EUROPEAN COMMISSION
DG Competition

Case M.9093 - DP WORLD INVESTMENTS / UNIFEEDER

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 04/12/2018

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EUROPEAN COMMISSION

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PUBLIC VERSION

To the notifying party:

Dear Sir or Madam,

Subject: **Case M.9093 – DP World Investments/Unifeeder**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 26 October 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which DP World Investments B.V., a Dutch company which is part of the DP World group ("DP World", United Arab Emirates), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Unifeeder A/S ("Unifeeder", Denmark) by way of a purchase of shares ("the Transaction"). DP World and Unifeeder are collectively referred to as the "Parties".[3]

1. THE PARTIES

(2) DP World is the owner, operator and manager of 78 marine container terminals and other port infrastructure in over 40 countries, located across six continents. In Northern Europe and the Mediterranean, DP World operates 13 terminals.[4] Its

1 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.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

3 Publication in the Official Journal of the European Union No C 402, 08.11.2018, p. 7.

4 Those terminals are located in Algeria (Algiers, and Djen-Djen), Belgium (Antwerp Gateway), Cyprus (Limassol), France (Marseille-Fos, and Le Havre), Germany (Germersheim), the Netherlands

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terminals handle general and bulk cargo, roll-on/roll-off and load-on/load-off vessels and passengers. However, container handling is the company's core business and generates more than three quarters of its revenue. DP World also provides cargo handling and logistics services, that is to say the discharging and loading of vessels and related activities such as handling of trucks/rail/barges, warehousing, container repair and container storage.

(3) DP World does not participate in liner shipping services but does provide certain maritime logistics and peripheral services at some of its terminals. Indeed, DP World has barge operations at its deep-sea terminals at Antwerp and Rotterdam, as well as at its inland terminals in Beverdonk (Belgium), Germersheim (Germany), Mannheim (Germany) and Stuttgart (Germany).[5] In addition, DP World, through its wholly-owned subsidiary P&O Maritime, also provides certain maritime support solutions. More specifically, it is active in the provision of specialist vessels servicing offshore renewables, river barging, chartering, and port services.[6]

(4) DP World is majority-owned by the Government of Dubai, via Dubai World Corporation ("Dubai World").[7] In line with its decisions in Case M.6060 – *Citigroup/Public Sector Pension Investment Board/DP World/DP World Australia/JV* and Case M.6913 – *DP World/Goodman/DP World Asia*, the Commission considers DP World as an undertaking which operates on the market independently from Dubai World. Therefore, the activities of entities belonging to the Dubai World Group – such as the services offered by P&O Ferries in the short-sea shipping market (namely in its load-on/load-off segment) on the Zeebrugge-Hull leg of trade and the freight forwarding services provided by P&O

(Rotterdam), Romania (Constanta), Spain (Tarragona), Turkey (Yarimca), United Kingdom (London Gateway, and Southampton).

5 DP World considers that those services are not relevant for the purposes of the assessment of the Transaction, as they comprise inland transportation; therefore, volumes carried on those routes are outside of the geographic scope of Unifeeder's activities (Form CO, paragraph 59). In any event, according to DP World, those activities are *de minimis* and even if considered as part of the same geographic market as Unifeeder's activities, the total capacity of DP World's barging activities would amount to [0-5]% of the container transport market in Northern Europe (and [0-5]% of the inland transportation market in Northern Europe, in which Unifeeder is not active). As a consequence, DP World's barge operations will not be further considered for the purposes of assessing the Transaction.

6 DP World considers that the maritime support solutions (e.g. tugging and harbour services) provided by P&O Maritime are fundamentally different activities and services to those of Unifeeder and hence do not give rise to a horizontal overlap. Furthermore, most of P&O Maritime's operations are outside of the EEA (Form CO, paragraph 59). There is nevertheless a (marginal) vertical link between the Parties' activities, since P&O Maritime supplies pilotage and tug services in Cyprus to shipping companies (including to Unifeeder, which represents [0-5]% of P&O Maritime's revenue in Cyprus). Considering that the maritime support solutions provided by P&O Maritime are add-ons meant to complement and enhance DP World's container terminal services and that the effects of the vertical link resulting from the Transaction between the upstream market for contained terminal services (in which DP World is active) and the downstream market for short-sea shipping services (in which Unifeeder is active) will be assessed in detail in section 5 of this Decision, P&O Maritime's operations will not be further considered for the purposes of assessing the Transaction.

7 DP World Limited, of which DP World Investments B.V. is an indirect wholly owned subsidiary, is 80.45% indirectly held by the Government of Dubai, via Dubai World. The remaining 19.55% of DP World Limited's shareholding is listed on NASDAQ Dubai.

Ferrymasters – are not taken into account for the purposes of assessing the Transaction.[8]

(5) Unifeeder is active in the provision of maritime transportation services for containerised goods. Unifeeder primarily provides feeder services, that is to say the transport of cargo between hub ports and (smaller) outports. However, Unifeeder also provides short-sea services, that is to say the transport of cargo from point to point, both on a port-to-port and door-to-door basis. Unifeeder operates primarily in Northern Europe with feeder and short-sea services and in the Mediterranean with feeder services only.[9] It has a fleet of approximately 50-60 chartered vessels.

2. THE OPERATION

(6) Pursuant to a share purchase agreement signed on 6 August 2018, DP World will purchase the entire issued share capital of Holdingselskabet af 10. januar 2013 II A/S, Unifeeder's sole indirect shareholder. As a consequence, post-Transaction DP World will acquire sole control over Unifeeder.

(7) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[10] (DP World: EUR […] million; Unifeeder: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (DP World: EUR […] million; Unifeeder: EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(9) The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(10) DP World provides container terminal services (also called stevedoring services), which are inputs to container transport services, in particular container liner shipping services, provided by operators like Unifeeder.

8 In any event, even if DP World, P&O Ferries and P&O Ferrymasters were considered as constituting a single economic unit, combining the activities of P&O Ferries and P&O Ferrymasters with the activities of DP World would not give rise to any additional affected market. As a consequence, the Transaction would not raise serious doubts even if P&O Ferries and P&O Ferrymasters were considered as belonging to the same group as DP World.

9 Northern Europe represents approximately [80-90]% of Unifeeder's activities in the EEA. The Mediterranean represents approximately [10-20]% of Unifeeder's activities in the EEA.

10 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4.1. Container terminal services

4.1.1. Relevant product market

(11) The provision of container terminal services by terminal operators involves the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo.[11]

(12) In its prior decision practice, the Commission has defined a separate market for the provision of container terminal services.[12] The Commission has considered segmenting container terminal services by traffic flows to (i) hinterland traffic, that is to say containers transported directly onto/from a container vessel from/to the hinterland via barge, truck or train, and (ii) transhipment traffic, that is to say containers destined for onward transportation to other ports or other vessels. Transhipment traffic involves both feeder movements, where containers are shipped to an adjacent market, and relay movements, where containers are moved from one ocean-going vessel to another ocean-going vessel to onward movement to another more distant market.[13]

(13) DP World considers that the Commission does not need to reach a view on the exact scope of the relevant product market, as in any event the Transaction does not give rise to competition concerns.[14]

(14) In any case, for the purposes of this Decision, the question of whether the market for container terminal services should be segmented between hinterland and transhipment traffic can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.1.2. Relevant geographic market

(15) In its prior decisional practice, the Commission has considered that the broadest possible geographic scope of the market for the provision of container terminal services is a region, such as Northern Europe (for transhipment traffic), and its narrowest possible scope is the catchment area of the ports in a certain range, such as Hamburg-Antwerp (for hinterland traffic) or possibly even narrower, comprising the ports of a single Member State only.[15]

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11 See for example Cases M.7523 – *CMA CGM/OPDR*, paragraph 63; M.5398 – *Hutchison/Evergreen*, paragraph 9.

