



EUROPEAN COMMISSION
DG Competition

***Case M.11143 - CMA CGM /
BOLLORE LOGISTICS***

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 23/02/2024

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.11143 – CMA CGM / BOLLORE LOGISTICS
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the
Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 5 January 2024, 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’ or ‘Notifying Party’, France) intends to acquire, by way of purchase of shares, sole control of the whole of Bolloré Logistics SE (‘Bolloré Logistics’, France) within the meaning of Article 3(1)(b) of the Merger Regulation (‘Transaction’).³ CMA CGM and Bolloré Logistics are hereinafter jointly designated as the ‘Parties’.

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 OJ C, C/2024/997, 18.01.2024.

1. THE PARTIES

- (2) CMA CGM is the parent company of an international group of companies involved in container liner shipping and port terminal services. CMA CGM also provides (i) sea freight forwarding services and contract logistics services through its wholly owned subsidiary CEVA Logistics S.A. ('CEVA', France), and (ii) air freight transportation services through its wholly owned subsidiary CMA CGM Air Cargo Holding S.A.S. ('CCAC', France). CMA CGM is also active in the press sector in France through the activity of its wholly owned subsidiary La Provence S.A. (France).
- (3) Bolloré Logistics is active in the provision of air, sea, and land freight forwarding and contract logistics services, such as value-added warehousing and distribution solutions. Virtually the entire share capital of Bolloré Logistics is owned by Bolloré SE (France), which solely controls it, with Tamaris Finances S.A.R.L. (France) owning less than [...] % of the shares.

2. THE TRANSACTION

- (4) On 11 July 2023, CMA CGM, on the one part, and Bolloré SE and Tamaris Finances S.A.R.L., on the other part, concluded a Share and Purchase Agreement by which the former will acquire 100% of Bolloré Logistics' share capital. Post-Transaction, the Notifying Party will solely control Bolloré Logistics.
- (5) Therefore, the Transaction qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million (CMA CGM: EUR 73,407 million; Bolloré Logistics: EUR 7,278 million).⁴ Each of them has a Union-wide turnover in excess of EUR 250 million (CMA CGM: EUR [...] million; Bolloré Logistics: EUR [...] million), and they do not achieve more than two-thirds of their Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension under Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Container liner shipping services

- (7) In previous decisions, the Commission defined the product market for the provision of container liner shipping services as 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 use of containers separates these services from other non-containerised transport services, such as the transport of bulk cargo.⁵

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

⁵ Cases M.8594 – *COSCO Shipping/OOIL*, para. 11; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 10; M.7908 – *CMA CGM/NOL*, para. 8; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, para. 16; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, para. 13.

- (8) The market investigation results in this case confirm that there are no reasons to depart from the Commission’s prior decisional practice: respondents active in the market for the provision of container liner shipping services unanimously consider that the distinctions between (i) liner shipping and non-liner shipping, and (ii) container shipping and non-container shipping remain relevant.⁶
- (9) In addition, in its prior decisional practice related to container liner shipping services, the Commission defined a separate product market for the provision of short-sea container liner shipping services, distinct from deep-sea container liner shipping and short-sea non-liner shipping.⁷ Unlike deep-sea, short-sea container liner shipping involves the provision of intra-continental (usually coastal trade) services.⁸
- (10) The Parties disagree with the possible delineation of a market for short-sea container liner shipping services distinct from the market for deep-sea container liner shipping services, noting that such a distinction is not always relevant because deep-sea container vessels can, on some routes, be a viable alternative to short-sea container services.⁹ However, all the container liner shipping companies that participated in the Commission’s market investigation and expressed an opinion confirm that the distinction between deep-sea and short-sea container shipping services remains appropriate.¹⁰

4.1.1. *Deep-sea container liner shipping services*

4.1.1.1. Product market definition

- (11) Deep-sea container liner shipping services involve the offer of regular, scheduled services for the sea transportation of containerised cargo.¹¹
- (12) A possible narrower product market for deep-sea container liner shipping services is that for the transport of only refrigerated (reefer) containers. In previous cases, the Commission has decided to sub-segment the market between the transport of reefer containers and the transport of 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.¹²

⁶ Replies to eRFI ‘Carriers’, Questions B.A.1 and B.A.3.

⁷ E.g., tramp or specialised transport. See cases Cases M.10733 – *CMA CGM/GEFCO*, para. 27; M.8330 – *Maersk Line/HSDG*, para. 19; and M.7523 – *CMA CGM/OPDR*, para. 50.

⁸ Cases M.10733 – *CMA CGM/GEFCO*, para. 27 and M.8330 – *Maersk Line/HSDG*, para. 19.

⁹ Form CO, paras. 355-356.

¹⁰ Replies to eRFI ‘Carriers’, Question B.A.5.

¹¹ Case M.8330 – *Maersk Line/HSDG*, para. 10. Container shipping is distinct from other categories of maritime shipping including bulk shipping (which involves the transportation of unpackaged goods, such as grain, or oil) and roll-on/roll-off shipping (‘Ro-Ro’) (which consists of the transportation of vehicles or trailers, including or excluding their tractor units, that can be driven onto and off the ship). CMA CGM is not active in bulk shipping and has marginal activities in the provision of Ro-Ro services (see Form CO, footnote 39 and footnote 155). The Parties confirmed that CMA CGM’s market share in the provision of Ro-Ro shipping services is marginal and, regardless of the exact market definition retained, does not give rise to affected markets. As such, this activity will not be further discussed in the present decision. See Parties’ reply to Request for Information 25.

¹² Cases M.10733 – *CMA CGM/GEFCO*, para. 29; M. 8594 – *COSCO Shipping/OOIL*, para. 13; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 11; M.7908 – *CMA CGM/NOL*, para. 9; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG*, para. 18; and M.3829 – *Maersk/PONL*, para. 10.

- (13) The Parties disagree with the possible distinction between the provision of reefer and dry container liner shipping services. In the Parties' opinion, the transport of refrigerated goods is part of the overall market for container liner shipping mainly because of the strong supply-side substitutability.¹³ The Parties have nonetheless provided the information necessary to assess the effects of the Transaction based on those two narrower segments.
- (14) The market investigation results show that the vast majority of respondents active in the market for container liner shipping services agree that the sub-segmentation between transport of refrigerated (reefer) goods and the transport of non-refrigerated (dry) goods is still appropriate.¹⁴
- (15) For purposes of the present case, the exact product market definition may be left open, considering that the Transaction, as modified by the commitments offered by the Parties, does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition. The Commission will assess the effects of the Transaction by reference to the narrowest plausible product market delimitation, *i.e.*, the market for the provision of deep-sea container liner shipping services further segmented between transport of refrigerated and non-refrigerated goods, whenever the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.

4.1.1.2. Geographic market definition

- (16) Whereas, in prior decisions,¹⁵ the Commission had left open whether the geographic scope should comprise trades—defined as the ranges of ports which are served at both ends of a service (*e.g.*, from North Europe to North America)—or each individual leg of trade (*e.g.*, each of North Europe to North America, as well as North America to North Europe), in its most recent practice the Commission concluded that the markets for the provision of deep-sea container liner shipping services are geographically defined on the basis of one-way legs of trade.¹⁶ Indeed, the Commission notes that market conditions on the two directions of a trade may be different, notably in case of trade imbalances or different characteristics of the shipped products.
- (17) Moreover, in its prior decisions,¹⁷ the Commission considered that several ports within the same geographic area (*e.g.*, North Europe or North America) are generally substitutable, in view of the existence of inland transport and maritime transshipment (*i.e.*, transport of cargo by feeder vessels from one close port to the destination port) connecting them to each other. As a result, the Commission typically considers various ranges of ports as constituting single ends of a leg of

¹³ Form CO, paras. 355 and 356.

¹⁴ Replies to eRFI 'Carriers', Questions B.A.5 and B.A.7.

¹⁵ M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, para. 29.

¹⁶ Cases M. 8594 – *COSCO Shipping/OOIL*, para. 14; M.8330 – *Maersk Line/HSDG*, para. 15; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, para. 19; M.7908 – *CMA CGM/NOL*, para. 15; M.9221 – *CMA CGM/CEVA*, para. 34; and M.10733 – *CMA CGM/GEFCO*, paras. 32-34.

¹⁷ See for example cases M.3829 - *MAERSK/PONL*, para. 16 and M.831 – *P&O/ROYAL NEDLLOYD*, paras. 36-38.

trade (such as North Europe, Mediterranean, North America, Central America & Caribbean, and Far East Asia).¹⁸

- (18) The Parties do not challenge the Commission's most recent decisional practice.¹⁹
- (19) The Commission's market investigation confirmed that the market for the provision of deep-sea container liner shipping services should be defined on the basis of one-way legs of trade connecting regions of substitutable ports.²⁰
- (20) In relation to which regions constitute single ends of a leg of trade, all respondents active in the market for container liner shipping services indicate that, in general, the below listed ranges of ports constitute single ends of a leg of trade:²¹
- (a) North America;
 - (b) Far East Asia;
 - (c) Australasia & Oceania;
 - (d) East Coast South America;
 - (e) West Coast South America;
 - (f) Central America & Caribbean;
 - (g) Indian Sub-continent;
 - (h) Middle East;
 - (i) West Coast Africa; and
 - (j) East Coast Africa & Indian Ocean Islands.
- (21) There are, however, two possible exceptions. *First*, the responses to the market investigation are mixed on whether it is necessary to differentiate, within Europe, between North Europe and the Mediterranean regions.²² In any case, this question may be left open. For purposes of the present decision, the Commission will conduct its assessment on the basis of the narrowest plausible market segmentation, *i.e.*, distinguishing between the North Europe and Mediterranean regions.
- (22) *Second*, the Commission's market investigation revealed that a refined assessment is necessary for the trades that include the Central America & Caribbean and East Coast Africa & Indian Ocean Islands regions, in view of the specificities of certain French overseas departments and regions ('French overseas territories'), *i.e.*, Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte. There appear to be reasons to consider distinct markets for the provision of deep-sea container liner shipping services in legs of trade from/to each of (i) North Europe and (ii) Mediterranean to/from each of Martinique, Guadeloupe, French Guiana,

¹⁸ See, for example, case M.8330 – *Maersk Line/HSDG*, para. 17.

¹⁹ Form CO, paras. 394-400.

²⁰ Minutes of pre-notification conference call of 3.08.2023, para. 12, and minutes of pre-notification conference call of 19.10.2023, para. 10.

²¹ Replies to eRFI 'Carriers', Question B.B.1.

²² Replies to eRFI 'Carriers', Question B.B.4.

Réunion, and Mayotte, in view of the limited substitutability with other ports located in their respective regions, as described below.²³

General considerations

- (23) *First*, while being part of France, these small territories (both in terms of size and/or population) are isolated from a geographic point of view from mainland France and are—with a single exception (French Guiana)²⁴—insular territories.
- (24) *Second*, they are particularly dependent on imports, which represent approximately 90% of the total trade flows in these territories.²⁵ This import dependence translates into a large trade deficit, with very limited freight exports. In view of their geographic isolation, these territories rely mostly on sea imports.²⁶
- (25) *Third*, these territories are poorly integrated with their neighbouring territories or countries. Despite geographic closeness, the Commission understands that there are limited exchanges between Martinique, Guadeloupe, and French Guiana, on the one hand, and the Central American & Caribbean region, on the other hand.²⁷ The same holds true for Réunion and Mayotte, on the one hand, and the African continent, on the other hand.²⁸ In one opinion issued in 2019,²⁹ the French Competition Authority noted that the consumption patterns and the regulatory constraints resulting from French and European regulations could impede the economic integration of these territories with their neighbouring territories/countries.
- (26) Though geographically isolated from mainland France, these territories have strong commercial links with mainland France. Out of all goods imported, the vast majority is imported from mainland France. As the Parties acknowledge,³⁰ the supplies to Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte originate to a very large extent from mainland France, for historical reasons³¹ and, to a lesser extent, from the rest of Europe. For instance, of all the imports to Martinique, Guadeloupe, and French Guiana, 55% originated from mainland France in 2022.³² A similar proportion of imports into Réunion and Mayotte originated from mainland France in 2022.³³ Out of all goods exported by Bolloré

²³ The market investigation has revealed that similar considerations regarding the lack of substitutability between ports could also apply to New Caledonia and French Polynesia. However, the European Commission does not have jurisdiction to review the effects of the Transaction in these territories. In addition, imports from these territories into the EEA are marginal (*i.e.*, less than 0.01% of the total containers shipped to the EEA).

²⁴ While French Guiana is not an island, it is surrounded by dense forests with limited accessibility by land.

²⁵ Form CO, para. 133.

²⁶ Form CO, para. 133.

²⁷ Form CO, Annex 8.5 and Parties' response to Request for Information 26, Annex 1.

²⁸ Form CO, Annex 8.5 and Parties' response to Request for Information 26, Annex 1.

²⁹ Avis n° 19-A-12 du 4 juillet 2019 concernant le fonctionnement de la concurrence en Outre-Mer, para. 312, available at https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2019-08/19a12.pdf.

³⁰ Form CO, Annex 8.5.

³¹ Form CO, para. 338.

³² Form CO, Annex 8.5, Table 8.

³³ Form CO, Annex 8.5, Table 5.

Logistics to these territories, approximately [...] % originated from mainland France.³⁴

Martinique, Guadeloupe, and French Guiana

- (27) With regard to the range of ports in the Central America & Caribbean region, the market investigation results show that ports in Martinique, Guadeloupe, and French Guiana may not be substitutable with other ports in the Central America & Caribbean region, due to the lack of integration between them and the absence of transshipment solutions connecting each of these three territories' ports with the other ports in the region.
- (28) The ports of Martinique, Guadeloupe, and French Guiana are served by direct services (to a large extent, to/from mainland France).³⁵ There are no carriers delivering—to a material extent and on a regular basis—goods in these territories through transshipment.³⁶ In that respect, two of the largest container liner shipping companies in the world explain that they do not ship products to these three territories, either directly or indirectly:
- (a) Maersk states that it *'provides container liner shipping services to a few Caribbean ports through third-party feeders, i.e., Maersk delivers to a main neighbouring port and then a feeder operated by a third party transports the cargo to the destination. However, Maersk does not offer container liner shipping services to Martinique, Guadeloupe and French Guyana through third-party feeders.'*³⁷
- (b) In 2023, MSC stopped directly shipping goods to these territories. In addition, it explained that in *'the Central America and Caribbean Sea (CAM/CAR) area, MSC operates as a carrier in the sea route connecting European ports to this region, with transshipment either in Dominican Republic or Panama. However, MSC does not currently offer feeder services to small Caribbean Islands countries'*.³⁸ In particular, MSC no longer directly or indirectly ships products to Martinique, Guadeloupe, or French Guiana.
- (29) The Parties also acknowledge that transshipment services are barely used to ship goods to Martinique, Guadeloupe, or French Guiana: the volumes imported to these territories through transshipment are marginal compared to the volumes imported to these same destinations through direct services.³⁹
- (30) The Commission notes that Bolloré Logistics, one of the main freight forwarders active in these territories, has not used any transshipment services to ship goods to these territories in 2022.⁴⁰ Moreover, freight forwarders active in these territories

³⁴ Form CO, para. 133.

³⁵ Exports from these territories are very limited and their destination is largely mainland France and other French overseas territories (Form CO, Annex 8.5).

³⁶ CMA CGM and Marfret offer some intra-regional services but with very limited capacities.

³⁷ Minutes of pre-notification conference call of 11.10.2023, para. 8.

³⁸ Minutes of pre-notification conference call of 19.10.2023, para. 18.

³⁹ Form CO, footnote 100.

⁴⁰ Form CO, para. 226.

confirmed that they mostly use direct services and that transshipment from/to other ports is almost inexistent:⁴¹

- (a) *‘For maritime transport, [...] suggests looking at the ports of destination, emphasising that each port of arrival has its own area of competition since transshipment is almost non-existent. (...) According to [...], the relevant market for maritime transport is the sea route Europe - Antilles/ French Guiana’.*⁴²
 - (b) *‘The commercial routes between France and the French overseas departments and regions are direct, with no transshipment to connect the main islands (such as Martinique, Guadeloupe or French Guiana) but only for the secondary islands with more limited traffic (such as Saint Lucia). From [...]’s point of view, there is no substitutability between the various Caribbean ports. [...] is obliged to operate direct lines, otherwise it is not economically viable’.*⁴³
 - (c) *‘There is no substitutability between ports [in Martinique, Guadeloupe, and French Guiana, on the one hand, and other ports in the Central America & Caribbean region, on the other hand] as feeders are not an option. Timing is crucial because the French overseas territories deal with inventories that last for only a few numbers of days’.*⁴⁴
 - (d) *‘In any case, in sea routes connecting Europe to Martinique and Guadeloupe, [...] rarely offers transshipment services to its clients. According to [...], transshipment is less reliable than a direct service. Besides, it is not uncommon to miss the connection at the intermediate destinations and, consequently, to deliver the cargo with a delay’.*⁴⁵
- (31) One of the largest container liner shipping companies in the world has also noted to the Commission that *‘it is not feasible for a carrier to offer transshipment services to Martinique and Guadeloupe’.*⁴⁶
- (32) As such, the Commission considers that there are strong indications pointing to the existence of separate narrower legs of trade from/to each of Martinique, Guadeloupe, and French Guiana. However, the exact geographic market definition can be left open, considering that the Transaction, as modified by the commitments offered by the Parties, does not raise serious doubts as to its compatibility with the

⁴¹ Minutes of pre-notification conference call of 27.09.2023; minutes of pre-notification conference call of 27.07.2023; and minutes of pre-notification conference call of 18.10.2023.

⁴² Minutes of pre-notification conference call of 18.10.2023, para. 14, translated from French: *‘Pour le transport maritime, [...] propose de regarder les ports de destination en soulignant que chaque port d’arrivée a sa propre zone de concurrence puisque le transbordement est quasi-inexistant. (...) Selon [...], le marché pertinent pour le transport maritime est la ligne commerciale Europe – Antilles/ Guyane’.*

⁴³ Minutes of pre-notification conference call of 27.07.2023, para. 12, translated from French: *‘Les routes commerciales entre la France et les DOM TOM sont directes, il n’y a pas de transbordement pour connecter les îles principales (comme la Martinique, la Guadeloupe ou la Guyane) mais seulement pour les îles secondaires qui ont des trafics plus limités (comme Sainte Lucie). Du point de vue de [...], il n’existe pas de substitutabilité entre les différents ports des Caraïbes. [...] est obligé de faire des lignes directes sinon ce n’est pas viable économiquement’.*

⁴⁴ Minutes of pre-notification conference call of 23.11.2023, para. 18.

⁴⁵ Minutes of pre-notification conference call of 27.09.2023, para. 10.

⁴⁶ Minutes of pre-notification conference call of 11.10.2023, para. 5.

internal market or the functioning of the EEA Agreement under any plausible market definition. The Commission will conduct its assessment under the narrowest plausible geographic market definition, *i.e.*, the separate narrower legs of trade from/to each of North Europe and Mediterranean, on one hand, to/from each of Martinique, Guadeloupe, and French Guiana, on the other hand.

Réunion and Mayotte

- (33) Based on the information submitted by the Parties and the results of the market investigation, the situation might be, to a certain extent, different in legs of trade to/from Réunion and Mayotte, where transshipment services are more significant than in Martinique, Guadeloupe, or French Guiana, due to geographical and economic reasons.
- (34) Réunion is served both by direct and indirect services. While MSC and CMA CGM (under a vessel sharing agreement, ‘VSA’) operate direct and indirect services between Europe and Réunion, Maersk operates only indirect services with transshipment in Oman.⁴⁷
- (35) CMA CGM is present in direct connections on the trade from North Europe to East Coast Africa & Indian Ocean Islands, mainly through the ‘New North Europe Med Oceania’ service (‘NEWMO’), though only through isolated ‘en-route’ port calls (in Réunion and Mauritius). Containers coming from different Mediterranean areas where the vessels do not stop (such as Spain and Greece) are mainly transhipped by CMA CGM in Malta,⁴⁸ which is used as a hub between Europe and the Indian Ocean. CMA CGM also operates various feeders (such as ‘Indian Ocean Feeder 2’ or ‘Indian Ocean Feeder 5’), connecting Réunion and Mayotte to other ports of the area, such as Mauritius, Madagascar, and East Coast Africa, with vessels of more limited capacity.⁴⁹
- (36) MSC serves Réunion through one direct service operated through a VSA with CMA CGM (‘Australia Express’ service) and one direct service without any VSA (‘Indian Ocean Relay Service 3’), which is a regional feeder service on which four vessels of 2,700 TEUs operate.⁵⁰ The Commission understands that MSC has established its hub (to consolidate its flows) on Mauritius (Port Louis), a few hours away and 132 nautical miles away from Réunion.⁵¹
- (37) Maersk also offers weekly shipping services from Europe to Réunion, with transshipment in Oman.⁵²
- (38) Overall, approximately 30% of the goods shipped to Réunion are transhipped.⁵³ The Commission notes that, contrasting with the situation in Martinique, Guadeloupe, and French Guiana, Bolloré Logistics regularly uses Maersk’s

⁴⁷ Replies to eRFI ‘Carriers’, Question A.5

⁴⁸ Form CO, para. 234.

⁴⁹ Form CO, para. 194.

⁵⁰ With ports of call at Port Louis (Mauritius), Toamasina (Madagascar), Colombo (Sri Lanka) and Le Port (Réunion). See Parties’ reply to Request for Information 27, Question 7.

⁵¹ Parties’ reply to Request for Information 27, Question 7.

⁵² Replies to eRFI ‘Carriers’, Question A.5

⁵³ Form CO, para. 231.

services (for no less than [...] % of its volumes to this destination) to transport goods to Réunion, with transshipment in Oman.⁵⁴

- (39) However, most of the respondents to the Commission’s market investigation having expressed an opinion indicate that ports in Réunion are not substitutable with close ports in the region⁵⁵ and that transshipment services are not used to a significant extent.⁵⁶
- (40) Regarding Mayotte, the Commission understands that there are no direct services between Europe and Mayotte and that 100% of the volumes are transported via transshipment.⁵⁷ CMA CGM and MSC are the container liner shipping companies serving Mayotte. For containers from Europe, CMA CGM operates transshipments in Jeddah (Saudi Arabia) and MSC in Port Louis (Mauritius). However, most of the respondents to the Commission’s market investigation having expressed an opinion indicate that ports in Mayotte are not substitutable with close ports in the region⁵⁸ and that transshipment services are not used to a significant extent.⁵⁹
- (41) As described, the results of the Commission’s market investigation are mixed as to the substitutability of Réunion and Mayotte’s ports with the other ports in their region. It is therefore not clear whether it is necessary to identify separate narrower legs of trade from/to each of Réunion and Mayotte. In any case, the exact geographic market definition can be left open, considering that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition. The Commission will conduct its assessment under the narrowest plausible geographic market definition, *i.e.*, the narrower legs of trade from/to each of North Europe and Mediterranean, on one hand, to/from each of Réunion and Mayotte, on the other hand.
- (42) For purposes of the present case, the exact geographic market definition—namely the question whether it is necessary to distinguish separate narrower legs of trade from/to each of Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte may be left open, considering that the Transaction, as modified by the commitments offered by the Parties, does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.
- (43) The Commission will assess the effects of the Transaction by reference to all plausible geographic market delimitations. On the one hand, it will consider one-way legs of trade constituted at each end by ranges of substitutable ports, namely those legs of trade from/to each of North Europe and Mediterranean to/from:
- (a) North America;
 - (b) Far East Asia;
 - (c) Australasia & Oceania;

⁵⁴ Form CO, para. 231.

⁵⁵ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.3.

⁵⁶ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.4.

⁵⁷ Form CO, para. 232.

⁵⁸ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.3.

⁵⁹ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.4.

- (d) East Coast South America;
 - (e) West Coast South America;
 - (f) Central America & Caribbean;
 - (g) Indian Sub-continent;
 - (h) Middle East;
 - (i) West Coast Africa; and
 - (j) East Coast Africa & Indian Ocean Islands.
- (44) On the other hand, for the legs of trade from/to North Europe and Mediterranean to/from Central America & Caribbean and to/from East Coast Africa & Indian Ocean Islands, the Commission will also assess narrower trades that may also constitute plausible market definitions, in light of (i) the limited substitutability between the ports in Martinique, Guadeloupe, and French Guiana, on one hand, and the other ports in the Central America & Caribbean region, on the other hand, and (ii) the possible limited substitutability between the ports in Réunion and Mayotte, on one hand, and the other ports in the East Coast Africa & Indian Ocean Islands region, on the other hand. These narrower segments correspond to legs of trade from/to each of North Europe and Mediterranean to/from (i) each of Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte, as well as (ii) Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana), and (iii) East Coast Africa & Indian Ocean Islands (excluding Réunion and Mayotte).

