

Complete acquisition by GXO Logistics, Inc. of Clipper Logistics plc

Decision on relevant merger situation and substantial lessening of competition

ME/6996/22

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 4 October 2022. Full text of the decision published on 19 October 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 24 May 2022, GXO Logistics, Inc. (**GXO**) acquired Clipper Logistics plc (**Clipper**) (the **Merger**). GXO and Clipper are together referred to as the **Parties**. For statements referring to the market position following the Merger, GXO and Clipper are together referred to as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of GXO and Clipper is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of contract logistics services (**CLS**) in the UK, specifically for the supply of CLS to retail consumers. This involves the supply of warehousing, distribution, order fulfilment, and returns management services to different retailers and end consumers, including where products are ordered online (**ecommerce**). The CMA has assessed the impact of the Merger in the supply of CLS to retail customers in the UK (but excluding in-house supply) and considered any relevant differences in the supply of CLS to retail ecommerce customers in its competitive analysis.
4. The CMA believes that the Parties are both material suppliers of CLS to UK retail customers. The Merged entity will be the largest supplier of these services, with a share of around [10-20]% (by revenue) in the supply of CLS to UK retail customers and with a higher share in relation to retail ecommerce customers. As the supply of

CLS to retail UK customers is a bidding market, in which the shares of supply can easily change, the CMA has placed greater weight on third party views, bidding data and internal documents, rather than on shares of supply on its own, as an indication of the competitive strength of CLS suppliers to retail customers.

5. The CMA found that Parties compete against each other in the supply of CLS to UK retail customers, but the evidence does not point towards the Parties being particularly close competitors in the supply of CLS to UK retail customers, or in the narrower segment for ecommerce customers.
6. The CMA believes that the Merged Entity will continue to be constrained in the supply of CLS to UK retail customers (including retail ecommerce customers) by a number of large competitors (such as DHL, Wincanton, Culina and CEVA) and to a lesser extent by a tail of medium and small suppliers.
7. The CMA believes that these suppliers, taken together with the ability of some customers to provide CLS services in-house, will provide a sufficient constraint on the Merged Entity to prevent an increase in price or deterioration in quality as a result of the Merger.
8. The CMA accordingly believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of CLS to retail (including ecommerce) customers in the UK.
9. The Merger will therefore not be referred under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

10. GXO is a CLS provider (see paragraph 24 onwards for more details) headquartered in Greenwich Connecticut, USA and operates in 28 countries across Europe, North America, Latin America and Asia.¹ GXO's global revenue in 2021 was £6,182 million, of which £2,051 million was generated in the UK.²
11. Clipper is a UK-based company with a presence in mainland Europe namely in Poland, Germany, Ireland, the Netherlands and Belgium and is primarily active in the provision of CLS to retailers. Clipper's total revenue in 2021 was £696 million, of which £[<] million was generated in the UK.³

¹ Final Merger Notice submitted by the Parties on 8 August 2022 (**FMN**), paragraph 4.

² FMN, page 18.

³ FMN, paragraph 2 and page 18.

12. On 24 May 2022, GXO completed the acquisition of the entire issued and to be issued share capital of Clipper in a mixed cash and share transaction.⁴
13. The Parties informed the CMA that the Merger was also the subject to review, and has been cleared, by competition authorities in Poland.⁵

Jurisdiction

14. Each of GXO and Clipper is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
15. The UK turnover of Clipper exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
16. The Merger completed on 24 May 2022 and the CMA was first informed about it on 24 May 2022. The four month deadline for a decision under section 24 of the Act is 25 October 2022, following an extension under section 25(2) of the Act. As such, the four-month period for a decision, as extended, has not yet expired.
17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 August 2022 and the statutory 40 working day deadline for a decision is therefore 11 October 2022.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie, the counterfactual).⁶ For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁷
20. The Parties submitted that the counterfactual should be the prevailing conditions of competition.⁸

⁴ FMN, paragraphs 1 and 28.

⁵ FMN, paragraph 38.

⁶ [Merger Assessment Guidelines](#) (CMA 129), March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

⁷ See Merger Assessment Guidelines, from paragraph 3.12.

⁸ FMN, paragraph 82.

21. The CMA has received some evidence that:
- (a) GXO was looking to introduce [redacted] in the UK.⁹ [redacted].¹⁰
 - (b) Clipper planned to offer reverse logistics¹¹ [redacted].¹²
22. The evidence considered by the CMA broadly supports that the appropriate counterfactual is the pre-Merger conditions of competition. The CMA considers the pre-Merger conditions of competition to be the relevant counterfactual but has taken account the effect of the Parties' plans for continue to develop their business in the competitive assessment.

Frame of reference

23. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹³
24. The Parties overlap in the supply of CLS to retail and life science customers.¹⁴
25. CLS forms part of a wide spectrum of B2B supply chain related services, which are utilised by businesses in order to supply their products to business customers and consumers. Different types of supply chain related services include, for example, freight forwarding, CLS and parcel delivery. CLS include a wide range of supply chain related services which are utilised by businesses in order to supply their products to business customers and consumers, such as warehousing, distribution, order fulfilment, retail e-commerce, and reverse logistics.¹⁵ Some of these services are tailored to the specific needs of each customer.¹⁶
26. Businesses can either outsource the supply of CLS (in whole or in part) to third parties, such as the Parties, or perform CLS in-house.¹⁷

⁹ FMN, paragraph 36 and Parties' response to Q2 of the CMA's request for information dated 9 June 2022.

