to MUC (13% of those who booked themselves).

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **FRA** passengers **only**)  
(without missing answers)

Q6	Q22			Total
	Don't know	No	Yes	
Business	47 13.70	219 63.85	77 <b>22.45</b>	343 100.00
Leisure/holidays	5 17.24	16 55.17	8 27.59	29 100.00
Other: please specify	1 16.67	2 33.33	3 50.00	6 100.00
Visiting friends/rela	0 0.00	18 56.25	14 43.75	32 100.00
Total	53 12.93	255 62.20	102 24.88	410 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **FRA** passengers **only**)  
(without missing answers and Don't knows)

Q6	Q22		Total
	No	Yes	
Business	219 73.99	77 <b>26.01</b>	296 100.00
Leisure	16 66.67	8 33.33	24 100.00
Other	2 40.00	3 60.00	5 100.00
VFR	18 56.25	14 43.75	32 100.00
Total	255 71.43	102 28.57	357 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **HAM** passengers **only**)  
(without missing answers)

Q6	Q22			Total
	Don't kno	No	Yes	
Business	29 6.74	336 78.14	65 <b>15.12</b>	430 100.00
Leisure/holidays	2 8.70	16 69.57	5 21.74	23 100.00
Other: please specify	2 15.38	7 53.85	4 30.77	13 100.00
Visiting friends/rela	2 3.45	40 68.97	16 27.59	58 100.00
Total	35 6.68	399 76.15	90 17.18	524 100.00



/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **HAM** passengers **only**)  
 (without missing answers and Don't knows)

Q6	Q22		Total
	No	Yes	
Business	336 83.79	65 <b>16.21</b>	401 100.00
Leisure	16 76.19	5 23.81	21 100.00
Other	7 63.64	4 36.36	11 100.00
VFR	40 71.43	16 28.57	56 100.00
Total	399 81.60	90 18.40	489 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **MUC** passengers **only**)  
 (without missing answers)

Q6	Q22			Total
	Don't kno	No	Yes	
Business	43 10.62	316 78.02	46 <b>11.36</b>	405 100.00
Leisure/holidays	4 5.97	48 71.64	15 22.39	67 100.00
Other: please specify	1 12.50	5 62.50	2 25.00	8 100.00
Visiting friends/rela	1 1.18	55 64.71	29 34.12	85 100.00
Total	49 8.67	424 75.04	92 16.28	565 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES BY TRAIN?\*/ -- BY PURPOSE OF TRAVEL (for **MUC** passengers **only**)  
(without missing answers and Don't knows)

Q6	Q22		Total
	No	Yes	
Business	316 87.29	46 <b>12.71</b>	362 100.00
Leisure	48 76.19	15 23.81	63 100.00
Other	5 71.43	2 28.57	7 100.00
VFR	55 65.48	29 34.52	84 100.00
Total	424 82.17	92 17.83	516 100.00

(80) The plane is chosen mostly for its speed and the train mostly for its cheaper price. Of the 286 passengers who compared both train and plane, the main reasons for ultimately **choosing the plane** to go to their destination were speed (62%) and schedule convenience (40%). The cheaper price of the plane was cited by 31% of these respondents. For those going to FRA only, 63% of the 104 respondents cited the speed, 45% cited the schedule and the price was only quoted by 24%. For business passengers to FRA, the main reasons for choosing the plane were speed (64%), convenience of flight schedule (49%) while the price was only quoted by 16%. Of the 97 respondents on the train passengers who compared both train and plane, the two main reasons for **choosing the train** were the price (56%) and comfort (34%). Clearly the factors determining the choice of the plane vs. the train are very different. This is consistent with the plane and the train being quite differentiated products in the eyes of would-be passengers.

#### PLANE PASSENGERS

/\* Q23 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING PLANE TODAY\*/

	q23	Freq	Perc	Total
1.	Airport location more convenient	32	11.19	286
4.	I participate in a frequent flyer program	14	4.9	286
8.	Other, please specify:	13	4.55	286
12.	The flight schedule was more convenient	114	39.86	286
13.	The plane is more comfortable	19	6.64	286
14.	The plane was cheaper	90	31.47	286
15.	The plane was faster	176	61.54	286

**PLANE PASSENGERS TO FRA**

/\* Q23 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING PLANE TODAY\*/

	q23	Freq	Perc	Total
1.	Airport location more convenient	17	16.35	104
2.	I participate in a frequent flyer program	3	2.88	104
5.	Other, please specify:	4	3.85	104
8.	The flight schedule was more convenient	47	45.19	104
9.	The plane is more comfortable	7	6.73	104
10.	The plane was cheaper	25	24.04	104
11.	The plane was faster	66	63.46	104

**PLANE BUSINESS PASSENGERS TO FRA**

/\* Q23 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING PLANE TODAY\*/

	q23	Freq	Perc	Total
1.	Airport location more convenient	14	18.18	77
2.	I participate in a frequent flyer program	3	3.9	77
3.	Niet leesbaar	1	1.3	77
4.	Other, please specify:	3	3.9	77
5.	Risque de (greve) train.	1	1.3	77
6.	Tagsreise mit Bahn nicht möglich	1	1.3	77
7.	The flight schedule was more convenient	38	49.35	77
8.	The plane is more comfortable	6	7.79	77
9.	The plane was cheaper	12	15.58	77
10.	The plane was faster	49	63.64	77

**TRAIN PASSENGERS**

/\* Q18 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THE TRAIN TODAY? (only the main answers)\*/

	q18	Freq	Perc	Total
1.	I participate in a frequent traveller program	1	1.03	97
2.	Location of station convenient	30	30.93	97
3.	Other, please specify:	9	9.28	97
4.	The train is more comfortable	33	34.02	97
5.	The train schedule was more convenient	18	18.56	97
6.	The train was cheaper	54	55.67	97
7.	The train was faster	10	10.31	97

(81) The price sensitivity of plane passengers is much lower compared with the price sensitivity of train passengers. **On the plane**, only **6%** of passengers responded they would switch to the train if the plane had been 5-10% more expensive (7% if excluding Don't Know answers). **On the train**, **21%** of passengers responded they would switch to the plane if the train had been 5-10% more expensive (26% if excluding Don't Know answers). This result is consistent with the fact that passengers on the train (mostly leisure / VFR) are more price sensitive than passengers on the plane (mostly business) as they claim to be more likely to respond to changes in the relative prices of the plane and train.

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/

Q24	Freq.	Percent	Cum.
Don't know	199	13.18	13.18
No	1,221	80.86	94.04
Yes	90	5.96	100.00
Total	1,510	100.00	

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
(excluding Don't Know answers)

Q24	Freq.	Percent	Cum.
No	1,221	93.14	93.14
Yes	90	6.86	100.00
Total	1,311	100.00	

**TRAIN PASSENGERS**

/\* Q19 - IF YOUR TRAIN JOURNEY HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE DECIDED TO TRAVEL BY AIRPLANE INSTEAD?\*/

Q19	Freq.	Percent	Cum.
Don't know	55	20.68	20.68
No	156	58.65	79.32
Yes	55	20.68	100.00
Total	266	100.00	

**TRAIN PASSENGERS**

/\* Q19 - IF YOUR TRAIN JOURNEY HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE DECIDED TO TRAVEL BY AIRPLANE INSTEAD?\*/  
(excluding Don't Know answers)

Q19	Freq.	Percent	Cum.
No	156	73.93	73.93
Yes	55	26.07	100.00

(82) **On the plane**, the proportion of switchers is roughly the same across the 3 routes (though arguably, MUC passengers are very unlikely to switch with just 4% saying they would do so). On the FRA route, only 7% of passengers said they would switch (and 18% did not know). The same proportion of passengers replied they would switch on the HAM route.

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
BY DESTINATION

Q24	destination			Total
	FRA	HAM	MUC	
Don't know	74 18.05	60 11.30	65 11.42	199 13.18
No	306 74.63	436 82.11	479 84.18	1,221 80.86
Yes	30 7.32	35 6.59	25 4.39	90 5.96
Total	410 100.00	531 100.00	569 100.00	1,510 100.00

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
BY DESTINATION  
(excluding Don't Know answers)

Q24	destination			Total
	FRA	HAM	MUC	
No	306 91.07	436 92.57	479 95.04	1,221 93.14
Yes	30 <b>8.93</b>	35 7.43	25 4.96	90 6.86
Total	336 100.00	471 100.00	504 100.00	1,311 100.00

(83) **On the plane**, the proportion of switchers is higher amongst VFR (13%) compared with business passengers (5%) and leisure (4%). If we look at FRA passengers only, the proportions are broadly similar per purpose of travel. **On the train**, the same applies as the proportion of switchers is greater for VFR (29%) compared with 22% for business passengers and just 12% for leisure passengers.<sup>34</sup>

<sup>34</sup> Note the low number of answers for leisure and VFR.

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
BY PURPOSE OF TRAVEL

Q24	Business	Leisure/h	Other: pl	Visiting	Total
Don't know	147 12.48	19 16.24	7 23.33	25 14.20	198 13.19
No	975 82.77	93 79.49	17 56.67	128 72.73	1,213 80.81
Yes	56 <b>4.75</b>	5 <b>4.27</b>	6 20.00	23 <b>13.07</b>	90 6.00
Total	1,178 100.00	117 100.00	30 100.00	176 100.00	1,501 100.00

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
BY PURPOSE OF TRAVEL, to **FRA** only

Q24	Business	Leisure/h	Other: pl	Visiting	Total
Don't know	61 17.89	7 25.00	0 0.00	6 18.75	74 18.18
No	259 75.95	19 67.86	5 83.33	20 62.50	303 74.45
Yes	21 <b>6.16</b>	2 <b>7.14</b>	1 <b>16.67</b>	6 <b>18.75</b>	30 7.37
Total	341 100.00	28 100.00	6 100.00	32 100.00	407 100.00

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/  
BY PURPOSE OF TRAVEL, to **FRA** only  
(excluding Don't Know answers)

Q24	Business	Leisure/h	Other: pl	Visiting	Total
No	259 92.50	19 90.48	5 83.33	20 76.92	303 90.99
Yes	21 <b>7.50</b>	2 9.52	1 16.67	6 23.08	30 9.01
Total	280 100.00	21 100.00	6 100.00	26 100.00	333 100.00

**PLANE PASSENGERS**

/\* Q24 - IF THE PLANE HAD BEEN 5-10% MORE EXPENSIVE WOULD YOU HAVE DECIDED TO TRAVEL BY TRAIN? \*/

BY DESTINATION, **ECONOMY NON-FLEXIBLE** TICKETS only  
(excluding Don't Know answers)

Q24	destination			Total
	FRA	HAM	MUC	
Don't know	27 17.31	23 8.91	25 8.45	75 10.56
No	114 73.08	216 83.72	255 86.15	585 82.39
Yes	15 <b>9.62</b>	19 7.36	16 5.41	50 7.04
Total	156 100.00	258 100.00	296 100.00	710 100.00

**TRAIN PASSENGERS**

/\* Q19 - IF YOUR TRAIN JOURNEY HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE DECIDED TO TRAVEL BY AIRPLANE INSTEAD?\*/

Q19	Business	Leisure/h	Other: pl	Visiting	Total
Don't know	18 16.07	15 26.32	5 25.00	16 21.92	54 20.61
No	69 61.61	35 61.40	14 70.00	36 49.32	154 58.78
Yes	25 <b>22.32</b>	7 <b>12.28</b>	1 5.00	21 <b>28.77</b>	54 20.61
Total	112 100.00	57 100.00	20 100.00	73 100.00	262 100.00

(84) **On the plane**, about 15% of passengers have already travelled with the train to their destination. The proportion is higher for FRA passengers (23%) compared with HAM passengers (13%) or MUC passengers (12%). Out of 230 respondents that have chosen the train on a previous occasion, the main reason was the price (44%) followed by the train schedule (28%). The answers from those on the FRA flight were similar (96 answers): 41% did so because of the price and 28% because of the schedule. Overall, the results presented so far have indicated a stronger degree of substitution between the plane and the train on FRA. Yet, given that the train journey is significantly longer on HAM and MUC, a wider gap between the answers on FRA and those on HAM/MUC may have been expected. However, most passengers on these routes are business passengers and the survey has revealed that they generally do not consider the train as a strong constraint (in concordance with other elements of the market investigation). Hence, whether the train journey is a bit longer or considerably longer does not seem to make a significant difference in the sense that business passengers seem to consider it is a weak substitute to the plane.

