



EUROPEAN COMMISSION
DG Competition

Case M.11326 - MSC / GIP III / ITALO

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/02/2024

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EUROPEAN COMMISSION

Brussels, 27.2.2024
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SAS Shipping Agencies Services S.à.r.l.
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**Subject: Case M.11326 – MSC / GIP III / ITALO
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 24 January 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which SAS Shipping Agencies Services S.à.r.l. ('SAS Lux', Luxembourg), a subsidiary of MSC Mediterranean Shipping Company Holding S.A. ('MSC Group', Switzerland) and GIP III Global Investments S.à.r.l. ('GIP III', United States), controlled by Global Infrastructure Management, LLC, acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of Italo – Nuovo Trasporto

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').

Viaggiatori S.p.A. ('Italo', Italy) by way of purchase of shares (the 'Transaction').³ MSC Group and GIP III are designated hereinafter as the 'Notifying Parties'. MSC Group, GIP III and Italo are hereinafter referred to as the 'Parties'.

1. THE PARTIES

- (2) **MSC Group** provides worldwide container liner shipping services and ancillary services combining shipping with rail, river and road transport, as well as container handling, terminal management services and towage services at ports. MSC Group is also active in the oceanic cruise sector through MSC Cruises and in the maritime passenger ferry sector with Grandi Navi Veloci S.p.A. ('GNV') and SNAV S.p.A. ('SNAV'), as well as in the market for tour operators via its subsidiary Going S.r.l. and in the market for travel agencies via the Bluvacanze and Cisalpina brands.
- (3) **GIP III** is a global infrastructure investor in the energy, transportation, digital, water and waste sectors.
- (4) **Italo** is Italy's only privately-owned high-speed passenger rail transport operator. Italo's current train fleet comprises 51 trains, connecting 51 cities throughout Italy. In May 2023, Italo acquired Itabus, which has a fleet of 100 buses in Italy. Italo is not active outside Italy. Italo is currently solely controlled by GIP III.

2. THE OPERATION

- (5) The Transaction concerns the acquisition of joint control by MSC Group and GIP III over Italo, which is currently solely controlled by GIP III.
- (6) Pursuant to a sale and purchase agreement dated 2 October 2023, MSC Group will indirectly acquire shares representing approximately 49.23% of the total voting rights of Italo. The remaining shares and voting rights of Italo will be held by GIP III (34.38%), Allianz Group ([...])% and other minority shareholders ([...])%.
- (7) Pursuant to the shareholders' agreement dated 2 October 2023 (the 'SHA'), each investor group will be in principle entitled to appoint and remove one voting director to the Italo board of directors (the 'Italo Board') per [...])% block of the issued share capital of Italo that it holds. The Parties agreed that initially the Italo Board will include [...] members – apart from the chairman and the CEO, this includes [...] appointed by the MSC Group, [...] appointed by GIP III and [...] appointed by the Allianz group. Each director is to have one vote and resolutions of the Italo Board will be taken by simple majority provided that, if at the relevant time either GIP III and/or MSC Group hold at least [...])% of shares in Italo, such resolution must also have the favourable vote of a majority of the directors appointed by GIP III and/or MSC Group (as applicable) eligible to vote on that resolution.
- (8) Moreover, pursuant to the SHA, MSC Group and GIP III (for so long as they hold at least [...])% of the issued share capital of Italo) will have veto rights on the appointment of senior management, the budget, and the business plan of Italo (the 'Reserved Matters'). Reserved Matters are subject to a deadlock mechanism foreseen in the SHA. However, this deadlock mechanism does not ultimately confer on either of MSC Group or GIP III the power to take a final decision over

³ OJ C, C/2024/1291, 2.2.2024.

these strategic decisions. In particular, in the event of a deadlock, there is a procedure for escalation to the senior representatives of each investor group. If, following such escalation, the deadlock has not been resolved (i) for the budget and business plan, it is foreseen that the previous budget/business plan will continue to apply subject to [...]; and (ii) for the appointment of senior management, the deadlock breaking right shall alternate between each of MSC Group and GIP III [...].

