



EUROPEAN COMMISSION
DG Competition

***Case M.9673 - COLUMBIA
THREADNEEDLE
INVESTMENTS /
BRITTANY FERRIES /
CONDOR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/02/2020

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Subject: Case M.9673 – COLUMBIA THREADNEEDLE INVESTMENTS / BRITTANY FERRIES / CONDOR
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 13 January 2020, the European Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation which would result from a proposed transaction by which Columbia Threadneedle Investments (“CTI”, United Kingdom) and B.A.I. Bretagne Angleterre Irlande S.A., trading as Brittany Ferries (“BF”, France) intend to acquire within the meaning of Article 3(1)(b) of that Regulation joint control over MEIF II Channel Islands Transport Holdings Limited and its subsidiaries (“Condor” or “the Target”, Guernsey), by way of purchase of shares (“the Transaction”).

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”).

- (2) CTI, BF and Condor are hereinafter referred to as ‘the Parties’ to the Transaction while CTI and BF are referred to as ‘the Notifying Parties’. The undertaking that would result from the Transaction is referred to as ‘the merged entity’

1. THE PARTIES

- (3) **CTI** is a UK global asset manager, offering a range of strategies and solutions covering global, regional and domestic markets and asset classes. It is the asset management group of Ameriprise Financial, Inc, a leading US-based financial services provider.
- (4) **BF** is a French shipping company, which operates passenger and freight transport services between France and the UK, France and Ireland, UK and Spain, and between Ireland and Spain. It also offers a selection of mini-cruises, holiday options and packages. It does not operate any services to or from the Channel Islands.
- (5) **Condor** is incorporated in Guernsey and operates passenger and freight ferry services between the Channel Islands and the UK, and the Channel Islands and France. Condor is (indirectly) owned by Macquarie European Infrastructure Fund II, a UK company, and belongs to the Macquarie Group.

2. THE OPERATION

- (6) The Transaction is to be achieved by means of the execution of a share and purchase agreement, by which TopCo, a newly incorporated entity, will acquire the entire issued share capital of Condor, the Target.
- (7) The CTI Fund, an investment fund of CTI, will hold around [...] % in TopCo (and ultimately in the Target) while BF will hold approximately [...] % in it. The Notifying Parties’ precise participation in the Target is to be determined on or after closing. While the actual percentage may change, BF will in any event be the minority shareholder in TopCo. Notwithstanding this, pursuant to the Shareholders’ Agreement between the CTI Fund and BF, they will jointly control TopCo because both shareholders’ consent will be needed to i) adopt or approve any variation to the Target’s business plan or annual budget and ii) appoint, terminate or approve a potential variation of the remuneration of the chief executive.
- (8) In light of the above, and taking into account the fact that the operation would result in the acquisition by CTI and BF of joint control, through TopCo, over Condor, the Transaction, in line with paragraphs 24 and 91 of the Commission's Consolidated Jurisdictional Notice³ ("CJN"), would result in a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

³ OJ C 95, 16.4.2008, p.1.

3. UNION DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [CTI: EUR 10 868 million; BF: EUR [...] million; Condor: EUR [...] million]. The aggregate Union-wide turnover of two of the undertakings concerned is more than EUR 250 million [CTI: EUR [...] million; BF: EUR [...] million]. Not each of the Parties achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.⁵
- (10) The Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (11) Both BF and Condor are active in the provision of (passenger and freight) ferry services. BF is also active in the (upstream) market for the provision of stevedoring/container terminal services.

4.1. Ferry Services

- (12) Condor provides both passenger and freight⁶ services between a) the Channel Islands and the UK and b) the Channel Islands and France. BF is also active in maritime transport of freight and passengers as well as tourism; its principal activity is the operation of passenger and freight transport between France and the UK, France and Ireland, UK and Spain and between Ireland and Spain.
- (13) Condor does not operate any UK-France services,⁷ while BF has no operations or activities in, to or from the Channel Islands.

