OFFICE OF FAIR TRADING

Anticipated acquisition by Unifeeder A/S of Feederlink Shipping and Trading BV

ME/5660/12

The OFT's decision on reference under section 33(1) given on 27 November 2012. Full text of decision published 17 January 2013.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. Unifeeder A/S (**Unifeeder**) is a Danish company controlled by Montague Private Equity LLP (**MPE**). Unifeeder is the only transportation services company in MPE's portfolio. Unifeeder is mainly active in the provision of maritime transportation services for all kinds of containerised goods, which it transports predominantly in Northern Europe via a fleet of around 40 chartered vessels. As such, Unifeeder provides both feeder[1] and short-sea[2] services, and its customers are mainly comprised of ocean liners (**Liners**). In the 2011 financial year, Unifeeder achieved a group turnover of €431 million, 75 per cent of which was from the provision of feeder services, £[ ] million[3] of which was derived in the UK.

2. Feederlink Shipping and Trading BV (**Feederlink**) is a Dutch company, which is a wholly owned subsidiary of Irish Continental Group (**ICG**). Feederlink is active in the provision of containerised transport services between the UK and the Netherlands via a fleet of four chartered vessels. Feederlink only provides feeder services, and its customers are also predominantly Liners. In 2011, Feederlink generated turnover of £[ ] million, of which £[ ] million was derived from the UK.

[1] The onward transportation of cargo from a hub port that originated from outside Europe – seen as 'port-to-port' (see paragraph 11).

[2] The transportation of cargo that originates within Europe (generally includes 'door-to-door' services) – seen as 'point-to-point' (see paragraph 11).

[3] Unifeeder's UK feeder revenue was €[ ] million whereas its short-sea revenue was €[ ] million.

TRANSACTION

3. Unifeeder and ICG entered into an agreement on 29 August 2012 under which Unifeeder agreed to purchase the entire share capital of Feederlink for €[ ] million, conditional on OFT clearance (the **Transaction**).

JURISDICTION

4. The OFT considers the Transaction would result in two enterprises ceasing to be distinct, as set out in section 23(1)(a) of the Enterprise Act 2002 (the **Act**). The UK turnover of Feederlink in the 2011 financial year was £[ ] million. Consequently, the turnover test in section 23(1)(b) of the Act is not met.

5. The parties are both active in the supply of container shipping services between UK ports, and domestic and mainland European hub ports. Subsequent to the merger, the parties submit that, if the Liners are excluded, they will have a share of supply of around [20-30] per cent by volume of the supply of container shipping services between UK ports, and domestic and mainland European hub ports.[4] As such, the OFT believes that the share of supply test in section 23(4) of the Act is satisfied.

6. Accordingly, the OFT believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of section 23 of the Act.

7. The OFT started the administrative clock on 11 September 2012. The administrative deadline, by agreement with the parties, was extended until 27 November 2012.

MARKET DEFINITION

8. Unifeeder and Feederlink are both active in feeder services, that is the onward transportation of containerised cargo (**TEUs**[5]) from a Liner's hub

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[4] The OFT notes that the parties would have a higher concentration of supply if alternative measures were considered. In particular, the parties would have 65-75 per cent in the supply of feeder services (excluding Liners) along the UK East Coast and they would account for [90-100] per cent of supply (excluding Liners) on certain routes, for example Felixstowe to Newcastle.

[5] Twenty foot equivalent unit, the standard measure of capacity when referring to containerised cargo.

port of discharge to a port near its ultimate destination. Additionally, Unifeeder is active in the provision of short-sea services, whereas Feederlink is not.

9. Feedering services are linked to lift-on/lift-off (**lo-lo**) vessels.[6] The OFT, Competition Commission, and European Commission have not dealt with any case which solely involved parties engaged in the transportation of containerised cargo by lo-lo vessels. However, each authority has conducted a number of investigations into acquisitions by firms primarily operating roll-on/roll-off (**ro-ro**) vessels.[7] As such, the OFT began its investigation in this case by considering lo-lo maritime transportation first.

10. Furthermore, feeder services on vessels are just one of a number of options for the onward transport of TEUs, which can also include road and rail. The parties submit that eight million TEUs arrive into the UK every year, of which only 800,000 are feedered. The competitive interaction between the different types of transport is likely to vary depending on the ultimate destination of the cargo, with the journey ultimately ending in the majority of cases with either road or rail (unless the port is the final destination for the cargo).

