

# Anticipated acquisition by Deutsche Post DHL Group of J.F. Hillebrand Group AG

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

**ME/6969/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 15 March 2022. Full text of the decision published on 13 April 2022.

**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. On 16 August 2021, Deutsche Post DHL Group (**DPDHL**) agreed to acquire up to 100% of J.F. Hillebrand Group AG (together with its subsidiaries **Hillebrand**) (the **Merger**). DPDHL and Hillebrand are together referred to as the **Parties** and, for statements concerning the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of DPDHL and Hillebrand 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. Both Parties provide international freight forwarding services for, amongst other products, beer, wine, spirits, and other alcoholic drinks (**BWS**), across different transport modes. The CMA has found that, in the UK, the Parties primarily overlap in the provision of international freight forwarding services for BWS through ocean transport, which typically refers to containerised maritime traffic to move BWS across an ocean on trade lanes between the UK and countries outside the European Economic Area (**EEA**). The CMA has therefore assessed the impact of the Merger in the provision of ocean freight forwarding services for BWS in to and out of the UK.

4. Hillebrand also manufactures and sells flexitanks, which are disposable plastic flexibags used in the transport of bulk non-hazardous liquids, including bulk BWS. Flexitanks are an input in the supply of freight forwarding services for bulk BWS.
5. The CMA has assessed whether the Merger may give rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects and vertical effects.
6. The CMA has found that Hillebrand is the current market leader in the provision of ocean freight forwarding services for BWS in to and out of the UK, and that DPDHL has recently seen growth in its ocean freight forwarding services for BWS to UK customers. However, the CMA has found that, despite competing closely, the Parties are not each other's closest competitor in the UK.
7. The CMA has also found that there are a number of alternatives for UK customers, including other freight forwarders and carriers, that many of these alternatives have seen growth in their services to UK customers, and are expected to expand further in the UK. In addition, the CMA has found that most UK customers already use more than one provider of ocean freight forwarding services for BWS and that switching provider and/or using additional providers is relatively easy. On this basis, the CMA believes that the Parties strongly compete with a number of providers who are able to meet the different needs of UK customers. The CMA also believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the provision of ocean freight forwarding services for BWS in to and out of the UK.
8. The CMA has also considered whether the Merger could give rise to input foreclosure of providers of freight forwarding services for BWS that purchase flexitanks from Hillebrand. The CMA has found that the Merged Entity would not have the ability to foreclose rival providers of freight forwarding services for BWS, as there are a number of alternative suppliers of flexitanks for bulk BWS. Further, many rival providers of freight forwarding services for BWS already purchase most of their flexitank requirements from suppliers other than Hillebrand. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of input foreclosure of providers of freight forwarding services for BWS.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

# ASSESSMENT

## PARTIES

10. DPDHL is a group of controlled companies whose parent company is Deutsche Post AG, a German company listed on, *inter alia*, the Frankfurt Stock Exchange. DPDHL is a global logistics group providing, amongst other services, freight forwarding for a range of products, including BWS.<sup>1</sup> These services are provided across different transport modes, including ocean transport, worldwide and in the UK. DPDHL's turnover in 2021 was approximately £69.5 billion worldwide and £[X] in the UK.
11. Hillebrand is a private German stock corporation which provides freight forwarding services for non-hazardous liquids, in particular bulk non-hazardous liquids<sup>2</sup> and BWS.<sup>3</sup> These services are provided across different transport modes, mainly ocean transport, worldwide and in the UK. Hillebrand also manufactures and sells flexitanks.<sup>4</sup> Hillebrand's turnover in 2021 was approximately £[X] worldwide and £[X] in the UK.<sup>5</sup>
12. Hillebrand's main current shareholders are Cobepa SA (**Cobepa**) and Sofina Capital S.A. (**Sofina**). Cobepa, Sofina and other minority shareholders of Hillebrand are together referred to as the **Sellers**.

## TRANSACTION

13. Deutsche Post AG's wholly-owned subsidiary, Deutsche Post Beteiligungen Holding GmbH, agreed to acquire up to 100% of the share capital of Hillebrand for a fixed

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<sup>1</sup> These services include the national postal service in Germany (provided under the brand Deutsche Post), international express, transportation, e-commerce, and supply chain management services.

<sup>2</sup> For example, edible oils, mineral oils, non-hazardous chemicals, and fruit juices.

<sup>3</sup> Alcoholic drinks are generally considered non-hazardous liquids but due to their flammability, spirits are considered hazardous liquids (Note of call with competitor [X], paragraphs 5 and 16). For ease of reference, all BWS (including spirits) are referred to as non-hazardous liquids in this Decision.

<sup>4</sup> In April 2007 and in October 2020, Hillebrand acquired, respectively, Trans Ocean Distribution Limited and Braid Logistics Group. These were two bulk liquid logistics providers with their own flexitank production. See Hillebrand's [press release on the acquisition of Trans Ocean](#) and [press release on the acquisition of Braid](#).

<sup>5</sup> Based on Hillebrand's unaudited draft 2021 financial statements. Hillebrand submitted that audited figures were not yet available on 7 March 2022. Hillebrand also submitted that its UK turnover reflects aggregated revenue from the UK subsidiaries of J.F. Hillebrand Group AG but that this figure would not be materially different from its turnover from sales to UK customers, given that Hillebrand invoices most UK customers from the UK subsidiaries of J.F. Hillebrand Group AG. The audited turnover of Hillebrand in the UK in 2020 was approximately £[X] (assuming the Bank of England average spot exchange rate for 2020 of 1.1250 EUR/GBP). Merger Notice submitted by the Parties on 21 January 2022 (**Merger Notice**), Table 2.

base amount of €1.5 billion pursuant to a share purchase agreement of 16 August 2021.<sup>6</sup>

14. The Parties informed the CMA that the Merger is also (or has also been) the subject of review by the European Commission and other competition authorities in Argentina, Brazil, Chile, Japan, Morocco, Russia, Saudi Arabia, South Africa and in the United States.

## JURISDICTION

15. The CMA believes that the Merger (as described in paragraph 13) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.<sup>7</sup>
16. Each of DPDHL and Hillebrand is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
17. The UK turnover of Hillebrand in 2021 exceeded £70 million (see paragraph 11), so the turnover test in section 23(1)(b) of the Act is satisfied.
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 initial period for consideration of the Merger under section 34ZA(3) of the Act started on 26 January 2022 and the statutory 40 working day deadline for a decision is therefore 22 March 2022.

## COUNTERFACTUAL

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>8</sup> For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.<sup>9</sup>

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<sup>6</sup> DPDHL will acquire at least 92.23% of the share capital of Hillebrand from the Sellers. Merger Notice, paragraph 2.10. See also [DPDHL press release of 17 August 2021](#).

<sup>7</sup> Section 33(1)(a) of the Act.

<sup>8</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

<sup>9</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.2.

21. In determining the appropriate counterfactual, the CMA will generally focus only on significant changes affecting competition between the merger firms relative to the prevailing conditions of competition (eg entry into new markets in competition with each other, significant expansion by the merger firms in markets where they are present, or exit by one of the merger firms), and where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>10</sup>
22. The Parties submitted that the CMA should assess the Merger against the prevailing conditions of competition, but with Hillebrand under different ownership and control.<sup>11</sup> The Parties explained that the sale of Hillebrand was subject to a competitive sale process organised by its main shareholder, Cobepa,<sup>12</sup> and that DPDHL was one of the bidders participating in the sale process.<sup>13</sup> Cobepa explained that it approached [X] potential purchasers in [X] 2021.<sup>14</sup> Apart from DPDHL, [X] private equity firms, with or without existing investments in the freight forwarding industry submitted offers to acquire Hillebrand.<sup>15</sup> These included [X]<sup>16</sup> [X]<sup>17</sup> [X].<sup>18</sup> The Sellers ultimately gave the preference to DPDHL because [X] for the Hillebrand business.<sup>19</sup>
23. The CMA has not received evidence that indicates it should assess the Merger against a counterfactual other than the prevailing conditions of competition (including sale to a third party which maintained Hillebrand's position as an independent competitor), and the Parties and third parties have not put forward arguments in this respect. Some DPDHL and Hillebrand internal documents refer to Hillebrand's sale process and/or to other interested purchasers for the Hillebrand business, including [X].<sup>20</sup> Information provided by Cobepa and publicly available information indicate that [X] existing interests in the freight forwarding industry do not appear to materially overlap with those of Hillebrand and that [X] has no existing interest in the

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<sup>10</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 3.8-3.9.

<sup>11</sup> Merger Notice, paragraph 11.1.

<sup>12</sup> Cobepa explained that, after a holding of roughly 15 years, it decided to sell its shares in Hillebrand, in agreement with the other Sellers. Cobepa also explained that Hillebrand's [X]. Response submitted by Cobepa to questions 5(a) and (b) of the Request for Information of 27 October 2021 (**Cobepa's Response to RF11**), question 5(a).

<sup>13</sup> Merger Notice, paragraphs 9.6-9.7.

<sup>14</sup> Cobepa's Response to RF11, Table 1.

<sup>15</sup> Cobepa's Response to RF11, Table 1.

<sup>16</sup> Cobepa submitted that [X] is active in the freight forwarding industry via its investment [X] in North America.

<sup>17</sup> Cobepa submitted that [X] is active in the freight forwarding industry via its investment [X] in South-east Asia; [X], which is active in freight forwarding for small and medium businesses; and [X], which is active in freight forwarding.

<sup>18</sup> Cobepa submitted that [X] is not active in the freight forwarding industry.

<sup>19</sup> Cobepa's Response to RF11, Table 1.

<sup>20</sup> Merger Notice, Annex 006 (pages 4 and 19), Annex 007 (page 4), Annex 008 (pages 4 and 66), Annex 014, Annex 076, Annex 077; Annex 079; Annex 080; Annex 082, Annex 083.

freight forwarding industry.<sup>21</sup> On this basis, the CMA believes that, absent the Merger, there is a realistic prospect that the Sellers would have sold Hillebrand to an alternative purchaser but that this would lead to materially the same conditions of competition as the prevailing conditions of competition.<sup>22</sup>

24. As discussed further at paragraph 74, the CMA has received evidence showing that at least in Q4 2020 and during 2021, Hillebrand experienced certain [§<] challenges in providing freight forwarding services for BWS in to and out of the UK (albeit it remains one of the main providers for these services to UK customers).<sup>23</sup> As also discussed further at paragraphs 69(b) and 75, the CMA has received evidence indicating that DPDHL has recently seen growth in its freight forwarding services for BWS to UK customers which, absent the Merger, could have been expected to continue. However, as noted from paragraph 94, similar or greater growth has also been seen by a number of other providers of freight forwarding services for BWS in the UK.
25. In determining the appropriate counterfactual, the CMA does not seek to ossify the market at a particular point in time and an assessment against the prevailing conditions of competition might, for example, reflect that, absent the merger, a merger firm would have continued making investments in improvements, innovations, or new products.<sup>24</sup> The CMA therefore considers that the prevailing conditions of competition in this case include any [§<] challenges recently experienced by Hillebrand in providing freight forwarding services for BWS in to and out of the UK as well as any growth seen by DPDHL (and other competitors) in freight forwarding services for BWS to UK customers. This has been considered as part of the competitive assessment of the Merger where relevant.
26. In this case, the CMA therefore believes the prevailing conditions of competition to be the relevant counterfactual.

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<sup>21</sup> See [§<]. Some DPDHL internal documents discussing the Merger also indicate that DPDHL believed that it had a slight advantage relative to other interested purchasers because it was 'the only bidder with meaningful synergies.' Merger Notice, Annex 011.1 (page 3); Annex 012.1 (page 3); Annex 013.1 (page 3); Annex 014.

<sup>22</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.9.

<sup>23</sup> For the purposes of this Decision, UK customers refers to UK-based customers or global customers with a material BWS business in the UK.

<sup>24</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.3.

## BACKGROUND

### The Parties' activities in the freight forwarding industry

27. As noted at paragraphs 10 and 11, DPDHL and Hillebrand are both active in the freight forwarding industry in the UK and worldwide. In the UK, the Parties' activities primarily overlap in international freight forwarding services for BWS.<sup>25</sup>

- (a) DPDHL provides international freight forwarding services for BWS across different transport modes (including ocean transport) under its DHL brand and, to a certain extent, through its Giorgio Gori (**Gori**) brand.<sup>26</sup> DPDHL has limited activities in freight forwarding for non-hazardous liquids other than BWS, including in bulk format.<sup>27</sup> DPDHL also provides international freight forwarding services for non-liquid cargo.
- (b) Hillebrand provides international freight forwarding services for BWS across different transport modes, in particular ocean and short sea transport. Hillebrand also provides freight forwarding services for bulk non-hazardous

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<sup>25</sup> The Parties submitted that neither Party provides domestic land freight forwarding services in the UK, and that air and ocean freight forwarding services are mostly provided cross-border. Merger Notice, paragraph 12.9.

<sup>26</sup> DPDHL submitted that in 2014 it acquired Gori, which is headquartered in Italy and provides freight forwarding services for a range of products including BWS. DPDHL decided to retain the Gori brand in countries where Gori already operated, and to continue to provide freight forwarding services for BWS under the DHL brand in countries where Gori did not have a (significant) presence. DPDHL also submitted that the UK is a "DHL country" for DPDHL, but that it uses the Gori brand in the UK occasionally. Response submitted by the Parties to the Request for Information of 27 October 2021 (**Response to RFI1**), paragraph 27.23.

