

***Case No COMP/M.6305 - DFDS/  
C.RO PORTS/ ÄLVSborg***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 02/04/2012

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Brussels, 02.04.2012  
C(2012) 2344

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6305 – DFDS/ C.RO Ports/ Älvsborg  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 27.02.2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings DFDS A/S ("DFDS", Denmark) and C.RO Ports SA ("C.RO Ports", Luxemburg), acquire within the meaning of Article 3(1) (b) of the Merger Regulation control of Älvsborg Ro/Ro AB ("Älvsborg", Sweden) by way of purchase of shares.<sup>2</sup> (*DFDS* and *C.RO Ports* are designated hereinafter as the "notifying parties" or "the parties".)

**(1) THE PARTIES**

2. **DFDS** is active in short sea/ferry transport in Northern Europe, including roll-on/roll-off ("Ro-Ro")<sup>3</sup> and container shipping, terminal services (in Norway, Denmark, the United Kingdom, France and the Netherlands), passenger transport services and trailer services, contract logistics and freight forwarding.

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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.

<sup>2</sup> Publication in the Official Journal of the European Union No C 69, 7.3.2012, p.6.

<sup>3</sup> Ro-Ro shipping refers to shipping carried out with vessels which take on cargo via a loading ramp fitted as part of the vessel.

3. **C.RO Ports** provides Ro-Ro terminal services (in the United Kingdom, Belgium and the Netherlands). It is owned by the [*details on ownership*] as CLdN Lignes Régulières SA, which operates a network of Ro-Ro shipping services.
4. **Älvsborg** provides Ro-Ro terminal services at the Port of Gothenburg in Sweden. It comprises seven Ro-Ro berths, areas for trailers and containers, areas for cars, other service and storage areas and a logistics centre dedicated to processing paper cargo. It has two main customers, DFDS and the forest products group Stora Enso. Its sole business activity is to provide terminal services and related services in the Port of Gothenburg.

## **(2) THE OPERATION AND CONCENTRATION**

5. DFDS and C.RO Ports first set up Bohus, a joint venture created for the sole purpose of the present acquisition where DFDS owns 65% and C.RO Ports 35% of the equity. Bohus then acquires 100% of the shares of Älvsborg.
6. Prior to the transaction, the Älvsborg Ro-Ro terminal was owned by Göteborgs Hamn AB (hereinafter "the Port of Gothenburg") which in turn is owned by the City of Gothenburg. The share transfer agreement between the Port of Gothenburg and the newly created joint venture Bohus was signed on 21 October 2010, time at which C.RO Ports belonged to the company Novopar SA.
7. The Shareholders' Agreement signed by DFDS and Novopar SA (which has since transferred to C.RO Ports its rights and shares) provides that a number of decisions such as the approval of the annual budget and of the business plan of the companies belonging to Bohus group and, hence for Älvsborg Ro-Ro terminal, as well as capital expenditure exceeding EUR [...], require prior written approval of both shareholders. Although certain parameters of the operating plan and the annual budget will be constrained by the Gothenburg Port Authority pursuant to the Concession Agreement<sup>4</sup> (for instance prices for gateway cargo), DFDS and C.RO Ports will, through their veto rights, have the ability to exert control over the key strategic areas such as investments, staff, reduction of costs etc. Hence, DFDS and C.RO Ports would acquire joint control over Älvsborg within the meaning of Article 3(1)(b) of the Merger Regulation.

## **(3) EU DIMENSION**

8. The transaction has a Community dimension pursuant to Article 1(3) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of EUR 2,500 million (DFDS EUR 1,827 million, C.RO Ports EUR 841 million) and a Union-wide turnover in excess of EUR 100 million (DFDS EUR [...] million, C.RO Ports EUR [...] million). In [...], [...], [...] and [...] the parties' combined aggregate turnover is more than

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<sup>4</sup> When the City of Gothenburg decided in 2009 to entrust the handling of three terminals at the port of Gothenburg to external parties, it established three terminal companies, amongst which Älvsborg. The Port Authority and Älvsborg entered into a long-term Concession Agreement pursuant to which Älvsborg was entrusted with the operation of the short-sea Ro/Ro terminal. Under the Concession Agreement, the Port Authority retains a certain level of influence over Älvsborg's operations. For example, it will oversee Älvsborg' actions at the Terminal and enforce its obligation to provide access to customers on a non-discriminatory basis. Also, the Port Authority has imposed through the Concession Agreement maximum rates for gateway cargo. However, the rights of the Port Authority relate to its role of a regulator – acting in the public interest – and it does not have control over Älvsborg within the meaning of the Merger Regulation.

