EUROPEAN COMMISSION
DG Competition

# *Case M.10733 - CMA CGM / GEFCO*

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

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Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2022

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EUROPEAN COMMISSION

Brussels, 25.7.2022
C(2022) 5443 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

CMA CGM S.A.
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**Subject:** **Case M.10733 – CMA CGM / GEFCO**
**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 17 June 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CMA CGM S.A. ('CMA CGM', France) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of GEFCO S.A. ('GEFCO', France) by way of purchase of shares ('the 'Transaction')[3]. CMA CGM and GEFCO are designated hereinafter as the 'Parties'. The undertaking that would result from the Transaction is referred to as the 'Merged Entity'.

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 245, 28.6.2022, p. 19.

## 1. THE PARTIES

(2) **CMA CGM** is the parent company of an international group of companies involved mainly in container liner shipping and port terminal services. CMA CGM is also active worldwide, through its wholly-owned subsidiary CEVA Logistics (‘CEVA’), on the markets for freight forwarding and contract logistics services.

(3) **GEFCO** is active worldwide in freight forwarding and contract logistics services to a variety of industries, with a focus on finished vehicle logistics. It is active mainly in Europe.

## 2. THE CONCENTRATION

(4) On 7 April 2022, the Commission adopted, subject to conditions, a derogation decision based on Article 7(3) of the Merger Regulation allowing CMA CGM to close the Transaction in derogation to the standstill obligation set in the Merger Regulation. Under the conditions imposed in that decision, CMA CGM undertook, among others, not to exercise any voting rights in and hold GEFCO separate under the overview of a Trustee.

(5) Pre-Transaction, GEFCO was solely controlled by the Russian state-owned rail company RZD, which held 75% of GEFCO’s share capital. Stellantis N.V. of the Netherlands held the remaining 25% of GEFCO’s shares.

(6) Through the Transaction, CMA CGM acquired 99.96% of the shares in GEFCO. As a result, once the conditions attached to the Article 7(3) decision relating to the Transaction are lifted, CMA CGM would acquire sole control over GEFCO within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (CMA CGM: EUR 55 976 million, GEFCO: EUR 4 219 million)[4]. Each of them has a Union-wide turnover in excess of EUR 250 million (CMA CGM: EUR […], GEFCO: EUR […]), and they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

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

## 4. MARKET DEFINITION

(9) GEFCO is mainly active in the provision of freight forwarding (land, sea and air) and contract logistics services, with a focus on finished vehicle logistics (‘FVL’). CMA CGM is mainly active in the provision of deep-sea and short-sea container liner shipping services on all main trade legs to/from the EEA. Through its subsidiary CEVA, CMA CGM is also active in freight forwarding (land, sea and air) as well as contract logistics services.

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

## 4.1. Freight forwarding services

### *4.1.1. Relevant product market*

(10) In previous decisions, the Commission defined the freight forwarding services 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*'.[5] 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 sea).[6]

(11) The market investigation did not provide indications that the Commission should deviate from the market delineations considered in previous decisions.[7]

(12) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the exact product market definition can be left open and in particular the questions whether the market should be further segmented by distinguishing between domestic and cross-border freight forwarding and different modes of transport.

### *4.1.2. Relevant geographic market*

(13) 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 wider in view of a trend by major competitors to create trans-national or even EEA-wide networks.[8] The Commission ultimately defined the market for sea freight forwarding as at least national.[9]

(14) The market investigation did not provide indications that the Commission should deviate from the geographic scope considered in previous decisions.[10]

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

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5 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.

6 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.

7 Replies to question 13 of Q2 to Freight Forwarders and Contract Logistics Providers.

8 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.

9 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.

10 Replies to question 14 of Q2 to Freight Forwarders and Contract Logistics Providers.

### *4.1.3. Conclusion*

(16) 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 plausible 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 sea;

(b) Geographic market: the national markets.

## 4.2. Contract logistics services

### *4.2.1. Relevant product market*

(17) 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' requirements.[11] 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.[12]

(18) In *Deutsche Post/Exel* and *Norbert Dentressangle/Laxey Logistics*,[13] 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.[14]

(19) The Commission has also considered a potential market for FVL services the providers of which are capable of responding to the multiple requirements of car manufacturers all along the car supply chain and thus have a special know-how, distinct from general contract logistics.[15] Within the FVL segment, the Commission considered various possible segmentations of the market according to type of vehicles (light commercial and passenger vehicles in a separate segment from heavy vehicles) and according to the mode of transport (rail, road, sea) although finding partial substitutability between the different modes of transport. The Commission also noted a potential segmentation considered by the German Bundeskartellamt into (i) the collection of finished cars (from plant to compound), (ii) compound services (storage and post-production services) and (iii) regional delivery of finished cars (from compound to dealer). In its decision, the Commission has ultimately left the product market definition open.[16]

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

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

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

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

15 Case M.8881 - *Berger/GEFCO/JV*, paragraph 10.

16 Case M.8881 - *Berger/GEFCO/JV*, paragraph 18.

(20) The market investigation did not provide indications that the Commission should deviate from the market delineations considered in previous decisions.[17]

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

*4.2.2. Relevant geographic market*

(22) 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.[18] On a potential FVL segment, the Commission considered that such a segment could be either of EEA-wide or national scope but ultimately left open the geographic market definition.[19]

(23) The market investigation did not provide indications that the Commission should deviate from the geographic scope considered in previous decisions.[20]

(24) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the exact geographic market definition can be left open.

*4.2.3. Conclusion*

(25) 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 plausible markets:

(a) Product markets: the contract logistics services markets by reference to (i) the type of operations, whether domestic or cross-border; (ii) the type of good handled or the industry serviced; and (iii) the type of logistics provider (LLPs and 3PLs), as well as the FVL segment by reference to (i) the type of vehicles; (ii) the mode of transport; and (iii) the type of operations, whether collection of finished cars, compound services or regional delivery of finished cars.

(b) Geographic market: the national markets.

### 4.3. Container liner shipping services

(26) In past cases, the Commission found that the product market for container liner shipping involved the provision of regular, scheduled services for the carriage of cargo by container. The container liner shipping services market can be distinguished from non-liner shipping (tramp, specialised transport) because of the regularity and frequency of the service. In addition, the Commission considered

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17 Replies to questions 15, 17, 18, 20 and 21 of Q2 to Freight Forwarders and Contract Logistics Providers.

18 Cases M.9221 - *CMA CGM/CEVA*, paragraph 22; M.6570 – *UPS/TNT*, paragraph 33; M.6059 – *Norbert Dentressangle/Laxey Logistic*s, paragraph 15; M.3971 – *Deutsche Post/Exel*, paragraphs 28-29.

19 Case M.8881 - *Berger/GEFCO/JV*, paragraph 22.

20 Replies to questions 16 and 19 of Q2 to Freight Forwarders and Contract Logistics Providers.

that the use of container transportation separates it from other non-containerised transport such as bulk cargo.[21]

(27) Within a container services market, the Commission has defined a separate product market for short-sea container shipping, distinct from deep-sea container shipping.[22] Unlike deep-sea container liner shipping, short-sea container liner shipping involves the provision of intracontinental (usually coastal trade) services.[23]

*4.3.1. Deep-sea container liner shipping services*

4.3.1.1. Relevant product market

(28) Deep-sea container liner shipping services involve the offer of regular, scheduled services for the sea transportation of containerised cargo.[24]

(29) 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 addition to reefer containers). In past cases, the Commission has looked separately at the plausible narrower markets for reefer and non-refrigerated (warm) containers only when the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.[25]

(30) The market investigation did not provide indications that the Commission should deviate from the market delineations considered in previous decisions.[26]

(31) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the exact product market definition can be left open.

