



EUROPEAN COMMISSION
DG Competition

Case M.10733 - CMA CGM / GEFCO

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

Article 7(3)
Date: 07/04/2022



EUROPEAN COMMISSION

Brussels, 07.04.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M. 10733 - CMA CGM / GEFCO
Commission decision pursuant to Article 7 (3) of Council Regulation
No. 139/2004¹ and Article 57 of the Agreement on the European
Economic Area²
Request of derogation**

Dear Sir or Madam,

- (1) On 5 April 2022, CMA CGM S.A. ('CMA CGM', France) requested, pursuant to Article 7(3) of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation (the 'Derogation Request'). The Derogation Request is submitted with regard to the proposed acquisition by CMA CGM of sole control of GEFCO S.A. and its direct and indirect subsidiaries ('GEFCO', France) by way of

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').

a purchase of shares (the ‘Transaction’). CMA CGM and GEFCO are together referred to as the ‘Parties’.

- (2) The present decision is taken without prejudice to the application of restrictive measures applicable to certain Russian entities and the assessment thereof that may be made by the competent national authorities of the Member States.

1. THE PARTIES

- (3) **GEFCO** is a French company active worldwide in freight forwarding and contract logistics. In particular, GEFCO is active in the provision of logistics services, transport solutions and integrated logistics to a variety of industries (automotive industry, pharmaceutical, retail, etc.). GEFCO is currently solely controlled by the Russian state-owned rail company RZD, which holds 75% of the GEFCO’s share capital. Stellantis N.V. (‘Stellantis’, the Netherlands) holds the remaining 25% of GEFCO’s shares.

- (4) **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, through its wholly-owned subsidiary CEVA Logistics (‘CEVA’), on the markets for freight forwarding and contract logistics services.

2. THE TRANSACTION

- (5) The Transaction would take place in two steps.
- (6) First, [...]. Second, pursuant to a firm offer submitted on 28 March 2022, CMA CGM would acquire 99.96% of the shares in GEFCO (the ‘CMA CGM Transaction’).³
- (7) The agreements relating to the two steps will be entered into on the same day. [...].⁴
- (8) Therefore, the two steps of the Transaction are interdependent and form a single concentration⁵ within the meaning of Article 3 of the Merger Regulation.
- (9) As a result of the Transaction, CMA CGM would acquire sole control over GEFCO within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (10) 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).⁶ Each of them has an EU-wide turnover in excess of EUR 250 million (CMA CGM: [...], GEFCO: [...]), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member

³ Derogation Request, Annex 1.

⁴ Parties’ response to RFI 1 and 2, paragraphs 21 and 22.

⁵ Consolidated Jurisdictional Notice, paragraph 38.

⁶ The Parties’ turnover data was provided for financial year 2021.

State. The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. THE APPLICATION FOR DEROGATION

- (11) On 5 April 2022, CMA CGM requested a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation to close its acquisition of 99.96% of GEFCO's shares by 6 April 2022.
- (12) According to CMA CGM, the Derogation Request is justified by the need to implement GEFCO's sale swiftly in order to stabilize the financial, economic and legal situation of the company and avoid the imminent opening of pre-insolvency proceedings. GEFCO is currently facing increasing financial and operational difficulties due to the fact that its controlling shareholder, RZD, is subject to certain restrictive measures imposed on it, including by the EU.⁷

The conditions for derogation pursuant to Article 7(3) of the Merger Regulation

- (13) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the internal market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1).
- (14) Article 7(3) of the Merger Regulation provides that, in deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.
- (15) A derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension provided for in the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
- (16) Such a derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition.

4.1. The Transaction falls under the suspension obligation pursuant to Article 7(1) of the Merger Regulation

- (17) As indicated in Sections 2 and 3 above, the Transaction constitutes a concentration within the meaning of Article 3 of the Merger Regulation and has an EU dimension according to Article 1 thereof. Hence the Transaction falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.
- (18) As per the Derogation Request, CMA CGM requests a derogation for completing by 6 April 2022 the Transaction, and thus for acquiring *de jure* sole control over GEFCO by that date.

⁷ Derogation Request, paragraphs 10-12.