EUR 100 million and in these countries the aggregate turnover of each of the parties is more than EUR 25 million. The parties do not achieve more than two thirds of their Union-wide turnover in one and the same Member State.<sup>5</sup>

#### (4) MARKET DEFINITION

9. Älvsborg provides Ro-Ro terminal services in Sweden. Each of DFDS and C.RO Ports also operates a number of other Ro-Ro terminals in Northwest Europe, but none in Sweden.<sup>6</sup>
10. Moreover, DFDS and CLdN (the shipping company owned by the [details on ownership] as C.RO Ports and [details on management]) are active on the downstream market for unitised freight shipping services.<sup>7</sup>

#### 1. Market for short-sea Ro-Ro terminal services

##### *Product market*

11. Terminal services can be defined as cargo handling (or stevedoring services consisting of loading and unloading of vessels) and cargo storage. In a recent case concerning operators of short-sea terminals, the Commission, while leaving the exact product market definition open, indicated that the market investigation confirmed a separate market for short-sea Ro-Ro terminal services.<sup>8</sup>
12. Overall, the market investigation confirmed that Ro-Ro vessels require different terminal infrastructure from other types of vessels such as Lift-on/Lift-off ("Lo-Lo") vessels<sup>9</sup> or vessels carrying bulk freight. Furthermore, the market investigation showed that not all Ro-Ro terminals are necessarily able to handle all types of Ro-Ro vessels (Ro-Ro vessels can be subdivided into pure Ro-Ro, Ro-Pax and cruise vessels).<sup>10</sup> Pure Ro-Ro vessels require sufficient quay space for the cargo while Ro-Pax and cruise vessels require dedicated passenger facilities. Älvsborg provides terminal services to pure Ro-Ro vessels only (and is not able to handle Lo-Lo, bulk, Ro-Pax or cruise vessels).

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<sup>5</sup> Year of turnover calculation 2009, last audited accounts corresponding to the date relevant for establishing jurisdiction.

<sup>6</sup> DFDS operates Ro-Ro terminals at Oslo Ro-Pax (NO), Brevik (NO), Copenhagen (DK), Esbjerg (DK), Immingham (UK), Dunkerque (FR) and Vlaardingen/Rotterdam (NL). Of these terminals, only the Immingham terminal also serves third party customers. C.RO Ports operates Ro-Ro terminals at Killingholme (UK), Purfleet (UK), Ipswich (UK), Port Sutton Bridge (UK), Zeebrugge (BE), Flushing (NL) and Rotterdam (NL). All these terminals save for Purfleet and Ipswich serve third party customers.

<sup>7</sup> They are also active on the further downstream market of freight forwarding services.

<sup>8</sup> COMP/M.5756 – DFDS/Norfolk, para 26-29.

<sup>9</sup> Lo-Lo vessels are vessels which use dock mounted cranes to lift and stack containers on the vessel.

<sup>10</sup> Pure Ro-Ro vessels carry Ro-Ro cargo and a maximum of twelve passengers accompanying their freight, whereas Ro-Pax vessels carry a mixture of Ro-Ro cargo and passengers, with spaces for passenger accommodations and entertainment, Cruise vessels also carry Ro-Ro cargo and passengers but tend to have significantly more entertainment and leisure facilities for passengers. See, e.g. Case COMP/M.5756 – DFDS/Norfolk, para 16-17.