4.1.2. *Short-sea container liner shipping services*

4.1.2.1. Product market definition

- (45) Short-sea container liner shipping involves the provision of regular, scheduled intra-continental (usually coastal trade) services for the sea transportation of containerised cargo.
- (46) In its previous decisional practice, the Commission concluded, as regards the type of cargo transported, that the market for the provision of short-sea container liner shipping services should be distinguished from non-containerised shipping, such as bulk shipping.⁶⁰ Furthermore, the Commission ultimately left open whether the transport of wheeled cargo, such as cars and lorries,⁶¹ on ships belongs to the market for the provision of short-sea container liner shipping services.⁶² The exact product market delineation may be left open given that CMA CGM is not active in bulk shipping and has marginal activity in the transport of wheeled cargo.⁶³

⁶⁰ Cases M.8330 – *Maersk Line/HSDG*, para. 19 and M.7523 – *CMA CGM/OPDR*, para. 49.

⁶¹ The transport of wheeled cargo, such as lorries and cars, on ships is commonly referred to as roll on-roll off or Ro-Ro shipping.

⁶² Cases M.8330 – *Maersk Line/HSDG*, para. 19 and M.7523 – *CMA CGM/OPDR*, para. 50.

⁶³ Form CO, footnote 39 and footnote 155. The Parties confirmed that CMA CGM's market share in the provision of roll-on/roll-off shipping services is marginal and, regardless of the exact market definition retained, does not give rise to affected markets. As such, this activity will not be further discussed in the present decision. See Parties' reply to Request for Information 25.

- (47) The Commission has also left open whether the provision of short-sea container liner shipping services should be sub-segmented between refrigerated (reefer) and non-refrigerated (dry) container shipping services, whenever the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.⁶⁴
- (48) The Parties do not agree with this possible delineation.⁶⁵ In line with the Commission's prior decisional practice, they have nonetheless provided the Commission with the information necessary to assess the effects of the Transaction under any plausible market definition.
- (49) The market investigation results confirmed that the sub-segmentation between transport of refrigerated and the transport of non-refrigerated goods is appropriate. The vast majority of respondents active in the market for container liner shipping services agreed with this distinction.⁶⁶
- (50) For purposes of the present case, however, the exact product market definition may be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the provision of short-sea container liner shipping services under any plausible product market definition. The Commission will assess the effects of the Transaction by reference to all plausible product market delimitations, *i.e.*, the market for the provision of short-sea container liner shipping services further segmented between transport of refrigerated and non-refrigerated goods, whenever the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade.

4.1.2.2. Geographic market definition

- (51) In its previous 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 (*e.g.*, from Iberia to British Isles and back)⁶⁷ or (ii) single legs of trade (*e.g.*, from Iberia to British Isles).⁶⁸
- (52) The Parties do not contest these possible delineations and have provided the Commission with the information necessary to assess the effects of the Transaction under any plausible market definition.
- (53) The results of the market investigation do not suggest that it is necessary to depart from the Commission's decisional practice.
- (54) For purposes of the present case, the exact geographic market definition may be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the provision of short-sea container liner shipping services under any plausible market definition. The Commission will assess the effects of the

⁶⁴ Cases M.8330 – *Maersk Line/HSDG*, para. 19 and M.7523 – *CMA CGM/OPDR*, para. 48.

⁶⁵ Form CO, para. 355.

⁶⁶ Replies to eRFI 'Carriers', Questions B.A.5 and B.A.7.

⁶⁷ Cases M.8330 – *Maersk Line/HSDG*, para. 20; M.7523 – *CMA CGM/OPDR*, para. 59.

⁶⁸ Cases M.8330 – *Maersk Line/HSDG*, para. 20; M.7523 – *CMA CGM/OPDR*, para. 60.

Transaction by reference to the narrowest plausible geographic market delimitations, *i.e.*, single legs of trade:

(a) North Europe:

- From/to Baltic States (Estonia, Latvia, and Lithuania) to/from British Isles (United-Kingdom and Ireland);
- From/to Baltic States to/from Iberia (Spain, Portugal, and Gibraltar);
- From/to Baltic States to/from Poland; and
- From/to Iberia to/from British Isles.

(b) Mediterranean:

- Intra-Med;
- Intra-East Med; and
- Intra-West Med.

4.2. Freight forwarding services

4.2.1. Product market definition

- (55) In previous decisions, the Commission defined the market for the provision of freight forwarding services 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*’.⁶⁹ Air and sea freight forwarding services include land transportation to/from the port/airport when required by customers. The freight forwarder often does not own the assets (ship, aeroplanes or other) necessary for the transportation (nor does it perform the actual transportation) but typically hires transportation capacity from third parties.
- (56) While ultimately leaving the relevant product market definition open, the Commission has previously considered possible segmentations of the freight forwarding product market, namely (i) between domestic and cross-border freight forwarding, (ii) based on the different modes of transportation (*i.e.*, freight forwarding by air, land (road and rail), and sea),⁷⁰ and (iii) by type of transported goods (*e.g.*, perishable goods, valuables, etc.).⁷¹

⁶⁹ M.10733 – CMA CGM/GEFCO, para. 10; M.10216 – DFDS/HSF Logistics Group, para. 11; M.9319 – DP World/P&O Group, para. 32; M.9221 – CMA CGM/CEVA, para. 10; M.8594 – Cosco Shipping/OOIL, para. 23; M.8330 – Maersk Line/HSDG, para. 38; M.8120 – Hapag-Lloyd/United Arab Shipping Company, para. 26; and M.7268 – CSAV/HGV/Kühne Maritime/Hapag-Lloyd, para. 37.

⁷⁰ M.10733 – CMA CGM/GEFCO, para. 10; M.10216 – DFDS/HSF Logistics Group, para. 12; M.9221 – CMA CGM/CEVA, paras. 11 and 17; M.8564 – COSCO SHIPPING/OOIL, para. 23; M.8330 – Maersk Line/HSDG, para. 38; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paras. 26-27; M.7630 – FEDEX/TNT EXPRESS, paras. 24-25; M.6059 – Norbert Dentressangle/Laxey Logistics, para. 18.

⁷¹ M.10216 – DFDS/HSF Logistics Group, para. 13; M.5579 – TLP/ERMEWA, paras. 43-44 ; M.1794 – Deutsche Post/Air Express International, para. 11.

- (57) The Parties do not consider it necessary to sub-segment the freight forwarding market, noting that (i) most freight forwarders supply domestic and cross-border services and do not specialise in one mode of transport, and (ii) customer demand often requires freight forwarders to combine different modes of transport. They consider, however, that the exact product market definition may be left open.⁷²
- (58) The results of the Commission’s investigation were inconclusive on the need to segment between domestic and cross-border freight forwarding services. While most freight forwarder respondents agree with this segmentation, virtually all respondents admit that, from a supply-side perspective, their companies and most of the freight forwarders active in Europe provide both domestic and cross-border services.⁷³
- (59) Similarly, although most of the freight forwarder respondents seem to agree with a sub-segmentation based on modes of transport, almost all admit that the majority of freight forwarders in Europe are active in all or at least in more than one type of freight forwarding services (air, rail, road, and/or sea).⁷⁴
- (60) Finally, the Commission’s investigation has shown that a segmentation based on types of transported goods is not appropriate, as most freight forwarders do not specialise, offering services regardless of the nature of the transported goods.⁷⁵
- (61) For purposes of the present case, the exact product market definition—namely the questions whether the market should be further segmented by distinguishing between domestic and cross-border freight forwarding and different modes of transport—may be left open, considering that the Transaction, as modified by the commitments offered by the Parties, does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition. The Commission will assess the effects of the Transaction by reference to the narrowest plausible product market definitions: the markets for the provision of each of domestic and cross-border freight forwarding services, segmented between modes of transport (air, rail, road, and sea).

4.2.2. *Geographic market definition*

- (62) In past decisions, the Commission left open whether the geographic scope of the market for the provision of freight forwarding services or subdivisions thereof—including sea freight forwarding services—should be considered national in scope or wider.⁷⁶
- (63) The Parties consider that the freight forwarding services markets are at least EEA-wide because the main freight forwarders are active internationally, either via branches or by marketing their services across borders through a network of agents. Furthermore, many customers manage relationships with freight forwarders on a

⁷² Form CO, paras. 303-304.

⁷³ Replies to eRFI ‘Freight Forwarders’, questions B.A.1, B.A.2, and B.A.3.

⁷⁴ Replies to eRFI ‘Freight Forwarders’, questions B.A.4 and B.A.5.

⁷⁵ Replies to eRFI ‘Freight Forwarders’, question B.A.6.

⁷⁶ M.10733 – *CMA CGM/GEFCO*, para. 13; Case M.9221 – *CMA CGM/CEVA*, paras. 14-16.

regional or global basis, not at national level. For the Parties, however, the exact geographic market definition may be left open.⁷⁷

- (64) The Commission's market investigation was inconclusive on the exact geographic market definition of the freight forwarding markets. On the one hand, most of the respondents consider that the relevant geographic market is wider than national because (i) many customers request international services covering multiple geographies and (ii) of the available technologies and the possibility of setting up networks of agents, which make it easy for freight forwarders to provide services even in territories where they do not have a physical presence.⁷⁸
- (65) On the other hand, the market investigation has yielded results that suggest that the relevant geographic delimitation is not wider than national. When choosing a freight forwarder, customers appear to typically consider those active in the country where they are located (instead of procuring on an EEA-wide or worldwide basis).⁷⁹ In addition, half of the freight forwarder respondents expressing an opinion believe that language and regulatory differences are capable of significantly hindering entry and expansion in different EEA countries.⁸⁰ Finally, the market investigation results indicate that the freight forwarding markets tend to be highly fragmented. There are large and well-established companies who operate in multiple countries and provide their services to customers transporting goods across borders, but also a significant number of smaller freight forwarders that specialise in flows to/from their domestic markets and tend to provide services to customers more focused on the domestic transport of goods.⁸¹
- (66) In light of the mixed market investigation results, the Commission will assess the effects of the Transaction by reference to the narrowest plausible market delimitations, *i.e.*, nation-wide markets. However, narrower market delimitations will be considered for a small number of territories, for the following reasons.
- (67) The Commission's market investigation revealed that there are reasons to consider distinct markets for the provision of sea freight forwarding services in each of the French overseas territories. Namely, the Commission's market investigation shows that Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte present characteristics that may justify the delimitation of narrower infra-national sea freight forwarding markets.⁸²

⁷⁷ Form CO, paras. 312-314.

⁷⁸ Replies to eRFI 'Freight Forwards', Questions B.B.A.1 and B.B.A.2.

⁷⁹ Replies to eRFI 'Freight Forwards', Question B.B.A.3.

⁸⁰ Replies to eRFI 'Freight Forwards', Questions B.B.A.3 and B.B.A.4.

⁸¹ Replies to eRFI 'Freight Forwards', Question B.B.A.2.

⁸² The Commission does not exclude that these results may apply, with the necessary adaptations, to the other French overseas territories. In particular, the Commission's investigation did not focus on whether it is appropriate to define narrower markets in Wallis and Futuna, French Southern and Antarctic Lands, and Saint Barthélemy because Bolloré Logistics is not active in any of these territories (Form CO, footnote 47).

Moreover, the Commission's investigation did not seek to understand whether it is appropriate to define narrower sea freight forwarding geographic markets in each of French Polynesia and New Caledonia because only the competition authorities of French Polynesia and New Caledonia, respectively, are competent to conduct these analyses. In this respect, see the decisions adopted by the competition authorities of French Polynesia (Decision 2024-CC-01 of 31.01.2024) and of New Caledonia (Decision 2023-DCC of 27.12.2023).

- (68) The results of the market investigation point to a number of elements that suggest that, from a supply-side perspective, it is not easy for any freight forwarder to develop a significant activity in these territories.
- (69) *First*, as described in paragraphs (23)-(26), these territories are isolated from a geographic point of view from mainland France and are mostly insular and isolated territories, with a large trade deficit (explained by the fact that imports are much more prominent than exports). Though physically isolated, they have stronger commercial links to mainland France than to their own geographic regions. By way of example, of all the imports to Martinique, Guadeloupe, and French Guiana in 2022, 55% originated from mainland France.⁸³ The same proportion of imports into Réunion and Mayotte in 2022 originated in mainland France.⁸⁴ In addition, out of all goods exported by Bolloré Logistics to these territories, approximately [...] % originate from mainland France.⁸⁵ As imports are much higher than exports, freight forwarders ‘*need to be flexible in order to provide specific services related to the management of empty containers when ships return to mainland France*’.⁸⁶
- (70) *Second*, the French overseas territories have a different structure of supply than the rest of the French territory. The main sea freight forwarders active in the French overseas territories are different from the main sea freight forwarders active in the entire French territory. The main operators in France are large freight forwarders, namely Geodis (France), Seafrigo (France), Kuhne+Nagel* (Germany/Switzerland), Deutsche Post DHL (Germany), and DB Schenker (Germany),⁸⁷ most of which do not feature as top competitors in the French overseas territories. This might be explained by the fact that trades to these territories are not sufficiently large to attract global freight forwarders, but also by the existence of specificities in these territories which favour French-based and locally present freight forwarders. In the French overseas territories, the main operators are French-based freight forwarders historically active there, such as Groupe GBH (Agence Maritime Martin), Bolloré Logistics, SIFA, Léon Vincent, SET CARGO, and Somatrans.⁸⁸ Accordingly, one freight forwarder characterised these territories as ‘*niche trades*’ with ‘*specific dedicated traders*’.⁸⁹
- (71) *Third*, specific know-how on how to handle transport to and from these territories is required on the part of both container liner shipping companies and freight forwarders. One freight forwarder responding to the Commission’s market investigation remarked that to be present in the French overseas territories ‘*require[s] in depth local knowledge in terms of culture and commercial behavior*’, including a local presence and ‘*personnel having specific know how of the market requirements both technically and commercially*’.⁹⁰

⁸³ Form CO, Annex 8.5, Table 8.

⁸⁴ Form CO, Annex 8.5, Table 5.

⁸⁵ Form CO, para. 133.

⁸⁶ Replies to eRFI ‘Freight Forwarders’, Question B.B.B.2.

* Should read: ‘Kuehne+Nagel’.

⁸⁷ Form CO, Table 50 (data for 2022).

⁸⁸ Form CO, Table 35 (data for 2022).

⁸⁹ Replies to eRFI ‘Freight Forwarders’, Question B.B.B.2.

⁹⁰ Replies to eRFI ‘Freight Forwarders’, Questions B.B.B.2 and B.B.B.4.

- (72) Notably, freight forwarders are required to handle and factor in the following specificities:
- (a) A significant part of goods exported to the French overseas territories are fast-moving consumer goods.⁹¹ Timely delivery is therefore crucial, as the inventories only last a few number of days.⁹²
 - (b) Volumes of goods to be dispatched for specific customers to the French overseas territories are often not sufficient to completely fill a container. As such, freight forwarders must have, at origin, the necessary logistics, staff, and expertise to consolidate goods from different clients (*i.e.*, to group together goods dispatched by several different shippers into the same container, for one or several importers) and split them at destination. Multi-customer and personalised consolidation are especially relevant in the context of the transportation of goods to the French overseas territories.⁹³
 - (c) Exporting goods to Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte from mainland France requires specific custom obligations, which are typically handled by freight forwarders.⁹⁴ In particular, the submission of export declarations in mainland France and import declarations at destination are required for most French overseas territories.⁹⁵ These declarations are necessary to compute specific local taxes applicable in these territories.⁹⁶
- (73) Moreover, from a demand-side substitutability perspective, the Commission understands that the French overseas territories have a different structure of demand than the rest of the French territory. Freight forwarders are mostly selected by customers at destination from the available freight forwarders with local presence, offices, and/or warehouses in the relevant territory.⁹⁷
- (74) *Finally*, most of the freight forwarders that participated in the Commission’s market investigation consider that there are reasons to identify separate geographic markets for each of Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte. The two main reasons identified were (i) the geographic and topographic specificities (*i.e.*, insular and isolated territories) and (ii) the specific know-how required (*e.g.*, importance of consolidation activities and balance of trade biased towards imports).⁹⁸
- (75) For purposes of the present case, the exact geographic market definition—namely the questions whether the markets are nation-wide or wider and whether distinct narrower markets should be identified for each of Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte—may be left open, considering that the Transaction, as modified by the commitments offered by the Parties, does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition. The

⁹¹ Form CO, para. 133. Parties’ reply to Request for Information 24, Question 5.

⁹² Minutes of pre-notification conference call of 23.11.2023, para. 18.

⁹³ Form CO, para. 124. Parties’ reply to Request for Information 24, Question 3.

⁹⁴ Form CO, paras. 88 and 126.

⁹⁵ Form CO, paras. 126-127.

⁹⁶ *E.g.*, the ‘*octroi de mer*’ in Martinique, Guadeloupe, French Guiana, Réunion, and Mayotte.

⁹⁷ Form CO, para. 133.

⁹⁸ Replies to eRFI ‘Freight Forwarders’, Questions B.B.B.1-B.B.B.4.

Commission will assess the effects of the Transaction by reference to all plausible geographic markets: the national markets and the possible narrower segmentations of the French market between, on the one hand, Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte, and, on the other hand, mainland France.

4.3. Contract logistics

4.3.1. Product market definition

- (76) In previous decisions,⁹⁹ the Commission has considered that the provision of contract logistics services is the part of the supply chain process that plans, implements, and controls the efficient and 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. The customer can be the supplier (*e.g.*, factory) or the buyer of the goods (*e.g.*, retailer), but the service is essentially the same in both scenarios.
- (77) In previous decisions, the Commission has made clear that contract logistics services concern a distinct service offering from, for instance, express parcel delivery and freight forwarding services, though the clear lines between these transport-related services are not easy to draw. This part of the supply chain has the management of the flow and storage of goods for customers as its focal point, as opposed to bare transportation, freight forwarding, or warehousing services. As such, the Commission has identified contract logistics as a distinct product market.¹⁰⁰
- (78) In previous decisions,¹⁰¹ the Commission considered whether the contract logistics market should be segmented (i) between cross-border and domestic logistics, (ii) by reference to the type of goods handled or the industry serviced, and (iii) between lead logistics providers ('LLPs') and traditional logistics providers ('3PLs'). 3PLs are contract logistics providers who make available the resources to execute some part or function of the supply chain. Typically, 3PLs specialise in executing physical activities linked to handling, storage, and distribution of products. 3PLs do not manage the overall logistics or supply chain functions, but usually run a warehouse for a client (based on its need) close to the final point of consumption (retail onward distribution). Taking logistics one step further in the supply chain, 4PLs/LLPs prolong and supplement the role of 3PLs by organising and overseeing supply chain logistics services for their clients. In the end, however, the Commission left open the precise scope of the relevant product market.
- (79) The Commission has also considered a potential separate market for finished vehicle logistics ('FVL') services, the providers of which can respond to the multiple requirements of car manufacturers all along the car supply chain. The providers have a special know-how, distinct from general contract logistics. Within

⁹⁹ Case M.10733 – *CMA CGM/Gefco*, para. 18. See also cases M.6570 – *UPS/TNT*, para. 32; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paras. 10-13; and M.3971 – *Deutsche Post/Exel*, paras. 15-19.

¹⁰⁰ Cases M.1895 – *Ocean Group/Exel (NFC)*, paras. 7-11; M.9221 – *CMA CGM/CEVA*, para. 18; M.3971 – *Deutsche Post/Exel*, paras. 15-19; and M.9824 – *XPO Logistics/Kuehne + Nagel Drinkflow Logistics Holdings*, paras. 18-19.

¹⁰¹ Case M.10733 – *CMA CGM/Gefco*, para. 18. See also cases M.6570 – *UPS/TNT*, para. 32; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paras. 10-13; M.3971 – *Deutsche Post/Exel*, paras. 15-19.

the FVL segment, the Commission considered various possible segmentations of the market according to type of vehicles and according to the mode of transport (rail, road, sea).¹⁰²

- (80) The Notifying Party considers that contract logistics is a relevant product market which does not need to be further segmented based on the scale of the contract logistics services, the industry or type of goods handled, or the operations' scope.¹⁰³ According to the Notifying Party, contract logistics services are designed to optimise the efficiency of customers' supply chain operations by offering a range of logistic services to customers, the main elements being the provision of warehousing services (including handling and storage) and the management of distribution of goods to the final point of consumption.¹⁰⁴ Traditionally, these functions have been performed by customers in-house, but manufacturers and retailers now outsource some of this activity in order to benefit from specialist expertise. The Notifying Party also submits that, contrary to freight forwarding, contract logistics services are not a brokerage or intermediation activity.¹⁰⁵
- (81) The results of the market investigation do not provide indications that the Commission should deviate from the market delineations considered in previous decisions. In particular, most of the freight forwarders having expressed an opinion consider that the segmentations (i) between cross-border and domestic, (ii) between LLPs and 3PLs, and (iii) by type of goods or industry remain relevant.¹⁰⁶
- (82) For purposes of the present case, the exact product market definition may be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market or with the functioning of the EEA Agreement with respect to the provision of contract logistics services under any plausible market definition. The Commission will assess the effects of the Transaction by reference to the narrowest plausible product market delimitations, *i.e.*, the markets for the provision of contract logistics services segmented based on the (i) type of operations (domestic or cross-border), (ii) type of good handled or industry serviced, and (iii) type of logistics provider (LLPs and 3PLs).¹⁰⁷

4.3.2. *Geographic market definition*

- (83) 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.¹⁰⁸ On a potential FVL segment, the

¹⁰² Case M.10733 – *CMA CGM/Gefco*, para. 19. See also case M.8881 - *Berger/GEFCO/JV*, para. 18.

¹⁰³ Form CO, para. 344.

¹⁰⁴ Parties' reply to Request for Information 30, Question 9.

¹⁰⁵ Form CO, para. 341.

¹⁰⁶ Replies to eRFI 'Freight forwarders', questions D.A.1 and D.A.2.

¹⁰⁷ Bolloré Logistics' only activity regarding FVL is highly specific (handling movements of car prototypes), is linked to one customer only ([...]), and represents a very marginal turnover (EUR [...] million in 2022, achieved only in France). Bolloré Logistics has a market share very close to 0% in each of the possible FVL market segment and respective possible sub-segments, always limited to France. As such, Bolloré Logistics' FVL activity will not be discussed further in this decision. See Form CO, paras. 142 and 484.

¹⁰⁸ Case M.10733 – *CMA CGM/Gefco*, para. 22. See also cases M.9221 – *CMA CGM/CEVA*, para. 22; M.6570 – *UPS/TNT*, para. 33; M.6059 – *Norbert Dentressangle/Laxey Logistics*, para. 15; and M.3971 – *Deutsche Post/Exel*, paras. 28- 29.

Commission considered that such a segment could be either EEA-wide or national in scope, but ultimately left open the exact geographic market definition.¹⁰⁹

- (84) The Notifying Party considers that the geographical dimension of the contract logistics markets (and its potential FVL segment) is at least EEA-wide. A national market definition would be artificial given the internationalisation of the contract logistics market.¹¹⁰
- (85) The majority of the Bolloré Logistics' competitors that expressed an opinion consider that the contract logistics market is either worldwide or EEA-wide.¹¹¹ At the same time, a majority of respondents acknowledges that the majority of their customers source contract logistics services at national or European levels.¹¹²
- (86) For purposes of the present case, the exact geographic market definition may be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market or with the functioning of the EEA Agreement with respect to the provision of contract logistics services under any plausible market definition. The Commission will assess the effects of the Transaction by reference to the narrowest plausible geographic market delimitations, *i.e.*, nation-wide markets.

5. COMPETITIVE ASSESSMENT

5.1. Overview of affected markets

- (87) The Transaction results in merger-specific vertical relationships between:
- (a) Upstream, the markets for the provision of container liner shipping services, where CMA CGM has a share of at least 30% in several short-sea and deep-sea legs of trade constituted at each end by a range of substitutable ports, segmented, whenever the share of reefer containers in relation to all containerised cargo is 10% or more on both legs of a trade, between transport of refrigerated and non-refrigerated goods (listed in **Table 1**); as well as
- Upstream, the markets for the provision of container liner shipping services, where CMA CGM has a share of at least 30% in the deep-sea legs of trade from/to each of North Europe and Mediterranean to/from Martinique, Guadeloupe, French Guiana, Réunion, Mayotte, and Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) (listed in **Table 2**);¹¹³ and
- (b) Downstream, the markets for the provision of cross-border sea freight forwarding services, where Bolloré Logistics and/or CMA CGM (through CEVA) is/are active in several EEA countries (listed in **Table 3**) and in the narrower plausible geographic markets corresponding to each of mainland France, Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte (listed in **Table 4**).

¹⁰⁹ Case M.10733 – *CMA CGM/Gefco*, para. 23. See also case M.8881 - *Berger/GEFCO/JV*, para. 22.

¹¹⁰ Form CO, para. 350.

