

CMA/32/2020

# Anticipated acquisition by XPO Logistics, Inc. of Kuehne + Nagel Drinkflow Logistics Holdings Limited

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

ME/6898/20

Please note that [X] indicates 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.

### SUMMARY

1. XPO Logistics, Inc. (**XPO**) has agreed to acquire sole control of certain parts of the contract logistics business (the **Target Business**) of Kuehne + Nagel Limited (**KNL**) (the **Merger**). XPO and KNL are together referred to as the **Parties**. For statements referring to the market position if the Merger were to be completed, XPO and the Target Business are together referred to as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of XPO and the Target Business is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. 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 supply of contract logistics services in the UK, specifically for contract logistics services in the food, drink and retail segments. The primary overlap between the Parties is within secondary drinks distribution, which involves the 'last mile' distribution of drinks to retail outlets of on-trade customers. The CMA has assessed the impact of the Merger in the supply of secondary drinks distribution services (including both contract logistics services and wholesale services but excluding self-supply) in the UK.

4. The CMA believes that pre-Merger, KNL was the second largest secondary drinks distribution supplier, with a share of [20-30]% and, post-Merger, the Merged Entity would remain the second largest supplier with a slightly increased share of [20-30]%. The CMA believes that the Parties compete in the supply of secondary drinks distribution services in the UK; however, due to the limited commercial appeal of XPO's service offering (which is a dedicated solution) compared to KNL's offering (which is based on a shared network) for most customers, the Parties are not particularly close competitors and XPO is a limited competitive constraint on KNL.
5. The CMA believes that the Merged Entity will continue to be constrained by a number of suppliers offering secondary drinks distribution services, including: Tradeteam, the market leader, which will continue to provide a strong constraint; Marston's, which provides a material constraint; other suppliers using a wholesale model, most prominently Matthew Clark and LWC; and to a lesser extent, small suppliers competing on a more regional basis.
6. The CMA believes that, these suppliers, taken together, will provide a sufficient constraint on the Merged Entity to prevent an increase in price or deterioration in quality as a result of the Merger.
7. The CMA therefore does not believe that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of secondary drinks distribution services in the UK.
8. The CMA also assessed the impact of the Merger in the supply of contract logistics services for: (i) primary drinks distribution; (ii) retail; and (iii) food service in the UK. In view of the large number of alternative suppliers – and the absence of concerns expressed by third parties – the CMA does not believe there is a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any of these segments.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

10. XPO is a global logistics provider of supply chain solutions, headquartered in the US.<sup>1</sup> It operates in 30 countries and offers customers a variety of services,

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<sup>1</sup> XPO Supply Chain UK Limited is a private limited, wholly-owned subsidiary of XPO, registered in Scotland.

including transport logistics, distribution and warehousing services, including receipt, handling, storage, packing and inventory management.

11. The turnover of XPO in the financial year 2019 was approximately £12,808 million<sup>2</sup> worldwide, of which approximately £[§]³ was generated in the UK.
12. KNL is a global transport and logistics company headquartered in Switzerland. It operates in 109 countries, providing a range of transport, logistics and supply chain services across various industry sectors.
13. The Target Business comprises a significant part of the UK contract logistics business of KNL and is principally active in the food service, drinks and retail sectors. The turnover of the Target Business in the financial year 2019 was approximately £[§] million<sup>4</sup>, which was generated entirely in the UK.

## Transaction

14. The Merger involves a pre-completion reorganisation by KNL, whereby the assets and business relating to the Target Business will be hived down to Kuehne + Nagel Drinkflow Logistics Holdings. Pursuant to a sale and purchase agreement dated 8 March 2020, XPO agreed to acquire Kuehne + Nagel Drinkflow Logistics Holdings through its wholly owned subsidiary, XPO Supply Chain UK Limited.

## Procedure

15. The Merger was considered at a Case Review Meeting.<sup>5</sup>

## Jurisdiction

16. Each of XPO and the Target Business is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
17. The UK turnover of the Target Business exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

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<sup>2</sup> Based on the figure of €14,112.5 million provided converted to GBP using the average ECB exchange rate for 2019 of €1 to £0.90754.

<sup>3</sup> Based on the figure of €[§] provided converted to GBP using the average ECB exchange rate for 2019 of €1 to £0.90754.

<sup>4</sup> Based on the figure of €[§] provided converted to GBP using the average ECB exchange rate for 2019 of €1 to £0.90754.

<sup>5</sup> See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34 onwards.

18. 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.
19. The Merger meets the thresholds under Council Regulation (EC) 139/2004 (the EC Merger Regulation) for review by the European Commission. The Parties submitted a reasoned submission to the European Commission on 13 August 2020 requesting referral to the CMA under Article 4(4) of the EC Merger Regulation. The CMA informed the Commission that it agreed with the referral request and considered the Merger capable of being reviewed in the United Kingdom under the Act. On 17 September 2020, the European Commission referred the Merger to the CMA for review.
20. The preliminary assessment period for consideration of the Merger under section 34A(2) of the Act started on 18 September 2020 and the statutory 45 European Commission working day deadline for a decision is therefore 20 November 2020.

## Background

21. Contract logistics services are 'the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements'.<sup>6</sup>
22. Contract logistics services are provided across a range of different industry sectors. The Parties both provide contract logistics services in the retail, food and drinks sectors in the UK.
23. Contract logistics services in the retail sector involve the provision of services to a range of different retailers and end consumers, including where products are ordered online.<sup>7</sup>
24. Contract logistics services in the food sector involve deliveries of food products to a range of different locations. 'Food service' activities involve deliveries to restaurants, pubs, hotels, cafes, coffee shops and other catering operations, whereas 'food retail' involves deliveries into the retail channel (ie supermarkets, convenience stores and other grocery retailers).<sup>8</sup>

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<sup>6</sup> European Commission ('EC') decision of 21 March 2011 in the Case no. M.6059 *Norbert Dentressangle / Laxey Logistics*, paragraph 9; EC's decision of 30 January 2013 in the Case no. M.6570, *UPS/ TNT Express*, paragraph 31.

<sup>7</sup> Draft form for standard merger notifications submitted to the EC by the Parties on 28 July 2020 ('**Draft Form CO**'), paragraph 10.

<sup>8</sup> Draft Form CO, paragraph 3.

25. Contract logistics services in the drinks sector involve both the primary and secondary stages of the distribution process. **Primary drinks distribution** involves the distribution of drinks from a brewery to a regional distribution centre (eg of a supermarket) or depot (eg of a pub company or wholesaler). **Secondary drinks distribution** involves the 'last mile' distribution of drinks to retail outlets of on-trade customers.<sup>9</sup>
26. Secondary drinks distribution services may be provided by contract logistics suppliers that have the capabilities required to service on-trade venues.<sup>10</sup>
27. The CMA notes that there are two main groups of customers for secondary drinks distribution services:
- (a) pub companies, who may purchase drinks directly from brewers and other brand owners and contract separately for them to be distributed to their managed and tenanted/leased pubs by contract logistics suppliers; and
  - (b) brewers and distillers,<sup>11</sup> who supply drinks to a range of on-trade outlets and may contract for these drinks to be distributed by contract logistics suppliers.<sup>12</sup>
28. Contract logistics suppliers may supply secondary drinks distribution via a shared network, or a network dedicated to a single customer:
- (a) In a **shared distribution network**, personnel and/or assets of a contract logistics supplier are used to provide services to multiple customers within the same network.<sup>13</sup> The network has a number of existing distribution centres and operates a fleet of trucks that carry products for a number of different customers (which may include brewers and distillers and pubs) and therefore cannot be optimised (eg in terms of delivery schedules) to suit the bespoke needs of each customer. The trucks and drivers' uniforms are also typically unbranded.<sup>14</sup>
  - (b) In a **dedicated distribution network**, personnel and/or assets of a contract logistics supplier are assigned to a particular customer.<sup>15</sup> XPO

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<sup>9</sup> 'On-trade' refers to where beverages are consumed on the premises where they are purchased, such as pubs, bars and restaurants, in contrast with 'off-trade' where beverages are consumed away from the point of purchase, such as grocery retailers and convenience stores.

<sup>10</sup> Secondary drinks distribution may also be provided by wholesalers; or may be self-supplied by brewers or pub companies. This is discussed further under the product frame of reference below.

<sup>11</sup> Brewers may procure secondary drinks distribution services in order to have drinks delivered to their own pubs, independent free trade customers or large pubcos (eg [REDACTED] has a contract to supply secondary drinks distribution services to the [REDACTED], which is fulfilled by KNL).

<sup>12</sup> Some customers may be both pub companies and brewers and purchase secondary drinks distribution services in either or both capacities.