13. The market investigation also confirmed that Ro-Ro vessels are essentially short-sea vessels with car carriers being the only Ro-Ro vessels engaged in regular deep-sea trade to any appreciable extent. Älvsborg does not handle deep sea vessels, and would therefore not be active on any hypothetical deep sea Ro-Ro terminal services market. In the competitive assessment, Älvsborg's competing terminals are limited to those terminals which are able to handle short-sea Ro-Ro vessels.
14. The conclusion on whether or not a distinction should be made between terminal services depending on the vessel type or between deep-sea and short-sea services can however be left open for the purposes of this decision as no competition concerns arise even under the narrowest market definition of short-sea terminal services to pure Ro-Ro vessels.
15. Finally, given the minimal volumes transhipped through Älvsborg<sup>11</sup>, a distinction between transhipment and hinterland cargo would not alter the competitive assessment. Therefore the conclusion on whether or not a distinction should be made between terminal services for hinterland traffic and for transhipment traffic can be left open as no competition concerns arise under any alternative market definition.

#### *Geographic market*

16. The Commission has previously considered the geographic scope of terminal services to be the catchment area of the ports in a certain range.<sup>12</sup>
17. The parties submit that it may be appropriate to consider Sweden, or alternatively the West and South coasts of Sweden as the narrowest possible relevant geographic market. They further submit that possibly also the Southeast coast of Norway, as far west as Oslo, could be considered as part of the relevant geographic market. They do not consider Danish ports as viable alternatives.
18. The market investigation was inconclusive as regards the exact scope of the geographic market. The mixed replies suggest a geographic market that is anywhere between Sweden at most and Gothenburg only at its narrowest. For the purposes of the present decision the exact scope of the geographic market can however be left open since no competition concerns arise even on the basis of the narrowest geographic scope.

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<sup>11</sup> Some transhipment takes place in Älvsborg, but these volumes are not tracked by Älvsborg and are believed to be insignificant. Examples would include Stora Enso paper products carried from Finland to Gothenburg for onward shipment to the UK, and cars manufactured in the UK and carried to Gothenburg for onward shipment to Finland. The services actually provided (i.e., loading and unloading Ro-Ro vessels) are the same for both hinterland and transhipment cargo.

<sup>12</sup> COMP/M.3973 – CMA CGM/ Delmas, para 12.

## 2. Market for short-sea Ro-Ro shipping services

### *Product market*

19. The Commission has previously considered, but ultimately left open, that short-sea freight shipping services carried on Ro-Ro vessels (i.e. vessels which take on cargo via a loading ramp fitted as part of the vessel) constitutes a relevant product market which excludes shipping services offered by Lo-Lo (lift-on/lift-off) vessels (i.e. vessels which use dock mounted cranes to lift and stack containers on the vessel).<sup>13</sup>
20. The results of the market investigation in the present case leaned towards a segmentation between Ro-Ro and Lo-Lo shipping as well as towards substitutability between pure Ro-Ro and Ro-Pax vessels (despite some limitations in respect of using the latter). Shipping of Ro-Ro cargo on a cruise vessel was not considered a substitute to shipping Ro-Ro cargo on a pure Ro-Ro vessel.
21. For the purposes of the present case, the exact scope of the product market can be left open as no competition concerns arise even on the narrowest relevant market definition of short-sea Ro-Ro shipping services (excluding cruise vessels).
22. Finally, the Commission also investigated whether land transport, i.e. road and rail could be considered substitutable for short-sea Ro-Ro shipping services. The Commission has also considered this in previous cases without coming to a firm conclusion.<sup>14</sup> The market investigation in the present case showed that rail and road transport provide limited competition to short-sea Ro-Ro shipping and that the extent of such competition depends on various factors such as the specific route, volumes of cargo in question and time sensitiveness of the cargo. Respondents indicated amongst others that road and rail options are often expensive and have a higher risk of damages.
23. For the purposes of the present case, it is not necessary to decide whether land transport is part of the same market. However, according to the results of the market investigation, land transport does impose some competitive constraint and the possibility of using land transport is taken into account in the competitive assessment.

### *Geographic market*

24. DFDS and CLdN provide short-sea Ro-Ro shipping services from Sweden to the UK and to Belgium. In previous Commission decisions, the geographic scope of the market has been considered to comprise overall geographic corridors<sup>15</sup>, but further segmentation into specific routes between particular countries has not been excluded.

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<sup>13</sup> See Cases COMP/M.5756 – DFDS/Norfolk, para 11 *et seq.*; COMP/M.5454 DSV/Vesterhavet/DFDS, para 15; COMP/M.2838 P&O Stena Line (Holding) Limited, para 8 and 15.

