

# Anticipated acquisition by GWI UK Acquisition Company Limited of Pentalver Transport Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6654/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 25 April 2017. Full text of the decision published on 15 May 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### SUMMARY

1. GWI UK Acquisition Company Limited (**GWI**) has agreed to acquire Pentalver Transport Limited (**Pentalver**) (the **Merger**). GWI and Pentalver are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the transport of deep sea containers within Great Britain. GWI, through its Freightliner group of companies, primarily transports containers by rail. Pentalver transports containers by road. Pentalver also provides container storage services at ports and other container related services.
4. The CMA assessed the impact of the Merger on the following frames of reference, based on the routes on which the Parties compete:
  - (a) Road and rail container transport between Southampton port and the Midlands;

- (b) Road and rail container transport between Felixstowe port and the Midlands;
  - (c) Road and rail container between London Gateway port and the Midlands.
- 5. The CMA also analysed the ability of the Parties to use their position in container storage at ports to foreclose competitors in the supply of container transport.
- 6. Within the above frames of reference, the CMA found that:
  - (a) the Parties' combined share of the supply of container transport is not, by itself, cause for concern;
  - (b) the increment in the Parties' shares of supply from the Merger is small; and
  - (c) there are alternative suppliers of container transport available to customers if the Parties increase prices or reduce their service quality post-Merger.
- 7. The CMA also found that the Parties will not have to the ability to use Pentalver's current position in container storage to foreclose its competitors in the supply of container transport.
- 8. The CMA believes that the above findings, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal or conglomerate effects in the frames of reference.
- 9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

- 10. GWI is a group company ultimately owned by Genesee & Wyoming Inc (**G&W**), a US-based rail freight company. G&W, and GWI, conduct their UK activities through Freightliner Group Ltd (**Freightliner**). Freightliner transports freight by rail, operates rail terminals and moves containers to and from its rail terminals by road. The turnover of G&W in 2015 was around \$2,000 million (approximately £1,560 million) worldwide and around £231 million in the UK.
- 11. Pentalver is a UK-based container sales and logistics company, currently under the ultimate control of A.P. Møller - Mærsk A/S, a global transport and

logistics company. Pentalver is primarily a road haulier. The turnover of Pentalver in 2015 was around £99 million, which was entirely generated in the UK.

## Transaction

12. GWI has agreed to purchase the entire issued share capital of Pentalver.

## Jurisdiction

13. As a result of the Merger, the enterprises of G&W and Pentalver will cease to be distinct.
14. The UK turnover of Pentalver exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 3 March 2017 and the statutory 40 working day deadline for a decision is therefore 3 May 2017.

## Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>1</sup>
18. In this case, the CMA has not seen any evidence supporting a different counterfactual, and the Parties and third parties have not put forward

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<sup>1</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## **Background**

### ***Inland transport of containers***

19. The Parties overlap in the transport of inter-modal deep sea containers (**containers**) within Great Britain. These containers are designed to be equally capable of being transported by road, rail or sea. The containers are used to move cargo long distances across oceans and to easily transfer it to road or rail for inland transport.
20. Typically, the large container ships that carry containers will only call at one British port. This means that containers often travel over large distances within Great Britain, even when there is another British port closer to their inland origin or destination. Inland transport operates in both directions, with import and export containers travelling to and from ports in Great Britain.
21. Inland transport is normally conducted either by road or rail. Feeder ships can provide an alternative transport option, but were not identified as an alternative by customers for the inland routes in this case.
22. Freightliner transports containers to and from British ports by rail only. Freightliner also has a fleet of 250 lorries that are used for container transport between Freightliner's inland rail terminals and customers' addresses.
23. Pentalver supplies container transport to and from British ports by road only and has a fleet of 180 lorries.

