EUROPEAN COMMISSION
DG Competition

Case M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/04/2022

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EUROPEAN COMMISSION

Brussels, 29.4.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Hapag-Lloyd Aktiengesellschaft
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20095 Hamburg
Germany

Eurogate GmbH & Co KGaA, KG
Präsident-Kennedy-Platz 1A
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Germany

Subject: **Case M.10522 – HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN**
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 March 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Hapag-

[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').

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Lloyd AG ("HL", Germany), and Eurogate GmbH & Co KGaA, KG ("Eurogate", Germany), intend to acquire, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, joint control of the whole of Eurogate Container Terminal Wilhelmshaven GmbH & Co. KG ("CTW", Germany) and Rail Terminal Wilhelmshaven GmbH ("RTW", Germany), together "the Target", by way of purchase of shares ("the Transaction").[3] HL and Eurogate together with the Target, are hereinafter referred to as "the Parties".

1. THE PARTIES

(2) HL is active in the maritime sector, offering global transport services for containerised cargo under the Hapag-Lloyd brand. To a lesser extent, HL is also active in the provision of container terminal services. In Northern Europe, HL jointly controls together with Hamburger Hafen und Logistik Aktiengesellschaft ("HHLA") the Altenwerder Container Terminal ("CTA") in Hamburg, Germany.[4] HL's most important shareholders are Kuehne Maritime GmbH ("Kuehne", Germany), HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH ("HGV", Germany), and Compañía Sud Americana de Vapores S.A. ("CSAV", Chile), together referred to as the Anchor Shareholders.[5] HGV is state-owned since 100% of its shares are held by the Free and Hanseatic City of Hamburg. Other shareholders of HL are Qatar Holding Germany GmbH ("QH") and the Public Investment Fund ("PIF") on behalf of the Kingdom of Saudi Arabia.

(3) Eurogate provides container terminal services in Europe and Northern Africa. Through its affiliates, Eurogate also offers a range of container-related operations as well as services related to intermodal transport and logistics management. Eurogate is jointly controlled by EUROKAI GmbH & Co. KGaA, ultimately controlled by the Eckelmann family and by BLG Logistics Group AG & Co. KG, which is majority-owned by the City of Bremen.

(4) CTW owns and operates the container terminal in the port of Wilhelmshaven, Germany. RTW operates the rail terminal in the same port, mainly serving the cargo loading and unloading needs of CTW.

2. THE OPERATION

(5) Pre-Transaction, CTW and RTW are jointly controlled by Eurogate and APM Terminals Deutschland Holding GmbH ("APMT"), an indirect wholly-owned subsidiary of A. P. Møller - Maersk A/S ("Maersk", Denmark).[6]

(6) Pursuant to a Share Purchase Agreement ("SPA") concluded between APMT and HL on […], HL will acquire from APMT the latter's 30% stake in CTW and its 50% stake in RTW. The remaining 70% and 50% stake in CTW and RTW respectively will continue to be held by Eurogate. Post-Transaction, HL will

[3] Publication in the Official Journal of the European Union No C 142, 30.03.2022, p. 16.
[4] HL also has a 10% stake in the Tanger Med 2 terminal in Morocco.
[5] M.7268 - CSAV / HGV / Kuehne / HLAG.
[6] M.5066 - Eurogate /APMM.

replace APMT in all its rights and obligations regarding the Target and will acquire joint control together with Eurogate.

(7) CTW is a full function Joint Venture (JV) within the meaning of Article 3(4) of the Merger Regulation, as it performs on a lasting basis all functions of an autonomous economic entity. It has its own management, dedicated to its day-to-day operations, and sufficient financial and technical resources to perform its business activities.[7] Services provided by Eurogate, such as, for example, […], are remunerated at arm's length basis.[8] CTW enters into agreements with customers in its own name and on its own behalf, while it determines its prices independently of Eurogate. Pre-Transaction, besides Maersk, CTW offered its services to any container carrier that wished to use them and non-Maersk throughput amounted in 2018 to [30-40]%, in 2019 to [40-50]% and in 2020 to [40-50]% of CTW's total throughput volume.[9] Similarly to Maersk, HL will undertake […]. CTW has a maximum handling capacity of 2.7 million TEUs and the future throughput with HL in 2025 is estimated to be […] TEUs. Given that CTW deals with its parent companies at arms' length and it achieved almost 50% of its sales (on volume basis) with third parties, which is intended to continue to be the case post-Transaction, it will continue to be a full function JV within the meaning of Article 3(4) of the Merger Regulation.[10]

(8) By contrast, RTW, which operates the rail terminal in the port of Wilhelmshaven, is likely not full function as it mainly serves the cargo loading and unloading needs of CTW. Between 2018 and 2020, [90-100]% of RTW's turnover was with CTW. In addition, RTW does not have either own management or own personnel. It is CTW staff who provides the necessary services to RTW and is paid by CTW itself. CTW also charges its customers for the services provided by RTW.

(9) However, for the reasons stated below, the Commission considers that both the CTW and RTW transactions can be treated as a single concentration under the Merger Regulation.

(10) First, both transactions will be carried out through the same SPA and in both operations HL (i) will replace the same seller (APMT) and (ii) will acquire joint control with Eurogate.[11]

(11) Second, the two transactions are also interdependent from an economic point of view, as CTW and RTW serve a common purpose, that is, to provide container terminal services. HL and Eurogate seek to provide a fully integrated container terminal service, which, if necessary, would include the loading/unloading of

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7 See paragraph 94 of Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008 ("CJN").

8 See paragraph 94 CJN.

9 See paragraph 98 CJN.

10 The Commission reached the same conclusion in case M. 5066 ¬ Eurogate / APMM, paragraph 8, concerning the establishment of CTW. The Parties have confirmed that there have been no changes in CTW's functioning since this Commission decision which would affect the conclusion on full functionality.

11 See paragraphs 40 and 44 CJN.

containers to/from the trains arriving at or departing from the rail terminal operated by RTW.[12]

(12) Third, the two transactions also appear to be interdependent *de iure* since the SPA does not contemplate the possibility of acquiring control over one of the targets alone.[13] Moreover, clause 3 of the SPA contemplates […].

(13) Finally, both transactions envisage the acquisition of control (joint control) by the same undertakings (that is, by HL and Eurogate) in the sense of paragraph 44 of the CJN.

(14) In addition, CTW and RTW taken together, will perform, on a lasting basis, all the functions of an autonomous economic entity within the meaning of article 3(4) of the Merger Regulation. Indeed, as indicated above, the activities of CTW and RTW are interdependent since they both serve a common purpose of providing container terminal services. While RTW may not be full function on a standalone basis, the services it provides to CTW, which include loading and unloading of container boxes from and to trains in the CTW container terminal, are ancillary and directly related to the terminal services provided by CTW. The RTW services are being offered by CTW to its customers as part of a bundled offering and CTW charges its customers for these services, aiming at providing a fully integrated service.

(15) Consequently, post-Transaction, HL will acquire joint control over the Target, that is, CTW and RTW, together with Eurogate within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(16) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[14] (HL: EUR […] million, Eurogate: EUR […] million, CTW: EUR […] million). Two of them have a Union-wide turnover in excess of EUR 250 million (HL: EUR […] million, Eurogate: EUR […] million), but the undertakings concerned do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. LINKS BETWEEN HAPAG-LLOYD AND THE PORT OF HAMBURG

(17) As mentioned in paragraph (2) above, state-owned HGV, the holding company for the commercial activities of the City of Hamburg, is one of HL's Anchor Shareholders. HGV holds a 13.9% stake in HL. In a previous decision, the Commission established that HL was jointly controlled within the meaning of the Merger Regulation by its three Anchor Shareholders Kuehne, HGV and CSAV, because (i) they held six of the 12 seats in the Supervisory Board at the time and

12 See, for instance, Form CO, paragraphs 108 and 278.

13 See paragraphs 39, 40 and 43 CJN. In fact, paragraph G of the Preamble to the SPA states that "[Seller wanted to sell its participation in CTW and RTW, which HL decided to acquire on the basis of the SPA.]".