<sup>14</sup> See Case COMP/M.5756 – DFDS/Norfolk, para 11 *et seq.* where the Commission, while leaving the exact product market definition open, analysed the market for sea transport separately from land transport.

<sup>15</sup> COMP/M.2838 – P&O/Stena Line (Holdings) Limited, para 15.

25. The Commission has previously considered the UK-Sweden corridor as potentially consisting of a separate relevant geographic market.<sup>16</sup>
26. As regards the routes from Sweden to Belgium, the Commission has not previously considered geographic market definitions for routes between Sweden and Northwest Continental Europe (including ports in part of France, Belgium, the Netherlands, and parts of Germany). The parties consider that a corridor consisting of Sweden – Northwest Continental Europe is an appropriate geographic market definition.
27. The market investigation is inconclusive but suggests that the likely relevant geographic market is the corridor between Sweden and Northwest Continental Europe excluding North Germany.
28. The exact scope of the geographic market can be left open as no competition concerns arise under the narrowest possible market definition.

#### **(5) COMPETITIVE ASSESSMENT**

29. The transaction gives rise to vertically affected markets as a result of the vertical link between the short-sea Ro-Ro terminal activities of Älvsborg and the short-sea Ro-Ro shipping activities of DFDS and CLdN.
30. Specifically, DFDS operates routes between Gothenburg and the UK and between Gothenburg and Ghent (Belgium). CLdN operates a route between Gothenburg and Zeebrugge (Belgium) both via its own ships and via a space charter agreement with Stora Enso.<sup>17</sup>

##### *Risk of foreclosure on the downstream market for short-sea Ro-Ro shipping services*

31. On the upstream market for short-sea Ro-Ro terminal services, Älvsborg has a market share of 13% by units on the market for short-sea Ro-Ro terminal services in Sweden. If one takes a narrower geographic market of West and South Sweden, Älvsborg has a market share of no higher than 17% by units. In a narrower market of West Sweden only, Älvsborg's market share would rise to 33% by units. Finally, should the Port of Gothenburg be considered the narrowest possible market, the Älvsborg terminal would represent 59% of the amount of Ro-Ro units and 65% of the amount of vehicles shipped through the Port of Gothenburg in 2010.<sup>18</sup>
32. On the downstream market for short-sea Ro-Ro shipping services, DFDS has had, until very recently, a near monopoly on the Sweden – UK corridor if so-called pure car and truck carriers which mainly carry trade vehicles were to be excluded. If one includes these pure car and truck carrier services, DFDS's market share on the Sweden - UK corridor would be around [70-80]%. A new competitor, North Sea Ro-Ro, entered the Sweden-UK corridor in January 2012 but it is too early to assess the effects of this entry in terms of market share. It

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<sup>16</sup> See Case COMP/M.5756, DFDS/Norfolk, paras 18 to 20.

<sup>17</sup> CLdN purchases capacity on Stora Enso's vessels on the Gothenburg to Zeebrugge route to sell to its customers. The space charter agreement with Stora Enso is set to expire in [...].

<sup>18</sup> Based on publicly available data on the Port of Gothenburg's website on the amount of Ro-Ro traffic handled by the port in 2010.



can, however, be noted that to date North Sea Ro-Ro has taken customers from the DFDS service. CLdN is not active on this trade corridor.

33. As regards the Sweden - Northwest Continental Europe trade corridor, DFDS has a market share of around [5-10]% and CLdN has a market share of [0-5]%. However, should the relevant geographic market be narrower and limited to that of short-sea Ro-Ro shipping services between Sweden and Benelux/Northern France (i.e. excluding North Germany), the parties are the only shipping lines selling Ro-Ro services to third party customers. In this context it should be noted that CLdN operates on this route via (i) a space charter agreement with Stora Enso under which CLdN has the [...] right to sell space on Stora Enso's vessels from Älvsborg to Belgium; and (ii) its own ships (CLdN began operating two sailings per week on its own vessels in August 2011 on this route, following Stora Enso's decision to reduce the number of sailing frequencies to five per week).
34. The Commission investigated the impact on competition of the vertical links between the activities of Älvsborg on the one hand and DFDS and CLdN on the other, in particular in respect of DFDS' and C.RO Ports' ability and incentive, through Älvsborg, to foreclose rival short-sea Ro-Ro shipping companies from providing shipping services to customers on the Sweden-UK and Sweden-Belgium/Northern France corridors by foreclosing access to Älvsborg. The Commission concluded that even on the basis of the narrowest possible market definitions, i.e. the markets for (i) short-sea Ro-Ro terminal services to pure Ro-Ro vessels in Gothenburg; (ii) Ro-Ro freight shipping services from Sweden to the UK; and (iii) Ro-Ro freight shipping services from Sweden to Belgium/Northern France, the transaction does not give rise to serious doubts as to its compatibility with the internal market for the reasons set out below.

