EUROPEAN COMMISSION
DG Competition

Case M.10559 - A P MOELLER-MAERSK / SENATOR INTERNATIONAL

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/03/2022

In electronic form on the EUR-Lex website under document number 32022M10559

EUROPEAN COMMISSION

Brussels, 29.3.2022
C(2022) 2086 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

A.P. Møller-Mærsk A/S Group
Esplanaden 50
1263 Copenhagen
Denmark

Subject: **Case M.10559 – A P MOELLER-MAERSK / SENATOR INTERNATIONAL**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 22 February 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which A.P. Møller-Mærsk A/S Group ("APMM", Denmark) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of Senator International group ("Senator International", Germany) by way of purchase of shares and assets ("the Transaction").[3] APMM and Senator International are designated

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 100, 1.3.2022, p. 41.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

hereinafter as the "Parties". The undertaking that would result from the Transaction is referred to as the "Merged Entity".

1. THE PARTIES

(2) APMM, ultimately controlled by A.P. Moller Holding ("APMH"), is an integrated transport and logistics company headquartered in Copenhagen with worldwide activities. APMM's core activities comprise container liner shipping through its subsidiaries Maersk A/S, SeaLand, and Hamburg Süd, container terminal services, inland transportation, inland services, supply chain management services, harbour towage and reefer container manufacturing.

(3) Senator International is a family-owned company primarily specialized in international freight, shipping and logistics, with its main focus on air and ocean freight forwarding, as well as logistics, packaging and customs services.

2. THE CONCENTRATION

(4) On 29 October 2021, the Parties entered into a Sale and Purchase Agreement ("SPA") by which APMM will acquire[4] the shares and assets of Senator International Spedition GmbH, Senator International Holding LLC and Senator International Freight Forwarding, LLC, as well as their subsidiaries and affiliated companies, together with certain contractual relationships entered into by Senator Freight Services GmbH that are material for the Senator International business.[5]

(5) Post-closing, Senator International will become a wholly owned subsidiary of APMM. The Transaction would therefore result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (APMM: EUR 37 866 million, Senator International: EUR […]).[7] Each of them has a Union-wide turnover in excess of EUR 250 million (APMM: EUR […], Senator International: EUR […]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.[8]

(7) The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

---

4 APMM will acquire control over Senator International through its wholly owned subsidiaries Maersk Logistics & Services International A/S ("Maersk Logistics"), Damco USA, Inc. ("Damco") and Rederiaktieselkabet Kuling A/S ("Rederiaktieselkabet Kuling").

5 As part of the Transaction, [information regarding assets that are excluded from the Transaction perimeter]

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

7 The Parties' turnover data was provided for financial year 2020.

8 Senator International achieves more than two-thirds of its Union-wide turnover in Germany while APMM does not.

4. MARKET DEFINITION

(8) Senator International is mainly active in the provision of freight forwarding services in air and ocean freight as well as contract logistics, packaging services and contractual warehousing services. APMM is mainly active in the provision of deep-sea and short-sea container liner shipping services, which are inputs to freight forwarding services. It is also active in air freight forwarding, inland transportation, harbour towage services and contract logistics.

4.1. Freight forwarding services

4.1.1. Relevant product market

(9) In previous decisions, the Commission defined the freight forwarding market as "*the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs*".[9] The Commission also considered possible sub-segmentations of the freight forwarding product market, namely (i) between domestic freight forwarding and cross-border freight forwarding and, (ii) depending on the modes of transport (i.e. freight forwarding by air, land and ocean).[10]

(10) The Parties consider that separate markets exist for freight forwarding by air, land and sea, given that freight forwarders tend operationally to split their departments to focus on each element of transport separately and because different modes of transport lead to different speeds of cargo transport.[11] However, the Parties do not consider that it is appropriate to further breakdown the market between domestic and cross-border freight forwarding since most freight forwarders can, and in general do, supply both domestic and cross-border services. The Parties submit that there is an increasing trend for customers to select a freight forwarder based on their ability to provide both domestic and cross-border services, commensurate with the increasingly global nature of trade.[12]

(11) The Parties have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative product market definition.

(12) The market investigation did not provide indications that the Commission should deviate from the market delineations considered in previous decisions.

(13) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest product market definition, the Commission will leave open the exact product market definition and in particular the

---

9 Cases M.9221 - *CMA CGM / CEVA*, paragraph 10; M.8564 – *COSCO SHIPPING/OOIL*, paragraph 23; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, paragraph 3; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 17.

10 Cases M.9221 *CMA CGM/CEVA*, paragraphs 11 and 17; M.8564 – *COSCO SHIPPING/OOIL*, paragraph 23; M.8330 – *Maersk Line/HSDG*, paragraph 38; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 26-27; M.7630 – *FEDEX/TNT EXPRESS*, paragraphs 24-25; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 18.

11 Form CO, paragraph 164.

12 Form CO, paragraph 166.

questions whether the market should be further segmented by distinguishing between domestic and cross-border freight forwarding or different modes of transport.

4.1.2. Relevant geographic market

(14) In its previous decisions, the Commission has left open whether the freight forwarding services market or subdivisions thereof should be considered national in scope, due to language and regulatory barriers, or larger in view of a trend by major competitors to create trans-national or even EEA-wide networks.[13] More specifically, the Commission defined the market for ocean freight forwarding as at least national.[14]

(15) The Parties submit that the appropriate geographic market for freight forwarding is at least EEA-wide in scope since the main freight forwarders are active internationally, either through branches or by marketing their services cross-border through a network of agents. Furthermore, many customers manage relationships with freight forwarders on a regional or global basis, not at a national level.[15]

(16) The Parties have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative geographic market definition.

(17) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest geographic market definition, the exact geographic delineation of this market can be left open.

4.1.3. Conclusion

(18) The precise product and geographic market definition can be left open as the Transaction does not raise serious doubts on any plausible market definition, including the narrowest markets:

(a) Product markets: the freight forwarding services markets by reference to: the (i) type of operations, whether domestic or cross-border; and the (ii) means of transportation, whether by air, land and ocean;

(b) Geographic market: the national markets.

4.2. Contract logistics services

4.2.1. Relevant product market

(19) In previous decisions, the Commission has considered that contract logistics services is the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers'

---

13 Case M.9221 – *CMA CGM/CEVA*, paragraphs 14 and 17. Specifically with respect to freight forwarding by rail: Case M.5480 - *Deutsche Bahn / PCC Logistics*, paragraphs 15-17 and the references there.

14 Cases M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 18; M.6671 – *LBO France/Aviapartner*, paragraph 76; M.5480 – *Deutsche Bahn/PCC Logistics*, paragraphs 15-17.

15 Form CO, paragraph 170.

requirements.[16] The focal point of contract logistics is the management of the flow of goods for customers either across the total supply chain or an element of it.[17]

(20) In *Deutsche Post/Exel* and *Norbert Dentressangle/Laxey Logistics*,[18] the Commission considered whether the contract logistics market should be segmented "*i) into cross-border and domestic logistics, ii) by reference to the type of good handled or the industry serviced or iii) into lead logistics providers ("LLPs") and traditional logistics providers ("3PLs")*". In the end, however, the Commission decided to leave the precise scope of the relevant product market open.[19]

(21) The Parties consider that there is a single market for contract logistics services, especially in light of supply-side considerations[20] and submit that any logistics provider can perform services for any type of client with little or no barriers to doing so. They have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative product market definition.

(22) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest product market definition, the Commission will leave open the exact product market definition.

4.2.2. Relevant geographic market

(23) Concerning the geographic scope of the market, the Commission previously found that the contract logistics market is EEA-wide, leaving open a possible segmentation into national markets.[21]

(24) The Parties submit that the market should geographically be at least EEA-wide and that a national market definition would be artificial given the internationalisation of the contract logistics market.[22] They have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative geographic market definition.

(25) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest geographic market definition, the Commission will leave open the exact geographic market definition.

---

16 Case M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraphs 9-16.

17 Cases M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 9; M.1895 – *Ocean Group/Exel (NFC)*, paragraphs 7-11.

18 Cases M.6570 – *UPS/TNT*, paragraph 32 ; M.6059 – *Norbert Dentrassangle/Laxey Logistics*, paragraphs 10-13; M.3971 – *Deutsche Post/Exel*, paragraphs 15-19.

