

***Case No COMP/M.5756 -  
DFDS/ NORFOLK***

Only the English text is available and authentic.

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

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 17/06/2010

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## EUROPEAN COMMISSION

Brussels, 17.06.2010  
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C(2010)4253

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION IN  
CONJUNCTION WITH  
ARTICLE 6(2)

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5756 – DFDS/ Norfolk  
Notification of 26 April 2010 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 26 April 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking DFDS A/S ("DFDS", Denmark), through its subsidiary DFDS Tor Line AB ("Tor Line", Sweden), acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the whole of the undertaking Norfolk Holdings B.V. ("Norfolk", the Netherlands), by way of purchase of shares.

### **I. THE PARTIES**

2. **DFDS** operates a sea transport network in Northern Europe. Its main activities are short sea transport in Northern Europe including Roll-on/Roll-off ("Ro-Ro") and container shipping, terminal services, passenger shipping services and trailer services, contract logistics and freight forwarding. DFDS is directly owned by Vesterhavet Holding A/S ("**Vesterhavet**") and ultimately controlled by Lauritzen Fonden. Lauritzen Fonden is also the parent company of the shipping companies J Lauritzen A/S.

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

3. **Norfolk** is active in short-sea sea transport in Europe including Ro-Ro shipping and passenger shipping services, terminal services, contract logistics and freight forwarding. It is currently a fully owned subsidiary of A.P. Møller Mærsk A/S ("APMM").

## II. THE OPERATION AND THE CONCENTRATION

4. As a result of the operation, DFDS will acquire 100% of the shares, and therefore sole control over Norfolk. In addition, as consideration for the shares in Norfolk, APMM will take a 31% minority shareholding in DFDS. Therefore, after the transaction, Vesterhavet will hold a 36% and APMM a 31% shareholding in DFDS; the rest are free floating shares.
5. According to the Shareholders' Agreement as amended, APMM will have the right to nominate one out of 6 or 7 members of the Board of Directors.<sup>2</sup> The majority of decisions of this board will be taken by simple majority, apart from a number of decisions over which APMM will hold a veto right and which constitute merely minority shareholders' protection rights within the meaning of the Commission Consolidated Jurisdictional Notice,<sup>3</sup> such as decisions related to DFDS' participation in any business outside the scope of the business as set out in the Common Understanding or investments related to ship maintenance/replacements exceeding [...].<sup>4</sup> APMM will have no veto rights over strategic decisions such as over the appointment or dismissal of the members of [...], budget or business plan.
6. It is therefore considered that APMM will not acquire (joint) control over DFDS.
7. On the basis of the above, the notified transaction whereby DFDS acquires sole control over Norfolk is a concentration in the meaning of Article 3(1)(b) Merger Regulation.

## III. EU DIMENSION

8. The operation does not have an EU dimension within the meaning of Article 1 of the Merger Regulation. The proposed transaction does not meet the thresholds of either Article 1(2) or Article 1(3) of the Merger Regulation as the parties' aggregate worldwide turnover is less than EUR 2 500 million.
9. In view of the filing requirements in six Member States<sup>5</sup> and the cross border nature of the proposed transaction, the notifying party on 24 March 2010 filed a reasoned submission for referral pursuant to Article 4(5) Merger Regulation. In conformity with the second subparagraph of that Article, the Commission transmitted the submission to all Member States. None of the Member States expressed their disagreement with the request for referral within the period laid down by the Merger

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<sup>2</sup> On 28 May 2010, APMM submitted the amended Shareholders' Agreement whereby APMM will only have a veto right over investments over [...]; via the same Agreement APMM gives up its veto rights over the appointment and dismissal of the [...] members.

<sup>3</sup> Commission Consolidated Jurisdictional Notice, OJ C95 of 16.04.2008

<sup>4</sup> The parties submitted data since 2000, on the basis of which in the business carried out by DFDS/Norfolk the average price per [...].

<sup>5</sup> Cyprus, Germany, Ireland, Sweden, the Netherlands and the United Kingdom.

Regulation. The concentration is therefore deemed to have an EU dimension pursuant to Article 4(5) of the Merger Regulation.

#### IV. COMPETITIVE ASSESSMENT

10. The parties' activities overlap in the following areas: (i) unitised freight services by sea, (ii) passenger shipping services, (iii) terminal services, (iv) freight forwarding, and (v) contract logistics. In addition, there are vertical relationships between (i) the unitised freight services and terminal services as well as between (ii) the unitised freight services and freight forwarding (and contract logistics).

##### 1. Market definition

##### 1.1. Unitised freight services by sea/ freight transport on Ro-Ro and Ro-Pax

###### *Relevant product market*

11. The Commission previously found that the unitised freight, i.e. freight stored in standardised modes such as driver accompanied vehicles, unaccompanied vehicles and containers, can be transported by sea on roll-on/roll-off (Ro-Ro) or lift-on/lift-off (Lo-Lo) vessels.<sup>6</sup> On Lo-Lo vessels, the cargo is usually transported in containers, and is loaded and unloaded by crane. Ro-Ro and Ro-Pax vessels usually transport wheeled cargo (trucks, trailers, cargo or containers on mafi trailers); they have built-in ramps for the "rolling-on" and "rolling-off" of the cargo. Ro-Pax vessels transport passenger and cargo drivers can thus accompany their trucks.
12. The parties submitted that the product market comprises unitised freight transported by all land and sea transport means, i.e., by Ro-Ro vessels, Lo-Lo vessels, Ro-Pax vessels, cruise vessels, freight trains and by trailers on the road, and that any further sub-segmentations according to the mode of transport would not be plausible. Furthermore, the parties argued that, in any event, the freight transport on short-sea cruise vessels should be included in the same relevant market with the freight transport on Ro-Ro and Ro-Pax vessels as they also carry wheeled cargo.
13. During the market investigation, a vast majority of customers and competitors submitted that the freight transport on Ro-Ro (including Ro-Pax) and Lo-Lo vessels constitute separate markets. From a demand side, some respondents indicate that Ro-Ro and Lo-Lo "aim at different cargo flows" as some goods such as steel, pipes, cars, timber, food-stuff (if in bulk) or paper products can only be transported by Ro-Ro as they cannot be containerised. In addition, customers indicated that transport on Ro-Ro is faster than on Lo-Lo vessels, as Ro-Ro is in general a direct service between two ports with more (often daily) frequencies, which constitutes a key element for transport of time sensitive products such as flowers or meat.<sup>7</sup> Furthermore, several freight forwarding customers indicated that they have adapted

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<sup>6</sup> IV/36.253 - P&O Stena Line; COMP/M.2838 - P&O/P&O Stena Line (Holding) Limited (para 8). This decision assessed transport of unitised freight by sea as well as by shuttle service and freight trains via the Channel tunnel with regard to the Continent/Great Britain freight market.

<sup>7</sup> According to DFDS' own website, Lo-Lo transports are offered once a week as round-trips between various ports ("bus trip") whereas Ro-Ro services are offered more often and connect two ports directly without stop-overs at another port. Competitors have also confirmed the much lower frequency (once per week) of their Lo-Lo service.

their logistical operation for transport on Ro-Ro i.e. have invested in purchases of trailers and it is difficult for them to switch to containerised transport.

14. From the supply side, Lo-Lo transport aims at containers transport so that the Lo-Lo vessels present different characteristics than the Ro-Ro vessels which are provided with facilities for trailers to drive on the vessels. Moreover, terminal facilities are different; Lo-Lo needs a terminal with container cranes hence a large investment whereby Ro-Ro can be worked on a quayside without this investment due to the built-in ramp of a Ro-Ro vessel.
15. As for the possible distinction between the freight transport on Ro-Ro and Ro-Pax vessels, the market investigation showed that the freight transport on Ro-Ro and Ro-Pax vessels are substitutes for most of the products with the exception of the hazardous products, which are forbidden to be carried on the Ro-Pax vessels.
16. Finally, the market investigation largely did not support the parties' claims with regard to the substitutability between the freight transport on Ro-Ro (and Ro-Pax) and cruise vessels (i.e. vessels designed at first place to carry passengers but with possibility to carry, to a certain extent, cars or trailers). A number of respondents indicated that the cruise vessels have limited cargo capacities and usually operate different routes, and have different schedules than the freight transport on Ro-Ro vessels.
17. On the basis of the above it appears that for the purpose of the current case, freight transport on Ro-Ro and Ro-Pax vessels forms part of the same product market.<sup>8</sup> As to whether the freight transport on cruise vessels is in the same relevant market as the freight transport on Ro-Ro and Ro-Pax vessels, this question can be left open as the commitments proposed by DFDS are capable of removing the competition concerns that arise on the potential (sub-)market for Ro-Ro/Ro-Pax.