<sup>27</sup> DPDHL submitted that it did not provide international freight forwarding services for non-hazardous liquids other than BWS in 2021 in the UK, and that in 2020 it had UK sales of only approximately £[REDACTED] (Response submitted by the Parties to the Request for Information of 2022 (**Response to RFI3**), paragraph 6.1). The Parties' internal documents indicate that there are a number of alternative providers available for UK customers to handle their bulk non-hazardous liquids requirements (other than BWS), including freight forwarders (eg Kuehne + Nagel, Hoyer, Tiba, Manuport Logistics), ISO tank operators (eg Bulkhaul, Newport, Bertschi, Stolt-Nielsen), and carriers (eg Maersk, MSC) (Merger Notice, Annex 004.1, page 13; Annex 006, page 28; Annex 007, page 16 and 46; Annex 008, pages 33 and 35; Annex 011.1, page 13; Annex 012.1, page 13; Annex 013.1, page 13; Annex 082, page 29; Annex 084, pages 20 and 50). In addition, no third party has raised concerns in relation to the Parties' overlap in international freight forwarding services for bulk non-hazardous liquids other than BWS. On this basis, the CMA considered that the available evidence indicated that no plausible competition concerns would arise in respect of international freight forwarding services for non-hazardous liquids other than BWS at an early stage in its investigation and this is therefore not discussed further in this Decision.

liquids other than BWS. Hillebrand has limited activities in freight forwarding for non-liquid cargo.<sup>28, 29</sup>

28. The Parties are also active in certain activities which are vertically related to the freight forwarding services provided by the other Party, worldwide and in the UK. In particular:

- (a) DPDHL operates an aircraft fleet primarily for its express and parcel business. Some of this airfreight transport capacity is marketed internally to its freight forwarding division and externally to third party freight forwarders providing air freight forwarding, including Hillebrand. However, DPDHL's airfreight capacity available to other freight forwarders is limited and Hillebrand has limited activities in air freight forwarding services for BWS in the UK.<sup>30</sup> In addition, the

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<sup>28</sup> Hillebrand submitted that it handles limited volumes of non-liquid commodities and that freight forwarding services for those commodities accounted for only approximately [5-10]% of its total sales in the UK in 2020 (ie roughly £[<]) (Merger Notice, footnote 4 to paragraph 2.13; Response to RFI1, paragraph 7.9 and footnote 1; Response submitted by the Parties to the Request for Information of 2 December 2021 (**Response to RFI2**), paragraph 14.1). The CMA has not received evidence suggesting that Hillebrand is a material provider of international freight forwarding services for non-liquid commodities. In addition, no third party has raised concerns in relation to the Parties' overlap in international freight forwarding services for non-liquid cargo. On this basis, the CMA considered that the available evidence indicated that no plausible competition concerns would arise in respect of international freight forwarding services for non-liquid cargo at an early stage in its investigation and this is therefore not discussed further in this Decision.

<sup>29</sup> The Parties also overlap in the provision of international freight forwarding for BWS by air, short sea, land, and intermodal transport. In relation to international air freight forwarding services, as noted at paragraph 28(a) and related footnotes 30 and 31, (a) Hillebrand has limited activities in international air freight forwarding services for BWS in the UK; (b) evidence received by the CMA indicates that there are alternative providers of air freight forwarding services and that BWS is not primarily transported by air; and (c) other than one customer [<], no other third party who responded to the CMA's merger investigation has raised concerns with respect to the Parties' provision of international air freight forwarding services for BWS in to and out of the UK. In relation to international short sea, land, and intermodal transport, while a precise breakdown is not available, the Parties do have material sales of international freight forwarding services for BWS to customers in the UK in these modes of transport. In addition, one UK customer [<] raised a concern that the Merger would reduce competition for short sea freight forwarding for BWS in to and out of the UK. However, the evidence received by the CMA indicates that (a) it is not uncommon for a number of UK customers to use a mix of short sea, land, and/or intermodal freight forwarding services to move their BWS requirements between the UK and EEA countries (see [<] responses to the customer questionnaire, question 6); (b) the Parties' combined share of supply for short sea / land / intermodal freight forwarding is relatively low and lower than those for ocean freight forwarding for BWS in to and out of the UK (see Table 1); (c) there is a wide set of providers of freight forwarding services via these transport modes for BWS available to UK customers, which is wider than that available to ocean freight forwarding for BWS (see [<] responses to the customer questionnaire, question 4); and (d) such providers have similar or more material activities in international short sea / land / intermodal freight forwarding for BWS in comparison to their activities in the narrower international ocean freight forwarding for BWS (see [<] responses to the competitor questionnaire, question 1). Moreover, no other third party has raised concerns regarding these transport modes. On this basis, the CMA considered that the available evidence indicated no plausible competition concerns would arise in respect of international air, short sea, land, and intermodal freight forwarding services for BWS at an early stage in its investigation and has instead focused its competitive assessment on ocean freight forwarding services for BWS.

<sup>30</sup> The Parties submitted that DPDHL's airfreight capacity available to other freight forwarders was limited pre-Merger and represented only very low market shares on any route (Merger Notice, paragraph 19.3). The Parties also submitted that Hillebrand has limited activities in air freight forwarding services for BWS in the UK, with these services accounting for less than [0-5]% of its UK and worldwide revenues in 2020 (ie roughly £[<] and £[<]) (Response to RFI1, Table 2 to question 10). Although one customer who responded to the CMA's merger investigation said that Hillebrand is entering the segment for air freight forwarding services for BWS ([<] response to the customer questionnaire, question 15), no other third party has raised concerns in relation to the vertical relationship between DPDHL's upstream airfreight



evidence received by the CMA indicates that there are alternative providers of upstream airfreight transport services and downstream air freight forwarding services, and that BWS is not primarily transported by air.<sup>31</sup> On the basis of this evidence, the CMA considered that no plausible competition concerns would arise in respect of this vertical link, and therefore it is not discussed further in this Decision.

- (b) Hillebrand manufactures a range of flexitanks used in the transport of bulk non-hazardous liquids, including bulk BWS. Hillebrand submitted that it typically sells flexitanks to customers together with its freight forwarding services of bulk non-hazardous liquids, including bulk BWS.<sup>32</sup> However, Hillebrand explained that it also sells a limited volume of flexitanks on a standalone basis to, amongst others, third party freight forwarders providing services for bulk non-hazardous liquids, including bulk BWS.<sup>33</sup> Freight forwarders, including DPDHL,<sup>34</sup> may therefore purchase flexitanks from Hillebrand and other suppliers when providing freight forwarding services for bulk BWS. This is discussed further in the **Competitive Assessment** section.

## International freight forwarding services for BWS

29. As noted at paragraph 27, the Parties' activities primarily overlap in the provision of international freight forwarding services for BWS in to and out of the UK. According to *gov.uk*, 'freight forwarding is a service industry that involves moving goods [including BWS] around the world on behalf of importers and exporters.'<sup>35</sup> International freight

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transport services and Hillebrand's downstream freight forwarding services for non-hazardous liquids (including BWS). In addition, as noted at footnote 31, evidence suggests there are a number of alternative providers of upstream air transport services.

<sup>31</sup> Hillebrand's internal documents indicate that there are a number of alternative providers of upstream air freight transport services (Merger Notice, Annex 082 (page 19); Annex 084 (page 28)). Downstream, customer and competitor feedback indicates that there are alternative providers of air freight forwarding services for BWS, such as Albatrans and Expeditors (Note of call with customer [3<], paragraph 14). Moreover, the Parties submitted that large volumes of non-hazardous liquids (including BWS) cannot be transported by air (Response to RF11, paragraph 7.10). This was confirmed by customer feedback, with only a very few customers who responded to the CMA's merger investigation saying that they use Hillebrand or other provider for air freight forwarding services and only to move part of their BWS requirements in to and/or out of the UK ([3<] responses to the customer questionnaire, question 4. See also, Note of call with customer [3<], paragraph 14).

<sup>32</sup> Merger Notice, paragraphs 2.6, 12.2 and 14.18; Response to RF11, paragraphs 18.2, 18.6, 18.8.

<sup>33</sup> Merger Notice, paragraphs 12.2 and 14.26; Response to RF11, paragraphs 18.2-18.3; Response to RF12, table at question 20(c).

<sup>34</sup> Response to RF11, paragraphs 32.1-32.2.

<sup>35</sup> [Freight forwarding moving goods - GOV.UK](https://www.gov.uk/guidance/freight-forwarding-moving-goods).

forwarding includes the provision of freight forwarding services from one country to any other country in the world.<sup>36</sup>

30. Together with the organisation and coordination of international transport, providers of international freight forwarding offer a range of services. These may include the organisation of international transport documents, insurance, customs clearance, handling, and storage of the products during international transit, the consolidation of smaller shipping volumes into larger shipments, and the coordination and management of shippers/customers' supply chain.
31. BWS can be transported either cased (eg packaged BWS in small to large quantities) or in bulk (ie unpackaged BWS transported in large quantities). Bulk BWS is transported in tanks, in particular flexitanks (especially wine) and ISO tanks (especially beer and spirits).<sup>37, 38</sup>
32. BWS can also be transported through different transport modes. From a UK perspective, these different transport modes include:
  - (a) **ocean transport** which typically refers to containerised maritime traffic that moves BWS across an ocean (ie deep sea) on trade lanes between the UK and countries outside the European Economic Area (**EEA**);<sup>39</sup>
  - (b) **short sea transport** which typically refers to containerised maritime traffic that moves BWS along a coast without having to cross an ocean on trade lanes between the UK and EEA countries;<sup>40</sup>
  - (c) **land transport** which typically refers to BWS shipments by trailer or train between the UK and continental Europe;
  - (d) **intermodal transport** which typically refers to BWS shipments moved via different transport modes between the UK and EEA countries; and

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<sup>36</sup> In contrast, domestic freight forwarding involves the provision of freight forwarding services within one country.

<sup>37</sup> Note of call with competitor [S&L], paragraph 5.

<sup>38</sup> The Parties submitted that bulk BWS may also be transported, albeit to a lesser extent, in Intermediate Bulk Containers (**IBC**) totes and drums. The Parties' internal documents and third-party evidence received by the CMA do not support the Parties' submissions. However, the CMA believes that the fact that IBC totes and drums are not typically used to transport BWS does not change its assessment of the Merger. As further discussed from paragraph 130, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC from vertical effects in relation to Hillebrand's upstream supply of flexitanks for bulk BWS and DPDHL's provision of international freight forwarding services for BWS in to and out of the UK.

<sup>39</sup> [UK Port Freight Statistics: 2020](#).

<sup>40</sup> [UK Port Freight Statistics: 2020](#).

- (e) **air transport**, which typically refers to BWS shipments by air.

***BWS imports into and exports from the UK***

33. The UK is mainly an import country of BWS:<sup>41</sup>

- (a) Wine is mostly produced by wineries in certain European countries (eg Italy, France, Spain, Portugal, Germany, and Austria) (the **Old World**) as well as in Australia, certain South American countries (eg Chile and Argentina), the US, and South Africa (the **New World**).<sup>42</sup> Wine from the Old World, in particular high-end wine, is mostly shipped cased to the UK primarily via short sea, land, or intermodal transport.<sup>43</sup> Wine from the New World is shipped either cased or in bulk (in particular entry-level wines) to the UK, primarily via ocean transport.<sup>44</sup>
- (b) Beer and spirits are produced in the UK (and as such, international freight forwarding services are not required) or shipped mostly cased to the UK from EEA or non-EEA countries. The transportation of beer and spirits from EEA countries takes place mainly via short sea, land, and intermodal transport, whereas the shipment of beer and spirits from non-EEA countries occurs mainly through ocean transport.<sup>45</sup>

34. Large volumes of imports of BWS into the UK take place by, or on behalf of, large retailers.<sup>46</sup> Other importers of BWS into the UK include, for example, BWS multinational brand owners, bottlers, distributors, smaller retailers, and customers active in the hospitality sector (eg pubs and restaurants).<sup>47</sup>

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<sup>41</sup> Merger Notice, Annex 080 (page 85). See also, Note of call with competitor [X], paragraph 2(a).

<sup>42</sup> Merger Notice, Annex 080 (page 85). See also, Note of call with competitor [X], paragraph 15; Note of call with customer [X], paragraph 3. See also, [X] responses to the customer questionnaire, question 1.

<sup>43</sup> Merger Notice, Annex 080 (page 85). See also, [X] responses to the customer questionnaire, question 1.

<sup>44</sup> Merger Notice, Annex 080 (pages 38 and 85). See also, Note of call with competitor [X], paragraph 15; Note of call with customer [X], paragraph 4. See also, [X] responses to the customer questionnaire, question 1.

<sup>45</sup> Merger Notice, Annex 080 (page 38), Annex 084 (page 73). See also, Note of call with customer [X], paragraphs 9, 13 and 15. See also, [X] response to the competitor questionnaire, question 5. See also, [X] responses to the customer questionnaire, question 1. Note of call with customer [X], paragraph 3.

<sup>46</sup> Merger Notice, Annex 080 (pages 85-86).

<sup>47</sup> Merger Notice, Annex 117 (page 142). See also, Response to RFI2, Annex 137 and Annex 138. See also, Note of call with competitor [X], paragraph 30; Note of call with customer [X], paragraph 19; Note of call with customer [X], paragraph 2; Note of call with competitor [X], paragraphs 16-17 and 22.

