EUROPEAN COMMISSION
DG Competition

Case M.9853 - HGK / IMPERIAL SHIPPING GROUP

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/06/2020

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EUROPEAN COMMISSION

Brussels, 29.06.2020
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.9853 – HGK / IMPERIAL SHIPPING 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 20 May 2020**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which[3] Häfen und Güterverkehr Köln AG ("HGK", Germany), controlled by Stadtwerke Köln GmbH (Germany), acquires control of the European inland shipping business currently owned by Imperial Mobility International B.V. & Co. KG, Druten and its subsidiaries (the sellers will be referred to as "Imperial Group", the Netherlands) (hereafter: the "Transaction").

(2) The Transaction will consist of the acquisition of sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, by way of purchase of 100% of the shares in the following entities (including their respective affiliates): Imperial Shipping

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

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

3 Publication in the Official Journal of the European Union No C 200, 15.06.2020, p. 10.

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Rotterdam B.V.(the Netherlands), Wijnhoff & Van Gulpen & Larsen B.V.(the Netherlands), Imperial Logistics SARL (France), Imperial Gas Barging GmbH (Germany), and Imperial Shipping Holding GmbH, (Germany). These entities will be jointly referred to as 'Imperial Shipping Group', 'Imperial' or 'the Target' (the Netherlands, Germany and France).

1. THE PARTIES

(3) HGK, which is solely controlled by Stadtwerke Köln GmbH ("SWK", Germany) and therefore ultimately by the city of Cologne, is active in the areas of inland waterway transportation, transhipment/stevedoring services at inland terminals, inland port infrastructure, rail transportation, rail infrastructure, freight forwarding and logistics services and short sea shipping in Germany with a focus on Cologne and the Rhine area.

(4) The Target is currently controlled by the Imperial Group and is active in inland navigation, transhipment/stevedoring services, storage, transport logistics, ships clearance and trade in vehicles, servicing customers in Germany, Benelux and Northeast France.

(5) HGK will also be referred to as the 'Notifying Party' and together with Imperial as 'the Parties' or the 'merged entity'.

2. THE OPERATION

(6) As part of a bidding process, HGK submitted a binding offer on 31 March 2020 to acquire 100% of the shares in the Target. On 30 April, the Parties concluded a Framework Agreement on the Sale and Transfer of the Waterway Transportation Business of the Imperial Group ("Framework Agreement").[4] Through the Framework Agreement, HGK will acquire 100% of the shares in the Target.

(7) In light of the above, post-Transaction, HGK will have sole control over the Target within the meaning of Article 3(1)(b) EUMR.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] in 2019 [HGK: EUR […] million, Imperial: EUR […] million]. Each of them has an EU-wide turnover in excess of EUR 250 million [HGK: EUR […] million, Imperial: EUR […] million], but they do not each achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.[6]

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

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[4] The Parties intend to complete the proposed merger by the end of June 2020 at the latest.

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

[6] While HGK achieved more than two thirds of its Union wide turnover in Germany, the Target did not.

4. MARKET DEFINITION

(10) Both HGK and the Target are active in the provision of freight transport by inland waterway, stevedoring services and the market for short-sea shipping.[7] In addition, HGK is also active in the market for rail freight transport and inland port infrastructure (public ports).

4.1. Inland waterway freight transport

4.1.1. Product market

(11) In previous cases, the Commission found that not all modes of freight transport, that is, by air, land and sea are generally substitutable with each other in view of the geographic situation of the customer as well as the specific characteristics of the goods transported[8] and that the different modes of freight transport – by air, land and sea could be distinguished, but the Commission did not take a final position on this.[9]

(12) Furthermore, the Commission considered that transport by land[10] may be further segmented into transport by rail, road, and inland waterways while, however, leaving the market definition open.[11]

(13) Interchangeability among rail, road and inland waterways depends on the good transported. While it is technically possible to transport almost all goods on either mode, barging on inland waterways is generally the cheapest way, in particular for the mass transport of dry bulk goods and when the final customer is located on a river/canal or close by. In those latter cases it is not uncommon that larger customers of coal, iron ore or coke build their entire logistics chain around barging, and often own barges and harbour infrastructure.[12]

(14) This view, that interchangeability depends on the type of goods transported and that barging on inland waterways is in general the cheapest way, has been generally confirmed by the market investigation. For instance, one of the Parties' customers indicated that while, in their view, freight transport by rail would be an alternative to dry bulk barge transport from, for instance, the port of Rotterdam to Neuss in Germany, a level of investment would be needed to make this possible.[13] A competitor considered that dry bulk inland waterways shipping is in competition with train-transport and that, in certain industry branches in particular (for instance, chemical industry, energy, steel and construction), both transport modes are strong and stand in direct competition to each other.[14] On the other hand, another

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7 The Parties' combined market share in short sea shipping is only around [0-5]%. Consequently, this market will not be further discussed in this decision.

8 See M.4294 Arcelor/SNCF/CFL Cargo; M.3150 SNCF/Trenitalia; M.5096 RCA/MAV Cargo.

9 See, for instance, cases M.6425- Imperial Mobility/Lehnkering; M.4294 – Arcelor/SNCF/CFL Cargo; M.3150 – SNCF/Trenitalia; M.5096 – *RCA/MAV Cargo*; M.5480 – *Deutsche Bahn/PCC Logistics* para 18-19 and 22; M.4746 – *Deutsche Bahn/English Welsh & Scottish Railway Holdings (EWS)* para. 13.

10 The market for inland transportation was defined as covering the physical movement of goods by using own (i.e. owned or leased) equipment; see M.8120 – Hapag-Lloyd/UASC para. 29.

11 See M.5480 *Deutsche Bahn/PCC Logistics*, para 22; M.4746 – *Deutsche Bahn/English Welsh & Scottish Railway Holdings (EWS)* para. 17.

12 See minutes of the call of 8 June 2020 with a market participant.

13 See minutes of the call of 28 May with a market participant.

14 See minutes of the call of 26 May with a market participant .

competitor indicated that, while shifting between transport modes for container transport would be relatively easy, this would be more difficult for dry bulk transport, as whole supply chains are often built for one specific modality. In its view, even though switching between modes of transport happens with regard to dry bulk to a limited extent, inland waterways transport would still be the most cost-effective way of transporting dry bulk goods in the Rhine area.[15]

(15) In light of the results of the market investigation and in line with previous practice, the Commission considers that it is not necessary to conclude on whether transport by inland waterways and rail form part of the same market. The Parties are mainly active in the inland waterways transport market while only HGK is active in rail freight transport as well where it is a small player compared to the incumbent Deutsche Bahn.[16] Therefore, for the purposes of this Decision, the Commission will assess the market for inland waterways transport, as the Transaction would not raise serious doubts as to its compatibility with the internal market whether rail and road were included or not.

(16) As regards the market for *transport by inland waterways*, the Commission considered in previous decisions that there were differences in the boats and handling of boats transporting (i) dry bulk products, (ii) liquids and (iii) containers.[17]

(17) The Commission found that the transport of dry bulk products on ships on inland waterways constituted a separate product market.[18] Its earlier market investigations have also shown that barges and boats used for the transport of liquid bulk products cannot easily transport dry bulk products[19] and that the majority of transport suppliers are active in either the dry bulk or liquid field.[20] This distinction was also confirmed by the market investigation in this case.[21]

(18) As HGK does not transport liquid bulk and there are no affected markets on the market for transporting containers[22] by inland waterways, this Decision will assess the market for dry bulk transport only and the markets for liquid bulk and container transport will not be considered further in this Decision.

15 See minutes of the call of 03 June 2020 with a market participant.

16 In a market including both rail and inland waterways transport, the Parties' combined market share would be around [5-10]%. See Form CO, para 278.

17 IV/897 *Stinnes/Haniel Reederei*, para 20; See also M.4082 – *Cargill/Pagnan II*, para 12 where the market investigation also showed that barges and boats used for the transport of liquid bulk products cannot easily transport dry bulk products; M.6425 – *Imperial Mobility/Lehnkering* para. 10.

18 See IV/897 – *Stinnes / Haniel Reederei*, para 20.

19 See COMP/M.4082 – *Cargill/Pagnan II*, para 12.

20 See case M.6425 - *Imperial Mobility/Lehnkering* para 11.

21 See, for instance, minutes of the calls of 26 May and 3 June 2020 with market participants.

22 HGK is active in this market through neska. According to the Parties, the Target's market share is very small and it is below [0-5]% in this market. This was confirmed by one market participant as well, see minutes of the call of 26 May 2020 with a market participant. See Form CO, para 125. Therefore, the market for container transport is not relevant and will not be further considered in this Decision in the assessment of horizontal or vertical effects.

Inland waterway transport of dry bulk products

(19) The Commission has so far left open the question of whether the dry bulk products market should be further subdivided between the various transported goods like for example coal, ore, sand, steel etc. The Commission's market investigation in previous cases confirmed that there are generally no dedicated ships for certain products and that shippers also switch between transporting different products.[23]

(20) The Parties submit that from the supply-side perspective of shipping services providers, dry bulk cargo vessels can be used for all such goods, subject to cleaning prior to usage. They argue that cleaning can be done with relatively low effort and expense.[24] In any case, the Parties provided market share information also based on different dry bulk product categories.[25] The Commission's market investigation in this case also confirmed that it is possible, following the necessary cleaning, to use the same barges to transport different types of dry bulk products,[26] that there are generally no dedicated ships for certain products and that shippers also switch between transporting different products.[27] This allows transport companies to switch between different dry bulk products for a transport upstream and back downstream in order to maximize their supply chain efficiency. Which ship is used for which transport and for which dry bulk product normally depends on the customers' demands.[28] However, some competitors also indicated that larger vessels will be used more frequently for the transport of coal, coke and construction materials and may not be particularly suitable to transport grain/feed, for instance.[29]

(21) For the purposes of this Decision, the Commission considers that the precise definition of the product market for the transport of dry bulk products on inland waterways can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market even if the relevant product market were narrower, based on the type of products transported.

4.1.2. Geographic market

(22) The Commission has considered in previous decisions that the geographic scope of the market for *inland waterway freight transport* should take into account the different trades or navigation corridors.

(23) In its decision in case M.1621 - *Pakhoed/van Ommeren*, the Commission considered the Rhine delta (the Netherlands and Belgium), Germany and Switzerland as the appropriate geographic market and considered that inland waterway transport is done on a limited route in order to supply clients along this route.

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23 See above, case M.6425 - *Imperial Mobility/Lehnkering*, paras 12-13.

24 See Form CO, para 117.

25 See under section 5.1.1.3 of this Decision.

26 See minutes of the call of 27 May 2020 with a market participant where it was indicated that barges used for the transport of coal can also be used for iron ore, steel and other types of dry bulk.

27 See for instance the minutes of the call of 26 May 2020 with a market participant, confirming that every dry bulk ship can in general be used for every dry bulk goods transport. For example, a ship that has transported coal before can be cleaned and used to transport grain, if certain technical requirements are met.

28 See minutes of the call of 3 June 2020 with a market participant.

29 See minutes of the calls of 26, May and 3 June 2020 with market participants.

(24) In case M.6425-*Imperial Mobility/Lehnkering*,[30] the notifying party submitted that the relevant geographic markets for the transport of both dry bulk products and liquid chemicals are the respective routes for inland waterways, namely the Rhine area (from the Rhine Delta in the Netherlands/Belgium to Basle in Switzerland), the northern German rivers and canals and the Main/Danube area. In that case, the Commission findings confirmed that there are differences in the types of vessels that can be used on these corridors. The market investigation showed that for competitors a crucial restraint in offering freight transport services also beyond their respective territories lies in the size of the barges. In particular, most of the vessels navigating on the Rhine are too large for the smaller canals and rivers of the northern area. However, the precise geographic market definition was left open in that case.

(25) The Parties in the present case took guidance from these decisions and agree that the geographic market definition for inland waterways freight transport should comprise the entire Rhine basin. Given the communitarian nature of the Rhine,[31] the Parties submit that national segmentation would be unreasonable and have provided data replicating the geographic market considered in the Commission precedents above,[32] including market share data for the Rhine basin only[33] and for a broader market including Germany, Belgium and the Netherlands.[34]

(26) The Parties also note that there are some differences as to which type of ships may navigate the Rhine and its tributaries as well as the Western German canal system. The Rhine and its tributaries allow for large ships – although the Rhine allows for the largest types of ships. On the Dortmund-Ems-Kanal, however, the size of the ships is smaller and their capacity is lower; hence, a larger cargo cannot be continuously transported from the Rhine to the Middle Lands. For dry bulk cargo in particular, given that transport capacity may be adjusted by coupling non-motorized

[30] See paras 23-25 of the decision. In case M.1621-*Pakhoed/van Ommeren*, the Commission considered the Rhine delta (the Netherlands and Belgium), Germany and Switzerland as the appropriate geographic market.

[31] The Parties refer to the international nature of the Rhine, upon which the principles of the freedom of navigation, unity of the (regulatory) scheme and of equal treatment are applicable. Under such principles, (i) navigation on the Rhine is open to all, subject to observance of the regulations which have been adopted for the purpose of maintaining general safety; (ii) the rules on traffic on the Rhine are contained in uniform regulations that are applicable on the entire length of the river (although this does not preclude specific provisions for certain sectors) and (iii) all the stakeholders in navigation on the Rhine must be treated equally, regardless of their nationality. See reply to Request for information ('RFI') 6, received on 24 June 2020.

[32] Further areas of (minor) activities of the parties are the area of the North German rivers and canals (Mittellandkanal, Weser, Elbe as well as the waterways in Berlin, Brandenburg and Mecklenburg-Vorpommern) and the Main-Danube area. However, the Parties' market shares in these regions are well below 20% in any conceivable market definition and these navigation corridors will not be considered further in this note.

[33] Because of the different ways that statistics are gathered and compiled by national (or regional) offices, in order to estimate the market size of the Rhine, the Parties summed the figures provided by the statistics offices of Belgium (Wallonia and Flanders), the Netherlands and Germany. To carve out the proportions relating to other German inland waterways, the parties reduced the German statistics to 83%, which is how much the CCNR considers the Rhine to weigh in the overall German figures. Switzerland was disregarded due to its tangential contact with the Rhine and, for the fact that its inland waterway statistics would necessarily also be accounted for in those of other countries. Luxembourg was disregarded given that, aside from its smaller figures, much of its presence in Rhine navigation occurs through the Mosel, which is already included in the Parties' figures.

[34] The Parties note that the focus on Belgium, Netherlands and Germany, is in alignment with the methodology often implemented by the CCNR in its Market Observation studies.

barges together, traffic restrictions are determined by the size/tonnage of the cargo being transported at once, more than the structure or build of the vessels. Some shipping companies offer inland waterway transport from the Rhine delta all the way to Romania – the capacity, in these cases, being determined by the limits of the stricter corridors, that is, waterways/canals involved.

(27) Market participants also noted during the market investigation that the waterways used for the transport will determine the size of the vessel that can be used. In particular, any kind of vessel can be used along the river Rhine, while smaller rivers or canals would require smaller vessels.[35]

(28) The market investigation confirmed that the geographic market comprises at least the Rhine basin. For instance, according to one market participant, the Parties are active in the Rhine basin[36] and another market participant noted that the geographic market is the Rhine-Area from the Amsterdam Rotterdam Antwerp (ARA) ports (Netherlands and Belgium) until Cologne, including the canal system from the Rhine until Dortmund.[37] Another market participant considered the entire north-western European waterways to be one geographic market, as every vessel can travel almost anywhere in this range without problem and developments within some of these waterways (for instance, low water levels in the Rhine) may also affect the market in other waterways (for instance, in Belgium).[38]

(29) For the purposes of this Decision, the Commission will assess the Transaction on the basis of a geographic market comprising the Rhine basin as well as a broader market including Germany, Belgium and the Netherlands. It considers that the precise geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market on all alternatives considered.

4.1.3. Conclusion on product and geographic market

(30) For the purposes of this Decision, the Commission considers that it is not necessary to conclude on the exact product and geographic definition for the market for the provision of freight transport by inland waterways, as the Transaction would not raise serious doubts as to its compatibility with the internal market including when only the Rhine basin is considered and only the market for inland waterway transport of coal and fuels, for instance, or inland waterway transport of agricultural and forestry products within that area is considered.

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35 See minutes of the call of 28 May and 3 June 2020 with market participants.

36 See for instance minutes of the call of 2 June 2020 with a market participant.

37 See minutes of the call with of 26 May with a market participant. One of the Parties’ customers also confirmed that the geographic market includes the ARA ports and the Rhineland range within which the Parties provide their services; See minutes of the call of 27 May 2020.

38 See minutes of the call of 3 June 2020 with a market participant. .

4.2. Stevedoring services

4.2.1. Product market

(31) The market for stevedoring services involves the loading, unloading, storage and land-side handling of cargo.[39] It is an input for the provision of shipping services and is therefore upstream to these services.

(32) The Commission has in the past considered that the market for stevedoring services could be further subdivided according to the three main types of cargo: (i) containers, (ii) dry bulk and (iii) liquid bulk goods.[40] A previous decision regarding stevedoring services at sea ports also made reference to indications that the market for stevedoring services for dry bulk cargo could be further subdivided according to the type of commodity handled while ultimately leaving the market definition open.[41] A further distinction which has been made by the Commission concerns the split between stevedoring services for hinterland traffic as opposed to stevedoring services for transhipment traffic.[42] It has, however, left the precise market definition open.

(33) As there are no overlaps between the Parties' activities with respect to containers, the Parties have provided market shares regarding stevedoring services based on the market volume of all bulk goods (dry and liquid) and dry bulk goods, but excluding containers.

(34) With regard to the possible distinction between stevedoring services for hinterland and transhipment traffic, the Parties, similarly to the notifying party in case M.6396-*Rhenus/Wincanton*,[43] submit that the distinction does not play any role in this case. The Parties submit that, with respect to inland waterways transportation, in contrast to deep-sea traffic, it does not make any difference which further transport mode is used (rail or truck), since the material is the same (provided there is a road and rail connection to the respective inland port). In addition, there is also no transhipment from one inland barge to another (like in deep-sea ports regarding transhipment services). Finally, the Parties note that the Target is not active in the transportation of containers, whereas multimodal transhipment is only possible for container transport.