#### *Relevant geographic market*

18. In previous Commission decisions the geographic scope for the short sea unitized freight services has been considered as consisting of overall geographic corridors.<sup>9</sup> The parties submit that the geographic market comprises the transport corridors Scandinavia-UK<sup>10</sup> and Western Europe-UK<sup>11</sup>; however, they also provided market data on narrower corridors such as UK-Denmark or UK-Benelux.
19. During the market investigation, a majority of respondents pointed at separate markets for: UK/Benelux, UK/Norway, UK/Sweden, and UK/Denmark. Some market investigation replies underlined the particularities of the UK/Denmark market which is mainly aimed at serving the Danish customers, whereas the UK/Sweden routes serve customers not only from Sweden but as well from Finland,

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<sup>8</sup> The question whether Lo-Lo forms part of the same market can be left open as (a) the parties' activities do not overlap in this potential sub-segment and (b) serious doubts as to the compatibility of the transaction with the internal market arise in any event on the (sub-)market for Ro-Ro/Ro-Pax services and are addressed by the proposed remedies.

<sup>9</sup> IV/36.253 – P&O Stena Line I. para 38; COMP/M.2838 - P&O/P&O Stena Line para 15.

<sup>10</sup> Scandinavia comprising Sweden, Denmark and Norway.

<sup>11</sup> Western Europe comprising: The Netherlands, Belgium, Germany and France.

Norway and the Baltic countries, with the Swedish port of Gothenburg performing a hub role to/from these countries.

20. However the exact definition of the relevant product and geographic markets can be left open as serious doubts arise in any event on the (sub-)market for Ro-Ro/Ro-Pax services and the remedies submitted by the notifying party are capable of removing the competition concerns under any potential geographic market definition.

## **1.2. Passenger shipping services**

### *Relevant product market*

21. The Commission has previously defined two separate markets within passenger shipping services, namely the market for business passenger services and the market for tourist passenger services.<sup>12</sup>
22. As regards the tourist passenger services, the parties submitted that the substitutability between air and rail services have developed since the Commission decision in 1999 and thus this market could be wider in scope than tourist passengers shipping services alone.
23. The market investigation confirmed the existence of a separate market for tourist passenger shipping. The market investigation suggested that for most of the passengers travelling by ferry, taking their vehicle on board is of major importance however for the remaining passengers the rail and air transport could be a possible substitute.

### *Relevant geographic market*

24. The Commission has previously examined the geographic markets for passenger shipping for Short Sea<sup>13</sup> and North Sea<sup>14</sup> routes on the corridors: (i) Western Channel,<sup>15</sup> and the Short Sea and (ii) the North Sea and the Short Sea<sup>16</sup>. The market investigation did not contradict the above division.
25. The exact definition of the relevant product and geographic markets can be left open for the purposes of the present decision as the transaction does not give rise to serious doubts irrespective of the market definition.

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<sup>12</sup> IV/36.253 - P&O Stena Line (para 22).

<sup>13</sup> The Short Sea, consisting of routes across the Short French Sea (routes between Dover, Folkestone, Ramsgate, Newhaven and Calais, Dieppe, Boulogne, Dunkirk and the Channel Tunnel) and the routes across the Belgian Straits (Ramsgate/Ostend).

<sup>14</sup> The North Sea, consisting of routes between ports on the east coast of England and ports in Belgium and the Netherlands.

<sup>15</sup> The Western Channel, consisting of routes between ports on the south coast of England and ports on the north coast of France.

<sup>16</sup> IV/36.253 - P&O Stena Line (para 20).

### **1.3. Terminal services**

26. Terminal services can be defined as cargo handling and cargo storage. The Commission has previously defined the relevant product market to be that for the provision of stevedoring services (i.e. services of loading and unloading of vessels) to deep-sea container ships, broken down by traffic flows to hinterland traffic (i.e. direct deep-sea) and transshipment traffic (i.e. relay/feeder).<sup>17</sup> The parties operate short-sea terminals, which, according to the information provided, should be considered as a different market from the deep-sea terminals.
27. The market investigation confirmed the difference between (i) short sea and deep sea terminals on one hand and the (ii) Ro-Ro and Lo-Lo terminals on the other hand.
28. Geographically, the Commission previously considered this market in its narrowest scope as the catchment area of the ports in a certain range.<sup>18</sup> The parties submitted data on the narrowest geographical market, i.e. east coast of England, west coast of Denmark and the coast of Norway.
29. The exact definition of the relevant product and geographic markets can be left open for the purposes of the present decision as the transaction does not give rise to serious doubts irrespective of the market definition.

### **1.4. Freight forwarding**

30. The Commission previously defined freight forwarding as the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services etc.) on behalf of customers according to their needs. The Commission has considered further sub-segmentations according to (i) the type of operations into domestic or international freight forwarding<sup>19</sup> and (ii) the type of transportation modes into freight forwarding by air, land and sea<sup>20</sup>.
31. Geographically, the Commission previously considered these markets as national in scope,<sup>21</sup> although it acknowledged that they may have a tendency towards an EEA wide market. The Commission also considered a possible trade lane-based market,<sup>22</sup> but it left the precise geographic definition open.
32. The exact definition of the relevant product and geographic markets can be left open for the purposes of the present decision as the transaction does not give rise to serious doubts irrespective of the market definition.

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<sup>17</sup> COMP/M.3973 – CMA CGM/Delmas (para. 12); COMP/JV.55 – Hutchinson/RCPM/ECM (paras. 24 et. subseq.).

<sup>18</sup> COMP/M.3973 - CMA CGM/Delmas (para 12).

<sup>19</sup> COMP/M. 1794 - Deutsche Post/Air Express International (para.8 and 9).

<sup>20</sup> COMP/M.4746 - Deutsche Bahn/EWS, par. 23; COMP/M.4786 Deutsche Bahn/Transfesa, par. 11. In both decisions the final market definition was left open.

<sup>21</sup> COMP/M.4045 – Deutsche Bahn/Bax Global; M. 5096-RCA/MAV Cargo.

<sup>22</sup> COMP/M.4786 - Deutsche Bahn/Transfesa.

## **1.5. General contract logistics**

33. The Commission previously defined contract logistics as the part of the supply chain process that plans, implements and controls the efficient flow and storage of goods, services and relative information from the point of origin to the point of consumption in order to meet the customers' requirements.<sup>23</sup>
34. As to the geographic dimension of the market, the Commission considered the market to be national in scope, due to regulatory and language specificities.<sup>24</sup> The parties also stated that, in recent decisions, the Commission indicated that there were reasons to consider an EEA-wide market in scope but left open the precise delineation.<sup>25</sup>
35. The exact definition of the relevant product and geographic markets can be left open for the purposes of the present decision as the transaction does not give rise to serious doubts irrespective of the market definition.

## **2. Competitive Assessment**

36. The transaction gives rise to (i) horizontally affected markets in short-sea unitised freight and passenger shipping services, and (ii) vertically affected markets, namely terminal services, freight forwarding and general contract logistics.<sup>26</sup>

### **2.1. Horizontal effects**

#### Unitised freight services by sea

37. The parties' activities lead to several affected corridor based markets for unitised freight services by sea comprising the freight transport on Ro-Ro and Ro-Pax vessels.<sup>27</sup>

#### **UK / Western Europe corridor:<sup>28</sup>**

38. The table below provides an overview of the parties and competitors' capacity based market shares in the UK/Western Europe corridor in 2008.<sup>29</sup>

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<sup>23</sup> COMP/M.1895 - Ocean Group/Exel.