35. The UK also exports certain alcoholic drinks (eg Scottish whiskey, gin, and beer) either cased or in bulk, through a combination of modes of transport, including ocean.<sup>48</sup>

### ***Customer preferences and procurement of international freight forwarding services for BWS in the UK***

36. UK customers tend to contract international freight forwarding services to move their BWS requirements in to and/or out of the UK,<sup>49</sup> considering factors such as price, the quality of the service provided, capacity, and the reliability of providers.<sup>50</sup>
37. UK customers also place value on international freight forwarding providers with a dedicated BWS brand or business division or a BWS focus (referred to here as **freight forwarders with a BWS focus**), as these providers may have more in-depth knowledge of and track record in the BWS sector.<sup>51</sup> However, having a BWS focus does not appear to be the most important customer requirement. Many customers do use or consider using providers that do not have a BWS focus.<sup>52</sup> Some UK customers, including at least some large retailers and multinational brand owners, also consider using or currently use carriers to move and organise the transport of their BWS requirements in to and/or out of the UK (see from paragraph 126).<sup>53</sup>

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<sup>48</sup> Merger Notice, Annex 080 (page 85). See also, Note of call with competitor [X], paragraph 30; Note of call with customer [X], paragraphs 2 and 4; Note of call with customer [X], paragraphs 1, 3, 6, 14-16; Note of call with competitor [X], paragraphs 2(b) and 12-13. See also [X] responses to the customer questionnaire, questions 1 and/or 2.

<sup>49</sup> Note of call with competitor [X], paragraph 10. Note of call with customer [X], paragraph 40. See also [X] responses to the customer questionnaire, question 3

<sup>50</sup> Note of call with customer [X], paragraph 7; Note of call with customer [X], paragraph 27. See also [X] responses to the customer questionnaire, question 8.

<sup>51</sup> Merger Notice, paragraphs 15.22-15.23. See also, Response submitted by the Parties to the section 109 Notice served by the CMA on 7 December 2021 (**Response to the s109 Notice of 7 December 2021**), Annex 011 (page 10); Annex 110 (page 36). See also, Note of call with competitor [X], paragraphs 10, 13-14 and 34; Note of call with customer [X], paragraphs 4 and 12; Note of call with competitor [X], paragraphs 4 and 6; Note of call with customer [X], paragraphs 20-22. See also, [X] responses to the customer questionnaire, questions 8 and 15.

<sup>52</sup> Note of call with competitor [X], paragraph 34; Note of call with customer [X], paragraphs 4 and 12 and response to follow up question at paragraph 12; Note of call with customer [X], paragraphs 15 and 39; Note of call with customer [X], paragraphs 10, 13 and 23; Note of call with competitor [X], paragraphs 5 and 10. See also, [X] responses to the customer questionnaire, questions 2 and/or 6.

<sup>53</sup> Note of call with competitor [X], paragraph 34; Note of call with customer [X], paragraphs 4 and 12 and response to follow up question at paragraph 12; Note of call with customer [X], paragraphs 15 and 39; Note of call with customer [X], paragraphs 10, 13 and 23; Note of call with competitor [X], paragraphs 5 and 10. See also, [X] responses to the customer questionnaire, questions 4, 6 and 10.

38. UK customers award business largely through global and/or local tenders, or a mix of tenders and bilateral negotiations.<sup>54</sup> Tenders and/or bilateral negotiations take place frequently, with contracts typically having an average length of 1 to 2 years.<sup>55</sup> There are also longer term contracts which will normally be awarded for a period of up to 3 years.<sup>56</sup>
39. UK customers typically use multiple freight forwarders and/or carriers to handle their BWS requirements,<sup>57</sup> and can redistribute volumes and/or UK trade lanes among existing providers in case of price increases or issues with the ability of providers to deliver the right level of service.<sup>58</sup> UK customers also often switch and/or use additional providers when better commercial terms are found or where there are issues with the ability of the provider to deliver the right level of service.<sup>59</sup> In general, customers told the CMA that switching and/or using additional providers to handle their BWS requirements is relatively easy,<sup>60</sup> that switching costs are mostly related to administrative work and IT system integration,<sup>61</sup> and that the switching process can be completed fairly quickly.<sup>62</sup> In this regard, many competitors that responded to the CMA's merger investigation also stated that they are always looking for opportunities

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<sup>54</sup> Most customers who responded to the CMA's merger investigation said that they contract international freight forwarding services for BWS in the UK through tenders, or a mix of tenders and bilateral negotiations ([redacted] responses to the customer questionnaire, question 5. See also, Note of call with competitor [redacted], paragraphs 31-32; Note of call with customer [redacted], paragraph 14; Note of call with competitor [redacted], paragraphs 18 and 20-21.

<sup>55</sup> Most customers who responded to the CMA's merger investigation said that they review international freight forwarding rates for BWS or enter into contracts for periods of 1 to 2 years ([redacted] responses to the customer questionnaire, question 5). Contracts may be awarded for even shorter periods (eg [redacted] response to the customer questionnaire, question 5). See also, Note of call with competitor [redacted], paragraph 18.

<sup>56</sup> [redacted] responses to the customer questionnaire, question 5). Contracts may be awarded for longer periods (eg [redacted] response to the customer questionnaire, question 5).

<sup>57</sup> Almost all customers who responded to the CMA's merger investigation use international freight forwarding services for BWS from more than one provider ([redacted] responses to the customer questionnaire, question 4). See also Note of call with competitor [redacted], paragraph 36. Note of call with customer [redacted], paragraph 7(d).

<sup>58</sup> Note of call with customer [redacted], paragraphs 4 and 17-18. Note of call with customer [redacted], paragraphs 11-13. [redacted] responses to the customer questionnaire, questions 6 and 9.

<sup>59</sup> Note of call with customer [redacted], paragraph 18. Note of call with customer [redacted], paragraphs 10-11 and 36. See also [redacted] responses to the customer questionnaire, questions 6 and/or 9.

<sup>60</sup> For example, most customers who responded to the CMA's merger investigation said that they consider switching provider of ocean freight forwarding service for cased BWS in to and out of the UK easy ([redacted] responses to the customer questionnaire, question 9; Note of call with competitor [redacted], paragraph 41; Note of call with customer [redacted], paragraph 28). However, a few third parties mentioned that switching freight forwarder may be more difficult in relation to bulk BWS shipments ([redacted] responses to the customer questionnaire, question 13).

<sup>61</sup> [redacted] responses to the customer questionnaire, question 9. Some customers who responded to the CMA's merger investigation also referred to resources necessary to carry out a tender process ([redacted] responses to the customer questionnaire, question 9).

<sup>62</sup> Note of call with customer [redacted], response to follow question at paragraph 18. See also [redacted] responses to the customer questionnaire, question 9. Specifically, some customers who responded to the CMA's merger investigation said that the switching process can largely be completed in 3 to 6 months ([redacted] response to the customer questionnaire, question 9). Some third parties also referred to the time necessary to carry out a tender process ([redacted] responses to the customer questionnaire, question 9).

to expand their BWS business with respect to UK customers,<sup>63</sup> with most competitors telling the CMA that there are no high barriers to expansion.<sup>64</sup>

### ***Flexitanks for bulk BWS (especially wine)***

40. As noted at paragraph 31, bulk BWS is typically transported in flexitanks or ISO tanks.<sup>65</sup> Flexitanks are currently the preferred option for the transport of bulk wine but cannot be used to transport bulk spirits and are almost never used in the transport of beer and other BWS containing carbon dioxide.<sup>66</sup>
41. Flexitanks are disposable, flexible bags made of one or multiple layers of polyethylene and polypropylene (ie they may be single or multi layered). There is a range of different qualities of flexitanks, for example due to the polyethylene used to produce the flexibags or ancillary components, such as valves to load/unload the flexitank. In particular for wine, the available evidence suggests that customers have a preference for high-end multi-layer flexitanks.<sup>67</sup>
42. Flexitanks are mostly produced in Asia, purchased globally by customers, and ultimately shipped to customers' locations for use. In the case of BWS, these are typically wine production locations.<sup>68</sup>

## **COMPETITIVE ASSESSMENT**

### **Frame of reference**

43. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.<sup>69</sup> It involves identifying the most significant competitive

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<sup>63</sup> Note of call with competitor [X], paragraphs 11, 13 and 35. See also [X] responses to the competitor questionnaire, question 6. See also, competitor [X] response to follow up questions to the competitor questionnaire.

<sup>64</sup> [X] responses to the competitor questionnaire, question 6.

<sup>65</sup> The Parties submitted that ISO tanks are rigid hollow stainless-steel tanks which are used to transport bulk hazardous and non-hazardous liquids. They are reusable and have a life span of approximately 30 years during which they are reloaded with varying products. ISO tanks must be cleaned before they are reloaded with the same or different products. Flexitanks were introduced in the late nineties as a cheaper and more flexible alternative to ISO tanks in the transport of bulk non-hazardous liquids, including BWS. Response to RF11, paragraphs 28.1 and 28.2(b); Response to RF12, paragraph 17.2

<sup>66</sup> The Parties estimated that flexitanks are used in approximately [70-80]% of bulk wine shipments (Response to RF12, paragraph 17.4). Spirits are considered hazardous liquids and must be transported in ISO tanks (Response to RF12, paragraph 18.11. See also Note of call with competitor [X], paragraphs 5 and 16). Beer and other BWS containing carbon dioxide can blow up/burst the flexitanks (Response to RF12, paragraph 18.11).

<sup>67</sup> Note of call with competitor [X], paragraphs 20-26.

<sup>68</sup> Note of call with flexitank supplier [X], paragraphs 2 and 6-7.

<sup>69</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.1.

alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.<sup>70</sup>

44. However, the CMA's assessment of the competitive effects of a merger does not need to be based on a highly specific description of any particular market (such as descriptions of the precise boundaries of the relevant market and bright-line determinations of whether particular products or services fall within it).<sup>71</sup> This is because in most mergers the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition.<sup>72</sup> Moreover, 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.<sup>73</sup> Therefore, the CMA may take a simple approach to identifying the market or markets within which an SLC may exist, for example, by describing the market as comprising the most important constraints on the merger firms that have been identified in the CMA's assessment of competitive effects.<sup>74</sup>
45. As noted at paragraph 27, the Parties' activities primarily overlap in international freight forwarding services for BWS in the UK. There is also a vertical relationship between Hillebrand's upstream supply of flexitanks and DPDHL's downstream freight forwarding services for BWS. Accordingly, the CMA has focused on these services and products in its assessment of the frame of reference.

### ***Freight forwarding services***

#### *Product scope*

46. The Parties submitted that distinguishing freight forwarding services by transport mode, ie between ocean, land, and air transport, would be the narrowest plausible basis for analysing the Merger.<sup>75</sup> In this respect, the Parties submitted that Hillebrand

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<sup>70</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>71</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.5.

<sup>72</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>73</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.4.

<sup>74</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.5.

<sup>75</sup> Merger Notice, paragraph 12.12.

is principally active in ocean freight forwarding and has a very limited presence in the land and air freight forwarding markets.<sup>76</sup>

47. The Parties also submitted that, for the purposes of the assessment of the Merger, there would be no need to distinguish between domestic and international freight forwarding services as neither Party provides domestic land freight forwarding in the UK, with ocean and air freight forwarding being provided mostly cross-border.<sup>77</sup> In addition, the Parties submitted that there would be no need to adopt a further distinction according to the type of goods transported, as freight forwarders would generally be able to serve all type of customers without distinction between the types of good transported.<sup>78</sup> This notwithstanding, the Parties provided information in relation to a narrower sub-segment of ocean freight forwarding of BWS.
48. The Parties also referred to previous decisions of the European Commission, in which the European Commission considered:
- (a) freight forwarding to form an independent market from transport services;<sup>79</sup>
  - (b) markets for international (or cross-border) freight forwarding services to be separate from domestic freight forwarding;<sup>80</sup>
  - (c) freight forwarding services to be segmented by transport mode, ie between ocean, land and air transport;<sup>81</sup> and

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<sup>76</sup> Merger Notice, paragraph 12.1.

<sup>77</sup> Merger Notice, paragraph 12.9.

<sup>78</sup> Merger Notice, paragraph 12.10.

<sup>79</sup> For example, [Case Comp M.1794 – Deutsche Post/Air Express International](#), 7 February 2000, paragraphs 8 and 12; [Case Comp M.3496 – TNT Forwarding Holding/Wilson Logistics](#), 2 August 2004, paragraph 8; [Case Comp M.4746 – Deutsche Bahn/English Welsh & Scottish Railway Holdings](#), 6 November 2007, paragraph 12; [Case Comp M.5096 – RCA/MAV Cargo](#), 25 November 2008, paragraph 15; [Case Comp M.5480 – Deutsche Bahn/PCC Logistics](#), 16 June 2009, paragraph 11; [Case Comp M.6059 – Norbert Dentressangle/Laxey Logistics](#), 21 March 2011, paragraph 17; [Case Comp M.6570 – UPS/TNT Express](#), 30 January 2013, paragraph 26; [Case Comp M.7630 – Fedex/TNT Express](#), 8 January 2016, paragraph 23; [Case Comp M.9016 – CMA CGM/Container Finance](#), 22 October 2018, paragraphs 59 and 61; [Case Comp M.9319 – DP World/P&O Group](#), 26 June 2019, paragraphs 32 and 39.

<sup>80</sup> For example, [Case Comp M.1794 – Deutsche Post/Air Express International](#), 7 February 2000, paragraph 9; [Case Comp M.3496 – TNT Forwarding/Wilson Logistics](#), 2 August 2004, paragraph 8; [Case Comp M.5096 – RCA/MAV Cargo](#), 25 November 2008, paragraph 17; [Case Comp M.6059 – Norbert Dentressangle/Laxey Logistics](#), 21 March 2011, paragraph 18; [Case Comp M.9016 – CMA CGM/Container Finance](#), 22 October 2018, paragraph 61.