- (9) As for Allianz group, its [...] % shareholding in Italo only entitles it to a veto right with respect to so-called 'Fundamental Reserved Matters' which are matters akin to those normally accorded to minority shareholders in order to protect their financial interests as investors in a joint venture.⁴
- (10) It follows that MSC Group and GIP III will both acquire veto rights in relation to the strategic business behaviour of Italo and will be able to exercise decisive influence over Italo in light of paragraphs 67, 69 and 70 of the Commission's Consolidated Jurisdictional Notice. As a result, pursuant to the Transaction, MSC Group and GIP III will acquire joint control over Italo within the meaning of Article 3(1)(b) of the Merger Regulation.
- (11) In addition, Italo performs and will continue to perform all the functions of an autonomous economic entity and will be full-function within the meaning of Article 3(4) of the Merger Regulation. Italo already operates independently on the market for passenger rail and bus transport services and will continue to do so post-Transaction. Moreover, Italo has its own management team dedicated to its day-to-day operations and access to sufficient resources including finance, staff and assets to conduct its business. Italo has its own access and presence on the market and does not have significant supply or purchase agreements with its parent companies affecting its autonomy. Lastly, Italo is intended to operate on the market on a lasting basis.
- (12) The Transaction will therefore result in a concentration pursuant to Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

- (13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (MSC Group: more than EUR [...] million;⁶ GIP III: EUR [...] million; Italo: EUR [...] million). Each of them has a Union-wide turnover in excess of EUR 250 million (MSC Group: more than EUR [...] million;⁷ GIP III: EUR [...] million; Italo: EUR [...] million), and none of them achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

⁴ Consolidated Jurisdictional Notice, paragraph 66.

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

⁶ [...].

⁷ [...].

4. MARKET DEFINITION

4.1. Passenger high-speed rail services

- (14) In its prior decisions, the Commission has defined a separate market for passenger rail transport services.⁸
- (15) The Commission has in previous decisions relating to international rail passenger transport services⁹ identified the relevant markets as those for point-to-point travel on the routes concerned. This market definition corresponds to the demand-side perspective whereby passengers do not readily substitute destinations. On this basis, every combination of a point of origin and a point of destination ('O&D pair') is considered to be a separate market.
- (16) In a call with Trenitalia (the state-owned Italian high-speed railway operator), Trenitalia stated that they typically assess their position and that of Italo on the basis of specific routes ('O&D') as well as on a national basis (i.e., in Italy as a whole).¹⁰
- (17) In its previous decisions, the Commission has not considered whether a distinction between high-speed and non high-speed passenger rail services needs to be made. The Notifying Parties submit that Italo is only active as an operator of the high-speed rail network in Italy, which is separate from trains on the non-high speed part of the Italian rail network. The Notifying Parties have therefore provided market share data for Italo (and its only competitor Trenitalia) for the high-speed passenger rail market in Italy on an O&D basis.
- (18) For completeness, the Commission has, in previous decisions, also considered whether a potential sub-segmentation on the basis of the passenger category (distinguishing between time-sensitive and non-time sensitive passengers)¹¹ would be relevant but ultimately left the exact market definition open, as the relevance of the distinction appeared to depend to a large extent on the particulars of the markets concerned. The Notifying Parties have not considered this distinction, which does not appear to apply in the present case as Italo is, as noted above, only active as an operator of the high-speed rail passenger network, which is only relevant for time-sensitive passengers.
- (19) 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

⁸ Case M.9603 – SNCF Voyageurs S.A./THI Factory (2022), paragraph 29; Case M.7449 – SNCF MOBILITIES/Eurostar International Limited (2015), paragraphs 16 and 18-20; Case M.7011 – SNCF/SNCB/Thalys JV (2014), paragraphs 31 and 47-61; Case M.6150 – Veolia Transport/Trenitalia/JV (2011), paragraphs 17, 19 and 23-25; Case M.5655 – SNCF/LCR/Eurostar (2010), paragraphs 15, 17-20, 23 and seq.

