EUROPEAN COMMISSION

Brussels, 3.10.2024
C(2024) 7052 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

SAS Shipping Agencies Services S.à.r.l.
11B Boulevard Joseph II
L-1840, Luxembourg
Grand-Duchy of Luxembourg

Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH
Gustav-Mahler-Platz 1
20354, Hamburg
Germany

Subject: **Case M.11302 – MSC / HGV / HHLA**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 29 August 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which SAS Shipping Agencies Services S.à.r.l. ('SAS', Luxembourg), a wholly-owned indirect subsidiary of MSC Mediterranean Shipping Company Holding S.A. (MSC Holding, together with its subsidiaries, 'MSC', Switzerland), and HGV Hamburger Gesellschaft für Vermögens und Beteiligungsmanagement mbH ('HGV', Germany), a wholly-owned subsidiary and the group holding company for the

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

commercial activities of the City of Hamburg, will acquire joint control over Hamburger Hafen und Logistik Aktiengesellschaft ('HHLA', together with its subsidiaries, the 'HHLA Group', Germany) by way of public bid announced on 13 September 2023 and by way of purchase of shares (the 'Transaction')[3]. MSC, HGV and HHLA are designated hereinafter as the 'Parties'.

1. THE PARTIES

(2) MSC is a privately owned global business engaged in the transport and logistics sector based in Geneva, Switzerland. The group has activities in the cargo, terminal services, logistics, and passenger cruise businesses.

(3) HGV is the holding company for the business activities of the City of Hamburg. As such, HGV has subsidiaries that are active – inter alia – in container terminal and terminal logistics services. HGV has a non-controlling 13.9% participation in Hapag-Lloyd AG, a company active in container liner shipping and related logistics services.

(4) The HHLA Group is a European port and transport logistics company. The core business of the company is container handling in seaports, particularly in the port of Hamburg, but also in the harbour of Muuga (Tallinn) and the port of Trieste. In addition, the HHLA Group is active in container transport between ports and the German and European hinterland. HHLA also offers a spectrum of port, consulting, and other services. HHLA is currently solely controlled by HGV.

2. THE OPERATION

(5) HHLA currently operates two different subgroups: (i) the port logistics subgroup, which includes container, intermodal transport and logistics activities and (ii) the real estate subgroup, which includes HHLA's real estate activities. In line with this structure, HHLA's share capital consists of (i) Class A shares, which relate to the port logistics subgroup and (ii) Class S shares, which relate to the real estate subgroup. The Class S shares are not part of the Transaction.

(6) Currently, HGV holds 69% of HHLA's Class A shares while the remaining 31% is free float. Post-Transaction, HGV and MSC will hold 50.1% and 49.9%, respectively, of Port of Hamburg Beteiligungsgesellschaft SE ('POH') a company that will hold HGV's existing 69% Class A shareholding in HHLA as well as the HHLA Class A shares tendered into a public offer launched by POH and any HHLA Class A shares held by MSC.

(7) Post-Transaction, the Parties will each hold veto rights over material changes to the business strategy, the agreed budget as well as the business and investment plan. Moreover, HGV will have the right to appoint HHLA's CEO and the Labour Director, while MSC will have the right to appoint its CFO and COO.

(8) Any deadlock would include an escalation mechanism [DETAILS ON CORPORATE GOVERNANCE].

(9) Based on the above, post-Transaction HHLA will be jointly controlled by HGV and MSC as strategic decisions at HHLA will require the approval of both Parties.

[3] OJ C, C/2024/5444, 5.9.2024.

3. UNION DIMENSION

(10) The undertakings concerned have a combined worldwide turnover of more than EUR 5 000 million (MSC: [DETAILS OF MSC's REVENUES]; HGV: EUR 5 557 million).[4] Both undertakings have an EU-wide turnover of more than EUR 250 million ([DETAILS OF THE PARTIES REVENUES]). The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(11) The Transaction therefore has an EU dimension.

4. LINKS BETWEEN HAPAG-LLOYD AND HHLA

(12) HGV, the state-owned holding company for the commercial activities of the City of Hamburg, is one of Hapag-Lloyd's shareholders. HGV holds a 13.9% stake in Hapag Lloyd. In a previous decision, the Commission established that Hapag-Lloyd was jointly controlled within the meaning of the Merger Regulation by its three main shareholders: Kuehne Maritime GmbH, HGV, and Compañía Sud Americana de Vapores S.A., because (i) they held six of the 12 seats in the supervisory board at the time and because (ii) they had agreed under a shareholder's agreement to exercise their voting rights in Hapag-Lloyd by issuing a common voting proxy, thereby making important decisions together.[5]

(13) HGV also holds a 69.6% solely-controlling stake in HHLA. HGV's presence in Hapag-Lloyd and HHLA creates a structural link between the two companies, which could therefore form a single economic unit for the purpose of the assessment under the Merger Regulation.

(14) It follows from Article 5(4) and recital 22 of the Merger Regulation, read in conjunction with paragraph 194 of the CJN,[6] that two state-owned enterprises will not be considered to constitute one economic entity provided they have a power of decision independent from each other and independent of the State concerned.

(15) The Commission has previously found that Hapag-Lloyd and HHLA do not constitute one economic unit because Hapag-Lloyd has an independent power of decision.[7] As Hapag-Lloyd's power of decision has not changed since it was last assessed by the Commission, the links between HHLA and Hapag-Lloyd through HGV are not relevant for the assessment of the Transaction and will not be further discussed in this decision.

5. MARKET DEFINITION

(16) The Parties' activities overlap horizontally in the provision of container terminal services at three port ranges in the EEA:

---

4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice ("CJN") (OJ C95, 16.4.2008, p. 1).

5 M.7268 - CSAV / HGV / Kuehne / HLAG, paragraphs 10 – 12.

6 See also paragraphs 52-53 and 153 CJN.

7 See M.10522 - Hapag-Lloyd / Eurogate / Eurogate Container Terminal Wilhelmshaven, paragraphs 17-37.

a. The Northern range, including ports on the Northern coast of Europe from Le Havre (France) to Gdańsk (Poland),

b. The Adriatic range, including the ports of Trieste (Italy), Koper (Slovenia) and Rijeka (Croatia), and

c. The Baltic range, including the ports of Klaipeda (Lithuania), Riga (Latvia) and Tallinn (Estonia).

(17) The Parties' activities also overlap horizontally in inland transportation services.

(18) Finally, MSC's container shipping line services are in a vertical relationship with HHLA's container terminal services and inland transportation services.[8]

5.1. Container terminal services

5.1.1. Product market

(19) In its prior decisional practice, the Commission has defined a separate market for container terminal services. The Commission has distinguished between the provision of container terminal services to (i) deep-sea container ships, (ii) ships carrying non-containerised cargo and (iii) short-sea vessels. The latter have two different requirements compared to deep-sea container ships.[9] For deep-sea container terminal services, the Commission has considered, but ultimately left open, a possible distinction between hinterland traffic (containers transported directly to/from a container vessel from/to the hinterland via barge, truck or train) and transhipment traffic (containers destined for the onward transportation to other ports or other vessels).[10]

(20) In addition, the Commission has considered, but ultimately left open whether there is a separate market for ancillary services to the container terminal services, such as storage, leasing, repair and maintenance of containers.[11]

(21) The Parties submit that it is not necessary to reach a definitive conclusion on market definition as the Transaction does not lead to any competition concerns under any plausible market definition.

---

8 Harbour towage services are provided to large vessels (container ships, bulk vessels, cruise ships, etc.) and include precise manoeuvring, positioning assistance, safe berthing, un-berthing and passing narrow gateways. Thus, there is a vertical relationship between container liner shipping activities and harbour towage services. However, only MSC is active in container liner shipping and harbour towage service, so the Transaction does not give rise to any vertical relationships. The Parties are also active in storage, repair and maintenance services in Germany, but these activities do not give rise to any affected markets.

9 See M.8459 - TIL/PSA/PSA DGD, paragraph 15.

10 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraphs 49-50; M.9450- PPG/TIL/JV, paragraph 13; M.9093 – DP World Investments/Unifeeder, paragraph 12; M.9016 – CMA CGM/Container Finance, paragraph 51.

11 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 40.

(22) The market investigation largely confirms the subdivision of the market for container terminal services into the sub-segments previously considered by the Commission which will be followed for the assessment of the Transaction.[12]

5.1.2. Geographic market

(23) In past cases, the Commission has considered that for container terminal services in deep-sea ports the relevant geographic market is determined by the geographic area the container terminal generally serves (catchment area). Concerning terminals in Northern Europe and Hamburg in particular, the Commission considered that the relevant geographic market is, in its broadest scope, Northern Europe (for transhipment traffic) and, in its narrowest possible scope, the catchment area of the ports in the range Hamburg – Antwerp (for hinterland traffic – due to the limited connectivity compared to transhipment traffic) or possibly even narrower, comprising the German ports only.[13] The Commission further indicated that northern and central European ports have a different catchment area than southern European ports so that they do not compete to an appreciable extent.[14] The Commission also previously considered whether Scandinavia/the Baltics may constitute a separate regional hinterland market, but the precise geographic market definition was left open.[15] For transhipment traffic, it was noted that the Mediterranean ports constitute a separate market.[16] The Commission has also considered a separate market for the East-Mediterranean / Black Sea.[17] Ultimately, the precise geographic market definition has been left open.

5.1.2.1. Container terminal services in the Northern range

(24) The Northern range encompasses the ports of Le Havre (France), Dunkirk (France), Antwerp (Belgium), Rotterdam (the Netherlands), Wilhelmshaven, Bremerhaven and Hamburg (all located in Germany), as well as the port of Gdańsk (Poland). HHLA is present in the Northern range with deep-sea container terminal activities at the port of Hamburg, where it operates the Container Terminal Altenwerder (CTA), the Container Terminal Burchardkai (CTB), and the Container Terminal Tollerort (CTT). MSC has controlling (jointly or solely) stakes in deep-sea container terminals in the ports of Rotterdam,[18] Antwerp,[19] Bremerhaven[20] and Le Havre.[21]

---

12 Replies to questions C.A.1-C.A.4 of the questionnaire to Container liner shipping companies, questions C.A.1-C.A.2 of the questionnaire to Container terminal operators and port authorities, questions C.A.1.-C.A.4 of the questionnaire to Freight forwarders and end customers.

13 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraphs 49-50, M.8594- Cosco Shipping/OOIL, paragraphs. 18-20; M.8330 – Maersk Line/HSDG, paragraph 30; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paragraph 22; M.5450 – Kühne/HGV/TUI/Hapag-Lloyd, paragraph 16; M.5066 – Eurogate/APMM, paragraph 15–20.

14 M. 8594 - COSCO Shipping/OOIL, paragraphs 20 and 22. Market participants contacted in pre-notification have broadly confirmed that there is limited substitutability between Northern European ports and Mediterranean ports. Moreover, they indicated that the final destination of the cargo may affect the choice of port.