### ***Port services***

24. In addition to the overseas and inland transport of containers, the transition between a container ship and a container's inland mode of transport involves several steps. For imports, containers will be first offloaded from a container ship and then processed at a port. Containers may then be transferred to a storage facility before making their inland journey. Alternatively, containers may be transferred directly to their inland transport vehicle (whether road or rail). The same steps, in reverse, are applicable to exports.
25. Pentalver supplies container storage at ports and related container services.

## Frame of reference

26. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>2</sup>
27. The Parties overlap in the supply of transport of containers from three British ports to inland destinations, and vice versa. The three British ports are:
  - (a) the port of Southampton (**Southampton**);
  - (b) the port of Felixstowe (**Felixstowe**); and
  - (c) London Gateway port (**London Gateway**).
28. This decision refers to Southampton, Felixstowe and London Gateway together as the **Southern Ports**.
29. In addition, Pentalver is active in the supply of storage at the Southern Ports.

### ***Container transport***

30. In transport markets, the distinction between the product scope of the frame of reference and its geographic scope are often interlinked. The CMA's analyses of the product and geographic frames of reference for container transport should therefore be considered in conjunction with each other.

### ***Product frame of reference***

#### ***Road and rail***

31. GWI submitted that, over certain distances, road and rail container transport are in the same product frame of reference. The Parties' activities only overlap if and when road and rail transport compete with each other. The CMA therefore assessed whether container transport by road and rail compete over certain distances.

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<sup>2</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

32. In *Freightliner/Deutsche Post* (2007), the Office of Fair Trading (**OFT**), concluded that road and rail container transport competed in the areas around the relevant target sites (terminals in Doncaster and Daventry).<sup>3</sup>
33. The distance over which road and rail transport compete was also considered by the Office of Rail and Road (**ORR**) in its investigation into deep sea container rail transport services.<sup>4</sup> The ORR made a preliminary finding that price and quality were the primary customer considerations in choosing a mode of container transport.<sup>5</sup> Rail tends to be more cost effective over longer distances, with road generally cheaper for shorter distances.<sup>6</sup> As part of its investigation, the ORR was advised that the cost of transporting containers by rail and road reached an equilibrium at approximately 150 miles. This is approximately the distance between the Southern Ports and the West Midlands.<sup>7</sup> The ORR therefore made a preliminary finding that container transport by road and rail compete between the Southern Ports and the Midlands.<sup>8</sup>
34. The CMA consulted with customers and competitors of the Parties, sector experts, other operators in the sector and the ORR. While some customers could not switch between road and rail for geographic reasons, most customers would consider road and rail as alternatives for journeys of up to around 150 miles. In addition, the Parties' internal documents confirm that relatively little road haulage revenue came from journeys of more than around [less than 250] miles, or from journeys to or from customer addresses north of the Midlands.
35. The CMA therefore believes that road and rail compete in the supply of container transport over distances of approximately 150 miles, and likely no further than [less than 250] miles. Practically, this means that the Parties compete in the supply of container transport between the Southern Ports and the Midlands.
36. Third parties also provided evidence that, whilst container transport by road and rail were alternatives over certain distances, road and rail face different constraints. For example, rail transport is constrained by the location of railway tracks and the times slots available to use the railway. Road container

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<sup>3</sup> Anticipated acquisition by *Freightliner Limited* of two inter-modal inland rail ports located at Doncaster and Daventry from *Deutsche Post A.G.*, June 2007 ([Freightliner/Deutsche Post](#))

<sup>4</sup> *Provision of Deep Sea Container rail transport services between ports and key inland destinations in Great Britain*: Decision to accept commitments offered by Freightliner Limited and Freightliner Group Limited, 18 December 2015 ([Commitments Decision](#))

<sup>5</sup> [Commitments Decision](#), para 3.19

<sup>6</sup> [Commitments Decision](#), para 5.5

<sup>7</sup> *Deep sea container transport market study*: MDS Transmodal Limited (October 2014), Section 8

<sup>8</sup> [Commitments Decision](#), paras 5.22–5.23

transport is not capacity constrained in the same way. However, given the absence of overlap between the Parties in rail container transport, the CMA has not needed to consider a narrower rail only frame of reference.