**PLANE PASSENGERS**

/\* Q25 - HAVE YOU ALREADY TRAVELLED BY TRAIN ON THIS ROUTE? \*/

Q25	Freq.	Percent	Cum.
No	1,278	84.75	84.75
Yes	230	<b>15.25</b>	100.00
Total	1,508	100.00	

**PLANE PASSENGERS**

/\* Q25 - HAVE YOU ALREADY TRAVELLED BY TRAIN ON THIS ROUTE? \*/  
BY DESTINATION

Q25	destination			Total
	FRA	HAM	MUC	
No	314	460	504	1,278
	76.59	87.12	88.42	84.75
Yes	96	68	66	230
	<b>23.41</b>	<b>12.88</b>	<b>11.58</b>	15.25
Total	410	528	570	1,508
	100.00	100.00	100.00	100.00

**PLANE PASSENGERS**

/\* Q25 - HAVE YOU ALREADY TRAVELLED BY TRAIN ON THIS ROUTE? \*/

**FRA** passengers only

By purpose of travel

Q25	Q6				Total
	Business	Leisure/h	Other: pl	Visiting	
No	261	23	4	25	313
	76.76	79.31	66.67	78.13	76.90
Yes	79	6	2	7	94
	<b>23.24</b>	20.69	33.33	21.88	23.10
Total	340	29	6	32	407
	100.00	100.00	100.00	100.00	100.00



**PLANE PASSENGERS**

/\* Q25 - HAVE YOU ALREADY TRAVELLED BY TRAIN ON THIS ROUTE? \*/

FRA passengers only

By ticket type

Q25	Q14				Total
	Business	Don't kno	Economy f	Economy n	
No	30	20	152	112	314
	85.71	76.92	79.58	71.79	76.96
Yes	5	6	39	44	94
	14.29	23.08	20.42	<b>28.21</b>	23.04
Total	35	26	191	156	408
	100.00	100.00	100.00	100.00	100.00

**PLANE PASSENGERS**

/\* Q27 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING THE TRAIN THEN \*/

	q27	Freq	Perc	Total
12.   I participate in a frequent traveller program		5	2.17	230
21.   Other, please specify:		34	14.78	230
23.   The train is more comfortable		37	16.09	230
24.   The train schedule was more convenient		65	28.26	230
25.   The train was cheaper		102	44.35	230
26.   The train was faster		10	4.35	230
27.   Train station location convenient		32	13.91	230

**PLANE PASSENGERS**

FRA passengers only

/\* Q27 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING THE TRAIN THEN \*/

	q27	Freq	Perc	Total
7.   I participate in a frequent traveller program		1	1.04	96
13.   Other, please specify:		13	13.54	96
14.   The train is more comfortable		23	23.96	96

15.	The train schedule was more convenient	27	28.13	96
16.	The train was cheaper	39	40.63	96
-----				
17.	The train was faster	5	5.21	96
18.	Train station location convenient	11	11.46	96
-----				

**PLANE BUSINESS PASSENGERS TO FRA only**

/\* Q27 - PLEASE SPECIFY THE TWO MAIN REASONS FOR CHOSING THE TRAIN THEN \*/

```

+-----+
+
|           |           |           |           |
|           |           |           |           |
|-----|-----|-----|-----| |
|---|---|---|---|---|
| 5. | I participate in a frequent traveller program          | 1 | 1.27 | 79 |
| 9. |           Other, please specify:                         | 8 | 10.13 | 79 |
| 10. |           The train is more comfortable                 | 21 | 26.58 | 79 |
| 11. |           The train schedule was more convenient       | 24 | 30.38 | 79 |
| 12. |           The train was cheaper                         | 34 | 43.04 | 79 |
|-----|-----|-----|-----| |
|---|---|---|---|---|
| 13. |           The train was faster                           | 5 | 6.33 | 79 |
| 14. |           Train station location convenient              | 10 | 12.66 | 79 |
|-----|-----|-----|-----|
+-----+
--+
```

(85) **On the train**, 36% of passengers had already travelled with the plane to FRA. Out of 99 respondents, the main reasons for having chosen the plane on a previous occasion are the fact that the plane is faster (41%) followed by the schedule being more convenient (29%).

**TRAIN PASSENGERS**

/\* Q19 - HAVE YOU ALREADY TRAVELLED ON THIS ROUTE BY AIRPLANE IN THE 12 PAST MONTHS?\*/

```

-----+-----+-----+-----+
| Q20 | Freq. | Percent | Cum. |
|-----+-----+-----+-----|
| No  | 176   | 64.00   | 64.00 |
| Yes | 99    | 36.00   | 100.00 |
|-----+-----+-----+-----|
| Total | 275 | 100.00 |

```

**TRAIN PASSENGERS**

/\* Q22 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THE PLANE ON THE LAST TIME YOU DID SO? (only the main answers)\*/

```

+-----+
--+
|           |           |           |           |
|           |           |           |           |
|-----|-----|-----|-----| |
|---|---|---|---|---|
| 1. | I participate in a frequent traveller program          | 9 | 9.09 | 99 |
| 2. |           Location of airport convenient                 | 12 | 12.12 | 99 |
| 3. |           Other, please specify:                         | 16 | 16.16 | 99 |
|-----|-----|-----|-----|

```

4.	The airplane was cheaper	22	22.22	99
5.	The airplane is more comfortable	2	2.02	99
-----				
6.	<b>The airplane schedule was more convenient</b>	<b>29</b>	<b>29.29</b>	<b>99</b>
7.	<b>The airplane was faster</b>	<b>41</b>	<b>41.41</b>	<b>99</b>
-----				

- (86) The table below compares the results of the answers across the various samples. The replies regarding competition between airlines on the Brussels-London route (from the LGW questionnaire) and the responses to the questionnaire on the BER route are used as a (rough) benchmark to evaluate the strength of competition between the train and the plane. These results show that while the train is a substitute, it is a more distant competitor to the parties than the parties' themselves. First, **in terms of comparison of fares/schedules**, passengers on the train were most likely to have looked at the plane (37%) but still they were far less likely to do so than passengers on LGW comparing fares and schedules on other airlines (66%) or on BER (64%). FRA plane passengers were even less likely than train passengers to have compared fares/schedules of both train/plane (the same applies for business plane passengers to FRA as only 26% of them compared fares on the train). With respect to **switching** in case of a 5-10% price increase on their chosen flight, less than 10% of plane passengers said they would have switched compared with 21% of train passengers who answered they would switch to another mode of transport. These figures are low (especially those of plane passengers) compared with the 28% of BER plane passengers that would switch to another airline, and 38% of LGW passengers that would have done so in case of a 5-10% price rise. Finally, **in terms of past choices**, more than half of LGW passengers had already flown with another airline to London (and almost half of BER passengers have also flown with another airline). In comparison, just a quarter of plane passengers to FRA have flown with the train to FRA and about a third of train passengers have already flown with the plane to FRA. The price was a major reason for plane passengers to choose the train on that previous occasion. While the price appears to be an important reason for having switched to the train on a previous occasion, it is still striking that very few passengers (< 10%) claim they would switch in the case of a price rise of the plane.<sup>35</sup> The main reason for choosing the plane is the speed while schedule convenience is another major factor.

<sup>35</sup> In fact only 13% of passengers that have already travelled with the train (on FRA) said they would switch to the train in case of a price increase (compared with 6% of those that have never travelled with the train before).

**Brief comparative summary table 2: Train substitution**

<b>Sample:</b>	<b>Plane passengers (FRA, HAM, MUC)</b>	<b>Plane passengers (FRA only)</b>	<b>Plane passengers (FRA only, business)</b>	<b>Train passengers to FRA</b>	<b>Benchmark : LGW</b>	<b>Benchmark : BER</b>
	Fares on the train	Fares on the train	Fares on the train	Fare on the plane	Fares of other airlines	Fares of other airlines
% of passengers that did look (out of those who booked themselves)	21%	29%	26%	37%	66%	64%
% that cited price as a reason for their current choice (out of those who compared)	31%	24%	16%	56%	49%	67%
	Switch to the train	Switch to the train	Switch to the train	Switch to the plane	Switch to other airlines	Switch to other airlines
% that would switch if price rose by 5-10% [% if excluding Don't Know answers]	6% [7%]	7% [9%]	6% [8%]	21% [26%]	38% [50%]	28% [38%]
	On the train	On the train	On the train	On the plane	With another airline to London	With another airline to BER
Already travelled?	15%	23%	23%	36%	55%	47%
% that cited price as a reason for their previous choice (out of those who have travelled before)	44%	41%	43%	22%	32%	49%

**F. ANALYSIS OF THE RESULTS REGARDING THE COMPETITION CONSTRAINT OF EASYJET IN BER AND GVA**

- (87) As will be shown below, the survey results indicate that on the BER route where three carriers compete (the parties and easyJet), the closest substitute to LH is SN, and the closest substitute to SN is LH. easyJet focuses more on leisure/VFR passengers and is not the next best alternative for passengers on SN or LH travelling to BER. The degree of competition between SN and easyJet on GVA is as strong as competition between LH and SN on BER. This suggests that on the GVA route, easyJet is a close substitute to SN while on the BER route, easyJet is a weaker constraint. This is probably explained by the fact that on the BER route, the parties focus on business passengers (as they have good frequencies) whereas easyJet focuses on non-business passengers in view of its inferior product offering for these passengers.<sup>36</sup>
- (88) Both the BER and GVA routes have a balanced split of business and non-business passengers (see paragraph (12)). easyJet is present on both routes but the majority of its passengers travel for non-business purposes (only 29% of easyJet's passengers travel for business purposes and 28% on GVA). Yet, in the sample gathered through the survey, easyJet captures a slightly greater share of all business passengers (28%) on the GVA route than it does on the BER route where only 20% passengers travelled with easyJet.