15 Case COMP/JV.55 - Hutchison/RCPM/ECT, paragraph 39.

16 M.5398 – Hutchison / Evergreen, paragraph 16; M.1674 – Maersk/ECT, paragraphs 10-11.

17 See, for instance, M.1674 - *Maersk/ECT*, paragraphs 10 *et seq*.; M.1651 - *Maersk / Sea-Land*, para. 15; M.831 - P*&O/Royal Nedlloyd*, para. 36.

18 Delta Dedicated North Terminal.

19 MSC PSA European Terminal (MPET).

20 MSC Gate.

21 Terminal de Normandie MSC (TNMSC) and Terminal Porte Océane (TPO).

(25) The Parties submit that for transhipment services, the relevant range of ports includes at least the Le Havre-Gdańsk range of ports.[22] For hinterland services, the Parties consider that at least all deep-sea container terminals in the Northern Range are part of the relevant market and that in any event, a narrower relevant market than the Antwerp-Hamburg range for hinterland traffic is not warranted.[23]

(26) On the geographic scope of the market for transhipment traffic in the Northern range, the market investigation did not provide evidence to depart from the Commission practice. In particular, the majority of market participants that expressed a view consider that the geographic scope of the Northern range is as wide as the whole Northern range (from Le Havre to Gdánsk) or possibly narrower including the ports from Antwerp to Hamburg.[24]

(27) Regarding the geographic scope of the market for hinterland traffic, it appears to be narrower than that for transhipment with a majority of respondents that expressed a view stressing that the proximity to the final destination of the container is an important criterion in their choice of port[25]. Indeed, the ports of Bremerhaven and Hamburg are viewed as the closest alternative to one another for hinterland traffic, followed by Wilhelmshaven, Antwerp and Rotterdam. Moreover, as discussed in greater detail in section 6.1.2.1, the market appears to be differentiated with each port in the Northern range being preferred for the transport of cargo to/from certain destinations.

(28) As the choice of the port in the Northern range is affected by a range of factors, and, among others, by the origin and destination of the cargo, this will be further taken into account in the competitive analysis.

5.1.2.2. Container terminal services in the Adriatic range

(29) The Adriatic range encompasses the ports of Trieste (Italy), Koper (Slovenia), and Rijeka (Croatia). HHLA is present in the Adriatic range with deep-sea container terminal activities at the HHLA PLT Italy terminal at the Port of Trieste. HHLA PLT currently only handles a limited volume of containers and focuses on other types of non-containerised cargo. MSC has sole control over the other deep-sea container terminal in the Port of Triste, the Trieste Marine Terminal.

(30) The Commission has previously considered a separate market for the Mediterranean for transhipment traffic[26] and a separate market for the East-Mediterranean / Black Sea.[27] While the Commission has not previously considered an Adriatic Range for hinterland traffic, the Italian competition authority considered in a recent decision (but ultimately left open) that the relevant geographic market would in its broadest scope include the range of North-East Italian ports / Ports of Koper / Rijeka / Northern Tyrrhenian Sea, or potentially a

22 Form CO, paragraph 176.

23 Form CO, paragraph 181.

24 Replies to questions C.A.A of the questionnaires to container liner shipping companies, container terminal operators and port authorities and freight forwarders and end customers. See also replies to questions D.5 of the questionnaires to freight forwarders and end customers.

25 Replies to questions C.A.A.3 of the questionnaires to container liner shipping companies, container terminal operators and port authorities and freight forwarders and end customers.

26 See M.5066 - Eurogate/APMM, paragraph 22.

27 See, for instance, M.1674 - *Maersk/ECT*, paragraphs 10 et seq.; M.1651 - *Maersk / Sea-Land*, paragraph 15; M.831 - P&*O/Royal Nedlloyd*, paragraph 36.

more limited scope comprising North-East Italian ports / Ports of Koper / Rijeka, and in its narrowest possible scope the ports of Port of Trieste / Koper / Rijeka.[28] For transhipment traffic, the Italian competition authority considered the geographic market to be broader and to include the entire Mediterranean Sea.[29]

(31) The Parties submit that the relevant geographic market for both transhipment and hinterland traffic, should not be narrower than the Trieste-Koper-Rijeka range of ports, but that the exact definition can ultimately be left open.

(32) Evidence on the Commission's file indicates that the ports of Trieste, Koper and Rijeka serve similar hinterland catchment areas around the Adriatic range.

(33) **First**, the three ports in the Adriatic range are close to each other (separated at most by 80km as is the case between Trieste and Rijeka). Moreover, all three ports have access to a large inland transportation network that allows containers deposited in the Adriatic ports to reach some of the main European hinterland destinations.

(34) **Second,** data provided by MSC[30] as well as data on trade flows collected from MSC and its main competitors offering integrated inland transportation indicates that only a limited amount of the cargo transported via the ports of Trieste, Koper, and Rijeka is cargo destined for the respective domestic markets. According to the Commission's analysis, the cargo's country of origin and destination for each of the ports in the Adriatic range are for the most parts locations in Hungary, Slovakia, and Austria. This indicates that all three ports serve similar hinterland catchment areas around the Adriatic range and not their own domestic markets.

(35) **Third**, the market investigation confirmed that the three ports in the Adriatic range are generally substitutable for hinterland and transhipment traffic. Indeed, a majority of the respondents to the market investigation that expressed a view confirmed that the ports of Koper and Rijeka are substitutable for the port of Trieste.[31] The pre-notification market investigation also broadly confirmed that there is substitutability between the three ports and that they are all used for a similar range of hinterland destination. A terminal operator explained that '*the three ports in the Adriatic compete very closely*'[32] and a shipping company noted that for hinterland destinations other than the country the port is located in, the Adriatic ports could '*be considered as substitutable to one another*.'[33]

5.1.2.3. Container terminal services in the Baltic range

(36) The Baltic range encompasses the port of Tallinn (Estonia), the port of Riga (Latvia), and the port of Klaipeda (Lithuania). HHLA is present in the Baltic range with deep-sea container terminal activities in the Muuga harbour (part of the port of Tallinn). MSC operates a deep-sea container terminal in the port of Klaipeda.[34]

---

28 See Autorita Garante della Concorrenza e del Mercato, C.12514 – *CSM Italia-Gate/Trieste Marine Terminal*, paragraph 12.

29 *Ibid.*, paragraph 13.

30 Form CO, paragraphs 224-226.

31 Replies to question C.A.B.1 of questionnaires to container terminal operators and port authorities, container liner shipping companies, freight forwarders and end-customers.

32 Minutes of call of 3 April 2024 with a terminal operator, paragraph 14.

33 Minutes of a call of 17 April 2024 with a shipping company, paragraph 9.

34 Klaipeda has one other terminal, the Klaipeda Container Terminal, while the port of Riga has two terminals, which are both independent from the Parties.

(37) The Commission has previously left open whether Scandinavia/the Baltics constitute a separate market.[35]

(38) The Parties submit that for both transhipment and hinterland traffic the Baltic terminals are predominantly gateway terminals, which serve the domestic markets of Estonia, Lithuania and Latvia. The Parties argue that there is limited cross-border trade.

(39) Evidence on the Commission's file indicates that the ports of Tallinn, Riga and Klaipeda serve the Estonian, Latvian and Lithuanian national markets respectively.

(40) **First**, based on data provided by MSC, [...] carrier haulage cargo it transports via the ports of Riga, Tallinn and Klaipeda is domestic cargo, serving the respective domestic markets.[36]

(41) **Second**, the Commission's analysis based on 2023 data on trade flows collected from MSC and its main competitors offering integrated inland transportation shows that there are virtually no cross-flows in the Baltic range. That is, very limited cargo moves from Riga to Lithuania or Estonia, from Klaipeda to Latvia or Estonia, or from Tallinn to Latvia or Lithuania.

(42) **Third**, during the market investigation a terminal operator noted that '*Riga port is mainly a destination port*' and that the majority of the cargo transported through it is to/from Latvia. Similarly, another terminal operator pointed out that '*cargo to/from Lithuania and Estonia will typically be transported through Klaipeda and Tallinn respectively, rather than through Riga, as shipping lines prefer to call the port which is closest to the cargo's destination/origin*'. Similarly, another terminal operator indicated that '*[i]n the Baltic range, import and exports through container terminals are mostly directed to the local market.*''[37]

(43) **Forth**, the market investigation indicated that the ports in the Baltic range mainly serve their own national markets. A majority of respondents expressing a view indicated that containers in the Baltic range are rarely transported beyond the national market. In addition, the Riga Port Authority explained that international volumes are transported to non-EEA countries.[38]

5.1.3. Conclusion on the relevant product and geographic markets

(44) The Commission will assess the effects of the Transaction on the following possible markets:

a. Product markets: i) deep-sea container terminal services overall; ii) deep-sea container terminal services for hinterland traffic; iii) deep-sea container terminal services for transhipment traffic and iv) short-sea container terminal services;

35 COMP/JV.55 - Hutchison/RCPM/ECT, paragraph 39.

36 Form CO, paragraphs 207-211.

37 Minutes of a call with a terminal operator dated 5 April 2024.

38 Replies to questions C.A.C.3 and C.A.C.4 of questionnaire to Container terminal operators and port authorities.

b. Geographic markets:

i. In the Northern range: the Commission will assess the effects of the Transaction on the basis of a geographic market, including catchment areas comprising: i) the ports between Le Havre and Gdansk for transhipment and hinterland traffic; ii) the ports between Antwerp and Hamburg for transhipment and hinterland traffic and iii) German ports for hinterland traffic. The geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

ii. In the Adriatic range: the Commission considers that the geographic market definition is not narrower than the Trieste-Koper-Rijeka range of ports.

iii. In the Baltic range: the Commission considers that ports in the Baltic range, namely the port of Tallinn (Estonia), the port of Riga (Latvia), and the port of Klaipeda (Lithuania) primarily serve their respective national hinterlands, therefore the geographic markets are national. However, the geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

5.2. Container liner shipping services

(45) In past cases, the Commission found that the product market for container liner shipping involves the provision of regular, scheduled services for the sea carriage of cargo by container. In addition, the Commission considered that the use of container transportation separates it from other non-containerised transport such as bulk cargo shipping.[39]

(46) The Commission has defined a separate product market for short-sea container liner shipping, which involves the provision of regular, scheduled intra-continental (usually coastal trade) services, distinct from deep-sea container shipping[40].

5.2.1. Deep-sea container liner shipping services

5.2.1.1. Product market

(47) Deep-sea container liner shipping services involve the offer of regular, scheduled services for the sea transportation of containerised cargo.[41]

(48) The Commission has previously considered that this market can be distinguished from non-liner shipping (e.g., charter, tramp, specialised transport) because of the regularity and frequency of the service. The use of container vessels to store the

[39] M. 10522 – HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 51; M.9221 M.8594 – COSCO Shipping/OOIL, paragraph 11; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paragraph 10; M.7908 – CMA CGM/NOL, paragraph 8; M.7268 – CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG, paragraph 16; M.5450 – Kühne/HGV/TUI/Hapag-Lloyd, paragraph 13.

