EUROPEAN COMMISSION
DG Competition

Case M.9319 - DP WORLD / P&O GROUP

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2019

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9319 – DP World / P&O Group**
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]

Dear Sir or Madam,

(1) On 17 May 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which DP World FZE (United Arab Emirates),[3] part of the DP World PLC 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 Dubai Ferries Holding FZE ("P&O Group",

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 DP World FZE is wholly owned by DP World PLC, which is an undertaking incorporated in Dubai (United Arab Emirates) and is 80.45% indirectly owned by the Government of Dubai, with the remaining 19.55% shareholding listed on NASDAQ Dubai. DP World PLC regards itself as an economic unit with independent power of decision-making from the rest of other entities ultimately owned by the Government of Dubai.

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United Arab Emirates) by way of a purchase of shares ("the Transaction").[4] DP World and P&O Group are collectively referred to as the "Parties".

1. THE PARTIES

(2) **DP World**, which is majority-owned by the Government of Dubai, is a worldwide operator of marine terminals and other port infrastructure. Its terminals handle general and bulk cargo, roll-on/roll-off and load-on/load-off vessels and passengers. 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. Following its recent acquisition of sole control over Unifeeder[5], DP World is also active in the provision of maritime transportation services for containerised goods in Northern Europe and the Mediterranean.

(3) **P&O Group** is active in the operation of cargo and passenger ferries in the United Kingdom, Ireland and Northern Europe (primarily Benelux & France) through P&O Ferries Holdings Limited ("P&O Ferries"), and the provision of freight forwarding and logistics services on a pan-European basis through P&O Ferrymasters Holdings Limited ("P&O Ferrymasters"). In addition, P&O Ferrymasters has a vertically integrated trailer and intermodal division, which provides road and rail services, both to P&O Ferrymasters' freight forwarding division and third parties.

(4) P&O Group is indirectly owned by the Government of Dubai. In previous decisions[6], the Commission considered DP World as an undertaking independent of other entities ultimately owned by the Government of Dubai. P&O Group therefore represents an undertaking separate from DP World.

2. THE OPERATION

(5) Pursuant to a share purchase agreement signed on 20 February 2019, DP World will purchase the entire issued share capital of P&O Group. As a consequence, DP World will acquire sole control over P&O Group.

(6) In light of the above, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] (DP World: EUR 5 854 million; P&O Group: EUR […] million). Each of them has an EU-wide turnover of more than EUR 250 million (DP World: EUR […] million; P&O Group: EUR […] million),

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4 Publication in the Official Journal of the European Union No C 179, 24.05.2019, p. 20.

5 Case M.9093 – *DP World Investments/Unifeeder*.

6 Cases M.6060 – *Citigroup/Public Sector Pansion Investment Board/DP World D/P World Australia/JV*; M.6913 – *DP World/Goodman/DP World Asia*; M.9093 – *DP World Investments/Unifeeder*.

7 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(8) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(9) DP World and P&O Group are both active on the markets for:

(i) intra-European door-to-door multimodal transport services and

(ii) short-sea container shipping services.

(10) In addition, two vertical relationships arise from the Transaction:

(iii) P&O Ferrymasters' (P&O Group) freight forwarding (downstream) and Unifeeder's (DP World) LoLo short-sea container shipping services (upstream), and

(iv) Unifeeder's (DP World) short-sea container shipping services (downstream) and P&O Ferrymasters' (P&O Group) road and/or rail container transport services (upstream).

4.1. Intra-European door-to-door multimodal transport services

4.1.1. Relevant product market

(11) 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.[8]

(12) The Parties submit that the relevant market is the market for the provision of intra-European door-to-door multimodal transport services. According to the Parties, different modes of transport for intra-European volumes are generally substitutable from the perspective of end customers.[9]

(13) 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.[10]

(14) In the present case, the Commission will assess the effects of the Transaction on the market for intra-European door-to-door multimodal transport services.

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

9 Form CO, paragraph 56.

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

4.1.2. Relevant geographic market

(15) In previous cases, the Commission considered that the market for door-to-door-multimodal transport services could be defined on a trade basis, by aggregating country pairs (e.g. Northern Europe to British Isle), or on a country pair basis, (e.g. Germany to the UK).[11] Ultimately, the Commission left the geographic market definition open.[12]

(16) The Parties consider the geographic scope of the market to be Northern Europe, but acknowledge that the Commission has previously considered narrower market definitions.[13]

(17) For the purpose of this assessment, the exact geographic scope of the market for door-to-door multimodal container transport services can be left open, since 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

(18) Therefore, for the purpose of this decision, the Commission considers the relevant market to be the one for intra-European door-to-door multimodal transport services, to be assessed on the basis of the narrower geographic market, that is, on the country-by-country basis.

4.2. Short-sea container shipping services

4.2.1. Relevant product market

(19) 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.