/\* Q6 - WHAT IS THE MAIN PURPOSE OF YOUR TRIP TODAY? \*/  
**GVA FLIGHTS ONLY** (split of purpose of travel by airline)

Q6	Brussels	easyJet	Total
Business	187	74	261
	59.37	27.92	45.00
Leisure/holidays	52	58	110
	16.51	21.89	18.97
Other: please specify	9	11	20
	2.86	4.15	3.45
Visiting friends/rela	67	122	189
	21.27	46.04	32.59
Total	315	265	580
	100.00	100.00	100.00

<sup>36</sup>

At the time of the survey, easyJet only offered a single frequency in the afternoon.

/\* Q6 - WHAT IS THE MAIN PURPOSE OF YOUR TRIP TODAY? \*/  
**GVA** FLIGHTS ONLY (split of airline by purpose of travel)

Q6	S3		Total
	Brussels	easyJet	
Business	187 71.65	74 28.35	261 100.00
Leisure/holidays	52 47.27	58 52.73	110 100.00
Other: please specify	9 45.00	11 55.00	20 100.00
Visiting friends/rela	67 35.45	122 64.55	189 100.00
Total	315 54.31	265 45.69	580 100.00

/\* Q6 - WHAT IS THE MAIN PURPOSE OF YOUR TRIP TODAY? \*/  
**BER** FLIGHTS ONLY (split of purpose of travel by airline)

Q6	S3			Total
	Brussels	Lufthansa	easyJet	
Business	185 66.31	180 70.31	90 29.22	455 53.97
Leisure/holidays	71 25.45	52 20.31	90 29.22	213 25.27
Other: please specify	4 1.43	3 1.17	14 4.55	21 2.49
Visiting friends/rela	19 6.81	21 8.20	114 37.01	154 18.27
Total	279 100.00	256 100.00	308 100.00	843 100.00

/\* Q6 - WHAT IS THE MAIN PURPOSE OF YOUR TRIP TODAY? \*/  
**BER** FLIGHTS ONLY (split of airline by purpose of travel)

Q6	S3			Total
	Brussels	Lufthansa	easyJet	
Business	185 40.66	180 39.56	90 19.78	455 100.00
Leisure/holidays	71 33.33	52 24.41	90 42.25	213 100.00
Other: please specify	4 19.05	3 14.29	14 66.67	21 100.00
Visiting friends/rela	19 12.34	21 13.64	114 74.03	154 100.00
Total	279 33.10	256 30.37	308 36.54	843 100.00

(89) On these routes, the great majority of passengers did look at fares and schedules of other airlines (57% overall and 67% of those who booked themselves).

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/  
 (without missing answers)

Q22	Freq.	Percent	Cum.
Don't know, I didn't book myself	199	14.09	14.09
No	406	28.75	42.85
Yes	807	57.15	100.00
Total	1,412	100.00	

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/  
 (without missing answers and Don't Knows)

Q22	Freq.	Percent	Cum.
No	406	33.47	33.47
Yes	807	66.53	100.00
Total	1,213	100.00	



- (90) The share of those who did book themselves is greater with easyJet passengers: 65% of easyJet's passengers did look at other fares/schedules compared with 49% for SN passengers and 59% for Lufthansa's.

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/ - BY AIRLINE  
(without missing answers)

S3	Q22			Total
	Don't kno	No	Yes	
Brussels Airlines	104 17.57	196 33.11	292 49.32	592 100.00
Lufthansa	34 13.82	68 27.64	144 58.54	246 100.00
easyJet	61 10.63	142 24.74	371 64.63	574 100.00
Total	199 14.09	406 28.75	807 57.15	1,412 100.00

- (91) The share of passengers who looked at fares and schedules is only marginally higher on the GVA route (59% compared with 56% on BER). If considering only those who booked themselves the share of passengers that compared is slightly higher on GVA (71%) than BER (64%).

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/ - BY DESTINATION  
(without missing answers)

destinatio n	Q22			Total
	Don't kno	No	Yes	
BER	107 12.89	262 31.57	461 55.54	830 100.00
GVA	92 15.81	144 24.74	346 59.45	582 100.00
Total	199 14.09	406 28.75	807 57.15	1,412 100.00

/\* Q22 - WHEN BOOKING THIS FLIGHT, DID YOU ALSO LOOK AT THE SCHEDULES/FARES AVAILABLE ON OTHER AIRLINES? \*/ - BY DESTINATION (without missing answers and Don't Knows)

destination	Q22		Total
	No	Yes	
BER	262 36.24	461 63.76	723 100.00
GVA	144 29.39	346 70.61	490 100.00
Total	406 33.47	807 66.53	1,213 100.00

(92) On the BER route, SN passengers are most likely to have looked at fares and schedules of LH (36%) compared with easyJet (18%). Similarly, LH passengers to BER are more likely to have looked at SN fares (49%) compared with easyJet (22%). If considering business passengers only, the same image emerges: 39% of business passengers to BER did look at fares/schedules of LH flights compared with just 16% that looked at easyJet while 43% of LH business passengers to BER looked at SN flights compared with just 14% that looked at easyJet flights.

/\* Q23 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT (only main answers not "Others")\*/

All **SN** passengers to **BER**

	q23	Freq	Perc	Total
1.	Brussels Airlines	64	22.70	282
2.	Lufthansa	102	36.17	282
3.	Other, please specify:	15	5.32	282
4.	Swiss	8	2.84	282
5.	easyJet	50	17.73	282

/\* Q23 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT (only main answers not "Others")\*/

All **LH** passengers to **BER**

	q23	Freq	Perc2	total2
1.	Brussels Airlines	127	49.22	258
2.	Lufthansa	68	26.36	258
3.	Other, please specify:	11	4.26	258
4.	Swiss	14	5.43	258
5.	easyJet	57	22.09	258

/\* Q23 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT  
 (only main answers not "Others")\*/  
 All **SN** business passengers to **BER**

	q23	Freq	Perc	Total
1.	Brussels Airlines	39	21.08	185
2.	Lufthansa	73	39.46	185
3.	Other, please specify:	7	3.78	185
4.	Swiss	4	2.16	185
5.	easyJet	30	16.22	185

/\* Q23 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT  
 (only main answers not "Others")\*/  
 All **LH** business passengers to **BER**

	q23	Freq	Perc	Total
1.	Brussels Airlines	77	42.78	180
2.	Lufthansa	42	23.33	180
3.	Other, please specify:	10	5.56	180
4.	Swiss	8	4.44	180
5.	easyJet	25	13.89	180

(93) On the GVA route, the share of SN passengers that looked at easyJet fares and schedules (38%) is similar to the share of passengers that looked at LH fares on the BER route (36% - see above). Also note that many SN passengers said they did look at LX fares (32%).

/\* Q23 - PLEASE SPECIFY THE AIRLINES WHOSE FARES/SCHEDULE YOU LOOKED AT  
 (only main answers not "Others")\*/  
 All **SN** passengers to **GVA**

	q23	Freq	Perc2	total2
1.	Brussels Airlines	95	29.69	320
2.	Lufthansa	30	9.38	320
3.	Other, please specify:	20	6.25	320
4.	Swiss	103	32.19	320
5.	easyJet	120	37.5	320

(94) The main factor for choosing a particular flight was the price on the BER route: 67% of all passengers to BER that had compared fares/schedules across airlines chose their flight because it was the lowest price. The second factor is the most convenient schedule (57%). All the other reasons (FFP, safety record, punctuality,...) were cited by few passengers. The most price sensitive passengers are clearly flying with easyJet while the schedule is the most important factor for passengers on SN and LH. Indeed, the main reason for choosing a flight by SN or LH passengers to BER is the schedule (68% of SN passengers and 64% of LH passengers), followed by the price (55% of SN passengers and 46% of LH passengers). In contrast, the overwhelming majority of easyJet's passengers chose their flight for the price (92%) while the schedule was quoted by 45% of passengers as a reason for their choice.

/\* Q24 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THIS AIRLINE TODAY? (only the main answers)\*  
PASSENGERS TO **BER** THAT COMPARED FARES/SCHEDULES

	q24	Freq	Perc	Total
1.	Frequent Flyer Program	24	5.21	461
2.	Good safety record	26	5.64	461
3.	<b>Lowest price</b>	<b>311</b>	<b>67.46</b>	<b>461</b>
4.	<b>Most convenient flight schedule</b>	<b>264</b>	<b>57.27</b>	<b>461</b>
5.	Other, please specify:	15	3.25	461
6.	Punctuality	71	15.4	461
7.	Quality of service	26	5.64	461

/\* Q24 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THIS AIRLINE TODAY? (only the main answers)\*  
**SN** Passengers to **BER** THAT COMPARED FARES/SCHEDULES

	q24	Freq	Perc	Total
1.	Frequent Flyer Program	6	4.72	127
2.	Good safety record	4	3.15	127
3.	<b>Lowest price</b>	<b>70</b>	<b>55.12</b>	<b>127</b>
4.	<b>Most convenient flight schedule</b>	<b>86</b>	<b>67.72</b>	<b>127</b>
5.	Other, please specify:	7	5.51	127
6.	Punctuality	24	18.9	127
7.	Quality of service	6	4.72	127

/\* Q24 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THIS AIRLINE TODAY? (only the main answers)\*  
**LH** Passengers to **BER** THAT COMPARED FARES/SCHEDULES

	q24	Freq	Perc	Total
1.	Frequent Flyer Program	17	11.81	144
2.	Good safety record	11	7.64	144
3.	<b>Lowest price</b>	<b>66</b>	<b>45.83</b>	<b>144</b>
4.	<b>Most convenient flight schedule</b>	<b>92</b>	<b>63.89</b>	<b>144</b>
5.	Other, please specify:	3	2.08	144
6.	Punctuality	25	17.36	144
7.	Quality of service	17	11.81	144

/\* Q24 - WHAT ARE THE TWO MAIN REASONS YOU ULTIMATELY CHOSE TO TRAVEL WITH THIS AIRLINE TODAY? (only the main answers)\*  
**easyJet** Passengers to **BER** THAT COMPARED FARES/SCHEDULES

	q24	Freq	Perc	Total
1.	Frequent Flyer Program	1	.53	190
2.	Good safety record	11	5.79	190
3.	<b>Lowest price</b>	<b>175</b>	<b>92.11</b>	<b>190</b>
4.	<b>Most convenient flight schedule</b>	<b>86</b>	<b>45.26</b>	<b>190</b>
5.	Other, please specify:	5	2.63	190
6.	Punctuality	22	11.58	190
7.	Quality of service	3	1.58	190

(95) On the GVA route, 43% of passengers indicated that they have considered flying with another airline in case of a 5-10% price increase (55% if excluding Don't Know answers). easyJet passengers are more likely (50%) than SN passengers (37%) to have responded they would do so (64% and 48% respectively if excluding Don't Know answers). This is consistent with the fact that easyJet passengers indicated that the main factor for choosing their flight is the lower price. On the BER route, 28% of passengers would switch to the other airline in case of a 5-10% price increase (38% if excluding Don't Know answers). Again, easyJet passengers are more likely to do so (37%) compared with SN (24%) and LH (20%) passengers (50% for easyJet, 34% for SN and 28% for LH if excluding Don't Know answers). When considering LH and SN passengers only on the BER route, the share of passengers indicating that they would switch to another airline is 22% (31% if excluding Don't Know answers).