<sup>24</sup> COMP/IV/M.1500 - TPG/Technologistica, COMP/M.1895 Ocean group/Exel.

<sup>25</sup> COMP/M.5096 - RCA/MAV CARGO.

<sup>26</sup> In view of the 31% APMM's shareholding in DFDS, the Commission has also analysed APMM's position on the relevant markets; however, no significant overlaps occurred on the affected markets.

<sup>27</sup> The parties' activities do not overlap in the Lo-Lo segment (i.e. un-wheeled containers) of unitised freight services, as Norfolk only provides Ro-Ro and Ro-Pax services.

<sup>28</sup> The entire UK/Western Europe market size was EUR [...] million in 2009 and EUR [...] million in 2008.

<sup>29</sup> On the UK/Western Europe corridor, DFDS operates the following routes Immingham (UK) – Cuxhaven (Germany); Immingham – Rotterdam (NL), and Newcastle (UK) – Ijmuiden(NL). Norfolk operates the following routes: Felixstowe (UK) – Vlaardingen (NL), Killingholme (UK) – Vlaardingen; Rosyth (UK) – Zeebrugge (BE) and Dover (UK) – Dunkerque (FR).



	<b>Ro-Ro / Ro-Pax / cruise vessels <sup>30</sup></b>	
<b>UK - Western Europe</b>	Market shares	Gross capacity/month (TEU)
DFDS	[0-5]%	[...]
Norfolk	[20-30]%	[...]
<b>Combined market shares</b>	<b>[20-30]%</b>	<b>[...]</b>
P&O Ferries	[30-40]%	[...]
Sea France Freight	[10-20]%	[...]
Cobelfret	1[10-20]%	[...]
Stena Line	[5-10]%	[...]
Others <sup>31</sup>	[10-20]%	[...]
<b>UK - Benelux</b>		
DFDS	[5-10]%	[...]
Norfolk	[10-20]%	[...]
<b>Combined market shares</b>	<b>[20-30]%</b>	<b>[...]</b>
Cobelfret	[20-30]%	[...]
Stena Line	[20-30]%	[...]
P&O Ferries	[10-20]%	[...]
Transeuropa Ferries	[5-10]%	[...]
Finnlines	[0-5]%	[...]

Source: Form CO

39. The market investigation showed that the transaction does not negatively affect competition in the freight transport on Ro-Ro and Ro-Pax vessels market on the **UK / Benelux or UK/ Western Europe corridors**. The combined market shares of the parties on any of the corridors are below [20-30]% (the highest on the UK/Western Europe corridor where the combined market shares would be [20-30]%, with an increment of [0-5]%). In addition, several competitors such as Brittany Ferries, P&O, Sea France or Transeuropa Ferries are also active in these markets. Moreover, the rail shuttle service via the Eurotunnel has been indicated as exercising strong competitive pressure on the Ro-Ro and Ro-Pax transport on these corridors.
40. On the basis of these findings, the transaction does not raise serious doubts on the UK/Benelux or UK/Western Europe market.

#### **UK / Scandinavia corridor:<sup>32</sup>**

41. The table below provides an overview of the parties and competitors' capacity based market shares in 2008<sup>33</sup> in the UK/Scandinavia corridor and the possible narrower corridors.

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<sup>30</sup> On the UK/Western Europe corridor, the volumes transported on cruise vessels only constituted a limited percentage i.e. out of the total volume of [...] TEU transported on Ro-Ro, Ro Pax and cruise vessels, [...] TEU were transported on cruise vessels.

<sup>31</sup> Brittany Ferries, LD Lines and Transeuropa Ferries each of them with about [0-5]%.

<sup>32</sup> The entire UK/Scandinavia market size was EUR [...] million in 2009 and EUR [...] million in 2008.

	<b>Ro-Ro / Ro-Pax / cruise vessels<sup>34</sup></b>	
<b>UK – Scandinavia</b>	Market shares	Gross capacity/month (TEU)
DFDS	[50-60]%	[...]
Norfolk	[5-10]%	[...]
<b>Combined market shares</b>	<b>[50-60]%</b>	<b>[...]</b>
Cobelfret	[10-20]%	[...]
Grimaldi	[5-0]%	[...]
Finnlines	[5-10]%	[...]
Others <sup>35</sup>	[10-20]%	[...]
<b>UK – Denmark</b>		
DFDS	[50-60]%	[...]
Norfolk	[10-20]%	[...]
<b>Combined market shares</b>	<b>[70-80]%</b>	<b>[...]</b>
Grimaldi	[10-20]%	[...]
Finnlines	[5-10]%	[...]
Cobelfret	[5-10]%	[...]

Source: Form CO

#### **UK / Scandinavia corridor:**

42. According to the parties, their combined market share for freight transport on Ro-Ro/Ro-Pax vessels on this overall corridor (UK to Denmark, Sweden and Norway) amounts to [50-60]% (DFDS: [50-60]%, Norfolk: [5-10]%). However, one of the competitors listed by the parties indicated that it has no services from Scandinavia. Another competitor submitted that it does not provide any direct service on the Scandinavia/UK corridor but only an indirect one via Zeebrugge/Belgium. As this indirect service takes much longer time, about 40 hours, compared to only 18 hours for the parties' direct service and as this service is only provided once per week (in contrast to DFDS' almost daily service), it is considered that the indirect route exercises only to a very limited extent a competitive constraint in the Scandinavia/UK corridor.
43. Furthermore, the routes to Southampton, which the parties included in their market shares calculations, also exercise only a very limited competitive constraint, as they do not seem to compete with the services to the East coast of the UK.
44. Considering all these factors mentioned above, the parties' position on the UK-Scandinavia corridor would be quasi-monopolistic.

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33 In 2010 DFDS has replaced the two vessels on the Esbjerg-Immingham route with larger vessels. Therefore the parties' capacity and the total market increased. Therefore the parties' market shares in the table below are slightly understated with regard to the current total capacity.

34 According to the parties, there was no activity for cruise vessels on the UK-Scandinavia market.

35 Sea-Cargo, UECC, Euro Marine Carrier, and Wallenius Wilhelmsen with market shares between 2 and 4%.

### **UK / Denmark corridor:<sup>36</sup>**

45. According to the parties, their combined market share on this narrower corridor amounts to [70-80]% (DFDS: [50-60]%, Norfolk: [10-20]%). Without the competitor who submitted that it is not present on the UK-Denmark route, the indirect line and Southampton services, the parties combined market share would amount to [90-100]%.

### **UK / Sweden corridor:<sup>37</sup>**

46. The parties' activities do not overlap on this corridor. DFDS holds a quasi monopoly on this corridor. The market investigation showed that Norfolk's services from Esbjerg would for some Swedish customers (from Southern Sweden notably) also be an alternative to DFDS' service from Gothenburg and therefore, the concentration would also remove this competitive constraint on the Sweden/UK corridor.

### **Conclusion on market structure**

47. In conclusion, irrespective of the precise market definition, and even considering the indirect services as well as the Southampton services as exercising some competitive pressure over the parties' services, the parties' position in the alternative markets is very strong.
48. Moreover, during the market investigation, customers and competitors complained with regard to possible price increases and capacity reduction on the UK/Scandinavia corridor in general and on the Denmark/UK corridor in particular. Respondents also mentioned that the parties' high market shares, the ability to bind freight forwarding customers via long term contracts<sup>38</sup> as well as DFDS' aggressive behaviour in the past towards new competitors would make market entry even more difficult.

### **Competitive assessment UK/Scandinavia corridor**

49. The focus of the competitive assessment is on the UK-Denmark corridor as it is the only corridor in Scandinavia where the parties' activities overlap. On the UK/Denmark corridor Norfolk is currently active on the basis of a Space Charter Agreement with DFDS on two routes: (i) Esbjerg – Harwich and (ii) Esbjerg – Immingham. On the basis of this Space Charter Agreement, Norfolk purchases approximately [...] of the annual capacity of DFDS' vessels on these routes ([...] TEU<sup>39</sup> annually) and prices, sells and markets these volumes independently to its customers.