(20) 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.[14] Should a separate market for shipping services exist, the Commission has concluded that (i) container shipping is distinct from non-containerised shipping (such as bulk shipping), (ii) short-sea container shipping is distinct from long-sea container shipping (i.e. deep-sea shipping), (iii) container liner shipping (scheduled service) is different from non-linear shipping (that is, charter, tramp or specialised transport services).

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11 Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 25 and M.7523 – *CMA CGM/OPDR*, paragraphs 36 and 37.

12 Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 27 and M.7523 – *CMA CGM/OPDR*, paragraph 37.

13 Form CO, paragraph 78.

14 Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 31; M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 48.

(21) The Commission has also considered, but ultimately left open, whether a distinction should be made between reefer (that is, refrigerated) and non-reefer (that is, not refrigerated) services.[15]

(22) The Commission has also to date left open whether the transport of wheeled container cargo on ferries ("RoRo") should be considered as a different product market from the transport of lift on - lift off ("LoLo") container cargo on container vessels.[16]

(23) Finally, the Commission has also considered, but left open, whether feeder services, i.e. transport of cargo between hub ports and (smaller) outports, should be considered as part of the short-sea container transport services market or as a separate product market.[17]

(24) The Parties submit that short-sea container shipping services should be regarded as part of a broader market for intra-European door-to-door multimodal container transport services, encompassing all modes of transport.[18]

(25) However, the Parties argue that, if short-sea container shipping services were to be considered as a separate market, then RoRo and LoLo short-sea container shipping services should be considered as distinct sub-segments. RoRo ferries transport wheeled cargo and the relevant vessels have built-in ramps for the "rolling-on" and "rolling-off" of the cargo. On LoLo ferries, cargo is transported in containers that are loaded and unloaded by cranes. Therefore, LoLo vessels must be called in at terminals with LoLo facilities, primarily container cranes, whereas RoRo terminals do not require such cranes. The Parties therefore conclude that LoLo and RoRo vessels differ in structure and are not substitutable.[19]

(26) Furthermore, the Parties submit that feeder services should be considered as a separate market from the short-sea container shipping market. According to the Parties, feeder services represent a different type of services. They involve the onward transportation of container volumes that originate from outside Europe from a large European hub port to a European outport and vice-versa. Instead, short-sea services relate to the transportation of container volumes that originate within Europe, primarily between smaller European outports. Customers of feeder services also differ from those of short-sea services. Feeder services are provided or sub-contracted by deep-sea liners as part of end-to-end shipping services, whereas short-sea service operators provide the end-to-end shipping service directly to freight forwarders or beneficial cargo owners ("BCOs"). Last, competitors for feeder services largely differ from short-sea service providers.

(27) The Commission notes that, for the purpose of assessing this Transaction, there is no need to distinguish between reefer and non-reefer services, considering that the Transaction does not give rise to horizontal effects. As to the other plausible market

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15 Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 34; M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 52.

16 Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 32; M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 50.

17 Case M.9093 – *DP World Investments/Unifeeder*, paragraph 32.

18 Form CO, paragraph 59.

19 Form CO, paragraphs 62 and 63.

definitions, 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.

4.2.2. Relevant geographic market

(28) In its prior decisional practice, the Commission has considered that the short-sea container shipping market should be segmented on the basis of (i) either single trade or corridor, defined by the range of ports which are served at both ends of the service; or (ii) single leg of trades, hence, direction of the trade flows. It has however left the exact scope of the geographic market open.[20]

(29) The Parties submit that, from a demand-side perspective, the relevant geographic market should be Northern Europe.[21]

(30) For the purpose of this assessment, the exact geographic scope of the market for short-sea container shipping services can be left open, since the Transaction seems unlikely to give rise to serious doubts under any plausible geographic market definition.

4.2.3. Conclusion

(31) Therefore, for the purpose of this decision, the Commission considers the relevant markets are those for RoRo/LoLo short-sea shipping services and for LoLo short-sea shipping services to be assessed either on the basis of the leg of trade or on the basis of the country pair delineation.

4.3. Freight forwarding services

4.3.1. Relevant product market

(32) The Commission has defined the freight forwarding services market in its prior decisional practice as the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs.[22]

(33) The Commission has considered the possibility of sub-segmenting the market into domestic and cross-border freight forwarding and into freight forwarding by air, land and sea.[23]

(34) The Parties do not express any disagreement with the Commission's approach.[24]

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[20] Cases M.9093 – *DP World Investments/Unifeeder*, paragraph 36 and 38; M.7523 – *CMA CGM/OPDR*, paragraphs 53, 60 and 61.

[21] Form CO, paragraph 78.

[22] Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26; and M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 37.

[23] Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 37; and M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 18.

[24] Form CO, paragraph 82.

(35) For the purpose of this assessment, the exact product market definition can be left open since 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) The Commission in its previous decisional practice has considered the geographic scope of the market as either national or wider in scope.[25]

(37) The Parties consider the geographical market to be wider than national in scope, encompassing at least Northern Europe.