19 Cases M.6570 – *UPS/TNT*, paragraph 32; M.3971 – *Deutsche Post/Exel*, paragraph 20.

20 Form CO, paragraph 176.

21 Cases M.6570 – *UPS/TNT*, paragraph 33; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 15; M.3971 – *Deutsche Post/Exel*, paragraphs 28-29.

22 Form CO, paragraph 192.

4.2.3. Conclusion

(26) The precise product and geographic definition can be left open as the Transaction does not raise serious doubts on any plausible market definition, including the narrowest markets:

(a) Product markets: the contract logistics services markets by reference to: the (i) type of operations, whether domestic or cross-border; the (ii) type of good handled or the industry serviced; and the (iii) type of logistics provider (LLPs and 3PLs).

(b) Geographic market: the national markets.

4.3. Container liner shipping services

(27) In past cases, the Commission found that the product market for container liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container. This market can be distinguished from non-liner shipping (tramp, specialised transport) because of regularity and frequency of the service. In addition, the Commission considered that the use of container transportation separates it from other non-containerised transport such as bulk cargo.[23]

(28) The Commission has defined a separate product market for short-sea container shipping, distinct from deep-sea container shipping.[24] Unlike deep-sea container liner shipping, short-sea container liner shipping involves the provision of intracontinental (usually coastal trade) services.[25]

(29) The Parties agree with the distinction between deep-sea and short-sea container liner shipping services but note that, as acknowledged by the Commission in Case M.7523 – *CMA CGM/OPDR*, deep-sea container liner shipping services may exert a significant competitive pressure on short-sea services.[26]

4.3.1. Deep-sea container liner shipping services

4.3.1.1. Relevant product market

(30) Deep-sea container liner shipping services involve the offer of regular, scheduled services for the sea transportation of containerised cargo.[27]

(31) A possible narrower product market for deep-sea container liner shipping services is that for the transport of refrigerated goods, which could be limited to refrigerated (reefer) containers only or could include transport in conventional bulk reefer vessels. In past cases, the Commission has looked separately at the plausible narrower markets for reefer containers and non-refrigerated (warm) containers only

---

[23] Cases M.8594 – *COSCO Shipping/OOIL*, paragraph 11; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 10; M.7908 – *CMA CGM/NOL*, paragraph 8; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 16; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 13.

[24] Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – CMA CGM/OPDR, paragraph 50.

[25] Case M.8330 – *Maersk Line/HSDG*, paragraph 18.

[26] Form CO, paragraph 194.

[27] Case M.8330 – *Maersk Line/HSDG*, paragraph 10.

when the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.[28]

(32) The Parties do not necessarily agree with the distinction between dry and reefer.[29] They have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative product market definition.

(33) The market investigation did not provide indications that the Commission should deviate from the market delineations considered in previous decisions.

(34) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest product market definition, the Commission will leave open the exact product market definition.

4.3.1.2. Relevant geographic market

(35) Whereas, in prior decisions, the Commission had left open whether the geographic scope should comprise trades, defined as the range of ports which are served at both ends of the service (e.g. Northern Europe – North America) or each individual leg of trade (e.g. westbound and eastbound within a given trade), in its most recent practice,[30] the Commission concluded that container liner shipping services are geographically defined on the basis of the individual legs of trade (e.g. Northern Europe – North America eastbound and Northern Europe – North America westbound separately). The Commission has also previously identified relevant trades as those from the Mediterranean to other non-European areas and back on the one hand, and Northern Europe and back on the other hand.[31]

(36) Pursuant to the definition applied by the Commission in previous cases, the Parties submit that the relevant geographic markets for deep-sea container liner shipping services consists of the trade routes from Northern Europe to rest of the world regions and back, and the Mediterranean to rest of the world regions and back.[32] The Parties have provided the Commission with the information necessary to assess the effects of the Transaction under any plausible geographic market definition.

(37) In the present case, in line with the Commission's prior decisional practice, the geographic market for deep-sea container liner shipping services is defined on the basis of individual legs of trades.

[28] Cases M.8594 – *COSCO Shipping/OOIL*, paragraph 13 ; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 11 ; M.7908 – *CMA CGM/NOL*, paragraph 9; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 18; M.3829 – *Maersk/PONL*, paragraph 10.

[29] Form CO, paragraphs 197 and 204-205.

[30] Cases M.9221 – *CMA CGM/CEVA*, paragraph 34; M. 8594 – *COSCO Shipping/OOIL*, paragraph 14; M.8330 – *Maersk Line/HSDG*, paragraph 15; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 19; M.7908 – *CMA CGM/NOL*, paragraph 15.

[31] Cases M.7908 – *CMA CGM/NOL*, paragraph 11; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, paragraph 23; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 14.

[32] Form CO, paragraph 211.

4.3.1.3. Conclusion

(38) As the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market, it is not necessary to conclude whether a separate market for the transport of refrigerated (reefer) goods could be identified in the market for deep-sea container liner shipping services and whether the market for refrigerated (reefer) goods could be limited to refrigerated containers only or could include transport in conventional bulk reefer vessels. The geographic scope of deep-sea container liner shipping services is defined on the basis of legs of trades.

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

(a) Product markets: market for (i) deep-sea container liner shipping services and (ii) the plausible reefer container liner shipping sub-segment;

(b) Geographic markets: individual legs of trade which in this case are identified in recital (62).

4.3.2. Short-sea container liner shipping services

4.3.2.1. Relevant product market

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

(41) In its prior decisional practice related to container liner shipping services, the Commission defined a separate product market for short-sea container liner shipping, i.e. distinct from deep-sea container shipping and short-sea non-liner shipping.[33]

(42) In its prior decisional practice related to short-sea shipping services, the Commission concluded, as regards the type of cargo transported, that short-sea container shipping services should be distinguished from non-containerised shipping, such as bulk shipping.[34] Furthermore, the Commission has considered but ultimately left open whether the transport of wheeled cargo[35] and short-sea container shipping services should be considered as belonging to the same product market.[36]

(43) The Commission also left open whether there should be a sub-segmentation between reefer (refrigerated) and dry (non-refrigerated) container shipping services.[37]

(44) The Parties do not necessarily agree with the distinction between dry and reefer.[38] They have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative product market definition.

---

33 *E.g.* tramp or specialised transport.

34 Cases M.8330 – *Maersk Line/HSDG*, paragraph 19 ; M.7523 – *CMA CGM/OPDR*, paragraph 49.

35 Roll on-roll off (“Ro-Ro”) shipping corresponds to the transport of wheeled cargo (lorries, cars, etc.) on ships.

36 Cases M.8330 – *Maersk Line/HSDG*, paragraph 19 ; M.7523 – *CMA CGM/OPDR*, paragraph 50.

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

38 Form CO, paragraphs 197 and 204-205.

(45) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest product market definition, the Commission will leave open the exact product market definition.

4.3.2.2. Relevant geographic market

(46) In its prior decisional practice, the Commission considered that the relevant geographic market for short-sea container liner shipping services should be defined on the basis of (i) either single trades or corridors, defined by the range of ports which are served at both ends of the service;[39] or (ii) single legs of trade.[40]

(47) The Parties submit that the relevant geographic market for short-sea container liner shipping services consists of the following intra-European trade routes:

- Northern Europe – North-East Mediterranean;
- Northern Europe – South-East Mediterranean;
- Northern Europe – West Mediterranean;
- Intra-East Mediterranean;
- Intra-Mediterranean;
- Intra-West-Mediterranean;
- Intra-Northern Europe.

(48) In any event, the Parties have provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative geographic market definition.

(49) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest geographic market definition, the Commission will leave open the exact geographic market definition and in particular the question whether this market should be defined on the basis of single trades or corridors or single legs of trade.

4.3.2.3. Conclusion

(50) For the purposes of this Decision, it can be left open whether the product market for short-sea container liner shipping services (i) forms part of a broader market encompassing the transport of wheeled cargo or (ii) whether a separate market for the transport of refrigerated (reefer) goods could be identified, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either of these definitions. For the same reason, it is also not necessary to conclude whether the market for short-sea container liner shipping services should be segmented between reefer and dry services. With respect to the geographic market for short-sea container liner shipping services, it may be left open whether short-sea

[39] Cases M.8330 – *Maersk Line/HSDG*, paragraph 20 ; M.7523 – *CMA CGM/OPDR*, paragraph 59.
[40] Cases M.8330 – *Maersk Line/HSDG*, paragraph 20 ; M.7523 – *CMA CGM/OPDR*, paragraph 60.

container liner shipping services should be defined on the basis of single trades or corridors, or single legs of trade.