4.3.1.2. Relevant geographic market

(32) In its most recent practice,[27] 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

[21] 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.

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

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

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

[25] 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.

[26] Replies to question 12 of Q1 to Shipping Companies.

[27] 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.

and back on the one hand, and Northern Europe to non-European areas and back on the other hand.[28]

(33) The market investigation did not provide indications that the Commission should deviate from the geographic scope considered in its most recent practice.[29]

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

4.3.1.3. Conclusion

(35) 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.

(36) 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 (64).

*4.3.2. Short-sea container liner shipping services*

4.3.2.1. Relevant product market

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

(38) 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.[30] The Commission also left open whether there should be a sub-segmentation between reefer (refrigerated) and dry (non-refrigerated) container shipping services.[31]

(39) Furthermore, the Commission has considered but ultimately left open whether the transport of wheeled cargo (Roll on-Roll off shipping) and short-sea container

[28] 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.

[29] Replies to question 13 of Q1 to Shipping Companies.

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

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

shipping services (Lift on-Lift off shipping) should be considered as belonging to the same product market.[32]

(40) Roll on-Roll off (‘Ro-Ro’) shipping services correspond to the transport of wheeled cargo (lorries, cars, etc.) on ships[33] with vessels which take on cargo via a loading ramp fitted as part of the vessel. In previous decisions, the Commission has considered that Ro-Ro shipping services constitute a potential separate relevant product market which excludes shipping services provided by Lift on-Lift off (‘Lo-Lo’) vessels, that is vessels which use dock mounted cranes to lift and stack containers on the vessel.[34] Ro-Ro shipping requires specific port facilities (access ramp, vehicle storage areas, etc.) and ships distinct from the vessels and facilities used for container cargo.

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

4.3.2.2. Relevant geographic market

(42) 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;[35] or (ii) single legs of trade.[36]

(43) On the geographic scope of the market for Ro-Ro shipping services, the Commission has considered that it must be defined in the same way as for containerised liner shipping services, that is on the basis of single trades defined by the range of ports which are served at both ends of the services.[37]

(44) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible 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

(45) 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; and (iii) the plausible narrower market for Ro-Ro shipping services;

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32 Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 50.
33 See M. 7523 - *CMA CGM/OPDR*, footnote 35.
34 See M. 6305 - *DFDS/C.RO Ports/Alvsborg*, paragraphs 19-20.
35 Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 59.
36 Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 60.
37 Case M.3973 – *CMA CGM/Delmas*, paragraph 11.

(b) Geographic markets: the narrowest plausible geographic market, that is to say individual legs of trade, which in this case are identified in recital (64).

## 5. COMPETITIVE ASSESSMENT

(46) CMA CGM is active in the markets for container liner shipping services, as well as freight forwarding and contract logistics services through its subsidiary CEVA. GEFCO is active in the markets for freight forwarding services and contract logistics, with a focus on FVL services.

(47) Therefore, the Transaction creates horizontal overlaps between the Parties' activities in the markets for freight forwarding and contract logistics services.

(48) Moreover, the Transaction gives rise to vertically affected markets due to (i) CMA CGM's activities in the upstream market for container liner shipping services and (ii) GEFCO's activities in the downstream market for sea freight forwarding services. The Transaction also gives rise to vertically affected markets due to (i) CMA CGM's activities in the upstream market for Ro-Ro shipping services and (ii) GEFCO's activities in the downstream market for FVL services.[38]

(49) The Commission will also assess whether the Transaction could give rise to conglomerate effects due the Parties' activities in related markets, namely (i) CMA CGM's activities in container liner shipping, and (ii) GEFCO's activities in contract logistics services.

### 5.1. Horizontal overlaps in relation to freight forwarding

(50) The Parties' activities in freight forwarding overlap in the EEA as a whole and in the following EEA Member States: Belgium, Czech Republic, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland, Portugal, Romania, Slovakia and Spain.

(51) The Parties' combined market share remains under 20% under any potential product (e.g. by mode of transport or by reference to cross-border or domestic services) and geographic (global, EEA or national) market segmentation, except for Slovakia, where, under a conservative approach,[39] the combined market share is [20-30]% for freight forwarding services overall (and remains below 20% under

[38] The Transaction also gives rise to a vertical link between (i) CMA CGM's activities in the upstream market for air cargo transportation and (ii) GEFCO's activities in the downstream market for air freight forwarding. However, the combined market shares of the Parties in these two markets are below 30% under any plausible product and geographic market definition. Consequently, since this vertical link does not give rise to any affected markets, these markets will not be further considered in this Decision.

[39] Form CO, paragraph 165: the Parties consider the approach is conservative as the total market sizes do not account the land segment (but only sea and air freight forwarding), whereas CMA CGM and GEFCO turnovers include their sales in land freight forwarding. The Parties submit that this is due to the fact that, as far as land freight forwarding is concerned, sources are not necessarily consistent. Under a non-conservative approach, where the total market would include the Parties' best estimates for the total market size of land freight forwarding, the Parties' combined market share would remain below 20% under any plausible geographic market.

any of the narrower product market segmentations).[40] However, in Slovakia, the increment brought about by CEVA is *de minimis*, at less than [0-5]%, with an HHI delta below 150.[41]

(52) According to the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI delta below 150.[42] Furthermore, according to the Simplified Procedure Notice, the Commission may also apply the simplified procedure if the combined market share of the Parties to the concentration is less than 50% and the HHI delta is below 150, which is the case here.[43]

(53) In addition, the Commission notes that the markets for freight forwarding services are highly fragmented and encompass major global players active at EEA level, including Slovakia, such as Deutsche Post DHL (market share of [0-5]% at the EEA level), DB Schenker ([0-5]% at EEA level), DSV ([0-5]% at the EEA level), Geodis ([0-5]% at EEA level) or Kühne + Nagel ([0-5]% at EEA level).[44]

(54) 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 with respect to freight forwarding services.

## 5.2. Horizontal overlaps in relation to contract logistics

(55) The Parties' activities in contract logistics overlap in the EEA as a whole and in the following EEA Member States: Belgium, Czech Republic, France, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia and Spain.

(56) The Parties' combined market share would remain below 20% under any potential product (e.g. by reference to cross-border or domestic services, by industry/type of good, or between LLPs and 3PLs) and geographic (global, EEA or national) market segmentation.[45] In the FVL segment, there is no overlap between the Parties' activities since CMA CGM does not provide such services in the EEA.[46] Therefore,

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40 Form CO, footnote 57 and paragraphs 87-88: the combined market share would also […] exceed 20%, reaching [20-30]% with a *de minimis* increment of [0-5]% by CEVA if the GEFCO 4PL revenue stream (normally accounted under contract logistics services) is accounted in freight forwarding. GEFCO's 4PL activity includes, inter alia, (*i*) logistic network design and engineering, (*ii*) sourcing, purchasing and contracting logistics services from carriers (road, sea, air, rail) and service providers, (*iii*) logistics operations management by managing transport and logistics orders by carriers and service providers, monitoring day to day collections of network operations, custom documentation, trucks follow up, alerts and escalation to customer if issue, etc. This activity represented around EUR […] in the EEA and [90-100]% of revenue from this activity is generated with […] who have given notice to terminate their contract in 2022, as they will internalize this activity.