<sup>81</sup> For example, [Case Comp M.1794 – Deutsche Post/Air Express International](#), 7 February 2000, paragraph 9; [Case Comp M.5096 – RCA/MAV Cargo](#), 25 November 2008, paragraph 17; [Case Comp M.6059 – Norbert Dentressangle/Laxey Logistics](#), 21 March 2011, paragraph 18; [Case Comp M.9016 – CMA CGM/Container Finance](#), 22 October 2018, paragraph 61.



- (d) it was not necessary to adopt a further segmentation of freight forwarding by type of transported good,<sup>82</sup> or that such a question should be left open.<sup>83</sup>

However, the CMA identified one European Commission decision not referred to by the Parties in which the European Commission considered a further segmentation of freight forwarding by type of transported cargo.<sup>84</sup>

49. The CMA has not received any evidence to deviate from the Parties' submissions, in line with European Commission decisions, that freight forwarding services form a separate product frame of reference from transport services, and therefore it has focused its analysis on the provision of freight forwarding services where the Parties' activities overlap.<sup>85</sup>
50. In addition, the CMA did not need to reach a conclusion on the potential distinction between international and domestic freight forwarding services, as it focused on the area where the Parties overlap, namely international freight forwarding.<sup>86</sup>
51. The CMA considered whether it was appropriate to adopt narrower frames of reference distinguishing freight forwarding services by transport mode and/or by transported goods.
52. Regarding a potential distinction of freight forwarding services by transport mode, evidence received by the CMA indicates that:
- (a) From a demand standpoint, freight forwarding services provided in relation to different transport modes serve different purposes for UK customers importing/exporting BWS and are typically used by UK customers alongside each other. For example, UK customers use ocean freight forwarding services to import/export BWS from/to countries outside the EEA, using short sea, land and/or intermodal freight forwarding services to import/export BWS from/to EEA countries.<sup>87</sup>
- (b) From a supply standpoint, providers of freight forwarding services tend to operationally split their business by transport mode. For example, DPDHL's

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<sup>82</sup> Case Comp M.1794 – Deutsche Post/Air Express International, 7 February 2000, paragraph 11; Case Comp M.5096 – RCA/MAV Cargo, 25 November 2008, paragraph 17.

<sup>83</sup> Case Comp M.10216 – DFDS/HSF Logistics Group, 6 September 2021, paragraphs 19.

<sup>84</sup> Case Comp M.5579 – TLP/ERMEWA, 22 January 2010, paragraphs 43-44 and 47-51.

<sup>85</sup> Merger Assessment Guidelines, footnote 154 to paragraph 9.6.

<sup>86</sup> Merger Assessment Guidelines, footnote 154 to paragraph 9.6.

<sup>87</sup> [3<] responses to the customer questionnaire, question 1. See also Note of call with customer [3<], paragraphs 9-10 and 14-15.

splits its freight forwarding business between ocean, air, and land freight forwarding, with different business plans, budgets, KPIs, and staff for each division.<sup>88</sup> In addition, the Parties' internal documents and third-party market reports and databases (eg Global Freight Forwarding report and Global Supply Chain Intelligence by Ti Research)<sup>89</sup> refer to different transport modes as separate market segments.<sup>90</sup> Moreover, the set of providers of freight forwarding services is different across the various transport modes.<sup>91</sup>

53. With respect to the potential segmentation by transported goods, evidence received by the CMA indicates that:

- (a) From a demand standpoint, as noted at paragraph 37, many customers place value on international freight forwarding providers with a BWS focus, as these may have more in-depth knowledge of the BWS sector (albeit having a BWS focus does not appear to be the most important criteria). In addition, the Parties' internal documents refer to BWS as a separate segment to other transported goods.<sup>92</sup>
- (b) From a supply standpoint, a number of providers of freight forwarding services who offer services across a range of products have a brand or business division focused on BWS.<sup>93</sup> For example, DPDHL provides freight forwarding services for BWS through both a dedicated brand (ie Gori) and a dedicated BWS business division;<sup>94</sup> Kuehne + Nagel (**K+N**) provides freight forwarding services for BWS under its dedicated brand VinLog;<sup>95</sup> Uniserve provides freight

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<sup>88</sup> Merger Notice, paragraphs 10.3 and 10.4; Annex (pages 19); Annex 052 (pages 4, 6, 10, 15-22); Annex 062; Annex 099 (pages 4, 6-7, 11, 16-21). See also, Response to the s109 notice of 7 December 2021, Annex 096 (pages 2-3, 9-11); Annex 097 (pages 3, 8); Annex 099 (pages 2, 6, 14-17).

<sup>89</sup> Transport Intelligence Ltd. See further at [Global Freight Forwarding 2021 market report | Ti-insight](#).

<sup>90</sup> Merger Notice, Annex 004.1 (pages 8-11, 39); Annex 007 (pages 6, 10-14, 46); Annex 011.1 (pages 7-11, 44); Annex 012.1 (pages 7-11, 39); Annex 013.1 (pages 7-11, 44); Annex 060 (pages 7, 9-10); Annex 061; Annex 063; Annex 064; Annex 065; Annex 067; Annex 068; Annex 077 (pages 10-11, 15); Annex 082 (pages 18-19 and 31); Annex 083 (pages 4 and 9); Annex 084 (pages 23, 28, 52); Annex 143. See also, Response to the s109 notice of 7 December 2021, Annex 011 (pages 10, 17); Annex 015 (pages 12 and 25); Annex 021 (page 2).

<sup>91</sup> For instance, the share of supply estimates provided by the Parties show that there are different providers of ocean, land and air freight forwarding services and the share of supply of providers active in more than one mode of transport varies across the different modes. Merger Notice, Figures at paragraph 14.1 and Tables 6 and 8-9.

<sup>92</sup> Merger Notice, Annex 004.1 (pages 5 and 8); Annex 006 (pages 7 and 28); Annex 007 (pages 11 and 46-47), Annex 008 (pages 33-34); Annex 011.1 (pages 5 and 8); Annex 012.1 (pages 5 and 8); Annex 013.1 (pages 5 and 8); Annex 074 (pages 17, 20, 34, 52, 74); Annex 080 (pages 10-11, 16, 20, 23); Annex 082 (pages 44-46, 59); Annex 084. Response to the s109 notice of 7 December 2021, Annex 011; Annex 012 (page 3); Annex 015.

<sup>93</sup> Response to the s109 notice of 7 December 2021, Annex 112 (page 4).

<sup>94</sup> [Gori Wine & Spirits Logistics Newsletter | DHL Global Forwarding Global](#) and [Wine & Spirits Logistics | DHL Global Forwarding | Global](#)

<sup>95</sup> [VinLog - Wine, Spirits and Drinks Logistics | Kuehne+Nagel \(kuehne-nagel.com\)](#).

forwarding services for BWS under both a dedicated brand (ie Wineflow) and a dedicated business division (UniDrinks).<sup>96</sup>

54. In view of the Parties' submissions and evidence received by the CMA indicating that ocean freight forwarding for BWS is the segment where there is a material overlap between the Parties, on a conservative basis the CMA has assessed the Merger against the narrowest product frame of reference relating to the provision of ocean freight forwarding services for BWS.<sup>97</sup>

### *Geographic scope*

55. The Parties submitted that the exact geographic frame of reference can be left open but considered that the geographic scope of the market for ocean freight forwarding services is at least the UK plus the EEA.<sup>98</sup> However, the Parties provided information and share of supply estimates on a national basis (as well as more widely).<sup>99</sup>
56. The Parties also referred to previous European Commission decisions in which, despite leaving open the exact geographic scope, the European Commission assessed the market for ocean freight forwarding services at a national level.<sup>100</sup>
57. Evidence received by the CMA indicates that:
- (a) UK-based customers typically use providers of ocean freight forwarding services for BWS with a UK presence, although these may be part of organisations with a wider geographic presence (eg each of the Parties, K+N, and Albatrans).<sup>101</sup>
  - (b) For contracts negotiated at international level, business relating to UK routes is typically managed at a UK level.<sup>102</sup>

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<sup>96</sup> Wineflow and UniDrinks - Uniserve Group.

<sup>97</sup> See footnotes 29-31 above in relation to why the Parties' overlaps in international freight forwarding services for BWS via airfreight, short sea, land, and intermodal transport are not discussed in this Decision.

<sup>98</sup> Merger Notice, paragraph 12.14.

<sup>99</sup> Merger Notice, paragraph 12.14.

<sup>100</sup> For example, [Case Comp M.4045 – Deutsche Bahn/Bax Global](#), 22 December 2005, paragraphs 9 and 15; [Case Comp M. 6570 – UPS/TNT Express](#), 30 January 2013, paragraphs 27 and 29; [Case Comp M.9016 – CMA CGM/Container Finance](#), 22 October 2018, paragraph 62 and 245; [Case Comp M.9319 – DP World/P&O Group](#), 26 June 2019, paragraph 39.

<sup>101</sup> Note of call with competitor [3<], paragraphs 2, 31 and 46; Note of call with customer [3<], paragraphs 9 and 22; Note of call with competitor [3<], paragraphs 2 and 21. See also Merger Notice, Annex 004.1 (page 18), Annex 007 (page 8), Annex 011.1 (page 18), Annex 012.1 (page 18) emphasizing that the 'beer, wine, spirits business is usually controlled at destination, thus requires a local sales force'.

<sup>102</sup> Note of call with competitor [3<], paragraph 19; Note of call with customer [3<], paragraphs 13.

58. On the basis of the available evidence, the CMA has assessed the Merger against the provision of ocean freight forwarding services for BWS in to and out of the UK, which is the narrowest plausible geographic frame of reference.

## ***Flexitanks***

### ***Product scope***

59. The Parties submitted that the exact product frame of reference can be left open, as the Merger would not give rise to competition concerns even if the supply of flexitanks was considered on a standalone basis.<sup>103</sup> The Parties referred to a decision in which the European Commission has previously considered whether to further segment tank containers used to transport bulk liquids, liquefied gases, and powders by type of tank, including each of ISO tanks and flexitanks. However, the European Commission ultimately did not reach a decision on this question.<sup>104</sup>
60. Given that the vertical relationship between the Parties is limited to flexitanks for bulk BWS (especially wine), on a conservative basis, the CMA has assessed the Merger against the supply of flexitanks for bulk BWS.

### ***Geographic scope***

61. The Parties submitted that the supply of flexitanks takes place at a worldwide level.<sup>105</sup> The Parties referred to European Commission decisions where the European Commission deemed markets for the manufacturing of containers and tanks – even under a narrow definition only comprising flexitanks – from a geographic point of view to be global in scope.<sup>106</sup>
62. Third party evidence received by the CMA is consistent with this and indicates that the supply of flexitanks for bulk BWS takes place on a worldwide basis.<sup>107</sup>
63. The CMA has therefore considered the impact of the Merger in the supply of flexitanks for BWS on a worldwide basis.

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<sup>103</sup> Merger Notice, paragraph 12.23.

<sup>104</sup> [Case Comp M.2023 – Brambles/Ermeva/JV](#), 4 August 2000, paragraphs 15-17.

<sup>105</sup> Merger Notice, paragraph 12.25.

<sup>106</sup> [Case Comp M.1020 – GE Capital/Sea Containers](#), 28 April 1998, paragraph 16; [Case Comp M.2023 – Brambles/Ermeva/JV](#), 4 August 2000, paragraph 18; [Case Comp M.8330 – Maersk Line/HSDG](#), 10 April 2017, paragraph 47.

<sup>107</sup> Note of call with flexitank supplier [3<], paragraph 2; Note of call with competitor [3<], paragraph 27; Note of call with competitor [3<], paragraphs 28-29.

### ***Frames of reference considered in the CMA's competitive assessment of the Merger***

64. The CMA has assessed the Merger against the following frames of reference:
- (a) the provision of ocean freight forwarding services for BWS in to and out of the UK; and
  - (b) the supply of flexitanks for BWS worldwide.

### **Horizontal unilateral effects**

65. 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 non-price aspects of its competitive offering (such as quality, range, service, and innovation) on its own and without needing to coordinate with its rivals.<sup>108</sup> Horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes.<sup>109</sup>
66. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the provision of ocean freight forwarding services for BWS in to and out of the UK. In its assessment the CMA considered:
- (a) the market structure, specifically shares of supply;
  - (b) the closeness of competition between the Parties; and
  - (c) the competitive constraints from other providers.

### **Market structure**

67. The Parties provided total market size and share of supply estimates, by volume, for the handling of BWS in to and out of the UK in 2020 in relation to (a) short sea / land / intermodal and ocean transport modes combined (referred to here as **all transport modes**) and (b) ocean transport separately. The market size and share of supply estimates provided by the Parties are presented in Table 1. The Parties have not been able to estimate shares of supply for each of the other competitors.

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<sup>108</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

<sup>109</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.6.

**Table 1 – Share of supply estimates for handling BWS in to and out of the UK (volume, 2020)**

	<b>All transport modes<sup>110</sup></b>	<b>Ocean transport<sup>111</sup></b>	<b>Short sea, land, and intermodal transport<sup>112</sup></b>
DPDHL	[0-5]%	[5-10]%	[0-5]%
Hillebrand	[20-30]%	[30-40]%	[10-20]%
<b>Combined</b>	<b>[20-30]%</b>	<b>[40-50]%</b>	<b>[10-20]%</b>
Other providers (including K+N/VinLog, Savino del Bene/Albatrans, Robert Kukla ( <b>Kukla</b> ), Uniserve, DSV Panalpina, carriers, etc)	[70-80]%	[50-60]%	[80-90]%
Total	5,037,448	1,754,838	3,282,610

*Note: List of providers included in 'others' added by the CMA based on questionnaire responses.*

68. In relation to BWS volumes handled via ocean transport, the Parties estimated that DPDHL and Hillebrand had [5-10]% and [30-40]% shares, respectively, leading to a combined share of supply of approximately [40-50]% in 2020 and an increment of [5-10]% brought about by the Merger. The Parties' combined share of supply and increment from the Merger are significantly lower when considering all transport modes together (ie combined share of supply of approximately [20-30]% and increment of [0-5]%) and even lower when considering international short sea, land and intermodal transport (ie combined share of supply of approximately [10-20]% and an [0-5]% increment).

