



## EUROPEAN COMMISSION

Brussels, 22.10.2018  
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

**To the notifying party :**

**Subject:**        **Case M.9016 – CMA CGM / Container Finance**  
**Commission decision pursuant to Article 6(1)(b) of Council**  
**Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the**  
**European Economic Area<sup>2</sup>**

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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Dear Sir or Madam,

On 17 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CMA CGM acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Container Finance. The concentration is accomplished by way of purchase of shares.<sup>3</sup> CMA CGM and Container Finance are designated hereinafter as the "Parties".

## **1. THE PARTIES**

- (1) CMA CGM is the parent company of an international group of companies engaged in containerised liner shipping, container terminal services and freight forwarding services.
- (2) CMA CGM is currently jointly controlled by Merit, the holding company created by CMA CGM's founder, Mr Jacques R. Saadé, and BPIfrance Participations, an investment fund controlled by the French public group Caisse des dépôts et Consignations.
- (3) Container Finance is a Finland-based holding company which owns *inter alia*, Containerships, a carrier providing door-to-door services predominantly in North Europe, and to a lesser extent, the Mediterranean. Containerships also provides to a very limited extent freight forwarding services. Container Finance also owns a controlling minority shareholding in Multi-Link Terminals Limited Ltd ("MLT") and CD Holding Oy ("CDH"), providing terminal handling services in Finland and Russia. Container Finance owns a non-controlling stake in MLT Logistics Kypros.

## **2. THE CONCENTRATION**

- (4) On 20 June 2018, the Parties signed a framework purchase agreement ("Framework Agreement"), pursuant to which CMA CGM could acquire Container Finance's businesses related to container liner shipping and terminal services, either by purchasing directly 100% of the share capital and voting rights of Container Finance, or by purchasing separately Containerships and the [...] stakes in MLT, CDH and MLT Logistics Kypros.
- (5) It has subsequently been confirmed that CMA CGM will directly acquire 100% of the share capital and voting rights of Container Finance (the "Transaction"). CMA CGM will therefore acquire sole control over Container Finance.
- (6) In light of the above, the Transaction constitutes a concentration under Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (7) The Transaction does not have an EU dimension within the meaning of Article 1(2) and 1(3) of the Merger Regulation as Container Finance achieved an EU

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<sup>3</sup> Publication in the Official Journal of the European Union No C 342, 25.09.2018, p. 5.

turnover of only EUR [...] million and it did not achieve a turnover of more than EUR 25 million in at least three Member States.

- (8) Nevertheless, the Transaction fulfilled the conditions set out in Article 4(5). On 9 July 2018, the Parties informed the Commission by means of a reasoned submission that the Transaction should be examined by the Commission pursuant to Article 4(5) of the Merger Regulation. A copy of that submission was transmitted to the Member States on 9 July 2018. As none of the Member States competent to review the Transaction expressed its disagreement as regards the request to refer the case, the Transaction is deemed to have an EU dimension pursuant to Article 4(5) of the Merger Regulation.<sup>4</sup>

#### **4. ACTIVITIES OF THE PARTIES**

##### **4.1. Container Finance**

- (9) Container Finance, *via* its subsidiary Containerships, provides door-to-door services, including short-sea container shipping services. Containerships currently operates a fleet of [...] vessels (either owned or chartered) with a capacity varying from [...] to [...] TEUs.<sup>5</sup> [INFORMATION RELATED TO CURRENT SUPPLY CONTRACT].<sup>6</sup>
- (10) Containerships is predominantly active in the Baltic and North Sea regions, which account for [80-90]% of its operations. Containerships also has activities in the Mediterranean region, which now account for [10-20]% of its operations. As far as the EEA is concerned, in the Mediterranean region Containerships only calls in Spain (Barcelona). Containerships is mainly active in the following countries: Belgium, Denmark, Finland, Germany, Lithuania, Latvia, Netherlands, Russia, Turkey, and UK.<sup>7</sup>

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<sup>4</sup> The case would have been notifiable in Austria, Finland, Germany, Ireland, Latvia and Lithuania.

<sup>5</sup> TEU stands for the "twenty-foot equivalent unit" used to describe the capacity of one ship container.

<sup>6</sup> Form CO, paragraphs 61-62.

<sup>7</sup> Form CO, paragraph 61, 62 and 65.



Source: Form CO, paragraph 63.

- (11) Containerships offers pure short-sea transport, as well as door-to-door transport, to its customers. Door-to-door requires the provision of the “extra mile” or “last leg” of land transport to the final place of destination, as a complement to sea transport. It estimates that approximately [...] % of the volumes shipped include an intermodal component.<sup>8</sup>
- (12) Containerships also provides inland transportation services in Finland, Russia, and the UK, where it operates its own truck fleet. Containerships does not operate trailers or barges in these countries. In other countries, including the Baltics, Benelux, Denmark, and Poland, trucks, trailers, and spaces on barges are contracted with third-party service providers.
- (13) Containerships offers freight forwarding services in Germany, Latvia, Lithuania, Russia, and the UK, although only to a limited extent. In 2017 it achieved a worldwide turnover of EUR [...]. Containerships estimates that its market shares are below [0-5] % in every country where it operates.

#### 4.2. CMA CGM

- (14) The CMA CGM Group is mainly active in the sectors of containerized liner shipping, container terminal and freight forwarding services.

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<sup>8</sup> Form CO, paragraph 64.

- (15) CMA CGM (11.8%) is currently the world's fourth largest container liner company, after Maersk (18%), MSC (14.5%), and COSCO (12.4%) since the latter finalized the acquisition of the carrier OOCL in July 2018. CMA CGM has worldwide operations. The group is present in more than [...] countries through its network of over [...] agencies. With a fleet of [...] vessels, the CMA CGM Group serves [...] commercial ports. CMA CGM operates more than [...] shipping lines on the main commercial trade routes.<sup>9</sup>
- (16) As Containerships, the CMA CGM Group provides door-to-door traffic to its customers, including short-sea container shipping services, notably via its specialized subsidiary MacAndrews.<sup>10</sup> It is therefore able to serve the "last leg" or the "extra mile" of land transport. It estimates that at least [...] % of the volumes shipped include an intermodal component. CMA CGM is mainly active in the following countries across Europe: the Baltic States, Belgium, France, Germany, Ireland, the Netherlands, Poland, Portugal, Scandinavia, Spain, and UK.<sup>11</sup>
- (17) In addition, for its door-to-door offers, CMA CGM purchases and re-sales inland transportation services to third-party customers. However, CMA CGM does not own or lease the operational assets necessary to provide inland transportation services, to the exception of Logistics Operator LLC (LogOper), a [...] undertaking whose activities have a very limited footprint in the EU.<sup>12</sup>
- (18) The CMA CGM Group, via its subsidiaries CMA Terminals and Terminal Link, is also active on the market for the provision of container terminal services, where Containerships is active on the demand-side.<sup>13</sup>
- (19) The CMA CGM Group, through its wholly-owned subsidiary CMA CGM Logistics (CCLog), has a limited activity as freight forwarder in Europe. In Europe, CCLog offers services in the Baltic States, Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, the UK. In 2017 it achieved a worldwide turnover of USD [...] million and an EU-wide turnover of approximately USD [...] million.

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<sup>9</sup> Form CO, paragraphs 74-75.

<sup>10</sup> MacAndrews includes OPDR, see Case M.7523 – CMA CGM/OPDR,

<sup>11</sup> Form CO, paragraphs 78 and 83.

<sup>12</sup> LogOper is a logistics services provider which operates weekly block train services within the territory of the Russian Federation and neighbouring countries. LogOper has a very small activity in the Baltic States, limited to Latvia and Estonia, where it operates trains between Tallinn and Moscow, and between Riga and Moscow.

<sup>13</sup> Form CO, paragraph 85.

## **5. MARKET DEFINITIONS**

### **5.1. Intra-European door-to-door multimodal transport**

#### *5.1.1. Relevant product market*

- (20) According to the Parties, their business of intra-Europe container liner shipping is directly subject to competitive pressure from land transport (especially by truck). As a result, the Parties submit that the relevant market is the market for intra-European door-to-door multimodal transport services.<sup>14</sup>
- (21) Door-to-door multimodal transport services consist in taking up cargo at an agreed point and delivering it to another agreed point. Customers decide where the point of loading and point of delivery are situated and transport services providers adapt to this. As the cargo is containerised, it can travel on vessels, trucks, trains and barges.<sup>15</sup>
- (22) In previous decision, the Commission noted that sea vessel operators, truck, rail and barge companies offering door-to-door transport ultimately compete on the provision of multimodal transport services and transport operators often need to combine different modes of transport in order to provide a full door-to-door service. Therefore, the Commission concluded that there is a market for door-to-door transport services, including all modes of transportation.<sup>16</sup>
- (23) In the present case, the Commission will assess the effects of the Transaction on the market for intra-European door-to-door multimodal transport services.

#### *5.1.2. Relevant geographic market*

- (24) The Parties claim that the geographic market should be delineated on the basis of points of origin (POO) and destination (otherwise reported as Final Place of Destination, FPD) rather than on the basis of ports of loading (POL) and delivery (POD).<sup>17</sup>
- (25) In this respect, the Parties submit that the narrowest relevant geographic market definition for intra-European door-to-door multimodal transport services is composed by pairs of countries.<sup>18</sup>
- (26) In its prior decisional practice, while leaving the geographic market definition open, the Commission has considered that this market could be defined as

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<sup>14</sup> Form CO, paragraphs 108 and 111.

<sup>15</sup> Case M.7523 – CMA CGM/OPDR, paragraph 24.

<sup>16</sup> Case M.7523 – CMA CGM/OPDR, paragraph 31.

<sup>17</sup> Form CO, paragraph 131.

<sup>18</sup> Form CO, paragraph 132.



consisting either on a country-by-country (*e.g.* Spain to Ireland) or a trade basis (*i.e.* aggregated country pairs, *e.g.* Iberia to Northern Europe).<sup>19</sup>

- (27) For the purpose of the assessment of the Transaction, the Commission will adopt a conservative approach and consider each country pair separately. Considering that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition (country pairs or trades), the exact geographic scope of the markets can be left open.