PRODUCT SCOPE

Maritime services (distinction between feeder and short-sea services)

Demand-side

11. Lo-lo maritime transportation services may be segmented by providers offering short-sea and feeder services. As noted in footnotes 1 and 2, there is a distinction between feeder services and short-sea services, with feeder services only transporting goods from a hub port to an out port (with the Liners as the feeder service's customers), whilst short-sea services transport goods from the point of origin to the point of destination (with the customer being the entity wishing to transport the goods to the end destination, rather than a Liner). Therefore, short-sea services can be viewed as an enhanced feeder offering in that they also provide more of a

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[6] Lo-Lo involves freight being carried on vessels on which goods are packed into containers which are loaded on and off vessels by cranes.

[7] Ro-Ro involves freight being carried on vessels used to carry, among other things, trucks and trailers loaded by means of one or more approach ramps.

start-to-finish logistics service, rather than simply providing transportation from hub port to out port. Thus, the parties contend that the two services are potentially demand-side substitutes.

12. The OFT notes that the customers for these services are different. Moreover, the parties' Liner customers have not indicated that they would be willing to switch to short-sea providers in the event of a small but substantial non-transitory increase in price (**SSNIP**) of five per cent by feeder providers. Accordingly, the OFT does not consider short-sea and feeder services as demand-side substitutes.

Supply-side

13. The OFT's guidance recognises that there are circumstances where it may be appropriate for the OFT to aggregate a number of narrow markets together, which are not demand-side substitutes, based on suppliers' responses to a change in price.[8]

14. The parties argue that the market should be widened to include short-sea services, due to supply-side substitution. Specifically, they highlight that the same vessels and shipping containers[9] are used for short-sea and feedering services. Therefore, any short-sea provider that does not currently provide feeder services could do so, utilising their current vessels and crew, with no additional expenditure required.[10]

15. Whilst the OFT recognises that similar vessels and containers are used by feeder and short-sea companies,[11] the OFT's market investigation did also indicate that some third parties questioned the appropriateness of aggregating feeder and short-sea services through supply-side substitution. In any event, given its overall conclusion, the OFT does not consider it necessary to conclude on this point.

[8] See *Merger Assessment Guidelines*, Joint Publication of the Competition Commission and the Office of Fair Trading, OFT1254, September 2010, paragraph 5.2.17.
[9] The parties have informed the OFT that shipping containers are either 20 foot or 40 foot, which allows them to be stacked one on top of the other.
[10] This presumes that short-sea and feeder cargos would be carried on the same vessels/routes.
[11] Third parties have indicated that 45 foot containers tend to be used for short-sea, whereas 40 foot and 20 foot containers are used by Liners. Vessels tend to be able to carry both types of container, but in varying proportions depending on the specific vessel.

Liners' in-house feeder services

16. The parties have indicated that Liners can and do operate in-house feeder services. If a Liner does operate an in-house feeder service, then, for that customer, it may represent an option and, as such, impose a competitive constraint on third party feeder operators.

17. Some third parties have supported this proposition that in-house feeder services do represent a competitive constraint on the parties. However, the OFT considers it more appropriate to take account of the constraint that these in-house services pose on the parties in the buyer power section, below, rather than including in-house services as part of the product market definition.

Wider than Maritime (feeder services distinct from non-maritime transport)

18. The parties argued that, because Liners require an onward transportation service, all transportation modes should be considered as the relevant market. The parties submit that the most common way of transferring containers between different points in Northern Europe is by road, with 83 per cent (by tonnage) of UK goods transported by road.[12]

19. The parties have also indicated that rail freight is becoming increasingly important, with Network Rail forecasting a 140 per cent increase in rail freight between 2006/7 and 2030/31. The parties submit that ports have developed rail infrastructure facilities, with three significant rail freight operators present in the UK (Freightliner, GB Railfreight, and DB Schenker), serving a number of UK ports, including Felixstowe.