*(a) Ability to foreclose*

35. The Älvsborg terminal is currently only used by DFDS, CLdN, Transatlantic and Stora Enso. Of these four, Stora Enso does not offer shipping services to third parties (CLdN, however, offers shipping services on the Stora Enso ships via the space charter agreement referred to above) and Transatlantic operates on routes to Finland and they are thus not in competition with DFDS and CLdN.
36. Stora Enso is tied to Älvsborg through a long-term agreement lasting until [...]. This agreement obliges Stora Enso to pass a certain minimum volume of cargo through Älvsborg but at the same time provides a contractual guarantee for access and the price formula for stevedoring services.<sup>19</sup> The agreement results from specific infrastructure investments made by the Port of Gothenburg to accommodate Stora Enso's tailor made containers (so-called SECU containers). Stora Enso currently uses DFDS to ship its cargo from Älvsborg to the UK<sup>20</sup> and its own ships on the Älvsborg – Belgium<sup>21</sup> route.
37. North Sea Ro-Ro, a newly established shipping company, started operating three weekly calls on the Gothenburg-UK corridor in January 2012 in competition with DFDS. North

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<sup>19</sup> [...].

<sup>20</sup> This agreement is [...] and valid until [...]. It contains minimum volume guarantees.

<sup>21</sup> On this route, Stora Enso has [...] space charter agreement with CLdN until [...] under which CLdN has the [...] right to sell space on Stora Enso's vessels from Älvsborg to Belgium.

Sea Ro-Ro operates from the neighbouring Logent Car Terminal, also situated in the port of Gothenburg.

38. Some shipping line customers suggested during the market investigation that shipping lines may, in general, be reluctant to start operations from Älvsborg on routes which would compete directly with those of the two parent companies, DFDS and C.RO Ports/CLdN for the following reasons: (i) they would expect the terminal to give preference to DFDS and CLdN in terms of slots, service levels, prices etc., all of which affect the viability and profitability of a shipping line's service; and (ii) DFDS already possesses market power on many short-sea routes, including the Gothenburg-UK route, and shipping lines would fear retaliation either on other routes or on the Gothenburg routes. The latter concern, however, is not merger specific and DFDS' alleged ability to engage in such behaviour would not be a result of this transaction. As regards the former concern, it should be noted that the Concession Agreement entered into between the Port of Gothenburg and the joint venture obliges Älvsborg to provide services on non-discriminatory terms and in such a way as to maximise cargo volumes handled. The Port Authority has confirmed that this non-discriminatory obligation is not limited to price and access but extends to slot times and other services.
39. Even if it were the case that DFDS and C.RO Ports could prevent competitors from having access to Älvsborg, or render the terms and conditions on which access would be granted less attractive to competitors, DFDS and C.RO Ports would not have the ability to foreclose competitors from the relevant downstream markets for the following reasons.
40. First, the recent entry by North Sea Ro-Ro on the Gothenburg - UK route from the neighbouring Logent Car Terminal shows that Älvsborg is not an essential facility and alternative terminals exist even within the Gothenburg harbour.
41. In this context, it should be noted that none of the shipping companies responding to the Commission's market investigation have ever used Älvsborg. North Sea Ro-Ro did consider using Älvsborg when setting up its service but concluded that Älvsborg's prices were uncompetitive and too high, the terminal did not offer the required service levels and there were restraints on resources on specific weekdays.<sup>22</sup>
42. Second, Stena Lines (another shipping company offering Ro-Ro services) has confirmed that it has a free Ro-Ro berth at one of its two terminals in Gothenburg.<sup>23</sup> This Ro-Ro berth has in principle been available to third parties since September 2010 when Stena Lines closed down its Ro-Ro service between Gothenburg and Travemünde.<sup>24</sup>

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<sup>22</sup> Alternative terminals within the port of Gothenburg therefore do not appear to be less efficient than Älvsborg. In fact, several respondents to the market investigation consider Älvsborg as inefficient.