### *5.1.3. Conclusion*

- (28) The Commission concludes that there is a market for door-to-door transport services, in which providers compete for the same customers irrespective of the specific mode or modes of transportation. The geographic scope of the market may at its narrowest be defined as consisting of country pairs, but may be larger in scope. As however this would not alter the present assessment, the exact scope of the geographic market (country pairs or trades) can be left open.

## **5.2. Short-sea container liner shipping services**

### *5.2.1. Relevant product market*

- (29) Short-sea container liner shipping involves the provision of regular, scheduled intra-continental (usually costal trade) services for the carriage of cargo by container liner shipping companies.
- (30) The Parties consider that short-sea container liner shipping services are part of a broader market encompassing alternative modes of transport (in particular trucks).<sup>20</sup>
- (31) In its prior decisional practice related to container liner shipping services, the Commission has defined a separate product market for short-sea container liner shipping, *i.e.* distinct from deep-sea container shipping, non-liner shipping<sup>21</sup> and non-containerised shipping, such as bulk shipping.<sup>22</sup>
- (32) However, the Commission ultimately left open whether the transport of wheeled cargo<sup>23</sup> should be considered as a different product market.<sup>24</sup>

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<sup>19</sup> Case M.7523 – *CMA CGM/OPDR*, paragraphs 35 and 36.

<sup>20</sup> Form CO, paragraph 113.

<sup>21</sup> *E.g.* tramp or specialised transport.

<sup>22</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 49.

<sup>23</sup> Roll on-roll off ("Ro-Ro") shipping corresponds to the transport of wheeled cargo (lorries, cars, etc.) on ships.

<sup>24</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 50.

- (33) The Commission also left open whether there should be a sub-segmentation between reefer and dry transport.<sup>25</sup> In the present case, the Parties' proportion of reefer activity out of their overall activity does not exceed 10% on the relevant legs of trade. In line with the Commission decisional practice in the short-sea container liner shipping market, in trades with a share of reefer containers in relation to all containerized cargo below 10% in both directions, transport in reefer is not assessed separately but as part of the overall market for container liner shipping services.<sup>26</sup>
- (34) During pre-notification contacts, a competitor of the Parties indicated that the market for short-sea shipping container liner shipping could be further segmented into a market for short-sea Euro Pallet Wide container liner shipping. Euro Pallet Wide containers are 40ft or 45ft containers specifically designed to optimise the transport of goods on Euro pallets by being a few centimetres wider than standard container, thereby allowing for a third row of pallets. Compared to standard containers, Euro Pallet Wide containers can load about 20% more Euro pallets.
- (35) This competitor considered that both CMA CGM and Containerships provide Euro Pallet Wide containers transport services and would have, post-Transaction, high market shares on some legs of trade.<sup>27</sup> On the contrary, the Parties do not consider that the transport of Euro Pallet Wide containers constitutes a separate market. The Parties argue that transportation in Euro Pallet Wide containers is substitutable to transportation in standard containers, both from a demand-side and supply-side perspective.<sup>28</sup>
- (36) When asked about the possible existence of a sub-segment for the transport of cargo in Euro Pallet Wide containers on short-sea liner shipping vessels, the majority of respondents to the market investigation having expressed a view indicated that this is likely to be the case.<sup>29</sup> However, the market investigation provides evidence of demand- and supply-side substitutability between the transport of cargo in Euro Pallet Wide containers and the transport of cargo in standard containers.
- (37) From the demand-side perspective, only a minority of respondents having expressed a view considered that customers have a preference for cargo being transported in Euro Pallet Wide containers and have tailored their supply chain accordingly. In addition, only a minority of respondents having expressed a view indicated that customers of transport services on Euro Pallet Wide containers would not switch to transport services on standard containers in case of a

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<sup>25</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 19; M.7523 – *CMA CGM/OPDR*, paragraph 48.

<sup>26</sup> Case M.7523 – *CMA CGM/OPDR*, paragraph 40.

<sup>27</sup> See non-confidential minutes of a conference call with a competitor of 7 September 2018.

<sup>28</sup> Reply of the Parties to QP3 and Form CO, paragraphs 217 *et seq.*

<sup>29</sup> See replies to Q1 – Questionnaire to Competitors, question 11; Q2 – Questionnaire to Direct Customers, question 6 and Q1 – Questionnaire to Freight Forwarders, question 10.

hypothetical but permanent price increase of transport on Euro Pallet Wide of 5-10%.<sup>30</sup>

- (38) From the supply-side perspective, the market investigation shows that the transports of cargo in Euro Pallet Wide containers and on standard containers are substitutable. Indeed, a large majority of respondents to the market investigation indicated that Euro Pallet Wide containers do not need to be transported on specific vessels. Instead, these Euro Pallet Wide containers can be transported on standard vessels.<sup>31</sup> Besides, it is unclear whether there is a cost-advantage in having vessels designed to optimise the transport of Euro Pallet Wide containers, since the views of the market respondents having expressed a view are split.<sup>32</sup>
- (39) On the basis of the available evidence, the Commission considers that short-sea Euro Pallet Wide container liner shipping does not constitute a separate product market. The short-sea transport of Euro Pallet Wide containers will therefore be assessed as part of the overall market for short-sea container liner shipping services.

#### 5.2.2. *Relevant geographic market*

- (40) In prior decisions, the Commission considered that the relevant geographic market for short-sea container liner shipping should be defined on the basis of single trades, defined by the range of ports which are served at both ends of the service.<sup>33</sup>
- (41) The market investigation confirmed that the geographic scope of the market for short-sea container liner shipping services should be defined on the basis of trades, because shipping companies can serve a range of ports at both ends of a service.<sup>34</sup>
- (42) The Parties agreed with this geographic market definition and have suggested the following aggregations:
- Benelux-Germany: Belgium, Luxembourg, the Netherlands and Germany;<sup>35</sup>
  - British Isles: United Kingdom and Ireland;<sup>36</sup>

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<sup>30</sup> See replies to Q1 – Questionnaire to Competitors, question 16; Q2 – Questionnaire to Direct Customers, question 11 and Q1 – Questionnaire to Freight Forwarders, question 15.

<sup>31</sup> See replies to Q1 – Questionnaire to Competitors, question 14.3; Q2 – Questionnaire to Direct Customers, question 9.3 and Q1 – Questionnaire to Freight Forwarders, question 13.3.

<sup>32</sup> See replies to Q1 – Questionnaire to Competitors, question 14.3.2; Q2 – Questionnaire to Direct Customers, question 9.3.2 and Q1 – Questionnaire to Freight Forwarders, question 13.3.2.

<sup>33</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 59.

<sup>34</sup> See replies to Q1 – Questionnaire to Competitors, question 19; Q2 – Questionnaire to Direct Customers, question 14 and Q1 – Questionnaire to Freight Forwarders, question 18.

<sup>35</sup> As endorsed by the Commission in case M.7523 – *CMA CGM/OPDR*, paragraphs 56 and 58.

- Iberia: Spain and Portugal;<sup>37</sup>
- Baltic States: Estonia, Latvia and Lithuania;
- Scandinavia: Denmark, Finland, Norway and Sweden;
- Other countries such as Algeria, Poland or Russia are treated on a standalone basis.

- (43) During the market investigation, no respondent expressed substantiated concerns about the trade delineations suggested by the Parties. In particular, concerning the suggested Scandinavian and Baltic trades, which have not been examined by the Commission in its prior decisions, a majority of respondents having expressed a view were of the opinion that it is not necessary to consider Estonia, Latvia, Lithuania, Denmark, Finland, Norway or Sweden as separate ends of trades.<sup>38</sup>
- (44) In prior decisions, the Commission also considered a further delineation according to legs of trade but ultimately left the exact market definition open.<sup>39</sup>
- (45) For the purpose of the assessment of the Transaction, the Commission will adopt a conservative approach and consider each leg of trade separately. Considering that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition, the exact geographic scope of the markets can be left open.

### 5.2.3. Conclusion

- (46) The Commission concludes that, for the purpose of assessing the Transaction, a product market for short-sea container liner shipping services should be considered.
- (47) The geographic scope of this market is delineated on the basis of single trades, defined by the range of ports which are called at both ends of service. A narrowest geographic market definition (i.e. on the basis of legs of trade) might also be considered.
- (48) However, it is not necessary to conclude on a precise definition of the relevant product and geographic markets as the Transaction does not raise serious doubts as to its compatibility with the internal market, under any plausible definition of the markets for short-sea container liner shipping services.

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<sup>36</sup> As endorsed by the Commission in case M.7523 – *CMA CGM/OPDR*, paragraphs 56 and 58.

<sup>37</sup> As endorsed by the Commission in case M.7523 – *CMA CGM/OPDR*, paragraphs 56 and 58.

<sup>38</sup> See replies to Q1 – Questionnaire to Competitors, question 20; Q2 – Questionnaire to Direct Customers, question 15 and Q1 – Questionnaire to Freight Forwarders, question 19.

<sup>39</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 20; M.7523 – *CMA CGM/OPDR*, paragraph 60.

### 5.3. Container terminal services

#### 5.3.1. Relevant product market

- (49) Container terminal services (also called stevedoring services) are "input services" to container liner shipping. In previous cases the provision of container stevedoring services by terminal operators has been defined as involving the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo.<sup>40</sup>
- (50) The Parties consider that in the present case the relevant product market is the market for the provision of stevedoring services to container shipping lines and that it is not necessary to address whether hinterland and transshipment traffic constitute separate markets.<sup>41</sup>
- (51) In previous decisions the Commission has delineated container terminal services by traffic flows, and has considered separate markets for container terminal services for hinterland traffic and container terminal services for transshipment traffic, ultimately leaving the product market definition open.<sup>42</sup>
- (52) In the present case, the Commission will assess the effects of the Transaction on the market for container terminal services for hinterland traffic and for transshipment traffic.
- (53) Considering that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market definition, the exact delineation of the market can be left open.