[40] M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 52; M.8330 – Maersk Line/HSDG, paragraphs 18-19; M.7523 – CMA CGM/OPDR, paragraph 62.

[41] M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 53; M.8330 – Maersk Line/HSDG, paragraph 10.

cargo being transported further separates it from other non-containerised transport such as transport by bulk vessel. It is also different from short-sea container shipping and Ro-Ro[42] shipping.[43]

(49) The Parties do not contest the Commission's decisional practice and submit that it is not necessary to reach a definitive conclusion on market definition as the Proposed Transaction does not lead to any competition concerns under any plausible market definition.

(50) The market investigation largely confirmed the subdivision of the market for container liner shipping into the deep-sea and short-sea sub-segments previously considered by the Commission which will be followed for the assessment of the Transaction.[44]

5.2.1.2. Geographic market

(51) In its most recent practice, the Commission concluded that deep-sea container liner shipping services are geographically defined on the basis of the individual legs of trade (e.g. Northern Europe – North America eastbound and Northern Europe – North America westbound separately).[45]

(52) In line with the Commission's decisional practice, the Parties submit that the geographic market for deep-sea container liner shipping services consists of individual legs of trades, which are defined by the range of ports that are served at both ends of the service.

(53) The market investigation did not provide any reasons to depart from the Commission's decisional practice[46].

5.2.1.3. Commission assessment on the relevant product and geographic markets

(54) The Commission considers that, in light of the evidence gathered during the market investigation, there is no reason to depart from its previous practice that there is a separate market for deep-sea container liner shipping services, which is geographically defined on the basis of the individual legs of trade. However, it is not necessary to precisely define the geographic market as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition, including the narrowest definition according to individual legs of trade.

---

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

43 For instance, M.7523 - CMA CGM/OPDR, paragraph 39.

44 Replies to question C.B.1 of the questionnaires to Container liner shipping companies and freight forwarders and end customers.

45 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 55; M.9221 – CMA CGM/CEVA, paragraph 34; M. 8594 – COSCO Shipping/OOIL, paragraph 14; M.8330 – Maersk Line/HSDG, paragraph 15; M.8120 – Hapag-Lloyd/United Arab Shipping Company, paragraph 19; M.7908 – CMA CGM/NOL, paragraph 15.

46 Replies to question C.B.2 of the questionnaires to Container liner shipping companies and freight forwarders and end customers.

5.2.2. Short-sea container liner shipping services

5.2.2.1. Product market

(55) 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[47].

(56) In its prior decisional practice related to short-sea shipping services, the Commission concluded, as regards the type of cargo transported, that short-sea container shipping services should be distinguished from non-containerised shipping, such as bulk shipping.[48] Furthermore, the Commission has considered but ultimately left open whether the transport of wheeled cargo[49] and short-sea container shipping services should be considered as belonging to the same product market.[50]

(57) The Commission also left open whether there should be a sub-segmentation between refrigerated (reefer) and non-refrigerated container shipping services. [51]

(58) The Parties submit that the product market comprises all short-sea container liner shipping services regardless of the type of cargo transported. The Parties also submit that short-sea container liner shipping constitutes a market separate from feeder services. Nevertheless, the Parties submit that it is not necessary to reach a definitive conclusion on market definition as the Transaction does not lead to any competition concerns under any market definition.

(59) The market investigation did not provide any reasons to depart from the Commission's decisional practice[52].

5.2.2.2. Geographic market

(60) In its prior decisional practice, the Commission considered that the relevant geographic market for short-sea container liner shipping services should be defined on the basis of (i) either single trades or corridors, defined by the range of ports which are served at both ends of the service[53] or (ii) single legs of trade.[54]

---

47 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 60.

48 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 61; M.8330 – Maersk Line/HSDG, paragraph 19; M.7523 – CMA CGM/OPDR, paragraph 49.

49 The transport of wheeled cargo (lorries, cars, etc.) on ships corresponds to roll on-roll off ("Ro-Ro") shipping.

50 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 61; M.8330 – Maersk Line/HSDG, paragraph 19; M.7523 – CMA CGM/OPDR, paragraph 49.

51 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 62; M.8330 – Maersk Line/HSDG, paragraph 19; M.7523 – CMA CGM/OPDR, paragraph 49.

52 Replies to question C.B.2 of the questionnaires to Container liner shipping companies and freight forwarders and end customers.

53 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 63; M.8330 – Maersk Line/HSDG, paragraph 20; M.7523 – CMA CGM/OPDR, paragraph 59.

(61) The Parties submit that they concur with the Commission's previous practice and that it is not necessary to reach a definitive conclusion on market definition as the Transaction does not lead to any competition concerns under any market definition.

(62) The market investigation did not provide any reasons to depart from the Commission's decisional practice[55].

5.2.2.3. Commission's assessment on the relevant product and geographic market

(63) The Commission considers that, in line with its previous practice, short-sea container shipping services should be distinguished from non-containerised shipping, such as bulk shipping. Short-sea container shipping services can be geographically distinguished on the basis of (i) either single trades or corridors, defined by the range of ports which are served at both ends of the service or (ii) single legs of trade. However, it is not necessary to precisely define the geographic market as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.3. Inland transportation

(64) Inland transportation refers to the physical movement of goods by using own (owned or leased) equipment. Inland transportation providers also include container liner shipping companies which may offer inland transportation as part of their offering under merchant haulage contracts. To the extent that a container liner shipping company arranges inland haulage to and/or from the port, inland transportation services constitute an input for container liner shipping services. Inland transportation may generally be organised through either rail, truck or barge transportation, or as a combination of these.

5.3.1. Product market

(65) In its previous practice the Commission has considered that the various means of inland transportation may constitute separate product markets, however ultimately left the market definition open.[56]

(66) The Parties consider that the question whether inland transportation services by rail, truck or barge may constitute separate products markets may be left open. In particular, the Parties submit that there is significant demand side substitution between incumbent/traditional rail freight operators and private operators, such as the Parties. Similarly, the Parties consider that it may be left open whether inland transportation by truck or barge constitute separate product markets, as these segments are not relevant for the competitive assessment in the present case. Notably, HHLA's subsidiary, Metrans is not active in inland transportation by

---

54 M.10522 - HAPAG-LLOYD / EUROGATE / EUROGATE CONTAINER TERMINAL WILHELMSHAVEN, paragraph 63; M.8330 – Maersk Line/HSDG, paragraph 20; M.7523 – CMA CGM/OPDR, paragraph 59.

55 Replies to question C.B.2 of the questionnaires to Container liner shipping companies and freight forwarders and end customers.

56 M.7268 - CSAV / HGV / Kühne Maritime/Hapag-Lloyd AG, paragraphs 42-45; M.10522 - Hapag-Lloyd/Eurogate/Eurogate Container Terminal Wilhelmshaven, paragraphs 68-71.

truck because [...].[57] When Metrans provides first- and last mile truck transport it [...],[58] while MSC provides inland transportation through [...].[59]

(67) During the market investigation, market participants confirm the appropriateness of the Commission's previous practice of defining a market for inland transportation that is distinct from freight forwarding and consider that a segmentation of the market for inland transportation based on the means of transport (rail, barge or truck) may be appropriate.[60]

(68) The Commission will conduct its assessment of the Transaction on the basis of the following: (i) the overlap between the Parties occurs within rail transportation services due to Metrans' focus on this segment;[61] (ii) MSC has very low market shares (excluding captive volumes) in truck transportation and HHLA's activity on this segment is negligible;[62] and (iii) MSC has limited activities in barge transportation, while HHLA is not active in this segment.[63] The Transaction raises no doubts as to its compatibility with the internal market under any plausible product market definition.

5.3.2. Geographic market

(69) In its previous practice the Commission has considered that the geographic market for inland transportation services may be national or wider, but ultimately left the market definition open.[64]

(70) The Parties submit that the geographic market for inland transportation is at least regional, if not EEA-wide. Suppliers are generally active in several neighbouring countries and through wider geographies, while customers do not exhibit strong preferences towards certain providers. The geographic reach of some of the main rail transport providers is indicated in Figure 1 below.

57 Form CO, paragraph 465.

58 Form CO, paragraph 502.

59 Form CO paragraphs 458-466.

60 Replies to questions C.1-C.8 of the Inland transportation questionnaire to Competitors, questions C.B.1.-C.B.6. of the of the questionnaire to Container terminal operators and port authorities, questions C.C.1.-C.C.8. of the questionnaire to Container liner shipping companies, questions C.C.1-C.C.8. of the questionnaire to Freight forwarders and end customers.

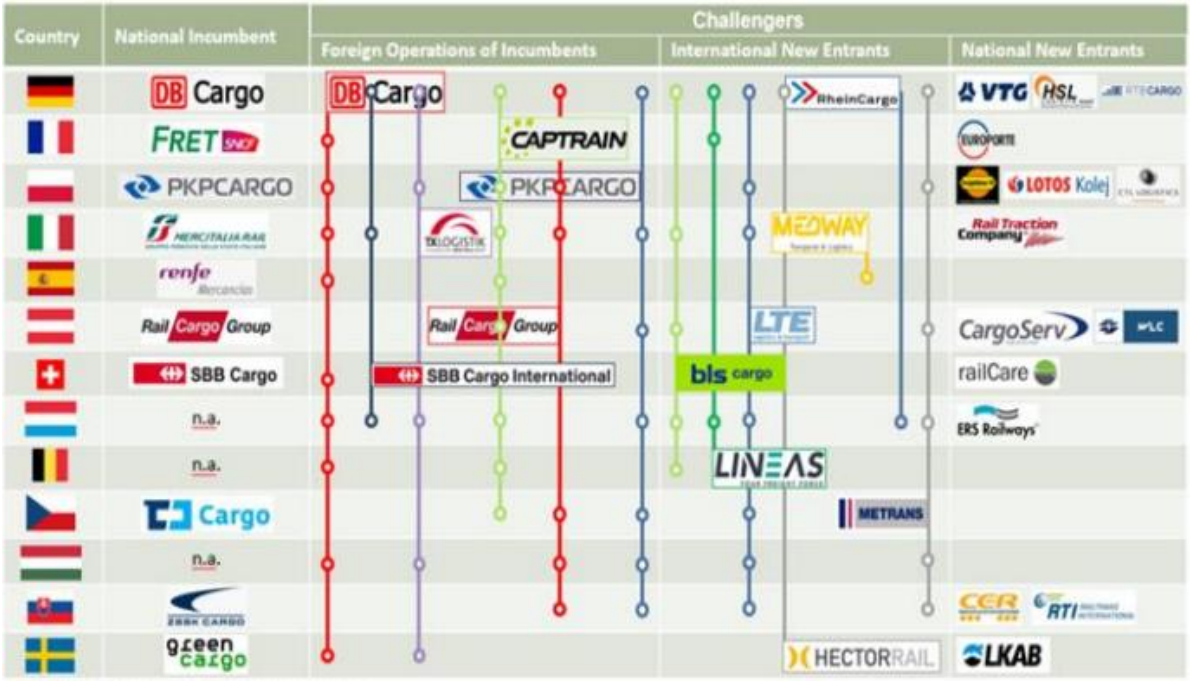
61 Form CO, Table 55.