41 Form CO, paragraph 186.

42 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03), paragraph 20.

43 Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (2013/C 366/04), paragraph 6.

44 Form CO, paragraph 171.

45 Form CO, paragraph 196.

46 Form CO, paragraph 202.

the Transaction does not give rise to any affected market with respect to contract logistics and will not be further discussed in this decision.

## 5.3. Vertical effects in relation to container liner shipping services

(57) The Transaction gives rise to a vertical link between the activities of GEFCO/CEVA in the downstream market for sea freight forwarding services and CMA CGM's activities in the upstream market for container liner shipping services.

### *5.3.1. Legal framework*

(58) According to the Non-Horizontal Merger Guidelines,[47] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[48] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[49] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[50]

(59) 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.[51] In practice, these factors are often examined together since they are closely intertwined.

### *5.3.2. Treatment of alliances/consortia*

(60) As regards CMA CGM's activities in the upstream market for container liner shipping services, it must be noted that CMA CGM is part of alliances/consortia with several other container liner shipping companies.

(61) The Commission has in its prior decisions relating to container liner shipping services looked at shipping companies that are members of alliances/consortia (the latter are also called vessel sharing agreements, 'VSAs'). Companies in VSAs jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Per a VSA, 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

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47 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.

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

49 Non-Horizontal Merger Guidelines, paragraph 31.

50 Non-Horizontal Merger Guidelines, paragraph 58.

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

providers individually so that there is limited to no sharing of operating costs for individual vessels between the participants in a VSA.[52]

(62) In previous cases, the Commission has considered that it is not appropriate to assess the effects of a concentration only on the basis of the individual market shares of the parties to that concentration. 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 alliance/consortium/VSA in question. Hence, the competitive assessment should also be based on the aggregate shares of the parties' alliances/consortia/VSAs.[53]

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

*5.3.3. Overview of the vertically affected markets*

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

- CMA CGM's market shares in the market for **deep-sea container liner shipping services** would be 30% or more on **four** legs of trade, namely (i) North Europe to Central America & Caribbean ([30-40]%), (ii) Central America & Caribbean to North Europe ([30-40]%), (iii) Mediterranean to Central America & Caribbean ([30-40]%), and (iv) Central America & Caribbean to Mediterranean ([30-40]%).[54]
- CMA CGM's market shares in the market for **deep-sea container liner shipping services for refrigerated goods** would exceed 30% on **five** legs of trade, namely (i) North Europe to Central America & Caribbean ([40-50]%), (ii) Mediterranean to Central America & Caribbean ([40-50]%), (iii) Central America & Caribbean to Mediterranean ([40-50]%), (iv) West Coast Africa to North Europe ([40-50]%), and (v) Australia & Oceania to North Europe ([30-40]%).[55]
- When attributing CMA CGM's **alliances/consortia/VSAs market shares** to CMA CGM, CMA CGM's market shares in the market for **deep-sea container liner shipping services** would be 30% or more on **34** legs of trade overall. This includes **30** additional legs of trade (where CMA CGM's market share alone is below 30%), namely (i) North Europe to Mediterranean ([50-60]%), (ii) Mediterranean to North Europe ([60-70]%), (iii) North Europe to Far East ([40-50]%), (iv) Far East to North Europe ([40-50]%), (v) North Europe to

52 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

53 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.

54 Form CO, Table 11.

55 Form CO, Table 12.

Indian Sub-Continent ([50-60]%), (vi) Indian Sub-Continent to North Europe ([40-50]%), (vii) North Europe to West Coast South America ([40-50]%), (viii) West Coast South America to North Europe ([40-50]%), (ix) North Europe to Australia & Oceania ([40-50]%), (x) Australia & Oceania to North Europe ([40-50]%), (xi) North Europe to East Coast Africa & Indian Ocean Islands ([50-60]%), (xii) East Coast Africa & Indian Ocean Islands to North Europe ([50-60]%), (xiii) North Europe to West Coast Africa ([30-40]%), (xiv) West Coast Africa to North Europe ([30-40]%), (xv) Mediterranean to Far East ([30-40]%), (xvi) Far East to Mediterranean ([30-40]%), (xvii) Mediterranean to Indian Sub-Continent ([60-70]%), (xviii) Indian Sub-Continent to Mediterranean ([60-70]%), (xix) Mediterranean to Middle East ([30-40]%), (xx) Middle East to Mediterranean ([40-50]%), (xxi) Mediterranean to North America ([30-40]%), (xxii) North America to Mediterranean ([30-40]%), (xxiii) Mediterranean to East Coast South America ([40-50]%), (xxiv) East Coast South America to Mediterranean ([40-50]%), (xxv) Mediterranean to Australia & Oceania ([40-50]%), (xxvi) Australia & Oceania to Mediterranean ([40-50]%), (xxvii) Mediterranean to East Coast Africa & Indian Ocean Islands ([40-50]%), (xxiii) East Coast Africa & Indian Ocean Islands to Mediterranean ([40-50]%), (xxix) Mediterranean to West Coast Africa ([30-40]%), and (xxx) West Coast Africa to Mediterranean ([30-40]%).[56]

- When attributing CMA CGM's **alliances/consortia/VSAs market shares** to CMA CGM, CMA CGM's market shares in the market for **deep-sea container liner shipping services for refrigerated goods** would exceed 30% on **10** legs of trade overall. This includes **six** additional legs of trade (where CMA CGM's market share alone is below 30%), namely (i) Central America & Caribbean to North Europe ([50-60]%), (ii) West Coast South America to North Europe ([30-40]%), (iii) North Europe to Australia & Oceania ([40-50]%), (iv) North Europe to West Coast Africa ([30-40]%), (v) Mediterranean to Middle East ([40-50]%), and (vi) East Coast South America to Mediterranean ([40-50]%).[57]

- CMA CGM's market share in the market for **short-sea container liner shipping services** would exceed 30% on **14** legs of trade, namely (i) Russia to British Isles ([60-70]%), (ii) British Isles to Iberia ([30-40]%), (iii) British Isles to Baltic States ([60-70]%), (iv) British Isles to France ([30-40]%), (v) Iberia to British Isles ([40-50]%), (vi) Baltic States to British Isles ([30-40]%), (vii) Baltic States to Iberia ([50-60]%), (viii) Baltic States to Poland ([90-100]%), (ix) Scandinavia to Russia ([30-40]%), (x) Morocco to Iberia ([30-40]%), (xi) Poland to British Isles ([40-50]%), (xii) France to Benelux & Germany ([50-60]%), (xiii) France to British Isles ([80-90]%), and (xiv) Canary Islands to Iberia ([30-40]%).[58]

- When attributing CMA CGM's **alliances/consortia/VSAs market shares** to CMA CGM, CMA CGM's market shares in the market for **short-sea container liner shipping services** would exceed 30% on **three** additional legs of short-

[56] Form CO, Table 13.
[57] Form CO, Table 14.
[58] Form CO, Table 15.