⁹ Case M.9603 – SNCF Voyageurs S.A./THI Factory (2022), paragraph 29; Case M.7449 – SNCF MOBILITIES/Eurostar International Limited (2015), paragraphs 16 and 18-20; Case M.7011 – SNCF/SNCB/Thalys JV (2014), paragraphs 31 and 47-61; Case M.6150 – Veolia Transport/Trenitalia/JV (2011), paragraphs 17, 19 and 23-25; Case M.5655 – SNCF/LCR/Eurostar (2010), paragraphs 15, 17-20, 23 and seq.

¹⁰ Non-confidential minutes of a call of 14 December 2023 with Trenitalia, paragraph 3.

¹¹ The basis for this distinction is that 'time-sensitive' passengers are ready to pay a relatively high price in exchange for speed and flexibility, as well as higher standards of comfort and other facilities whereas 'non-time-sensitive' passengers are prepared to give up some of this flexibility and accept lower standards of comfort in return for a lower price (see M.6150, paragraph 23; M.9603, paragraph 21; M.7449, paragraph 19).

and geographic market definition can be left open and in particular whether the market should be further segmented by distinguishing between time-sensitive and non-time sensitive passengers.

4.2. Provision of travel agency services

- (20) In its prior decisions, the Commission has defined a separate market for the provision of travel agency services. It has divided this market by type of customers, distinguishing between the provision of business travel services and leisure travel services.¹² In addition, the Commission has also recently considered that online travel intermediation constitutes a separate product market from brick-and-mortar travel agencies.¹³
- (21) As regards the geographic market definition, the Commission has in the past considered (but ultimately left open) that the market for the provision of travel agency services is likely national in scope because of linguistic and cultural borders.¹⁴ More recently, the Commission assessed the effects of a transaction on the market for *online* travel intermediation at the EEA level, because online travel agents are generally active and their services are rather homogenous across the EEA and language and regulatory barriers to expand across Member States had reduced over the years.¹⁵
- (22) The Notifying Parties submit that MSC Group is active in the market for the provision of travel agency services in Italy through its subsidiaries Bluvacanze S.r.l. (in the leisure sub-segment) and Cisalpina Tour S.r.l. (in the business sub-segment). The Notifying Parties have therefore submitted separate market share data for the two sub-segments of the market for the provision of travel agency services in Italy. The Notifying Parties have provided market shares for the market for the provision of travel agency services, for each of business travel services and leisure travel services, focused on brick-and-mortar agencies, since the MSC Group only provides offline travel agency services. The Notifying Parties confirmed that MSC Group's market shares would be lower in a market combining online and offline sales.¹⁶
- (23) 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 and geographic market definition can be left open.

4.3. Provision of tour operator services

- (24) The Commission has identified in its prior decisional practice a distinct market for the supply of travel services by tour operators, further distinguishing between

¹² M.8046 – Tui/Transat France, paras. 95 and ff.); M.6163 – AXA / Permira / Opodo / GO Voyages / eDreams, paras. 18 and ff.

¹³ M.10615 – Booking Holdings / Etraveli Group, paragraphs 123-129.

¹⁴ M.4600 – TUI / First Choice, recital 51; M.4601 – KarstadtQuelle/ MyTravel, recital 38; M.5996 – Thomas Cook/ Travel business of Co-operative Group / Travel business of Midlands Co-operative Society, recital 35.

¹⁵ M.10615 – Booking Holdings / Etraveli Group, paragraphs 173-186.

¹⁶ Notifying Parties' responses to RFI 1 dated 22 February 2024.

leisure and business travel.¹⁷ Regarding geographic market definition, the Commission considered the markets as national in scope.¹⁸

- (25) The Notifying Parties submit that MSC Group is active in the market for the supply of leisure travel services by tour operators through its subsidiary Going S.r.l. which provides personalised package holidays, and have therefore submitted market share data for the market of the supply of leisure travel services by tour operators in Italy.
- (26) 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 and geographic market definition can be left open.

4.4. Provision of passenger ferry services

- (27) MSC Group is active in passenger maritime transport services by ferries in the Mediterranean Sea through GNV and SNAV.
- (28) In previous decisions, the Commission has considered a separate market for the scheduled maritime transport of passengers by ferry. As regards the geographic market definition, the Commission has in the past adopted the O&D approach.¹⁹ The Notifying Parties do not contest this approach.
- (29) Consequently, for the purposes of the analysis of this Transaction, the Commission considered the relevant markets for the provision of scheduled maritime transport of passengers by ferry on the relevant O&Ds.