62 HHLA is active in inland transportation via Metrans and CTD (Form CO, paragraph 447). The first- and last-mile truck services operated by Metrans cannot be considered fully-fledged inland transportation operations as they are generally part of the rail transportation service (customers opting for rail connections will need a short truck transport as a first- or last-mile service. See also Form CO, paragraph 497 and footnote 213) and Metrans [...] (Form CO, paragraph 448). In addition, while CTD mostly offers first and last mile services by truck, it has limited revenues ([...] in 2022 ([...] of group revenues) and [...] in 2023 ([...] of group revenues) (Form CO, footnote 682). Any impact of CTD's activities on the competitive assessment is therefore insignificant and will not lead to an increment on the market for inland transportation services (Form CO, footnote 682).

63 Form CO Table 55 and Annex QP8 Q1.1.

64 M.7268 - CSAV / HGV / Kühne Maritime/Hapag-Lloyd AG, paragraphs 42-45; M.10522 - Hapag-Lloyd/Eurogate/Eurogate Container Terminal Wilhelmshaven, paragraphs 68-71.

Figure 1



Source: Form CO, Figure 24 (ECM Ventures Analysis)

(71) A majority of respondents that expressed a view during the market investigation consider that inland transportation service providers compete on an EEA level.[65]

(72) The Commission considers that the geographic market definition can be left open in the present case. Irrespective of whether EEA or national market shares are considered, the Transaction would not give rise to affected markets.[66] Indeed, at EEA level, the Parties' shares are well below 20%. Likewise, at national level the Parties' activities in the merchant market overlap only in Germany where the Parties hold a combined share of about [0-5]%.[67]

5.3.3. Conclusion on the relevant product and geographic markets

(73) Given that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the narrow segment of rail inland transportation services on a national level, where the Parties' activities overlap, the Commission leaves open the exact product and geographic market definition.

6. COMPETITIVE ASSESSMENT

(74) The Transaction leads to horizontal overlaps in the market for the provision of container terminal services and in inland transportation services and to vertical relationships: (i) between the provision of container terminal services (where HHLA is active) and deep-sea container liner shipping services (where MSC is active), (ii) between short-sea container liner shipping (where MSC is active) and

65 Replies to question C.7 of the Inland transportation questionnaire to Competitors, question C.B.5. of the of the questionnaire to Container terminal operators and port authorities, questions C.C.7. of the questionnaire to Container liner shipping companies, questions C.C.7. of the questionnaire to Freight forwarders and end customers.

66 Form CO, Table 57.

67 See Annex QP8 Q1.1.

short-sea container terminal services (where HHLA is active), and (iii) between deep-sea container liner shipping (where MSC is active) and inland transportation services (where HHLA is active, through Metrans).

6.1. Horizontal overlaps

6.1.1. Legal Framework

(75) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing, pursuant to Articles 2(2) and (3), whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

(76) Pursuant to Article 6(1)(b) of the Merger Regulation, where the Commission finds that the notified concentration does not raise serious doubts as to its compatibility with the internal market, the Commission shall decide not to oppose the concentration and declares it compatible with the internal market.

(77) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the Horizontal Merger Guidelines. Horizontal effects may be non-coordinated or coordinated.

(78) As regards horizontal non-coordinated effects, according to paragraph 26 of the Horizontal Merger Guidelines, a number of factors (the list of which is non exhaustive) may be taken into account in order to determine whether significant non-coordinated effects are likely to result from a concentration, including the combined entity's market power, closeness of competition and barriers to entry and/or expand.

6.1.2. Deep-sea container terminal services

6.1.2.1. Northern range

(79) As further explained in section 5.1.2.1, in the Northern range, HHLA operates three deep-sea container terminals in the port of Hamburg[68] and MSC has controlling (jointly or solely) stakes in deep-sea container terminals in the ports of Rotterdam,[69] Antwerp,[70] Bremerhaven[71] and Le Havre. [72] The other deep-sea ports in the Northern range are the ports of Dunkirk (France), Wilhelmshaven (Germany) and Gdańsk (Poland) where neither of the Parties controls a terminal.

(80) As explained in section 5.1, the results of the market investigation indicate that the market for the provision of container terminal services in the Northern range is a differentiated one in which the choice of port is affected by a range of factors, and, among others, by the origin and destination of the cargo. In this respect not all ports

---

68 Container Terminal Altenwerder (CTA), the Container Terminal Burchardkai (CTB), and the Container Terminal Tollerort (CTT).

69 Delta Dedicated North Terminal.

70 MSC PSA European Terminal (MPET).

71 MSC Gate.

72 Terminal de Normandie MSC (TNMSC) and Terminal Porte Océane (TPO).

in the Northern range are equally well-suited to serve different hinterland destinations.

(81) In particular, German ports appear to be preferred for cargo to/from central Europe (in particular Germany, Czechia, and Austria). Data on trade flows collected from MSC and its main competitors offering integrated inland transportation indicates that cargo destined for Germany is mainly offloaded at the German deep-sea ports,[73] from where it is further transported inland by barge, train and/or truck to its final destination. The German deep-sea ports (in particular Hamburg and Bremerhaven) are also the main ports for the handling of cargo destined to some central and eastern European countries (notably Austria and Czechia).[74] The preference towards German ports for cargo to/from Germany, central and eastern Europe was further confirmed by views of market participants. When asked about the competitiveness of different ports in the Northern range for destinations in central and eastern Europe, participants in the market investigation gave German ports the highest rating compared to other ports in the Northern range.[75] For destinations in Germany, the ports of Rotterdam and Antwerp were also rated as competitive but to a lower extent compared to German ports. [76] Some market participants indicated that the ports of Rotterdam and Antwerp are mainly attractive for destinations in Western and Northern Germany.[77] The market investigation further suggests that the port of Wilhelmshaven is considered to be the least attractive among the German ports in terms of connectivity to rail, road and barge.[78]

(82) The importance of the German ports in handling cargo destined for central and eastern Europe can be explained, at least in part, by the higher cost of transport by rail ([PRICING DETAILS]), inland waterways e.g. by small ships and push barges ([PRICING DETAILS]) and road ([PRICING DETAILS]) compared to transport by sea [PRICING DETAILS]),[79] which creates an incentive for shipping companies to offload their cargo close to its final destination. The market investigation confirmed the importance of the ports' proximity to the final destination of the cargo: customers indicated that the most important criterion for choosing a port is the proximity to the final destination as this helps limit transportation costs.[80]

---

73 Hamburg, Bremerhaven and, to a lesser extent, Wilhelmshaven.

74 This was also confirmed by data on cargo flows between port and point of origin/destination at the NUTS1 from the Institute of Shipping Economics and Logistics provided by the Parties.

75 Replies to question DAA1 of questionnaire to container liner shipping companies, questionnaire to container terminal operators and port authorities and questionnaire to end customers and freight forwarders.

76 Replies to question DAA.1 of questionnaire to container liner shipping companies, questionnaire to container terminal operators and port authorities and questionnaire to end customers and freight forwarders.

77 Replies to questions CAA.4 of questionnaire to container liner shipping companies, questionnaire to container terminal operators and port authorities, questionnaire to end customers and freight forwarders.

78 The port of Wilhelmshaven was rated on average 2.8 out of 5 by shipping lines replying to the EC questionnaire, while other German ports were rated 3 (Bremerhaven) to 3.4 (Hamburg). Replies to question DAA2, questionnaire to container liner shipping companies.

79 Form CO, annex 9.3, paragraphs 27 and 39.

80 Rated on average 4.63 on a scale of 1-5. See replies to question D.5 of questionnaire to end customers and freight forwarders.

(83) When asked to indicate the closest competitors to the Parties' terminals in Germany, shipping line companies mainly referred to terminals in the German ports, and to a more limited extent, also terminals in Antwerp and Rotterdam.[81]

(84) Table 1 and Table 2 below provide the market shares of the Parties and their main competitors in the markets for (i) deep-sea container terminal services overall and divided into (ii) container terminal services for hinterland traffic and (iii) container terminal services for transhipment traffic,[82] in the port ranges of (i) Le Havre to Gdansk (the 'wider' Northern range), (ii) Antwerp to Hamburg (the 'core' Northern range) and (iii) German ports (for hinterland traffic only). The assessment will focus on the narrowest plausible market for deep-sea container terminal services for hinterland traffic in the German ports, in which the Parties have the highest combined market shares.

Table 1: Deep-sea container terminal services (transhipment and hinterland combined) in 2023[83]

Terminal operator/owner[84]	Total throughput[85] (transhipment and hinterland combined) in 2023		
	Le Havre-Gdańsk	Antwerp-Hamburg	German ports
MSC[86]	[10-20]%	[20-30]%	[5-10]%
HHLA[87]	[10-20]%	[10-20]%	[40-50]%
Combined	**[30-40]%**	**[30-40]%**	**[50-60]%**
Hutchison[88]	[10-20]%	[20-30]%	[0-5]%
Eurogate[89]	[5-10]%	[5-10]%	[20-30]%
PSA[90]	[10-20]%	[5-10]%	[0-5]%
DP world[91]	[10-20]%	[10-20]%	[0-5]%
Others[92]	[10-20]%	[10-20]%	[10-20]%

Source: Form CO, Annex QP6 Q23.

81 Replies to question DAB1 of questionnaire to container liner shipping companies.

82 The Parties were not able to provide market share estimates for the sub-segments of hinterland and transhipment traffic for third parties, and therefore these are provided only for the Parties.

83 The Commission notes that the respective market shares for the years 2020-2022 do not differ substantially from the ones indicated in Table 1.

84 Market shares are based on a non-equity adjusted basis. When more than one stakeholder owns a stake in a terminal, the terminal is assigned entirely to the stakeholder owning the controlling stake. On a conservative basis, in instances of joint control in the case of MSC, the terminal is assigned entirely to MSC.

85 Throughput refers to the quantity of cargo that passes through the terminal from arrival at the terminal to loading onto a vessel or from the discharge from a vessel to the exit from the terminal complex or from transhipment. This is measured on the basis of twenty-foot equivalent units (TEU), which is the metric commonly used in the industry.

86 Terminals included: MSC PSA European Terminal (MPET), Antwerp; MSC Gate, Bremerhaven; TNMSC and TPO, Le Havre, and Delta Dedicated North Terminal, Rotterdam.

87 Terminals included: Burchardkai Terminal (CTB), Altenwerder Container Terminal (CTA) and Tollerort Terminal (CTT), Hamburg.

88 Terminals included: Euromax Terminal, HPH Terminal Maasvlakte I, and Delta Dedicated East & West Terminals, Rotterdam.