¹⁰ Parties' response to Q1 of the CMA's request for information dated 9 June 2022.

¹¹ Reverse logistics can be used to refer to different concepts: (1) recycling, waste and packaging management (such as taking back cardboard packaging and tray-washing); or (2) the management of returned products ie, the logistics of products coming back 'up' the supply chain. The Parties mainly overlap in the management of returned products and therefore when 'reverse logistics' is used in the decision it is referring to the management of returned products (FMN, paragraph 154).

¹² Parties' response to Q15 of the CMA's request for information dated 19 May 2022.

¹³ Merger Assessment Guidelines, paragraph 9.4.

¹⁴ FMN, Table 2.

¹⁵ FMN, paragraphs 86-88 and 108.

¹⁶ FMN, paragraphs 86 and 87.

¹⁷ FMN, paragraph 94.

27. When businesses (customers) outsource the supply of CLS they tend to use bidding processes.¹⁸ Such processes usually involve multiple rounds, whereby the list of suppliers is narrowed down to a shortlist and an eventual winner or winners. Prices and contracts terms are in practice, generally, determined through extensive bilateral negotiations leading to an individual specifically tailored arrangement with a customer, typically following a sophisticated tendering process.¹⁹
28. The supply of CLS to retail customers refers to the provision of CLS to different retailers and end consumers (eg retail suppliers of clothing, non-food products, furniture), including where products are ordered online (**ecommerce**) but does not include the provision of logistics services for: (a) primary drinks distribution; (b) secondary drinks distribution;²⁰ and (c) food service (ie, deliveries to restaurants, pubs, hotels, cafes, coffee shops and other catering operations) (**CLS to retail customers**).
29. The supply of CLS to life science customers refers to the provision of CLS services to life science/healthcare customers (in a broad sense) (**CLS to life science customers**), but does not include beauty products or over-the-counter pharmaceuticals, as these fall within the retail segment.²¹

Product scope

30. The Parties submitted that the product frame of reference should include all or almost all CLS provided within the UK.²² However, on a cautious basis the Parties also assessed the Merger on the basis of CLS to retail customers separate from others.²³
31. The CMA has previously considered the provision of CLS in XPO / Kuehne + Nagel Drinkflow (**XPO/K+N**) and assessed the market for UK CLS on the basis of a frame of reference by industry sector/type of goods handled. As a result, in that decision, the CMA assessed the following segments: (a) primary drinks distribution; (b) secondary drinks distribution (excluding self-supply); (c) food service; and (d) retail.²⁴ The Parties submitted the retail segment identified in XPO/K+N is the only

¹⁸ Parties' response to question 9 of the CMA's request for information dated 19 May 2022.

¹⁹ FMN, paragraphs 103-105. and submissions of various third parties.

²⁰ See definitions of primary and secondary drinks distribution in the CMA decision, CMA/32/2020 XPO Logistics, Inc. / Kuehne + Nagel Drinkflow Logistics Holdings Limited, paragraph 25.

²¹ FMN, Table 2.

²² FMN, paragraph 143.

²³ FMN, paragraph 144. The Parties submitted that, on a cautious basis, a narrower frame of reference could be considered for the supply of CLS to retail customers, distinguishing between suppliers with or without temperature-controlled capabilities for food products. The Parties supplied shares of supply including and excluding the supply of CLS for temperature-controlled food products, which showed little variation in the Parties' combined share. The CMA received no evidence that indicated any significant difference between supplying CLS to temperature-controlled and non-temperature-controlled retail customers. However, it has not been necessary to conclude on the relevant frame of reference for temperature controlled CLS as no competition concerns arise in relation to these services on any plausible basis.

²⁴ CMA/32/2020 XPO Logistics, Inc. / Kuehne + Nagel Drinkflow Logistics Holdings Limited, paragraph 63.

area of overlap between the Parties due to Clipper's focus on retail and life science segments.²⁵

32. The CMA considered whether it would be appropriate to:
- (a) widen the product frame of reference to include all segments (such as CLS offered to industrial and construction, food and beverage customers or life science customers) aggregated into one product frame of reference.
 - (b) distinguish a narrower product frame of reference for ecommerce, as a segment of the supply of CLS to retail customers; and
 - (c) include both the in-house and outsourced supply of CLS as part of the same product frame of reference.

The supply of CLS to retail customers and to non-retail customers

33. As noted above, the Parties overlap in the supply of CLS to both retail customers and life science customers. The CMA has considered whether the supply of CLS to these two segments should be aggregated, along with the supply of CLS to other segments, such as industrial and construction or food and beverage.
34. In relation to the supply of CLS to life science customers, the CMA received third party evidence that that there are additional regulatory requirements that providers need to meet to provider CLS to life science customers which reduces the pool of potential suppliers.²⁶ The CMA also received mixed evidence from third parties about the level of supply-side substitutability between supplying life science customers and other segments, with one supplier noting that more investment was required,²⁷ while another supplier did not consider it to be sufficiently different.²⁸ Further, there are also specialist suppliers providing CLS to life science customers.²⁹
35. Taking the evidence in the round, the CMA has considered that the supply of CLS to life science customers as a distinct product frame of reference to the supply of CLS to other customer segments. However the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within the supply of CLS to life science customers. The Parties' combined share of supply to life science customers is below [5-10]% (by revenue)³⁰ with Clipper only active in supplying life science customers via [S&C].³¹ Even if Clipper were to expand

²⁵ FMN, paragraph 148.