4.5. Provision of passenger cruises services

- (30) MSC Group is active in the oceanic cruise market through MSC Cruises.
- (31) In its previous decisions, the Commission has considered the market for the supply of oceanic cruises to be distinct from the market for the supply of coastal ferry or riverine cruises, and also separate from the market for the supply of other (land-based) holidays.²⁰
- (32) As regards geographic market definition, the Commission has in its precedents considered the market as national in scope because marketing channels are predominantly country specific.²¹ The Notifying Parties do not contest this approach.
- (33) Consequently, for the purposes of the analysis of this Transaction, the Commission considered the relevant markets for the provision of passenger cruise services on a national basis.

¹⁷ M.8046 – Tui/Transat France, paragraph 11; M.6704 – Rewe Touristik GmbH / Ferid Nasr / Exim Holding SA, paragraph 16; M.5867 – Thomas Cook / Öger Tours, paragraph 10.

¹⁸ M.8046 – Tui/Transat France, paragraph 61 and 65; M.6704 – REWE Touristik GmbH / Ferid NASR / EXIM Holding SA, recital 28; M.5867 – Thomas Cook / Öger Tours, recital 11.

¹⁹ M.4206 – Veolia-BCP/SNCM, para 18; M.6150 – VEOLIA TRANSPORT / TRENITALIA / JV, paragraph 19.

²⁰ Case M.9778 – TUI AG/RCCL/Hapag-Lloyd Cruises, paragraphs 23 et seq; Case M.10082 CPPIB / TPG / THE TORSTEIN HAGEN INTEREST IN POSSESSION SETTLEMENT / VIKING, paragraphs 17-18.

²¹ Case M.9778 – TUI AG/RCCL/Hapag-Lloyd Cruises, paragraph 40; Case M.10082 CPPIB / TPG / THE TORSTEIN HAGEN INTEREST IN POSSESSION SETTLEMENT / VIKING, paragraphs 15-16.

5. COMPETITIVE ASSESSMENT

- (34) Italo is active in the provision of passenger rail services in Italy.²² MSC Group is active in markets which could be considered to be vertically related or closely related to those in which Italo is active. The Transaction results in the following affected markets:
- (a) Vertical links between Italo's upstream activities in high-speed passenger rail services; and MSC Group's downstream activities in the provision of (i) travel agency services and (ii) tour operator services in Italy;
 - (b) Conglomerate effects between (i) Italo's activities in high-speed passenger rail services; and (ii) MSC Group's activities in the maritime transport of passengers via ferry and cruise in Italy.
- (35) The Transaction does not result in any horizontal overlaps as MSC Group and Italo are not engaged in activities in the same product or geographic markets. For completeness, Italo is not active in the rail transportation of cargo and does not plan to engage in such activity,²³ such that any potential non-horizontal link with MSC Group's container shipping activities can be ruled out.

5.1. Vertical effects in relation to travel agency and tour operator services

- (36) The Transaction gives rise to a vertical link between the activities of Italo in the upstream market for passenger high-speed rail services and MSC Group's activities in the downstream markets for (i) travel agency services and (ii) tour operator services in Italy.

5.1.1. *Legal framework*

- (37) According to the Non-Horizontal Merger Guidelines,²⁴ foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.²⁵ Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;²⁶ and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.²⁷
- (38) For input or customer foreclosure concerns to arise 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

²² Italo is also active in commercial long-distance bus transport services and in charter bus services, but Italo has confirmed that its market share (including under a narrower origin & destination approach) would be below the thresholds foreseen in the Notice on Simplified Procedure (see Form CO, Section 7.3, 'upstream' tables for charter bus services and commercial long-distance bus transport services). As a result, any potential vertical link arising out of Italo's activities in (i) commercial long distance bus services, and (ii) charter bus services does not give rise to affected markets. Therefore, these vertical links will not be discussed in this Decision.