89 Terminals included: Eurogate Container Terminal, Bremerhaven; Eurogate Container Terminal, Hamburg, and Jade Weser Container Terminal, Wilhelmshaven.

90 Terminals included: Noordzee Terminal and Europa Terminal, Antwerp, and Baltic Hub Container Terminal (BHCT), Gdansk.

91 Terminals included: Antwerp Gateway and Rotterdam World Gateway Terminal.

92 Terminals included: Cosco Terminal Zeebrugge, Antwerp; NTB North Sea Terminal, Bremerhaven; Nord France Terminal, Dunkirk; Terminal de France and Terminal de l'Europe, Le Havre; Terminal de l'Atlantique, Le Havre; APM Terminals Maasvlakte II, Rotterdam.

Table 2: Deep-sea container terminal services, divided into transhipment and hinterland traffic, in 2023

Terminal operator / owner[93]	Le Havre-Gdańsk		Antwerp-Hamburg		German ports	
	Transhipment throughput	Hinterland throughput	Transhipment throughput	Hinterland throughput	Transhipment throughput	Hinterland throughput
MSC	[30-40]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[5-10]%
HHLA	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**	**[60-70]%**
Others	[60-70]%	[60-70]%	[60-70]%	[60-70]%	[70-80]%	[30-40]%

Source: Form CO, Annex QP6 Q23.

(85) As shown in Table 2, in 2023 the Parties had combined market shares of [30-40]% for hinterland traffic when the whole range of ports is considered (i.e. Le Havre to Gdańsk), [30-40]% for the port range Antwerp to Hamburg and of [60-70]% when considering only German ports.

(86) The views of market participants as to the impact of the Transaction on effective competition in deep-sea container terminal services for hinterland traffic in the Northern range are overall mixed.[94] Some container liner shipping companies expressed concerns related to the Parties' strong position in German ports. In addition, some container liner shipping companies consider, or do not exclude, that post-Transaction the Parties will have the ability to increase prices in terminals in the Northern range.[95] Other market participants expect no impact or a positive impact as a result of the Transaction. However, as explained further below, the Commission considers that, given the available spare capacity in the Northern range, the Transaction is unlikely to give rise to horizontal non-coordinated effects.

(87) Based on the information provided by the Parties, as well as feedback collected in the market investigation, the minimal utilization rate allowing the terminal to cover its costs is estimated at about 60%. Below this, the terminal would typically be loss making.[96] On the other hand, a utilization rate of around 85% is generally considered the maximal or best utilisation rate to ensure quality of service and minimize congestion risks.[97] This means that terminal operators have a strong incentive to compete to attract volumes to achieve a utilization rate of at least 60%. When capacity utilization lies between these 60% and 85% thresholds, terminal operators may be likely less inclined to compete, and may have instead an incentive to raise prices, so as to manage the trade-off between expanding volumes and worsening services.

(88) In 2023 capacity utilisation was [50-60]% in Germany and [60-70]% in the Northern range. Capacity utilisation rates thus currently fall below the 60-85% range in Germany, but within the 60-85% range in the Northern range. The low capacity utilisation rates in Germany (and close to the lower bound of the 60-85% range in the Northern range) coupled with the relatively high number of terminal

93 See footnote 84.

94 The majority of market participants did not express a view, saying they do not know what the impact will be and of those very few expressing a view there is a mix between no impact/positive impact and negative views. Replies to question F.1 of questionnaire to container liner shipping companies; question F.1 of questionnaire to container terminal operators and port authorities and question F.1 of questionnaire to end customers and freight forwarders.

95 Replies to question F.2 of questionnaire to container liner shipping companies.

96 Form CO, footnote 645.

97 Form CO, paragraph 317; minutes of a call with a market participant dated 20 March 2024, paragraph 22.

operators active in the Northern range suggest that there may be ample spare capacity for terminal operators in the Northern range. This means that they are more likely than not to have an incentive to compete over volumes. This is confirmed by market participants expressing a view in reply to the Commission's questionnaires, the majority of which consider that there is at least limited overcapacity in the Northern range and its different geographic sub-segments.[98]

(89) Several terminals within the core Northern Antwerp to Hamburg range of ports are subject to planned capacity expansions.[99] While demand for container terminal services is expected to grow in the future, based on the information provided by the Parties as well as information and data gathered from market participants,[100] the capacity expansions foreseen in German ports and in the broader Northern range will maintain sufficient spare capacity in the Northern range[101], i.e. keeping utilization rates well below 85% and more likely closer to the lower 60% threshold. This would limit the merged entity's bargaining position and ability to increase prices or worsen conditions of competition.

(90) In this respect, the majority of market participants providing a view in reply to the Commission's questionnaire consider that container shipping line companies can switch their volumes relatively easily between different container terminal service providers.[102] Therefore, customers could quickly react to any attempt of the merged entity to increase prices post-Transaction by switching volumes to alternative terminals.

(91) Considering that switching appears relatively easy, that at least for some destinations in Germany, the ports of Antwerp and Rotterdam appear to be a close alternative[103] and that sufficient capacity is expected to remain in the Northern range ports, even when looking at German ports only, the Transaction is unlikely to give rise to horizontal non-coordinated effects in the market for deep-sea terminal operations for hinterland traffic in the Northern range, regardless of the relevant geographic market definition.

(92) The Parties' market shares for deep-sea container terminal services for transhipment in the Northern range are lower: [30-40]% with a [5-10]% increment in the Northern range and [20-30]% with [5-10]% increment in Germany. Notably, the Port of Hamburg, located approximately 110 kilometres inland along the Elbe River, is not well-suited to handle transhipment traffic due to its inland position, which limits its competitiveness in this segment. Moreover, the market investigation confirmed that ports in the Northern range are substitutable to each

98 i.e. the port ranges of Le Havre-Gdansk, Antwerp-Hamburg and German ports. Replies to question DAC1 of questionnaire to shipping line companies; replies to question DAC4 of questionnaire to container terminal operators and port authorities and question DAB1 of questionnaire to end customers and freight forwarders.

99 For example, (i) in Germany: Eurogate's planned expansions in Hamburg and Wilhelmshaven, Maersk's planned expansion in Bremerhaven, as well as HHLA's planned expansions in Hamburg; (ii) in Rotterdam, Hutchison Ports, DP World and Maersk are all expanding capacity at their respective terminals; and similarly (iii) in Antwerp, both DP World and PSA are expanding capacity at their respective terminals.

100 Replies to questions D.A.C of questionnaires to container terminal operators and port authorities.

101 Capacity utilisation for 2024-2035 is calculated taking into account planned capacity expansions and an annual constant growth in demand of 2.7% based on the Parties' best estimates.

102 Replies to question D.A.3 of questionnaire to container liner shipping companies and of questionnaire to container terminal operators and port authorities.

103 See paragraph (81) above.

other for transhipment traffic,[104] and especially Antwerp and Rotterdam are highly competitive ports for transhipment traffic.[105] The Transaction is thus unlikely to give rise to horizontal non-coordinated effects also in this sub-segment of the market.

(93) In the course of the Commission's market investigation, concerns were raised in relation to MSC's ability, post-Transaction, to gain access, through its controlling stake at HHLA, to commercially sensitive information regarding competing shipping lines, who are HHLA's customers. However, the Business Combination Agreement ('BCA') the Parties will enter into contains comprehensive provisions preventing the disclosure of competitively sensitive information to MSC.[106] As explained by the Parties,[107] [DETAILS OF THE BCA].

(94) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to the horizontal overlaps between MSC and HHLA in the provision of deep-sea container terminal services in the Northern range.

6.1.2.2. Adriatic range

(95) HHLA is present in the Adriatic range with deep-sea container terminal activities at the HHLA PLT Italy terminal at the Port of Trieste. HHLA PLT currently only handles a limited volume of containers and focuses on other types of non-containerised cargo. MSC has sole control over the other deep-sea container terminal in the Port of Trieste, the Trieste Marine Terminal.

(96) While the merged entity's position would be strong in the port of Trieste, the Parties' shares for deep-sea container terminal services in the Adriatic range are moderate ([20-30]% combined, increment of [0-5]%). The Commission's investigation has shown that the three ports in the Adriatic range are generally substitutable for hinterland and transhipment traffic. A majority of the respondents to the market investigation confirmed that the ports of Koper and Rijeka are substitutable for the port of Trieste.[108] Moreover, the respondents to the market investigation confirmed that there is sufficient capacity in the Adriatic range.[109]

(97) In addition, there are planned capacity expansions in the Adriatic range, most of which will not be controlled by the Parties. The total capacity in the Adriatic range is currently approx. 2.37 million TEU and the capacity expansions will increase this to approx. 4.5 million TEU over the next 2-3 years. Notably, by Q2 of 2025 a new terminal is planned in the Port of Rijeka constructed by Maersk with an annual

---

104 Replies to questions in section C.A.A of questionnaire to container liner shipping companies, of questionnaire to container terminal operators and port authorities, and questionnaire to freight forwarders and end-customers.

105 Replies to questions in section C.A.A of questionnaire to container liner shipping companies, of questionnaire to container terminal operators and port authorities, and questionnaire to freight forwarders and end-customers.

108 Replies to question C.A.B.1 of questionnaires to container terminal operators and port authorities, container liner shipping companies, freight forwarders and end-customers.

109 Replies to question D.A.4 of questionnaires to container terminal operators and port authorities, question D.A.1 of container liner shipping companies, and question D.B.1 of freight forwarders and end-customers.

capacity of over 1 million TEU.[110] In the Port of Koper expansion plans resulting in additional capacity of 0.4 million TEU by 2030 have also been announced.[111] Therefore, in the coming years significant additional capacity (part of which would likely be 'free' capacity) will become available to third parties, which will further dilute the Parties' share in the Adriatic range.

(98) Overall, a majority of the respondents to the market investigation considered that the Transaction would not have a negative impact on the market for container terminal services in the Adriatic range.[112] A majority of terminal operators and port authorities considered that the Parties would not be able to increase prices post Transaction[113] and a majority of end customers considers that there are sufficient alternatives to the port of Trieste.[114]

(99) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to the horizontal overlaps between MSC and HHLA in the provision of deep-sea container terminal services in the Adriatic range.

6.1.2.3. Baltic range

(100) In the Baltic range HHLA is active in the provision of container terminal services in the deep-sea container terminal of Muuga in the Port of Tallinn whereas MSC is active in the Smelte Container Terminal in the Port of Klaipeda. The Commission's investigation has shown that the container terminal of Muuga primarily serves Estonia due to the fact that it is located in the Port of Tallinn and that container terminals in the Baltic range of ports primarily serve their own domestic markets. Similarly, the Smelte Container Terminal is located in the Port of Klaipeda and primarily serves Lithuania.

(101) In particular, data on trade flows collected from MSC and its main competitors offering integrated inland transportation indicates that most of the cargo landing at the ports in the Baltic range has a final destination in the country where it landed.