<sup>13</sup> CMA note of 10 September 2020 call with [REDACTED].

<sup>14</sup> Draft Form CO, paragraph 174.

<sup>15</sup> CMA note of 10 September 2020 call with [REDACTED].

submitted that a dedicated solution is akin to an outsourced in-house logistics operation. The trucks and drivers' uniforms may be branded with the customer's brand.

29. Contract logistics for secondary drinks distribution may also be provided on the basis of an open or closed book solution:
- (a) In **open book contracts**, the customer has the right to see the costs incurred by the contract logistics supplier, the budget is agreed in advance and the expected levels of activity and performance are measured against the agreed budget (in terms of service and cost) jointly by the customer and supplier.<sup>16</sup> The customer usually pays the cost of service plus a management fee.
  - (b) In **closed book contracts**, there is a specified rate for each service. The customer and contract logistics supplier may agree the basis on which these rates will be varied in the future. In closed book contracts, charges are usually set by reference to unit charges on a rate card basis, meaning that, in comparison with open book contracts, there is more certainty for the customer in relation to the price to be paid, but less transparency in relation to the costs of supply. Closed book contracts are typically used for shared user networks, where it is difficult to assign specific costs to a specific customer.<sup>17</sup>

## Counterfactual

30. 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>18</sup>
31. 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>16</sup> CMA note of 10 September 2020 call with [REDACTED].

<sup>17</sup> Draft Form CO, paragraph 196.

<sup>18</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5 onwards. 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.

32. Like many other sectors, contract logistics services have been disrupted, at least in the short term, by the ongoing Coronavirus (COVID-19) pandemic. In conducting a forward-looking assessment, the CMA has considered the lasting structural impact of the Merger, focusing on the longer-term conditions of competition in the relevant market. The CMA has taken the evidence on the impact of Coronavirus (COVID-19) into account in the competitive assessment where appropriate.<sup>19</sup>
33. The CMA notes that, even prior to the Coronavirus (COVID-19) pandemic, secondary drinks distribution has been a declining market characterised by reducing volumes and low profitability.<sup>20</sup>

## **Frame of reference**

34. 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 merging 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>21</sup>

## **Product scope**

35. The CMA's approach to assessing the product frame of reference is to begin with the overlapping products of the merging parties in the narrowest plausible frame of reference and then to see if this should be widened on the basis, primarily, of demand or supply-side considerations.<sup>22</sup>
36. The Parties overlap in the supply of contract logistics services to the retail, food service and drinks sectors in the UK. In the drinks sector, the Parties overlap in the supply of both primary and secondary drinks distribution.

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<sup>19</sup> CMA guidance on Merger assessments during the Coronavirus (COVID-19) pandemic, paragraphs 21-23.

<sup>20</sup> Parties' response to question 1 of the CMA's fifth section 109 notice of 3 November 2020 ('**fifth s109**'); email from [redacted] on 3 November 2020.

<sup>21</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>22</sup> [Merger Assessment Guidelines](#), section 5.2.

37. The CMA first considered product scope in relation to secondary drinks distribution and then in relation to the Parties' other overlapping areas of contract logistics services (including primary drinks distribution).

#### *Secondary drinks distribution*

38. The Parties submitted that the appropriate frame of reference is wider than secondary drinks distribution and should encompass all contract logistics services in line with previous decisions by the European Commission.<sup>23</sup>
39. In particular, the Parties submitted that providers of contract logistics services are generally able to serve all types of customers, without distinguishing between the goods transported, and that in their experience contract logistics services are customer-specific rather than sector-specific.<sup>24</sup>
40. The Parties further submitted that contract logistics services involves a package of services and requires the use of warehouses, vehicles to move goods between different depots, and IT software (eg for stock and supply chain management purposes) together with the staff, know-how, and relevant technical expertise. These common inputs are combined in order to provide contract logistics services and deliver solutions which are tailored to the specific needs and requirements of each customer.<sup>25</sup>
41. The Parties submitted that if the CMA were to consider a narrower frame of reference which focused only on the delivery of drinks to on-trade outlets, it should include supply by wholesalers and self-supply by brewers and pub companies on the basis that these services are an alternative for customers using contract logistics providers to deliver drinks to on-trade outlets.
42. The CMA has previously considered, but ultimately left open, the issue of whether there might be a distinct market for secondary drinks distribution in *DHL Supply Chain Limited*.<sup>26</sup> On a cautious basis, the CMA in that case assessed the impact of the merger on the narrow basis for the supply of secondary drinks distribution (or portage services) separately from other

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<sup>23</sup> The Parties relied on a previous definition of contract logistics services used by the EC as 'the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements' (EC's decision of 21 March 2011 in the Case no. M.6059, [Norbert Dentressangle / Laxey Logistics](#); EC's decision of 30 January 2013 in the Case no. M.6570, [UPS / TNT Express](#)).

<sup>24</sup> Draft Form CO, paragraph 64.

<sup>25</sup> Draft Form CO, paragraph 65.

<sup>26</sup> CMA's decision of 13 January 2017 in the case no. ME/6628/16, [Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited](#).

contract logistics services and from wholesaling.<sup>27</sup> Ultimately, however, it was not necessary for the CMA to reach a conclusion in that case on the appropriate product frame of reference as it found no competition concerns on any plausible basis.<sup>28</sup>

43. As noted above, the Parties overlap in the supply of secondary drinks distribution services. The CMA considered whether it would be appropriate to widen the product frame of reference to include primary drinks distribution, and other contract logistics services. The CMA also considered whether to include in the frame of reference the wholesale supply of drinks, and self-supply by brewers and distillers and/or pub companies.

#### *Secondary drinks distribution and other forms of contract logistics services*

- *Demand-side substitution*

44. The CMA considers that primary drinks distribution and other forms of contract logistics services are not demand-side substitutes for secondary drinks distribution. Customers typically request tenders for secondary drinks distribution services as distinct from primary drinks distribution and other contract logistics services since they serve different purposes.<sup>29</sup>
45. The Parties' internal documents indicate that customers in secondary drinks distribution require specialist services to deliver drinks to on-trade premises which cannot be directly substituted with standard contract logistics services.<sup>30</sup>
- *Supply-side substitution*
46. While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market where there is evidence of supply-side substitution.<sup>31</sup> The CMA may do so where there is evidence that suppliers can quickly shift capacity between different products depending on demand for each product;

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<sup>27</sup> CMA's decision of 13 January 2017 in the case no. ME/6628/16, *Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited*, paragraphs 36-43.

<sup>28</sup> CMA's decision of 13 January 2017 in the case no. ME/6628/16, *Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited*, paragraph 43.

<sup>29</sup> CMA note of 13 October 2020 call with [REDACTED], paragraph 4.

<sup>30</sup> Document titled [REDACTED], submitted by XPO in response to the second section 109 notice of 2 October 2020 ('second s.109'), page 8 and 13. See also document titled [REDACTED], submitted by XPO in response to the CMA's second s.109, page 5. See also CMA note of 15 September 2020 call with [REDACTED].

<sup>31</sup> *Merger Assessment Guidelines*, paragraph 5.2.17.

and the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.<sup>32</sup>

47. The Parties submitted that, in considering supply-side substitution, it is important to distinguish between shared and dedicated distribution networks: while it may be difficult to shift assets from primary distribution into a shared network, this is less relevant to single-customer dedicated networks (as XPO provides for Greene King).<sup>33</sup>
48. The evidence received by the CMA indicates that, for the most part, suppliers are not able to shift capacity quickly into secondary drinks distribution from primary drinks distribution or any other form of contract logistics services:
  - (a) The Parties submitted that primary distribution is ‘generally regarded as a relatively straightforward and commoditised activity’ which ‘does not require any special assets and involves the movement of large orders’.<sup>34</sup> This was supported by submissions from third parties.<sup>35</sup>
  - (b) This contrasts with secondary distribution, which involves the ‘last mile’ distribution to the on-trade. The Parties submitted that this requires dray vehicles, specialised forklifts for beer kegs and additional staff training.<sup>36</sup> This is supported by third parties who told the CMA that secondary drinks distribution requires specific skills and specialist vehicles for bulky drinks deliveries into on-trade locations.<sup>37</sup>
49. In addition, the conditions of competition between firms are not the same across primary and secondary drinks distribution: although some providers are active in both segments, others operate solely in primary drinks distribution.<sup>38</sup>
50. The evidence from the Parties’ internal documents supports the CMA’s view that it is not appropriate to widen the frame of reference to include primary drinks distribution or any other form of contract logistics. These documents indicate that there are distinct opportunities in secondary drinks distribution and that it is common for [redacted] customers to use different providers for primary

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<sup>32</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

<sup>33</sup> The Parties’ response to the CMA’s Issues Letter of 3 November 2020 (‘**Issues Letter Response**’), paragraph 19.