²³ Form CO, paragraph 211-212.

²⁴ 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.

²⁵ Non-Horizontal Merger Guidelines, paragraphs 20-29.

²⁶ Non-Horizontal Merger Guidelines, paragraph 31.

²⁷ Non-Horizontal Merger Guidelines, paragraph 58.

competition.²⁸ In practice, these factors are often examined together since they are closely intertwined.

5.1.2. *Assessment of the vertically affected markets*

- (39) The Commission will assess under this Section whether the Transaction could lead to (i) input foreclosure, pursuant to which the Parties would foreclose downstream competitors for travel agency and tour operator services in Italy by restricting , or deteriorating the access, to the passenger high-speed rail services in Italy currently provided by Italo; or (ii) customer foreclosure, pursuant to which the Parties would foreclose upstream competitor Trenitalia by sourcing their demand for passenger high-speed rail services mostly or exclusively from Italo, or by deteriorating the purchase conditions the Parties offer to Trenitalia for such services.

5.1.2.1. Notifying Parties' views

- (40) The Notifying Parties submit that the Transaction does not give rise to any meaningful vertical relationships between MSC Group and Italo and that, as a result, the Merged Entity will have neither the ability or the incentive to foreclose inputs or customers post-Transaction.²⁹

5.1.2.2. Commission assessment

- (41) Italo's market share on the overall Italian market for high-speed passenger rail services amounted to [40-50]% in 2022, and has been around [40-50]% in previous years (2021 and 2020). According to the market shares submitted by the Notifying Parties, Trenitalia would be the market leader in the broad Italian market with a [50-60]% market share in 2022.
- (42) However, market shares provided by the Notifying Parties on an O&D basis indicate that Italo's market share was above 50% in a limited number of O&D pairs in 2022, namely (i) Milan-Naples ([60-70]%), (ii) Bologna-Naples ([50-60]%), (iii) Naples-Turin ([50-60]%) and (iv) Naples-Reggio Emilia ([60-70]%). Italo's market share was [50-60]% in Naples-Rome; and Rome-Verona. In the remaining relevant 15 routes, where Italo is active, its market share was below 50% and Trenitalia is the market leader.³⁰
- (43) At the same time, MSC Group held a modest market share in the provision of travel agency services in Italy in 2022, including under the sub-segmentations for leisure ([0-5]%) and business travel ([5-10]%).³¹ Likewise, MSC Group's market share in 2022 as regards the provision of leisure tour operator services in Italy was *de minimis* at [0-5]%.³²
- (44) For the reasons set out below, the Commission considers that it is unlikely that the Merged Entity would have the ability or incentives to implement any successful input or customer foreclosure strategy post-Transaction.

²⁸ Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

²⁹ Form CO, paragraph 250.

³⁰ The Transaction also results in several vertical links in 15 out of the 20 O&D pairs in the Italian high-speed rail passenger market. However, all of these vertical links do not give rise to affected markets as a result of the application of the Notice on Simplified Procedure. Therefore, these vertical links will not be discussed in this Decision.

³¹ Form CO, Table 1.

³² Form CO, Tale 1.