(35) The market investigation confirmed the Parties' views that, for inland waterways transport (and therefore for inland ports), the distinction between hinterland and transhipment stevedoring services may not be applicable.[44] Consequently, in this Decision and with regard to stevedoring services provided in inland ports, the

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39 So far only defined for container terminal services, see, e.g., M.5398 – *Hutchison/Evergreen*, paras 9-10; M.7523 – *CMA CGM/OPDR*, para. 63.

40 See Case No JV.55 *Hutchison/RCPM/ECT*; M.3884 – *ADM Poland/Cefetra/BTZ*, para 11 with reference to sea ports; M.6425- *Imperial Mobility/Lehnkering*, para 21.

41 See M.3884 – *ADM Poland/Cefetra/BTZ* with reference to sea ports in Poland, paras 11 and 13.

42 See case No JV.55 *Hutchison/RCPM/ECT*; M.3576 – *ECT/PONL/Euromax*. In case M.6396 - *Rhenus/Wincanton*, para 37, the Notifying Party submitted that a distinction between terminal services for hinterland and transhipment traffic is not applicable, as the same technique is used for both types of cargo handling.

43 See M.6396- *Rhenus/Wincanton*, para 37.

44 See minutes of the calls of 26 May and 3 June 2020 with market participants.

Commission will assess these services as one market and will refer to it as transhipment/stevedoring services.

(36) During the market investigation, one market participant indicated that the market for dry bulk stevedoring/transhipment in inland ports should be subdivided into segments (various types of dry bulk like agribulk, fertilizers, salt, coal, raw construction materials); in their view, while every dry bulk ship can be used to transport every dry bulk product, not every dry bulk can be transshipped at every transshipment location/inland port due to the different characteristics of various types of dry bulk. For instance, coal cannot be handled by the same (kind of) crane, at the same transshipment location as grain.[45]

(37) With respect to a further subdivision of stevedoring/transhipment services for dry bulk, the Parties submit that generally the same kind of crane can be used for (un-)loading a vessel and that the transhipment service providers can offer the transhipment of a large variety of (dry bulk) goods and could easily expand their services to further goods. They note that, in principle, all bulk goods that can be grabbed *(greiffähig*) can be handled with the same technical equipment. Transhipment cranes or systems are generally applicable universally for different goods, with the exception of container cranes. In general, any bulk material (*Schüttgut*) or general cargo (*Stückgut*) can be handled with these systems (only limited by the lifting capacity of the transhipment facility). Sometimes, cleaning is necessary between the transhipment of various goods (e.g. food could not be transhipped directly after coal has been transhipped). Alternatively, the grippers of the crane (*Greifer*) can be changed, for example, so that each gripper can be used for one product group only. This means that classic bulk handling terminals can actually cover a wide range of different products. The same generally applies to the (open) storage capacities. Consequently, there are no technical restrictions to the provision of these services between different products. In some case, providers would need to take into consideration additional elements based on approval requirements or specific product characteristics. For instance, depending on the facility, only certain types of goods are permitted by the licensing regulations, so there may be restrictions on the variety of goods.[46]

(38) With regard to a further subdivision of the stevedoring services market for inland ports according to the type of dry bulk product handled, the Commission considers that, while some adjustments may need to be made to the cranes used, these adjustments do not require a big investment on the part of the stevedoring services provider, and that classic bulk handling terminals can actually cover a wide range of different products at the same time and expand their services to other goods, once obtaining the necessary license for certain products. Furthermore, the Commission notes that during the market investigation the rest of the market participants did not raise any issues with regard to the need to further sub-divide the stevedoring services market for inland ports.

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45 See additional information attached to the minutes of the call of 3 June 2020 with a market participant.

46 See reply to RFI 4 received on 19 June 2020. The Parties note that transhipment service providers do not always have a permit under Federal Immission Control Act (BImSchG) and/or water law for every conceivable cargo to be handled/stored. Essential aspects in this respect are, for example, the dust content of the material or waste regulations.

(39) The Parties also submit that a distinction should be drawn between stevedoring services provided in public inland ports and those provided in private inland ports only. Depending on whether public and private ports are considered to form a single market or not, the horizontal overlaps between the Parties vary.[47]

(40) The market investigation in this case suggested that when private companies require stevedoring services to be provided at their own private ports/terminals, they would often organise an open tender and discuss with several providers and have recourse to the same operators providing stevedoring services in public inland ports as well.[48] Providers of stevedoring services would also not appear to differentiate between stevedoring services provided in public or private ports.[49]

(41) The Commission considers that, for the purposes of this Decision, the product market definition, including whether stevedoring services for public and private ports belong to the same market or whether stevedoring services should be subdivided in hinterland or transhipment traffic or according to the type of cargo and/or type of commodity handled, 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.

4.2.2. Geographic market

(42) The geographic scope for terminal cargo handling services is determined by the distance between the terminal and the final customers (depending on the direction of the transport, as recipient or sender of the goods).[50] Depending on the goods to be transhipped, this can mean cross-border regions such as Northern Europe (for transhipment traffic), but also individual cross-border areas such as Hamburg-Antwerp (for hinterland traffic, e.g. by inland waterway, truck or train) or a segmentation at national level only.[51]

(43) The Commission has assessed previous transactions considering the geographic market for container terminal services servicing waterway transport between the Amsterdam Rotterdam Antwerp (ARA) ports and the German Rhine area. In previous cases, most respondents to the market investigation had indicated that a 50km distance up and down the Rhine of a particular terminal would not prevent them from switching to another terminal.[52] The Commission has, however, in previous decisions left open the precise definition of the geographic market, including whether the geographic scope of terminal services covers the entire Rhine or only ports of a certain distance to each other, such as for instance the inland ports between Mainz and Karlsruhe, including Frankfurt and Aschaffenburg.[53]

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47 See Form CO, para. 6 and paras 132-139.

48 See the minutes of the calls of 27 May, 28 May and 8 June 2020 with market participants.

49 See minutes of the call of 26 May 2020 with a market participant.

50 See M.2632 - *Deutsche Bahn/ECT/United Deposits/JV,* para 19.

51 See cases M.7523 – *CMA CGM/OPDR*, para. 65; M.3973 – *CMA CGM/DELMAS*, para 12.

52 See M.6396 - *Rhenus/Wincanton,* para 44.

53 See M.6396 - *Rhenus/Wincanton*, para 45 in which the Notifying Party claimed that ports within a radius of 50 km of each other would be interchangeable.

(44) In previous decisions,[54] the Commission also assumed, with regard to transhipment services, that the geographic market for the transhipment of containers for hinterland transport by inland waterway between the ports of Amsterdam, Rotterdam and Antwerp (ARA) and the Rhine/Ruhr area includes all container terminals in the area between Nijmegen and Cologne but left open whether this would be limited to a radius between 100 and 200 km for each port.[55]

(45) The Parties generally agree with the above delineation, which they believe should also apply to the transhipment of other goods. They submit that much of the dry bulk cargo that is transported is delivered, and unloaded, directly at customers' facilities. In these cases, customers choose providers by the bottom-line prices offered (including transport and cargo handling services). They also submit that at least the port of Bonn should be included in this range as it is HGK's immediate competitor only around 30 km south of its port in Cologne.[56]

(46) In line with its previous practice, the Commission will assess the transaction considering a geographic market for stevedoring services servicing waterway transport between Nijmegen and Cologne. As the Parties have provided market share data both for a market including Bonn and without it, the Commission will also assess the Transaction considering a Nijmegen-Bonn range as well.

4.2.3. Conclusion on product and geographic market

(47) For the purposes of this Decision, the Commission considers that the exact product and geographic scope of the stevedoring services market for inland waterways transport can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market whether Bonn is included or not.

4.3. Inland Port Infrastructure

4.3.1. Product market

(48) Within the inland waterways transport sector, the Commission has previously defined separate markets for inland waterways freight transport and stevedoring/transhipment services.[57] The Notifying Party submits that within the inland waterways transport sector, an additional market for the provision of inland port infrastructure exists, which is an upstream market supplied to shipping companies wishing to land their vessels in the port and tranship goods, terminal operators transhipping goods in the port and companies based in the port providing logistics services or leasing space.[58] The Notifying Party further submits that, within

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[54] See reference in M.6452 - *Imperial Mobility/Lehnkering*, para 26; M.2632 *Deutsche Bahn/ECT International/United Depots/JV*, para 19; M.7523 – *CMA CGM/OPDR*, para 65; M.3973 – *CMA CGM/DELMAS*, para.12.

[55] See M.2632 – *Deutsche Bahn/ECT International/United Depots/JV*, para 19; M.6425 – *Imperial Mobility/Lehnkering*, para. 26; M.6396 - *Rhenus/Wincanton International*, para 46.

[56] According to the Parties, when dry bulk cargo is delivered at third party ports, ports within a range of 150 km are considered as alternatives for a customer. See Form CO, para 167.

[57] See section 4.1 and 4.2 of this Decision.

[58] See Form CO, para 142.

this market for inland port infrastructure, a further sub-segmentation between public and private ports should be assumed.[59]

(49) The Commission has so far not analysed the market for inland port infrastructure. In order to determine the scope of the relevant product market in relation to inland port infrastructure, the Commission will first assess the overall market for inland port infrastructure and subsequently assess different possible segmentations.

(50) According to the Parties, the market for inland port infrastructure comprises the provision of port areas with direct access to the waterway, the provision of landside port infrastructure for the transhipment of goods from ship to shore or to another mode of transport, crane facilities and storage facilities, the provision of waterside infrastructure for installation of ships for the purpose of transhipping goods and the rental and leasing of port buildings in the broader sense.[60] For the provision of these facilities, the port infrastructure provider charges certain fees, such as embankment fees for the permission of transhipment (usually payable by the company providing stevedoring/transhipment services), port fees as payment for the landing of vessels (usually payable by the shipping companies), crane fees as remuneration for the provision of a crane including a crane operator and revenues from renting and leasing of part areas including facilities (either to companies operating their own terminal or companies providing transhipment/stevedoring services).[61]

(51) The Parties submit that the customers of the operator of a public inland port are, on the one hand, logistics companies that offer the handling of goods for third parties and, on the other hand, usually larger companies that have their own handling terminals, production or storage facilities in the public port and carry out the loading and unloading or transhipment of goods themselves (own handling).[62]

(52) The Parties further draw a distinction between public inland ports, operated by public authorities, and private inland ports, operated by private undertakings. While according to the Parties, public ports are public services of general interest, available on a non-discriminatory basis to all transhipment and shipping customers, private ports are used by the private owner or operator and are generally not available to third parties and do not collect shore and port fees. Therefore, the Parties argue, public and private inland ports are typically not in competition with each other.[63]

(53) The market investigation broadly confirmed the Notifying Party's views.

(54) Market participants have indicated that from a demand-side perspective, the provision of inland port infrastructure services constitutes a different demand than the operation of terminals or the provision of stevedoring/transhipment services. While providers of stevedoring/transhipment services require access to port infrastructure to provide these loading, unloading, storage and land-side handling of cargo services, which port infrastructure is being used will depend on the customer. While some customers operate their own private ports or docks and solely require

59 See Form CO, para.89.

60 See Form CO, para.140.

61 As previously defined by the Bundeskartellamt, 30.01.2012, B-9-125/11, *HGK/Neuss-Düsseldorfer Häfen (Rhein-Cargo)*, paras. 38-48.

62 See Form CO, para.90.

63 See Form CO, para 89.

stevedoring/transhipment services, others will use public inland ports to have their goods handled (in which the stevedoring/transhipment services can be done by the same company that owns the port, or a separate company).[64] Which elements of the logistics within the inland waterways transport sector are conducted by which market participant thus varies significantly (from separated shipping, stevedoring/ transhipment services and port infrastructure providers to fully integrated service providers), depending on the business model of the market participant concerned and the preferences of the customer.[65]

(55) Market participants further confirmed that from a supply-side perspective, the owner of the port-infrastructure does not necessarily operate all terminals (to provide stevedoring/transhipment services) within the port. These services can also be provided by third parties that operate own terminals within a (public) port.[66] These third parties would be service providers for shipping companies/their customers and at the same time themselves be customers of the respective port. They would therefore be providing a separate service than the port infrastructure provider itself. The market investigation further confirmed that public inland port infrastructure providers have a legal obligation to allow other transhipment/ stevedoring providers access to their ports, thereby further allowing for a differentiation between these markets.[67]

(56) Based on the above, the Commission therefore considers that there is a distinct product market for the provision of inland port infrastructure, which is separate from other markets within the inland waterways transport sector.

(57) As the ports in the relevant geographic range handle a variety of goods[68] and overlaps between the ports in terms of available infrastructure necessary for the handling of different product categories remain,[69] the Commission does not further differentiate between different inland port infrastructures according to the type of goods handled.

(58) Regarding a possible sub-division according to public or private ports, for the purposes of this decision, the precise definition of the market for the provision of inland port infrastructure can be left open, as the Transaction does not raise serious doubts if the product market were further divided into public and private inland port infrastructure. As part of this decision, the Commission, will however only look at the more narrow potential market of public inland ports, as HGK's only activity in the provision of private ports infrastructure is the terminal operated by its subsidiary neska in Dormagen[70] and Imperial is not active in the provision of port infrastructure at all.

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64 See minutes of the calls of 26, 27 and 28 May 2020 with market participants.

65 See minutes of the calls of 26, 27 and 28 May 2020 with market participants.

66 See minutes of the calls of 26, 27 May and 2 June 2020 with market participants.

67 See minutes of the call of 03 June 2020 with a market participant.

68 Form CO, para 247.

69 As established in: Bundeskartellamt, 30.01.2012, B-9-125/11, *HGK/Neuss-Düsseldorfer Häfen (Rhein-Cargo)*, para 47.

70 […]; See reply to RFI3 received on 17 June 2020.

4.3.2. Geographic market

(59) On the geographic scope of the market, the Parties submit that it should be defined in terms of catchment areas, which they submit covers a distance of around 150 km. Only ports located within this distance are considered as substitutable by port customers. On this basis, the Bundeskartellamt has previously defined inland ports on a regional basis and considered the ports located on the Rhine from Wesel to Bonn with the hinterland "Rhine-Ruhr" to belong to one market (Bonn-Wesel-range), which the Parties suggest as the relevant market.

(60) While the Commission has not yet expressly defined the geographic market for inland port infrastructure, the results of the market investigation confirmed the results of the market investigation confirmed the Parties' assessment of the geographic market to encompass the Bonn-Wesel range.[71] In light of this and considering all the information available to it, the Commission considers this definition to also be appropriate for the geographic market for the provision of port infrastructure.

4.3.3. Conclusion on product and geographic market

(61) The Commission will thus assess the Transaction on the basis of the Bonn-Wesel range of ports. However, it considers that, for the purpose of this Decision, the exact product and geographic scope of the market for inland port infrastructure services can be left open, since the Transaction would not raise serious doubts as to its compatibility with the internal market under any alternative product market definition considered above in the Bonn-Wesel range.

5. COMPETITIVE ASSESSMENT

(62) 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.

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

(64) The Parties' activities create a horizontal overlap in the following product markets:[72] (i) inland waterway transport for dry bulk cargo and container transport and (ii) transhipment/stevedoring services.

(65) There is no horizontal overlap between the Parties' activities in the following markets: a) inland port infrastructure; b) rail freight transport and c) railway infrastructure, as only HGK is active in these markets.

(66) The Transaction gives rise to horizontally affected markets with respect to (i) the inland waterways transport of certain dry bulk products[73] in Germany, Belgium and the Netherlands as well as the Rhine basin and (ii) the markets for the provision of

[71] See minutes of the call of 02 June 2020 with a market participant.

[72] As indicated above, see para. 10 and footnote 6, the Parties' combined market share in short sea shipping is only around [0-5]%. Consequently, this market will not be further discussed in the Decision.

[73] In particular: agricultural/forestry products, coal and fuels and other goods.

stevedoring/transhipment services for all ports (public and private), as well as for private ports, both for all bulk or dry bulk goods, in the Nijmegen-Bonn and Nijmegen-Cologne range.[74] These will be discussed in section 5.1 below.

(67) The Transaction creates vertically affected markets with respect to the Parties' activities in the markets for inland waterways transport as well as stevedoring/transhipment services (downstream) and the activities of HGK in the provision of inland port infrastructure in the Bonn-Wesel range (upstream) as well as the Parties' activities in inland waterways transport (downstream) and stevedoring/transhipment services (upstream). These will be discussed in section 5.2 below.

(68) In addition, the Commission will further examine potential conglomerate effects due to the transaction (see section 5.3 below).

5.1. Horizontal effects

5.1.1. Inland waterway freight transport market for dry bulk

(69) Both HGK (through its subsidiaries Häfen und Transport AG ['HTAG'] and neska) and the Imperial Shipping Group (via subsidiaries Imperial Shipping Rotterdam B.V., Imperial Shipping Holding GmbH, Wijnhoff & Van Gulpen & Larsen B.V. [Wijgula] and Imperial Gas Barging GmbH) are active in inland waterway transport. While HGK and Imperial are both active in the transport of dry bulk goods, the Imperial Shipping Group is furthermore active in the field of transport of liquid goods and HGK (via its subsidiary neska) is also active in the transport of containers. HGK is not active in the transport of liquid goods. Imperial Shipping Group is only active in the transport of containers exceptionally, in individual cases.

(70) The Transaction therefore leads to a horizontal overlap between the Parties' activities in the market for inland waterways transport of dry bulk as well as for several sub-segmentations of dry bulk by category of goods[75] in Germany, Belgium and the Netherlands as well as the Rhine basin. The consequences of the Transaction on these markets will therefore be analysed in the following.

5.1.1.1. Market characteristics for inland waterway transport of dry bulk

(71) The market for inland waterway transport of dry bulk exhibits characteristics different from liquid bulk or container transport. As these are relevant for the competitive analysis of the Transaction, these will be set out before the competitive analysis for the dry bulk waterway transport market and all plausible sub-segmentations.

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74 The market for inland waterways container transport does not give rise to an affected market, due to the very limited activity of the Target. HGK's market share (via its subsidiary neska) is well below 20% and the market share of the Target is below [0-5]%. The combined market share is below 20%. As indicated above, this market will not be further discussed in the Decision.

75 In particular: Coal and fuels, agricultural and forestry products and other goods.

(A) Fragmented market with few large shipping companies

(72) The inland waterway transport business for dry bulk has been traditionally characterized by small-scale barging businesses or single-barge owners ("*Partikuliere*"), operating independently of one another.[76] However, while the market is still highly fragmented, a small number of significantly larger inland waterways shipping companies and brokers (including the Parties, the Rhenus Group ['Rhenus'] and Coöperatie NPRC U.A. ['NPRC']) have come to separate themselves from the rest in size. Their size is significantly larger than that of their competitors respectively. The remaining market is made up of a large number of shipping companies with moderate to small market shares.[77]

(73) This structure can partially be explained by the demand-structure of the market. Large industrial customers will often look for one logistics provider to service all their (significant) dry bulk transport needs instead of finding different inland waterways transport providers for every individual transport. Some of the contracts of these large industrial customers require a significant number of ships as well as a certain infrastructure on the side of the shipping company to deal with the required volume and assure constant deliveries.[78]

(74) Even larger shipping companies (such as the Parties) however often do not own a sufficient amount of vessels to service the demand of such larger customers, but rather rent vessels from smaller market participants according to their needs.[79] This is being done either through (exclusive) charter contracts, where the charterer (owner or Partikulier) bears the utilisation risk or through lease contracts where the lessee bears the utilisation risk.[80] Most of these contracts are concluded on an annual basis, whereas the majority of the rest are spot contracts.[81] Furthermore, smaller shipping companies often participate in the market via brokers, which act as intermediaries between customers and smaller transport companies. While there is a significant number of brokers available, the largest ones are the major shipping companies (such as the Parties and Rhenus).[82] Smaller shipping companies alternatively also have the option of working within a cooperative organisation (such as NPRC or Deutsche Transport-Genossenschaft Binnenfahrt ['DTG']), in which they commit to cooperate with one another to be able to better compete with bigger shipping companies.[83]

(75) While certain of the larger customers may not consider the smaller inland waterway transport providers as direct alternatives to the major shipping companies, the smaller the customer and the contract is, the greater the range of inland waterways providers they will likely consider bidding for the contract.[84] Similarly, competitors

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76 See minutes of the calls of 26 May and 3 June 2020 with market participants.

77 See Form CO, para 375; See minutes of the calls of 26, 27 May and 2, 3 June 2020 with market participants.

78 See minutes of the calls of 26, 27 May and 3 June 2020 with market participants.

79 HGK does not have an own fleet and operates entirely through time-charters or rental agreements whereas Imperial Shipping Group owns [Further information on the structure and ownership structure of Imperial's fleet].See Form CO, para 307-308. See also minutes of the calls of 26 May and 2 June 2020 with market participants.

80 See Form CO, para 306.

81 See Form CO, para 312.

82 See minutes of the calls of 26 May and 3 June 2020 with market participants.

83 See minutes of the call of 3 June 2020 with a market participant.

84 Se Form CO, para 349.

stated in the market investigation that depending on the contract that they are bidding for, they also consider smaller shipping companies and even individual barge owners (Partikuliere) to be direct competitors.[85]

(B) Switching

(76) Most inland waterway transport contracts are concluded on a non-exclusive, annual basis.[86] Furthermore, with several notable exceptions,[87] the market is characterized by a high degree of standardization and a low degree of specialization and complexity.[88] This gives customers for the transport of dry goods the ability to switch from one provider to the next at relative short notice. The cost of switching for customers is also likely to be very low.[89]

(77) In addition, most transport contracts are regularly awarded by tender.[90] Even in cases of long-standing business relationships, transport providers will often have to participate in tenders again for most orders.[91] Market volumes can thus shift relatively quickly from one transport provider to another. The willingness of customers to switch transport providers was confirmed by competitors in the market investigation.[92]

(C) Price sensitivity and customer preferences

(78) The market for the transport of dry bulk is characterized by strong price sensitivity amongst the customers. While qualitative factors may play a role for customers in selecting the shipping company, price plays the most important role. This was confirmed by the Parties as well as in the market investigation, with multiple participants stressing the strong price sensitivity of shipping customers and the great importance of the price when choosing an inland waterway transport provider for dry bulk goods, even for long-standing customers.[93]

(D) Barriers to entry

(79) Barriers to entry for the market for inland waterway transport of dry bulk are relatively low. In particular, compared to the market for inland waterway transport of liquid bulk, investments necessary to become active in this market would be relatively low. In addition, as explained above, several companies active in the market (including HTAG) do not actually own the vessels they use to fulfil their

85 See minutes of the call of 26 May 2020 with a market participant.

86 See Form CO, para 344; Also see minutes of the call of 3 June 2020 with a market participant.

87 Some services do however require a high degree of specialization, due to the volume or type of product shipped or due to additional circumstances. Given the scope of the contract, the infrastructure or investments needed and the complexity of the operation, switching suppliers would be much more difficult and costly in these circumstances. See Form CO, para 355 and see minutes of the call of 27 May 2020 with a market participant.

88 See Form CO, paras 344 and 347.

89 See Form CO, para 347.

90 See minutes of the calls of 26 and 27 May 2020 with market participants.

91 See Form CO, para 357-358, and see minutes of the call of 26 May 2020 with a market participant.

92 See minutes of the calls of 26 May and 3 June 2020 with market participants.

93 See minutes of the calls of 26 and 27 May 2020 with market participants; Also see Form CO paras 336 and 360.

contracts, but charter/lease them.[94] Regarding regulatory barriers to entry, depending on which waterway a company operates on, different patents/licenses (such as the Rhine-patent) may be required. However, within the EU, the requirements for these patents/licenses are mostly comparable.[95] Consequently, there have been several examples of medium-sized shipping companies entering the market for inland waterway transport of dry bulk in the last three years.[96]

(E) Development of the market

(80) The market for the inland waterway transport of dry bulk is a mature market, which however is likely to experience a decline in volume in the future,[97] largely due to the phase out of coal-fired power plants in Germany until 2038.[98] As a competitor of the Parties further confirmed in the market investigation, the volume of the market for inland waterway transport of dry bulk is also likely to further decline in the future due to the increased use of containers.[99] This shrinking of the market is expected to lead to an increase in overcapacity[100] and heightened competition.[101]

(F) Conclusion

(81) The Commission will assess the horizontal effects of the Transaction in the market for inland waterway freight transport of dry bulk on the relevant geographic markets, taking account of the general characteristics of these markets as described in the section above.

5.1.1.2. Market for inland waterways transport of dry bulk

(82) The concentration does not give rise to an affected market in the broader product market for inland waterway transport of dry bulk under any plausible geographic market definition, with combined market shares by the Parties of [5-10]% in Germany, Belgium and the Netherlands and [5-10]% in the Rhine basin in 2019 respectively.[102]

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94 See Form CO, para 364 and 381.

95 See Form CO, para 387.

96 Rijnmonod Logistics B.B., founded in 2018; G.K. Logistics B.v. in 2018; see Form CO, paras 366-367.

97 See minutes of the call of 2 June 2020 with a market participant.

98 See Form CO, para 334.

99 See minutes of the call of 3 June 2020 with a market participant.

100 See Form CO, para 378.

101 See minutes of the call of 3 June 2020 with a market participant.

102 All market shares for inland waterways transport markets: see Form CO, Annex 7.3.0. The Parties' estimates rely on the figures provided by the annual reports of the European Central Commission for Navigation on the Rhine ("CCNR") and the survey of Eurostat and the national statistical offices (in Germany: Federal Statistical Office – Destatis; in the Netherlands: CBSS Statistics Netherlands; in Belgium: Direction gènèaire opérationnelle de la Mobilité et des Voies hydrauliques Wallonie, Vlaamse Waterweg Flanders) as the data basis for determining the market volume.

Table 1 – Inland waterway transport of dry bulk in DE/NL/BEL (volume) [103]

Volume (in tonnes)	2017		2018		2019	
	Volume	Market Share	Volume	Market Share	Volume	Market share
Imperial	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
HGK	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[5-10]%**
Rhenus Partnership GmbH & Co. KG	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
NPRC	[…]-[…]	[0-5]-[5-10]%	[…]-[…]	[0-5]-[5-10]%	[…]-[…]	[0-5]-[5-10]%
Trans-Saar BV	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Haeger & Schmidt Logistics GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Deutsche Binnenreederei	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	n/a	[60-70]-[70-80]%	n/a	[60-70]-[70-80]%	n/a	[60-70]-[70-80]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 7.3.0, Annex 7.2.1.4, and Reply to Request for Information 7 ('RFI7'), received on 26 June 2020, Annex 1.

[103] Market shares of competitors have been provided as estimates by the Parties based on publicly available data.

Table 2 - Inland waterways transport of dry bulk in the Rhine basin (volume)[104]

Volume (in tonnes)	2017		2018		2019	
	Volume	Market Share	Volume	Market Share	Volume	Market share
Imperial	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
HGK	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[5-10]%**	**[…]**	**[5-10]%**
Rhenus Partnership GmbH & Co. KG	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
NPRC	[…]-[…]	[0-5]-[5-10]%	[…]-[…]	[0-5]-[5-10]%	[…]- […]	[0-5]-[5-10]%
Trans-Saar BV	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Haeger & Schmidt Logistics GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Deutsche Binnenreederei AG	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	n/a	[60-70]-[70-80]%	n/a	[60-70]-[70-80]%	n/a	[60-70]-[70-80]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 7.3.0, Annex 7.2.1.5. and Reply to RFI7, received on 26 June 2020, Annex 2.

(83) The transshipment volumes of the Parties and those of their main competitors were broadly confirmed in the market investigation,[105] although some uncertainties as to the overall size of the market for inland waterways transport of dry bulk products (and thereby the Parties' market shares) remain.[106]

104 Market shares of competitors have been provided as estimates by the Parties based on publicly available data.

105 See minutes of the call of 26 May 2020 with a market participant.

106 See additional information received following the call with a market participant on 03 June 2020.

(84) The Commission considers that post-Transaction, the merged entity would continue to face competition by several major shipping companies or shipping cooperatives, such as Rhenus (market share: [5-10]%), NPRC (market share: [0-5]-[5-10]%) and competitors such as Trans-Saar, Haeger & Schmidt and Deutsche Binnenreederei,[107] with estimated market shares of [0-5]% each in the market for inland waterway transport of dry bulk for both geographic markets.[108] Market participants have confirmed in the market investigation that they consider Rhenus,[109] NPRC and Trans-Saar[110] to be competitors of the merged entity and to provide comparable services.[111] In addition, the market investigation indicated that currently, still between [70-80]% of the highly fragmented market is being served by smaller companies, other than these larger competitors and the Parties.[112]

(85) While some competitors expressed concerns about the impact of the Transaction on the overall market for inland waterway transport for dry bulk, particularly in the Rhine basin,[113] the majority of market participants have expressed the view that the Transaction will have no impact or a positive impact on the market for inland waterways transport of dry bulk.[114] In addition, while a competitor has stated in the market investigation that the Transaction might further increase the dependency of smaller shipping companies on larger brokers,[115] the market investigation has shown that even certain very large industrial customers also consider small competitors to be viable alternatives to the services of the Parties and other large shipping companies.[116]

(86) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market for inland waterway transport for dry bulk in Germany, the Netherlands and Belgium and the Rhine basin post-Transaction and that the competitive constraints on the Parties would be sufficient. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for inland waterways transport for dry bulk under any plausible geographic market.

5.1.1.3. Markets for inland waterways transport of certain dry bulk products

(87) On several narrower product markets subdivided according to the type of goods transported, the combined entity would have higher market shares than on the overall

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107 A transaction involving the purchase of the majority of shares in Deutsche Binnenreederei AG by Rhenus SE & Co KG is currently being assessed by the German Competition Authority (Bundeskartellamt, case no: B9-66/20).

108 Estimates by the Parties, based on the information published on the homepages of the competitors, broadly confirmed by participants of the market investigation. See Reply to RFI7, received on 26 June 2020, Annexes 1 and 2.

109 See minutes of the calls of 26, 27 May and 2 June 2020 with market participants.

110 See minutes of the call of 2 June 2020 with a market participant.

111 Other potential competitors named in the market investigation include: Dettmer Reederei, Deutsche Transport Genossenschaft, Bavaria Schiffahrts u. Speditions AG, Ruhrmann Logistik, Rederij de Jong, DAP Barging, Eurokor Barging BV; See minutes of the call of 27 May 2020 with a market participant.

112 See minutes of the call of 3 June 2020 with a market participant.

113 See minutes of the calls of 26 May and 3 June 2020 with market participants.

114 See minutes of the calls of 26, 27 and 28 May 2020 with market participants.

115 See minutes of the call of 3 June 2020 with a market participant.

116 See minutes of the calls of 27 May and 8 June 2020 with market participants.

market for inland waterway transport for dry bulk, leading to affected markets in the markets for the inland waterway transport of coal and fuels, agricultural and forestry products as well as other goods.[117]

(A) Inland waterway transport of coal and fuels

(88) The combined market shares of both parties on the market for inland waterway transport of coal and fuels[118] in 2019 was [20-30]% in Germany, Belgium and the Netherlands and [10-20]% in the Rhine basin.

Table 3 - Inland waterways transport of coal and fuels in the DE/NL/BEL (volume)

Volume of **coal and fuels** (in tonnes)	2017		2018		2019	
	Volume in tonnes	Market Share	Volume in tonnes	Market Share	Volume in tonnes	Market share
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
HGK	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Rhenus Partnership GmbH & Co. KG	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Trans-Saar BV	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
NPRC	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]-[5-10]%
Haeger & Schmidt Logistics GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	n/a	[40-50]-[50-60]%	n/a	[40-50]-[50-60]%	n/a	[40-50]-[50-60]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form Co, Annex 7.2.1.6. and Reply to RFI7, received on 26 June 2020,, Annex 3

[117] The segmentation of the total market transport volume by groups of goods is based on the NST-2007 classification (Standard Goods Classification for Transport Statistics) established by Eurostat and the national statistical authorities.

[118] Product division NST 02 of the NST-2007 classification.

Table 4 - Inland waterways transport of coal and fuels in the Rhine basin (volume) [119]

Volume of coal/oil and gas (in tonnes)	2017		2018		2019	
	Volume in tonnes	Market Share	Volume in tonnes	Market Share	Volume in tonnes	Market share
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
HGK	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**
Rhenus Partnership GmbH & Co. KG	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Trans-Saar BV	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
NPRC	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]-[5-10]%
Haeger & Schmidt Logistics GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	n/a	[40-50]-[50-60]%	n/a	[50-60]-[60-70]%	n/a	[40-50]-[50-60]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 7.2.1.8. and Reply to RFI7, received on 26 June 2020, Annex 4

(89) The combined market shares of the Parties as well as the overall market concentration in the market for inland waterway transport of coal is higher than in the broader market for dry bulk, as customers for the transport of coal are larger and fewer in number and individual contracts are for larger amounts of goods transported.[120] Nevertheless, post-Transaction, the merged entity would continue to face competition in the market for inland waterway transport for coal by several major shipping companies or shipping collectives, such as Rhenus (market share estimate: [10-20]%), Trans-Saar ([5-10]%), NPRC ([0-5]%) and smaller competitors such as Haeger & Schmidt, OTS, Interrijn and others.[121] Although it was not possible to verify all the market shares due to the large number of smaller

[119] Market shares of competitors have been provided as estimates by the Parties based on publicly available data.

[120] See Form CO, paras 354 and 377.

[121] See Form CO, Annex 7.4.1.2. and Reply to RFI7 received on 26 June 2020, Annex 3 and 4.

competitors, the relative size of most larger competitors has been confirmed by the Commission's market investigation.

(90) In addition, the market shares of the Parties are likely to be overestimated and therefore in reality smaller than market shares provided. Due to differing internal classifications of goods, when calculating their market shares in the respective markets subdivided by dry bulk product categories allocated under NST-classification, the Parties frequently allocated the respective product volumes to several groups of goods at the same time. The market shares of the Parties are thus likely to be overstated.[122] In any case, as can be seen in the table above, the Parties' combined market shares are relatively low remaining below 20% for the Rhine basin in 2018 and 2019 and reaching a maximum of [20-30]% in 2017 falling to [20-30]% in 2019 for a geographic market including Germany, Belgium and the Netherlands.

(91) The relative size and capacity of the Parties compared to their closest competitors may provide them with a competitive advantage when entering a tender for some larger contracts (such as those in the coal transport sector), in particular for large-scale orders of industrial customers. In addition, for the transport of coal, often larger vessels are used (compared to those for other bulk products). This can explain the respectively larger market share of the Parties in the market for the transport of coal. However, the market investigation has shown that sufficient competitors with the ability compete effectively will remain active in the market, such as Rhenus and NPRC.

(92) In addition, the high level of standardization within the market, the low cost of switching suppliers, the relatively short duration of contracts, the strong price-sensitivity of customers and the large size of industrial customers, particularly in the market for the transport of coal,[123] provides customers with countervailing buyer power that will apply competitive pressure on the merged entity and further inhibits the Parties ability post-Transaction to significantly impede effective competition.

(93) Furthermore, barriers to entry to the market for inland waterway transport for all products are relatively low. While the market for the transport of coal is likely to decline due to the foreseen closing of coal power plants in Germany by 2038, thereby making market entry less likely, there have been several notable entries to the market in recent years.[124] The Commission therefore considers potential market entry in the future to further potentially constrain the Parties' ability post-Transaction to significantly impede effective competition.

(94) While some competitors voiced concerns about the growing gap between the market shares of the largest inland waterways transport provider (the merged entity) and all other competitors during the market investigation,[125] the majority of market participants did not express concerns regarding the market for inland waterway transport of coal.[126]

122 See Form CO, para 216.
123 See Section 5.1.1.1. of this Decision.
124 See Section 5.1.1.1. of this Decision.
125 See minutes of the call of 03 June 2020 with a market participant.
126 See minutes of the calls of 26, 27 and 28 May 2020 with market participants.

(95) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market inland waterway transport of coal and fuels in Germany, the Netherlands and Belgium and the Rhine basin post-Transaction and that the competitive constraints on the Parties would be sufficient. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for inland waterway transport of coal under any of the plausible geographic market definitions considered.

(B) Inland waterway transport of agricultural and forestry products

(96) When looking at the estimated *value* (instead of volume) of transportation, the market for inland waterway transport of agricultural and forestry products[127] is affected by the Transaction. The combined market shares of both Parties on the market for inland waterway transport of agricultural and forestry products in 2019 were [20-30]% in 2019 in Germany, Belgium and the Netherlands and [10-20]% in the Rhine basin.[128]

Table 5 - Inland waterways transport of agricultural and forestry products in DE/NL/BEL (value) [129]

Value of **agricultural and forestry products** (in EUR)	2017		2018		2019	
	Sales in EUR	Market Share	Sales in EUR	Market Share	Sales in EUR	Market share
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
HGK	[…]	[0-5]%	[…]	[10-20]%	[…]	[5-10]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Others	n/a	[80-90]%	n/a	[70-80]%	n/a	[70-80]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 7.2.1.6.

(97) The combined market shares of the Parties in the market for inland waterway transport of agricultural and forestry products remains relatively modest and only surpasses 20% (in 2018 and 2019) when looking at the larger geographic market of Germany, Belgium and the Netherlands but remains below 20% in each of the last three years for the Rhine basin. It furthermore likely only surpasses 20% due to

127 Product division NST 01 of the NST-2007 classification.

128 The Parties' combined market share (value) in the Rhine basin has not surpassed 20% from 2017 to 2019 ([10-20]% in 2017, [10-20]% in 2018, [10-20]% in 2019).

129 Market shares of competitors have been provided as estimates by the Parties based on publicly available data, see Reply to RFI6, received on 24 June 2020.

double counting of fertilizers and forestry products by the Parties and only when looking at value of contracts.[130] In addition, when looking at the *volume* transported, the combined market shares of the Parties remain below 20% within each of the years from 2017 to 2019 in all alternative geographic markets.[131]

(98) Post-Transaction, customers in Germany, the Netherlands and Belgium as well as the Rhine area will still have the ability to switch to other existing suppliers. Post-Transaction, a sufficient number of competitors, including NRPC (market share estimate for volume: [5-10]% in 2019 for DE/NL/BEL), Rhenus ([5-10]%), DTG ([0-5]%) and MSG eG ([0-5]%),[132] will remain on the market.[133] The Parties will therefore continue to face robust competition from players which are already active in the market.

(99) In addition, above-considerations[134] on countervailing buyer power due to relative ease of switching, short- to medium-term contract length, price sensitivity of customers as well as relative standardization of the market also apply in the market for the transport of agricultural and forestry products. Furthermore, barriers to entry to this potential market are likely to be even lower, as the transport of agricultural products is often conducted on mid-sized vessels,[135] which are cheaper to buy or lease/rent.

(100) While some competitors voiced concerns about the growing gap between the market shares of the largest inland waterways transport provider (the merged entity) and all other competitors during the market investigation,[136] the majority of market participants did not express concerns regarding the market for inland waterway transport of agricultural and forestry products.[137]

(101) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market for inland waterway transport of agricultural and forestry products in Germany, the Netherlands and Belgium and the Rhine basin post-Transaction and that the competitive constraints on the Parties would be sufficient. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for inland waterway transport of agricultural and forestry products under any of the plausible alternative geographic market definitions considered.

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130 See Form CO, para 206.

131 The Parties' combined market shares (volume) in the market for inland waterway transport of agricultural and forestry products in DE/NL/BEL were: [10-20]% in 2017, [10-20]% in 2018, [10-20]% in 2019; in Rhine basin: [10-20]% in 2017, [10-20]% in 2018, [10-20]% in 2019; See: Form CO, Annex 7.2.1.6 and Annex 7.2.1.8.

132 Market share estimates for Rhine basin are slightly higher for all competitors. Market share estimates for competitors were only provided in *volume*, see reply to RFI7 received on 26 June 2020. However, as the difference between value and volume is relatively small, these market shares still provide a realistic picture of the size of the main competitors in the market for inland waterway transport of agricultural and forestry products.

133 As most vessels can be used to transport every dry bulk products, competitors are the same as in the overall market for inland waterway transport of dry bulk.

134 See Section 5.1.1.1. (B)-(E) of this decision.

135 See minutes of the call of 26 May 2020 with a market participant.

136 See minutes of the call of 03 June 2020 with a market participant.

137 See minutes of the calls of 26, 27 and 28 May 2020 with market participants.

(C) Inland waterway transport of other goods

(102) Furthermore, the market inland waterway transport of other goods[138] is affected by the Transaction. The Parties' combined market shares for the market for inland waterway transport for other goods have varied between [40-50]% in 2017 to [0-5]% in 2019 in Germany, Belgium and the Netherlands and [40-50]% in 2017 to [0-5]% in 2019 in the Rhine basin.

Table 6 - Inland waterways transport of other goods in the DEU/NL/BEL (volume) [139]

Volume of **other goods** (in tonnes)	2017		2018		2019	
	Volume in tonnes	Market Share	Volume in tonnes	Market Share	Volume in tonnes	Market share
Imperial	[…]	[20-30]	[…]	[10-20]%	[…]	[0-5]%
HGK	[…]	[20-30]	[…]	[10-20]%	[…]	[0-5]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[20-30]%**	**[…]**	**[0-5]%**
Ruhrmann Logistik GmbH & Co.KG	n/a	n/a	n/a	n/a	[…]-[…]	[10-20]-[40-50]%
Haeger & Schmidt Logistics GmbH	n/a	n/a	n/a	n/a	[…]-[…]	[5-10]-[10-20]%
Rhenus Partnership GmbH & Co. KG	n/a	n/a	n/a	n/a	<[…]	<[5-10]%
Deutsche Transport Genossenschaft Binnenschifffart e.V.	n/a	n/a	n/a	n/a	<[…]	<[5-10]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Form Co, Annex. 7.2.1.6.

138 Product division NST 18 of the NST-2007 classification. The Standard Goods Classification for transport statistics (NST-2007) is a statistical nomenclature by Eurostat used to classify goods transported by road, rail, inland waterway and sea (maritime); See: Commission Regulation (EC) No 1304/2007 of 7 November 2007 amending Council Directive 95/64/EC, Council Regulation (EC) No 1172/98, Regulations (EC) No 91/2003 and (EC) No 1365/2006 of the European Parliament and of the Council with respect to the establishment of NST 2007 as the unique classification for transported goods in certain transport modes.

139 Market shares of competitors have been provided as estimates by the Parties based on publicly available data, see reply to RFI6, received on 24 June 2020.

(103) The Parties explain the enormous fluctuation of the market shares in this market by the lack of homogeneity and clarity when classifying goods as “other goods”.[140] According to the classification system for transport statistics (NST 2007)[141], NST-18 refers to “Grouped goods: a mixture of types of goods which are transported together”. This means that various goods are transported under this category, where the shipping companies do not provide any further subdivision. Also amongst the Parties, the goods that were classified in this category varied significantly. The figures on "other goods" provided by Eurostat and the statistical authorities of the countries concerned do not seem to follow any systematic approach. In particular, it is unclear whether there is a targeted competition between the shipping companies for the transport of other goods. According to the Parties, therefore, each inland shipping company reports as NST-18 whatever they understand to fall outside of other categories and/or lies outside their business scope and no competitor is specifically active in this subdivision. This assessment is supported by the enormous fluctuations in the total value of goods shipped in this category.

(104) The Commission was therefore not able to establish the concrete market shares of competitors in a potential market for the inland waterway transport of other goods. However, as almost all dry bulk vessels can be used to transport all dry bulk goods after a relatively fast and easy cleaning process,[142] competitors on a potential market for the inland waterway transport of other goods are likely to be the same as on an overall market for inland waterway transport of dry bulk.

(105) According to the Parties, their highest combined market share in 2019 was [0-5]% under any alternative geographic market definition for a market for inland waterway transport of other goods. No customer or other market participant raised concerns regarding this potential market during the market investigation. Moreover, the above-considerations on countervailing buyer power and market entry apply to this market as well.

(106) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market inland waterway transport of other goods in Germany, the Netherlands and Belgium and the Rhine basin post-Transaction and that the competitive constraints on the Parties would be sufficient. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for inland waterway transport of other goods under any of the plausible alternative geographic market definitions considered.

5.1.1.4. Conclusion

(107) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for inland waterways transport of dry bulk products or any

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140 See Form CO, para 220.

141 UN, Economic and Social Council, Report of the Working Party on Transport Statistics on its Fifty-Ninth Session (28–30 May 2008), Addendum: Classification system for transport statistics (NST 2007), Document ECE/TRANS/WP.6/155/Add.1 of 24 June 2008, available at https://www.unece.org/trans/main/wp6/transstatwp6nst.html.

142 See minutes of the call of 26 May 2020 with a market participant.

alternative sub-segmentation according to category of goods in any alternative geographic market considered.

5.1.2. Stevedoring/transhipment services market

5.1.2.1. Overview

(108) HGK is active in this market via various subsidiaries: HTAG provides transhipment services in Duisburg (three terminals via MASSLOG GmbH),[143] Ginsheim-Gustavsburg, Mannheim and Karlsruhe; neska provides transhipment services in Cologne and Düsseldorf, as well as in Dormagen, Krefeld and in Neuss (general cargo and bulk but also containers); RheinCargo[144] provides transhipment services in Cologne, Düsseldorf and Neuss. In the field of stevedoring/transhipment, HGK operates almost only in public inland ports on the Rhine (Nijmegen-Bonn range), except for the private port of Dormagen.

(109) Imperial Shipping Group provides cargo handling services exclusively in […] private inland ports ([…]) for individual customers[145] and is not active in public inland ports. As the coal-fired power plant in Mehrum is expected to cease operating […].[146]

(110) The Transaction leads to a horizontal overlap between the Parties' activities in the market for stevedoring/transshipment services in public and private (meaning all) ports as well as in the more narrow market of stevedoring/transshipment services in private ports between the Amsterdam Rotterdam Antwerp (ARA) ports and the German Rhine area, both for all bulk and dry bulk.[147] The concentration gives rise to affected markets for a wider market of stevedoring/transshipment services in public and private ports as well as a more narrow market of stevedoring/transshipment services in private ports only, both for all bulk and dry bulk only for every plausible geographic market.

(111) As the overall market volume has been assessed based on data taken from selected ports only (excluding most private and some public inland ports), the actual overall market size is likely to be higher and market shares of the Parties are thus likely to be overstated.[148] This particularly affects the information provided for the stevedoring/transhipment volume in private ports, as there are no reporting obligations for private parties as to the volume of goods handled in private ports.[149] In addition, RheinCargo (subsidiary of HGK) does not provide transhipment services for liquid goods itself. All liquid bulk terminals in RheinCargo's ports are operated

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[143] MASSLOG GmbH is a 50%50 joint venture of HTAG and Duisburger Hafen AG.

[144] RheinCargo is a 50/50 joint venture between HGK and Neuss-Düsseldorfer Häfen GmbH and Co KG.

[145] Buss Imperial Logistics in Duisburg is a 50/50 joint venture of Imperial with Buss Port Services GmbH in Hamburg, which provides stevedoring services to […] on its premises in Duisburg-[…]. In Neuss, Imperial provides services exclusively for […]. The stevedoring services in […] are provided by the Arbeitsgemeinschaft „Kohlenumschlag Kraftwerk Mehrum" GbR, a 50/50 cooperation of the Imperial Shipping Group (via NVG) and Rhenus (having the operational lead); it […].

[146] See Form CO, para 317.

[147] Imperial Shipping Group is not active in the potential market for the provision of stevedoring/transhipment services for liquid bulk (see Form CO, para 268) or containers (see: Response to RFI1 received on 10 June 2020).

[148] See Form CO, para 246.

[149] See Form CO, para 246.

by customers or third parties. Nevertheless, these transhipment figures are included in HGK's market shares.[150] Therefore, the information provided represents a worst-case scenario regarding the Parties' market shares, and is likely to be lower.[151]

5.1.2.2. Stevedoring/transhipment services in public and private (all) ports

(112) The Parties' combined market shares in the market for stevedoring/transhipment services in public and private ports in 2019 was [30-40]% for all bulk goods and [30-40]% for dry bulk goods in the Nijmegen-Bonn range (market shares: [30-40]% and [40-50]% respectively for the more narrow Nijmegen-Cologne range, excluding the port of Bonn).[152]

Table 7 – stevedoring/transshipment services for all bulk in public and private ports in the Nijmegen-Bonn range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Rhenus Logistics	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Ruhrmann Logistik GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Hafen Krefeld GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]%
Chemion Logistik GmbH	n/a	n/a	n/a	n/a	[…]	[0-5]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**

Source: Form CO, Annex 7.3.0., and Reply to RFI7.

150 See Form CO, para 260.

151 Market shares are calculated according to the Statistical Reports for Inland Shipping established by the Land North Rhine Westphalia for a selected group of ports between Emmerich and Bonn (both: Germany). According to the Parties, these only include a small portion of the volumes transhipped in private ports. In addition, not all public ports are included in the list as well (e.g. Nijmegen); See Form CO, paras 223 and 266.

152 See: Response to RFI1, received on 10 June 2020.

Table 8 – stevedoring/transshipment services for dry bulk in public and private ports in the Nijmegen-Bonn range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Rhenus Logistics	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Ruhrmann Logistik GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Hafen Krefeld GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[0-5]%
Chemion Logistik GmbH	n/a	n/a	n/a	n/a	[…]	[0-5]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[30-40]%**

Source: Form CO, Annex 7.3.0. and Reply to RFI 7.

Table 9 – stevedoring/transshipment services for all bulk in public and private ports in the Nijmegen-Cologne range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Rhenus Logistics	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Ruhrmann Logistik GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Hafen Krefeld GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]%
Chemion Logistik GmbH	n/a	n/a	n/a	n/a	[…]	[0-5]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**

Source: Responses to RFI1 and Reply to RFI 7

Table 10 – stevedoring/transshipment services for dry bulk in public and private ports in the Nijmegen-Cologne range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Imperial	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Rhenus Logistics	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Ruhrmann Logistik GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[5-10]-[10-20]%
Hafen Krefeld GmbH & Co. KG	n/a	n/a	n/a	n/a	[…]	[0-5]%
Chemion Logistik GmbH	n/a	n/a	n/a	n/a	[…]	[0-5]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**

Source: Responses to RFI1 and Reply to RFI7.

(113) Even given the likely overestimation of the Parties' market shares in all bulk and dry bulk markets in both the Nijmegen-Bonn and Nijmegen-Cologne range, the Parties' combined market shares barely surpass [40-50]%. In addition, post-transaction, the merged entity would continue to face competition in the market for stevedoring/transshipment services in public and private ports by competitors such as Rhenus,[153] Ruhrmann Hafen Logistik and smaller or local competitors such as Hafen Krefeld GmbH and Co KG, Zietschmann, Haeger & Schmidt & Preymesser.[154]

(114) Even when analysing the overall market for stevedoring/transhipment services in private and public ports, it should be noted that Imperial Shipping Group's activities in the provision of stevedoring services are limited to only […] customers in private

[153] See minutes of the call of 26 May 2020 with a market participant.

[154] See Form CO, para 287 and Reply to RFI 7, received on 26 June 2020; also minutes of the calls of 27 May and 8 June 2020 with market participants.

ports, which will be reduced to […] customers[…].[155] These contracts are all directly related and in service to Imperial Shipping Group's inland waterways transport business and are exclusively provided in private ports to the Target's inland waterways transport clients.[156] These services are highly specialized and have been specifically tailored to the needs of the customers.[157] While these contracts amount to a relatively high volume of transhipped goods and thereby a sizable market share of Imperial Shipping Group, this activity is significantly different from the activity of HGK in the same market, which is almost exclusively active in public ports and provides services to a variety of customers on a non-exclusive basis (even in its single private port operation in Dormagen).[158] The Parties are therefore only in limited competition with one another pre-Transaction.

(115) Moreover, except for specialized services such as those provided by the Imperial Shipping Group, stevedoring/transhipment services are relatively interchangeable. This generally allows customers to switch between different service providers easily, which constrains the Parties' ability post-Transaction to significantly impede effective competition.[159] In addition, there are no significant regulatory barriers to entry regarding the market for stevedoring/transhipment services. While there are general legal provisions regarding traffic and transhipment in ports and safety, these do not amount to significant barriers to enter the market.[160] For a new entrant, while some initial investment might be necessary (in the form of cranes or storage area/warehouses), this investment is not prohibitive and could be implemented in a relatively short period including through, for instance, renting rather than buying.[161]

(116) Lastly, during the market investigation, the majority of market participants having expressed a view stated that the Transaction will have no impact on market for stevedoring/transhipment services.[162]

(117) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market for the provision of stevedoring/transsshipment services for bulk or dry bulk goods in public and private ports, both in the Nijmegen-Bonn, as well as the narrower Nijmegen-Cologne range. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for stevedoring/transsshipment services in public and private ports in both plausible alternative geographic markets considered.

5.1.2.3. Stevedoring/transhipment services in private ports

(118) The Parties' combined market shares in the market for stevedoring/transhipment services when only looking at private ports were [20-30]% for all bulk goods and [40-50]% for dry bulk goods in 2019 under any plausible geographic market.[163]

155 See Form CO, para 317.
156 See Form CO, para 316.
157 See Form CO, para 317.
158 See Form CO, paras 319-320.
159 See Form CO, para 337.
160 See Form CO, para 390.
161 See, for instance, minutes of the call of 27 May 2020 with a market participant indicating that they could use the cargo handling and storage facilities offered by the ports.
162 See minutes of the calls of 26 and 27 May 2020 with market participants.

Table 11 – stevedoring/transshipment services of bulk goods in private ports in the Nijmegen-Bonn range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Imperial	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**

Source: Form CO, Annex 7.3.0.

Table 12 – stevedoring/transshipment services for dry bulk in private ports in the Nijmegen-Bonn range (volume)

	2017 (in million tonnes)	Share 2017 (in %)	2018 (in million tonnes)	Share 2018 (in %)	2019 (in million tonnes)	Share 2019 (in %)
Overall market volume	[…]	100%	[…]	100%	[…]	100%
HGK	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Imperial	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[40-50]%**

Source: Form CO, Annex 7.3.0.

(119) While the overall combined market shares of both parties in the potential market for stevedoring/transhipment services in private ports just surpassed [40-50]% for dry bulk in 2019, it is important to note that HGK's activities on this market are marginal ([0-5]% for bulk, [0-5]% for dry bulk in 2019 even with likely overstated estimated market shares) and limited to one private terminal in Dormagen. The transaction will thus only have a very limited effect on the competition for the provision of stevedoring/transhipment services in private ports. In addition, the increment added to the Parties' overall combined market share in this market is quite small, which further limits the impact of this transaction on the market.

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163 A differentiation between the Nijmegen-Bonn range and Nijmegen-Cologne range is not necessary for the assessment of stevedoring/transhipment services in private ports, as the only difference between both ranges would be the inclusion of the port of Bonn, which is a public port (and thus not assessed in this market).

(120) While services like those performed by Imperial Shipping Group for its stevedoring customers […] require a certain degree of specialization and investment from the service provider, other competitors in the market are also able to provide such services (such as Rhenus, Chemion Logistik GmbH and Buss Port Services GmbH).[164] When Imperial Shipping Groups' contracts with […] were last put up for tender, a sufficient number of competitors participated in the tender that would indicate a competitive market.[165] The Commission therefore considers that a sufficient number of competitors for the provision of such services in private ports will remain post-Transaction. As competitors often do not differentiate between services provided in public and private ports,[166] the competitors for this market are in fact likely to be the same as for the broader market for public and private ports. This was confirmed by a competitor during the market investigation.[167]

(121) Furthermore, the ability of the merged entity post-Transaction to impede effective competition in the market would be limited by the customer's ability to switch to providing these services themselves in their private ports.[168]

(122) In addition, during the market investigation, the majority of market participants having expressed a view stated that the Transaction will have no impact on market for stevedoring/transhipment services in private ports.[169]

(123) In view of the above considerations and all evidence available to it, the Commission considers that the Parties will face sufficient competition in the market for the provision of stevedoring/transhipment services for bulk or dry bulk goods in private ports in the Nijmegen-Bonn range. The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for stevedoring/transhipment services in private ports in any of the alternative geographic markets considered.

5.1.2.4. Conclusion

(124) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal effects in the market for stevedoring/transsshipment services or any plausible sub-segmentation in any of the plausible geographic markets considered.

5.2. Vertical effects

5.2.1. *Introduction*

(125) The Transaction gives rise to a vertical link with respect to the Parties' activities in the market for inland waterways transport as well as a potential link with

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164 See minutes of the calls of 26 and 27 May 2020 with market participants; Reply to RFI7 received on 26 June 2020.

165 Between 5 and 10 respondents to the tender, see minutes of the calls of 27 and 28 May 2020 with market participants.

166 See minutes of the call of 26 May 2020 with a market participant.

167 See minutes of the call of 26 May 2020 with a market participant.

168 See minutes of the call of 27 May 2020 with a market participant.

169 See minutes of the calls of 26 and 27 May 2020 with market participants.

transhipment/stevedoring services and the activities of HGK in the provision of inland port infrastructure services (upstream market) in the Bonn-Wesel range. The Target is not active in the market for port infrastructure and HGK's market share in this market is above 30%. There is also a vertical link between the Parties' activities in inland waterways transport (downstream) and stevedoring services (upstream).

(126) Specifically, the Transaction gives rise to a vertical link and vertically affected markets due to the provision by HGK (through RheinCargo) of inland port infrastructure services in public inland ports which is an input and therefore upstream to the provision of inland waterways transport services offered by HGK and the Target. The market for port infrastructure services is characterised by the presence of port operators, like HGK, as suppliers and of shipping companies, like the Target, calling at these public inland ports wishing to land their vessels in the port and tranship goods.[170]

(127) In addition, the market for port infrastructure services in public inland ports where HGK is active is an upstream market which is vertically related to the market for transhipment/stevedoring services where both HGK and the Target are active. In the field of transhipment/stevedoring services, HGK, via neska, HTAG and its joint venture RheinCargo provides stevedoring services almost only in public ports on the Rhine (Nijmegen-Bonn range) except for the private port of Dormagen.[171] As already explained above, the Target provides stevedoring services only in […] private inland ports (–[…]) and is not active in public ports.

(128) Finally, the Transaction also gives rise to a vertical link and vertically affected markets between the Parties' activities in inland waterways transport (downstream market) and the provision of stevedoring services by the Parties in public and private ports (upstream market).

(129) Consequently, the Commission will assess below the vertical links arising between a) the market for port infrastructure (upstream) and inland waterways freight transport (downstream); b) the market for port infrastructure (upstream) and transhipment/stevedoring services (downstream) and c) the market for transhipment/stevedoring services (upstream) and inland waterways freight transport (downstream).

(130) These markets would be vertically affected by the Transaction if the Parties' individual or combined market shares were 30% or more in one of those upstream or downstream markets or if the Parties' individual or combined market shares were 30% or more in the inland waterways transport market.

5.2.2. *Legal Framework*

(131) 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

[170] Moreover, on the market for port operations, the market for port services is characterised by the presence of port operators as suppliers and i) terminal operators transhipping goods in the port as well as ii) companies based in the port and either providing logistic services or leasing space.

[171] According to the Parties, Dormagen (Stürzelberg) is the only port which could be regarded as a private port since it is rented on an exclusive basis by HGK's indirect subsidiary uct.

these companies' ability and/or incentive to compete.[172] 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).[173]

(132) 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.[174]

(133) 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.[175]

(134) 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.[176]

5.2.3. *Inland Port Infrastructure Services*

(135) Through its subsidiary RheinCargo,[177] HGK is active on the market for the provision and operation of port infrastructure in *public* inland ports. RheinCargo operates seven inland ports at the locations Cologne-Godorf, Cologne-Deutz, Cologne-Niehl I, Cologne-Niehl II, Düsseldorf-Reisholz, Neuss and Düsseldorf. Imperial is not active in the field of inland port infrastructure.

(136) As indicated above, this product market comprises the provision of port areas with direct access to the waterway, the provision of landside port infrastructure for the transhipment of goods from ship to shore or to another mode of transport, crane facilities and storage facilities, the provision of waterside infrastructure for the

[172] 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 Merger Guidelines’), paras 29–30.

[173] Non-Horizontal Merger Guidelines, paras 29–30.

[174] Non-Horizontal Merger Guidelines, paras 31.

[175] Non-Horizontal Merger Guidelines, para 58.

[176] Non-Horizontal Merger Guidelines, paras 32, 59.

[177] RheinCargo is a joint venture between HGK and Neuss-Düsseldorfer Häfen GmbH & Co. K ('NDH'), which each hold 50% of the shares and jointly control RheinCargo. The shareholder NDH also holds a 49% stake in Hafen Krefeld GmbH & Co.KG, the operator of the port of Krefeld, which it controls jointly with the city of Krefeld.

installation of ships for the purpose of transhipping goods, and the rental and leasing of port buildings in the broader sense.[178]

(137) According to the Parties, the market for inland port infrastructure services is characterised by the presence of port operators as suppliers and (i) shipping companies wishing to land their vessels in the port and tranship goods; (ii) terminal operators transhipping goods in the port and (iii) companies based in the port and either providing logistic services or leasing space.[179] Consequently, shipping companies such as the Target only enter into business relations with the operator of the port infrastructure to the extent that they have to pay port fees for the landing of their vessels in the port.[180] According to the Parties, the customers of the operator of a public inland port are, on the one hand, logistics companies that offer the handling of goods for third parties and, on the other hand, usually larger companies that have their own handling terminals, production or storage facilities in the public port and carry out the loading and unloading or transhipment of goods themselves (own handling).[181]

(138) Port operators charge different fees for the use of inland ports, for instance embankment fees for the permission of transhipment, port fees as payment for the landing of vessels and crane fees as remuneration for the provision of a crane including crane operator. They also achieve revenues from renting and leasing of port areas including facilities.[182]

(139) The Parties have provided market share estimates in the market for the operation of port infrastructure by looking at the revenues that port operators generate for providing their port structure to third parties, for instance from riverside dues and port fees, income from rentals and leases, income from crane handling and other revenues published in the port operators' yearly financial accounts.[183]

(140) The table below contains HGK's estimates on the market volume of income from the operation of the public ports and the turnover it has achieved from port operations in the seven public inland ports in the Bonn-Wesel range where it is active:

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178 See Form CO, para 140.

179 See Form CO, para 142.

180 See Form CO, para 91.

181 As already indicated in the section on the market definition, the Parties only refer to the market for the operation of public inland ports since private ports are normally used only by the port operator's company and cannot normally be used by the general public/third parties and they do not normally collect shore and port fees. Although private port operators may change a terminal operator, the latter will regularly provide its services to the port operator and will not be able to operate for third parties in the private port. See Bundeskartellamt, 30.01.2012, B-9-125/11 – *HGK/Neuss-Düsseldorfer Häfen* (RheinCargo).

182 See Form CO, page 98.

183 See Form CO, para 248.

	Revenues from (public) port operations in the Bonn-Wesel-Range (in TEUR)	HGK's turnover from public[184] port operations in the Bonn-Wesel range (in TEUR)
Market volume 2019	[…]	[…]
Market Volume 2018	[…]	[…]
Market Volume 2017	[…]	[…]

(141) Based on the information contained in the table above, HGK estimates that its market share in inland port infrastructure within the Bonn-Wesel range has been consistently below [40-50]% over the last three years reaching a maximum of [30-40]% in 2019 (from [30-40]% in 2017 and [30-40]% in 2018).[185]

(142) With regard to competitors on the river Rhine ports of the Bonn-Wesel range from which the hinterland Rhine-Ruhr is served, HGK estimates their market shares as shown in the table below:[186]

Competitor	2017	2018	2019
HGK	[40-50]%[187]	[30-40]%	[30-40]%
Duisburger Hafen AG-Duisport (Duisburg)	[40-50]%	[40-50]%	[40-50]%
NIAG (Orsoy)	[10-20]%	[10-20]%	[10-20]%
Hafen Krefeld GmbH & Co. KG (Krefeld)	[0-5]%	[0-5]%	[0-5]%
DeltaPort GmbH & Co. KG (Wesel, Emmelsum)	[0-5]%	[0-5]%	[0-5]%
Bonner Hafenbetriebe GmbH (Bonn)	[0-5]%	[0-5]%	[0-5]%
Total:	**100%**	**100%**	**100%**

(143) As can be seen in the table above, Duisburger Hafen AG (hereafter Duisport) is the market leader and appears to be HGK's main competitor in this market with a market share reaching [40-50]% in 2019 (down from [40-50]% in 2018), ahead of HGK which has a market share of [30-40]%. NIAG in Rheinberg-Orsoy is another significant competitor with a market share above [10-20]%, followed by some smaller competitors with a market share below [5-10]%.

[184] According to the Parties (see *footnote 129* above and reply to RFI 3), HGK does not provide inland port infrastructure services at the private port in Dormagen; therefore, the respective turnover amounts to EUR 0. Since the premises in private ports belong to the respective industrial customer (for whom the cargo is transported/ transhipped), no fees for port infrastructure have to be paid in private ports. In addition, these private ports are also not open to other industrial customers (e.g. for stevedoring/ storage purposes). See also Form CO para 143 referring to the decision of the German Federal Cartel Office in the decision HGK/NDH/RheinCargo.

[185] See Form CO, para 275.

[186] See reply to RFI 4, received on 19 June 2020, Annex 1.

[187] The Parties have confirmed the volumes and relevant market shares include RheinCargo's activities in inland port infrastructure and revenues from port fees as well as the letting of port areas.

5.2.3.1. Inland Port Infrastructure Services (upstream) and inland waterways freight transport services for dry bulk (downstream)

(A) Input foreclosure in relation to inland port infrastructure services (upstream) and inland waterway freight transport services for dry bulk (downstream)

(144) The Commission considers that the Transaction would not lead to input foreclosure, as the merged entity would not have the ability or incentive post-Transaction not to provide port infrastructure services to third party inland waterway shipping providers or to raise the price for these services to third parties.

(A.i) Ability to foreclose

(145) First, HGK's market share in the upstream market for inland port infrastructure was [30-40]% in 2019 and only once slightly above [40-50]% during the last three years. It was never number one in this market, and as the Target is not active in this market, there is no increment brought about by the Transaction.

(146) Second, Duisport is and remains the market leader, which was able to increase its lead over HGK over the last three years with its market share of [40-50]% in 2019. As can be seen in the table above, NIAG is also an important competitor with a market share above [10-20]% over the last three years, with [10-20]% in 2019. With regard to Duisport in particular, it operates the public port in Duisburg which, as also mentioned by participants to the market investigation,[188] is by far the largest port infrastructure operator in the Bonn-Wesel range and, according to publicly available data, the largest inland port in Europe and one of the largest in the world. Duisport is the leading logistics hub in Central Europe. It is a multimodal freight and logistics platform connecting companies from around the world with the markets in Europe via water, rail and road. It is a full service provider in the logistics industry with a comprehensive range of services. It processes around 20 000 ships and 25 000 trains per year. It has eight (8) container terminals with 21 gantry cranes, 5 import coal terminals and 19 facilities for handling liquid goods.[189] As a hub between the Dutch and Belgian seaports and the Rhine-Ruhr area and, above all, as the end point of the New Chinese Silk Road, Duisburg also has a geographical and infrastructural advantage.

(147) Third, the Commission notes that, with the exception of Dormagen, the ports operated by HGK are public ports which are subject to regulation and must be made available to everyone, and thus to every shipping company on a non-discriminatory basis and at arms' length basis and on equal terms.[190] It is therefore not possible for the merged entity to give preference to the Target over other shipping companies when deciding whether to grant access to port infrastructure.

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[188] See, for instance, the minutes of the call of 8 June 2020 with a market participant who also has its own shipping company for transporting raw materials to its production plant.

[189] See publicly available information: https://www.duisport.de/hafeninformation/.

[190] A legal obligation for public ports not to discriminate among their customers exists for rail-side transhipment services: According to Article 10 of the Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (para 10 (1) of the German Railway Regulation Act (Eisenbahnregulierungsgesetz "ERegG"), the right (of railway undertakings) to be granted access, under equitable, non-discriminatory and transparent conditions also includes access to infrastructure connecting (maritime and) inland ports and other service facilities, and to infrastructure serving or potentially serving more than one final customer. See Form CO, para 320.

(148) Fourth, there is no price differentiation or price competition over shipping company customers between the port operators.[191] The pricing of public inland ports is bound to certain legal provisions[192] according to which port and bank charges are to be levied for the use of public ports, public landing or transhipment points in accordance with tariff regulations or tax regulations. Inspection of the fee structure of a port operator is subject to official control by the competent authorities.

(149) Fifth, as RheinCargo is a joint venture between HGK and Neuss-Düsseldorfer Häfen GmbH & Co. KG ('NDH'), which each hold 50% of the shares and jointly control RheinCargo, it would appear that NDH would have to agree to any changes that RheinCargo/the merged entity would propose to make regarding RheinCargo's operations.

(A.ii) *Incentive to foreclose*

(150) The incentive to foreclose depends on the degree to which foreclosure would be profitable for the merged entity and requires a balancing exercise between profits lost upstream and gains made downstream. For the reasons discussed below, the Commission considers that the merged entity would have no incentive to engage into input foreclose since, among others, the merged entity will also economically not be in a position to refuse the discharge of a ship on the grounds that it is a ship of a shipping company not belonging to it.

(151) The Commission notes that during the market investigation, the majority of the Parties' large industrial customers and one of their main competitors were overall positive about the Transaction and did not raise any input foreclosure concerns with regard to HGK's activities as inland port infrastructure provider. There were, however, some concerns expressed by other market participants.

(152) Specifically, one market participant[193] while staying neutral and not taking a position regarding the merger, drew attention to the position of the individual (small) inland shipping entrepreneurs in the market, which in its view could be put under pressure by the Transaction. In its view, the acquisition makes HGK a large and powerful player in the market and that might affect the entire transport chain. It indicated that, as port manager, HGK has the rights to 'issue' quays and ports in Cologne and the surrounding area. HGK is already active in transshipment activities in the region and the acquisition of an interest in inland shipping services would, according to this market participant, give HGK influence on all aspects of the transport chain which could entail a conflict of interest and create an uneven playing field between inland shipping operators and cargo providers.

(153) Another market participant also expressed concerns with regard to input foreclosure and indicated that the combined HGK/Imperial fleet may largely (or possibly fully) use up transhipment capacities at various locations, putting other market operators (including shipping companies) dependent on HGK's transhipment capacity in a difficult, disadvantageous position as HGK might be inclined to favour its own combined fleet. That market participant also indicates that, regardless of the (inland)

[191] Form CO, para 324.
[192] The provisions of § 119 of the NRW Land Water Act (Landeswassergesetz NRW (LWG)),
[193] See information sent by a market participant on 12 June 2020.

ports regulations in Germany, port operators will always have an incentive to service their own group companies more favourably. It is concerned that HGK might not give access to other shipping companies to their facilities if this would mean that HGK needs to divert its own vessels to third party locations.[194]

(154) First, with respect to these concerns, the Commission notes that, as indicated above, an input foreclosure implies a certain market position of the supplier or service provider. However, HGK' market share in public port infrastructure was [30-40]% in 2019 and only once slightly above [40-50]% over the last three years; it was always behind Duisport.

(155) Second, the Commission notes that the increment brought about by the Transaction in the downstream inland waterways shipping market is modest. While the Target's market share in the transport of agricultural products and coal/oil/gas is above [10-20]%, it has not exceeded [10-20]% over the last three years and was below [10-20]% in 2019. Its highest market share in 2019 was at [20-30]% in value for the transport of machines and equipment (where there is no overlap with HGK) while its market share by volume was only [0-5]%. The Parties' combined market share on the market for dry bulk goods shipping is [5-10]% in value and the increment brought about by the Target is [5-10]% in the market for dry bulk goods shipping. Consequently, the increment brought about by the Target is modest.

(156) Third, there is, in general, rarely a direct contractual relationship between the shipping company and between the port operator. Contracts for the landing of a ship in a port, just like contracts for the unloading of a ship in a transhipment terminal, are negotiated and concluded by the industrial customer with the port operator. Consequently, the decision as to which ship to use for transport and handling in a port is not taken by the port operator, but by the industrial or loading customer who wishes to transport a good to a particular location.[195]

(157) Fourth, besides the legal obligation to provide the port or terminal as an essential facility on a non-discriminatory basis and "at arm's length", the port operator is also economically not in a position to refuse the discharge of a ship on the grounds that it is a ship of a shipping company not belonging to the group. If the merged entity as inland port operator were to refuse the customer the use of the port or the handling of cargo on the grounds that ships from its own fleet should be discharged preferentially, it would run the risk that the customer would terminate the contractual relationship with the merged entity or simply not adhere to this requirement. Where the industrial customer in the port has contractually agreed the exclusive use of a transhipment facility with the port operator and the latter expects a delivery to be transhipped water-side, it is the responsibility of the lessee/private owner (industrial customer) to organise the unloading with the shipowner that has been chosen. For the merged entity, as port operator it is irrelevant which ship has to be discharged when, as long as this is done during the business hours agreed with the lessee. The port operator does not have any influence on which ship docks and when, as the lessee/landing party carries out the organisation. However, should the merged entity not respect this agreement, it runs the risk of losing the customer to another port operator. In addition, when the port or terminal is not used exclusively by a third

[194] See minutes of the call of 3 June 2020 with a market participant and additional information sent by email.

[195] See minutes of the call on 2 June 2020 and 8 June 2020 with market participants.

party shipper, time slots are allocated for unloading and it is usually the customers who have ordered the goods with whom the port operator or terminal operator enters into business relations. These customers regularly purchase goods, so that weekly or monthly schedules are available. Therefore, the customers usually announce the arrival of a ship in advance. Slots are allocated according to the first come - first served principle. It is therefore a sequential process, with some customers having their fixed slots, as they always purchase goods at a certain time. In principle, slots are allocated in the monthly/weekly schedule after receipt of the application. The slots are then allocated around the recurring cancellations. The port operator is in contact with the recipient regarding the unloading of the cargo and negotiates with them the times for unloading. Should ships arrive sooner or later, they would have to wait until either their slot is free or a new slot becomes free if their own slot is missed.

(158) Based on the above, the Commission considers that, in addition to the obligation to provide the port infrastructure on equal terms and treat all shipping companies and ships equally, the fact that the contractual relationships and business practices in the port make it impossible to specify the use of a group-owned shipping company or to open up one's own port or transhipment facility preferentially to group-owned ships, ultimately limit the possibility for the merged entity to employ input foreclosure strategies. Furthermore, since the decision as to which inland port to approach is based on the plant and customer locations and is therefore not made by the shipping companies but by the shippers, even if the merged entity wished to, post-Transaction, move its volumes to the ports currently operated by HGK, this would require its customers' agreement.

(159) Finally, as mentioned above, during the market investigation, the majority of the Parties' industrial customers were neutral or positive about the Transaction and did not express any concerns regarding this vertical link. Some of them also stressed that the Transaction would be positive for the market as it would give the Target the stability needed and also keep its business active in inland waterways transport.

(A.iii) Conclusion on input foreclosure

(160) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction input (port infrastructure services) foreclosure strategy by the merged entity in order to foreclose other freight transport companies is unlikely.

(B) Customer foreclosure in relation to inland port infrastructure services (upstream) and inland waterway freight transport services for dry bulk (downstream)

(161) Any customer foreclosure strategy of the merged entity, in the form of inhibiting access for port infrastructure operators to shipping companies, 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.[196] By contrast, if the existing or future customer base is

[196] Non-Horizontal Merger Guidelines, para 58.

sufficiently large to turn to independent suppliers, vertical foreclosure concerns are unlikely to arise.

(162) The Commission notes that during the market investigation, the majority of the Parties' large industrial customers and one of the Parties' competitors did not raise any concerns with regard to the vertical foreclosure effects arising from the Transaction. However, one market participant expressed certain concerns about customer foreclosure post-Transaction.

(163) Specifically, this market participant expressed concerns with regard to the vertical link arising through HGK's activities in port infrastructure and Imperial's position for the transport of certain bulk goods. According to this market participant, HGK will be the first fully integrated transport provider in inland ports. It is concerned that HGK's market power will increase by controlling the transportation chain and that volumes currently held with other port infrastructure providers might be shifted to the merged entity's ports instead.

(164) For the reasons set out below, the Commission considers that post-Transaction, the merged entity will have neither the ability nor the incentive to engage into customer foreclosure.

(B.i) Ability to foreclose

(165) First, as already noted, the merged entity's market share in the downstream market for inland waterways transport is modest. The Parties' combined market share on the broader market for all dry bulk goods remains below [10-20]% in Germany, Belgium and the Netherlands as well as for the Rhine basin in 2019. The Parties' combined market share on the market for inland waterways transport of agricultural and forestry products in 2019 was [20-30]% in Germany, Belgium and the Netherlands and [10-20]% in the Rhine basin. Also for the category other goods, the Parties' market share was only [0-5]% in 2019.[197] Furthermore, with regard to the transport of liquid bulk by inland waterways, where only the Target is active, its market share is very small and below [0-5]% over the last three years both in value and volume; it rises to [10-20]% by value in 2019 when only chemicals are considered. Moreover, as already noted above, the Parties' combined market share in the transport of containers is below 20% with an increment brought about by the Target of less than [0-5]%. The merged entity cannot therefore be considered as an important competitor in the downstream market.[198]

(166) Second, there are several other shipping companies or shipping collectives active in the market, such as Rhenus or NPRC, Haeger & Schmidt, Trans-Saar as well as many smaller companies which are independent from HGK/the merged entity and will continue to need access to inland port infrastructure services to carry out their business. As noted above, the market investigation has shown that even certain large industrial customers also consider smaller competitors to be viable alternatives to the services of the Parties and other large shipping companies.[199] Therefore, even if the

[197] As already mentioned above, the enormous fluctuation of the market shares in this market is due to the lack of homogeneity and clarity when classifying goods as 'other goods'.

[198] See Non-Horizontal Merger Guidelines, para 43.

[199] See above, para 85 of this Decision.

merged entity were to shift all its volumes and activities to ports that HGK operates, these other competitors would still be active in the market as customers of inland port infrastructure services, and would be representing a contestable share of the market for dry and liquid bulk goods.

(167) Third, the Commission notes that, as also confirmed by the market investigation, the decision to call at a particular port is usually taken by the loading customers according to their logistics needs, the geographical location where they need the goods to be delivered and the principle that 'whoever pays for the transport also chooses the port'. It is therefore the end customer's choice which port to use.[200] Freight transport companies such as the Target only enter into business relations with the operator of the port infrastructure to the extent that they have to pay port fees for the landing of their vessels in the port. From the point of view of the shipping company, the preferences of its customer, meaning the company carrying out the loading or unloading, are decisive for the selection of a particular port for loading or unloading goods. The loading customers are usually large industrial customers with specific needs, also including the location to where the goods are transported to be close, for instance, to their production plant.[201] The decision as to which inland port to approach is in general based on the plant and customer locations and is therefore not made by the shipping companies but by the shippers.[202] Consequently, the shipping companies do not, in general, have the possibility to influence their customers on the choice of which port to call.

(168) Regarding the choice of the port, the Commission understands that, for instance, while Imperial transported around […] tonnes of dry bulk goods to the port in Duisburg in 2019, representing around [40-50]% of its total dry bulk cargo transported along the Rhine (and around [30-40]% of the total dry bulk revenue generated in that area) around [90-100]% was (un)loaded at private docks and terminals. Specifically, around […] tonnes were transported to […], one of Imperial's heavy industry customers, under the long term agreement Imperial has with that company. The transport to its private terminal located in Duisburg is essential for […] and other customers who are also located in Duisburg who have their own private terminal in that port. Consequently, transport to another port is excluded for economic reasons for the customers. Imperial supplies various customers of heavy industry and, as a rule, these have their own ports and transport is always to these ports.[203]

(169) In the Commission's understanding, HGK has no plans to transfer transport volumes from the Target that are currently transhipped in other ports such as, for instance, Duisport to ports that HGK or its affiliated companies operate.

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200 See minutes of the calls of 26 May, 28 May and 2 June with market participants.

201 See minutes of the calls of 27 May and 28 May 2020 with market participants.

202 See reply to RFI2, received on 15 June 2020.

203 A customer's choice to have goods transported by inland waterway transport is entirely contingent on the prices for this mode of transport (avg. 3 EUR/t/100km) with the pressure to outcompete alternatives such as land (avg. 6 EUR/t/100km) or rail transport (avg. 5 EUR/t/100km) as well as pipeline (avg. 2 EUR/t/100km); See reply to RFI 4, received on 19 June 2020.

(B.ii) *Incentive to foreclose*

(170) The Commission notes that the merged entity's incentive to foreclose would depend on the degree to which this is profitable.

(171) First, as already noted, the merged entity's downstream operations are relatively small, with the Parties' combined market shares remaining below 20% for the Rhine basin in 2018 and 2019 and reaching a maximum of [20-30]% in 2017 falling to [20-30]% in 2019 for a geographic market including Germany, Belgium and the Netherlands.

(172) Second, in this case, diverting shipments to ports HGK currently operates could involve potentially higher logistics costs as it could later require further steps in the logistics chain such as employing a longer train or road haulage than otherwise necessary by going to the nearest inland port. This would reduce HGK's competitiveness vis-à-vis its customers or harm its profitability, as inland waterways is the cheapest mode of land transport. This would be even more unlikely in view also of the strong price sensitivity of the market for the transport of dry bulk where price would appear to play the most important role (see above).[204] Therefore, it would be possible for the upstream rivals providing inland port infrastructure services to price more aggressively to maintain sales levels in the downstream market.[205]

(173) Finally, the Commission understands that when in the past HGK acquired the container transport business of Imperial, this did not lead to a radical change in the market and other competitors/infrastructure port services providers were able to keep their market position and not lose market shares, by providing low prices to strengthen other parts of their port's business.[206]

(B.iii) Conclusion on customer foreclosure

(174) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction customer foreclosure strategy by HGK/the merged entity is unlikely and that the Transaction would not raise any customer foreclosure concerns for providers of the (upstream) port infrastructure services market.

(C) Conclusion

(175) Therefore, the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between HGK's port infrastructure services provision and the Parties' inland waterways freight transport provision.

5.2.3.2. Inland port infrastructure services (upstream) and stevedoring services (downstream)

(176) As indicated above, the Transaction gives rise to a vertical link between the activities of HGK in the upstream market for the provision of port infrastructure services and

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204 See, for instance, under section 5.1.1.1 point (C) of this Decision.

205 See Non-Horizontal Merger Guidelines, para 67.

206 See minutes of the call of 2 June 2020 with a market participant.

the downstream market for the provision of transhipment/steve-doring services where both HGK and the Target are active. HGK as provider of inland port services is in a (vertical) business relationship also with logistics companies/steve-doring services providers that have rented areas in the port and operate transship goods in the ports that it operates.

(177) HGK is active in the market for the provision of stevedoring services via various subsidiaries: HTAG provides transhipment services in Duisburg (three terminals via Masslog GmbH), Ginsheim-Gustavsburg, Mannheim and Karlsruhe, whereas neska provides transhipment services in Cologne and Düsseldorf, as well as in Dormagen, Krefeld and in Neuss (general cargo and bulk but also containers). RheinCargo provides transhipment services in Cologne, Dusseldorf and Neuss; it does not provide such services for liquid goods itself and all liquid bulk terminals in RheinCargo's ports are operated by customers or third parties. HGK operates almost only in public ports on the Rhine (Nijmegen-Bonn range) except the private port of Dormagen.[207]

(178) The Target only offers transhipment services in […] private inland ports for three customers on their respective premises ([…])[208] and is not active in public ports. In the case of private ports owned by individual companies, transhipment services are usually organised directly by these companies or by companies specialising in these services in private ports, because the services are often specially adapted to the needs of the owners (their companies). Only in individual cases are transport companies involved.

(179) The Parties' combined market shares when all public and private ports are considered within the Nijmegen-Bonn range have been consistently below [5-10]% over the last three years, also for the transport of dry bulk only. Furthermore, their combined market share remains below [5-10]% when all private ports are considered in the Nijmegen-Bonn range for dry bulk only.

(180) The Parties have also provided market share information for a selection of public and private ports within the Nijmegen-Bonn range under a worst case scenario for an overall market comprising a minimum market volume; their market shares are therefore likely to be even lower.[209] The Parties' combined market share in 2019 was below [40-50]% for a market comprising selected public and private ports in the market for all bulk goods stevedoring services and the market for dry bulk only. Specifically, it was [30-40]% for all bulk goods and [30-40]% for dry bulk goods only. When the Nijmegen Cologne range is considered, the market shares are respectively [30-40]% for all bulk goods and [40-50]% for dry bulk only.

(181) When selected private ports are considered under a worst case scenario (thereby providing for a smaller overall market volume and overestimating the Parties'

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207 Private ports are considered to be those ports which are operated by privately owned companies and that are not open to the public, that is, to third parties (freight forwarders/ industrial customers) wishing to load and unload their barges. See Form CO, para 134.

208 […].

209 As indicated in para 111 of this Decision, the Parties have assessed the overall market volume based on data taken from selected ports only, thereby excluding most private and some public ports and the actual overall market size is likely to be higher and the Parties' market shares likely to be lower.

market shares), then their combined market share in 2019 remains below 30% for all bulk goods stevedoring services. Affected markets arise when only dry bulk stevedoring services provision is considered with a combined market share of [40-50]% for 2019. The Parties' market shares in value remain consistently below [20-30]% in all the above markets. As already mentioned, HGK's market share is marginal in private ports (only [0-5]% for all bulk and [0-5]% for dry bulk only in 2019) even with likely overstated market shares and limited to one private terminal in Dormagen.

(182) There are no overlaps between the Parties for the provision of stevedoring services in public ports where only HGK is active. HGK's market share in volume in a market comprising public ports in the Nijmegen-Bonn range was [40-50]% in 2019 while its market share in value was [30-40]%.

(183) 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.

(A) Input foreclosure in relation to inland port infrastructure (upstream) and stevedoring services (downstream)

(184) 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 port infrastructure services to stevedoring services providers or to raise the price for these services to third parties.

(A.i) *Ability to foreclose*

(185) First, as mentioned above, HGK's market share in the upstream market for inland port infrastructure was [30-40]% in 2019 and has been less than [40-50]% over the last three years. The Target is not active in this market and there is no increment brought about by the Transaction.

(186) Second, besides HGK, there are other competitors active in the market, such as Duisport, with a market share of [40-50]% in 2019 or NIAG with a market share above [10-20]% over the last three years and at [10-20]% in 2019. As already mentioned above, Duisport, operates the public port in Duisburg which is one of the main inland ports in Europe and one of the largest ones in the world. [210]

(187) Third, the ports operated by HGK,[211] are public ports which are subject to regulation and must be made available to everyone, and thus to every stevedoring services provider on a non-discriminatory basis and at arms' length basis and on equal terms.[212] The transhipment facilities operated by HGK are essential facilities which

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[210] See publicly available information https://www.duisport.de/hafeninformation/ and discussion in section 5.2.3.1 (Ai) of this Decision above.

[211] With the exception of Dormagen.

[212] A legal obligation for public ports not to discriminate among their customers exists for rail-side transhipment services: According to Article 10 of the Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (para 10 (1) of the German Railway Regulation Act (Eisenbahnregulierungsgesetz "ERegG"), the right (of railway undertakings) to be granted access, under equitable, non-discriminatory and transparent conditions also includes access to infrastructure connecting

must be available on equal terms. It is therefore not possible for HGK to give preference to the merged entity over other stevedoring services providers when deciding whether to grant access to port infrastructure.

(188) Fourth, as RheinCargo is a joint venture between HGK and Neuss-Düsseldorfer Häfen GmbH & Co. K ('NDH'), which each hold 50% of the shares and jointly control RheinCargo, it would appear that NDH would have to agree to any changes that RheinCargo/the merged entity would propose to make regarding RheinCargo's operations.

(A.ii) *Incentive to foreclose*

(189) As already indicated above,[213] during the market investigation, the majority of the Parties' large industrial customers and one of their main competitors were overall positive about the Transaction and did not raise any input foreclosure concerns with regard to HGK's activities as inland port infrastructure provider. As mentioned above, some concerns were expressed by other market participants regarding HGK's position as a port manager and the possibility that the combined HGK/Imperial fleet may largely (or possibly fully) use up transhipment capacities at various locations, putting other market operators (including shipping companies) dependent on HGK's transhipment capacity in a difficult, disadvantageous position.

(190) With respect to these concerns, the Commission first notes that, as indicated above, input foreclosure implies a certain market position of the supplier or service provider. However, HGK' market share in public port infrastructure was [30-40]% in 2019 and only once slightly above [40-50]% over the last three years; it was always behind Duisport.

(191) Second, the Commission notes that the increment brought about by the Target in the provision of stevedoring services in public ports is insignificant, as the Target only provides stevedoring services for […] large customers' private ports and their own private terminals. Consequently, with regard to operations in the pubic ports, there is no increment brought about by the Target.

(192) Moreover, as seen above, the Parties' combined market shares remain below [10-20]% when all public and private ports are considered within the Nijmegen-Bonn range as well as when all private ports for dry bulk are considered within this range. The Parties' combined market shares give rise to affected markets under a worst case scenario when only selected public and private ports are considered within the Nijmegen-Bonn range under the most conservative worst case scenario for an overall market comprising a minimum market volume. Therefore, their market shares are likely to be even lower.[214]

(193) Third, the incentive to foreclose depends on the degree to which foreclosure would be profitable for the merged entity and requires a balancing exercise between profits

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(maritime and) inland ports and other service facilities, and to infrastructure serving or potentially serving more than one final customer. See Form CO, para 320.

[213] See the section on the vertical link between port infrastructure and inland waterways freight transport.

[214] As indicated in para 111 of this Decision, the Parties have assessed the overall market volume based on data taken from selected ports only, thereby excluding most private and some public ports and the actual overall market size is likely to be higher and the Parties' market shares likely to be lower.

lost upstream and gains made downstream. As already noted above, irrespective of the legal obligation to provide the port or terminal as an essential facility on a non-discriminatory basis and "at arm's length", the merged entity will also economically not be in a position to refuse the discharge of a ship on the grounds that it is a ship of a shipping company not belonging to it because the merged entity could lose this company as a customer since it could decide to use the services of another upstream provider. If the merged entity as inland port operator were to refuse the customer the use of the port or the handling of cargo on the grounds that ships from its own fleet should be discharged preferentially, it would run the risk that the customer would terminate the contractual relationship with them or simply not adhere to this requirement.

(194) Fourth, contracts for the unloading of a ship in a transhipment terminal, are negotiated and concluded by the industrial customer with the port operator (or the operator of the transhipment terminal). Consequently, the decision as to which ship to use for transport and handling in a port is not taken by the port operator, nor by the terminal operator, but by the industrial or loading customer who wishes to tranship a good to a particular location.

(A.iii) Conclusion on input foreclosure

(195) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction input (inland port infrastructure services) foreclosure strategy by the merged entity is unlikely.

(B) Customer foreclosure in relation to inland port infrastructure (upstream) and stevedoring services (downstream)

(196) The Commission considers that the Transaction will not lead to customer foreclosure, as the merged entity would not have the ability or incentive post-Transaction to foreclose access of the upstream inland port infrastructure providers to their (downstream) stevedoring services providers as customers.

(197) 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.[215] By contrast, if the existing or future customer base is sufficiently large to turn to independent suppliers, vertical foreclosure concerns are unlikely to arise.

(198) The Commission notes that during the market investigation, the majority of the Parties' large industrial customers and one of the Parties' competitors did not raise any concerns with regard to the vertical foreclosure effects arising from the Transaction. However, one market participant expressed certain concerns about customer foreclosure post-Transaction.[216]

(199) Specifically, this market participant expressed concerns with regard to the vertical link arising through HGK's activities in port infrastructure and the merged entity's

[215] Non-Horizontal Merger Guidelines, para 58.

[216] See, among others, minutes of the call of 2 June 2020 with a market participant.

activities in stevedoring services provision and was concerned that other port infrastructure services providers would lose the Target's demand for these services.

(200) For the reasons set out below, the Commission considers that post-Transaction, the merged entity will have neither the ability nor the incentive to engage into customer foreclose.

(B.i) *Ability to foreclose*

(201) First, as already noted, the merged entity's market share in the downstream market for stevedoring services provision is rather modest and there is no increment brought about by the Transaction for the provision of these services in public ports as the Target does not provide such services in public ports. The Target's business with respect to transhipment is limited to services provided for […] private customers only. In total, the Target's turnover with such transhipment services represents less than [5-10]% of its total turnover in 2019. The Commission notes that with regard to a market comprising all public and private ports, there are no affected markets arising by the Transaction and the Parties' combined market shares have been consistently below [5-10]% over the last three years, both for all bulk and for dry bulk only. As indicated above, it is under a worst case scenario with their market shares likely to be overestimated that the Parties' combined market share in 2019 was [30-40]% for all bulk[217] goods and [30-40]% for dry bulk goods only in the Nijmegen Bonn range (the combined market shares are respectively [30-40]% for all bulk goods and [40-50]% for dry bulk only for the Nijmegen Cologne range).

(202) Second, there are several other stevedoring services providers active in the market, such as Rhenus Logistics, Ruhrmann Logistic GmbH & Co KG, Hafen Krefeld GmbH&Co.KG, Chemion Logistik GmbH etc.[218] During the market investigation, some of the market participants indicated that during the tender process for the stevedoring services contract to be provided to them, several competitors participated in the tender, indicating a competitive market where the same competitors are active in private or public inland ports.[219]

(203) Third, the Commission notes that, as also confirmed by the market investigation, the decision to call at a particular port is usually taken by the loading customers according to their logistics needs, the geographical location where they need the goods to be delivered and the principle that 'whoever pays for the transport also chooses the port'. It is therefore the end customer's choice which port to use.[220] The loading customers are usually large industrial customers with specific needs, also including the location to where the goods are transported to be close, for instance, to their production plant.[221] The decision as to which inland port to approach is in general based on the plant and customer locations and is therefore made by the end-customers.[222] Consequently, the inland port operators do not, in general, have the

217 As noted above, RheinCargo does not provide transhipment services for liquid goods itself. All liquid bulk terminals in RheinCargo's ports are operated by customers or third parties. Nevertheless, these transhipment figures are included in HGK's market shares.

218 See Form CO, para 287 and minutes of the calls of 27 May and 8 June with market participants.

219 See also analysis under the stevedoring services section.

220 See minutes of the calls of 26 May, 28 May and 2 June with market participants.

221 See minutes of the calls of 27 May and 28 May 2020 with market participants.

222 See reply to RFI2, received on 15 June 2020.

possibility to influence their customers on the choice of which port to call for transhipment services.

(204) Fourth, the Commission considers that, as would appear to be the case in the past, it would be possible for the upstream competitors to, for instance, price more aggressively in order to maintain their sales in the market and mitigate the effects of any unlikely foreclosure attempt.[223]

(B.ii) *Incentive to foreclose*

(205) As already indicated, HGK is a public undertaking and is unable to directly induce (shipping companies or) stevedoring services providers to use the ports it operates by offering them advantages for establishing themselves at these ports. HGK's obligation as a port operator and as operator of transhipment facilities to make both the port infrastructure and the transhipment facilities available to all companies in a non-discriminatory manner and under the same conditions, prevents HGK from granting privileges to the merged entity in the event it is active in the ports HGK operates.

(206) In addition, as noted above, with regard to transhipment services, Imperial supplies customers of heavy industry and, as a rule, these have their own ports and transport is always to these same ports on the basis of the agreements Imperial has with them and these customers' needs to have the goods transhipped at their specific location. Consequently, transhipment to another port would be excluded for economic reasons for the customers.

(207) As noted above, with regard to transhipment services, Imperial supplies customers of heavy industry and, as a rule, these have their own ports and transport is always to these same ports.

(208) Finally, the Commission understands that HGK has no plans to transfer in the future volumes from the Target, which are currently transhipped in other ports, to ports that HGK or its affiliated companies operate.

(B.iii) Conclusion on customer foreclosure

(209) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction customer foreclosure strategy by the merged entity is unlikely.

(C) Conclusion

(210) Therefore, the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between HGK's port infrastructure services provision and the Parties' provision of transhipment/ stevedoring services downstream.

223 See, for instance, minutes of the call of 2 June 2020 with a market participant.

5.2.4. *Transhipment/stevedoring services*

(211) The market for the provision of stevedoring services is an upstream market vertically related to the market for inland waterways freight transport.

(212) HGK is active in the market for the provision of stevedoring services via various subsidiaries: HTAG provides transhipment services in Duisburg (three terminals via Masslog GmbH), Ginsheim-Gustavsburg, Mannheim and Karlsruhe, whereas neska provides transhipment services in Cologne and Düsseldorf, as well as in Dormagen, Krefeld and in Neuss (general cargo and bulk but also containers). RheinCargo provides transhipment services in Cologne, Dusseldorf and Neuss; it does not provide such services for liquid goods itself and all liquid bulk terminals in RheinCargo's ports are operated by customers or third parties. HGK operates almost only in public ports on the Rhine (Nijmegen-Bonn range) except the private port of Dormagen.[224]

(213) The Target only offers transhipment services in […] private inland ports for three customers on their respective premises ([…])[225] and is not active in public ports. In the case of private ports owned by individual companies, transhipment services are usually organised directly by these companies or by companies specialising in these services in private ports, because the services are often specially adapted to the needs of the owners (their companies). Only in individual cases are transport companies involved.

(214) The providers of transhipment services in public inland ports are, on the one hand, logistics companies that have rented areas in the port and operate transhipment facilities on these areas. On the other hand, the operators of public inland ports themselves also have transhipment facilities with which they offer the transhipment of goods. The operator of the public port charges a fee for the handling of goods using the port's own handling facilities (so-called crane usage fee).[226]

(215) The Parties' combined market shares when all public and private ports are considered within the Nijmegen-Bonn range have been consistently below [5-10]% over the last three years, also for the transport of dry bulk only. Furthermore, their combined market share remains below [5-10]% when all private ports are considered in the Nijmegen-Bonn range for dry bulk only.

(216) The Parties have also provided market share information for a selection of public and private ports within the Nijmegen-Bonn range under a worst case scenario for an overall market comprising a minimum market volume; their market shares are therefore likely to be even lower.[227] The Parties' combined market share in 2019 was below [40-50]% for a market comprising selected public and private ports in the market for all bulk goods stevedoring services and the market for dry bulk only. Specifically, it was [30-40]% for all bulk goods and [30-40]% for dry bulk goods

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224 Private ports are considered to be those ports which are operated by privately owned companies and that are not open to the public, that is, to third parties (freight forwarders/ industrial customers) wishing to load and unload their barges. See Form CO, para 134.

225 […].

226 See Form CO, para 97.

227 As indicated in para 111 of this Decision, the Parties have assessed the overall market volume based on data taken from selected ports only, thereby excluding most private and some public ports and the actual overall market size is likely to be higher and the Parties' market shares likely to be lower.

only. When the Nijmegen Cologne range is considered, the market shares are respectively [30-40]% for all bulk goods and [40-50]% for dry bulk only.

(217) When selected private ports are considered under a worst case scenario (thereby providing for a smaller overall market volume and overestimating the Parties' market shares) , then their combined market share in 2019 remains below 30% for all bulk goods stevedoring services. Affected markets arise when only dry bulk stevedoring services provision is considered with a combined market share of [40-50]% for 2019. The Parties' market shares in value remain consistently below [20-30]% in all the above markets. As already mentioned, HGK's market share is marginal in private ports (only [0-5]% for all bulk and [0-5]% for dry bulk only in 2019) even with likely overstated market shares and limited to one private terminal in Dormagen.

(218) There are no overlaps between the Parties for the provision of stevedoring services in public ports where only HGK is active. HGK's market share in volume in a market comprising public ports in the Nijmegen-Bonn range was [40-50]% in 2019 while its market share in value was [30-40]%.

(219) 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.

(A) Input foreclosure in relation to transhipment/stevedoring services (upstream) and inland waterways freight transport services (downstream)

(220) 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 inland waterway transport providers or to raise the price for these services to third parties.

(A.i) *Ability to foreclose*

(221) For the reasons set out below, the Commission considers that the merged entity will not have a significant degree of market power in the stevedoring services market to enable it to influence the conditions of competition in this market or prices and supply conditions in the downstream shipping market.

(222) First, the Commission notes that, with regard to stevedoring services provided in private inland ports, the increment brought about by the Transaction is very small as HGK's activities on this market are marginal with a market share of [0-5]% for all bulk and [0-5]% for dry bulk in 2019 (even with likely overstated estimated market shares) and provided in one port only (Dormagen). In addition, the Target's business with respect to transhipment is limited to services provided for […] private customers only. In total, the Target's turnover with such transhipment services represents less than [5-10]% of its total turnover in 2019.

(223) Second, with regard to stevedoring services provided in public inland ports, there is no increment brought about by the Transaction as the Target is not active in the provision of stevedoring services in public ports.

(224) Third, the Commission notes that with regard to a market comprising all public and private inland ports, there are no affected markets arising by the Transaction and the

Parties' combined market shares have been consistently below [5-10]% over the last three years, both for all bulk and for dry bulk only. As indicated above, it is under a worst case scenario with their market shares likely to be overestimated that the Parties' combined market share in 2019 was [30-40]% for all bulk[228] goods and [30-40]% for dry bulk goods only in the Nijmegen Bonn range (the combined market shares are respectively [30-40]% for all bulk goods and [40-50]% for dry bulk only for the Nijmegen Cologne range).

(225) Fourth, any input foreclosure strategy of the merged entity would be unlikely, because shipping companies could procure stevedoring services from several alternative providers in both public and private ports, such as Rhenus Logistics, Ruhrmann Logistic GmbH & Co KG, Hafen Krefeld GmbH&Co.KG, Chemion Logistik GmbH etc.[229] Various companies would appear to be active at, for instance, the port of Duisburg, including Haeger & Schmidt, Rhenus, CTS, Preymesser etc.[230] During the market investigation, some of the market participants indicated that during the tender process for the stevedoring services contract to be provided to them, several competitors participated in the tender, indicating a competitive market where the same competitors are active in private or public ports.[231]

(A.ii) *Incentive to foreclose*

(226) During the market investigation, most market participants were neutral or positive about the Transaction and did not raise any foreclosure concerns.

(227) A few market participants noted, however, that because of the vertical integration smaller market players will be unable to offer a comparable price for the array of integrated services as could be offered by the merged entity as a result of HGK owning and operating many transhipment locations in the Cologne area. One market participant noted that pricing and location are key in this market and were concerned that as a consequence of the Transaction, it will become dependent on HGK's transhipment capacity (especially in the Cologne area), while HGK will be inclined to favour its 'own' combined fleet of HGK/Imperial vessels which could use up transhipment capacities at various locations, putting this market participant in a difficult, disadvantageous position. This market participant indicated that, in its opinion, regardless of the (inland) ports regulations in Germany, port operators will always have an incentive to service their own group companies more favourably and is concerned that HGK might not give access to their facilities if this would mean that HGK needs to divert its own vessels to third party locations.

(228) For the reasons set out below, the Commission considers that the merged entity would have no incentive to foreclose access to stevedoring services and that the above concerns are not sufficient for the Commission to consider that the Transaction raises serious doubts as to its compatibility with the internal market.

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228 As noted above, RheinCargo does not provide transhipment services for liquid goods itself. All liquid bulk terminals in RheinCargo's ports are operated by customers or third parties. Nevertheless, these transhipment figures are included in HGK's market shares.

229 See Form CO, para 287 and, for instance, minutes of the calls of 27 May and 8 June 2020 with market participants.

230 See minutes of the call of 8 June 2020 with a market participant

231 See also analysis under the stevedoring services section.

(229) First, as already noted, the merged entity's market share in the downstream market for inland waterways transport is modest. The Parties' combined market shares on the broader market for all dry bulk goods remain below [10-20]% in Germany, Belgium and the Netherlands as well as for the Rhine basin in 2019. The Parties' combined market share on the market for inland waterway transport of agricultural and forestry products in 2019 were [20-30]% in Germany, Belgium and the Netherlands and [10-20]% in the Rhine basin. Also for the category other goods, the Parties' market share was only [0-5]% in 2019.[232] Therefore, the merged entity's market share downstream is modest and unlikely to give rise to an incentive to foreclose.[233]

(230) Second, the Commission notes that, with the exception of Dormagen, the ports operated by HGK and where it provides stevedoring services are public ports which are subject to regulation and must be made available to everyone, and thus to every shipping company on a non-discriminatory basis and at arms' length on equal terms.[234] The transhipment facilities operated by HGK are also essential facilities, which must be available to all shipping companies on a non-discriminatory basis and on equal terms. It is therefore not possible for the merged entity to give preference to its own fleet over other shipping companies when deciding whether to grant access to stevedoring services.

(231) Third, apart from the obligation to provide stevedoring services on equal terms and treat all shipping companies and ships equally, which would reduce or even eliminate the possibility that the merged entity would make access for shipping companies to the inland ports operated by it more difficult,[235] the contractual relationships and business practices in the port and transhipment business make it impossible to specify the use of a group-owned shipping company or to open up one's own port or transhipment facility preferentially to group-owned ships. Since the decision as to which inland port to approach is based on the plant and customer locations and is therefore not made by the shipping companies but by the shippers, even if post-Transaction the merged entity wished to move all of its volumes to be transhipped to the ports currently operated by HGK, thereby foreclosing other shipping companies from access to its stevedoring services upstream, this would have to be decided or agreed on by the industrial customer as well.

(232) During the market investigation, the majority of the Parties' industrial customers were neutral or positive about the Transaction, indicating that they believed that the merged entity would honour the contracts they already had with, for instance, the Target and did not express any concerns regarding this vertical link.

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[232] As already mentioned above, the enormous fluctuation of the market shares in this market is due to the lack of homogeneity and clarity when classifying goods as 'other goods'

[233] See Non-Horizontal Merger Guidelines, para 43.

[234] A legal obligation for public ports not to discriminate among their customers exists for rail-side transhipment services: According to Article 10 of the Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (para 10 (1) of the German Railway Regulation Act (Eisenbahnregulierungsgesetz "ERegG"), the right (of railway undertakings) to be granted access, under equitable, non-discriminatory and transparent conditions also includes access to infrastructure connecting (maritime and) inland ports and other service facilities, and to infrastructure serving or potentially serving more than one final customer. See Form CO, para 320.

[235] See Non-Horizontal Merger Guidelines, para 46.

(233) Finally, the Commission notes that there are no significant regulatory barriers to entry for the market for stevedoring/transhipment services (in public ports),[236] rather certain general (regional and local) legal provisions, for instance, regarding traffic and transhipment in ports and safety that have to be adhered to.[237] For a new entrant, while some initial investment might be necessary (in the form of cranes or storage area/warehouses), this investment is not prohibitive and could be implemented in a relatively short period including through, for instance, renting rather than buying.[238] Moreover, except for specialized services, stevedoring/transhipment services are relatively interchangeable which would in general allows customers to switch between different service providers easily, constraining the Parties from engaging into foreclosure strategies.[239] In addition, during the market investigation, certain market participants explained that they do their own loading/unloading of raw materials and have storage facilities on their location near the production plant.[240]

(A.iii) Conclusion on Input Foreclosure

(234) Based on the above considerations and the evidence available to it, the Commission concludes that a post-Transaction input (transhipment/stevedoring services) foreclosure strategy by the merged entity is unlikely.

(B) Customer foreclosure in relation to transhipment/stevedoring services (upstream) and inland waterways transport (downstream)

(235) Any customer foreclosure strategy of the merged entity, in the form of inhibiting stevedoring services providers' access to inland waterways transport companies as customers, 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.[241] By contrast, if the existing or future customer base is sufficiently large to turn to independent suppliers, vertical foreclosure concerns are unlikely to arise.

(236) During the market investigation, one of the market participants expressed certain concerns with regard to the vertical link arising from the activities of HGK as provider of stevedoring services mainly in public ports that it also operates and was concerned that stevedoring services providers could lose Imperial as a customer post-Transaction if its volumes were moved to HGK's ports and/or the areas where HGK provides stevedoring services.[242]

(237) For the reasons set out below, the Commission considers that the merged entity will have neither the ability nor the incentive to foreclose its upstream rivals' access to shipping companies as customers on the downstream market.

236 See Form CO, para 390

237 There may be certain practical limitations to the provision of such services in a specific port, due to, for instance, the geographic requirements (water access, quay, water depth) that in general need to be taken into account.

238 See, for instance, minutes of the call of 27 May 2020 with a market participant indicating that they could use the cargo handling and storage facilities offered by the ports.

239 See Form CO, para 337.

240 See minutes of the call of 8 June 2020 with a market participant.

241 Non-Horizontal Merger Guidelines, para 58.

242 See minutes of the call of 2 June with a market participant and additional information provided.

(B.i) *Ability to foreclose*

(238) First, as already noted, the merged entity's market share in the downstream market for inland waterways transport is modest. The Parties' combined market share on the broader market for all dry bulk goods remains below [10-20]% in Germany, Belgium and the Netherlands as well as for the Rhine basin in 2019. The Parties' combined market share on the market for inland waterway transport of agricultural and forestry products in 2019 was [20-30]% in Germany, Belgium and the Netherlands and [10-20]% in the Rhine basin. Also for the category other goods, the Parties' market share was only [0-5]% in 2019.[243] Furthermore, with regard to the transport of liquid bulk by inland waterways, where only the Target is active, its market share is very modest and below [0-5]% over the last three years both in value and volume; it rises to [10-20]% by value in 2019 when only chemicals are considered. Moreover, as already noted above, the Parties' combined market share in the transport of containers is below 20% with an increment brought about by the Target of less than [0-5]%. The merged entity cannot therefore be considered as an important competitor in the downstream market.[244]

(239) Second, there are several other shipping companies or shipping collectives active in the market, such as Rhenus or NPRC, Haeger & Schmidt, Trans-Saar as well as many smaller companies which are independent from HGK/the merged entity and will continue to need access to stevedoring services to carry out their business. As noted above, the market investigation has shown that even certain large industrial customers also consider smaller competitors to be viable alternatives to the services of the Parties and other large shipping companies.[245] Therefore, even if the merged entity were to shift all its volumes and activities to ports that HGK operates or provides stevedoring services in, these other competitors would still be active in the market as customers of stevedoring services.

(240) Third, the Commission notes that, as also confirmed by the market investigation, the decision to call at a particular port is usually taken by the loading customers according to their logistics needs, the geographical location where they need the goods to be delivered and the principle that 'whoever pays for the transport also chooses the port'. The loading customers are usually large industrial customers and the shipping companies do not have the kind of market power to influence their customers on the choice of which port to call. Post-Transaction, the merged entity will still not be able to instruct its customers which port the ship used for transport has to call at.

(241) Finally, the majority of the Parties' industrial customers were mostly uncritical with regards to potential anti-competitive vertical effects arising from the concentration. The majority of these customers did not express concerns about the Transaction and indicated that it would not have any impact on their company[246] while several also indicated that, in their view, the fact that HGK was taking over the Target was a positive outcome. In their view, the merger would provide the Target with stability

[243] As already mentioned above, the enormous fluctuation of the market shares in this market is due to the lack of homogeneity and clarity when classifying goods as 'other goods'

[244] See Non-Horizontal Merger Guidelines, para 43.

[245] See para 85 of this Decision.

[246] See minutes of the call of 27 June 2020 with a market participant.

and a strong parent company behind it which the Parties' customers indicated could improve quality and business relations.[247]

(B.ii) *Incentive to foreclose*

(242) As already indicated, HGK is a public undertaking and is unable to directly induce shippers to use the ports it operates or is active in by offering them advantages for establishing themselves at these ports. HGK's obligation as a port operator and as operator of transhipment facilities to make both the port infrastructure and the transhipment facilities available to all shipping companies in a non-discriminatory manner and under the same conditions, prevents HGK from granting privileges to shipping companies in the event they enter the ports HGK operates or use the transhipment facilities it operates.

(243) Moreover, diverting shipments to ports where the merged entity operates post-Transaction in order to provide stevedoring services there could involve potentially higher logistics costs as it could later require further steps in the logistics chain reducing HGK's competitiveness vis-à-vis its customers or harm its profitability. This would be even more unlikely in view also of the strong price sensitivity of the market for the transport of dry bulk where price would appear to play the most important role.[248] Therefore, it would be possible for the upstream rivals providing stevedoring services to price more aggressively to maintain sales levels in the downstream market.[249]

(244) In addition, the Commission understands that with regard to some of the Target's industrial customers, such as […] for instance, which has its own private terminal in Duisburg, the transhipment location is also connected to the location of its plant. Consequently, transport to another port would be excluded for economic reasons for the customers. As noted above, with regard to transhipment services, Imperial supplies customers of heavy industry and, as a rule, these have their own ports and transport is always to these same ports.

(245) Finally, the Commission understands that HGK has no plans to transfer in the future volumes from the Target, which are currently transhipped in other ports, to ports that HGK or its affiliated companies operate.

(B.iii) Conclusion on customer foreclosure

(246) Based on the above considerations and the evidence available to it, the Commission considers that a post-Transaction customer foreclosure strategy by the merged entity is unlikely.

(C) Conclusion

(247) Based on the above considerations and the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between

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247 See minutes of the call of 28 May 2020 with a market participant.

248 See above, for instance, section 5.1.1.1 under point (C) of this Decision.

249 See Non-Horizontal Merger Guidelines, para 67.

stevedoring/transhipment services (upstream) and inland waterways freight transport (downstream).

5.2.5. Conclusion on the vertical effects

(248) The Commission considers that, as also suggested by market participants,[250] it is not excluded that the Transaction could create economies of scale and could lead to avoiding an intermediary's cost and that this advantage may be, at least partially, passed on to those who purchase the relevant services from the merged entity.

(249) 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.

5.3. Conglomerate effects

5.3.1. Framework for the competitive assessment

(250) A market participant argued that the transaction may also lead to conglomerate foreclosure effects concerning the relationship between the markets for inland waterway transport, stevedoring/transhipment services, inland port infrastructure and railway transport services. According to the market participant, the combined entity would be active on all these markets with a relatively strong market positions and thus be able to provide all these services in an integrated manner. Consequently, the merged entity would potentially be able to bundle or tie together its services on these markets and thereby foreclose or obstruct competitors.[251]

(251) Conglomerate effects may arise in mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). These effects often arise between companies that are active in closely related markets (for example mergers involving suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use).[252]

(252) The proposed Transaction exhibits such a feature, as inland waterway transport services, stevedoring/transhipment services, inland port infrastructure services and railway transport services all relate to the provision of transport logistics services. These services are complimentary to each other and at times also offered comprehensively in so-called "all-in" services.[253] These markets can therefore be considered to be related markets, in which conglomerate effects could potentially occur.

(253) In the majority of circumstances, conglomerate mergers will not lead to any competition problems.[254] However, in certain specific cases, there may be harm to competition. The main concern in the context of conglomerate effects is that of foreclosure. The combination of products in related markets may confer on the

250 See, for instance, the minutes of the call of 8 June 2020 with a market participant.

251 Submission by a market participant from 17 June 2020.

252 Non-Horizontal Merger Guidelines, para 5.

253 See Form CO, para 76.

254 Non-Horizontal Merger Guidelines, para 92.

merged entity the ability and incentive to leverage a strong market position from one market to another one by means of tying or bundling or other exclusionary practices.[255] While the combination of products in related markets through tying and bundling are common practices that may provide customers with better products of offerings in cost-effective ways, these practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity, allowing it to increase prices.[256]

(254) The Non-Horizontal Merger Guidelines provide for a framework of assessment of such a foreclosure strategy: "*In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers*".[257]

(255) The Commission considers that the Transaction will not give rise to competition concerns with regard to conglomerate effects related to the markets for inland waterway transport, stevedoring/transhipment services, inland port infrastructure and railway transport services for the following reasons.

5.3.2. *Ability to foreclose*

(256) According to the market participant mentioned in Section 5.3.1., the merged entity may have the ability post-Transaction to bundle services for inland waterway transport, stevedoring/transhipment, inland port infrastructure and railway transport together for customers that are not dependent on HGK's port infrastructure, due to the ability to offer lower prices than competitors as a result of efficiency gains. In addition, the market participant claims that for those customers dependent on HGK's port infrastructure, the merged entity would be able to apply a tying strategy for its related services.[258]

(257) The Commission considers that the merged entity would not have the ability to foreclose competitors' customers by conditioning its sales in a way that links the products in the above-mentioned markets together, either via tying or bundling.

(258) In order to be able to foreclose competitors, the new entity must have a significant degree of market power.[259] However as mentioned before, the Parties would have a combined market share of no more than [10-20]% in the market for inland waterway transport of dry bulk goods along the Rhine and therefore, their market power on this market is limited.[260] Similarly, the merged entity's combined market shares in railway transport services would be even lower.[261] This would therefore limit the

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[255] Non-Horizontal Merger Guidelines, para 93.

[256] Non-Horizontal Merger Guidelines, para 93.

[257] Non-Horizontal Merger Guidelines, para 94.

[258] Submission by a market participant from 17 June 2020.

[259] Non-Horizontal Merger Guidelines, para 99.

[260] See section 5.1.1.1. of this Decision; While the Parties' combined market shares are higher on some potential sub-segmentations of the market for inland waterway transport of dry bulk (see: section 5.1.1. of this Decision), these never surpass [20-30]% and are thus still at most moderately high.

[261] See, footnote 15 of this Decision.

merged entity's ability to tie or bundle its products together in a fully integrated manner.

(259) Furthermore, cases of pure bundling are very unlikely if products are not bought simultaneously or by the same customers.[262] As shown by the market investigation, at least some customers procure different logistics services separately.[263] Particularly larger customers are able to partition their transport needs amongst different transport providers. For instance, regarding Imperial Shipping Groups' operation in […], the [...] customer receives inland waterway transport services from a JV company between the Target and Rhenus (one of the Parties' main competitors). Therefore, the service of inland waterway transport of goods itself is often not sourced as a bundle by customers.[264]

(260) In addition, when assessing the likelihood of conglomerate foreclosure strategies, the Commission also assesses the possibility of effective and timely counter-strategies of rival firms.[265] The Commission considers the inland waterway transport provided by the Target not to be sufficiently different from what could be provided by competing shipping companies, to prevent competitors from offering similarly integrated services. In particular Rhenus and to a somewhat lesser degree also Duisport offer integrated logistics services[266] that may serve to counter those potential tying and bundling strategies of the merged entity.

(261) Moreover, the fact that the merged entity will have a broad range or portfolio of products does not, as such, raise competition concerns, as customers may also prefer to purchase from a single source due to saved transaction costs.[267] In fact, the transaction could prove beneficial to such customers since turning to the merged entity for more than one service might avoid an intermediary's cost and price raising margin.[268] Thus, the fact that some customers have mentioned during the market investigation, that they prefer to obtain most of their logistics needs from one or few providers[269] does not in itself lead to anti-competitive effects.

5.3.3. *Incentive to foreclose*

(262) According to the market participant mentioned in Section 5.3.1., the merged entity may have the incentive post-Transaction to foreclose competitors by tying or bundling the above-mentioned services together. According to the market participant, the merged entity would be able to gain market shares on all relevant markets while at the same time being able to be profitable by setting the highest possible price without losing any customers. Moreover, this foreclosure strategy might decrease competitive pressures on the merged entity.[270]

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262 Non-Horizontal Merger Guidelines, para 98.
263 See minutes of the calls of 27 May and 8 June 2020 with market participants.
264 See Response to RFI4, received on 19 June 2020.
265 Non-Horizontal Merger Guidelines, para 103.
266 See minutes of the calls of 26 May and 2 June 2020 with market participants.
267 Non-Horizontal Merger Guidelines, para 104.
268 Submission by a market participant from 17 June 2020.
269 See minutes of the call of 28 May 2020 with a market participant.
270 Submission by a market participant from 17 June 2020.

(263) The Commission considers that the merged entity would have limited incentive to apply tying or bundling strategies to foreclose its competitors.

(264) When assessing the incentive of a company to foreclose, it may be relevant to assess the relative value of different products that would be bundled or tied together. It is unlikely that the merged entity would be willing to forego sales on one highly profitable market in order to gain market shares on another market where turnover is relatively small and profits are modest.[271] According to the Parties, the merged entity would lack the incentive to foreclose competitors' customers because, if it were to bundle or tie the different services it provides, it would not be able to sufficiently cross-subsidise price fluctuations. The Parties claim that in particular, bundling or tying any other product to inland waterway transport is becoming increasingly risky, as profit in this business has recently been severely affected by weather conditions (which influence the navigability of the Rhine).[272] The merged entity could thus not consistently rely on hypothetical profits generated from its inland waterway transport business to compensate for rebates or lower prices for potential other services, or it would risk running considerable losses each summer. The Commission considers that this argument from the Parties is indeed one of the reasons casting doubt on the ability and incentive of the merged entity to engage in bundling or tying.

(265) In addition, bundling the provision of inland waterway transport with that of transhipment/stevedoring services and port infrastructure services would be limited by the geographic scope of operations of the merged entity. As shipping companies would normally use the port the closest to the customer,[273] tying/bundling its services to a particular port would require the merged entity to offer further logistic steps (prior or subsequent to the transport) by means of, for instance, offering transport by road or rail (as customers will expect delivery at the desired location). This would have to be done for a price low enough to compete with transport solutions offered by competitors, who instead would carry out the transport to whichever destination is closest to the customer's intended delivery location via inland waterway transport. The Commission considers this to be difficult, due to the relative price-advantage of inland waterway transport compared to rail and road[274] and the relatively limited rail transport capacity compared to larger rail competitors.[275]

(266) In addition, the majority of inland waterway transport contracts are concluded on an annual basis.[276] Bundling these contracts with other services would thus restrict the Parties' ability of de-bundling its operations, should the arrangement cease to be profitable. Due to the fluctuations of profitability of inland waterway transport contracts,[277] the Commission considers it likely that the merged entity may also want to retain some flexibility post-Transaction to deal with such fluctuations, thereby limiting its incentive to tie or bundle its products.

271 Non-Horizontal Merger Guidelines, para 107.
272 See Response to RFI4, received on 19 June 2020.
273 See minutes of the call of 8 June 2020 with a market participant.
274 Average cost of inland waterway transport: 3 EUR/t/100km); of land transport: 6 EUR/t/100km; of rail transport: 5 EUR/t/100km; See Response to RFI4, received on 19 June 2020.
275 See Response to RFI4, received on 19 June 2020.
276 See para 76 of this Decision.
277 See Response to RFI4, received on 19 June 2020

(267) In its assessment of the likely incentives of the merged entities, the Commission may also take into account the type of strategies adopted on the market in the past.[278] As even the market participant mentioned in Section 5.3.1. has pointed out, despite its strong position in the container sector, HGK has so far not employed tying strategies.[279]

(268) In addition, when assessing the likelihood of the adoption of a certain conduct, the Commission also takes into account the possibility that this conduct is unlawful.[280] As noted above, HGK is subject to non-discrimination obligations with respect to its port infrastructure.[281] These obligations further reduce any incentive for the merged entity to act unilaterally to gain competitive benefits from conglomerate effects and possibly make such actions or some of them unlawful.

5.3.4. Competitive assessment

(269) The effect on competition further needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power.[282] In the case of transport logistics services, the customers generally choose the destinations.[283] In the case of large industrial customers, such as those with whom the Parties have a business relationship, who require raw materials and commodities to be delivered at their specific processing facilities, the flexibility to switch the destination ports to which a shipping company shall deliver the transported goods is small,[284] thereby limiting the ability of the merged entity to tie or bundle its products by forcing customers to use its port infrastructure or stevedoring/transhipment services.

(270) The Commission thus considers that a potential foreclosure strategy of the merged entity would not likely have a detrimental impact on competition in the markets for inland waterways shipping, transhipment/stevedoring services, inland port infrastructure and railway transport services.

5.3.5. Conclusion

(271) In view of the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to conglomerate effects in the markets for inland waterways shipping, transhipment/stevedoring services, inland port infrastructure and railway transport services, under any of the plausible product market definitions.

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278 Non-Horizontal Merger Guidelines, para 109.
279 See submission by a market participant from 17 June 2020.
280 Non-Horizontal Merger Guidelines, para 110.
281 See footnote 189 of this Decision.
282 Non-Horizontal Merger Guidelines, para 114.
283 See para 167 of this Decision; see also minutes of the call of 8 June 2020 with a market participant.
284 See Response to RFI4, received on 19 June 2020.

6. CONCLUSION

(272) 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