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/

**GVA** passengers only

Q25	S3		Total
	Brussels	easyJet	
Don't know	71 22.54	60 22.47	131 22.51
No	128 40.63	74 27.72	202 34.71
Yes	116 <b>36.83</b>	133 <b>49.81</b>	249 <b>42.78</b>
Total	315 100.00	267 100.00	582 100.00

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/

(excluding Don't Know answers)

**GVA** passengers only

Q25	S3		Total
	Brussels	easyJet	
No	128 52.46	74 35.75	202 44.79
Yes	116 <b>47.54</b>	133 <b>64.25</b>	249 <b>55.21</b>
Total	244 100.00	207 100.00	451 100.00

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/

**BER** passengers only

Q25	S3			Total
	Brussels	Lufthansa	easyJet	
Don't know	78 28.06	75 30.00	81 26.38	234 28.02
No	133 47.84	126 50.40	112 36.48	371 44.43
Yes	67 <b>24.10</b>	49 <b>19.60</b>	114 <b>37.13</b>	230 <b>27.54</b>
Total	278 100.00	250 100.00	307 100.00	835 100.00

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/

(excluding Don't Know answers)

**BER** passengers only

Q25	Brussels	Lufthansa	easyJet	Total
No	133 66.50	126 72.00	112 49.56	371 61.73
Yes	67 <b>33.50</b>	49 <b>28.00</b>	114 <b>50.44</b>	230 <b>38.27</b>
Total	200 100.00	175 100.00	226 100.00	601 100.00

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/  
**SN** and **LH** passengers to **BER** passengers

Q25	S3		Total
	Brussels	Lufthansa	
Don't know	78 28.06	75 30.00	153 28.98
No	133 47.84	126 50.40	259 49.05
Yes	67 <b>24.10</b>	49 <b>19.60</b>	116 <b>21.97</b>
Total	278 100.00	250 100.00	528 100.00

/\* Q25 - IF YOUR CURRENT FLIGHT HAD BEEN 5-10% MORE EXPENSIVE, WOULD YOU HAVE CONSIDERED FLYING WITH ANOTHER AIRLINE? \*/  
(excluding Don't Know answers)  
**SN** and **LH** passengers to **BER** passengers

Q25	S3		Total
	Brussels	Lufthansa	
No	133 66.50	126 72.00	259 69.07
Yes	67 <b>33.50</b>	49 <b>28.00</b>	116 <b>30.93</b>
Total	200 100.00	175 100.00	375 100.00

(96) When asked to which airline they would have switched, once again, the passengers' replies show that on the BER route, LH and SN are each other's closest substitutes.<sup>37</sup> On the BER route, of all SN passengers, 14% indicated that they would have switched to LH in case of a 5-10% price increase compared with 8% that would have switched.

<sup>37</sup>

Some respondents may not have carefully read the question which requested which **other** airline they would have considered. Indeed, a number of SN passengers answered SN, a number of LH passengers answered LH, etc... Yet, given that multiple answers were possible, the fact that some passengers ticked the airline they were already using may not be such a problem as they had the opportunity to indicate all the airlines they would have considered.

About 16% of LH's passengers to BER would have switched to SN compared with 8% that would have switched to easyJet. On the GVA route, 25% of SN indicated they would have switched to easyJet in case of a 5-10% price rise (this is higher than the proportion of SN passengers that replied they would have switched to LH on the BER route).

/\* Q26 - PLEASE SPECIFY WHICH OTHER AIRLINES YOU WOULD HAVE CONSIDERED (only main answers not "Others")\*/  
All **SN** Passengers on **BER**

	q26	Freq	Perc	Total
1. /	Brussels Airlines	14	4.96	282
2.	Easyjet	23	8.16	282
3.	Lufthansa	39	13.83	282
4.	Other, please specify:	11	3.90	282
5.	Swiss	7	2.48	282

Q26 - PLEASE SPECIFY THE AIRLINES YOU WOULD HAVE CONSIDERED (only main answers not "Others")\*/  
All **LH** Passengers on **BER**

	q26	Freq	Perc2	total2
1.	Brussels Airlines	41	15.89	258
2.	Easyjet	20	7.75	258
3. /	Lufthansa	13	5.04	258
4.	Other, please specify:	3	1.16	258
5.	Swiss	9	3.49	258

/\* Q26 - PLEASE SPECIFY THE AIRLINES YOU WOULD HAVE CONSIDERED (only main answers not "Others")\*/  
All **SN** Passengers on **GVA**

	q26	Freq	Perc2	total2
2.	Easyjet	79	24.69	320
3.	Lufthansa	42	13.13	320
4.	Other, please specify:	10	3.13	320
5.	Swiss	71	22.19	320

(97) Almost half of all passengers to BER and GVA have already flown to their destination with another airline. The proportion is roughly the same on both routes, and it is also roughly similar across carriers (although LH passengers have done so more often than SN or easyJet passengers).



/\* Q27 - HAVE YOU FLOWN TO THIS DESTINATION BEFORE WITH OTHER AIRLINES? \*/

Q27	Freq.	Percent	Cum.
No	729	52.18	52.18
Yes	668	47.82	100.00
Total	1,397	100.00	

/\* Q27 - HAVE YOU FLOWN TO THIS DESTINATION BEFORE WITH OTHER AIRLINES? \*/  
BY DESTINATION

Q27	BER	GVA	Total
No	435	294	729
	53.44	50.43	52.18
Yes	379	289	668
	<b>46.56</b>	<b>49.57</b>	<b>47.82</b>
Total	814	583	1,397
	100.00	100.00	100.00

/\* Q27 - HAVE YOU FLOWN TO THIS DESTINATION BEFORE WITH OTHER AIRLINES? \*/  
BY AIRLINE

Q27	S3			Total
	Brussels	Lufthansa	easyJet	
No	308	115	306	729
	52.38	46.00	54.74	52.18
Yes	280	135	253	668
	<b>47.62</b>	<b>54.00</b>	<b>45.26</b>	<b>47.82</b>
Total	588	250	559	1,397
	100.00	100.00	100.00	100.00

(98) The last time they travelled with another airline, SN passengers to BER are more likely to have travelled with LH (43%) than easyJet (21%).<sup>38</sup> LH passengers to BER have mainly travelled with SN (57%) the last time they did so with another airline compared with just 8% that flew with easyJet. In comparison, a third of SN passengers to GVA have flown with easyJet last time they did travel with another airline to this destination.

/\* Q29 - PLEASE INDICATE THE OTHER AIRLINE WITH WHICH YOU FLEW LAST TO THIS DESTINATION \*/

SN Passengers to BER only (those that have travelled with another airline)

Q29	Freq.	Percent	Cum.
Brussels Airlines	34	29.57	29.57
Lufthansa	49	42.61	72.17
Other, please specify:	8	6.96	79.13
easyJet	24	20.87	100.00

<sup>38</sup> There is also an issue with the answers to this question given that many respondents actually indicated the airline they were travelling with as a response to which other airline they flew last to the destination. Obviously the question was not properly understood by a number of passengers.

Total		115	100.00
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/\* Q29 - PLEASE INDICATE THE OTHER AIRLINE WITH WHICH YOU FLEW LAST TO THIS DESTINATION \*/

**LH** Passengers to **BER** only (those that have travelled with another airline)

Q29		Freq.	Percent	Cum.
<b>Brussels Airlines</b>		<b>68</b>	<b>56.67</b>	<b>56.67</b>
<i>Lufthansa</i>	/	32	26.67	83.33
Other, please specify:		7	5.83	89.17
Swiss		4	3.33	92.50
easyJet		9	7.50	100.00
-----				
Total		120	100.00	

/\* Q29 - PLEASE INDICATE THE OTHER AIRLINE WITH WHICH YOU FLEW LAST TO THIS DESTINATION \*/

**SN** Passengers to **GVA** only (those that have travelled with another airline)

Q29		Freq.	Percent	Cum.
<i>Brussels Airlines</i>	/	47	32.64	32.64
<i>Lufthansa</i>		3	2.08	34.72
Other, please specify:		13	9.03	43.75
Swiss		33	22.92	66.67
<b>easyJet</b>		<b>48</b>	<b>33.33</b>	<b>100.00</b>
-----				
Total		144	100.00	

- (99) When asked the two main reasons for having chosen the other airline on the previous occasion they travelled with another airline to BER, 55% of passengers cited the more convenient flight schedule and 49% cited a lower price. Again, on the BER route, it appears that the schedule is a major factor of choice for SN and LH passengers (more than the price). Indeed, 52% of SN passengers and 63% of LH passengers chose the other airline because of a more convenient schedule (compared with 45% and 44% respectively that quoted price). On the contrary, the lower price is the main reason for choosing another flight quoted by easyJet passengers (59%). On the GVA route, these are also the reasons most cited for choosing another airline although the price is cited by most passengers (57%) followed by the schedule (54%).

/\* Q30 - PLEASE SPECIFY THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE BEFORE (only main answers not "Others")\*/  
 All passengers to **BER**

	q30	Freq	Perc	Total
1.	Frequent Flyer Program	21	5.54	379
2.	Good safety record	7	1.85	379
3.	<b>Lowest price</b>	<b>187</b>	<b>49.34</b>	<b>379</b>
4.	<b>Most convenient flight schedule</b>	<b>209</b>	<b>55.15</b>	<b>379</b>
5.	Other, please specify:	31	8.18	379
6.	Punctuality	38	10.03	379
7.	Quality of service	31	8.18	379

/\* Q30 - PLEASE SPECIFY THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE BEFORE (only main answers not "Others")\*/  
 SN passengers to **BER**

	q30	Freq	Perc	Total
1.	Frequent Flyer Program	7	5.74	122
2.	Good safety record	3	2.46	122
3.	<b>Lowest price</b>	<b>55</b>	<b>45.08</b>	<b>122</b>
4.	<b>Most convenient flight schedule</b>	<b>63</b>	<b>51.64</b>	<b>122</b>
5.	Other, please specify:	6	4.92	122
6.	Punctuality	18	14.75	122
7.	Quality of service	12	9.84	122

/\* Q30 - PLEASE SPECIFY THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE BEFORE (only main answers not "Others")\*/  
 LH passengers to **BER**

	q30	Freq	Perc	Total
1.	Frequent Flyer Program	10	7.41	135
2.	Good safety record	4	2.96	135
3.	<b>Lowest price</b>	<b>60</b>	<b>44.44</b>	<b>135</b>
4.	<b>Most convenient flight schedule</b>	<b>85</b>	<b>62.96</b>	<b>135</b>
5.	Other, please specify:	12	8.89	135
6.	Punctuality	8	5.93	135
7.	Quality of service	8	5.93	135

/\* Q30 - PLEASE SPECIFY THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE BEFORE (only main answers not "Others")\*/  
**easyJet** passengers to **BER**

	q30	Freq	Perc	Total
1.	Frequent Flyer Program	4	3.28	122
2.	<b>Lowest price</b>	<b>72</b>	<b>59.02</b>	<b>122</b>
3.	<b>Most convenient flight schedule</b>	<b>61</b>	<b>50</b>	<b>122</b>
4.	Other, please specify:	13	10.66	122
5.	Punctuality	12	9.84	122
6.	Quality of service	11	9.02	122