### *Geographic frame of reference*

#### *Southern Ports (Southampton, Felixstowe and London Gateway)*

37. GWI submitted that there are separate markets for transport between the Midlands and each of the Southern Ports. This was also an approach provisionally adopted by the ORR.<sup>9</sup> The CMA therefore considered whether to define separate frames of reference for each port, or whether it is appropriate to aggregate all Southern Ports into a single frame of reference.
38. The CMA assessed whether, in response to a small but significant increase in the cost of long distance transport between a given Southern Port and the Midlands, a customer would switch to using a different port. Evidence from third parties confirmed that decisions by customers regarding which British port they use (typically just one), are usually made far in advance and would be costly to alter. Switching between ports would be commercially unattractive for customers, even in response to a significant increase in cost, and customers confirmed that they would be reluctant to do this.
39. Based on this evidence, the CMA considers it is appropriate, on a cautious basis, to consider transport to and from each of the Southern Ports as a separate frame of reference.

#### *Midlands*

40. From a customer perspective, the options (**Route Options**) for delivery or collection of a container to/from the Midlands are:
  - (a) Transport between a Southern Port and a Midlands rail terminal by rail, with transport between the customer's Midlands address and the rail terminal by road;
  - (b) Transport between a Southern Port and a Midlands road depot by road, with a second leg of road transport between the customer's Midlands address and the road depot; or

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<sup>9</sup> [Commitments Decision](#), para 5.7

- (c) Transport directly between a Southern Port and a customer's Midlands address by road.
41. Freightliner provides Route Option (a) to its customers using terminals in Hams Hall, Daventry and Birmingham.
  42. Pentalver provides Route Options (b) and (c) to its customers, using a depot in Cannock for Route Option (b). Around [80-90]% of Pentalver's container transport travels directly between customers' Midlands addresses and a Southern Port, ie via Route Option (c).
  43. GWI submitted that the relevant geographic frame of reference should be transport into and out of the whole of the Midlands, rather than a narrower segment of the Midlands, or to terminals or depots only.
  44. In *Freightliner/Deutsche Post* (2007), the OFT assessed whether specific terminals posed a competitive constraint on each other. It concluded that terminals 25 miles apart were a competitive constraint on each other, while a terminal 40 miles away still imposed a degree of constraint.<sup>10</sup>
  45. In this case, the Parties submitted evidence that 80% of their container transport between terminals/depots and customer addresses occurred within [less than 40] miles of the relevant terminal or depot, depending on the specific terminal or depot (**Parties' catchment areas**).
  46. Based on the Parties' submissions, previous decisions and corroborating third party evidence, the CMA believes that terminals and depots within 20-30 miles of each other place a significant constraint on each other. The CMA therefore took the Parties' catchment areas as a starting point for its frame of reference. The CMA did not distinguish between the Route Options used to transport a container into or out of the Parties' catchment area because of the CMA's conclusion that road and rail compete on these routes.
  47. In this case, the Parties' catchment areas for Freightliner's Hams Hall terminal, Freightliner's Birmingham terminal and Pentalver's Cannock depot overlap to such a significant extent around the focal point of Birmingham that they can be aggregated to form a combined overlap area (**Core Birmingham area**).<sup>11</sup> The CMA believes that the Core Birmingham area is a suitable proxy for the Parties' catchment areas, excluding Daventry.

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<sup>10</sup> [Freightliner/Deutsche Post](#), para 18

<sup>11</sup> Specifically, the Core Birmingham area includes the counties of West Midlands, Staffordshire, Warwickshire, and Worcestershire.