12 See for example Cases M.7523 – *CMA CGM/OPDR*, paragraph 63; M.5398 – *Hutchison/Evergreen*, paragraph 9.

13 This possible segmentation mainly concerned deep-sea container ships (see for example Cases M.8330 – *Maersk Line/HSDG*, paragraph 29; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 21 and 24; M.7908 – *CMA CGM/NOL*, paragraph 17; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16; and M.5398 – *Hutchison/Evergreen*, paragraphs 9 and 10).

14 Form CO, paragraph 94.

15 This possible geographic definition mainly concerned deep-sea ports (see for example Cases M.8330 – *Maersk Line/HSDG*, paragraph 32; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 22-24; M.7908 – *CMA CGM/NOL*, paragraph 18; M.7523 – *CMA CGM/OPDR*, paragraph

(16) DP World considers that it is not necessary to consider the market more narrowly than on a regional basis (that is, for the purpose of the Transaction, Northern Europe, the Mediterranean and Eastern Mediterranean, and Black Sea).[16]

(17) With regard to the ports of Constanta (Romania), Marseille-Fos and Le Havre (France), in which DP World operates terminals, the market investigation has not produced sufficient evidence to conclude on the geographic scope of the market for the provision of container terminal services.[17]

(18) In any case, for the purposes of this Decision, the question of whether the market for container terminal services encompasses ports of a region, of a catchment area, or of one Member State can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

4.1.3. *Conclusion*

(19) For the purposes of this Decision, it is not necessary to conclude on the exact product and geographic definition of the market for the provision of container terminal services, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

(20) The Commission will therefore assess the effects of the Transaction on the following markets:

(a) Product markets: (i) container terminal services (overall); (ii) container terminal services for hinterland traffic; and (iii) container terminal services for transhipment traffic;

(b) Geographic markets: (i) regions (such as Northern Europe or the Mediterranean), (ii) catchment areas comprising the ports in a certain range (such as Le Havre-Hamburg), and (iii) the ports of a single Member State (such as Romania or France).

4.2. Door-to-door multimodal transport services

4.2.1. *Relevant product market*

(21) Door-to-door multimodal transport services consist in taking up cargo at an agreed point and delivering it to another agreed point. Customers decide where the point of loading and point of delivery are situated and transport services providers adapt to this. As the cargo is containerised, it can travel on vessels, trucks, trains and barges.[18]

65; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16; M.5066 – *Eurogate/APMM*, paragraphs 15-23).

16 Form CO, paragraph 98.

17 Replies to Q1 – Questionnaire to market participants, questions 3 and 4.

18 Case M.7523 – *CMA CGM/OPDR*, paragraph 24.

(22) In a prior decision, the Commission noted that sea vessel operators, truck, rail and barge companies offering door-to-door transport ultimately compete on the provision of multimodal transport services, as transport operators often need to combine different modes of transport in order to provide a full door-to-door service. Therefore, the Commission concluded that there is a market for door-to-door transport services, including all modes of transportation.[19]

(23) DP World submits that the relevant market in which Unifeeder is active is the market for the provision of intra-European door-to-door multimodal transport services. According to DP World, different modes of transport for intra-European volumes are highly substitutable from the perspective of end customers; therefore shipping services should be regarded as part of the intra-European door-to-door multimodal transport services market, which encompasses all modes of transport by sea, rail and road.[20]

(24) In any case, for the purposes of this Decision, the question of whether there is a market for intra-European door-to-door multimodal transport services can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.2.2. Relevant geographic market

(25) In a prior decision, the Commission considered that the market for door-to-door multimodal transport services could be defined either on a trade basis, aggregating country pairs (such as Iberia to Northern Europe), or on a country pair basis (e.g. Spain to Germany). Ultimately, the Commission left the geographic market definition open.[21]

(26) DP World considers that geographic market for the transport of containers should be defined regionally (that is to say, in this case, Northern Europe and the Mediterranean).[22]

(27) In any case, for the purposes of this Decision, the question of whether the market for door-to-door multimodal transport services should be defined on a trade or country pair basis can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

4.2.3. Conclusion

(28) For the purposes of this Decision, it is not necessary to conclude on whether there is an overall market for the provision of door-to-door multimodal transport services and on its exact geographic definition, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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19 Case M.7523 – *CMA CGM/OPDR*, paragraph 31.

20 Form CO, paragraphs 101-106.

21 Case M.7523 – *CMA CGM/OPDR*, paragraphs 35 and 36.

22 Form CO, paragraphs 116-118.

(29) The Commission will therefore assess the effects of the Transaction on the market for door-to-door multimodal transport services, defined on the basis of the following geographic scopes: (i) trades (such as between countries within the Mediterranean), and (ii) country pairs.

4.3. Short-sea shipping services

4.3.1. Relevant product market

(30) Short-sea container liner shipping involves the provision of regular, scheduled intra-continental (usually, costal trade) services for the carriage of cargo by container liner shipping companies.

(31) In its prior decisional practice, the Commission has left open whether shipping services should be part of a broader door-to-door multimodal transport services market.[23] Should a separate market for exist, the Commission has concluded that (i) container shipping is distinct from bulk shipping (i.e. non-containerised shipping);[24] (ii) short-sea container shipping is distinct from long-sea container shipping (i.e. deep-sea shipping);[25] and (iii) non-liner shipping services are not part of the short-sea container shipping market.[26]

(32) The Commission has also considered, while ultimately leaving open, the following further possible distinctions within the market for short-sea container liner shipping services: (i) between reefer (that is to say refrigerated) and dry (or non-reefer, that is to say not refrigerated) services;[27] and (ii) between roll-on/roll-off ("Ro-Ro") and lift-on/lift-off ("Lo-Lo") services.[28] The Commission has not examined the possible existence of a separate market for feeder services.

(33) DP World considers that shipping services should be regarded as part of a broader market for door-to-door multimodal transport services, encompassing all modes of transport by sea, rail and road.[29] If a market for short-sea container liner

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23 Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 48.

24 Case M.7523 – *CMA CGM/OPDR*, paragraph 49.

25 See for example Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraphs 49 and 51.

26 See for example Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 10; M.7523 – *CMA CGM/OPDR*, paragraph 49. Non-linear shipping, such as charter, tramp and specialised transport, distinguishes itself from linear shipping because of the regularity and frequency of the service.

27 See for example Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 48; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraphs 18-20; M.3973 – *CMA CGM/Delmas*, paragraphs 6-7; M.3829 – *Maersk/PONL*, paragraphs 7-12. If reefer and non-reefer services constitute one single market, the Commission has considered whether reefer containers and bulk reefer vessels should be included (see for example Cases M.7523 – *CMA CGM/OPDR*, paragraphs 50-52; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 20).

28 See for example Cases M.7523 – *CMA CGM/OPDR*, paragraph 50; M.6305 – *DFDS/C.RO Ports/Älvsborg*, paragraphs 19-21. Roll-on/roll-off ("Ro-Ro") shipping corresponds to the transport of wheeled cargo (lorries, cars, etc.) on ships. Ro-Ro vessels have built-in ramps for the "rolling-on" and "rolling-off" of the cargo. In Lo-Lo shipping, dock mounted cranes lift and stack containers on vessels.