- (19) The Commission considers that implementing the measures described in the Derogation Request would amount to a full implementation of the Transaction. Implementing these measures before the notification of the Transaction or before it has been declared compatible with the internal market by the Commission requires a derogation pursuant to Article 7(3) of the Merger Regulation.

4.2. The effects of the suspension on the undertakings concerned and third parties

4.2.1. The Parties' arguments

- (20) CMA CGM considers that the suspension obligation imposed in Article 7(1) of the Merger Regulation would cause irreparable damage to GEFCO and third parties.
- (21) CMA CGM submits that the Derogation Request, as described in section 4 above, is necessary to allow RZD to divest its shareholding in GEFCO, and to maintain GEFCO as a going concern until the final decision of the Commission on the compatibility of the Transaction with the internal market. In particular, GEFCO is subject to unsustainable pressure [...] because it is controlled by RZD.⁸
- (22) [further confidential information regarding GEFCO's financial and business situation].⁹
- (23) [further confidential information regarding GEFCO's financial and business situation].¹⁰
- (24) CMA CGM submits that without the derogation, GEFCO will have no other choice but to enter into the French safeguard procedure (*'procedure de sauvegarde'*). Safeguard procedure is a pre-insolvency procedure that can be requested by a company facing financial difficulties which is still not in a situation of default, as is the case for GEFCO. Safeguard procedure seeks to prevent, in particular, customers from terminating ongoing agreements and banks and suppliers from requiring early debt payments. In the context of safeguard procedure, the company's management is also under supervision of a court-appointed administrator and the bankruptcy judge (*'juge commissaire'*). GEFCO has requested a hearing, which is expected to take place on April 7, 2022, for the opening of such proceedings.¹¹
- (25) CMA CGM considers that the opening of these proceedings will have a negative impact on GEFCO's reputation, as it publicly confirms the financial and operational difficulties of the company. In addition, CMA CGM submits that, given the current context, safeguard procedure would likely quickly be converted into reorganization proceedings (*'redressement judiciaire'*) and subsequently lead to the sale of GEFCO's assets and activities.¹²

⁸ Derogation Request, paragraphs 16-18.

⁹ Derogation Request, paragraphs 23, 24.

¹⁰ Derogation Request, paragraphs 27, 28.

¹¹ [...].

¹² Parties' response to RFI 4, paragraph 5.

4.2.2. *The Commission's assessment*

- (26) The French authorities, which are ultimately in charge of the implementation of EU restrictive measures in French territory, have indicated that measures imposed by the EU on RZD do not apply to GEFCO. A letter from the Directorate General of Treasury (*Direction Générale du Trésor*) summarises the French Government's view.¹³
- (27) However, evidence presented by the Parties suggests that GEFCO is experiencing increasing financial difficulties as a result of it being majority owned by RZD. GEFCO's difficulties are a collateral damage of the fact that GEFCO is ultimately controlled by an entity subject to restrictive measures. Indeed, evidence presented by the Parties suggests that, because GEFCO is majority owned by RZD, its financial situation and ability to operate in the market are rapidly degrading for the following reasons.
- (28) [further confidential information regarding GEFCO's financial and business situation]¹⁴ [further confidential information regarding GEFCO's financial and business situation].¹⁵ [further confidential information regarding GEFCO's financial and business situation]¹⁶ [further confidential information regarding GEFCO's financial and business situation].¹⁷
- (29) [further confidential information regarding GEFCO's financial and business situation].¹⁸
- (30) [further confidential information regarding GEFCO's financial and business situation]¹⁹ [further confidential information regarding GEFCO's financial and business situation].²⁰ [further confidential information regarding GEFCO's financial and business situation]²¹ [further confidential information regarding GEFCO's financial and business situation].²²
- (31) [further confidential information regarding GEFCO's financial and business situation].²³ [further confidential information regarding GEFCO's financial and business situation].²⁴ [further confidential information regarding GEFCO's financial and business situation]²⁵, [further confidential information regarding GEFCO's financial and business situation]²⁶. [further confidential information regarding GEFCO's financial and business situation]²⁷ [further confidential

¹³ Letter from Direction Générale du Trésor dated 15 March 2022, provided in Parties' response to RFI 1.

¹⁴ GEFCO's internal document submitted on 1 April 2022, [...].