¹¹¹ Replies to eRFI 'Freight Forwarders', question D.B.1.

¹¹² Replies to eRFI 'Freight Forwarders', questions D.B.2 and D.C.1.

¹¹³ CMA CGM does not have market shares of at least 30% in any of the narrower legs of trade to/from East Coast Africa & Indian Ocean Islands (excluding Réunion and Mayotte).

- (88) In addition, the Transaction results in a possible conglomerate relationship between the upstream markets for the provision of container liner shipping services, where CMA CGM has a share of at least 30% in several short-sea and deep-sea legs of trade (listed in **Table 1** and **Table 2**) and the markets for the provision of contract logistics services (segmented based on the (i) type of operations (domestic or cross-border), (ii) type of good handled or industry serviced, and (iii) type of logistics provider (LLPs and 3PLs), where the Parties are active in several EEA countries.
- (89) Finally, the Transaction results in other horizontal overlaps and non-horizontal relationships. However, none of these give rise to affected markets within the meaning of recital 25(g) of the introduction of Annex I of Regulation (EU) 2023/914.¹¹⁴ Since such relationships typically do not give rise to serious doubts as to their compatibility with the internal market or functioning of the EEA Agreement and there are no indications to the contrary in this case, these relationships will not be further discussed in this decision.

5.2. Vertical relationships

5.2.1. *Legal framework*

- (90) According to the Non-Horizontal Merger Guidelines,¹¹⁵ foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.¹¹⁶ Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered¹¹⁷ and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.¹¹⁸
- (91) 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 on the downstream market (input foreclosure) or on consumers in the downstream market (customer foreclosure).¹¹⁹ In practice, these factors are often examined together since they are closely intertwined.

5.2.2. *Analytical framework*

- (92) Shipping operators provide their services either individually with their own vessels (owned or chartered) or through cooperation agreements with other shipping operators. Cooperation agreements can consist in slot charter agreements, consortia, or alliances.
- (93) Under a slot charter agreement, a shipping company 'rents' a predetermined number of container slots on a vessel to another shipping company in exchange for cash (normal or regular slot charter) or slots on its own vessels (slot-exchange).

¹¹⁴ OJ L 119, 5.5.2023, p. 22.

¹¹⁵ 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

¹¹⁶ Non-Horizontal Merger Guidelines, paras. 20-29.

¹¹⁷ Non-Horizontal Merger Guidelines, paras. 31.

¹¹⁸ Non-Horizontal Merger Guidelines, paras. 58.

¹¹⁹ Non-Horizontal Merger Guidelines, paras. 32 and 59.

Slot charter agreements do not normally involve joint decision-making concerning marketing, ports of call, schedules, or the use of the same port terminals.¹²⁰

- (94) Consortia are operational agreements between shipping companies established for the provision of a joint maritime service on individual trades. The most common consortia agreements are VSAs. 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 contributed. The allocation of container slots is usually predetermined, and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing costs between the participants in a VSA.¹²¹
- (95) Finally, alliances are matrices of vessel sharing agreements that may encompass several types of cooperation agreements between all members of the alliance covering several trades, as opposed to consortia.¹²² Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost-efficient way.
- (96) In prior decisions relating to container liner shipping services, the Commission considered that shipping companies that are members of alliances/consortia jointly agree on the capacity that will be offered by the service, on its schedule, and ports of call.¹²³ 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/consortia 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/VSA in question. Therefore, the competitive assessment should also be based on the aggregated shares of the parties' alliances and consortia.¹²⁴
- (97) Nevertheless, the Commission has also previously considered that, despite alliances/consortia partners' flexibility on certain parameters of competition (e.g., capacity, schedule, and ports of calls) being restricted, there is still some degree of price competition between their members.¹²⁵ All of the container shipping companies that participated in the Commission's market investigation in this case agree that, typically, (i) freight forwarders invite companies belonging to the same alliance/consortium to bid for a contract, (ii) container liner shipping companies bid separately, and (iii) container liner shipping companies compete on price

¹²⁰ Cases M.8594 – *COSCO SHIPPING/OOIL*, para. 27.

¹²¹ Cases M.8594 – *COSCO SHIPPING/OOIL*, paras. 28-29 and M.9221 – *CMA CGM/CEVA*, paras. 60-62.

¹²² For example, Ocean Alliance—to which CMA CGM is a member together with COSCO Group and Evergreen Marine Corporation—is mainly based on a network of reciprocal exchange of maritime slots across different services that are usually operated by one single ocean carrier as vessel operator. Cross-allocation of slots among members is organised solely within the same trade (e.g., North Europe – Far East), with no cross-trade re-allocations. The operational cost of vessel operation is borne individually by the vessel operator. See Form CO, para. 365.

¹²³ Cases M.8594 – *COSCO SHIPPING/OOIL*, paras. 28-29 and M.9221 – *CMA CGM/CEVA*, paras. 60-62.

¹²⁴ Cases M.8594 – *COSCO SHIPPING/OOIL*, paras. 32-33; M.8330 – *Maersk Line/HSDG*, para. 60; M.7523 – *CMA CGM/OPDR*, para. 33; and M.9221 – *CMA CGM/CEVA*, paras. 61-62.

¹²⁵ Case M.7268 – *CSAV/HGV/KUHNE MARITIME/HAPAG-LLOYD AG*, paras. 67-68.

against their partners in alliances/consortia.¹²⁶ In addition, the Parties confirmed that these arrangements do not result in profit sharing of any kind.¹²⁷

(98) Therefore, for purposes of the present case, in line with its prior decisional practice, the Commission will assess the effects of the Transaction by considering the aggregated shares of CMA CGM and of all the members of the alliances/consortia to which CMA CGM is a member, thus reflecting the more limited competitive constraints that CMA CGM's partners exert on them. However, in light of the evidence described in the previous paragraph, the Commission will nonetheless take into consideration the fact that, typically, there is some degree of competition between partners to alliances/consortia. Conversely, the part of the market over which CMA CGM has no influence, *i.e.*, corresponding to carriers that are not members to any of CMA CGM's alliances/consortia (the 'free market'), will be viewed as fully competing with the Parties in the respective trade.

5.2.3. Market shares

(99) CMA CGM's individual share and CMA CGM's and its partners' aggregated market shares are at least 30% in the upstream market for the provision of container liner shipping services in the deep-sea and short-sea legs of trade indicated in **Table 1**.

Table 1 – Market shares in deep- and short-sea container liner shipping services (2022)¹²⁸

Leg of trade	Type	CMA CGM's share (%)	CMA CGM and partners' share (%)	Consortia/alliances
From Central America & Caribbean to Mediterranean	Deep-sea; all containers	[40-50]	N/A	N/A
From Mediterranean to Central America & Caribbean		[40-50]	N/A	N/A
From West Coast Africa to Mediterranean		[30-40]	N/A	N/A
From Far East to North Europe		[10-20]	[40-50]	Alliance with EMC, COSCO, and OOCL
From North Europe to Far East		[10-20]	[40-50]	
From Far East to Mediterranean		[10-20]	[30-40]	
From Mediterranean to Far East		[10-20]	[30-40]	
From Australasia & Oceania to North Europe		[30-40]	[60-70]	VSA with MSC and VSA with Marfret
From North Europe to Australasia & Oceania		[10-20]	[50-60]	
From Indian Sub-Continent to Mediterranean		[10-20]	[30-40]	VSA with Hapag-Lloyd and VSA with COSCO
From Mediterranean to Indian Sub-continent		[10-20]	[30-40]	

¹²⁶ Replies to eRFI 'Carriers', Questions C.A.7-C.A.9.

¹²⁷ Form CO, para. 369.

¹²⁸ Market shares in terms of volume of twenty-foot equivalent unit ('TEU') containers shipped in each leg of trade.

Leg of trade	Type	CMA CGM's share (%)	CMA CGM and partners' share (%)	Consortia/alliances
From North Europe to West Coast Africa		[20-30]	[50-60]	VSA with Hapag-Lloyd and Arkas, VSA with Marguisa, and VSA with Hapag-Lloyd
From West Coast Africa to North Europe		[20-30]	[60-70]	
From North America to North Europe		[10-20]	[30-40]	Alliance with OOCL, VSA with Maersk, and Alliance with EMC and COSCO
From Mediterranean to North America		[5-10]	[30-40]	VSA with Hapag-Lloyd, One Line, OOCL, COSCO, and Yang Ming
From North America to Mediterranean		[5-10]	[30-40]	
From North Europe to West Coast South America		[10-20]	[50-60]	VSA with Hapag-Lloyd and COSCO
From West Coast South America to North Europe		[10-20]	[40-50]	
From East Coast South America to Mediterranean		[10-20]	[30-40]	VSA with Maersk
From Mediterranean to East Coast South America		[10-20]	[30-40]	
From Central America & Caribbean to North Europe		[20-30]	[30-40]	VSA with Marfret
From North Europe to Central America & Caribbean		[20-30]	[30-40]	
From North Europe to West Coast South America		Deep-sea; dry containers only	[10-20]	[50-60]
From West Coast South America to North Europe	[10-20]		[60-70]	
From Central America & Caribbean to North Europe	[40-50]		[40-50]	VSA with Marfret
From North Europe to Central America & Caribbean	[20-30]		[30-40]	
From North Europe to West Coast Africa	[20-30]		[50-60]	VSA with Hapag-Lloyd, VSA with Arkas, and VSA with Marguisa
From West Coast Africa to North Europe	[20-30]		[60-70]	
From Australasia & Oceania to North Europe	[20-30]		[60-70]	VSA with MSC and VSA with Marfret
From North Europe to Australasia & Oceania	[10-20]		[50-60]	
From North Europe to East Coast Africa & Indian Ocean Islands	[20-30]		[50-60]	VSA with MSC
From North Europe to West Coast South America	Deep-sea; reefer containers only		[10-20]	[60-70]
From West Coast South America to North Europe		[10-20]	[30-40]	
From North Europe to West Coast Africa		[20-30]	[50-60]	VSA with Hapag-Lloyd, VSA with Arkas, and VSA with Marguisa
From West Coast Africa to North Europe		[50-60]	[70-80]	
From Australasia & Oceania to North Europe		[40-50]	[50-60]	VSA with MSC; VSA with Marfret
From North Europe to Australasia & Oceania		[10-20]	[40-50]	
From North Europe to East Coast Africa & Indian Ocean Islands		[40-50]	[70-80]	VSA with MSC

Leg of trade	Type	CMA CGM's share (%)	CMA CGM and partners' share (%)	Consortia/alliances
From Baltic States to British Isles	Short-sea; all containers	[30-40]	N/A	N/A
From Baltic States to Iberia		[50-60]	N/A	N/A
From Baltic States to Poland		[50-60]	N/A	N/A
From Iberia to British Isles		[30-40]	N/A	N/A
From Poland to British Isles		[30-40]	N/A	N/A

Source: Form CO, Annexes 8.1-8.2, and Table 80 (mostly based on Container Trade Statistics ('CTS') market data for 2022,¹²⁹ MDS Transmodal market study, and CMA CGM's actual 2022 volumes).

(100) In the narrower markets for the provision of deep-sea container liner shipping services, corresponding to the legs of trades from/to each of North Europe and Mediterranean to/from Martinique, Guadeloupe, French Guiana, Réunion, Mayotte; Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana), and East Coast Africa & Indian Ocean Islands (excluding Réunion and Mayotte), CMA CGM's individual and CMA CGM's and its partners' aggregated market shares are at least 30% in the legs of trade indicated in **Table 2**.¹³⁰

Table 2 – Market shares in container liner shipping services - narrower geographic market delimitations (2022/2023)¹³¹

Leg of trade	Type	CMA CGM's share (%)	CMA CGM and partners' share (%)	Consortia/alliances
From North Europe to Martinique (2023)	Deep-sea; all containers ¹³²	70-90	[90-100]	VSA with Marfret
From Martinique to North Europe (2023)		70-90	100	
From Mediterranean to Martinique (2023)		70-90	N/A	N/A
From Martinique to Mediterranean (2023)		70-90	N/A	N/A
From North Europe to Guadeloupe (2023)		70-90	[90-100]	VSA with Marfret
From Guadeloupe to North Europe (2023)		70-90	100	
From Mediterranean to Guadeloupe (2023)		70-90	N/A	N/A
From Guadeloupe to Mediterranean (2023)		70-90	N/A	N/A
From North Europe to French Guiana (2023)		70-90	100	VSA with Marfret
From French Guiana to North Europe (2023)		70-90	100	

¹²⁹ Shipping companies Marfret, Arkas, and Marguisa do not contribute to the CTS database. Volumes of non-contributing lines are estimated by CTS to calculate total market volumes.

¹³⁰ CMA CGM does not have market shares of at least 30% in any of the narrower legs of trade to/from each of North Europe and Mediterranean from/to East Coast Africa & Indian Ocean Islands (excluding Réunion and Mayotte). In addition, CMA CGM does not have a market share of at least 30% in the narrower leg of trade From Mayotte to Europe.

¹³¹ Market shares in terms of volume of TEUs containers shipped in each leg of trade.

¹³² In the absence of publicly available sources, the Parties are unable to provide market shares for these narrower trades segmented between dry and reefer containers.

Leg of trade	Type	CMA CGM's share (%)	CMA CGM and partners' share (%)	Consortia/alliances
From Mediterranean to French Guiana (2023)		100	N/A	N/A
From French Guiana to Mediterranean (2023)		100	N/A	N/A
From North Europe to Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) (2022)		~[20-30]	[30-40]	VSA with Marfret
From Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) to North Europe (2022)		~[20-30]	~[30-40]	
From Mediterranean to Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) (2022)		[40-50]	N/A	N/A
From Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) to Mediterranean (2022)		[40-50]	N/A	
From Europe to Réunion (2022) ¹³³		[30-40]	[70-80]	VSA with MSC
From Réunion to Europe (2022)		[30-40]	N/A	N/A
From Europe to Mayotte (2022) ¹³⁴		[70-80]	N/A	N/A

Source: Form CO, paras. 578 and 583, Tables 69-71 (based on the Parties' best estimates); Annexes 8.1-8.2 (mostly based on CTS's market data for 2022); Parties' replies to Requests for Information 21, Question 3, and 27, Question 8 (based on Parties' best estimates).

- (101) Bolloré Logistics' individual market shares and, when applicable, the Parties' combined market shares in the downstream market for the provision of cross-border sea freight forwarding services in the EEA countries are indicated in **Table 3**.

Table 3 – Market shares in sea freight forwarding services (2022)¹³⁵

	CMA CGM's share (%)	Bolloré Logistics share (%)	Parties' combined share (%)
Austria	[0-5]	[0-5]	[0-5]
Benelux ¹³⁶	[0-5]	[0-5]	[0-5]
Czech Republic	[0-5]	[0-5]	[0-5]
Denmark	[0-5]	[0-5]	[0-5]
Finland	[0-5]	[0-5]	[0-5]
France	[0-5]	[10-20]	[10-20]
Germany	[0-5]	[0-5]	[0-5]

¹³³ The Parties are unable to provide market shares for legs of trade to/from Réunion from/to each of North Europe and Mediterranean. However, the Parties consider that the market shares in legs of trade to/from each of North Europe and Mediterranean would not significantly differ than the shares in legs of trade to/from Europe (Parties' reply to Request for Information 21, Question 4).

¹³⁴ The Parties are unable to provide market shares for legs of trade to/from Mayotte from/to each of North Europe and Mediterranean. However, the Parties consider that the market shares in legs of trade to/from each of North Europe and Mediterranean would not significantly differ than the shares in legs of trade to/from Europe (Parties' reply to Request for Information 21, Question 4).

¹³⁵ In terms of value of sales.

¹³⁶ Includes sales in Belgium, Luxembourg, and the Netherlands. The Parties are unable to provide market shares split by each Member State.

	CMA CGM's share (%)	Bolloré Logistics share (%)	Parties' combined share (%)
Hungary	[0-5]	[0-5]	[0-5]
Italy	[0-5]	[0-5]	[0-5]
Poland	[0-5]	[0-5]	[0-5]
Portugal	[0-5]	[0-5]	[0-5]
Romania	[0-5]	[0-5]	[0-5]
Spain	[0-5]	[0-5]	[0-5]
Sweden	[0-5]	[0-5]	[0-5]
Norway	[0-5]	[0-5]	[0-5]
EEA	[0-5]	[0-5]	[0-5]

Source: Form CO, Table 82 (based on Transport Intelligence Global Freight Forwarding 2023 report and Parties' internal data).

- (102) Bolloré Logistics' individual market shares and, when applicable, the Parties' combined market shares¹³⁷ in the possible narrower downstream markets for the provision of cross-border sea freight forwarding services in Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, and Mayotte are indicated in **Table 4**. The Notifying Party acknowledges that these market shares, being based on the Parties' best estimates, may not accurately reflect the Parties' actual position in each of these territories. Notably, the Parties recognise that their combined shares might be understated, as the total market volumes may include competitors' intra-group sales.¹³⁸

Table 4 – Market shares in sea freight forwarding services – narrower geographic market delimitations (2022)¹³⁹

	Bolloré Logistics' share (%)	CMA CGM (CEVA)'s share (%)	Parties' combined share (%)
Martinique	[10-20]	[0-5]	[10-20]
Guadeloupe	[20-30]	[0-5]	[20-30]
French Guiana	[10-20]	[0-5]	~[10-20]
Saint Martin	~[10-20]	~[0-5]	~[10-20]
Réunion	[10-20]	[0-5]	~[10-20]
Mayotte	[5-10]	[0-5]	~[5-10]
Mainland France	~[10-20]	~[0-5]	~[10-20]

Source: Form CO, Tables 35, 40 and 48, footnote 200, and para. 152; Parties' reply to Request for Information 21, Question 2 (based on Parties' best estimates); and Parties' reply to Request for Information 24, Question 7 (based on Parties' best estimates).

5.2.4. Input foreclosure

- (103) The Commission will assess in this section whether the Transaction could lead to input foreclosure, pursuant to which CMA CGM would, post-Transaction, foreclose Bolloré Logistics' competitors by restricting access to, increasing the

¹³⁷ CEVA's turnover achieved in the French overseas territories in 2023 represents less than [...] % of its total air and sea freight forwarding turnover achieved in France. Moreover, in these territories, nearly all customers to which CEVA renders freight forwarding services are invoiced by CEVA's agents in the territories. See Form CO, paras. 152-154 and Parties' reply to Request for Information 24, Question 6.

¹³⁸ Parties' reply to Request for Information 17, Question 4.

¹³⁹ In terms of value of sales.

price of, or deteriorating the quality of the container liner shipping services that it provides to Bolloré Logistics' competitors in the relevant geographic markets.

5.2.4.1. Deep-sea and short-sea legs of trade between regions of substitutable ports

5.2.4.1.1. Notifying Party's views

(104) The Notifying Party argues that input foreclosure concerns are implausible for the following reasons:

- (a) CMA CGM does not have significant market power. Its market shares only exceed 30% in a minority of legs of trade and, in all trades, there are several competitors. As switching costs are insignificant, there are no long-term exclusive contracts, and freight forwarders already multisource from several shipping companies, freight forwarders would not have difficulty switching to other shipping companies in response to a hypothetical input foreclosure strategy. The markets are characterised by large overcapacities, so CMA CGM's competitors could increase supply to meet the demand of the affected competitors of Bolloré Logistics.¹⁴⁰
- (b) CMA CGM would not have the incentive to input foreclose. It would not be able to recoup the losses incurred upstream with profits on the downstream markets because Bolloré Logistics has a small presence in the downstream markets. Its total demand for container liner shipping services represents only approximately [...] % of CMA CGM's worldwide container liner shipping activities in 2022. In addition, by engaging in an input foreclosure strategy, CMA CGM would jeopardise its commercial relationships with third-party sea freight forwarders, which represent its primary revenue source (Bolloré Logistics and CEVA's competitors represented more than [...] % of CMA CGM's revenues achieved with the provision of container liner shipping services worldwide in 2022).¹⁴¹
- (c) Even if the merged entity would have the ability and incentive to attempt an input foreclosure strategy, this would have no significant effect in the relevant downstream markets because other carriers would immediately start providing container liner shipping services to the affected sea freight forwarders. Therefore, enough credible competitors would remain in the downstream markets.¹⁴²

5.2.4.1.2. Commission's assessment

5.2.4.1.2.1. Ability to foreclose

5.2.4.1.2.1.1. Deep-sea legs of trades

(105) Input foreclosure may raise competition problems if it concerns an important input for the downstream product.¹⁴³ The provision of container liner shipping services is a critical component without which intermediaries such as freight forwarders cannot provide their services. Moreover, the transport of goods is the main cost

¹⁴⁰ Form CO, paras. 656-670.

¹⁴¹ Form CO, paras. 671-676.

¹⁴² Form CO, paras. 677-680.

¹⁴³ Non-Horizontal Merger Guidelines, para. 34.

factor of sea freight forwarding services provided in the downstream markets (representing at least more than [...] % of the overall gross revenue of each of Bolloré Logistics and CEVA).¹⁴⁴

- (106) In addition, for input foreclosure to be a concern, the vertically integrated firm resulting from the concentration must have a significant degree of power in the upstream market and thus, possibly, on prices and supply conditions in the downstream markets.¹⁴⁵ It seems unlikely, however, that CMA CGM has a significant degree of market power in the deep-sea legs of trade listed in **Table 1**, for the following reasons.
- (107) *First*, in most of the deep-sea legs of trade where it is active, CMA CGM, along with its partners in alliances/consortia (when applicable), hold market shares of less than 50% (see **Table 1**). The free market, composed of independent companies that fully compete with CMA CGM, represents at least 50% of the total market. In response to a hypothetical input foreclosure strategy, freight forwarders would have available alternative carriers to which they could switch at least part of their demand. As further explained below, freight forwarders do not incur high switching costs when switching between different container liner shipping companies. Moreover, none of the respondents to the Commission's investigation provided evidence showing that CMA CGM may have significant market power in these legs of trade.¹⁴⁶
- (108) Only in a minority of the deep-sea legs of trade listed in **Table 1** does CMA CGM, along with its partners in alliances/consortia (when applicable), hold market shares of at least 50% in 2022. Nevertheless, in these legs of trade, CMA CGM's individual share remains below 50%, facing competition from independent and well-established carriers, smaller independent container liner shipping providers, and, as the case may be, from its alliance/consortia partner(s).¹⁴⁷
- (a) From Australasia & Oceania to North Europe. CMA CGM's individual share is [30-40]%, while CMA CGM's partners' aggregated share is [20-30]% in 2022. Several independent competitors are active in the market, including Maersk ([10-20]%), Hapag-Lloyd ([5-10]%), and COSCO ([5-10]%).
 - (b) From North Europe to Australasia & Oceania. CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [30-40]% in 2022. Several independent competitors are active in the market, including Maersk ([10-20]%), Hapag-Lloyd ([10-20]%), and OOCL ([5-10]%).
 - (c) From North Europe to West Coast Africa. CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [20-30]% in 2022. Several independent competitors are active in the market, including MSC ([20-30]%), Maersk ([10-20]%), and One Line ([0-5]%).
 - (d) From West Coast Africa to North Europe. CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [40-50]% in

¹⁴⁴ Form CO, Table 51. Similarly, one freight forwarder participating in the Commission's investigation confirmed that the tariffs charged by container liner shipping companies account for 70-80% of its total costs (see minutes of pre-notification conference call of 27.07.2023, para. 16).

¹⁴⁵ Non-Horizontal Merger Guidelines, para. 35.

¹⁴⁶ Replies to eRFI 'Freight Forwarders', Questions B.C.17-B.C.18.

¹⁴⁷ Form CO, Annexes 8.1 and 8.2 (based on CTS's market data for 2022).

2022. Several independent competitors are active in the market, including MSC ([10-20]%), Maersk ([10-20]%), and One Line ([0-5]%).

- (e) From North Europe to West Coast South America. CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [40-50]% in 2022. Several independent competitors are active in the market, including MSC ([10-20]%) and Maersk/Hamburg Süd ([20-30]%).
- (f) From North Europe to West Coast South America (dry containers segment). CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [40-50]% in 2022. Several independent competitors are active in the market, including Maersk/Hamburg Süd ([20-30]%) and MSC ([10-20]%).
- (g) From West Coast South America to North Europe (dry containers segment). CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [40-50]% in 2022. Several independent competitors are active in the market, including MSC ([10-20]%) and Maersk/Hamburg Süd ([10-20]%).
- (h) From North Europe to West Coast Africa (dry containers segment). CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [20-30]% in 2022. Several independent competitors are active in the market, including MSC ([20-30]%), Maersk ([10-20]%), and One Line ([0-5]%).
- (i) From West Coast Africa to North Europe (dry containers segment). CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [40-50]% in 2022. Several independent competitors are active in the market, including MSC ([10-20]%), Maersk ([10-20]%), and One Line ([0-5]%).
- (j) From Australasia & Oceania to North Europe (dry containers segment). CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [30-40]% in 2022. Independent competitors are active in the market, including Hapag-Lloyd ([10-20]%), Maersk ([10-20]%), and COSCO ([5-10]%).
- (k) From North Europe to Australasia & Oceania (dry containers segment). CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [30-40]% in 2022. Several independent competitors are active in the market, including Maersk ([10-20]%), Hapag-Lloyd ([10-20]%), and OOCL ([5-10]%).
- (l) From North Europe to East Coast Africa & Indian Ocean Islands (dry containers segment). CMA CGM's individual share is [20-30]%, while MSC, CMA CGM's partner, has a market share of [20-30]% in 2022. Several independent competitors are active in the market, including Maersk ([40-50]%), Hapag-Lloyd ([0-5]%), and DAL ([0-5]%).
- (m) From North Europe to West Coast South America (reefer containers segment). CMA CGM's individual share is [10-20]%, while CMA CGM's partners' aggregated share is [40-50]% in 2022. Several independent

competitors are active in the market, including MSC ([20-30]%) and Maersk/Hamburg Süd ([10-20]%).