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

because (ii) they had agreed under a shareholder's agreement to exercise their voting rights in HL by issuing a common voting proxy, thereby making important decisions together.[15]

(18) HGV also holds a 69.6% solely-controlling stake in HHLA. HGV's presence in HL and HHLA creates a structural link between the two companies, which could therefore form a single economic unit for the purpose of the assessment under the Merger Regulation.

(19) Article 5(4) read in conjunction with Recital 22 CJN[16], states that two State-owned enterprises ("SOEs") will not be considered to constitute one economic entity provided they have a power of decision independent of each other and independent of the State concerned.

(20) In its previous decisions the Commission considered that SOEs are considered one economic entity if (i) the State has the ability to exercise decisive influence over the SOEs concerned[17] (see point 4.1 "State's ability to exercise decisive influence") and (ii) if the SOEs have no independent power of decision (see point 4.2 "independent power of decision").

4.1. State's ability to exercise decisive influence

4.1.1. Parties' view

(21) The Parties are of the opinion that HL and HHLA do not form a single economic unit since, in their view, HGV cannot exercise decisive influence over HL.

(22) Due to the entry of QH and PIF on behalf of Saudi Arabia as shareholders of HL in 2016, the Supervisory Board was extended to 16 members against the initially 12 members. By way of law, eight Supervisory Board members are appointed by HL's shareholders and further eight members are appointed by HL's employees ("Employee Representatives").

(23) Under the Shareholders Agreement ("SHA"), the three Anchor Shareholders have, however, agreed to nominate only six out of the 16 members, i.e. less than half of the members of the Supervisory Board and allowed the new shareholders QH and PIF to nominate the remaining two members out of the eight Supervisory Board members representing HL's shareholders. The 10 other Supervisory Board members include the eight Employee Representatives and two representatives of each of the other shareholders of HL, QH and PIF, which could in different constellations overrule the Anchor Shareholder's (including HGV's) vote.

(24) The Parties argue in particular that the powers of the eight Employee Representatives of the Supervisory Board of HL, which approves HL's business plan and budget[18], should be taken into consideration when assessing control.[19] In that respect, the Parties point out that the Employee Representatives have the same

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15 M.7268 - CSAV / HGV / Kuehne / HLAG, paragraphs 10 – 12.

16 Paragraphs 52-53, 153 and 194 CJN.

17 M. 5549 - EDF/Segebel, paragraph 173 and 92; M.9014 – PKN Orlen/Grupa Lotos, paragraph 20.

18 Section 7.3 Hapag-Lloyd Articles of Association.

19 See Form CO paragraph 34.

rights and obligations as all the other members of the Supervisory Board and are in particular not subject to instructions. According to the Parties, the Chairman of the Supervisory Board, the CEO of HL and the Supervisory Board Employee Representatives [details on the governance of the Supervisory Board evidencing that the employee representatives have the same rights and obligations as all other members of the supervisory board]. If there is an agenda item with which the Employee Representatives disagree, efforts are made to reach a compromise. If this proves unsuccessful, the item is taken off the agenda. In the Parties' view, this proves that the Employee Representatives can significantly influence the outcome of votes in the Supervisory Board and should therefore be taken into consideration when assessing control.

4.1.2. The Commission's assessment

(25) The Commission notes that when disregarding the votes of the Employee Representatives in the decision making process of HL's Supervisory Board, HGV would most likely be able to exercise decisive influence over the vote of six out of eight members and, in consequence, over HL's strategic decisions by way of its veto rights.[20] In contrast, HGV would be unlikely to exercise decisive influence over HL if paragraph 22 of the CJN would be qualified to allow a differentiation in the assessment of control between the ability of Employee Representatives to actively exercise control on the one hand and the ability of Employee Representatives to limit the scope of control of other shareholders on the other hand as the Parties seem to suggest.[21]

(26) The question on the interpretation of paragraph 22 of the CJN can, however, be left open as even if HGV had decisive influence over HL's strategic decisions, in any event, HL and HHLA do not constitute one economic unit because HL has an independent power of decision as set out below (point 4.2).

4.2. Independent power of decision

(27) According to the Commission's previous decisions, factors to take into account when assessing whether SOEs have an independent power of decision can include (a) ownership/supervision by the same public authority; (b) dependence of commercial decision making from the State as determined by the legal framework and its application in practice, including interlocking directorships and the existence of adequate safeguards ensuring that commercially sensitive information is not shared between such undertakings;[22] and (c) whether there are indications that the commercial conduct of SOEs has been coordinated in the past.[23]

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[20] Section 7.3 Hapag-Lloyd Articles of Association.

[21] See in the same sense Wessely/Wegner, Münchener Kommentar zum Wettbewerbsrecht, FKVO Art. 3, paragraph 75.

[22] M.9014 - PKN Orlen/Grupa Lotos, paragraph 33; M.7643 – CNRC/Pirelli, paragraph 8 et seq; M.6113 – DSM/SINOCHEM/JV, paragraphs 10-13; M.5549 – EDF/Segebel, paragraph 93 (and paragraph 174).

[23] M.931 – Neste/IVO, paragraph 8; M.9014 - PKN Orlen/Grupa Lotos, paragraph 20.

4.2.1. The Parties' view

(28) The Parties are of the opinion that HGV does not centrally coordinate the market activities of its portfolio companies, including HL and HHLA, as, according to the Parties, sufficient safeguards are in place in order to prevent any kind of coordination through parallel directorates. Therefore, according to the Parties, HL and HHLA have independent power of decision-making and do not constitute one economic entity.

4.2.2. The Commission's assessment

(29) Two members out of the 16 members of the Supervisory Board of HL are at the same time members of the Supervisory Board of HHLA which is composed of 12 members: Dr Isabella Niklas, managing director of HGV, and Maya Schwiegershausen-Güth, a member of the trade union Verdi. Only Dr Niklas' directorship is relevant in this respect, however, since HGV does not nominate or otherwise influence the Employee Representation on the Supervisory Boards.

(30) Despite the presence of one common board member nominated by HGV, the Commission concludes that a series of safeguards ensures the operational independence of HL and HHLA.

(31) **First**, Supervisory Board members are bound by law to maintain confidentiality and are legally prevented from sharing any commercially sensitive information or classified material related to HL when acting as Board members in other companies owned by HGV, in particular HHLA.[24]

(32) **Second**, Supervisory Board members are barred from voting on any matters that could constitute a conflict of interest.[25] Accordingly, the HGV representative on HL's Supervisory Board abstained from voting on the Transaction due to a potential conflict of interest with HHLA. This illustrates how the separation of interests enshrined in law is observed in practice.

(33) **Third**, HL appears to be operationally independent in practice. According to press reports, the City of Hamburg was not supportive of the Transaction.[26] Despite its 13.9% shareholding in HL and its representation on the Supervisory Board, it could not prevent the Transaction from materializing however. Moreover, there has not been any instance in the past where HGV would have used its veto rights in HL to dissent to the budget or another measure requiring Supervisory Board approval.

(34) **Fourth**, there is no indication that the commercial conduct of HL and HHLA has been coordinated in the past. […], the common Employee Representative on the Supervisory Boards of HL and HHLA, […] voted […] the CTW Transaction in the

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24 See e.g. Section 116 German Stock Corporation Act (Aktiengesetz ("AktG"). Disclosing such information to someone not being a member of the Supervisory Board is a criminal offense under German law (Section 404 para 1 no. 1 AktG). The Rules of Procedure for the Supervisory Board of Hapag-Lloyd further detail the confidentiality duty.

25 Section 2.3 of the Supervisory Board Rules of Procedure.

26 Cf. the relevant press coverage such as for example https://www handelsblatt.com/unternehmen/handelkonsumgueter/seefahrt-konkurrent-fuer-den-hamburger-hafen-hapag-lloyd-kauft-sich-beim-jade-weser-portein/27655674.html?ticket=ST-126314-elQudJwlC9QvypmnrAws-cas01.example.org, last visited on 4 November 2021.