<sup>34</sup> Draft Form CO, paragraph 140.

<sup>35</sup> CMA note of 9 October 2020 call with [redacted].

<sup>36</sup> Draft Form CO, paragraph 60.

<sup>37</sup> See CMA note of 9 October 2020 call with [redacted]; questionnaire response submitted by [redacted]; CMA note of 16 September 2020 call with [redacted]; and the response to the CMA questionnaire submitted by [redacted].

<sup>38</sup> Draft Form CO, Tables 5 and 6.

and secondary drinks distribution services.<sup>39</sup> Furthermore, XPO's internal documents discussed the specialised nature of secondary drinks distribution. For example, one document stated that secondary drinks distribution is a [redacted]<sup>40</sup> while another highlighted the [redacted].<sup>41</sup>

51. In relation to the Parties' submission on the distinction between shared and dedicated distribution networks in terms of supply-side substitution, the CMA notes that there is little evidence of suppliers other than XPO competing through the offer of dedicated networks. The CMA has therefore considered this point as part of the competitive assessment (see paragraphs 147 to 150 below).

#### *Inclusion of wholesalers*

52. The Parties submitted that they are constrained by wholesalers which have their own distribution capabilities (such as Matthew Clarke).<sup>42</sup> This constraint results both from wholesalers offering contract logistics services (where the wholesaler does not take ownership of the stock),<sup>43</sup> and from wholesalers offering a wholesale service as an alternative to contract logistics services for customers seeking to have drinks delivered to the on-trade.<sup>44</sup>
53. To the extent wholesalers are offering contract logistics services, the CMA considers these services to be direct substitutes to the Parties' offering and should therefore be included within the relevant frame of reference. The CMA has further considered the extent to which wholesale services may be a demand-side substitute to secondary drinks contract logistics services in determining whether the product frame of reference should be widened to include wholesale services.
54. The CMA understands that there are some differences between a wholesale offering and a contract logistics offering. In particular, a wholesaler acts as an intermediary and purchases products from a supplier (typically a brewery) and then resells these products to pub companies, often as part of a wider product portfolio with products from a range of breweries. Furthermore, third parties

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<sup>39</sup> See, for example, documents titled [redacted] submitted by XPO in response to the CMA's second s.109.

<sup>40</sup> Document titled [redacted], submitted by XPO in response to the CMA's second s.109, pages 15-16.

<sup>41</sup> Document titled [redacted], submitted by XPO in response to the CMA's second s.109, page 13. See also document titled [redacted], submitted by XPO in response to the CMA's second s.109.

<sup>42</sup> References to 'wholesalers' in this decision are to wholesalers with their own networks for distributing to the on-trade. Similarly, references to wholesaling and wholesale services are to services offered by such wholesalers. Wholesaling may also be carried out by brewers (which sell to pub companies and the free trade) and by pub companies (which sell to their tenanted and leased outlets) using the secondary distribution networks of the Parties and other contract logistics suppliers.

<sup>43</sup> Draft Form CO, paragraph 9.

<sup>44</sup> Issues Letter Response, paragraph 78.

cited some additional differences between wholesale services and secondary drinks distribution such as the inclusion in wholesale contracts of value added services including technical support and marketing activities.<sup>45</sup>

55. Notwithstanding these differences, there is strong evidence of pub company customers using wholesale services to procure drinks for their on-trade outlets. For example, one supplier told the CMA that it provides drinks to a number of pub companies under a wholesale contract. This supplier also offers delivery on a contract logistics basis and explained that these are alternative options for customers.<sup>46</sup> Another supplier told the CMA that it won significant volumes in a recent tender through the provision of wholesale services in direct competition against the Parties' contract logistics services.<sup>47</sup>
56. On the basis of the evidence summarised above, the CMA has included both secondary drinks contract logistics services and wholesale services provided to the on-trade within the relevant frame of reference.

#### *Self-supply*

57. A number of brewers, typically smaller brewers with local operations, distribute drinks to on-trade outlets. Typically, this occurs when a brewer continues to operate its own on-trade outlets.
58. Where such companies are supplying, or bidding to supply, secondary drinks distribution services to third parties, the CMA has included these activities in the relevant product frame of reference. However, consistent with its usual practice, the CMA has not included the volumes that these companies supply to themselves when calculating market shares.<sup>48</sup>

#### *Other contract logistics services*

59. As noted above, the Parties also overlap in the supply of contract logistics services for primary drinks distribution, retail and food service.
60. The Parties submitted that providers of contract logistics services are generally able to serve all types of goods and customers. In relation to the primary distribution of drinks, the Parties submitted that no specific inputs are required. In relation to retail, the Parties submitted that, while no specific inputs are generally required, a high level of automation to reduce labour

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<sup>45</sup> See CMA note of 9 October 2020 call with [REDACTED], paragraph 2; and CMA note of 14 October 2020 call with [REDACTED], paragraph 25.

<sup>46</sup> CMA note of 14 October 2020 call with [REDACTED].

<sup>47</sup> CMA note of 3 November 2020 call with [REDACTED].

<sup>48</sup> [Merger Assessment Guidelines](#), paragraph 5.2.20.

costs, optimise inventory and streamline delivery was often important for customers. In relation to food service, the Parties submitted that multi-temperature facilities and vehicles were typically required, together with staff who are available on a 24 hour basis six or seven days a week. Nevertheless, the Parties submitted that any specific inputs are readily available to any contract logistics suppliers which wants to diversify and expand its contract logistics services into different industry sectors.<sup>49</sup>

61. The CMA considers that the supply of contract logistics services for primary drinks distribution, retail and food service are not demand-side substitutes as they serve different customers and purposes. From a supply-side perspective, there are certain differences in the inputs required, particularly for food service. There are also differences in the conditions of competition between these segments, with different sets of providers active in each segment.
62. On a cautious basis, the CMA has therefore considered the impact of the Merger in each of the segments for primary drinks distribution, retail and food service. However, it has not been necessary to conclude on the relevant frame of reference for these other contract logistics services as no competition concerns arise in relation to these services on any plausible basis.

#### *Conclusion on product scope*

63. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of:
  - (a) secondary drinks distribution, including both contract logistics services and wholesale services, but excluding self-supply;<sup>50</sup> and
  - (b) contract logistics services for (i) primary drinks distribution; (ii) retail; and (iii) food service.

#### **Geographic scope**

##### *Secondary drinks distribution*

64. The CMA has previously considered the relevant geographic market for secondary drinks distribution to be national in scope in *DHL/Carlsberg*, albeit

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<sup>49</sup> Draft Form CO, paragraphs 66-67.

<sup>50</sup> References to 'secondary drinks distribution services' in this Decision refer to both the supply of secondary drinks contract logistics services (excluding self-supply) and the supply of drinks wholesaling services to the on-trade.

limited to Great Britain since the parties in that merger only overlapped in Great Britain.<sup>51</sup>

65. The Parties submitted that the market for contract logistics services is EEA-wide in scope because many contract logistics suppliers can readily expand their activities to meet customer demand and the requirements of customers and inputs does not vary materially by geography. However, the Parties also submitted that the Target Business's business and customers were in the UK and the relevant customers, for which the Parties competed, were concerned with their domestic contract logistics needs.<sup>52</sup>
66. The CMA has not seen any evidence of overseas logistics suppliers bidding for secondary drinks distribution contracts in the UK and these contracts are typically national in scope. Accordingly, the CMA does not believe the geographic scope is wider than national.
67. The CMA also considered whether the relevant geographic scope was narrower than national.
68. Based on the evidence received in its investigation, the CMA notes that:
  - (a) the Parties' customers in secondary drinks distribution generally require the provision of these services on a national basis;<sup>53</sup> and
  - (b) there are few examples of a customer splitting secondary drinks distribution regionally (such as Greene King in Scotland, which the Parties submitted was due to the historical development of the Greene King pub network and distribution arrangements).<sup>54</sup>
69. Furthermore, the CMA notes that the Parties and their competitors typically have a national presence, notwithstanding the possibility of certain suppliers providing a competitive constraint on a more regional basis. While this does not affect the CMA's assessment that secondary drinks distribution services should be analysed on national basis for the purposes of this case, the more limited nature of the service provided by specific suppliers has been taken into account in the competitive assessment.
70. Therefore, the CMA believes that the supply of secondary drinks distribution in the UK is the appropriate geographic frame of reference.

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<sup>51</sup> CMA's decision of 13 January 2017 in the case no. ME/6628/16, *Anticipated acquisition by DHL Supply Chain Limited of the enterprise constituted by the secondary assets of Carlsberg Supply Company UK Limited*.