4.1.1. Product market

- (14) In its decision in case M.2838- *P&O Stena Line (Holding) Limited*, the Commission indicated that: *'ferry operators can carry both freight and passengers (passengers accompanying a vehicle or foot passengers) and that most of the ferry operators who offer passenger services operate with so-called multi-purpose vessels carrying both passengers and freight on the same vessel, which allows capacity to be shifted between the two services, depending on the specific demand for a particular sailing.'*⁸
- (15) Both BF and Condor provide both freight and passenger ferry services. With regard to freight ferry services, they are only active in short-sea container liner shipping services. Short-sea container liner shipping involves the provision of regular,

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁵ [...].

⁶ While the services Condor provides fall within 'short sea containerised shipping', the 'containers' involved are trucks which are driven on and off ships.

⁷ For completeness, although Condor does not operate a service between the UK and France, a small number of passengers travel from Portsmouth to St Malo via the Channel Islands. In terms of Condor's market share, it accounts for [0-5]% of passengers on the Portsmouth-St Malo route. See Form CO, paragraph 115 and footnote 18.

⁸ See paragraph 7 of the Commission decision of 7 August 2002.

scheduled intracontinental (usually coastal trade) services for the carriage of cargo by container liner shipping companies.

- (16) This Decision examines each of these possible markets separately below.

Freight (short sea container liner) shipping services

- (17) 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.*”⁹ Should a separate market for shipping services exist, the Commission has considered 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 (that is, deep-sea shipping), (iii) container liner shipping (scheduled service) is different from non-liner shipping (that is, charter, tramp or specialised transport services).¹⁰
- (18) In its prior decisional practice, the Commission has also considered, but ultimately left open, whether a distinction should be made between reefer (that is, refrigerated) and dry or non-reefer (that is, non-refrigerated) services.¹¹
- (19) The Commission has also to date left open whether the transport of wheeled container cargo on ferries (roll on-roll off, “RoRo”) should be considered as a different product market from the transport of lift on - lift off (“LoLo”) container cargo on container vessels.¹²
- (20) Finally, the Commission has also considered, but left open, whether feeder services, that is, 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.¹³

Passenger shipping services

- (21) The Commission has previously defined two separate markets within passenger shipping services, namely the market for business passenger services and the market for tourist passenger services¹⁴ and concluded that there was a separate market for tourist passenger shipping.¹⁵ The Commission has also noted that, for passengers

⁹ See, for instance, case M.9319- *DP World / P&O Group*, paragraph 20; M.9093-*DP World Investments/Unifeeder*, paragraph 31; M. 8330-*Maersk Line/HSDG*, paragraph 19; M.7523-*CMA CGM/OPDR*, paragraph 48.

¹⁰ See, for instance, case M.9319-*DP World/P&O Group*, paragraphs 20 and 27.

¹¹ See, for instance, M. 9319- *DP World/P&O Group*, paragraph 27; M.9093-*DP World Investments/Unifeeder*, paragraph 34.

¹² See, for instance, case M. 9319- *DP World/P&O Group*, paragraph 27; M.9093-*DP World Investments/Unifeeder*, paragraph 35. 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.

¹³ See, for instance, M. 9319- *DP World/P&O Group*, paragraph 27; M.9093-*DP World Investments/Unifeeder*, paragraph 35.

¹⁴ See, for instance, IV/36.253-*P&O Stena Line*, paragraph 22.

¹⁵ See case M. 5756 – *DFDS / Norfolk*, paragraph 23.

travelling by ferry without a car, rail and air transport could be a possible substitute.¹⁶

4.1.1.1. The Notifying Parties' views

- (22) The Notifying Parties submit that, as a general rule, almost all ferry service providers offer passenger and freight services and many will be able to do so on the same vessel.¹⁷ With regard to transportation services to and from the Channel Islands, where the Target is active, they consider that the relevant product markets should be considered broadly (including passenger and freight ferry services in the same market), since a standalone passenger ferry service would be uneconomic and unsustainable.¹⁸
- (23) In any event, the Notifying Parties submit that the exact product market definition (including whether passenger and freight ferry services to the Channel Islands belong to the same market) can be left open in this case, given the lack of overlap between the Parties' activities, since they operate between different destinations.¹⁹
- (24) With particular regard to freight ferry services, the Notifying Parties submit that, as Condor only offers RoRo freight services and carries both refrigerated and non-refrigerated containers on the same vessels, it is not necessary for the Commission to reach any conclusion on the possible segmentations referred to in (17) to (20),
- (25) With particular regard to passenger ferry services, since Condor's passengers are almost exclusively tourists, the Notifying Parties further submit that the distinction between business and tourist passenger services would not make any difference to the assessment in this case.