(38) For the purpose of this assessment, the exact geographic scope of the market for freight forwarding services can be left open, since the proposed Transaction does not raise serious doubts under any plausible geographic market definition.

4.3.3. Conclusion

(39) Therefore, for the purpose of this decision, the Commission considers the relevant market to be the one for the freight forwarding services further segmented into domestic and cross-border freight forwarding and on the basis of the mode of transport (by air, land and sea) at national level.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal overlaps

(40) The Transaction does not give rise to any horizontally affected markets. The activities of DP World (through Unifeeder) and P&O Group (through P&O Ferries) overlap in the market for containerised transportation services. However, the Parties' combined market share does not exceed 20% on any plausible product and geographic market definition.

5.1.1. Intra-European door-to-door multimodal transport services in Northern Europe

(41) Irrespective of whether the door-to-door multimodal transport services market is defined as regional (such as, Northern Europe) or on the basis of individual legs of trade, the Parties' market shares do not exceed 20%.

(42) There are a multitude of operators which provide containerised transport services in Northern Europe, those active in the transportation of containers by road and rail via the Channel tunnel, as well as those which offer highly frequent RoRo ferry and LoLo short-sea container shipping services, including DFDS, Stena, Cobelfret, A2B, Samskip and Eurotunnel. As acknowledged by the Commission in prior decisions, truck companies indeed represent one of the main competitors of carriers that provide door-to-door multimodal transport services.[26]

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25 Cases M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26; and M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 39.

26 Case M.9016 – *CMA CGM/Container Finance*, paragraphs 104-106.

Table 1: Market shares - Door-to-door multimodal transport services in Northern Europe

Party	Shares by volume (TEU / %)	
DP World (Unifeeder)	[…]	[5-10]%
P&O Group (P&O Ferries)	[…]	[0-5]%
P&O Ferrymasters (road/rail)	[…]	[0-5]%
TOTAL MARKET	[…][27]	100%

5.1.2. *Intra-European door-to-door multimodal transport services based on legs of trade*

(43) The Parties have also provided best estimates of their market shares in the door-to-door multimodal transport services market with respect to the legs of trade where their activities overlap, namely: the UK to the Netherlands (and vice versa); the UK to Belgium (and vice versa); the UK to Germany (and vice versa); the Netherlands to Italy (and vice versa); the Netherlands to Poland (and vice versa); Belgium to Italy (and vice versa); Germany to the Netherlands (and vice versa); the Netherlands to Poland (and vice versa); the United Kingdom to Portugal.

(44) In none of the above legs of trade the Parties' combined market shares exceed 20%.

Table 3: Market shares – Door-to-door multimodal transport on individual legs of trade

Legs of trade	DP World (Unifeeder)	(P&O Ferries	P&O Ferrymasters Road	P&O Ferrymasters Rail
UK to Netherlands	[0-5]%	[0-5]%	[0-5]%	Not Active
Netherlands to UK	[0-5]%	[0-5]%	[0-5]%	Not Active
UK to Belgium	[0-5]%	[5-10]%	[0-5]%	Not Active
Belgium to UK	[0-5]%	[10-20]%[28]	0%[29]	Not Active
UK to Germany	[0-5]%	Not Active	[0-5]%	Not Active
Germany to UK	[0-5]%	Not Active	[0-5]%	Not Active
Netherlands to Italy	[0-5]%	Not Active	[0-5]%	Not Active
Italy to Netherlands	[0-5]%	Not Active	[0-5]%	Not Active

27 DP World (Unifeeder) considers that this is a conservative estimate of total containerised transport in Northern Europe, as it primarily takes account of traffic going to hub ports rather than between smaller ports or between cities where there is no port (i.e., by road or rail).

28 P&O Ferries estimates that it has a share of approximately [10-20]% on a combined RoRo/LoLo market). The Parties do not have reliable data as to the total market of other forms of container transportation (such as road and rail) are brought into the total market, but P&O Ferries' share would in any event be lower than the market shares on a RoRo/LoLo basis.

29 P&O Ferrymasters has confirmed that it does not transport containers between Belgium and the United Kingdom by road and therefore its share on an all container transport market on this route of trade is in fact 0%. The combined market shares of the Parties on an all door-to-door multimodal transport market on the "Belgium to the UK" leg of trade therefore does not exceed [10-20]%.