/\* Q30 - PLEASE SPECIFY THE TWO MAIN REASONS WHY YOU CHOSE THAT OTHER AIRLINE BEFORE (only main answers not "Others")\*/  
All passengers to **GVA**

	q30	Freq	Perc	Total
1.	Frequent Flyer Program	20	6.92	289
2.	Good safety record	9	3.11	289
3.	<b>Lowest price</b>	<b>165</b>	<b>57.09</b>	<b>289</b>
4.	<b>Most convenient flight schedule</b>	<b>155</b>	<b>53.63</b>	<b>289</b>
5.	Other, please specify:	38	13.15	289
6.	Punctuality	31	10.73	289
7.	Quality of service	18	6.23	289

(100) The next table summarises the results from the survey regarding competition between easyJet and the parties. The results can be compared with those obtained with the LGW sample. As can be seen, the great majority of passengers on these routes compare fares and schedules across airlines (from 64% to 71%). Regarding the closeness of competition on the BER route, the results reveal that LH and SN are each other's closest competitors. This may be due to the fact that at the time of the survey, both SN and LH offered good schedules (compared with easyJet's single frequency). The schedule appears to be a major factor of choice for large number of passengers on this route (in particular those that have chosen SN and LH to fly). On the GVA route, easyJet is "as close" a competitor to SN as LH is on the BER route. When comparing fares across airlines on the BER route, SN passengers are much more likely to look at the fares of LH than those of easyJet (the same applies for LH passengers having compared SN fares). Both SN and LH passengers on the BER route are more likely to switch to each other in case of a 5-10% price increase than to easyJet. Finally, SN passengers on the BER route are much more likely to have travelled in the past with LH than easyJet (the same applies for LH passengers having travelled with SN).

**Brief comparative summary table 3: Competition between the parties and easyJet (U2)**

	<b>GVA passengers</b>	<b>BER passengers</b>	<b>Benchmark : LGW</b>
% of passengers that did look at fares of other airlines (out of those that booked themselves)	71%	64%	66%
Airlines of which fares were looked at (out of all passengers)	38% of SN looked at U2	36% of SN looked at LH 18% of SN looked at U2 49% of LH looked at SN 22% of LH looked at U2	38% of SN looked at BA 24% of SN looked at Bmi 10% of SN looked at VLM
% that would switch to another airline if price rose by 5-10% [% if excluding Don't Know answers]	43% [55%]	28% [38%]	38% [50%]
	Only SN passengers	Only SN and LH passengers	Only SN passengers
% that would switch to another airline if price rose by 5-10% [% if excluding Don't Know answers]	37% [48%]	22% [31%]	<i>Same as above</i>
Airlines to which passengers would consider switching (out of all passengers)	25% of SN would consider U2	14% of SN would consider LH 8% of SN would consider U2 16% of LH would consider SN 8% of LH would consider U2	24% of SN would consider BA 15% of SN would consider Bmi 10% of SN would consider VLM
Already travelled to the destination with another airline?	50%	47%	55%
Airline with which you flew last (out of those who have travelled before)?	33% of SN flew with U2	43% of SN flew with LH 21% of SN flew with U2 57% of LH flew with SN 8% of LH flew with U2	58% of SN flew with BA 22% of SN flew with Bmi 13% of SN flew with VLM

#### ANNEX IV: ECONOMETRIC ESTIMATION OF THE IMPACT OF EASYJET'S ENTRY ON THE GENEVA ROUTE

1. The competitive constraint that easyJet currently exerts on SN with two frequencies per day is documented by Figure 30 and Figure 31 below that plot SN's net average ENS and ETS fares (with the red line indicating easyJet's entry) and suggest that SN's ENS and ETS fares dropped after easyJet entered<sup>39</sup>. To examine this issue formally, the Commission used the same econometric techniques that it developed in Annex II that estimated the impact of easyJet's entry onto the Berlin route. Namely, the Commission used daily flight-level pricing data provided by SN on the Geneva route along with the data provided by SN for the Munich and Hamburg routes as controls to ensure that the movement in prices is not driven by some changes in SN's pricing across its entire network.<sup>40</sup>
2. Table 12 below contains the results of the pooled regressions, while Table 13 and Table 14 below contain the results of the regressions by direction for each fare class separately. The pooled regressions suggest that when easyJet entered the route, SN's ENS fares fell by [20-30]\*% on the Geneva route for passengers departing from BRU and by [20-30]\*% for passengers departing from GVA. If the regressions are estimated separately for ENS fares, the regression results suggest that SN's ENS fares dropped by [20-30]\*% for passengers departing from BRU and by [20-30]\*% for passengers departing from BER. All of these results are statistically significant.
3. As noted in recital 1 of this Annex, in order to ensure that such effect on SN's ENS fares can be attributed purely to easyJet, it is important to compare the evolution of SN's ENS fares on the BRU-BER route with the development of SN's ENS fares on the Hamburg and Munich routes. Figure 32 and Figure 33 that show the evolution of SN's ENS fares on the three routes (from and to BRU, respectively) suggest that the GVA fares have been steadily dropping as opposed to the other two routes, and particularly the difference in the HAM and GVA fares significantly decreased after easyJet entered on the GVA route. This would thus suggest that, on balance, at least some portion of the by [20-30]\*% drop in fares that the regressions are estimating can be attributed to easyJet, and thus easyJet likely poses a competitive constraint for SN's non time-sensitive passengers.

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<sup>39</sup> The passenger survey also confirms the strong competitive interaction between SN and easyJet on the GVA route. The share of SN passengers that compared fares/schedules with easyJet when booking their ticket is 38% (and this is slightly more than share of SN passengers that looked at LH fares and schedules on the BER route where it was confirmed that SN and LH are close competitors). Also, 56% of easyJet's passengers compared fares and schedules with SN on GVA (slightly more than the 50% that did so on BER). It is also worth noting that 25% of SN passengers to GVA indicated that they would have considered switching to easyJet if the price had been 5-10% higher (compared with 14% that would have considered switching to LH on the BER route). On the GVA route, a third of SN passengers had travelled with easyJet on the last time they travelled with another airline on the route compared and 52% of easyJet's passengers having travelled with SN. In comparison, on the BER route, SN passengers were more likely to have flown with LH on the last time they did fly with another airline to BER (42%) compared with easyJet (21%).

<sup>40</sup> SN does not fly to any other Swiss destination on its own metal, and thus there are no Swiss routes that could be used for this comparison.

4. With regard to SN's ETS fares, both the pooled regressions as well as the regressions that are estimated separately suggest that SN's fares dropped by [5-10]\*-[10-20]\*%, and this fare decrease is statistically significant. This is further confirmed by Figure 34 and Figure 35 that plot SN's ETS fares on the Berlin, Hamburg and Munich routes and suggest that SN's ETS fares have been steadily decreasing after easyJet entered, as opposed to SN's ETS fares on the other two routes that remained more or less flat. This would thus suggest that the [10-20]\*% decrease in SN's ETS fares can be attributed to easyJet, and thus easyJet likely poses a competitive constraint on SN' time-sensitive passengers.

**Table 12: Pooled regression results (p-value in parentheses)**

	BRU-GVA	GVA-BRU
ETS dummy	[0.8-1.0]* (0.00)	[0.8-1.0]* (0.00)
<b>easyJet dummy</b>	<b>-[0.2-0.4]* (0.00)</b>	<b>-[0.2-0.4]* (0.00)</b>
<b>easyJet dummy*ETS dummy</b>	<b>[0.0-0.2]* (0.04)</b>	<b>[0.0-0.2]* (0.03)</b>
Trend	-[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.00)
Trend*ETS dummy	0.00 (0.04)	0.00 (0.00)
Virgin dummy	[0.0-0.2]* (0.16)	[0.0-0.2]* (0.29)
Virgin dummy*ETS dummy	[0.0-0.2]* (0.82)	[0.0-0.2]* (0.15)
Winter season dummy	[0.0-0.2]* (0.49)	0.00 (0.89)
Winter season dummy*ETS dummy	[0.0-0.2]* (0.11)	[0.0-0.2]* (0.41)
Constant	4.61 (0.00)	4.62 (0.00)
R <sup>2</sup>	98.0%	98.7%
Number of observations	120	120

Source: Commission calculations

**Table 13: Regression results by fare class for BRU-GVA (p-value in parentheses)**

	ETS	ENS
<b>easyJet dummy</b>	<b>-[0.0-0.2]* (0.34)</b>	<b>-[0.2-0.4]* (0.05)</b>
Trend	0.00 (0.03)	-[0.0-0.2]* (0.00)
Virgin dummy	[0.0-0.2]* (0.00)	-[0.0-0.2]* (0.66)
Winter season dummy	[0.0-0.2]* (0.16)	[0.0-0.2]* (0.22)
Constant	5.57 (0.00)	4.78 (0.00)
R <sup>2</sup>	90.3%	58.3%
Number of observations	60	60

Source: Commission calculations

**Table 14: Regression results by fare class for GVA-BRU (p-value in parentheses)**

	ETS	ENS
<b>easyJet dummy</b>	<b>-[0.0-0.2]* (0.17)</b>	<b>-[0.0-0.2]* (0.00)</b>
Trend	0.00 (0.13)	-[0.0-0.2]* (0.00)
Virgin dummy	[0.0-0.2]* (0.00)	[0.0-0.2]* (0.86)
Winter season dummy	0.00 (0.90)	[0.0-0.2]* (0.11)
Constant	5.55 (0.00)	4.66 (0.00)
R <sup>2</sup>	94.3%	80.6%
Number of observations	60	60

Source: Commission calculations

**Figure 30: SN's average net ENS/ETS fares on the BRU-GVA route**  
[CONFIDENTIAL]\*

Source: SN

**Figure 31: SN's average net ENS/ETS fares on the GVA-BRU route**  
[CONFIDENTIAL]\*

Source: SN

**Figure 32: SN's average net ENS fares on the BRU-GVA, BRU-HAM and BRU-MUC routes**  
[CONFIDENTIAL]\*

Source: SN

**Figure 33: SN's average net ENS fares on the GVA-BRU, HAM-BRU and MUC-BRU routes**  
[CONFIDENTIAL]\*

Source: SN

**Figure 34: SN's average net ETS fares on the BRU-GVA, BRU-HAM and BRU-MUC routes**  
[CONFIDENTIAL]\*

Source: SN

**Figure 35: SN's average net ETS fares on the GVA-BRU, HAM-BRU and MUC-BRU routes**  
[CONFIDENTIAL]\*

Source: SN



# COMMITMENTS PACKAGE

## CASE COMP/M.5335 - Lufthansa / SNAH

Pursuant to Article 8(2) of Council Regulation (EC) 139/2004 (“Merger Regulation”), Deutsche Lufthansa AG (“Lufthansa”), in agreement with SN Airholding (“SNAH”), submits the commitments specified below (the “Commitments”) in order to enable the European Commission (“Commission”) to declare the proposed concentration between Lufthansa and SNAH (“Concentration”) compatible with the common market by means of a decision pursuant to Article 8(2) of the Merger Regulation (“Decision”).