69. The CMA also notes that:

<sup>110</sup> Share of supply estimates provided by the Parties considering (a) a total market size based on all UK trade flow data by volume (ie net liquid weight) for all UK imports and exports for custom codes relevant to BWS published by UK Trade Info (HMRC); (b) the Parties' shares of supply based on the Parties' actual sales by volume (ie net liquid weight); and (c) other providers' shares of supply based on the difference between total market size and the Parties' shares of supply. Response to RFI3, Table 1 to question 4.

<sup>111</sup> Share of supply estimates provided by the Parties considering (a) a total market size based on UK trade flow data with non-EEA countries by volume (ie net liquid weight) for all UK imports and exports from or to non-EEA countries for custom codes relevant to BWS published by UK Trade Info (HMRC); (b) the Parties' shares of supply based on the Parties' actual sales by volume (ie net liquid weight); and (c) other providers' shares of supply based on the difference between total market size and the Parties' shares of supply. Response to RFI3, Table 1 to question 4; Response to RFI3, Table 4 at question 4.

<sup>112</sup> Share of supply estimates calculated by the CMA by comparing (a) the total market size and share of supply estimates provided by the Parties in relation to all UK trade (see footnote 110) and (b) the total market size and share of supply estimates provided by the Parties in relation to UK trade with non-EEA countries (see footnote 111).

- (a) The share of supply estimates in Table 1 relate to all BWS volumes shipped in to and out of the UK and therefore may include BWS volumes for which UK customers did not use freight forwarding services. However, based on third party evidence received during its merger investigation, the CMA believes that for most of the BWS volumes moved in to and out of the UK customers will use freight forwarding services.<sup>113</sup>
- (b) Evidence received by the CMA indicates that DPDHL has recently seen volume growth in its provision of ocean freight forwarding services for BWS in to and out of the UK.<sup>114</sup> The CMA therefore believes that the estimates in Table 1 could understate DPDHL's current position in the market. However, as further discussed from paragraph 94 onwards, the CMA has also received evidence that other competitors, including freight forwarders such as K+N, Albatrans, Kukla, and Uniserve, have seen similar or greater growth in their ocean freight forwarding services for BWS to UK customers and are expected to expand further in the UK.

70. Given that there is some uncertainty about the market size and share of supply estimates, the CMA has used shares of supply only as a starting point and has also considered other sources of evidence on the Parties' closeness of competition.<sup>115</sup>

### ***Closeness of competition***

71. The CMA assessed the closeness of competition between the Parties by reference to:

- (a) the Parties' submissions on closeness of competition;
- (b) the Parties' sales;
- (c) the Parties' bidding data;
- (d) the Parties' internal documents; and

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<sup>113</sup> For example, a competitor told the CMA that the UK market is currently more freight forwarder-based (Note of call with competitor [3<], paragraph 10). Customer feedback also indicates that most UK customers currently use freight forwarding services to handle their BWS requirements in to and/or out of the UK.

<sup>114</sup> As noted at paragraph 74, DPDHL's sales data and internal documents indicate growth in its freight forwarding services for BWS in to and out of the UK in the last few years.

<sup>115</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.15.

(e) third-party views on closeness of competition.

#### *Parties' submissions*

72. The Parties submitted that Hillebrand is more active in the provision of ocean freight forwarding services for BWS in to and out of the UK than DPDHL.<sup>116</sup> The Parties also submitted that, within BWS, Hillebrand provides ocean freight forwarding services in relation to both cased and bulk BWS, whereas DPDHL has a stronger presence in cased BWS but does not have any significant business in bulk BWS.<sup>117</sup> Further, the Parties submitted that Hillebrand's bidding data shows that, at least in relation to UK-specific tenders, Hillebrand does not perceive DPDHL as a close competitor in the UK. Instead, Hillebrand considers that its main competitors are K+N/VinLog, Uniserve, Kukla (which [X] Hillebrand employees) and Savino del Bene/Albatrans.<sup>118</sup>

#### *Parties' sales*

73. The Parties provided their sales data, by value and volume, for ocean freight forwarding services for BWS in to and out of the UK in 2020 and 2021.<sup>119</sup> This is presented in Table 2.

**Table 2 - Parties' sales of ocean freight forwarding services for BWS in to and out of the UK (value and volume, 2020 and 2021)<sup>120</sup>**

	2020		2021	
	Revenue (£, millions)	Volume (TEU, '000s)	Revenue (£, millions)	Volume (TEU, '000s)
DPDHL	[X]	[X]	[X]	[X]
Hillebrand	[X]	[X]	[X]	[X]

74. Hillebrand explained that at least in Q4 2020 and during 2021, it experienced certain [X] challenges in providing ocean freight forwarding services for BWS in to

<sup>116</sup> Merger Notice, paragraphs 15.16-15.17.

<sup>117</sup> Merger Notice, paragraph 15.16. Response to RF11, paragraphs 21.3 and 27.26. Response to RF12, paragraphs 5.9-5.11 and 13.1 and related footnote 13. Response to RF13, paragraphs 5.1-5.4.

<sup>118</sup> Merger Notice, paragraph 16.18.

<sup>119</sup> The 2020 volume figures presented in Table 2 are equivalent to those used by the Parties to estimate their shares of supply presented in Table 1. Response to RF11, question 17. Response to RF12, question 29.

<sup>120</sup> Response submitted by the Parties to the follow-up questions of 21 January 2022. Response submitted by the Parties to the follow-up questions of 27 January 2022.



and out of the UK.<sup>121</sup> Hillebrand also explained that such [redacted] challenges may have [redacted] customers, including [redacted] move business away from Hillebrand.<sup>122</sup> Customer feedback received by the CMA indicates that a number of UK customers of ocean freight forwarding services for cased BWS, including a mix of [redacted], switched business away from Hillebrand due to [redacted] issues in the UK.<sup>123</sup> The CMA notes that most of these customers switched business to providers other than DPDHL.<sup>124, 125</sup>

75. DPDHL has increased its sales of ocean freight forwarding services for BWS to UK customers in recent years. The figures in Table 2 demonstrate, however, that DPDHL remains [redacted] of Hillebrand's size by revenue and approximately [redacted] of Hillebrand's size by volume. The CMA has also found references in some DPDHL internal documents suggesting that, in the UK, DPDHL has recently seen growth in its ocean freight forwarding services for BWS and aspires to expand its presence in the BWS segment, including in bulk shipments.<sup>126</sup> However, the CMA has not found in DPDHL's internal documents evidence of significant expansion or any developed growth plan targeting ocean freight forwarding services for BWS in to and out of the UK. In particular on bulk BWS shipments, DPDHL's internal documents and third-party feedback indicate that DPDHL remains a [redacted] competitor in the UK (see paragraphs 84 and 86). DPDHL also submitted that its expansion investments in the BWS segment in the UK are limited to a moderate expansion of around [redacted]% of the staff in its BWS-dedicated office in Glasgow.<sup>127</sup>

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<sup>121</sup> Hillebrand explained that it suffered a ransom attack on 15 December 2020, [redacted] (the **2020 Cyberattack**). [redacted]. Hillebrand also explained that [redacted] after 1 January 2021 all transports between the UK and the European Union required customs clearances, [redacted]. Hillebrand further explained that the backlog was exacerbated by the lack of truck drivers, containers/vessel space, and [redacted] (Response to RFI2, paragraphs 6.1-6.4). Hillebrand's internal documents show that it recorded lower sale volumes in recent years in the UK [redacted] (Merger Notice, Annex 074 (page 114); Annex 077 (page 85); Annex 079 (pages 12, 14-15, 24, 28); Annex 080 (pages 53-54, 86-87, 153); Annex 081 (page 4); Annex 082 (pages 101-102); Annex 084 (page 148); Annex 088 (page 55); Annex 089 (pages 16, 22); Annex 102 (page 12); Annex 105 (page 15); Annex 107 (pages 16, 25); Annex 112 (page 2); Annex 144 (pages 13, 17)). Third party feedback also indicates some customer dissatisfaction with Hillebrand's service levels in the UK in recent years, with some UK customers switching (all or part of businesses) to other providers. Reasons for customer dissatisfaction included the 2020 Cyberattack, Brexit-related issues, constraints in the global shipping industry, staff churn, changes in Hillebrand's leadership, and operational issues during the acquisition of Braid ([redacted] responses to the customer questionnaire. See also [redacted] responses to the competitor questionnaire).

<sup>122</sup> These are [redacted]. Response to RFI2, paragraph 6.5.

<sup>123</sup> [redacted] responses to the customer questionnaire, questions 6, 9 and 10. See also Note of call with customer [redacted], paragraph 4.

<sup>124</sup> [redacted] responses to the customer questionnaire, questions 6, 9 and 10.

<sup>125</sup> The CMA notes that this is consistent with Hillebrand's submission that over the course of 2021 it has lost [redacted] volumes to [redacted] from UK customers. Response to RFI1, question 25.

<sup>126</sup> Response to s109 notice of 7 December 2021, Annex 011 (pages 11-15, 18); Annex 012 (page 3); Annex 014 (page 14); Annex 015 (pages 10, 12, 15-28); Annex 020; Annex 021 (page 3); Annex 034 (pages 1, 6); Annex 046; Annex 107 (page 25); Annex 108 (notes to slide 46); Annex 120; Annex 121; Annex 122; Annex 129; Annex 130; Annex 132.

<sup>127</sup> Response to RFI3, paragraph 3.2-3.5.

76. The Parties have also provided their sales data (by value) by format (ie cased or bulk) in the UK in 2020.<sup>128</sup> These figures further indicate that bulk BWS shipments account for a material proportion of Hillebrand's sales of ocean freight forwarding services for BWS (approximately [30-40]%), whereas bulk BWS shipment accounts for a [X] limited proportion of DPDHL's sales (less than [X]%).
77. On this basis, the CMA believes that the Parties have a material presence and compete closely in the provision of ocean freight forwarding services for BWS in to and out of the UK. However, the CMA believes that the Parties are not each other's closest competitor. Specifically, the Parties' sales indicate that Hillebrand has significant activities in ocean freight forwarding services for both bulk and cased BWS. In contrast, while DPDHL has recently grown its presence in the provision of ocean freight forwarding services for BWS in to and out of the UK, it does not currently have material activities in bulk BWS shipments and there is no evidence of a developed plan to expand in this area. In addition, although DPDHL has a more material position in ocean freight forwarding services for cased BWS and Hillebrand lost [X] sales to competitors in 2021, the available evidence indicates that many of Hillebrand's customers who switched went to alternative competitors.

#### *Parties' bidding data*

78. The Parties provided data on tender opportunities involving UK customers that concerned ocean transport of BWS in which each of Hillebrand and DPDHL participated in recent years.<sup>129, 130</sup>
79. According to this data, DPDHL's participation in UK tenders has increased in recent years and the Parties compete to provide ocean freight forwarding services for BWS in to and out of the UK. However, the CMA notes that this data also suggests that the Parties are not each other's closest competitor. In particular:

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<sup>128</sup> Response to RFI2, question 5; Response to RFI3, questions 5 and 7.

<sup>129</sup> Response to RFI1, question 27 and Annex 123. Hillebrand submitted that its best endeavours to collect data on the UK-relevant tenders in which it participated resulted in two non-exhaustive lists of tenders that took place from mid-2020 to September 2021. These include a list of [X] tenders organised by UK-based customers (accounting for approximately [X] of Hillebrand's revenue in the UK) and a list of [X] tenders organised by global customers but involving significant business in to and out of the UK. Information on participating competitors was only provided for [X] out of the [X] tenders organised by UK-based customers.

<sup>130</sup> Response to RFI1, question 27 and Annex 124 (updated). DPDHL provided data for [X] UK-relevant tenders in which it participated from 1 January 2018 to 30 September 2021. DPDHL's customers captured in this dataset account for approximately [70-80]% of its total BWS revenue in 2020. Information on bidding rivals was provided for [X] tenders.

- (a) consistent with its revenue growth (see paragraphs 69(b) and 75), DPDHL has increased its bidding activity in the UK in the last three years, moving from bidding for [X] tenders in 2018, to [X] in 2019, [X] in 2020 and [X] in 2021 (up to 30 September);
- (b) there is a high degree of overlap (ie over [60-70]%) in the tenders in which the Parties participated; and
- (c) the other merging Party is the second most frequently identified competitor in both DPDHL's and Hillebrand's data. The first and the third most frequently identified competitors are, for both Parties, K+N/VinLog and Albatrans, respectively. These are followed by many other freight forwarders with or without a BWS focus, such as Kukla, Uniserve, Agility Logistics (part of DSV Panalpina), Expeditors, Kentucky/KC Shipping, and carriers that also frequently compete against the Parties in tenders.