Legs of trade	DP World (Unifeeder)	(P&O Ferries	P&O Ferrymasters Road	P&O Ferrymasters Rail
Netherlands to Poland	[0-5]%	Not Active	[0-5]%	Not Active
Poland to Netherlands	[0-5]%	Not Active	[0-5]%	Not Active
Belgium to Italy	[0-5]%	Not Active	[0-5]%	Not Active
Italy to Belgium	[0-5]%	Not Active	[0-5]%	Not Active
Germany to Netherlands	[0-5]%	Not Active	[0-5]%	Not Active
Netherlands to Germany	[0-5]%	Not Active	[0-5]%	Not Active
Netherlands to Poland	[0-5]%	Not Active	[0-5]%	Not Active
Poland to Netherlands	[0-5]%	Not Active	[0-5]%	Not Active
UK to Portugal	[0-5]%	Not Active	[0-5]%	Not Active

5.1.3. RoRo/LoLo short-sea container shipping services

(45) As explained in paragraph (25), the Parties do not consider that a combined RoRo/LoLo short-sea shipping services market would be an appropriate market definition.

(46) The Parties do not have reliable total market data with respect to a hypothetical RoRo/LoLo short-sea shipping services market. However, they consider that on such a market their combined shares would not exceed 20% on any of the legs of trade where their activities overlap, namely: the UK to the Netherlands (and vice versa); the UK to Belgium (and vice versa).

Table 4: Market shares –RoRo/LoLo short-sea services on overlapping legs of trade

Legs of trade	DP World (Unifeeder) (Containers)[30]		P&O Ferries (Containers)		Combined market shares	Total market (Containers)
UK to Netherlands	[…]	[0-5]%	[…]	[0-5]%	[0-5]**%**	[…]
Netherlands to UK	[…]	[0-5]%	[…]	[0-5]%	[0-5]**%**	[…]
UK to Belgium	[…]	[0-5]%	[…]	[5-10]%	[5-10]**%**	[…]
Belgium to UK	[…]	[0-5]%	[…]	[10-20]%	[10-20]**%**	[…]

Source: UK Government Statistics (https://www.gov.uk/government/statistical-data-sets/port-and-domestic-waterborne-freight-statistics-port)

5.1.4. LoLo short-sea container shipping services

(47) If the market for containerised transportation was segmented to comprise only LoLo short-sea container shipping services, the horizontal overlap between DP World (through Unifeeder) and P&O Ferries would be almost entirely removed, as P&O

30 As UK Government statistics are not provided in TEUs, DP World (Unifeeder)'s volumes have been converted to containers where 2 TEU equates to approximately 1 container.

Ferries does not generally operate LoLo short-sea container shipping services, with the exception of a single LoLo vessel which operates between Hull (the UK) and Zeebrugge (Belgium).

(48) On a Northern European basis, the Parties estimate that their combined market share is well below 20% (indeed on the Parties' best estimates is approximately [0-5]%). Furthermore, as P&O Ferries only provides LoLo short-sea container shipping services on the route between Hull and Zeebrugge the increment brought about by the Transaction on this market is *de minimis* and would not result in any appreciable impact on competition.

Table 5: Market shares - provision of LoLo short-sea services in Northern Europe (2018)

Parties	**Shares by volume (TEU / %)**	
DP World (Unifeeder)	[…]	[0-5]%
P&O Ferries	[…]	[0-5]%
TOTAL MARKET[31]	[…] [32]	100%

5.2. Vertical relationships

(49) DP World (through Unifeeder) is active in the market for door-to-door multimodal transport services and in the market for short-sea container shipping services, while P&O Ferrymasters is active in the market for freight forwarding services and also provides, via a trailer and intermodal division, certain trucking and rail services both to P&O Ferrymasters' freight forwarding services and to third parties. In this context, the Parties' activities do not overlap. However, the Parties' activities are vertically related. The Transaction creates vertical links between:

(a) DP World operations in the upstream market for door-to-door- multimodal transport services and (LoLo) short-sea container shipping services, on the one hand, and P&O Ferrymasters' operations in the downstream market for freight forwarding services, on the other hand; and

(b) P&O Ferrymasters' operations in the upstream market for road and rail services and DP World's operations in the downstream market for door-to-door multimodal transport services and short-sea container shipping services.

5.2.1. Legal framework

(50) According to the Non-Horizontal Merger Guidelines,[33] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those

31 The total market size is based on DP World (Unifeeder)'s best estimates.

32 DP World (Unifeeder) considers that this is a conservative estimate of LoLo short-sea transportation in Northern Europe, as it primarily takes account of traffic going to hub ports (rather than between smaller ports).

33 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 ("Non-Horizontal Merger Guidelines").

companies' ability and/or incentive to compete.[34] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[35] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[36]

(51) 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).[37] In practice, these factors are often examined together since they are closely intertwined.

5.3. Overview of the vertically affected markets

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

(53) As regards the upstream markets for door-to-door multimodal transport services and (LoLo) short-sea container shipping services, with respect to the downstream market for freight forwarding services, DP World (through Unifeeder) 's market share would exceed 30% only in the market for (LoLo) short-sea container shipping services and only if the geographic scope of such market were defined narrowly on the basis of country pair legs of trade. In such a case, DP World (through Unifeeder)'s market shares would exceed 30% on the following four legs of trade: Germany to the UK ([70-80]%), the UK to Germany ([60-70]%), Poland to the UK ([40-50]%) and the UK to Poland ([40-50]%).