<sup>52</sup> The Parties therefore analysed the competitive dynamics solely based on operators providing contract logistics services in the UK. See Draft Form CO, paragraphs 72-75.

<sup>53</sup> CMA note of 9 October 2020 call with [REDACTED].

<sup>54</sup> Draft Form CO, footnote 149.

### *Contract logistics services for primary drinks distribution, retail and food service*

71. Similarly, the CMA found that competition in contract logistics services for primary drinks distribution, retail and food service occurred on a national basis. The CMA therefore believes that the UK is the appropriate geographic frame of reference for assessing competition in the supply of these other contract logistics services.

### *Conclusion on geographic scope*

72. For the reasons set out above, the CMA has considered the impact of the Merger in the UK.
73. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

### **Conclusion on frame of reference**

74. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) secondary drinks distribution (provided both via contract logistics services and as part of a wholesale service but excluding self-supply) in the UK; and
  - (b) contract logistics services for (i) primary drinks distribution; (ii) retail; and (iii) food service in the UK.

## **Competitive assessment**

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

75. 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 to degrade quality on its own and without needing to coordinate with its rivals.<sup>55</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.<sup>56</sup>

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<sup>55</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>56</sup> [Merger Assessment Guidelines](#), paragraph 5.4.6.

76. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the following frames of reference:
- (a) secondary drinks distribution services in the UK; and
  - (b) contract logistics services for (i) primary drinks distribution; (ii) retail; and (iii) food service in the UK.

***Supply of secondary drinks distribution services in the UK***

77. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in relation to the supply of secondary drinks distribution services in the UK, the CMA considered:
- (a) shares of supply;
  - (b) closeness of competition between the Parties; and
  - (c) competitive constraints from alternative suppliers.

*Shares of supply*

78. Based on customer and other third party data, the CMA estimated the shares of the supply of the Parties and their competitors in secondary drinks distribution services in the UK by volume (hectolitres) in 2019 (including XPO’s projected volume under its contract with Greene King).

**Table 1: Shares of supply in secondary drinks distribution in the UK for 2019 (hectolitres) <sup>i</sup>**

XPO <sup>57</sup>	[0-5]%
KNL	[20-30]%
<b>Combined Share</b>	[20-30]%
Tradeteam	[40-50]%
Matthew Clark	[10-20]%
Marston’s	[10-20]%
Others	[0-5]%
Note: Based on responses to CMA questionnaires; excludes self-supply.	

<sup>57</sup> Includes XPO’s estimated projected revenue of £[ ] for Greene King.

79. Pre-Merger, KNL was the second largest secondary drinks distribution supplier, with a share of [20-30]% and, post-Merger, the Merged Entity would remain the second largest supplier with a slightly increased share of [20-30]%.
80. Tradeteam would remain the largest provider of secondary drinks distribution services with a combined share of [40-50]%, while Matthew Clark and Marston would have moderate shares of supply, at [10-20]% and [10-20]% respectively.

#### *Closeness of competition*

81. The CMA has examined the closeness of competition between the Parties in the supply of secondary drinks distribution services, and considered within this assessment:
  - (a) the Parties' submissions;
  - (b) evidence on the Parties' participation in tenders and contract opportunities for secondary drinks distribution services;
  - (c) third party views on closeness of competition; and
  - (d) internal documents of the Parties.

#### *Parties' submissions*

82. The Parties submitted they are not close competitors within secondary drinks distribution on the basis that this is not an area of focus for XPO. In particular, they highlighted that XPO derives only approximately [0-5]% of its UK revenues from drinks logistics<sup>58</sup> and currently has only one material customer (Greene King) in secondary drinks distribution.<sup>59</sup> The Parties also noted that XPO has not won any secondary drinks customers from KNL.<sup>60</sup>
83. The Parties further submitted that XPO's service proposition is different from that of KNL, and other incumbent providers (Tradeteam and Marston's). In particular, the Parties noted that XPO does not have a shared secondary drinks distribution network, which they consider a requirement to gain share in this traditionally low margin segment against competition from the in-house operations of the brewers and distillers.<sup>61</sup> XPO has instead set up a dedicated and bespoke secondary drinks distribution solution for its sole customer,

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<sup>58</sup> Including both primary and secondary drinks distribution.

<sup>59</sup> Draft Form CO, paragraph 6.

<sup>60</sup> Issues Letter Response, paragraph 44.

<sup>61</sup> Draft Form CO, paragraph 9 and 147.

Greene King. Start-up costs for this venture were [REDACTED] and XPO simply procured the necessary vehicles and obtained leases for warehouses needed for this contract.<sup>62</sup> The Parties submitted that any of the other top 10 contract logistics suppliers (or indeed any medium-sized contract logistics supplier) could readily set up a dedicated secondary distribution solution.<sup>63</sup>

84. The Parties further submitted that there are very few customers in the drinks sector for whom a dedicated solution is likely to be viable. First, the economics of a dedicated single-customer solution require a combination of large volumes and significant 'drop density',<sup>64</sup> which few customers possess. Second, there are not many customers prepared to take on the commercial risk of underwriting a dedicated solution.<sup>65</sup>
85. Finally, the Parties submitted that XPO does not have (and did not have pre-Merger) any strategic plan to enter the secondary drinks distribution segment.<sup>66</sup> Rather, XPO's activities in secondary drinks distribution have been [REDACTED]. They said that XPO has not elaborated, let alone pursued, a strategic plan to enter into this segment of the contract logistics market, [REDACTED]. The Parties therefore submitted that [REDACTED].<sup>67</sup>

#### *Participation in tenders and contract opportunities*

86. The CMA notes that suppliers can exert competitive constraints in bidding markets by bidding for, as well as winning, tender opportunities. The CMA has considered evidence on the Parties' participation in tender processes and contract opportunities for secondary drinks distribution services.
87. As discussed below, the evidence gathered by the CMA shows that, since XPO was awarded the Greene King contract in 2019,<sup>68</sup> the Parties have been in competition with one another for several opportunities within the secondary drinks distribution segment.

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<sup>62</sup> Draft Form CO, paragraph 6 and 150.

<sup>63</sup> Draft Form CO, paragraph 9.

<sup>64</sup> This refers to the existence of a high number of distribution points in a given geographic area.

<sup>65</sup> Issues Letter Response, paragraphs 22 to 25.

<sup>66</sup> XPO response of 7 October to CMA questions dated 2 October 2020.

<sup>67</sup> XPO response of 12 October to CMA questions dated 9 October 2020.

<sup>68</sup> The Parties submitted that, in addition to Greene King, XPO has one smaller customer for secondary drinks distribution, [REDACTED] (Draft Form CO, paragraph 138, footnote 141). XPO submitted that it carries out a range of different services for [REDACTED] including warehousing, primary drinks distribution and secondary drinks distribution services (XPO response of 13 October to CMA questions dated 12 October 2020). XPO explained that, in relation to secondary drinks distribution, this involves the operation of a single dray vehicle contracted to deliver around 8,000 kegs per year to pubs in Scotland (XPO response of 13 October 2020 to CMA questions dated 12 October 2020).

- [REDACTED]

88. [REDACTED]<sup>69</sup> [REDACTED].<sup>70</sup> [REDACTED].<sup>71</sup>

89. [REDACTED].<sup>72</sup> [REDACTED]<sup>73</sup> [REDACTED].

- [REDACTED]

90. [REDACTED].<sup>74</sup> [REDACTED].<sup>75</sup>

91. [REDACTED].<sup>76</sup> [REDACTED]<sup>77</sup> [REDACTED].<sup>78</sup> [REDACTED].<sup>79</sup>

92. [REDACTED].<sup>80</sup>

- [REDACTED]

93. [REDACTED].<sup>81</sup> [REDACTED].<sup>82</sup> [REDACTED].<sup>83</sup> [REDACTED].<sup>84</sup>

- [REDACTED]

94. [REDACTED].<sup>85</sup> [REDACTED].<sup>86</sup>

95. [REDACTED].<sup>87</sup> [REDACTED].<sup>88</sup> [REDACTED].<sup>89</sup>

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<sup>69</sup> Document titled [REDACTED] (Annex 12.3), submitted by XPO in response to the CMA's first section 109 notice of 18 September 2020 ('**first s.109 notice**').

<sup>70</sup> Document titled [REDACTED] (Annex 12.4), submitted by XPO in response to the CMA's first s.109.

<sup>71</sup> Email [REDACTED], submitted by XPO in response to the CMA's first s.109.

<sup>72</sup> CMA note of 7 September 2020 call with [REDACTED].

<sup>73</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third section 109 notice of 15 October 2020 ('**third s.109**').

<sup>74</sup> Draft Form CO, paragraph 181.

<sup>75</sup> XPO response of 7 October (question 1) to the second s.109.