80. However, the CMA notes that the Parties' bidding data has certain limitations which could mean that the analysis does not fully capture DPDHL and Hillebrand's competitive interactions with rivals, including the other merging Party. This is because:

- (a) the identity of the competitors participating in the tender (including the other Party) is not available for all tenders identified by the Parties. For those tenders in relation to which the Parties have provided the identity of other bidders, this information may not be accurate since the list of participants for each tender is not ultimately disclosed by customers; and
- (b) the tender data provided by the Parties does not include information on the individual trade lanes that were covered by each tender or for which trade lane(s) each of the Parties and the identified competitors have bid for.  
Therefore, the CMA has not been able to assess with certainty whether the Parties competed against each other in each of these tenders.

81. Given these limitations, the CMA has placed limited weight on the tender data provided by the Parties and has considered this data alongside other sources of evidence on the Parties' closeness of competition.

### *Internal documents*

82. The Parties' internal documents discussing ocean freight forwarding services for BWS at a global level generally identify Hillebrand as the market leader, increasingly facing competition from K+N/VinLog, DPDHL, Albatrans, and Balguerie/Transo.<sup>131</sup> Some of those internal documents also refer to many smaller freight forwarders and carriers as other competitors active in this space.
83. The Parties' internal documents discussing ocean freight forwarding services for BWS in to and out of the UK indicate that the Parties see each other among their main competitors. However, in line with the Parties' bidding data, the Parties' internal documents indicate that DPDHL does not necessarily see Hillebrand as its closest competitor in the UK, and *vice versa*. For example:
- (a) Some of DPDHL's internal documents indicate that Hillebrand was losing staff and struggling in the UK, whereas Albatrans was seen as [X] in the marketplace and K+N/VinLog was offering [X] to UK customers.<sup>132</sup> One of these documents does not identify Hillebrand as a main competitor in the movement of spirits through ocean transport to UK customers, but rather refers to other freight forwarders (ie Albatrans and K+N/VinLog) and a carrier (ie MSC).<sup>133</sup> Another internal document also does not refer to Hillebrand, but notes that Albatrans was competing fiercely and making [X] over DPDHL (eg Albatrans successfully won business from [X], which was a DPDHL customer since [X]) in the UK.<sup>134</sup>
  - (b) A DPDHL internal document indicates that DPDHL was facing competition from Hillebrand and K+N/VinLog, but that Albatrans was 'the main [X]'.<sup>135</sup>
  - (c) A DPDHL internal document does not refer to Hillebrand but notes that DPDHL was facing strong competition from K+N/VinLog.<sup>136</sup>

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<sup>131</sup> For example, Merger Notice Annex 004.1 (page 8); Annex 006 (page 28); Annex 007 (pages 11 and 46); Annex 008 (pages 33-34); Annex 012.1 (page 8); Annex 013.1 (page 8); Annex 074 (pages 20, 52 and 74); Annex 077 (page 29); Annex 082 (page 46); Annex 090 (page 3); Annex 091 (page 4); Annex 092 (pages 7 and 10). Response to the s109 Notice of 7 December 2021, Annex 112 (pages 13, 75).

<sup>132</sup> Response to the s109 Notice of 7 December 2021, Annex 109 (page 24); Annex 110 (page 19).

<sup>133</sup> Response to the s109 Notice of 7 December 2021, Annex 110 (page 36).

<sup>134</sup> Response to the s109 Notice of 7 December 2021, Annex 107 (page 20).

<sup>135</sup> Response to the s109 Notice of 7 December 2021, Annex 108 (notes to page 46).

<sup>136</sup> Response to the s109 Notice of 7 December 2021, Annex 126 (page 1).

- (d) A Hillebrand internal documents indicates that DPDHL has a [redacted] market position in Italy, whereas K+N/VinLog has a [redacted] market position in the UK.<sup>137</sup>

84. Consistent with the Parties' sales data (see paragraph 76), DPDHL's internal documents also indicate that Hillebrand has a strong offer in bulk BWS shipments to UK customers, whereas DPDHL does not currently have material activities in bulk BWS in the UK. For example:

- (a) A DPDHL internal document identifies Hillebrand (including Braid), K+N/VinLog, Paltank, and Uniserve as the providers with a [redacted] of freight forwarding services for bulk wine in the UK but does not include itself in that list. The same document indicates that DPDHL has been struggling with [redacted] albeit this is an area in which DPDHL had aspirations to grow.<sup>138</sup>
- (b) Another DPDHL internal document identifies Hillebrand, K+N/VinLog and Helmmann as current providers of freight forwarding services for bulk wine for [redacted] in the UK, but not itself (although it identifies this as a growth area in the UK).<sup>139</sup>

### *Third-party views*

85. Most customers and competitors who responded to the CMA's merger investigation identified the Parties as close competitors for ocean freight forwarding services for BWS in to and out of the UK, offering similar services and often competing against each other in tenders.<sup>140</sup> However, almost all these third parties did not consider the Parties to be the closest competitor to each other and/or considered that there are other providers that are as close competitors to each of the Parties.<sup>141</sup> In addition, most of such customers also told the CMA that they award business largely through tenders (or a mix of tenders and bilateral negotiations), that a number of freight forwarders and/or carriers are typically invited to participate in tenders, and that they often switch and/or use additional providers when better commercial terms are found

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<sup>137</sup> Merger Notice, Annex 074 (page 74).

<sup>138</sup> Response to the s109 Notice of 7 December 2021, Annex 011 (pages 16-17).

<sup>139</sup> Response to the s109 Notice of 7 December 2021, Annex 015 (pages 13 and 25).

<sup>140</sup> [redacted] responses to the customer questionnaire, question 7. See also [redacted] responses to the competitor questionnaire, question 8.

<sup>141</sup> [redacted] responses to the customer questionnaire, question 10. See also [redacted] responses to the competitor questionnaire, question 8.

or where there are issues with the ability of the provider to deliver the right level of service.<sup>142</sup>

86. In line with the Parties' sales data and internal documents (see paragraphs 76 and 84), many customers and most competitors who responded to the CMA's merger investigation consider that DPDHL is a weaker alternative (or not an alternative) for ocean freight forwarding services for bulk BWS in to and out of the UK.<sup>143</sup>
87. Most customers and competitors who responded to the CMA's merger investigation had no views on the Merger or considered that the Merger would have either a positive or a neutral impact on competition.<sup>144</sup> In particular, some of these third parties specifically stated that there will be a number of alternative providers for UK customers post-Merger.<sup>145</sup>
88. However, some customers and a few competitors did suggest that the Merger may have a negative impact on competition (albeit two of these customers had also expressed positive views, providing examples of each).<sup>146</sup>
89. Of those customers and competitors who raised concerns about the Merger, most considered that a reduction in the number of alternative providers of ocean freight forwarding services for BWS in to and out of the UK may lead to higher prices and/or lower service levels for UK customers.<sup>147</sup> However, almost all of these customers identified alternative freight forwarders and/or carriers to the Parties.<sup>148</sup> Further they either considered switching provider or using additional providers to be relatively easy, or have already switched provider or used additional providers in the recent past.<sup>149</sup> Moreover, all competitors who raised concerns about the Merger also identified close alternatives to the Parties.<sup>150</sup>

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<sup>142</sup> [X] responses to the customer questionnaire, questions 5 and 6. See also, Note of call with customer [X], paragraph 18.

<sup>143</sup> [X] responses to the customer questionnaire, question 14. See also [X] responses to the competitor questionnaire, question 9. Note of call with competitor [X], paragraphs 10 and 12.

<sup>144</sup> [X] responses to the customer questionnaire, question 15. See also, [X] responses to the competitor questionnaire, question 14; Note of call with competitor [X], paragraphs 35-36.

<sup>145</sup> [X] response to the customer questionnaire, question 15. [X] responses to the competitor questionnaire, question 14.

<sup>146</sup> [X] responses to the customer questionnaire, question 15. See also [X] responses to the competitor questionnaire, question 14.

<sup>147</sup> [X] responses to the customer questionnaire, question 15. See also [X] responses to the competitor questionnaire, question 14.

<sup>148</sup> [X] responses to the customer questionnaire, questions 6, 9 and 10.

<sup>149</sup> [X] responses to the customer questionnaire, questions 5, 6, 9 and 10.

<sup>150</sup> [X] responses to the competitor questionnaire, question 8.

### *Conclusion on closeness of competition between the Parties*

90. On the basis of the available evidence, the CMA believes that the Parties compete closely in the provision of ocean freight forwarding services for BWS in to and out of the UK. However, the CMA also believes that the Parties are not each other's closest competitor in the provision of these services, with DPDHL being one of several alternatives to Hillebrand. The CMA further believes that UK customers regularly tender for ocean freight forwarding services for BWS in to and out of the UK, that they invite a number of other freight forwarders and/or carriers to participate in those tenders, that switching provider or using additional providers is relatively easy, and that UK customers can and often do switch or use additional providers when better commercial terms are found or where there are issues with the ability of the provider to deliver the right level of service.

### ***Competitive constraints from other providers***

91. The Parties submitted that the provision of ocean freight forwarding services, including for BWS, is very competitive with many major global players and numerous other competitors, which will continue to exert a significant competitive constraint on the Merged Entity.<sup>151</sup>
92. The Parties also submitted that their main competitors include global freight forwarders active across all types of goods, such as DSV Panalpina and DB Schenker, as well as freight forwarders with a BWS focus which can be either part of large global groups – such as VinLog (part of K+N) and Albatrans (part of Savino del Bene) – or independent providers – such as Robert Kukla and Uniserve. The Parties also submitted that they face competition from carriers that increasingly provide services that have been traditionally provided by freight forwarders directly to cargo owners in relation to all types of goods, including BWS.<sup>152</sup>
93. The CMA assessed the constraints from each of these providers by taking into consideration:
- (a) the sales data and service features of these alternative providers;
  - (b) the Parties' internal documents and bidding data; and

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<sup>151</sup> Merger Notice, paragraph 15.42.

<sup>152</sup> Merger Notice, paragraphs 15.13-15.18.

(c) third-party feedback, including any competitors' expansion plans.

- *K+N / VinLog*

94. K+N is the world's largest ocean freight forwarder, followed by DPDHL.<sup>153</sup> K+N operates a BWS business division, VinLog.<sup>154</sup> K+N/VinLog specialises in ocean and short sea freight forwarding for BWS, which it handles both in cased and bulk formats.
95. K+N/VinLog had sales of ocean freight forwarding services for BWS in to and out of the UK of approximately £[redacted] / [redacted] TEU in 2020 and higher sales of approximately £[redacted] / [redacted] TEU in 2021.<sup>155</sup> On this basis, K+N/VinLog is the second largest provider of ocean freight forwarding services for BWS in to and out of the UK, after Hillebrand. K+N/VinLog [redacted] considers itself to be a stronger competitor to Hillebrand in BWS in the UK than DPDHL currently is.<sup>156, 157</sup>
96. The Parties' bidding data also shows that K+N/VinLog is the competitor that both DPDHL and Hillebrand most frequently compete against in UK tenders (see paragraph 79). However, given the limitations of this data (see paragraph 80), the CMA has considered the bidding data provided by the Parties alongside other sources of evidence on the competitive constraint exerted by K+N/VinLog and other competitors assessed in this section on the Parties.
97. DPDHL and Hillebrand's internal documents also indicate that K+N/VinLog is a main competitor for ocean freight forwarding services for BWS in to and out of the UK and that it [redacted] competes [redacted]. For example, a DPDHL internal document refers to K+N/VinLog as a key competitor in ocean freight forwarding services which offers [redacted] to retain customers in the UK.<sup>158</sup> Similarly, in another internal document Hillebrand states that 'K+N continues to put [redacted] effort in competing for the import business [redacted]'.<sup>159</sup>
98. Customer feedback further indicates that K+N/VinLog is a strong provider of ocean freight forwarding services in to and out of the UK for both cased and bulk BWS,

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<sup>153</sup> Response to the s109 notice of 7 December 2021, Annex 112 (page 12).

<sup>154</sup> [VinLog - Wine, Spirits and Drinks Logistics | Kuehne+Nagel \(kuehne-nagel.com\)](https://www.kuehne-nagel.com).

<sup>155</sup> [redacted] response to the competitor questionnaire, question 1.

<sup>156</sup> Note of call with competitor [redacted], paragraphs 42-43 and 45.

<sup>157</sup> The CMA notes that this is consistent with Hillebrand's submission that over the course of 2021 it has lost [redacted] volumes to K+N/VinLog from UK customers. Response to RF11, question 25.

<sup>158</sup> Response to the s109 notice of 7 December 2021, Annex 110 (page 19).

<sup>159</sup> Merger Notice, Annex 113 (pages 11-12).



which is frequently invited to participate in tenders organized by (or to engage in bilateral negotiations with) UK customers. In particular, K+N/VinLog was listed as a main provider of ocean freight forwarding services for BWS by the vast majority of customers who responded to the CMA's merger investigation.<sup>160</sup> In addition, K+N/VinLog was also invited to participate in tenders organized by (or to engage in bilateral negotiations with) most of the UK customers who responded to the CMA's merger investigation.<sup>161</sup>

99. In terms of growth, K+N/VinLog [X] is looking to [X] expand its BWS business in to and out of the UK going forward, including expanding its footprint [X] in relation to spirits.
100. Based on the available evidence, the CMA believes that K+N/VinLog exerts a strong competitive constraint on the Parties in the supply of ocean freight forwarding for BWS in to and out of the UK and can be expected to continue to do so post-Merger.
- *Savino del Bene / Albatrans*
101. Savino del Bene is a global freight forwarder headquartered in Florence. It has a BWS business division, Albatrans.<sup>162</sup>
102. Albatrans [X] operating model is very similar to Hillebrand's: it is a network-based freight forwarder to the beverage industry that operates globally and across all transport modes. In the UK, Albatrans handles BWS in both cased and bulk formats.<sup>163</sup>
103. Albatrans had sales of ocean freight forwarding services in to and out of the UK of under £[X] in 2021.<sup>164</sup> On this basis, Albatrans is the fourth largest provider of ocean freight forwarding services for BWS in to and out of the UK, after Hillebrand, K+N/VinLog, and DPDHL.