20. Although the OFT notes the existence of alternative methods of transport, such as road and rail, the key question for the OFT to consider is what Liner customers would do in the event that a hypothetical monopolist of feeder services engaged in a five per cent SSNIP. In this respect, the parties have provided some evidence of switching between feeder services and road and rail, and these are discussed in paragraph 42 below. The OFT received mixed views from third parties on this point, with some indicating that there may be limited substitution between feeder on the one hand and

[12] Note that this figure is based on data for all freight moved in the UK, rather than just containerised freight, and as such is likely to overstate the importance of road transportation for Liners.

road and rail on the other between mainland Europe and the UK, whilst others indicated that substitution was possible. In particular, one Liner customer stated that road is viable against feeder for up to 250km, whereas rail is used for longer distances, such as from the South to the North of England or Scotland.

21. Taking account of the discussion and evidence above, the OFT acknowledges that the strength of constraint from road and rail services may vary between feeder routes.

22. As with in-house feeder services, the OFT does not consider it necessary to conclude on this point in respect of the product market, but will consider the strength of constraint from road and rail in its competitive assessment.

23. Taking a cautious basis, the OFT will analyse the Transaction on the basis of a market for feeder services. It recognises the evidence indicating that there are a number of constraints on the parties' feeder services, all of which it will take into account in its competitive assessment.

GEOGRAPHIC SCOPE

24. The parties have argued for a Northern Europe market, citing the constraint from road and rail and the Liners' ability to switch hub ports.[13] Furthermore, the parties submit that pricing is national, and set per country, despite each destination carrying a specified price which, the parties indicate, is done for the benefit of their internal purchasing system. Nevertheless, the parties contract with their customers based on broad geographies, and in the current case, contracts for routes between mainland Europe and the UK East Coast are embodied in contracts defined as covering 'Northern Europe'. Accordingly, the parties submit that this should be taken as the geographic scope.

25. The OFT notes that whilst the parties overlap on intra-UK routes, third parties have not highlighted any issues on individual intra-UK routes because of the constraint that exists from road and rail for transporting

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[13] The parties argue that Liners may have the ability to change the point of origin of their cargo, by offloading it at a different hub port in a way that other users of feeder services may not be able to. Accordingly, the parties submit that Liners would switch between hub ports in the event of a price increase. This is considered in the context of competitive assessment (see paragraphs 45 to 49 (inclusive) below).

containers within the UK, and so these have not been considered as part of the geographic market. The OFT has, however, considered the constraint from intra-UK road and rail transport options in the competitive assessment below.

Rotterdam to Grangemouth

26. The OFT considered whether it was appropriate to consider the Rotterdam to Grangemouth route as a market in itself. Grangemouth is the sole port on the East Coast of Scotland; it is served by both of the parties. Customers have identified Rotterdam as one of the main hub ports in mainland Europe and indicated that the Rotterdam to Grangemouth flow is important. Therefore, the OFT considered what customers' responses would be to a five per cent SSNIP by a hypothetical monopolist of feeder services on the Rotterdam to Grangemouth route.

27. The parties state that such a price rise would not be profitable given the constraints that feeder services face from road, rail and Liners switching hub ports. Additionally, the OFT notes that Scottish demand could be served by using Greenock on the West Coast of Scotland, or South Shields, which lies to the south of Grangemouth, although the parties provided no evidence to support this competitive constraint.

28. Nevertheless, the OFT's market investigation cast some doubt on the parties' arguments. Specifically, third parties highlighted the fact that transporting TEUs via the Greenock route, or via road and rail, was more expensive than feedering them. The OFT has therefore, on a cautious basis, considered it appropriate to assess the proposed merger on the basis of the single route from Rotterdam to Grangemouth. However, even having examined the case on this narrow basis, the OFT does not believe the merger raises competition concerns and, consequently, does not believe it is necessary to conclude on the geographic market.

Rotterdam to East Coast of England

29. The OFT also considered it appropriate to examine the network of routes between Rotterdam to East Coast of England. This is on the basis that third parties have voiced some concerns about it, and identified it as a single market.

30. Further, in looking at the effects of a price rise on this market, the OFT concluded that if there was a five per cent SSNIP between Rotterdam and, for example, Teesport, there may be diversion to the routes between Rotterdam and Newcastle, and Rotterdam to Immingham, with goods being transported to their final destination by road or rail. Some third parties have indicated that the options for onland transportation are not as good in Scotland, which would suggest that this diversion is likely to be greater than that from Rotterdam to Grangemouth.