²⁶ Third party responses to CMA questionnaire.

²⁷ Third party response to CMA questionnaire.

²⁸ Third party response to CMA questionnaire.

²⁹ FMN, paragraph 270 and third party response to CMA questionnaire.

³⁰ FMN, Table 14.

³¹ FMN, paragraph 163.

its position in the supply of CLS to life science customers in the UK, there are a range of alternative suppliers of these services.³² Therefore, the CMA does not consider the supply of CLS to life science customers further in this decision.

36. In relation to other sectors in which the Parties do not overlap (such as industrial and construction or food and beverage), the CMA received mixed evidence on suppliers' ability to switch between supplying different segments. Some suppliers considered they could easily switch³³ and others considered they could not easily switch between segments such as food and manufacturing due to the scale of operations in those segments.³⁴ One respondent also noted that the competitor set varies across different segments.³⁵ Therefore, in line with XPO/K+N, the CMA does not consider it appropriate to aggregate supply of CLS to retail customers with the supply of CLS to other customer segments.

The supply of CLS to ecommerce and non-ecommerce retail customers

37. Within retail CLS, both GXO and Clipper have a strong position in the supply to ecommerce customers.³⁶ Ecommerce customers typically supply their customers from centralised distribution centres and are often large-scale operations which involve significant automation, specialist IT and returns processing.³⁷
38. The Parties submitted that ecommerce should be considered as part of the retail segment. This is because customers can either purchase products via ecommerce channels or via traditional bricks and mortar retail channels,³⁸ and from a supplier's perspective there is little difference between reverse logistics services for purchases made online or in bricks-and-mortar stores.³⁹
39. Some customers identified CLS supplied to ecommerce customers as a separate segment to CLS supplied to retail customers.⁴⁰ Several customers also considered experience in supplying ecommerce customers was an important factor when assessing CLS suppliers.⁴¹ However, a significant majority of customers that responded to the CMA's questionnaire were active in both ecommerce and non-ecommerce retail spaces and often purchased CLS across both of these areas from the same supplier.⁴²

³² For example, third party response to CMA questionnaire.

³³ Third party call note.

³⁴ Third party response to CMA questionnaire.

³⁵ Third party response to CMA questionnaire.

³⁶ Third party responses to CMA questionnaire. Third party call note. Clipper Annex Clipper_0518 provided in response to the CMA section 109 notice dated 17 May 2022.

³⁷ Third party response to CMA questionnaire.

³⁸ FMN, paragraph 159; and Parties' response to Q6 of the CMA's request for information dated 9 June 2022.

³⁹ FMN, paragraph 160.

⁴⁰ Third party responses to CMA questionnaire.

⁴¹ Third party call note; third party responses to CMA questionnaire.

⁴² Customer responses to the CMA questionnaire.

40. The CMA received mixed evidence from competitors. Some competitors identified CLS supplied to ecommerce customers as a separate segment to CLS supplied to retail customers noting size, scale, the level of the investment, and competitor set as their reasons.⁴³ Other competitors considered the requirements to supply CLS to retail and ecommerce to be similar.⁴⁴ Also, several competitors noted that they were planning to enter or expand their current CLS offering for ecommerce customers.⁴⁵ One competitor supplying CLS to retail, has plans to enter ecommerce based on an investment of £[redacted] over three years. It expects to grow its CLS revenue by [redacted]% each year as a result of these plans.⁴⁶
41. Internal documents provided by the Parties show ecommerce is generally discussed as part of their CLS retail businesses. In particular, GXO provided documents that show [redacted].⁴⁷ Clipper documents [redacted].⁴⁸
42. Overall, the CMA considers that:
- (a) the requirements to supply ecommerce and non-ecommerce retail customers appear to be broadly similar;
 - (b) customers typically require both types of CLS (ie, ecommerce and non-ecommerce retail CLS) and often used the same supplier for the supply of both CLS services; and
 - (c) there is a similar competitor set between ecommerce and non-ecommerce retail CLS and there are several competitors planning to enter or expand their current CLS offering for ecommerce customers.
43. Therefore, the supply of CLS to retail ecommerce customers has been considered in the same frame of reference as the supply of CLS to retail customers, with any differences in the competitive strength of the suppliers taken into account in the competitive assessment.

The supply of CLS In-house and the supply of CLS to third parties (outsourcing)

⁴³ Third party responses to CMA questionnaire.

⁴⁴ Third party responses to the CMA questionnaire.

⁴⁵ Third party responses to the CMA questionnaires.

⁴⁶ Third party response to the CMA questionnaire.

⁴⁷ GXO document CAT_02_00031395 provided in response to the CMA section 109 notice dated 19 May 2022, GXO document CAT_02_00055355 provided in response to the CMA section 109 notice dated 19 May 2022, and GXO document CAT_02_00049993 provided in response to the CMA section 109 notice dated 19 May 2022.

⁴⁸ Clipper document Clipper_0692 provided in response to the CMA section 109 notice dated 17 May 2022, and Clipper document Clipper_0518 provided in response the CMA section 109 notice dated 17 May 2022.