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

(a) Product markets: (i) the market for short-sea container liner shipping services, as well as (ii) the plausible narrower market for short-sea reefer container liner shipping services;[41]

(b) Geographic markets: the narrowest plausible geographic market, that is to say individual legs of trade, which in this case is identified in recital (63).

5. COMPETITIVE ASSESSMENT

(52) The Transaction gives rise to vertically affected markets due to (i) APMM's activities in the upstream market for container liner shipping services and (ii) Senator International's activities in the downstream market for ocean freight forwarding services.[42] The Commission will also assess whether the Transaction could give rise to conglomerate effects due to the Parties' activities in related markets, namely (i) APMM's activities in air freight forwarding, contract logistics and container liner shipping services, and (ii) Senator International's activities in air freight forwarding and contract logistics services.

(53) The Transaction leads to a combination of mostly complementary activities and is largely driven by APMM's objective of offering customers a more integrated end-to-end offer, including a complete supply chain service, in line with a wider trend in the industry, which included similar recent acquisitions by competing container liner shipping companies.[43]

5.1. Vertical links in relation to container liner shipping services

(54) The Transaction gives rise to a vertical link between the activities of Senator International in the downstream market for ocean freight forwarding services and APMM's activities in the upstream market for container liner shipping services.

---

41 The Commission will not assess the effects of the Transaction on (i) a broader market encompassing short-sea wheeled cargo shipping and short-sea container shipping or (ii) an overall market for door-to-door intermodal transport services, since the market shares of the Parties on these broader markets will be diluted.

42 The Parties' activities overlap horizontally in the provision of air freight forwarding and contract logistics services but their combined market shares remain below 20% under any plausible alternative product and geographic market definition. Consequently, since these horizontal overlaps do not give rise to any affected markets, these markets will not be further considered in this Decision.

43 Form CO, paragraphs 416 and 417: some of APMM's largest competitors have recently moved into logistics. For example, CMA CGM is a notable player moving into integrated logistics through acquisitions such as CEVA Logistics and continues to invest in its long-haul air freight business. MSC has also recently been integrating vertically, having received regulatory approval to acquire Brazil's Log-in Logistica and having made a bid for Bolloré Africa Logistics. COSCO paid USD 157 million for shares on Shun Feng Holdings, an integrated logistics company based in China.

5.1.1. *Legal framework*

(55) According to the Non-Horizontal Merger Guidelines,[44] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[45] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[46] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[47]

(56) For input or customer foreclosure to be a concern three conditions need to be met post-Transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition.[48] In practice, these factors are often examined together since they are closely intertwined.

5.1.2. *Treatment of alliances/consortia*

(57) In its prior decisions relating to container liner shipping services, the Commission considered that shipping companies that are members of alliances/consortia (the latter are also called vessel sharing agreements, "VSAs") jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity that it contributes. The allocation of container slots is usually predetermined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of operating costs for individual vessels between the participants in a VSA.[49]

(58) In previous cases, the Commission also considered that it is not appropriate to assess the effects of the concentration only on the basis of the Parties' individual market shares. Such an approach would not adequately take into account the fact that a member of an alliance/consortium/VSA can have a significant influence on operational decisions determining service characteristics. This influence can have a dampening effect on competition on the trade/s served by the

---

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

[45] Non-Horizontal Merger Guidelines, paragraphs 20-29.

[46] Non-Horizontal Merger Guidelines, paragraph 31.

[47] Non-Horizontal Merger Guidelines, paragraph 58.

[48] Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

[49] See for instance, Case M.9221 – *CMA CGM/CEVA*, paragraphs 60-61; M.8594 – *COSCO SHIPPING/OOIL*, paragraphs 28-29. Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. Alliances are matrices of vessel sharing agreements that cover multiple trades rather than one trade, as opposed to consortia.

alliance/consortium/VSA in question. Hence, the competitive assessment should also be based on the aggregate shares of the Parties' alliances/consortia/VSAs.[50]

(59) In line with its prior decisional practice, the Commission will assess the effects of the Transaction on the above-mentioned trades and legs of trade by taking into account the aggregate market shares of APMM and of its partners in the respective alliances/consortia/VSAs.

5.1.3. *Overview of the vertically affected markets*

(60) Related markets in which APMM holds a market share of at least 30% in the upstream markets and/or Senator International holds a market share of at least 30% in the downstream markets are considered to be vertically affected by the Transaction.

(61) As regards the **upstream markets for container liner services**, post-Transaction:

- APMM's market shares in the market for **deep-sea container liner shipping services** would exceed 30% on **nine** legs of trade, namely (i) Oceania to North Europe ([30-40]%), (ii) Mediterranean to Indian Sub-Continent & Middle East ([30-40]%), (iii) Indian Sub-Continent & Middle East to Mediterranean ([30-40]%), (iv) Central America & Caribbean to North Europe ([40-50]%), (v) Mediterranean to East Coast South America ([30-40]%), (vi) East Coast South America to Mediterranean ([30-40]%), (vii) Mediterranean to South Africa ([30-40]%), (viii) South Africa to Mediterranean ([30-40]%) and (ix) Oceania to Mediterranean ([30-40]%).[51]

- APMM's market shares in the market for **deep-sea container liner shipping services for refrigerated goods** would exceed 30% on **nine** legs of trade, namely i) Oceania to North Europe ([30-40]%), ii) Mediterranean to Indian Sub-Continent & Middle East ([30-40]%), iii) Central America & Caribbean to North Europe ([40-50]%), iv) East Coast South America to Mediterranean ([30-40]%), v) South Africa to Mediterranean ([30-40]%), vi) Oceania to Mediterranean ([50-60]%), vii) North Europe-West Coast Africa ([30-40]%), viii) North Europe to Oceania ([30-40]%), ix) West Coast South America to Mediterranean ([30-40]%).[52]

- When attributing APMM's alliances/consortia/VSAs market shares to APMM, APMM's market shares in the market for **deep-sea container liner shipping services** would exceed 30% on **nine** legs of trade overall. This includes five additional legs of trade (where APMM's market share alone is below 30%), namely (i) Far East to North Europe ([30-40]%), (ii) Mediterranean to Far East ([30-40]%), (iii) Far East to Mediterranean ([40-50]%), (iv) Mediterranean to North America (including Canada, US (with Gulf Coast) and Mexico) ([30-

---

50 See, for instance, Cases M.9221 – *CMA CGM/CEVA*, paragraph 62; M.8594 – *COSCO SHIPPING/OOIL*, paragraphs 32-33; M.8330 – *Maersk Line/HSDG*, paragraph 60; M.7523 – *CMA CGM/OPDR*, paragraph 33.

51 Form CO, Table 1.

52 Six out of these nine legs of trade were already affected, meaning that three additional affected legs of trade result when reefer cargo is taken separately (that is, North Europe to West Coast Africa, North Europe to Oceania and West Coast South America to Mediterranean).

40]%) and (v) North America (including Canada, US (with Gulf Coast) and Mexico) to Mediterranean ([30-40]%).[53]

- When attributing APMM's alliances/consortia/VSAs market shares to APMM, APMM's market shares in the market for **deep-sea container liner shipping services for refrigerated goods** would exceed 30% on 3 legs of trade, that is, East Coast South America-Mediterranean ([40-50]%), South Africa-Mediterranean ([40-50]%) and Mediterranean-Far East Asia ([40-50]%).

(62) The table below shows all affected markets for deep-sea container liner shipping (including for reefer cargo).