sea corridors in the Mediterranean region, namely (i) Intra-East Mediterranean, (ii) Intra-West Mediterranean, and (iii) Intra-Mediterranean.[59]

- CMA CGM's market share in the market for **short-sea container liner shipping services for refrigerated goods** would not exceed 30% on any leg of trade.[60]
- When attributing CMA CGM's **alliances/consortia/VSAs market shares** to CMA CGM, CMA CGM's market shares in the market for **short-sea container liner shipping services for refrigerated goods** would not exceed 30% on any additional leg of trade.[61]

(65) With respect to the downstream market for **sea freight forwarding services**, the Parties' combined market share is consistently below [0-5]% under any product (that is, sea freight forwarding overall or when splitting between domestic and cross-border services) or geographic market definition (that is, EEA or national level).[62]

*5.3.4. Assessment of the vertically affected markets*

(66) The Commission will assess in this Section whether the Transaction could lead to (i) input foreclosure, pursuant to which the Merged Entity would foreclose downstream competitors for sea freight forwarding services by restricting access to or deteriorating the access to the container liner shipping services that it provides in the countries where it is active; or (ii) customer foreclosure, pursuant to which the Merged Entity would foreclose upstream competitors for container liner shipping services by sourcing its container liner shipping services requirements mostly or exclusively from CMA CGM or deteriorating the purchase conditions it offers to competing container liner shipping companies.

5.3.4.1. Input foreclosure

5.3.4.1.1. Parties' views

(67) With respect to the risk that CMA CGM restricts or deteriorates access of GEFCO's competitors to its container liner shipping services, the Parties submit that CMA CGM will have neither the ability nor the incentive to engage in an input foreclosure strategy.[63]

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59 Form CO, Table 16 and paragraph 259: the Parties confirmed that CMA CGM's market share would exceed 30% on the corridors Intra-Mediterranean, Intra-East Mediterranean and Intra-West Mediterranean should the market shares of CMA CGM's consortia partners be added. However, CMA CGM indicated that it cannot provide market shares for the Mediterranean corridors for its competitors since most of the carriers in the Mediterranean region do not report to Container Trade Statistics ('CTS').

60 Form CO, paragraph 256.

61 Form CO, paragraph 257.

62 Form CO, Tables 5 and 6.

63 Form CO, paragraph 287.

#### 5.3.4.1.2. Commission's assessment

*Ability to foreclose*

(68) 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. It is only in these circumstances that the merged firm can be expected to have a significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.[64] For the reasons below, the Commission considers that it is unlikely that the Merged Entity would have the ability to implement any successful input foreclosure strategy post-Transaction.

(69) **First**, the Commission notes that CMA CGM, either on a standalone basis or together with its partners in alliances/consortia/VSAs, holds market shares above 30% on 51 legs of trade (34 legs of trade for deep-sea container liner shipping services and 17 for short-sea container liner shipping services).

(70) CMA CGM faces a number of significant and long-established competing container liner shipping companies who provide container liner shipping services on all relevant legs of trade. Such significant competitors include A P Moeller-Maersk, with market shares of up to [40-50]% on certain affected legs of trades,[65] MSC ([40-50]%)[66] and Hapag-Lloyd ([10-20]%).[67] On the vast majority of the affected legs of trade,[68] the independent carriers combined account for more than half of the market, which means that the 'free' market[69] amounts to at least [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 CMA CGM.[70] In addition, in 14 out of these 51 legs of trade,[71] CMA CGM is not a member of any consortia, which means that it has no connection to any of the other major container liner shipping companies active on those legs of trade, such as A P Moeller-Maersk, MSC, Hapag-Lloyd, COSCO Shipping, One

64 Non-Horizontal Merger Guidelines, paragraph 35.

65 Form CO, Annex 11: for instance, East Coast Africa & Indian Ocean Islands –North Europe leg of trade.

66 Form CO, Annex 11: in, for instance, the Mediterranean-North America leg of trade.

67 Form CO, Annex 11: in, for instance, the Mediterranean – Central America & Caribbean leg of trade.

68 See Tables 13 and 24 Form CO and Annex 11. This relates to the following 25 deep-sea legs of trade: North Europe to Far East, both legs of trade; Indian Subcontinent-North Europe; North Europe to West Coast South America, both legs of trade; North Europe to Australia & Oceania, both legs of trade; North Europe to West Coast Africa, both legs of trade; Mediterranean to Far East, both legs of trade; Mediterranean to Middle East, both legs of trade; Mediterranean to North America, both legs of trade; Mediterranean to East Coast South America, both legs of trade; Mediterranean to Central America & Caribbean, both legs of trade; Mediterranean to Australia & Oceania, both legs of trade; Mediterranean to East Coast Africa & Indian Ocean Islands, both legs of trade; Mediterranean to West Coast Africa, both legs of trade. It also relates to the following 9 (nine) short-sea legs of trade: British Isles to Iberia, both legs of trade; British Isles to France; Baltic States to British Isles; Baltic States to Iberia; Scandinavia to Russia; Morocco to Iberia; Poland to British Isles; Canary Islands to Iberia.

69 The share of the market that is not linked to the Parties, either on a standalone basis or through an alliance/consortium/VSA.

70 Form CO, Annex 11.

71 This includes all 14 short-sea corridors referred to in paragraph 64 above. See also Form CO, Table 15.

Line, ZIM, Evergreen, etc. For the deep-sea legs of trade where the 'free' market is below [40-50]%, that is, North Europe-Mediterranean (both legs of trade), North Europe-Indian Sub-Continent leg of trade, Mediterranean - Indian Sub Continent (both legs of trade), North Europe-East Coast Africa & Indian Ocean Islands (both legs of trade) and North Europe-Central America & Caribbean (both legs of trade), the share of the free market is always above [30-40]% (and close to [40-50]% on the North Europe-Indian Sub-Continent leg of trade). In addition, apart from the North Europe-Central America & Caribbean trade, CMA CGM's individual market share is well below [20-30]%, remaining below [10-20]% on each of the above legs of trade (with the exception of North Europe-East Coast Africa & Indian Ocean Islands where it is [20-30]%). For the North Europe-Central America & Caribbean leg of trade, where CMA CGM market share reaches [60-70]% when consortia are taken into account (otherwise, it remains below [30-40]% on a standalone basis), the free market comprises Maersk and MSC with market shares of around [20-30]% and [10-20]% respectively (and some smaller operators, accounting for around [0-5]% of the market).[72] On the Central America & Caribbean to North Europe leg of trade, Maersk and MSC are active with a market share of around [30-40]% and[5-10]% respectively.