These Commitments shall take effect upon receipt of the Commission’s Decision declaring the Concentration compatible with the common market and will be binding on Lufthansa, its subsidiaries, successors and assigns. These Commitments are offered exclusively in the context of the notified concentration between Lufthansa and SNAH and are without prejudice to the position of Lufthansa and/or its alliance partners in other cases examined by the European Commission.

This text shall be interpreted in the light of the Decision to which the Commitments are attached as conditions and obligations, and in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies.

### 0 DEFINITIONS

#### **Brussels Airport**

Means Brussels Zaventem Airport.

#### **Codeshare**

Means an enhanced form of interlining that includes one airline (the marketing airline) marketing services on flights operated by the other airline (the operating airline) under its own name and under its own designator code, regardless of whether it is construed in form of a free-flow or blocked space agreement or in other form.

#### **Competitive Air Service**

A non-stop scheduled passenger air service that is operated on one or more of the Identified City Pairs.

#### **Consummation of the Concentration**

The date on which Lufthansa acquires 45% of the share capital in SNAH as provided for in the Acquisition Agreement dated 15 September 2008.

**Effective Date**

The date of the Decision, unless otherwise specified.

**Frequency**

Means a roundtrip on an Identified City Pair.

**FFP (Frequent Flyer Program)**

A program offered by airlines to reward customer loyalty under which airline customers enrolled in the program accrue points for travel on that airline that can be redeemed for free air travel and other products or services, as well as allowing passengers to have increased benefits, such as airport lounge access, or priority bookings.

**IATA Scheduling Period or IATA Season**

The IATA Summer Scheduling Period (also known as IATA Summer Season) starts on the 4th Sunday in March and ends on the 4th Saturday in October. The IATA Winter Scheduling Period (also known as IATA Winter Season) starts on the 4th Sunday in October and ends on the 4th Saturday in March.

**Identified City Pairs**

Brussels-Frankfurt, Brussels-Munich, Brussels-Hamburg, Brussels-Zurich.

**Indemnified Party**

Has the meaning given to it in Section 8.2.6.

**Interline Agreement**

An agreement between two or more airlines under which the contracting airlines accept each other's travel documents (tickets).

**Intermodal Partner**

Has the meaning given to it in Section 6.1.

**Lufthansa**

The Lufthansa Group and SNAH and companies and/or affiliated businesses controlled by the entities after the Consummation of the Concentration.

**Misuse**

This term will have the meaning provided under Section 1.3.4.

**MITA**

Multilateral Interline Traffic Agreements Manual published by the International Air Transport Association (IATA).

**Monitoring Trustee**

Means an individual or institution, independent from Lufthansa or SNAH, who is approved by the Commission and appointed by Lufthansa and who has the duty to monitor Lufthansa's compliance with the conditions and obligations attached to the Decision as more fully described in Section 8.

**New Air Service Provider**

Any airline or airlines that are each members of the same alliance (other than the Parties including all airlines controlling it/them or controlled by it/them ), that individually, or collectively by codeshare, provide(s) a new or additional Competitive Air Service.

**Parties**

Lufthansa, SNAH and their respective subsidiaries.

**Prospective New Entrant**

Any airline, or airlines that are each members of the same alliance (other than the Parties), including all airlines controlling it/them or controlled by it/them, able to offer a new or additional Competitive Air Service individually or collectively by codeshare and needing a slot or slots to be made available by Lufthansa in accordance with the Commitments to operate a Competitive Air Service.

**Published Fare**

Refers to applicable IATA fares, carrier fares that are distributed to CRS via the public tariff data base of ATPCO (Airline Tariff's Publishing Corporation), and fares marketed on the Internet where such fares are available to the general public, excluding network-wide fuel, passenger or service surcharges.

**Review Section**

Has the meaning given to it in Section 11.

**Slot**

Shall mean the arrival and departure at a scheduled time available or allocated to an aircraft movement on a specific date at the airport of origin and destination.

**Slot Handback Deadline**

15 January for the IATA Summer Scheduling Period and 15 August for the IATA Winter Scheduling Period.

**Slot Transfer Agreement**

Has the meaning given to it in Section 1.2.6.

**Slot Transfer Procedure**

Has the meaning given to it in Section 1.2.1.

**Standard Slot Allocation Procedure**

Has the meaning given to it in Section 1.2.1.

# 1 SLOTS

## 1.1 SLOTS FOR CERTAIN IDENTIFIED CITY PAIRS

**1.1.1** The Parties undertake to make slots available at Brussels Airport and/or Frankfurt (International) and/or Munich and/or Hamburg and/or Zurich to allow one or more Prospective New Entrant(s) to operate a new or additional Competitive Air Service with the following number of Frequencies on the following Identified City Pairs:

- **Brussels-Frankfurt** up to two (2) frequencies per day;
- **Brussels-Munich** up to three (3) frequencies per day;
- **Brussels-Hamburg** up to three (3) frequencies per day;
- **Brussels-Zurich** up to two (2) frequencies per day.

**1.1.2** The number of slots the parties undertake to make available under Section 1.1.1 will be reduced by the number of slots already transferred to a Prospective New Entrant, except for slots that have been handed back to the Parties pursuant to Section 1.2.8 or Section 1.3.4. Slots that have been handed back to the Parties pursuant to Section 1.2.8 or 1.3.4 do not reduce the number of slots the parties undertake to make available under Section 1.1.1 even if the handed back slots have been lost as a consequence of the principle of “use it or lose it” in Article 10 of Regulation (EEC) No 95/93. If a Prospective New Entrant already operates frequencies on the Identified City Pairs at the time of notifying its requests pursuant to Section 1.2.1, the number of frequencies operated will reduce the number of Frequencies in Section 1.1.1. for this Identified City Pair.

**1.1.3** Lufthansa will inform the Monitoring Trustee and the Commission in accordance with Section 11 of the announced commencement by a carrier of a new or additional Competitive Air Service on an Identified City Pair that does not use slots made available by the Parties as soon as possible following the announcement of that service.

## 1.2 CONDITIONS PERTAINING TO SLOTS

**1.2.1** The Prospective New Entrant shall comply with the following procedure to obtain slots from the Parties (“*Slot Transfer Procedure*”).

The Prospective New Entrant wishing to commence/increase a new additional Competitive Air Service in one or more of the Identified City Pairs shall notify in writing its request for Slots to (i) the slot coordinator, through the normal slot allocation procedure (“*the Standard Slot Allocation Procedure*”); and (ii) the Monitoring Trustee, within the period provided for in Clause 3.1.

The Prospective New Entrant shall be eligible to receive slots pursuant to these Commitments only if it can demonstrate that all reasonable efforts to obtain slots for the Identified City Pair(s) through the Standard Slot Allocation Procedure before the beginning of the relevant IATA traffic season have failed, including the allocation of Slots by the coordinator from the waitlist following the Slot Handback Date. The

Prospective New Entrant shall request slots for use during a full IATA Season unless it can demonstrate a compelling business need to start its services during the Season.

The Prospective New Entrant will be deemed not to have exhausted all reasonable efforts to obtain slots, if:

(i) slots were obtained through the Standard Slot Allocation Procedure within twenty (20) minutes of the times requested, but such slots have not been accepted by the Prospective New Entrant; and/or

(ii) slots were obtained through the Standard Slot Allocation Procedure more than twenty (20) minutes from the times requested and the Prospective New Entrant did not give the Parties the opportunity to exchange those slots for slots within +/- twenty (20) minutes of the times requested.

- 1.2.2** The slots released by the Parties shall be within +/- twenty (20) minutes of the time requested by the Prospective New Entrant, if the Parties have slots available within this time-window. In the event that the Parties do not have slots available within this time-window, they shall offer to release the slots closest in time to the Prospective New Entrant's request. Arrival and departure slots shall be such as to allow for reasonable aircraft rotation taking into account the Prospective New Entrant's business model. The Parties do not have to offer slots, however, if the slots that the Prospective New Entrant can obtain through the Standard Slot Allocation Procedure are closer in time to the Prospective New Entrant's request than the slots that the Parties have available.
- 1.2.3** Any slot transferred on an indefinite basis in accordance with the Slot Transfer Procedure under Section 1.3 shall reduce the maximum number of slots to be transferred in accordance with the Commitments.
- 1.2.4** To ensure that the slots released by the Parties are used in a manner consistent with these conditions, the Prospective New Entrant should inform the Monitoring Trustee in accordance with Section 3.5 .
- 1.2.5** Slots made available by the Parties under these Commitments shall be offered without any compensation.
- 1.2.6** The Parties shall enter into a slot transfer agreement with the Prospective New Entrant (the "*Slot Transfer Agreement*"). Such an agreement shall be subject to review by the Monitoring Trustee and approval by the Commission and shall provide for fast-track dispute resolution according to Section 9. The agreement may (i) contain prohibitions on the Prospective New Entrant transferring any slots released by the Parties to a third party, swapping such slots for other slots with a third party, making available such slots in any way to any third party for the use of that third party, or releasing, surrendering, giving up or otherwise disposing of such slots; and (ii) provide for reasonable financial compensation to the Parties in case of Misuse as defined in Sections 1.3.4 and 1.3.5.,. The duration of the slot transfer agreement shall be the Utilization Period, as defined in 1.3.1 below, except if the Prospective New Entrant is a member of the Star Alliance. If the Prospective New Entrant is a member of the Star

Alliance, the agreement shall include the obligations listed in 1.3.6 and, if appropriate, specific conditions imposed on the Prospective New Entrant by the Commission according to Section 3.3. c), and the Commission's approval of the agreement shall be conditional on the Prospective New Entrant committing to comply with these obligations and conditions.

**1.2.7** The slot transfer agreement shall provide that the Prospective New Entrant will be able to terminate the slot transfer agreement at the end of each IATA season without penalty, provided the Prospective New Entrant notifies the termination of the agreement to the Parties in writing before the Slot Handback Deadline for the relevant IATA season.

**1.2.8** Upon termination of the agreement, the slots will be handed back to the Parties and will be available for a new entrant under Section 1.1.1, unless the Prospective New Entrant has acquired Grandfathering rights according to Section 1.3.

### **1.3 GRANDFATHERING OF SLOTS**

**1.3.1** As a general rule, the slots obtained by the Prospective New Entrant from the Parties as a result of the Slot Transfer Procedure shall be used only to provide a Competitive Air Service on the Identified City Pairs for which the Prospective New Entrant has requested them from the Parties through the Slot Transfer Procedure. These slots can not be used on another city pair unless

- the Prospective New Entrant has operated the Identified City Pair for which these slots have been transferred for a number of full consecutive IATA Seasons ("*Utilization Period*") and
- the Prospective New Entrant is not a member of the Star Alliance

The Utilization Periods shall be 8 (eight) consecutive IATA Seasons for the Brussels-Frankfurt route, 4 (four) consecutive IATA seasons for the Brussels-Munich and Brussels-Zurich routes, and 2 (two) consecutive IATA seasons for the Brussels-Hamburg route.

**1.3.2** During the Utilization Period the Prospective New Entrant shall not be entitled to transfer, assign, swap or sell any slot transferred by the Parties.