Table 6 – Vertically affected markets
(DP World's market shares exceeding 30%)

Upstream market	DP World's share upstream affected market	P&O Group's share downstream affected markets
		Freight forwarding
LoLo short-sea from Germany to the UK	[70-80]%	[0-5]%
LoLo short-sea from the UK to Germany	[60-70]%	[0-5]%
LoLo short-sea from Poland to the UK	[40-50]%	[0-5]%
LoLo short-sea from the UK to Poland	[40-50]%	[0-5]%

Source: Parties' estimates

34 Non-Horizontal Merger Guidelines, paragraphs 20-29.
35 Non-Horizontal Merger Guidelines, paragraph 31.
36 Non-Horizontal Merger Guidelines, paragraph 58.
37 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

(54) As regards the downstream market for door-to-door multimodal transport services and (LoLo) short-sea container shipping services, with respect to the upstream market for road and rail services, DP World's market share would exceed 30% only if the geographic scope of the market were defined narrowly on the basis of the country pair legs of trade indicated under paragraph (31).

Table 7 – Vertically affected markets
(DP World's market shares exceeding 30%)

Upstream market	P&O Group's share upstream affected market	DP World's share downstream affected markets LoLo short-sea shipping
Road and Rail services	[0-5]%	[70-80]% (from Germany to the UK)
Road and Rail services	[0-5]%	[60-70]% (from the UK to Germany)
Road and Rail services	[0-5]%	[40-50]% (from Poland to the UK)
Road and Rail services	[0-5]%	[40-50]% (from the UK to Poland)

Source: Parties' estimates

5.4. Assessment of the vertically affected markets

<u>DP World (Unifeeder)'s upstream market for (LoLo) short-sea container shipping services and P&O Ferrymasters' downstream market for freight forwarding services</u>

(55) The Commission will assess in this section whether the Transaction would lead to (i) input foreclosure, pursuant to which DP World would foreclose P&O Ferrymasters' competitors by restricting access to, or deteriorating the quality of, the (LoLo) short-sea container shipping services that it provides to P&O Ferrymasters' competitors in Germany, Poland or the United Kingdom; or (ii) customer foreclosure, pursuant to which P&O Group would foreclose DP World's competitors by sourcing its (LoLo) short-sea container shipping services requirements in Germany, Poland or the United Kingdom mostly or exclusively from DP World.

5.4.1. Input foreclosure

DP World's view

(56) DP World argues that, irrespective of its market share, the Transaction would not lead to any foreclosure scenario, as DP World (Unifeeder) would have neither the ability nor the incentive to engage in input foreclosure strategies.[38]

The Commission assessment

(57) 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.[39]

[38] Form CO, paragraphs 118-124.
[39] Non-Horizontal Merger Guidelines, paragraph 35.

(58) The Commission notes that post-Transaction, DP World (Unifeeder)'s market share in Northern Europe for the provision of containerised transport will be less than [5-10]% and less than [0-5]% on a (LoLo) short-sea container shipping basis. Only under the narrowest possible geographic market definition, that is, single legs of trade between country pairs, DP World (Unifeeder)'s market shares would exceed 30% and lead to four affected legs of trade: Germany to the UK ([70-80]%); the UK to Germany ([60-70]%); Poland to the UK ([40-50]%); and the UK to Poland ([40-50]%).

(59) Nevertheless, the following elements question the ability of DP World (Unifeeder)'s to foreclose P&O Ferrymasters' competitors. On the affected routes of trade, numerous competing and attractive providers will be present. More precisely, post-Transaction, on the Germany to the UK (and vice versa) and Poland to the UK (and vice versa) legs of trade short-sea and deep-sea shipping services providers, such as Containerships, DFDS, Hapag Lloyd, Seago, and MSC will be present, as well as RoRo shipping providers such as DFDS and Stena.[40] Therefore, in response to any attempt by DP World (Unifeeder) to increase prices or deteriorate/refuse its services, P&O Ferrymasters' competitors could easily react by shifting their volumes to a competing shipping services provider.