#### 5.3.2. Relevant geographic market

- (54) In its prior decisional practice, the Commission considered that the relevant geographic dimension of container terminal services is, in its broadest scope, regions, such as Northern Europe (for transshipment traffic), or, in its narrowest possible scope, the catchment area of the ports in a certain range, such as Hamburg-Antwerp (for hinterland traffic) or possibly even narrower, comprising the ports of a single Member State only.<sup>43</sup>

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<sup>40</sup> Cases M.7523 – *CMA CGM/OPDR*, paragraph 63; M.5398 – *Hutchison/Evergreen*, paragraph 9.

<sup>41</sup> Form CO, paragraph 125.

<sup>42</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 29; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 21 and 24; M.7908 – *CMA CGM/NOL*, paragraph 17; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16, and M.5398 – *Hutchison/Evergreen*, paragraphs 9 and 10.

<sup>43</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 32; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 22-24; M.7908 – *CMA CGM/NOL*, paragraph 18; M.7523 – *CMA CGM/OPDR*, paragraph 65; M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 16; and M.5066 – *Eurogate/APMM*, paragraphs 15-23.

- (55) The Parties agree with the Commission's prior decisional practice. In line with a recent decision,<sup>44</sup> the Parties submit that the geographic dimension of container terminal services for transshipment traffic could be Saint-Nazaire – Rotterdam, while the geographic scope of container terminal services for hinterland traffic would be Le Havre-Rotterdam.<sup>45</sup>
- (56) In the present case the Commission will assess the effects of the Transaction on the markets for container terminal services both in its broadest scope (regions, such as Northern Europe for transshipment traffic), and in its narrowest possible scope (the catchment area of the ports in a certain range, for hinterland traffic).
- (57) Considering that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition (regions or catchment areas), the exact geographic scope of the markets can be left open.

#### 5.3.3. Conclusion

- (58) For the purpose of this Decision, it is not necessary to conclude on a precise definition of the relevant product and geographic market since the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible definitions of the markets for container terminal services.

### 5.4. Freight forwarding services

#### 5.4.1. Relevant product market

- (59) The Commission has defined freight forwarding 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*".<sup>46</sup>
- (60) In its prior decisional practice, the Commission subdivided the market into domestic freight forwarding and cross-border freight forwarding, and, on the basis of the mode of transport, into freight forwarding by air, land, and sea.<sup>47</sup>

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<sup>44</sup> Case M.8459 – *TIL/PSA/PSA DGD*, paragraph 21.

<sup>45</sup> Form CO, paragraphs 146, 253 and 255. For transshipment traffic, the Parties have taken a conservative approach by including Saint-Nazaire, which increases CMA CGM share.

<sup>46</sup> Cases M.8594 – *COSCO SHIPPING/OOIL*, paragraph 23; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26; M.7268 – *CSAV/HGV/Kühne Maritime/Hapag-Lloyd*, paragraph 3; M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 17.

<sup>47</sup> Cases M.8594 – *COSCO SHIPPING/OOIL*, paragraph 23; M.8330 – *Maersk Line/HSDG*, paragraph 38; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 26-27, M.7630 – *FEDEX/TNT EXPRESS*, paragraphs 24-25; and M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraph 18.

- (61) In the present case, the Commission will assess the effects of the Transaction on the market for freight forwarding services, subdivided into domestic freight forwarding and cross-border freight forwarding, and, on the basis of the mode of transport, into freight forwarding by air, land, and sea.
- (62) However, considering that the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible product market definition, the exact delineation of the market can be left open.

#### *5.4.2. Relevant geographic market*

- (63) The Parties submit that the market for freight forwarding is at least national in scope.<sup>48</sup>
- (64) In past decisions, the Commission has left open whether the geographic scope of the market is national or wider than national.<sup>49</sup> Specifically, the Commission defined the market for sea freight forwarding as at least national.<sup>50</sup>
- (65) In the present case, the Commission will adopt a conservative approach and consider each country as a separate market. Since the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition, the exact geographic scope of the markets can be left open.

#### *5.4.3. Conclusion*

- (66) The Commission concludes that, for the purpose of assessing the Transaction, the precise relevant product and geographic market definition for freight forwarding services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition.

## **6. COMPETITIVE ASSESSMENT**

### **6.1. Horizontal overlaps – Intra-European door-to-door multimodal transport**

- (67) The Parties are active on a number of Intra-European markets for the provision of door-to-door multimodal transport services delineated on the basis of country pairs, which is the most conservative approach that the Commission has adopted so far as indicated in Section 5.1.3.<sup>51</sup> If the Commission were to assess the impact

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<sup>48</sup> Form CO, paragraph 148.

<sup>49</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 39; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraphs 26-27; M.7630 – *FEDEX/TNT EXPRESS*, paragraphs 24-25; and M.6059 – *Norbert Dentressangle/Laxey Logistics*, paragraphs 20 and 22.

<sup>50</sup> Cases M.8594 – *COSCO SHIPPING/OOIL*, paragraph 24; M.8120 – *Hapag-Lloyd/United Arab Shipping Company*, paragraph 26, M.5450 – *Kühne/HGV/TUI/Hapag-Lloyd*, paragraph 18; M.5480 – *Deutsche Bahn/PCC Logistics*, paragraphs 12-17.

<sup>51</sup> According to the data provided by the Parties, [...] % and [...] % of the volumes shipped in 2017 by CMA CGM and Container Finance, respectively, included an intermodal component. Form CO, paragraphs 78 and 64.

of the Transaction on this product market on the basis of a broader geographic market definition, the Parties' market shares would be further (significantly) lower. According to the Parties' estimates, which are based on the most conservative approach, four affected markets arise from the Transaction, as listed in Table 1 below.

*Table 1 - Parties' combined market shares – Intra-European door-to-door multimodal transport services in 2017<sup>52</sup>*

From	To	Total size market (TEU)	CMA CGM (TEU)	CMA CGM (%)	Containerships (TEU)	Containerships (%)	CMA CGM + Containerships
Netherlands	Finland	[50 000 - 100 000]	[...]	[0-5]%	[...]	[20-30]%	[20-30]%
Russia	UK	[10 000 - 50 000]	[...]	[0-5]%	[...]	[40-50]%	[40-50]%
UK	Russia	[10 000 - 50 000]	[...]	[0-5]%	[...]	[20-30]%	[20-30]%
Lithuania	Ireland	[0 - 10 000]	[...]	[0-5]%	[...]	[40-50]%	[40-50]%

*Source: Form CO, paragraph 204.*

#### *6.1.1. Data sources*

- (68) The Parties commissioned [External Consultant] to determine the total market size.<sup>53</sup> [External Consultant] defines the overall market as that between shippers and receivers in individual countries which includes cargo moved overland by road or rail in competition with shipping. [External Consultant] estimates this volume by reference to trade and intrastate data by commodity. It then converts that data to the equivalent TEU, if cargo is carried entirely by container.
- (69) The difficulty in collecting reliable data relating to door-to-door multimodal transport was already acknowledged by the Commission in a prior decision.<sup>54</sup> During the market investigation, the Commission asked competitors to provide an estimate of the overall size of the markets, as well as their volumes shipped on the relevant country pairs. Competitors did not always confirm the Parties' submission as regards total market size. It therefore appears that the Parties' estimation of the total market size might be either underestimated or overestimated.<sup>55</sup>

<sup>52</sup> Form CO, Table under paragraph 161.

<sup>53</sup> [External Consultant] is a consultancy which provides and advises on strategic, commercial and economic issues mainly related to cargo transport and logistics. [External Consultant] estimated the total market based on its own internal database ([...]).

<sup>54</sup> Case M.7523 – CMA CGM/OPDR, paragraph 78.

<sup>55</sup> Form CO, table at paragraph 161. See replies to Q1 – Questionnaire to Competitors, question 41.



### *6.1.2. The Parties' view*

- (70) The Parties claim that in all four affected markets the increment is negligible. It is therefore unlikely that competition concerns would arise as a result of the Transaction.
- (71) More specifically, in two of the four country pairs, namely United Kingdom to Russia and the Netherlands to Finland, the Parties' market shares slightly exceed 20% and the increment is less than [0-5]% with a HHI delta below [...].<sup>56</sup> The increment brought by CGM CMA in actual volume transported - equal to [...] TEUs - represents less than an average short-sea vessel.
- (72) In the remaining two country pairs, namely Lithuania to Ireland and Russia to United Kingdom, the Parties' market shares reach [40-50]% for each country pair. However, the increment brought by the Transaction is negligible (respectively [0-5]% and [0-5]%). In addition to that, the overall size of the market is very small, below 3 000 TEUs.
- (73) Moreover, in all four country pairs, post-Transaction the Parties will face competition from both, transportation by road, and several other large and well-established shipping companies. Indeed, competition from trucks represents a significant competitive constraint.<sup>57</sup> The Parties also claim that barriers to entry are not significant as both ships and port slots are easily accessible.<sup>58</sup>
- (74) Therefore, the Parties argue that the Transaction does not raise any competition concerns in any of the above country pairs.

### *6.1.3. Commission's assessment*

- (75) The Commission's market investigation has confirmed that the Transaction is unlikely to raise competition concerns in any of the four affected markets.
- (76) Having regard to volume figures, the increment brought about by CMA CGM is marginal in each of the relevant country pairs. Furthermore, and in line with the Commission decisional practice, country pairs where one end is outside the EEA, such as the UK to Russia and Russia to UK country pairs, can be considered as a non-substantial part of the internal market.<sup>59</sup>
- (77) All the four country pairs may also be partially reached by land transport. It is therefore probable that trucking companies do, and will continue to, exert a significant competitive constraint on the Parties and other shipping companies on the four affected country pairs. The market investigation has confirmed that, depending on the country pairs considered, truck companies represent one of the main competitors of carriers that provided intra-European multimodal transport

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<sup>56</sup> Form CO, paragraphs 307 and 313.

<sup>57</sup> Form CO, paragraph 320.

<sup>58</sup> Form CO, paragraphs 323-324.