The slot transfer will become definitive and the Prospective New Entrant will be deemed to have grandfathering rights for the slots once appropriate use of these slots has been made on the Identified City Pair during the Utilization Period. In this regard, once the Utilization Period has elapsed, the Prospective New Entrant will be entitled to use the slot(s) obtained on the basis of these Commitments exclusively for intra-European City Pair operated by the Prospective New Entrant, or operated by one of the Prospective New Entrant's alliance partners and marketed by the Prospective New Entrant on a code-share basis ("*Grandfathering*").

**1.3.3** Grandfathering is subject to the approval of the Commission, advised by the Monitoring Trustee, in accordance with Section 3.3. The Commission's approval shall be conditional on the Prospective New Entrant committing that if it ceases to use the

Slots in question for purposes described in Section 1.3.2, it will return those Slots to the slot coordinator.

- 1.3.4** During Utilization Period, the Prospective New Entrant shall not be entitled to transfer, assign, sell, swap or charge in breach of these Commitments any Slot transferred by the Parties in the Slot Transfer Procedure. During the Utilization Period, a situation of Misuse shall be deemed to arise where a Prospective New Entrant that has obtained slots released by the Parties decides: (i) not to commence services on a Identified City Pair(s); (ii) to operate fewer daily Frequencies on the Identified City Pair(s) or to cease operating on the Identified City Pair(s) during such period; (iii) to transfer, assign, swap or sell in breach of these Commitments any Slot transferred by the Parties in the Slot Transfer Procedure; (iv) not to use the slots for the Identified City Pair(s); and (v) not to use the slots properly. The Prospective New Entrant does not use the slots properly, if (a) it loses the slots as a consequence of the principle of “*use it or lose it*” in Article 10 of Regulation (EEC) No. 95/93 or (b) it misuses the slot as described and interpreted in Art. 14 (4) of the Slot Regulation 793/2004.
- 1.3.5** During the Utilization Period, the Prospective New Entrant who has obtained slots under the Slot Transfer Procedure and has been found to or is anticipated to be found in a situation of Misuse as defined in Section 1.3.4 shall immediately inform the Monitoring Trustee and Lufthansa and hand back the Slots. In cases (i) and (ii) identified in Section 1.3.4, the Parties shall then use their best efforts to redeploy the slots in order to safeguard the historic precedents. If despite their best efforts,, the Parties are not able to retain the historic precedents for these slots, or in case of a Misuse as defined in (iii)-(v) of Section 1.3.4. the Prospective New Entrant shall provide reasonable compensation to the Parties as provided for in the Slot Transfer Agreement.
- 1.3.6** If the Prospective New Entrant is a member of the Star Alliance at the time of the signature of the Slot Transfer Agreement, or becomes a member of the Star Alliance between the signature of the Slot Transfer Agreement and the end of the utilization period (Star Alliance New Entrant), the Prospective New Entrant will not acquire grandfathering rights of the slots released.

A Star Alliance New Entrant shall not be entitled to transfer, assign, swap or sell any slot transferred by the Parties. All provisions of Sections 1.3.4 and 1.3.5 foreseen for the Utilization Period apply to a Star Alliance New Entrant without any limitation in time. Furthermore, the Star Alliance New Entrant shall not enter into a code share agreement with the parties or any other airline that is a member of the Star Alliance with respect to the Identified City Pairs on which it operates a Competitive Air Service, and more generally shall not operate a Competitive Air Service collectively with the Parties or any other airline that is a member of the Star Alliance.

## **2 DURATION OF THE SLOT TRANSFER**

The Parties’ obligations to transfer slots are unlimited in duration and may be invoked at any time by a Prospective New Entrant, subject to the limitations set out in Sections 1 and 11.

### **3 SELECTION PROCEDURE, ROLE OF THE MONITORING TRUSTEE AND APPROVAL OF THE COMMISSION**

- 3.1** Before the deadline for the submission of slot applications to slot coordinators (i.e. currently 35 days before the IATA Scheduling Conference)(the “*Final Slot Request Date*”), any airline wishing to obtain Slots from the Parties pursuant to the Transfer Procedure shall send a slot request to (i) the slot coordinator; and (ii) the Monitoring Trustee.
- 3.2** At latest three (3) weeks before the IATA Scheduling Conference of the relevant season, the Monitoring Trustee forwards the slot requests to Lufthansa and asks, if necessary, which slots the Parties would release within +/- twenty (20) minutes of the time a Prospective New Entrant requested. Lufthansa’s proposal shall refer to IATA’s Slot Preliminary Allocation List (SAL). Lufthansa will respond to the Monitoring Trustee within two (2) weeks upon the Monitoring Trustee’s request.
- 3.3** Between the Final Slot Request Date and the beginning of the IATA Scheduling Conference the Commission, advised by the Monitoring Trustee:
- (a) assesses whether each applicant would qualify as a Prospective New Entrant and whether the service to be provided by the Applicant qualifies as a Competitive Air Service;
  - (b) if there is more than one applicant, ranks the applicants by order of preference; and
  - (c) if the Prospective New Entrant is a member of the Star Alliance, or is anticipated to become a Member of the Star Alliance, assesses whether specific conditions should be imposed on the Prospective New Entrant.
- 3.4** In its assessment according to Section 3.3 (a), the Commission shall decide after considering the advice of the Monitoring Trustee whether it considers the applicant to be a Prospective New Entrant pursuant to the following criteria:
- the Prospective New Entrant is independent of and unconnected to the Parties;
  - the Prospective New Entrant is a viable existing or potential competitor, with the ability, resources and commitment to operate the Identified City Pair in the long term as a viable and active competitive force.
- 3.5** In its assessment according to Section 3.3. (b), the Commission shall decide, after considering the advice of the Monitoring Trustee, how to rank the applicants by order of preference using notably the following criteria:
- Preference shall be given to applicants that are not members of the Star Alliance or anticipated to become members of the Star Alliance (Non Star Alliance Applicants) over applicants that are members of the Star Alliance or anticipated to become members of the Star Alliance (Star Alliance Applicants),
  - If there is more than one Non Star Alliance Applicant, preference shall be given to the Non Star Alliance Applicant that intends to operate the greatest numbers of Identified City Pairs.



- If there is more than one Star Alliance applicant, preference shall be given to the Star Alliance Applicant that intends to operate the greatest number of Identified City Pairs.

**3.6** In its assessment according to Section 3.3 (c), the Commission shall decide, after considering the advice of the Monitoring Trustee, whether specific conditions should be imposed on a Star Alliance Applicant in order to guarantee the independence of the Star Alliance Applicant from the Parties.

**3.7** To assist the Monitoring Trustee in the preparation of his advice and/or the Commission in taking its decision, the Monitoring Trustee and/or the Commission shall request the Prospective New Entrant to provide to the Monitoring Trustee and/or the Commission with a detailed business plan. This plan shall contain a general presentation of the company including its history, its legal status, the list and a description of its shareholders and the two most recent yearly audited financial reports. The plan shall provide information on the plans that the company has in terms of development of its network, fleet etc, and detailed information on its plans for the Identified City Pairs on which it wants to operate. The company should specify in detail planned operations (size of aircraft, number of frequencies operated, planned time-schedule of the flights) and expected financial results (expected traffic, revenues, profits) on the Identified City Pairs on which it wants to operate during the Utilization Period for the respective Identified City Pair. . The Monitoring Trustee and/or the Commission may also request a copy of all co-operation agreements the Prospective New Entrant may have with other airlines. Business secrets and confidential information will be kept confidential by the Commission and the Monitoring Trustee and will not become accessible to other undertakings or to the public.

**3.8** Upon receiving the SAL messages from the slot coordinator, and in advance of the beginning of the IATA Scheduling Conference, the Monitoring Trustee informs each applicant not having received slots within the time-window of +/-twenty (20) minutes as indicated through the SAL and the slot coordinator:

(i) whether it qualifies for the Slot Commitment;

(ii) whether it is:

a) The only applicant or the preferred applicant; or

b) Not the preferred applicant

(iii) whether specific conditions are imposed by the Commission under Section 3.3 (c)

(iv) the exact Slot(s) that the Parties would release through the Slot Transfer Procedure.

In any case, the applicant shall go to the IATA Scheduling Conference and try to improve its slots.

- 3.9** At the end of the IATA Scheduling Conference, it will be clear, also for the Monitoring Trustee, for instance through the *European Union Airport Coordinators Association* (EUACA) database, whether each Prospective New Entrant will have received slots within the window of +/- twenty (20) minutes through the Standard Slots Allocation Procedure.
- 3.10** Within two (2) weeks of the end of the IATA Scheduling Conference, the preferred applicant informs the Monitoring Trustee and Lufthansa whether it will commit to operate the slots offered eventually by the Parties, in case the Standard Slot Allocation Procedure does not provide for them. If not, the Monitoring Trustee offers the slots to the next applicant (if any) by order of preference.
- 3.11** Within one (1) week of the confirmation that the applicant will operate the slots, the Parties offer the dedicated slots for transfer to the preferred applicant. The Slot Transfer Agreement shall be signed and the slot transfer performed within three weeks after the Slot Handback Deadline, and the slot coordinator is informed of the transfer in order to get the required confirmation.

#### **4 INTERLINING AGREEMENTS**

- 4.1** At the request of a New Air Service Provider, the Parties shall enter into an interline agreement concerning any Identified City Pair operated by the New Air Service Provider.
- 4.2** Any such interline agreement shall be subject to the following restrictions:
- it shall apply to the business and economy class only;
  - it shall provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued;
  - it shall be limited to true origin and destination traffic on the Identified City Pair operated by the New Air Service Provider;
  - it shall be subject to the MITA rules and/or normal commercial conditions;
  - it shall include the possibility for the New Air Service Provider, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the New Air Service Provider.
- 4.3** Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a New Air Service Provider for travel on an Identified City Pair. However, to avoid abuse, the Parties may require that the New Air Service Provider or the passenger, where appropriate, pay the (positive) difference between the fare charged by the Parties and the fare charged by the New Air Service Provider. In cases where the New Air Service Provider's fare is lower than the value of the coupon issued by it, the Parties may endorse its coupon only up to the value of the fare charged by the New Air Service Provider. A New Air Service Provider shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

- 4.4** All interline agreements entered into pursuant to this Section 4 for a particular Identified City Pair shall lapse automatically in the event that the New Air Service Provider ceases to operate that City Pair.

## **5 SPECIAL PRORATE AND CODE SHARE AGREEMENTS**

- 5.1** At the request of a Prospective New Entrant, the Parties shall enter into a special prorate agreement with the Prospective New Entrant for traffic with a true origin and destination in either Germany, Switzerland and/or Belgium, provided part of the journey involves the Hamburg-Brussels, Frankfurt-Brussels, Brussels-Zurich, or Munich-Brussels routes. The conditions for a special prorate agreement shall be on terms such that the New Air Service Provider shall have equal treatment with Lufthansa's Star Alliance partners on the same Identified City Pair. Financial conditions will be reasonable and in particular reflect the average conditions agreed upon with Lufthansa's alliance partners. The conclusion of the special prorate agreement is subject to the approval of the Commission, advised by the Monitoring Trustee. The Commission will in particular assess whether the financial conditions of the special prorate agreement are reasonable.