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<sup>36</sup> According to the parties, the entire UK/Denmark market size (Ro-Ro/Ro-Pax/ cruise vessels) was EUR [...] million in 2009 and EUR [...] million in 2008.

<sup>37</sup> According to the parties, the entire UK/Sweden market size (Ro-Ro/Ro-Pax/ cruise vessels) was EUR [...] million in 2009 and EUR [...] million in 2008.

<sup>38</sup> A number of the parties' major customers indicated that they have exclusive contracts with the parties for a period of 1 to 5 years, some of them bundling several geographical routes.

<sup>39</sup> TEU stands for Twenty-foot Equivalent Unit, a standard measure for a container.

50. First, the parties argue that due to the Space Charter Agreement which would be similar to a free flow code sharing agreement in the aviation industry, the competition between DFDS and Norfolk would not be "vigorous." Therefore, the parties argue, the concentration would not lead to substantially higher prices.
51. However, a free flow code sharing agreement is substantially different from the Space Charter Agreement in the current case. This is due to the fact that in the current case, under the Space Charter Agreement, Norfolk takes over a predetermined volume of [...] TEU. Therefore, Norfolk, on the one side bears the economic risk to sell this volume to the market, on the other side it has all the benefits of the obtained profits. In a typical free flow code share agreement, the "charterer" would not bear the economic risk, nor have the possibility of increasing his profits by independently acting in the market as it would normally only receive a commission fee from the operating carrier for its services. Therefore Norfolk's incentive to compete with DFDS is higher, as Norfolk needs to cover its costs, and it can also fully benefit from the obtained profits, unlike under such a code share agreement.
52. Second, the parties argue that they would only compete from a "technical point of view" as DFDS could terminate the agreement with Norfolk with a "normal termination" notice period of [...] months.
53. However, the imminent termination of the Space Charter Agreement can hardly be considered a likely scenario. Since its conclusion in 1993, DFDS and Norfolk have systematically extended the Space Charter Agreement on a bi-annual basis. The consistent extension of the Agreement shows that the incentives for the parties to terminate the Space Charter Agreement seem to be very low.
54. Moreover, the Commission considers that, should DFDS terminate the cooperation, Norfolk would be the most likely entrant on this route: Norfolk was active on the same market before the Space Charter Agreement with DFDS and has already an established customer base including large freight forwarders such as [...] or [...] and has its own in-house freight forwarding volumes (provided by Norfolk Logistics). In addition, Norfolk already has a well established service between Vlaardingen and Killingholme (near Immingham) and thus a presence at one of the terminals on the UK East Coast. Furthermore, Norfolk, with its current strong parent company, APMM, would also be able to bear the initial investment for (re)entry. The fact that Norfolk's potential entry can also be a threat to DFDS is also illustrated by the fact that DFDS has prolonged Space Charter Agreement ever since its conclusion.
55. Third, DFDS argues that the number of customers affected by the current concentration would be limited and therefore it would not result in a substantial impediment to effective competition. In this respect, the parties argue that [...] of the volumes carried by them are currently "captive" due to the fact that: (i) the largest customers of DFDS on this route, the freight forwarder [...], accounts for [...] of the volumes transported by DFDS<sup>40</sup> on this route, (ii) parts of DFDS' volumes are reserved for its own freight forwarding subsidiary Speedcargo

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<sup>40</sup> This represents [...] of DFDS' turnover.

representing about [...] of the volumes transported by DFDS, and (iii) Norfolk's own freight forwarding business accounts for [...] of its shipped volumes.

56. In the parties' view DFDS and Norfolk do not currently compete for these "captive" volumes. In particular, Norfolk would not compete for [...]s volumes. DFDS submits that this is due to Norfolk's capacity restrictions and to the fact that [...]. Finally [...] has historically required a single supplier and therefore the parties argue that [...] would not be interested in multi-sourcing on one and the same route.
57. The Commission considers that the fact that [...] is DFDS' largest customer on these routes does not render the services "captive". Rather, the arguments put forward by DFDS could possibly be considered as indicating some degree of buyer power of [...]. [...] is an independent company which may choose in the future to multi-source if this is commercially more interesting, for instance due to increased competition. Even if the parties' assumption was correct that Norfolk would not be in a position to compete for [...]s volumes, the percentage of possibly affected customers put forward by the parties does not seem to be correct. According to the Commission's calculations, the volumes used by [...] as well as by DFDS and Norfolk for their own in-house operations account for roughly [...]% of their turnover and for only [...]-% of the overall capacity.<sup>41</sup> Therefore the concentration would result in a significant number of vulnerable customers. In addition, even if [...] had buyer power, this would not "protect" other customers as DFDS is able to price discriminate.
58. Fourth, the parties also argue that the merger is unlikely to reduce the overall capacity in the market on the UK-Denmark corridor. The parties claim that it would be unprofitable and highly inefficient and that if it were to reduce capacity DFDS would have already done so.
59. The Commission considers that, pre merger, the ability of DFDS to exercise full control on the overall capacity deployed in the market is influenced and determined by the presence of Norfolk. In fact, pre merger the actual capacity is the result of the competitive interaction between DFDS and Norfolk. The ability of Norfolk to impose a credible threat of entry in such corridor allows Norfolk to negotiate for volume and to independently make use of it. This has a direct impact in the capacity decision of DFDS which is currently constrained by the presence of Norfolk. Post merger, the threat of entry would be removed, and the capacity decision would be totally controlled by DFDS and the effect would be an overall reduction of the capacity with a likely price increase in order to extract additional rent from the customers.
60. Finally, the parties argue that DFDS will continue to face competition from other (indirect) Ro-Ro and Lo-Lo competitors and provide examples of DFDS customer that have switched to either Cobelfret's indirect Denmark-UK service via Zeebrugge or to containerised less frequent Lo-Lo transport such as Tschudi Lines.

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<sup>41</sup> [...] accounts for [...]% of DFDS' turnover which in turn accounts for [...]% of the vessel capacity. In terms of volumes, [...] accounts for [...]% of DFDS' shipped volumes, DFDS' inhouse volumes account for [...]% of its shipped volumes, Norfolk's in-house use accounts for [...]% of its shipped volumes. The vessels have on average a capacity utilisation rate of [...]%.

61. However, irrespective of the market definition, the combined market shares of the parties would be high. The parties only provide some examples of customers switching to these alternative modes of transport. However, based on the information obtained in the market investigation, this customer switching does seem rather exceptional and concerned only a small proportion of the total demand by these customers other than the captive demand and [...].
62. In addition, the alternative of using Cobelfret's indirect Ro-Ro service from Esbjerg to Killingholme/ Purfleet via Zeebrugge does not seem a strong constraint either. As previously mentioned, such an indirect service takes significantly longer time (approximately 40 hours instead of 18 hours) and it is only an alternative for non-time sensitive customers. Therefore only very few customers currently make use of shipping cargo indirectly via Zeebrugge. However, even if the indirect service was considered in the total market volume, the parties' combined market share would still be very high ([50-60]% on the Ro-Ro UK-Scandinavia routes or [70-80]% on Ro-Ro the UK-Denmark routes).
63. On this basis, the Commission considers that following the concentration DFDS would lose its most important competitive constraint consisting in the competition from Norfolk. In view of the overall competitive situation on these routes, there is a significant risk of an overall reduction of capacity and a likely price increase in order to extract additional rent from the customers, and thus a significant impediment of effective competition. The Commission therefore finds that the concentration, with respect to freight transport for on Ro-Ro, and Ro-Pax vessels on the corridor UK-Scandinavia and a narrower corridor UK-Denmark, raises serious doubts as to its compatibility with the internal market.

#### Passenger Shipping Services

64. The transaction will only affect tourist passenger shipping services market on the North Sea, where Norfolk is operating a route from Rosyth (UK) to Zeebrugge (BE) and DFDS is active on a route Newcastle (UK) – Amsterdam (NL). The parties also overlap in tourist passenger services on a wider geographical market for North Sea and Short Sea combined.<sup>42</sup>
65. On the North Sea segment the parties' combined market share will amount to [20-30]% (with a [0-5]% increment due to Norfolk).<sup>43</sup> Moreover, the ports from which the parties operate their routes are situated at a considerable distance one from the other in the UK. In addition strong competitors such as P&O Ferries ([40-50]%) and Stena Line ([20-30]%) are also present on this segment.