29 Form CO, paragraph 106.

shipping services were to exist, DP World submits that: (i) the distinction between reefer and dry transport is not of relevance for the Transaction;[30] (ii) Ro-Ro ferry and LoLo short-sea services should be considered separately;[31] and (iii) it is not necessary to consider feeder services as a separate market.[32]

(34) The Commission notes that there is no need, for the purposes of assessing the Transaction, to distinguish between reefer and non-reefer services, considering that the Transaction does not give rise to horizontal effects and that Unifeeder, like other short sea shippers, is equally able to transport either type of container.

(35) As to the other plausible markets, the questions of whether there is a market for short-sea container liner shipping services and, if so, whether RoRo ferry services, LoLo short-sea services and feeder services should constitute separate markets can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.3.2. Relevant geographic market

(36) In its prior decision practice, the Commission has considered that the relevant geographic market for short-sea container liner shipping services should be defined on the basis of (i) either single trades or corridors, defined by the range of ports which are served at both ends of the service;[33] (ii) or single legs of trade.[34]

(37) DP World submits that the geographic scope of the market should be considered as regional in the context of Unifeeder's services (that is to say Northern Europe and the Mediterranean).[35]

(38) In any case, for the purposes of this Decision, the question of whether the market for short-sea container liner shipping services should be defined on a trade or leg of trade basis can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

4.3.3. Conclusion

(39) For the purposes of this Decision, it is not necessary to conclude on whether there is a market for the provision of short-sea container liner shipping services or whether it forms part of the overall market for the provision of door-to-door multimodal transport services, and on its exact product and geographic definition, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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30 Form Co, paragraph 109.

31 Form CO, paragraph 111.

32 Form CO, paragraph 115.

33 Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 59.

34 Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 60.

35 Form CO, paragraph 119.

(40) The Commission will therefore assess the effects of the Transaction on the following markets:

(a) Product markets: door-to-door multimodal transport services (see paragraph (29) above) and, in the absence of any horizontal overlap between the Parties' activities, on the narrowest plausible product markets in which Unifeeder is active,[36] that is to say: (i) LoLo short-sea services, and (ii) feeder services;

(b) Geographic markets: in the absence of any horizontal overlap between the Parties' activities, on the narrowest plausible geographic markets in which Unifeeder is active,[37] that is to say legs of trade. In line with the geographic markets for door-to-door multimodal transport services (see paragraph (29) above), the legs of trade will be defined on the basis of the following geographic delineations: (i) trades (such as between countries within the Mediterranean), and (ii) country pairs.

5. COMPETITIVE ASSESSMENT

(41) DP World is active in the market for container terminal services, while Unifeeder is active in the market for container liner services. In this context, the Parties' activities do not overlap. However, the Parties' activities are vertically related,[38] with DP World being active in the upstream market for container terminal services and Unifeeder being active in the downstream market defined as the provision of (i) door-to-door multimodal transport services, (ii) LoLo short-sea shipping services; or (iii) feeder services.[39]

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36 Those narrowest plausible product markets are indeed the ones in which Unifeeder's market share would be highest and Unifeeder's market position would be strongest. In the absence of serious doubts with the compatibility of the Transaction in relation to those markets, the Commission can reasonably conclude on the absence of serious doubts in relation to broader markets.

37 Those narrowest plausible geographic markets are indeed the ones in which Unifeeder's market share would be highest and Unifeeder's market position would be strongest. In the absence of serious doubts with the compatibility of the Transaction in relation to those markets, the Commission can reasonably conclude on the absence of serious doubts in relation to broader markets.

38 In its prior decision practice, the Commission has consistently considered container terminal services as an upstream market to the provision of container liner shipping services (see for example M.8594 – *COSCO SHIPPING/OOIL*, paragraph 52; M.8459 – *TIL/PSA/PSA DGD*, section 4.2.; M. 7523 – *CMA CGM/OPDR*, paragraph 150; M.7248 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 198 and following).

39 The Commission has not identified any significant conglomerate effect in the present case. According to DP World, (i) the broadening of DP World’s product offering will not provide any meaningful competitive advantage; (ii) DP World would not have any meaningful possibility of tying or bundling its services with those of Unifeeder; (iii) even if DP World were technically able to bundle/tie its services with those of Unifeeder, DP World would have no ability to engage in a tying/bundling foreclosure strategy; (iv) DP World would, in any case, not have an incentive to engage in tying/bundling strategies; and (v) any hypothetical bundling/tying foreclosure strategy would have no anticompetitive effects (major shipping lines, such as Maersk and CMA CGM, are heavily vertically integrated with interests in liner, feeder and port operations) (Form CO, paragraphs (198)-(202)).

5.1. Legal framework

(42) According to the Non-Horizontal Merger Guidelines,[40] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[41] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[42] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[43]

(43) For input or customer foreclosure to be a concern, three conditions need to be met post-transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on customers (customer foreclosure).[44] In practice, these factors are often examined together since they are closely intertwined.

5.2. Overview of the vertically affected markets

(44) Related markets in which DP World holds a market share of at least 30% in the upstream market and/or Unifeeder holds a market share of at least 30% in the downstream market are considered to be vertically affected by the Transaction.

(45) As regards the upstream market for container terminal services, within the EEA, DP World operates terminals at the following 10 ports: (i) Antwerp Gateway (Belgium), (ii) Limassol (Cyprus), (iii) Marseille-Fos (France), (iv) Le Havre (France), (v) Germersheim (Germany),[45] (vi) Rotterdam (the Netherlands), (vii) Constanta (Romania), (viii) Tarragona (Spain), (ix) London Gateway (the United Kingdom), and (x) Southampton (the United Kingdom).

(46) DP World's market share would exceed 30% only if the geographic scope of the market for container terminal services is defined narrowly as comprising the ports of a single Member State. In such a case, DP World's market share exceeds 30% in Romania (overall: [80-90]%; transhipment traffic: [90-100]%; hinterland traffic: [70-80]%) and France (overall: [40-50]%; transhipment traffic: [40-50]%; hinterland traffic: [40-50]%).[46]

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40 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7.

41 Non-Horizontal Merger Guidelines, paragraphs 20-29.

42 Non-Horizontal Merger Guidelines, paragraph 31.

43 Non-Horizontal Merger Guidelines, paragraph 58.

44 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

45 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

46 DP World submits that the total market data that it has been able to gather is not a comprehensive list of all terminal capacity/volume in the relevant countries and, as a result, the market shares provided likely overstate the position of DP World. Form CO, paragraph 127.

(47) The table below provides Unifeeder's share of the downstream markets related to France and Romania, where DP World's share of the upstream market exceeds 30%.