<sup>76</sup> XPO response of 7 October (question 1) to the second s.109.

<sup>77</sup> Document titled [REDACTED] (Annex 12.17), submitted by XPO in response to the CMA's first s.109.

<sup>78</sup> Document titled [REDACTED] (Annex 12.19), submitted by XPO in response to the CMA's first s.109; [REDACTED] (Annex 12.20), submitted by XPO in response to the CMA's first s.109; and [REDACTED] (Annex 12.21), submitted by XPO in response to the CMA's first s.109.

<sup>79</sup> Document titled [REDACTED] (Annex 12.25), submitted by XPO in response to the CMA's first s.109.

<sup>80</sup> Issues Letter Response, paragraph 51.

<sup>81</sup> XPO response of 7 October to the CMA's second s.109.

<sup>82</sup> Document titled [REDACTED], submitted by XPO in response to the CMA's second s.109.

<sup>83</sup> XPO response of 7 October to the CMA's second s.109.

<sup>84</sup> CMA note of 13 October 2020 call with [REDACTED].

<sup>85</sup> XPO response of 7 October to the CMA's second s.109.

<sup>86</sup> Document titled [REDACTED], submitted by XPO in response to the CMA's second s.109.

<sup>87</sup> XPO response of 7 October to the CMA's second s.109.

<sup>88</sup> Issues Letter Response, paragraph 52 and Annex IL2.

<sup>89</sup> XPO response of 7 October to the CMA's second s.109.

- *Conclusion*

96. Overall, the CMA believes that XPO's participation in these processes demonstrates that it is actively pursuing further opportunities within the secondary drinks distribution segment in competition with KNL. However, the CMA notes that XPO has not been successful in any of these tender opportunities following the award of the Greene King contract.

*Third party views on closeness of competition*

97. The CMA sought evidence from third parties on the closeness of competition between the Parties, including in relation to the opportunities XPO has been pursuing.

98. Third party evidence indicates that XPO actively competes with KNL in secondary drinks distribution. In some instances, and as described further above, KNL and XPO have been shortlisted for the same contracts,<sup>90</sup> and some customers indicated that the Parties – alongside Tradeteam – were the only alternatives in the market.<sup>91</sup> Moreover, all of the respondents to the CMA's customer questionnaire indicated some degree of competition between the Parties' secondary drinks distribution offerings in general.

99. However, third parties noted some differences between the Parties' secondary drinks distribution offerings. Specifically, they highlighted the relatively larger size of KNL's offering;<sup>92</sup> that KNL offers a shared network while XPO offers a dedicated network;<sup>93</sup> that KNL will utilise its own systems, IT platforms and procedures, while XPO will rely on the customer's;<sup>94</sup> and that KNL is a traditional operator, while XPO adopts a more creative approach.<sup>95</sup>

100. Some customers considered the Parties to be viable alternatives in secondary drinks distribution, notwithstanding these differences. In particular:

- (a) One pub company [REDACTED] told the CMA that it was open to choosing a dedicated network, rather than a shared user network, on the basis that it would provide greater customer service, increased control and deliver

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<sup>90</sup> CMA note of 13 October 2020 call with [REDACTED]; CMA note of 7 September 2020 call with [REDACTED].

<sup>91</sup> CMA note of 16 September 2020 call with [REDACTED], paragraph 23.

<sup>92</sup> Responses to the CMA questionnaire submitted by [REDACTED] and CMA note of 9 October 2020 call with [REDACTED].

<sup>93</sup> CMA note of 7 September 2020 call with [REDACTED] and CMA note of 13 October 2020 call with [REDACTED].

<sup>94</sup> CMA note of 7 September 2020 call with [REDACTED].

<sup>95</sup> CMA note of 16 September 2020 call with [REDACTED], paragraph 16.

financial benefits. The pub company noted it was large enough to create its own network.<sup>96</sup>

(b) Another pub company [X] commented that it had considered XPO for secondary drinks distribution as XPO ‘wanted to expand in the [pub deliveries] business and they have a very good reputation so far’.<sup>97</sup> This pub company subsequently told the CMA that it decided not proceed with XPO on the basis that its proposal ‘didn’t look commercially viable’.<sup>98</sup>

(c) One brewer [X] said that ‘despite XPO being a new entrant, [brewer] feels confident that XPO has the necessary level of expertise to handle [brewer’s] secondary drinks distribution’. The brewer added that ‘the only thing XPO would need to do is to scale up...’<sup>99</sup>

101. However, several other customers told the CMA that XPO’s dedicated solution would not meet their requirements. In particular:

(a) One pub company [X] explained that it had entered into initial discussions with XPO regarding the supply of secondary drinks distribution services. However, ‘early in these conversations it became clear that the scale of providing a nationwide drinks logistics services wasn’t something that XPO was geared up for.’ As part of the discussions, XPO said that it could have provided a dedicated network to the pub company, but the pub company considered that would have been ‘overkill’ given its requirements.

(b) Another pub company [X] said that, apart from Tradeteam and KNL, ‘no other providers operate on a scale to provide a national distribution service to our [X] outlets.’<sup>100</sup>

(c) One brewer [X] had considered XPO for secondary drinks distribution on the basis that it expected that XPO ‘would have looked at the Greene King volumes they already had and tried to engineer a shared solution which could have been the start of a shared user network.’ However, XPO instead decided to keep the Greene King solution as dedicated and also to offer a dedicated option to the brewer. The brewer told the CMA

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<sup>96</sup> CMA note of 7 September 2020 call with [X].

<sup>97</sup> CMA note of 16 September 2020 call with [X].

<sup>98</sup> Email dated 2 November 2020 from [X].

<sup>99</sup> CMA note of 13 October 2020 call with [X].

<sup>100</sup> Response to the CMA questionnaire submitted by [X].

that this is not a viable option for them, as it is ‘more challenging to set up and is more expensive.’<sup>101</sup>

102. The CMA considers that this evidence is consistent with the Parties’ submissions that only a limited subset of customers has the necessary combination of volume and drop density to sustain a dedicated network for secondary drinks distribution.<sup>102</sup>
103. Only one third party expressed concerns about the impact of the Merger on competition. Specifically, a customer told the CMA that ‘since Carlsberg exited drinks logistics in 2017 there have only been [KNL] or Tradeteam as providers of scale. XPO had recently entered the market and were seen as credible challengers to the other two’.<sup>103</sup>
104. A customer also commented that ‘XPO’s recent award of some Greene King on-trade distribution activity has signalled a potential return to a 3 player on-trade distribution market alongside Tradeteam and [KNL] but the acquisition would maintain [two providers], albeit with [KNL] now much stronger.’ Notwithstanding that position, that customer also told the CMA that it was not concerned about the impact of the Merger on competition.<sup>104</sup>
105. By contrast, other customers told the CMA that the Merger could enhance competition. In particular, one customer told the CMA that the ‘merger could have a positive impact, since...XPO wants to actively come into the industry and invest.’<sup>105</sup> Similarly, another customer expressed the view that they ‘do not believe the acquisition will lessen competition in this market and it may increase the investment required to modernise drinks logistics for on-premise outlets.’<sup>106</sup>
106. Overall, the evidence received from third parties indicates that, while the Parties compete in the supply of secondary drinks distribution services, XPO’s dedicated solution is only viable for a limited subset of customers who are of a certain size and scale, in contrast with KNL’s shared network solution which is in principle suitable for all customers.

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<sup>101</sup> CMA note of 13 October 2020 call with [REDACTED].

<sup>102</sup> Issues Letter Response, paragraph 23.

<sup>103</sup> Response to the CMA questionnaire submitted by [REDACTED].

<sup>104</sup> CMA note of 9 October 2020 call with [REDACTED].

<sup>105</sup> CMA note of 7 September 2020 call with [REDACTED].

<sup>106</sup> Response to the CMA questionnaire submitted by [REDACTED].

### *Internal documents*

107. The CMA considered the extent to which the Parties view each other as close competitors in secondary drinks distribution based on its review of the Parties' internal documents.

### *XPO documents*

108. XPO's internal documents suggest that XPO is active in secondary drinks distribution and is monitoring potential customers and competitors in that segment.<sup>107</sup> These documents also show that XPO views KNL as a competitor for secondary drinks distribution services. For example, XPO identifies KNL as one of only three external suppliers of such services and therefore as a [REDACTED] in this segment.<sup>108</sup>
109. Furthermore, XPO's internal documents suggest that XPO is directly competing against KNL for certain customers in secondary drinks distribution services. For instance, a draft proposal to [REDACTED] set out the costs that would need to be taken into account to ensure a consistent comparison between XPO's indicative pricing and KNL's current costs.<sup>109</sup>
110. XPO's internal documents also analyse potential secondary drinks distribution customers that it can win from incumbent suppliers, including KNL. For example:
- (a) One XPO document mentions a call with [REDACTED] in which it discussed a potential move from its secondary drinks distribution provider at the end of its contract and noted that it may consider a move to a supplier other than Tradeteam or KNL;<sup>110</sup>
  - (b) Another internal XPO email describes KNL as one of only two options in terms of secondary drinks distribution networks in the context of a discussion about the providers for certain customers;<sup>111</sup> and
  - (c) XPO identified KNL as one of two incumbent suppliers for secondary drinks distribution when it was considering pitching to win business from [REDACTED].<sup>112</sup>

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<sup>107</sup> See, by way of example, document titled [REDACTED] submitted by XPO in response to the CMA's second s.109.