- (n) From North Europe to West Coast Africa (reefer containers segment). CMA CGM's individual share is [20-30]%, while CMA CGM's partners' aggregated share is [20-30]% in 2022. Several independent competitors are active in the market, including MSC ([20-30]%), Maersk ([20-30]%), and One Line ([0-5]%).
 - (o) From West Coast Africa to North Europe (reefer containers segment). CMA CGM's individual share is [50-60]%, while CMA CGM's partners' aggregated share is [20-30]% in 2022. Several independent competitors are active in the market, including MSC ([10-20]%), Maersk ([5-10]%), and One Line ([0-5]%).
 - (p) From Australasia & Oceania to North Europe (reefer containers segment). CMA CGM's individual share is [40-50]%, while CMA CGM's partners' aggregated share is [10-20]% in 2022. Several independent competitors are active in the market, including Maersk/Hamburg Süd ([30-40]%) and One Line ([0-5]%).
 - (q) From North Europe to East Coast Africa & Indian Ocean Islands (reefer containers segment). CMA CGM's individual share is [40-50]%, while MSC, CMA CGM's partner, has a market share of [30-40]% in 2022. Several independent competitors are active in the market, including Maersk ([20-30]%), Hapag-Lloyd ([0-5]%), and DAL ([0-5]%).
- (109) These competitors are alternative container shipping companies to whom third-party freight forwarders—if affected by a hypothetical input foreclosure strategy—could in principle switch to. Most freight forwarders that participated in the Commission's investigation and expressed an opinion consider that there will remain, in each of these legs of trade, a sufficient number of container liner shipping companies preventing the merged entity from stopping the supply, raising prices, or deteriorating service quality to Bollore Logistics' competitors.¹⁴⁸ Similarly, one carrier that participated in the Commission's market investigation confirmed that *'if CMA CGM started to sell its container liner shipping exclusively to Bollore Logistics post-transaction in specific trade routes, freight forwarders downstream could easily switch to alternative suppliers'*.¹⁴⁹
- (110) *Second*, the Commission's investigation in this case, like the market investigations in previous cases,¹⁵⁰ confirmed that freight forwarders are not locked-in because they do not face significant switching costs when switching carriers. Most freight forwarders that responded to the market investigation consider that it is either easy or very easy for a freight forwarder to switch from one container liner shipping company to another in a given leg of trade.¹⁵¹ Similarly, the majority of respondents highlighted that, typically, contracts between freight forwarders and

¹⁴⁸ Replies to eRFI 'Freight Forwarders', question B.C.17.

¹⁴⁹ Minutes of pre-notification conference call of 03.08.2023, para. 25.

¹⁵⁰ E.g., Cases M.10733 - CMA CGM/GEFCO, paras. 76-77 and M.9221 - CMA CGM/CEVA, para. 72.

¹⁵¹ Replies to eRFI 'Freight Forwarders', question B.C.5. Container liner shipping companies replied in a similar vein (see Replies to eRFI 'Carriers', question C.B.1).

- container liner shipping companies do not contain clauses that may restrict the ability to switch, such as exclusivity clauses or switching penalties.¹⁵²
- (111) More than two thirds of the of the surveyed freight forwarders explained that they switch either regularly or occasionally.¹⁵³ Freight forwarders ‘*do not tend to show any brand loyalty to certain container liner shipping companies*’.¹⁵⁴ Out of twenty one freight forwarders expressing an opinion in response to the market investigation, only two revealed that they never switch and that they show brand loyalty to container liner shipping companies.
- (112) Most freight forwarders seem to already multisource their needs in container liner shipping services from different sea carriers, including on single legs of trade. This has been largely confirmed by the results of the market investigation¹⁵⁵ and is likely to facilitate a timely switch of at least part of their demand to available alternative carriers.
- (113) *Third*, the Commission notes that the mere threat of switching allows freight forwarders to negotiate prices. Most freight forwarders that expressed an opinion admit that they are typically able to negotiate prices with container liner shipping carriers by, for instance, threatening to switch to alternative carriers.¹⁵⁶
- (114) *Fourth*, the Commission’s file does not contain elements showing that there are high barriers to entry, high barriers to expansion, or capacity constraints in these legs of trade. This is consistent with the Commission’s prior decisional practice showing that barriers to entry and expansion are generally low in this sector,¹⁵⁷ especially on large legs of trade.
- (115) In this respect, the Parties explained that, overall, there is excess capacity in the container liner shipping sector.¹⁵⁸ In line with global demand forecasts, shipowners invested in new vessels before the COVID-19 pandemic. From 2021 onwards, container liner shipping companies faced a significant and unexpected demand shock that led them to strongly invest in additional capacity. However, the output growth did not meet the capacity growth (in 2022, the capacity growth reached 4.1%, while output growth was only 0.1%).¹⁵⁹ In 2023 and 2024, the capacity growth is expected to be 7% and 6.6% higher than output growth, respectively.¹⁶⁰ As the rest of the sector, CMA CGM confirmed that it has excess capacity.¹⁶¹ As such, container liner shipping companies are, in principle, able to expand supply to meet diverging demand from freight forwarders affected by a hypothetical input foreclosure strategy.
- (116) *Finally*, any foreclosure attempts by CMA CGM would only benefit its subsidiary Bolloré Logistics, but not its VSAs/alliance partners (in the legs of trade where it is

¹⁵² Replies to eRFI ‘Freight Forwarders’, question B.C.13 and Replies to eRFI ‘Carriers’, question C.B.4.

¹⁵³ Replies to eRFI ‘Freight Forwarders’, question B.C.12.

¹⁵⁴ Minutes of pre-notification conference call of 03.08.2023, para. 23.

¹⁵⁵ Replies to eRFI ‘Freight Forwarders’, question B.C.1.

¹⁵⁶ Replies to eRFI ‘Freight Forwarders’, question B.C.8. See also, *e.g.*, minutes of pre-notification conference call of 3.08.2023, para. 24.

¹⁵⁷ See, *e.g.*, Cases M.9221 – *CMA CGM/CEVA*, para. 81 and M.8330 – *Maersk Line/HSDG*, para. 142.

¹⁵⁸ Form CO, paras. 661 and following.

¹⁵⁹ Form CO, paras. 661 and following (based on the data included in Alphaliner reports).

¹⁶⁰ Form CO, paras. 661 and following (based on the data included in Alphaliner reports).

¹⁶¹ Parties’ response to Request for Information 30, Question 1.

part of VSAs/alliances). As described in Section 5.2.2, despite the fact that alliances/consortia partners' flexibility on certain parameters of competition (e.g., capacity, schedule, and ports of calls) being restricted, there is still some degree of price competition between their members. As such, CMA CGM's partners would in principle have no reason to follow such strategy.

- (117) Considering the above, the Commission concludes that CMA CGM would likely not have the ability to implement any successful input foreclosure strategy post-Transaction in any of the deep-sea legs of trade listed in **Table 1**.

5.2.4.1.2.1.2. Short-sea legs of trade

- (118) As described in Section 5.2.4.1.2.1.1, the provision of container liner shipping services, including in short-sea legs of trade, is an important input for freight forwarders. However, it seems unlikely that CMA CGM has a significant degree of market power in the short-sea legs of trade listed in **Table 1**, for the following reasons.

- (119) In most of the short-sea legs of trade where it is active, CMA CGM holds market shares of less than 40% (see **Table 1**). CMA CGM does not appear to have a significant degree of market power in these legs of trade. At least 60% of these markets are composed of independent companies that compete with CMA CGM. In response to a hypothetical input foreclosure strategy, freight forwarders would have available alternative carriers to which they could switch at least part of their demand. As further explained below, freight forwarders do not incur high switching costs when switching between different container liner shipping companies. None of the respondents to the Commission's investigation provided evidence showing that CMA CGM may have significant market power in these legs of trade.¹⁶²

- (120) Only in two short-sea legs of trade does CMA CGM hold market shares of at least 50% in 2022:¹⁶³

(a) From the Baltic States to Iberia ([50-60]%). In this leg of trade, CMA CGM faces competition from independent rivals Samskip and Viasea.¹⁶⁴

(b) From the Baltic States to Poland ([50-60]%). In this leg of trade, CMA CGM faces competition from independent rivals Finnlines, Hapag-Lloyd, Unifeeder, X-Press Feeders Group, Samskip, COSCO, and Sealand.¹⁶⁵

- (121) These competitors are alternative container shipping companies to whom third-party freight forwarders—if affected by a hypothetical input foreclosure theory—could in principle switch to. Most freight forwarders that participated in the Commission's investigation and expressed an opinion consider that there will remain, in each of these legs of trade, a sufficient number of container liner

¹⁶² Replies to eRFI 'Freight Forwarders', Questions B.C.17-B.C.18.

¹⁶³ Form CO, Table 80.

¹⁶⁴ Form CO, para. 602. The Parties are unable to provide market share information for other competitors.

¹⁶⁵ Form CO, para. 602. CMA CGM is unable to provide market share data for its competitors.

shipping companies preventing the merged entity from stopping the supply, raising prices, or deteriorating service quality to Bolloré Logistics' competitors.¹⁶⁶

- (122) As described in Section 5.2.4.1.2.1.1, the Commission's investigation revealed that freight forwarders are not locked-in: it is easy for them to switch and they indeed switch at least occasionally or regularly, given that, typically, contracts with carriers do not contain exclusivity clauses or switching penalties.
- (123) Moreover, most of the surveyed freight forwarders seem to already multisource their needs in container liner shipping services from different sea carriers for the same short-sea leg of trade,¹⁶⁷ which is likely to facilitate a timely switch of at least part of their demand to available alternative carriers.
- (124) The results of the market investigation also show that the threat of switching is used by freight forwarders when trying to negotiate prices of container liner shipping services in short-sea legs of trade: most freight forwarders that expressed an opinion admit that they are typically able to negotiate prices with container liner shipping companies by, for instance, threatening to switch to alternative carriers.¹⁶⁸
- (125) The Commission's file does not contain elements showing that there are high barriers to entry, high barriers to expansion, or capacity constraints in the short-sea legs of trade. This is consistent with the Commission's prior decisional practice showing that barriers to entry and expansion are generally low in this sector¹⁶⁹ and the evidence that the Parties adduced showing that, overall, there is excess capacity in the container liner shipping sector.¹⁷⁰ Consequently, container liner shipping companies would, in principle, be able to expand capacity to meet diverging demand from freight forwarders affected by a hypothetical input foreclosure strategy in short-sea legs of trade.
- (126) Considering the above, the Commission concludes that CMA CGM would likely not have the ability to implement any successful input foreclosure strategy post-Transaction in any of the short-sea legs of trade listed in **Table 1**.

5.2.4.1.2.2. Incentive to foreclose

- (127) 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.¹⁷¹
- (128) Even if the merged entity were to be considered to have the ability to engage in total or partial input foreclosure, it would likely not have the incentive to do so

¹⁶⁶ Replies to eRFI 'Freight Forwarders', question B.C.17.

¹⁶⁷ Replies to eRFI 'Freight Forwarders', question B.C.3.

¹⁶⁸ Replies to eRFI 'Freight Forwarders', question B.C.10.

¹⁶⁹ See, e.g., M.9016 – *CMA CGM/Container Finance*, paras. 95-99.

¹⁷⁰ Form CO, paras. 661 and following.

¹⁷¹ Non-Horizontal Merger Guidelines, para. 40.

because such strategy would be unprofitable in the legs of trade listed in **Table 1**, for the reasons mentioned below.

- (129) In 2022, Bolloré Logistics' global demand for container liner shipping services accounted for less than [...] % of CMA CGM's container liner shipping activities worldwide ([...] million TEUs). In the EEA, Bolloré Logistics' 2022 demand accounted for [...] % of CMA CGM's container liner shipping activities in the EEA ([...] million TEUs).¹⁷²
- (130) If a distinction between deep-sea and short-sea activities is made, in 2022, Bolloré Logistics' demand represented only approximately (i) [...] % and [...] % of CMA CGM's worldwide deep-sea and short-sea container liner shipping activities, respectively, and (ii) less than [...] % and less than [...] % of CMA CGM's EEA-wide deep-sea and short-sea container liner shipping activities, respectively.¹⁷³
- (131) As a result, even if Bolloré Logistics would move all of its freight forwarding volumes to CMA CGM on EEA-related legs of trade, volumes booked by Bolloré Logistics would represent less than [...] % of CMA CGM's container liner shipping activities with freight forwarders in each leg of trade.¹⁷⁴
- (132) In view of Bolloré Logistics' small demand for container liner shipping services, by engaging in an input foreclosure strategy (whether total or partial) which would only benefit Bolloré Logistics' sea freight forwarding activities, the merged entity would face the risk of jeopardising its commercial relationship with third-party freight forwarders downstream, its primary source of activities and revenue (approximately [...] % of CMA CGM's container liner shipping revenues are achieved with freight forwarders).¹⁷⁵ Moreover, sea freight forwarders other than CEVA (CMA CGM's subsidiary also active in sea freight forwarding) and Bolloré Logistics represent more than [...] % of CMA CGM's revenues in container liner shipping achieved with freight forwarder clients in 2022.¹⁷⁶ Likewise, more than [...] % of CMA CGM's revenue achieved in 2022 with container liner shipping services in the EEA achieved with sea freight forwarders was generated with sea freight forwarders other than CEVA and Bolloré Logistics.¹⁷⁷
- (133) 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 CEVA and Bolloré Logistics' activities in sea freight forwarding would not compensate the losses incurred in the upstream markets in the legs of trade listed in **Table 1**. Considering the above, the Commission concludes that the merged entity would likely not have the incentive to implement a successful input foreclosure strategy post-Transaction in any of the legs of trade listed in **Table 1**.

¹⁷² Form CO, para. 672. Parties' reply to Request for Information 30, Question 4.

¹⁷³ Parties' reply to Request for Information 30, Question 4.

¹⁷⁴ Form CO, para. 673. Parties' reply to Request for Information 30, Questions 4 and 7.

¹⁷⁵ Form CO, para. 672.

¹⁷⁶ Parties' reply to Request for Information 30, Question 6.

5.2.4.1.2.3. Overall effect of input foreclosure

- (134) In general, a concentration will raise competition concerns as a result of input foreclosure when it leads to increased prices in the downstream market, thereby significantly impeding effective competition.¹⁷⁸
- (135) Since, as explained above, it is unlikely that the merged entity would have the ability or incentive to engage in an input foreclosure strategy on the legs of trade listed in **Table 1**, the Commission considers that there cannot be any negative effects on competition in the downstream markets for the provision of sea freight forwarding services.
- (136) The Commission notes that there are usually several other carriers that 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 Bolloré Logistics, or favour them either through lower prices or better quality of service, other carriers could start providing container liner shipping services to the other freight forwarders on the downstream markets.
- (137) In addition, there will remain in these legs of trade credible downstream competitors whose costs are not likely to be raised because (i) they are themselves vertically integrated, such as Maersk,¹⁷⁹ Evergreen, COSCO, MSC (through its subsidiary MEDLOG), Arkas (through its subsidiary Arkas Logistics), ONE Line, and Yang Ming,¹⁸⁰ or (ii) they would be able to switch to alternative container liner shipping companies.¹⁸¹ As described in Sections 5.2.4.1.2.1.1 and 5.2.4.1.2.1.2, freight forwarders can easily switch between container liner shipping companies and there are no capacity constraints or barriers to entry or expansion in these legs of trade. The Commission's market investigation did not indicate that the Transaction would raise barriers to entry. This would therefore be sufficient to prevent significant anticompetitive effects.
- (138) Consequently, the Commission concludes that the implementation by the merged entity of an input foreclosure strategy post-Transaction in any of the legs of trade listed in **Table 1** would be unlikely to have a significant negative impact in the relevant markets for the provision of sea freight forwarding services.

5.2.4.2. Narrower deep-sea legs of trade to/from Martinique, Guadeloupe, and French Guiana

5.2.4.2.1. Notifying Party's views

- (139) The Notifying Party argues that the merged entity would not have the ability to restrict access to container liner shipping services to/from Martinique, Guadeloupe, and/or French Guiana because (i) the cost of switching between container liner shipping companies is low and (ii) despite CMA CGM's high market shares, there are no barriers to entry in the container liner shipping trades covering Martinique,

¹⁷⁸ Non-Horizontal Merger Guidelines, para. 47.

¹⁷⁹ Form CO, para. 740.

¹⁸⁰ Parties' reply to Request for Information 30, Question 8.

¹⁸¹ Non-Horizontal Merger Guidelines, para. 50. Form CO, para. 740.

Guadeloupe, and French Guiana; as such, large worldwide container liner shipping companies—including those already active in the wider Central America & Caribbean region—could easily deploy capacity in these narrower trades.¹⁸²

- (140) Moreover, the Notifying Party considers that, post-Transaction, the merged entity would not have the incentive to foreclose access to its container liner shipping services (and thus to eliminate competitors on the downstream market) in legs of trade to Martinique, Guadeloupe, and French Guiana,¹⁸³ relying on the following two main arguments.
- (141) *First*, the Notifying Party submits an economic analysis according to which the losses generated by a hypothetical input foreclosure strategy would by far outweigh the gains of such strategy—be it through pure volume effect or pure price effect. This is because, *inter alia*, margins are significantly higher on the upstream market than on the downstream market.¹⁸⁴ *Second*, it claims that, since many freight forwarders purchasing CMA CGM’s services on legs of trade with stops at ports located in the French overseas territories also use its services, to a much greater extent, elsewhere in the world, trying to foreclose those freight forwarders in Martinique, Guadeloupe, and French Guiana would lead freight forwarders to retaliate.¹⁸⁵

5.2.4.2.2. Commission’s assessment

5.2.4.2.2.1. Ability to foreclose

- (142) As described in Section 5.2.4.1.2.1.1, the provision of container liner shipping services is an important input for the provision of sea freight forwarding services. In addition, the Commission’s investigation revealed that CMA CGM is likely to have a significant degree of market power in the narrower legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French Guiana, for the following reasons.
- (143) As shown in **Table 2**, CMA CGM’s individual market share may be as high as 100% in these legs of trade and no lower than 70%. In the legs of trade where it is a member to a VSA with Marfret,¹⁸⁶ the combined market share reaches [90-100]% or, in some legs of trade, 100% of the market, according to the Parties’ best estimates.
- (144) All of these legs of trade are highly concentrated markets where CMA CGM faces limited competition from only one smaller carrier or, in a minority of trades, from a maximum of two small carriers with a much more limited presence:
- (a) In four of these legs of trade (From Mediterranean to Martinique, From Martinique to Mediterranean, From Mediterranean to Guadeloupe, and From Guadeloupe to Mediterranean), CMA CGM competes with one single

¹⁸² Form CO, Annex 8.5.

¹⁸³ Form CO, para. 682.

¹⁸⁴ Form CO, para. 681.

¹⁸⁵ Form CO, para. 681.

¹⁸⁶ From Martinique to North Europe, From Guadeloupe to North Europe, From North Europe to French Guiana, and From French Guiana to North Europe.

independent competitor, Marfret. Marfret is a smaller carrier than CMA CGM in these legs of trade, with a market share of 10-30% (2023).¹⁸⁷

- (b) In four of these legs of trade (From Martinique to North Europe, From Guadeloupe to North Europe, From North Europe to French Guiana, From French Guiana to North Europe), CMA CGM operates in the context of a VSA with Marfret and the only competitor it faces is its partner. The combined share of CMA CGM and Marfret is 100%, with Marfret holding a share of, at maximum, 30% (2023). No independent competitor is active.
 - (c) In two of these legs of trade (From North Europe to Martinique and From North Europe to Guadeloupe), CMA CGM operates in the context of a VSA with Marfret and the only independent competitor they face is Seatrade. Seatrade is a much smaller carrier in these legs of trade than CMA CGM, with a market share of, at most, 10% (2023).
 - (d) In two of these legs of trade (From Mediterranean to French Guiana and From French Guiana to Mediterranean), CMA CGM has no competitor whatsoever, holding a market share of 100% (2023).¹⁸⁸
- (145) Marfret and Seatrade do not seem to constitute significant competitive constraints on CMA CGM's activities:¹⁸⁹
- (a) **Marfret** is a smaller carrier worldwide and at least 2-3 times smaller in these legs of trade than CMA CGM, with much less capacity:¹⁹⁰

Martinique/Guadeloupe

- In the legs of trade to/from North Europe from/to Martinique and Guadeloupe, Marfret does* operate any vessel, carrying out its activity only under the terms of a VSA with CMA CGM.¹⁹¹ CMA CGM, by contrast, operates 6 vessels in these legs of trade.¹⁹²
- In the legs of trade to/from Mediterranean from/to Martinique and Guadeloupe, Marfret only operates one vessel, while CMA CGM operates eight.¹⁹³ CMA CGM and Marfret do not have a VSA covering these legs of trade.

French Guiana

- In the legs of trade to/from North Europe from/to French Guiana, Marfret operates in the context of a VSA with CMA CGM. In this

¹⁸⁷ Parties' reply to Request for Information 24.

¹⁸⁸ Parties' reply to Request for Information 27, Question 8.

¹⁸⁹ Minutes of pre-notification conference call of 15.09.2023, para. 24; minutes of pre-notification conference call of 18.10.2023, para. 17; minutes of pre-notification conference call of 15.09.2023, para. 24; minutes of pre-notification conference call of 06.09.2023, paras. 15, 18, and 24.

¹⁹⁰ Minutes of pre-notification conference call of 27.07.2023, para. 18, minutes of pre-notification conference call of 18.10.2023, paras. 5 and 17, and minutes of pre-notification conference call of 27.09.2023, para. 25.

* Should read: 'does not'.

¹⁹¹ Form CO, Annex 6.7.

¹⁹² Form CO, Annex 6.7.

¹⁹³ Form CO, Annex 6.7.

context, it only operates one vessel, carrying out the rest of its activity on CMA CGM's vessels. CMA CGM, in contrast, owns five vessels that it operates in these legs of trade.¹⁹⁴

- In the legs of trade to/from Mediterranean from/to French Guiana Marfret is not active (it does not have direct capacity, nor does it have a VSA in place with CMA CGM).¹⁹⁵

As shown, Marfret is dependent on CMA CGM to provide its services in the legs of trade to/from North Europe from/to Martinique and Guadeloupe as well as to/from North Europe from/to French Guiana. If CMA CGM would decide to terminate the applicable VSAs, it could do so relatively quickly. VSAs may be unilaterally terminated at any time, subject to the provision of a prior notice of, typically, approximately six months.¹⁹⁶

- (b) **Seatrade** is only active in two of these legs of trade (from North Europe to Martinique and to Guadeloupe). Being even smaller than Marfret, Seatrade is present in only one small European port (Radicatel, France).¹⁹⁷ It operates vessels of a smaller dimension (with a capacity of less than 500 TEUs,¹⁹⁸ as opposed to CMA CGM's vessels of an average capacity of 3,690-6,900 TEUs¹⁹⁹) and it specialises in reefer containers.²⁰⁰ One market participant described Seatrade's presence as '*anecdotal*' and asserted it already operates at full capacity.²⁰¹
- (146) Consistent with its high market shares, the Commission's market investigation results indicate that freight forwarders active in these trades depend heavily on CMA CGM's services. Practically all freight forwarders having expressed an opinion explained that at least 80% of their total demand for container liner shipping services in each of these legs of trade were purchased from CMA CGM in 2022.²⁰² Half of the freight forwarder respondents purchased 90-100% of their demand from CMA CGM in the same year.²⁰³ In other words, as pointed out by several freight forwarders, CMA CGM appears to be an '*unavoidable trading partner*' on these legs of trade.²⁰⁴
- (147) Barriers to entry and expansion for the provision of container liner shipping services are high in these markets. Most of the market investigation respondents consider that there are high barriers to entry in legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French

¹⁹⁴ Form CO, para. 389.