Table 1 – Vertically affected markets
(DP World's market shares exceeding 30%)

Upstream affected market	DP World's share of the upstream affected market	Unifeeder's share of the downstream affected market		
		Door-to-door multimodal transport services	LoLo short-sea shipping services	Feeder services
Container terminal services in Romania	**Overall: [80-90]%** **Transhipment: [90-100]%** **Hinterland: [70-80]%**	Mediterranean: [0-5]% Georgia to Romania: <10% Greece to Romania: <10% Malta to Romania: <10% Romania to Bulgaria: <10% Romania to Turkey: <10% Russia to Romania: <10% Turkey to Romania: <10% Ukraine to Romania: <10%	Not active[47]	Mediterranean: [10-20]% Georgia to Romania: <10% Greece to Romania: <10% Malta to Romania: <10% Romania to Bulgaria: <10% Romania to Turkey: <10% Russia to Romania: <10% Turkey to Romania: <10% Ukraine to Romania: <10%
Container terminal services in France	**Overall: [40-50]%** **Transhipment: [40-50]%** **Hinterland: [40-50]%**	Mediterranean: [0-5]% France to Spain: <10% Spain to France: <10%	Not active[48]	Mediterranean: [10-20]% France to Spain: <10% Spain to France: <10%

Source: Form CO, Annex 9

(48) As regards the downstream market, Unifeeder's market share would not exceed 30% if the market is defined as door-to-door multimodal transport services, under any plausible geographic market definition. It would nevertheless exceed 30% in relation to LoLo short-sea shipping services and feeder services.

(49) Unifeeder's market share would exceed 30% if the geographic scope of the market for LoLo short-sea shipping services is defined narrowly on the basis of country pair legs of trade. In such a case, Unifeeder's market share exceeds 30% in the following legs of trade: (i) from Germany to the United Kingdom ([70-80]%); (ii) from the United Kingdom to Germany ([60-70]%); (iii) from Poland to the United Kingdom ([40-50]%); and (iv) from the United Kingdom to Poland ([40-50]%).

(50) The table below provides DP World's share of the upstream markets related to the legs of trade, where Unifeeder's share of the downstream market exceeds 30%.

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47 As indicated in paragraph (5) of this Decision, Unifeeder does not provide short-sea services in the Mediterranean.

48 As indicated in paragraph (5) of this Decision, Unifeeder does not provide short-sea services in the Mediterranean.

Table 2 – Vertically affected markets
(Unifeeder's market shares exceeding 30%)

Downstream affected market	Unifeeder's share of the downstream affected market	DP World's share of the upstream affected market		
		Overall container terminal services	Transhipment traffic	Hinterland traffic
LoLo short-sea shipping services from Germany to the UK	Multimodal transport: <10% **Short-sea: [70-80]%** Feeder: <10%	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% UK and Ireland: [20-30]% UK: [20-30]% Germany: Not active[49]	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% UK and Ireland: [20-30]% UK: [20-30]% Germany: Not active[50]	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% UK and Ireland: [20-30]% UK: [20-30]% Germany: Not active[51]
LoLo short-sea shipping services from the UK to Germany	Multimodal transport: <10% **Short-sea: [60-70]%** Feeder: 10-30%	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% UK: [20-30]% Germany: Not active[52]	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% UK: [20-30]% Germany: Not active[53]	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% UK: [20-30]% Germany: Not active[54]
LoLo short-sea shipping services from Poland to the UK	Multimodal transport: <10% **Short-sea: [40-50]%** Feeder: <10%	Northern Europe: [10-20]% UK and Ireland: [20-30]% UK: [20-30]% Poland: Not active	Northern Europe: [5-10]% UK and Ireland: [20-30]% UK: [20-30]% Poland: Not active	Northern Europe: [10-20]% UK and Ireland: [20-30]% UK: [20-30]% Poland: Not active
LoLo short-sea shipping services from the UK to Poland	Multimodal transport: <10% **Short-sea: [40-50]%** Feeder: <10%	Northern Europe: [10-20]% UK: [20-30]% Poland: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% UK: [20-30]% Poland: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% UK: [20-30]% Poland: Not active

Source: Form CO, Annex 9

49 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

50 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

51 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

52 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

53 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

54 Germersheim is an inland terminal, which therefore does not interact with Unifeeder's activities.

(51) Unifeeder's market shares would exceed 30% if the geographic scope of the market for feeder services with respect is defined narrowly on the basis of legs of trade defined as: (i) country to region, or (ii) country to country. In such cases, Unifeeder's market share exceeds 30% in the following legs of trade: (i) from Denmark to Northern European hub ports and vice versa ([30-40]% on the trade),[55] (ii) from Sweden to Northern European hub ports and vice versa ([30-40]% on the trade),[56] (iii) from the Netherlands to Norway ([30-40]%); (iv) from Norway to the Netherlands ([30-40]%); (v) from the Netherlands to Latvia ([40-50]%); (vi) from Latvia to the Netherlands ([40-50]%); (vii) from the Netherlands to Lithuania ([40-50]%); (viii) from Lithuania to the Netherlands ([40-50]%); (ix) from Cyprus to Egypt ([60-70]%); and (x) from Egypt to Cyprus ([70-80]%).

Table 3 – Vertically affected markets
(Unifeeder's market shares exceeding 30%)

Downstream affected market	Unifeeder's share of the downstream affected market	DP World's share of the upstream affected market		
		Overall container terminal services	Transhipment traffic	Hinterland traffic
Feeder services between Denmark and hub ports	Multimodal transport: [10-20]% Short-sea: [0-5]% **Feeder: [30-40]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20% Belgium: [20-30]% Netherlands: [10-20]% Denmark: Not active	Northern Europe: [5-10]% Le-Havre-Hamburg: [5-10]% Belgium: [5-10]% Netherlands: [10-20]% Denmark: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Belgium: [20-30]% Netherlands: [10-20]% Denmark: Not active
Feeder services between Sweden and hub ports	Multimodal transport: [10-20]% Short-sea: [0-5]% **Feeder: [30-40]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Belgium: [20-30]% Netherlands: [10-20]% Denmark: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Belgium: [5-10]% Netherlands: [10-20]% Denmark: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Belgium: [20-30]% Netherlands: [10-20]% Denmark: Not active
Feeder services from the Netherlands to Norway	Multimodal transport: <10% Short-sea: 10-30% **Feeder: [30-40]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Norway: Not	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [10-20]% Norway: Not	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Norway: Not

55 DP World does not offer terminal services at outports in Northern Europe (Form CO, paragraph 162).

56 DP World does not offer terminal services at outports in Northern Europe (Form CO, paragraph 162).

		active	active	active
Feeder services from Norway to the Netherlands	Multimodal transport: <10% Short-sea: 10-30% **Feeder: [30-40]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Norway: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [10-20]% Norway: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Norway: Not active
Feeder services from the Netherlands to Latvia	Multimodal transport: <10% Short-sea: <10% **Feeder: [40-50]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Latvia: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [10-20]% Latvia: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Latvia: Not active
Feeder services from Latvia to the Netherlands	Multimodal transport: <10% Short-sea: <10% **Feeder: [40-50]%**	Northern Europe: [10-20]% Le-Havre-Hamburg: [10-20]% Netherlands: [10-20]% Latvia: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [10-20]% Latvia: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Latvia: Not active
Feeder services from the Netherlands to Lithuania	Multimodal transport: <10% Short-sea: <10% **Feeder: [40-50]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Lithuania: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [5-10]% Lithuania: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Lithuania: Not active
Feeder services from Lithuania to the Netherlands	Multimodal transport: <10% Short-sea: <10% **Feeder: [40-50]%**	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Lithuania: Not active	Northern Europe: [5-10]% Le Havre-Hamburg: [5-10]% Netherlands: [10-20]% Lithuania: Not active	Northern Europe: [10-20]% Le Havre-Hamburg: [10-20]% Netherlands: [10-20]% Lithuania: Not active
Feeder services from Cyprus to Egypt	Multimodal transport: <10% Short-sea: 0% **Feeder: [60-70]%**	East Mediterranean: [5-10]% Cyprus: [0-5]% Egypt: Not active	East Mediterranean: [0-5]% Cyprus: Not active Egypt: Not active	East Mediterranean: [5-10]% Cyprus: [0-5]% Egypt: Not active
Feeder services from Egypt to Cyprus	Multimodal transport: <10% Short-sea: [0-5]% **Feeder: 70%**	East Mediterranean: [5-10]% Cyprus: [0-5]% Egypt: Not active	East Mediterranean: [0-5]% Cyprus: Not active Egypt: Not active	East Mediterranean: [5-10]% Cyprus: [0-5]% Egypt: Not active