31. The OFT has therefore examined the merger on the basis of a single market encompassing routes between Rotterdam and the East Coast of England. However, as with its Rotterdam to Grangemouth route analysis, the OFT does not have competition concerns in relation to this market, and so has not needed to conclude on the question of geographic market.

32. On a cautious basis, the OFT has analysed the Transaction based on a Rotterdam to East Coast of England market, and, separately, on the Rotterdam to Grangemouth route. However, notwithstanding that the OFT has considered these as separate candidate geographic markets, the OFT notes that some of the evidence considered below relates to both these markets and may therefore apply to the competition analysis applicable to each of them.

COUNTERFACTUAL

33. The parties have not argued that Feederlink was a failing firm, although they have suggested that the current services of both parties are not sustainable at their current levels of utilisation. Accordingly, the OFT has, in accordance with its guidance,[14] taken the prevailing conditions of competition as the appropriate counterfactual.

COMPETITIVE ASSESSMENT - HORIZONTAL EFFECTS

34. Below, the OFT considers the existing competition which exists for feeder services, as well as the competitive constraints on the merged entity. In the discussion that follows, the OFT's competitive analysis relates to the Rotterdam to East Coast of England market, and to the Rotterdam to Grangemouth route, (together referred to as **Rotterdam to the UK East**

[14] See *Merger Assessment Guidelines*, paragraph 4.3.5.

Coast for the purposes of convenience), unless expressly identified to the contrary.

COMPETITION FOR FEEDER SERVICES

35. The merger represents a reduction in competing feeder operators on the East Coast of the UK, with the main operators being Unifeeder, Feederlink and BG Freight. At present, the merging parties serve similar routes on the UK East Coast; specifically these are routes serving Immingham, Teesport, South Shields and Grangemouth, from the hub ports of Felixstowe and Rotterdam. In fact, the parties identify this overlap in their services as being a key rationale for the merger.

36. The competition between the parties is recent, with the parties serving the same routes for only just over two years. This was [ ] Unifeeder successfully winning the [ ] tender which had previously been held by Feederlink. The OFT notes that, when Unifeeder secured this tender, it did not have any UK operations, and it was able to start such operations within [ ] months of receiving confirmation of its bid. Since then, it has built up its feedering business, and managed to become one of the largest feeder operators providing services in the UK. The OFT considers Unifeeder's entry into the UK in greater detail in the barriers to entry section below.

37. Since Unifeeder's entry, Feederlink has not [ ]. The OFT considers that this points to the limited constraint imposed on Unifeeder by Feederlink.

38. BG Freight is the other operator on the parties' routes, as described above, and the parties submit that it came [ ] on the [ ] tender. Third parties also confirmed that BG Freight was an alternative to the parties. In relation to BG Freight, the OFT notes it has a share of supply on the UK East Coast roughly equal to the parties, with the majority of third parties indicating that it is a competitor on these routes. Additionally, the parties have provided evidence that BG Freight recently made at least two calls at Felixstowe (a port which it does not normally call at) on its way up the UK East Coast. The parties submit that on each of these calls, BG Freight picked up [ ] containers on behalf of a Liner customer for delivery to Grangemouth. The parties stated that these containers were regularly carried by Feederlink on its own service from Felixstowe to Grangemouth. Taking all of the above evidence in the round, and in particular comments

from third party customers, the OFT considers that BG Freight is a direct competitor to the parties and represents a strong constraint on them.

39. The parties also identified X-Press Feeder and Teamlines, both of which also bid for the [ ] tender. The OFT notes that neither of these companies are currently active on the UK East Coast, and third parties did not identify these operators as an existing constraint on the parties. The OFT has considered X-Press Feeder and Teamlines in the barriers to entry section below, which discusses expansion of existing operators.

COMPETITIVE CONSTRAINTS ON THE PARTIES

40. The parties argue that feeder services have an insignificant presence in the overall container transportation market, as they have a combined share of only around four per cent of the eight million containers that arrive into the UK each year. Set against this background, the OFT recognises that the parties' activities in the feeder market are subject to a variety of constraints, each of which will be considered in greater detail below:

(a) road and rail as alternative transport options,
(b) Liners' ability to flex hub ports, and
(c) customer responsiveness to price increases.