<sup>59</sup> Case M.7523 – CMA CGM/OPDR, paragraph 88.

services.<sup>60</sup> In addition, besides transportation by road, the Parties will face the competition from other established sea carriers on the relevant country pairs. As confirmed by the market investigation, the individual or combined volumes transported by Evergreen, Maersk, OOCL, Samskip and Unifeeder on the relevant country pairs are at least equal to the increment brought about by the Transaction.<sup>61</sup>

- (78) With respect to all affected country pairs, the number of respondents to the market investigation who believe that, should price increase post-Transaction, capacity on the said country pairs could be easily increased, is twice as high as the number of those who think that capacity could not be increased easily.<sup>62</sup>
- (79) Furthermore, the country pairs are served by either CMA CGM or both CMA CGM and Containerships, indirectly, i.e. through transshipment. Similar services could be therefore also offered by other carriers serving one of the two ends of the country pair and a European hub.<sup>63</sup>
- (80) Finally, the majority of the respondents to the market investigation having expressed a view indicate that the Transaction will have a neutral or positive impact on their company and on competition.<sup>64</sup> No respondent to the market investigation expressed substantiated concerns about the Transaction in relation to the market for door-to-door multimodal transport services.<sup>65</sup>

#### *6.1.4. Conclusion*

- (81) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to Intra-Europe door-to-door multimodal transport services, under any plausible geographic market definition.

## **6.2. Horizontal overlaps – Short-sea container liner shipping services**

### *6.2.1. Analytical Framework*

#### *Consortia*

- (82) In its prior decisions, the Commission has considered that consortium members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating

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<sup>60</sup> See non-confidential minutes of the conference call with a competitor of 11 September 2018 and reply of a competitor to eQ1 – Questionnaire to Competitors, question 44.1 "*Still other modes of transportation is the main competitor*".

<sup>61</sup> See replies to Q1 – Questionnaire to Competitors, question 41.

<sup>62</sup> See replies to Q1 – Questionnaire to Competitors, question 42.

<sup>63</sup> Case M.7523 – CMA CGM/OPDR, paragraph 96.

<sup>64</sup> See replies to Q1 – Questionnaire to Competitors, questions 44 and 46.

<sup>65</sup> See replies to Q1 – Questionnaire to Competitors, questions 44 and 46.

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 it contributes. The allocation of container slots is usually predetermined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing costs between the participants in a consortium.<sup>66</sup>

- (83) The Commission has considered that it was 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 that a member of an alliance/consortium can have a significant influence on operational decisions determining service characteristics. This influence can have a dampening effect on competition on the trades served by the alliance/consortium in question. Hence, the competitive assessment should also be based on the aggregate shares of the Parties' consortia.<sup>67</sup>
- (84) CMA CGM has entered into a consortia/vessel sharing agreement (VSA)<sup>68</sup> on one of the trades where the Parties' short-sea activities overlap. CMA CGM is party to a VSA with Fesco Line on the trade Benelux-Germany to Russia.<sup>69</sup> By contrast, Containerships is not a party to any vessel sharing agreement on the overlap trades. Therefore, the VSA with Fesco Line on the trade Benelux-Germany to Russia is the only consortium that is relevant for the assessment of the Transaction.
- (85) In line with the prior decisional practice, the Commission will assess the effects of the Transaction on the trade Benelux-Germany to Russia by taking into account the aggregate market shares of the Parties and Fesco, CMA CGM's consortium partner on that overlap trade.

#### *Data sources*

- (86) In order to determine the total size of the market, the Parties have primarily used Container Trade Statistics (CTS) from which it is possible to extract volumes transported on a country by country basis.<sup>70</sup>
- (87) However, the data extracted from CTS on total volume transported led to inconsistent results on some legs of trade, where Parties' market shares would exceed 100%. The Parties explain that these inconsistencies are linked to the fact

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<sup>66</sup> Cases M.8594 – *COSCO SHIPPING/OOIL*, paragraph 28.

<sup>67</sup> See for instance Cases M.8594 – *COSCO SHIPPING/OOIL*, paragraphs 32-33; M.8330 – *Maersk Line/HSDG*, paragraph 60; M.7523 – *CMA CGM/OPDR*, paragraph 33.

<sup>68</sup> A VSA is an agreement between two or more carriers in which a number of container positions ("slots") equal in space are reserved on particular vessels for each of the participants (Form CO, footnote 61).

<sup>69</sup> Form CO, paragraph 195.

<sup>70</sup> Form CO, paragraph 173.

that most short-sea carriers active in intra-Europe, in particular in the Baltic and Scandinavia regions, do not report to CTS. CTS itself estimates the volumes of these non-contributing lines. The Parties submit that CTS underestimates, sometimes significantly, the volumes transported by these competitors.<sup>71</sup>

- (88) For the legs of trade where the market shares exceeded 100% based on CTS data, the Parties have commissioned [External Consultant] to estimate the total volume of maritime traffic based on Eurostat data.<sup>72</sup> However, the Parties indicate that for the trades where cargo is principally transported via indirect services (e.g. between Iberia to the Baltic region), the market shares based on [External Consultant] data might be underestimated.<sup>73</sup>
- (89) As a result, the market shares provided by the Parties might be overestimated for trades where CTS data is used, while they might be underestimated where [External Consultant] data is used. The Commission has therefore used in its assessment either CTS or [External Consultant] data provided by the Parties, depending on which data was closer to market reality as checked during the market investigation.
- (90) During the market investigation, the Commission has asked competitors to provide their volumes shipped on the relevant legs of trade, as well as their best estimates of the total volumes shipped on these legs. Where no reliable estimates of the total size of the market could be established, market shares will be viewed critically, for the purpose of the assessment of the Transaction. The Commission will also base its assessment on the actual volumes shipped and more broadly on the functioning of the market.

*Overview of the affected markets*

- (91) As explained in paragraph (45) above, the Commission will adopt a conservative approach and consider each leg of trade separately. If the Commission were to assess the impact of the Transaction on this market on the basis of a broader geographic market definition (i.e. assess the effects of the Transaction on the trade), the Parties' market shares would be (significantly) lower.
- (92) On the basis of the most conservative market shares and taking account of the Parties' consortia, the Transaction gives rise to 18 affected markets. Those are: Baltic States to Benelux-Germany, Baltic-States to British Isles, Baltic States to Scandinavia, Benelux-Germany to Baltic States, Benelux-Germany to Russia, Benelux-Germany to Scandinavia, British Isles to Russia, British Isles to Scandinavia, Iberia to Algeria, Iberia to Scandinavia, Poland to British Isles, Russia to Benelux-Germany, Russia to British Isles, Russia to Scandinavia, Scandinavia to Benelux-Germany, Scandinavia to British Isles, Scandinavia to Iberia and Scandinavia to Russia.

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<sup>71</sup> Form CO, paragraph 174.

<sup>72</sup> Form CO, paragraph 176.

<sup>73</sup> Form CO, paragraph 177.

- (93) The Parties submit that the leg of trade Benelux-Germany to Russia constitutes an affected market only when taking account of the market shares of CMA CGM's consortium partner.<sup>74</sup> However, in line with its decisional practice, the Commission aggregated the market shares of the consortium members and consequently consider the leg of trade as an affected market.
- (94) The Parties have also treated the legs of trade Baltic States to Benelux-Germany, Benelux-Germany to Scandinavia and Scandinavia to Benelux-Germany as affected markets, even though the combined market shares are below 20% on the basis of [External Consultant] data.<sup>75</sup> The Parties have also analysed Scandinavia-Russia as an affected market, despite the fact that neither [External Consultant] nor CTS data on the total market size seem reliable, resulting in a combined market share exceeding 100%.<sup>76</sup>

#### 6.2.2. *General considerations on the market structure*

##### *Barriers to entry*

- (95) The Parties suggest that the market for short-sea container liner shipping services is characterised by non-significant barriers to entry. Indeed, the Parties indicate that the two elements needed in order to enter the short-sea container liner shipping market, that is ships and port slots, are easily accessible.<sup>77</sup> In addition, the Parties argue that there is no need to own vessels to operate a service, since it is possible to purchase capacities from third party vessel operators. This is common practice in the industry.<sup>78</sup> In that regard, the Parties submit that their vessel utilisation rate vary between [...] % and [...] %, which indicates that the Parties could for instance sell capacity to third parties.<sup>79</sup>
- (96) The market investigation shows that there are no major barriers to entry or expansion. However, costs of entry or expansion vary according to the chosen way of entry. Although some competitors highlight that entering individually a new trade can be costly, other competitors submit that other ways of entry, for instance via slot chartering or joining a consortium, are less capital intensive.<sup>80</sup>

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<sup>74</sup> Form CO, paragraph 198.

<sup>75</sup> Form CO, paragraph 206.

<sup>76</sup> Form CO, paragraph 207.

<sup>77</sup> Form CO, paragraphs 323 *et seq.*

<sup>78</sup> Form CO, paragraph 325.

<sup>79</sup> Form CO, Annex 15 "Parties Average Vessel Utilisation Rate".

<sup>80</sup> See replies to Q1 – Questionnaire to Competitors, questions 32 and 33. For instance, a competitor submits that "*A slot charter is the least capital intensive way to enter [...]. Jointing or forming a consortium constitutes a middle course to individually operating a service with own vessels*".

- (97) In terms of time, competitors consider that entry or expansion could be achieved within 3 to 12 months.<sup>81</sup>
- (98) Besides, all the competitors having expressed a view indicate that the Transaction does not have any impact on their entry or expansion plans.<sup>82</sup>
- (99) In its prior decisions, the Commission has acknowledged that barriers to entry appear to be rather low on intra-Europe short-sea shipping markets.<sup>83</sup> As confirmed by the market investigation, the Commission considers that the market for intra-European short-sea container liner shipping is characterised by low barriers to entry and that entry could take place within a relatively short time frame.

*Switching costs*

- (100) The Parties argue that, from the demand-side perspective, customers may seamlessly change carrier.<sup>84</sup>
- (101) The market investigation confirmed this finding. A majority of customers consider that it would be easy to switch from one sea carrier to another.<sup>85</sup> Direct customers also indicated that switching would usually take between a few days to a few months.
- (102) In its prior decisions, the Commission has acknowledged that switching costs do not appear to be prohibitively high on intra-Europe short-sea shipping markets.<sup>86</sup> The Commission considers that in the present case switching costs do not appear to be prohibitively high.