¹⁹⁵ Minutes of pre-notification conference call of 20.07.2023, Annex 1.

¹⁹⁶ Parties' reply to Request for Information 27, Question 2.

¹⁹⁷ Minutes of pre-notification conference call of 18.10.2023, paras. 5 and 17, and minutes of pre-notification conference call of 6.09.2023, para. 15. Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

¹⁹⁸ Minutes of pre-notification conference call of 20.07.2023, Annex 1. Parties' reply to Request for Information 27, Question 5.

¹⁹⁹ Form CO, Annex 6.7. Parties' reply to Request for Information 27, Question 5.

²⁰⁰ E.g., minutes of pre-notification conference call of 27.09.2023, para. 25 and minutes of pre-notification conference call of 06.10.2023, para. 10. See also: <https://www.seatrade.com>.

²⁰¹ Minutes of pre-notification conference call of 06.09.2023, para. 15.

²⁰² Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁰³ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁰⁴ Minutes of pre-notification conference call of 20.07.2023, para. 4 and minutes of pre-notification conference call of 27.07.2023, para. 11.

Guiana. One of the main reasons restricting entry or expansion in these markets seems to be the limited market sizes and the historical presence of the existing operators, which makes it difficult for potential entrants to justify initial or additional investment in these markets.²⁰⁵ One freight forwarder has explained that *‘there are high barriers to enter the market for container liner shipping services from Europe to the French Overseas Territories as these are niche French-speaking markets with limited size. Furthermore, CMA CGM has been operating such sea routes for decades and has a consolidated historical presence and a good service coverage. Consequently, it would be difficult for competing carriers to enter the market’*.²⁰⁶ In addition, freight forwarders participating in the Commission’s market investigation have mentioned that certain of the existing operators, including CMA CGM, have in the past quickly reacted against new entrants to protect their position, *‘by lowering their freight rates so that others could not operate these routes competitively’*.²⁰⁷

- (148) The large trade deficit (explained by the fact that imports into these territories are much more prominent than exports) means that carriers active in these legs of trade may not be able to significantly fill containers in the northbound legs of trade (*i.e.*, back to North Europe or Mediterranean).²⁰⁸
- (149) The barriers have led competitors to exit these markets, as the Parties recognise when mentioning that *‘CMA CGM’s competitors have shown a tendency to cease serving these territories’*.²⁰⁹ One competitor, Maersk, exited the legs of trade from/to Martinique and Guadeloupe in February 2023 because the revenue achieved did not cover the costs of being active in these markets.²¹⁰ As Maersk explained, it bore significant operational costs linked to the fact that the *‘containers Maersk transported back from Martinique and Guadeloupe to Europe were empty’*.²¹¹ Accordingly, Maersk is not aware of other carriers that are planning to enter these segments in the near future.²¹² Another of CMA CGM’s competitors, Geest Line, has also stopped servicing Martinique and Guadeloupe in 2018.²¹³
- (150) In this context, CMA CGM appears to be the only carrier capable of filling completely, or to a significant extent, containers in the northbound legs of trade from Martinique and Guadeloupe, as it has long-term agreements with local suppliers of bananas (one of the few products exported from these territories).²¹⁴ Namely, UGPBAN (*Union des Groupements de Producteurs de Bananes*) has been

²⁰⁵ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.5 and replies to eRFI ‘Carriers’, Questions D.2-D.3.

²⁰⁶ Minutes of pre-notification conference call of 27.09.2023, para. 24.

²⁰⁷ Minutes of pre-notification conference call of 19.10.2023, para. 17 and minutes of pre-notification conference call of 27.07.2023, para. 10.

²⁰⁸ Replies to eRFI ‘Carriers’, Questions D.2-D.3. Minutes of pre-notification conference call of 11.10.2023, para. 3.

²⁰⁹ Form CO, para. 216.

²¹⁰ Minutes of pre-notification conference call of 11.10.2023, para. 2.

²¹¹ Minutes of pre-notification conference call of 11.10.2023, para. 3.

²¹² Minutes of pre-notification conference call of 11.10.2023, para. 6.

²¹³ Form CO, para. 216.

²¹⁴ Avis n° 19-A-12 du 4 juillet 2019 concernant le fonctionnement de la concurrence en Outre-Mer. Parties’ reply to Request for Information 24, Question 1.

entrusting all its volumes to CMA CGM since [...].²¹⁵ As such, CMA CGM by finding it profitable to be active in these markets, appears to be an exception.²¹⁶

- (151) Therefore, the Commission considers that CMA CGM has significant market power in the narrower legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French Guiana.
- (152) The Commission's market investigation revealed that, post-Transaction, the merged entity might be able to leverage its significant market power to implement partial or total input foreclosure strategies. In particular, CMA CGM might be able to:
- (a) Refuse the provision of its services in the relevant legs of trades (e.g., refusing to supply shipping slots) to freight forwarders competing with Bolloré Logistics in the relevant downstream markets (total foreclosure); or
 - (b) Profitably raise the price, or reduce the quality, of its container liner shipping services in these legs of trade to competitors of Bolloré Logistics (partial foreclosure).²¹⁷
- (153) In this respect, some freight forwarders that participated in the Commission's market investigation raised concerns relating to the ability of CMA CGM to completely exclude competing freight forwarders from the downstream market:
- (a) *'(...) CMA CGM would have the capacity and the resources to replace [...] and other freight forwarder operating in French Overseas Territories.'*²¹⁸
 - (b) *'If CMA CGM decided to offer container liner shipping services integrated with Bolloré Logistics' freight forwarding activities in sea routes connecting European ports to French Overseas Territories, notably Martinique and Guadeloupe, [...] would likely not be able to compete and might have to stop its offering locally.'*²¹⁹
 - (c) One freight forwarder submitted that CMA CGM could start implementing a foreclosure strategy *'either as a full foreclosure, where CMA CGM simply refuse to deliver goods (...) or as partial foreclosure.'*²²⁰
- (154) In addition, many freight forwarders raised concerns regarding a partial input foreclosure, in particular through pricing strategies favouring Bolloré Logistics:
- (a) *'[...] excludes the risk of CMA CGM refusing to take volumes from [competing freight forwarder]. The consequences of the operation will not be*

²¹⁵ Parties' reply to Request for Information 24, Question 1.

²¹⁶ Minutes of pre-notification conference call of 27.07.2023, paras. 7, 10, and 18 and minutes of pre-notification conference call of 18.10.2023, para. 15.

²¹⁷ Replies to eRFI 'Freight Forwarders', Question B.C.B.5-6.

²¹⁸ Minutes of pre-notification conference call of 20.07.2023, para. 28.

²¹⁹ Minutes of pre-notification conference call of 15.09.2023, para. 27.

²²⁰ Replies to eRFI 'Freight Forwarders', Question D.C.5. See also minutes of pre-notification conference call of 08.09.2023, para. 30: *'In [...] view, if, post transaction, CMA CGM started to sell its container liner shipping services exclusively to Bolloré Logistics, sea freight forwarders would be unable to switch to other carriers in sea routes connecting European ports to Martinique, Guadeloupe and French Guyana'.*

*direct, but rather in the form of rate increases to favour Bolloré Logistics’.*²²¹

- (b) *‘(...) in sea routes connecting Europe to the French overseas territories, freight forwarders working with CMA CGM will be placed at a disadvantage compared to Bolloré Logistics. CMA CGM might grant preferential access to its services to Bolloré Logistics or a cost disadvantage to other forwarders’.*²²²
- (c) *‘CMA CGM could foreclose competing freight forwarders active downstream through the tariff charged, the capacity on its vessels and other contractual conditions. [...] thinks that CMA CGM will have the opportunity to grant specific privileges to Bolloré Logistics post-transaction’.*²²³
- (d) *‘[...] fears that, following the operation, CMA CGM will offer it less favourable tariff conditions than to Bolloré. This would have a significant impact on its price competitiveness, since the cost of maritime transport represents 70-80% of its total costs. (...) [...] is also concerned that CMA CGM will degrade its quality of service when it is in direct competition with Bolloré in the same territories. Quality of service is a very important element to customers, especially delivery times. CMA CGM could reduce the volumes allocated to [...] and refuse at the last minute certain containers, which would remain in the quay while those of Bolloré would be favoured’.*²²⁴
- (155) Moreover, market participants also underlined that the merged entity would be able to partially foreclose Bolloré Logistics’ competitors through non-price-based mechanisms, for instance by granting Bolloré Logistics preferential access to its vessels, reducing the slots allocated to competitors during peak periods, or overbooking strategies:
- (a) *‘(...) it is likely that post-transaction, in sea routes connecting Europe to the French overseas territories, freight forwarders working with CMA CGM will be placed at a disadvantage compared to Bolloré Logistics. CMA CGM might grant preferential access to its services to Bolloré Logistics or a cost disadvantage to other forwarders’.*²²⁵
- (b) *‘[...] CMA CGM would have the capacity and the resources to replace [...] and other freight forwarder operating in French Overseas Territories. In [...]’s opinion, CMA CGM would be able to foreclose freight forwarders*

²²¹ Minutes of pre-notification conference call of 18.10.2023, para. 20, translated from French: ‘[...] *exclut le risque que CMA CGM refuse de prendre des volumes de [competing freight forwarder]. Les conséquences de l’opération ne se feront pas directement, mais plutôt sur des augmentations tarifaires pour favoriser Bolloré Logistics*’.

²²² Minutes of pre-notification conference call of 27.09.2023, para. 26.

²²³ Minutes of pre-notification conference call of 15.09.2023, para. 26.

²²⁴ Minutes of pre-notification conference call of 27.07.2023, para. 16, translated from French: ‘[...] *crain qu’à la suite de l’opération, CMA CGM lui offre des conditions tarifaires moins bonnes qu’à Bolloré. Cela aurait un impact énorme sur sa compétitivité prix puisque le coût du transport maritime représente 70-80% de ses coûts totaux. (...) [...] s’inquiète également ce que CMA CGM dégrade sa qualité de services alors qu’elle est en concurrence direct avec Bolloré, dans les mêmes territoires. La qualité de services est un élément très important pour les clients, notamment s’agissant des délais de livraison. CMA CGM pourrait réduire les volumes alloués à [...] et refuser au dernier moment certains containers qui resteraient à quai quand ceux de Bolloré seraient favorisés*’.

²²⁵ Minutes of pre-notification conference call of 27.09.2023, para. 26.

operating in French Overseas Territories by manipulating tariffs and capacity. (...) Furthermore, given that carriers have limited capacity on their vessels, CMA CGM would be able to grant preferential treatment in terms of space allocation in its ships to Bolloré Logistics without suffering any losses (i.e., CMA CGM would continue to operate its ships at maximum capacity)'.²²⁶

- (c) *'[...] is also concerned that CMA CGM is degrading its quality of service when it is in direct competition with Bolloré in the same territories. Quality of service is very important to customers, particularly when it comes to delivery times. CMA CGM could reduce the volumes allocated to [...] and refuse at the last minute certain containers that would remain on the quay while Bolloré's would be favoured. Such a strategy, which is tantamount to "overbooking", would enable CMA CGM to further optimise the filling of its vessels and ensure a good quality of service for Bolloré. CMA CGM would therefore be a winner both upstream and downstream, while [...] would be negatively impacted and lose significant volumes to Bolloré, without showing a price preference and therefore, invisible unfair competition'. This freight forwarder added that 'there are already capacity problems in maritime transport to the French overseas departments and regions (...). After the operation, the situation could deteriorate significantly for [...]. CMA CGM will have the ability and the incentive to favour Bolloré'.²²⁷*

- (156) The ability to implement total or partial input foreclosure strategies will be enhanced by the fact that CMA CGM will start having access to competitively strategic information concerning the way the downstream markets function, including the cost structure of the freight forwarders with significant activities in these legs of trade. At least two market participants remarked on the access to strategically sensitive information. One of them remarked that the Transaction '*is likely to increase market transparency*'.²²⁸ The other asserted that CMA CGM could, post-Transaction '*use the detailed information acquired*', namely '*client identity, types of goods, volume, destination, and frequency*', to impact its competitors in the downstream markets.²²⁹
- (157) In response to such strategies, most freight forwarder respondents have mentioned that they would not be able to switch to alternative providers of container liner shipping services.²³⁰ As one of Bolloré Logistics' competitors described it, '*CMA*

²²⁶ Minutes of pre-notification conference call of 20.07.2023, para. 28.

²²⁷ Minutes of pre-notification conference call of 27.07.2023, paras. 17 and 18, translated from French: '*[...] s'inquiète également ce que CMA CGM dégrade sa qualité de services alors qu'elle est en concurrence direct avec Bolloré, dans les mêmes territoires. La qualité de services est un élément très important pour les clients, notamment s'agissant des délais de livraison. CMA CGM pourrait réduire les volumes alloués à [...] et refuser au dernier moment certains containers qui resteraient à quai quand ceux de Bolloré seraient favorisés. Une telle stratégie s'assimilant à du « surbooking » permettrait à CMA CGM d'optimiser encore le remplissage de ses bateaux et d'assurer une bonne qualité de services pour Bolloré. CMA CGM serait donc gagnante à l'amont et à l'aval tandis que [...] serait négativement impacté et perdrait des volumes significatifs au détriment de Bolloré, sans pour autant montrer une préférence tarifaire et donc, concurrence déloyale invisible'; 'il existe déjà des problèmes de capacité dans le transport maritime vers les DOM TOM, (...). Après l'opération, la situation pourrait se dégrader largement pour [...]. En effet, CMA CGM aura la capacité et l'incitation à favoriser Bolloré'.*

²²⁸ Replies to eRFI 'Carriers', Question E.2.

²²⁹ Replies to eRFI 'Carriers', Question D.C.5.

²³⁰ Replies to to eRFI 'Freight Forwarders', Question B.C.B.5-7.

CGM could foreclose competing freight forwarders active downstream through the tariff charged, the capacity on its vessels and other contractual conditions. [...] thinks that CMA CGM will have the opportunity to grant specific privileges to Bolloré Logistics'. This freight forwarder 'would likely not be able to compete and might have to stop its offering locally'.²³¹ Similarly, another freight forwarder explained that, if CMA CGM would attempt to foreclose, it 'would not be able to offer its freight forwarding services in the French Overseas Territories anymore'.²³²

- (158) In light of the above, the Commission considers it likely that, post-Transaction, CMA CGM would have the ability to foreclose Bolloré Logistics' competitors by restricting access to, increasing the price of, or deteriorating the quality of the container liner shipping services that it provides to Bolloré Logistics' competitors in the legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French Guiana.
- (159) The Commission considers that CMA CGM does not have significant market power in the narrower legs of trade From Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) to Mediterranean; From Mediterranean to Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana); From Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana) to North Europe; and From North Europe to Central America & Caribbean (excluding Martinique, Guadeloupe, and French Guiana).
- (160) Given the small size of the narrow trades to/from each of Martinique, Guadeloupe, French Guiana, their exclusion from the broader region does not materially change the competitive landscape or CMA CGM's position in the broader deep-sea legs of trade that take into account the entire Central America & Caribbean region (without excluding any territory).²³³ CMA CGM's market shares in these legs of trade are much lower (lower than 50%) than in the narrower legs of trade to/from each of Martinique, Guadeloupe, and French Guiana (see **Table 2**). As such, the Commission considers, for the same reasons as those described in Section 5.2.4.1.2.1.1, that CMA CGM does not have significant market power in the narrower legs of trade identified in the previous paragraph.

5.2.4.2.2.2. Incentive to foreclose

- (161) As explained 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. 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

²³¹ Minutes of pre-notification conference call of 15.09.2023, paras. 26-27.

²³² Minutes of pre-notification conference call of 20.07.2023, para. 27.

²³³ The Parties confirmed that the market shares for both type of markets (including or excluding these territories) are virtually the same—see **Table 2**—as legs of trade to/from Martinique, Guadeloupe, and French Guiana are thin in terms of shipped volumes compared to the wider legs of trade (see Form CO, footnote 260). This is consistent with the results of the Commission's market investigation, which reveal that these legs of trades have a small size (see Replies to eRFI 'Freight Forwarders', Questions B.C.B.5.1-B.C.B.5.8).

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.²³⁴

- (162) The Commission considers that the Notifying Party will have the incentive to implement an input foreclosure strategy post-Transaction.
- (163) *First*, the Commission notes that the economic assessment²³⁵ submitted by the Notifying Party only covers a situation of total input foreclosure pursuant to which CMA CGM would completely stop providing container liner shipping services to downstream competitors. Some freight forwarders that responded to the market investigation pointed to the fact that CMA CGM could engage in such strategy, as explained in Section 5.2.4.2.2.1.
- (164) In such case, the Notifying Party submits that the diversion ratios (*i.e.*, share of affected freight forwarding activity that would need to be transferred to the merged entity to make an input foreclosure strategy profitable) would be particularly high: 82% in the case of total foreclosure of all competing freight forwarding activity and 80% in case of total foreclosure of local competitors' activity. The Notifying Party's calculations are summarised in **Table 5**, below.

Table 5 – Analysis of input foreclosure for freight forwarders in Martinique, Guadeloupe, and French Guiana (2022)

	Foreclosure of all freight forwarders	Foreclosure of local freight forwarders
CMA CGM net income with freight forwarders other than Bolloré Logistics (M€)	[...]	[...]
CMA CGM freight volume with freight forwarders other than Bolloré Logistics (TEUs)	[...]	[...]
Total Bolloré Logistics' freight volume (TEUs)	[...]	
Bolloré Logistics' net income (M€)	7.76	
CMA CGM's average unit margin per TEU with Bolloré Logistics (€/TEU)	[...]	
Average unit margin per TEU of Bolloré Logistics on the downstream market (€/TEU)	[...]	
Average unit margin per total TEU of the merged entity (€/TEU)	[...]	
CMA CGM's average unit margin per TEU with other freight forwarders (€/TEU)	[...]	[...]
Pure volume effect: higher freight volume offsets lower revenues (TEUs, at constant prices)	[...] 82%	[...] 80%
Pure price effect: increase in average unit margin (€/TEU, constant freight volume)	[...] 985%	[...] 673%

Source: Form CO, Annex 8.5, Table 25.

- (165) Contrary to the Parties' views, the Commission notes that diversion ratios of 80-82% are not unrealistic, considering the facts that:
- CMA CGM is an unavoidable trading partner in the upstream markets, and
 - Marfret operates mostly on CMA CGM's vessels.

²³⁴ Non-Horizontal Merger Guidelines, para. 40.

²³⁵ Form CO, Annex 8.5.

- (166) In addition, the Parties' assessment relies on diversion ratios calculated as a 'pure volume effect' at constant prices or a 'pure price effect' calculated at constant freight volumes that are not realistic. The assessment does not take into account the fact that the merged entity would be in the position to raise both the volumes transported and the margin per TEU to final customers and, consequently, these figures rather represent an upper bound estimate for the diversion ratio to make input foreclosure profitable.
- (167) As a result, the Commission considers that CMA CGM might have the incentive to totally foreclose its rivals in the downstream markets.
- (168) Without prejudice of the above, the Commission considers, in addition, that CMA CGM will have the incentive to partially foreclose competing freight forwarders by favouring Bolloré Logistics, for the following reasons.
- (169) *Second*, as already explained in Section 5.2.4.2.2.1, CMA CGM has very high market shares in these legs of trade (see **Table 2**), facing at most limited competition from smaller container liner shipping players, namely Marfret and Seatrade. None of the other major shipping companies have calls at these territories' ports since Maersk's departure in the beginning of 2023. As a result, freight forwarders have extremely limited *de facto* switching possibilities in these territories. Moreover, in view of the barriers to entry described in Section 5.2.4.2.2.1, it is unlikely that container liner shipping companies would profitably start operating in these markets in the near future.
- (170) This has been largely confirmed by the Commission's market investigation.²³⁶ In particular, the vast majority of the respondents that expressed an opinion consider that they do not have any alternative to switch to in these territories.²³⁷ For example, one customer underlined that '*if, post transaction, CMA CGM started to sell its container liner shipping services exclusively to Bolloré Logistics, sea freight forwarders would be unable to switch to other carriers in sea routes connecting European ports to Martinique, Guadeloupe and French Guyana*'.²³⁸ Another explained that, if CMA CGM would input foreclose, it would not have other option except leaving these territories: '*if CMA CGM started to sell its container liner shipping services exclusively to Bolloré Logistics post-transaction, then [...] would not be able to offer its freight forwarding services in French Overseas Territories anymore*'.²³⁹ Another freight forwarder stated that: '*the real problem is a pre-existing one, namely the absence of any significant alternative to CMA CGM on routes between mainland France and the French West Indies/French Guiana*'.²⁴⁰
- (171) *Third*, contrary to the Notifying Party's views,²⁴¹ the Commission considers that competing freight forwarders, whether global or local operators, will in principle not be able to implement effective retaliation strategies, such as, for instance, leveraging their positions in other routes such as major legs of trade to Asia or America.

²³⁶ Replies to eRFI 'Carriers', Questions B.C.B.5-7.

²³⁷ Replies to eRFI 'Carriers', Questions B.C.B.5-7.

²³⁸ Minutes of pre-notification conference call of 08.09.2023, para. 30.

²³⁹ Minutes of pre-notification conference call of 20.07.2023, para. 27.

²⁴⁰ Minutes of pre-notification conference call of 06.09.2023, para. 21, translated from French: '*le vrai problème est préexistant, à savoir l'absence d'alternative significative à CMA CGM sur les routes entre la France métropolitaine et les Antilles/Guyane*'.

²⁴¹ Form CO, Annex 8.5.

- (172) Local freight forwarders are the main operators on the downstream markets. They represent [...]% of the volumes shipped by CMA CGM to Martinique, Guadeloupe, and French Guiana.²⁴² Based on the data provided by the Parties, the vast majority of the local freight forwarders purchase most of their worldwide volumes on these legs of trade from CMA CGM, making their possibilities to retaliate extremely limited, as shown in **Table 6**, below.

Table 6 – Proportion of local freight forwarders’ total turnover achieved with CMA CGM in Martinique, Guadeloupe, and French Guiana (2022)

Freight Forwarder	Proportion (%)
[...]	[90-100]
[...]	[80-90]
[...]	[60-70]
[...]	[60-70]
[...]	[50-60]
[...]	[10-20]

Source: Form CO, Annex 8.6

- (173) This is also confirmed by various local freight forwarders that participated in the market investigation. By way of example, one freight forwarder explained that ‘[...] it is not in a position to implement retaliatory measures on other routes if CMA CGM increases freight prices to the West Indies and French Guiana. First of all, [...] points out that since the French overseas departments and regions are its main markets, it is difficult to use other markets as leverage’.²⁴³ Similarly, another claimed that ‘if CMA CGM were to increase prices post-transaction, [...] could not retaliate on other service providers. [...] would not be able to offer competitive prices to its customers and will therefore lose its clients’.²⁴⁴
- (174) Global freight forwarders represent only [...]% of the volumes shipped by CMA CGM to Martinique, Guadeloupe, and French Guiana. Some of the major operators in the EEA have only an insignificant presence in these territories. While these freight forwarders are active at worldwide level and purchase container liner shipping services from CMA CGM for various legs of trade, it is doubtful that they could implement effective retaliation strategies regarding these territories.
- (175) In this respect, several global freight forwarders with activities in these territories explained to the Commission that they would not be able to implement effective retaliation measures:
- (a) ‘(...) if CMA CGM decided to foreclose competing freight forwarders in sea routes connecting Europe to French Overseas Territories, [...] and other sea freight forwarders could not retaliate, i.e. start purchasing less container liner shipping services from CMA CGM and more from alternative carrier, on other sea routes. [...] explains this strategy would not be feasible because

²⁴² Form CO, Annex 8.5. Data excluding direct customers and Bolloré Logistics.

²⁴³ Minutes of pre-notification conference call of 18.10.2023, para. 22, translated from French : ‘[...] il n’est pas en mesure de mettre en place des mesures de représailles sur d’autres lignes dans le cas où CMA CGM augmenterait les prix de fret à destination des Antilles et de la Guyane. Tout d’abord, [...] souligne que les marchés des territoires d’outre-mer étant ses principaux marchés il est difficile de faire levier sur d’autres marchés’.

²⁴⁴ Minutes of pre-notification conference call of 23.11.2023, para. 20.