(60) Moreover, official statistics compiled by Eurotunnel show that a certain amount of freight volumes are moved in and out the United Kingdom via the Eurotunnel. Precisely, in 2017 1.63 million trucks, which roughly correspond to 3.26 million TEU, have gone through the Eurotunnel. By comparison, DP World (Unifeeder)'s short-sea shipping activity represents less than [0-5]% of the freight that in 2017 was transported in and out of the United Kingdom by trucks through the Eurotunnel.[41] As a result, short-sea shipping on routes connecting the United Kingdom to the continent does not appear to be an important input for freight forwarding services, in the sense that it can easily be substituted by road and rail transport modes. This is line with the Commission's acknowledgement in prior decisions, that short-sea container shipping services are exposed to competitive pressure from other modes of transport.[42]

(61) The Parties also argue that the affected legs of trade are dominated by RoRo rather than LoLo shipping services, while DP World (Unifeeder) only provides LoLo shipping services. This is confirmed by a report on UK Port Freight Statistics published in 2017 by the Department of Transport, which states that RoRo services are more significant than LoLo services: 100.8 million tonnes of cargo had been shipped to/from UK major ports as RoRo freight, whereas only 64.0 million tonnes had been LoLo freight.[43] Moreover, only 38.7 % of the LoLo freight had been shipped to the EU, while the majority had been shipped to Asia, whereas 97.7 % of the RoRo freight had been shipped to the EU.[44]

(62) In light of the above, the Commission considers that, on balance, DP World has no ability to engage in an input foreclosure strategy in Germany, Poland, and the United Kingdom.

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40 Form CO, paragraph 156.

41 Form CO, paragraphs 122-124.

42 M.9016 – *CMA CGM/Container Finance*, paragraph 106; M.7523 – *CMA CGM/OPDR*, paragraph 91.

43 UK Port Freight Statistics 2017, Department for Transport, 22 August 2018, page 5.

44 UK Port Freight Statistics 2017, Department for Transport, 22 August 2018, page 21.

(63) The incentive to foreclose depends on the degree to which foreclosure would be profitable. In this context, a vertically integrated firm would take into account how its supplies of inputs to downstream competitors would 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' costs further depends on the extent to which downstream demand is likely to be diverted away from the foreclosed rivals and the share of that diverted demand that the downstream division of the integrated firm can capture.[45]

(64) The market investigation in this case has confirmed that freight transport is a dynamic business in the EEA. Asked whether the ratio between ship transport and road/rail transport had changed over the past five years on routes between the United Kingdom and Germany or Poland, a freight forwarder replied that, "[t]*he business of moving loads is always changing and evolving, mainly due to price spiking and customer cost saving requirements*".[46] The market investigation has also confirmed that transport by sea is only one of the ways in which freight is transported from Germany or Poland to the United Kingdom. A customer has explained that, in deciding which means of transport to use to transport containers between the United Kingdom and Germany or Poland, "*the transit time is the key factor* [although] *product type, loading/onload restrictions&destinations all have to be taken into account before decid[ing] on the logistical method*". This operator has further explained that, "*the self-drive trailer [is] the quickest but the most expensive and the container via rail being the cheapest but slowest … This isn't the "absolute law" on pricing and transit as there are a lot of factors / permutations that can affect and/or alter the final choice*".[47]

(65) Moreover, the merged entity would gain limited benefits on the upstream market from a foreclosure strategy of downstream competitors. Given the limited demand represented by P&O Ferrymasters, any refusal by DP World (Unifeeder) to supply short-sea shipping services to P&O Ferrymasters' competitors would indeed lead to a loss of volumes for DP World (Unifeeder) without substantial increase in the volumes treated by P&O Ferrymasters. The Commission therefore finds that, even if DP World were to have the ability to engage in an input foreclosure strategy, it would likely lack the incentive to do so.

(66) Moreover, as the Commission has established in prior decisions, in the intra-European short-sea shipping markets there are no major barriers to entry or expansion.[48] Hence, short-sea shipping services providers active on legs of trade different from the affected ones could easily expand their activities, so as to include the Germany to the UK (and vice-versa), and Poland to the UK (and vice-versa) legs of trade, were DP World (Unifeeder) to decide to start engaging in a foreclosure strategy.

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

46 E-mail of Kuehne + Nagel of 4 June 2019.

47 E-mail of Kuehne + Nagel of 4 June 2019.

48 Cases M.9016 – *CMA CGM/Container Finance*, paragraphs 96-99; M.8330 – *Maersk Line/HSDG*, paragraph 209; M.7523 – *CMA CGM/OPDR*, paragraph 109.

(67) In general, a merger will raise competition concerns due to input foreclosure when it leads to increased prices in the downstream market thereby significantly impeding effective competition.[49] If there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or capable of switching to adequate alternative inputs, competitions from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.[50]

(68) Based on the above considerations and all evidence available to it, the Commission concludes that a post-Transaction input foreclosure strategy by DP World (Unifeeder) in order to exclude P&O Ferrymasters' competitors in Germany, Poland, and the United Kingdom is unlikely.