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<sup>42</sup> On this wider market also the activities of Norfolk operating a route from Dover to Dunkerque should be taken into account. DFDS also operates the route Esbjerg-Harwich which however, according to the parties and the Commission's past practice (see IV/36.253 - P&O Stena Line), is not within the same market as the routes to Zeebrugge, Amsterdam (and Dunkerque) and, in any event, can only constitute a very weak competitive constraint on the other routes operated by the parties.

<sup>43</sup> If one considers both North Sea and Short Sea to be a relevant market for passenger services, the transaction will result in combined market share of [10-20]% with [0-5]% increment due to DFDS).

66. In a wider market for North and Short Sea, the combined market share of the Parties would be smaller – [10-20]% with a [0-5]% increment due to DFDS, and the following important competitors are present on this market: Eurotunnel ([30-40]%), P&O Ferries ([20-30]%) and Sea France ([10-20]%). Therefore, the transaction does not lead to serious doubts in the passenger shipping services market.

## **2.2. Vertical effects**

67. Due to the parties' high market shares in the unitised freight services by sea, the downstream market for (i) terminal services as well as the upstream markets for (ii) freight forwarding and (iii) contract logistics are vertically affected.

### Terminal services

68. The terminal services constitute an upstream market for the unitized freight services, since the freight is loaded / unloaded at the terminals. Only DFDS is present on the market for overall terminal services to third parties (non captive). If one considers the market for short sea terminal services encompassing services to Ro-Ro, Ro-Pax, cruise and Lo-Lo vessels DFDS's market shares are the following: on the east coast of the UK the market share would be around [0-5]% and on the Norwegian coast around [0-5]%.
69. However, DFDS is only to a limited extent active in the segment of terminal services for Ro-Ro/Ro-Pax and cruise terminal services. DFDS' market shares on this segment are only around [0-5]%. DFDS market shares on the Lo-Lo vessels terminals are around [0-5]% (east coast of UK) and [5-10]% (Norway). Taking into consideration DFDS' limited market shares in the terminals market, vertical competition issues appear to be remote and would in any event be addressed by the proposed remedies

### Freight forwarding

70. Ro-Ro and Ro-Pax shipping constitutes an upstream market for freight forwarding. The parties submit that their combined market shares in the various freight forwarding markets are below [10-20]% i.e. about [10-20]% on the UK/Denmark trade lanes and about [10-20]% on each of the UK/Sweden and UK/Denmark+ Sweden corridors.
71. Some of the customers raised possible input foreclosure issues such as more favourable treatment for the parties' own freight forwarders or low priority on vessels, due to the very high market shares in the upstream market (for Ro-Ro shipping). Such a theory of harm is difficult to sustain in view of the parties' relatively low market shares in the downstream market for freight forwarding. Nevertheless, should the transaction give rise to vertical issues, these would also be addressed by the remedies proposed by the parties relating to the upstream market.

### Contract logistics

72. Only Norfolk is active in the contract logistics market, with market share of less than [0-5]% in the UK. Due to this very limited market shares possible vertical issue appear remote and would in any event be addressed by the proposed remedies.

## **Conclusion competitive assessment**

73. In conclusion, the Commission considers that there is a substantial risk of capacity reductions and price increases due to the proposed transaction which would likely lead to a significant impediment of effective competition with respect to the market for Ro-Ro and Ro-Pax shipping on the corridor UK-Scandinavia and a narrower corridor UK-Denmark, and that the concentration thus raises serious doubts as to its compatibility with the internal market

## **V. PROPOSED REMEDIES**

### **Description of the proposed remedies**

74. In order to render the concentration compatible with the internal market, DFDS proposed on 27 May 2010 to modify the notified concentration by offering commitments under Article 6(2) of the Merger Regulation. On 3 June 2010, the parties submitted an improved version of the commitments which was market tested. Following the results of the market test of the remedies, on 16 June 2010, the parties improved their remedy proposal.<sup>44</sup> The final proposal consists in the following:
75. Concerning the Ro-Ro route between Esbjerg (Denmark) and Immingham (United Kingdom) and the Ro-Pax route between Esbjerg (Denmark) and Harwich (United Kingdom), DFDS commits to offer a Space Charter Agreement for at least 20,000 standard trailer units (44,590 TEU) on any of its present or future Ro-Ro/Ro-Pax, routes between the United Kingdom and Denmark and to transfer Norfolk's current customers on this routes (the " Agreement").
76. In order to provide the necessary flexibility for starting a new business, the commitments propose that the contract party to the Agreement (the "Purchaser") has the option to increase the capacity up to a total of 38,125 standard trailer units (85,000 TEU) or, following an increase, decrease such capacity to any level above 20,000 standard trailer units (44,590 TEU) throughout the term of the agreement. The capacity is split pro rata to capacity per vessel, but with an option for the purchaser to move up to 50 per cent of the capacity from Esbjerg-Immingham to Esbjerg-Harwich and vice versa. The capacity will be adapted (subject to certain veto rights by the Purchaser) pro rata in cases of increase or decrease in the overall capacity.
77. In addition, DFDS proposes to transfer to the Purchaser Norfolk's third party customers, and under certain circumstances also some of its own customers, subject only to the approval of these customers.
78. DFDS also commits that the Purchaser has an option to extend the five years space charter agreement by another five years. The Purchaser can terminate the Agreement at the earliest after two years. However the Purchaser is free to terminate the Agreement before that time if it starts its own independent service in the UK/Denmark corridor. If the Agreement is terminated earlier than 4 years after Closing, DFDS commits to find

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<sup>44</sup> Changes were made in particular with regard to duration, the flexibility regarding the volumes/split between the routes and the customer transfer mechanism.



another Purchaser for the remaining time (up to 5 years and giving the new Purchaser the option to a further extension of the Agreement with 5 more years). The improved commitments also enhance the Purchaser's rights to approve changes to the sailing schedule by DFDS. Finally, the improved commitments provide for greater flexibility of the Purchaser with regards to volumes chartered and the split of those volumes between the two routes during the term of the Agreement.

### **Assessment of the proposed remedies**

79. The Commission considers that the proposed commitments as improved by DFDS are capable of removing the Commission's serious doubts concerning the compatibility of the concentration with the internal market in the market for unitised freight forwarding by sea on the UK-Scandinavia corridor in general and on the Ro-Ro and Ro-Pax routes between the UK and Denmark in particular. The transfer of Norfolk's current third party Ro-Ro activities on the UK-Denmark routes by the divestiture of capacity through the agreement to charter space, in combination with the transfer of customers is likely to attract the entry of a viable competitor on these routes.
80. The Agreement provides for a flexible capacity of 20,000 standard trailer units (44,590 TEU) to 38,125 standard trailer units (85,000 TEU) to be chartered to the Purchaser. Despite the fact that, the minimum capacity under the Agreement is smaller than the capacity in the present Space Charter Agreement with Norfolk, the Purchaser has an option to increase the capacity under the Space Charter Agreement at short notice throughout the term of the Agreement and thereby fully replicate Norfolk's present capacity on the Denmark (and Scandinavia)-UK corridor. Furthermore the minimum capacity of 20,000 standard trailer units (44,590 TEU) covers considerably more than the volumes Norfolk currently transports for third party customers which shall be transferred to the Purchaser.
81. The modified remedy offers the Purchaser the necessary flexibility with regard to the capacity chartered and the split of this capacity between the two routes. The possibility to increase volumes over time throughout the Agreement facilitates the Purchaser's entry and allows it to gradually build a presence and customer base beyond the transferred Norfolk customers on these routes.
82. The Commission notes that the existing competition results not from a fully independent service but from a Space Charter Agreement of Norfolk with DFDS which, as described above, is capable of exercising competitive pressure on DFDS.
83. In view of these particular circumstances, the Commission considers that the commitments are capable of replacing the currently existing competition by Norfolk through the entry of another competitor. Furthermore, the Commission considers that the commitments facilitate that the Purchaser may offer an independent service after the expiry of the Agreement due to the fact that the Purchaser has the opportunity to establish its own customer base and build a regional presence on the route.
84. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.
85. The commitments in section 2 (with the exception of the last sentence of point 2.3) and in the corresponding parts of the Schedule of the Annex constitute a condition attached

to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

## **VI. CONCLUSION**

86. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section 2 (with the exception of the last sentence of point 2.3) and in the corresponding parts of the Schedule of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

*(signed)*

Joaquín ALMUNIA

Vice-President of the Commission

**By email**

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**16 June 2010**

**Case No. COMP/M.5756 – DFDS/Norfolk**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 as amended (the “*Merger Regulation*”), DFDS hereby provide the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the acquisition of sole control by DFDS over Norfolk Holdings B.V. (the “*Parties*”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, 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 acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (as amended by Commission Regulation (EC) No 1033/2008).