Table 1 – APMM's market shares in the affected legs of trade in deep-sea container liner shipping services[54]

Leg of trade	APMM's market share	Aggregated market share of APMM and its alliances/consortia partners	APMM's market share in reefer cargo[55]	Aggregated market share of APMM and alliance/consortia partners in reefer cargo
OCE-NE	[30-40]%	No consortium	[30-40]%	No consortium
MED-ISCME	[30-40]%	No consortium	[30-40]%	No consortium
ISCME-MED	[30-40]%	No consortium	Reefer < 10%	No consortium Reefer <10%
CAMCAR-NE	[40-50]%	No consortium	[40-50]%	No consortium
OCE-MED	[30-40]%	No consortium	[50-60]%	No consortium
MED-ECSA	[30-40]%	[40-50]% (with CMA CGM)	Reefer <10%	Reefer <10%
ECSA-MED	[30-40]%	[40-50]% (with CMA CGM)	[30-40]%	[40-50]% (with CMA CGM)
MED-SAF	[30-40]%	[40-50]% (with DAL, ONE Line)	Reefer <10%	Reefer <10%
SAF-MED	[30-40]%	[30-40]% (with DAL, ONE Line)	[30-40]%	[40-50]% (with DAL, ONE Line)

53 Form CO, Table 1.
54 Source: Form CO, paragraph 306, Table 15.
55 Reefer market in the legs of trade where reefer is above 10%.

Leg of trade	APMM's market share	Aggregated market share of APMM and its alliances/consortia partners	APMM's market share in reefer cargo	Aggregated market share of APMM and alliance/consortia partners in reefer cargo
FEA-NE	[20-30]%	[30-40]% (with MSC)	Reefer <10%	Reefer <10%
MED-FEA	[10-20]%	[30-40]% (with MSC)	[20-30]%	[40-50]% (with MSC)
FEA-MED	[10-20]%	[40-50]% (with MSC)	Reefer <10%	Reefer <10%
MED-NAM	[10-20]%	[30-40]% (with Hapag-Lloyd)	Reefer <10%	Reefer <10%
NAM-MED	[10-20]%	[30-40]% (with Hapag-Lloyd)	Reefer <10%	Reefer <10%
NE-WAF	[20-30]%	No consortium	[30-40]%	No consortium
NE-OCE	[20-30]%	No consortium	[30-40]%	No consortium
WCSA-MED	[20-30]%	No consortium	[30-40]%	No consortium

(63) On **short-sea** container liner shipping services, APMM's market share on a standalone basis would be below 30%, apart from the Northern Europe-South East Mediterranean leg of trade for refrigerated goods only, where it has a market share of [30-40]%. When alliance/consortia/VSA market shares are included, APMM's market share would still only exceed [30-40]% in this specific leg of trade reaching [30-40]% together with CMA CGM (and [40-50]% for reefer cargo only).[56]

(64) With respect to the **downstream markets for ocean freight forwarding services**, Senator International's market share is consistently below 5% under any product (that is, ocean freight forwarding overall or when split between domestic[57] and cross border) or geographic market definition (that is, at global, EEA or national level).

5.1.4. Assessment of the vertically affected markets

(65) The Commission will assess in this Section whether the Transaction could lead to (i) input foreclosure, pursuant to which APMM would foreclose Senator International's competitors by restricting access to or deteriorating the access to the container liner shipping services that it provides to Senator International's competitors in the

[56] Form CO, paragraph 306, Table 15.

[57] The parties note that Senator is not active in the area of domestic ocean freight forwarding, Form CO, paragraph 329.

countries where it is active; or (ii) customer foreclosure, pursuant to which Senator International would foreclose APMM's competitors by sourcing its container liner shipping services requirements mostly or exclusively from APMM or deteriorating the purchase conditions it offers to competing container liner shipping companies.

5.1.4.1. Input foreclosure

(A) The Parties' views

(66) With respect to the risk that APMM restricts or deteriorates access of Senator International's competitors to its container liner shipping services, the Parties submit that APMM will have neither the ability nor the incentive to engage in an input foreclosure strategy.[58]

(B) The Commission's assessment

Ability to foreclose

(67) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of power in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.[59]

(68) **First,** the Commission notes that APMM, either on a standalone basis or together with its partners in alliances/consortia/VSAs, holds market shares above 30% on 18 legs of trade (seventeen legs of trade for deep-sea container liner shipping services and one leg of trade for short-sea container liner shipping services). As indicated under section 5.1.3. above, its market share in the affected markets, whether on a standalone or on a consortia basis, ranges between [30-40]% and a maximum of [50-60]%. More specifically, APMM's market share on a standalone basis only exceeds 40% on two legs of trade, that is, CAMCAR-NE ([40-50]%) and OCE-MED ([50-60]%) and only when reefer cargo is considered separately. When consortia market shares are taken into account, its market share never exceeds [40-50]% (including for reefer cargo only) and does not exceed 40% in six legs of trade for container liner shipping services overall.

(69) Furthermore, significant and long-established competing carriers provide container liner shipping services on the above-mentioned legs of trade independently from APMM and/or its consortia partners. On all but one leg of trade (that is, OCE-MED), those independent carriers account for more than half of the market, which means that the 'free' market amounts to at least around [50-60]% and up to [60-70]% on several occasions, with several competing container liner shipping companies holding in general either comparable or higher market shares than APMM.[60] In addition, in eight out of these eighteen legs of trade, APMM is not a member of any consortia which means that it has no connection to any of the other major container liner shipping companies, such as, CMA CGM, MSC, Hapag-Lloyd, COSCO Shipping, One Line, ZIM, Evergreen, Yang Ming Line etc. Therefore, in case

[58] Form CO, paragraph 336.

[59] Non-Horizontal Merger Guidelines, paragraph 35.

[60] For instance, in the MED-SAF and the MED-NAM trades, MSC has a market share of around [50-60]% and [40-50]% respectively while in the OCE-NE trade CMA CGM has a market share of around [20-30]%.

APMM were to decide to limit, degrade or stop supplying freight forwarders, such freight forwarders will continue to have access to equivalent services provided by competing carriers.

(70) This was confirmed by several shipping companies responding to the market investigation. For instance, the majority of container liner shipping companies responding to the market investigation indicated that the Transaction would have no impact on competition in the container liner shipping services market[61] and that their ability to supply container liner shipping services would not be affected as a result of the Transaction.[62] The Commission notes that, since Senator International is not active in container liner shipping services, the Transaction does not lead to any change to APMM's position or market share increment in the market for container liner shipping services.

(71) **Second**, any foreclosure attempts by APMM would only benefit its subsidiary Senator International, but not its consortia partners in the trades where it forms part of a consortium (see recital (62)). For instance, if APMM decided to serve fewer trades or sail less frequently, the divergent interests of APMM's consortia partners on these routes mean that these partners would be unlikely to follow such a strategy. That would restrict the Merged Entity's ability to engage into an input foreclosure strategy for all of the consortium's trade volumes.

(72) **Third**, as noted in, for instance, the Commission decision in case M.9221,[63] freight forwarders do not face high switching costs when they decide to switch carriers, even until the very last minute. This possibility to change to alternative providers, often without any cancellation fee, allows them to be less reliant on APMM and encourages competition among shipping companies. Furthermore, most of the freight forwarders show no brand loyalty and multi-source their needs in container liner shipping services among different carriers, as also confirmed by the market investigation in this case.[64]

(73) For instance, the majority of container liner shipping companies responding to the market investigation consider that their customers multi-source.[65] In their view, customers prefer to multi-source in order to have options in terms of price and service[66] and in order to "*spread their risk among different ship systems and invite competition*".[67] Most container liner shipping companies also consider that freight forwarders in a given leg of trade can easily switch volumes to other container liner shipping companies.[68] One respondent indicated that freight forwarders "*tend to*

---

61 See, for instance, replies to question 13 of Q1 to Container Liner Shipping Companies.

62 See replies to question 17 of Q1 to Container Liner Shipping Companies.

63 Case M.9221 – *CMA CGM/CEVA*, paragraph 72.

64 See replies to question 5 of Q2 to Freight Forwarders and replies to question 6 of Q1 to Container Liner Shipping Companies.

65 See replies to question 6 of Q1 to Container Liner Shipping Companies.

66 See reply of a market participant to question 6.1 of Q1 to Container Liner Shipping Companies.

67 See reply of a market participant to question 6.1 of Q1 to Container Liner Shipping Companies. Another market participant also indicated that: "*Multiple carrier options keep shippers more flexible and hedge them against risks, such as Force Majeure declaration, blank sailing and rolled shipment, or cyberattack that may disrupt communication or operation. A diverse supplier base also means customers are less dependent on any individual carrier and can spur competitive pricing among vendors*".