- (45) Regarding input foreclosure, the Merged Entity would not have the ability to foreclosure downstream rivals as Trenitalia remains an important competitor of Italo in the affected O&D pairs, and the market investigation has not indicated that Trenitalia is a less efficient or less preferred alternative by travel agencies or tour operator to source train tickets from. On the contrary, a travel agency with over 2,500 travel agencies in Italy, has indicated that since 2017 it only works with Trenitalia following Italo's decision to cut supply to its business because it did not provide a sufficient volume of sales of Italo's train tickets.³³ This fact has not prevented the travel agency from remaining the number one travel agency in Italy, as it claims to be.³⁴ In addition, the Merged Entity would not have an incentive post-Transaction to cut supply of Italo's high-speed train tickets to rival travel agents or tour operators. First, MSC Group's travel agency/tour operator companies have a modest market position on the market ([0-5]% market share in the leisure tour operator Italian market, where Alpitour is the market leader with approximately [10-20]%; and [0-5]% and [5-10]% - respectively – in the leisure and business segments of the Italian travel agency markets, where Gattinoni is the market leader in the business segment and Geo/Wellcome is the market leader in the leisure segment with [10-20]%). Second, by refusing access to train tickets to rival travel agency/tour operators, Italo would likely lose sales (currently sales from travel agents/tour operators would account for approx. [10-20]% of Italo's revenues in 2022).³⁵ Therefore, Italo would have little incentive to engage in a foreclosure strategy which would, at most, only benefit one partner to the joint venture, the MSC Group. Consequently, given its limited market share downstream, the Merged Entity would most likely not gain much from an input foreclosure strategy, while it would likely lose substantial sales.
- (46) Regarding customer foreclosure, first, as indicated above, none of MSC Group's companies active in tour operator and travel agency services in Italy can be considered to have market power in the downstream markets, where they hold very modest market shares. Accordingly, the MSC Group companies do not represent significant customers for Italo's rival Trenitalia. Second, if MSC Group's companies were to stop sourcing tickets from Trenitalia, they would likely lose market share downstream because Trenitalia is the leading train operator in Italy, with a greater high-speed rail network and a higher market share on a national basis than Italo. In addition, such a strategy would only benefit Italo, while MSC Group – the other partner of the joint venture – would need to bear the costs arising from this strategy. It follows that the resulting entity would not have the ability or incentive to foreclose access to downstream markets by reducing its purchases from Italo's upstream rival, Trenitalia. Further, there is no past evidence of foreclosure strategies by MSC Group's companies in respect of their travel agency/tour operator services and their activities as regards maritime transport of passengers via ferry and cruise in Italy.
- (47) The market investigation did not raise any specific input or customer foreclosure concerns. In particular, a leading travel agency active in Italy noted that if Italo continued with its current policy not to provide it with access to its passenger high-speed rail services, it would need to continue sourcing from Trenitalia, and that this would enable it to offer sufficient connections to end-customers.³⁶ The travel

³³ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraph 6.

³⁴ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraph 11.

³⁵ Form CO, paragraph 249.

³⁶ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraphs 16 and 17.

agency further noted that MSC Group policy pre-Transaction has been to cooperate with travel agencies (including with the travel agency itself), and there is no indication that this would change post-Transaction.³⁷

- (48) Based on the above considerations and in light of all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to vertical effects in relation to high-speed passenger rail services upstream and travel agency and tour operator services downstream.

5.2. Conglomerate effects in relation to high-speed passenger rail services and maritime transport of passengers via ferry and cruise in Italy

- (49) The Transaction may have a conglomerate dimension, as it involves services that belong to related markets (i.e. passenger high-speed rail services and maritime transport of passengers via ferry and cruise in Italy), that is, products that are purchased by a significant set of customers for a similar use (either together in a bundle or separately). The typical concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the resulting entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling.³⁸
- (50) The Commission assessed the question of whether the Transaction could give rise to conglomerate effects by combining Italo's activities in high-speed passenger rail services with MSC Group's activities in the maritime transport of passengers via (i) ferry; and (ii) cruise in Italy. In particular, the Commission assessed whether the Merged Entity would have the ability and incentive to engage in a tying/bundling strategy by offering combination of train and ferry/cruise tickets and whether such strategy would give rise to anti-competitive effects.

5.2.1. Notifying Parties' view

- (51) The Notifying Parties submit that the Merged Entity would lack the ability and incentive to engage in tying/bundling practices because the markets for oceanic cruises and for passenger maritime transport (ferries), on the one hand, and the markets for passenger high-speed rail services, on the other, are not complementary to each other as these services are most typically purchased separately from one another. The Notifying Parties indicate that high-speed rail tickets are mostly sold separately from cruise and ferry tickets, and that cooperation agreements between high-speed rail and ferry/cruise operators are not the norm. In particular, [...]; and only [...] % of its cruise customers have also purchased train tickets via MSC Group's cooperation agreement with Trenitalia. Italo has no cooperation agreements with oceanic cruise operators, and while it has some cooperation in place with passenger ferry operators like Blu Jet and Travelmar, it only generated EUR 703 in revenues out of such cooperation in 2022.³⁹
- (52) In addition, the Notifying Parties submit that any bundling strategy would have no effect on the passenger high-speed rail market given that there is little interest by customers to purchase a bundle of high-speed and cruise/ferry tickets. In particular, the Notifying Parties estimate that less than [...] % of MSC Group's passenger

³⁷ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraph 18.