44. The Parties submitted that CLS can be managed in-house or outsourced to a third party CLS provider, however on a cautious basis focused their submissions as to the competitive assessment on outsourced CLS.⁴⁹
45. In XPO/K+N, the CMA excluded in-house supply from the relevant product frame of reference when considering the supply of secondary drink distribution.⁵⁰
46. While some evidence by the CMA suggests that some customers can switch between using in-house and outsourcing arrangement for CLS, other evidence indicates that in-house supply was not a viable option for all customers, with around half of customers that responded to the CMA questionnaire submitted that in-house provision is not commercially viable for their business (see paragraphs 89 and 90).
47. It has not been necessary for the purpose of this Merger to conclude whether the supply of CLS to retail customers should include both in-house and outsource supply these services, as no competition concerns arise on any plausible basis. On a cautious basis, however, the CMA has assessed this Merger in relation to the outsourced supply of CLS, excluding in-house supply from the relevant product frame of reference.

Conclusion on product scope

48. The CMA has accordingly considered this Merger using a retail product frame of reference, excluding in-house supply, and has considered any relevant differences in the ecommerce segment in its competitive analysis below. However, it was not necessary to reach a definitive conclusion on the product reference, since it found no competition concerns on any plausible basis.

Geographic scope

49. The Parties submitted that a UK national geographic frame of reference is appropriate for the supply of CLS to retail customers. The Parties submit that the vast majority of suppliers provide services across the entirety of the UK where customer's needs are met by a national or international supply chain.⁵¹ The Parties also submitted that suppliers can and do lease local assets required to provide CLS when they win contracts, so local presence is not necessary to bid for a contract.⁵²
50. In XPO/ K+N, the CMA found that competition on a UK basis is the appropriate geographic frame of reference for the supply of CLS to retail and food customers, but ultimately did not need to conclude on the specific boundaries.⁵³

⁴⁹ FMN, paragraph 137.

⁵⁰ CMA/32/2020 XPO Logistics, Inc. / Kuehne + Nagel Drinkflow Logistics Holdings Limited, paragraph 63.

⁵¹ FMN, paragraph 171.

⁵² FMN, paragraph 172.

⁵³ CMA/32/2020 XPO Logistics, Inc. / Kuehne + Nagel Drinkflow Logistics Holdings Limited, paragraph 73.

51. Evidence received from retail CLS customers indicates that they tend to use national suppliers to meet their needs. Customers typically have national requirements even when their operations are based in a specific region. One customer said it contracts with its CLS provider under a master services agreement for the entire UK.⁵⁴ The customer also provided lists of the suppliers it would consider in future tenders with no regional suppliers listed by either customer. Another customer stated that it considered suppliers need to have an existing large scale warehouse network in order to compete for its business.⁵⁵ Two other customers, however, stated that smaller local providers would also be included in the tendering process.⁵⁶
52. Competitor responses also point towards a national frame of reference. One competitor considered the geographic scope of the CLS to be national.⁵⁷ The CMA received no evidence from competitors that showed regional suppliers being able to compete on a national basis.
53. The Parties' internal documents show that they tend to assess the conditions of competition and the competitor set in the supply of CLS to retail customers at national level (UK). In an internal document, GXO explains [redacted].⁵⁸ Another GXO internal document also support that [redacted] and Clipper's documents show [redacted].⁵⁹ The CMA did not see any evidence in the Parties documents that there were regional differences in competition within the UK.
54. Given the above, the CMA has not undertaken specific local or regional assessments. Instead, in its competitive assessment, the CMA has focussed on the extent to which the Parties face competitive constraints in the supply of CLS to retail customers at national level, given that there a large number of suppliers who deliver or can deliver these services on a national basis.

Conclusion on frame of reference

55. For the reasons set out above, the CMA has considered the impact of the Merger by reference to the supply of CLS to retail customers in the UK, excluding in-house

⁵⁴ Third party call note.

⁵⁵ Third party response to the CMA questionnaire.

⁵⁶ Third party responses to the CMA questionnaire.

⁵⁷ Third party call note.

⁵⁸ GXO document CAT_02_00048908 provided in response to the CMA section 109 notice dated 19 May 2022, GXO document CAT_02_00031395 provided in response to the CMA section 109 notice dated 19 May 2022, and GXO document CAT_02_00049994 provided in response to the CMA section 109 notice dated 19 May 2022.

⁵⁹ GXO document CAT_02_00097204 provided in response to the CMA section 109 notice dated 19 May 2022, Clipper document Clipper_0692 provided in response to the CMA section 109 notice dated 17 May 2022, and Clipper document Clipper_0518 provided in response to the CMA section 109 notice dated 17 May 2022.

supply, and has considered any relevant differences in the ecommerce segment in its competitive analysis below (**supply of CLS to UK retail customers**).

Competitive assessment

Horizontal unilateral effects

56. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁶⁰
57. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of CLS to UK retail customers.
58. In assessing whether the Merger raises competition concerns in the supply of CLS to UK retail customers, the CMA considered:
 - (a) shares of supply;
 - (b) closeness of competition; and
 - (c) competitive constraints from other CLS suppliers to UK customers and from in-house supply.

Shares of supply

59. The Parties submitted their share of supply estimates for CLS to UK retail customers for 2019-2022,⁶¹ using their own revenues and estimated revenues for competitors based on public information. The Parties' share of supply estimates do not, overall, differ materially from the CMA's own estimates for the supply of CLS to UK retail customers (see Table 1 below). The Parties submitted that their estimated share of supply (which they considered to have been estimated on a conservative basis)⁶² are not indicative of plausible competition concerns. The Parties noted that the incremental share of supply to GXO as a result of the Merger is limited. The Parties also stated that a number of competitors they identified, although having a relatively limited share of supply in CLS to UK retail customers, are a very significant competitive constraint to the Parties.⁶³
60. The CMA considers that in bidding markets, where tenders are not frequent and the revenues generated from only a few contracts can materially change the market

⁶⁰ Merger Assessment Guidelines, paragraph 4.1.