Supervisory Board meeting of HL, after asking a question about the reasons […][27] although the City of Hamburg, in general, and HHLA, in particular, were opposed to the Transaction.[28]

(35) **Fifth,** market participants contacted during the Commission's market investigation did not perceive HL and HHLA as coordinated in their commercial behaviour.[29] For example a competing terminal operator stated that it does "not have the impression that HL and HHLA belong together or act as "one" legal entity and they are rather seen as two separate entities on the market for container terminal services".[30]

(36) **Sixth**, under applicable law, transactions between HL and HHLA must take place in the ordinary course of business and under normal market conditions; otherwise certain approval and disclosure requirements must be observed.[31]

4.3. Conclusion

(37) Following the above and since HL has an independent power of decision, the Commission finds that HL and HHLA are not to be considered as part of the same economic unit as a result of the link between both companies through HGV.

5. MARKET DEFINITION

(38) HL is primarily active in the containerized shipping of goods as well as the provision of container terminal services. Eurogate and the Target are mainly active in the provision of container terminal services.

5.1. Container terminal services

5.1.1. Product market

(39) The provision of container terminal services by terminal operators involves the loading, unloading, storage and land-side handling for inland transportation of containerised cargo.[32]

(40) Additionally one could consider a separate market for ancillary services such as storage, leasing, repair and maintenance of containers.

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27 See Annex 8.8, excerpt from the minutes of the relevant Board meeting on 27 September 2021.

28 Cf. the relevant press coverage such as for example https://www handelsblatt.com/unternehmen/handelkonsumgueter/seefahrt-konkurrent-fuer-den-hamburger-hafen-hapag-lloyd-kauft-sich-beim-jade-weser-portein/27655674.html?ticket=ST-126314-elQudJwlC9QvypmnrAws-cas01.example.org, last visited on 29 March 2022.

29 See e.g. replies to questions 25 and 26 of Q1 to Container Liner Shipping Companies, to questions 21 and 22 of Q2 to Container Terminal Operators and Port Authorities and to question 8 of Q3 to Customers and minutes of the calls of 17 February 2022 with a customer and of 4 March 2022 with a competitor.

30 See minutes of 4 March 2022.

31 See Section 312 AktG and Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, OJ L 132, 20.5.2017, p. 1–25.

32 See, among others, M.9093 – DP World Investments/Unifeeder, paragraph 11; M.7523 – CMA CGM/OPDR, paragraph 63 ; M.5398 – Hutchison/Evergreen, paragraph 9.

(41) In its prior decisional practice, the Commission has defined a separate market for container terminal services, and has considered a possible distinction between hinterland traffic (containers transported directly to/from a container vessel from/to the hinterland via barge, truck or train) and transhipment traffic (containers destined for the onward transportation to other ports or other vessels).[33]

5.1.2. Geographic market

(42) The Commission has considered that for container terminal services in deep-sea ports, the relevant geographic market is in essence determined by the geographic area the container terminal generally serves (catchment area). For example, concerning terminals in Northern Europe and in Hamburg in particular, the Commission considered that the relevant geographical dimension is in its broadest scope Northern Europe (for transhipment traffic) and in its narrowest possible scope the catchment area of the ports in the range Hamburg – Antwerp (for hinterland traffic) or possibly even narrower, comprising the German ports only.[34] However, the precise geographic market definition has been left open.

(43) Moreover, while ultimately leaving the market definition open, the Commission indicated in previous cases that, for hinterland traffic, substitution between Northern and Central European ports and Southern European ports does not take place to any considerable degree because of their different catchment areas.[35] For transhipment traffic, it noted that Mediterranean ports constitute a separate market.[36]

5.1.2.1. Parties' views

(44) The Parties agree with the product market definition and the potential distinction between transhipment and hinterland traffic.[37]

(45) On the geographic scope of the market, the Parties consider that for *transhipment* traffic, the market comprises at least all deep-sea ports in Northern Europe, including the ports in the UK and Scandinavia as well as Gdansk, in Poland and Gothenburg in Sweden.[38] They have, however, provided market share estimates also for the narrower Hamburg-Le Havre and Hamburg-Antwerp ranges. For *hinterland* traffic, the Parties submit that the geographic scope of the market comprises at least all deep-sea ports in the Hamburg-Le Havre range.[39] They have, however, provided market share estimates also for the narrower Hamburg-Antwerp range as well as for the level of the German ports only.

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[33] See, e.g, M.9450- PPG/TIL/JV, paragraph 13; M.9093 – DP World Investments/Unifeeder, paragraph 12; M.9016 – CMA CGM/Container Finance, paragraph 51.

[34] See, e.g., M.8594 – Cosco Shipping/OOIL, paragraphs. 18-20; M.8330 – Maersk Line/HSDG, paragraph 30; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paragraph 22; M.5450 – Kühne/HGV/TUI/Hapag-Lloyd, paragraph 16; M.5066 – Eurogate/APMM, paragraph 15–20.

[35] See, e.g, M. 8594 – COSCO Shipping/OOIL, para. 20 and 22.

[36] See e.g., M.5398 – Hutchison / Evergreen, para. 16; M.1674 – Maersk/ECT, para. 10-11.

[37] Form CO, paragraph 125.

[38] Form CO, see, among others, paragraph 125.

[39] Form CO, see, among others, paragraph 125.

5.1.2.2. Commission assessment

(46) On whether the market for container terminal services should be segmented between hinterland and transhipment traffic, the majority of the respondents to the market investigation indicated that they agree with this segmentation.[40] However, for the purposes of this decision, this question can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible alternative product market definitions.

(47) On the geographic scope of the market for transhipment traffic, the market investigation did not provide evidence to depart from the Commission practice. For instance, the majority of respondents to the market investigation did not deny that the scope could be the Hamburg-Le Havre range or even as wide as Northern Europe (including ports in Poland and Sweden).[41]

(48) Regarding the geographic scope of the market for hinterland traffic, while respondents have indicated that the proximity to the final destination of the container is an important criterion in their choice of port,[42] the majority of the respondents to the market investigation (including shipping lines, container terminal operators and customers) have indicated that the ports within the Hamburg-Antwerp range would be a suitable alternative to CTW for hinterland traffic.[43] In addition, the majority of respondents indicated that the ultimate destination of a container is often in a different country to that in which its port of discharge is located.[44] One terminal operator explained in this respect that a significant portion of the containers it handles destined for hinterland traffic have a final destination in countries other than the one where the port is located.[45] Another market participant also noted that, as some countries have no national ports and the countries with the biggest ports are often small (Belgium/Netherlands), the 'nationality' of a port is rarely a factor and there are large volumes of cross-border transport, particularly in the big ports.[46]

40 See replies to q. 5 of Q1 to Container Liner Shipping Companies, q. 4 of Q2 to Container Terminal Operators and Port Authorities.

41 See, for instance, replies to q. 5, q. 6 and q. 11 of Q2 to Container Terminal Operators and Port Authorities and replies to q. 6 and 7 of Q1 to Container Liner Shipping Companies. See also Non-Confidential minutes of a call of, for instance, 16 February 2022, 23 February 2022, 3 March 2022 and 4 March 2022 with market participants.

42 See, for instance, replies to q. 17 of Q1 to Container Liner Shipping Companies.

43 See replies to q. 12 of Q1 to Container Liner Shipping Companies; q. 12 of Q2 to Container Terminal Operators and Port Authorities and q. 5 of Q3 to Customers. Only one respondent indicated that it considered that the German ports could not be easily substituted by other ports for hinterland traffic. This market participant also indicated, however, that over the last few years Adriatic ports as well as the port of Gdansk can be an alternative for reaching destinations, for instance, in central Europe such as Czech Republic, Hungary, Austria as well as Poland. See non-confidential minutes of a call of 25 February 2022 with a market participant.

44 See, for instance, replies to q. 18 of Q1 to Container Liner Shipping Companies; q. 15 of Q2 to Container Terminal Operators and Port Authorities.