(71) Regarding the short-sea legs of trade where the free market would be below 50% as CMA CGM's market share on a standalone basis would be [50-60]% or more, the Commission notes that the share of the free market is in most instances above [30-40]%. For instance, the free market is around [30-40]% for the Russia-British Isles leg of trade, with competitors such as Unifeeder, MSC, Transfennica, Maersk with a market share of around [10-20]%, [10-20]%, [5-10]% and [0-5]% respectively. For the British Isles-Baltic States leg of trade, there are strong competitors active in the trade such as Maersk, Unifeeder or MannLines, representing a free market of around [30-40]%. The free market reaches up to [40-50]% for the France-Benelux & Germany leg of trade, with competitors such as LD Seaplane and Eukor with a market share of around [20-30]% and [10-20]% respectively.[73]

(72) As regards the short-sea legs of trade Baltic States to Poland and France to British Isles, CMA CGM holds a market share of [90-100] % and [80-90]% respectively. In these legs of trade, the share of the free market, as well as the number and strength of competing carriers, are limited. The Commission therefore considers that it cannot be excluded that the Merged Entity would have the ability to engage in an input foreclosure strategy as regards these two legs of trade post-Transaction, which are not further discussed in the remainder of this Section. In any event, the Commission notes that, even if the Merged Entity were to be considered to have the ability to engage into input foreclosure, it however lacks the incentives to do so for the reasons explained in the Section below.

(73) Therefore, as regards all other affected deep-sea and short-sea legs of trade, under a hypothetical scenario where the Merged Entity would decide to limit or stop supplying third-party freight forwarders or deteriorate the access to its container

[72] No specific concerns were expressed during the market investigation on this specific leg of trade. See also below paragraph 74.

[73] Form CO, Annex 11.

liner shipping services, these freight forwarders would continue to have access to container liner shipping services provided by several competing carriers.

(74) This was confirmed by several shipping companies responding to the market investigation. For instance, the majority of container liner shipping companies expressing a view indicated that their ability to supply container liner shipping services in the affected legs of trade, such as the North Europe-Central America & Caribbean leg of trade, would not be affected as a result of the Transaction.[74] In addition, the majority of the freight forwarding services providers expressing a view indicated that their ability to procure container liner shipping services[75] and their ability to supply freight forwarding services[76] will not be affected post-Transaction. For instance, one of them noted that '*with the current alternative ocean carrier options available,* […] *expects to be able to find ways to ship its cargo as desired-with or without CMA CGM*'.[77]

(75) **Second**, any foreclosure attempts by CMA CGM would only benefit its subsidiaries GEFCO and CEVA, but not its consortia partners in the legs of trade where it forms part of a consortium, such as for instance, the North Europe-Central America & Caribbean or the Mediterranean-Indian Sub-Continent deep-sea legs of trade or the intra-Mediterranean, intra-East Mediterranean and intra-West Mediterranean legs of short-sea corridors.[78] For instance, if CMA CGM were to decide to serve fewer trades or sail less frequently, as a result of the divergent interests of CMA CGM's consortia partners on these routes it is unlikely that these partners would 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.

(76) **Third**, as noted for instance in the Commission decision in case M.9221,[79] 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 CMA CGM and encourages competition among container liner 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.[80]

(77) For instance, all container liner shipping expressing a view consider that their customers multi source.[81] One respondent indicated that '*customers do multisource because they want to spread their risk among different ship systems. Customers usually approach different carriers, including carriers within the same alliance*'.[82]

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74 Replies to question 25 of Q1 to Shipping Companies.

75 Replies to question 40 of Q2 to Freight Forwarders and Contract Logistics Providers.

76 Replies to question 39 of Q2 to Freight Forwarders and Contract Logistics Providers

77 Reply to question 40.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

78 As indicated above under Section 5.3.3, affected markets arise in these corridors only when consortia market shares are taken into account. CMA CGM's market share on a standalone basis would be below [20-30]% in all instance, and below [5-10]% for Intra-East Med.

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

80 Replies to question 6 of Q1 to Shipping Companies and question 7 of Q2 to Freight Forwarders and Contract Logistics Providers.

81 Replies to question 6 of Q1 to Shipping Companies.

82 Reply of a market participant to question 6.1 of Q1 to Shipping Companies.

Another respondent considered that '*multiple carrier options keep* [freight forwarders] *more flexible and hedge them against risks, such as Force Majeure declaration, blank sailings 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*'.[83]

(78) Most container liner shipping companies expressing a view also consider that freight forwarders can easily switch volumes to other container liner shipping companies on a given leg of trade.[84] One respondent indicated that '*as most* [freight forwarders] *have direct EDI links with most of their suppliers (including various liner shipping companies), IT systems for booking, instructions and documentation, also no substantial switching costs do occur. 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. As a result, in practice, major customers, both freight forwarders and large shippers, ship their commodities with several carriers on one trade. Customers are well informed of the conditions offered in the market and can easily, and regularly do, switch between carriers*'.[85]

(79) When responding to the market investigation, the majority of freight forwarders expressing a view also confirmed that they multi source and have different shipping services providers for the same legs of trade.[86] One respondent explained that '*to accommodate divergent logistic needs of (…) customers*, [it] *normally uses different shipping providers for the same destinations. These divergent needs include different departure times, transit times, interest in direct shipments or transhipments and prices*'.[87] Another respondent indicated that '*we are working with almost all shipping lines in order to satisfy our customer needs and be as flexible and independent as we can be*'.[88]

(80) Several respondents to the market investigation expressing a view referred to the overall increasing challenges to find alternative container liner shipping services in light of 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 expressing a view indicated that this would depend on different factors.[89] One freight forwarder indicated, for instance, that '*in this period it is not very easy to switch from a shipping company to another, it depends on the answers that time by time we receive from the carriers in terms of space, equipment availability and*

83 Reply of a market participant to question 6.1 of Q1 to Shipping Companies.

84 Replies to question 7 of Q1 to Shipping Companies.

85 Reply of a market participant to question 7.1 of Q1 to Shipping Companies.

86 Replies to question 7 of Q2 to Freight Forwarders and Contract Logistics Providers.

87 Reply of a market participant to question 7.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

88 Reply of a market participant to question 7.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

89 Replies to question 6 of Q2 to Freight Forwarders and Contract Logistics Providers.

*rates*'.[90] Another freight forwarder pointed out that it '*can switch between shipping companies from one vessel departure to the next, it being noted that with the current vessel capacity constraints switching is less easy*'.[91] However, the Parties submitted that an overall increase in capacity in the shipping industry can be expected in the next two years, as shown by the sea carriers' order books for new vessels.[92] Indeed, one container liner shipping company indicated that it '*has a significant order book for vessels and will increase its global capacity as from 2023*'.[93] In addition, most container liner shipping companies expressing a view indicated that deploying more capacity to face increased demand from freight forwarders can be done.[94]

(81) Moreover, most container liner shipping companies expressing a view indicated that it is not a problem to switch cargo under 'normal' market circumstances.[95] One respondent explained that '*in general, it can be done in a timely manner but would cause extra costs, i.e. perhaps additional space needs to be chartered at a cost*'.[96]

(82) In light of the above, the Commission considers that, on balance, the Merged Entity would likely not have the ability to implement any successful input foreclosure strategy post-Transaction, to the possible exception of the two short-sea legs of trade Baltic States to Poland and France to Britsh Isles. In any event, as regards these two short-sea legs of trade, even if the Merged Entity were to be considered to have the ability to engage into input foreclosure, it however lacks the incentives to do so for the reasons explained below.

*Incentive to foreclose*

(83) 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.[97]

(84) The Commission notes that, even if the Merged Entity 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.