4.1.1.2. The Commission assessment

- (26) First, with regard to freight ferry services, the Commission notes that there is no need, for the purposes of assessing the Transaction, to distinguish between reefer and non-reefer services or RoRo and LoLo freight services. The Target only offers RoRo freight services and it can offer both reefer and non-reefer services while there is no horizontal overlap arising from the Transaction.
- (27) Similarly, with regard to passengers ferry services, as the majority of the passengers travelling with Condor are tourists, there is no need, for the purposes of assessing the Transaction, to distinguish between tourist and business services.
- (28) In light of the above, the Commission considers that the relevant product market concerns the market for the provision of ferry/shipping services overall and it can be left open (i) whether this includes both passenger and freight ferry services; (ii) whether this includes both RoRo and LoLo services; and (iii) whether this includes both business and tourist passengers, since the Transaction would not raise serious doubts as to its compatibility with the internal market under those alternative product market definitions.

¹⁶ See case M.5756- *DFDS/Norfolk*, paragraph 23.

¹⁷ Form CO, paragraph 72.

¹⁸ Form CO, paragraph 74.

¹⁹ Form CO, paragraphs 73, 74 and 76.

4.1.2. Geographic market

Freight (short-sea container) shipping services

- (29) 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;²⁰ or (ii) single leg of trades, hence, direction of the trade flows. The Commission has, however, left the exact scope of the geographic market definition open.²¹

Passenger shipping services

- (30) The Commission has previously examined the geographic markets for passenger shipping for Short Sea and North Sea routes on the corridors: i) Western Channel, and the Short Sea and ii) the North Sea and the Short Sea. In its decision in case M.2838-*P&O Stena Line (Holding) Limited*, the Commission noted that the Western Channel consists of routes between ports on the south coast of England and ports on the north coast of France.²²

4.1.2.1. The Notifying Parties' views

- (31) The Notifying Parties submit that the relevant geographic markets for *passenger shipping services* in this case are i) between the UK and the Channel Islands and ii) between France and the Channel Islands. With regard to *freight/short-sea container shipping services*, they submit that the relevant geographic markets should be as follows: i) from the UK to the Channel Islands, ii) from the Channel Islands to the UK, iii) from France to the Channel Islands and iv) from the Channel Islands to France.
- (32) The Notifying Parties submit that it is not necessary, for the purposes of this Decision, to determine whether ferry services to and from the Channel Islands to the UK and to and from the Channel Islands to France comprise separate markets or belong to the same market for the provision of passenger and freight services to and from the Channel Islands. They also submit that it is not necessary to consider if separate ports constitute potential separate markets, as this would make minimal (if any) difference to Condor's position.

²⁰ See, for instance, case M.3973-*CMA CGM/Delmas*, where the Commission left open the exact geographic market definition but observed that for both containerised shipping and RoRo shipping the relevant geographic market 'consists of single trades, defined by the range of ports which are served at both ends of the service', paragraphs 8 and 11.

²¹ See, for instance, cases M.9319- *DP World/P&O Group*, paragraph 28; M.9093 – *DP World Investments/Unifeeder*, paragraph 36 and 38; M.8330-*Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraphs 53, 60 and 61.

²² See case M.2838-*P&O Stena Line (Holding) Limited*, paragraph 6. The Short Sea consists of routes across the Short French Sea (Routes between Dover, Folkstone, Ramsgate, Newhaven and Calais, Dieppe, Boulogne, Dunkirk and the Channel Tunnel) and the Belgian Straits (Ramsgate/Ostend) while the North Sea consists of routes between ports on the east coast of England and ports in Belgium and the Netherlands.