Road and Rail

41. As identified in paragraphs 10 and 18 to 20 above, the parties argue that considering the transport of TEUs by feeder services alone does not accurately reflect the range of options open to a Liner, and thus the competitive constraint imposed on the parties. They submit that feeder services are highly substitutable with other forms of transport and that most containers are transported to their final destination by road and rail. As such, Liners will have contracts with road and rail haulage firms, so would be able to easily switch volume between feeder, road and rail.

42. The parties have provided a range of evidence to support their submission that road and rail are a constraint. These are as follows:

(a) Internal documents which demonstrate that [ ] use the cost of transportation by road [ ]. The parties have also provided examples of quotes that they were asked to give for business currently carried by road.

(b) Examples of customers switching their business from the parties to road or rail alternatives.

(c) Details (including internal documents) about Feederlink having to withdraw some of its services as a result of it being unable to compete with Freightliner.

(d) Data in relation to the rates on certain [ ] routes, which the parties argue can be used as inferential evidence to show that rates are the same for routes where there is only one feeder operator, as for routes where there are multiple operators. The parties submit that this data shows that feeder operators must be sufficiently constrained by outside options (including other transport modes) such that even if only one operator is present on a route they are unable to raise prices. The [ ] constraint that the Liners' purchasing options place on the [parties] [ ] is discussed in greater detail below.

43. Although some third party customers have indicated that road and rail services are not able to compete with feeder services over longer distances, such as from Rotterdam to the UK East Coast,[15] other third parties have recognised that road and rail may provide a constraint for cargo landed at UK hub ports. In particular, and as identified in paragraph 20, third parties have indicated that road is competitive for distances up to 250km, and rail is competitive on longer distances within the UK. A rail TEU transport operator supported this, and made it clear that it did compete with feeder services in the UK, but not on TEUs discharged in mainland Europe.

44. The OFT recognises that road and rail provide an alternative means of transporting containers from hub ports to end customers. Although it is indicated that road and rail may be more expensive than feedering, on the basis of evidence received from the parties and third parties, the OFT is of the view that, within the UK, road provides a constraint for journeys under 250km, and rail provides a constraint on longer journeys. The extent to

[15] Suggestions for this proposition included the fact that the Channel Tunnel and/or ro-ro ferries are not considered viable options due to cost, and potential speed issues.

which these road and rail options would be a constraint on the markets in question, will depend on the Liners' ability to flex hub ports. This is discussed in further detail below.

Flexing hub ports

45. The parties submit that Liners continually shift demand between different modes in order to get the best possible combination according to their requirements. Liners will normally calculate the optimal way of carrying containers from one place to another and will adapt the route of a container accordingly. They have automated systems that enable them to calculate the quickest (and cheapest) routes for their cargo, but these are not necessarily determined by mode of transport.

46. Therefore, the parties submit that, in response to a price rise by feeder operators, Liners could change the hub port for UK cargo, so that they do not have to use a feeder service from mainland Europe, but could offload at a UK hub port and use road and rail. By way of example, the parties provided evidence of a Liner customer switching its outbound hub port in response to Unifeeder offering a lower feeder price on a different route.

47. The parties also emphasised that it would not be necessary for Liners to switch hub ports completely given that only a marginal switching in volumes between different hub ports would be required to defeat a price rise. Specifically, the parties estimated that a five per cent switching of volume in response to a five per cent price rise, would be sufficient to offset that price rise.

48. The parties' customers have indicated that their choice of hub port is based on a number of factors, of which feeder costs are just one factor. One customer indicated that speed can be an important factor for customers, which is consistent with the parties' feeder services being used even when a ship is subsequently to call at a UK port. Thus, even if feeder costs were to be increased, only a proportion of the cargo on the Liner will be bound for the UK, and if more of that cargo is urgent and bound for mainland Europe than is bound for the UK, there will be little incentive to switch. However, on this point, the OFT notes the parties' submission that feeders are unable to price discriminate according to end customer requirements given that demand is aggregated by Liners, so that feeder operators have no transparency on these requirements (that is, the feeder service provider

does not generally know when particular shipments are time sensitive or not). The OFT believes that feeder services cannot, as a result, increase prices on specific cargo which relies on being feedered.