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[90] Reply of a market participant to question 6.1 of Q2 to Freight Forwarders and Contract Logistics Providers.
[91] Reply of a market participant to question 6.1 of Q2 to Freight Forwarders and Contract Logistics Providers.
[92] Form CO, paragraph 322.
[93] Reply of a market participant to question 8.1 of Q1 to Shipping Companies.
[94] Replies to question 8 of Q1 to Shipping Companies.
[95] Replies to question 7 of Q1 to Shipping Companies.
[96] Reply of a market participant to question 8.1 of Q1 to Shipping Companies.
[97] Non-Horizontal Merger Guidelines, paragraph 40.

(85) **First**, GEFCO's demand for container liner shipping services is negligible on any of the affected legs of trade. Indeed, CMA CGM moves around […] TEUs[98] per year on a worldwide basis and around […] TEUs in the EEA in container liner shipping services, of which around […] are moved on behalf of freight forwarders on a worldwide basis and approximately […] TEUs in the EEA.[99] These CMA CGM figures are to be compared with GEFCO's total demand in container liner shipping services of only […] TEUs worldwide ([…] TEUs in the EEA) in 2021. In addition, with regard to the North Europe-Central America & Caribbean leg of trade, GEFCO's share of demand was minimal, comprising only […] TEUs out of a total market of around 360 046 TEUs in 2020. Consequently, GEFCO's share of demand was [0-5]% of the total market and it represented [0-5]% of the CMA CGM demand.[100] As a result, even if GEFCO would move all of its freight forwarding volumes to CMA CGM's container liner shipping services on EEA-related trades, volumes booked by GEFCO represent less than [0-5]% of CMA CGM's global container liner shipping activities with freight forwarders, and less than [0-5]% at the EEA level.[101]

(86) **Second**, the Commission notes that GEFCO's demand in reefer is almost non-existent. Indeed, on deep-sea legs of trade in 2021, GEFCO's demand was of only […] TEUs on legs of trade to/from the EEA. This is to be compared with (i) the approximately […] reefer TEUs transported by CMA CGM on deep-sea legs of trade in 2020 and (ii) the more than 4.4 million TEUs moved in the area for the same period. As a result, GEFCO's entire demand in deep-sea freight would represent a negligible part of CMA CGM's deep-sea reefer activities ([0-5]%).[102]

(87) **Third**, GEFCO's total demand in sea freight in short-sea intra-European legs of trade in North Europe where there are affected corridors[103] is negligible (approximately […] TEUs). This is to be compared with (i) the approximately […] TEUs transported by CMA CGM on an intra-European basis in 2021 and (ii) the more than 3.4 million TEUs moved in the area for the same period (including the UK and North Africa). As a result, GEFCO's entire demand in intra-European short-sea freight would represent less than [0-5]% of CMA CGM's short-sea activities in the EEA, including the two legs of trade Baltic States to Poland and France to British Isles.[104]

(88) In view of GEFCO's small demand for container liner shipping services, by engaging in an input foreclosure strategy which would only benefit GEFCO's sea freight forwarding activities, the Merged Entity would therefore face the risk of jeopardising its commercial relationship with third-party freight forwarders downstream, which represent its primary source of activities and revenue. Indeed, freight forwarders other than CEVA (CMA CGM's subsidiary also active in sea

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98 Twenty-foot equivalent unit.

99 Form CO, paragraph 307.

100 Form CO, Annex 11.

101 Form CO, paragraph 307.

102 Form CO, paragraph 308.

103 There are no affected short-sea corridors in the Mediterranean region on a standalone basis, only when consortia are taken into account, see Section 5.3.3 above. In any event, GEFCO's demand for short-sea shipping in the Mediterranean region is only around […] TEUs (including non-EEA countries, see Form CO, paragraph 260) so any foreclosure scenario is unlikely.

104 Form CO, paragraph 309.

freight forwarding) and GEFCO represent close to [50-60]% of CMA CGM's revenues in container liner shipping.[105] The Merged Entity would therefore have no other choice but to keep supplying third-party freight forwarders downstream for a predominant portion of its relevant activities in the EEA since GEFCO's and CEVA's activities in sea freight forwarding would not compensate the losses incurred in the upstream market.

*Overall effect of input foreclosure*

(89) 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.[106]

(90) 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.[107]

(91) Since, as explained above, it is unlikely that the Merged Entity would have the ability or incentive to engage in an input foreclosure strategy post-Transaction, the Commission considers that there cannot be any negative effects on competition in the downstream market for sea freight forwarding.

(92) In any event, the Commission notes that many other carriers provide container liner shipping services in the EEA and compete for customers such as freight forwarders, which represent a significant part of their revenues. Therefore, even if the Merged Entity were to engage in an input foreclosure strategy by limiting its supply only to CEVA and GEFCO, other carriers could start providing container liner shipping services to the other freight forwarders on the downstream market. This would therefore be sufficient to prevent the prices for output on the downstream market from rising.

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

*Conclusion*

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

105 Form CO, paragraph 307.
106 Non-Horizontal Merger Guidelines, paragraph 47.
107 Non-Horizontal Merger Guidelines, paragraph 50.

#### 5.3.4.2. Customer foreclosure

##### 5.3.4.2.1. Parties' views

(95) The Parties submit that the Merged Entity will not have the ability or incentive to engage in any customer foreclosure strategy by sourcing most or all of its needs in container liner shipping services from CMA CGM in the EEA or by degrading access conditions for other container liner shipping companies, in particular in view of GEFCO's small size in sea freight forwarding downstream.[108]

##### 5.3.4.2.2. Commission's assessment

*Ability to foreclose*

(96) 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.[109] For the reasons below, 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 GEFCO is active.

(97) **First**, GEFCO's market share in the downstream market for sea freight forwarding services is limited, less than [0-5]% in the overall market for sea freight forwarding at EEA or national level. Its market share remains below [0-5]% at EEA or national level also when domestic and cross-border sea freight forwarding are considered separately.[110] In addition, the Parties' combined market shares would also remain […] below 20% under any geographic market definition in sea freight forwarding, both for domestic and cross-border services.[111]

(98) **Second**, GEFCO cannot be considered as an important customer with a significant degree of market power. Indeed, GEFCO's total demand in container liner shipping services in the EEA is approximately […] TEUs on deep-sea legs of trade to/from the EEA in 2021, as compared to a total market of container liner shipping services of more than 52 million TEUs at the EEA level in 2021. Therefore, even if GEFCO were to divert all of its needs in container liner shipping services (representing less than [0-5]% of the EEA market) towards CMA CGM, this would not have any significant impact on the market.[112]

(99) **Third**, the market for sea freight forwarding services is highly fragmented and includes several major players, such as Kühne + Nagel, DSV, DHL, DB Schenker and Geodis.[113] Should GEFCO contract exclusively or mostly with CMA CGM or

[108] Form CO, paragraph 287.
[109] Non-Horizontal Merger Guidelines, paragraph 61.
[110] Form CO, Table 23.
[111] Form CO, paragraph 288.
[112] Form CO, paragraph 289.
[113] Form CO, paragraph 290.

deteriorate its purchasing conditions, CMA CGM's competitors in container liner shipping services would still have access to a sufficient customer base.

(100) **Fourth**, the respondents to the market investigation expressing a view did not raise concerns with regard to customer foreclosure. In particular, none of the container liner shipping companies expressing a view considered that their ability to supply container liner shipping services to freight forwarders will be affected in any way post-Transaction.[114] One respondent indicated that the '*freight forwarding market is fragmented, thus we do not think that this vertical integration will restrict our ability to supply container liner shipping services to freight forwarders in general*'.[115]

*Incentive to foreclose*

(101) 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.[116]

(102) The Commission notes that, even if the Merged Entity were to be considered to have the ability to engage into customer 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.