**1. DEFINITIONS**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

**Closing:** the entering into effect of the Space Charter Agreement.

**Completion:** as defined in Clause 10 of the Share Purchase Agreement between A.P. Møller – Mærsk A/S, DFDS Tor Line Holding AB, and DFDS A/S dated 17 December 2009.

**Danish Norfolk Business:** the activities related to Norfolkline Shipping B.V.'s space charter agreement with DFDS A/S between the United Kingdom and Denmark, i.e. Norfolk Holdings B.V.'s activities within unitised freight by sea on Ro-Ro, Ro-Pax, and/or cruise vessels between the United Kingdom and Denmark.

**Divestment Capacity:** the capacity as defined in paragraph 2.4 and Schedule 1 that DFDS commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by DFDS and who has/have received from DFDS the exclusive trustee mandate to sell the Divestment Capacity to a Purchaser [...].

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period until [...].

**Hold Separate Manager:** the person appointed by DFDS to manage the day-to-day business of the Danish Norfolk Business under the supervision of the Monitoring Trustee.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by DFDS, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

**Minimum Price:** [...]

**Purchaser:** means the entity approved by the Commission as acquirer of the Divestment Capacity in accordance with the criteria set out in paragraphs 4.1-4.2.

**Routes:** the Ro-Ro route Esbjerg-Immingham and vice versa, the Ro-Pax route Esbjerg-Harwich and vice versa, and any other route opened by DFDS between the United Kingdom and Denmark and vice versa during the term of the Commitments as defined in paragraph 2.3 whether by Ro-Ro, Ro-Pax, or cruise vessel.

**Second Divestiture Period:** the period of [...] from expiry of the First Divestiture Period.

**Space Charter Agreement:** The agreement to be entered into with the Purchaser with respect to the Divestment Capacity in accordance with the terms set out in Schedule 1.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Divestiture Period:** the period of [...] from the end of the Second Divestiture Period.

**DFDS:** DFDS Tor Line Holding AB, incorporated under the laws of Sweden, with its registered office at Sydatlanten 19, Skandiahallen, S-40272 Gothenburg, Sweden and registered with the Swedish Companies Registration Office - Bolagsverket under number 556618-3942.

## 2. THE DIVESTMENT CAPACITY

### Commitment to divest

- 2.1. In order to restore effective competition, DFDS commits to divest, or procure the divestiture of, the Divestment Capacity on the Routes under a Space Charter Agreement no later than by the end of the Trustee Divestiture Period (including such extensions as may be granted pursuant to paragraph 6.1) to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described at paragraph 4.2 according to the following procedure:
- (i) DFDS commits to find a purchaser and to enter into a final binding Space Charter Agreement within the First Divestiture Period.
  - (ii) If DFDS has not entered into such an agreement at the end of the First Divestiture Period, DFDS commits to find a purchaser and to enter into a final binding Space Charter Agreement within the Second Divestiture Period.
  - (iii) If DFDS has not entered into such an agreement at the end of the Second Divestiture Period, DFDS shall grant the Divestiture Trustee an exclusive mandate to enter into a Space Charter Agreement in accordance with the procedure described in paragraph 5.9 in the Trustee Divestiture Period.
- 2.2. DFDS shall be deemed to have complied with the Commitments if no later than by the end of the Trustee Divestiture Period (including such extensions as may be granted pursuant to paragraph 6.1) DFDS has entered into a final binding Space Charter Agreement and if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 4.2 and Closing takes place within a period not exceeding [...] after Completion or the approval of the Purchaser and the terms of sale by the Commission (whichever is later).
- 2.3. In order to maintain the structural effect of the Commitments, the Space Charter Agreement may not be terminated by DFDS during the initial 5 years from Closing or, where relevant, during a subsequent 5 year period available at the option of the Purchaser (except for usual termination clauses, including in particular material breach of contract), unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Capacity is no longer necessary to render the proposed concentration compatible with the common market. If the Space Charter Agreement (whether the first or a subsequent space charter agreement) is terminated earlier than 4 years after Closing, DFDS commits to enter into a new Space Charter Agreement to apply for the remaining period of the 5 years period of the original Space Charter Agreement with an option for the Purchaser to prolong the Space Charter Agreement by a further 5 years.

### Structure and definition of the Divestment Capacity and the Space Charter Agreement

- 2.4. The Divestment Capacity consists of space equal to 20,000 standard trailer units (1 standard trailer unit = 13.6 lane meters) equal to 44,590 TEU (1 TEU = 6.1 lane meters) on the Routes in accordance with the terms set out in Schedule 1.
- 2.5. The Purchaser has an option during negotiations and throughout the term of the Space Charter Agreement subject to giving notice of at least three months to

increase such capacity up to a level decided by the Purchaser but not exceeding a total of 38,125 standard trailer units (equal to 85,000 TEU) on the Routes. To the extent the Purchaser at any time during the term of the Space Charter Agreement has a capacity in excess of 20,000 standard trailer units (equal to 44,590 TEU) on the Routes, the Purchaser has an option, subject to giving notice of at least three months, to decrease such capacity down to a level decided by the Purchaser but not below 20,000 standard trailer units (equal to 44,590 TEU) on the Routes. Thus, the Purchaser has the flexibility throughout the term of the Space Charter Agreement subject to giving notice to set the capacity anywhere between 20,000 and 38,125 standard trailer units.

- 2.6. To the extent that DFDS changes overall capacity on the Routes, Purchaser has an option to maintain present capacity or have such capacity increased or decreased (as the case may be) pro rata to the change in the total capacity.
- 2.7. For the avoidance of doubt, the options in paragraphs 2.5 and 2.6 resulting in an increase or decrease in the Purchaser's capacity can, subject to the requirements to give notice (where applicable) and a pro rata adjustment of the price be exercised an indefinite number of times throughout the term of the Space Charter Agreement.

### 3. RELATED COMMITMENTS

#### Period until Completion

- 3.1. DFDS commits, from the Effective Date until Completion, to keep the Danish Norfolk Business a business separate from DFDS in accordance with the Share Purchase Agreement between A.P. Møller – Mærsk A/S, DFDS Tor Line Holding AB, and DFDS A/S dated 17 December 2009 according to which Norfolk Holdings B.V. prior to Completion will be solely and exclusively controlled (directly or indirectly) by A.P. Møller - Mærsk A/S subject only to approval by DFDS of extraordinary conduct.

#### Preservation of Viability, Marketability and Competitiveness

- 3.2. From Completion until Closing, DFDS shall preserve the economic viability, marketability and competitiveness of the Danish Norfolk Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential, including particularly detrimental effects to the customer base, which could impede the conclusion of Closing of the Space Charter Agreement, of the Danish Norfolk Business.

#### Hold-separate obligations of Parties

- 3.3. From Completion until Closing, the Parties shall to the furthest practical extent keep the Danish Norfolk Business a business separate from the businesses it is retaining and to ensure that personnel of the Danish Norfolk Business – including the Hold Separate Manager – have no involvement in any business to be retained and vice versa. DFDS shall also ensure that the personnel does not report to any individual outside the Danish Norfolk Business, however, subject to paragraph 3.5.
- 3.4. From Completion until Closing, DFDS shall assist the Monitoring Trustee in ensuring that the Danish Norfolk Business to the furthest practical extent is managed as a distinct entity separate from the businesses retained by the Parties. DFDS shall

appoint a Hold Separate Manager who shall be responsible for the management of the Danish Norfolk Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Danish Norfolk Business independently and in accordance with these Commitments, particularly paragraph 3.2.