Source: Form CO, paragraph 121 and Annex 9

5.3. Assessment of the vertically affected markets in relation to container terminal services in Romania and in France

(52) The Commission will assess in this section whether the Transaction could lead to (i) input foreclosure, pursuant to which DP World would foreclose Unifeeder's competitors by restricting access to or deteriorating the quality of the container terminal services that it provides to Unifeeder's competitors in Romania or in France; or (ii) customer foreclosure, pursuant to which Unifeeder would foreclose DP World's competitors by sourcing its container terminal services requirements in Romania or in France mostly or exclusively from DP World.

5.3.1. Input foreclosure

5.3.1.1. DP World's views

(53) DP World submits that, despite DP World's relatively high share in respect of Romanian and French ports, the Transaction does not give rise to any input foreclosure concerns.[57]

5.3.1.2. The Commission's assessment

Ability to foreclose

(54) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of power in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.[58]

(55) The Commission notes that DP World's operations at Constanta lead to very high shares of the market for container terminal services in Romania ([80-90]% overall; [90-100]% for transhipment traffic; [70-80]% for hinterland traffic),[59] despite a competing terminal at Constanta with spare capacity.[60]

(56) DP World's operations at Marseille-Fos and Le Havre also lead to significant market shares in France ([40-50]% overall; [40-50]% for transhipment traffic;

57 Form CO, Annex 9, paragraphs (6)(a) and (7)(a).

58 Non-Horizontal Merger Guidelines, paragraph 35.

59 Nevertheless, DP World's market shares on the basis of the catchment area comprising ports within a certain range drop significantly. For example, in the Piraeus-Odessa range, they would be: [5-10]% overall; [0-5]% for transhipment traffic and [10-20]% for hinterland traffic (Form CO, paragraph (127) and Annex 9, paragraph (6)).

60 According to DP World, the Socep terminal at Constanta is expected to have approximately [70-80]% spare capacity in 2018 (Form CO, Annex 9, paragraph (6)).

[40-50]% for hinterland traffic),[61] although DP World is in direct competition with a number of operators of other terminals.[62]

(57) In addition, a number of respondents to the market investigation point to the advantages that DP World could grant to Unifeeder at the ports where both operate, such as preferred berthing and operational priority.[63]

(58) Nevertheless, two elements may question the ability of DP World's to foreclose Unifeeder's competitors.

(59) First, the majority of transhipment traffic takes place at hub ports.[64] At hub ports, in most cases, feeder providers do not have a direct contractual relationship with terminal owners and operators. Typically terminal operators negotiate directly with deep-sea liners both the volume of transhipment cargo handled by them and the cost of the services provided. Hence, when terminal operators agree with deep-sea liners on the price for the provision of transhipment services at a given port, they are not aware of the identity of the feeder provider that will transport cargo from/to hub ports.[65] It is therefore unlikely that the merged entity will be in the position to discriminate against competing feeder providers and refuse or deteriorate the services offered to them.

(60) Second, according to DP World, DP World operates as a common user terminal and based on the open access regulations, it must provide services to main liners and feeder operators on a non-discriminatory basis.[66]

(61) In light of the above, the Commission considers that, on balance, it cannot be excluded that DP World has the ability to engage in an input foreclosure strategy in Romania and in France post-Transaction.

Incentive to foreclose

(62) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream activities, but also of its downstream activities. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers. The incentive for the integrated firm to raise rivals'

61 Nevertheless, DP World's market shares on the basis of the catchment area comprising ports within a certain range drop significantly. For example, in the Hamburg-Le Havre range, they would be: [5-10]% for transhipment traffic and [10-20]% for hinterland traffic; in the Marseille-Livorno range, they would be: [10-20]% for transhipment traffic and [10-20]% for hinterland traffic (Form CO, paragraph (127)).

62 Those competing terminals include: Terminal Normandie MSC (Le Havre), MED Europe Terminal (Marseille-Fos), Fos 2XL (Marseille-Fos), APM Terminals France SAS (Marseille-Fos).

63 Replies to Q1 – Questionnaire to market participants, question 8.1.

64 Form CO, paragraph (65).

65 Form CO, paragraphs (83)-(84).

66 Form CO, paragraph (166).

costs further depends on the extent to which downstream demand is likely to be diverted away from the foreclosed rivals.[67]

(63) In this context, the Commission finds that, even if DP World had the ability to engage in an input foreclosure strategy, it would likely lack the incentive to do so.

(64) First, the profit margins that terminal operators obtain from the provision of container terminal services are usually higher than those that vessel operators in the downstream markets derive from their (liner) shipping activities. This has been confirmed by the majority of the respondents to the market investigation who have expressed an opinion.[68]

(65) Second, as indicated in paragraph (59) above, deep-sea liners, who autonomously choose to which operator to entrust the provision of feeder services, are DP World's main customers. By engaging in an input foreclosure strategy, DP World would therefore face the risk of jeopardising its commercial relationship with operators which represent its primary source of revenue.

(66) Third, with regard to France, Unifeeder does not currently call at Le Havre and does not generally call at Marseille-Fos either.[69] Therefore, any input foreclosure strategy by would be unlikely to result in increased volumes for Unifeeder.

(67) As a result, even if post-Transaction DP World decided to engage in an input foreclosure strategy, this would likely be unprofitable. Any attempt by the merged entity to make the conditions of supply less favourable than they were pre-Transaction would lead to losses in the upstream market, with no possibility of offsetting those losses through an expansion of sales in the downstream markets.

(68) The market investigation has confirmed the above conclusions with regard to DP World's lack of ability or incentive to successfully implement an input foreclosure strategy. The majority of the respondents who have expressed an opinion have either stated that DP World would not have the ability and incentive to foreclose Unifeeder's rivals from its container terminal services in the EEA, or specified that DP World's ability and incentive to foreclose Unifeeder's rivals depend on different factors, such as the possible negative reactions of liner shipping companies to any attempt to foreclose.

(69) In that regard, liner shipping companies, being at the same time customers of terminal operators and of feeder providers, might indeed react badly to any attempt of DP World to disrupt container terminal services or to force them to procure feeder services from Unifeeder.

(70) As an example, among the operators which have replied to the market investigation by stating that post-Transaction the Parties could and would engage in an input foreclosure strategy, one has pointed out that the possible benefits stemming from such a strategy would nonetheless have to be balanced against the

67 Non-Horizontal Merger Guidelines, paragraphs 40 and 41.

68 Replies to Q1 – Questionnaire to market participants, question 5.

69 Form CO, Annex 9, paragraph (7). Unifeeder's volumes at Marseille-Fos in 2017 represented [number of containers].

inability of the Parties to capture and carry all downstream volumes. Other shipping companies would still have "significant volumes" at their disposal.[70] This opinion underpins the conclusion that any such foreclosure strategy would be defeated by shifting these volumes elsewhere, in the case of Romania to the half empty other terminal at Constanta, in the case of France to competing terminals, including those at Marseille-Fos and Le Havre.