(103) **First**, given GEFCO'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.

(104) **Second**, the Commission considered in its decision in Case M.9221,[117] 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 this respect, the Parties submit that CEVA sources approximately [70-80]% of its needs from competing container liner shipping companies.[118]

*Overall effect of customer foreclosure*

(105) 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.[119]

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114 Replies to question 25 of Q1 to Shipping Companies.
115 Reply of a market participant to question 25.1 of Q1 to Shipping Companies.
116 Non-Horizontal Merger Guidelines, paragraph 68.
117 Case M.9221 – *CMA CGM/CEVA*, paragraph 91.
118 Form CO, paragraph 294.
119 Non-Horizontal Merger Guidelines, paragraph 74.

(106) Since, as explained above, it is unlikely that the Merged Entity would have the ability or incentive to engage in a customer foreclosure strategy post-Transaction, the Commission considers that there cannot be any negative effects on competition in the upstream market for container liner shipping services.

(107) In any event, the Commission notes that GEFCO already sources an appreciable proportion of its needs on container liner shipping services from CMA CGM, around [10-20]% of its total needs in the EEA (around […] TEUs in 2021 from CMA CGM in the EEA).[120] Consequently, the pre-existing situation subdues the effect of a diversion of GEFCO's demand on the upstream market for container liner shipping services towards CMA CGM. Therefore, the Commission considers that CMA CGM's competitors in the upstream market for container liner shipping services will likely be unaffected by the Transaction.

(108) 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 and in the countries where GEFCO is active.

*Conclusion*

(109) 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 upstream competitors selling container liner shipping services in the EEA in general and in each EEA country is unlikely.

### *5.3.5. Conclusion on the vertical effects in relation to container liner shipping services*

(110) 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 in relation to container liner shipping services.

## 5.4. Vertical effects in relation to Ro-Ro shipping services

(111) The Transaction gives rise to a vertical link between the activities of GEFCO in the downstream market for FVL services and CMA CGM's activities in the upstream market for Ro-Ro shipping services.

### *5.4.1. Overview of the vertically affected markets*

(112) As regards the **upstream markets for Ro-Ro shipping services**, CMA CGM operates a number of services between France and Western North Africa (Morocco, Algeria and Tunisia). Post-Transaction:[121]

120 Form CO, paragraph 299.

121 Form CO, paragraphs 220 and 227: the Parties consider that CMA CGM's market shares for Ro-Ro shipping services are largely overestimated as they only take into account trailers and do not include finished vehicles transported on Ro-Ro vessels. This is due to the fact that CMA CGM transports finished vehicles on its Ro-Ro vessels only to a very limited extend and does not have the necessary internal market data to estimate the number of vehicles by competitors.

- CMA CGM's market share in Ro-Ro shipping services would not exceed 30% in the corridors (i) France to North Africa ([20-30]%), and (ii) North Africa to France ([20-30]%).[122]

- CMA CGM's market share in Ro-Ro shipping services would exceed 30% in **two** corridors per country pairs, namely (i) France to Algeria ([60-70]%), and (ii) Algeria to France ([40-50]%).[123]

(113) As regards the **downstream markets for FVL services**, post-Transaction, GEFCO's market share would exceed 30% but remain below [30-40]%[124] in the following markets:[125]

- **FVL services by rail** in **three** EEA countries, namely (i) France, (ii) Benelux countries, and (iii) Romania.[126]

- **FVL services by sea** in **one** EEA country, namely France.[127]

- **Collection of finished cars (from plant to compound)** in **one** EEA country, namely Portugal.[128]

- **Regional delivery of finished cars (from compound to dealers)** in **two** EEA countries, namely (i) Slovakia, and (ii) Czech Republic.[129]

*5.4.2. Assessment of the vertically affected markets*

(114) The Commission will assess in this Section whether the Transaction could lead to (i) input foreclosure, pursuant to which the Merged Entity would foreclose downstream competitors for FVL services by restricting access to or deteriorating the access to the Ro-Ro shipping services that it provides in the countries where it is active; or (ii) customer foreclosure, pursuant to which the Merged Entity would foreclose upstream competitors for Ro-Ro shipping services by sourcing its Ro-Ro shipping services requirements mostly or exclusively from CMA CGM or deteriorating the purchase conditions it offers to competing Ro-Ro shipping companies.

[122] Form CO, Table 9.
[123] Form CO, Table 10.
[124] Form CO, paragraph 211.
[125] Form CO, Table 8, paragraphs 206 and paragraph 210: GEFCO's market share would remain below 30% at EEA level and in any EEA country where it is active in an all-encompassing FVL services market, in the market for FVL services for light commercial and passenger vehicles (GEFCO does not provide FVL services for heavy vehicles) and in the market for compound services (storage and post-production services).
[126] Form CO, paragraph 210.
[127] Form CO, paragraph 210.
[128] Form CO, paragraph 210.
[129] Form CO, paragraph 210.

#### 5.4.2.1. Input foreclosure

##### 5.4.2.1.1. Parties' view

(115) The Parties submit that the vertical link between CMA CGM's upstream activities in Ro-Ro shipping and GEFCO's downstream activities in FVL services is unable to lead to competition concerns.[130]

##### 5.4.2.1.2. Commission's assessment

*Ability to foreclose*

(116) For the reasons set out below, the Commission considers that, on balance, the Merged Entity would likely not have the ability to implement any successful input foreclosure strategy post-Transaction.

(117) **First**, the Commission notes that CMA CGM's market share as regards Ro-Ro shipping services only exceeds 30% as regards the France-Algeria corridor (both ways) but is below 30% as regards any other corridor in which it operates Ro-Ro shipping services. Furthermore, there are numerous competitors of much larger scale than CMA CGM, in particular Ro-Ro car carrier specialists such as Suardiaz, Neptune, Grimaldi or DFDS.[131] Therefore, in case the Merged Entity were to decide to limit, degrade or stop supplying FVL providers, such FVL providers will continue to have access to equivalent services provided by competing Ro-Ro services providers.

(118) This was confirmed by the market investigation. Most respondents to the market investigation expressing a view did not identify CMA CGM as an important player in the Ro-Ro shipping market. One respondent indicated that '*CMA CGM is not at this time a significant Ro-Ro operator*'.[132] Another respondent pointed to the existence of '*alternatives*' to CMA CGM as regards Ro-Ro shipping services.[133]

(119) **Second**, FVL providers do not face high switching costs when they decide to switch Ro-Ro shipping services providers. The majority of freight forwarders expressing a view indicated that they have switched Ro-Ro shipping services providers in the last five years.[134] One respondent indicated that it '*will not work only with one provider. This is both for risk mitigation purposes as well as how general business of the market work. Instead* [it] *will engage the providers that best meets the needs of* [its] *clients for a particular shipment*'.[135] Another respondent indicated that it is '*working with all partners*'.[136]

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130 Form CO, paragraph 213.