#### Ring-fencing

- 3.5. DFDS shall implement all necessary measures to ensure that it does not from Completion until Closing obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Danish Norfolk Business. In particular, the participation of the Danish Norfolk Business in a central information technology network shall be severed to the extent that this does not compromise the viability of the Danish Norfolk Business. DFDS may obtain information relating to the Danish Norfolk Business which is reasonably necessary for the effective provision of services by DFDS to the Danish Norfolk Business or vice versa, which is reasonably necessary for the divestiture of the relevant parts of the Danish Norfolk Business or whose disclosure to DFDS is required by law.

#### Due diligence

- 3.6. In order to enable potential purchasers to make a reasoned decision whether to enter into the Space Charter Agreement, DFDS shall, subject to customary confidentiality assurances and dependent on the stage of the sales process provide to potential purchasers sufficient information as regards the Space Charter Agreement.

#### Reports

- 3.7. DFDS shall submit written reports in English on potential purchasers of the Divestment Capacity and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). This paragraph shall not apply if DFDS fulfils the Commitments within the First Divestiture Period.
- 3.8. DFDS shall submit written reports in English on a quarterly basis regarding the Space Charter Agreement. The content of such reports to be agreed with the Commission after Closing.

#### **4. THE PURCHASER**

- 4.1. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties (for the avoidance of doubt, the Space Charter Agreement does not constitute such dependence of or connection to the Parties);
  - (b) have the financial resources, proven expertise, and incentive to maintain and develop the Divestment Capacity as a viable and active competitive force in competition with the Parties and other competitors;

- (c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Capacity (the before-mentioned criteria for the purchaser hereafter the “Purchaser Requirements”).
- 4.2. The final binding Space Charter Agreement shall be conditional on the Commission’s approval. When DFDS has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee DFDS must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Capacity is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Capacity is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Capacity in an amended form or with less capacity, if this does not affect the viability and competitiveness of the Divestment Capacity after the sale, taking account of the proposed purchaser.

## 5. TRUSTEE

### I. Appointment Procedure

- 5.1. DFDS shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If DFDS has not entered into a binding Space Charter Agreement one month before the end of the Second Divestiture Period or if the Commission has rejected a purchaser proposed by DFDS at that time or thereafter, DFDS shall appoint a Divestiture Trustee to carry out the functions described below in paragraphs 5.9-5.10. The appointment of the Divestiture Trustee shall take effect upon the commencement of Trustee Divestiture Period.
- 5.2. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by DFDS in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final value of the Space Charter Agreement, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

#### *Proposal by the Parties*

- 5.3. No later than one week after the end of the First Divestiture Period, DFDS shall submit a list of one or more persons whom DFDS proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the Second Divestiture Period, DFDS shall submit a list of one or more persons whom DFDS proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 5.2 and shall include:



- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

- 5.4. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, DFDS shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, DFDS shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Parties*

- 5.5. If all the proposed Trustees are rejected, DFDS shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 5.1 and 5.4.

*Trustee nominated by the Commission*

- 5.6. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom DFDS shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- 5.7. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or DFDS, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

- 5.8. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
  - (ii) oversee the on-going management of the Danish Norfolk Business with a view to ensuring its continued economic viability, marketability and

competitiveness and monitor compliance by DFDS with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall (where applicable):

- (a) monitor the preservation of the economic viability, marketability and competitiveness of the Danish Norfolk Business, and the keeping separate of the Danish Norfolk Business from the business retained by the Parties, in accordance with paragraphs 3.2 and 3.3 of the Commitments;
- (b) supervise the management of the Danish Norfolk Business as a distinct and saleable business, in accordance with paragraph 3.4 of the Commitments;
- (c) (i) in consultation with DFDS, determine all necessary measures to ensure that DFDS does not after the Effective Date and before Completion and the Parties do not after Completion and before Closing obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Danish Norfolk Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent that this does not compromise the viability of the Danish Norfolk Business, and
- (c) (ii) decide whether such information may be disclosed to the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to DFDS such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability and competitiveness of the Danish Norfolk Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process the potential purchasers receive sufficient information relating to the Divestment Capacity;
- (vi) provide to the Commission, sending DFDS a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Parties so that the Commission can assess that the operation is conducted in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending DFDS a non-confidential copy at the same time, if it concludes on

reasonable grounds that DFDS is failing to comply with these Commitments;

- (vii) within one week after receipt of the documented proposal referred to in paragraph 4.2, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Capacity after Closing and as to whether the Divestment Capacity is sold in a manner consistent with the conditions and obligations attached to the Decision.

#### *Duties and obligations of the Divestiture Trustee*

- 5.9. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell [...] the Divestment Capacity under a Space Charter Agreement in accordance with the terms set out in Schedule 1 to a purchaser, provided that the Commission has approved both the purchaser and the final binding Space Charter Agreement in accordance with the procedure laid down in paragraph 4.2. The Divestiture Trustee shall include in the Space Charter Agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. The Divestiture Trustee shall protect the legitimate financial interests of the DFDS, subject to DFDS' unconditional obligation to divest [...] in the Trustee Divestiture Period.
- 5.10. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to DFDS.

#### III. Duties and obligations of the Parties

- 5.11. The Parties shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties shall provide the Trustee upon request with copies of any document. The Parties shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 5.12. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to all information granted to potential purchasers in the due diligence procedure. DFDS shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 5.13. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the signing and Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the signing and Closing, including the appointment of advisors to assist with the sale process. Upon request of the

Divestiture Trustee, the Parties shall cause the documents required for effecting the signing and Closing to be duly executed.

- 5.14. The Parties shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the 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 Trustee, its employees, agents, or advisors.
- 5.15. At the expense of DFDS, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to DFDS’ approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should DFDS refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard DFDS. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 5.14 shall apply mutatis mutandis. The Divestiture Trustee may use advisors who served DFDS during the First Divestiture Period and/or the Second Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

#### IV. Replacement, discharge and reappointment of the Trustee

- 5.16. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require DFDS to replace the Trustee; or
  - (b) DFDS, with the prior approval of the Commission, may replace the Trustee.
- 5.17. If the Trustee is removed according to paragraph 5.16, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 5.1-5.6.
- 5.18. Beside the removal according to paragraph 5.16, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

6. **THE REVIEW CLAUSE**

- 6.1. The Commission may, where appropriate, in response to a request from DFDS showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments (particularly if a Space Charter Agreement has not been entered into at the expiry of the Trustee Divestiture Period), and/or
  - (ii) Waive, modify or substitute, in exceptional circumstances (for instance being that a Space Charter Agreement has not been entered into at the expiry of the Trustee Divestiture Period despite such extensions as granted pursuant to paragraph 6.1(i) or the Purchaser or another undertaking sets up a competing service between the United Kingdom and Denmark), one or more of the undertakings in these Commitments.
- 6.2. Where DFDS seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall DFDS be entitled to request an extension within the last month of any period (however, such may be the case in the last part of the Trustee Divestiture Period or where an extension pursuant to clause 6.1(i) is for a month or less).
- 6.3. These Commitments shall automatically cease to have effect if Completion does not take place.