- 5.2** At the request of a Prospective New Entrant on the Hamburg-Brussels City Pair, the Parties shall enter into a special pro-rate agreement and a code-share agreement in the form requested by the Prospective New Entrant (i.e. free-flow or blocked-space) allowing the Prospective New Entrant to place its code on flights operated by the Parties from Brussels for purposes of offering a connecting service to/from Hamburg. The conditions for these agreements shall be on terms such that the New Air Service Provider shall have equal treatment with the Lufthansa's Star Alliance partners on the routes operated out of Brussels. Financial conditions will be reasonable and in particular reflect the average conditions agreed upon with Lufthansa's alliance partners. The conclusion of the special prorate agreement and the code share agreement is subject to the approval of the Commission, advised by the Monitoring Trustee. The Commission will in particular assess whether the financial conditions of the special prorate agreement and the code share agreement are reasonable.

## **6 COMMITMENT TO FACILITATE INTERMODAL SERVICES**

- 6.1** At the request of a railway or other surface transport company operating between Belgium and Germany (an Intermodal Partner), the Parties shall enter into an intermodal agreement whereby they provide passenger air transport on their services on any of the Identified City Pairs as part of an itinerary that includes surface transportation by the Intermodal Partner.
- 6.2** Any intermodal agreement entered into pursuant to this Section 6 shall be based on the MITA principles (including the Intermodal Interline Traffic Agreement - Passenger and IATA Recommended Practice 1780e) and normal commercial conditions. The Parties shall accept full pro-rating according to the terms applied by MITA members, including on routes where only rail services are provided. No restrictions shall apply

to fare combinations between carriers that are IATA intermodal MITA members and the most restrictive conditions rule shall apply only for the applicable segment and its carrier. The Parties and the Intermodal Partner may waive minimum stay requirements on any fare and any City Pair they operate. Such decisions are respected and published reciprocally. Where the Intermodal Partner requires notification of a sector mileage, a location identifier or an add-on fare, the Parties shall make such a request to IATA under normal IATA procedures.

- 6.3** At the request of a potential Intermodal Partner, the Parties shall make efforts in good faith to reach an agreement on conditions comparable to those granted to other Intermodal Partners, provided that the necessary requirements are met especially with regard to safety, quality of service, insurance coverage and liability limits. The conditions of such an agreement shall override the general obligations arising pursuant to this Section 6.

## **7 FREQUENT FLYER PROGRAM**

- 7.1** At the request of a New Air Service Provider that does not participate in Lufthansa's frequent flyer program ("Miles&More"), Lufthansa shall allow it to be hosted in Miles&More for the Identified City Pairs operated by the New Air Service Provider. The agreement with the New Air Service Provider shall be on terms such that the New Air Service Provider shall have equal treatment with Lufthansa's alliance partners. Financial conditions will reflect the average conditions agreed upon with Lufthansa's alliance partners.
- 7.2** Any agreement relating to a particular Identified City Pair and entered into pursuant to this Section 7 shall lapse automatically in the event that the New Air Service Provider ceases to operate that City Pair.

## **8 MONITORING TRUSTEE**

### **8.1 APPOINTMENT OF MONITORING TRUSTEE**

**8.1.1** A Monitoring Trustee shall be appointed in accordance with the procedure described in Section 8.1.2. The Monitoring Trustee must be familiar with the airline industry and have the experience, competence and independence necessary for this appointment. The Monitoring Trustee will have had no direct or indirect employment, consultancy or other relationship with Lufthansa or SNAH during the past two years and will have no such relationship with Lufthansa for the three years following the completion of its mandate.

**8.1.2** The Parties shall ensure that the Monitoring Trustee's remuneration shall be sufficient to guarantee the effective and independent compliance of its mandate.

Within one (1) week of the Effective Date, Lufthansa, in agreement with SNAH, shall submit a list of one or more persons whom Lufthansa proposes to appoint as the Monitoring Trustee to the Commission for approval.

The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in Section 8.1.1 and shall include:

- (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
- (ii) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee 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, Lufthansa shall appoint or cause to be appointed the individual or institution concerned as Monitoring Trustee. If more than one name is approved, Lufthansa shall be free to choose the 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.

If all the proposed Monitoring Trustees are rejected, Lufthansa shall submit the names of at least two more individuals or institutions within one (1) week of being informed of the rejection, in accordance with the requirements and the procedure set out in Section 8.1.1.

If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Lufthansa shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

## **8.2 MONITORING TRUSTEE'S MANDATE**

**8.2.1** The Monitoring Trustee's mandate shall include, in particular, the following responsibilities:

- (i) to monitor the satisfactory discharge by the Parties of the obligations entered into in these Commitments in so far as they fall within the scope of these Commitments;
- (ii) to 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;
- (iii) to advise and make a written recommendation to the Commission as to the suitability of the Slot Transfer Agreement and any Prospective New Entrant submitted for approval to the Commission under Section 1 and 3;
- (iv) to provide written reports to the Commission on the progress of the discharge of its mandate, identifying any respects in which the Parties have failed to comply with these Commitments and in which the Monitoring Trustee has been unable to discharge its mandate;
- (v) to mediate any disagreements relating to these Commitments;; if mediation is agreed to by the other party or parties to the agreement in question, and submit a report upon the outcome of the mediation to the Commission; and
- (vi) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the scope of these Commitments.

**8.2.2** The Parties shall receive simultaneously a non-confidential version of any written recommendation made by the Monitoring Trustee to the Commission (as provided for in Section 8.2.1(iii)).

**8.2.3** The reports provided for in Section 8.2.1(iii) to (vi) shall be prepared in English. The reports provided for in Section 8.2.1(iv) shall be sent by the Monitoring Trustee to the Commission within ten (10) working days from the end of every IATA season following the Monitoring Trustee's appointment or at such other time(s) as the Commission may specify, and shall cover developments in the immediately preceding IATA season. The Parties shall receive simultaneously a non-confidential copy of each Monitoring Trustee report.

**8.2.4** The Parties shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate and shall pay reasonable remuneration for its services.

- 8.2.5** The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel facilities, sites, technical information necessary for fulfilling its duties.
- 8.2.6** The Parties shall indemnify the Monitoring Trustee (and, where appropriate, its employees and agents) (each an Indemnified Party) and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee (or, where appropriate, its employees, advisors and agents).
- 8.2.7** At the expense of the Parties, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval, if the Monitoring Trustee considers the appointment of such advisors necessary for the performance of its duties under the mandate, provided that any fees incurred are reasonable and upon consultation of the Parties.

### **8.3 TERMINATION OF MANDATE**

- 8.3.1** If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (i) the Commission may, after hearing the Monitoring Trustee, require the Parties, to replace the Monitoring Trustee; or
  - (ii) the Parties, with the prior approval of the Commission, may replace the Monitoring Trustee.
- 8.3.2** If the Monitoring Trustee is removed 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 affected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to Section 8.1.2.
- 8.3.3** Aside from being removed in accordance with Section 8.3.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

## **9 FAST TRACK DISPUTE RESOLUTION**

- 9.1** In the event that a Prospective New Entrant or a New Air Services Provider has reason to believe that the Parties are failing to comply with the requirements of the Commitments vis-à-vis that party, the fast track dispute resolution procedure described in this Section 9 will apply.
- 9.2** Any Prospective New Entrant or New Air Services Provider who wishes to avail itself of the fast track dispute resolution procedure ("Requesting Party") must notify the

Parties in writing setting out in detail the reasons leading that party to believe that the Parties are failing to comply with the requirements of the Commitments ("Notice"). The Requesting Party and the Parties will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not to exceed fifteen (15) business days after receipt of the Notice.

- 9.3** Should the Requesting Party and the Parties fail to resolve their differences of opinion through cooperation and consultation as provided for in Section 9.2, the Requesting Party shall nominate an arbitrator.
- 9.4** The Parties shall, within two (2) weeks of receiving notification in writing from a Requesting Party of the appointment of the Requesting Party's arbitrator, nominate its arbitrator and provide to the Requesting Party in writing detailed reasons for its challenged conduct.
- 9.5** The arbitrators nominated by the Parties and the Requesting Party shall, within one (1) week from the nomination of the former, agree to appoint a third arbitrator. If the arbitrators nominated by Lufthansa and the Requesting Party cannot agree on the nomination of a third arbitrator, they shall ask the President of the International Chamber of Commerce ("ICC") to appoint the third arbitrator.
- 9.6** The arbitrators shall be instructed to establish an arbitration tribunal and to make a preliminary ruling on the contested issues within one (1) month of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all arbitrators. The preliminary ruling shall be applicable immediately and until the final decision is issued. The final decision shall be taken by the arbitrators within six (6) months of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all arbitrators.
- 9.7** In their preliminary ruling and their final decision, the arbitrators shall also decide the action, if any, to be taken by the Parties in order to ensure compliance with the Commitments vis-à-vis the Requesting Party, including making a preliminary or final binding determination of the disputed contractual conditions.
- 9.8** Any of the arbitrators will be entitled to request any relevant information from the Parties or the Requesting Party in order to enable the arbitrators to reach a decision.
- 9.9** The burden of proof in any dispute under this fast track dispute resolution procedure shall be borne as follows: i) the Requesting Party must produce evidence of a *prima facie* case, and ii) if the Requesting Party produces evidence of a *prima facie* case, the arbitrator must find in favour of the Requesting Party unless the Parties can produce evidence to the contrary.
- 9.10** The arbitrators shall be instructed not to disclose confidential information and to apply the standards attributable to confidential information and business secrets by European Community competition law.
- 9.11** The arbitration shall be in English and conducted pursuant to the ICC rules. The arbitration award shall, in addition to dealing with the merits of the claim, impose the



fees and costs of the prevailing party upon the party that is unsuccessful. The arbitration award shall be final and binding on the parties.

**9.12** In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the arbitrators shall inform the Commission and may seek the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration. The Commission may, at any time, issue a submission during the arbitration procedure.

**9.13** Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the EC Treaty.

## **10 GENERAL PROVISIONS**

**10.1** If the Concentration is abandoned, abrogated, unwound, not approved or disapproved by a relevant Government Authority, or otherwise terminated, then these Commitments shall automatically cease to apply.

**10.2** If the approval of the Concentration by another governmental authority is made subject to requirements that are potentially inconsistent with these Commitments, Lufthansa may request a review and adjustment of these Commitments in order to avoid such inconsistencies.

## **11 REVIEW SECTION**

**11.1** The Commission may, if appropriate, in response to a request from Lufthansa duly justified and provided together with the relevant report prepared by the Monitoring Trustee, in exceptional circumstances, waive, modify or substitute one or more of the obligations stated in these Commitments.

**11.2** The Commission may, if appropriate, in response to a request from Lufthansa duly justified and provided together with the relevant report prepared by the Monitoring Trustee, grant an extension of the terms foreseen in these Commitments. In case Lufthansa asks for any term extension, such a request shall be filed no later than one (1) month before the end of the period. Only in exceptional circumstances shall Lufthansa be entitled to request an extension within the last month of any period.

Frankfurt, 28 May 2009

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duly authorized to act for and on behalf of Deutsche Lufthansa AG

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