131 Form CO, paragraph 221.

132 Reply of a market participant to question 47.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

133 Reply of a market participant to question 46.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

134 Replies to question 11 of Q2 to Freight Forwarders and Contract Logistics Providers.

135 Reply of a market participant to question 11.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

136 Reply of a market participant to question 11.1 of Q2 to Freight Forwarders and Contract Logistics Providers.

*Incentive to foreclose*

(120) As already indicated above, 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.[137] For the reasons set out below, the Commission considers that the Merged Entity will likely not have an incentive to engage in an input foreclosure strategy post-Transaction.

(121) The Commission notes that GEFCO procures Ro-Ro shipping services for transporting finished vehicles (i) from Morocco to Spain/France/Italy, (ii) between European ports in the Mediterranean (including between Spain and Canary Islands), and to lesser extent (iii) from Europe to North Africa and Turkey (except between Algeria and France). The estimated turnover for 2021 generated with finished vehicles transported on Ro-Ro vessel is approximately EUR […], which represents less than [0-5]% of GEFCO's turnover.[138]

(122) As a result, there is no demand from GEFCO for Ro-Ro shipping services on the affected corridors between France and Algeria on which CMA CGM operates a limited number of services.[139] Newly manufactured cars sold in Algeria are mostly imported from neighbouring countries or manufactured in Algeria. Likewise, cars sold in France do not come from Algeria since most of the cars manufactured in North Africa and distributed in the EEA come from Morocco.[140] In addition, CMA CGM only transported a very small number of vehicles on its Ro-Ro vessels, that is, less than […] vehicles.[141]

(123) The Commission therefore considers that, post-Transaction, the Merged Entity would likely have incentives to keep supplying Ro-Ro shipping services to downstream competitors for FVL services at the same conditions as absent the Transaction.

*Overall effect of input foreclosure*

(124) Since, as explained above, it is unlikely that the Merged Entity would have the ability or incentive to engage in an input foreclosure strategy post-Transaction, there is no need to assess the overall impact of any such strategy.

(125) In any event, for completeness, the Commission notes that the total market size of the France-Algeria country pair is low, namely 988 trailers on Algeria to France (which represents 1,976 TEUs) and 867 trailers on France to Algeria (which represents 1,734 TEUs). Compared to short-sea vessels, this corresponds to approximately one average short-sea vessel in each direction per year. Considering the very limited number of trailers transported on this country pair, any foreclosure attempt is unlikely to harm competition.

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137 Non-Horizontal Merger Guidelines, paragraph 40.

138 Form CO, paragraph 218.

139 Form CO, paragraph 217.

140 Form CO, paragraph 235.

141 Form CO, paragraph 236. CMA CGM transported mainly second hand cars and only a limited number of newly manufactured cars for Renault, Peugeot and Citroen.

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

*Conclusion*

(127) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by the Merged Entity in order to exclude or deteriorate access of downstream competitors purchasing Ro-Ro shipping services in any of the affected corridors is unlikely.

5.4.2.2. Customer foreclosure

5.4.2.2.1. Parties' views

(128) The Parties submit that the vertical link between CMA CGM's upstream activities in Ro-Ro shipping and GEFCO's downstream activities in FVL services is unable to lead to competition concerns.[142]

5.4.2.2.2. Commission's assessment

*Ability to foreclose*

(129) For the reasons set out below, 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.

(130) **First**, GEFCO's market share in the downstream market for FVL services is limited. On an overall market for FVL services, GEFCO's market share would remain below 30% in the EEA and in each EEA country in which it is active. While GEFCO's market share would exceed [10-20]% in the Benelux, Bulgaria, Croatia, the Baltics, France, Italy, Portugal and Spain, its market share would remain well below [5-10]% in all other EEA countries in which it operates.[143] GEFCO's market share would only exceed 30% but remain below [30-40]% as regards some sub-segments of the FVL market as explained in recital (113).[144]

(131) **Second**, the Commission notes that GEFCO had an exclusivity contract until […], which has been terminated. The market shares have been calculated based on 2021 data, but the Parties submit that most of the affected markets will cease to be affected in 2022 and years going forward […] has issued tenders on all European FVL sub-markets and new contracts with awarded companies will be rolled out over the year 2022.

*Incentive to foreclose*

(132) 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. Indeed, given GEFCO's small demand for Ro-Ro services in the EEA overall as indicated

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142 Form CO, paragraph 213.

143 Form CO, Table 8.

144 Form CO, paragraph 211.

above, the Merged Entity would have limited benefits on the upstream markets for Ro-Ro shipping services.

*Overall effect of customer foreclosure*

(133) Since it is unlikely that the Merged Entity would have any ability or incentive to engage in a customer foreclosure strategy, there is no need to assess the overall impact of any such strategy in light of the first two conditions not being fulfilled.

*Conclusion*

(134) 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 the Merged Entity's upstream competitors providing Ro-Ro shipping services in the EEA in general and in each EEA country is unlikely.

### *5.4.3. Conclusion on the vertical effects in relation to Ro-Ro shipping services*

(135) 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 in relation to Ro-Ro shipping services.

## 5.5. Conglomerate effects in relation to contract logistics

(136) The Transaction may have a conglomerate dimension, as it involves services that belong to related markets (i.e. container liner shipping services and contract logistics 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 of bundling.[145]

### *5.5.1. Parties' views*

(137) The Parties submit that the Transaction will not lead to any conglomerate anticompetitive effects. CMA CGM will not have any ability to tie or bundle logistics services post-Transaction, and will continue to offer such services separately at competitive conditions.[146]

### *5.5.2. Commission's assessment*

(138) 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

145 Non-Horizontal Merger Guidelines, paragraph 93.
146 Form CO, paragraph 156.

Commission will assess whether such practices may have a significant negative impact on competition and consumers.[147]

*Ability to foreclose*

(139) The Commission considers that the Merged Entity will not have any ability, post-Transaction, to engage in a strategy of tying or bundling its contract logistics services with its container liner shipping services.

(140) 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 contract logistics remains below 20% under any plausible product or geographic market delineation (see Section 5.4.2.2.2).

(141) Second, the Commission notes that competing container liner shipping and contract logistics services will remain available on a standalone basis from other sea carriers and logistics providers (see Section 5.4.2.1).

(142) Third, the Commission has already acknowledged that the market structures of shipping services and contract logistics services differ, which makes bundling difficult. While contract logistics services are customer-demand driven and tailor made, container liner shipping services are mostly off-the-shelf services.[148] 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 the Merged Entity tried to.

*Incentive to foreclose*

(143) The incentive to foreclose rivals through bundling or tying depends on the degree to which the strategy is profitable.[149]

(144) The Commission considers that the Merged Entity would have no incentive post-Transaction to favour any tied or bundled offers to the detriment of its core container liner shipping activities. Consequently, CMA CGM intends to continue to offer such services separately post-Transaction.[150]

*Overall effect of foreclosure*

(145) The Commission considers that the Transaction is unlikely to have an overall negative impact on effective competition in the markets for contract logistics services 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. As such, customers will continue to have immediate access to competitive container liner shipping services and contract logistics services on a standalone basis. Any hypothetical tying or bundling strategy is unlikely to have an overall negative impact on prices and choice.

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147 Non-Horizontal Merger Guidelines, paragraph 94.
148 M.9221 – *CMA CGM/CEVA*, paragraph 105.
149 Non-Horizontal Merger Guidelines, paragraph 105.
150 Form CO, paragraph 156.

(146) 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

(147) 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*