¹⁵ GEFCO's internal document submitted on 1 April 2022, [...].

¹⁶ GEFCO's internal document submitted on 1 April 2022, [...].

¹⁷ [...].

¹⁸ Parties' response to RFI 4, paragraphs 9 and 10.

¹⁹ GEFCO's internal document submitted on 1 April 2022, [...].

²⁰ These include [...]

²¹ GEFCO's internal document submitted on 1 April 2022, [...].

²² GEFCO's internal document submitted on 1 April 2022, [...].

²³ GEFCO's internal document submitted on 1 April 2022, [...].

²⁴ GEFCO's internal document submitted on 1 April 2022, [...].

²⁵ GEFCO's internal document submitted on 1 April 2022, [...].

²⁶ GEFCO's internal document submitted on 1 April 2022, [...].

²⁷ GEFCO's internal document submitted on 1 April 2022, [...].

- information regarding GEFCO's financial and business situation]²⁸ [further confidential information regarding GEFCO's financial and business situation].
- (32) [further confidential information regarding GEFCO's financial and business situation],²⁹ [further confidential information regarding GEFCO's financial and business situation],³⁰ [further confidential information regarding GEFCO's financial and business situation],³¹ [further confidential information regarding GEFCO's financial and business situation]³² [further confidential information regarding GEFCO's financial and business situation]³³ [further confidential information regarding GEFCO's financial and business situation].
- (33) [further confidential information regarding GEFCO's financial and business situation].³⁴
- (34) [further confidential information regarding GEFCO's financial and business situation].³⁵
- (35) Eighth, GEFCO has taken several pre-insolvency procedural steps:
- a) [...].³⁶
 - b) [...].³⁷
 - c) [...]³⁸ [...]³⁹ [...].⁴⁰
 - d) [...] As discussed above, under French law, safeguard procedure constitutes a procedural step for companies facing irremediable difficulties but that are still not in a situation of insolvency. In the context of safeguard procedure, the company's management continues to run the company subject to the powers and supervision of a Court-appointed administrator and the bankruptcy judge (*'juge commissaire'*). The company's debt [...]⁴¹ is frozen so as to allow for the structured payment of debt and avoid a situation of insolvency. The Court-appointed administrator has the power to force the continuation of on-going contracts, but GEFCO notes that the coercive power of the Court-appointed administrator to request from third parties that existing contracts continue to be honoured is untested in a context of international sanctions. In addition, [...] entering into safeguard procedure entails a risk of loss of the company's value and could therefore result in significant damage for GEFCO's business.

²⁸ GEFCO's internal document submitted on 1 April 2022, [...].

²⁹ GEFCO's internal document submitted on 1 April 2022, [...].

³⁰ GEFCO's internal document submitted on 1 April 2022, [...].

³¹ GEFCO's internal document submitted on 1 April 2022, [...].

³² GEFCO's internal document submitted on 1 April 2022[...].

³³ GEFCO's internal document submitted on 1 April 2022, [...].

³⁴ GEFCO's internal document submitted on 1 April 2022, [...].

³⁵ GEFCO's internal document submitted on 1 April 2022, [...].

³⁶ Derogation Request, Annex 2.

³⁷ GEFCO's internal document submitted on 1 April 2022, [...].

³⁸ Derogation Request, Annex 3, translated from French: [...].

³⁹ [further confidential information regarding GEFCO's financial and business situation].

⁴⁰ Parties' response to RFI 4, paragraphs 14 and 15.

⁴¹ GEFCO's Consolidated financial statements for the year ended 31 December 2021, page 5.