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<sup>160</sup> [X] responses to the customer questionnaire, questions 10 and 14.

<sup>161</sup> [X] responses to the customer questionnaire, questions 4 and 6.

<sup>162</sup> Merger Notice, page 52. See also, <https://www.savinodebene.com/2018/06/business-leaders-paolo-nocentini/>.

<sup>163</sup> Note of call with competitor [X], paragraph 2(a).

<sup>164</sup> Note of call with competitor [X], paragraphs 2(a) and (b).

104. The Parties' bidding data shows that Albatrans is the third most frequently 'met' competitor by both DPDHL and Hillebrand in UK tenders, showing that Albatrans is an important competitor for both of them (see paragraph 79).<sup>165</sup>
105. Albatrans is also described in DPDHL and Hillebrand's internal documents as a strong rival for ocean freight forwarding services for BWS in to and out the UK. For instance, certain DPDHL internal documents refer to Albatrans as the main [X] DPDHL has been coming across in the UK and an [X] competitor in the UK marketplace, which has been able to make [X] over DPDHL.<sup>166</sup> In another DPDHL internal document setting out the results of a customer survey commissioned by DPDHL, [X].<sup>167</sup> Similarly, some Hillebrand's internal documents refer to Albatrans as a key competitor which is competing [X] and successfully securing business [X] from [X] customers (among which [X], that is presented in another document as [X] buyer of wine [X]).<sup>168</sup>
106. Around a third of the customers who responded to the CMA's merger investigation listed Albatrans among the main providers of ocean freight forwarding services for BWS in to and out of the UK.<sup>169</sup> In addition, a significant proportion of customers submitted that they currently use or had invited Albatrans to their recent tenders.<sup>170</sup>
107. In terms of growth, Albatrans [X] has experienced strong growth in the UK over the past ten years and [X] this trend will continue going forward. Consistent with these expectations, Albatrans has plans to [X] expand its business in the UK and [X] the size of its London office by [X].<sup>171</sup>
108. Based on the available evidence, the CMA believes that Albatrans exerts a strong competitive constraint on the Parties in the supply of ocean freight forwarding for BWS in to and out of the UK and can be expected to continue to do so post-Merger.

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<sup>165</sup> As noted at paragraphs 80 and 81., given the limitations of the bidding data provided by the Parties, the CMA has considered this data alongside other sources of evidence on the competitive constraint exerted by Albatrans and other competitors assessed in this section on the Parties.

<sup>166</sup> Response to the s109 Notice of 7 December 2021, Annex 107 (page 20); Annex 108 (page 46); Annex 109 (page 24); Annex 110 (page 19).

<sup>167</sup> Response to the s109 Notice of 7 December 2021, Annex 139 (pages 141 and 149).

<sup>168</sup> Response to the s109 Notice of 7 December 2021, Annex 109 (page 4); Annex 110 (page 5).

<sup>169</sup> [X] responses to the customer questionnaire. Note of call with customer [X], paragraph 15.

<sup>170</sup> In addition to the customers identified in footnote 167, [X] invited Albatrans to their UK tenders and [X] currently use Albatrans for ocean freight forwarding services for BWS in to and out of the UK. See [X] responses to the customer questionnaire.

<sup>171</sup> Albatrans [X] London office, which opened ten years ago, has grown [X] and it is expected to at least [X] in size ([X]) within the next five years. Albatrans [X] Glasgow office has been growing since its opening in 2004. Note of call with competitor [X], paragraphs 11 and 13.

- *Kukla*

109. Kukla is a German freight forwarder with a BWS focus, which was founded five years ago by former Hillebrand personnel. Kukla has a global footprint through a mixed network of owned offices in Europe and third-party agents in key New World locations.<sup>172</sup>
110. Kukla has a strong presence in short sea / land / intermodal freight forwarding services for BWS in to and out of the UK, and a growing presence in ocean freight forwarding services for BWS to UK customers. For instance, Kukla had sales of approximately £[REDACTED] of short sea / land / international freight forwarding services in to and out of the UK in 2021, and sales of approximately £[REDACTED] of ocean freight forwarding services for BWS to UK customers in 2021 (representing a substantial increase compared to its sales in 2020).<sup>173</sup>
111. While the CMA has not found references to Kukla in the Parties' internal documents, the Parties' bidding data indicates that Kukla is identified as a competitor by both DPDHL and Hillebrand (see paragraph 79).<sup>174</sup>
112. Customer feedback however indicates that Kukla has recently been successful in gaining business in the UK, including by winning customers from Hillebrand in 2021.<sup>175</sup> Moreover, Kukla was listed as one of the main providers of ocean freight forwarding services for BWS in to and out of the UK by a number of customers that responded to the CMA's merger investigation,<sup>176</sup> and several more submitted that they regularly invite Kukla to participate in tenders along with the Parties.<sup>177</sup>
113. In line with its recent growth, Kukla [REDACTED] a strong growth trajectory and has plans to expand in the supply of ocean freight forwarding services for BWS in to and out of the UK. To support this growth, Kukla [REDACTED] will keep investing in people and network

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<sup>172</sup> [REDACTED] response to the competitor questionnaire, question 6 and response to follow-up questions. [Start Page - Robert Kukla GmbH - Internationale Spedition \(kukla-spedition.com\)](#).

<sup>173</sup> [REDACTED] response to the competitor questionnaire, question 1.

<sup>174</sup> Based on the Parties' bidding data, Kukla is seen less often in tenders by DPDHL than Hillebrand, with Hillebrand identifying Kukla more frequently as participating in the same UK tenders than DPDHL did. As noted at paragraphs 80 and 81, given the limitations of the bidding data provided by the Parties, the CMA has considered this data alongside other sources of evidence on the competitive constraint exerted by Kukla and other competitors assessed in this section on the Parties.

<sup>175</sup> [REDACTED] submitted that they use Kukla. [REDACTED] submitted that they have recently moved business from Hillebrand to Kukla. [REDACTED]. [REDACTED] response to the competitor questionnaire and follow-up questions.

<sup>176</sup> [REDACTED] responses to the customer questionnaire.

<sup>177</sup> [REDACTED] responses to the customer questionnaire.

infrastructure based on the business opportunities that present themselves in the future.

114. Based on the available evidence, the CMA believes that Kukla exerts at least some degree of competitive constraint on the Parties in the supply of ocean freight forwarding for BWS in to and out of the UK and can be expected to continue to do so post-Merger.

- *Uniserve / UniDrinks*

115. Uniserve is a large UK-based freight forwarder with its own global network of offices. Its UK activities, with almost £[redacted] in sales in 2021, focus on ocean freight forwarding (representing over [redacted]% of sales) for all types of cargo. It has a specialist division, UniDrinks, that is dedicated to freight forwarding services for BWS in to and out of the UK.<sup>178</sup>

116. UniDrinks has an established presence in BWS freight forwarding between the UK and the EEA with sales of approximately £[redacted] in 2021, and a growing presence in ocean BWS with sales of approximately £[redacted] in 2021, making it similarly sized to [redacted] (and representing a substantial increase compared to 2020).<sup>179</sup>

117. Uniserve was identified by Hillebrand as a competitor in at least one tender involving ocean freight forwarding services for BWS in to and out of the UK.<sup>180</sup> In addition, in at least one of its internal documents, DPDHL notes that Uniserve is expanding and growing its share in bulk wine in the UK with a projection for it to become the third largest player in the segment, after Hillebrand and K+N/ VinLog.<sup>181</sup>

118. A number of customers who replied to the CMA's merger investigation listed Uniserve among the main forwarders for ocean transport of BWS products in to and out of the UK,<sup>182</sup> and several more submitted that they either use it as a provider for both cased and bulk BWS or have invited it to bid in their recent tenders.<sup>183</sup> Further, one competitor submitted that Uniserve is a direct competitor equipped with a strong local UK management.<sup>184</sup>

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<sup>178</sup> [redacted] response to the competitor questionnaire. See also <https://uniserve.co.uk/>

<sup>179</sup> [redacted] response to the competitor questionnaire, question 1.

<sup>180</sup> Hillebrand's bidding data, Response to RF11, question 27 and Annex 123.

<sup>181</sup> Response to the s109 Notice of 7 December 2021, Annex 011 (page 16).

<sup>182</sup> [redacted] responses to the customer questionnaire.

<sup>183</sup> [redacted] responses to the customer questionnaire.

<sup>184</sup> [redacted] response to the competitor questionnaire.

119. Finally, in terms of growth, Uniserve [X] is expanding its portfolio and capabilities to reach a broader BWS customer base. [X] Uniserve has recently acquired a stake in WineFlow (a UK-based specialist wine freight forwarder with £[X] turnover) and UniDrinks has invested over £[X] in containers to service wine import markets.

120. Based on the available evidence, the CMA believes that Uniserve exerts at least some degree of competitive constraint on the Parties in the supply of ocean freight forwarding for BWS in to and out of the UK and can be expected to continue to do so post-Merger.

- *Other providers of ocean freight forwarding services including for BWS*

121. The Parties' bidding data and third-party feedback indicate that there are many other providers active in ocean freight forwarding services, including for BWS in to and out of the UK.<sup>185</sup> For example:

- (a) Paltank<sup>186</sup> and Stolt<sup>187</sup> are ISO-tank operators offering ocean freight forwarding services for bulk liquids, including BWS. Paltank features as a competitor in bulk BWS in the Parties' internal documents.<sup>188</sup> In addition, both Paltank and Stolt have been listed by around a third of the customers who responded to the CMA's merger investigation as two of the main providers of ocean freight forwarding services for bulk BWS.<sup>189</sup>
- (b) Hellmann is another provider of ocean freight forwarding services for cased and bulk BWS in to and out of the UK. Hellmann is currently used for ocean freight forwarding by at least two large customers who responded to the CMA's merger investigation and was identified by several others as a main provider of ocean freight forwarding services for BWS.<sup>190</sup>

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<sup>185</sup> Customer responses to the CMA's merger investigation also suggest that there are numerous other freight forwarders and transport operators which offer services with respect to BWS between EEA countries and the UK, including Liquid Logistics Group, Geodis, Aprille, Rodella, XPO logistics, and APLL. However, it is unclear to what extent these providers are currently competing in relation to ocean transport and/or BWS. For this reason and uncertainty around the extent to which they act as a competitive constraint on the Parties (and thus on the Merged Entity post-Merger), those providers are not discussed in this Decision and the CMA has not placed any weight on them as current competitors in relation to the provision of freight forwarding services for BWS in to and out of the UK (see paragraph 64(a)).

<sup>186</sup> [Paltank – Dedicated to the wines/spirits/drinks trades.](#)

<sup>187</sup> [Stolt-Nielsen - Experts in bulk-liquid logistics and aquaculture.](#)

<sup>188</sup> Response to the s109 Notice of 7 December 2021, Annex 011 (page 16). Merger Notice, Annex 089 (pages 37 and 39).

<sup>189</sup> [X] responses to the customer questionnaire.

<sup>190</sup> [X] responses to the customer questionnaire.

- (c) DSV Panalpina and DB Schenker are respectively the third and the fourth largest providers of ocean freight forwarding services in the world (after K+N and DPDHL)<sup>191</sup> and are both active in the BWS segment in the UK. DB Schenker has a BWS business division. DSV Panalpina [X] would not require significant investment to set one up and [X] regularly competes for BWS business in the UK, as opportunities arise.<sup>192</sup>
- (d) Kyfi Forwarding Kentucky (Kyfi) is a US-based global freight forwarder focused on spirits that has established an exclusive partnership with the Glasgow-based provider KC Shipping since 2018.<sup>193</sup> Evidence of Kyfi/KC Shipping competing against the Parties in UK tenders was found in DPDHL's bidding data (see paragraph 79).<sup>194</sup> Furthermore, Kyfi/KC Shipping was used by at least a few customers who responded to the CMA's merger investigation and was identified by two of them as a main provider of ocean freight forwarding services for BWS.<sup>195</sup>
- (e) Hoyer and Newport are two providers of ocean services for bulk BWS in to and out of the UK which were identified as main providers by three of the customers who responded to the CMA's merger investigation.<sup>196</sup>
- (f) DPDHL's bidding data shows that a large number of other freight forwarders active in other types of cargo also compete in BWS tenders, including Agility Logistics (part of DSV Panalpina since August 2021) and Expeditors (see paragraph 79).<sup>197</sup> In addition, around a third of the customers who responded to the CMA's merger investigation consider freight forwarders active in other types of cargo as an alternative to freight forwarders with a BWS focus. For instance, freight forwarders active in other types of cargo are frequently invited to

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<sup>191</sup> Merger Notice, Annex 004.1 (page 39); Annex 007 (page 6); Annex 011.1 (page 44); Annex 012.1 (page 39); Annex 013.1 (page 44).

<sup>192</sup> DSV Panalpina [X] the investment to create a BWS business division unit [X] would [X] involve training internal staff about excised good regulations and fiscal compliance. [X] response to the competitor questionnaire.

<sup>193</sup> Merger Notice, page 54, and <https://www.kcshipping.co.uk/about/origins-and-evolution>

<sup>194</sup> As noted at paragraphs 80 and 81, given the limitations of the bidding data provided by the Parties, the CMA has considered this data alongside other sources of evidence on the competitive constraint exerted by Kyfi/KC Shipping and other competitors assessed in this section on the Parties.