48. The 80% customer catchment area for Freightliner's Daventry terminal does not overlap with Pentalver's Cannock depot. However, on a cautious basis, and in light of the GWI's submissions in relation to the Midlands, the CMA also considered container transport between the Southern Ports and a wider Midlands frame of reference (**Wider Midlands area**).<sup>12</sup>

#### *Intra-Midlands container transport*

49. For completeness, the CMA observed that there may be a second frame of reference for container transport specifically between depots and terminals in the Midlands and customers' addresses. However, in this case the CMA's broader container transport frame of reference captures the vast majority of the Parties' container transport within the Midlands. No third parties raised any concerns in relation to this second potential frame of reference so the CMA did not pursue it further.

#### *Customer Segmentation*

50. The CMA also considered whether supply and demand conditions for different customers may differ, such that separate frames of reference should be used for different customer types.
51. The Parties' main customers are shipping lines and freight forwarders, who organise complete journeys for containers to and from overseas destinations, but the Parties also provide services to end users and other road hauliers. Evidence obtained from different types of customers indicated there may be material differences in the needs and method of procurement for different customer groups.
52. However, as the CMA is satisfied that no competition issues would arise, even on a narrower basis of specific customer groups, the CMA does not consider it necessary to conclude whether separate customer groups may constitute separate frames of reference.

#### *Conclusion on container transport frame of reference*

53. For the reasons set out above, the CMA has considered the impact of the Merger on container transport between:

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<sup>12</sup> Specifically, the Wider Midlands area includes the Core Birmingham area and the counties of Derbyshire, Herefordshire, Leicestershire, and Shropshire.

- (a) Southampton and the Core Birmingham area or the Wider Midlands area (**Southampton/Midlands Routes**);
- (b) Felixstowe and the Core Birmingham area or the Wider Midlands area (**Felixstowe/Midlands Routes**); and
- (c) London Gateway and the Core Birmingham area or the Wider Midlands area (**London Gateway/Midlands Routes**).

### **Container storage**

#### *Product frame of reference*

- 54. The product scope of the frame of reference for container storage is closely connected to the geographic scope (ie where containers are stored). Different storage companies store containers in different ways depending on where they store them.
- 55. The geographic aspects of container storage are considered further from paragraph 61 below.
- 56. In addition to these considerations, the CMA considered whether it is appropriate to use separate frames of reference for the storage of empty and laden containers.
- 57. Third party submissions suggested that there may be material differences between the storage of empty and laden containers, for example in the cost of supplying the service and the extent to which customers can switch between suppliers.
- 58. The CMA found evidence that empty and laden storage facilities constrain each other to differing degrees. For example, storage facilities with the ability to store laden containers will be able to store empty containers as well. However, the opposite is not always true. Storage facilities that can store empty containers may not be able to store laden containers, for example because the foundations under the facility cannot withstand the weight of laden containers, or because the facility does not have a powerful enough crane to lift the laden containers.
- 59. However, as the CMA is satisfied that no competition issues would arise even on a narrower frame of empty or laden containers, the CMA does not consider it necessary to conclude whether separate frames of reference should be defined for empty and laden containers.

60. Similarly, customers provided some evidence that different storage facilities may be used depending on how long containers are stored for. However, as the CMA is satisfied that no competition issues would arise even on a narrower frame of long-term or short-term container storage, the CMA does not consider it necessary to conclude whether separate frames of reference should be defined depending on the storage period.

#### *Geographic frame of reference*

61. GWI submitted that the geographic frame of reference for container storage should include all container storage in and around a port.
62. Container storage can be differentiated by (i) whether it occurs within the boundaries of a port or outside it and (ii) the method of transport to and from the storage facility.

#### *Port boundaries*

63. The CMA found evidence that whilst a port boundary in itself is not significant for customers, there are potential time and cost implications of storing containers outside a port. These include higher shunting costs, the inability to access low-tax fuel used by shunting vehicles within port boundaries, and the time taken to shunt containers between areas. Shunting refers to the short distance transport of containers, for example between ships, terminals, depots and storage facilities.
64. However, customers also provided the CMA with examples of storage facilities just outside of a port being price and time competitive with storage inside the boundaries of the port.