- (36) In light of the above and of the available evidence, the Commission considers it likely that non-implementation of the Transaction by or shortly after 6 April 2022 due to the suspension obligation under Article 7(1) of the Merger Regulation, would have negative effects on GEFCO's ability to continue trading as a going concern.
- (37) In addition, the Commission also considers that the suspension obligation is likely to have adverse effects on third parties, in particular GEFCO's employees, suppliers and customers.
- (38) Indeed, in the absence of a derogation from the suspension obligation, GEFCO will enter into safeguard procedure which could potentially transform into reorganisation proceedings. As noted above, the safeguard procedure entails a significant risk of loss of the company's value as GEFCO's difficulties will be publicly confirmed. GEFCO expects inevitable drawbacks as soon as the safeguard procedure is opened including the possibility of suppliers requesting shorter payment conditions or early payment in the context of the procedure with the subsequent negative impact on GEFCO's working capital requirement; and the deterioration of GEFCO's credit score which will negatively impact GEFCO's commercial relations with customers, service suppliers, banks and insurers, and its ability to retain new clients.⁴²
- (39) The opening of safeguard procedure would therefore further compromise GEFCO's viability, and may result in the company ultimately entering into reorganisation proceedings. Should this to occur, GEFCO's assets and contracts would be liquidated. GEFCO's workforce, which amounts to more than 11,000 employees globally, out of which 3,000 are located in France, would be at risk of layoffs as the liquidation of GEFCO's assets would bring the company to cease to exist as a going concern. Suppliers and customers would be similarly negatively affected as they would not only lose a commercial partner, but also experience delays and/or difficulties in recovering credits from GEFCO.

4.2.3. *Conclusion*

- (40) Against this background, and based on the available evidence, the Commission concludes that the suspension obligation imposed by Article 7(1) of the Merger Regulation could lead to serious harm to GEFCO as well as its employees, suppliers and customers.

4.3. The threat to competition posed by the concentration

- (41) Based on the information provided by CMA CGM, the Parties' activities overlap in the provision of (i) freight forwarding services and (ii) contract logistics services.
- (42) In addition, the Transaction would give rise to vertical relationships in relation to the provision of (i) container liner shipping services and (ii) ocean freight forwarding.

⁴² Parties response to RFI 4, paragraphs 7 and 8.

4.3.1. Horizontal overlaps

4.3.1.1. Freight forwarding services

- (43) In its prior decisional practice related to freight forwarding services, the Commission has defined the relevant 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*’.⁴³ The Commission also considered possible sub-segmentations of the freight forwarding product market, namely (i) between domestic freight forwarding and cross-border freight forwarding and, (ii) depending on the modes of transport (i.e. freight forwarding by air, land and ocean).⁴⁴
- (44) Concerning the geographic scope of the market, the Commission previously left open whether the freight forwarding services market or sub-segmentations thereof should be considered national in scope, due to language and regulatory barriers, or broader in view of a trend by the main suppliers to create trans-national or even EEA-wide networks.⁴⁵ More specifically, the Commission defined the market for ocean freight forwarding as at least national.⁴⁶
- (45) While providing freight forwarding services in the EEA with relation to all types of transportation modes, GEFCO generates most of its revenues in the field of land freight forwarding (close to [...]). Ocean (c. [...]) and air (c. [...]) freight forwarding services have a less important contribution to GEFCO’s EEA freight forwarding revenues.⁴⁷
- (46) Based on the (partial) information provided at this time by the Parties, on a market for freight forwarding encompassing all modes of transport, the Parties’ combined market share would be below [5-10]% in the EEA and worldwide.⁴⁸ The Parties’ combined market share would not be materially different when considering a national relevant geographic market, except for Slovakia, where the combined market share would be slightly above 20%.⁴⁹

⁴³ 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.

⁴⁴ Cases M.10559 – *A P Moeller-Maersk/Senator International*, paragraph 9; 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.

⁴⁵ Case M.10559 – *A P Moeller-Maersk/Senator International*, paragraph 14; 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.

⁴⁶ 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.

⁴⁷ Parties’ response to RFI 1 and 2, paragraph 4.

⁴⁸ Parties’ response to RFI 1 and 2, paragraphs 138-143: the Parties estimate the EEA demand for freight forwarding services to be at least EUR 45 billion in the EEA. CEVA’s freight forwarding services revenues in the EEA is approximately [...], while that of GEFCO is [...].

⁴⁹ Parties’ response to RFI 1 and 2, Table 23.1 – A: the Parties’ combined market share in Slovakia would be [20-30] %.

- (47) When looking at potential sub-segmentations of the freight forwarding services market depending on the modes of transport, the Transaction would not lead to any affected markets⁵⁰
- (48) However, at this stage, the Parties have only submitted partial market share data for the freight forwarding markets. For instance, they have not provided data for potential sub-segmentations of the freight forwarding product market by type of operation (i.e., between domestic and cross-border freight forwarding). Moreover they have only provided market share data on the basis of the value of sales.
- (49) In view of the lack of comprehensive data, and considering the existence of at least one affected market, the Commission is not in a position, at this stage, to exclude that the Transaction would *prima facie* pose a threat to competition in relation to freight forwarding services.