<sup>108</sup> Document titled [REDACTED], submitted by XPO in response to the CMA's second s.109.

<sup>109</sup> Document titled [REDACTED], submitted by XPO in response to the CMA's second s.109, page 14.

<sup>110</sup> Document titled [REDACTED] (Annex 1. 150 11 1 37), submitted by XPO in response to the CMA's first s.109.

<sup>111</sup> Document titled [REDACTED] (Annex 1.55 11.1.60), submitted by XPO in response to the CMA's first s.109.

<sup>112</sup> Document titled [REDACTED] submitted by XPO in response to the CMA's first s.109.

### *KNL documents*

111. KNL submitted that [REDACTED].<sup>113</sup> However, [REDACTED].<sup>114</sup>
112. A number of other KNL documents indicate that it views XPO as a competitor in secondary drinks distribution. For example:
- (a) an internal KNL email dated 15 July 2019 with the subject [REDACTED] and notes that KNL is discussing the risks associated with its own offer;<sup>115</sup>
  - (b) a KNL presentation dated 7 August 2019 lists XPO under the heading [REDACTED] on the basis of it winning the Greene King contract from Tradeteam;<sup>116</sup> and
  - (c) an internal KNL email dated 11 December 2019 that discusses the [REDACTED] opportunity considers only two rival bidders: XPO and Tradeteam. The email goes on to [REDACTED].<sup>117</sup>
113. However, the CMA has also seen evidence to suggest that KNL was sceptical of XPO's dedicated solution, and that it questioned the viability and credibility of its offering. For example, the KNL email dated 1 May 2019 (see paragraph 111 above) notes that, in its discussions with [REDACTED], KNL [REDACTED]<sup>118</sup> Similarly, a KNL email dated 12 December 2019 regarding XPO's offer to [REDACTED] highlights the unsuitability of the dedicated network solution proposed by XPO for [REDACTED], stating that [REDACTED].<sup>119</sup>

### *Conclusion on closeness of competition*

114. For the reasons set out above, the CMA believes that the Parties compete in the supply of secondary drinks distribution services in the UK. However, due to the limited appeal, for most customers, of XPO's dedicated solution compared to KNL's shared offering, the CMA believes that the Parties are not particularly close competitors, and that XPO is a limited competitive constraint on KNL. Specifically:
- (a) XPO won the Greene King contract in 2019 [REDACTED]. The Parties have subsequently competed against each other in several opportunities within

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<sup>113</sup> Email from [REDACTED] of 12 October 2020.

<sup>114</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109.

<sup>115</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109.

<sup>116</sup> Documents titled [REDACTED]. Further examples of KNL considering XPO a competitor in secondary drinks distribution include: [REDACTED] and [REDACTED], submitted by KNL in response to the CMA's third s.109.

<sup>117</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109.

<sup>118</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109.

<sup>119</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109.

the secondary drinks distribution segment; however, XPO has not been successful in any of these;

- (b) evidence from third parties indicates that, while the Parties compete in the supply of secondary drinks distribution services, XPO's dedicated solution is only viable for a limited subset of customers who are of a certain size and scale, in contrast with KNL's shared solution which is in principle suitable for all customers; and
- (c) the Parties' internal documents confirmed that the Parties monitor and compete with one another for contract opportunities, although there is some scepticism on the part of KNL as to the viability and credibility of XPO's dedicated solution.

115. Moreover, the CMA has not seen any evidence indicating that, following its award of the Greene King contract and entry into secondary drinks distribution with a dedicated network, XPO has either taken any steps or adopted any strategy to develop a shared solution, which may enable it to compete more closely with KNL. The CMA has also not seen any evidence of a more general incentive, as part of XPO's broader business strategy, to enter the secondary drinks distribution segment with a shared network.

#### *Competitive constraints*

116. Unilateral effects are more likely where customers have little choice of alternative suppliers.<sup>120</sup> The CMA considered whether, post-Merger, alternative suppliers would provide a sufficient competitive constraint on the Merged Entity.
117. The Parties submitted that they would be subject to significant competitive constraints from a range of third parties post-Merger. The CMA has considered the constraint from each of these alternatives below.

#### *Tradeteam*

118. Tradeteam is DHL's drinks logistics business and operates a network of operations across the UK providing both primary and secondary drinks distribution services. Tradeteam is the largest provider of secondary drinks distribution services in the UK, with a share of supply of [40-50]% (see Table 1 above).

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<sup>120</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.5.

119. The Parties submitted that Tradeteam imposes a significant competitive constraint on KNL through its extensive shared distribution network.
120. The Parties' internal documents consistently identify Tradeteam as a competitor and one of the main suppliers of secondary drinks distribution services in the UK.<sup>121</sup> XPO internal documents identify Tradeteam and KNL as the two leading drinks distribution networks in the UK.<sup>122</sup> KNL internal documents identify Tradeteam as its closest competitor for secondary drinks distribution in the UK.<sup>123</sup>
121. Third parties unanimously considered Tradeteam as a major supplier of secondary drinks distribution services. For example:
- (a) One pub company [X] said that Tradeteam and KNL were the 'main providers operating secondary drinks distribution nationally';<sup>124</sup>
  - (b) One pub company [X] described Tradeteam and KNL as the 'two main players' in the market for secondary drinks distribution;<sup>125</sup>
  - (c) One brewer [X] described Tradeteam and KNL as 'the only two viable options that are national players' on the basis that they 'can deliver to a pub in Lands' End and a pub in John O'Groats' and that 'someone else would need to make a massive investment to be able to do the same';<sup>126</sup> and
  - (d) One brewer [X] described Tradeteam as providing 'a similar service on a similar scale' to KNL.<sup>127</sup>
122. Evidence submitted by the Parties suggests that Tradeteam participates in almost all secondary drinks distribution tenders and is regularly shortlisted,<sup>128</sup> competing closely with KNL to win shared network contracts for customers throughout the UK.
123. In light of the evidence summarised above, the CMA believes that Tradeteam competes strongly in the supply of secondary drinks distribution services in the UK and will, post-Merger, continue to exert a strong competitive constraint on the Merged Entity.

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<sup>121</sup> Document titled [X], submitted by XPO in response to the CMA's second s.109.

<sup>122</sup> Emails titled [X] and [X], submitted by XPO in response to the CMA's second s.109.

<sup>123</sup> Document titled [X], submitted by KNL in response to the CMA's first s.109, page 4.

<sup>124</sup> CMA note of 7 September 2020 call with [X].

<sup>125</sup> CMA note of 16 September 2020 call with [X].

<sup>126</sup> CMA note of 9 October 2020 call with [X].

<sup>127</sup> CMA note of 13 October 2020 call with [X].

<sup>128</sup> Table 1 of the Issues Letter Response.

## *Wholesalers*

124. The Parties submitted that the competitive constraint posed by suppliers using a wholesale business model stems from their ability to provide both contract logistics services and wholesaling activities, enabling them to offer a wider range of services to customers. The Parties further submitted that wholesalers are able to subsidise their contract logistics activities with the larger margins from their wholesaling activities.<sup>129</sup>
125. As set out in the frame of reference (paragraphs 52 to 56 above), the CMA considers that secondary drinks distribution services provided by wholesalers form part of the relevant product frame of reference. This is true regardless of whether those suppliers are bidding for secondary drinks distribution contracts through contract logistics services or wholesale services. The CMA received evidence in the course of its investigation indicating that the following suppliers using a wholesale model are active in the supply of secondary drinks distribution services in the UK: Marston's, Matthew Clark and LWC.<sup>130</sup>

## *Marston's*

126. Marston's is a pub company that operates roughly 1,600 pubs in the UK. It also operates as a brewer and distributor through its recently agreed joint venture with Carlsberg.<sup>131</sup> Marston's delivers a combination of its beer and third party beverages to approximately 11,500 pubs in the UK, predominantly through a wholesale business model.<sup>132</sup> The CMA estimates Marston's share of supply in secondary drinks distribution to be [10-20]% - see Table 1 above.
127. The Parties submitted that Marston's is a strong competitor and exerts a considerable competitive constraint by operating a shared distribution network with a wide geographic footprint. The Parties submitted that this is evidenced by the fact that Marston's has recently won tenders for secondary drinks distribution contracts, including from customers previously serviced by KNL.<sup>133</sup>
128. The Parties' internal documents characterise Marston's as a competitor in secondary drinks distribution,<sup>134</sup> albeit to a lesser extent than Tradeteam. One

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<sup>129</sup> Issues Letter Response, paragraph 81.