⁶¹ FMN, page 53, Table 5.

⁶² The more 'conservative' share of supply estimates submitted by the Parties have excluded small regional players and in-house supply.

⁶³ FMN, paragraphs 181-183.

position of a supplier, shares of supply may not be fully indicative of the competitive pressure that each competitor exerts. As the supply of CLS to retail customers has the characteristics of a bidding market, shares of supply provide a less useful indication of the Parties' relative competitive strength. The CMA has, therefore, placed greater weight on third party evidence, bidding data and internal documents, rather than on shares of supply on its own, as an indication of the competitive strength of CLS suppliers to retail customers.

61. The CMA obtained UK revenue information from the Parties and third parties in relation to the supply of CLS to retail customers in 2021, to estimate shares of supply. Where data on third parties was not available the CMA used estimates of competitors' revenue provided by the Parties. This data was aggregated to derive the total market size for CLS supply to retail customers in the UK, for 2021. The CMA's share estimates for the supply of CLS services to UK customers in the UK are set out in Table 1.
62. Whilst the CMA's estimate for the share of supply of CLS to UK retail customers refer to 2021, the CMA has also estimated shares of supply for both 2019 and 2020 using the same methodology described above. The CMA found that the 2019 and 2020 shares of supply did not differ significantly from the 2021 estimates, although both of the Parties' shares have [redacted] in the last three years.

Table 1: Share of supply of CLS to retail customers in the UK, for 2021

Supplier	2021 Revenue (£m)	2021 Share
GXO	£[redacted]	[10-20]%
Clipper	£[redacted]	[0-5]%
Combined	£[redacted]	[10-20]%
DHL	£[redacted]	[10-20]%
Culina	£[redacted]	[10-20]%
Wincanton	£[redacted]	[10-20]%
EV Cargo	£[redacted]	[0-5]%
Yusen	£[redacted]	[0-5]%
Unipart	£[redacted]	[0-5]%
Ocado	£[redacted]	[5-10]%
GIST	£[redacted]	[5-10]%
CEVA	£[redacted]	[0-5]%
Other	£[redacted]	[10-20]%
Total estimated market	£[redacted]	100.0%

Source: CMA analysis of third-party responses to the CMA questionnaire and estimates provided by the Parties.

63. The shares of supply in Table 1 show that the Merged Entity will be the largest supplier of CLS to retail customers with a [10-20]% share. GXO ([10-20]%) is one of four suppliers that have a share of over 10% in 2021. Clipper is the seventh largest supplier in 2021 with a [0-5]% share.⁶⁴ The level of concentration in the supply of CLS to retail customers is not very high and no supplier (including the Parties) has a particularly high share of supply.
64. As noted above in paragraph 37, a few third parties indicated the Parties are strong in the supply of CLS to ecommerce customers.⁶⁵ The CMA has also estimated shares for the supply of CLS to ecommerce retail customers using ecommerce revenue provided by the Parties and their competitors.⁶⁶ In this segment, GXO's share in 2021 was [10-20]%, whilst Clipper's share was [10-20]%. The Parties' three largest competitors based on ecommerce shares are Ocado [20-30]%, DHL ([10-20]%), and Wincanton ([0-10]%). There are also some small suppliers in the overall supply of CLS to retail customers (namely DSV, Kinexia, and Expert) that have a disproportionately high number of ecommerce retail customers, but still only collectively account for about [5-10]% of the ecommerce share of supply.
65. As explained above in paragraphs 60-61, in interpreting the shares of supply the CMA took into account the fact that winning or losing a contract may materially change the shares of supply. This is particularly relevant in relation to the shares of supply for ecommerce, as one customer accounts for over 10% of all ecommerce supply.⁶⁷
66. Other limitations of the share of supply estimated by the CMA in relation to the supply of CLS to UK customers in the ecommerce segment are:
- (a) Some retail customers use the same CLS suppliers for ecommerce and non-ecommerce.⁶⁸ It may be difficult to these customers to allocate their CLS spending between e-commerce and non-ecommerce activities.
 - (b) Some CLS suppliers to ecommerce retail customers were not included in the CMA's share of supply estimates. For example, the CMA has not received revenue data for [X] which was identified as being a relevant ecommerce CLS supplier.⁶⁹

⁶⁴ [X]: Clipper's average share between 2019-2021 was [5-10]%. compared to [0-5]% in 2021.

⁶⁵ Third party identified ecommerce as a separate segment.

⁶⁶ Ecommerce shares of supply estimates include Ocado. [X] Excluding Ocado from the shares of supply estimates for ecommerce customers increases the shares for the Parties (GXO – [20-30]% and Clipper – [10-20]%), as well as the shares of all other competitors.

⁶⁷ CMA analysis of the Parties, competitors, and [X] data.

⁶⁸ Customers' responses to the CMA questionnaire indicate that a high proportion (20/26) of customers that contract CLS services both for ecommerce suppliers and non-ecommerce retail CLS.

⁶⁹ Third party response to CMA questionnaire.

67. This means that the CMA's share estimates represent an upper bound estimate in relation to the supply of CLS to UK retail customers in the ecommerce segment.
68. The CMA has considered in the remainder of the competitive assessment whether the Parties compete closely and whether they are constrained by alternative suppliers for these customers in particular.