49. Although some Liner customers were sceptical as to whether they would switch *all* their volumes from one hub port to another in response to a price rise by feeder operators, the OFT believes that Liner customers would be able to switch marginal volumes between hub ports, and that this would act as a form of competitive constraint on the parties.

Customer responsiveness to price increases

50. Feedering is a 'scale' business, and the parties submit that the incentive is always to grow volumes, or at the very least, to ensure that 'all TEUs remain on board' their vessels. The parties argue that customers could respond to price increases by switching volumes. [ ] switching of volumes [ ] would be financially very significant in terms of [ ]. The parties submit that the Liners are fully aware of this, and the OFT recognises that an actual or threatened switching of volumes in response to a price change does constrain and discipline the parties in some way.

BUYER POWER

51. The parties submit that customers of feeder services have strong buyer power and that the Transaction is in part a response to the significant market power enjoyed by these Liner customers.

Concentrated customer base

52. The parties submit that the Liners are very large and resourceful, and that they have significant leverage over suppliers. This has been encouraged by the steady move towards increased consolidation at customer level, and Liners entering into alliances.[16] Specifically, the parties claim that the demand for TEU transportation is concentrated through the Liners, with the largest three Liners estimated as representing in excess of 50 per cent of the volumes shipped to/from the UK. More generally, the seven largest Liners and alliances cover approximately 80 per cent of all the Europe/Far

[16] Two of the largest alliances are CHKY Alliance and G6 alliance. The CHKY Alliance and G6 alliance each represent [a significant part of] each of the parties' global custom.

East container traffic. Consequently, TEU transport service providers deal with very few customers who represent the vast majority of their sales.

53. Each of the parties' customer bases evidence this point: Unifeeder's 15 largest UK customers account for [75-85] per cent of its UK turnover and [70-80] per cent of its Northern Europe volume. Feederlink's largest 15 customers account for circa [85-95] per cent of its revenues.[17] Unifeeder and Feederlink's remaining customers are made up of around [150-250] and [55-65] customers respectively, who typically ship very low volumes on an ad hoc basis.

54. The OFT recognises that Liners control the vast majority of the parties' volume, which points to their having some buyer power. Given that this fact is not always sufficient in itself,[18] the OFT considers, in accordance with its guidance, the alternative options available to customers[19] in greater detail below.

Liners' variety of outside options

55. According to the parties, the buyer power which the Liners have as a result of controlling huge volumes is strengthened by the fact that they have a variety of options open to them to counter and/or prevent any possible price increases. These are as follows:

(a) Switching, or threatening to switch, to BG Freight: as previously discussed, BG Freight offers a viable, existing alternative to the parties on the parties' overlapping routes (see paragraph 38 above) (in addition, see paragraphs 62 and 63 below in relation to potential new expansion by other feeder operators onto such routes).

(b) Self-supply: some Liners operate their own in-house feeder services which either serve the same routes as the parties, or which could potentially be flexed or expanded to cover any route that they

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[17] This refers to Feederlink's global revenue. All of this revenue is generated on routes to/from the UK.

[18] See *Merger Assessment Guidelines*, paragraph 5.9.4.

[19] See *Merger Assessment Guidelines*, paragraph 5.9.3.

consider could benefit from an alternative supplier.[20] Furthermore, even though the ability to self-supply might be more evidently enjoyed by the largest Liners, such as Maersk, the relatively smaller Liners (albeit, these are still considerably larger than the parties) are protected by existing alliances or the potential to form new alliances which could provide them with access to the in-house services operated by other members of the same alliance.

(c) Sponsoring new entry: Given the vast volumes that Liners control, they can sponsor and have sponsored new entry. The most notable example of this is Unifeeder's entry to the UK [ ]. The parties have also provided details of a Liner with relatively small volumes in the UK, providing the base cargo to induce a feeder to call at an additional port, and so to sponsor its entry onto a particular route. Further, a number of Liners have indicated to the OFT in response to its investigation that they would sponsor entry.