(71) In light of the above, the Commission considers that DP World will likely not have an incentive to engage in an input foreclosure strategy in Romania or in France post-Transaction.

Overall effect of foreclosure

(72) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.[71]

(73) In that respect, the Commission notes that some major global container liners operate their own port operations and feeder services, and are thus unlikely to be foreclosed.[72] Even if some (non-integrated) feeder service providers were foreclosed post-Transaction from routes to/from Romania or France, these providers would remain active on other routes and could easily re-enter in the event of a price increase by Unifeeder, for example by calling at competing terminals in Romania and France or in neighbouring countries.

(74) When asked about the possible impact of the Transaction on their business, the majority of the respondents to the market investigation who have expressed an opinion have stated that they do not foresee any negative or significant impact on their company.[73] Moreover, none of the respondents have raised substantial concerns regarding the overall impact of the Transaction on the provision of container terminal services or container shipping services in the EEA.[74]

(75) In light of the above, the Commission considers that the implementation of an input foreclosure strategy by DP World in Romania or in France post-Transaction would be unlikely to have a negative effect on competition.

Conclusion

(76) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by DP World in order to exclude Unifeeder's competitors purchasing container terminal services in Romania and France is unlikely.

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70 Replies to Q1 – Questionnaire to market participants, questions 8 and 8.1.

71 Non-Horizontal Merger Guidelines, paragraph 47.

72 Form CO, paragraph (198); and Replies to Q1 – Questionnaire to market participants, questions 1 and 10.

73 Replies to Q1 – Questionnaire to market participants, question 10.

74 Replies to Q1 – Questionnaire to market participants, question 11.

5.3.2. Customer foreclosure

5.3.2.1. DP World's views

(77) DP World submits that the Transaction does not give rise to any customer foreclosure concern in Romania or France.[75]

5.3.2.2. The Commission's assessment

(78) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[76]

(79) The Commission notes that Unifeeder's volumes account for a minimal proportion of the cargo handled on all legs of trade involving Romania and France (Unifeeder's shares of door-to-door multimodal transport services and feeder services are below 10% on all legs of trade).[77] More generally, Unifeeder's volumes loaded and discharged in Romania in 2017 accounted for less than [0-5]% of the total volume for container terminal services in Romania.[78] In France, Unifeeder's volumes account for close to [0-5]% of the total business of terminal service operators.[79]

(80) Based on the above considerations and all evidence available to it, the Commission concludes that a customer foreclosure strategy post-Transaction by Unifeeder in order to reduce the ability or incentive of DP World's rivals to compete on the market for container terminal services in Romania and France is unlikely.

5.4. Assessment of the vertically affected markets in relation to LoLo short-sea shipping services between Germany and the United Kingdom, and between Poland and the United Kingdom

(81) The Commission will assess in this section whether the Transaction could lead to (i) input foreclosure, pursuant to which DP World would foreclose Unifeeder's competitors by restricting access to or deteriorating the quality of the container terminal services that it provides to Unifeeder's competitors in Germany, Poland or the United Kingdom; or (ii) customer foreclosure, pursuant to which Unifeeder would foreclose DP World's competitors by sourcing its container terminal

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75 Form CO, Annex 9, paragraphs (6)(b) and (7)(b).

76 Non-Horizontal Merger Guidelines, paragraph 58.

77 See Table 1 above.

78 Form CO, Annex 9, paragraph (6)(b) .

79 Form CO, Annex 9, paragraph (7)(b) .

services requirements in Germany, Poland or the United Kingdom mostly or exclusively from DP World.

5.4.1. Input foreclosure

5.4.1.1. DP World's views

(82) DP World submits that the merged entity does not have the ability or incentive to attempt to restrict or deteriorate services to Unifeeder's short-sea rivals at its United Kingdom ports.[80]

5.4.1.2. The Commission's assessment

(83) First, DP World does not own or operate container terminals in Poland or Germany.[81] It would therefore be impossible for the merged entity to foreclose access of Unifeeder's rivals to container terminal services in those countries.

(84) In the United Kingdom (the narrowest plausible geographic scope), where DP World operates the London Gateway London and Southampton terminals, DP World holds a share for the market for container terminal services of no more than [20-30]%, under any plausible product market definition. Therefore, DP World likely lacks market power on the upstream market and would thus likely be unable to engage in an input foreclosure strategy post-Transaction.

(85) In addition, according to DP World, short-sea liners rarely call at London Gateway and Southampton, which are large transhipment hub ports, due to [information relating to DP World's ports].[82]

(86) As a consequence, if DP World were to put in place an input foreclosure strategy, Unifeeder's short-sea shipping rivals could and would start calling at alternative ports in the United Kingdom, such as Felixstowe, Hull, Teesport, Immingham, or Grangemouth.

(87) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by DP World in order to exclude Unifeeder's competitors purchasing container terminal services in Germany, Poland or the United Kingdom is unlikely.

5.4.2. Customer foreclosure

5.4.2.1. DP World's views

(88) DP World submits that the merged entity does not have the ability or incentive to attempt to foreclose DP World's terminal services rivals by shifting Unifeeder's volumes to DP World's ports.[83]

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[80] Form CO, Annex 9, paragraph 10.

[81] Form CO, Annex 9, paragraph 11.

[82] Form CO, Annex 9, paragraph 12.

[83] Form CO, Annex 9, paragraph (19).

5.4.2.2. The Commission's assessment

Ability to foreclose

(89) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[84]

(90) The Commission notes that Unifeeder's market share for LoLo short-sea shipping services exceeds 30% on legs of trade from Germany to the United Kingdom ([70-80]%) and vice versa ([60-70]%); and from Poland to the United Kingdom ([40-50]%) and vice versa ([40-50]%).[85] Nevertheless, Unifeeder's short-sea volumes at any port in the United Kingdom competing with DP World's ports are small.[86] Even considering Unifeeder's total volumes (not only short sea volumes), Unifeeder accounts for [proportion] of the total volumes at any port in the United Kingdom.

(91) In light of the above, the Commission considers that Unifeeder will likely not have the ability to engage in a customer foreclosure strategy in the United Kingdom post-Transaction.

Incentive to foreclose

(92) The incentive to foreclose depends on the degree to which it is profitable. The merged entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so, for instance, because it allows the merged entity to raise price in the upstream or downstream markets.[87]

(93) As explained in paragraph (85) above, according to DP World, [information relating to DP World’s ports]. It is hence unlikely that post-Transaction the merged entity would try to switch all of Unifeeder's volumes to DP World's terminals. Indeed, in doing so, the merged entity would, on the one hand, risk losing customers of short-sea shipping services, as the latter would be unwilling [information relating to DP World’s ports]. In that regard, with respect to the legs of trade between Germany and the United Kingdom, and between Poland and the United Kingdom, the majority of respondents to the market investigation have indicated that it is relatively easy for customers of short-sea services to switch to

[84] Non-Horizontal Merger Guidelines, paragraph 61.

[85] See Table 2 above.