Closeness of competition

69. Horizontal unilateral effects are more likely when the merging parties are close competitors.
70. The main overlap between the Parties is for the supply of CLS to retail customers. The CMA has considered the extent to which the Parties compete against each other, and the extent to which customers consider the Parties as rivals for future opportunities. In its assessment, the CMA considered the: i) the Parties' submission; ii) third party evidence; iii) bidding data; and iv) internal documents.

Parties' submissions

71. The Parties submitted that they are not particularly close competitors, let alone each other's closest competitor and that GXO and Clipper, in practice, offer differentiated solutions based on the differently configured respective infrastructure⁷⁰ resulting in their competitive interaction being less intensive than their estimated shares of supply would suggest.⁷¹

Third party evidence

72. Customers' and competitors' responses to the CMA questionnaire indicate that the Parties compete with each other, but are not particularly close competitors, with other competitors competing as closely with each of the Parties, including in relation to ecommerce.
 - (a) GXO and Clipper were two of the five CLS suppliers (third and fifth respectively) most frequently mentioned by CLS retail customers. The results are the same even considering only the responses of ecommerce customers. Around a quarter of customers would also consider both Parties in a future tender.
 - (b) The Parties were each other's fourth most frequently listed competitor by other CLS suppliers. Most competitors [redacted] identified GXO as a close competitor of Clipper, and around half [redacted] identified Clipper as a close competitor of GXO.

⁷⁰The Parties submitted that GXO's current logistics offering in the UK is [redacted], while Clipper's [redacted] (FMN, paragraph 34 and 35).

⁷¹ FMN, paragraph 185.

Bidding data

73. Bidding data provided by some of the Parties' CLS UK retail customers to the CMA, showed that the Parties only sometimes ([REDACTED]) competed directly against each other. In the bids where the Parties did overlap most [REDACTED] customers identified bids from at least four CLS suppliers.
74. The bidding data provided by the Parties' customers also showed that the Parties competed directly against each other in relation to a small number [REDACTED] of ecommerce customers. In some [REDACTED] of these tenders, customers received bids from several other competitors.⁷²

Internal documents

75. Some of the Parties' internal documents, in particular transcripts from GXO meetings with investors and other of the Parties' strategic documents, suggest that the Parties are close competitors.⁷³ The transcripts of GXO with investors provided a record of GXO representatives explaining [REDACTED].⁷⁴ In the Parties' internal strategic documents it shows that [REDACTED].⁷⁵
76. Although some of GXO's internal documents suggest that the Parties are each others' closest competitors, the CMA has considered these presentations to investors in the context of the overall evidence received during its investigation, including other internal documents that refer to other competitors and, in particular, the responses to the CMA questionnaires and bidding data submitted by various of third parties that, which indicate that the Parties are not particularly close competitors.⁷⁶
77. As noted at paragraph 21 above, the CMA has received some evidence that GXO is looking to [REDACTED].⁷⁷ However, GXO submitted that it did not have any documents setting out its plans for [REDACTED].⁷⁸ Furthermore, no customers or competitors raised [REDACTED] in response to the CMA's questionnaire. It was not necessary, however, to reach any final conclusion on the impact of the [REDACTED], as no competition concerns were found on any plausible basis.

⁷² While the Parties were the only bidders in one ecommerce tender, this customer did not raise any concerns with the Merger (third party response to CMA questionnaire).

⁷³ GXO document CAT_02_00048908 provided in response to the CMA section 109 notice dated 19 May 2022, GXO document CAT_02_00031395 provided in response to the CMA section 109 notice dated 19 May 2022, and GXO document CAT_02_00049994 provided in response to the CMA section 109 notice dated 19 May 2022.

⁷⁴ [REDACTED] The CMA has accounted for ID Logistics, and other small suppliers by using the 'other' category in the shares of supply at Table 1 which aggregates the share of several smaller competitors into a single row.

⁷⁵ See for example: Annex 10 to the FMN; Annex 11 to the FMN; and Annex 17 to the FMN.

⁷⁶ Merger Assessment Guidelines, paragraph 2.23.

⁷⁷ FMN, paragraph 36; and Parties' response to Q2 of the CMA's request for information dated 9 June 2022.

⁷⁸ Parties' response to Q3 of the CMA's request for information dated 9 June 2022.

Conclusion on closeness of competition

78. Overall, the Parties compete against each other in the supply of CLS to UK retail customers. The Parties are both material suppliers, with a material share of supply. Customers and competitors view each of the Parties as competitors, but the evidence does not point towards the Parties being particularly closer competitors in the supply of CLS to retail customers, or in the narrower segment for ecommerce customers.

Competitive constraints from other CLS suppliers to UK customers and in-house supply

79. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA considered whether there are alternative suppliers that would provide a competitive constraint on the Merged Entity. In its assessment, the CMA considered: i) the Parties' submission; ii) third party evidence; iii) bidding data; iv) internal documents; and the outside market constraints from self-supply.