Liners' purchasing options

56. The parties have identified a number of techniques used by Liners to constrain them by imposing pricing pressure or demanding modification of route networks. These are as follows:

(a) Organising tenders or requests for quotations (**RFQs**): Liners will use these processes to play competitors off against each other, and several Liners have confirmed that they have played feeder suppliers off against one another. Furthermore, the parties submit that Liners will put out a RFQ, and invite the parties to win volumes by quoting prices which fall below those offered by a Liner's in-house service provider.

(b) Short-term contracts and re-negotiation during contracts: The duration of the contracts means that customers ensure their ability to switch to other providers whilst maintaining pressure on their current

[20] For example, Maersk has operated its own service, Sea-go, since 2010 which today operates approximately twice as many vessels as Unifeeder. MSC, CMA-CGM and Hapag Lloyd also use their own in-house operations on various routes in Northern Europe. On the UK corridor, CMA-CGM, MSC and K-Line all currently operate an in-house service.

transportation service providers. Moreover, the parties claim that customers will [ ].

(c) According to the parties, the result of these techniques is evidenced by the fact that [ ]. Third parties have generally supported this point. Equally, just as Liners [ ], they also expect to share in the parties' cost reductions. In this regard, the OFT notes that both the parties and third parties have provided evidence that they expect to obtain a share of the efficiencies generated as a result of the merger.

57. Further, the parties submit that Liners have the ability to 'punish' them. As noted in paragraph 24, this stems from the fact that they enter into contracts which cover wide geographies, for example, Northern Europe. Therefore, price discrimination on individual routes would be, and is, discouraged on the basis that Liners have the ability to punish suppliers by withdrawing volumes or their entire demand on other routes. The parties provided data which compares the volume that they carry for each of their customers on Rotterdam to Grangemouth and the Continent to UK East Coast,[21] against the total volume that they carry on each customer's entire portfolio of routes. These data show that, on average, only around [one to five] per cent of each Liner's business is carried on the Rotterdam to Grangemouth route; and some [five to ten] per cent of each Liner's business is carried on the Continent to UK East Coast network. Consequently, the parties submit that there is no incentive for them to increase prices on the routes in question, given that the volumes which they carry on these account for such an insignificant amount of the overall volumes which they ship, and Liners could use this as leverage to keep the parties in check.

58. The OFT recognises that the Liners have at their disposal a number of techniques, as described above, each, or a combination of which, have the ability to discipline the parties. Third parties support this, particularly in relation to the Liners' expectation to benefit from the efficiencies generated as a result of the merger, and their capacity to discipline the parties.

[21] Please note that this is said to exclude Felixstowe to Rotterdam. Further, the 'Continent' was undefined.

Conclusion on buyer power

59. On the basis of the evidence provided, the OFT believes that Liners do have the buyer power to impose a sufficient competitive constraint on the parties to prevent them from increasing prices. In particular, the OFT recognises the concentrated nature of the parties' customer base; the nature of their contractual arrangements; the variety of credible outside options available to the Liners; and the disciplining techniques which the Liners can employ. In relation to the number of alternative options which the Liners have, the OFT recognises that even though the ability to self-supply or sponsor entry might be more evidently enjoyed by the largest Liners, the relatively smaller Liners are protected by membership of existing alliances or the potential to form new alliances that will offer access to in-house services and/or the threat of being able to sponsor a new entrant.

BARRIERS TO ENTRY AND EXPANSION

60. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT will consider whether such entry or expansion would be: (a) timely; (b) likely; and (c) sufficient.[22]

61. The parties submit that barriers to entry in feedering are low, with chartered vessels being supplied quickly, complete with a crew, and for as little as a single journey.

62. The parties argue that entry would be likely in response to a price increase by the parties, with incumbents enjoying few advantages over new operators. The OFT notes that Unifeeder entered the UK East Coast feedering market [ ] tender awarded to them. In relation to the [ ] tender, the OFT recognises that there were [ ] bidders for it, and yet the successful bidder, Unifeeder, was not an incumbent. Also, and as already noted, Unifeeder was able to start operating services to the UK within [ ] months, at a cost of €[ ]. Further, not only was Unifeeder able to enter quickly and with minimal ease, it also enjoyed a rapid growth over a relatively short period of time.

63. Both the parties and third parties have indicated that expansion can be sponsored. The parties have identified instances of Unifeeder and other

[22] See *Merger Assessment Guidelines*, paragraph 5.8.3.

third party feeders expanding into new routes as a result of being sponsored by Liner customers.