5.4.2. Customer foreclosure

DP World's view

(69) DP World argues that no customer foreclosure can arise as P&O Ferrymasters is not an important customer of short-sea services. Hence, DP World (Unifeeder)'s short-sea competitors cannot be plausibly foreclosed from significant volumes.[51]

The Commission assessment

(70) Any customer foreclosure strategy of the merged entity would also be unlikely. For customer foreclosure to be a concern, the merger must involve a company which is an important customer with a significant degree of market power in the downstream market. By contrast, if, the existing or future customer base is sufficiently large to turn to independent suppliers, vertical foreclosure concerns are unlikely to arise.[52]

(71) In the present case, the merged entity cannot be considered to be an important customer of (LoLo) short-sea container shipping services. In Northern Europe, P&O Ferrymasters' market share in the freight forwarding services market is [0-5]%, and only […]% of their activity involves a seaward leg. Furthermore, in any single Member State P&O Ferrymasters's market share remains [0-5]%. Even when considering all possible sub-segments of the freight forwarding services market, therefore the domestic and cross-border segments as well as the freight forwarding by air, land and sea segments, P&O Ferrymasters' market shares remain well below [20-30]%.[53] As a consequence, it is unlikely that DP World's competitors could be foreclosed from significant volumes as a result of the Transaction. .

(72) The merged entity would also have no incentive to engage in any foreclosure strategy since such strategy would in all likelihood not be profitable. Should P&O Ferrymasters decide to exclusively procure (LoLo) short-sea container shipping services from DP World (Unifeeder), there would still remain numerous operators in the freight forwarding services market, such as Kuehne+Nagel, Internationale LKW

[49] Non-Horizontal Merger Guidelines, paragraph 47.
[50] Non-Horizontal Merger Guidelines, paragraph 50.
[51] Form CO, paragraphs 128-130.
[52] Non-Horizontal Merger Guidelines, paragraph 58.
[53] Form CO, paragraph 116.

Walter and Erontrans, to which DP World (Unifeeder)'s competitors could offer their shipping services.

(73) For this reason the Commission considers that any foreclosure strategy is unlikely to have an adverse impact on competition. It is indeed 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.[54]

(74) Based on the above considerations, the Commission concludes that a post-Transaction customer foreclosure strategy by P&O Ferrymasters in Germany, Poland and the UK is unlikely.

P&O Ferrymasters' upstream market for road and rail services and DP World (Unifeeder)'s downstream market for (LoLo) short-sea container shipping services

(75) The Commission will assess in this section whether the Transaction could lead to (i) input foreclosure, pursuant to which P&O Ferrymasters would foreclose DP World's competitors by restricting access to, or deteriorating the quality of, its road and rail services in Germany, Poland or the United Kingdom; or (ii) customer foreclosure, pursuant to which DP World would foreclose P&O Ferrymasters' competitors by sourcing its road and rail services requirements in Germany, Poland or the United Kingdom mostly or exclusively from P&O Ferrymasters.

5.4.3. Input foreclosure

DP World's view

(76) DP World argues that no input foreclosure can arise as P&O Ferrymasters is not an important supplier of road and rail services. As a consequence, DP World (Unifeeder)'s short-sea shipping services competitors cannot be plausibly foreclosed from significant volumes.[55]

The Commission assessment

(77) The Commission notes that P&O Ferrymasters provides containerised transportation services by rail on ten legs of trade only four of which - Poland to Netherlands (and vice versa), and Germany to Romania (and vice versa) – relate to routes where Unifeeder's short-sea shipping services can be considered as "affected markets". On each of these routes, P&O Ferrymasters' market share does not exceed [0-5]%. P&O Ferrymasters also provides containerised transport services by road throughout Europe. However, its market share does not exceed [0-5]% on any individual leg of trade.[56] As a result, P&O Ferrymasters' rail and road services cannot be considered to represent an important input for DP World's competitors in the downstream market.

54 Non-Horizontal Merger Guidelines, paragraph 72.
55 Form CO, paragraphs 108-109.
56 Form CO, paragraph 103.

(78) Moreover, P&O Ferrymasters faces competition from a number of rail and road service providers in Germany, Poland and the UK, such as Samskip, ECS2XL, A2B and LKW. Post-Transaction DP World (Unifeeder)'s short-sea shipping competitors could therefore switch to a variety of alternative transportation providers, should P&O Ferrymasters decide to restrict or deteriorate access to its road and rail services. The market investigation has confirmed that transport by rail represents a valid alternative to road transport especially in countries with a good rail network, "… *clients moving from road to container/rail...is ultimately driven by the needs of the client and when they need to receive goods. The rail/container network is very poor in most European countries for the ability to be flexible to the client's need. The main "good" countries are … Belgium, Netherlands, Luxembourg, Cerntral and Northern Germany and Central and Northern Poland*".[57] As a consequence, a foreclosure strategy would simply result in a loss of volumes for P&O Ferrymasters with no likelihood that such losses could be recouped with a increased volumes coming from DP World (Unifeeder). Therefore, P&O Ferrymasters neither appear to have the ability nor the incentive to engage in an input foreclosure strategy.

(79) Based on the above considerations, the Commission concludes that a post-Transaction input foreclosure strategy by P&O Ferrymasters in order to exclude DP World's downstream competitors in Germany, Poland, and the United Kingdom is unlikely.