4.3.1.2. Contract logistics services

- (50) 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.⁵¹ 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.⁵²
- (51) In *Deutsche Post/Exel* and *Norbert Dentressangle/Laxey Logistics*,⁵³ 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.⁵⁴
- (52) 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.⁵⁵
- (53) On an all-encompassing market for contract logistics, the Parties' combined market share would be less than [5-10]% in the EEA and worldwide.⁵⁶ The Parties' combined market shares on such a market would not be materially different at the national level; it would not exceed [10-20]% in any EEA member State.

⁵⁰ Parties' response to RFI 1 and 2, paragraphs 149-166.

⁵¹ Case M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraphs 9-16.

⁵² Cases M.10559 – *A P Moeller-Maersk/Senator International*, paragraph 19; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 9; M.1895 – *Ocean Group/Exel (NFC)*, paragraphs 7-11.

⁵³ Cases M.6570 – *UPS/TNT*, paragraph 32 ; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraphs 10-13; M.3971 – *Deutsche Post/Exel*, paragraphs 15-19.

⁵⁴ Cases M.6570 – *UPS/TNT*, paragraph 32; M.3971 – *Deutsche Post/Exel*, paragraph 20.

⁵⁵ Cases M.10559 – *A P Moeller-Maersk/Senator International*, paragraph 23; M.6570 – *UPS/TNT*, paragraph 33; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 15; M.3971 – *Deutsche Post/Exel*, paragraphs 28-29.

⁵⁶ Parties' response to RFI 1 and 2, paragraphs 167-171 and Parties' response to RFI 1 and 2, Table 23.5.

- (54) When looking at potential sub-segmentations of the contract logistics services market (see recital (51)), generally the Transaction would not lead to any affected markets.⁵⁷
- (55) However, at this stage, the Parties have only submitted partial market share data for the contract logistics markets. For instance, they have not provided data for the potential sub-segmentation of the contract logistics product market between domestic and cross-border contract logistics services.
- (56) In view of the lack of comprehensive data, the Commission is not in a position, at this stage, to exclude that the Transaction would *prima facie* pose a threat to competition in relation to contract logistics services.

4.3.2. Vertical links in relation to container liner shipping services

- (57) The Transaction gives rise to a vertical link between the activities of GEFECO in the downstream market for ocean freight forwarding services and CMA CGM's activities in the upstream market for container liner shipping services.
- (58) In previous decisions, the Commission found that the product market for container liner shipping involves the provision of regular, scheduled services for the carriage of cargo by container. This market can be distinguished from non-liner shipping (tramp, specialised transport) because of the 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.⁵⁸
- (59) The Commission has defined a separate product market for short-sea container shipping, distinct from deep-sea container shipping.⁵⁹ Unlike deep-sea container liner shipping, short-sea container liner shipping involves the provision of intracontinental (usually coastal trade) services.⁶⁰
- (60) In previous cases, the Commission also considered that it is not appropriate to assess the effects of the concentration only on the basis of the Parties' individual market shares. Such an approach would not adequately take into account the fact that a member of an alliance/consortium/vessel sharing agreements ('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.⁶¹

⁵⁷ Parties' response to RFI 1 and 2, paragraphs 175-180.

⁵⁸ Cases M.10559 – *A P Moeller-Maersk/Senator International*, paragraph 27; 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.

⁵⁹ Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 50.

⁶⁰ Case M.8330 – *Maersk Line/HSDG*, paragraph 18.

⁶¹ 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.