<sup>23</sup> These terminals are owned by the Port of Gothenburg and according to Stena Lines, it is the Port Authority who ultimately decides to whom access is given.

<sup>24</sup> Stena Lines confirmed that due to some restrictions on quay side capacity, any entry would depend on a number of factors such as the frequency of sailings required, the schedule (loading/discharging timings), size and number of vessels, the mix of freight (unaccompanied/accompanied), etc.

43. Overall, there has been limited demand for Älvsborg in the past and in any event, there appear to be sufficient alternative terminals to accommodate potential new entry.<sup>25</sup>
44. Whilst it is true that Stora Enso would be unable, without difficulty, to switch to another terminal and take advantage of such new entry given that its SECU containers require specific port infrastructure currently only available at Älvsborg, this situation is not a result of the proposed transaction.<sup>26</sup> In terms of foreclosure and access to Älvsborg, Stora Enso is protected by the Concession Agreement and the existing long-term agreement with Älvsborg.

***(b) Incentive to foreclose***

45. Even if DFDS and CLdN had the ability to foreclose rivals' access to Älvsborg post-transaction, it is questionable whether they would have the incentive to do so given the inability to foreclose rivals' access to alternative terminals for the following reasons.
46. First, Älvsborg currently has spare capacity and operates at a loss. On the upstream level, any attempted foreclosure would imply a loss of revenues for the Älvsborg terminal.
47. Second, foreclosing potential entrants from Älvsborg Terminal is unlikely to significantly increase the profits of DFDS and CLdN on the downstream level. First, potential entrants that were foreclosed from Älvsborg would be likely to obtain access to Ro-Ro terminal services using nearby terminals as laid out at paragraphs 40 to 42 above. Second, this is compounded on the Sweden-Belgium route by the fact that road and rail transport may be an alternative for some cargo, although the market investigation was not clear as to the extent of this constraint. Third, on the Sweden-UK route there is competition among DFDS and North Sea Ro-Ro while on the Sweden-Belgium route DFDS and CLdN are competitors. Competition on these routes limits the profits in these markets.<sup>27</sup>
48. The parties would also have to deal with complaints to the Port Authority that the Concession Agreement would not have been complied with.
49. For the reasons set out above, and in particular, the lack of ability and the incentive on the side of the parties to foreclose downstream competitors given alternative terminals, the Commission considers that the operation does not raise serious doubts as to its compatibility with the internal market.

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<sup>25</sup> In this respect it is important to note that one reason why many shipping lines have shown no interest to operate from Älvsborg to date appears to be the fact that there seems to be overcapacity on the relevant routes.

<sup>26</sup> The Commission has assessed the specific position of Stora Enso following a number of exchanges with the company.

<sup>27</sup> Regarding the specific position of Stora Enso, in particular the last point applies, while there are limitations concerning the first and second points for the reasons laid out above.

*(c) Cooperative effects of the joint venture*

50. Under Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the co-ordination of the competitive behaviour of undertakings that remain independent, such co-ordination is to be appraised in accordance with the criteria of Article 101(1) and (3) of the Treaty on the Functioning of the European Union, with a view to establishing whether or not the operation is compatible with the internal market.
51. As mentioned above, DFDS and CLdN both provide short-sea Ro-Ro shipping services between Sweden and Belgium<sup>28</sup>, a market which is downstream of Ro-Ro terminal services, the market in which Älvsborg is active. The Commission therefore assessed whether there is any material concern relating to cooperative effects on the Ro-Ro short-sea shipping market.<sup>29</sup>
52. The market investigation provided no evidence that Älvsborg would have as its *object* the coordination of the parties' competitive behaviour in short-sea Ro-Ro shipping on the corridor between Belgium and Sweden.
53. As regards the potential co-ordinated *effects* arising as a result of the joint venture, the Commission considers this unlikely for the reasons set out below.
54. First, Älvsborg is already a common supplier in Sweden to both parties and the terminal charges paid by the parties are only one input out of many.<sup>30</sup> Thus DFDS and CLdN will not face any increased commonality of sourcing.
55. Second, as regards exchange of commercially sensitive information, while terminal operators and shipping lines confirmed during the market investigation that terminal operators generally obtain information on volumes, customers and type of goods handled at the terminal, joint control over Älvsborg would not provide DFDS and CLdN with significant additional competitively strategic information concerning the other's