4.1.2.2. The Commission assessment

- (33) The Commission notes that, for customers of ferry services seeking a route either from the UK or France to the Channel Islands, suppliers of ferry services on routes that do not go to the Channel Islands are not potential substitutes. Furthermore, in the Commission's understanding, the topography of the Channel Islands is such that vessels that service the cross-Channel routes (that is, between the UK and France) would not in general be used on routes to the Channel Islands as the ports in St Helier (Jersey) and St Peter Port (Guernsey) are subject to tidal movements and are generally shallower than the ports serving the UK-France routes.²³
- (34) Moreover, in the Commission's understanding, the authorisation agreements under which ferry services can be provided to the Channel Islands contain stringent obligations, which effectively mean that only one operator can profitably provide primary ferry services sufficient to ensure security of supply for the Channel Islands. These obligations relate, for instance, to the kind of vessels to be used and the quality of the services to be provided on a long term basis, requiring the provision of both passenger and freight services.²⁴
- (35) Therefore, for the purposes of this decision, and on the basis of its precedents and the arguments put forward by the Parties, the Commission considers that the cross-Channel routes, that is, the routes between UK and France (as serviced by BF) do not belong to the same geographic market as routes to the Channel Islands (serviced by Condor) because of, among others, the lack of demand-side substitutability and the specific topography of the Channel Islands ports (tidal movements and shallowness), which require a specific type of vessels for providing such services.

4.1.3. Conclusion

- (36) For the purposes of this Decision, it is not necessary to conclude on the exact product and geographic definition for the market for the provision of ferry services (freight and passengers), as the Transaction would not raise serious doubts as to its compatibility with the internal market under any alternative market definition.

4.2. Stevedoring services

- (37) BF provides limited²⁵ stevedoring services in several ports, including at the port of Portsmouth where it provides its services to Condor through its subsidiary Portsmouth Handling Services Limited (PHS).

4.2.1. Product market

- (38) Stevedoring services for containers (also called container terminal services) are an input for the provision of (short-sea) container liner shipping services. The provision of container stevedoring services by terminal operators involves the loading,

²³ See Form CO, paragraph 90, and the Parties' reply to question 1 of RFI 1.

²⁴ See Form CO, paragraphs 91, 139 and 147 and the Parties' reply to question 1 of RFI 1.

²⁵ The services offered by BF are limited to only moving unaccompanied RoRo trailers onto ferries and mainly involve self-supply. See Form CO, paragraph 100.

unloading, storage and land-side handling for inland transportation of containerised cargo.²⁶ It relates only to freight and does not concern passenger services.

- (39) The Commission has consistently distinguished the provision of container terminal services to deep-sea container ships from the provision of terminal services to vessels carrying non-containerised cargo (such as bulk, liquid bulk, etc.) and short sea vessels.²⁷
- (40) In previous decisions the Commission has delineated container terminal services by traffic flows, and has considered separate markets for container terminal services for hinterland traffic and container terminal services for transshipment traffic, ultimately leaving the product market definition open.²⁸

4.2.1.1. *The Notifying Parties' views*

- (41) The Parties submit that BF provides stevedoring services that are not as comprehensive as those described in previous Commission decisions. BF only provides a service to unaccompanied trailers and moves trailers (that is, cargo containers on wheels) onto and off ferries where the trailer is unaccompanied (that is, the engine which drove the trailer to the port does not travel).²⁹ Such unaccompanied trailers represent only a small portion of total RoRo freight.³⁰
- (42) The Parties submit that stevedoring is not a core part of BF's offering, as BF only provides stevedoring services as an ancillary service at ports where it operates and typically as self-supply.
- (43) In the Notifying Parties' view, there is no need for the Commission to define the relevant product market for stevedoring services in this case as, on any basis, irrespective of the market definition, the Transaction does not give rise to any foreclosure concerns in the provision of stevedoring services.

4.2.1.2. *The Commission assessment*

- (44) For the purposes of this Decision, the exact delineation of the product market (including the question of whether the market for container terminal services should be segmented between hinterland and transshipment 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.

²⁶ Cases M.9016- *CMA CGM/Container Finance*, paragraph 49; M.7523 – *CMA CGM/OPDR*, paragraph 63; M.5398 – *Hutchison/Evergreen*, paragraph 9.

²⁷ Cases M. 8459-TIL/PSA/PSA DGD, paragraph 15; COMP/JV.55 – *Hutchinson/RCPM/ECM*, paragraph 25; M.5093 – *DP World/Conti7/Rickmers/DP World Breakbulk/JV*, paragraph 13.