68 See replies to question 7 of Q1 to Container Liner Shipping Companies

book wherever price is the more attractive and overall level of quality is sufficient" and it is possible to do "*multiple bookings for a single shipment, as cancellation of ocean bookings are flexible*".[69] Another container liner shipping company indicated that: "*Switching costs are very low in the container liner shipping industry. There are hardly any additional costs for customers when they change from one supplier to another. With regard to timing, only a short phasing-in period is required. As most customers have direct EDI links with most of their suppliers (including various liner shipping companies), IT systems for booking, instructions and documentation do also not incur substantial switching costs. In addition, a lot of contracts are short- or medium-term contracts that can be terminated after not more than six or twelve months. Moreover, sailing schedules of shipping companies are readily accessible for customers and the shipping services can be easily booked. In practice, major customers, both freight forwarders and large shippers, ship their commodities with several carriers on one trade. Thus, customers are well informed of the conditions offered in the market and can easily, and regularly do, switch between carriers*".[70]

(74) When responding to the market investigation, the majority of freight forwarders also confirmed that they multi-source and have different shipping services providers for the same routes.[71] Several freight forwarders noted that multi-sourcing is a feature of this market and that they are cooperating will all shipping lines providing services in a particular trade. As one freight forwarder indicated "*we will contract with several shipping lines to proceed our business. The decision on which shipping line will be used depends on service and costs*".[72] Another freight forwarder noted that "[our company]…*operates significant volumes across all continents for its thousands of customers. To accommodate divergent logistic needs of these customers,* [we] *normally use different shipping providers for the same destinations. These divergent needs include different departure times, transit times, interest in direct shipments or transhipments and prices*".[73]

(75) Several respondents to the market investigation referred to the overall increasing challenges to find alternative container liner shipping services with the market concentration upstream (where some trades are operated by few providers) and the current effects of the Covid19 pandemic on the logistics value chain (including port congestions, landside bottlenecks, reduced vessel capacity etc). For instance, when asked whether freight forwarders could easily switch volumes to other container liner shipping companies, the majority of freight forwarders replying to the market investigation indicated that this would depend on different factors.[74] One freight forwarder indicated, for instance, that "*subjected to normal market conditions (availability of vessel space) it can switch between shipping companies…*" and noted that "*…with the current vessel capacity constraints switching is less easy*".[75] This view was also shared by other freight forwarders who, for instance, indicated the following: "*Up to the Covid pandemic impact, we had the ability to switch from one operator to another, depending on price and service offering. Freight forwarders*

69 See reply of a market participant to question 7.1 of Q1 to Container Liner Shipping Companies.

70 See reply of a market participant to question 7.1 of Q1 to Container Liner Shipping Companies.

71 See replies to question 5 of Q2 to Freight Forwarders.

72 See reply of a market participant to question 5.1 of Q2 to Freight Forwarders.

73 See reply of a market participant to question 5.1 of Q2 to Freight Forwarders.

74 See reply to question 4 of Q2 to Freight Forwarders.

75 See reply of a market participant to question 4.1 of Q2 to Freight Forwarders.

have currently enormous difficulties to access capacities and to switch to other shipping companies".[76] Another freight forwarder noted that "*Hamburg Sud is the leading shipping company for Latin America. As they cancelled all agreements with logistic providers in Germany the space at other container liners is extremely tight and you will not be able to get your shipments on board*"[77] while a third one indicated that "*Some trades are operated by very few providers only, so switching is not impossible but will come at increased costs or might, under certain circumstances, not be possible at all*".[78]

(76) Some of the container liner shipping companies also referred to the current exceptional circumstances where demand significantly exceeds market supply, with carriers being often fully booked and with tight equipment availability, which means that switching bookings is more difficult and carries the risk of delays.[79] However, as ocean transport is a commodity and all carriers provide similar services with similar requirements towards the freight forwarders/customers, most container liner shipping companies indicated that it is not a problem to switch cargo under 'normal' circumstances.[80] For instance, one shipping company noted that *'it is a free competition market. Carriers provide similar services which allows the customers, including freight forwarders to switch easily, depending on cost or time. The requirements from the carriers to the customers including freight forwarders are similar…'*[81] Another shipping company has indicated that freight forwarders usually secure "*multiple bookings for a single shipment, as cancellation of ocean bookings are flexible*".[82] Furthermore, APMM[83] and most container liner shipping companies responding to the market investigation expect the market situation to normalise by 2023.

(77) In addition, all shipping companies have indicated that deploying more capacity to face increased demand from freight forwarders can be done.[84] One of them noted that reallocation of capacities on a designated trade is feasible and done routinely, notably in case of increase of demand (such as the current situation following the Covid19 pandemic).[85] Several of them noted that it would require a delay or increased costs since the vessels/ships are not always readily available in the market and, as indicated above, the market is currently experiencing heavy port congestions and supply chain bottlenecks (including in ports, landside transportation and warehousing) which could cause operational constraints for increasing capacity.[86]

76 See reply of a market participant to question 4.1 of Q2 to Freight Forwarders.

77 See reply of a market participant to question 4.1 of Q2 to Freight Forwarders. APMM indicated that it has not unilaterally cancelled long-term contracts with customers and that rather [information on business and marketing plans]. Paragraphs 1.30 and 1.31 of the Parties' response to RFI 5.

78 See reply of a market participant to question 4.1 of Q2 to Freight Forwarders.

79 See reply of a market participant to question 7.1 of Q1 to Container Liner Shipping Companies.

80 See replies to question 7.1 of Q1 to Container Liner Shipping Companies.

81 See reply of a market participant to question 7.1 of Q1 to Container Liner Shipping Services.

82 See reply of a market participant to question 7.1 of Q1 to Container Liner Shipping Companies.

83 Paragraphs 1.6 and 1.7 of the Parties's response to RFI 5.

84 See replies to question 8 of Q1 to Container Liner Shipping Companies.

85 See replies to question 8.1 of Q1 to Container Liner Shipping Services.

86 See replies to question 8.1 of Q1 to Container Liner Shipping Companies.

Having to wait for new built ships could take 2-3 years; however, in the meantime, shipping companies could, if available, charter additional space at a cost.[87]

(78) APMM also indicated in this respect that in normal times the regular industry over-capacity and the availability of additional vessels on the charter market would allow it or its competitors to increase supply and this has also been the case during the pandemic. In 2021, APMM added additional capacity of […] to support the customer demand and ease congestion, […]. APMM also noted that the supply bottlenecks are not primarily due to the lack of capacity but to bottlenecks in ports and across the supply chain, including land transportation and warehousing. In addition, APMM has continued to order new ships; in 2021 and early 2022 APMM ordered 12 new container vessels capable of operating on green methanol, to be delivered in […] and […] to replace older tonnage and drive the transition to carbon-neutral shipping.[88]

(79) **Fourth**, even in the current market disruption, some container liner shipping companies have decided to freeze their rates, despite the opportunity to charge higher rates to reflect the fact that demand outstrips supply, and instead focus on maintaining/improving relationships with their customers. This indicates that competing carriers are able to continue to compete for customers and offer a low-rate alternative to freight forwarders, even under the current disrupted context.[89]

(80) In light of the above, the Commission considers that, on balance, APMM would likely not have the ability to implement any successful input foreclosure strategy post-Transaction.

Incentive to foreclose

(81) 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.[90]

(82) The Commission notes that, even if APMM were to be considered to have the ability to engage into input foreclosure, it would likely not have the incentive to do so because such a foreclosure strategy would be unlikely to be profitable for the reasons mentioned below.