<sup>130</sup> Other wholesalers may also exert a limited competitive constraint in relation to particular tenders, but the CMA has not seen specific evidence from other wholesalers.

<sup>131</sup> CMA summary decision of 9 October 2020 in the case no. ME/6898/20, [Anticipated joint venture between Carlsberg A/S and Marston's PLC](#).

<sup>132</sup> CMA note of 14 October 2020 call with [REDACTED].

<sup>133</sup> Issues Letter Response, paragraph 74.

<sup>134</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's third s.109; document titled [REDACTED], submitted by KNL in response to the CMA's third s.109; and document titled [REDACTED], slide 12, submitted by KNL in response to the CMA's third s.109, [REDACTED]. Document titled [REDACTED], submitted by XPO in response to the CMA's second s.109.

KNL internal document described Marston's as a new competitor, noting Marston's [REDACTED].<sup>135</sup> A number of other KNL internal documents indicate that KNL views Marston's as a significant and growing constraint on KNL and Tradeteam. In particular:

- (a) One KNL document described how Marston's has '[REDACTED]';<sup>136</sup>
- (b) A [REDACTED];<sup>137</sup> and
- (c) A KNL presentation on its drinks business describes Marston's' strengths as [REDACTED], noting that [REDACTED].<sup>138</sup>

129. Third parties also considered Marston's to be a potential supplier in secondary drinks distribution services. For example:

- (a) One pub company [REDACTED] described Marston's as 'an alternative national supplier in secondary drinks, which mainly provides in-house service';<sup>139</sup>
- (b) Another pub company [REDACTED] stated that it had considered Marston's as an option when it last tendered for secondary drinks;<sup>140</sup>
- (c) A third pub company [REDACTED] told the CMA that it had considered Marston's for a secondary drinks distribution contract but ultimately decided Marston's did not have the geographical coverage to meet its requirements;<sup>141</sup> and
- (d) One brewer [REDACTED] described Marston's as a potential option in secondary drinks on the basis that they 'operate a similar network to [KNL's] for themselves and pub groups such as [REDACTED]'.<sup>142</sup>

130. Evidence submitted by the Parties indicates that Marston's regularly participates in competitive tenders for secondary drinks distribution contracts and was recently shortlisted for several contracts.<sup>143</sup>

131. The CMA notes that Marston's has recently entered into a joint venture with Carlsberg and it is currently unclear whether the joint venture will follow Marston's' model of in-house secondary drinks distribution or Carlsberg's

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<sup>135</sup> Document titled [REDACTED], submitted by KNL in response to the third s109.

<sup>136</sup> Document titled [REDACTED], submitted by KNL in response to the third s109.

<sup>137</sup> Document titled [REDACTED], submitted by KNL in response to the CMA's first s.109.

<sup>138</sup> Document titled [REDACTED] at Annex IL to the Issues Letter Response.

<sup>139</sup> CMA note of 7 September 2020 call with [REDACTED].

<sup>140</sup> Responses to the CMA questionnaire submitted by [REDACTED]

<sup>141</sup> CMA note of 16 September 2020 call with [REDACTED]

<sup>142</sup> CMA note of 16 September 2020 call with [REDACTED].

<sup>143</sup> Table 1 of the Issues Letter Response.

model of supply by a third party such as Tradeteam or the Parties, which may impact Marston's service offering. One third party [redacted] told the CMA that an initial proposition by Marston's was insufficient to fulfil the required scale and UK wide demand but discussions have resumed with Marston's since the conclusion of the joint venture with Carlsberg.<sup>144</sup>

132. In light of the evidence summarised above, the CMA believes that Marston's exercises a material competitive constraint in the supply of secondary drinks distribution services in the UK and post-Merger will continue to exercise such a constraint on the Merged Entity.

*Matthew Clark and LWC*

133. Matthew Clark is a large drinks wholesaler in the UK supplying a range of drinks to both on-trade and off-trade premises. Matthew Clark has in-house delivery capabilities and a number of small secondary drinks distribution contracts with brewers under which it is responsible for delivering beer to pubs without taking ownership of the stock.<sup>145</sup> The CMA estimates Matthew Clark's share of supply in secondary drinks distribution to be [10-20]% (see Table 1 above).
134. LWC is a large independent drinks wholesaler active in the UK, providing a national distribution service from five distribution centres. The CMA estimates LWC's share of supply in secondary drinks distribution to be [0-5]% (see Table 1 above).
135. The Parties' internal documents indicate that the Parties consider Matthew Clark as a competitor in secondary drinks distribution. LWC is also considered, albeit to a lesser extent. For example:
- (a) One internal KNL document listed both Matthew Clark and LWC as competitors in secondary drinks. Matthew Clark is described as having [redacted], and [redacted]. LWC is described as a [redacted];<sup>146</sup>
  - (b) Another KNL internal document analysed Matthew Clark and LWC when considering the market dynamics in respect of the distribution of wine and spirits;<sup>147</sup> and

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<sup>144</sup> CMA note of 4 November 2020 call with [redacted], paragraph 10.

<sup>145</sup> CMA note of 9 October 2020 call with [redacted], paragraph 2.

<sup>146</sup> Document titled [redacted], submitted by KNL as Annex IL4 to the Issues Letter Response.

<sup>147</sup> Document titled [redacted], submitted by KNL as Annex IL5 to the Issues Letter Response.

- (c) A further KNL internal document included comparisons to service proposals made by Matthew Clark regarding a potential customer account.<sup>148</sup>
136. Third parties identified Matthew Clark as a viable alternative supplier for secondary drinks distribution services. One third party also identified LWC as a potential alternative supplier. For example:
- (a) A brewer [redacted] said that potential options in secondary drinks include ‘a couple of other larger wholesalers such as Matthew Clark and LWC’;<sup>149</sup>
- (b) One pub company [redacted] said that Matthew Clark is an alternative national supplier in secondary drinks, which specialises in restaurant delivery;<sup>150</sup>
- (c) One pub company [redacted] considered Matthew Clark as an option when it last tendered for secondary drinks because it is a ‘national logistics provider’;<sup>151</sup> and
- (d) A competitor [redacted] told the CMA that it occasionally competes against Matthew Clark and has recently lost a customer to it.<sup>152</sup>
137. Evidence submitted by the Parties suggested that Matthew Clark participates in competitive tenders for secondary drinks distribution contracts and is occasionally shortlisted for such contracts.<sup>153</sup>
138. Matthew Clark was recently awarded a contract to distribute [redacted] to a large pub group. The contract was awarded following a competitive tender process involving each of the two main secondary drinks distribution providers, KNL and Tradeteam. Matthew Clark [redacted].<sup>154</sup>
139. In light of the evidence summarised above, the CMA believes that Matthew Clark exercises some competitive constraint in the market for secondary drinks distribution in the UK. Matthew Clark is, however, stronger in the distribution of bottled beer, wine, spirits and soft drinks than keg and cask beer, which may make Matthew Clark less appealing to certain customers as a full service provider.

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<sup>148</sup> Document titled [redacted], submitted by KNL as Annex IL6 to the Issues Letter Response of 3 November 2020.

<sup>149</sup> CMA note of 16 September 2020 call with [redacted].

<sup>150</sup> CMA note of 7 September 2020 call with [redacted].

<sup>151</sup> Responses to the CMA questionnaire submitted by [redacted].

<sup>152</sup> CMA note of 10 September 2020 call with [redacted].

<sup>153</sup> Table 1 of the Issues Letter Response.

<sup>154</sup> CMA note of 3 November 2020 with [redacted].

140. The CMA believes that LWC is also active in the market to some extent, although it exercises a more limited competitive constraint than Matthew Clark.