#### *Transport to/from the storage facility*

65. Within the boundaries of a port, a storage facility may be located within or outside of a container terminal.
66. Containers are typically moved to or from port storage facilities by lorry. However, within a container terminal (such as DP World's container terminal at Southampton) containers can be moved to and from a storage facility by straddle carrier, a specialist vehicle used for lifting containers. Shunting containers by straddle carrier is around three times cheaper than by lorry.
67. If containers are transported by rail and shunted by lorry, customers incur the higher cost of lorry shunting twice because the container is shunted from the

ship to the storage facility and then from the storage facility to the rail terminal (and vice versa).

68. If containers are transported by road and shunted by lorry, the impact on the customer is lower because there is no need to shunt containers between a storage facility and rail terminal, ie the container is only shunted once.
69. For these reasons, container storage facilities that use lorries for shunting (whether inside or outside of a port boundary) may impose a weaker competitive constraint on container terminals using straddle carriers.
70. As no realistic prospect of a substantial lessening of competition arises even on a narrow geographic frame of reference of container storage within or outside of a container terminal with straddle carriers, it is not necessary for the CMA to conclude on whether the appropriate geographic frame of reference includes all storage facilities within a port or just outside.

### ***Conclusion on frames of reference***

71. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
  - (a) Transport of containers between the Southern Ports and the Midlands, specifically:
    - (i) between Southampton and the Core Birmingham area or the Wider Midlands area (**Southampton/Midlands Routes**);
    - (ii) between Felixstowe and the Core Birmingham area or the Wider Midlands area (**Felixstowe/Midlands Routes**); and
    - (iii) between London Gateway and the Core Birmingham area or the Wider Midlands area (London **Gateway/Midlands Routes**).
  - (b) Container storage in and around a port.

### **Competitive assessment**

72. The CMA has considered two theories of harm in relation to the Merger; horizontal unilateral effects and conglomerate effects.

#### ***Horizontal unilateral effects***

73. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and

without needing to coordinate with its rivals.<sup>13</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.

74. The CMA assessed whether it is or may be the case that the Merger may be expected to result in a substantial lessening of competition in relation to horizontal unilateral effects in the container transport frame of reference.

*Container transport between the Southern Ports and the Midlands*

*Shares of supply*

75. The CMA assessed the Parties' combined shares of supply on the Southampton/Midlands Routes and the Felixstowe/Midlands Routes, where the Parties' operations are focussed.
76. The CMA could not obtain full volume and revenue data for all competitors in each frame of reference in order to calculate accurate shares of supply for the Parties. The CMA therefore calculated the highest possible shares of supply attributable to the Parties for each route. These highest possible shares overstate the Parties' shares of supply because they exclude the volumes of certain competitors' from the total level of supply of container transport.
77. The Parties' highest possible shares of supply for the Southampton/Midlands Routes and the Felixstowe/Midlands Routes using the narrowest Core Birmingham Areas frame of reference are:

From	To	Freightliner	Pentalver
Felixstowe	Core Birmingham area	[40-50]%	[0-5]%
Southampton	Core Birmingham area	[40-50]%	[0-5]%
Core Birmingham area	Felixstowe	[50-60]%	[5-10]%
Core Birmingham area	Southampton	[50-60]%	[5-10]%

Source: CMA analysis

78. The Parties submitted that their estimated shares of supply on a wider Midlands frame of reference are:

To and From	Freightliner	Pentalver
Felixstowe and Midlands	[10-20]%	[0-5]%
Southampton and Midlands	[20-30]%	[5-10]%

Source: Merger Notice

79. The CMA believes the Parties' shares of supply to be plausible estimates given the approximate size of the competitors excluded from the CMA's highest possible calculations. Based on the highest possible shares of supply, the shares of supply estimated by the Parties and the small increment

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<sup>13</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

attributable to Pentalver, the CMA found no concerns in the Parties' combined share of supply on the Southampton/Midlands and Felixstowe/Midlands Routes.