(102) This has also been confirmed by the market investigation where a majority of respondents expressing a view indicated that containers in the Baltic range are rarely transported beyond the national market.[115]

(103) Moreover, the market investigation has yielded no indications that competition concerns would arise with regard to any potential interactions between the Parties in the Baltic range of ports. Indeed, the Parties (which are active in different countries) do not compete or, at least, do not compete to an appreciable extent. Lastly, the majority of respondents expressing a view in the market investigation have also confirmed that the Transaction has no negative impact on effective competition in deep-sea container liner shipping services in the Baltic range and

---

110 See https://www.apmterminals.com/en/rijeka/about/our-terminal.

111 Alphaliner Newsletter 32/2024, p.16

112 Replies to question F.1.1 of questionnaires to container terminal operators and port authorities, question F.1 of questionnaire to container liner shipping companies, and question F.1 of questionnaire to freight forwarders and end-customers.

113 Replies to question F.3 of questionnaires to container terminal operators and port authorities.

114 Replies to question F.2 of questionnaire to freight forwarders and end-customers.

115 Replies to question C.A.C.4. of questionnaires to container terminal operators and port authorities, questionnaires to container liner shipping companies, and questionnaires to freight forwarders and end customers.

that post-Transaction MSC would not have the ability and could not profitably restrict its rivals' access to container terminal services in this range.[116]

(104) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to the horizontal overlaps between MSC and HHLA in the provision of deep-sea container terminal services in the Baltic range.

6.1.3. Inland transportation services

(105) MSC (either directly or through Medway or Medlog) and HHLA (through Metrans and CTD) provide inland transportation services.

(106) Cargo can be transported inland via (i) rail, (ii) truck and (iii) barge. HHLA is not active in transportation by barge and its activities in inland transportation services by truck are negligible.[117] Therefore, the Parties primarily overlap in rail inland transportation. However, MSC's inland transportation service is primarily a vertically integrated offering. MSC mostly offers inland transportation services to its container shipping customers as part of an overall journey including an ocean leg. As a result, MSC participates to the inland transportation merchant market to a very limited extent.[118] HHLA offers rail freight transportation as a standalone service on a set schedule and on-demand basis.[119]

(107) The Parties' inland transportation activities overlap in Germany, Austria, Czech Republic and Hungary. Excluding MSC's captive sales, the Transaction does not give rise to affected markets in inland transportation due to MSC's marginal presence on the merchant market. In the Czech Republic and Slovakia, where Metrans holds high market shares, MSC is not active in the physical transportation of cargo.[120] MSC's market shares (excluding captive sales) would reach [0-5]% in Germany, leading to a [0-5]% combined share, while there would be no overlaps in other countries.[121] Therefore, the competitive interaction between the Parties appears to be very limited.[122]

---

116 Replies to questions F.1 and F.3 of questionnaires to container terminal operators and port authorities, questionnaires to container liner shipping companies, and questionnaires to freight forwarders and end customers.

117 HHLA is active in inland transportation via Metrans and CTD (Form CO, paragraph 447). The first- and last-mile truck services operated by Metrans cannot be considered fully-fledged inland transportation operations as they are generally part of the rail transportation service (customers opting for rail connections will need a short truck transport as a first- or last-mile service. See also Form CO, paragraph 497 and footnote 213) and Metrans [...] (Form CO, paragraph 448). CTD mostly offers first and last mile services by truck and has limited revenues ([...] in 2022 ([...]of group revenues) and [...] in 2023 ([...]% of group revenues) (Form CO, footnote 682). Any impact of CTD's activities on the competitive assessment is therefore insignificant and will not lead to an increment on the market for inland transportation services (Form CO, footnote 682).

118 With the exception of Germany where [...]% of Medlog's volumes is offered to third parties, Medlog's volumes are entirely captive to MSC in the Member States where the Parties' activities in inland transportation overlap. See Form CO, paragraphs 468-472 and table 56.

119 Form CO, paragraph 498.

120 Form CO, paragraph 441.

121 See Form CO, paragraph 442, 443 and Annex QP 8 Q 1.1. MSC's subsidiaries transport (physically) non-captive volumes only in Germany and only to a negligible extent, amounting to [...] TEU, which corresponds to [...] of the overall volumes transported by MSC in Germany. When captive shares are taken into account, the combined shares would lead to an affected market with high shares in Czechia [60-70] %, increment of [0-5] %). However, this does not appear to be the appropriate approach to

(108) The market investigation has confirmed that MSC is active in the merchant market only to a very limited extent so that it does not compete, or at least does not compete closely, with HHLA. When asked about HHLA's closest competitors for inland transportation services, none of the freight forwarders and end customers mentioned MSC as a close competitor to HHLA.[123]

(109) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to the horizontal overlaps between MSC and HHLA in the provision of inland transportation services.

6.2. Vertical relationships

(110) The Transaction give rise to the following vertically affected markets:

(i) Deep-sea container terminal services upstream, where both Parties are present, and deep-sea container liner shipping downstream, where only MSC is active; (i) in the Northern range, (ii) in the Adriatic range and (iii) in the Baltic range.

(ii) Short-sea container terminal services upstream, where only HHLA is active, and short-sea container liner shipping downstream, where MSC is active in the Mediterranean Sea and between European countries along the Atlantic Coast and Morocco.

(iii) Deep-sea and short-sea container liner shipping downstream, where MSC is active, and inland transportation services upstream, where both MSC and HHLA are active, with HHLA having a strong market position especially in Central and Eastern Europe.

6.2.1. Legal framework

(111) According to the Non-Horizontal Merger Guidelines,[124] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[125] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[126] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[127]

(112) For input or customer foreclosure to be a concern three conditions need to be met post-Transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and

---

assess the Parties' market position. Indeed, MSC (generally) does not compete with HHLA to serve the same customer base.

122 At the same time competitors appear to be active in the EEA. The Parties' competitors in rail inland transportation in the EEA include DB Cargo in Germany, Captrain in France, Rail Cargo Group in Austria and Hungary, PKP Cargo in Poland, Mercitalia in Italy, CD Cargo in Czechia, Renfe Mercancias in Spain, and ZSSK Cargo in Slovakia. See Form CO, paragraph 437.

123 Questionnaire to Freight Forwarders and End Customers, D.B.1-D.B.2.

124 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p.7.

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

126 Non-Horizontal Merger Guidelines, paragraph 31.

127 Non-Horizontal Merger Guidelines, paragraph 58.

(iii) the foreclosure strategy needs to have a significant detrimental effect on competition.[128] In practice, these factors are often examined together since they are closely intertwined.

6.2.2. Approach to alliances/consortia

(113) In its prior decisions relating to container liner shipping services, the Commission considered that shipping companies that are members of alliances/consortia[129] (the latter are also called vessel sharing agreements, 'VSAs') 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 the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity that it contributes. The allocation of container slots is usually predetermined and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of operating costs for individual vessels between the participants in a VSA.[130]

(114) The Parties submit that MSC's market shares should be assessed individually and not based on alliances/consortia memberships[131], notably the 2M alliance between MSC and Maersk (2M Alliance), which will expire at the end of 2024.

(115) In previous cases, the Commission considered that it is not appropriate to assess the effects of the concentration only on the basis of the Parties' individual market shares. Such an approach would not adequately take into account the fact that a member of an alliance/consortium/VSA can have a significant influence on operational decisions determining service characteristics. This influence can have a dampening effect on competition on the trade/s served by the alliance/consortium/VSA in question. Hence, the competitive assessment should also be based on the aggregate shares of the Parties' alliances/consortia/VSAs.[132]

(116) In the absence of indications that the Commission should depart from its past decisional practice, the Commission will assess the effects of the Transaction on the above-mentioned trades and legs of trade by taking into account the aggregate market shares of MSC and of its partners in the respective alliances/consortia/VSAs.

---

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

129 See for instance, Cases M.9221 - CMA CGM/CEVA, paragraphs 60-61; M.8594 – COSCO SHIPPING/OOIL, paragraphs 28-29. Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. Alliances are matrices of vessel sharing agreements that cover multiple trades rather than one trade, as opposed to consortia.

130 See for instance, Cases M.9221 – CMA CGM/CEVA, paragraphs 60-61; M.8594 – COSCO SHIPPING/OOIL, paragraphs 28-29.

131 See Form CO, paragraph 563 and annex QP5 Q42.2

132 See, for instance, Cases M.10522 - Hapag-Lloyd / Eurogate / Eurogate Container Terminal Wilhelmshaven, paragraphs 91-93; M.9221- CMA CGM/CEVA, paragraph 62; M.8594 – COSCO SHIPPING/OOIL, paragraphs 32-33; M.8330 – Maersk Line/HSDG, paragraph 60; M.7523 – CMA CGM/OPDR, paragraph 33.

6.2.3. Deep-sea container liner shipping (downstream) and deep-sea container terminal services (upstream)

(117) The Transaction gives rise to vertically affected markets between deep-sea container terminal services, where both Parties are present, and deep-sea container liner shipping, where only MSC is active.

(118) Downstream, MSC has market shares exceeding 30% on certain shipping legs to/from Northern Europe[133] and to/from Mediterranean ports. Upstream, post-Transaction the Parties would have a share of [30-40]% in deep-sea container terminal services for both transhipment and hinterland traffic in the Northern range ([50-60]% at the German ports).

6.2.3.1. Input foreclosure in the Northern range

6.2.3.1.1. Ability to foreclose

(119) The outcome of the Commission's investigation suggests that the Parties will not have the ability to engage in an input foreclosure strategy in the Northern range but might have the ability to engage in an input foreclosure strategy in the Hamburg port.

(120) Some concerns were raised during the market investigation and in pre-notification calls that post-Transaction the Parties may have the ability to engage in input foreclosure strategies. These concerns raised during the market investigation related to the vertical integration of MSC and HHLA, which would confer advantages to the Parties' terminal operations[134] and on MSC.[135] In particular, one shipping line raised concerns that MSC could self-preference its vessels at the port of Hamburg.[136] Another shipping line also considered that a bottleneck exists for very large vessels at the port of Hamburg as most of the berths that can accommodate them are owned by HHLA.[137]

(121) The market investigation also suggests that the market for the provision of container terminal services in the Northern range is a differentiated one in which the choice of port is affected by a range of factors, and, among others, by the origin and destination of the cargo. In this respect not all ports in the Northern range are equally well-suited to serve different hinterland destinations. Data on trade flows collected from MSC and its main competitors offering integrated inland transportation indicates that cargo destined for Germany is mainly offloaded at the German deep-sea ports,[138] from where it is further transported inland by barge, train and/or truck to its final destination. The Parties' strong position in the German ports means that it cannot be excluded that they would have the ability to foreclose competing shipping lines who rely on access to those ports for central and eastern European hinterland destinations.

---

133 In 2023, MSC had shares exceeding 30% on the routes between Northern Europe and West Coast South America, Indian Subcontinent, Oceania, South Africa, and East Africa, and between the Mediterranean and North America, East Coast South America, Indian Subcontinent, Oceania, South Africa, West Africa, and East Africa.