Parties' submissions

80. The Parties submitted that the supply of CLS to UK retail customers is characterised by the presence of a large number of suppliers that will continue to constrain a combined GXO and Clipper after the Merger. The Parties submitted that these suppliers, such as DHL, Wincanton, Culina, Torque, Uniserve, Geodis, CEVA, EV Cargo and other smaller suppliers (including those with a strong e-commerce offering), have the necessary scale and capabilities to provide an equivalent range of services. The Parties noted that many of these competitors already also provide services to GXO and/or Clipper customers or provide services to comparable customers, with regular switching occurring among operators.⁷⁹ The Parties also submitted that many of the largest retailers and consumer product manufacturers continue to meet their logistics needs fully or largely in-house (amounting to more than half of all potentially addressable CLS UK retail market). The Parties consider that the ability for customers to opt to maintain logistics operations in-house is a significant additional disciplining factor.⁸⁰

Third party evidence

81. Customers' and competitors' responses to the CMA questionnaire indicate that the Merged Entity faces constraints from a number of suppliers of CLS to UK retail customers, including some suppliers able to service ecommerce customers. In particular:
- (a) DHL (first), Wincanton (second), and CEVA (fourth) are the three most regularly mentioned CLS suppliers by customers (other than the Parties).

⁷⁹ FMN, paragraphs 216 and 221.

⁸⁰ FMN, paragraphs 226 and 227.

Customers also gave a weighting (from 1-5, where 1 = strongest offer and 5 = weakest offer) to the strength of competitors and of those that were listed by at least 3 customers GXO received the highest average weighted score followed by Culina, DHL, DSV and Wincanton. Clipper had the seventh highest score. A long tail of different competitors to the Parties were also mentioned by some customers, with an additional ten suppliers mentioned by two different customers, and a further 24 suppliers mentioned by only one customer.⁸¹

- (b) Competitors mentioned DHL (first), Wincanton (second), and CEVA (third) as are the three most regularly suppliers mentioned as close competitors to both GXO and Clipper (in the same order for both). Competitors also gave a weighting (from 1-5, where 1 = closest competitor and 5 = remote competitor) of the constraint other suppliers provide on each of the Parties. For Clipper: DHL, Wincanton and CEVA were rated as its top three competitive constraints. For GXO: DHL, Wincanton and Clipper were rated as its top three competitive constraints.⁸² Competitor responses also identified a tail of 13 other competitors to the Parties. As some of these competitors were also listed by at least some customers, the CMA has considered that they individually provide a small constraint, but collectively provide some constraint on the Parties in relation to the supply of CLS to UK retail customers.

82. The CMA also considered third parties' responses to assess the constraints that the Parties face in relation to ecommerce UK retail customers:

- (a) Ecommerce customers identified a long tail of competitors (eg nine suppliers were identified by at least two ecommerce customers, and a further 19 suppliers were mentioned by one).
- (b) Around half of competitors identified Clipper as being stronger in ecommerce. Competitors, in general, identified DHL (first), Wincanton (second), CEVA (third) and GXO (fourth) as Clipper's closest competitors, which suggest that the Parties will continue to face the constrain of these suppliers in relation to ecommerce. Furthermore, the vast majority of competitors did not identify any differences in the competitor set between retail and ecommerce.

83. In relation to third party views on the effects of the Merger on competition, the CMA notes that:

- (a) Over two thirds of customers that expressed a view on the Merger explicitly stated they were not concerned with the Merger. Of those customers, some explained that they believed there will be sufficient competition remaining after

⁸¹ The impact restricting the sample to ecommerce customers is to reduce the long tail by four suppliers. The ordering of the Parties and their competitors remains unchanged.

⁸² CEVA was rated as GXO's fourth strongest competitor that received a weighting by at least 3 competitors, based on average weightings.

the Merger.⁸³ A few customers also viewed the Merger as benign.⁸⁴ A minority expressed views that the Merger would be beneficial.⁸⁵

- (b) The majority of competitors stated they were not concerned about the Merger and noted that they expected a large number of competitors to remain after the Merger.⁸⁶

84. A minority of customers expressed concerns about the Merger because it would reduce the number of available suppliers. However, these customers also provided evidence of a significant number of competitive constraints that would remain after the Merger. One customer explained that its concerns related to supply of CLS to ecommerce customers.⁸⁷ However, this ecommerce customer identified five other competitors it would consider in its next tender.

85. A small number of competitors expressed concerns about the Merger. These competitors noted that they believed the Merger would result in few remaining suppliers in addition to increased buyer power. These competitors, however, provided evidence of a significant number of competitive constraints that would remain post-Merger.⁸⁸

Bidding data

86. The bidding data provided by customers is broadly consistent with third parties' responses, showing that retail customers tend to consider a range of CLS suppliers in their tender. Customers typically invited and received bids from four to six bidders in their recent tenders.

Internal documents

87. The CMA considered the internal documents submitted by Parties to assess how each Party monitors its competitors.

88. Documents produced by GXO which monitor its competitors generally list a wide range of other competitors. For example:

- (a) [redacted].⁸⁹

⁸³ Third party responses to the CMA questionnaire.

⁸⁴ Third party responses to the CMA questionnaire.

⁸⁵ Third party responses to the CMA questionnaire.

⁸⁶ Third party responses to the CMA questionnaire.

⁸⁷ Third party response to the CMA questionnaire.

⁸⁸ Third party responses to the CMA questionnaire.

⁸⁹ GXO document CAT_02_00097204 provided in response to the CMA section 109 notice dated 19 May 2022.