CMA CGM is the 3rd biggest global container carrier. Neither [...] nor other forwarders would be able to take such measures'.²⁴⁵

- (b) *'(...) in case CMA CGM decided to foreclose [...] in sea routes connecting Europe to French Overseas Territories, the volumes [...] ships via CMA CGM would not constitute sufficient leverage to influence CMA CGM decision on the French Overseas Territories*'.²⁴⁶
- (176) *Fourth*, against this background, the Commission notes that, even if, as submitted by the Parties, CMA CGM's upstream margins are higher than Bolloré Logistics' downstream margins, CMA CGM would still likely have, post-Transaction, the incentive to implement foreclosure strategies against competing freight forwarders, in view of the existing market structure and the VSAs with Marfret.
- (177) On one hand, most of the volumes lost by CMA CGM would be diverted to Marfret.²⁴⁷ This would still likely benefit CMA CGM, as Marfret is operating mainly on CMA CGM's vessels under the terms of VSAs²⁴⁸ and will be charged by CMA CGM for the use of any additional capacity. In this respect, one freight forwarder explained that *'CMA CGM would be able to grant preferential treatment in terms of space allocation in its ships to Bolloré Logistics without suffering any losses (i.e., CMA CGM would continue to operate its ships at maximum capacity)*'.²⁴⁹
- (178) On the other hand, the potential gain on the downstream market would not be limited as Bolloré Logistics does not face any capacity constraint and could expand its local business. Competing freight forwarders also confirmed the absence of capacity constraints for Bolloré Logistics to expand locally.²⁵⁰
- (179) *Fifth*, although the Non-Horizontal Merger Guidelines acknowledge that upstream monopolists may not have an incentive to foreclose if they extract all available profits in vertically related markets pre-Transaction,²⁵¹ the Commission does not consider that, in this case, CMA CGM can already extract all available profits from its position in the upstream market before the Transaction, for the following reasons.
- (180) Primarily, the Commission notes that, while the freight forwarding industry is characterised by relatively low margins, the margins are still positive and Bolloré Logistics' current margins in these territories are, as per the Parties' explanations, [...].²⁵²
- (181) Moreover, the Commission considers that the price mechanisms in the container liner shipping industry and, more particularly, in these legs of trade do not allow CMA CGM to maximise its profit extraction. Indeed, non-negligible volumes are

²⁴⁵ Minutes of pre-notification conference call of 27.09.2023, para. 27.

²⁴⁶ Minutes of pre-notification conference call of 15.09.2023, para. 29.

²⁴⁷ As mentioned, Seatrade is a very small company, with very limited capacity, and specialised on shipping reefer containers.

²⁴⁸ To the exception of the legs of trade from/to Mediterranean to/from each of these territories. However, these legs of trade are much smaller in terms of volume.

²⁴⁹ Minutes of pre-notification conference call of 20.07.2023, para. 28.

²⁵⁰ Minutes of pre-notification conference call of 27.07.2023, para. 18 d.

²⁵¹ Non-Horizontal Merger Guidelines, para. 44.

²⁵² Form RM, paras. 65 and 167. In 2022, the gross margin of Bolloré Logistics' local entities was EUR [...] in 2022, while operating profits were EUR [...].

purchased by freight forwarders at spot prices.²⁵³ These spot prices are public, the same for every freight forwarder, and available on CMA CGM's website.²⁵⁴ In this respect, the Notifying Party submits that freight forwarders that have entered into a contract with CMA CGM usually decide from time to time to benefit from spot rates (close to the departure date), notably when the latter are lower than the rates applicable under their contract. In these instances, CMA CGM has no choice but to accept this, so it can fill ships that are already committed (but not sufficiently filled).²⁵⁵ In addition, various elements, such as the (i) highly cyclical nature of the shipping activity, (ii) existence of various surcharges such as the Bunker Adjustment Factor (identical for all customers) or (iii) high fixed costs, point towards the unlikelihood of CMA CGM being already fully optimizing its pricing to extract downstream profits.

- (182) Finally, the Commission considers that the current market features do not allow CMA CGM to be sufficiently certain that it will not face any competition in the longer term, allowing it to extract all available profits without any risk. The Commission notes that (i) until the beginning of 2023, Maersk, one of the leading shipping companies in the world, was present on these legs of trade for many years, (ii) Maersk has significant presence in the Caribbean region, and (iii) Maersk has prior knowledge of these territories. In this context, it cannot be completely excluded that Maersk could re-enter the market. This is even truer that one of the main factors to operate profitably relate to the shipping of bananas to Europe. CMA CGM currently controls this export flow, but one cannot exclude that another shipping company could win it in the future. In this respect, MSC submitted that *'to profitably operate as a carrier from Europe to Martinique and Guadeloupe, imports and exports must be sufficiently balanced. In this respect, the main export from the French Antilles mostly consists of bananas which are perishable goods shipped by CMA CGM through long-term contracts with local producers/exporters. (...) according to MSC, a feeder service connecting the French Antilles would operationally be feasible if there was a business opportunity and if it was economically viable'*.²⁵⁶
- (183) In light of the above, the Commission considers it likely that, post-Transaction, CMA CGM would have the incentive to foreclose Bolloré Logistics' competitors by restricting access to, increasing the price of, or deteriorating the quality of the container liner shipping services that it provides to Bolloré Logistics' competitors in the legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French Guiana.

5.2.4.2.2.3. Overall effect of input foreclosure

- (184) As explained above, in general, a merger will raise competition concerns as a result of input foreclosure when it leads to increased prices in the downstream market, thereby significantly impeding effective competition.²⁵⁷

²⁵³ Form CO, para. 737.

²⁵⁴ Parties' reply to Request for Information 28, Question 1.

²⁵⁵ Form CO, para. 756.

²⁵⁶ Minutes of pre-notification conference call of 19.10.2023, paras. 16 and 18.

²⁵⁷ Non-Horizontal Merger Guidelines, para. 47.

5.2.4.2.2.3.1. Overall effect in Martinique, Guadeloupe, and French Guiana

- (185) Post-Transaction, the merged entity will likely have the ability and the incentive to carry out total or partial input foreclosure strategies with respect to legs of trade from/to Martinique, Guadeloupe, and French Guiana, as described in Sections 5.2.4.2.2.1 and 5.2.4.2.2.2. The likely effect of the implementation of such strategies could be a refusal to supply, a significant price increase, and/or a significant deterioration of the quality of container liner shipping services provided by CMA CGM to Bolloré Logistics' competitors in the relevant downstream markets.
- (186) *First*, in the market investigation, the vast majority of respondents indicated that, post-Transaction, CMA CGM would be in position to raise prices and/or reduce service quality to Bolloré Logistics' competitors in Martinique, Guadeloupe, and French Guiana when shipping their goods to/from Martinique, Guadeloupe, and French Guiana.²⁵⁸ The majority of respondents confirmed that the Transaction would have a negative impact on prices and service quality on the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, and French Guiana.²⁵⁹ Freight forwarders that participated in the market investigation are concerned that they could be excluded from the downstream markets and the impact would be very negative on prices for customers in these territories:
- (a) *'[...] claims that if CMA CGM started to sell its container liner shipping services exclusively to Bolloré Logistics post-transaction, then [...] would not be able to offer its freight forwarding services in French Overseas Territories anymore'.*²⁶⁰
 - (b) *'(...) an increase in tariffs would have a significant impact on freight forwarders'.*²⁶¹
 - (c) *'[...] explains that it has no capacity to absorb the price increase that CMA CGM could implement, as its margins are already very low'.*²⁶²
 - (d) *'The transaction will have a very negative impact in the French overseas departments and regions, particularly in the West Indies, French Guiana and the Caribbean, where CMA CGM already has a shipping monopoly. Given its negative impact, this transaction should have excluded the French overseas departments and regions. This short-term merger could have dramatic consequences for the price of consumer goods, because once serious competition from freight forwarders is eliminated, the door will be open to price increases, and nothing will be able to prevent this inflation, as only small service providers will be able to maintain small, insignificant flows'.*²⁶³

²⁵⁸ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.6

²⁵⁹ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.8.

²⁶⁰ Minutes of pre-notification conference call of 20.07.2023, para. 27.

²⁶¹ Minutes of pre-notification conference call of 20.07.2023, para. 28.

²⁶² Minutes of pre-notification conference call of 18.10.2023, para. 21, translated from French: *'[...] explique n'avoir aucune capacité à absorber l'augmentation de prix que pourrait mettre en place CMA CGM, ses marges étant déjà très faibles'.*

²⁶³ Minutes of pre-notification conference call of 27.07.2023, para. 20, translated from French: *'La transaction aura un effet très négatif dans les DOM TOM, et plus particulièrement dans les Antilles, Guyane et les Caraïbes où CMA CGM a déjà un monopole du transport maritime. Compte tenu de*

- (187) *Second*, the Commission notes that all competing freight forwarders could be affected by this strategy. Together, foreclosed rivals represent a significant part of the downstream markets (at least [70-80]%), with main competitors having individual market shares of around [20-30]%, as shown in the table below.

Table 7 – Market shares of main competitors in sea freight forwarding in Martinique, Guadeloupe, and French Guiana (2022)

	Competitor 1	Competitor 2	Competitor 3	Competitor 4	Competitor 5	Competitor 6
French Guiana	Seafrigo	GBH (Agence Maritime Martin)	Set Cargo	Bolloré Logistics	Somatrans	SIFA
	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Guadeloupe	Bolloré Logistics	GBH (Agence Maritime Martin)	SIFA	Léon Vincent	Set Cargo	Somatrans
	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Martinique	GBH (Agence Maritime Martin)	SIFA	Set Cargo	Bolloré Logistics	Léon Vincent	Somatrans
	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Source: Form CO, Table 35.

- (188) In view of the market specificities, these remaining competitors are unlikely to be able to avoid the increase of their costs, as they are not vertically integrated or capable of switching to alternative providers.
- (189) As explained above,²⁶⁴ all of these legs of trade are highly concentrated markets, where CMA CGM has a market share that can go as high as 100% and no less than 70%, facing competition from one carrier or, in a minority of trades, from a maximum of two other carriers with a much more limited presence. The investigation results indicated that freight forwarders active in these trades depend heavily on CMA CGM’s services. The market investigation results explained above in Sections 5.2.4.2.2.1 and 5.2.4.2.2.2 directly contradict the Notifying Party’s narrative that, if CMA CGM were to engage in input foreclosure strategies, alternative carriers would enter/expand their upstream activities in these legs of trade.
- (190) Further, the vast majority of respondents indicated that, if the merged entity were to raise its prices, they would not be able to switch to alternative providers.²⁶⁵

son impact négatif, cette transaction aurait dû exclure les DOM TOM. Cette fusion à court terme peut avoir des conséquences dramatiques sur le prix de la consommation des biens-courants car une fois la concurrence sérieuse des commissionnaires de transport éliminée, la porte à la hausse tarifaire sera ouverte et rien ne pourra empêcher cette inflation, car seuls les petits prestataires conserveront de petits flux non significatifs’.

²⁶⁴ Section 5.2.4.2.2.1.

²⁶⁵ Replies to eRFI ‘Freight Forwarders’, Question B.C.B.5.7.

- (191) *Third*, the Commission considers that there is no countervailing factor such as (i) buyer power (which appears to be at most very limited in these legs of trade) or (ii) the likelihood of entry upstream.
- (192) Regarding buyer power, the results of the market investigation show that freight forwarders have no or very limited possibilities to negotiate with CMA CGM on these legs of trade, as it is an unavoidable trading partner. In this respect, freight forwarders submitted the following:
- (a) [...] *believes that freight forwarders' clients in French Overseas Territories would not have enough bargaining power to negotiate prices with CMA CGM*²⁶⁶ [in relation to the possibility of negotiating prices with carriers in the legs of trade between each of Mediterranean and North Europe and each of Martinique, Guadeloupe, and French Guiana].
- (b) *'CMA CGM will likely be tempted to raise tariffs on competing freight forwarders, especially for the French market, as the margin made upstream is currently low. Consequently, given that the margin earned by freight forwarders is also extremely low, [...] and competing freight forwarders would have no alternative but to increase the price charged on final customers'*.²⁶⁷
- (193) *Finally*, as explained above,²⁶⁸ the market investigation indicates that the barriers to entry/expansion in the relevant upstream markets (legs of trade to/from Martinique, Guadeloupe, and French Guiana) are high. In this context, it appears unlikely that a new shipping company will start in the near future shipping services to/from these territories.
- (194) For the reasons set out above, the Commission considers that an attempt to foreclose rival freight forwarders either completely or partially would have a significant impact in the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, and French Guiana.

5.2.4.2.2.3.2. Overall impact in mainland France and other EEA countries

- (195) The Commission considers that the Transaction will have no or limited effects, namely on price and quality, in the markets for the provision of freight forwarding services in mainland France or other EEA countries.
- (196) *First*, most of the respondents to the market investigation indicated that the Transaction would have no or limited impact outside of Martinique, Guadeloupe, and French Guiana.²⁶⁹
- (197) *Second*, even if CMA CGM would have the ability and incentive to foreclose competing freight forwarders for the limited volumes imported from these territories into mainland France or any other EEA country, the overall impact on the national sea freight forwarding markets would be almost inexistent. Indeed, in 2022, only EUR 433 million were imported from Martinique, Guadeloupe, and

²⁶⁶ Minutes of pre-notification conference call of 20.07.2023, para. 32.

²⁶⁷ Minutes of pre-notification conference call of 15.09.2023, para. 35.

²⁶⁸ Section 5.2.4.2.2.1.

²⁶⁹ Replies to eRFI 'Freight Forwarders', Question B.C.A.3.

French Guiana into mainland France²⁷⁰ and only EUR 47 million into the rest of the EEA. These flows represent significantly less than 1% of sea freight forwarding's value of sales achieved in the EEA and in mainland France.²⁷¹

- (198) As a result, in view of the size of the sea freight forwarding market in mainland France and in the EEA, any attempt by CMA CGM to implement foreclosure strategies against freight forwarders active in mainland France would likely not have a significant impact.

5.2.4.3. Narrower deep-sea legs of trade to/from Réunion and Mayotte

5.2.4.3.1. Notifying Party's views

- (199) The Notifying Party argues that, post-Transaction, the merged entity would not have the ability or the incentive to implement input foreclosure strategies capable of significantly impeding effective competition in the narrower legs of trade to/from:

- (a) Réunion because CMA CGM does not have significant market power in these markets, as it competes with alternative carriers, namely MSC and Maersk;²⁷² and
- (b) Mayotte because (i) these legs of trade are very thin and non-strategic for the Parties (e.g., CMA CGM's volumes transported from/to Mayotte represent less than [...] % of the total volumes transported by the undertaking in 2022), (ii) CMA CGM does not have significant market power in these markets, facing competitive pressure from MSC, and (iii) downstream, Bolloré Logistics is a fringe operator facing strong competition from numerous freight forwarders in Mayotte.²⁷³

5.2.4.3.2. Commission's assessment

- (200) As described in Section 5.2.4.1.2.1.1, the provision of container liner shipping services is an important input for the provision of sea freight forwarding services. However, CMA CGM does not appear to hold a significant degree of market power in the legs of trade to/from Réunion and Mayotte, for the following reasons.
- (201) As shown in **Table 2**, CMA CGM's market share only exceeds 30% in the following legs of trade: From Europe to Réunion, From Réunion to Europe, and From Europe to Mayotte.²⁷⁴

²⁷⁰ There are also non-negligible flows between the French overseas territories. See Parties' reply to Request for Information 26, Annex 1.

²⁷¹ Form CO, paras. 432-433.

²⁷² Form CO, paras. 688-694.

²⁷³ Form CO, 695-709.

²⁷⁴ The Parties are unable to provide market shares for legs of trade to/from (i) Réunion or (ii) Mayotte from/to each of North Europe and Mediterranean. However, the Parties consider that the market shares in legs of trade to/from each of North Europe and Mediterranean would not significantly differ than the shares in legs of trade to/from Europe (Parties' reply to Request for Information 21, Question 4).

From Europe to Réunion

- (202) *First*, CMA CGM's individual share is [30-40]% in 2022. It faces competition from two major competitors with similar market shares: MSC, its VSA partner, with a share of [30-40]%, and also from Maersk, with a share of [20-30]%. Both operate independently with their own vessels:
- (a) MSC is engaged in a VSA with CMA CGM, though MSC operates the majority of the vessels involved, *i.e.*, 10 out of 16 vessels, while CMA CGM operates only six of them.
 - (b) More generally, MSC has densified its activities in the East Coast Africa & Indian Ocean Islands region in the past few years, especially in Réunion, through (i) the acquisition of Société de Manutention et de Consignation Maritime, a terminal operator strongly established in Réunion, in 2019, and (ii) the acquisition of Bolloré Logistics Africa (currently known as Africa Global Logistics) in 2022.²⁷⁵
 - (c) Maersk is also a significant player in this leg of trade. Maersk owns a transshipment hub in Salalah (via its subsidiary APM Terminals), which enables it to guarantee short transshipment times. The transit time between Europe and Réunion is only about three days longer than CMA CGM and MSC's direct services.²⁷⁶
- (203) *Second*, most of the freight forwarders having expressed an opinion in response to the Commission's market investigation explained that at least half of their total demand for container liner shipping services in this leg of trade was purchased from CMA CGM's competitors.²⁷⁷
- (204) The Commission's market investigation confirmed that the presence of strong competition in this market renders it very difficult for CMA CGM to raise its prices or lower the quality of its service.²⁷⁸ This is reflected in the Commission's market investigation results. Most of the freight forwarder respondents having expressed an opinion consider that, if CMA CGM decided to implement an input foreclosure strategy in this market, they would in principle be able to switch to alternative container liner shipping companies and remain unaffected.²⁷⁹ By way of example, one freight forwarder respondent stated that '*if, post-transaction, CMA CGM started to sell its container liner shipping services exclusively to Bolloré Logistics, sea freight forwarders would be unable to switch to other carriers in sea routes connecting European ports to Martinique, Guadeloupe and French Guyana. Conversely, in legs of trade connecting European ports to, for instance, Reunion Island, freight forwarders would likely be able to switch carrier post-transaction*'.²⁸⁰ As described in Section 5.2.4.1.2.1.1, switching costs in this sector are typically not high.
- (205) *Third*, any foreclosure attempts by CMA CGM would only benefit its subsidiary Bolloré Logistics, but not its VSA partner (MSC). As described in Section 5.2.2,

²⁷⁵ Form CO, paras. 690-693.

²⁷⁶ Form CO, para. 588-591.

²⁷⁷ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁷⁸ Minutes of pre-notification conference call of 06.09.2023, para. 23.

²⁷⁹ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁸⁰ Minutes of pre-notification conference call of 08.09.2023, para. 30.

despite alliances/consortia partners' flexibility on certain parameters of competition (e.g., capacity, schedule, and ports of calls) being restricted, there is still some degree of price competition between partners to alliances/consortia. As such, MSC would in principle have no reason to follow such strategy. This would restrict the merged entity's ability to engage in an input foreclosure strategy for all of the VSA's trade volumes.²⁸¹

- (206) *Finally*, most of the freight forwarder respondents having expressed an opinion believe that the Transaction will have either a positive impact or no/limited impact in this leg of trade.²⁸²
- (207) As such, the Commission considers it unlikely that CMA CGM has significant market power in this leg of trade.

From Réunion to Europe

- (208) In this market, CMA CGM's share is [30-40]% in 2022. It faces competition from two of the largest container liner shipping companies in the world, MSC and Maersk, with estimated market shares of [60-70]% and [5-10]% in 2022, respectively.²⁸³ As such, the Commission considers it unlikely that CMA CGM has significant market power in this leg of trade. In any event, both of the Parties' shares in the upstream and downstream markets are below 50%, the increment resulting from the Transaction is inexistent in the upstream market and is only at most [0-5]% in all the possible downstream markets (sea freight forwarding national markets and the sea freight forwarding markets in Réunion and mainland France)—see **Table 3** and **Table 4**—, which suggests that the Parties' ability to implement an input foreclosure strategy will likely not change as a result of the Transaction.

From Europe to Mayotte

- (209) *First*, CMA CGM's share is [70-80]% in 2022. However, it faces a strong and well-established competitor, MSC ([20-30]%), an operator that is completely independent from CMA CGM in this leg of trade.²⁸⁴
- (210) As described, MSC has been, for the past few years, especially focused on the trade between North Europe and East Coast Africa & Indian Ocean Islands (including Mayotte), making a few acquisitions that increase its influence in the area (namely, Bolloré Logistics Africa in 2022).²⁸⁵ Accordingly, MSC's share has increased since 2019, when its estimated market share was only approximately 20%.²⁸⁶
- (211) *Second*, most of the freight forwarder respondents having expressed an opinion in response to the Commission's investigation consider that, if CMA CGM would implement an input foreclosure strategy in this market, they would in principle be able to switch to alternative container liner shipping companies and remain

²⁸¹ In the same vein, see Cases M.10733 – *CMA CGM/GEFCO*, para. 75, and M.9221 – *CMA CGM/CEVA*, para. 71.

²⁸² Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁸³ Form CO, Table 71.

²⁸⁴ Form CO, Table 71.

²⁸⁵ Form CO, paras. 690-693.

²⁸⁶ Parties' reply to Request for Information 27, Question 6.

unaffected.²⁸⁷ As described in Section 5.2.4.1.2.1.1, switching costs are typically not high. This is also consistent with the Parties' assertion that MSC would be able to absorb additional capacity.²⁸⁸

- (212) *Third*, in response to a hypothetical input foreclosure strategy, Maersk could in principle easily modify its existing service that currently calls at Réunion to call as well at Mayotte (geographically very close to Réunion).²⁸⁹
- (213) As a result, it is therefore unlikely that CMA CGM would have the ability to implement any successful input foreclosure strategy post-Transaction in the leg of trade from Europe to Mayotte.
- (214) Even if it had the ability to do so, it is unlikely that it would have the incentive. CMA CGM's services stopping in Mayotte's ports are structurally in excess of capacity.²⁹⁰ Favouring Bolloré Logistics, a fringe competitor downstream with a market share of approximately [5-10]% in Mayotte, to the detriment of its competitors with much higher market shares, would likely jeopardise the mere existence of CMA CGM's services on major legs of trade that link Europe to Australia and Asia.
- (215) Considering the above, the Commission concludes that CMA CGM would likely not have the ability to implement a successful input foreclosure strategy post-Transaction in any of the legs of trade from Europe to/from each of Réunion and Mayotte. With respect to these legs of trade, it is therefore not necessary to assess whether the merged entity would have the incentive to implement an input foreclosure strategy and whether this strategy could have a significant detrimental effect in the relevant downstream markets.

5.2.5. Customer foreclosure

- (216) The Commission will assess in this section whether the Transaction could lead to customer foreclosure, pursuant to which, post-Transaction, Bolloré Logistics would foreclose CMA CGM's competitors by sourcing its container liner shipping service requirements mostly or exclusively from CMA CGM.

5.2.5.1. Notifying Party's views

- (217) The Parties submit that the Transaction does not lead to customer foreclosure because: (i) the merged entity would lack the ability to foreclose customers, notably due to the Parties' limited market shares in the sea freight forwarding markets (below 5% at the EEA and national levels, save for France), (ii) the merged entity would have no incentive to foreclose customers given Bolloré Logistics' very limited demand for container liner shipping (representing less than [...]% of the EEA market for container liner shipping services), and (iii) such foreclosure strategy would have no overall impact on the container liner shipping markets given Bolloré Logistics' limited demand in the EEA.²⁹¹

²⁸⁷ Replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁸⁸ Parties' reply to Request for Information 27, Question 6.

²⁸⁹ Parties' reply to Request for Information 27, Question 6.

²⁹⁰ Form CO, para. 702.

²⁹¹ Form CO, paras. 618 and following.

5.2.5.2. Commission's assessment

- (218) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete.²⁹²
- (219) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.²⁹³
- (220) For the merged entity to have the ability to customer foreclose, a concentration must involve a company which is an important customer with a significant degree of market power in the relevant downstream market.²⁹⁴
- (221) The Commission considers that, in this case, customer foreclosure concerns can be excluded as the Parties are unlikely to have a significant degree of market power, for the following reasons. Bolloré Logistics and, where applicable, the Parties' combined market share on the downstream sea freight forwarding markets are lower than 30% at the national level (see **Table 2**) as well as in the narrower geographic delimitations limited to each of Martinique, Guadeloupe, French Guiana, Saint Martin, Réunion, Mayotte, and mainland France (see **Table 4**). There is a significant number of competitors in the downstream markets, which constitute economic alternatives for the upstream rivals to sell their output.²⁹⁵ Moreover, Bolloré Logistics accounts for less than [...] % of the overall demand for container liner shipping services in all the relevant legs of trade.²⁹⁶
- (222) The results of the market investigation confirm these findings: the majority of the carriers expressing a view indicated that the Transaction will not increase the combined entity's ability nor incentive to restrict access of container shipping companies to a sufficient large base of freight forwarder customers.²⁹⁷
- (223) Therefore, it is unlikely that the merged entity would be considered as an important customer with a significant degree of market power in the downstream relevant sea freight forwarding markets.
- (224) In light of the above, the Commission considers that the merged entity would likely not have the ability to implement any successful customer foreclosure strategy post-Transaction. It is therefore not necessary to assess whether the merged entity would have the incentive to implement a customer foreclosure strategy and whether this strategy could have a significant detrimental effect in the relevant downstream markets.

²⁹² Non-Horizontal Merger Guidelines, para. 58.