²⁸ Cases M.9016- *CMA CGM/Container Finance*, paragraph 51; 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.

²⁹ Form CO, paragraph 96.

³⁰ Form CO, paragraph 97.

4.2.2. *Geographic market*

- (45) In its prior decisional practice, the Commission considered that the relevant geographic dimension of stevedoring services is, in its broadest scope, regional, such as for Northern Europe (for transshipment traffic), or, in its narrowest possible scope, could be delineated based on 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.³¹

4.2.2.1. *The Notifying Parties' views*

- (46) The Notifying Parties indicate that, whilst various plausible geographic markets have been considered, the Commission has never considered a possible market narrower than that of the ports of a Member State. There is therefore no basis, in their view, to consider individual ports as relevant geographic markets.
- (47) The Notifying Parties also submit that it is not necessary to conclude on the precise scope of the relevant geographic market for stevedoring services in this case as, on any plausible basis, the Transaction does not give rise to concerns in the provision of such services. They, however, submit that, in view of BF's activities, it would be reasonable to consider the relevant geographic markets to be i) Southern England and ii) Northern France.

4.2.2.2. *The Commission assessment*

- (48) In its previous decisions concerning 'full service' stevedoring services, the Commission has not concluded on the precise scope of the relevant geographic market and has left the market definition open.
- (49) 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 alternative geographic market definition.
- (50) However, as the Parties have provided information at the level of the port of Portsmouth (where BF provides such services to Condor), the Commission will assess the effects of the Transaction on the overall market for the provision of stevedoring services (without distinction between hinterland and transshipment traffic) at the level of the ports in Southern England and, even though it does not believe that a single port constitutes the appropriate geographic market delineation, also at the narrowest level of the port of Portsmouth. As demonstrated below, the Transaction will not give rise to competition concerns even within this narrow scope comprising only the port of Portsmouth (which is where a vertical relationship arises between the Parties' activities).

³¹ This possible geographic market definition mainly concerned deep-sea ports. See, for example, Cases M.9093-DP *World Investments/Unifeeder*, paragraph 15; M.9016-CMA CGM/Container Finance, paragraph 54; 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 65; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16; and M.5066 – *Eurogate/APMM*, paragraphs 15-23.

4.2.3. Conclusion

- (51) 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/stevedoring services, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any alternative market definition.

5. COMPETITIVE ASSESSMENT

- (52) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

- (53) In this respect, a merger may entail horizontal and/or non- horizontal effects.

- (54) In the present case, the Parties' activities do not give rise to any horizontal overlaps but there is a vertical relationship between BF's stevedoring activities and the activities of the Target.

5.1. Horizontal relationships

- (55) While BF and Condor both provide passenger and freight ferry services, they do not operate on any overlapping routes. As indicated above, Condor only operates ferry services between the UK/France and the Channel Islands,³² while BF does not operate any services to and from the Channel Islands.

- (56) BF owns and operates 13 ships providing passenger and freight ferry services between France and the UK, France and Ireland, UK and Spain and between Ireland and Spain. BF has never operated any services to or from the Channel Islands and, based on the information provided by the Parties, does not intend to do so in the future. On the other hand, Condor has never offered [information provided by the Parties on Condor's strategy] any services other than to and from the Channel Islands.

- (57) As indicated above, the Commission considers that the routes operated by BF and Condor do not (actually or potentially) overlap. Therefore, the Commission considers that the Parties' activities in the provision of ferry services do not overlap. Therefore, the Transaction does not give rise to any horizontal relationships.

5.2. Vertical relationships

- (58) As stated above, the Transaction may give rise to a vertical relationship between BF and the Target.

³² As noted in footnote 7, although Condor does not operate a service between the UK and France, a small number of passengers travel from Portsmouth to St Malo via the Channel Islands. In terms of Condor's market share, it accounts for [0-5]% of passengers on the Portsmouth-St Malo route. Therefore, even if it was considered that Condor and BF operate on overlapping routes, the increment resulting from the Transaction is minimal and will not be further considered in this Decision.