4.3.2.1. Deep-sea container liner shipping services

- (61) 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 considered separately the plausible narrower markets for deep-sea reefer containers and non-refrigerated (dry) containers only when the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.⁶²
- (62) Whereas, in prior decisions, the Commission had left open whether the geographic scope should comprise trades, defined as the range of ports which are served at both ends of the service (e.g. Northern Europe – North America) or each individual leg of trade (e.g. westbound and eastbound within a given trade), in its most recent practice,⁶³ the Commission concluded that container liner shipping services are geographically defined on the basis of the individual legs of trade (e.g. Northern Europe – North America eastbound and Northern Europe – North America westbound separately). The Commission has also previously identified relevant trades as those from the Mediterranean to other non-European areas and back on the one hand, and Northern Europe and back on the other hand.⁶⁴
- (63) Based on the information provided, CMA CGM's activities in the upstream market for container liner shipping services lead to affected markets with market shares above 30% on at least 9 deep-sea legs of trade, ranging from 30% to [90-100]%.⁶⁵ The Parties also indicated that, in case the upstream market for short-sea container liner shipping services were to be further segmented between reefer and dry container liner shipping services, there would be additional affected deep-sea legs of trade.⁶⁶ In addition, in the context of the decision in Case M.9221 – *CMA CGM/CEVA*, the Commission noted that CMA CGM's activities led to additional affected markets upstream, with market shares up to 70-80%, when considering the aggregated market share of CMA CGM and its alliance/consortia partners.
- (64) As regards the downstream market for ocean freight forwarding, as mentioned in Section 4.3.1.1 above, the Parties' combined market share would be less than [0-5]% in the EEA. At national level, the Parties' combined market shares would be below 20% in each overlapping market, ranging from [0-5]% to [5-10]%.

4.3.2.2. Short-sea container liner shipping services

- (65) In its prior decisional practice related to short-sea container liner shipping services, the Commission concluded, as regards the type of cargo transported, that short-sea container shipping services should be distinguished from non-containerised

⁶² 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.

⁶³ 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.

⁶⁴ 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.

⁶⁵ Parties' response to RFI 3, Table 2-1.

⁶⁶ Parties' response to RFI 5, question 2.

shipping, such as bulk shipping.⁶⁷ Furthermore, the Commission has considered but ultimately left open whether the transport of wheeled cargo⁶⁸ and short-sea container shipping services should be considered as belonging to the same product market.⁶⁹

- (66) The Commission also left open whether there should be a sub-segmentation between reefer (refrigerated) and dry (non-refrigerated) short-sea container shipping services.⁷⁰
- (67) 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;⁷¹ or (ii) single legs of trade.⁷²
- (68) Based on the information provided, CMA CGM's activities in the upstream market for container liner shipping services lead to affected markets with market shares above 30% on at least 14 short-sea legs of trade, ranging from 30% to [70-80]%.⁷³
- (69) As regards a potential relevant product market for Ro-Ro shipping, the Parties submit that CMA CGM operates predominantly between France and North Africa (with also [...] from Spain to Morocco). GEFECO 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 a lesser extent (iii) from Europe to North Africa and Turkey. Based on the information provided by CMA CGM, the Transaction would not lead to any vertically affected markets due to CMA CGM's activities upstream for Ro-Ro shipping. Furthermore, GEFECO's market share in finished vehicle logistics is approximately [10-20]% in the EEA, and [10-20]% in France and [20-30]% in Spain.⁷⁴

4.3.2.3. Conclusion

- (70) At this stage, the Parties have only submitted partial data about CMA CGM's activities in the vertically related market for container liner shipping. For instance, they have not provided aggregated market shares of CMA CGM and its partners in the respective alliances/consortia/VSAs. It cannot be excluded that additional deep-sea and/or short-sea legs of trade would be affected on the basis of such data.
- (71) Furthermore, the Commission notes that in its decision in Case M.10559 – *A P Moeller-Maersk/Senator International*, some respondents to the market investigation referred to the overall increasing challenges for freight forwarders to switch volumes to alternative container liner shipping services providers due the market concentration in the upstream market for container liner shipping services, as well as due to the current market circumstances following the Covid 19 pandemic where

⁶⁷ Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 49.

⁶⁸ Roll on-roll off ('Ro-Ro') shipping corresponds to the transport of wheeled cargo (lorries, cars, etc.) on ships.

⁶⁹ Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 50.

⁷⁰ Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 48.

⁷¹ Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 59.

⁷² Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 60.

⁷³ Parties' response to RFI 3, Table 2-2.