45 See reply of a market participant to q. 15.1 of Q2 to Container Terminal Operators and Port Authorities.

46 See reply of a market participant to q. 15.1 of Q2 to Container Terminal Operators and Port Authorities.

5.1.3. *Conclusion on the relevant product and geographic market*

(49) For the purposes of this decision, it is not necessary to conclude on a precise definition of the relevant product and geographic market as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible alternative product and geographic market definition.

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

a) Product markets: i) container terminal services overall; ii) container terminal services for hinterland traffic; and c) container terminal services for transhipment traffic;

b) Geographic markets: i) the narrower geographic market,[47] including catchment areas comprising the ports in a certain range (such as Hamburg-Le Havre and Hamburg-Antwerp) for transhipment and hinterland traffic and ii) the ports of a single Member State (Germany) for hinterland traffic.

5.2. Container liner shipping services

(51) In past cases, the Commission found that the product market for container liner shipping involves the provision of regular, scheduled services for the sea 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 shipping.[48]

(52) The Commission has defined a separate product market for short-sea container liner shipping, which involves the provision of regular, scheduled intra-continental (usually coastal trade) services,[49] distinct from deep-sea container shipping.

5.2.1. *Deep-sea container liner shipping services*

5.2.1.1. Product market

(53) Deep-sea container liner shipping services involve the offer of regular, scheduled services for the sea transportation of containerised cargo.[50]

(54) 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 containers only when

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47 The Parties' market share in the wider Northern Europe market would be diluted and therefore even lower.

48 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.

49 M.8330 – Maersk Line/HSDG, para. 18-19; M.7523 – CMA CGM/OPDR, paragraph 62.

50 M.8330 – Maersk Line/HSDG, paragraph 10.

the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.[51]

5.2.1.2. Geographic market

(55) In its most recent practice,[52] 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 non-European areas and back on the one hand, and Northern Europe to non-European areas and back on the other hand.[53]

5.2.1.2.1. Parties' views

(56) The Parties do not contest this approach and the Commission decisional practice and indicate that the following ranges of ports have been considered as constituting distinct legs of trade: 1) Northern Europe, 2) Australia & New Zealand, 3) West Africa, 4) South Africa, 5) East Africa, 6) Central America and Caribbean, 7) East Coast South America, 8) West Coast South America, 9) Far East, 10) Indian Subcontinent, 11) Middle East and 12) North America.[54]

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

5.2.1.2.2. Commission assessment

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

5.2.1.3. Conclusion on the relevant product and geographic market

(59) 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;

51 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.

52 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.

53 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

54 Form CO, paragraph 169.

(b) Geographic markets: legs of trade whose distinct ends have been set out above.

5.2.2. Short-sea container liner shipping services

5.2.2.1. Product market

(60) 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.

(61) 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.[55] Furthermore, the Commission has considered but ultimately left open whether the transport of wheeled cargo[56] and short-sea container shipping services should be considered as belonging to the same product market.[57]

(62) The Commission also left open whether there should be a sub-segmentation between refrigerated (reefer) and non-refrigerated container shipping services.[58]

5.2.2.2. Geographic market

(63) 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;[59] or (ii) single legs of trade.[60]

5.2.2.2.1. Parties' views

(64) The Parties agree with the Commission decisional practice and have provided the Commission with the information necessary to assess the effects of the Transaction under any plausible alternative product and geographic market definition. Specifically, the Parties have provided market share information for each country pair (and each direction of trade) where HL is active with Germany as one end of trade, such as the Finland-Germany and Germany-Finland or the Poland-Germany and Germany-Poland country pairs. They have also provided market share information for other country pairs in Northern Europe that HL serves such as the Poland-Belgium, Finland-Belgium and Belgium-Russia country pairs (in each direction of trade).[61] They have also provided market share information based on several intra-European trade routes, such as Northern Europe - North East Mediterranean, Northern Europe - South East Mediterranean, Northern Europe – West Mediterranean, Intra Eastern Mediterranean, Intra- Mediterranean, Intra

55 M.8330 – Maersk Line/HSDG, paragraph 19 ; M.7523 – CMA CGM/OPDR, paragraph 49.
56 The transport of wheeled cargo (lorries, cars, etc.) on ships corresponds to roll on-roll off ("Ro-Ro") shipping.
57 M.8330 – Maersk Line/HSDG, paragraph 19 ; M.7523 – CMA CGM/OPDR, paragraph 50.
58 M.8330 – Maersk Line/HSDG, paragraph 19 ; M.7523 – CMA CGM/OPDR, paragraph 48
59 M.8330 – Maersk Line/HSDG, paragraph 20 ; M.7523 – CMA CGM/OPDR, paragraph 59.
60 M.8330 – Maersk Line/HSDG, paragraph 20 ; M.7523 – CMA CGM/OPDR, paragraph 60.
61 See Form CO, Annex 10.

Northern Europe[62] as well as for the Northern Europe-Mediterranean/Black Sea (NE-MED/BS) and the Mediterranean/Black Sea-Northern Europe (MED/BS-NE) legs of trade where HL is active.[63]

5.2.2.2.2. Commission assessment

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

5.2.2.3. Conclusion on the relevant product and geographic market

(66) 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;

(b) Geographic markets: the narrowest plausible geographic market, that is to say single legs of trade (including country pairs), which have been set out above.

5.2.3. Storage, leasing, repair and maintenance of containers

(67) If one should consider a potential market for the storage, leasing, repair and maintenance of containers, where Eurogate and HL have minor activities through their respective subsidiaries REMAIN GmbH Container-Depot and Repair (“REMAIN”) and CMR Container Maintenance Repair Hamburg GmbH (“CMR”), this would, however, not be an affected market, since the combined market share of HL and EUROGATE is below 10% on a national level in Germany.[64]

5.2.4. Inland transportation

(68) Inland transportation refers to the physical movement of goods by using own (owned or leased) equipment .Container liner shipping companies offering door-to-door services could also arrange inland transportation for their customers. To that extent, inland transportation services are an input to container liner shipping services. In its previous decisional practice, the Commission left open whether rail, road and water inland transport constitute separate product markets.[65] The geographic scope of the market for inland transportation was considered as either national or wider.[66]

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62 The Parties have confirmed that HL’s market share on these intra- European trade routes are below 10% (in each leg of trade).

63 On the NE-MED/BS and MED/BS-NE legs of trade, HL is active through the EMX Vessel Sharing Agreement (VSA) together with Sealand and COSCO Shipping; see below under section 6.2.3.

64 See also below, paragraph 137.

65 See, among others, M.8330 – Maersk Line/HSDG, paragraph 34.

66 See, among others, M.8330 – Maersk Line/HSDG, paragraph 35-36; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paragraph 29; M.7268 – CSAV/HGV/Kühne Maritime/Hapag – Lloyd AG, paragraph 43; M.5450 – Kühne/HGV/TUI/Hapag-Lloyd, paragraph 17.

(69) The precise definition of the product and geographic market for inland transportation can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible alternative market definition.

(70) Since the Target is not active on the market for inland transportation, no horizontal or vertical links arise by the Transaction. The relevant services are provided amongst others by EUROGATE's subsidiary EGIM and by Kuehne, one of HL's Anchor Shareholders, with a combined market share below 20%.

(71) Consequently, this market will only be discussed under section 6.5 of this decision in the context of possible spill over effects under Article 2(4) of the Merger Regulation.

6. COMPETITIVE ASSESSMENT

(72) The Transaction leads to a horizontal overlap in the market for the provision of container terminal services[67] and to a vertical link between the provision of container terminal services (upstream), where both HL and Eurogate/CTW[68] are active, and container liner shipping services (downstream) where only HL is active.