80. In relation to the London Gateway/Midlands Routes, the CMA was not concerned by the Parties' shares of supply for several reasons. First, Pentalver's turnover from container transport to and from London Gateway is minimal (around [0-5]% of its total turnover) indicating that any increment in the Parties' share of supply as a result of the Merger would be minimal. Second, no customers raised concerns in relation to the Parties' position at London Gateway post-Merger. Finally, third parties confirmed that London Gateway, which opened in 2013, remains in its infancy, meaning that current shares of supply are not a good indicator of future shares of supply.
81. In relation to different types of customer, no third party concerns were received from any customer segment regarding the Parties' positions in container transport on any route.

#### *Closeness of competition*

82. The Parties submitted that they do not compete for the same business in relation to container transport. This is because typically, Freightliner provides transport services for larger and more predictable journeys and Pentalver services smaller volumes at shorter notice. The Parties could not recall an instance where they both competed for the same contract, or where a customer switched from one Party to the other.
83. The CMA asked the Parties' customers who they would consider to be the closest competitors for each of Freightliner and Pentalver. Customers' consistent feedback to the CMA was that the Parties are not among each other's closest competitors in relation to any of the frames of reference. In particular, when asked how they would respond to a 5-10% increase in Freightliner's prices, the overwhelming majority of customers said that they would switch to another rail operator, or to any of a number of road hauliers.

#### *Competitive constraints*

84. During its third party consultation the CMA identified many other road and rail competitors that currently constrain the Parties. The CMA believes that, within each frame of reference, the Parties will continue to be constrained by at least one or two rail operators and a large number of sizeable road hauliers.

### *Conclusion on horizontal unilateral effects*

85. In light of:

- (a) the parties' estimated shares of supply;
- (b) the small increment in these shares post-Merger;
- (c) the fact that the Parties are not each other's closest competitors;
- (d) the presence of closer competitors to the Parties, who will continue to constrain them post-Merger; and
- (e) the absence of customer concerns,

the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of container transport.

### ***Conglomerate effects***

86. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).<sup>14</sup>
87. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
88. In this case, the CMA considered whether Pentalver's market position in the supply of container storage may allow the Parties to foreclose their competitors in the supply of container transport post-Merger through a bundling or tying strategy. During the CMA's third party consultation, several parties commented on Pentalver's strong position in container storage at Southampton. The CMA therefore focussed its analysis on container storage in Southampton and container transport to and from Southampton.

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<sup>14</sup> [Merger Assessment Guidelines](#), paragraph 5.6.2.

89. The CMA only analysed conglomerate effects between container storage and rail transport. This is because Pentalver's ability to tie or bundle container storage with road transport post-Merger would not materially alter from the pre-Merger position.
90. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.<sup>15</sup> These are discussed below.

### *Ability*

91. In this case, to successfully tie or bundle container storage and long distance transport post-Merger, two conditions would need to be satisfied; (i) the Parties must have sufficient market power in one frame of reference and (ii) the services being brought together must be complements.

### *Complementarity*

92. The CMA assessed the complementarity between Pentalver's storage facility at Southampton against rail transport to and from Southampton. GWI submitted that Pentalver's storage facility only weakly complements rail transport. It estimated that only a small amount (around [5-10]%) of the containers that Freightliner transports to or from Southampton are handled by Pentalver's storage operations. Pentalver's storage facility is within Southampton port, around one mile from the container docks and Freightliner's rail terminal. GWI submitted that Freightliner's customers are unwilling to incur the additional cost of shunting containers to and from Pentalver's storage facility by lorry. Instead, these customers prefer to store containers in Southampton's main container facility or to avoid storage at the port altogether.
93. These submissions were largely supported by third parties. For example, one customer told the CMA that it only contracted with Pentalver for storage at Southampton when it was unable to use Southampton's main container facility.
94. In relation to the one other rail freight operator at Southampton, the CMA was told that it previously offered free shunting between Pentalver's storage facility and its rail terminal. It recently discontinued this service, indicating an element

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<sup>15</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.



of complementarity between container storage and rail transport, but not perfect complementarity.