*Competition from other modes of transport*

- (103) The Parties consider that other modes of transport, especially road transportation, constitute a powerful competitive constraint.<sup>87</sup> They further submit that customers are also able to switch easily from maritime transportation to road transportation.<sup>88</sup>

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<sup>81</sup> See replies to Q1 – Questionnaire to Competitors, question 32.2.

<sup>82</sup> See replies to Q1 – Questionnaire to Competitors, question 36.

<sup>83</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 209; M.7523 – *CMA CGM/OPDR*, paragraph 109.

<sup>84</sup> Form CO, paragraph 330.

<sup>85</sup> See replies to Q1 – Questionnaire to Freight Forwarders, question 24 and Q2 – Questionnaire to Direct Customers, question 19.

<sup>86</sup> Cases M.8330 – *Maersk Line/HSDG*, paragraph 209; M.7523 – *CMA CGM/OPDR*, paragraph 113.

<sup>87</sup> Form CO, paragraph 320.

<sup>88</sup> Form CO, paragraph 331.

- (104) Respondents to the market investigation confirmed that, on the trades where the Parties' activities overlap, other modes of transport (e.g. trucks, train, deep-sea vessels) may exert a competitive constraint on short-sea container liner services providers.<sup>89</sup>
- (105) The outcome of the market investigation as to whether switching into a different mode of transport would be easy is rather inconclusive. The majority of direct customers having expressed a view consider switching into a different mode of transport somewhat difficult, while none of the freight forwarders having expressed a view consider switching as difficult.<sup>90</sup>
- (106) In its prior decisional practice, the Commission has acknowledged that short-sea container liner shipping services are exposed to competitive pressure from other modes of transportation.<sup>91</sup> The Commission therefore considers that, on certain intra-European trades, short-sea container liner shipping services might be subject to competition from other modes of transport.

### 6.2.3. *Baltic States to Benelux-Germany*

- (107) The following table shows the Parties' transported volumes on the leg of trade Baltic States to Benelux-Germany.

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[0-5]%</b>
Total market	[250 000 - 500 000]	100%

Source: Form CO, paragraphs 181, 209 and 390.

- (108) According to the [External Consultant] database, the Parties' combined market share would be below 20%. As a result, that market would not be considered as an affected market.
- (109) In any event, the increment brought about by the Transaction is not significant. Indeed, the volume transported by CMA CGM represents less than [0-5]% of the volume transported by Containerships in 2017. In that regard, the Parties submit that CMA CGM transported less than the equivalent of a ship in 2017.<sup>92</sup>

<sup>89</sup> See replies to Q1 – Questionnaire to Competitors, question 40 and Q1 – Questionnaire to Freight Forwarders, question 28.

<sup>90</sup> See replies to Q2 – Questionnaire to Direct Customers, question 20 and Q1 – Questionnaire to Freight Forwarders, question 24.

<sup>91</sup> Case M.7523 – *CMA CGM/OPDR*, paragraph 62.

<sup>92</sup> Form CO, paragraph 390.

- (110) In addition, the market investigation confirmed that the Parties will face significant competition from other sea carriers such as Samskip, Team Lines and Unifeeder.<sup>93</sup>
- (111) Furthermore, a majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Baltic States to Benelux-Germany.<sup>94</sup>
- (112) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Baltic States to Benelux-Germany, under any plausible market definition.

#### 6.2.4. Baltic States to British Isles

- (113) The following table shows the Parties' transported volumes on the leg of trade Baltic States to British Isles.

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[70-80]%
Parties combined	[...]	<b>[70-80]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 338.

- (114) As explained in paragraphs (86) *et seq.* above, there is no reliable information on the total volume transported on this leg of trade. Therefore, the market shares should be viewed critically.
- (115) According to the [External Consultant] database, the Parties' combined market share would be [70-80]%, with an increment of [0-5]%.
- (116) In terms of volumes transported, the increment brought about by the Transaction is not significant. Indeed, the volume transported by CMA CGM represents less than [0-5]% of the volume transported by Containerships in 2017.
- (117) In addition, the market investigation confirmed that the Parties will face significant competition from other sea carriers such as Samskip, Seago (Maersk), and Unifeeder.<sup>95</sup>

<sup>93</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>94</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>95</sup> See replies to Q1 – Questionnaire to Competitors, question 21.



- (118) Furthermore, a majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Baltic States to British Isles.<sup>96</sup>
- (119) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Baltic States to British Isles, under any plausible market definition.

#### 6.2.5. *Baltic States to Scandinavia*

- (120) The following table shows the Parties' transported volumes on the leg of trade Baltic States to Scandinavia.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[10-20]%
Parties combined	[...]	<b>[20-30]%</b>
Total market	[5 000 – 10 000]	100%

*Source: Form CO, paragraphs 181, 209 and 370.*

- (121) Post-Transaction, the Parties will have a combined market share of [20-30]% with an increment of [0-5]%.
- (122) Besides this limited combined market share, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as Hapag-Lloyd, Seago (Maersk) and Unifeeder.<sup>97</sup>
- (123) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Baltic States to Scandinavia.<sup>98</sup>
- (124) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Baltic States to Scandinavia, under any plausible market definition.

<sup>96</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>97</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>98</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

#### 6.2.6. *Benelux-Germany to Baltic States*

- (125) The following table shows the Parties' transported volumes on the leg of trade Benelux-Germany to Baltic States.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[40-50]%
Parties combined	[...]	<b>[40-50]%</b>
Total market	[10 000- 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 348.

- (126) Post-Transaction, the Parties will have a combined market share of [40-50]% with a negligible increment of [0-5]%.
- (127) Besides these moderate combined market share and increment, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as Samskip, Seago (Maersk), Team Lines and Unifeeder.<sup>99</sup>
- (128) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Benelux-Germany to Baltic States.<sup>100</sup>
- (129) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg Benelux-Germany to Baltic States, under any plausible market definition.

#### 6.2.7. *Benelux-Germany to Russia*

- (130) The following table shows the Parties' transported volumes on the leg of trade Benelux-Germany to Russia.

<sup>99</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>100</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[10-20]%
Parties combined	[...]	<b>[10-20]%</b>
Fesco (consortium member)	n/a	<b>[5-10]%</b>
Total market	[100 000 – 250 000]	100%

Source: Form CO, paragraphs 181, 209 and 335.

- (131) As explained in paragraphs (82)-(85) above, the Commission aggregates the market shares of the Parties and their consortia members. When taking account of CMA CGM's consortium member, the combined market share reaches [20-30]% post-Transaction. However, when only taking into account the Parties' individual market share, the combined market share post-Transaction is [10-20]%. The Transaction would therefore not give rise to an affected market.
- (132) Besides these limited combined market share and increment, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as OOCL, Seago (Maersk), Samskip and Unifeeder.<sup>101</sup>
- (133) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Benelux-Germany to Russia.<sup>102</sup>
- (134) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>103</sup>
- (135) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Benelux-Germany to Russia, under any plausible market definition.

#### 6.2.8. *Benelux-Germany to Scandinavia*

- (136) The following table shows the Parties' transported volumes on the leg of trade Benelux-Germany to Scandinavia.

<sup>101</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>102</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>103</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[0-5]%</b>
Total market	[500 000 – 1 000 000]	100%

Source: Form CO, paragraphs 181, 209 and 388.

- (137) According to the [External Consultant] database, the Parties' combined market share would be below 20%. As a result, that market would not be considered as an affected market.
- (138) In any event, the increment brought about by the Transaction is negligible. Indeed, the volume transported by CMA CGM represents less than [0-5]% of the volume transported by Containerships in 2017.
- (139) In addition, the market investigation confirmed that the Parties will face significant competition from other sea carriers such as Samskip, Team Lines and Unifeeder.<sup>104</sup>
- (140) Furthermore, a majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Benelux-Germany to Scandinavia.<sup>105</sup>
- (141) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Benelux-Germany to Scandinavia, under any plausible market definition.

#### 6.2.9. British Isles to Russia

- (142) The following table shows the Parties' transported volumes on the leg of trade British Isles to Russia.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[40-50]%
Parties combined	[...]	<b>[40-50]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 356.

<sup>104</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>105</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

- (143) Post-Transaction, the Parties will have a combined market share of [40-50]% with a limited increment of [0-5]%.
- (144) The market investigation confirmed that the Parties will face significant competition from well-established short-sea container liner shipping services providers, in particular Hapag-Lloyd, Samskip, Seago (Maersk) and Unifeeder.<sup>106</sup>
- (145) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg British Isles to Russia.<sup>107</sup>
- (146) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>108</sup>
- (147) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade British Isles to Russia, under any plausible market definition.

#### 6.2.10. British Isles to Scandinavia

- (148) The following table shows the Parties' transported volumes on the leg of trade British Isles to Scandinavia.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[20-30]%
Containerships	[...]	[20-30]%
Parties combined	[...]	<b>[40-50]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 353.

- (149) Post-Transaction, the Parties will have a combined market share of [40-50]%.
- (150) Besides, the market investigation confirmed that the Parties will face significant competition from other well-established short-sea container liner shipping services providers, in particular Samskip, Seago (Maersk) and Unifeeder. The combined transported volume of these three competitors in 2017 was equivalent to the volume transported by the Parties.<sup>109</sup>

<sup>106</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>107</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>108</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

<sup>109</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

- (151) All the respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg British Isles to Scandinavia.<sup>110</sup>
- (152) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade British Isles to Scandinavia, under any plausible market definition.

#### 6.2.11. Iberia to Algeria

- (153) The following table shows the Parties' transported volumes on the leg of trade Iberia to Algeria.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[30-40]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[30-40]%</b>
Total market	[50 000 – 100 000]	100%

Source: Form CO, paragraphs 181, 209 and 392.