³⁸ Non-Horizontal Merger Guidelines, paragraph 93.

³⁹ Form CO, paragraphs 269-276.

ferry/oceanic cruises passengers currently use high-speed train to travel from/to the relevant port in Italy and that this is similar for other ferry operators. Specifically for ferry passengers, the Notifying Parties estimate that around [...] % of MSC Group's ferry passengers do not purchase their ferry tickets in advance or are domiciled in the same region as the ferry port, so the large majority of ferry customers would not be prone to acquire a combined train-ferry ticket. Further, the MSC Group's cruise/ferry rivals could partner up with Trenitalia, the other high-speed railway operator, which would continue to operate on the market and represents a viable and highly competitive alternative as it operates even wider high-speed rail network than Italo.⁴⁰

- (53) Finally, the Notifying Parties submit that if a combined train-ferry/cruise ticket solution were to be offered to customers by the Merged Entity, this would in any case be beneficial to customers interested in such a combination. It would provide those customers with a one-stop-shop experience, thereby allowing them to spend less time in researching, identifying and booking appropriate intermodal transport. This is particularly the case for customers who may not be familiar with the transport market in Italy (i.e. non-Italian tourists).⁴¹

5.2.2. *Commission assessment*

- (54) The Commission's market investigation indicates that it is unlikely that the Transaction would result in anti-competitive conglomerate effects.⁴²
- (55) First, the market investigation has confirmed the Notifying Parties' views regarding the nascent nature of the 'intermodal' business in Italy. In particular, Italo's business plan only identifies as potential synergies arising of the combination of Italo's passenger high-speed train business and MSC Group's ferry and cruise businesses a total of EUR [...] (EUR [...] for ferries and EUR [...] for cruises), which would represent less than [...] % of Italo's current valuation and which are expected to be achieved only by [...]. The same internal document estimates that potential synergies would only amount to EUR [...] in [...].⁴³ Further, respondents to the Commission's market investigation indicated that the intermodal business in Italy is still small. One of the leading travel agencies active in Italy has indicated that there may be some appetite for these combined train and ferry/cruise products, but they do not have a clear view on how many customers would want these products.⁴⁴ The Merged Entity would therefore continue to face competition post-Transaction from Trenitalia should it wish to engage in a tying/bundling strategy.
- (56) Second, neither Trenitalia, nor one of the main ferry operators or one of the leading travel agencies active in Italy consulted during the market investigation have expressed serious conglomerate concerns regarding the Transaction. In particular, the ferry operator indicated that they did not have any concern.⁴⁵ The travel agency

⁴⁰ Form CO, paragraph 265.

⁴¹ Form CO, paragraph 268.

⁴² For completeness, based on the results of the Commission's market investigation, any potential conglomerate effects related to Italo's bus transport services are not further discussed in this Decision due to the limited link between bus transport services and maritime transport services by ferries in Italy, which are not sold together contrary to train and ferry services.

⁴³ Form CO, Confidential Annex 7, slide 30.

⁴⁴ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraph 14.

⁴⁵ Non-confidential e-mail from a ferry operator dated 1 December 2023.

noted that the acquisition of Italo could give an ‘*advantage*’ to MSC Group, but was not in a position to articulate serious concerns.⁴⁶

- (57) Third, regarding potential efficiencies, the Commission agrees with the Notifying Parties’ views that, while the appetite for intermodal tickets appears to be low in Italy for the time being, any customers already interested in these services may find it beneficial to be able to enjoy a one-stop-shop experience, which would result in less time searching and one point of contact for the purchase of tickets covering their whole journey from/to the ferry/cruise port.
- (58) Based on the above considerations and in light of all 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

- (59) 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

⁴⁶ Non-confidential minutes of a call of 12 December 2023 with a travel agency, paragraph 12.