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<sup>28</sup> While DFDS has its own ships operating a route between Älvsborg and Ghent, CLdN has a space charter agreement with Stora Enso, under which it can market the Ro-Ro transportation of freight on Stora Enso vessels on the route between Älvsborg and Zeebrugge. In addition to the space charter agreement, CLdN started to operate two sailings per week on its own vessels in August 2011 on this route, following Stora Enso's decision to reduce the number of frequencies to five per week.

<sup>29</sup> There is no need to consider the risk of coordination between DFDS and C.RO in terminal services, as they do not compete against each other either in the market in which Älvsborg would operate or in any neighbouring market. As explained above, Älvsborg operates in the Ro-Ro terminal services market in Gothenburg (Sweden), an area in which neither DFDS nor C.RO operates Ro-Ro terminals. DFDS only operates Ro-Ro terminals in Norway and Denmark, however C.RO does not operate any terminals in Scandinavia.

<sup>30</sup> DFDS estimates that the terminal fees paid to Älvsborg in 2010 amounted to [...] % of their total costs on the Gothenburg-Ghent route and CLdN estimates that the terminal fees paid to Älvsborg in 2010 amount to [...] % of their cost of shipping units on the Gothenburg-Zeebrugge route. The other costs, which will remain different for DFDS and CLdN post-transaction, and to which neither party will have access as a result of the joint venture, consist of terminal fees at the other ends of the routes, vessel, fuel, crew and insurance costs, and lastly port charges (i.e. charges paid to the Port Authority for usage of the port as opposed to fees paid to the terminal operator for terminal services).

downstream business (beyond what is already available to them at present).<sup>31</sup> Even if additional volume information might be available via the terminal, this is unlikely to be of great strategic value in determining the price or scope of downstream shipping activities of the parties. Given that shipping prices are individually negotiated and customer specific discounts remain confidential, most customers indicated that they could switch between DFDS and CLdN on this route and indeed frequently do so, thus making customer allocation difficult.<sup>32</sup>

56. Third, there is no overall general realignment of the parents' competing interests given the small size of the joint venture compared to their total shipping businesses. As evidenced by the market investigation, DFDS and CLdN have to date competed fiercely on the routes between Sweden and Belgium (where the parties have a combined 100% market share). They also face competition from alternative routes (including road and rail for some cargo) which would defeat the purpose of any coordination. Many current customers of DFDS and CLdN seem to regard coordination as a remote risk.<sup>33</sup>
57. In conclusion, the Commission considers that the operation does not raise serious doubts in respect of potential cooperative effects resulting from the transaction.

## (6) CONCLUSION

58. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*

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<sup>31</sup> Customer data can already be obtained to some extent via so called lamp-post monitoring (which consists of posting an employee at a terminal to observe the activities of competitors) and via requests for quotes from customers. As regards additional information relating to the type of cargo being shipped from Älvsborg, although such information cannot be obtained through lamp-post monitoring, the descriptions in the ship manifest are typically rather generic.

<sup>32</sup> Indeed, [...], an important customer stated that switching between DFDS and CLdN is normal practice for them and they switch depending on prices, capacity and lead times. [...] also confirmed that they increased their activities with CLdN (while previously using DFDS) on this route.

<sup>33</sup> Indeed important freight forwarders like [...] and industrial customers like [...] consider that DFDS and CLdN compete on this route. [...] explained that they are "*not concerned that DFDS and CLdN would stop competing. They have many more legs in Europe and they are (and have always been) fierce competitors. Gothenburg represents only a very small part of their European business.*" In this context it is also worth noting that C.RO Ports is the terminal service provider of the recent new entrant, North Sea RoRo AB, at the UK end of the Gothenburg - UK route, thus helping to establish the only current competing line to that of DFDS on this particular trade corridor.