- (154) Post-Transaction, the Parties will have a combined market share of [30-40]% with a negligible increment of less than [0-5]%.
- (155) Besides these limited combined market share and increment, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as Arkas, MSC, Seago (Maersk) and Sloman.<sup>111</sup>
- (156) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Iberia to Algeria.<sup>112</sup>
- (157) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>113</sup>
- (158) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal

<sup>110</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>111</sup> See replies to Q1 – Questionnaire to Competitors, questions 21 and 30.

<sup>112</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>113</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

market with respect to the leg of trade Iberia to Algeria, under any plausible market definition.

#### 6.2.12. Iberia to Scandinavia

- (159) The following table shows the Parties' transported volumes on the leg of trade Iberia to Scandinavia.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[30-40]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[30-40]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 373.

- (160) Post-Transaction, the Parties will have a combined market share of [30-40]% with a negligible increment of [0-5]%.
- (161) Besides these limited market share and increment, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as Samskip, Seago (Maersk) and CLdN (Evergreen).<sup>114</sup>
- (162) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Iberia to Scandinavia.<sup>115</sup>
- (163) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Iberia to Scandinavia, under any plausible market definition.

#### 6.2.13. Poland to British Isles

- (164) The following table shows the Parties' transported volumes on the leg of trade Poland to British Isles.

<sup>114</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>115</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[50-60]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[50-60]%</b>
Total market	[50 000 – 100 000]	100%

Source: Form CO, paragraphs 181, 209 and 365.

- (165) Post-Transaction, the Parties will have a combined market share of [50-60]% with a low increment of [0-5]%.
- (166) The outcome of the market investigation was inconclusive as to whether the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Poland to British Isles.<sup>116</sup>
- (167) However, the market investigation confirmed that the Parties will face significant competition from other sizeable short-sea container liner shipping services providers, in particular Unifeeder, Samskip and Seago (Maersk), which together account for more than 40% of the market.<sup>117</sup>
- (168) Furthermore, as explained in paragraphs (95) - (102) above, barriers to entry are relatively low and customers have the ability to switch to other sea carriers. Customers could also switch to alternative modes of transportation, given that maritime transport accounts for 16% of the total market (including all modes of transport).<sup>118</sup> In that regard, the Parties consider that Maersk, which operates a direct service between Poland and British Isles, and the intra-European maritime specialist Unifeeder, exert a significant competitive constraint on the Parties.<sup>119</sup>
- (169) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Poland to British Isles, under any plausible market definition.

#### 6.2.14. Russia to Benelux-Germany

- (170) The following table shows the Parties' transported volumes on the leg of trade Russia to Benelux-Germany.

<sup>116</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>117</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>118</sup> Form CO, paragraph 396.

<sup>119</sup> Form CO, paragraph 366.



	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[10-20]%
Containerships	[...]	[10-20]%
Parties combined	[...]	<b>[20-30]%</b>
Fesco (consortium member)	n/a	<b>[5-10]%</b>
Total market	[100 000 – 250 000]	100%

Source: Form CO, paragraphs 181, 209 and 341.

- (171) On the leg Russia to Benelux-Germany, the combined market share of the Parties slightly exceeds [20-30]. Only when adding the consortium member Fesco, the combined market shares reach [20-30]%.
- (172) Besides these limited combined market share, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers such as Hapag Lloyd, OOCL, Seago (Maersk), Sea Connect, Team Lines and Unifeeder.<sup>120</sup>
- (173) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Russia to Benelux-Germany.<sup>121</sup>
- (174) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>122</sup>
- (175) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Russia to Benelux-Germany, under any plausible market definition.

#### 6.2.15. Russia to British Isles

- (176) The following table shows the Parties' transported volumes on the leg of trade Russia to British Isles.

<sup>120</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>121</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>122</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[5-10]%
Containerships	[...]	[40-50]%
Parties combined	[...]	<b>[40-50]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 344.

- (177) Post-Transaction, the Parties will have a combined market share of [40-50]%, with an increment of [5-10]% brought about by CMA CGM.
- (178) The outcome of the market investigation is inconclusive as to whether post-Transaction the Parties will have the ability to increase prices on that leg of trade.<sup>123</sup>
- (179) However, the market investigation confirmed that the Parties will face significant competition from other well established short-sea container liner shipping services providers, such as Hapag-Lloyd, Samskip, Seago (Maersk) and Unifeeder.<sup>124</sup> The Parties also submit that they will face competition from Finnlines and Transfennica on that leg of trade.<sup>125</sup>
- (180) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>126</sup>
- (181) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Russia to Benelux-Germany, under any plausible market definition.

#### 6.2.16. Russia to Scandinavia

- (182) The following table shows the Parties' transported volumes on the leg of trade Russia to Scandinavia.

<sup>123</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>124</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>125</sup> Form CO, paragraph 346.

<sup>126</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[5-10]%
Containerships	[...]	[30-40]%
Parties combined	[...]	<b>[40-50]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 362.

- (183) Post-Transaction, the Parties' combined market share would be well below [40-50]% with an increment of [5-10]%.
- (184) The market investigation confirmed that Parties will face competition from other sizeable sea carriers such as Unifeeder, Hapag-Lloyd, Samskip and Seago (Maersk), which together account for more than 50% of the market.<sup>127</sup>
- (185) In addition, all the respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Russia to Scandinavia.<sup>128</sup>
- (186) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>129</sup>
- (187) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Russia to Scandinavia, under any plausible market definition.

#### 6.2.17. Scandinavia to Benelux-Germany

- (188) The following table shows the Parties' transported volumes on the leg of trade Scandinavia to Benelux-Germany.

<sup>127</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>128</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>129</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[0-5]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[0-5]%</b>
Total market	[1 000 000 – 2 000 000]	100%

Source: Form CO, paragraphs 181, 209 and 386.

- (189) According to the [External Consultant] database, the Parties' combined market share post-Transaction would be below 20%. As a result, that market would not be considered as an affected market.
- (190) In any event, the increment brought about by the Transaction is not significant. Indeed, the volume transported by CMA CGM represents less than [0-5]% of the volume transported by Containerships in 2017.
- (191) In addition, the market investigation confirmed that Parties will face competition from other sea carriers such as Samskip, Team Lines, Unifeeder and Viasea Shipping.<sup>130</sup>
- (192) Furthermore, a majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Scandinavia to Benelux-Germany.<sup>131</sup>
- (193) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Scandinavia to Benelux-Germany, under any plausible market definition.

#### 6.2.18. Scandinavia to British Isles

- (194) The following table shows the Parties' transported volumes on the leg of trade Scandinavia to British Isles.

<sup>130</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>131</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

	Volumes transported (TEUs)	Market shares in actual volume transported (MDS)
CMA CGM	[...]	[5-10]%
Containerships	[...]	[10-20]%
Parties combined	[...]	[20-30]%
Total market	[50 000 – 100 000]	100%

Source: Form CO, paragraphs 181, 209 and 351.

- (195) The Parties' combined market share post-Transaction would be [20-30]%.
- (196) As explained in paragraph (90) above, the Commission checked during the market investigation whether the market shares provided by the Parties could be considered as accurate. However, the market investigation was inconclusive in that regard. In particular, the Commission was unable to confirm whether, in 2017, one or more competitors transported a volume of cargo equivalent to the Parties' combined transported volume.<sup>132</sup> Therefore, the Commission further investigated whether the Transaction would raise serious doubts as to its compatibility with the internal market.
- (197) The Parties submits that the volume transported by CMA CGM in 2017 ([...] TEUs) was exceptionally high, in comparison to the volumes transported in 2015 and 2016, as well as in the first part of year 2018 (about [...] TEUs per year).<sup>133</sup> The Parties also suggest looking at market shares in terms of capacity deployed. Under this approach, the Parties' combined market share would be [10-20]%, with Maersk as market leader with [20-30]% of the capacities deployed on that market.<sup>134</sup>
- (198) As explained in paragraphs (95) - (102) above, barriers to entry are relatively low and customers have the ability to switch to other sea carriers. Customers could also switch to alternative modes of transportation, given that maritime transport accounts for [10-20]% of the total market (including all modes of transport).<sup>135</sup> In that regard, the Parties consider that Ro-Ro carriers, such as DFDS, represent a major source of competition and prevent sea-carriers, including the Parties, to raise prices.<sup>136</sup>
- (199) The unlikelihood of price increase post-Transaction is confirmed by the market investigation. A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity

<sup>132</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>133</sup> Reply of the Parties to RFI 2 of 4 October 2018.

<sup>134</sup> Form CO, paragraph 353.

<sup>135</sup> Form CO, paragraph 396.

<sup>136</sup> Reply of the Parties to RFI 2 of 4 October 2018.

would be sufficient to prevent the Parties from raising prices on the leg Scandinavia to British Isles.<sup>137</sup>

- (200) Lastly, none of the respondents to the market investigation has raised any substantiated concern as regards the effects of the Transaction on this market.
- (201) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Scandinavia to British Isles, under any plausible market definition.

#### 6.2.19. Scandinavia to Iberia

- (202) The following table shows the Parties' transported volumes on the leg of trade Scandinavia to Iberia.

	Volumes transported (TEUs)	Market shares in actual volume transported (CTS)
CMA CGM	[...]	[30-40]%
Containerships	[...]	[0-5]%
Parties combined	[...]	<b>[30-40]%</b>
Total market	[10 000 – 50 000]	100%

Source: Form CO, paragraphs 181, 209 and 378.

- (203) Post-Transaction, the Parties will have a combined market share of [30-40]% with a negligible increment of [0-5]%.
- (204) Besides these limited market share and increment, the market investigation confirmed that the Parties will face significant competition from other short-sea container liner shipping services providers, such as CLdN (Evergreen), Samskip, Seago (Maersk) and Unifeeder.<sup>138</sup>
- (205) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Scandinavia to Iberia.<sup>139</sup>
- (206) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Scandinavia to Iberia, under any plausible market definition.

<sup>137</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>138</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>139</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

## 6.2.20. Scandinavia to Russia

- (207) The table below shows the Parties' transported volumes as well as their market shares in terms of capacity deployed.