(83) **First,** the Commission notes that Senator International's demand for deep-sea container liner services is negligible on any of the affected legs of trade. Senator International's global demand for container liner shipping services accounted for less than 2% of APMM's container liner shipping activities in 2020.[91] In addition, out of

87 See replies to question 8.1 and 8.2 of Q1 to Container Liner Shipping Companies. (

88 Paragraphs 1.3-1.5 of the Parties' response to RFI 5.

89 Paragraphs 1.9 and 1.10 of the Parties' response to RFI 6.

90 Non-Horizontal Merger Guidelines, paragraph 40.

91 Form CO, paragraph 345 and Table 27.

[…]TEUs for which Senator International provided freight forwarding services in 2020, only […]TEUs were shipped with APMM. This represents [0-5]% of APMM's total volumes (which was around […]TEUs).[92]

(84) Even if Senator International moved all of its ocean freight forwarding volumes (including volumes in non-EEA related trades) to APMM's container liner shipping services on EEA-related trades, volumes booked by Senator would represent [0-5%] of APMM's volumes.[93] On a per leg basis, Senator International's freight forwarding volumes would represent (i) less than 1% on […] trades, (ii) [0-5%] on […] trades, and (iii) […] (and only with respect to the […] trade) [5-10%] of APMM's total volumes.[94] In addition, Senator International's demand for short-sea container liner shipping services represents [0-5%] of APMM's short-sea activities.[95]

(85) In view of Senator International's small demand for container liner services, if APMM engaged in any input foreclosure strategy this would only benefit Senator International's ocean freight forwarding activities and expose APMM to the risk of jeopardising its commercial relationship with freight forwarders downstream, which represent its primary source of activities and revenue. As noted by APMM, the container liner shipping business accounts for the largest part of APMM Group's revenue, so there would be little incentive to undertake actions that could negatively affect it.[96]

(86) This was not contradicted by the market investigation. Indeed, most container liner shipping companies indicated that Senator International is a marginal player and its demand for container liner shipping services is very small.[97] In addition, freight forwarders responding to the market investigation also confirmed this view. One of them indicated for instance that "*Maersk will still need other freight forwarders to fill their ships*"[98] while another noted that "*Senator alone will never be able to fill up all the vessel fleet of APMM. APMM will need the other freight forwarders to fill up the vessels*".[99]

(87) As a result, even if post-Transaction APMM decided to stop, degrade or limit its supply of container liner shipping services to other freight forwarders, this would likely be unprofitable since Senator International's activity in freight forwarding would not compensate the losses incurred in the upstream market. In addition, in view of the fact that Senator International is mainly focused on air freight forwarding rather than on ocean freight forwarding, it would be unlikely to be able to grow quickly enough to absorb business of other freight forwarders. […].[100]

---

92 Form CO, see inter alia, paragraph 344 and footnote 215.
93 Form CO, paragraph 345.
94 Form CO, paragraph 344-345 and footnote 215.
95 Form CO, paragraph 389 (for refrigerated cargo in NE-SEM trade leg).
96 Parties' response to question 5 of RFI 5.
97 See reply to question 13.1 of Q1 to Container Liner Shipping Companies.
98 See reply of a market participant to question 17.1 of Q2 to Freight Forwarders.
99 See reply of a market participant to question 17.1 of Q2 to Freight Forwarders.
100 Paragraph 1.29 of the Parties' response to RFI 6. Senator had, inter alia, […].

(88) **Second,** in this respect, while a direct comparison between gross margins for container liner shipping services and ocean freight forwarding may be difficult,[101] it would appear that profit margins for container shipping services are much higher than profit margins for freight forwarding services. For instance, APMM's average EBITDA margin[102] between 2018-2021 in its container liner shipping business was […]. In 2021, the average margin was approximately […].[103] On the other hand, Senator International's average EBITDA margin between 2018-2021 for its ocean freight forwarding business was approximately […]. In 2021, the average margin was approximately […].[104] This shows that, pre-pandemic, APMM's profit margins were on average almost […] times higher for container shipping services than Senator International's profit margins for freight forwarding services. Even when comparing pre-pandemic EBITDA margins for 2018 for instance ([…] for APMM versus […] for Senator),[105] the margins for container shipping were at least […] times higher than for freight forwarding services. This further demonstrates that APMM would be unlikely to have incentive to pursue an input foreclosure strategy in favour of Senator International's ocean freight forwarding business since it would have to achieve margins that are significantly higher than the margins achieved in ocean freight forwarding in order to recoup the container liner shipping margins it would be losing out on by foreclosing access to its services.

(89) **Third,** as already mentioned above, freight forwarders generally multi-source and can switch among several long-established competing shipping companies without significant additional cost. This would also likely make input foreclosure unprofitable for APMM. Indeed, one major freight forwarder indicated that, even if APMM had the ability to restrict access to its shipping services, it would be rather easy for it to find alternative providers of container shipping services.

(90) Finally, the Commission notes that APMM's rationale for the Transaction mainly relates to Senator International's presence in the air freight forwarding services market rather than its limited activities and presence in ocean freight forwarding. Indeed, APMM's memo to the board of directors indicates that Senator International will "[summary of APMM's internal assessment of why the Transaction is focused

[101] The Parties note that given that ocean freight forwarding services may differ in terms of scope from one contract to the next, the cost structure for freight forwarding services provided by Senator International is different for each shipment and depends on what steps of the shipping process is managed by Senator International. In some cases Senator International does not book the shipment and provides only ancillary freight forwarding services ([Information on Senator International's pricing calculation]). Consequently, the margins in the area of ocean freight forwarding may differ from shipment to shipment and depend on what steps of the shipping process is managed by Senator International. Also, the margins may be different in case of long-term contracts than in case of ad hoc shipments, in particular in the current market environment (Parties' response to question 13 of RFI 6).

[102] Comparing net revenues to EBITDA/operating income.

[103] The Parties note that due to the market developments in the industry arising from the pandemic and subsequent macro-economic events, margins are currently unusually high. See the Parties' response to question 13 of RFI 6.

[104] The underlying Senator International ocean freight forwarding turnover includes […] and comprises also […]. See the Parties' response to question 13 of RFI 6.

[105] Parties' response to question 13 of RFI 6.

on air freight forwarding]".[106] APMM foresees that "[summary of APMM's internal assessment of why the Transaction is focused on air freight forwarding]".[107]

(91) In light of the above, the Commission considers that APMM will likely not have an incentive to engage in an input foreclosure strategy post-Transaction.

Overall effect of input foreclosure

(92) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.[108]

(93) If there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or they are capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.[109]

(94) The Commission notes that none of the container liner shipping companies responding to the market investigation considered that the Transaction would have a negative impact on effective competition on the deep-sea container liner shipping services market, with the vast majority indicating that the Transaction would have no impact at all.[110]

(95) When freight forwarders were asked whether their ability to procure container liner shipping services[111] and their ability to provide freight forwarding services will be affected as a result of the vertical integration between APMM and Senator International, the results of the market investigation were mixed.[112] For instance, one freight forwarder noted that APMM could offer direct customers on the market preferential rates which independent freight forwarders would not be able to obtain. Another indicated however that they still hope to keep a strong partnership and continue to be provided with services and rates.[113] Another freight forwarder indicated that, in any event, it does not intend to use APMM as a supplier post-Transaction due to concerns that APMM will have access to its freight information and can make use of it.[114]

(96) However, other freight forwarders responding to the market investigation indicated that they expect to be able to find ways to ship their cargo as desired even without APMM, while others said that they generally have a "*multiple carrier choice program*" and will use alternative carriers if needed. One company specified that

106 Form CO, Annex C.7(e).
107 Form CO, Annex C.7(e).
108 Non-Horizontal Merger Guidelines, paragraph 47.
109 Non-Horizontal Merger Guidelines, paragraph 50.
110 See replies to question 13 of Q1 to Container Liner Shipping Companies.
111 See replies to to question 19 of Q2 to Freight Forwarders.
112 See replies to to question 18 of Q2 to Freight Forwarders.
113 See replies to question 19.1 of Q2 to Freight Forwarders.
114 See replies of a market participant to question 19.1 of Q2 to Freight Forwarders.

they procure shipping services from nine global providers plus several regional ones, which are not related to the Merged Entity.[115]

(97) In this respect, the Commission also notes the presence of downstream competitors who are also vertically integrated. For instance, CEVA Logistics is part of the CMA CGM group and could turn to CMA CGM in case APMM were to engage in an input foreclosure strategy. The Commission considers that this constitutes an additional constraint on the Merger Entity.