134 Questionnaire to Container liner shipping companies, F.12–13.

135 Questionnaire to Container liner shipping companies, F.14–15.

136 Minutes of a call with a shipping liner company dated 17 April 2024.

137 Minutes of a call with a shipping liner company dated 15 February 2024.

138 Hamburg, Bremerhaven and, to a lesser extent, Wilhelmshaven.

(122) However, the Commission notes that the Parties' combined shares in the Northern range are moderate, [30-40]% combined, and the above concerns seem unfounded for the following reasons.

(123) **First,** as explained above, there is currently spare capacity in the Northern range. Capacity utilisation rates currently fall within the optimal 60-85% range in the Northern range. The capacity utilisation rates in Germany fall below 60%, suggesting that, coupled with the high number of terminal operators active in the Northern range, there may thus be ample spare capacity for terminal operators in the Northern range. This is confirmed by views of market participants expressing a view in reply to the Commission's questionnaires, the majority of which consider that there is at least limited overcapacity in the Northern range.

(124) **Second**, announced capacity expansions and demand evolution more generally indicate that there will also be spare capacity in future. While demand for container terminal services is expected to grow in the future, based on the information provided by the Parties and verified by the Commission, capacity expansions in German ports[139] and in the broader Northern range,[140] including capacities that will not be controlled by the Parties, are foreseen that will maintain sufficient spare capacity in the Northern range[141]. This would limit the merged entity's bargaining position and ability to increase prices or worsen conditions of competition.

(125) **Third**, MSC will remain a minority shareholder and will have limited influence over HHLA, which will remain the sole terminal operator for the relevant terminals in the Hamburg port. This will therefore limit MSC's ability to engage in price discrimination or foreclosure of competing shipping lines (HHLA's customers).

(126) In light of the points above, the Commission overall considers that the merged entity will not have the ability to engage in an input foreclosure strategy in the Hamburg port and, for the reasons set out below, the merged entity will in any event not have the incentive to engage in such foreclosure strategies.

6.2.3.1.2. Incentive to foreclose

(127) As a preliminary point, the Commission notes that total foreclosure of competing shipping lines is very unlikely as a result of the Transaction. MSC's current deep-sea cargo volumes at Hamburg are unlikely to be sufficient for HHLA's terminals to break even, thus risking profitability in case of total foreclosure. Moreover, Hapag Lloyd and COSCO also jointly own stakes in terminals in Hamburg with HHLA and would in any event oppose any total foreclosure strategy.

(128) With respect to partial foreclosure, the evidence on the Commission's file indicates that MSC might have the ability to foreclose as explained above, but it seems unlikely that there would be an incentive to do so because such a foreclosure strategy would be unlikely to be profitable for the reasons set out below.

---

139 Notably, capacity expansion is planned by Eurogate in Hamburg and Wilhelmshaven, by Maersk in Bremerhaven, as well as by HHLA in Hamburg.

140 For example, in Rotterdam, Hutchison Ports, DP World and Maersk are all expanding capacity at their respective terminals, and similarly, in Antwerp, both DP World and PSA are expanding capacity at their respective terminals.

141 Capacity utilisation for 2024-2035 is calculated taking into account planned capacity expansions and an annual constant growth in demand of 2.7% based on the Parties' best estimates.

(129) **First**, for the reasons set out above, there is no ability to foreclose because there is sufficient spare capacity in the Northern range. As a result of the available spare capacity, it would also not be profitable for the merged entity to raise prices or deteriorate the quality of services offered because customers would make use of alternative services. The majority of market participants providing a view in reply to the Commission's questionnaire consider that container shipping line companies can switch their volumes relatively easily between different container terminal service providers.[142] Therefore, customers could quickly react to any attempt of the merged entity to increase prices post-Transaction.

(130) **Second**, MSC's current deep-sea cargo volumes at Hamburg are unlikely to be sufficient for HHLA's terminals to break even. As such, foreclosing rival shipping lines would likely result in loss-making for the merged entity. As noted above, post-Transaction MSC will be a minority shareholder in HHLA with limited strategic control. It would also not be in HHLA's interests, as a terminal operator, to engage even in a partial foreclosure strategy that would risk its profitability. Indeed, HHLA interests would be to bring additional volumes from other shipping lines to its terminals, not reduce them.

(131) **Third**, the majority of respondents to the market investigation confirmed that it would not be a profitable strategy for the Parties to restrict other container liner shipping companies' access to HHLA's container terminal services post-Transaction in the Northern range.[143]

(132) **Fourth**, the Parties, and MSC in particular, are also contractually obliged to ensure that the container terminal services at the port of Hamburg are offered on a non-discriminatory basis to all shipping lines: [DETAILS OF THE BCA].[144] In addition, the BCA provides that [DETAILS OF THE BCA].[145]

6.2.3.1.3. Overall effect of input foreclosure in the Northern range

(133) In the Commission's view, in light of the merged entity's lack of ability and of incentives, the Transaction is unlikely to have a detrimental effect on competition. For the reasons set out above, partial or total foreclosure of competing shipping lines would not be a profitable strategy for the merged entity. The presence of other strong competing shipping liner companies, some of whom such as Maersk, Hapag-Lloyd and COSCO are also shareholders in terminals in Hamburg and the wider Northern range, will further reduce the possibility and impact of any foreclosure strategy.

6.2.3.2. Input foreclosure in the Adriatic and Baltic ranges

(134) The Commission does not consider that the Transaction gives rise to foreclosure concerns in the Adriatic and Baltic ranges for the reasons set out above.

a. In the **Adriatic range**, the Parties have moderate combined shares in deep-sea container terminal services ([20-30] % combined, increment of [0-5] %). As explained in paragraph (97) above, there is ample spare capacity and

142 Replies to questionnaire to shipping line companies and questionnaire to container terminal operators and port authorities, D.A.3.

143 Questionnaire to Container terminal operators and port authorities, F.7; questionnaire to Container liner shipping companies, F.4; questionnaire to end customers and freight forwarders, F.3.

144 BCA, Section 10.1.

145 BCA, Sections 10.2 and 10.3.

planned capacity expansions in the Adriatic range, the majority of which will not be controlled by the Parties. The total capacity in the Adriatic range is currently approx. 2.37 million TEU and the capacity expansions will increase this to approx. 4.5 million TEU over the next 2-3 years. Of these expansions, 1.455 million TEU will be controlled by third parties and only 0.68 million TEU by the Parties. The merged entity therefore cannot be considered to have market power in container terminal services and thus ability to engage in foreclosure strategies vis-à-vis competing deep-sea shipping lines.

b. In the **Baltic range**, vertical effects may arise in the terminal in the Muuga harbour (part of the port of Tallinn). However, MSC currently represents a very limited percentage of the total throughput in Muuga.[146] In addition, HHLA operates with [...] excess capacity (utilisation rate of [...]%) in Muuga and the Parties would not be able to rely on MSC's own volumes to ensure profitable operations.[147] At the same time, MSC is already present in the Baltic range, as it has sole control over the Smelte terminal in Klaipeda, which is not a terminal exclusive to MSC.[148] The Commission's investigation did not reveal any indications that MSC and HGV would pursue a different strategy post-Transaction vis-à-vis the Muuga terminal. In addition, the majority of respondents expressing a view in the market investigation have confirmed that post-transaction MSC would not have the ability and it would not be profitable for MSC to restrict access to HHLA's container terminal services in the Baltic range.[149]

(135) In light of the lack of ability in both the Adriatic and Baltic ranges, it is not necessary to consider the merged entity's incentive to engage in such a strategy. The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market due to input foreclosure concerns in relation to the Parties' activities in deep-sea container liner shipping and deep-sea container terminal services in the Adriatic and Baltic ranges.

6.2.3.2.1. Conclusion

(136) Based on the above considerations and all evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market due to input foreclosure concerns in relation to the Parties' activities in deep-sea container liner shipping and deep-sea container terminal services.

6.2.3.3. Customer foreclosure in the three ranges

(137) The Parties submit that they will not have the ability or the incentive to engage in any customer foreclosure strategy by sourcing most or all of MSC's needs in container terminal services from its (co-)controlled terminals or by degrading conditions for other container terminal service providers at whose terminals MSC ships call. This is because other container liner shipping companies will continue to

146 Form CO, paragraph 364.
147 Form CO, paragraph 399.
148 Form CO, paragraph 209 and footnote 275.
149 Replies to question F.3 of questionnaires to container terminal operators and port authorities, questionnaires to container liner shipping companies, and questionnaires to freight forwarders and end customers.

exert strong competitive pressure on MSC and container liner shipping is characterized by strong price competition between carriers under pressure to fill their vessels. Moreover, MSC's deep-sea trade volume on the relevant trades in Northern Europe and the Mediterranean is not sufficiently large to harm other terminal operators competing with the HHLA terminals.

6.2.3.3.1. Ability to foreclose

(138) The Commission considers, based on the evidence collected during the market investigation, that the Parties are unlikely to have the ability to engage in any customer foreclosure strategy in light of the fact that MSC's deep-sea trade volumes are not sufficiently large to be able to cause competitive harm to competing terminal operators. In ranges where MSC has shareholdings in terminals, MSC primarily calls at its own terminals. In the Northern range, [...] % of MSC's total volumes are processed in terminals in which it has shareholdings, [...] % in the Adriatic range, and [...] % in the Baltic range.[150] As a result, MSC does not currently have significant volumes to be diverted from competing terminals and is therefore unlikely to have any ability to foreclose those terminals' access to a significant customer.

(139) On this basis, the Commission considers that the merged entity is unlikely to have the ability to engage in any customer foreclosure strategy by sourcing most or all of MSC's needs in container terminal services from its (co-)controlled terminals or by degrading conditions for other container terminal services providers at whose terminals MSC ships call.

6.2.3.3.2. Incentive to foreclose

(140) In light of the lack of ability, it is not necessary to consider the merged entity's incentive to foreclose.

6.2.3.3.3. Overall effect of customer foreclosure

(141) In the Commission's view, in light of the merged entity's lack of ability to engage in customer foreclosure strategies in the Northern and Adriatic ranges, there are unlikely to be any effects on competition. In light of MSC's limited volumes at third party terminals set out above, even if some MSC volumes were lost to HHLA terminals post-Transaction, competing container terminal services would still be able to fill that capacity and replace MSC's volumes.

6.2.4. Short-sea container liner shipping (downstream) and short-sea container terminal services (upstream)

(142) The Transaction gives rise to vertically affected markets between MSC's short sea container shipping services and HHLA's short-sea container terminal services, as defined in section 5.2.2 above. Downstream, MSC has market shares exceeding 30% on certain single legs of trade between Mediterranean ports[151] as well as on the basis of combined legs of country pairs in the Northern and Adriatic range.[152] Upstream, HHLA's market share on a potential market for short-sea container terminal services is below 10% in any relevant market.