⁷⁴ Parties' response to RFI 1 and 2, paragraphs 93-104.

demand significantly exceeds market supply, with carriers being often fully booked and with tight equipment availability.⁷⁵

- (72) In view of the above and considering the lack of comprehensive data, the Commission is not in a position, at this stage, to exclude that, *prima facie*, the vertical link between the activities of GEFCO in the downstream market for ocean freight forwarding services and CMA CGM's activities in the upstream market for container liner shipping services may give rise to competition concerns.

4.4. Balance of interests

- (73) In this section, the Commission will balance, on the one hand, the negative effects that the suspension of the implementation of the Transaction would have on the undertakings concerned and third parties, and, on the other hand, the threat to competition in the EEA that the Transaction is likely to pose.
- (74) To this end, the Commission notes, on the one hand, that the suspension of the implementation of the Transaction would seriously and negatively affect GEFCO's viability and thus its ability to remain an effective competitor on the markets for freight forwarding and contract logistics services. It would also seriously affect third parties, notably GEFCO's employees, customers and suppliers (see section 5.2 above).
- (75) On the other hand, based on the information currently available and without prejudice to the Commission's fully-fledged assessment of the Transaction, the Commission considers that, *prima facie*, it cannot be excluded that the Transaction may pose a threat to competition (see section 5.3 above).
- (76) Therefore, in balancing the interests at stake, the Commission considers it necessary that a derogation from the suspension obligation regarding the Transaction is made subject to adequate conditions, ensuring that the derogation would not bring about an irreversible change in the competitive structure of the affected markets or result in anti-competitive effects.
- (77) Consequently, the Commission concludes that, as the Transaction raises *prima facie* concerns, a derogation from the suspension obligation as described in section 4 above can only be granted subject to compliance with the conditions set out in section 6 below.

5. CONDITIONS

- (78) According to Article 7(3), fourth sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7(1) thereof may be made subject to conditions and obligations in order to ensure conditions of effective competition.
- (79) In view of the *prima facie* threat to competition posed by the Transaction, and in order to preserve the conditions of effective competition on the markets on which the Parties are active, the Commission considers it necessary that the implementation of the Transaction is made subject to adequate conditions.

⁷⁵ M.10559 – *A P Moeller-Maersk/Senator International*, paragraphs 75-76.

5.1. Conditions offered by CMA CGM

- (80) In the Derogation Request, CMA CGM commits itself to the following conditions (i) it will not exercise any voting rights in GEFCO and it will hold GEFCO separate under the overview of trustee and (ii) it will submit a draft notification form to the Commission within 15 business days from the granting of the Derogation.⁷⁶

5.1.1. Hold separate condition

- (81) CMA CGM committed not to take any action which might impede the implementation of any Commission decision adopted by it after the review of the Transaction under the Merger Regulation. In particular, unless it has obtained the prior consent of the Trustee, in consultation with Commission, CMA CGM will not take any action which might lead to:⁷⁷
- a) The integration of the GEFCO business with the CMA CGM business. In particular, there will be no integration of staff, systems, information technology or operations of GEFCO and CMA CGM, which will remain to be carried out on a standalone basis;
 - b) The transfer of ownership or assignment of any GEFCO assets or contracts to CMA CGM. In particular, all contracts of GEFCO will continue to be serviced by GEFCO (and *vice versa* contracts awarded to CMA CGM will continue to be serviced by CMA CGM);
 - c) The transfer of any GEFCO subsidiaries or businesses to CMA CGM. Also, none of GEFCO assets will be disposed of, except in the ordinary course of business as determined by the management of GEFCO;
 - d) The change of the management team or the corporate legal structure of GEFCO;
 - e) The exchange of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of GEFCO or CMA CGM; and
 - f) Any action that might result in the operation of the GEFCO business being conducted otherwise than separately and independently from CMA CGM business (including brand identity).
- (82) In the Derogation Request, CMA CGM subjects the hold separate condition to the following exceptions:⁷⁸
- a) Provision by CMA CGM to GEFCO of the funding strictly limited to (i) fully or partially pay the purchase price for the RZD Transaction by a GEFCO subsidiary (step 1 of the Transaction) prior to the CMA CGM Transaction, and (ii) operate until completion of the EU merger review with a view to maintain market viability and competitiveness of GEFCO (subject to the review and approval by the Trustee, in consultation with the Commission);
 - b) Access granted to CMA CGM to GEFCO's financial and operational indicators allowing to exercise oversight on GEFCO's financial and

⁷⁶ Derogation Request, Annex 8(1).