64. On the basis of the current evidence, the OFT considers that the barriers to entry are low. Furthermore, the OFT considers that expansion by existing feeder operators, in particular other feeder operators active in Northern Europe, for whom the barriers to entry would be very low, is a threat. This is facilitated by the larger Liners being able to facilitate entry, as [ ] did with [ ].

CONCLUSION

65. The parties compete on similar routes alongside one another, where they also face another strong competitor, BG Freight. Whilst the parties do represent a competitive constraint on one another, the OFT recognises a number of other constraints which exist on the parties. These include road and rail combined with the possibility of Liners flexing of hub ports; and customer responsiveness to price increases. In addition to these constraints, the parties are impacted by the buyer power enjoyed by the Liners and the low barriers to entry and expansion. Accordingly, the OFT considers that customers will not be harmed as a result of the merger.

THIRD PARTY VIEWS

66. Third party comments have been taken into account where appropriate in the competitive assessment above.

67. By way of summary, the customers contacted by the OFT were mixed in their views about the merger. The OFT did receive complaints about the Transaction from a number of third parties, including customers and competitors. The OFT notes that customer concerns mostly focused on the reduction in the number of feedering operators and possible price increases.

68. Nevertheless, a number of the parties' key customers were unconcerned about the proposed merger. These customers provided more sanguine responses, and many of the parties' arguments resonated with these third parties, particularly in relation to buyer power and barriers to entry.

ASSESSMENT

69. The Transaction qualifies for assessment on the basis that, if the Liners are excluded, the parties will have a share of supply of around [20-30] per cent by volume of the supply of container shipping services between UK ports, and domestic and mainland European hub ports.

70. On a cautious basis, the OFT has assessed the transaction on the basis of a market for feeder services on a network of routes from Rotterdam to East Coast of England, and on the individual route from Rotterdam to Grangemouth. On each of these candidate geographic markets, the merger represents a reduction in feeder operators. The main operators are Unifeeder, Feederlink and BG Freight, all of which have significant shares of supply on the candidate geographic markets concerned. Third parties have identified BG Freight as a viable alternative to the parties, and recent evidence indicates that it presents a significant constraint.

71. The OFT considered the additional constraints imposed on the parties by road and rail, combined with the potential for Liners to flex hub ports; and customer responsiveness to price increases. In relation to road and rail, the OFT found that there is some constraint from intra-UK transport options, with road providing a constraint for journeys under 250km, and rail providing a constraint on longer journeys. The extent to which these road and rail options are a constraint on the markets in question depends on the Liners' ability to flex hub ports. On this point, the OFT believes that marginal switching of volumes between hub ports is possible, and would act as a competitive constraint on feeder operators.

72. Moreover, the OFT recognises that customers could respond to price increases by switching volumes. [ ] switching of volumes [ ] would be financially very significant in terms of profitability. As such, the OFT considers that an actual or threatened switching of volumes in response to a price change does constrain and discipline the parties in some way.

73. The OFT also considered the competitive constraint imposed on the parties by the Liners' buyer power. The OFT believes that this dynamic does constrain the parties, and it considers that Liners can leverage the large volumes they control on some routes against other routes in order to discipline the parties. Equally, these large volumes can be used to either sponsor new entry, or, as mentioned above, they can be marginally

switched between hub ports to defeat price increases. Further, Liners' in-house feeder operations, or the threat of Liners' switching volumes in-house, provide another constraint on the parties.

74. The parties have indicated that barriers to entry are low, with costs being low, and the ease of chartering a vessel being high. As such, incumbents would enjoy few advantages over new operators, and Unifeeder's quick entry and rapid expansion into the UK East Coast feedering market clearly indicates this. The parties have also identified other incidents of expansion onto new routes by other feeder operators active in Northern Europe. In addition, Liners operating their own in-house feedering services could expand to cover new routes.

75. Taking all the evidence considered above in the round, and having regard to the fact that the particular candidate geographic markets considered form part of the wider container transportation operations in the North Sea, the OFT considers that customers will not be harmed as a result of the merger.

76. As such, the OFT does not believe that it is or may be the case that the Transaction may be expected to result in a substantial lessening of competition.

DECISION

77. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.