- (59) A vertical merger may result in anti-competitive effects due to foreclosure. Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.³³ Two forms of foreclosure can be distinguished in a vertical relationship: input and customer foreclosure. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).³⁴
- (60) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.³⁵
- (61) 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.³⁶
- (62) For an input or customer foreclosure scenario to raise competition concerns, three cumulative factors need to be taken into account: (i) the ability of the merged entity to engage in foreclosure; (ii) the incentives of the merged entity to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream market.³⁷
- (63) The Transaction gives rise to vertically affected markets due to the provision by BF of stevedoring services which is an input to the provision of ferry services. Condor does not provide any stevedoring services.³⁸
- (64) While BF's stevedoring services are principally 'self-supply', BF also provides such services to a limited number of third parties, including Condor at the Port of Portsmouth ('the port' or 'Portsmouth'). At the port, BF provides these services through its subsidiary, Portsmouth Handling Services Limited ('PHS').³⁹ Therefore,

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. 6 ('Non-Horizontal Guidelines'), paragraphs 29–30.

³⁴ Non-Horizontal Guidelines, paragraphs 29–30.

³⁵ Non-Horizontal Guidelines, paragraph 31.

³⁶ Non-Horizontal Guidelines, paragraph 58.

³⁷ Non-Horizontal Guidelines, paragraphs 32, 59.

³⁸ Condor also owns [...] % of Guernsey Stevedores Limited ("GSL"), which provides stevedoring services in Guernsey. However, the provision of such services is not an affected market as it is outside the EEA. See Form CO, paragraph 50.

³⁹ Around 15 years ago, MMD (now Portico) provided such stevedoring services to Condor; see Form CO, paragraph 103.

as Condor is a customer of PHS at Portsmouth, there is a vertical relationship between BF and Condor.

- (65) This vertical relationship between Condor and BF gives rise to vertically affected markets because Condor accounts for more than 30% of ferry services to and from the Channel Islands. More specifically, Condor’s share of freight ferry services between the UK and the Channel Islands amounted to around [70-80]% in 2018 and its share of freight ferry services between France and the Channel Islands amounted to around [80-90]%.

Table 1: Volume market shares UK-CI freight ferry services

UK-CI freight services	Volume ('000 lane metres)		
	2018	2017	2016
Condor	[...] ([70-80]%)	[...] ([70-80]%)	[...] ([70-80]%)
Channel Seaways	([20-30]%)* combined	([20-30]%)* combined	([20-30]%)* combined
Ronez			

Source: Form CO, paragraph 116.

Table 2: Volume market shares France-CI freight ferry services

France-CI freight services	Volume ('000 lane metres)		
	2018	2017	2016
Condor	[...] ([80-90]%)	[...] ([80-90]%)	[...] ([80-90]%)
Normandy Traders	([10-20]%)	([10-20]%)	([10-20]%)

Source: Form CO, paragraph 118.

- (66) According to the information provided by the Parties, BF accounts for around [10-20]% of stevedoring services at Portsmouth. Condor as a customer of these stevedoring services provided by BF at Portsmouth, accounts for around [>60]% of the demand of these stevedoring services provided by BF at Portsmouth, with the remaining [<40]% being self-supply by BF to its own vessels. In terms of vessel visits, however, Condor only accounts for around [<30]% of BF’s stevedoring business, with self-supply accounting for [>70]%. Furthermore, BF estimates its market shares for stevedoring services in each of Southern England (where it only operates at Portsmouth) and Northern France (where it provides stevedoring services at three ports, that is, Ouistreham, Roscoff and St Malo) to be significantly less than [0-10]%.

- (67) The Commission considers that this vertical relationship is unlikely to have any material impact on the market and is unlikely to raise any foreclosure concerns, as further analysed below.