	Volumes transported (TEUs)	Market shares in capacity deployed
CMA CGM	[...]	[10-20]%
Containerships	[...]	[10-20]%
Parties combined	[...]	<b>[20-30]%</b>
Total market	***	100%

Source: Form CO, paragraphs 181, 209 and 383.

- (208) As explained in paragraph (94) above, the Parties submit that there is no reliable data concerning the total size of the market. The Parties suggest estimating their shares on that leg based on the capacity deployed. Under this approach, the Parties would have a combined market share of [20-30]% and would face competition from notably COSCO and Hapag-Lloyd, which respectively account for [10-20]% and [5-10]% of the capacity deployed on the leg Scandinavia to Russia.<sup>140</sup>
- (209) Based on the outcome of the market investigation, it appears that the Parties will also face competition from Hapag-Lloyd, Seago (Maersk) and Unifeeder, whose combined transported volume largely exceeds the increment brought about by the Transaction.<sup>141</sup>
- (210) A majority of respondents to the market investigation having expressed a view consider that the competitive constraints on the merged entity would be sufficient to prevent the Parties from raising prices on the leg Scandinavia to Russia.<sup>142</sup>
- (211) Furthermore, one end of the leg of trade is outside the EEA. The leg of trade could therefore be considered as a non-substantial part of the internal market.<sup>143</sup>
- (212) In view of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the leg of trade Scandinavia to Russia, under any plausible market definition.

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<sup>140</sup> Form CO, paragraph 383.

<sup>141</sup> See replies to Q1 – Questionnaire to Competitors, question 21.

<sup>142</sup> See replies to Q1 – Questionnaire to Competitors, question 39; Q2 – Questionnaire to Direct Customers, question 23 and Q1 – Questionnaire to Freight Forwarders, question 27.

<sup>143</sup> See Article 2 of the Merger Regulation and, by analogy, Case M.7523 – *CMA CGM/OPDR*, paragraph 88 (where, in the market for door-to-door multimodal transport services, one end is outside the EEA, the country-pair has been considered as a non-substantial part of the internal market).

### 6.2.21. Conclusion

- (213) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to short-sea container liner shipping services in the following 18 affected legs of trade: (i) Baltic States to Benelux-Germany, (ii) Baltic-States to British Isles, (iii) Baltic States to Scandinavia, (iv) Benelux-Germany to Baltic States, (v) Benelux-Germany to Russia, (vi) Benelux-Germany to Scandinavia, (vii) British Isles to Russia, (viii) British Isles to Scandinavia, (ix) Iberia to Algeria, (x) Iberia to Scandinavia, (xi) Poland to British Isles, (xii) Russia to Benelux-Germany, (xiii) Russia to British Isles, (xiv) Russia to Scandinavia, (xv) Scandinavia to Benelux-Germany, (xvi) Scandinavia to British Isles, (xvii) Scandinavia to Iberia and (xviii) Scandinavia to Russia.

### 6.3. Vertical relationships

- (214) CMA CGM and Containerships are active on markets that are vertically related to the container liner shipping business, namely the markets for the provision of container terminal services and freight forwarding services.<sup>144</sup>
- (215) The Transaction would thus create actual or potential vertical links between the Parties' operations in the market for container liner shipping services, on the one hand, and the Parties' operations in (i) the upstream market for container terminal services, and (ii) the downstream market for freight forwarding services, on the other hand.
- (216) If CMA CGM or Containerships hold a 30% share in the upstream or downstream markets mentioned in the preceding paragraph, or if the Parties hold a 30% share in the container liner shipping markets, these markets are considered to be vertically affected.

#### 6.3.1. Container terminal services

##### *Description of the Parties' activities*

- (217) Container terminal services have consistently been considered as an upstream market to the provision of container liner shipping services.<sup>145</sup>
- (218) Within the EEA, CMA CGM, via its subsidiaries, holds [...] interests in the following terminals:
- Intramar (Marseille, France),
  - Générale de Manutention Portuaire (Le Havre, France),
  - Terminal des Flandres SAS (Dunkirk, France),

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<sup>144</sup> Form CO, paragraphs 243 and 279.

<sup>145</sup> M.8594 – COSCO SHIPPING/OOIL, paragraph 52; M.8459 – TIL/PSA/PSA DGD, section 4.2.; M.7523 – CMA CGM/OPDR, paragraph 150; M.7248 – CSAV/HGV/Küne Maritime/Hapag-Lloyd AG, paragraphs 198 and following.



- Terminal du Grand Ouest (St Nazaire, France),
- Eurofos (Marseille, France),
- Marseille Manutention (Marseille, France),
- Terminal Maritima del Guadalquivir (Seville, Spain), and
- Malta Freeport Terminals (Marsaxlokk, Malta).<sup>146</sup>

(219) CMA CGM is a small player in, both, the overall market for the provision of container terminal services, and its sub-segments, that is, hinterland traffic and transshipment traffic.<sup>147</sup> As indicated in Table 2 below, CMA CGM's market shares never exceed [5-10]%, even when adopting the narrowest possible geographic market definition for stevedoring services, that is, the catchment area comprising the ports in a certain range, such as Le Havre and Rotterdam (for hinterland traffic).<sup>148</sup>

*Table 2 - CMA CGM's market shares for container terminal services at regional level in 2016 and 2017.*

<b>Region (range between)</b>	<b>CMA CGM's market shares at regional level</b>		
	Hinterland and Transshipment	Hinterland	Transshipment
Le Havre and Rotterdam	[5-10]%	[5-10]%	-
St Nazaire and Rotterdam	-	-	[0-5]%

*Source: Form CO, paragraphs 252, 254 and 256.*

(220) As regards the downstream market for short-sea container liner shipping services, Containerships' individual market shares on trades in Northern Europe are below 30%, except for the leg of trade Benelux-Germany to Baltic States ([40-50]%).<sup>149</sup> The Parties' combined market shares exceed 30% on the following legs of trade: Russia to Benelux-Germany and Benelux-Germany to Baltic States. Taking the most conservative data, the combined market shares of the parties on trades in Northern Europe also exceed 30% for the legs of trade Benelux-Germany to Scandinavia, Baltic States to Benelux-Germany and Scandinavia to Benelux-Germany.<sup>150</sup>

<sup>146</sup> Form CO, paragraph 243.

<sup>147</sup> M.5398 – *Hutchison/Evergreen*, paragraphs 9-10.

<sup>148</sup> M.7523 – *CMA CGM/OPDR*, paragraph 65.

<sup>149</sup> Form CO, paragraph 260.

<sup>150</sup> As discussed in Section 6.2. above, in these three legs of trade, the Parties combined market shares exceed 100% on the basis of CTS data. Market shares based on [External Consultant] data would be well below 30%. However, in order to adopt a conservative approach, the Commission will consider these three legs of trade as affected markets for the purpose of assessing the vertical links created by the Transaction.

- (221) The Transaction would therefore give rise to affected markets between the Parties' activities in the container terminal services market (upstream market), and the following legs of trade: Russia to Benelux-Germany; Baltic States to Benelux-Germany; Benelux-Germany to Baltic States; Benelux-Germany to Scandinavia; and Scandinavia to Benelux-Germany (downstream, market).
- (222) Containerships holds a minority controlling share in a container terminal operator which operates container terminals in Helsinki, Kotka, and Saint Petersburg.<sup>151</sup> As indicated in Table 3 below, Container Finance's market shares never exceed [5-10]%, even when adopting a geographic market definition for stevedoring services narrower than the catchment area comprising the ports in a certain range, that is, the catchment area comprising national ports only.

*Table 3 - Container Finances' market shares for container terminal services at national ports' level in 2017*

	Container Finance's market shares at national ports' level
National ports	Hinterland and Transshipment
Saint Petersburg (Russia)	[5-10]%
Finland (Helsinki+Kotka)	[5-10]%

*Source: Form CO, paragraph 268.*

- (223) On the downstream market for short-sea container liner shipping services from Russia or Scandinavia, CMA CGM's individual market shares or the Parties' combined market shares are above 30% on the followings legs of trade: Russia to Benelux-Germany, Russia to British Isles, British Isles to Scandinavia, British Isles to Russia, Russia to Scandinavia, Iberia to Scandinavia, Scandinavia to Iberia.<sup>152</sup> Taking the most conservative data, the combined market shares of the parties on trades in Russia or Scandinavia also exceed 30% for the legs of trade Benelux-Germany to Scandinavia, Scandinavia to British Isles, Scandinavia to Benelux-Germany and Scandinavia to Russia.<sup>153</sup>
- (224) The Transaction would therefore give rise to affected markets between the Parties' activities in the container terminal services market, and the following legs of trade: Benelux-Germany to Scandinavia; British Isles to Scandinavia; British Isles to Russia; Iberia to Scandinavia; Russia to Benelux-Germany; Russia to British-

<sup>151</sup> Form CO, paragraph 266.

<sup>152</sup> Form CO, paragraph 209.

<sup>153</sup> As discussed in Section 6.2. above, in these four legs of trade, the Parties combined market shares exceed 100% on the basis of CTS data. Market shares based on [External Consultant] data would be well below 30%, except for the leg Scandinavia to Russia where no accurate market size data is available. However, in order to adopt a conservative approach, the Commission will consider these four legs of trade as affected markets for the purpose of assessing the vertical links created by the Transaction.

Isles; Russia to Scandinavia; Scandinavia to Benelux-Germany; Scandinavia to Iberia; Scandinavia to British Isles and Scandinavia to Russia.

*Commission's assessment*

- (225) The Commission considers that post-Transaction the merged entity would neither have the ability, nor the incentive to engage in any input and/or customer foreclosure strategy.