(98) In addition, due to their size and their commercial significance, freight forwarders such as, for instance, DSV, Kuehne+Nagel have a level of countervailing bargaining power vis-à-vis container liner shipping companies, including APMM. For instance, DSV has indicated in a public statement that "*We are in a good position where we get the capacity from carriers that we need*" and that "*the long-term partnership between the two companies made a difference*".[116] In addition, Kuehne+Nagel indicated that "*it has always been possible for a large player to call Maersk and secure a spot on one of the carrier's container vessels, no matter how difficult the market looks*".[117]

(99) Finally, similarly to the container liner shipping companies, several freight forwarders also noted that considering Senator International's limited volume for ocean carriage, the Transaction in itself is not expected to change the market situation.[118]

(100) Consequently, the Commission considers that an input foreclosure strategy post-Transaction by APMM would be unlikely to have a negative effect on competition.

Conclusion

(101) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by APMM in order to exclude or deteriorate access of Senator International's competitors purchasing container liner shipping services in any of the affected legs of trade is unlikely.

5.1.4.2. Customer foreclosure

(A) The Parties' views

(102) APMM submits that the Merged Entity will not have the ability or the incentive to engage into any customer foreclosure strategy by sourcing most or all of its needs in container liner shipping services from APMM in the EEA or by degrading access conditions for other container liner shipping companies, in particular in view of Senator International's small size in ocean freight forwarding downstream which precludes any possibility of customer foreclosure and will not affect competing container liner shipping companies upstream.[119]

---

115 See replies to question 19.1 of Q2 to Freight Forwarders.

116 Paragraph 1.20 of the Parties' response to RFI 4.

117 Paragraph 1.20 of the Parties' response to RFI 4.

118 See replies to question 20.1 of Q2 to Freight Forwarders.

119 Form CO, paragraph 349.

(B) The Commission's assessment

Ability to foreclose

(103) 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.[120]

(104) **First,** Senator International's market share in the downstream market for ocean freight forwarding services is limited, less than 1% in the overall market for ocean freight forwarding at a global,[121] EEA[122] or national level. Its market share remains below 5% at global, EEA or national level also when domestic ocean freight forwarding and cross border ocean freight forwarding services are considered separately. Indeed, Senator International is mainly focused on air freight forwarding and the ocean freight forwarding business represents only around […] of its overall annual revenues and […] of its annual total freight forwarding turnover.[123] In addition, the Parties' combined market shares would also remain significantly below 20% under any geographic market definition in a possible overall market for freight forwarding (that is, when air and ocean freight forwarding are taken together) both for domestic and cross-border freight forwarding services.[124]

(105) **Second,** Senator International's demand in container liner shipping services of around […] TEUs in 2020 is small, as compared to a total market of more than 76.8 million TEUs.[125] Therefore, Senator cannot be considered an important customer with a significant degree of market power in the downstream market. Out of […] TEUs, Senator International only shipped around […] TEUs with APMM in 2020 which represents [0-5]% of the total cargo transported by APMM (which was around […] TEUs).[126]

(106) In addition, out of the nine legs of trade where APMM's market share on a standalone basis exceeds 30% in the (overall) deep-sea container liner shipping services market, Senator International has not managed any volumes shipped with APMM and/or any other carrier in two of them, that is: ISCME-MED and OCE-MED.[127] Consequently, it is not currently a customer in these legs of trade. Therefore, even if Senator International started providing such services in these legs of trade and procuring shipping services from APMM in the future, this would not

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

[121] Form CO, paragraph 59 and footnote 26: the Parties estimate Senator International's market share to be below 0.5% globally. The Parties note that, based on Global Freight Forwarding 2021, Ti Research, p.177, the top 25 ocean freight forwarders alone account for a total volume of more than 25 000 000 TEUs.

[122] Form CO, paragraph 59 and footnote 27: The Parties estimate Senator International's market share to be below 0.5% at EEA level. According to Senator International, given that the Top 15 Ports in Europe have a throughput of 76.8 million TEUs in 2020, its market shares is far below 0.5%.

[123] Form CO, paragraph 90.

[124] Form CO, paragraph 268.

[125] The Top 15 container ports in Europe had a throughput of 76.8 million TEUs and Senator International estimates its market share to be well below 0.5% at EEA level. See Form CO, footnote 27.

[126] Form CO, paragraph 344.

[127] Form CO, paragraph 378.

deprive any of APMM's competitors in container liner shipping from current volumes.

(107) Furthermore, Senator International's demand in container liner shipping services in the remaining seven affected legs of trade[128] is very small ([…]TEU) compared to a total market of container liner shipping services in these legs of trade of more than 3 million TEUs (approximately [<0.1]% of the total demand in these legs of trade).[129]

(108) Senator International's demand for container shipping services is very small also when considering the additional five trade routes where APMM's market share exceeds 30% only when adding consortia market shares, that is FEA-NE, MED-FEA, FEA-MED, MED-NAM, NAM-MED. Senator International managed around […] TEUs compared to a total market of 21 048 044 TEUs in these trade legs. Senator International therefore represents [<0.5]% of the total demand in these legs of trades[130] and cannot be considered as an important customer.

(109) Finally, Senator International's share of demand for container liner shipping services in any of the legs of trade where it manages cargo shipped with container liners is consistently less than 1% (in most cases even less than 0.1%).[131]

(110) **Third**, the market for ocean freight forwarding services is fragmented and includes several major players, such as Kühne+Nagel, DSV and DHL.[132] Should Senator International contract exclusively or mostly with APMM, APMM's competitors in container liner shipping services would still have access to a sufficient customer base.

(111) For instance, there are several large freight forwarders such as, Kuehne+Nagel, DHL Global Forwarding, DSV, DB Schenker with a much larger market share in ocean freight forwarding than Senator International within the EEA. For instance, Kuehne+Nagel's market share was around [10-20]% in 2020, while DHL Global Forwarding's was around [0-10]%.[133] These companies represent a large proportion of the overall demand for container liner shipping services. When the demand for container liner shipping services represented by Senator's top 5 competitors is taken together, it represents around [0-10]% of the total demand for container liner shipping services, whereas Senator International's demand represents [<0.1]% of the total demand for container liner shipping services.[134]

(112) **Fourth**, the respondents to the market investigation did not raise any concerns with regard to customer foreclosure. In particular, none of the container liner shipping companies responding to the market investigation considered that their ability to supply container liner shipping services to freight forwarders will be affected in any

[128] The remaining seven affected legs of trade where APMM's market share exceeds 30% on a standalone basis and where Senator International has volumes shipped with APMM and/or any other carrier are (see Form CO, paragraph 61): OCE – NE; MED – ISCME; CAMCAR – NE; MED – ECSA; ECSA – MED; MED – SAF and SAF – MED.

[129] Form CO, paragraph 66.

[130] Form CO, paragraph 74.

[131] Form CO, paragraph 334.

[132] Form CO, paragraph 59.

[133] Parties' response to question 1a) of RFI 7.

[134] Parties' additional response to question 1b) of RFI 7.

way post-Transaction[135] and none of them indicated that they considered Senator International as one of their main customers or a significant customer in ocean freight forwarding overall or in any specific leg of trade.[136] On the contrary, one shipping company indicated that "*Senator International never played a significant or dominant role in the freight forwarding market*" and that "*their volumes are very small in comparison to our capacity on the routes*"[137] while another one commented that "*Senator is a marginal player in freight forwarding and a marginal customer overall for* […] *as an ocean carrier*".[138]

(113) When asked about the impact of the Transaction on their company, the majority of the container liner shipping companies expressing a view indicated that the Transaction would have no impact.[139] One of them also commented that "*we can easily replace the cargo controlled by Senator International*".[140] While one company considered that there was a risk of the price agreement with Senator becoming known to APMM post-Transaction, which could lead them to terminate business relations with Senator,[141] this company also indicated that the vertical integration between APMM and Senator International would not restrict its ability to supply container liner shipping services to freight forwarders in general because "*the freight forwarders' market is fragmented and the Senator shares are very little in our business*".[142]

(114) In light of the above, the Commission considers that, post-Transaction, the Merged Entity is unlikely to have the ability to engage in a customer foreclosure strategy in the EEA and in the countries where Senator International is active.

Incentive to foreclose

(115) The incentive to foreclose depends on the degree to which it is profitable. The merged entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so, for instance, because it allows the merged entity to raise price in the upstream or downstream markets.[143]

(116) Given Senator International's small demand for container liner shipping services in the EEA as indicated above, the Merged Entity would have limited benefits on the upstream markets for container liner shipping services.