.....

duly authorised for and on behalf of DFDS

Martin André Dittmer

## SCHEDULE 1

### Terms of Space Charter Agreement

<p><b>1. Period</b></p>	<p>5 years from Closing with an option for Purchaser to prolong for an additional 5 years, such option to be exercised no later than on the date falling 4 years after Closing.</p>
<p><b>2. Bridge</b></p>	<p>BritanniaBridge (Esbjerg, Denmark – Immingham, UK and vice versa; Esbjerg, Denmark – Harwich, UK and vice versa)</p> <p>Currently serviced by 3 vessels (below information is total capacity for these vessels):</p> <ul style="list-style-type: none"> <li>• Tor Fionia, 3,322 lane metres (201 standard trailers each consuming a space of 14 metres)</li> <li>• Tor Jutlandia, 3,322 lane metres (201 standard trailers, each consuming a space of 14 metres)</li> <li>• Dana Sirena (Esbjerg – Harwich), 1,690 lane metres allocated for freight (124 standard trailers, each consuming a space of 14 metres)</li> </ul>
<p><b>3. Scope</b></p>	<p>20,000 standard trailers (1 standard trailer = 13.6 lane meters) equal to 44,590 TEU (1 TEU = 6.1 lane meters) on the Routes. The Purchaser has an option during negotiations and throughout the term of the Space Charter Agreement subject to giving notice of at least three months to increase such capacity up to a level decided by the Purchaser but not exceeding a total of 38,125 standard trailer units (equal to 85,000 TEU) on the Routes. To the extent the Purchaser at any time during the term of the Space Charter Agreement has a capacity in excess of 20,000 standard trailer units (equal to 44,590 TEU) on the Routes, the Purchaser has an option, subject to giving notice of at least three months, to decrease such capacity down to level decided by the Purchaser but not below 20,000 standard trailer units (equal to 44,590 TEU) on the Routes. Thus, the Purchaser has the flexibility throughout the term of the Space Charter Agreement subject to giving notice to set the capacity anywhere between 20,000 and 38,125 standard trailer units.</p> <p>Capacity evenly spread on all departures, pro rata to capacity per vessel as mentioned in 2 above. Purchaser has option during negotiations – and during the term of the agreement, however, subject to giving notice of at least 3 months, such capacity request to remain binding for a [...] period – to move up to 50 per cent of the capacity on Esbjerg-Harwich to Esbjerg-Immingham or</p>

	<p>up to 50 per cent of the capacity on Esbjerg-Immingham to Esbjerg-Harwich.</p> <p>To the extent that DFDS changes capacity on BritanniaBridge, Purchaser has option to maintain present capacity or have such capacity increased or decreased (as the case may be) pro rata to the change in the total capacity.</p>
<b>4. Price</b>	<p>During period in which DFDS seeks a purchaser (i.e. First Divestiture Period and Second Divestiture Period): The best obtainable rate.</p> <p>During period in which trustee seeks a purchaser (i.e. the Trustee Divestiture Period): The best obtainable rate [...] Price to be indexed annually at the average of Danish and English consumer price index. [...]</p> <p>Prices for bookings in excess of capacity under the Space Charter Agreement will be at market rates and subject to space availability.</p>
<b>5. Payment terms</b>	<p>Payments to DFDS to be made monthly in advance on last Danish banking day of a month, covering 1/12 of annual price together with any additional bookings for preceding month as per 4 above as well as variations caused by factual changes as per 6 and 7 below.</p> <p>Usual default interest rate to be agreed.</p>
<b>6. BAF – CAF</b>	<p>Bunker Adjustment Factor:</p> <p>Bunker cost for BritanniaBridge 2009 determined in EUR shall form base case payable as per 4 above; where bunker prices in EUR increase DFDS shall on a monthly basis invoice the excess amount compared to the base case; in case of decreases DFDS shall through a reduction in subsequent monthly invoice return to Purchaser an amount in EUR corresponding to the fall in bunker costs below base case in EUR.</p> <p>Currency Adjustment Factor:</p> <p>The average rates in EUR during 2010 year to date shall be deemed base rates and were as follows:</p> <p>GBP 0.8802</p> <p>DKK 7.4425</p> <p>On a monthly basis costs incurred in either of the above currencies shall be converted into EUR at the then applicable monthly average and any gains or losses</p>

	<p>shall be invoiced (losses) or repaid (gains) to Purchaser.</p> <p>Bunker and currency adjustments shall be invoiced and documented as part of monthly invoicing by DFDS as per 5 above.</p>
<b>7. Changes to Price</b>	<p>Outside indexation and BAF/CAF, changes in prices (up or down) can only be prompted by following:</p> <ul style="list-style-type: none"> <li>- Changes in capacity held by the Purchaser</li> <li>- Changes in applicable rules and regulations having cost impact</li> <li>- Reciprocal hardship clause</li> </ul>
<b>8. Stevedoring</b>	<p>Stevedoring Immingham to be provided by DFDS Nordic Terminal at terms and conditions as currently agreed with Norfolkline Shipping B.V.</p> <p>Price for services at Nordic Terminal:</p> <p>During period in which DFDS seeks a purchaser (i.e. First Divestiture Period and Second Divestiture Period): The best obtainable rate.</p> <p>During period in which trustee seeks a purchaser (i.e. the Trustee Divestiture Period): The best obtainable rate [...].</p> <p>Stevedoring Esbjerg to be provided by DFDS Scandic Terminal at terms and conditions as currently agreed with Norfolkline Shipping B.V. Prices to be set as outlined above for Immingham [...].</p> <p>Should DFDS cease to operate a terminal and transfer stevedoring to a third party service provider then stevedoring costs will be a pro rata share of charges debited by such third party to DFDS.</p> <p>Stevedoring Harwich to be a pro rata share of charges debited by Harwich International Port to DFDS.</p> <p>Any cargo dues to be settled by Purchaser directly for its account.</p>
<b>9. Termination</b>	<p>Non-terminable by DFDS for 5 years from Closing (and where relevant during an optional period of 5 years), except for usual termination clauses, including in particular material breach of contract (all to apply reciprocally). Non-terminable for Purchaser for 24 months and otherwise with a termination notice of 3 months, always provided that the Purchaser during the initial 24 months may terminate the Space Charter</p>



	Agreement by giving notice of at least 3 months if the Purchaser has set-up a competing service between the United Kingdom and Denmark.
<b>10. Business changes</b>	DFDS to decide changes to the vessels and to the schedule, except that major changes in the sailing schedule (such as changing departure times by more than 6 hours) will require the prior consent of the Purchaser, such not to be unreasonably withheld. Notwithstanding the preceding DFDS, being the party exposed to the higher risk by having a higher share of the total capacity, may decide to close a given route, meaning that DFDS stops the route as such, always provided that the Purchaser may require DFDS to continue the said route against carrying any losses incurred through the continued operation. Purchaser to be informed as soon as possible before changes are implemented and in any event at least three months before changes in vessels (other than causes beyond control of DFDS) and at least one month before changes in schedule.
<b>11. Choice of law</b>	English law and London arbitration.
<b>12. Other</b>	Principles of current agreement with Norfolkline Shipping B.V. to serve as reference for details of final Space Charter Agreement
	Purchaser to take out suitable liability insurance towards its customers as well as owners
	Purchaser to provide sufficient security for indemnification of claims raised by Purchaser's customers against DFDS
	During the term of the Space Charter Agreement the Purchaser cannot carry unitised freight for the Parties on the Routes. For the avoidance of doubt, when the Space Charter Agreement between DFDS and the Purchaser terminates, DFDS and the Purchaser shall again be free again to enter into such agreements and the Commitments shall in no way affect such future business relationship between the Parties and the Purchaser.
	DFDS has an obligation to transfer existing third party Norfolk customers to Purchaser subject only to approval by such customers (or other parties whose approval is required in order to affect such transfer). To the extent that existing third party Norfolk customers refuse to transfer DFDS shall transfer existing third party DFDS customers representing a total volume

	<p>similar to that not successfully transferred from Norfolk subject only to approval by such customers (or other parties whose approval is required in order to affect such transfer). DFDS shall not for a period of 1 year from Closing actively solicit customers transferred from the Parties to the Purchaser before Closing. In the period [...], DFDS shall abstain from entering into or renew long-term contracts (i.e. a contract with a duration, excluding options by the customer, exceeding 1 year) with its customers.</p>
	<p>To the extent required by Purchaser DFDS will</p> <ul style="list-style-type: none"> <li>○ use reasonable endeavors to transfer [...] employees currently managing the Norfolkline Shipping B.V. space charter agreement</li> <li>○ make available office space in Esbjerg and Immingham at cost plus 5 per cent</li> </ul>

## SCHEDULE 2

### **Calculation of Minimum Price**

[...]