[86] Unifeeder's short-sea volumes account for [0-5]% of the total port volumes at Felixstowe (which primarily competes with the nearby ports where DP World operates terminals), [0-5]% at Grangemouth, [20-30]% at Immingham, [0-5]% at South Shields/Tyne and [5-10]% at Teesport (Form CO, Annex 9, paragraph 23).

[87] Non-Horizontal Merger Guidelines, paragraph 68.

other short-sea providers, but also to alternative transport services, such as truck, and potentially rail.[88]

(94) On the other hand, the merged entity would have limited benefits (such as increased volumes) on the upstream market, because Unifeeder's short sea volumes are very small.

(95) It is therefore likely that, in pursuing a customer foreclosure strategy in the United Kingdom, the merged entity would incur losses on the downstream market, without corresponding benefit, hence profit, in the upstream market.

(96) The market investigation has confirmed the above conclusions with regard to Unifeeder's lack of ability or incentive to successfully implement a customer foreclosure strategy. The majority of the respondents who have expressed an opinion stated that Unifeeder would not have the ability and the incentive to foreclose DP World's rivals from a sufficient customer base in the EEA, by, for example, sourcing all the container terminal services it needs from DP World and stopping or reducing its purchases of container terminal services from DP World's rivals.[89]

(97) In light of the above, the Commission considers that Unifeeder is unlikely to have an incentive to engage in a customer foreclosure strategy in the United Kingdom post-Transaction.

Overall effect of foreclosure

(98) It is only when a sufficiently large fraction of upstream output is affected by the revenue decreases resulting from the vertical merger that the merger may significantly impede effective competition on the upstream market. If there remain a number of upstream competitors that are not affected, competition from those firms may be sufficient to prevent prices from rising in the upstream market and, consequently, in the downstream market.[90]

(99) The Commission considers that, even Unifeeder's short-sea volumes were re-routed to DP World's terminals in the United Kingdom, this would have a limited impact on the level of use of the capacity of DP World's terminal rivals, hence on their competitiveness and on the competitiveness of short-sea shipping providers competing with Unifeeder.

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[88] Replies to Q1 – Questionnaire to market participants, question 6.

[89] Replies to Q1 – Questionnaire to market participants, question 9. One respondent nevertheless indicated that *"access to Unifeeder's contracts with its competitors would give DP World knowledge of their competitor's pricing as well as commercial terms of business giving them an advantage when competing for contestable business not enjoyed by the competing terminal"* and, as a consequence, the Transaction will have a negative impact (higher prices, lower quality of services, less innovation, etc.) on the provision of container terminal services in the EEA (reply of a market participant to Q1 – Questionnaire to market participants, question 9.2). The Commission considers that, on balance, access of DP World to confidential information held by Unifeeder will not give DP World a sufficient advantage to foreclose competing container terminal operators.

[90] Non-Horizontal Merger Guidelines, paragraph 72.

(100) When asked about the possible impact of the Transaction on their business, the majority of the respondents to the market investigation who have expressed an opinion have stated that they do not foresee any negative or significant impact on their company.[91] Moreover, none of the respondents have raised substantial concerns regarding the overall impact of the Transaction on the provision of container terminal services or container shipping services in the EEA.[92]

(101) In light of the above, the Commission considers that the implementation of a customer foreclosure strategy by Unifeeder in the United Kingdom post-Transaction would likely have no overall negative effect on effective competition.

Conclusion

(102) Based on the above considerations and all evidence available to it, the Commission concludes that a customer foreclosure strategy post-Transaction by Unifeeder in order to exclude DP World's competitors selling container terminal services in Germany, Poland or the United Kingdom is unlikely.

5.5. Assessment of the vertically affected markets in relation to feeder services between Denmark and hub ports, between Sweden and hub ports, between Norway and the Netherlands, between Latvia and the Netherlands, between Lithuania and the Netherlands, and between Egypt and Cyprus

(103) The Commission will assess in this section whether the Transaction could lead to (i) input foreclosure, pursuant to which DP World would foreclose Unifeeder's competitors by restricting access to or deteriorating the quality of the container terminal services that it provides to Unifeeder's competitors at Northern European hub ports, in Norway, Latvia, Lithuania, the Netherlands, or Cyprus; or (ii) customer foreclosure, pursuant to which Unifeeder would foreclose DP World's competitors by sourcing its container terminal services requirements at Northern European hub ports, in Norway, Latvia, Lithuania, the Netherlands, or Cyprus mostly or exclusively from DP World.

5.5.1. Input foreclosure

5.5.1.1. DP World's views

(104) DP World submits that the merged entity does not have the ability or incentive to attempt to restrict or deteriorate services to Unifeeder's feeder rivals at any Northern European hub ports, in Norway, Latvia, Lithuania, the Netherlands, or Cyprus.[93]

[91] Replies to Q1 – Questionnaire to market participants, question 10.

[92] Replies to Q1 – Questionnaire to market participants, question 11.

[93] Form CO, paragraph 180, and Annex 9, paragraphs 31 and 34.

5.5.1.2. The Commission's assessment

(105) First, DP World does not own or operate container terminals in Norway, Latvia or Lithuania.[94] It would therefore be impossible for the merged entity to foreclose access of Unifeeder's rivals to container terminal services in those countries.

(106) In Northern Europe, DP World operates five terminals receiving feeder volumes: (i) Antwerp Gateway (Belgium), (ii) Le Havre (France), (iii) Rotterdam (the Netherlands), (iv) London Gateway (the United Kingdom), and (v) Southampton (the United Kingdom). In Cyprus, DP World operates a terminal at Limassol. In relation to these terminals, DP World's market shares never exceed 30% under any plausible product or market definition, even under the narrowest geographic market definition, that is to say the catchment area comprising national ports only.[95] In that respect, for Northern Europe, DP World faces competition from a number of alternative terminals and ports with spare capacity in Belgium, France, and the Netherlands.[96] For Cyprus, DP World's terminal processes [0-5]% of volumes going to and from Cyprus.[97] Hence, if DP World decided to foreclose Unifeeder's rivals, the latter could and would start procuring container terminal services from those competing terminals.

(107) Therefore, DP World likely lacks market power on the upstream market and would thus likely be unable to engage in an input foreclosure strategy post-Transaction.

(108) Moreover, as explained in paragraph (59) above, at hub ports, DP World does not have a direct relationship with feeder services providers, which limits DP World's ability to favour Unifeeder or to disadvantage third-party feeder operators.[98]

(109) Besides, as explained in paragraphs (62) to (71) above, DP World has likely no incentive to foreclose Unifeeder's rivals.

(110) In addition, according to DP World, a number of liners and feeder providers do not currently call at DP World's terminals. They would therefore not be disadvantaged by an input foreclosure strategy.[99] As a consequence, sufficient competition would remain on the downstream market for feeder services to prevent Unifeeder from raising prices or degrading the quality of its services post-Transaction.

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94 Form CO, Annex 9, paragraph 31. With regard to Egypt, DP World does have a port in Egypt (Sokhna), but it is located on the other side of the Suez Canal. Accordingly, it does not receive feeder volumes travelling between Cyprus and Egypt (Form CO, Annex 9, paragraph 34).

95 See Table 3 above.

96 Form CO, paragraph 160, and Annex 9, paragraph 31.

97 Form CO, Annex 9, paragraph 34.

98 With regard to the possibility for DP World to grant Unifeeder operation priority as referred to in paragraph (57) above, DP World notes that, among the Northern European hub ports where it operates, it faces congestion issues only at Rotterdam and, to a lesser extent, at Antwerp Gateway (Form CO, paragraph (167)).