²⁹³ Non-horizontal Merger Guidelines, para. 59.

²⁹⁴ Non-Horizontal Merger Guidelines, para. 61.

²⁹⁵ Form CO, Table 34 and replies to eRFI 'Freight Forwarders', Question B.C.B.5.

²⁹⁶ Form CO, Table 63. Parties' reply to Request for Information 30, Question 7.

²⁹⁷ Replies to eRFI 'Carriers', Question C.F.1.

5.2.6. *Conclusion*

- (225) In light of the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, as it is likely that, post-Transaction, the merged entity would have the ability and the incentive to foreclose Bolloré Logistics' competitors by restricting access to, increasing the price of, or deteriorating the quality of the container liner shipping services that it provides to Bolloré Logistics' competitors in the legs of trade from/to each of North Europe and Mediterranean to/from each of Martinique, Guadeloupe, and French Guiana, thereby significantly impeding effective competition in the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, and French Guiana.

5.3. **Conglomerate relationship**

- (226) The Transaction has a conglomerate dimension, as it involves services that belong to related markets, that is, products or services that are purchased by a significant set of consumers for a similar end use (either together in a bundle or separately).²⁹⁸ In this case, container liner shipping services and contract logistics services.
- (227) The main concern in the context of conglomerate concentrations 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, *e.g.*, tying of bundling.²⁹⁹

5.3.1. *Notifying Party's views*

- (228) The Parties submit that the Transaction will not lead to conglomerate anticompetitive effects. CMA CGM will not have the ability to tie or bundle logistics services post-Transaction and will continue offering such services separately at competitive conditions.³⁰⁰

5.3.2. *Commission's assessment*

- (229) To assess the likelihood of an anticompetitive foreclosure strategy due to conglomerate links, the Commission will firstly examine whether the merged entity has (i) the ability and (ii) the incentives to foreclose. Secondly, the Commission will assess whether such practices may have a significant negative impact on competition and consumers.³⁰¹
- (230) The Commission considers that, post-Transaction, the new entity will not have the ability to engage in an anticompetitive strategy of tying or bundling its contract logistics services with its container liner shipping services, for the following reasons.
- (231) *First*, the Parties' combined market share in contract logistics is below 30% under any plausible product or geographic market delineation, as shown in Table 8, below, and the increment is marginal as Bolloré Logistics has limited contract logistics activities, only in a limited number of Member States. Competing

²⁹⁸ Non-Horizontal Merger Guidelines, para. 91.

²⁹⁹ Non-Horizontal Merger Guidelines, para. 93.

³⁰⁰ Form CO, paras. 717 and following.

³⁰¹ Non-Horizontal Merger Guidelines, para. 94.

container liner shipping and contract logistics services will remain available on a standalone basis from other container liner shipping companies and logistics providers (see Sections 5.2.4.1.2.1.1 and 5.2.4.1.2.1.2).

Table 8 – Parties’ market shares in contract logistics (value, 2022)

	Market shares (%)		
	CMA CGM	Bolloré Logistics	Combined
Benelux ³⁰²	[5-10]	<[0-5]%	[5-10]
Czech Rep.	[0-5]	<[0-5]%	[0-5]
France	[10-20]	[0-5]	[10-20]
Germany	[0-5]	<[0-5]%	[0-5]
Italy	[5-10]	<[0-5]%	[5-10]
Spain	[5-10]	<[0-5]%	[5-10]
EEA total	[5-10]	[0-5]	[5-10]

Source: Form CO, Table 53

- (232) In addition, the Parties’ market shares under any plausible segmentations remain below 20%.³⁰³
- (233) *Second*, the Commission has already acknowledged that the structures of the container liner shipping and contract logistics markets differ significantly, making it difficult to bundle both services.³⁰⁴ In this respect, the Notifying Party explained that container liner shipping and contract logistics services have very different contractual durations: container liner shipping services are mainly provided in response to spot requests, as opposed to the multi-year contracts that are more usual in the contract logistics markets. Moreover, these are very different services: container liner shipping services are commodity services, as opposed to the tailor-made services in the contract logistics markets.³⁰⁵ The vast majority of the freight forwarders that responded to the market investigation confirmed that the market functioning of container liner shipping and contract logistics services are indeed different.³⁰⁶
- (234) *Third*, most of the respondents to the Commission’s market investigation claim that their customers do not usually jointly procure contract logistics and container liner shipping services.³⁰⁷
- (235) Consequently, the Commission considers that, in view of the information available, technical tying or bundling are likely not possible in any of these markets, and customers could easily and effectively defeat any hypothetical tying/bundling attempt.

³⁰² Includes sales in Belgium, Luxembourg, and the Netherlands. The Parties are unable to provide market shares split by each Member State.

³⁰³ Form CO, paras. 479 and following.

³⁰⁴ Case M.10733 - *CMA CGM / GEFCO*, para. 142. See also M.9221 – *CMA CGM/CEVA*, para. 105.

³⁰⁵ Form CO, para. 725.

³⁰⁶ Replies to eRFI ‘Freight Forwarders’, Questions D.C.7. At the same time, a majority of freight forwarders having expressed an opinion also consider, without substantiating their opinion, that CMA CGM could have the ability and incentive to bundle both services.

³⁰⁷ Replies to eRFI ‘Freight Forwarders’, Questions D.C.4.

- (236) The incentive to foreclose rivals through bundling or tying depends on the degree to which such strategies would be profitable.³⁰⁸ The Commission considers that the merged entity would have no incentive to favour any tied or bundled offers to the detriment of its core container liner shipping activities. Indeed, the merged entity's share in contract logistics services will remain well below 20% in most EEA countries,³⁰⁹ with the Transaction adding an only marginal increment,³¹⁰ while CMA CGM is one of the largest container liner companies in the world. Consequently, it is likely that CMA CGM would continue offering such services separately.
- (237) In addition, since its acquisition of CEVA in 2019, CMA CGM provides contract logistics in many territories (to the exception of the French overseas territories, where its presence is not material).³¹¹ The Notifying Party confirmed that '*since its acquisition of CEVA, the CMA CGM Group has never bundled its offers of contract logistics and container liner shipping services*'.³¹² The majority of the freight forwarders that expressed an opinion in response to the Commission's market investigation confirmed that CMA CGM did not start offering contract logistics services together with container shipping services after CEVA's acquisition.³¹³
- (238) *Finally*, the Commission considers that the Transaction would not have an overall negative impact on effective competition, as any bundling or tying strategy would be unlikely to reduce the ability and incentives of providers active in the EEA to compete. In this respect, the vast majority of the freight forwarders that expressed an opinion considered that the Transaction will have no or only a limited impact on the contract logistics markets.³¹⁴
- (239) Based on the above considerations and in light of all the evidence available, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to these possible conglomerate relationships.

6. THE PROPOSED REMEDIES

- (240) When a notified concentration raises serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, the parties may undertake to modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.³¹⁵

³⁰⁸ Non-Horizontal Merger Guidelines, para. 105.

³⁰⁹ Only near 20% in Slovakia (which does not have sea access).

³¹⁰ Form CO, Table 53.

³¹¹ Form CO, para. 156.

³¹² Form CO, para. 722.

³¹³ Replies to eRFI 'Freight Forwarders', Question D.C.6.

³¹⁴ Replies to eRFI 'Freight Forwarders', Question D.C.9.

³¹⁵ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the 'Commission Notice on Remedies'), para. 5.

- (241) As set out in the Commission Notice on Remedies, it is for the notifying parties to the concentration to put forward commitments.³¹⁶ The Commission is only entitled to accept commitments that it considers likely to make the notified concentration compatible with the internal market.³¹⁷ The commitments have to eliminate the Commission's competition concerns entirely and they have to be comprehensive and effective from all points of view.
- (242) On 30 January 2024, in order to remove the serious doubts arising from the Transaction, and render the concentration compatible with the internal market, the Parties have modified the notified concentration by entering into the following commitments under Article 6(2) of the Merger Regulation, which are annexed to this decision and form an integral part thereof ('Commitments').
- (243) The Commission launched a market test of these Commitments on 31 January 2024, seeking responses from customers and competitors of Bolloré Logistics. The commitments were also discussed with the national competition authorities of French Polynesia and New Caledonia.
- (244) On 16 February 2024, the Notifying Party submitted a slightly revised version of the Commitments.
- (245) As per the Commitments, the Notifying Party commits to divest Bolloré Logistics' legal entities and activities in air, land, and sea freight forwarding, as well as contract logistics, in Martinique, Guadeloupe,³¹⁸ and French Guiana.
- (246) In particular, the Notifying Party commits to sell to an independent and suitable purchaser ('Purchaser') Bolloré Logistics' freight forwarding and contract logistics activities in relation with Guadeloupe, Martinique, Saint Martin, and French Guiana ('Divestment Business').
- (247) *First*, the Divestment Business includes the following legal entities established in these territories: Bolloré Logistics Guadeloupe SAS, Guadeloupe Transit Déménagement SAS, SMTL Bolloré Logistics Martinique SAS, and Bolloré Logistics Guyane SAS ('Divestment Entities').
- (248) The Notifying Party commits to divest the Divestment Business which includes in particular:
- (a) all tangible and intangible assets of the Divestment Entities (including products under development and related rights, intellectual property rights, and know how);
 - (b) all licences, permits, and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments, and customer orders of the Divestment Business;

³¹⁶ Commission Notice on Remedies, para. 6.

³¹⁷ Commission Notice on Remedies, para. 9.

³¹⁸ Including Saint Martin's assets and activity. As Bolloré Logistics provides its services in Saint Martin through its legal entity Bolloré Logistics Guadeloupe SAS, the scope of the divestment business also includes assets and economic activities in Saint Martin, to ensure it constitutes a comprehensive business unit.

- (d) all customers, credit, and other records of the Divestment Business; and
 - (e) all staff currently employed by the Divestment Entities, including staff seconded to the Divestment Entities.
- (249) *Second*, the Divestment Business also includes relationships with customers with activities in Martinique, Guadeloupe, Saint Martin, and French Guiana which are currently commercially managed by Bolloré Logistics' legal entities in mainland France ('Bolloré Logistics France'). However, a number of global customers with multi-destination commercial relationships with Bolloré Logistics France, as well as those customers carrying out only a limited part of their business in these territories, are excluded from the scope of the Divestment Business ('Global Excluded Clients').³¹⁹
- (250) *Third*, the Notifying Party undertakes, in order to ensure the viability of the Divestment Business, to also transfer (i) some limitedly defined personnel of Bolloré Logistics France located in mainland France (approximately [100-200] employees) and (ii) staff employed by Bolloré Logistics France's subcontractors for warehousing services provided to Bolloré Logistics France.³²⁰
- (251) *Fourth*, the Divestment Business includes the benefit, for a transitional period, on terms and conditions equivalent to those at present afforded to the Divestment Business or at cost, at the option of the Purchaser, of the current arrangements under which Bolloré Logistics or its affiliated undertakings supply products or services to the Divestment Business or which are necessary for the viability of the Divestment Business, such as IT infrastructure and software, human resources, and financial services.
- (252) *Fifth*, the Notifying Party commits, for a period of [...] years after closing of the Purchaser's acquisition of the Divestment Business:
- (a) Not to solicit the key personnel of the Divestment Entities and personnel of Bolloré Logistics located in mainland France transferred with the Divestment Business ('Non-Solicitation Agreement');
 - (b) Not to provide freight forwarding services to and from Guadeloupe, Martinique, Saint Martin, and French Guiana, with the exception of services to Global Excluded Clients ('Non-Competition Agreement'); and
 - (c) To refrain from developing any local presence in the provision of freight forwarding services in Guadeloupe, Martinique, Saint Martin, and French Guiana ('Non-Relocation Agreement').

³¹⁹ Global Excluded Clients are comprised of two distinct categories of customers: (i) the customers that currently have a multi-destination commercial relationship with Bolloré Logistics France and that are listed in Annex 17 to the Form RM and (ii) customers that are not listed in Annexes 15 and 16 to the Form RM, to the extent that the annual freight forwarding turnover that would be achieved by the Parties with these customers on the legs of trade to/from Martinique, Guadeloupe, Saint Martin, and French Guiana would represent less than 25% of the total annual freight forwarding turnover achieved by the Parties with these customers.

³²⁰ These are the employees of Bolloré Logistics France who are currently devoted to flows from/to Martinique, Guadeloupe, Saint Martin, and French Guiana.

- (253) Furthermore, for a period of [...] years after closing of the Purchaser's acquisition of the Divestment Business, the Notifying party undertakes not to acquire, directly or indirectly, in whole or in part, the Divestment Business.
- (254) *Sixth*, the Commitments provide that the purchaser of the Divestment Business will meet the following criteria: (i) be independent and unconnected to the Parties, (ii) have the financial resources, expertise, and incentive to maintain and develop the Divestment Business, (iii) not be likely to create *prima facie* competition concerns. In addition, the Purchaser shall be an operator already active in the freight forwarding market, having significant activities in mainland France.
- (255) *Finally*, the Notifying Party has entered into related commitments, *inter alia*, regarding (i) the separation of the Divestment Business from their retained businesses, (ii) the preservation of the viability, marketability, and competitiveness of the Divestment Business, and (iii) the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

7. ASSESSMENT OF THE PROPOSED REMEDIES

7.1. Framework for the assessment of the proposed remedies

- (256) In Phase I, commitments can only be accepted by the Commission where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward, and the commitments so clear-cut that (i) it is not necessary to enter into an in-depth investigation and (ii) the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.³²¹
- (257) In assessing whether or not the commitments proposed by the parties would restore effective competition, the Commission considers all relevant factors, including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market, including the position of the parties and other participants on the market.³²²
- (258) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.³²³ The Commission must determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market.³²⁴
- (259) As regards the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard. Divestiture commitments are often the most effective way to eliminate competition concerns. The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser.³²⁵

³²¹ Commission Notice on Remedies, para. 81.

³²² Commission Notice on Remedies, para. 12.

³²³ Commission Notice on Remedies, para. 9.

³²⁴ Commission Notice on Remedies, para. 10.

³²⁵ Case T-177/04 – *easyJet v Commission* [2006] ECR II-1913, para. 197.

- (260) To ensure that the business is divested to a suitable purchaser, the commitments have to include general (and sometimes case-specific) purchaser criteria.³²⁶ This will allow the Commission to conclude that the divestiture of the business to a specific purchaser will likely remove the competition concerns identified.

7.2. Results of the market test of the Commitments

- (261) The Commission market tested the Commitments as of 31 January 2024. On 14 February 2024, the Commission communicated to the Notifying Party the feedback received by market test respondents.
- (262) The results of the market test were overall positive. The majority of respondents who expressed an opinion were of the view that the Commitments will remove the competition concerns raised by the Transaction.³²⁷ A significant majority of the respondents submitted that the provisions of the commitments are sufficiently clear and capable of being implemented in a timely manner.³²⁸ The majority of respondents who expressed an opinion considered that the Divestment Business is viable and includes all necessary tangible and intangible assets for the Purchaser to operate freight forwarding services in Martinique, Guadeloupe, and French Guiana.³²⁹ A significant majority of respondents who expressed an opinion submitted that the Divestment Business is an attractive business likely to attract significant interest from potential purchasers³³⁰ and several freight forwarders expressed interest in buying it.³³¹
- (263) In addition, respondents to the market test did not identify specific and substantial elements that should be improved in the Commitments.
- (264) The Parties submitted on 16 February 2024 a final version of the Commitments, which does not contain any substantial changes requiring assessment.

7.3. Commission's assessment

7.3.1. Suitability of the Commitments to remove the Commission's serious doubts

- (265) The Divestment Business is a separate business within Bolloré Logistics, composed of four independent legal entities that, already pre-divestiture, are operated as a standalone business, with own dedicated management, specific personnel, and tangible and intangible assets located in the concerned territories.³³² In addition, as the sea freight forwarding business takes place between a point of origin and a point of destination, the Divestment Business also includes assets and specific personnel in mainland France to handle, from an operational standpoint, the flows of goods exported to these territories.

³²⁶ Commission Notice on Remedies, para. 49.

³²⁷ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Questions E.9-E.10. Replies to eRFI 'Customers – Questionnaire on proposed remedies', Questions E.5-E.6.

³²⁸ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Questions E.5-E.8. Replies to eRFI 'Customers – Questionnaire on proposed remedies', questions E.1-E.4.

³²⁹ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Questions F.1, F.2, H.3, H.4. Replies to eRFI 'Customers – Questionnaire on proposed remedies', Questions F.1, F.2, H.3, H.4.

³³⁰ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Questions H.1-H.2. Replies to eRFI 'Customers – Questionnaire on proposed remedies', Questions H.1-H.2.

³³¹ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Questions E.3-E.4.

³³² Form RM, para. 120.

- (266) The sale of the Divestment Business therefore constitutes a straightforward and clear-cut structural remedy generally suitable to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.
- (267) The market test has confirmed the viability and attractiveness of the Divestment Business. Concretely, the vast majority of the market test respondents having expressed an opinion confirmed that the Divestment Business would be viable and allow a suitable purchaser to compete effectively, and on a lasting basis, in the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, Saint Martin, and French Guiana.³³³
- (268) The divestiture of the Divestment Business addresses the concerns that CMA CGM could, post-Transaction, have the ability and the incentive to foreclose Bolloré Logistics's competitors in the downstream markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, and French Guiana. By divesting the Divestment Business to an independent third-party purchaser, CMA CGM's position in the relevant sea freight forwarding market will remain unchanged by the Transaction.
- (269) The Commission therefore considers that the scope of the Divestment Business is sufficiently comprehensive, as the Commitments will entirely remove the Commission's serious doubts as to the compatibility of the Transaction with the internal market or the functioning of the EEA Agreement.

7.3.2. *Viability of the Divestment Business*

- (270) The Commission considers that, based on the evidence on file and the results of the market test, the Commitments are suitable to lead to the divestment of a viable competitive and attractive business.
- (271) *First*, the Divestment Business is financially robust and profitable, with a turnover of EUR [...] million, a gross margin of EUR [...] million, and an operating profit of EUR [...] million in 2022.³³⁴
- (272) *Second*, the Divestment Business will be a competitor with a sizeable share in all the territories where the Commission finds serious doubts, being one of the largest local competitors.³³⁵
- (273) *Third*, the market test has confirmed the viability and competitiveness of the Divestment Business. The majority of the market test respondents having expressed an opinion confirmed that the Divestment Business is a viable business unit, allowing a suitable purchaser to compete effectively and on a lasting basis in the markets for the provision of sea freight forwarding services in Martinique, Guadeloupe, and French Guiana.³³⁶

³³³ As described above, the Commitments also include Bolloré Logistics' activities in Saint Martin, as they are carried out by Bolloré Logistics' legal entity in Guadeloupe (Bolloré Logistics Guadeloupe SAS). See Parties' reply to Request for Information 27, Question 1.

³³⁴ Form RM, Table 1.

³³⁵ See **Table 4** above.

³³⁶ Replies to eRFIs 'Competitors – Questionnaire on proposed remedies', Question H.3, and 'Customers – Questionnaire on proposed remedies', Question H3.

- (274) *Fourth*, the majority of the freight forwarders having expressed an opinion confirmed that it is reasonable for the seller to retain the Global Excluded Clients.³³⁷ The exclusion of the Global Excluded Clients from its scope does not appear to impair the Divestment Business' viability. Moreover, the Purchaser will have the option to enter into an exclusive agency agreement with the Notifying Party to serve these clients in the concerned territories.
- (275) *Fifth*, the Commission considers, in view of the market test responses, that the Divestment Business contains all the tangible and intangible assets necessary to be viable and competitive.³³⁸ In particular, the majority of the freight forwarders that expressed a view consider that:
- (a) The Divestment Business contains all necessary employees, in particular those located in mainland France ([100-200] employees).³³⁹ One respondent submitted that '*the number and job description of the employees to be transferred appears on the surface adequate*'.³⁴⁰ In this respect, the majority of the freight forwarders that expressed a firm opinion confirm the necessity of the Non-Solicitation Agreement covering employees located in mainland France that will be transferred with the Divestment Business.³⁴¹ The Commission considers that such provision is justified by the specificities of the case, in particular the fact that Bolloré Logistics will remain present in mainland France in the same work areas and, possibly for a temporary period, the same warehouses, as well as the fact that the concerned employees are particularly qualified on the specificities to ship goods to Martinique, Guadeloupe, and French Guiana (*e.g.*, consolidation of goods). In addition, the Commission understands that qualified workforce is a scarce resource, especially in view of the size of the Divestment Business.³⁴²
 - (b) The Divestment Business is viable as there is no significant risk that the clients currently invoiced by Bolloré Logistics France in relation to freight forwarding activities between mainland France and Martinique, Guadeloupe, and French Guiana would choose not to be transferred to the Purchaser.³⁴³ One respondent suggested to change the provision requesting the Notifying Party to deploy '*commercially reasonable efforts*' to a '*best efforts*' provision.³⁴⁴ The Parties accepted to implement this change in the final version of the Commitments submitted on 16 February 2024.
- (276) *Sixth*, the Commission considers that, in view of the market test feedback, the Commitments are sufficient as regards the scope and the duration of the transitional service agreements offered by the Notifying Party.³⁴⁵ In particular, the majority of freight forwarders that expressed an opinion consider that the temporary

³³⁷ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Question F.16.

³³⁸ Replies to eRFIs 'Competitors – Questionnaire on proposed remedies', Question F.1, and 'Customers – Questionnaire on proposed remedies', Question F.1.

³³⁹ Replies to eRFIs 'Competitors – Questionnaire on proposed remedies', Question F.5, and 'Customers – Questionnaire on proposed remedies', Question F.3.

³⁴⁰ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Question F.8.

³⁴¹ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Question F.7.

³⁴² Minutes of a pre-notification conference call of 18.12.2023, para. 10.

³⁴³ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Question F.3.

³⁴⁴ Replies to eRFI 'Competitors – Questionnaire on proposed remedies', Question F.4.

³⁴⁵ Replies to eRFIs 'Competitors – Questionnaire on proposed remedies', Question F.11 and 'Customers – Questionnaire on proposed remedies', Question F.9.

arrangements regarding the leases of two warehouses located in mainland France are sufficient for the Purchaser to take over the Divested Business and ensure its viability.³⁴⁶

7.3.3. *Purchaser criteria and potential buyers*

- (277) The Commitments contain the standard requirements that the purchaser (i) be independent from the Notifying Party, (ii) has the financial resources, proven expertise, and incentive to maintain and develop the Divestment Business as a viable and active competitive force, and (iii) be unlikely to create competition concerns. In addition, the Commitments also contain a requirement for the Purchaser to be an operator already active in the market for the provision of freight forwarding services with significant activities in mainland France.
- (278) The majority of the respondents to the market test that expressed an opinion considered these criteria to be appropriate and sufficient.³⁴⁷
- (279) A minority of freight forwarders also submitted that the Purchaser should already have a pre-existing activity in Guadeloupe, Martinique, and French Guiana.³⁴⁸ The Commission notes that, overall, the responses from the market investigation are mixed in this respect, with only a slight majority of freight forwarders considering that a pre-existing activity in the concerned territories is not necessary.³⁴⁹ One freight forwarder, for example, submitted that ‘*the Divestment Business is mature enough to allow for a ‘plug and play’ takeover by a Purchaser without pre-existing local activities.*’³⁵⁰ In addition, the Commission notes that there are likely biases in the responses as most freight forwarders already present in these territories consider that such local presence is necessary whereas those that are not present locally do not deem it necessary.³⁵¹ The customers that responded to the market test also have mixed views.³⁵² However, the Commission notes that none of them considered this criterion to be indispensable. At best, they consider it would be a ‘*real advantage*’ or a ‘*plus*’.³⁵³
- (280) The Commission notes that:
- (a) The criterion of having a pre-existing activity in the concerned territories is not widely and consistently considered as necessary by the market participants that responded to the market test; and that
 - (b) This criterion would significantly restrict the number of potential buyers, especially as the Purchaser would have to be already present, while not having a market position creating *prima facie* competition concerns.

³⁴⁶ Replies to eRFI ‘Competitors – Questionnaire on proposed remedies’, Question F.14

³⁴⁷ Replies to eRFIs ‘Competitors – Questionnaire on proposed remedies’, Question G.1, and ‘Customers – Questionnaire on proposed remedies’, Question G.1.

³⁴⁸ Replies to eRFI ‘Competitors – Questionnaire on proposed remedies’, Question G.4.

³⁴⁹ Replies to eRFI ‘Competitors – Questionnaire on proposed remedies’, Question G.4.

³⁵⁰ Replies to eRFI ‘Competitors – Questionnaire on proposed remedies’, Question G.5.

³⁵¹ Replies to eRFIs ‘Competitors – Questionnaire on proposed remedies’, Question G.5.

³⁵² Replies to eRFIs ‘Customers – Questionnaire on proposed remedies’, Question G.4.