- (b) [REDACTED].⁹⁰
- (c) [REDACTED].⁹¹
- (d) [REDACTED],⁹² [REDACTED].⁹³

89. [REDACTED].⁹⁴ In one document, Clipper focuses [REDACTED].⁹⁵ In another document setting out Clipper's commercial strategy, Clipper identifies [REDACTED].⁹⁶
90. Some smaller competitors are also mentioned in a few internal documents of both Parties.⁹⁷

Outside market constraints from self-supply

91. In addition to third-party suppliers of CLS to retail UK customers, the CMA assessed the extent to which in-house supply is an alternative to these customers:
- (a) Around half of all customers that responded to the CMA's questionnaire submitted that in-house provision is commercially viable for their business. One customer submitted that it had previously switched provision from one of the Parties to in-house supply in six months.⁹⁸
 - (b) In a few internal documents GXO seems to consider the possibility of customers in-sourcing CLS as a competitive threat.⁹⁹
92. The CMA considers that the evidence above indicates that some customers in-source some or all of CLS requirements, which would provide a further constraint to the Parties, but it is unclear whether this alternative is a possibility and would meaningfully constrain the Parties in relation to all customers. Even if in-house CLS supply is not an alternative to some UK retail customers, the CMA considers that

⁹⁰ GXO document CAT_01_00002220 provided in response to the CMA section 109 notice dated 19 May 2022.

⁹¹ GXO document CAT_02_00097204 provided in response to the CMA section 109 notice dated 19 May 2022, GXO document CAT_01_00002220 provided in response to the CMA section 109 notice dated 19 May 2022, and GXO document CAT_02_00091488 provided in response to the CMA section 109 notice dated 19 May 2022.

⁹² It is unclear whether the responses of customers might have been influenced by the imminence of the Merger.

⁹³ FMN, paragraph 212.

⁹⁴ FMN, paragraph 209.

⁹⁵ Clipper document Clipper_0310 provided in response to the CMA section 109 notice dated 17 May 2022.

⁹⁶ Clipper document Clipper_0329 provided in response to the CMA section 109 notice dated 17 May 2022.

⁹⁷ See, for example, Clipper document Clipper_0681 provided in response to the CMA section 109 notice dated 17 May 2022; Annex 7 to the FMN; Annex 13 to the FMN GXO document CAT_02_00096162 provided in response to the CMA section 109 notice dated 19 May 2022; and GXO document CAT_02_00097204 provided in response to the CMA section 109 notice dated 19 May 2022.

⁹⁸ Third party response to the CMA questionnaire.

⁹⁹ For example, GXO document CAT_02_00096005 provided in response to the CMA section 109 notice dated 19 May 2022.

the Parties will face sufficient competition from a number of CLS suppliers in relation to these customers.

Conclusion on competitive constraints from other CLS suppliers to UK customers and in-house supply

93. The CMA found the Merged Entity will continue to be constrained by a number of large competitors in the supply of CLS to UK retail customers and by a tail of medium and small suppliers, as well as by the ability of some customers to provide these services in-house. Overall, the evidence considered above show that the following competitors will continue to pose a significant constrain on the Parties in the supply of CLS to UK retail customers, including in the ecommerce segment:
- (a) DHL is the largest supplier of CLS to UK retail customers, based on 2021 revenues. Customers view DHL as a stronger supplier than either of the Parties. Competitors also view DHL as a closer competitor to each of the Parties than they are to each other. DHL is [redacted] in the Parties' internal documents as [redacted]. DHL has a strong presence in the ecommerce segment.
 - (b) Wincanton is the fourth largest supplier of CLS to UK retail customers, based on 2021 revenues, broadly the same size of GXO. Customers view Wincanton as a stronger supplier than either of the Parties. Competitors view Wincanton as a closer competitor to each of the Parties than they are to each other. Wincanton is [redacted] in the Parties' internal documents. Wincanton is an active competitor in the ecommerce segment.
 - (c) Culina is the second largest supplier of CLS to UK retail customers, based on 2021 revenues. Several customers view Culina as a strong supplier, but overall it is seen as a weaker supplier than each of the Parties. Competitors view Culina as a close competitor to each of the Parties but more distant than they are to each other. Culina is identified as a competitor in some of the Parties' internal documents. Culina is an active competitor in the ecommerce segment.¹⁰⁰
 - (d) CEVA is a relatively small supplier, based on customers, based on 2021 revenues. Customers, however, view CEVA as a stronger supplier than Clipper and competitors view CEVA as a close competitor to each of the Parties. CEVA is mentioned in a few of the Parties' internal documents. CEVA is an active competitor in the ecommerce segment.
94. There are also a few other mid-sized competitors and a long tail of small suppliers that account for a significant proportion of the supply for CLS to UK retail customers ([30-40]%). This includes some suppliers which are similar in size to Clipper such as

¹⁰⁰ Third party response to the CMA questionnaire.

EV Cargo, Ocado, and Gist, as well as smaller suppliers, such as DSV, Kinexia, and Expert, which have smaller shares of supply, but are material competitors in the ecommerce segment. Many of these competitors were identified by a few third parties (customers and competitors) and mentioned in internal documents of both Parties as alternative suppliers of CLS to UK retail customers (even if less frequently than the competitors set out in paragraph 93). Some large customers also list the smaller suppliers among the alternatives to the Parties.

95. Furthermore, the evidence considered above indicates that in-house CLS supply may be an alternative to some UK retail customers.

Conclusion on horizontal unilateral effects

96. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of CLS to UK retail (including ecommerce) customers.

Decision

97. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
98. The Merger will therefore **not be referred** under section 22(1) of the Act.

Maria Duarte
Director
Competition and Markets Authority
4 October 2022