⁷⁷ Derogation Request, Annex 8(1), paragraph 4.

⁷⁸ Derogation Request, Annex 8(1), paragraph 5.

operational viability (e.g., KPI/Performance indicators, management accounts, credit terms offered by banks with regards to new credit facilities). Such information access will not allow access to commercially-sensitive information of GEFCO regarding pricing, discussions with clients and suppliers, participation to tenders, or any other information considered as competitively sensitive;

- c) Transfers and transactions of any nature are permitted between GEFCO and CMA CGM as long as they are planned in the ordinary course of business and done on arm's length basis;
 - d) While GEFCO key staff will be encouraged to remain with the company, in case of an existing employment offer or such employment offer being planned in the ordinary course of business by CMA CGM, it may be offered as a preference to GEFCO employees;
 - e) Appointment of GEFCO's supervisory board upon resignation of its existing members. In compliance with the hold separate condition, CMA CGM is willing to accept to submit all decisions to be adopted by GEFCO Supervisory board after the appointment of CMA CGM representatives for prior review and approval by the Trustee, in consultation with Commission.
- (83) CMA CGM is willing to make the application of the Hold separate subject to an overview by a Trustee. In line with a work-plan of the proposed Trustee annexed to the Parties' proposal, the mission assigned to the Trustee, in consultation with the Commission, will in summary consist of:
- a) Monitor the compliance of CMA CGM actions vis-à-vis GEFCO with the hold separate condition;
 - b) Review and validate all decisions to be adopted by GEFCO Supervisory board after the appointment of CMA CGM representatives to ensure compliance with the hold separate.

5.1.2. No exercise of voting rights

- (84) Unless it has obtained the prior consent of the Trustee and in consultation with the Commission, CMA CGM commits not to exercise the voting rights attached to the GEFCO shares it intends to acquire in the context of the Transaction, other than in respect of (i) the approval of the annual accounts of GEFCO, (ii) the update of the articles of association of GEFCO required to remove all references to the existing shareholders of GEFCO (i.e., all references to RZD and Stellantis), and (iii) the appointment of CMA CGM's representatives to GEFCO's Supervisory board.⁷⁹

5.2. Assessment of the conditions proposed by CMA CGM

- (85) The Commission considers that the conditions offered by CMA CGM are adequate and ensure that the conditions of effective competition are preserved.
- (86) First, the hold-separate condition mentioned in Section 6.1.1 above and the non-exercise of voting rights mentioned in Section 6.1.2 above ensure that GEFCO remains commercially autonomous, to the extent possible, such as to preserve its viability.

⁷⁹ Derogation Request, Annex 8(1), paragraph 9.

- (87) In that respect, the exceptions from the non-exercise of voting rights by CMA CGM and the hold-separate obligations referred to in paragraphs (82) and (83) above are limited to the actions and decisions necessary to preserve the viability of GEFCO as a going concern and to maintain its operations to the extent possible until the end of the merger review process.
- (88) The limitations in terms of non-exercise of voting rights and hold-separate obligations also confine the exchange of information between CMA CGM and GEFCO to the minimum necessary and circumscribe the influence of CMA CGM over the acquired business. In addition, the limitations restrain the level of integration of GEFCO into the operations of CMA CGM. Therefore, they contribute to the reversibility of the implementation of the Transaction, should the Commission issue a prohibition decision pursuant to Article 8(3) of the Merger Regulation.

5.3. Conclusion

- (89) In light of the above considerations, the Commission concludes that the conditions proposed by CMA CGM in the Derogation Request are sufficient to ensure the conditions of effective competition until the end of the merger review process.

6. CONCLUSION

- (90) The Commission considers that CMA CGM's request for a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation, as described in section 4 above, meets the requirements set out in Article 7(3) of the Merger Regulation, subject to compliance with the conditions set out in section 6.1 of this decision.
- (91) Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, and subject to compliance with the conditions set out in section 5.1 of this decision, CMA CGM is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation for the measures identified in section 4 of this decision until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

For the Commission

*((Signed))
Margrethe VESTAGER
Executive Vice-President*