³⁵³ Replies to eRFIs ‘Customers – Questionnaire on proposed remedies’, Question G.5.

(281) In view of the above, the Commission considers that it is not necessary for the viability of the Divestment Business to require that a potential purchaser has pre-existing activities in Guadeloupe, Martinique, and French Guiana.

(282) The Commission therefore concludes that the purchaser criteria offered by the Notifying Party in the Commitments are sufficient to ensure that an appropriate purchaser can be selected, ensuring the viability of the Divestment Business.

7.3.4. *Attractiveness of the Divestment Business*

(283) The Divestment Business is a profitable, pre-existing, and relatively stand-alone business, [...].³⁵⁴ The Commission therefore considers that the Divestment Business would be attractive to suitable purchasers.

(284) Furthermore, the majority of the participants to the market test who expressed a firm view confirmed that the Divestment Business would be sufficiently interesting to attract suitable purchasers.³⁵⁵ A large majority also considers that the Divestment Business is a viable business for a purchaser to become a credible player on these markets.³⁵⁶ One freight forwarder explained that *‘the scope of the remedies is appealing as it is a recurring business, mostly with flows from France mainland’*.³⁵⁷

(285) Based on the results of the market test, the Commission considers that the Divestment Business is a viable, competitive, and attractive business. This is further confirmed by the fact that several companies, all with strong experience in freight forwarding in mainland France, have expressed a strong preliminary interest in acquiring the Divestment Business.³⁵⁸

7.4. **Conclusion**

(286) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

(287) The commitments in section B of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

³⁵⁴ Form RM, para. 167.

³⁵⁵ Replies to eRFIs ‘Competitors – Questionnaire on proposed remedies’, Question H.1 and ‘Customers – Questionnaire on proposed remedies’, Question H.1.

³⁵⁶ Replies to eRFIs ‘Competitors – Questionnaire on proposed remedies’, Question H.3 and ‘Customers – Questionnaire on proposed remedies’, Question H.3

³⁵⁷ Minutes of pre-notification conference call of 18.12.2023, para. 6, translated from French: *‘le périmètre des remèdes envisagés est attractif puisqu’il s’agit d’un business récurrent et que la plupart des flux viennent de France métropolitaine’*.

³⁵⁸ Replies to eRFIs ‘Competitors – Questionnaire on proposed remedies’, Question E.3. See also minutes of pre-notification conference call of 14.12.2023, para. 17; minutes of pre-notification conference call of 14.12.2023, para. 5; minutes of pre-notification conference call of 15.12.2023, para. 3; minutes of pre-notification conference call of 18.12.2023, para. 3; and minutes of pre-notification conference call of 18.12.2023, para. 5.

8. CONCLUSION

(288) For the above reasons, the European Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

**Case M.11143 – CMA CGM / BOLLORE LOGISTICS
COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), CMA CGM S.A. (“*CMA CGM*” or the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of sole control of Bolloré Logistics SE and its direct and indirect subsidiaries (“*Bolloré Logistics*”) (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation, to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Consolidated Jurisdictional Notice").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 5 (a), (b), (c) and (d) and described more in detail in the Schedule.

Bolloré Logistics France: the activities of Bolloré Logistics operated in mainland France.

Bolloré Logistics France Transferred Clients: the list of customers of Bolloré Logistics France provided in **Annex RM 16**.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of [...] months (subject to a possible extension under Section F) from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestment Entities: Bolloré Logistics Guadeloupe SAS, Guadeloupe Transit Déménagement SAS, SMTL Bolloré Logistics Martinique SAS and Bolloré Logistics Guyane SAS.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by CMA CGM and who has/have received from CMA CGM the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months (subject to a possible extension under Section F) from the Effective Date.

Global Excluded Clients are comprised of two distinct categories of customers: (i) the customers that currently have a multi-destination commercial relationship with Bolloré Logistics France and that are listed in Annex RM 17 and (ii) customers that are not listed in Annex RM 15 and Annex RM 16, to the extent that the annual freight forwarding turnover that would be achieved by the Parties with these customers on the French West Indies/French Guiana trade lanes would represent less than 25% of the total annual freight forwarding turnover achieved by the Parties with these customers.

Hold Separate Manager: the person appointed by CMA CGM for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Main Closing Date: the closing of the Concentration filed under case M.11143.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by CMA CGM, and who has/have the duty to monitor CMA CGM's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party (CMA CGM) and the undertaking that is the target of the concentration (Bolloré Logistics), including their current or future Affiliated Undertakings.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, as well as (i) the staff employed by Bolloré Logistics France's subcontractors, CNL and Bogart, for the warehousing services provided to Bolloré Logistics France, and (ii) some limitedly defined personnel of Bolloré Logistics France located in mainland France.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing in detail the Divestment Business.

Seller: (i) Bolloré SE, incorporated under the laws of France, with its registered office at Odet, 29 500 Ergué-Gabéric, and registered with the Commercial/Company Register of Quimper under number 055 804 124; and (ii) Tamaris Finances SARL, incorporated under the laws of France, with its registered office at 51, boulevard de Montmorency, 75 016 Paris, and registered with the Commercial/Company Register of Paris under number 417 978 632.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] months (subject to a possible extension under Section F) from the end of the First Divestiture Period.

CMA CGM: CMA CGM S.A., incorporated under the laws of France, with its registered office at Boulevard Jacques Saadé - 4, quai d'Arenc, 13 235 Marseille, and registered with the Commercial/Company Register of Marseille under number 562 024 422.

Bolloré Logistics: Bolloré Logistics SE, incorporated under the laws of France, with its registered office at 31-32, Quai de Dion Bouton, 92 800 Puteaux, and registered with the Commercial/Company Register of Nanterre under number 552 088 536, and its direct and indirect subsidiaries.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, CMA CGM commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, CMA CGM commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If CMA CGM has not entered into such an agreement at the end of the First Divestiture Period, CMA CGM shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
3. CMA CGM shall be deemed to have complied with this commitment if:
 - a. by the end of the Trustee Divestiture Period, CMA CGM or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20;
 - b. the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period; and
 - c. by the end of the respective terms, CMA CGM complied with its obligations lasting beyond the closing of the sale of the Divestment Business, including under any and all of the agreements between CMA CGM and the Purchaser, as detailed in the Schedule.
4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of [...] years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of the divestment of Bolloré Logistics Guadeloupe SAS ("***Bolloré Logistics Guadeloupe***"), Guadeloupe Transit Déménagement SAS ("***GTD***"), SMTL Bolloré Logistics Martinique SAS ("***Bolloré Logistics Martinique***") and Bolloré Logistics Guyane SAS ("***Bolloré Logistics Guyane***") (the "***Divestment Entities***") as well as the customers of Bolloré Logistics France with activities in the French West Indies and French Guiana territories listed in **Annex RM 16** ("***Bolloré***

Logistics France Transferred Clients”) (with the Divestment Entities, the “*Divestment Business*”). The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

- a. all tangible and intangible assets (including products under development and related rights, intellectual property rights, and know how);
 - b. all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - c. all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - d. the Personnel.
6. In addition, the Divestment Business includes the benefit, for a transitional period after Closing, on terms and conditions equivalent to those at present afforded to the Divestment Business or at costs (whichever is more advantageous to the Divestment Business), of the current arrangements under which Bolloré Logistics or its Affiliated Undertakings supply products or services to the Divestment Business or which are necessary for the viability of the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser and with the approval of the Commission. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit/division of the corresponding Bolloré Logistics entity.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until the Main Closing Date, Bolloré Logistics, and from the Effective Date until Closing, the Notifying Party, shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Parties undertake:
- a. not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

- b. to make available, or procure to make available, sufficient financial and other resources needed for the development of the Divestment Business, including the development of pipeline products or services where relevant, on the basis and continuation of the existing business plans;
- c. to use their best efforts, including providing appropriate incentive schemes, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to CMA CGM's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission;
- d. in case a member of the personnel located in mainland France refuses to be transferred to the Divestment Business, to provide a reasoned proposal to replace that person.

Hold-separate obligations

- 8. The Notifying Party commits, from the Effective Date until Closing (and Bolloré Logistics commits, from the Effective Date until the Main Closing Date), to keeping, within the limits set by applicable labour laws, the Divestment Business separate from the business(es) it is retaining and to ensure that, unless explicitly permitted under these Commitments and save for the operational support that is currently provided to the Divestment Business in the ordinary course of business: (i) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Business, and (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individuals outside the Divestment Business.
- 9. From the Effective Date until the Main Closing Date, Bolloré Logistics, and from the Effective Date until Closing, CMA CGM shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which CMA CGM is retaining. Immediately after the adoption of the Decision, CMA CGM shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by CMA CGM. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure

laid down in paragraph 7(c) of these Commitments. The Commission may, after having heard CMA CGM, require CMA CGM to replace the Hold Separate Manager.

10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise CMA CGM's rights as shareholder in the legal entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling CMA CGM's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

11. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by them before the Effective Date will be eliminated and not be used by them. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the operational support that is currently provided to the Divestment Business in the ordinary course of business or for the divestiture of the Divestment Business, or the disclosure of which is required by law.

Non-solicitation and non-compete clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel and any other personnel of Bolloré Logistics France located in mainland France transferred with the Divestment Business for a period of [...] years after Closing.
13. The Parties undertake, for a period of [...] years after Closing, not to provide, and to procure that Affiliated Undertakings will not provide, freight forwarding services to and from Guadeloupe, Martinique, Saint-Martin and French Guiana, with the exception of services to Global Excluded Clients.

Non-relocation

14. The Parties undertake, for a period of [...] years after Closing, to refrain, and to procure that Affiliated Undertakings will refrain, from developing any local presence in Guadeloupe, Martinique, Saint-Martin and French Guiana in freight forwarding activities, in particular through acquiring or creating locally based companies or branches

having freight forwarding activities, which in particular includes setting up a commercial or technical agency, or contracting with a commercial agent or establishing a legal entity, contracting for warehouses, or hiring any employee.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, CMA CGM shall provide them with the confidential version (or a meaningful non-confidential version) of the Commitments. Subject to customary confidentiality assurances and dependent on the stage of the divestiture process, CMA CGM shall also:
 - a. provide to potential purchasers sufficient information as regards the Divestment Business;
 - b. provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. CMA CGM shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten days after the end of every month following the Effective Date (or otherwise at the Commission's request). CMA CGM shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
17. CMA CGM shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.
18. As from Closing, and for the duration of the non-compete clause, CMA CGM shall provide on a regular basis the Monitoring Trustee with all elements of its contracts and commercial relationships with Global Excluded Clients required to effectively monitor the provision of the non-compete clause.

Section D. The Purchaser

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
 - a. The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture). In addition, neither the Seller nor any of its affiliated undertakings is a suitable Purchaser.

- b. The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
 - c. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
 - d. The Purchaser shall be an operator already active in the market for freight forwarding having significant activities in mainland France.
20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When CMA CGM has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. CMA CGM must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

- 21. CMA CGM shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
- 22. If CMA CGM has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by CMA CGM at that time or thereafter, CMA CGM shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

23. The Trustee shall:
- (a) at the time of appointment, be independent of the Notifying Party, the Seller, as well as any identified potential purchaser, and its/their affiliated undertakings;
 - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (c) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by CMA CGM

25. No later than two weeks after the Effective Date, CMA CGM shall submit the name of at least three natural or legal persons whom CMA CGM proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, CMA CGM shall submit a list of one or more persons whom CMA CGM proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, CMA CGM shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, CMA CGM shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the CMA CGM

27. If all the proposed Trustees are rejected, CMA CGM shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

Trustee nominated by the Commission

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom CMA CGM shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or CMA CGM, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by CMA CGM with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - a. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 7 and 8 of these Commitments;
 - b. monitor that Parties make available sufficient resources for the Divestment Business to develop including the development of pipeline products or services where relevant, based on the existing business plans and their continuation;
 - c. to the extent that the Commitments include transitional service agreements or the obligation to supply certain inputs or products, monitor the strict compliance with the terms approved and inform the Commission promptly of any changes or compliance problems during the terms of such agreements;

- d. supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;
 - e. with respect to Confidential Information:
 - determine all necessary measures to ensure that CMA CGM or its Affiliated Undertakings does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by CMA CGM before the Effective Date is eliminated and will not be used by CMA CGM or its Affiliated Undertakings; and
 - decide whether such information may be disclosed to or kept by CMA CGM as the disclosure is reasonably necessary to allow CMA CGM to carry out the divestiture or as the disclosure is required by law;
 - f. monitor the splitting of assets and the allocation of Personnel between the Divestment Business and CMA CGM or its Affiliated Undertakings;
- (iii) propose to CMA CGM such measures as the Monitoring Trustee considers necessary to ensure CMA CGM's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- a. it is fully independent from any identified potential purchaser and is not exposed to any Conflict of Interest in respect thereto,
 - b. potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and by ensuring their access to a confidential version or a meaningful non-confidential version of the Commitments, and
 - c. potential purchasers are granted reasonable access to the Personnel and Key Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

- (vi) provide to the Commission, sending CMA CGM a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending CMA CGM a non-confidential copy at the same time, if it concludes on reasonable grounds that CMA CGM is failing to comply with these Commitments;
- (viii) promptly report in writing to the Commission as soon as it becomes aware of potential exposure to a Conflict of Interest arising after its appointment;
- (ix) to the extent that the Commitments include transitional service agreements or the obligation to supply certain inputs or products, inform promptly of any deviation from the terms included in the Commitments or approved by the Commission or any dispute as to the compliance with such terms during the full duration of the agreement;
- (x) monitor the transfer, by CMA CGM, of the current customers of the Divestment Entity listed in Annex RM 15 and of Bolloré Logistics France Transferred Clients listed in Annex RM 16;
- (xi) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending CMA CGM a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (xii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision, and in particular oversee CMA CGM's compliance with the non-compete provision, and, notably that (a) the 25% threshold in the definition of Global Excluded Clients is duly verified, for each customer, at least once per 12-month period, and (b) commercial relationships with the Global Excluded Clients to which the 25% threshold is applicable are terminated with regard to the French West Indies/French Guiana trade lanes when this threshold is reached or exceeded;

(xiii) remain for the entire duration of the Commitments a point of contact for CMA CGM, the Purchaser, the Commission and any other interested third party, in case of issues arising from the implementation and monitoring of the Commitments, including by producing ad hoc reports upon request of the Commission.

31. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 19 and 20 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of CMA CGM, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

34. CMA CGM shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of CMA CGM's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and CMA CGM and the Divestment Business shall provide the Trustee upon request with copies of any document. CMA CGM and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

35. CMA CGM shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. CMA CGM shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. CMA CGM shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. CMA CGM shall grant or procure its Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, CMA CGM shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. CMA CGM shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to CMA CGM for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of CMA CGM, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to CMA CGM’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should CMA CGM refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard CMA CGM, at the expense of CMA CGM. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served CMA CGM during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale. The Divestiture Trustee may appoint, at the expense of CMA CGM, advisors (in particular for corporate finance or legal advice), without CMA CGM’s approval if the Divestiture Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties

and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are in line with business practice.

39. CMA CGM agrees that the Commission may share Confidential Information proprietary to CMA CGM with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.
40. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - a. the Commission may, after hearing the Trustee and CMA CGM, require CMA CGM to replace the Trustee; or
 - b. CMA CGM may, with the prior approval of the Commission, replace the Trustee.
43. If the Trustee is removed according to paragraph 42 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21-28 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from CMA CGM or, in appropriate cases, on its own initiative. Where CMA CGM requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who

shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall CMA CGM be entitled to request an extension within the last month of any period.

46. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

47. The Commitments shall take effect upon the date of adoption of the Decision.

On behalf of CMA CGM S.A.

[...]

[signed]

On behalf of Bolloré Logistics SE

[...]

[signed]

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

- Bolloré Logistics Guadeloupe SAS (“***Bolloré Logistics Guadeloupe***”)

Bolloré Logistics Guadeloupe is a joint-stock company (*société par actions simplifiée*) incorporated under the laws of France with its registered office and place of management in Baie-Mahault, Guadeloupe, France. Bolloré Logistics Guadeloupe is currently 100% owned by Bolloré Logistics.

Bolloré Logistics Guadeloupe holds a minority shareholding of [...]% in CEI.BA, a public limited company (*société anonyme à directoire*) incorporated under the laws of France with its registered office and place of management in Baie-Mahault, Guadeloupe.

- Guadeloupe Transit Déménagement SAS (“***GTD***”)

Guadeloupe Transit Déménagement is a joint-stock company (*société par actions simplifiée*) incorporated under the laws of France with its registered office and place of management in Baie-Mahault, Guadeloupe, France. Guadeloupe Transit Déménagement is currently 100% owned by Bolloré Logistics¹.

- SMTL Bolloré Logistics Martinique SAS (“***Bolloré Logistics Martinique***”)

Bolloré Logistics Martinique is a joint-stock company (*société par actions simplifiée*) incorporated under the laws of France with its registered office and place of management in Fort-de-France, Martinique, France. Bolloré Logistics Martinique is currently owned at 100% by Bolloré Logistics.

Bolloré Logistics Martinique holds a minority shareholding of [...]% in Port Plus, a joint-stock company (*société par actions simplifiée*) incorporated under the laws of France with its registered office and place of management in Fort-De-France, Martinique, France.

Bolloré Logistics Martinique is a member of Transair, *groupement d'intérêt économique* (GIE) operating handling activities on the airport of Le Lamentin (Martinique).

- Bolloré Logistics Guyane SAS (“***Bolloré Logistics Guyane***”)

Bolloré Logistics Guyane is a joint-stock company (*société par actions simplifiée*) incorporated under the laws of France with its registered office and place of

¹ [...].

management in Remire Montjoly, Guyane, France. Bolloré Logistics Guyane is currently owned at [>50]% by Bolloré Logistics.

Bolloré Logistics Guyane holds a minority shareholding of [...] % in GUYANE INFORMATIQUE PORTUAIRE PLUS, a joint-stock company (société par actions simplifiée) incorporated under the laws of France with its registered office and place of management in Remire-Montjoly (Guyane).

[...]

2. In accordance with paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:
 - a. the following main tangible and intangible assets:
 - [...]: one warehouse, located [...].
 - [...]: a total land area of [...] m² including office area (head office and agency) (surface area: [...] m²) and a warehouse (surface area: [...] m²), [...].
 - Standard computer licences.
 - b. the following main licences, permits and authorisations:
 - Authorized economic operator (AEO) certifications;
 - Customs Representative approvals;
 - DELTA G conventions with customs (in Guadeloupe and Martinique, for sending electronic declarations to customs) and DELTA T conventions with customs (in Martinique and French Guiana, for managing transit declarations);
 - Attestations of capacity to exercise the profession of freight forwarder issued by the Ministry of Transport;
 - Certifications ISO9001, ISO14001, ISO45001 and for the distribution of medicinal products for Human use;
 - Comprehensive Guarantee Authorisations (“CGU Authorisations”);
 - Customs warehousing authorisations (in Martinique);
 - Authorisations to operate temporary storage facilities (“IST Approvals”) (in Guadeloupe and French Guiana);
 - Simplified declaration authorisations (in Guadeloupe);
 - Convention to provide a LIAD inspection site for phytosanitary checks (in French Guiana).

- c. the following main contracts, agreements, leases, commitments and understandings:
- all customer formal contracts of Bolloré Logistics Guadeloupe, Bolloré Logistics Martinique and Bolloré Logistics Guyane, i.e.:
 - [...];
 - [...];
 - [...];
 - [...].
 - the following customers:

To the best of the Parties' knowledge, the Divestment Business's main customers currently consist of a portfolio of approximately [>1000] customers, listed in **Annex RM 15**. The exact portfolio will be confirmed at Closing and will be regularly updated until then.

In addition, the Divestment Business includes the Bolloré Logistics France Transferred Clients listed in **Annex RM 16**. The exact portfolio will be confirmed at Closing and will be regularly updated until then. In practice, the Parties undertake to use their best efforts to ensure that the relevant customers agree to be managed and invoiced (in France and at destination) by the Purchaser (either through the local entities or its branch in France).

In particular, Bolloré Logistics will contact each of the Bolloré Logistics France Transferred Clients in order to present and explain to them the transfer of the relationships and the reasons for this transfer. If necessary, and in compliance with competition rules, Bolloré Logistics will arrange specific visits with the Purchaser to the Bolloré Logistics France Transferred Clients so that the Purchaser can reassure them in terms of continuity, quality, improvement of service, pricing and continuity of credit term.

In any event, CMA CGM commits, as from Closing, to ceasing all commercial relationships with both the current customers of the Divestment Entity listed in **Annex RM 15** and Bolloré Logistics France Transferred Clients listed in **Annex RM 16**.

- the following leases:
 - Bolloré Logistics Martinique:
 - leasehold interest for a total land area of [...] m² including one warehouse area ([...] m²) and adjoining office building (agency and head office) ([...] m²), located [...];
 - leasehold interest for one office space (surface area: [...] m²) located [...].

- Bolloré Logistics Guadeloupe:
 - leasehold interest for warehouse [...], located [...];
 - leasehold interest for three warehouses (surface area: [...] m²) and adjoining office building (agency and head office) (surface area: [...] m²), located [...];
 - leasehold interest for one warehouse (surface area: [...] m²), located [...];
 - leasehold interest for one office space (surface area: [...] m²), located [...];
 - leasehold interest for one office space (surface area: [...] m²), located [...];
 - leasehold interest for one office space (surface area: [...] m²), located [...].

d. the following Personnel:

[100-200] persons employed by the four ceded entities, who can be classified as follows:

[...]

CMA CGM will also transfer the following [100-200] sea and air freight forwarding personnel (full-time equivalent) of Bolloré Logistics France located in mainland France, which can be classified as follows:

[...]

Since the personnel of Bolloré Logistics France located in mainland France is not dedicated to the French West Indies and French Guiana activity, due to Labour law constraints, such transfers would have to be made on a case by case and voluntary basis. CMA CGM and Bolloré Logistics would use their best efforts to convince and encourage the concerned employees to accept such a transfer.

In practice, the Parties undertake to use their best efforts, including providing appropriate incentive schemes, to encourage the concerned personnel from Bolloré Logistics France located in mainland France to be transferred to the Divestment Business.

Should, for whatever reason, one or several members of the above-mentioned personnel of Bolloré Logistics France not be transferred to the Divestment Business, Bolloré Logistics shall have the right to keep such members as their employees.

Are also included in the Personnel [...] FTE employed by Bolloré Logistics France's subcontractors ([...]) in Dunkerque and Le Havre for warehousing activities provided to Bolloré Logistics France. In practice, the Parties would transfer the contractual relationship with the subcontractor to the Purchaser and do not anticipate any difficulties in such a transfer as the subcontractor is a supplier.

The Personnel includes the following Key Personnel:

Personnel from the Divestment Entities:

– within Bolloré Logistics Guadeloupe:

- [...],
- [...],
- [...],
- [...],
- [...].

– within Bolloré Logistics Martinique:

- [...],
- [...],
- [...].

– within Bolloré Logistics Guyane:

- [...],
- [...],
- [...].

Personnel from Bolloré Logistics France:

- [...],
- [...],
- [...],
- [...],
- [...],
- [...].

e. Transitory arrangements

At the option of the Purchaser, arrangements for the supply of the following products or services by CMA CGM or Affiliated Undertakings for a transitional period of [...] months after Closing, renewable for [...] at the option of the Purchaser, which may cover all or part of the following services, for instance but not limitatively:

- key support services located in mainland France necessary to freight forwarding activities to and from the French West Indies and French Guiana²;
- IT infrastructure, licenses and software, including the transport management system (TMS) and warehouse management system (WMS) used by the Divestment Business;
- human resources services, including the payroll management system, and other human resources systems ([...]), used by the Divestment Business;
- financial services, including the access and assistance in the use of [...], used by the Divestment Business.

At the option of the Purchaser, arrangements for the lease of the following warehouses located in mainland France for a transitional period of [...] months after Closing, renewable for [...] at the option of the Purchaser:

- one warehouse of 10.000 square meters located [...]; and
- 4.000 stand alone square meters in a warehouse located [...].

f. Operational agency agreement at destination

CMA CGM will offer the Purchaser the opportunity to enter into an operational agency agreement with Bolloré Logistics France to entrust the Divestment Business, on an exclusive basis, with the technical operations in the French West Indies and French Guiana necessary to handle the Global Excluded Clients' volumes in those territories³.

3. The Divestment Business shall not include the business currently achieved by Bolloré Logistics France with Global Excluded Clients as defined in Section A above.
4. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

² Such key support services located in mainland France would be defined on a case-by-case basis based on the Purchaser's needs. [...].

³ The duration and the commercial terms and conditions of the operational agency agreement that may be entered into at destination will be discussed with the Purchaser. The Parties anticipate that such an agreement could have a duration of between [...], depending on the Purchaser's interest.