6.1. Horizontal overlaps (non-coordinated effects)

6.1.1. Counterfactual for the competitive assessment and rationale for the Transaction

(73) The relevant counterfactual (i.e. the most likely scenario in case the Transaction were not to take place) is the Target's continued ownership by Maersk. Maersk currently holds stakes in a number of other container terminals in Northern Europe, including in Rotterdam and Bremerhaven. Furthermore, Maersk is the second largest container liner shipping company in the world (after MSC). Therefore, the Transaction is unlikely to deteriorate the market structure considerably, both from a horizontal and vertical perspective.

(74) Moreover, the rationale for Hapag-Lloyd to acquire the Wilhelmshaven terminal is mainly to increase competitiveness and utilization of CTW, which is currently substantially underutilized.

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[67] There is no horizontal overlap between HL and RTW, since HL does not control any rail terminal in Northern Europe.

[68] A potential vertical link would arise between the activities of HL and RTW, as the services provided by RTW to CTW (loading and unloading of container boxes from and to trains in the CTW container terminal) are ancillary and directly related to the terminal services provided by CTW to HL. As RTW's activities form part of the container terminal services provided by CTW (and are charged by CTW to its end customers, see above paragraph (8), this theoretical link is assessed as part of the vertical link between the provision by CTW of container terminal services and container liner shipping services. Indeed, as already explained above (see under section 2), RTW currently provides its rail terminal services to CTW and does not provide such services directly to carriers, such as HL or competitors of HL. Instead, the services of RTW are being offered by CTW to its customers as part of a bundled offering. In addition, RTW is the only rail terminal operator in Wilhelmshaven as it holds the relevant concession until 2034 and does not compete with other rail terminals at other ports in the Hamburg-Le Havre range. See Form CO, paragraphs 278-279.

(75) These factors should be taken into account as additional background to the competitive assessment set out in sections 6.2.2 and 6.2.3 below.

6.1.2. Container terminal services - Horizontal overlap

(76) The Parties' activities overlap horizontally in the provision of container terminal services, where all of them -HL, Eurogate and CTW- are active. Importantly, however, those activities will not be merged into one company. Rather, Eurogate and HL will acquire joint control over CTW. In addition, Eurogate and HL will retain independent container terminal activities: Eurogate has participations in container terminals in Hamburg,[69] Bremerhaven[70] and Wilhelmshaven.[71] HL, besides the planned acquisition of CTW, holds a 25.1% stake in CTA in Hamburg, which is operated by HHLA.[72]

(77) For horizontal non-coordinated effects, the assessment will be limited to the activities that are brought under common control through the Transaction, namely the addition of the CTW activities to the existing HL activities through CTA. By contrast, the independent activities of Eurogate will not be brought under common control with HL's pre-existing activities and will therefore be taken into account only in the assessment pursuant to Article 2(4) of the Merger Regulation in terms of spill-over effects in section 6.5 below.

(78) The Parties' individual and combined market shares for 2020 regarding each terminal's throughput, that is to say the quantity of cargo that passes through the terminal from arrival at the terminal to loading onto a vessel or from the discharge from a vessel to the exit (clearance) from the terminal complex are shown in the table below. Differentiation is made between total throughput and non-internal (non-captive) throughput. The Commission notes that the respective market shares for 2019 and 2018 do not differ substantially from the ones indicated below.

		Hinterland traffic		**Transhipment traffic**		**Total (both hinterland and transhipment combined)**	
Range	**Terminal**	**Throughput**	**Non-captive throughput**	**Throughput**	**Non-captive throughput**	**Throughput**	**Non-captive throughput**
Hamburg-Le Havre	CTW	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	HL/CTA	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
	Combined	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
	Eurogate (incl. CTW)	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
	HHLA (incl. CTA)	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
	Others	[70-80]%	[70-80]%	[40-50]%	[60-70]%	[60-70]%	[70-80]%

69 Container Terminal Hamburg (CTA), 100%.

70 Northsea Container Terminal Bremerhaven (NTB, 50%), MSC Gate (50%) and Container Terminal Bremerhaven (CTB, 100%).

71 CTW, 70%.

72 As a result of veto rights on strategic commercial decisions, HL has joint control over CTA within the meaning of the Merger Regulation, see M.2422 – Hapag-Lloyd / HHLA / HHLA-CTA, paragraph 5.

		Hinterland traffic		Transhipment traffic		Total (both hinterland and transhipment combined)	
Range	**Terminal**	**Throughput**	**Non-captive throughput**	**Throughput**	**Non-captive throughput**	**Throughput**	**Non-captive throughput**
Hamburg-Antwerp	CTW	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	HL/CTA	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
	Combined	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
	Eurogate (incl. CTW)	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[10-20]%	[10-20]%
	HHLA (incl. CTA)	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
	Others	[70-80]%	[70-80]%	[50-60]%	[60-70]%	[50-60]%	[60-70]%
German ports	CTW	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
	HL/CTA	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
	Combined	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
	Eurogate (incl. CTW)	[40-50]%	[30-40]%	[60-70]%	[60-70]%	[50-60]%	[40-50]%
	HHLA (incl. CTA)	[50-60]%	[60-70]%	[30-40]%	[30-40]%	[40-50]%	[50-60]%
	Others[73]	[10-20]%	[5-10]%	[70-80]%	[50-60]%	[30-40]%	[10-20]%

(79) The Transaction is unlikely to give rise to horizontal non-coordinated effects for the following reasons.

(80) **First,** the combined market share of HL/CTA and CTW is moderate under the plausible market definitions.

(81) **Second**, a number of alternatives are available. While some terminals are dedicated to specific shipping companies (such as APMT MV II in Rotterdam),[74] dedicated terminals remain the exception and most are ‘common user’ terminals which means that they are open to all shipping companies. When considering the Hamburg-Le Havre and Hamburg-Antwerp ranges, these alternatives include in particular the various terminals at the ports of Rotterdam and Antwerp. For instance, they would include the terminals operated by Hutchison Ports in Rotterdam (ECT Delta, Delta II and Euromax with an estimated market share of around [10-20]%) and PSA in Antwerp (MPET, Noordzee Terminal, Europa Terminal with an estimated market share of around [10-20]%). In addition, DP World provides terminal services through Antwerp Gateway and Rotterdam World Gateway. In terms of market share, the container terminals operating in Rotterdam represent around 33% and those of Antwerp around 27.7% in terms of throughput. When considering German ports only, those alternatives include the HHLA terminals in Hamburg and the

73 Participations from other terminal operators (notably Maersk and MSC) in German container terminals.

74 100 % owned by APMT, a unit of Maersk and therefore dedicated to Maersk.

independently-run Eurogate terminals at Bremerhaven. According to the Parties, the competitors' terminals/ports have available capacity and present in general the same characteristics as CTW which is currently underutilised and has available capacity, as also confirmed by the market investigation.[75] Some customers also consider Adriatic ports as substitutes to CTW as they can target the same hinterland.[76]

(82) **Third,** the market share increment brought about by the Transaction is low and in most cases [0-5]%, reaching [5-10]% only in a narrowly-defined market for hinterland shipment from German ports only. CTW has limited capacity and the smallest throughput among the German terminals.

(83) **Fourth,** […]; it has […] with a low capacity utilization. Maersk, who has been a shareholder since its creation, has decided to divest its stake in CTW, indicating that CTW may not be of strategic importance.

(84) **Fifth,** HL intends to invest in CTW to increase its capacity. In the internal documents, HL indicates that they will, for instance, invest […]. In addition, CTW's current handling capacity is around 1.7 million TEUs and can be extended to around [2-3] million TEUs.[77] Such capacity expansion will benefit both HL and the wider market and will lead to additional volumes being available to customers of terminal services in Germany.

(85) **Sixth,** switching costs are in general low. During the Commission's market investigation, competitors explained that most container liner shipping companies have contracts with various terminals and can switch volumes easily from one terminal to another.[78] For instance, HL itself, which already has a shareholding in CTA in Hamburg, also called at other terminals in the Hamburg-Le Havre range, such as PSA in Antwerp and Hutchison Ports in Rotterdam.