Vertical relationship between CMA CGM's container terminal services and Containerships' short-sea container liner shipping services

- (226) Post-Transaction, the market shares of CMA CGM on the market for the provision of container terminal services will be low, below [5-10]% (see Table 1 above). These low market shares would make any input foreclosure strategy, aimed at preventing competing shipping companies from procuring the Parties' terminal services, unlikely.
- (227) The Parties would have no ability to engage in such a strategy. Post-Transaction, the Parties will not have a dominant position in the market for container terminal services, and competing container liner shipping companies would continue to be able to source container terminal services from alternative providers in the ports belonging to the same catchment area as the one where the Parties will control terminals. By way of example, the following container terminals are situated in this same catchment area and can thus be considered in direct competition with the Parties' terminals: Antwerp, Belgium; Zeebrugge, Belgium; and Rotterdam, the Netherlands.
- (228) In addition to the above, CMA CGM controls container terminals in Northern Europe [with another undertaking]. It is reasonable to assume that post-Transaction the latter would oppose any attempt by the Parties to engage in an input foreclosure strategy which could adversely impact the joint-venture revenues.
- (229) The Parties would also lack the incentive to engage in an input foreclosure strategy. The margins from the provision of container terminal service are usually higher than the margins that short-sea container shipping companies derive from the provision of their services. It would hence be unprofitable for them to forego the revenues from the upstream market, by restricting or deteriorating the provision of container terminal services to competing short-sea container shipping companies at their terminals.
- (230) Any customer foreclosure strategy of the merged entity would also be unlikely. Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market.<sup>154</sup> In the present case, the merged entity cannot be considered as an important customer of container terminal services in Northern Europe. Indeed, the merged entity's market shares on the relevant legs of trade remain limited. Post-Transaction, on each relevant leg of trade there will be

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<sup>154</sup> Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C265C/07), paragraph 58.

a sufficient number of potential container terminal services' customers, which are competing short-sea container liner shipping companies. These are: Hapag-Lloyd, Samskip, Maersk, Team Lines, and Unifeeder.<sup>155</sup> In addition, Containerships represents a very limited share of demand for container terminal services in Northern Europe (less than [0-5]%).<sup>156</sup> Therefore, the Transaction cannot be considered as changing in any way the incentives of CMA CGM in engaging in a hypothetical customer foreclosure strategy.

- (231) The Commission therefore considers that Parties will lack the ability and the incentive to engage in a customer foreclosure strategy.

Vertical relationship between Container Finance's container terminal services and CMA CGM's short-sea container liner shipping services

- (232) With respect to the possible vertical relationships with Container Finance's terminals, the Commission first observes that Container Finance's market shares never exceed [5-10]%. Once again, post-Transaction the Parties will not have the dominant position in the markets for container terminal services necessary to successfully engage in any input foreclosure strategy.
- (233) Should the merged entity try to deteriorate or restrict the provision of container terminal services to competing container liner shipping companies, the latter would be able to procure those services from competing container terminal services providers, for instance, in the ports of Gdansk, Poland, and Klaipeda, Lithuania. In addition to that, Container Finance only owns [...] of the shares of the container terminals in Helsinki, Kotka, and Saint Petersburg. The remaining shares are held [by another undertaking], who would in all likelihood oppose any of Container Finance's attempts to engage in foreclosure strategies that would impair or reduce the revenues from the upstream market.
- (234) More importantly, the Parties will lack the incentive to engage in an input foreclosure strategy since, as pointed out in paragraph (229) the margins from the provision of container terminal service are usually higher than the margins that short-sea container shipping companies derive from the provision of their services.
- (235) Any customer foreclosure strategy of the merged entity is also unlikely to be deployed.
- (236) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market.<sup>157</sup> In the present case, the merged entity cannot be considered as an important customer of container terminal services in Scandinavia and Russia. Indeed, the merged entity's market shares on the relevant legs of trade remain limited. Post-Transaction, on each relevant leg of trade a sufficient number of potential container terminal services' customers (*e.g.*

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<sup>155</sup> See Section 6.2 of this Decision.

<sup>156</sup> Form CO, paragraph 264.

<sup>157</sup> Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C265C/07), paragraph 58.

competing short-sea container liner shipping companies) will be present. These are, for instance: CLdN (Evergreen), Hapag Lloyd, Samskip, Seago (Maersk), Team Lines, Unifeeder, and Via sea Shipping.<sup>158</sup> Even if post-Transaction the merged entity decided to source container terminal services only from its terminals, a significant number of providers could still decide to call at competing terminals.

- (237) In addition, the Parties would lack the incentive to adopt a similar course of conduct. It is indeed doubtful that the merged entity will be able to make this course of conduct profitable. It is indeed doubtful that the potential additional revenues on the downstream market would compensate the lost profits in the upstream terminal services market, by increasing prices either in the upstream or in the downstream market.
- (238) The Commission therefore considers that the Parties will lack the ability and incentive to engage in a customer or input foreclosure strategy.

#### *Conclusion*

- (239) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical links between the Parties' activities, on the one hand, in container terminal services in (i) the Le Havre and Rotterdam region, (ii) the St Nazaire and Rotterdam region, (iii) Russia (Saint Petersburg), and (iv) Finland (Helsinki-Kotka), on the other hand, in short-sea container liner shipping services in the following 18 affected legs of trade: (i) Baltic States to Benelux-Germany, (ii) Baltic-States to British Isles, (iii) Baltic States to Scandinavia, (iv) Benelux-Germany to Baltic States, (v) Benelux-Germany to Russia, (vi) Benelux-Germany to Scandinavia, (vii) British Isles to Russia, (viii) British Isles to Scandinavia, (ix) Iberia to Algeria, (xx) Iberia to Scandinavia, (xi) Poland to British Isles, (xii) Russia to Benelux-Germany, (xiii) Russia to British Isles, (xiv) Russia to Scandinavia, (xv) Scandinavia to Benelux-Germany, (xvi) Scandinavia to British Isles, (xvii) Scandinavia to Iberia and (xviii) Scandinavia to Russia.

#### *6.3.2. Freight forwarding services*

- (240) Freight forwarders are among the most important customers of container liner shipping companies.

#### *Description of the Parties' activities*

- (241) CMA CGM, via its subsidiary CCLog, provides freight forwarding services worldwide, including to a limited extent in Europe, namely in: the Baltic countries, Belgium, the Czech Republic, France, Germany, Latvia, Lithuania, the Netherlands, Poland, and the UK.

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<sup>158</sup> See Section 6.2 of this Decision.

- (242) Containerships provides freight forwarding services in Germany, Latvia, Lithuania, and the UK.<sup>159</sup>
- (243) The Transaction will therefore give rise to potential vertically affected markets between the Parties' activities in container liner shipping activities (upstream market) and freight forwarding services (downstream market), as well as between the Parties' activities in the markets for door-to-door multimodal transport services (upstream market) and freight forwarding services (downstream market).
- (244) As explained in paragraph (65), the Commission will adopt a conservative approach and assess the effects of the Transaction on the national basis. If the Commission were to assess the impact of the Transaction on the basis of a broader geographic market definition, the Parties' market shares would be (significantly) lower.

#### *Affected markets*

- (245) On the upstream market for freight forwarding services, CCLog's market share in the Baltic countries, Belgium, the Czech Republic, France, Germany, Latvia, Lithuania, the Netherlands, Poland, and the UK is below [0-5]%, under any plausible definition of the relevant market. Containerships' market share is below [0-5]% in Germany, Latvia, Lithuania, and the UK, under any plausible relevant market definition.
- (246) In relation to the downstream markets for door-to-door, on the basis of the individual and combined market shares of the Parties, the Transaction will give rise to vertically affected markets in excess of 30% between, on the one hand, the provision of freight forwarding services, on the other hand, the provision of door-to-door multimodal transport services on the following country pairs: Netherlands to Finland; Russia to UK; UK to Russia; Lithuania to Ireland.
- (247) In relation to the downstream markets for short-sea container liner shipping services, the Transaction will give rise to vertically affected markets on the following legs of trade: Baltic States to Benelux-Germany; Baltic States to British Isles; Baltic States to Scandinavia; Benelux-Germany to Baltic States; Benelux-Germany to Scandinavia; British Isles to Russia; British Isles to Scandinavia; Poland to British Isles; Russia to Benelux-Germany; Russia to British Isles; Scandinavia to Benelux-Germany.

#### *Commission's assessment*

- (248) The Parties are minor players in freight forwarding services. In light of the low market shares that the Parties hold in the freight forwarding services market, irrespective of the market definition retained, it is unlikely that post-Transaction the merged entity would have the ability and incentive to engage in foreclosure strategies.
- (249) Given its low market share, the Commission considers it unlikely that the merged entity will have the ability and the incentive to engage in a customer foreclosure

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<sup>159</sup> Form CO, paragraph 279.

strategy. Even if the merged entity foreclosed access to its customer base to its actual or potential competitors in the upstream markets for door-to-door multimodal transport services and container liner shipping services, those competitors would still be able to revert to numerous competing freight forwarders companies.

- (250) Likewise, as regards input foreclosure, post-Transaction a number of competitors will remain active on the markets for the provision of door-to-door multimodal transport services and container liner shipping services. It is hence unlikely that the merged entity's rival freight forwarders will be foreclosed from access to door-to-door multimodal transport services or short-sea container liner shipping services, on any of the relevant geographic markets listed in paragraphs (246) and (247).

### *Conclusion*

- (251) In light of the above considerations, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as regards the vertical links between the activities of the Parties, on the one hand, in the market for freight forwarding services, on the other hand, in the market for door-to-door multimodal transport services – in the Netherlands to Finland, Russia to UK, UK to Russia and Lithuania to Ireland country pairs – and in the market for short-sea container liner shipping services in the following 18 affected legs of trade: i) Baltic States to Benelux-Germany, (ii) Baltic-States to British Isles, (iii) Baltic States to Scandinavia, (iv) Benelux-Germany to Baltic States, (v) Benelux-Germany to Russia, (vi) Benelux-Germany to Scandinavia, (vii) British Isles to Russia, (viii) British Isles to Scandinavia, (ix) Iberia to Algeria, (x) Iberia to Scandinavia, (xi) Poland to British Isles, (xii) Russia to Benelux-Germany, (xiii) Russia to British Isles, (xiv) Russia to Scandinavia, (xv) Scandinavia to Benelux-Germany, (xvi) Scandinavia to British Isles, (xvii) Scandinavia to Iberia and (xviii) Scandinavia to Russia.

## **7. CONCLUSION**

- (252) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

*Margrethe VESTAGER*

*Member of the Commission*