5.4.4. Customer foreclosure

DP World's view

(80) DP World argues that no customer foreclosure can arise as DP World (Unifeeder) is not an important customer of road and rail services in any of the affected countries. Hence, DP World (Unifeeder)'s short-sea shipping services competitors cannot be plausibly foreclosed from significant volumes.

The Commission assessment

(81) The Commission notes that DP World (Unifeeder) appears to be a small consumer of road and rail transportation services in any of the routes/legs where Unifeeder's services can be considered as "affected countries". In 2018, DP World (Unifeeder) only spent EUR […] on road and rail transportation services (EUR […] in Germany, EUR […] in the UK and EUR […] in Poland). Post-Transaction the merged entity will not represent an important customer of road and rail transportation service providers in any of the affected countries. As a result, P&O Ferrymasters' rivals will not be foreclosed from access to substantial cargo volumes. This is particularly so given that, on the one hand, shipping providers are not considered major consumers of road and rail transportation providers[58], and, on the other hand, P&O Ferrymasters' limited presence (particularly on rail routes) means that it currently lacks the ability to service all of DP World (Unifeeder)'s transportation requirements in the affected countries

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[57] E-mail of Kuehne + Nagel of 4 June 2019.

[58] Cases M.8330 - *Maersk Line/HSDG*, paragraph 264; M.8120 - *Hapag Lloyd/United Arab Shipping Company*, paragraph 145.

(82) Based on the above, it is unlikely that the Transaction will give rise to any significant risk of consumer foreclosure strategies.

5.5. Conglomerate effects

(83) The Transaction may have a conglomerate dimension, as it involves services that belong to related markets (i.e. short-sea container liner shipping services and road and rail services), i.e., products that are purchased by a significant set of consumers for a similar end use (either together in a bundle or separately). The main competition concern raised by conglomerate mergers is foreclosure of competitors. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying of bundling. Those practices are common and often have no anticompetitive consequences. Companies engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways.[59]

The Parties' views

(84) The Parties submit that the Transaction will not lead to any conglomerate anticompetitive effect. Even if in principle post-Transaction DP World could offer an end-to-end transport service to freight forwarders and beneficial cargo owners, it would have no incentive to do so.[60]

The Commission's assessment

(85) Whereas it is acknowledged that conglomerate mergers in the majority of circumstances will not lead to any competition problems, in certain specific cases there may be harm to competition.[61] In order to assess the likelihood of such anticompetitive foreclosure strategy, the Commission will examine whether the merged entity has (i) the ability to foreclose and (ii) the incentives to foreclose. Lastly, the Commission will assess whether such practices may have a significant negative impact on competition and consumers.[62]

(86) The Commission considers that post-Transaction DP World will not be able to engage in a tying/bundling foreclosure strategy. On the one hand, P&O Ferrymasters has limited market presence in the supply of road and rail container transportation services. On the other hand, when organising transportation, freight forwarders have a lot of flexibility as to which road and rail provider to use. Even on a narrow geographic basis there are many alternatives to P&O Ferrymasters' road and rail container transportation services. DP World (Unifeeder)'s shipping services are similarly not essential, as post-Transaction freight forwarders could easily switch to alternative providers which – as seen in paragraph (66) - are readily able to expand their fleet and establish new routes to serve demand.

(87) DP World would not, in any case, have an incentive to engage in tying/bundling strategies. This reflects the fact that freight forwarders have a variety of alternative providers to choose from and, thus, could not be forced to accept a tied/bundled offer

59 Non-Horizontal Merger Guidelines, paragraph 93.
60 Form CO, paragraphs 139-140.
61 Non-Horizontal Merger Guidelines, paragraph 92.
62 Non-Horizontal Merger Guidelines, paragraph 94.

from DP World (Unifeeder). Any attempt to tie the purchase of P&O Ferrymasters' road and rail container transportation services to the supply of DP World (Unifeeder)'s short-sea shipping services would simply result in a loss of volume, as freight forwarders would switch to the service of one of DP World (Unifeeder) competitors.

(88) Finally, any hypothetical bundling/tying foreclosure strategy would have no anticompetitive effects. Rivals' ability to compete for future contracts would not be affected by the potential loss of a few contracts, as a result of some customers accepting the bundled offer. This reflects in particular the fact that most rivals - shipping lines, such as Maersk and CMA CGM - are heavily vertically integrated with interests in inland transportation, such as road and rail as well as terminal/ports and shipping services. The loss of sales in one market would not lead to their exit, given their possibility of compensating that loss with commercial activities in another market. Competitors would remain active on other routes and any attempt by DP World to subsequently raise prices would invite re-entry.

(89) Based on the above considerations and in light of all the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to hypothetical conglomerate effects

6. CONCLUSION

(90) 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