(86) **Seventh**, the Transaction involves the replacement of the shipping company Maersk, also active in terminal services while holding the CTW stake. Specifically, Maersk is active in Northern Europe through a 100% share in Rotterdam APMT MV II and a 50% share in North Sea Container Terminal Bremerhaven. In comparison, HL only has a 25.1% share in CTA and does not have any other shareholdings in terminals in Northern Europe. The Transaction therefore does not lead to a significant increase in concentration compared to the counterfactual situation.

(87) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to the horizontal overlaps between HL and CTW in the provision of terminal services.

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75 See, for instance, replies to q.18 of Q2 to Container Terminal Operators and Port Authorities.

76 See, for instance, reply of a competitor to q. 16.1 of Q1 to Container Liner Shipping Companies; see also Non-Confidential minutes of a call of 17 February 2022 with a market participant.

77 Form CO, paragraph 228 iii).

78 See, for instance, replies to q. 16 and q. 26 of Q2 to Container Terminal Operators and Port Authorities.

6.2. Vertical link (non-coordinated effects)

(88) The Transaction gives rise to a vertical link between the provision of container terminal services upstream and container liner shipping services by HL downstream. HL is already vertically integrated pre-Transaction as it controls CTA in Hamburg.

6.2.1. Legal framework

(89) According to the Non-Horizontal Merger Guidelines,[79] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[80] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[81] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[82]

(90) 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.[83] In practice, these factors are often examined together since they are closely intertwined.

6.2.2. Approach to alliances/consortia

(91) In its prior decisions relating to container liner shipping services, the Commission considered that shipping companies that are members of alliances/consortia[84] (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.[85]

(92) In previous cases, the Commission 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

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79 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.

80 Non-Horizontal Merger Guidelines, paragraphs 20-29.

81 Non-Horizontal Merger Guidelines, paragraph 31.

82 Non-Horizontal Merger Guidelines, paragraph 58.

83 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

84 See for instance, Cases 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.

85 See for instance, Cases M.9221 – CMA CGM/CEVA, paragraphs 60-61; M.8594 – COSCO SHIPPING/OOIL, paragraphs 28-29.

decisions determining service characteristics. This influence can have a dampening effect on competition on the trade/s served by the alliance/consortium/VSA in question. Hence, the competitive assessment should also be based on the aggregate shares of the Parties' alliances/consortia/VSAs.[86]

(93) In the absence of indications that the Commission should depart from its past 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 HL and of its partners in the respective alliances/consortia/VSAs. HL is part of The Alliance (THEA), which also includes the following container shipping lines: Yang Ming Lines (YML), Ocean Network Express (ONE) and Hyundai Merchant Marine (HMM).

6.2.3. *Overview of the vertically affected markets*

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

(95) As regards the **downstream markets for deep-sea container liner shipping services**, HL's market share on all legs of trade to and from Northern Europe (NE) is below 30% in 2020 on a standalone basis, except for the reefer trade leg NE-Caribbean & Central America where its market share is [30-40]%. When the aggregate market share of the members of THEA are included, the market share slightly exceeds 30% and affected markets arise in four legs of trade in 2020: NE-Far East ([30-40]%); NE-Middle East ([30-40]%), NE-North America ([30-40]%) and North America-NE ([30-40]%). Consequently, HL's market share in deep-sea container liner shipping remains below 40% (also for 2019 and 2018).[87]

(96) Regarding **the downstream market for short-sea container shipping services**, HL's market share is almost consistently below 15% on the various trade legs,[88] with limited exceptions, such as the Poland-Belgium trade leg, where its market share has fluctuated from year to year and exceeded 30% in 2020 reaching [30-40]% (while it was below [5-10]% in 2019 and 2018). HL is, together with Sealand (that belongs to the Maersk group) and COSCO Shipping, party to the EMX VSA, which covers the Northern Europe-Mediterranean/Black Sea (NE-MED/BS) short sea trade legs. The 2020 combined market share of all three parties to the VSA slightly exceeded 30%, reaching [30-40]% for the NE-MED/BS leg of trade and [30-40]% for the MED/BS-NE leg of trade.[89]

(97) With respect to the **upstream markets for container terminal services**, the Parties' market shares are included above in Table 1 (under paragraph 78).

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86 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.

87 Form CO, Annex 10.

88 See also above under section 5.2.2.2.1. The Parties have confirmed (reply to RFI 3) that HL's market share on the below short-sea trades is below 10% (for each leg of trade): Northern Europe-North East Mediterranean, Northern Europe-South East Mediterranean, Northern Europe-West Mediterranean, Intra Eastern Mediterranean, Intra Mediterranean, Intra Northern Europe.

89 See reply to q. 4 of RFI 2.

6.2.4. *Assessment of the vertically affected markets*

(98) The Commission will assess in this Section whether the Transaction could lead to (i) input foreclosure, pursuant to which the Parties would foreclose HL's competitors by restricting access to or deteriorating the access to the container terminal services that the Parties provide to HL's competitors, or (ii) customer foreclosure, pursuant to which HL would foreclose CTW's competitors by sourcing its container terminal services requirements mostly or exclusively from the Parties or deteriorating the purchase conditions HL offers to competing container terminal services providers.

6.3. Input foreclosure

6.3.1. *The Parties' views*

(99) With respect to the risk that the Parties restrict or deteriorate access of HL's competitors to their container terminal services, the Parties submit that CTW will have neither the ability nor the incentive to engage in an input foreclosure strategy.[90]

6.3.2. *The Commission's assessment*

6.3.2.1. Ability to foreclose

(100) 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.[91]

(101) The Commission notes that the Parties are unlikely to have the ability to foreclose input, for the following reasons:

(102) **First,** the market shares in the upstream container terminal services market remain moderate under any alternative product and geographic market definition. When CTA and CTW are taken together, the combined market share remained well below 20% for the Hamburg-Le Havre and Hamburg-Antwerp range in 2020 under any alternative delineation of the product market.[92] In each case, the increment brought about by CTW to HL's pre-existing vertical integration is in most instances [0-5]% points. The combined market share remains below 25% also at the level of the German ports when considering either capacity or throughput market shares (total and non-captive) both for hinterland and transhipment traffic, with an increment of at most [5-10]% points.[93] Eurogate's market shares in terminal services that will continue to be operated independently from CTW and HL are not taken into account in this assessment. This is because Eurogate would not have incentives to engage in input foreclosure strategies as it is not active in shipping and would therefore not profit from such strategies. Eurogate's market shares will be assessed under the Art. 2(4) assessment in section 6.5 below.

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90 Form CO, paragraph 336.

91 Non-Horizontal Merger Guidelines, paragraph 35.

92 According to the Parties the market share slightly exceeds 20% and remains below [20-30]% if non-captive capacity is considered (Annex 9 and Annex 9A Form CO).

93 If HHLA volumes are added, the market share remains in general below 40% reaching around [50-60]% at the level of the German ports when non-captive capacity volumes were considered. However, as already analysed under section 4 above, the Commission is of the view that the HHLA volumes should not be included in the calculation of the market share post-Transaction.

(103) **Second,** there are various alternative providers of container terminal services that other shipping companies could use, as set out above, under section 6.1.2.

(104) **Third,** CTW has been […] and underutilised in the past years which was also acknowledged by the majority of market participants responding to the market investigation.[94] CTW needs to increase its throughput […].[95] This view is also shared by, for instance, other shipping lines which indicated during the market investigation that 'the investment in a terminal will cause huge sunk costs so a terminal needs volume to build economies of scale'.[96]

(105) **Fourth,** CTW is obliged by law to operate the terminal as a public port and provide access to everyone. In addition, the terminal operation agreement between CTW and the grantor JadeWeserPort Realisierungs GmbH & Co. KG ("JWPR") […].[97] In addition, as CTW was underutilised and needs to increase throughput, it is unlikely that it could decide to discriminate on prices or deteriorate the quality of services provided to the remaining […] of its customers, because this would lead to additional loss of customers and revenue.