99 Form CO, paragraph 173, and Annex 9, paragraph 34.

(111) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by DP World in order to exclude Unifeeder's competitors purchasing container terminal services at Northern European hub ports, in Norway, Latvia, Lithuania, the Netherlands, or Cyprus is unlikely.

5.5.2. Customer foreclosure

5.5.2.1. DP World's views

(112) DP World submits that the merged entity does not have the ability or incentive to attempt to foreclose DP World's terminal services rivals by shifting Unifeeder's volumes to DP World's ports.[100]

5.5.2.2. The Commission's assessment

Ability to foreclose

(113) As indicated in paragraph (89) above, in assessing the ability to engage in a customer foreclosure strategy, the Commission takes into account whether there are sufficient operators in the downstream markets to which upstream undertakings could offer their services.[101]

(114) The Commission notes that the Unifeeder's market shares for feeder services remain moderate (between [30-40]% and [40-50]%) on legs of trades between Denmark and hub ports ([30-40]%), Sweden and hub ports ([30-40]%), Norway and the Netherlands ([30-40]%), Latvia and the Netherlands ([40-50]%), Lithuania and the Netherlands ([40-50]%). On the legs of trade from Cyprus to Egypt and from Egypt to Cyprus, Unifeeder's market shares are higher ([60-70]% and [70-80]%, respectively).[102] Nevertheless, Unifeeder's feeder volumes only account for a very small proportion of the container terminal business of DP World's rivals. Based on an assessment by DP World of Unifeeder's volumes at competing terminals located at hub ports in Northern Europe, Unifeeder accounted in 2017 for [10-20]% of the total volumes at all relevant ports.[103] In Cyprus, Unifeeder's volumes account for a small proportion of rival terminal capacity ([10-20]% of the total volumes at the Eurogate terminal).[104]

(115) In addition, as pointed out by DP World, Unifeeder does not have discretion or control over which terminal it calls at: the origin or destination hub port is determined by deep sea liners, not feeder providers, while the origin or destination outport is determined by the freight forwarder or the beneficial cargo owner.[105] In that respect, one respondent to the market investigation confirmed that *"generally the main line operator drives the feeder calls rather than the other*

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[100] Form CO, paragraph (180), and Annex 9, paragraphs (33) and (35).

[101] Non-Horizontal Merger Guidelines, paragraph 61.

[102] See Table 3 above.

[103] Form CO, paragraph 185.

[104] Form CO, Annex 9, paragraph 35.

[105] Form CO, paragraph 187.

way around". Another underlined that Unifeeder does not carry *"enough volumes to dictate where [its] customers should go, especially the deep-sea liners carriers will have enough leverage*."[106]

(116) In light of the above, the Commission considers that Unifeeder is unlikely to have the ability to engage in a customer foreclosure strategy in Belgium, France, the Netherlands, the United Kingdom, or Cyprus post-Transaction.

Incentive to foreclose

(117) As indicated in paragraph (92) above, the incentive to foreclose depends on the degree to which it is profitable.[107]

(118) Should Unifeeder decide to procure container terminal services only from DP World post-Transaction, it is likely that liner shipping companies would simply stop procuring feeder services from Unifeeder and either bring feeder volumes in-house or switch to other feeder providers. This has been confirmed, overall, by the majority of the respondents to the market investigation who have expressed an opinion.[108]

(119) Some respondents nevertheless indicated that it would be relatively difficult for customers of feeder services in the EEA (liner shippers) to switch providers or to bring the feeder volumes in-house on the legs from Denmark to Northern European hub ports and from Sweden to Northern European hub ports. However, the Commission notes that, on the Denmark to/from hub ports trade, Unifeeder competes on the market for feeder services with notably MSC ([20-30]% in 2017) and SeaGo ([10-20]% in 2017). On the Sweden to/from hub ports trade, Unifeeder mainly competes with MSC ([30-40]% in 2017), and X-Press ([10-20]%).[109] In addition, one of the respondents to the market investigation confirmed that post-Transaction there will be enough feeder operators to ensure healthy competition in the market.[110]

(120) It is therefore likely that, in pursuing a customer foreclosure strategy in Belgium, France, the Netherlands, the United Kingdom, or Cyprus, the merged entity would likely incur losses in the downstream market, with no prospect of increasing volumes and revenues in the upstream market.

(121) Moreover, as highlighted in paragraph (96) above, the majority of the respondents to the market investigation who have expressed an opinion stated that Unifeeder would not have the ability and the incentive to foreclose DP World's rivals from a sufficient customer base in the EEA, by, for example, sourcing all the container

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106 Replies to Q1 – Questionnaire to market participants, questions 9 and 9.1.

107 Non-Horizontal Merger Guidelines, paragraph 68.

108 Replies to Q1 – Questionnaire to market participants, question 7.1.

109 Form CO, paragraph 219.

110 Reply of a market participant to Q1 – Questionnaire to market participants, question 10.

terminal services it needs from DP World and stopping or reducing its purchases of container terminal services from DP World's rivals.[111]

(122) In light of the above, the Commission considers that Unifeeder will likely not have an incentive to engage in a customer foreclosure strategy in Belgium, France, the Netherlands, the United Kingdom, or Cyprus post-Transaction.

Overall effect of foreclosure

(123) As indicated in paragraph (98) above, if there remain a number of upstream competitors that are not affected, competition from those firms may be sufficient to prevent prices from rising in the upstream market and, consequently, in the downstream market.[112]

(124) The Commission considers that, even Unifeeder's feeder volumes were re-routed to DP World's terminals in Belgium, France, the Netherlands, the United Kingdom, or Cyprus, this would have a limited impact on the level of use of the capacity of DP World's terminal rivals, hence on their competitiveness and on the competitiveness of feeder providers competing with Unifeeder.

(125) When asked about the possible impact of the Transaction on their business, the majority of the respondents to the market investigation who have expressed an opinion have stated that they do not foresee any negative or significant impact on their company.[113] Moreover, none of the respondents have raised substantial concerns regarding the overall impact of the Transaction on the provision of container terminal services or container shipping services in the EEA.[114]

(126) In light of the above, the Commission considers that the implementation of a customer foreclosure strategy by Unifeeder in Belgium, France, the Netherlands, the United Kingdom, or Cyprus post-Transaction would likely have no overall negative effect on effective competition.

5.6. Conclusion

(127) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to vertical effects.

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[111] Replies to Q1 – Questionnaire to market participants, question 9. One respondent nevertheless indicated that *"access to Unifeeder's contracts with its competitors would give DP World knowledge of their competitor's pricing as well as commercial terms of business giving them an advantage when competing for contestable business not enjoyed by the competing terminal"* and, as a consequence, the Transaction will have a negative impact (higher prices, lower quality of services, less innovation, etc.) on the provision of container terminal services in the EEA (reply of a market participant to Q1 – Questionnaire to market participants, question 9.2). The Commission considers that, on balance, access of DP World to confidential information held by Unifeeder will not give DP World a sufficient advantage to foreclose competing container terminal operators.

[112] Non-Horizontal Merger Guidelines, paragraph 72.

[113] Replies to Q1 – Questionnaire to market participants, question 10.

[114] Replies to Q1 – Questionnaire to market participants, question 11.

6. CONCLUSION

(128) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission