



EUROPEAN COMMISSION
DG Competition

Case M.10216 - DFDS / HSF LOGISTICS GROUP

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/09/2021

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

DFDS A/S
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2100 – Copenhagen
Denmark

**Subject: Case M.10216 – DFDS / HSF LOGISTICS GROUP
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 2 August 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which DFDS A/S (“DFDS”, Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation indirect sole control of the following entities: (i) HSF Distri Holding B.V., (ii) HSF Expeditie Holding B.V. and (iii) Frekrenij B.V. (together with their respective subsidiaries “HSF” or the “Target”, the Netherlands) by way of purchase of shares (the “Transaction”).³ DFDS is designated as the “Notifying Party” and, together with HSF, as the “Parties” to the Transaction.

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

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

³ Publication in the Official Journal of the European Union No C 321, 10.8.2021, p. 5.

1. THE PARTIES

- (2) DFDS is a limited liability company incorporated under the laws of Denmark that is listed on NASDAQ OMX Copenhagen A/S and ultimately controlled by Lauritzen Fonden.⁴ It operates a sea transport network around Europe and provides ferry shipping services as well as transport and logistics solutions. DFDS' business is split into two divisions: (i) the Ferry Division, which operates a network of ferry routes in and around Europe, providing port terminal services, freight and passenger transport services and (ii) the Logistics Division, which provides full-load and part-load freight transport services together with warehousing and logistics solutions, active in continental Europe and the United Kingdom ("UK").
- (3) HSF is a cold chain logistics company operating across North West Europe. Its principal activities include refrigerated transport (fresh and frozen food), cold storage and cross-docking, re-usable packaging and packaging contract cleaning. It operates from a number of sites located primarily in the Netherlands, Denmark, Norway, Sweden, Germany, Poland and the UK. HSF transports truck loads for various clients with a focus on continental Europe and the UK.

2. THE OPERATION

- (4) On 25 January 2021, DFDS, through its wholly owned subsidiary DFDS NewCo B.V., entered into an agreement (the "Signing Protocol") and a related Share Purchase Agreement ("SPA") to acquire the entire issued and outstanding share capital of the entities that together form HSF. As a result of the Transaction, DFDS will acquire the entire issued and outstanding share capital of the entities that together form HSF, together with all voting rights in these entities. DFDS will thus acquire sole control over HSF within the meaning of Article 3(1)(b) of the Merger Regulation.
- (5) As part of the Transaction, the Sellers⁵ will acquire a preference share in HSF through a dedicated entity (the "Preference Shareholder") in accordance with a shareholders' agreement ("SHA") attached to the SPA. This preference share, however, will not confer joint control because (i) [information related to the Seller's rights under the Shareholder's agreement].⁶
- (6) The Preference Shareholder will have certain consent rights, but these correspond to customary minority shareholder rights within the meaning of paragraph 66 of the

⁴ Lauritzen Fonden also controls (through a 100% shareholding) (i) the shipping company J. Lauritzen A/S and (ii) the investment company LF Investment ApS. However, DFDS explained that in the absence of any horizontal overlaps and vertical links with HSF's activities, the activities of these companies are not relevant to the Transaction. Form CO, para. 58.

⁵ Fam. PTML Bonnichsen Holding A/S, FCKH B.V., Frederiks Holding B.V., MGG Holding ApS, and Weideman Beheer B.V. (the "Sellers") currently hold all issued and outstanding depository receipts corresponding to all issued and outstanding shares in the capital of HSF Distri Holding B.V., HSF Expeditie Holding B.V. and Frekrenij B.V.

⁶ The Preference Shareholder will appoint [...] members of DFDS NewCo B.V.'s supervisory board. The other board members will be appointed by DFDS. [...] members will have to attend in order for the supervisory board to adopt resolutions and the supervisory board will adopt resolutions [...].

Commission Consolidated Jurisdictional Notice⁷ (“CJN”) and do not relate to HSF’s strategic commercial decisions.⁸

3. UNION DIMENSION

- (7) The Transaction does not meet the turnover thresholds of Article 1(2) of the Merger Regulation as the combined aggregate worldwide turnover of the undertakings concerned is less than EUR 5 000 million (DFDS: EUR 2 710 million; HSF: EUR [...] million).⁹
- (8) However, the proposed transaction fulfils the alternative turnover thresholds of Article 1(3) of the Merger Regulation as the combined worldwide turnover of the undertakings concerned exceeds EUR 2 500 million, in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million, and in each of these Member States the aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million.¹⁰ Finally, the aggregate EU-wide turnover of at least two of the undertakings concerned is more than EUR 100 million (DFDS: EUR [...] million; HSF: EUR [...] million) and none of the undertakings concerned achieves more than two thirds of its aggregate EU-wide turnover within one and the same Member State.

4. MARKET DEFINITION

- (9) The Parties’ activities overlap in the provision of freight forwarding services. Both DFDS (through its Logistics Division) and HSF provide freight forwarding services, primarily by land (via road), in the EEA. DFDS is active in freight forwarding by land mostly via road (>[...]), with a small proportion of business carried by rail (<[...]) primarily between Trieste in Italy and Northern Europe.¹¹ HSF’s core business in freight forwarding relates to freight forwarding by land. When goods need to be carried by sea, it procures short-sea shipping services from third parties.¹²

⁷ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1-48.

⁸ These consent rights cover in particular decisions over [information related to the Seller’s rights under the Shareholder’s agreement] (see: Form CO, para. 71).

⁹ Turnover calculated in accordance with Article 5 of the Merger Regulation. The Parties provided turnover figures for 2019 as only 2019 audited financial accounts were available at the time of the execution of the Signing Protocol. The Parties confirmed that the 2020 turnover will not affect the Commission’s jurisdiction to review the Transaction (see: Form CO, footnotes 51 and 52).

¹⁰ Denmark (DFDS: EUR [...] million; HSF: EUR [...] million); Germany (DFDS: EUR [...] million; HSF: EUR [...] million); Netherlands (DFDS: EUR [...] million; HSF: EUR [...] million); Sweden (DFDS: EUR [...] million; HSF: EUR [...] million).

¹¹ Form CO, para. 121.

¹² Form CO, para. 111. A small part of the Target’s business also relates to transportation by air via N&K Air Solutions. The total turnover attributable to this business is minimal (around EUR [...]) and N&K Air Solutions is mainly active in transporting products (such as Norwegian salmon) to countries outside the EU (Form CO, para. 112).

- (10) In addition, the Transaction gives rise to vertical relationships between: (i) DFDS' short-sea shipping services (provided by its Ferry Division) upstream and (ii) the Parties' freight forwarding activities downstream.

4.1. Freight forwarding services

4.1.1. Product market

- (11) Freight forwarding refers to the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs.¹³ Air and sea freight forwarding services include land transportation to/from the port/airport when required by customers. The freight forwarder often does not own the assets (ship, aeroplanes or other) necessary for the transportation (nor does it perform the actual transportation) but, generally, hires transportation capacity from third parties.¹⁴
- (12) In its previous decisions, the Commission has considered the possibility of sub-segmenting this market into domestic¹⁵ and cross-border freight forwarding,¹⁶ and into freight forwarding by air, land (road and rail¹⁷) and sea.¹⁸ In *CMA CGM/OPDR*, however, the Commission defined a market for door-to-door transport services,¹⁹ in which providers compete for the same customers irrespective of the specific mode of transportation.²⁰ In that decision, the Commission noted that in the intra-European market, customers who would consider maritime transportation could often also opt for transport by truck, whereas sea transport could often be an option for customers of truck transportation services (depending on their needs in terms of frequency and flexibility).²¹
- (13) In addition, the Commission previously considered a further segmentation by type of transported cargo (e.g. perishable goods, valuables, etc.).²² In *Deutsche Post/Air Express International*, the market investigation suggested that such a segmentation was not relevant because freight forwarders are generally able to serve all types of

¹³ See, for instance: M.9319 – *DP World/P&O Group*, para. 32; M. 9221 - *CMA CGM/CEVA*, para. 10; M.8594 – *Cosco Shipping/OOIL*, para. 23; M.8330 – *Maersk Line/HSDG*, para. 38; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, para. 37; M.6059 – *Norbert Dentressangle/Laxey Logistics*, para. 17; M.1794 – *Deutsche Post/Air Express International*, para. 8.

¹⁴ M.7630 – *Fedex/TNT Express*, para. 23; M.6570 – *UPS/TNT Express*, para. 26; M.1794 – *Deutsche Post/Air Express International*, para. 8.

¹⁵ Domestic freight forwarding means the provision of services within one country.

¹⁶ Cross-border freight forwarding means the provision of freight forwarding services from one country to any other country in the world.

¹⁷ M.5579 – *TLP/ERMEWA*, para. 42.

¹⁸ See, for instance, Commission decision in cases: M.9319 – *DP World/P&O Group*, para. 33; M.9221 – *CMA CGM/CEVA*, para. 11; M.8594 – *Cosco Shipping/OOIL*, para. 23; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 26; M.6059 – *Norbert Dentressangle/Laxey Logistics*, para. 18; M.6570 – *UPS/TNT Express*, para. 27; M.5756 – *DFDS / Norfolk*, para. 30; M.5579 – *TLP/ERMEWA*, para. 38; M.1794 – *Deutsche Post/Air Express International*, paras. 9-11.

¹⁹ Door-to-door transport services consist in taking up cargo at an agreed point and delivering it to another agreed point. Customers decide where the point of loading and point of delivery are situated and transport services providers adapt to this. See M.7523 – *CMA CGM/OPDR*, para. 24 and M.9319 – *DP World / P&O Group*, para. 11.

²⁰ M.7523 – *CMA CGM/OPDR*, paras. 31 and 37.

²¹ M.7523 – *CMA CGM/OPDR*, para. 26.

²² M.5579 – *TLP/ERMEWA*, paras. 43 – 44 ; M.1794 – *Deutsche Post/Air Express International*, para. 11.

customers without distinguishing them according to the types of goods transported.²³ More recently, however, the market investigation in *TLP/ERMEWA* showed that a segmentation according to the type of products concerned could be relevant for the transport of products requiring a specific expertise or a specific logistical set-up.²⁴

4.1.1.1. The Notifying Party's view

- (14) DFDS submits that the relevant freight forwarding product market definition should include door-to-door multimodal transportation services without segmentation by mode of transport or type of transported cargo.²⁵
- (15) DFDS submits that both Parties offer door-to-door transportation services, that inland and sea transport modes are fully substitutable²⁶ from a customer's perspective, and that sea vessel operators, truck, rail and barge companies all ultimately compete in the provision of multimodal transport services.²⁷ DFDS further submits that HSF and DFDS' ferry customers would use other means of transport and competing ferry routes (e.g. indirect ferry routes²⁸) or container services, and that a number of cold cargo freight forwarders will not use DFDS ferry routes at all but still offer cold cargo freight forwarding for the country pairs of concern through alternative means of transport.²⁹
- (16) As for the potential sub-segmentation by type of transported cargo, DFDS submits that a potential segmentation by type of transported cargo into cold (i.e. temperature-controlled) cargo and ambient (i.e. dry) cargo is not relevant in the case at hand. According to DFDS, segmentation by type of transported cargo has only been considered appropriate for specific types of cargo and in markets where freight forwarders act as the "gatekeeper" to the transportation of that particular product.³⁰
- (17) DFDS considers that any freight forwarder has the option at modest cost and relative ease to carry cold cargo since in DFDS' view cold cargo freight forwarding

²³ M.1794 – *Deutsche Post/Air Express International*, para. 11.

²⁴ M.5579 – *TLP/ERMEWA*, paras. 43 -44.

²⁵ Even though DFDS does not object to the segmentation between domestic and cross-border freight forwarding discussed in the prior precedents of the Commission, it, nevertheless, explained that only one of the Target's business units, namely Skive, focusses on domestic freight forwarding and generates a [...] turnover. All other of the Target's business units focus on international trade. Form CO, para. 203.

²⁶ In particular because containerised cargo can be transported easily by truck. Form CO, para. 180 referring to M.7523 – *CMA CGM/OPDR*, para. 26.

²⁷ Form CO, para. 180 referring to Case M.7523 – *CMA CGM/OPDR*, para. 31.

²⁸ According to DFDS, a "direct route" involves a direct ferry service between countries that form a country pair, while an "indirect route" involves road only, or road plus a ferry service from a country that is not part of the country pair. On that basis, DFDS submits that indirect routes are good alternatives for direct routes and that there is no basis for a market that involves only direct routes, see the Notifying Party's reply to RFI 10, question 1. For instance, DFDS explained it may be more cost effective for HSF to carry volumes via routes that do not use DFDS' Denmark-UK ferry. As explained by DFDS, when HSF won freight forwarding business related to [customer]'s cold cargo from [competitor] in 2013, it moved such volumes away from DFDS' Denmark-UK ferry (i.e. EBJ-IMM ferry) and transported these via alternative routes. See Notifying Party's reply to RFI 8, question 15. Also, according to DFDS, such a strategy would also be consistent with HSF's current business model: [...]. RBB Economics submission on input foreclosure assessment of 20 August 2021, page 2.

²⁹ Notifying Party's reply to RFI 2, question 2.

³⁰ Form CO, para. 183.

is not a niche or specialist service for which specialised expertise and equipment is required.³¹ Accordingly, DFDS submits that the relevant market segmentation by type of transported cargo into freight forwarding of cold cargo and freight forwarding of ambient cargo is not appropriate.³²

- (18) DFDS also submits that it is not appropriate to further segment the potential market for cold cargo freight forwarding into fresh³³ and frozen goods. As explained by DFDS, almost all HSF trailers are “multi-temp trailers” meaning that they can transport both fresh and frozen products at the same time in the same trailer by making use of compartments.³⁴

4.1.1.2. The Commission’s view

- (19) In the case at hand, the replies received in the course of the market investigation provided indications that a distinction in terms of type of transported cargo between ambient and cold cargo³⁵ could be relevant. However, on balance, the replies were too inconclusive in order for the Commission to reach a definite conclusion on the existence of separate product markets.³⁶
- (20) From a demand-side perspective, several customers (*i.e.*, shippers) replied that in their view ambient and cold cargo freight forwarding would appear to be difficult to substitute. These customers explained that when the goods need to be chilled to prevent their deterioration during transport, there is no alternative to cold cargo freight forwarding.³⁷ There are also time restrictions on how long certain cold cargo such as, for example, fresh fish can be in transit as it has a limited shelf life and has to be consumed in a relatively short time.³⁸
- (21) By way of illustration, one customer explained that “*in order to be able to transport cold or frozen cargo, special equipment and knowledge is required. This includes specific trailers with cooling facilities, and access to cool terminals*”. The same customer noted that it would not be possible to “*use a provider of only ambient cargo transport services for the transportation of any of its products*”.³⁹

³¹ Form CO, para. 184. See also Notifying Party’s reply to RFI 2, introduction.

³² Form CO, para. 185.

³³ “Fresh” goods can also be referred to as “chilled” goods, meaning that fresh products require warmer refrigerated conditions (e.g. around 0 to 5 degrees Celsius), whereas frozen goods are typically transported at minus 18 to minus 20 degrees Celsius. See non-confidential replies to Questionnaire for shippers, question 10.1.1.

³⁴ Multi-temp trailer units offer dual temperature zones within the same trailer. There are usually multiple entry points with doors to each zone and they are separated by a bulkhead to create the different compartments. See Notifying Party’s reply to RFI 2, question 13. See also Form CO, paras. 184-193.

³⁵ Including both fresh and frozen cargo.

³⁶ The results of the market investigation also appeared inconclusive in relation to a potential segmentation between domestic and cross-border freight forwarding, however, many of the market participants responding to the market investigation explained that they are active in both domestic and cross-border freight forwarding and that from a demand side perspective, some customers purchase freight forwarding services at EU level. See non-confidential replies to Questionnaire for freight forwarders, questions 1, 3.3, 9 and 10.

³⁷ Non-confidential replies to Questionnaire to shippers, question 10.

³⁸ Non-confidential replies to Questionnaire to shippers, question 7. See also non-confidential minutes of a call with a market participant of 7 July 2021, para. 12; non-confidential minutes of a call with a market participant of 8 July 2021, para. 4.

³⁹ Non-confidential replies to Questionnaire to shippers, question 10.

- (22) However, some customers noted that cold and ambient cargo freight forwarding could be performed by the same company. Indeed, certain customers explained that they buy cold cargo freight forwarding services from freight forwarders that provide both cold and ambient cargo freight forwarding services.⁴⁰
- (23) From a supply-side perspective, the market investigation has confirmed that most freight forwarders that are active in cold cargo freight forwarding are also active in ambient cargo freight forwarding.⁴¹ Some freight forwarders also indicated that for the return journey they could use cold cargo trailers for cargo that does not require temperature control.⁴²
- (24) However, the market investigation also indicated that ambient cargo freight forwarders may not be able to easily switch to cold cargo freight forwarding in the short term without incurring additional costs or risks. This is mainly because: (i) cold cargo transport requires special equipment and infrastructure, and might require a different logistical approach due to time constraints of the cold cargo's shelf life or the need to have a plug on the ferry, (ii) cold cargo transport mostly pertains to foodstuffs, so special regulations may apply and specific licenses may be required, (iii) different requirements relating to sanitation, smell, temperature and packaging mean that different types of fresh cold cargo (e.g., meat, fish, fruit and vegetables) have to be transported separately, which would indicate that such product transportation might be more complex.⁴³
- (25) The results of the market investigation also indicate that a smaller group of freight forwarders specialise in cold cargo freight forwarding (as opposed to ambient cargo) and the prices for cold cargo freight forwarding appear to be higher than for freight forwarding of ambient cargo.⁴⁴
- (26) As to the possible sub-segmentation within cold cargo freight forwarding between fresh and frozen cargo, the results of the market investigation suggest that even though there are some differences in terms of expertise and infrastructure required for transportation of frozen and fresh cargo,⁴⁵ it does not appear that this further distinction of the cold cargo freight forwarding segment is warranted on the basis

⁴⁰ Non-confidential minutes of a call with a market participant of 7 July 2021, para. 14; non-confidential replies to Questionnaire to shippers, questions 7 and 9.

⁴¹ Non-confidential replies to Questionnaire for freight forwarders, questions 5 and 6. See also Non-confidential minutes of a call with a market participant of 1 June 2021, para. 3.

⁴² Non-confidential minutes of a call with a market participant of 1 June 2021, para. 5.

⁴³ See Non-confidential replies to Questionnaire for freight forwarders, questions 11, 13, 13.1, and 15; non-confidential minutes of a call with a market participant of 30 June 2021, para. 10. According to one of the freight forwarders, for instance: "*Cold (or temperature-controlled) transport [...] is a somewhat different activity than ambient (or non-controlled temperature) transport, especially with respect to fresh cargo. Fresh cargo is very sensitive and requires special and modern equipment, educated and specifically trained personnel and compliance with regulations, and certification applying to transport [...]. Transporting fresh products is very complex. Fish, for example, are very temperature sensitive and can have a very strong [smell] so they cannot be transported with other fresh cargo. After transporting fish, the trailer must be thoroughly cleaned before other type of cargo can be loaded to it. Usually fresh fruit and vegetables cannot be transported with fresh meat, unless both are finished packed for retail sales to consumers because of the risk of coli bacteria that may be found in them*" (Non-confidential minutes of a call with a market participant of 4 June 2021, paras. 3-4).

⁴⁴ A large majority of freight forwarders confirmed that prices are higher for cold cargo freight forwarding than for ambient cargo freight forwarding. See Non-confidential replies to Questionnaire for freight forwarders, question 14.

⁴⁵ Non-confidential replies to Questionnaire for shippers, question 10.1.

of the results of the market investigation. This is so in particular because the majority of freight forwarders confirmed that it would be easy for a freight forwarder transporting frozen cargo to start providing freight forwarding services of fresh cargo.⁴⁶ In the same vein, one shipper explained that “*it is possible to transport both frozen and fresh goods together in the same shipment*”.⁴⁷ This is in line with DFDS’ submission that that HSF can transport both fresh and frozen products at the same time in the same trailer by making use of compartments.⁴⁸ For the above-mentioned reason, the Commission considers that there is no need to further distinguish cold cargo freight forwarding into fresh and frozen cargo.

- (27) Lastly, as for DFDS’ argument that the relevant product market should include different means of transportation and that available indirect routes should be considered as alternatives to direct routes, the Commission considers that for the country pairs relevant for the assessment of this Transaction, it is warranted to include available modes of transport via indirect routes into the relevant product market in this case. Such a view is supported by the replies received in the course of the market investigation which suggest that despite certain freight forwarders’ preference to use one specific route that requires certain modes of transport (e.g. ferry in conjunction with trucks),⁴⁹ other freight forwarders choose less direct routes and rely on different modes of transport (e.g. only trucks without using a ferry).⁵⁰ Some customers submitted that they might cooperate or discuss with a freight forwarder the optimal route or mode of transport which would meet their needs, while others explained that the choice of mode of transport or specific route is entirely in the hands of a freight forwarder.⁵¹
- (28) In light of the above, the Commission considers that the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.
- (29) Nevertheless, given the fact that HSF is specialised in cold cargo freight forwarding and that cold cargo freight forwarding appears to present certain constraints in terms of transportation timing and required equipment, the Commission considers that under the most conservative approach the Transaction should be assessed on the basis of the potential segment for cold cargo freight forwarding including available direct and indirect routes.

4.1.2. Geographic market

- (30) In its prior decisional practice, the Commission has left open whether the freight forwarding market or subdivisions thereof should be considered national in scope,

⁴⁶ Non-confidential replies to Questionnaire for freight forwarders, question 16.

⁴⁷ Non-confidential replies to Questionnaire for shippers, question 10.1.1.

⁴⁸ Notifying Party’s reply to RFI 2, question 13. See also Form CO, paras. 184-193.

⁴⁹ Non-confidential minutes of a call with a market participant of 1 June 2021, paras. 8-9.

⁵⁰ Non-confidential minutes of a call with a market participant of 30 June 2021, para. 4. See also non-confidential replies of a market participant to follow-up request of information of 25 August 2021, question 1a.

⁵¹ For instance, one customer noted that it “*do[es] not decide the routing but do[es] in general decide what type of mode to be used. Especially (sic) in relation to intermodal solutions (combinations of truck/sea/rail)*.” Non-confidential replies to Questionnaire for shippers, question 11.

due to language and regulatory barriers, or larger in view of a trend by major competitors to create transnational or even EEA-wide networks.⁵²

- (31) The Commission has also considered a possible trade-lane based market, but it left the precise geographic definition open.⁵³ In *DFDS / Norfolk*, the Commission assessed the transaction on freight forwarding markets on specific country pairs (e.g., between Denmark and the UK and between Sweden and the UK).⁵⁴

4.1.2.1. The Notifying Party's view

- (32) With respect to domestic freight forwarding, DFDS submits that the relevant market is at least national in scope and provided the relevant market shares on a national basis.⁵⁵
- (33) As for international freight forwarding, DFDS considers that the relevant market is that of freight forwarding to any destination in the EEA outside of the national market of reference.⁵⁶ Accordingly, for the relevant Member States where the Parties are active in international freight forwarding, DFDS provided market share estimates between said country (e.g. Denmark) and the rest of EEA.⁵⁷
- (34) DFDS argues that even if the Commission were to consider a putative market segment for cold cargo, it regards the market for freight forwarding to be at least national (or wider than national, extending to the EEA).⁵⁸ In DFDS' view, the freight forwarding market should not be defined on a country-country basis, nevertheless, it has provided the relevant market shares in cold cargo freight forwarding on the specific country pairs.⁵⁹

4.1.2.2. The Commission's view

- (35) The market investigation provided mixed results as to the definition of the relevant geographic market for freight forwarding. Some freight forwarders explained that customers procure freight forwarding services at national level, whereas others explained that customers procure freight forwarding services at regional level (i.e. for a group of countries), at EU level or even globally.⁶⁰
- (36) Conversely, when asked about their main points of origin and points of destination, a vast majority of freight forwarders mentioned corridors corresponding to country

⁵² See, for instance: M.9319 – *DP World/P&O Group*, para. 36; M.9221 – *CMA CGM/CEVA*, para. 14; M.8594 – *Cosco Shipping/OOIL*, para. 24; M.8330 – *Maersk Line/HSDG*, para. 39; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, para. 39; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paras. 20 and 22; M.5579 – *TLP/ERMEWA*, para. 52.

⁵³ M.4786 – *Deutsche Bahn/Transfesa*, para. 43 (where most respondents to the market investigation considered a separate market for rail freight forwarding from and to Spain due to the specificities of the Spanish railways).

⁵⁴ M.5756 – *DFDS / Norfolk*, para. 70.

⁵⁵ Form CO, paras. 194, 198, and Annex 10. See also Notifying Party's reply to RFI 2, introduction.

⁵⁶ Form CO, paras. 198-199.

⁵⁷ Form CO, para. 196 and Annex 10.

⁵⁸ Notifying Party's reply to RFI 2, introduction.

⁵⁹ Notifying Party's reply to RFI 2, introduction and questions 1-2.

⁶⁰ Non-confidential replies to Questionnaire for freight forwarders, questions 10 and 10.1.

pairs (e.g., from Denmark to the UK or Sweden to the UK).⁶¹ Besides, some of the market participants identified possible input foreclosure issues, which could possibly occur on the routes connecting specific country pairs.⁶² In light of this, the Commission adopted a conservative approach and, similarly to the approach adopted in *DFDS / Norfolk*, assessed the Transaction under the narrowest plausible market definition for international freight forwarding, taking into account country pairs. However, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts under any plausible market definition.

4.2. Short-sea shipping services

4.2.1. Product market

- (37) Short-sea shipping involves the provision of regular, scheduled, intracontinental (usually, costal trade) services for the carriage of cargo by shipping companies.⁶³
- (38) In previous decisions, the Commission left open whether short-sea shipping services should be part of a broader door-to-door multimodal transport services market, encompassing all modes of transport by sea, rail and road.⁶⁴ However, in *CMA CGM/OPDR*, the majority of respondents to the market investigation indicated that short-sea container shipping should be distinguished from other modes of transport as a separate market.⁶⁵
- (39) The Commission has also distinguished short-sea container shipping from long-sea container shipping (i.e., deep-sea shipping)⁶⁶ and has considered that non-liner shipping services (i.e., charter, tramp or specialised transport services) are not part of the short-sea container shipping market.⁶⁷
- (40) In addition, the Commission has considered that short-sea container shipping could be distinguished from roll-on/roll-off (“RoRo”) shipping, on the one hand, and bulk shipping (i.e., non-containerised shipping), on the other hand.⁶⁸
- (41) RoRo vessels usually transport wheeled cargo (trucks, trailers, cargo or containers on trailers) and have built-in ramps for the “rolling-on” and “rolling-off” of the

⁶¹ Non-confidential replies to Questionnaire for freight forwarders, question 2.

⁶² Non-confidential replies to Questionnaire for freight forwarders, questions 43-45.

⁶³ See, for instance: M.9093 – *DP World Investments/Unifeeder*, para. 30. With respect to short sea container shipping services see also: M.9319 – *DP World/P&O Group*, para. 19.

⁶⁴ See, for instance: M.9319 – *DP World/P&O Group*, para. 20; M.9093 – *DP World Investments/Unifeeder*, para. 31; M.8330 – *Maersk Line/HSDG*, para. 19; M.7523 – *CMA CGM/OPDR*, para. 48.

⁶⁵ M.7523 – *CMA CGM/OPDR*, para. 41.

⁶⁶ See, for instance, Commission decision in cases: M.8330 – *Maersk Line/HSDG*, para. 19; M.7523 – *CMA CGM/OPDR*, paras. 49 and 51.

⁶⁷ See, for instance, Commission decision in cases: M.8330 – *Maersk Line/HSDG*, para. 19; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 10; M.7523 – *CMA CGM/OPDR*, para. 49. Non-liner shipping distinguishes itself from liner shipping because of the regularity and frequency of the service.

⁶⁸ M.7523 – *CMA CGM/OPDR*, para. 39; M.3829 – *Maersk/ PONL*, para. 7; M.3973 – *CMA CGM/Delmas*, para. 6; M.5398 – *Hutchison/Evergreen*, para. 12; M.5756 – *DFDS/Norfolk*, paras. 11 and following; M.6305 – *DFDS/ C.RO Ports/Ålvsborg*, para. 19; M.7268 – *CSAV/ HGV/ Kühne Maritime/ Hapag-Llyod AG*, paras. 15 and following.

cargo.⁶⁹ They can be distinguished from (i) RoPax⁷⁰ vessels that transport cargo and passengers (so cargo drivers can accompany their trucks) and (ii) lift-on/lift-off (“LoLo”) vessels that are primarily used for the transport of containers.⁷¹

- (42) In *DFDS/Norfolk*, the market investigation confirmed that the freight transport on RoRo and RoPax vessels are substitutes for most products⁷² as they can transport all types of unitised freight (*i.e.*, containers but also other types of freight stored in standardized modes such as driver accompanied vehicles and unaccompanied vehicles).⁷³ In contrast, LoLo vessels are not substitutable because they aim at different cargo flows, they require terminals with container cranes and they take more time to load and unload.⁷⁴ Accordingly, the Commission defined a market for short-sea unitised freight services, encompassing containers and other freight stored in standardized modes transported on Ro-Ro and Ro-Pax vessels (*i.e.*, driver accompanied vehicles and unaccompanied vehicles).⁷⁵
- (43) The Commission has also considered potential distinctions: (i) between reefer (*i.e.*, refrigerated or temperature-controlled) and dry (or non-reefer) services⁷⁶, and (ii) between feeder services (*i.e.* transport of cargo between hub ports and (smaller) outports) and non-feeder services.⁷⁷ However, the Commission has ultimately left the exact market definition open.

4.2.1.1. The Notifying Party’s view

- (44) According to DFDS, the relevant product market for the assessment of the Transaction is the market for the provision of short-sea shipping services for unitised cargo.⁷⁸
- (45) DFDS carries all categories of cargo, including ambient and temperature-controlled cargo, in both trailers and containers. If the cargo arrives in a RoRo trailer, it can be driven onto the ship. If it is in a container, it can be lifted onto a rolling unit and then driven onto the ship.⁷⁹ Accordingly, DFDS submits that the relevant product market for the assessment of the Transaction is that of short-sea shipping services for unitised cargo, without further distinction between trucks and containers.⁸⁰

⁶⁹ M.5756 – *DFDS / Norfolk*, para. 11.

⁷⁰ Roll-on/roll-off passengers (“RoPax”).

⁷¹ M.5756 – *DFDS / Norfolk*, para. 11. In contrast with Ro-Ro shipping, in Lo-Lo shipping, dock mounted cranes lift and stack containers on vessels.

⁷² With the exception of the hazardous products, which cannot be transported on RoPax vessels.

⁷³ M.5756 – *DFDS / Norfolk*, para. 11.

⁷⁴ M.5756 – *DFDS / Norfolk*, paras. 13-14.

⁷⁵ M.5756 – *DFDS / Norfolk*, para. 37.

⁷⁶ M.9319 – *DP World/P&O Group*, para. 22; M.9093 – *DP World Investments/Unifeeder*, para. 35; M.7523 – *CMA CGM/OPDR*, para. 50; M.6305 – *DFDS/C.RO Ports/Ålvsborg*, paras. 19-21.

⁷⁷ See, for instance, cases: M.9319 – *DP World/P&O Group*, para. 27; M.9093 – *DP World Investments/Unifeeder*, para. 35.

⁷⁸ Form CO, para. 244.

⁷⁹ Form CO, para. 239.

⁸⁰ Form CO, paras. 239 and 242. In this respect, DFDS explains that only [...] customers of HSF use container transport and that HSF does not organise LoLo transportation to these customers. As a result, there is no vertical relationship between the Target and DFDS with respect to LoLo shipping (Form CO, para. 122, footnote 54).

- (46) As for feeder services, DFDS submits that they should be considered as a separate market⁸¹ and with regards to a possible distinction between reefer and non-reefer services, DFDS explains that such segmentation would not be relevant⁸² as the frequency and duration of services are the same for both types of services.⁸³ In this respect, DFDS further submits that short-sea shipping operators are equally able to transport either type of unit since reefer capacity can be adjusted easily in accordance with the customers' needs.⁸⁴

4.2.1.2. The Commission's view

- (47) The Commission investigated whether other modes of transportation are substitutable to short-sea shipping services. In this respect, the market investigation elicited mixed results showing that the competitive pressure exerted by alternative modes of transportation (road transportation in particular) is stronger for certain routes than for others.
- (48) By way of illustration, respondents to the market investigation indicated that other modes of transportation may constitute viable alternatives to direct ferry lines between (i) Northern Europe (*i.e.*, France, Belgium, the Netherlands and Germany) and the British Isles (via the Channel Tunnel),⁸⁵ as well as (ii) Scandinavia and the Baltic region.⁸⁶
- (49) In light of the results of the market investigation, the Commission concludes with respect to the routes between (i) Northern Europe and the British Isles (via the Channel Tunnel) and (ii) Scandinavia and the Baltic region that the relevant product market includes both road transportation and short-sea shipping services. For the other routes, because the market investigation elicited mixed results, the Commission will assess the Transaction under the narrowest plausible product market definition (*i.e.*, short-sea shipping services, to the exclusion of alternative modes of transportation).
- (50) The Commission also investigated whether RoRo, RoPax and LoLo services belong to the same market. In this regard, the market investigation has confirmed the relevance of a distinction between RoRo and RoPax, on the one hand, and

⁸¹ Form CO, para. 3, footnote 3. In this respect, DFDS notes however that these services are generally provided in the context of deep-sea shipping and DFDS does not provide feeder services.

⁸² Form CO, para. 241.

⁸³ Form CO, para. 241.

⁸⁴ Form CO, para. 242. Plugs for refrigerated transport can be turned on and off, and additional plugs may be added bringing on-board a power generator. This means that reefer capacity can be adjusted easily in accordance with customer needs.

⁸⁵ Non-confidential replies to Questionnaire for ferry operators, questions 19.6, 19.6.1 and 25; Non-confidential replies to Questionnaire for freight forwarders, question 26.2. Likewise, the Parties explained for instance that HSF [information on HSF's current business strategy] and that the alternative routes it uses include the Eurotunnel (see Notifying Party's reply to RFI 11, question 2). The fact that there was no direct ferry line between France and the Republic of Ireland before 2021 also shows the possibility to use alternative modes of transportation on this country-pair (Notifying Party's reply to RFI 11, question 2).

⁸⁶ Several freight forwarders active on this route explained that they significantly rely on modes of transportation other than direct ferry lines (See non-confidential replies to Questionnaire for freight forwarders, question 26.2; non-confidential replies to Questionnaire for ferry operators, questions 19.3 and 19.3.1). Likewise, the Parties confirmed for instance that HSF [information on HSF's current business strategy]. (see Notifying Party's reply to RFI 11, question 2).

LoLo services, on the other hand. All freight forwarders use RoRo vessels, alone or together with LoLo vessels, whereas certain freight forwarders do not use LoLo vessels.⁸⁷ In addition, several market participants stressed that LoLo vessels take longer to load and unload so they do not constitute a credible alternative to transport fresh cargo.⁸⁸

- (51) The market investigation also suggested that a market for unitised cargo (including containers and trailers) would be relevant. Although freight forwarders mostly use wheeled transport vehicles (*i.e.*, trailers)⁸⁹, the Commission notes that DFDS carries cargo in both trailers and containers, which contain all categories of cargo.⁹⁰ This was also confirmed by other ferry operators.⁹¹
- (52) Concerning the potential distinction between reefer and non-reefer services, freight forwarders explained that the transport of cold cargo requires special equipment on the ferries (*i.e.*, electricity plug-ins), power for coolers and temperature checks during the trip.⁹² As a result, prices tend to be higher for the transport of cold cargo than for ambient cargo.⁹³ This would suggest that a further segmentation between cold cargo and ambient cargo is relevant. However, the vast majority of ferry operators confirmed that they could transport both cold and ambient cargo.⁹⁴ For instance, one ferry operator explained that “*all ferry/ro-ro services offer plus facilities for reefer units*”.⁹⁵
- (53) For the purpose of the assessment, in connection with the routes between (i) Northern Europe - British Isles, and (ii) Scandinavia - the Baltic region, the Commission will analyse the effect of the Transaction on a product market including both road transportation and short-sea shipping for the transport of unitised freight cargo on RoRo and RoPax vessels (*i.e.*, excluding LoLo shipping and bulk shipping). As for the other routes, the Commission will analyse the effect of the Transaction on a product market limited to short-sea shipping services for the transport of unitised freight cargo on RoRo and RoPax.⁹⁶

4.2.2. Geographic market

- (54) In previous decisions, the Commission defined the geographic market for short-sea shipping services by reference to corridors, *i.e.* ranges of ports at each side of each

⁸⁷ Non-confidential replies to Questionnaire for freight forwarders, question 32: 56% of the respondents use only RoRo and RoPax vessels, whereas 44% of them use both RoRo and LoLo vessels.

⁸⁸ Non-confidential replies to Questionnaire for freight forwarders, question 32.1: “[We use] *only ro/ro vessel due to speed and fast transit as well as availability of departues throughout the week*”. Non-confidential replies to Questionnaire for freight forwarders, question 32.1: “*Ro/Ro is the only alternative [w]hen[?] going to UK with fresh products with short lead time*”.

⁸⁹ Non-confidential replies to Questionnaire for freight forwarders, question 32.1.

⁹⁰ Form CO, para. 239.

⁹¹ Non-confidential replies to Questionnaire for ferry operators, question 1.1.

⁹² Non-confidential replies to Questionnaire for freight forwarders, question 30.1.

⁹³ Non-confidential replies to Questionnaire for freight forwarders, question 30.

⁹⁴ Non-confidential replies to Questionnaire for ferry operators, question 5.

⁹⁵ Non-confidential replies to Questionnaire for ferry operators, question 19.1.1.

⁹⁶ The Commission will not assess the effects of the Transaction on a broader market encompassing door-to-door intermodal transport services, since the market shares of DFDS on this broader market will be diluted as DFDS only provides short-sea shipping services.

trade route.⁹⁷ While leaving the question open, the Commission adopted the same approach with respect to short-sea unitised freight services with a potential sub-segmentation by country-pair.⁹⁸

- (55) By way of illustration, in *DFDS/Norfolk*, a majority of respondents to the market investigation pointed at separate markets for unitised freight services by sea between: (i) the UK and the Benelux, (ii) the UK and Norway, (iii) the UK and Sweden, and (iv) the UK and Denmark.⁹⁹
- (56) The Commission also considered a further delineation between the different legs of trade. A leg of trade is defined as one of the two directions of a trade (e.g., on the trade connecting Scandinavia to the UK and back, Scandinavia-UK is the first leg and UK-Scandinavia is the second leg).¹⁰⁰

4.2.2.1. The Notifying Party's view

- (57) DFDS considers that the market for short-sea shipping should be segmented on the basis of single trades¹⁰¹ with a further distinction between each leg of trade, given that the conditions of demand differ in each direction of trade.¹⁰²
- (58) However, DFDS considers that a definition of each trade by country pairs or on a port-port basis is not relevant¹⁰³. In the case at hand, DFDS considers that trade legs should be defined by reference to the following ranges of ports¹⁰⁴: (i) the British Isles (i.e. the UK and Republic of Ireland)¹⁰⁵; (ii) Scandinavia (i.e., Denmark, Finland, Norway and Sweden)¹⁰⁶; (iii) Baltic region (i.e., Estonia, Poland, Latvia and Lithuania)¹⁰⁷ and (iv) Northern Europe (i.e., the Netherlands, Belgium, Germany and Northern France).

4.2.2.2. The Commission's view

- (59) The market investigation confirmed that the broadest plausible market definition for short-sea shipping services corresponds to trade routes (i.e., corridors) with a possible further segmentation by country-pairs on some routes.

⁹⁷ See, for instance: M.8330 – *Maersk Line/HSDG*, para. 20; M.6305 - *DFDS/C.RO PORTS/ ÄLVSBORG*, paras. 24-28; M.5756 - *DFDS/ Norfolk*, paras.18-20; M.2838 - *P&O STENA LINE (HOLDING) LIMITED*, paras.15-16; Case IV/36.253- *P&O Stena Line*, para. 38.

⁹⁸ M.5756 - *DFDS/ Norfolk*, paras. 18-20.

⁹⁹ M.5756 - *DFDS/ Norfolk*, para. 19.

¹⁰⁰ M.7523 – *CMA CGM/OPDR*, paras. 54 and 60 ; M.9093 – *DP World Investments/Unifeeder*, para. 36; M.8330 – *Maersk Line/HSDG*, para. 20.

¹⁰¹ Form CO, paras. 245-246.

¹⁰² Form CO, para. 246.

¹⁰³ Form CO, para. 247.

¹⁰⁴ Form CO, para. 251.

¹⁰⁵ In this respect, DFDS refers to the Commission's precedents in cases M.7523 – *CMA CGM/OPDR*, paras. 56 and 58; M.9016 – *CMA CGM/Container Finance*, para. 42 (Form CO, para. 251, footnote 119).

¹⁰⁶ M.9016 – *CMA CGM/Container Finance*, para. 42 (Form CO, para. 251, footnote 120).

¹⁰⁷ In this respect, DFDS refers to the Commission's precedents in cases M.9016 – *CMA CGM/Container Finance*, para. 42, in which the Commission endorsed a definition of the Baltic region as including Estonia, Latvia and Lithuania (Form CO, para. 251, footnote 121). In addition, DFDS explains that it considers Poland substitutable from a demand-side perspective with routes to and from Estonia, Latvia and Lithuania (Form CO, footnote 121).

- (60) In the case at hand, the Transaction may give rise to vertically affected markets, at corridor and/or country-pair level¹⁰⁸, on the following routes: (i) Scandinavia – British Isles, (ii) Northern Europe – Baltic region, (iii) Northern Europe – British Isles¹⁰⁹, (iv) Scandinavia – Baltic region.¹¹⁰
- (A) Scandinavia – British Isles
- (61) The Commission investigated whether the relevant geographic market corresponds to a trade corridor including all Scandinavian ports, on one end, and all ports from the British Isles (*i.e.*, the UK and the Republic of Ireland), on the other end.
- (62) The results from the market investigation elicited mixed results, which, on balance, did not confirm the Parties' submission that Scandinavia and the British Isles constitute relevant ends of trade.
- (63) Concerning Scandinavia, several freight forwarders confirmed that Norwegian ports are substitutable with the port of Gothenburg (Sweden). Likewise, several freight forwarders explained that Swedish ports are substitutable with the port of Esbjerg (Denmark).¹¹¹ However, a significant freight forwarder explained that Swedish ports, Norwegian ports and Danish ports are not substitutable.¹¹² Concerning British Isles, all the responses received in this respect explained that there is no port substitutable with UK ports.¹¹³

¹⁰⁸ The Parties were not able to provide volume and value market shares for every route. For the purpose of the assessment and for the sake of consistency, the Commission relied on capacity market shares to list affected trade routes (Form CO, Annex 21).

¹⁰⁹ On a country-pair basis, the country pairs that could be potentially affected on this route would be between the Netherlands and the UK, the Republic of Ireland and France, Germany and the UK. On these country-pairs DFDS confirmed that its market share would be below 30% if road transportation via the Channel Tunnel is taken into account (response to RFI 12, question 4). In this respect, as explained above, the market investigation confirmed the Parties' submission that road transportation (via the Channel Tunnel) is a viable alternative to direct ferry lines between France, Belgium, the Netherlands and Germany, on the one hand, and the UK, on the other hand. In any event, none of the market participants expressed concern in connection with this country pair (see non-confidential replies to Questionnaire for freight forwarders, question 3; non-confidential replies to Questionnaire for shippers, question 19). Therefore, this trade route will not be further examined.

¹¹⁰ On a country-pair basis, the country pairs that could be potentially affected on this route would be between Sweden and Lithuania, Denmark and Lithuania, Sweden and Estonia. On these country-pairs DFDS confirmed that its market share would be below 30% if road transportation is taken into account. In this respect, as explained above, the market investigation confirmed the Parties' submission that road transportation is a viable alternative to direct ferry lines between Scandinavia (*i.e.*, Denmark, Sweden, Norway, Finland) on the one hand, and the Baltic region (*i.e.*, Lithuania, Latvia, Estonia as well as Poland) on the other hand. In any event, none of the market participants expressed concern in connection with this country pair (see non-confidential replies to Questionnaire for freight forwarders, question 3; non-confidential replies to Questionnaire for shippers, question 19). Therefore, this trade route will not be further examined.

¹¹¹ Non-confidential replies to Questionnaire for freight forwarders, question 37. The responses were the same for ambient and cold cargo.

¹¹² Non-confidential reply to Questionnaire for freight forwarders, question 37. The response concerned only cold cargo.

¹¹³ Non-confidential replies to Questionnaire for freight forwarders, question 37. The responses were the same for ambient and cold cargo.

- (64) Accordingly, the Commission will analyse the Transaction under the narrowest plausible market definition, that is the country pairs between Scandinavia and the UK (*i.e.*, Denmark – UK, Sweden – UK, Norway – UK).¹¹⁴
- (65) In addition, the Commission examined whether indirect routes via Dutch, Belgian and French ports as well as the Channel Tunnel could constitute credible alternatives to direct ferry lines between Scandinavian countries (especially Denmark, Sweden and Norway) and the British Isles, more specifically the UK. In this respect, the market investigation elicited mixed results.
- (66) On the one hand, the market investigation pointed towards several elements suggesting that there would be no perfect alternative to direct ferry lines between the country-pairs of Scandinavia and the UK. In this regard, because HSF is specialised in cold cargo freight forwarding, the Commission adopted a conservative approach and focused on the substitutability of alternative routes from the point of view of cold cargo freight, which is the most time sensitive.
- (67) First, from a demand-side perspective, according to several market participants, driving to Dutch, Belgian or French ports would not be a perfect substitute. For instance, several freight forwarders active between Scandinavia and the UK explained that going by road and then crossing by ferry from the Netherlands or Belgium or via the Channel Tunnel would not be a competitive alternative for cold cargo freight forwarding,¹¹⁵ especially for routes between Sweden and Norway to the UK.¹¹⁶
- (68) Likewise, several freight forwarders active between Scandinavia and the UK explained that going by road from Scandinavia and then crossing the Channel via the Eurotunnel would not be a competitive alternative.¹¹⁷
- (69) Second, cold cargo freight forwarders using DFDS' ferries between Scandinavia and the UK actually ship most of their cold cargo (around 90%) from Scandinavia to the UK by direct ferry. Alternative routes represent only around 10% of their cold cargo from Scandinavia to the UK. For these freight forwarders, the direct ferry lines between Scandinavia and the UK seem to be more attractive.
- (70) Third, according to the Parties' data, shipping cold cargo from Scandinavia to the UK other than via direct ferry lines would be at least 20% more expensive.¹¹⁸ This confirms that alternative routes would be less attractive for freight forwarders.

¹¹⁴ As for Finland, DFDS does not operate any direct ferry line between Finland and the UK.

¹¹⁵ Non-confidential replies to Questionnaire for freight forwarders, questions 38 and 39. One freight forwarder, for instance, explained that *"The price difference is too high – this would not be a cost competitive solution for most ports, particularly in the Nordics, Baltics and some North European markets. Such other routing would also add more transportation time which would easily render the alternative less viable for most types of cargo"* (non-confidential reply of a market participant to Questionnaire for freight forwarders, question 38.2).

¹¹⁶ According to a freight forwarder: *"it is easier to go by road from Denmark to the UK than from Sweden or Norway"* (non-confidential minutes of the call with a market participant on 26 August 2021).

¹¹⁷ According to one freight forwarder: *"It is absolutely not possible [to go by road and then cross the Channel via the Eurotunnel] due to economic, operational and time factors. Gothenburg is the main corridor and going to other ports like in Benelux or even the Channel is both very expensive due to distance and the complication of getting another setup to return trailers"* (non-confidential replies to questionnaire for freight forwarders, question 38.2).

- (71) On the other hand, several elements suggested that cold cargo freight forwarders actually use alternative routes.
- (72) First, the market investigation showed that a number of cold cargo freight forwarders active between Scandinavia and the UK frequently use routes other than direct ferry lines. These market participants include significant players in the cold cargo freight forwarding segment.¹¹⁹
- (73) Second, several freight forwarders relying on direct ferry lines to transport cold cargo between Scandinavia and the UK have confirmed that they could use alternative routes if required when there are capacity constraints on the ferries or when the sailing schedules of ferries are not convenient.¹²⁰
- (74) One cold cargo freight forwarder specialised in the transport of Norwegian salmon to the UK explained for instance that it prefers to use the ferry line between Sweden and the UK instead of the ferry line between Norway and the UK because the sailing schedules of the latter ferry line are not convenient for the product flows of this market participant.¹²¹ The same cold cargo freight forwarder further explained that it uses alternative routes “*from time to time, but only if DFDS has no capacity on [Gothenburg-Immingham], because we can't wait for the next ferry, so in that case we are forced to go via Benelux*”.¹²²
- (75) Third, several shippers also confirmed that they can use alternative routes.¹²³ From 2013 to 2018, for instance, [customer] used HSF to transport cold cargo (including full truckloads) from Denmark to the UK via the Netherlands.¹²⁴ Today, to some extent [customer] continues to transport cold cargo to the UK via the Netherlands, Belgium and even the Channel Tunnel.¹²⁵
- (76) For the purpose of this decision, however, the exact geographic market definition for short-sea shipping between Scandinavia and the UK can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. Accordingly, the Commission will assess the effects of the Transaction below on a market for short-sea shipping

¹¹⁸ Non-confidential replies to Questionnaire for freight forwarders, question 39.1.

¹¹⁹ “[our company] is not using DFDS services to the UK because the schedule of its ferries is not convenient for [our company]. [Our company] transports fresh salmon from Norway to the UK mostly by road (with a lead time between 2-3 days)”, non-confidential minutes of a call with a market participant of 30 June 2021, para. 4. See also non-confidential replies of a market participant to follow-up request of information of 25 August 2021, question 1a.

¹²⁰ Non-confidential replies to Questionnaire for freight forwarders, question 39; non-confidential replies of a market participant to follow-up questions of 25 August 2021.

¹²¹ Non-confidential minutes of a call with a market participant of 27 August 2021.

¹²² Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹²³ According to one shipper for instance: “*It is always possible to drive “around” and avoid all ferries, but this will cost extra in addition to longer transit. Usually a bad solution. When the weather does not allow it, we have to send trucks by road all the way*” (non-confidential replies to questionnaire to shippers, question 16.2.).

¹²⁴ Notifying Party’s reply to RFI 8, question 15, non-confidential minutes of a call with a market participant of 26 August 2021, para. 3.

¹²⁵ Non-confidential minutes of a call with a market participant of 26 August 2021, para. 4.

services for unitised cargo between Scandinavia and the British Isles,¹²⁶ with a further segmentation by country-pair and to the exclusion of indirect routes.

(B) Northern Europe – Baltic region

- (77) The Commission investigated whether the relevant geographic market corresponds to a trade corridor including all Northern European ports (*i.e.*, Northern France, Netherlands, Belgium, Germany) at one end of the leg, and all ports from the Baltic region (*i.e.*, Lithuania, Latvia, Estonia as well as Poland) on the other end of the leg.
- (78) Several market participants confirmed that ports in Northern Europe (*i.e.*, Northern France, Netherlands, Belgium, and Germany) are substitutable with one another.¹²⁷ However, the responses of certain market participants suggest that German ports would not be substitutable to other ports in France, Netherlands and Belgium.¹²⁸
- (79) Regarding the Baltic region, on the other hand, several market respondents confirmed that the ports in the Baltics (*i.e.*, Latvia, Lithuania and Estonia) are substitutable with one another.¹²⁹ According to another market participant for ambient cargo, the port of Gdynia in Poland would also be substitutable with Lithuanian ports.¹³⁰
- (80) For the purpose of the assessment, however, the Commission will analyse the Transaction under the narrowest plausible market definition, that is the country pairs between Northern Europe and the Baltic region (*i.e.*, Germany - Lithuania).
- (81) The Commission also examined whether indirect routes could constitute credible alternatives to direct ferry lines between Northern Europe and the Baltic region for freight forwarders. In this respect again, the market investigation elicited mixed results.
- (82) On the one hand, several market participants explained that direct ferry lines are more attractive than alternative routes, including alternative means of transportation. One freight forwarder transporting both ambient and cold cargo explained that *“it would not be a competitive solution for most ports, particularly in the Nordics, Baltics and some North European markets. Also getting capacity in place for trucking, rest period for drivers would unfavourably impact the set-up significantly – as well as getting the trailer equipment into the right flows. Congestion on road side would also make this alternative less attractive – not forgetting environmental impact, which is having higher concern from our customers than earlier”*.¹³¹
- (83) Another freight forwarder transporting ambient and cold cargo explained in the same vein that *“Road is not a viable alternative due to the extra costs due to*

¹²⁶ In a conservative approach, the Commission focuses on the ferry lines between Scandinavia and the UK (because DFDS does not operate any ferry line between Scandinavia and Ireland). On such a broader market, DFDS' market share would be diluted.

¹²⁷ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹²⁸ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹²⁹ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹³⁰ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹³¹ Non-confidential replies to Questionnaire for freight forwarders, question 40.

*additional required equipment, additional required personnel and, especially when it comes to the road mode, it would result in additional CO2 emission. When it comes to rail mode, the issue of imbalanced cargo flows plays important role and very important factor to mention is foreseen provisions of the mobility package which would require return of the truck to the country of registration, therefore rail mode would become the least acceptable option leaving only ferry and road as relatively acceptable”.*¹³²

- (84) A third freight forwarder also mentioned “*additional factors like limited permissions crossing the Polish border that might limit our possibilities to use the road as an alternative. The rail alternative do not have well-developed service to use it as an option*”.¹³³
- (85) On the other hand, several respondents confirmed that they actually use alternative routes to transport cargo from Northern Europe to the Baltics. A freight forwarder transporting both ambient and cold cargo explained, for instance, that it uses various routes to/from the Baltic region, via Northern German ports, over land via east-coast Sweden or direct line out of Fredericia port in Denmark into Klaipeda in Lithuania.¹³⁴
- (86) Likewise, another freight forwarder explained that the “*Baltic sea is better covered by alternatives*” and that it can use trucks to transport products between Northern Europe to the Baltics via Poland.¹³⁵
- (87) For the purpose of this decision, however, the exact geographic market definition for short-sea shipping between Northern Europe and the Baltic region can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. Accordingly, the Commission will assess the effects of the Transaction below on a market for short-sea shipping services for unitised cargo between Northern Europe and the Baltic region with a further segmentation by country-pair and to the exclusion of indirect routes.¹³⁶

(C) Northern Europe – British Isles

- (88) The Commission investigated whether the relevant geographic market corresponds to a trade corridor including all Northern European ports (*i.e.*, Northern France, Netherlands, Belgium, Germany) at one end of the leg, and all ports from the British Isles (*i.e.*, the UK and the Republic of Ireland) on the other end of the leg.
- (89) As previously explained, several market participants confirmed that ports in Northern Europe (*i.e.*, Northern France, Netherlands, Belgium, and Germany) are substitutable with one another.¹³⁷ However, the responses of certain market participants suggest that German ports would not be substitutable with other ports

¹³² Non-confidential replies to Questionnaire for freight forwarders, question 40.

¹³³ Non-confidential replies to Questionnaire for freight forwarders, question 40.

¹³⁴ Non-confidential minutes of a call with a market participant of 4 June 2021, para. 14.

¹³⁵ Non-confidential replies to Questionnaire for freight forwarders, question 40.

¹³⁶ As explained in further detail below, at the level of country pairs, the only vertically affected market is the route between Germany and Lithuania where DFDS’ market share for direct short-sea shipping services upstream is above 30%. The Commission thus focused its assessment on this country-pair.

¹³⁷ Non-confidential replies to Questionnaire for freight forwarders, question 39.

in France, Netherlands and Belgium.¹³⁸ Regarding the British Isles, only one respondent expressed the view that UK ports were not substitutable to other ports.

- (90) However, the exact market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition. For the purpose of the assessment, the Commission will analyse the Transaction on a country-pair basis, to the exclusion of indirect routes.

(D) Scandinavia – Baltic region

- (91) The Commission investigated whether the relevant geographic market corresponds to a trade corridor including all Scandinavian ports (*i.e.*, Denmark, Sweden, Norway) at one end of the leg, and all ports from the Baltic region (*i.e.*, Lithuania, Latvia, Estonia as well as Poland) on the other end of the leg.
- (92) As explained above, several freight forwarders confirmed that Norwegian ports are substitutable with the port of Gothenburg (Sweden). Likewise, several freight forwarders explained that Swedish ports are substitutable with the port of Esbjerg (Denmark).¹³⁹ However, a significant freight forwarder explained that Swedish ports, Norwegian ports and Danish ports are not substitutable.¹⁴⁰
- (93) As for the Baltics, several market respondents confirmed that the ports in the Baltics (*i.e.*, Latvia, Lithuania and Estonia) are substitutable with one another.¹⁴¹ In addition, one market participant for ambient cargo explained that the port of Gdynia in Poland would also be substitutable to Lithuanian ports.¹⁴²
- (94) However, the exact market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition. Accordingly, the Commission will analyse the Transaction under the narrowest plausible market definition, that is the country pairs between Scandinavia and the Baltic region, to the exclusion of indirect routes.

5. COMPETITIVE ASSESSMENT

- (95) The Parties' activities overlap in the provision of freight forwarding services. HSF is specialised in cold cargo freight forwarding, especially for fresh products, whereas DFDS is primarily active in ambient cargo freight forwarding, with limited activities in cold cargo freight forwarding.¹⁴³ As a result, the Parties'

¹³⁸ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹³⁹ Non-confidential replies to Questionnaire for freight forwarders, question 37. The responses were the same for ambient and cold cargo.

¹⁴⁰ Non-confidential replies to Questionnaire for freight forwarders, question 37.

¹⁴¹ Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹⁴² Non-confidential replies to Questionnaire for freight forwarders, question 39.

¹⁴³ DFDS' current business in cold cargo freight forwarding is limited to the UK and Ireland (Form CO, para. 153). DFDS' activities to-date in cold cargo freight forwarding have largely been the result of historical acquisitions. For example, through its acquisition of Norfolkline in 2010, DFDS assumed Norfolkline's freight forwarding activities (including cold chain transportation in the UK) and opted to continue operating this business but not extend it to other countries (Form CO, para. 153, footnote 72). However, DFDS submitted that it has an ambition to grow the cold chain part of its logistics business (Form CO, para. 37).

activities in freight forwarding are relatively complementary and primarily overlap on cold cargo freight forwarding. Accordingly, the Commission will focus its assessment on the overlap for cold cargo freight forwarding.

- (96) DFDS also provides short-sea shipping services (i.e. ferry services) which are an input to the provision of freight forwarding services; freight forwarders are thus customers of ferry companies. As a consequence, the Transaction gives rise to vertical relationships between (i) DFDS' activities upstream on the markets for short-sea shipping services and (ii) the Parties' activities downstream on the markets for freight forwarding.
- (97) The horizontal and vertical relationships arising as the result of the Transaction will be further assessed below.

5.1. Horizontal effects

- (98) While the Parties' activities overlap horizontally in the provision of freight forwarding services, the Transaction only gives rise to horizontally affected markets in the market for the provision of cold cargo freight forwarding services for the country pair Denmark-UK¹⁴⁴ (when taking into account indirect transportation modes).¹⁴⁵ Indeed, if indirect transportation modes via Northern European routes such as the Netherlands and the Eurotunnel are taken into account, HSF estimates its market share to be around [20-30]% for the Denmark - UK country pair (and less than [10-20]% for the Scandinavia – UK corridor).¹⁴⁶
- (99) The Commission notes however that DFDS' individual market share in cold cargo freight forwarding between Denmark and the UK is negligible and estimated to be less than [0-5]%.¹⁴⁷ The resulting market share is therefore almost entirely attributable to the Target's business in Denmark and the increment brought about by the Transaction is insignificant.
- (100) The Parties do not appear to be close competitors since: (i) HSF is specialised in cold cargo freight forwarding whereas the presence of DFDS on this segment is currently very limited, (ii) DFDS does not [information on DFDS's current business strategy], whilst the Target uses both the direct ferry route and indirect routes via the Netherlands and the Eurotunnel, (iii) the vast majority of the Target's volumes between Denmark and the UK are transported via the Netherlands. In addition, there are several other freight forwarders active in this market which is very fragmented.¹⁴⁸ For instance, DSV is one of the Parties' main competitors active in this market, with an estimated market share well above [10-20]%. Other

¹⁴⁴ See Notifying Party's reply to RFI 11, question 1.

¹⁴⁵ DFDS provided different market share estimates for freight forwarding depending on the relevant delineation of the product market. See below under Section 5.2.2 information on the Parties' downstream market shares, which remain below 20%.

¹⁴⁶ See Notifying Party's reply to RFI 6, question 6. The Parties confirmed that no other market would be horizontally affected when taking into account indirect transportation modes (see Notifying Party's reply to RFI 11, question 1).

¹⁴⁷ See Table 2 below.

¹⁴⁸ For instance, DFDS estimates that there are at least 12 other freight forwarders offering cold-freight forwarding services between Denmark and the UK. DFDS also notes that on the basis of a report "Europe Refrigerated Transport Vehicles Market: 2015-2026" by IMARC market research, the total EEA fleet of refrigerated transport vehicles is approximately 1.2 million units and the Parties' combined share of this total is less than [0-5]%. See Notifying Party's reply to RFI 9, question 2 c.

freight forwarders, such as Girteka, Bring and Nagel are also competing with the Parties on this market with a combined estimated market share of up to [30-40]%.¹⁴⁹

- (101) Finally, the majority of market participants responding to the Commission's market investigation did not raise any horizontal competition concerns with respect to freight forwarding.
- (102) Based on the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to horizontal overlaps in freight forwarding, including on any putative horizontally affected market for cold cargo freight forwarding between Denmark and the UK.

5.2. Vertical effects

5.2.1. Legal framework

- (103) A merger can entail non-horizontal effects when it involves companies operating at different levels of the same supply chain or in closely related markets. Pursuant to the Non-Horizontal Merger Guidelines,¹⁵⁰ non-horizontal mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies. However, there are circumstances in which non-horizontal mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure.¹⁵¹
- (104) In assessing potential vertical effects of a merger, the Commission analyses whether a merger results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.¹⁵² Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market. It is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of their competitors as well — are as a result able to profitably increase the price charged to consumers.
- (105) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: (i) input foreclosure, when access of downstream rivals to supplies is hampered;¹⁵³ and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.¹⁵⁴
- (106) In assessing both types of foreclosure, the Commission assesses whether the merged entity (i) would have the ability to engage in foreclosure, (ii) whether it would have the incentive to do so, and (iii) what would be the overall impact on effective competition in the affected markets.

¹⁴⁹ See Notifying Party's reply to RFI 7, question 12.

¹⁵⁰ Commission 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.

¹⁵¹ Non-Horizontal Merger Guidelines, para. 18.

¹⁵² Non-Horizontal Merger Guidelines, paras. 20-29.

¹⁵³ Non-Horizontal Merger Guidelines, para. 31.

¹⁵⁴ Non-Horizontal Merger Guidelines, para. 58.

5.2.2. Overview of the vertically affected markets

- (107) In the case at hand, as explained above,¹⁵⁵ the Transaction gives rise to vertically affected markets, at corridor and/or country-pair level,¹⁵⁶ on the following routes (i) Scandinavia – British Isles, (ii) Northern Europe – Baltic region. In these affected trade corridors, HSF uses only DFDS on the Esbjerg-Immingham ferry connecting Denmark and the UK in the British Isles-Scandinavia trade corridor, and on the Kiel-Klaipeda ferry connecting Germany and Lithuania in the Northern Europe-Baltics trade corridor. HSF does not use any provider of short-sea shipping services on any other routes within the affected markets.¹⁵⁷
- (108) The following table shows DFDS' market shares on the affected market segments for short-sea shipping services.

Table 1. DFDS' market share on the market for short-sea shipping services on the basis of capacity (upstream)

Corridor (same share for both directions of trade)	Market Share of DFDS
Scandinavia/British Isles	[70-80]%
<i>Denmark/UK</i>	100%
<i>Sweden/UK</i>	100%
<i>Norway/UK¹⁵⁸</i>	[50-60]%
Northern Europe-Baltics	[30-40]%
<i>Germany/Lithuania</i>	[80-90]%

Source: Form CO, Annex 21.

- (109) As for the downstream markets, DFDS provided different market share estimates depending on the relevant delineation of the product market. For instance, DFDS submitted that the Parties' combined market shares by volume are below [5-10]% in the EEA and in any individual Member State when the overall (cold and ambient) freight forwarding services by land and sea¹⁵⁹ are considered in international (i.e. cross-border) freight forwarding.¹⁶⁰ Similarly, when outbound volumes of only ambient cargo¹⁶¹ freight forwarding from one Member State to

¹⁵⁵ See footnotes 111 and 112 above.

¹⁵⁶ The Parties were not able to provide volume and value market shares for every route. For the purpose of the assessment and for the sake of consistency, the Commission relied on capacity market shares to list affected trade routes (Form CO, Annex 21).

¹⁵⁷ Form CO, para. 207.

¹⁵⁸ The cargo transported between Norway and the UK include but are not limited to agricultural and fishery products that fall outside the scope of the EEA agreement. Although the exact nature of the products stored in the trailers and cargo cannot be determined precisely, these products also include ambient and cold products falling within the scope of the EEA agreement, which would thus be part of the relevant market. Accordingly, the Commission will assess the merger in relation to Norway with regard to all products falling within the scope of the EEA-agreement, in accordance with the principles and the approach set out in its communication on the definition of the relevant market.

¹⁵⁹ DFDS refers to it as "road transport" and explains that the total market sizes are based on Eurostat data in volume (tonnes) and include road and sea freight on the relevant routes. The sea freight volumes are included in the totals, as all sea freight includes a road leg, which is not reflected in the road freight volumes in the Eurostat data. Form CO, Annex 10.

¹⁶⁰ Form CO, para. 200 and Annex 10.

¹⁶¹ DFDS refers to it as "non-temperature-controlled freight forwarding". Form CO, Annex 10.

other EU countries by land and sea¹⁶² are considered, DFDS submitted that the Parties' combined market shares by volume are below [5-10]%.¹⁶³

- (110) When outbound volumes of cold cargo freight forwarding from one Member State to other EU countries by land and sea¹⁶⁴ are considered, the highest market shares of the Parties are in Denmark to other EU countries (HSF: [10-20]%; DFDS: [0-5]%), the Netherlands to other EU countries (HSF: [5-10]%; DFDS: [0-5]%), the UK to the EU (HSF: [0-5]%; DFDS: [0-5]%) and Germany to other EU countries (HSF [0-5]%; DFDS: [0-5]%).¹⁶⁵ In all other markets from one Member State to the other EU countries, the Parties' combined market shares by land and sea for cold cargo freight forwarding are below [10-20]%.¹⁶⁶
- (111) Given the fact that HSF is specialised in cold cargo freight forwarding and that cold cargo freight forwarding appears to present certain constraints in terms of transportation timing and required equipment and that DFDS operates the only direct short-sea shipping service between Denmark-UK and Sweden-UK, and faces limited competition on short-sea shipping services between Norway-UK and Germany-Lithuania,¹⁶⁷ (see Section 4 above), the Commission considers that under the most conservative approach the Transaction should be assessed on the basis of the potential segment for cold cargo freight forwarding. For this reason, DFDS provided market share estimates on the narrowest plausible market, i.e. the market for cold cargo freight forwarding on the relevant country pairs, including direct and indirect routes.¹⁶⁸
- (112) The table below shows DFDS' and HSF's market shares on such a potential market segment.

¹⁶² As explained above, DFDS refers to it as "road transport" and explains that the total market sizes are based on Eurostat data in volume (tonnes) and include road and sea freight on the relevant routes. Form CO, Annex 10.

¹⁶³ Form CO, para. 200 and Annex 10.

¹⁶⁴ As explained above, DFDS refers to it as "road transport" and explains that the total market sizes are based on Eurostat data in volume (tonnes) and include road and sea freight on the relevant routes. Form CO, Annex 10. With respect to domestic vs. international freight forwarding, the Target estimates – given its focus on international freight forwarding – that the domestic cold cargo freight forwarding market shares will be lower than its international cold cargo freight forwarding market shares. With respect to the split between fresh and frozen, the Target was unable to provide a meaningful market share estimate. Form CO, paras. 203-204.

¹⁶⁵ Form CO, para. 196 and Annex 10.

¹⁶⁶ Form CO, Annex 10.

¹⁶⁷ See Table 1 above.

¹⁶⁸ I.e., the market shares provided by DFDS take into account the volumes that HSF transports via indirect routes (e.g. volumes transported by HSF from Denmark to the UK via the Netherlands or the Eurotunnel). As explained in Section 4 above, the Commission agrees with this view because the market investigation has shown that several of the Parties' cold cargo freight forwarding competitors are active on the relevant markets by way of alternative routes without using DFDS' short-sea shipping input.

Table 2. The Parties' market share by volume on the potential market segment for cold cargo freight forwarding on the relevant trade corridors/country pairs (downstream)

Corridor	Market Share of HSF	Market Share of DFDS
Scandinavia/UK	<[10-20]%	<[0-5]%
Denmark/UK	[20-30]% ¹⁶⁹	<[0-5]%
Sweden/UK	<[0-5]%	<[0-5]%
Norway/UK	<[0-5]%	<[0-5]%
UK/Scandinavia	<[0-5]%	<[0-5]%
UK/Denmark	<[0-5]%	<[0-5]%
UK/Sweden	<[0-5]%	<[0-5]%
UK/Norway	<[0-5]%	<[0-5]%
Northern Europe-Baltics	<[0-5]%	[0-5]%
Germany/Lithuania	<[0-5]%	<[0-5]%
Baltics-Northern Europe	<[0-5]%	[0-5]%
Lithuania/Germany	[0-5]%	<[0-5]%

Source: Notifying Party's reply to RFI 2, question 2; Notifying Party's reply to RFI 8, questions 9, 10 and 11; Notifying Party's reply to RFI 9, question 2; and Notifying Party's reply to RFI 10, question 3.

Notes: The provided market shares take into account the volumes that HSF transports via direct and indirect routes.

5.2.3. Input foreclosure

(113) During the market investigation, the Commission has examined whether the merged entity would have the ability to substantially foreclose access to input, whether it would have the incentive to do so and whether any foreclosure strategy would have a significant detrimental effect on competition on the freight forwarding services on the narrowest plausible markets within the affected trades,

¹⁶⁹ Including the volumes of [customer]. It should be noted that [customer] (end customer) has a direct contract for short-sea shipping services between Denmark and the UK with DFDS, whereas haulage services for transporting cold cargo from [customer]'s facilities to the short-sea shipping terminal in Denmark and from the short-sea terminal in the UK to its destination are provided by HSF. DFDS argues that [customer] volumes should not be included in the market share estimate of HSF because (i) [customer] decides on the shipping line of its cargo on its own and HSF is not involved in negotiating the ferry rate; (ii) [customer] will continue to determine its choice of shipping line and negotiate with it; (iii) the Transaction does not weaken [customer]'s negotiation strength, which remains as it was prior to the Transaction. (See Form CO, para. 140, Notifying Party's reply to RFI 2, question 2, Notifying Party's reply to RFI 7, question 1, and Notifying Party's reply to RFI 9, question 1). However, the Commission considers that [customer]'s volumes should be included in calculating the market share of HSF as they represent HSF business. Moreover, post-Transaction, both contracts for haulage services and for short-sea shipping services will be serviced by the merged entity (at least until the expiry of such contracts). Consequently, post-Transaction, [customer] will be a customer of the merged entity and not of other cold cargo freight forwarder(s). According to DFDS, if [customer]'s volumes were not attributed to HSF, HSF's market share on Denmark-UK would be <[0-5]%. (See Notifying Party's reply to RFI 9, question 1).

namely between Scandinavia (*i.e.* Denmark, Sweden and Norway) and the British Isles (*i.e.* the UK) and between Northern Europe (*i.e.* Germany) and the Baltic region (*i.e.* Lithuania).¹⁷⁰

5.2.3.1. The Notifying Party's view

- (114) According to DFDS, it would have neither the ability nor the incentive to engage in an input foreclosure strategy post-Transaction. In this respect, DFDS submits that even if HSF were to divert volumes to DFDS post-Transaction, these volumes would not materially affect DFDS' market shares in the affected markets. In addition, it notes that the Target already uses DFDS' short-sea shipping services for the limited volumes it carries within these regions.¹⁷¹ DFDS also notes that multiple options exist for freight forwarders and other logistics providers to procure shipping services and that customers can and do use alternative routes in a given region.
- (115) DFDS also submits that it has no incentive to raise prices, restrict access or degrade the terms or quality of service offered to existing and potential customers given the small revenue represented by HSF, the likelihood of customer switching and its desire to maximise capacity utilisation in order to minimise its ferry unit costs.¹⁷²
- (116) In relation to the Denmark-UK route specifically, DFDS submits that it lacks the ability to engage in an input foreclosure strategy because its service is not an important input and that there are several substitutable routes that could be used and are indeed currently used by the Target and other cold cargo freight forwarders.¹⁷³ DFDS submits that its upstream margins are more than [...] larger than HSF's downstream margins on this route and therefore it is unlikely to have an incentive to foreclose other freight forwarders since a blanket price increase on cold cargo shipping would cause substantial volumes to be switched which in return would cause profits to be lost upstream. DFDS also argues that the Target would have limited scope to recapture business downstream because, it is only one of many freight forwarders on this route and that it is multiple times smaller than DFDS' main cold cargo freight forwarding customer on this route.¹⁷⁴
- (117) In the same vein, DFDS argues that the merged entity will not have the ability and incentive to engage in input foreclosure on the Sweden-UK, Norway-UK and Germany-Lithuania routes, because (i) DFDS' ferry service is not an important input to offering freight forwarding services; (ii) an attempted foreclosure strategy would trigger substantial switching to alternative routes; (iii) as both DFDS and the Target have only small market shares on the downstream market on these routes,¹⁷⁵ there is no reason to expect that the merger would cause a material change in

¹⁷⁰ DFDS is not active on Finland-UK. Form CO, Tables 24 and 25.

¹⁷¹ Form CO, para. 124.

¹⁷² Form CO, para. 124.

¹⁷³ According to DFDS, [information on HSF's current business strategy]. RBB Economics submission on input foreclosure assessment of 20 August 2021, page 2.

¹⁷⁴ Ibid and see, for instance, Notifying Party's reply to RFI 8, question 15.

¹⁷⁵ When looking at the market shares of direct and indirect means of transport. If a narrow (direct route only) market were considered, the Transaction would not give rise to vertically affected markets on the Sweden-UK and Norway-UK routes because [information on HSF's current business strategy]. See Notifying Party's reply to RFI 10, question 1.

DFDS' incentives; and (iv) input foreclosure would likely be unprofitable.¹⁷⁶ Consequently, DFDS submits that it would lack the ability or incentive to favor HSF post-Transaction by raising prices to its other freight forwarder customers or refusing to provide services to those other customers on the routes of concern where DFDS has a high market share and HSF is active as a customer.¹⁷⁷

5.2.3.2. Commission's view

(A) Ability to foreclose

(118) The Non-Horizontal Merger Guidelines point to three conditions, which are necessary for the merged entity to have the ability to foreclose its downstream competitors, namely (i) the existence of a significant degree of market power, (ii) the importance of the input and (iii) the absence of timely and effective counter-strategies.¹⁷⁸

(A.i) Scandinavia-British Isles

(119) The Commission's market investigation has shown that ferry services are an important input for the freight forwarding services on the Denmark-UK, Sweden-UK and Norway-UK country pairs, representing approximately [...] % of the total costs of the freight forwarding service.¹⁷⁹

(120) As explained above, DFDS is the only short-sea shipping operator on the Denmark-UK (market share of 100%) and Sweden-UK (market share of 100%) country pairs and has a considerable presence on the Norway-UK country pair (market share of [50-60] %).

(121) Despite these large market shares and the ferry component being an important input, the market investigation has indicated the existence of certain elements, which could constrain DFDS' market power to some extent post-Transaction.

(122) First, while a large number of respondents to the Commission's market investigation indicated that DFDS' short-sea shipping services are a critical input for their cold and ambient cargo freight forwarding activities and that the competitive pressure exercised on DFDS by other short-sea shipping operators active on the other routes would be limited,¹⁸⁰ some of the largest freight

¹⁷⁶ Notifying Party's reply to RFI 10, question 1.

¹⁷⁷ Form CO, para. 145.

¹⁷⁸ Non-Horizontal Merger Guidelines, para. 35.

¹⁷⁹ Notifying Party's reply to RFI 2, question 8 and RBB Economics submission on input foreclosure assessment of 20 August 2021. Furthermore, on the basis of the information submitted by DFDS, it appears that the ferry component on various alternative routings (e.g. via the Netherlands, North of France or the Eurotunnel) is available at a roughly similar total cost. DFDS also noted that the sea leg of the journey falls to [...] % on the Dunkirk-Dover ferry route or [...] % with the Eurotunnel. See Notifying Party's reply to RFI 2, question 8 and Form CO, Annex 26(a) and (b).

¹⁸⁰ Non-confidential replies to Questionnaire for freight forwarders, questions 27, 27.3, 46, 46.2, non-confidential replies to Questionnaire to ferry operators, questions 22; 25 and 25.1, non-confidential minutes of a call with a market participant of 1 June 2021, paras. 8-10, non-confidential minutes of a call with a market participant of 27 August 2021, paras. 3-5. Some end customers also noted that the merged entity might have the ability to foreclose by explaining that "*DFDS will have the ferry set up, the transportation set up, the set up in relation to some types of reusable (sic) packaging materiel (sic) - meaning that a bigger part of the total chain of value will be in their "hand" [.] Can be difficult for other*

forwarders active on the routes of concern (and in the region in general) noted that they either do not use the ferry services on the Denmark-UK, Sweden-UK and Norway-UK country pairs, or that they believe that there are competitive services provided by other means of transport or other routes, such as for example, going through the Netherlands, Belgium, North of France or the Channel Tunnel.¹⁸¹

- (123) At the same time, it should be noted that some market respondents explained that the substitutability of DFDS' Denmark-UK short-sea shipping ferry line with the other routes depends on the origin and destination points.¹⁸² While these submissions are good indications that some alternatives to DFDS' direct ferry are available, however, the results of the market investigation did not allow to determine whether these alternatives would be similarly attractive or available for all cold cargo freight forwarders.
- (124) Second, one of DFDS' largest short-sea shipping customers of cold cargo, [customer], in the past has also transported its cold cargo between Denmark and the UK going through the Netherlands in the south and to a lesser extent by way of a DFDS' ferry.¹⁸³ In the Commission's view, this could suggest that even though the direct short-sea shipping services provided by DFDS on the Esbjerg-Immingham ferry are a preferred option for some of the cold cargo freight forwarding companies active in the region, the existence of certain alternatives would exert a certain degree of competitive constraints on DFDS' position in the upstream market.
- (125) Third, the market investigation did not confirm entry or expansion plans of other ferry operators.¹⁸⁴ However, some cold cargo freight forwarding customers of DFDS explained that if DFDS were to engage in input foreclosure, there would

transport companies / forwarders to be seen as an alternative in the market". See non-confidential replies to Questionnaire to shippers, questions 17 and 17.1.

¹⁸¹ For instance, one large freight forwarder active in both cold and ambient cargo explained that it transports fresh salmon from Norway to the UK mostly by road (with a lead time of 2-3 days). It added that "*The journey starts in Oslo – Sweden (sometimes [the company] will use a ferry from Sweden directly to Germany) – Denmark – Germany – the Netherlands (sometime [the company] will use a ferry from Denmark directly to the UK) – Belgium – France – Euro tunnel – UK.*" The same market participant further explained that "*It would also be possible to travel by road to the Netherlands and cross over by ferry from Rotterdam to Immingham in the UK*". See non-confidential minutes of a call with a market participant of 30 June 2021, para. 4. Another large cold cargo freight forwarder explained that its "trucks are routed via mainland Europe and the Calais - Dover (France – UK) or Hook of Holland – Harwich (Netherlands – UK) port pairing." Non-confidential replies of a market participant to follow-up request of information of 25 August 2021, question 1a. See also non-confidential minutes of a call with a market participant of 26 August 2021, para. 6.

¹⁸² For instance, one market participant submitted that "*the further South one goes, the more competitive the Southern routes become via the Channel Tunnel, Belgium, the Netherlands or Northern France. Likewise, the origin matters: it is easier to go by road from Denmark to the UK than from Sweden or Norway.*" It further noted that it is "*important to consider whether a freight forwarder has customers to transport cargo on the return trip Eastbound [i.e. from the UK]. If so, taking the Channel Tunnel as opposed to the ferry might become more cost competitive.*" Non-confidential minutes of a call with a market participant of 26 August 2021, paras. 6-7. Another market participant noted that "*The choice of one route instead of another is a complex one, which should take into account a number of commercial factors, such as types of goods, location of the customer, possibility of a freight forwarder to fill in the trailers on for the return trip, regulatory requirements and other*". Non-confidential minutes of a call with a market participant of 26 August 2021, para. 2.

¹⁸³ Notifying Party's reply to RFI 8, questions 2 and 3. Non-confidential minutes of a call with a market participant of 26 August 2021, paras. 3-4.

¹⁸⁴ Non-confidential replies to Questionnaire to ferry operators, questions 30.1 and 30.1.1.

exist a possibility to retaliate by, for instance, (i) switching cold cargo volumes from the merged entity to other (indirect) routes or modes of transport; (ii) encouraging entry of a new ferry operator; or (iii) switching away from DFDS on other routes.¹⁸⁵ For instance, one of the largest cold cargo customers of DFDS explained that post-Transaction it will try to negotiate advantageous conditions with the merged entity and did not exclude the possibility that the other cold cargo freight forwarders might also bid for its business.¹⁸⁶ It further noted that if post-Transaction the merged entity attempted to impose higher prices or exert other less favorable conditions, then it might look for possibilities to switch to alternative routes such as taking the ferry from Belgium or contract with alternative cold cargo freight forwarders.¹⁸⁷

- (126) Fourth, DFDS explained that the ferry business model is focused on the utilisation of capacity, meaning that in order to operate profitably it has to fill the available capacity on its ferry.¹⁸⁸ Based on the data submitted by DFDS, the largest part of DFDS' business on these country pairs relates to ambient cargo (as opposed to cold cargo).¹⁸⁹ Moreover, some of the largest DFDS' freight forwarding customers that transport cold cargo also use the same DFDS ferry for their ambient cargo volumes. Therefore, in response to an attempted input foreclosure such customers might also switch their ambient cargo volumes from DFDS.¹⁹⁰
- (127) For instance, the split of total volumes of cargo transported by [customer], DFDS' largest customer that accounts for the largest part of DFDS' total ferry capacity on Denmark-UK, shows that it transports [...] % of cold and [...] % of ambient cargo.¹⁹¹ With the exception of [customer] and [customer], the remainder of the top 10 of DFDS' customers on this route carry ambient cargo only.¹⁹² The potential loss of more significant volumes of ambient cargo on the short-sea shipping route between Denmark and the UK could potentially minimize the merged entity's ability to engage in input foreclosure.
- (128) The results of the market investigation did not allow to conclude how timely or effective such retaliation measures would be, nevertheless, the Commission

¹⁸⁵ For instance, one large cold cargo freight customer noted that “*if DFDS were to engage in input foreclosure, [freight forwarder] would have the possibility to divert all or some of its DFDS volumes on other routes.*” Non-confidential minutes of a call with a market participant of 26 August 2021, paras. 21-22. Another market respondent explained that has other trade relationships with DFDS therefore it “*could leverage this trade relationship to ensure that it is not treated disadvantageously by the merged entity.*” Non-confidential minutes of a call with a market participant of 26 August 2021, para. 10.

¹⁸⁶ Non-confidential minutes of a call with a market participant of 26 August 2021, paras. 6-7.

¹⁸⁷ Non-confidential minutes of a call with a market participant of 26 August 2021, para. 9.

¹⁸⁸ Form CO, para. 216.

¹⁸⁹ For instance, in 2020 on Denmark-UK ferry DFDS shipped [...] lanemetres of ambient cargo and [...] lanemetres of cold cargo; on Sweden-UK ferry DFDS shipped [...] lanemetres of ambient cargo and only [...] lanemetres of cold cargo; on Norway-UK ferry DFDS shipped [...] lanemetres of ambient cargo and only [...] lanemetres of cold cargo. See Notifying Party's reply to RFI 5, Annex 1.

¹⁹⁰ See, for instance, an explanation by one market participant that transports cold and ambient cargo with DFDS on the Denmark-UK route: “*In addition to cold freight forwarding cargo, [our company] transports significant ambient cargo volumes using DFDS, this gives a stronger leverage for [our company], which DFDS knows.*” Non-confidential minutes of a call with a market participant of 26 August 2021, para. 21.

¹⁹¹ Notifying Party's reply to RFI 2, Annex 2.

¹⁹² Form CO, para. 128.

considers that the possibility for such counter-strategies may potentially have an impact at least to some degree.¹⁹³

- (129) In light of the above, the Commission considers that on balance DFDS may not have the ability to foreclose cold cargo freight forwarders active between Scandinavia (i.e. Denmark, Sweden and Norway), on the one hand, and the British Isles (i.e. the UK), on the other hand.

(A.ii) Northern Europe-Baltics

- (130) Between Northern Europe and the Baltics, the only affected country-pair is that of Germany-Lithuania. On this country-pair, as explained above, DFDS has a market share of [80-90]% on the upstream market for short-sea shipping services between Germany and Lithuania (in both directions).
- (131) In the course of the market investigation, one cold cargo freight forwarder active on the route between Germany and Lithuania explained that “*DFDS is practically the sole shipping operator between Lithuania and Germany*” and expressed concerns that the new entity could “*attract end customers by providing lower overall prices while charging higher prices to other freight forwarders [...] This would increase other freight forwarders’ overall costs and make them less competitive compared to the combined entity*”.¹⁹⁴
- (132) Other market participants, however, were of the view that DFDS was unlikely to have the ability to foreclose freight forwarders between Germany and Lithuania post-Transaction.
- (133) First, the market power of DFDS on the upstream market is limited by the presence of an alternative operator (TT Line), which is active on the route between Trelleborg (Sweden) and Klaipeda (Lithuania). On this route, the alternative ferry operator has a market share of [10-20]% and a frequency similar to that of DFDS’ ferries (i.e., 5 departures per week compared to 4.5 for DFDS).
- (134) Several cold cargo freight forwarders mentioned TT Line as a credible competitor of DFDS.¹⁹⁵ By way of illustration, one cold cargo freight forwarder, which uses DFDS’ ferries between Germany and Lithuania, listed TT Line as a credible alternative to DFDS’ ferry line and explained that it has no concern because “*there are alternative options to DFDS*”.¹⁹⁶ In the same vein, another cold cargo freight forwarder explained that the “*Baltic Sea is better covered by alternatives*”.¹⁹⁷ Another cold cargo freight forwarder also explained that “*Other operators in the Baltic Sea are Stena and Finnlines. Although the choice of ferries in the Baltic Region is limited, DFDS does not have a monopoly in that region like it has on*

¹⁹³ It should be also noted that in the past one of the current DFDS’ cold cargo freight customers moved away from its ferry on Denmark-UK to an alternative route for at least some of its cold cargo volumes. See Notifying Party’s reply to RFI 8, question 15. See also Non-confidential minutes of a call with a market participant of 26 August 2021, paras 3-4.

¹⁹⁴ Non-confidential minutes of the call held with a market participant in pre-notification on 4 June 2021.

¹⁹⁵ Non-confidential replies to Questionnaire for freight forwarders, question 42.

¹⁹⁶ Non-confidential minutes of a call with a market participant of 10 June 2021.

¹⁹⁷ Non-confidential replies to Questionnaire for freight forwarders, question 46.3.

*Sweden and Denmark – UK and there are alternative routes for [confidential] for all types of cargo”.*¹⁹⁸

- (135) Likewise, the market investigation has shown that alternative means of transportation constitute credible alternatives for cold cargo freight forwarders between Germany and Lithuania. According to one freight forwarder for example, the road route via Poland is a credible alternative to transporting cold cargo between Germany and Lithuania.¹⁹⁹ Another freight forwarder transporting both ambient and cold cargo explained that it uses various routes to/from the Baltic region, via Northern German ports, over land via east-coast Sweden or direct line out of Fredericia port in Denmark into Klaipeda in Lithuania.²⁰⁰
- (136) In light of these elements, the Commission is of the view that even if these alternative routes were excluded from the market, they would constitute credible alternatives, which despite relatively higher transit time, may offer more flexibility and thus exert a constraint on DFDS, thereby limiting DFDS’ market power on the market for short-sea shipping services between Germany and Lithuania.
- (137) Second, the data submitted by the Parties show that ferry services do not account for a large part of the total costs borne by freight forwarders downstream to transport cargo from Germany to Lithuania (i.e. between [...] % and [...] %).²⁰¹ This in turn suggests that ferry services do not constitute an important input for freight forwarding between Germany and Lithuania.
- (138) In light of the above, the Commission considers that on balance, DFDS may not have the ability to foreclose freight forwarders on the Northern Europe – Baltics corridor, and more specifically between Germany and Lithuania post-Transaction.

(B) Incentive to foreclose

- (139) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream activities, but also of its downstream activities. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.²⁰²

(B.i) *Scandinavia-British Isles*

- (140) The results of the market investigation suggest that even if the merged entity had the ability to engage in input foreclosure post-Transaction, it is questionable whether it would have the incentive to do so as any such attempts would not appear to be sufficiently profitable.

¹⁹⁸ Non-confidential minutes of a call with a market participant of 26 August 2021.

¹⁹⁹ Non-confidential replies to Questionnaire for freight forwarders, question 27.4.

²⁰⁰ Non-confidential minutes of a call with a market participant of 26 August 2021.

²⁰¹ Response to RFI 2, question 8.

²⁰² Non-Horizontal Merger Guidelines, para. 40.

- (141) In relation to the short-sea shipping operations between Denmark and the UK, DFDS' upstream profit margins amount to [...]%.²⁰³ The following elements suggest that the merged entity would not recuperate the loss of DFDS' profits on the upstream level by foreclosing potential competitors downstream.
- (142) First, as submitted by DFDS, the downstream gross margin earned by HSF on a round trip between Denmark and the UK is [...]%, which is more than [...] lower than the margin that DFDS earns upstream.²⁰⁴ Given the difference in margins, the diversion ratio on the downstream market would need to be particularly important for a foreclosure strategy to be profitable, which appears rather unlikely given that the main cold cargo freight forwarding customers on the Denmark-UK route seem to enjoy some retaliation power.
- (143) The higher margins on the upstream market incentivize DFDS to maximize the utilization rate of its ships. If the merged entity were to engage in input foreclosure, it would have no guarantee to win all the volumes lost to competing cold cargo freight forwarders downstream. As a result, an input foreclosure strategy would arguably result in a loss of some volumes for DFDS on the upstream market and these losses upstream may not be recouped downstream because of the significantly lower margins of cold cargo freight forwarding.
- (144) On the basis of DFDS' estimates, HSF currently holds a market share of [20-30]% on the market for cold cargo freight forwarding between Denmark and the UK, when including indirect modes of transportation (i.e. alternative routes through the Netherlands or the Eurotunnel).²⁰⁵ This means that the base of sales on which the merged entity could potentially enjoy increased margins as a result of an input foreclosure strategy are currently not particularly large.
- (145) HSF has only used DFDS for short-sea shipping for a relatively small proportion of HSF's entire business. Indeed, as explained by the Parties, in 2019, HSF shipped approximately [...] tonnes of cargo with DFDS which amounted to only [...]% of its total demand for short-short sea shipping services.²⁰⁶ In 2020, this volume was lower (approximately [...] tonnes) and amounted to [...]% of the total short-sea shipping demand of HSF.²⁰⁷ HSF's market share on DFDS' ferry between Denmark and the UK is limited and on the basis of volume amounts only to [...]%.²⁰⁸
- (146) While the results of the market investigation show that DFDS has plans to expand its activities in the market for cold cargo freight forwarding,²⁰⁹ the likelihood that

²⁰³ RBB Economics submission on input foreclosure assessment of 20 August 2021; Notifying Party's reply to RFI 8, question 15.

²⁰⁴ See Notifying Party's reply to RFI 8, question 15. According to DFDS, for the period from January to June in 2021, the gross margin for the transport of cold cargo from Denmark to the UK when using DFDS' ferry route on average was approx. [...]%. See Notifying Party's reply to RFI 8, question 8. In its earlier submissions, DFDS noted that the downstream gross margin earned by HSF was [...]%. RBB Economics submission on input foreclosure assessment of 20 August 2021, p. 8.

²⁰⁵ See Table 2 above.

²⁰⁶ Form CO, para. 206 and the following table.

²⁰⁷ Form CO, para. 206 and the following table.

²⁰⁸ Notifying Party's reply to RFI 8, question 9.

²⁰⁹ See, for example, Form CO, paras. 17-18; 37; 97 and 153. Also, Commission's analysis of the Parties' internal documents shows that DFDS [DFDS's current business strategy]. See Form CO, annex 30, Slide 16.

the merged entity would be able to attract a sufficient amount of new business to replace the profit loss upstream was not confirmed by the market investigation.

- (147) First, as already explained, the results of the market investigation indicate that alternative means of transportation could constitute an alternative for cold cargo freight forwarders between Denmark and the UK to some extent. Indeed, some of the freight forwarders responding to the market investigation indicated that they are active on this country pair with no or limited use of the DFDS ferry.²¹⁰ Therefore, given the availability of competing suppliers, in case of a foreclosure strategy, freight forwarders would be unlikely to divert all their demand to DFDS' ferry, as some of the volumes would likely be diverted to alternative routes.
- (148) Second, the results of the market investigation also show that due to the presence of well-established players on the downstream market, some retaliation possibilities may exist post-Transaction. Indeed, as confirmed by the market investigation, the two largest freight forwarding customers on the Denmark-UK route represent [...] % of DFDS' cold cargo freight forwarding volumes shipped on this country pair in 2020.²¹¹ These freight forwarding customers confirmed that they would have possible retaliation measures available.²¹² The possibility that two of its largest cold cargo freight forwarding customers would switch to other means of service, in the Commission's view, limit DFDS' incentive to engage in foreclosure.
- (149) Third, DFDS is currently vertically integrated with respect to ambient cargo freight forwarding on the Denmark-UK country-pair and the market investigation has not revealed concrete evidence of prior attempts to foreclose downstream competitors on this market.²¹³
- (150) In light of the above, while potential loss of customers on the upstream market can presumably be compensated by attracting customers downstream, the profit expected from any foreclosure on the Denmark-UK country-pair would be relatively modest in view of the low downstream margins.
- (151) In relation to the short-sea shipping operations between Sweden and the UK, DFDS' upstream profit margin amounts to approximately [...] %, whereas on the Norway-UK route, its upstream profit margin is approximately [...] %.²¹⁴ These

²¹⁰ Non-confidential minutes of a call with a market participant of 30 June 2021, para. 4. See also non-confidential replies of a market participant to follow-up request of information of 25 August 2021, question 1a.

²¹¹ Notifying Party's reply to RFI 2, Annex 1. Even when looking at DFDS' 10 largest customers on the route for both ambient and cold cargo, these two customers are among the largest. See Form CO, table "Denmark-UK" on p. 43.

²¹² Non-confidential minutes of a call with a market participant of 26 August 2021, paras. 20-21; non-confidential minutes of a call with a market participant of 26 August 2021, paras. 9-10. See also explanation in Section 5.2.3.2. (A.i) above.

²¹³ Even though DFDS submits that it is vertically integrated not only with respect to ambient cargo but also cold cargo freight forwarding (see Notifying Party's reply to RFI 8, question 1), the Commission considers that this is not the case with respect to the Denmark-UK country pair. As explained in the Form CO, DFDS' current business in cold cargo freight forwarding is limited to the UK and Ireland. In the UK, DFDS' activities in cold cargo freight forwarding relate only to the domestic market (as opposed to cross-border), whereas its presence in Ireland is [information on DFDS' current business strategy]. See Form CO, paras. 153-154 and footnote 72.

²¹⁴ Notifying Party's reply to RFI 10, question 1.

margins are significantly higher than HSF's margins downstream for cold cargo freight forwarding on these country pairs which are approximately [...]%.²¹⁵

- (152) As explained above, the higher margin on the upstream market gives DFDS an incentive to maximize the utilization rate of its ships. If the merged entity were to engage in input foreclosure, it would have no guarantee to win sufficient volumes that were lost by competing freight forwarders downstream.²¹⁶ As a result, an input foreclosure strategy would likely result in a loss of some volumes for DFDS on the upstream market and these losses upstream may not be recouped downstream because of the significantly lower margins for cold cargo freight forwarding.
- (153) Second, HSF's presence on the market for cold cargo freight forwarding between Sweden and the UK, and Norway and the UK respectively, is extremely limited: the cold cargo transported by HSF on these country pairs amount to [...] tonnes on the Sweden-UK and [...] tonnes on the Norway-UK country pairs,²¹⁷ which represents a market share of less than [0-5]%.²¹⁸
- (154) This means that the base of sales on which the merged entity could potentially enjoy increased margins as a result of an input foreclosure strategy would be currently limited, which reduces the incentive of the merged entity to engage in such a strategy.
- (155) Third, as already explained, DFDS is currently vertically integrated with respect to ambient cargo freight forwarding and the market investigation has not revealed concrete evidence of prior attempts to foreclose downstream competitors on the market for ambient cargo freight forwarding.²¹⁹
- (156) In light of the above, the Commission considers that the merged entity will likely not have an incentive to engage in an input foreclosure strategy post-Transaction on the routes between Scandinavia (*i.e.* Denmark, Sweden and Norway), on the one hand, and the British Isles (*i.e.* the UK), on the other hand.

(B.ii) Northern Europe-Baltics

- (157) By the same token, even if DFDS had the ability to foreclose competing cold cargo freight forwarders active between Germany and Lithuania, it is unlikely that DFDS would have the incentive to do so post-Transaction.

²¹⁵ Notifying Party's reply to RFI 10, question 1.

²¹⁶ For instance, some of these volumes could be diverted to alternative routes (*e.g.*, through the Netherlands or the Eurotunnel). Besides, in relation to Norway-UK, some of these volumes could potentially be also diverted to the other ferry operator (*i.e.*, SeaCargo).

²¹⁷ Notifying Party's reply to RFI 10, question 1. DFDS explained that the Target [information on HSF's current business strategy].

²¹⁸ See Table 2 above and Notifying Party's reply to RFI 10, question 1.

²¹⁹ Even though DFDS submits that it is vertically integrated not only with respect to ambient cargo but also cold cargo freight forwarding (see Notifying Party's reply to RFI 8, question 1 and RFI 10, question 1), the Commission considers that this is not the case with respect to the Sweden-UK and Norway-UK country pairs. As explained in the Form CO, DFDS' current business in cold cargo freight forwarding is limited to the UK and Ireland. In the UK, DFDS' activities in cold cargo freight forwarding relate only to the domestic market (as opposed to cross-border), whereas its presence in Ireland is [information on DFDS' current business strategy]. See Form CO, paras. 153-154 and footnote 72.

- (158) First, according to the Parties' data, the margins upstream for short-sea shipping services between Germany and Lithuania (approx. [...]%)²²⁰ are higher than the margins downstream for cold cargo freight forwarding on this country pair (approx. [...]%)²²¹.
- (159) As explained above, the higher margin on the upstream market gives to DFDS an incentive to maximize the utilization rate of its ships. If the merged entity were to engage in input foreclosure, it would have no guarantee to win sufficient volumes lost by competing freight forwarders downstream, given the existence of a number of serious competitors active on the downstream market.²²² As a result, an input foreclosure strategy would likely result in lost volumes for DFDS on the upstream market and these losses upstream would unlikely be recouped downstream because of the significantly lower margins for cold cargo freight forwarding.
- (160) Second, HSF's presence on the market for cold cargo freight forwarding between Germany and Lithuania is extremely limited: the cold cargo transported by HSF on this country pair, from Germany to Lithuania in 2020 corresponds to [...] tonne,²²³ which represents a market share of less than [0-5]%.²²⁴ When including indirect modes of transportation, the Parties confirmed that HSF's market share would remain lower than [0-5]%.²²⁵
- (161) This is consistent with the response received in the course of the market investigation. In this respect, one cold cargo freight forwarder explained for instance that it does not consider "*HSF as an important competitor in the Baltic region today*".²²⁶
- (162) This means that the base of sales on which the merged entity could potentially enjoy increased margins as a result of an input foreclosure strategy would be limited, which reduces the incentive of the merged entity to engage in such a strategy.
- (163) Third, DFDS is currently vertically integrated with respect to ambient cargo freight forwarding²²⁷ and the market investigation has not revealed concrete evidence of prior attempts to foreclose downstream competitors on the market for ambient cargo freight forwarding.²²⁸

²²⁰ Notifying Party's reply to RFI 10, question 1.

²²¹ Notifying Party's reply to RFI 10, question 1.

²²² Some of these volumes could be diverted to alternative ferry operators (e.g., TT Line), alternative routes (e.g., land transportation via Poland) or to alternative freight forwarders with countervailing buyer power vis-à-vis DFDS.

²²³ Response to RFI 3, question 3. In this respect, DFDS explained that given this limited volume, a subcontractor was engaged by HSF to actually transport these cold cargo.

²²⁴ HSF has [information on HSF's volumes in a selected route]. (see response to RFI 3, question 3).

²²⁵ Notifying Party's reply to RFI 9, question 2(a).

²²⁶ Non-confidential minutes of a call with a market participant of 4 June 2021, para. 14.

²²⁷ Form CO, p. 46.

²²⁸ Even though DFDS submits that it is vertically integrated not only with respect to ambient cargo but also cold cargo freight forwarding (see Notifying Party's reply to RFI 10, question 1), the Commission considers that this is not the case with respect to Germany-Lithuania country pair. As explained in the Form CO, DFDS' current business in cold cargo freight forwarding is limited to the UK and Ireland. In the UK, DFDS' activities in cold freight forwarding relate only to the domestic market (as opposed to

(164) In light of the above, the Commission considers that the merged entity will likely not have an incentive to engage in an input foreclosure strategy post-Transaction on the route between Germany and Lithuania.

(C) Impact

(165) For trade corridors between both Scandinavia (*i.e.*, Denmark, Sweden and Norway) and the UK, on the one hand, and Northern Europe (Germany) and the Baltics (Lithuania), on the other hand, any input foreclosure is unlikely to lead to increased prices.²²⁹

(166) As explained above, HSF's relatively low market shares on downstream markets, together with the retaliation possibilities available to customers and the existence of alternative routes for freight forwarders make it unlikely that any input foreclosure strategy would lead to increased prices for freight forwarders, shippers and ultimately end customers. As a result, any such strategy would be unlikely to significantly impede effective competition.

(D) Conclusion on input foreclosure

(167) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by the merged entity in order to exclude HSF's competitors purchasing short-sea freight shipping services in any of the affected legs of trade is unlikely.

5.2.4. *Customer foreclosure*

(168) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.²³⁰

(169) In the case at hand, as explained above, the Parties' combined market share on each of the vertically affected downstream markets for cold cargo freight forwarding are always below 30% under any plausible market definition. On the vast majority of markets, the Parties' combined market share is below [10-20]%. The only exception is for the country pair Denmark-UK where the Parties' combined market share downstream is [20-30]%.

(170) On the Denmark-UK route, however, HSF's market share estimate is limited to cold cargo only and includes cargo transported by HSF via indirect routes.²³¹

(171) Yet, the cargo transported by HSF via indirect routes (*i.e.*, via ferry from the Netherlands or France to the UK, or via road) are not transported on direct ferries between Denmark and the UK. When taking into account only volumes transported

cross-border), whereas its presence in Ireland is [information on DFDS' current business strategy]. See Form CO, paras. 153-154 and footnote 72.

²²⁹ Non-Horizontal Merger Guidelines, para. 47.

²³⁰ Non-Horizontal Merger Guidelines, para. 61.

²³¹ See para 98.

by HSF on the downstream market via direct ferries between Denmark and the UK, HSF's market share is equal to [0-5]%.²³² According to the information submitted by DFDS, in 2020 HSF's spend on short-sea shipping services in the affected market of British Isles/Scandinavia represented less than [...] % of DFDS' short-sea shipping revenues in that market.²³³

- (172) In addition, the market investigation has confirmed that the vast majority of ferry operators can transport both cold and ambient cargo.²³⁴ Therefore, when assessing whether the new entity will have the ability to foreclose competitors on the upstream market for short-sea shipping services, it is relevant to look at HSF's market on a broader market including both cold and ambient cargo. On such market share, HSF's market share is equal to [0-5]%.²³⁵
- (173) In light of the above, the Commission considers that the merged entity will lack the ability to engage in a customer foreclosure post-Transaction so there is no need to examine the incentive of the new entity to engage in a customer foreclosure strategy and the impact that such strategy would have on the market.

5.2.5. *Access to customer confidential information*

- (174) According to the Non-Horizontal Merger Guidelines,²³⁶ a vertical merger may give the combined entity access to commercially sensitive information regarding the activity of downstream rivals. For instance, by becoming a supplier to its downstream competitors the combined entity may obtain sensitive information, which could allow it to target the customers of competing freight forwarders and thereby weaken their position on the market, and make entry and expansion less attractive.
- (175) During the market investigation, some market participants indicated that, especially when transporting cargo to or from the UK, freight forwarders have to provide ferry operators with consignment documents that contain sensitive commercial information such as the type of cargo they transport, its origin, the name of the shipper,²³⁷ its destination, volume and the name of the consignee.²³⁸ According to these participants, such information could allow the merged entity to identify and potentially target the end customers of competing freight forwarders.²³⁹

5.2.5.1. The Notifying Party's view

- (176) DFDS argues that its ferry division receives only limited information from its customers, that it cannot and does not track their information, that it always treated

²³² Notifying Party's reply to RFI 8, question 9.

²³³ Form CO, para. 124.

²³⁴ Non-confidential replies to Questionnaire for ferry operators, question 5.

²³⁵ See RFI 2, annex 2 (excluding cargo transported via indirect routes).

²³⁶ Non-Horizontal Merger Guidelines, para. 78.

²³⁷ The shipper is the party that prepares the cargo for transport, typically the seller of the goods. The consignee is the party that receives the cargo, typically the buyer. Depending on the arrangements between the shipper and consignee, either of them can be the customer of the freight forwarders that handles the transport.

²³⁸ Non-confidential minutes of a call with a market participant of 4 June 2021, para.12; non-confidential minutes of a call with a market participant of 4 June 2021, para. 14.

²³⁹ Non-confidential minutes of a call with a market participant of 4 June 2021, paras 13 and 14.

DFDS' freight forwarding division at arm's length and that even from a technological perspective, the two divisions cannot share information.

- (177) DFDS also notes that it does not carry out customs clearance for customers unless they specifically make an agreement with DFDS to do so. There is a number of neutral customs clearing agents who can carry out this procedure if they cannot do it themselves.²⁴⁰
- (178) Moreover, DFDS submits that the situation will not be affected by the Transaction *i.e.*, the concerns are not merger-specific since DFDS is already vertically integrated in freight forwarding.

5.2.5.2. The Commission's view

- (179) Market participants confirmed that freight forwarders typically provide ferry operators with information on their cargo, including CMR²⁴¹ consignment notes, etc. for customs purposes.²⁴² The market investigation also showed that the information that has to be communicated is less detailed for cargo transported on EU routes than for cargo transported to or from the UK.²⁴³
- (180) In this respect, the Commission notes that DFDS already has access to this information concerning both ambient and cold cargo transported by freight forwarders with whom it competes. Therefore, the Transaction will not provide DFDS with significant additional competitively strategic information concerning HSF's downstream business (beyond what is already available to DFDS at present).
- (181) Even if additional volume information might be available post-Transaction, this is unlikely to be of great value in determining the price or scope of the activities of HSF's competitors as prices between freight forwarders and end customers are individually negotiated and customer specific discounts remain confidential.
- (182) In addition, the market investigation also showed that freight forwarders have alternatives for the custom clearance of their cargo. For instance, a freight forwarder using DFDS' ferries confirmed that it does not entrust DFDS with the custom clearance of its cargo.²⁴⁴ This market participant sub-contracts the custom clearance of its cargo to a third party but it confirmed that it could also do it in-house.
- (183) During the course of the merger investigation, DFDS also confirmed that it will not be technically able to share sensitive information between its freight forwarding arm (including both DFDS Logistics and HSF) and its short-sea shipping arm.²⁴⁵
- (184) Finally, the market investigation confirmed that DFDS would have a strong incentive to maintain confidentiality of the information that its ferry division

²⁴⁰ See DFDS' submission "Note on customs handling for freight forwarders using DFDS DK/UK/DK ro-ro ferry services" of 29 August 2021, p. 1.

²⁴¹ Carriage of Merchandise by Road.

²⁴² Questionnaire for freight forwarders, question 36, non-confidential responses.

²⁴³ Non-confidential minutes of a call with a market participant of 26 August 2021.

²⁴⁴ Non-confidential minutes of a call with a market participant of 26 August 2021.

²⁴⁵ Notifying Party's reply to RFI 10, question 6.

receives in order to remain a credible supplier. As the Parties explained, if DFDS were to monitor the content of trailers, this would trigger a concern with customers.²⁴⁶ This in turn could be harmful for DFDS because the market investigation confirmed that reputation is one of the main parameters when competing on the freight forwarding market.²⁴⁷ Likewise, the market investigation confirmed the Parties' claim that significant freight forwarders would have the possibility to retaliate if DFDS were to use sensitive information on their activities to favour its logistics division.²⁴⁸ This is also consistent with the results of the market investigation which has not elicited any element suggesting that DFDS would have used this kind of information in the past to favour its logistics division or target the customers of competing freight forwarders.

- (185) On balance, the Commission concludes that the confidentiality issues post-Transaction do not lead to serious doubts as to the compatibility of the Transaction with the internal market.

6. CONCLUSION

- (186) 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

²⁴⁶ Form CO, para. 217.

²⁴⁷ Non-confidential replies to Questionnaire for freight forwarders, question 22.

²⁴⁸ Non-confidential minutes of a call with a market participant on 26 August 2021.