5.2.1. Input foreclosure

- (68) The Commission considers that the Transaction will not lead to input foreclosure, as the merged entity would not have the ability or incentive post-Transaction not to provide stevedoring services to third parties or to raise the price for stevedoring services to third parties.
- (69) First, Condor has no actual competitors in the (downstream) provision of passenger and freight ferry/shipping services from Portsmouth to the Channel Islands who could potentially require the provision of stevedoring services at Portsmouth. There are no other RoRo ferry operators that sail to the Channel Islands from Portsmouth, so there is no incentive not to provide the types of stevedoring services supplied by PHS to third parties who could be operating on routes that do not compete with Condor.
- (70) More specifically, as the incentive to foreclose depends on the degree to which foreclosure would be profitable, the Commission notes that it would be counter-productive for BF/PHS not to provide stevedoring services to third party (RoRo) freight operators at Portsmouth because it would lose revenues and not gain any additional business by such refusal. BF/PHS already accounts for 100% of RoRo freight to and from the Channel Islands as it provides stevedoring services to Condor.
- (71) Second, probability of entry of a competitor to Condor is low due to (i) the stringent obligations under the Operating Agreement of the Harbour Master of Jersey and the Memorandum of Understanding of the States of Guernsey And (ii) the logistical issues in finding suitable vessels to operate these Ports.⁴⁰
- (72) Regarding the suitable vessels, a new operator would have to overcome the Channel topography issues (with some of the largest tidal movements in the world) and provide the specific vessels required in the agreements. According to the information provided by the Parties, there are only around [<30] vessels in the world capable of operating in the sea conditions around the Channel Islands and there is no other ferry operator who owns a comparable fleet or has sufficient vessels capable to operate this route and service.⁴¹
- (73) Third, the Transaction internalises a contractual relationship but does not change the current competitive situation. No third party could be disadvantaged by the Transaction, since BF/PHS does not currently provide such services to any third party other than Condor. PHS' only customers are BF (that is, self-supply) and Condor to which it provides all its RoRo stevedoring services at Portsmouth. Therefore, the Commission considers, as also confirmed by the market investigation, that the Transaction would not lead to any material changes at Portsmouth.⁴²

⁴⁰ See Form CO, paragraphs 147 and the Parties' reply to question 1 of RFI 1.

⁴¹ See Form CO, paragraphs 90-91 and the Parties' reply to question 1 of RFI 1.

⁴² See, for instance, the minutes of the call with [a market participant].

- (74) Fourth, there are other providers of stevedoring services at Portsmouth such as the Port of Portsmouth itself, through Portico as well as Southern Maritime Services (SMS) or Portsmouth International Port which could provide such stevedoring services to any potential customer at the port. More specifically, Portsmouth International Port already provides RoRo services at the port and all stevedoring service providers currently operating at the port are able to provide both RoRo and LoLo stevedoring services, should this be required in the future. For instance, as BF does not provide a ‘full service’ stevedoring operation and given the limited equipment needed to provide the types of services it performs, these services could be offered by any third party, especially if they already operate at the port. As indicated, Portico already provided such services to Condor in the past and could easily provide such services to any third party using its existing equipment. Similarly, SMS, which services cruise vessels at the port, could provide stevedoring services to move unaccompanied trailers with any engines/trucks it operates.⁴³
- (75) Lastly, given the limited stevedoring services that BF provides to its vessels and to Condor, there are other stevedoring service providers, which operate at other ports in Southern England, which could provide such services to any potential customer at Portsmouth. This could be done by either moving engines/trucks (“tugs” to carry the unaccompanied trailers) from other locations, such as Southampton or by acquiring such tugs (second hand) or renting them which requires very little investment or infrastructure. BF undertakes only a limited number of unaccompanied trailer movements per day; any third party with a small number of tugs/investment could do this.
- (76) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction input (stevedoring services) foreclosure strategy by BF/PHS in order to exclude Condor’s competitors is unlikely.

5.2.2. Customer foreclosure

- (77) 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 in the downstream market.⁴⁴
- (78) In this case, BF/PHS is already the only supplier of stevedoring services to Condor at Portsmouth; the Transaction would, therefore, not lead to any material changes at the port and there can be no customer foreclosure as competing providers of stevedoring services are not affected by the Transaction. The Transaction will simply result in the internalisation of a pre-existing contract-based situation. This was also confirmed by the authorities at the Port of Portsmouth.⁴⁵ Therefore, the Transaction would not raise any customer foreclosure concerns for providers of the (upstream) stevedoring services.

⁴³ See the Parties’ reply to question 3 of RFI 1 as well as the minutes of the call with [a market participant].

⁴⁴ Non-Horizontal Merger Guidelines, paragraph 58.

⁴⁵ See, among others, the minutes of the call with [a market participant].

5.2.3. *Conclusion*

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

6. CONCLUSION

- (80) 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
Executive Vice-President*