<sup>195</sup> [X] responses to the customer questionnaire.

<sup>196</sup> [X] responses to the customer questionnaire.

<sup>197</sup> As noted at paragraph 80, given the limitations of the bidding data provided by the Parties, the CMA has considered this data alongside other sources of evidence on the competitive constraint exerted by these competitors on the Parties.

participate in tenders along with freight forwarders with a BWS focus, and already have contracts with BWS customers in the UK.<sup>198</sup>

122. Based on the available evidence, the CMA believes that these providers exert a degree of competitive constraint on the Parties in relation to the provision of ocean freight forwarding services for BWS in to and out of the UK and can be expected to continue to do so post-Merger. However, the CMA considers that this is more limited than the constraint exerted by the providers described in paragraphs 94 to 120.

- *Carriers*

123. The available evidence shows that some carriers, including MSC, Maersk and Hapag Lloyd, work directly with customers to move and organise the transport of BWS in to and out of the UK.

124. The Parties' bidding data indicates that carriers regularly compete against DPDHL and Hillebrand for the provision of ocean freight forwarding services for BWS in to and out of the UK.<sup>199</sup> Similarly, the Parties' internal documents identify carriers as having a role in BWS freight forwarding and increasingly competing in tenders, in particular those involving beer and spirits.<sup>200</sup>

125. Consistent with the Parties' bidding data and internal documents, many customers who responded to the CMA's merger investigation said that they either use or would be willing to use carriers to handle their BWS requirements.<sup>201</sup>

126. Carriers who responded to the CMA's merger investigation submitted that while they typically supply vessel capacity to freight forwarders, they also provide services directly to customers for all types of BWS (including wine) with material sales in the UK.<sup>202</sup> However, carriers are not generally active in bulk BWS.<sup>203</sup> This is because the provision of freight forwarding services for bulk BWS involves additional services (eg

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<sup>198</sup> [redacted] responses to the customer questionnaire.

<sup>199</sup> As noted at paragraphs 80 and 81, given the limitations of the bidding data provided by the Parties, the CMA has considered this data alongside other sources of evidence on the competitive constraint exerted by these competitors on the Parties.

<sup>200</sup> Response to the s109 Notice of 7 December 2021, Annex 011 (slide 10); Annex 110 (slide 36). See also, Merger Notice, Annex 109 (page 4); Annex 102 (page 11).

<sup>201</sup> [redacted] responses to the customer questionnaire.

<sup>202</sup> [redacted] responses to the competitor questionnaire, question 1.

<sup>203</sup> [redacted] responses to the competitor questionnaire.

the supply, delivery, and management of tanks) which require a further layer of organisation and currently go beyond the carriers' area of expertise.<sup>204</sup>

127. In terms of growth, two of the carriers that responded to the CMA's merger investigation submitted that the role of carriers in freight forwarding for BWS (and for other commodities) will likely increase going forwards, as they progressively expand their range of logistics functions beyond transportation.<sup>205</sup> Further, one of these carriers told the CMA that it has already started an internal transformation to provide an increased range of logistics services, which are traditionally offered by freight forwarders.<sup>206</sup>
128. Based on the available evidence, the CMA believes that carriers exert a degree of competitive constraint on the Parties in the provision of ocean freight forwarding services for BWS in to and out of the UK (in particular for cased BWS) and can be expected to continue to do so post-Merger. However, the CMA considers that this is more limited than the constraint exerted by the providers described in paragraphs 94 to 120.

### ***Conclusion on horizontal unilateral effects***

129. For the reasons set out above, the CMA considers that the Parties have a significant presence and compete against each other closely for the provision of ocean freight forwarding services for BWS in to and out of the UK. However, the available evidence also indicates that the Parties are not each other's closest competitor.
130. Furthermore, for the reasons set out above, the CMA believes that the Parties strongly compete with a large number of providers (including both freight forwarders and carriers), which are frequently invited to participate in tenders organized by (or bilateral negotiations with) UK customers and are able to meet the different needs of these customers. In addition, while DPDHL may have grown its presence in the provision of ocean freight forwarding services for BWS in to and out of the UK, the available evidence shows that a number of other competitors have also been and can be expected to continue growing their BWS business in the UK. Moreover, the available evidence indicates that most UK customers already use more than one

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<sup>204</sup> Note of the call with customer [REDACTED], paragraph 24.

<sup>205</sup> [REDACTED] responses to the competitor questionnaire, questions 6 and 14.

<sup>206</sup> [REDACTED] response to the competitor questionnaire, question 6.



provider of ocean freight forwarding services for BWS and that switching provider or using additional providers is relatively easy.

131. Therefore, the CMA believes that the above constraints, taken together, are sufficient to ensure 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 provision of ocean freight forwarding services for BWS in to and out of the UK.

## **Vertical effects**

132. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer.<sup>207</sup>
133. Non-horizontal mergers do not involve a direct loss of competition between the merger firms.<sup>208</sup> Instead, a common concern is that they may result in the foreclosure of current or potential rivals, ie that the merged entity will be able to use its position in one market to harm the competitiveness of its rivals in the other.<sup>209</sup> This would weaken the constraints that the Merged Entity faces and as a result harm competition and therefore customers.<sup>210</sup> The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>211</sup>
134. As noted at paragraph 11, Hillebrand supplies flexitanks together with its freight forwarding services for BWS. Hillebrand may also supply flexitanks to other third parties, including DPDHL and other freight forwarders, for the purpose of freight forwarding services for bulk BWS. The CMA has therefore considered whether the Merged Entity could use the control of an input for the supply of freight forwarding services for bulk BWS to harm the competitiveness of its downstream rivals (input foreclosure).

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<sup>207</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.1(a).

<sup>208</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.2.

<sup>209</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.2.

<sup>210</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.2.

<sup>211</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 2.17(c). In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

135. The CMA's approach to assessing vertical 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>212</sup> This is discussed below.

### **Ability**

136. The Parties submitted that the Merged Entity would have no ability to foreclose access of downstream providers of freight forwarding services to flexitanks because Hillebrand is not an important supplier, and multiple alternatives will remain available to rival freight forwarders.<sup>213</sup> The Parties also submitted that flexitanks are not an important input for downstream providers of freight forwarding services.<sup>214</sup>

137. In its assessment of ability, in this case, the CMA has focused on the Merged Entity's market power upstream (see paragraph 133). In doing so, the CMA has considered:

- (a) the availability of alternative suppliers of flexitanks for BWS, especially wine for which flexitanks are the preferred tank option (see paragraph 40); and
- (b) the extent to which the Merged Entity's competitors in the downstream provision of freight forwarding services for bulk BWS currently purchase BWS flexitanks from Hillebrand.

138. The Parties submitted that BLT is the largest supplier of flexitanks, followed by Hillebrand, LAF and SIA, and that Hillebrand's share of supply would not exceed [20-30]% on a worldwide basis.<sup>215</sup> The CMA notes that the share of supply estimates submitted by the Parties are not specific to the supply of flexitanks for BWS, but rather encompass all types of flexitanks.

139. Hillebrand's internal documents indicate that Hillebrand's flexitank proposition is strong, but that it is facing [X] competition from rival suppliers in the process of improving their offer. These rival suppliers identified in Hillebrand's internal documents include BLT, LAF, LET, SIA, Trust, Hoyer, Liquatrans, and Philton.<sup>216</sup>

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<sup>212</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 7.10.

<sup>213</sup> Merger Notice, paragraphs 19.4(d) and 19.5.

<sup>214</sup> Merger Notice, paragraphs 19.4(d) and 19.5.

<sup>215</sup> Merger Notice, Table 10.

<sup>216</sup> Merger Notice, Annex 117.

140. While the CMA considers that Hillebrand is likely to be the market leader in the supply of flexitanks for BWS, third party feedback indicates that BLT, SIA and LAF also have a significant position in this segment.<sup>217</sup>
141. In addition, all downstream providers of freight forwarding services for bulk BWS that responded to the CMA's merger investigation submitted that they do not currently purchase BWS flexitanks from Hillebrand and that a range of alternative suppliers are available, including SIA, Liquatrans, BLT and LAF.<sup>218, 219</sup> Several of these downstream competitors also explained that they used to purchase BWS flexitanks from Braid but have switched supplier after Hillebrand's takeover of Braid in October 2020. As such, they currently rely on suppliers other than Hillebrand for their purchases of BWS flexitanks.<sup>220</sup>
142. Moreover, no third party raised concerns in relation to the access to flexitanks for BWS.<sup>221</sup>
143. Based on the available evidence, the CMA considers that Hillebrand's role as supplier of flexitanks for BWS to downstream competitors is currently limited and that alternative suppliers remain available to rival freight forwarders. The CMA therefore believes that the Merged Entity would not have the ability to harm the competitiveness of its downstream rivals by engaging in input foreclosure.

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<sup>217</sup> For example, one provider of ocean freight forwarding services for BWS to UK customers submitted that Hillebrand is the largest supplier of BWS flexitanks worldwide, followed by SIA, BLT, and LAF. [X] response to follow-up questions.

<sup>218</sup> [X] responses to the competitor questionnaire. See also, Note of call with competitor [X], paragraph 27; Note of call with competitor [X], paragraph 28.

<sup>219</sup> Hillebrand submitted that it only has [X] for the supply of flexitanks for BWS to freight forwarders ([X]), which it will continue to honour post-Merger (Response to RFI3, question 12). Based on sales data provided by Hillebrand and third-party evidence, the CMA considers that [X] activities in bulk BWS are limited. Therefore, the CMA believes that even if the Merged Entity were to engage in foreclosure of flexitanks with [X], such a strategy would only lead to limited gains and would be unlikely to have an effect on competition in the UK.

<sup>220</sup> Note of call with competitor [X]; Note of call with competitor [X].

<sup>221</sup> The CMA notes that the flexitank supplier [X] submitted a concern to the CMA about the Merger leading to the creation of a dominant player in the bulk liquid segment and that this would put smaller suppliers of flexitanks at a disadvantage. [X] submitted that, due to its scale and being vertically integrated, the Merged Entity would be able to offer freight forwarding services for bulk non-hazardous liquids (including BWS) at a lower price to end-customers. As a result, smaller vertically integrated operators (such as [X]) may be driven out of business and the Merged Entity would eventually be able to raise prices of flexitanks and freight forwarding services in general. As [X] submitted that DPDHL is not a significant customer for them, the CMA believes that this concern relates to the Parties potentially becoming more efficient. Efficiencies that induce merger firms to act as stronger competitors to their rivals would typically support the case for a merger to be cleared ([Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 8.4-8.5). A merger might raise concerns if an increase in scale could enable the merged entity to drive out rivals and subsequently increase prices once it faces less competition. However, given the evidence that there are available alternative suppliers to Hillebrand in the supply of flexitanks as well as to the Merged Entity in the provision of freight forwarding services in general, the CMA has not discussed further this concern further in the Decision.

### ***Incentive and effect***

144. The CMA has not needed to consider incentive or effect given it does not believe, for the reasons set out above, that the Merged Entity has the ability to harm the competitiveness of its downstream rivals.

### ***Conclusion on vertical effects***

145. For the reasons set out above, the CMA believes that the Merged Entity would lack the ability to harm the competitiveness of its downstream rivals by foreclosing access to flexitanks for BWS. This is because rival providers of freight forwarding services for BWS mainly source their flexitanks from alternative suppliers and will continue to do so post-Merger. For any rival downstream competitors that currently purchase flexitanks from Hillebrand, there are also a number of alternative suppliers of BWS flexitanks to which they could switch. The CMA therefore considers that the Merger does not give rise to a realistic prospect of an SLC on the basis of vertical effects in relation to the provision of freight forwarding services for bulk BWS in to and out of the UK.

## **ENTRY AND EXPANSION**

146. Entry, or expansion of existing firms triggered by the merger, 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 triggered by the merger might prevent an SLC, the CMA considers whether such entry or expansion triggered by the merger would be timely, likely, and sufficient.<sup>222</sup>
147. However, the CMA has not had to conclude on entry or expansion triggered by the Merger, as the Merger does not give rise to competition concerns on any basis. The CMA considered in the Competitive Assessment section recent growth and further expansion plans of competitors irrespective of the Merger (see from paragraph 94).

## **THIRD PARTY VIEWS**

148. The CMA contacted customers and competitors (including other freight forwarders and carriers) of the Parties for ocean freight forwarding services for BWS in to and out of the UK. The CMA also contacted suppliers of flexitanks, including flexitanks

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<sup>222</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

specifically designed for bulk BWS. Third party comments have been taken into account where appropriate in the competitive assessment above.<sup>223</sup>

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<sup>223</sup> The CMA notes that a small number of customers have raised the concern that providers of ocean freight forwarding services for BWS in to and out of the UK could coordinate their market behaviour following the Merger ([3<] responses to the customer questionnaire, question 15). However, for the reasons outlined in the **Competitive Assessment** section (in particular the lack of visibility on the various competitors taking part in tenders, the existence of a number of competitors envisaging growth, and the relatively low barriers to expansion) and the lack of evidence of pre-existing coordination with respect to the provision of ocean freight forwarding services for BWS to UK customers, the CMA considered that no plausible competition concerns would arise in respect of coordinated effects as a result of the Merger at an early stage in its investigation and this is therefore not discussed further in this Decision.

## **DECISION**

149. Consequently, 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.

150. The Merger will therefore not be referred under section 33(1) of the Act.

**Jenny Sugiarto**  
**Director, Mergers**  
**Competition and Markets Authority**  
**15 March 2022**