135 See replies to question 17 of Q1 to Container Liner Shipping Companies.

136 See, for instance, replies to question 4.1 of Q1 to Container Liner Shipping Companies. The respondents indicated that Senator International's volumes are very small and there are no legs of trade where they provide container liners shipping services only to Senator International.

137 See reply of a market participant to question 4.1 and question 17.1 of Q1 to Container Liner Shipping Companies.

138 See reply of a market participant to question 4.1 and question 17.1 of Q1 to Container Liner Shipping Companies.

139 See replies to question 14 of Q1 to Container Liner Shipping Companies.

140 See reply of a container liner shipping company to question 14.1 of Q1 to Container Liner Shipping Companies.

141 See reply of a container liner shipping company to question 14.1 and 19.1 of Q1 to Container Liner Shipping Companies.

142 See reply of a container liner shipping company to question 17.1 of Q1 to Container Liner Shipping Companies.

143 Non-Horizontal Merger Guidelines, paragraph 68.

(117) In addition, the Commission considered in its decision in case M. 9221 - *CMA CGM/CEVA*[144] that no freight forwarder can afford, in order to address its clients' needs, to procure all of its needs in container liner shipping services from a single carrier. In support of this observation, the Commission noted in that case that CMA CGM's subsidiary CC Log only sourced […]% to […]% of its needs from CMA CGM. However, in the present case, Senator International sources less than 10% of its needs from APMM.[145] This makes it all the more unlikely for Senator International to stop procuring container liner shipping services from APMM's competitors post-Transaction.

(118) In light of the above, the Commission considers that, post-Transaction, the Merged Entity will not likely have the incentive to engage in a customer foreclosure strategy in the EEA in general and in each EEA country where Senator is active.

Overall effect of customer foreclosure

(119) It is only when a sufficiently large fraction of upstream output is affected by the revenue decreases resulting from the vertical merger that the merger may significantly impede effective competition on the upstream market. If there remain a number of upstream competitors that are not affected, competition from those firms may be sufficient to prevent prices from rising in the upstream market and, consequently, in the downstream market.[146]

(120) The Commission considers that even if Senator International's small demand for container liner shipping services (of around […] TEUs), which represented less than 1% of the total demand in the EEA in 2020, was sourced exclusively from APMM, this would have a limited impact on the market for container liner shipping services. In addition, the presence of larger freight forwarders with countervailing buyer power or of competitors in freight forwarding, like for instance CEVA Logistics, which are vertically integrated would constitute sufficient constraints on the Merged Entity and would limit the effects of a potential customer foreclosure strategy, if any.

(121) Therefore, the Commission considers that APMM's competitors in the upstream market for container liner shipping services will likely be unaffected by the Transaction.

(122) In light of the above, the Commission considers that, post-Transaction, the implementation of a customer foreclosure strategy by the Merged Entity would have likely no overall negative impact on effective competition in the EEA in general and in each EEA country.

Conclusion

(123) Based on the above considerations and in light of all the evidence available to it, the Commission concludes that a customer foreclosure strategy post-Transaction by the Merged Entity in order to deteriorate access of or exclude APMM's competitors selling container liner shipping services in the EEA in general and in each EEA country is unlikely.

144 See Case M.9221 – *CMA CGM/CEVA*, paragraph 91.
145 Form CO, paragraph 353.
146 Non-Horizontal Merger Guidelines, paragraph 74.

5.1.5. Conclusion on the vertical effects

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

5.2. Conglomerate effects in relation to contract logistics, air freight forwarding and container liner shipping services

(125) The Transaction may have a conglomerate dimension, as it involves services that belong to related markets (i.e. container liner shipping services, contract logistics services and air freight forwarding services), that is, products that are purchased by a significant set of consumers for a similar end use (either together in a bundle or separately). The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling. Those practices are common and often have no anticompetitive consequences. Companies engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways.[147]

(A) The Parties' views

(126) The Parties submit that the Transaction will not lead to any conglomerate anticompetitive effects. Post-Transaction, APMM will not have the ability to tie or bundler either its contract logistics services or its air freight forwarding services or both of them to its container liner shipping services, and would have no incentive to engage in a tying/bundling foreclosure strategy. Customers will continue to have access to competitive contract logistics and freight forwarding and container liner shipping services on a standalone basis.[148]

(B) The Commission's assessment

(127) In order to assess the likelihood of an anticompetitive foreclosure strategy due to conglomerate links, the Commission will examine whether the Merged Entity has (i) the ability to foreclose and (ii) the incentives to foreclose. Lastly, the Commission will assess whether such practices may have a significant negative impact on competition and consumers.[149]

(128) The Commission considers that APMM will not gain any ability, post-Transaction, to engage in a strategy of tying or bundling its contract logistics services and/or air freight forwarding services with its container liner shipping services. First, the Merged Entity will lack the market power on any of the markets concerned to engage in such a strategy. The Parties' combined market share in the contract logistics market is significantly below 1% considering the narrowest plausible definition (i.e. limited to Germany).[150] Moreover, the Parties' combined market share in the air freight forwarding is very limited. Even considering the narrowest

[147] Non-Horizontal Merger Guidelines, paragraph 93.
[148] Form CO, paragraph 82.
[149] Non-Horizontal Merger Guidelines, paragraph 94.
[150] Form CO, paragraph 84.

plausible definition at national level, the Parties' combined market share would be below 5%. Second, the Commission notes that competing container liner shipping, contract logistics and freight forwarding services will remain available on a standalone basis from other carriers and logistics providers.

(129) In addition, in the case of air freight forwarding, there is no practical conglomerate relationship to container liner shipping because customers do not buy air freight forwarding, contract logistics and container liner shipping services simultaneously. Indeed, even though a customer may have a service contract with a provider that includes both ocean and air transportation, the customer would use ocean and air transportation independently from each other based on individual needs (shipment size, value and urgency).[151]

(130) The same also applies to the three markets considered together. Customers typically do not procure any of their container liner shipping, air freight forwarding or contract logistics services together. Most major customers have different departments or teams responsible for procurement of such services, with different decisions regarding different elements of the logistics process made by different people, reflecting the fact that they are not procured together.[152]

(131) Furthermore, the Commission has already acknowledged that the market structures of shipping services and logistics services differ, which makes bundling difficult. While contract logistics services are customer-demand driven and tailor made, container liner shipping services and air freight forwarding services are mostly off-the-shelf services.[153] Consequently, technical tying or bundling might not be possible in any of these markets, and it would be easy to reverse any hypothetical tying/bundling even if APMM tried to.[154]

(132) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable.[155] The Commission considers that APMM would have no incentive post-Transaction to favour any tied or bundled offers to the detriment of its core container liner shipping activities. Indeed, Senator International's share in contract logistics or air freight forwarding is small while APMM is one of the largest container liner companies. The revenues attributable to air freight forwarding and contract logistics provided by APMM represent respectively only [<5]% and [5-10]% of APMM's container liner shipping revenues. Consequently, APMM is unlikely to have an economic incentive to engage in (full or partial) foreclosure and will continue to offer such services separately, since customers could in any case switch to alternative providers.[156]

(133) Should the Merged Entity decide to increase the price of standalone contract logistics, air freight forwarding or container liner shipping services, the Commission considers that the incentive to do so would be mitigated by the existence of alternative shipping, contract logistics and air freight forwarding services providers.

[151] Paragraph 1.47 of the Parties' response to RFI 6.
[152] Paragraph 1.48 of the Parties' response to RFI 6.
[153] M.9221 – *CMA CGM/CEVA*, paragraph 105.
[154] Form CO, paragraphs 84 and 86-87.
[155] Non-Horizontal Merger Guidelines, paragraph 105.
[156] Form CO, paragraphs 85 and 88.

The Commission considers that the Transaction is unlikely to have an overall negative impact on effective competition in the markets for contract logistics, air freight forwarding and container liner shipping services, as any bundling or tying strategy is unlikely to reduce the ability and incentives to compete of the significant competing providers that are active in the EEA. Customers will continue to have immediate access to competitive container liner shipping, contract logistics and air freight forwarding services on a standalone basis. Overall, the Commission is of the view that the effects of any hypothetical tying or bundling strategy is unlikely to have an overall negative impact on prices and choice.

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

6. CONCLUSION

(135) 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