### *Market power*

95. The Parties submitted that, within Southampton port, Pentalver has a [10-20]% share of the total capacity for container storage and a [10-20]% share of supply by revenue. Including storage facilities outside the port, the Parties estimated a market share of [5-10]% by revenue.
96. Southampton's main container facility, operated by DP World, is located between the container docks and Freightliner's rail terminal. DP World's container facility accounts for the majority ([70-80]%) of the total container storage at Southampton. In light of the Freightliner customer comment that it engaged Pentalver when it was unable to use the main container facility, the CMA assessed whether the main facility is capacity constrained. DP World provided evidence that its container storage facility averaged [70-80]% utilisation and rarely exceeded [90-100]% utilisation. This evidence indicates that the main container facility is not currently capacity constrained.
97. Several customers told the CMA that they also used container storage facilities just outside of Southampton port.
98. In addition to existing storage facilities at Southampton, a new storage facility is being constructed within the port. The CMA expects this facility to provide a further constraint on Pentalver's market power for container storage, though it has not speculated on the extent of this future constraint.
99. Customers also confirmed that storage at locations further away from the port would be an option for long-term storage. A number of customers said that they would respond to a price increase for storage in Southampton by considering storage in the Midlands. This applies equally to exports, with containers being stored in the Midlands prior to their inland transport to a port, and imports, with containers stored in the Midlands after completing their inland journey.
100. Based on the current constraint imposed by DP World's main container facility, Pentalver's low share of the supply of container storage and other storage options available to customers, the CMA does not believe Pentalver holds significant market power in container storage at or around Southampton.
101. Even on the narrower frames of reference of empty container storage and laden container storage, the CMA does not believe Pentalver has significant market power. Some customers stated that they are more likely to use

Pentalver for longer term storage and for empty containers, however these customers also identified other options, such as storage away from Southampton.

#### *Conclusion on ability*

102. Because of the low degree of complementarity between rail transport and Pentalver's storage services in Southampton, and because of Pentalver's modest market power in the market for storage in Southampton, the CMA does not believe that the Parties, post-Merger, would have the ability to engage in bundling or tying of rail container transport and container storage at Southampton.

#### *Incentive and effects*

103. Given the CMA's conclusion that the Parties would not have the ability to tie or bundle its Southampton container storages facilities and rail transport to and from Southampton, the CMA did not need to assess the Parties' incentives to do so, or the effects.

#### *Conclusion on conglomerate effects*

104. As set out above, the CMA believes that the Parties will not have the ability, post-Merger, to bundle container storage and rail transport. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of conglomerate effects in relation to Pentalver's position in the supply of container storage in Southampton.

#### ***Barriers to entry and expansion***

105. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>16</sup>
106. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

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<sup>16</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

## Third party views

107. The CMA contacted customers and competitors of the Parties, sector experts, other operators in the sector and the sector regulator, the ORR. In general feedback from customers was neutral or in some cases positive about the Merger, with a number of competitors noting the Parties may be able to offer a more joined up service post-Merger. A few third parties highlighted the potential strength of Pentalver in storage at Southampton, including specific concerns about possible leveraging of Pentalver's strong position in storage to foreclose competitors in container transport, as outlined above.
108. Third party comments have been taken into account where appropriate in the competitive assessment above.

## Decision

109. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
110. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Joel Bamford**  
**Director of Mergers**  
**Competition and Markets Authority**  
**25 April 2017**