(106) **Fifth,** the majority of respondents to the market investigation expressing a view did not consider that the Parties would have the ability to restrict access to CTW post-Transaction.[98]

6.3.2.2. Incentive to foreclose

(107) 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.[99]

(108) Even if the Parties were to be considered to have the ability to engage into input foreclosure, they would likely not have the incentive to do so because such a foreclosure strategy would be unlikely to be profitable for the reasons set out below.

(109) **First,** there do not seem to have been any access issues in the past, when Maersk, which is substantially larger than HL in the downstream container liner shipping services market (with Maersk being the second largest container shipping company globally and HL being the fifth largest), was a co-controlling shareholder in CTW.[100]

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94 See replies to q. 22 of Q1 to Container Liner Shipping Companies; q. 18 of Q2 to Container Terminal Operators and Port Authorities as well as q. 6 of Q3 to Customers.

95 Form CO, paragraph 269 iv).

96 See reply of a container liner shipping company to q. 30.1 of Q1 to Container Liner Shipping Companies.

97 Form CO, paragraph 245.

98 See replies to q. 30 of Q1 to Container Liner Shipping Companies; q. 35 of Q2 to Container Terminal Operators and Port Authorities.

99 Non-Horizontal Merger Guidelines, paragraph 40.

100 See replies to question 31.3 of Q1 to Container Liner Shipping Companies.

Similarly, none of the respondents to the market investigation raised any concerns regarding HL's past strategies with respect to its existing shareholding in CTA.[101]

(110) **Second**, according to HL's internal planning, HL will use only […]% of the CTW throughput in the years up to 2035.[102] That would leave [more than 50%] of the CTW throughput available to other shipping companies. Moreover, the Commission understands that HL intends to make investments in CTW, e.g. [details on the HL investment plan][103], which is expected to increase CTW's efficiency and available capacity.

(111) **Third,** the Commission found in the past that profit margins for container terminal services are in general higher than for shipping services.[104] While during the pandemic profit margins for container liner shipping companies have increased considerably, under 'normal market conditions', HL would be unlikely to have an incentive to engage into an input foreclosure strategy and restrict other shipping companies' access to CTW as this would lead to reduced profits in the terminal services market.[105]

(112) **Fourth,** the Commission notes that Eurogate, which is only active in container terminal services (and not in container liner shipping) will continue to be present in CTW with a 70% shareholding. Even if HL wanted to engage in input foreclosure, Eurogate would only participate in the losses from such an input foreclosure strategy in CTW and it would consequently be unlikely to agree to it. This was also highlighted during the market investigation by several market participants who noted, for instance, that CTW will not be a HL 'dedicated' terminal, as HL will only have a 30% shareholding and that they expect Eurogate to focus on maintaining strong commercial relations with all shipping companies, delivering the same level of quality and competitive pricing to ensure they retain other shipping lines as their customers.[106] Highlighting the continued shareholding by Eurogate, another market participant also noted that, in the interest of the terminal operator, it is convinced that there will be an arms' length treatment to ensure that the terminal stays competitive and profitable. This view is shared by other shipping lines which indicated, for instance, that 'HL would most likely encourage CTW to strengthen its competitiveness so that HL's investment proves to be worthy…'.[107]

6.3.2.3. Overall effect of input foreclosure

(113) 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]

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101 See replies to questions 30.3 and 31 of Q1 to Container Liner Shipping Companies and to question 36 of Q2 to Container Terminal Operators and Port Authorities.

102 HL expects to increase its percentage of the throughput of CTW from 0% in 2022 to […]% in the period 2026-2035, Form CO, paragraph 4 c).

103 See, for instance, Annex 8.2 p. 6 and Annex RFI 2-4 p.16.

104 See, e.g., M.9093 - DP World Investments/Unifeeder, paragraph 64.

105 See replies to q. of Q1 to Container Liner Shipping Companies and q. of Q2 to Container Terminal Operators and Port Authorities.

106 See reply to q. 18.2 and 35.1 of Q2 to Container Terminal Operators and Port Authorities.

107 See reply to q. 31.1 of Q1 to Container Liner Shipping Companies.

108 Non-Horizontal Merger Guidelines, paragraph 47.

(114) 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]

(115) As regards the impact of a potential input foreclosure strategy, the Commission notes that almost all major shipping liners hold shares in ports within the Hamburg-Le Havre range, including the German ports. For instance, both MSC and Maersk hold stakes in terminals in Bremerhaven and COSCO has plans to acquire a stake in CTT, one of the Hamburg terminals. They also hold stakes in other terminals within the Hamburg-Le Havre range, such as Rotterdam or, in the case of CMA CGM, in French ports.

(116) This was also noted by a market participant who also highlighted that such investments by shipping companies are not unusual in the market and that, even if HL would have some of the CTW capacity reserved, there would still be enough capacity for other shipping lines.[110]

(117) The presence of strong competing liner shipping companies as shareholders in other terminals within the Hamburg-Le Havre range would reduce the possibility and overall impact of any potential input foreclosure strategy.

6.3.3. Conclusion

(118) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to input foreclosure concerns.

6.3.3.1.

6.4. Customer foreclosure

6.4.1. The Parties' views

(119) The Parties submit that HL 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 terminal services from CTW or by degrading access conditions for other container terminal services providers. This is in particular in view of HL's small size in container liner shipping downstream, which precludes any possibility of customer foreclosure and will not affect competing container terminal services providers upstream.[111]

109 Non-Horizontal Merger Guidelines, paragraph 50.
110 See reply to q. 30.1 of Q2 to Container Terminal Operators and Port Authorities.
111 See, for instance, Form CO, paragraphs 255 et seq. and paragraph 270.

6.4.2. The Commission's assessment

6.4.2.1. Ability to foreclose

(120) 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.[112]

(121) The Commission considers that HL is unlikely to have the ability to foreclose access to a sufficient customer base for the reasons set out below:

(122) **First,** HL's market share for **deep-sea** container liner shipping services remains moderate at below 40%, regarding all relevant markets, even when the volumes of the THEA alliance partners are included.[113] HL is the fifth largest carrier by operating capacity and represents around 8.5% of the total operating capacity of the top 10 container lines worldwide. There are several other container shipping companies active in the same Northern European trades, including MSC, CMA CGM, COSCO, Maersk (the second largest container shipping line by operating capacity), which would still require terminal services post-Transaction.

(123) On **short-sea** container services, HL's market share is almost consistently below 15% on the various legs of trade (e.g. [10-20]% on the Finland-Germany leg of trade in 2020) and in 2020 it only exceeded 30% on a standalone basis on the Poland-Belgium leg of trade, where it remained below [30-40]%. The 2020 combined market share of all three parties to the EMX VSA (HL, Sealand and COSCO) slightly exceeded 30%, reaching [30-40]% for the NE-MED/BS leg of trade and [30-40]% for the MED/BS-NE leg of trade.[114] Regarding the Poland-Belgium trade, the Commission notes that HL's market share was below [5-10]% in 2019 and 2018. As these market shares are not constant but fluctuate considerably from year to year, they do not appear to be indicative of market power. Further, the market size is likely understated, as only some shipping lines provide market data to market intelligence services. Apart from HL, an overall minor player in short-sea shipping in Northern Europe, both major container shipping companies such as CMA CGM, MSC and Maersk and specialized feeder shipping companies, such as Unifeeder and X-Press Feeders, are active in Northern Europe. Finally, the HL ships sailing on the Poland-Belgium trade leg do not call at ports in Germany. On the market shares when the EMX VSA members are included for the NE-MED/BS and MED/BS-NE legs of trade, the Commission notes that other competitors are active in both of these legs of trade, such as MSC with an estimated market share of around 40% and CMA CGM with a market share of around 10% in each leg of trade. HL's standalone market share on each leg of trade has been consistently below 5% between 2018-2020. In addition, the EMX service does not call at Wilhelmshaven and HL […].[115]

112 Non-Horizontal Merger Guidelines, paragraph 61.
113 See above, under paragraph 95.
114 See paragraph 96 above.
115 See reply to q. 4 of RFI 2.

