

# Executive summary

## Background

At the request of the Dutch Ministry of Transport, Public Works and Water Management (V&W), and as part of the evaluation of the Dutch Aviation Act, the Netherlands Competition Authority (NMa) has analyzed whether Schiphol Airport (NVLS) enjoys a dominant position on one or more markets for aviation activities and for activities closely related to aviation activities. In addition, the NMa has examined, in cases where it has been determined there is a dominant position on a market, what qualitative indications can be found, such as a risk for abuse, that would justify the continuation of sector-specific regulation of the relevant market(s), or that would suggest that regulation under the Dutch Competition Act and the Treaty on the Functioning of the European Union would suffice. In that context, the NMa has also explained, at the request of V&W, why a study into a dominant position for the other non-aviation activities is not considered to be necessary.

## Scope and structure of the study

Having consulted with V&W, the NMa has narrowed the scope of the study to two groups of activities, which are *aviation activities* and *activities closely related to aviation activities*. These activities almost entirely concern activities of the business area 'Aviation'.

The other non-aviation activities have not been analyzed because the market characteristics of these markets give no reason to believe that NVLS enjoys a dominant position. In the eyes of the NMa, general competition law would suffice for these activities. Even if NVLS enjoyed a dominant position, it is very likely that general competition law would suffice. The other non-aviation activities almost entirely concern all activities of NVLS' business areas 'Real Estate, Consumers and Alliances & participations.'

German Aviation Performance (GAP), a research collaboration between different German universities, carried out the study into a possible dominant position on the market(s) for aviation activities and activities closely related to aviation activities. This study comprised two steps: 1) defining the relevant market(s) and 2) determining the possible dominant position on this/these market(s). Finally, the NMa has examined what qualitative indications can be found to justify the desirability of sector-specific regulation of the markets in question.

## Aviation activities

The aviation activities include the activities of NVLS, operator of Amsterdam airport Schiphol, that are carried out for the airport's users, as defined in the Dutch Aviation Act and detailed in the Decision on operating Amsterdam airport Schiphol. More specifically, these activities include NVLS' activities for the purpose of aircraft take-offs and landings, aircraft parking, passenger and baggage handling in relation to aircraft take-offs and landings, passenger and baggage security activities, including customs and immigration facilities.

On the basis of GAP's findings, the NMa comes to the conclusion that aviation activities form a single market: the market of making available the airport's infrastructure to airlines and other users. Although it does not affect the study's outcome in any way, this market can be subdivided into the following product markets:

1. **The market of making available infrastructure by the operator of Amsterdam airport Schiphol**

- a. To airlines offering services to passengers who start their journey at Schiphol (so-called 'o/d-passengers', where 'o/d' stands for 'origin-destination')
- b. To airlines offering services to passenger who transfer at the airport (so-called 'transfer passengers').
- c. To freight airlines.
- d. To local flights and flight trainings.

Geographically, this market is defined by the *catchment area* of Amsterdam airport Schiphol on these product markets. NVLS enjoys a dominant position on this/these market(s), because it has been revealed that, using a SSNIP-test, NVLS would be able to profitably increase its tariffs. Despite the current competition among airlines, most of them would most likely see no reason to choose a different airport nor a different range of services at Amsterdam airport Schiphol, if tariffs were raised 5-10 per cent, given the tariff's marginal share in the overall price. On top of that, most of these airlines do not even have the option of moving to a different airport. In other words: the competition on the retail level offers insufficient competitive pressure on the wholesale level. Given the fact there is a dominant position, and NVLS could thus ask the above-marginal price, there is a real risk of abusing this position by setting tariffs too high.

Sector-specific regulation is desirable for the aviation activities, because general competition oversight under the Dutch Competition Act does not suffice here due to protracted proceedings, and due to the restriction that intervention can only be done once the abuse has taken place. The considerations at the time of when the Dutch Aviation Act came into force, on which the choice for sector-specific regulation was based, are thus still valid. These considerations relate, on the one hand, to how often intervention is required, because without any additional rules, users are expected to file a complaint with the NMa frequently, and, on the other hand, to the timing of intervention, because, given the importance of the aviation industry to the Dutch economy, ex-ante intervention is advisable in order to prevent abuse of market power abuse from happening with respect to tariffs and conditions.

### **Activities closely related to aviation activities**

The activities that are closely related to aviation activities include the non-aviation activities of NVLS that are essential to the aviation activities and those that are bound to the airport's location. More specifically, they include NVLS' activities for providing access to the airport for ground handlers and other organizations (e.g. Dutch Customs, and the Royal Netherlands Marechaussee), and rental of operationally necessary spaces to airlines, ground handlers and others.

On the basis of GAP's findings, the NMa comes to the conclusion that activities closely related to aviation activities form a single market: the market of providing access to the airport's infrastructure for ground handlers and other organizations. Although it does not affect the study's outcome in any way, this market too can be subdivided into the following product markets:

- 2. The market of providing access to the airport's infrastructure by the operator of Amsterdam airport Schiphol ...**
  - a. For offering passenger-handling services
  - b. For offering freight & mail services
  - c. For offering aircraft-handling services
  - d. For offering catering services
  - e. For offering refueling services

Geographically, this market is limited to the airport's area, possibly including locations close to the airport. Since NVLS manages access to the airport, and since it can charge a fee under the exclusive operation license granted by the Dutch government, NVLS enjoys a monopoly position on this/these market(s), and thus enjoys a dominant position. Sector-specific regulation on this market would normally be desirable based on the risk of abusing the dominant position by charging excessive tariffs. However, NVLS is currently not using the dominant position because it is not charging any access fees (except for fuel supply concessions).

In consideration of the possible future situation where NVLS may want to charge access fees after all, it needs to be considered to incorporate in the Dutch Aviation Act other possible methods of access compensation next to the concessions for aircraft fuel supply and aircraft catering. Moreover, such a regulatory amendment would not result in additional oversight costs, because the infrastructure costs have already been incorporated in the regulatory framework, and only the possible revenues from other forms of access compensation for ground handling services would have to be included. As long as such fees are not charged, no regulation needs to be enforced, just like with catering.

Access to ground handling services has already been laid down in the Regulations concerning ground-handling aviation sites – and the Dutch Customs and the Royal Netherlands Marechaussee are obviously granted access at no costs.

Regarding the rental of operationally necessary spaces, regulation is undesirable because the rental rates equal those charged for operationally non-necessary spaces. General competition law will thus suffice.

## **Conclusion**

According to the NMa, sector-specific regulation of tariffs and conditions for aviation activities is still justified because of the current market situation of Schiphol. After all, there is a conceivable risk that the NVLS abuses its dominant position that it is enjoying on the market for these activities. With regard to the activities closely related to the aviation activities, the NMa believes that introducing sector-specific regulation on the provision of access to the infrastructure for ground-handling services needs to be considered. That way, the risk of abusing the dominant position by charging other forms of access fees for ground-handling services can be managed without any additional regulatory costs. Regarding the rental of operationally necessary spaces, sector-specific regulation is undesirable, and general competition law will suffice here – same goes for other non-aviation activities.