#### *Other suppliers*

141. The CMA is aware of some other providers of secondary drinks distribution services competing to some extent on a more regional basis.
142. The Parties submitted that the fact that suppliers are more regionally focussed does not detract from their ability to exert a competitive constraint in secondary drinks distribution.<sup>155</sup>
143. Third parties indicated that Culina<sup>156</sup> and Saint Austell<sup>157</sup> are both actively competing for secondary drinks distribution contracts, with one large customer confirming that it contacted Culina prior to its last tender.<sup>158</sup> This is consistent with evidence of tender activities submitted by the Parties.<sup>159</sup>
144. Culina is a food and drink warehousing and distribution specialist. In the drinks distribution segment, Culina focuses on supplying fine wines, predominantly in London.<sup>160</sup> The CMA estimates that Culina's share of supply in secondary drinks distribution to be [0-5]% (see Table 1 above).
145. Saint Austell is a brewer, pub estate and wholesaler delivering a range of beers, wines, spirits and soft drinks to locations in South West England.<sup>161</sup> The CMA estimates that Saint Austell's share of supply in secondary drinks distribution to be [0-5]% (see Table 1 above).
146. In light of the evidence summarised above, the CMA believes that smaller suppliers such as Culina and Saint Austell may offer a limited constraint for certain tenders suited to their geographic networks.

#### *Constraint from other contract logistics suppliers*

147. The Parties submitted that many general contract logistics suppliers have the capabilities to offer a dedicated network solution to customers in secondary drinks distribution. The Parties submitted this is because a dedicated network solution is the same regardless of the product being delivered: what matters is

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<sup>155</sup> Issues Letter Response, paragraph 86

<sup>156</sup> Responses to the CMA questionnaire submitted by [REDACTED].

<sup>157</sup> CMA note of 7 September 2020 call with [REDACTED].

<sup>158</sup> CMA note of 4 November 2020 call with [REDACTED].

<sup>159</sup> Table 1 of the Issues Letter Response.

<sup>160</sup> CMA note of 15 September 2020 call with [REDACTED].

<sup>161</sup> <https://www.staustellbrewery.co.uk/about-the-company/who-we-are>

the ability to handle the last mile logistics of multiple-drop deliveries.<sup>162</sup> The Parties highlighted XPO's recent award of the Greene King contract as evidence of this.<sup>163</sup>

148. The CMA notes that, prior to 2019, XPO did not have any material customer relationships in secondary drinks distribution. XPO supplied contract logistics services across various other industry segments and responded to a tender opportunity from Greene King to offer a dedicated network solution for secondary drinks distribution, which it was able to fulfil with [X] investment. However, the CMA notes that dedicated networks are only likely to be attractive to customers of a certain size and scale and are not commercially feasible for most customers.
149. Moreover, the CMA has not received any evidence from third parties indicating that other general contract logistics suppliers actively compete to supply secondary drinks distribution services in the UK, through either a shared or dedicated network solution. One customer [X] told the CMA that it considered another large contract logistics supplier [X] when tendering for its most recent contract but that provider did not show the requisite urgency or desire to be considered seriously.<sup>164</sup> Another third party [X] considered Wincanton to be a potential provider for secondary drinks distribution since Wincanton had previous experience delivering food and drink before Wincanton decided to exit the market.<sup>165</sup>
150. In light of the above evidence, the CMA does not believe that other general contract logistics suppliers provide a material competitive constraint in the supply of secondary drinks distribution services.

*The CMA's conclusion on the constraint imposed by third-party suppliers*

151. In light of the evidence summarised above, the CMA believes that:
- (a) Tradeteam will continue to provide a strong constraint on the Merged Entity post-Merger;
  - (b) Marston's will continue to exercise a material competitive constraint on the Merged Entity post-Merger;

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<sup>162</sup> Issues Letter Response, paragraphs 71-72.

<sup>163</sup> Issues Letter Response, paragraph 94.

<sup>164</sup> CMA note of 4 November 2020 call with [X].

<sup>165</sup> CMA note of 2 October 2020 call with [X].

- (c) The Merged Entity will also be constrained to some extent by other suppliers using a wholesale model, most prominently Matthew Clark, and to a lesser extent LWC; and
- (d) Small suppliers, most notably Culina and St Austell, that compete on a more regional basis may also exert a limited constraint on the Merged Entity post-Merger in relation to certain tenders.

152. The CMA believes that post-Merger the aggregate competitive constraint posed by these alternative suppliers will sufficiently constrain the Merged Entity.

*Conclusion on horizontal unilateral effects in the supply of secondary drinks distribution services in the UK*

153. For the reasons set out above, the CMA believes that pre-Merger, KNL was the second largest secondary drinks distribution supplier, with a share of [20-30]% and post-Merger, the Merged Entity would remain the second largest supplier with a slightly increased share of [20-30]%. The CMA believes that the Parties compete in the supply of secondary drinks distribution services in the UK; however, due to the limited appeal of XPO's dedicated solution relative to KNL's shared offering for most customers, the CMA believes that the Parties are not particularly close competitors and that XPO is a limited competitive constraint on KNL.

154. In addition, the CMA believes that the Merged Entity will continue to be constrained by a number of suppliers offering secondary drinks distribution services, including: Tradeteam, which will continue to provide a strong constraint; Marston's, which will provide a material constraint; other suppliers using a wholesale model, most prominently Matthew Clark and also LWC; and to a lesser extent, small suppliers such as Culina and Saint Austell competing on a more regional basis.

155. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of secondary drinks distribution services in the UK.

***Supply of contract logistics services for (i) primary drinks distribution; (ii) retail; and (iii) food service in the UK***

*Primary drinks distribution*

156. The Parties submitted that although they overlap in primary drinks distribution in the UK, XPO only has one significant customer (Carlsberg) in this segment.

The Parties further submitted that XPO has failed to expand its offering to other customers, as demonstrated by the fact that it has unsuccessfully bid for customers such as [REDACTED].<sup>166</sup>

157. The Parties submitted that their estimated combined share of supply in primary drinks distribution is [20-25]%. The increment from XPO is low (estimated at [0-5]%).<sup>167</sup>
158. The CMA found that the Parties compete in this segment and that they competed directly for at least one primary drinks distribution contract. As noted at paragraph 86 above, suppliers can exert competitive constraints in bidding markets by bidding for, as well as winning, tender opportunities.
159. However, all customers indicated that they would have a large number of alternative suppliers available to them post-Merger, including DHL, Wincanton, Eddie Stobart, Downton, Turners (Soham), DSV, Howard Tenens, Bibby, Culina, Canute, Lloyd Fraser, Corporate Solutions Logistics, Harlequin and WH Malcolm. Moreover, the CMA did not receive concerns from any third parties in relation to this segment. The CMA therefore believes that there is no realistic prospect of an SLC as a result of horizontal unilateral effects in relation to primary drinks distribution.

### *Retail*

160. Within the retail segment of contract logistics, the Parties submitted that they largely focus on different categories of products and the companies that supply them: KNL has a strong focus on technology products, particularly mobile phones, while XPO's retail business is mainly focused on fashion, food and fast-moving consumer goods.<sup>168</sup>
161. The Parties submitted that their estimated combined share of supply within the retail segment is [20-30]%. The increment from KNL is low (estimated at [0-5]%).<sup>169</sup>
162. The CMA found that the Parties compete in this segment, and were considered as alternatives in relation to specific tenders. However, all customers indicated that they would have a large number of alternative suppliers available to them post-Merger, including DAMCO, APL Logistics, Unipart Logistics, DHL, Wincanton, Gist, Culina, Jigsaw, Yusen and Securispeed. Moreover, the CMA did not receive concerns from any third

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<sup>166</sup> Draft Form CO, paragraph 141.

<sup>167</sup> Draft Form CO, Table 5.

<sup>168</sup> Draft Form CO, paragraph 10.

<sup>169</sup> Draft Form CO, Table 8.

parties in relation to this segment. The CMA therefore believes that there is no realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of contract logistics services for retail.

#### *Food service*

163. The Parties submitted that, while KNL is active food service, XPO has no current business in this segment and there is therefore no overlap. The Parties estimate that KNL's share of supply in 2019 was [0-5]%.<sup>170</sup>
164. The CMA found that the Parties compete for opportunities in this segment. However, all customers indicated that they would have a large number of alternative suppliers available to them post-Merger, some of which have a much larger presence than either of the Parties, such as Brakes Bros and Best Food Logistics. Moreover, the CMA did not receive concerns from any third parties in relation to this segment. The CMA therefore believes that there is no realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of contract logistics services for food service.

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

165. 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 SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>171</sup>
166. However, in this case 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 plausible basis.

#### **Decision**

167. On the basis of the evidence set out above, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
168. The Merger will therefore **not be referred** under section 33(1) of the Act.

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<sup>170</sup> Draft Form CO, Table 7.

<sup>171</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**19 November 2020**

i Following the publication of this decision, DHL Tradeteam informed the CMA of an error in the calculation of volume data provided to the CMA. Revised data provided to the CMA by DHL Tradeteam indicates that the share of supply for DHL Tradeteam is likely to be marginally overstated and therefore that the share of supply for the Parties is likely to be marginally understated. The CMA considers that the extent of these changes does not materially affect the substance of this decision.