150 Annex RFI 1 Q1.
151 See annex QP6 Q32.2 of the FCO.
152 See annex QP6 Q25 of the FCO.

6.2.4.1. The Parties' views

(143) The Parties submit that the Transaction will not lead to input foreclosure because the Parties have neither the ability nor the incentive to restrict or deteriorate access to HHLA's short-sea container terminal services. In particular, the Parties claim that MSC does not have market power in the provision of short-sea container liner shipping due to the limited volume transported through short-sea services, which in any event would not make it possible to use HHLA's full capacity and create incentives to close off access to competing container liner shipping lines. Moreover, the Parties submit that, due to HHLA's limited market share on the potential market for short-sea container terminal services, competing short-sea shipping lines will continue to have numerous options and significant terminal capacity will remain available.

(144) The Parties also consider that the Transaction will not lead to customer foreclosure considering that, as explained above, MSC transport limited volume of short-sea container and, in any event, a number of strong competitors are active even when considering the narrowest possible geographic scope by country pairs.

6.2.4.2. The Commission's Assessment

(145) As explained above, for input or customer foreclosure to be a concern, the merged entity must have the ability and incentive to foreclose its rivals, and the foreclosure strategy must have a significant detrimental effect on competition post-Transaction.[153]

(146) The Commission takes the view that any potential input and customer foreclosure strategy post-Transaction is not likely to have a negative impact on effective competition due to, MSC's activities in short-sea container liner shipping in the Mediterranean Sea and between European countries on the one hand,[154] and HHLA's activities in short-sea container terminal services in Hamburg on the other hand. HHLA's market share upstream for short-sea container terminal services is below 10%. Short-sea cargo also only accounts for less than 10% of MSC's total overall throughput in Europe. The merged entity is therefore unlikely to have market power.

(147) Moreover, MSC's short-sea container liner shipping services do not call at HHLA terminals in Hamburg and Trieste and only one MSC feeder service in the Baltic Sea calls at HHLA Muuga. However, even if MSC started offering short-sea services from the HHLA terminals, it would not be able to use HHLA's full capacity given the limited volumes MSC's short-sea business represents. The volumes transported through short-sea services are *de minimis* when compared to the deep-sea volumes and, in any event, they represent a small share out of the total volumes of the short-shipping cargo. In any event, there are multiple terminals in the Northern, Baltic and Adriatic Ranges that offer short-sea services, e.g., in the Ports of Le Havre, Dunkirk, Rotterdam, Antwerp, Bremerhaven, Wilhelmshaven, Gdańsk, Gdynia Klaipeda, Riga, Trieste, Koper and Rijeka.

(148) With respect to possible customer foreclosure, the Commission considers that the Parties will not have the ability to foreclose other container terminal services

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

154 Moreover, MSC provides feeder services for its own cargo and does not offer these services to other deep-sea shipping lines (unlike e.g., DP World (Unifeeder) or X-Press Feeders).

providers because MSC's share for short-sea container liner shipping services remains moderate, even when considering the narrowest possible geographic scope by country pairs, and a number of strong competitors are active on each of these legs of trades, including CMA-CGM, COSCO Shipping, Hapag Lloyd, Maersk, Evergreen, ONE Line and Yang Ming Line.

(149) Therefore, due to the lack of market power at the terminal where MSC is active and due to the lack of ability to engage in any input or customer foreclosure strategies, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the Parties' activities in short-sea container liner shipping and short-sea container terminal services.

6.2.5. Container liner shipping (downstream) and inland transportation services (upstream)

(150) The Transaction gives rise to vertically affected markets between inland transportation services, where mainly HHLA is present in the merchant market, and container liner shipping, where only MSC is active. Downstream, MSC has market shares exceeding 30% on certain shipping legs to/from Northern Europe and to/from Mediterranean ports. Upstream, HHLA has shares in excess of 50% for inland transportation services in Czechia ([60-70]%) and Slovakia ([50-60]%). At EEA level, HHLA's share for inland transportation services is significantly lower and likely below 10%.

6.2.5.1. The Parties' views

(151) The Parties submit that the Transaction will not lead to input foreclosure because the Parties have neither the ability nor the incentive to restrict access by competing shipping lines to inland transportation services offered by HHLA's Metrans that connect deep-sea ports with *inter alia* the Czech Republic and Slovakia. In particular, the Parties claim that Metrans does not have market power in the provision of inland transportation services, and, in any event, inland transportation services are not an important input for the provision of container liner shipping services. Moreover, there are many competing operators offering inland transportation services and transporting only MSC volumes would by far not be sufficient to exhaust Metrans' capacity.

(152) The Parties also consider that the Transaction will not lead to customer foreclosure, as MSC is not an important customer and would not be able to fill Metrans' capacity and thereby deprive competing inland transportation service providers of customers.

6.2.5.2. The Commission's Assessment

(153) As explained above, for input or customer foreclosure to be a concern, the merged entity must have the ability and incentive to foreclose its rivals, and the foreclosure strategy must have a significant detrimental effect on competition post-Transaction.[155]

[155] Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

Input foreclosure

6.2.5.2.1. Ability to foreclose

(154) The outcome of the Commission's investigation suggests that the Parties will not have the ability to engage in an input foreclosure strategy at EEA level, but that it cannot be excluded that they would have the ability in certain member states, notably in the Czech Republic and Slovakia.

(155) While Metrans does not have a significant degree of market power in the provision of inland transportation services at EEA level, in the Czech Republic and Slovakia market power cannot be excluded. A majority of the respondents to the market investigation confirmed that competing providers could expand their output in response to any restrictions by Metrans for rail,[156] but when asked about all types of inland transportation, including rail, barge and truck, a slight majority of respondents indicated that it would not be easy for any existing inland transportation services provider to increase supply.[157] The market investigation also indicated that while it would be possible for container liner shipping companies to switch providers of inland transportation services,[158] for significant volumes the switch would take time and that "*companies like Metrans/HHLA benefit from economies of scale that are far superior to alternatives*."[159]

(156) While there are multiple other operators offering inland transportation services to / from the countries in question such as DB Cargo, CD Cargo and PKP Cargo, the market investigation also indicated that it is important for container liner shipping companies to be able to offer inland transportation services to their customers.[160] While respondents were unsure whether there would be sufficient alternative providers of inland transportation services post-Transaction in the Czech Republic, the majority of respondents did not think there would be sufficient alternatives in Slovakia. [161]

(157) However, because Metrans is a German stock corporation with an independent management board, controlled by HHLA, over which MSC will only hold joint control with HGV, MSC cannot direct Metrans to engage in discriminatory or unfavourable pricing vis-à-vis other shipping lines.

(158) While it therefore cannot be excluded that the merged entity would have market power, specifically in relation to certain Member States, for the reasons set out below, the Commission's investigation indicates that the merged will not have the incentive to engage in input foreclosure strategies.

6.2.5.2.2. Incentive to foreclose

(159) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream

156 Replies to question D.3 of questionnaires to inland transportation services providers.
157 Replies to question D.3 of questionnaires to inland transportation services providers.
158 Replies to question D.4 of questionnaires to inland transportation services providers.
159 Replies to question D.5 of questionnaires to inland transportation services providers.
160 Replies to question D.6 of questionnaires to inland transportation services providers.
161 Replies to question D.8 of questionnaires to inland transportation services providers. See also third-party submission of 30 September 2024.

activities, but also of its downstream activities. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.[162] The Commission takes the view that a potential input foreclosure strategy would be unlikely to be profitable for the following reasons.

(160) MSC is a small customer, which covers its own inland transportation needs primarily in-house. Therefore, its ability to shift volumes to Metrans would be limited post-Transaction. At the same time, a foreclosure strategy would likely result in a significant underutilisation on Metrans' side, which MSC could not compensate. Notably, in the Czech Republic and Slovakia MSC's overall carrier haulage volumes would only amount to [...] % and [...] % of Metrans' volumes based on 2022 data. Therefore, even if MSC allocated all of its carrier haulage volumes to Metrans, it is unlikely that Metrans could function profitably.[163] Similarly, the Parties submit that if MSC were to subcontract [...] volumes to Metrans on an EEA level, it would not be able to fill Metrans' capacities.[164]

(161) In addition, Metrans will be jointly controlled by MSC and HGV post-Transaction. HGV would not benefit from any of the potential additional revenues realised by MSC on the container liner shipping market as a result of foreclosing MSC's rivals, which further reduces the likelihood that the Parties would have an incentive to engage in input foreclosure.

6.2.5.2.3. Overall likely effect on competition

(162) In the Commission's view, in light of the merged entity's lack of incentive to engage in partial or total foreclosure of competing container liner shipping providers, the Transaction is unlikely to have a detrimental effect on competition.

Customer foreclosure

6.2.5.2.4. Ability to foreclose

(163) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[165] The Parties are unlikely to have the ability to engage in a customer foreclosure strategy for the following reasons.

(164) The market share of MSC on the container liner shipping market would remain moderate, exceeding 30% only on certain trade legs, and remaining generally below 40% with a few exceptions, such as on the trade leg East Africa – Northern Europe.[166] In addition, as explained above, MSC only becomes a relevant customer for inland transportation providers for the cargo carried under a carrier haulage

162 Non-Horizontal Merger Guidelines, paragraph 40.
163 Form CO, paragraph 668.
164 Form CO, paragraph 672.
165 Non-Horizontal Merger Guidelines, paragraph 61.
166 Form CO, Table 58.

contract, which is only […]%, of the cargo transported by MSC.[167] Moreover, most of MSC's inland transportation volumes are already transported in-house by Medlog and Medway. The primary function of these inland transportation entities is to support MSC's container liner shipping operations.

(165) Medlog and Medway do further subcontract some of these volumes to third-party inland transportation companies, however only to a limited extent. Importantly, some of these subcontracted MSC volumes are already in large part transported by HHLA. Specifically in Slovakia and the Czech Republic MSC subcontracts to Metrans [...]% and [...]% of its carrier haulage volumes respectively.[168]

(166) On this basis, the Commission considers that the merged entity is unlikely to have the ability to engage in any customer foreclosure strategy by sourcing most or all of MSC's needs in inland transportation services from HHLA.

6.2.5.2.5. Incentive to foreclose

(167) In light of the lack of ability, it is not necessary to consider the merged entity's incentive to foreclose. In any event, the Commission considers that the merged entity is unlikely to have any incentive to engage in any customer foreclosure strategy. MSC could already source its entire inland transportation needs from Metrans even prior to the Transaction but it does not do so, because other inland transportation service providers offer a more attractive/tailored range of services that MSC uses.

6.2.5.2.6. Overall likely effect on competition

(168) In the Commission's view, in light of the merged entity's lack of ability and incentives to engage in any partial or total foreclosure of competing inland transportation providers, the Transaction is unlikely to have any effect on competition.

6.2.5.3. Conclusion

(169) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to input or customer foreclosure concerns in relation to the Parties' activities in container liner shipping and inland transportation services.

[167] Form CO, paragraph 648.
[168] Form CO, paragraphs 507 and 680.

7. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President