(124) **Second,** HL's share of demand out of the total volume moved to and from the Hamburg-Le Havre range terminals was small, around [10-20]% in 2020.[116] The results of the market investigation do not contradict this view. Specifically, when asked how important a customer HL is compared to other shipping companies, the majority of container terminal operators indicated that it is not more or less important than other customers.[117] In addition, the majority of the respondents expressing a view indicated that HL would not have the ability post-Transaction to restrict access to a sufficient customer base. For instance, one of the container terminal services providers indicated that HL is only one of several shipping lines requiring terminal services and with the volumes growing in the market, HL would be limited in its ability to restrict access to a sufficient customer base. Another container terminal operator indicated that they will still have access to other shipping lines as customers. [118]

(125) **Third,** as also noted by a market participant, all THEA members would have to agree to the shifting of volumes from other terminals/ports, which may not be in line with their own needs and customer preferences.[119] Furthermore, shippers could also have an influence on the decision where their container should be unloaded, meaning that several ports in the Hamburg-Le Havre range might need to be called at.[120]

6.4.2.2. 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 prices in the upstream or downstream markets.[121]

(126) The Commission considers that HL is unlikely to have the incentive to foreclose access to a sufficient customer base. In particular, the Commission notes that CTW, with a maximum handling capacity of […] million TEUs, is too small to accommodate all of HL's volumes (over […] million TEUs to/from the Hamburg-Le Havre range in 2020). Therefore, HL would still need to use other terminals post-Transaction. Furthermore, despite its stake in CTA in Hamburg, HL also called at other ports/terminals within the Hamburg-Le Havre range pre-Transaction, such as, for instance, the port of Rotterdam. In addition, as indicated above, Maersk did not appear to have engaged into any customer foreclosure strategy when it was the co-controlling shareholder of CTW and none of the market participants raised any such concerns about their past experience with a vertically integrated CTW.

116 Form CO, paragraph 255.

117 See replies to q.29 of Q2 to Container Terminal Operators and Port Authorities.

118 See replies to q. 33.1 of Q2 to Container Terminal Operators.

119 See reply of one market participant to q. 19.1 of Q2 to Container Terminal Operators and Port Authorities.

120 See, for instance, replies to q. 3 and q.3.1 of Q3 to Customers. See also Non-Confidential minutes of a call of 17 February 2022 with a market participant.

121 Non-Horizontal Merger Guidelines, paragraph 68.

6.4.2.3. Overall effect of customer foreclosure

(127) The Commission considers that, post-Transaction, the implementation of a customer foreclosure strategy by HL would have likely no overall negative impact on effective competition within the EEA and/or any of the affected legs of trade for the following reasons.

(128) **First**, as already set out in section 6.3 on input foreclosure, all major shipping companies are vertically integrated with stakes in Northern European terminals/ports, fostering stable customer relationships between terminals and container liner shipping companies.

(129) **Second**, none of the container terminal services operators responding to the market investigation considered that the Transaction would have a negative impact on effective competition on the container terminal services market, with the vast majority indicating that the Transaction would have no impact at all.

(130) **Third**, even when some container terminal operators indicated that they would risk losing some of HL volumes in the short to medium term, they still indicated they would be able to sell to other customers and replace HL's volumes and that this may also lead to increased competition among terminals to attract other shipping lines.[122] One of them also highlighted that it is not concerned since such moves of volumes happen regularly in the market.

Conclusion

(131) 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 customer foreclosure concerns.

6.4.3. Conclusion on the (non-coordinated) vertical effects

(132) 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.

6.5. Article 2(4) Assessment (Possible Spill-over Effects)

(133) According to Article 2(5) of the Merger Regulation the Commission shall assess the presence of coordinated effects as set out in Article 2(4) of the Merger Regulation by taking into account in particular (i) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market and (ii) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

122 See replies to q. 33.1 of Q2 to Container Terminal Operators and Port Authorities.

(134) In the case at present, CTW's parent companies, HL and Eurogate, retain activities in the same market as CTW[123] and HL retains activities in downstream markets.[124]

6.5.1. The Parties' view

(135) The Parties submit that coordinated effects can be excluded as the market for container terminal services is fragmented and there is a multitude of terminal operators present in the Hamburg – Antwerp range.[125] In particular, the Transaction would not increase concentration in the market, as the number of terminal operators post-Transaction stays the same. Also, according to the Parties, the market only features a limited transparency as terminal handling charges are negotiated between the carrier and each terminal. Further, the Parties submit that shipping companies can easily switch from one terminal to another in Northern Europe.

6.5.2. The Commission's assessment

(136) The Commission concludes that the concentration does not have neither as its object nor as its effect the coordination of the competitive behaviour of HL and Eurogate. Even though the concentration establishes a link between the independent container terminal operators Eurogate and HL, coordination does not seem probable because:

(137) **First**, there does not appear to be price transparency in the market for container terminal services as no public price lists exist. Prices are rather negotiated bilaterally between container terminal operators and their customers. In addition, prices depend on multiple factors which very much differ according to the individual needs of each customer.[126]

(138) **Second**, other shareholders of terminals operated by Eurogate (e.g. APMT (a unit of Maersk) in NTB[127] or TIL (a 100% MSC subsidiary) in MSC Gate[128]) and of HHLA (COSCO in CTT[129]) may not be supportive of a coordination strategy as (i) they do not participate in the profits of CTW and HHLA respectively and (ii) they operate container shipping services themselves and would therefore be put at the same disadvantage as other customers when competition between terminals is restricted.

(139) **Third**, HL might not have the incentive to coordinate terminal operations as it is - to a much larger extent than its activities in container terminal services – active in container shipping services and would in consequence have to bear the negative consequences of limited competition between terminal operators at the same level as its competitors.

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123 Eurogate with container terminals in Bremerhaven and Hamburg and HL with CTA in Hamburg.
124 HL with container liner shipping services.
125 Such as PSA, Hutchison, HHLA, TIL, DP World, APMT and COSCO.
126 See e.g. Non-Confidential minutes of a call of 23 February 2022 with a market participant.
127 North Sea Terminal Bremerhaven (NTB).
128 MSC Gate terminal in Bremerhaven.
129 Container Terminal Tollerort (CTT) in Hamburg.

(140) **Fourth**, there is an imminent risk of losing customers to competing terminals as switching terminals seems to be easy for shipping companies and, according to the market investigation, competing terminals seem to still have available capacities.

(141) **Fifth**, in the market investigation, no market participant raised concerns regarding possible spill-over effects.[130]

(142) **Sixth**, also regarding the market for inland transportation possible spill-over effects are unlikely as Eurogate has only minor activities in inland transportation, while HL itself has no activities in this market. The fact that Kuehne, one of the Anchor Shareholders of HL, is also active in inland transport does not change this assessment in view of Eurogate's minor role in these markets and the existence of numerous strong competitors, such as for instance DHL, XPO Logistics, UPS and Dachser.

(143) **Seventh**, the risk of spill-over effects can also be considered as being minor with regard to a potential market for the leasing, repair and maintenance of containers, where both HL and Eurogate are active through their respective subsidiaries CMR and REMAIN. Not only are the activities of the Parties in those two markets minor (market shares of less than [0-5] % for CMR (turnover of EUR […]m in 2021) and less than [0-5] % for REMAIN (turnover of EUR […]m) in 2021, assuming a total market value of [250-500]m for the German market in 2021)[131], but also for both HL and EUROGATE this area is a rather ancillary activity that generates limited revenue compared to the overall activities of HL and Eurogate.

(144) **Eighth**, the Commission notes that the Parties intend to enter into a clean team agreement providing guidelines for the exchange of information between CTW and the Parties in the context of the operation of CTW and the cooperation in CTW's company bodies.

7. CONCLUSION

(145) 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

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130 See replies to questions 25 and 26 of Q1 to Container Liner Shipping Companies, to questions 21 and 22 of Q2 to Container Terminal Operators and Port Authorities and to question 8 of Q3 to Customers.

131 Form CO, paragraphs 284 and 356.