



Wincanton

CASE NO. ME/7099/24

Acquisition of Wincanton plc by GXO Logistics, Inc.

2 December 2024

**RESPONSE TO THE CMA'S PHASE 1 DECISION
DATED 1 NOVEMBER 2024**

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1. Executive Summary

- 1.1 The Parties welcome this opportunity to provide the CMA Panel and staff team with their views in response to the Phase 1 decision (the **Decision**) and look forward to discussing these issues at the Initial Substantive Meeting.
- 1.2 The Decision accepts that GXO's main strategic rationale for the Transaction as regards UK CLS is to give GXO the opportunity to enter or expand in customer segments where Wincanton is currently active but where GXO currently has a limited presence or none at all, including: aerospace and defence (**A&D**), public sector, industrials, infrastructure and construction, energy and bulk transport.
- 1.3 The Decision primarily considers the Transaction's potential impact on competition within Mainstream CLS covering Non-Retail and Retail customers.
- 1.4 The Parties' understanding is that the CMA did not identify concerns in respect of Non-Retail customers. The Parties agree with this. There can be no substantial lessening of competition (**SLC**) for Non-Retail customers given that:
 - (a) Regardless of size, these customers will continue to have a wide choice of 3PLs who can effectively meet their needs. Over the past three years, the Parties' combined share of this segment has been consistently at or below [10-20]% (excluding insourcing).
 - (b) There has been limited direct competition between the Parties reflecting their different specialisms and broader strategies. Wincanton is active across more Non-Retail verticals than GXO, including providing specialist transport CLS in a variety of verticals, such as construction (e.g. Aggregate Industries, Marshalls) and energy (e.g. Valero).
 - (c) The Decision implies that these customers are not central to the CMA's concerns: it does not focus on these customers and provides less detail and analysis for Non-Retail as Retail, and the Decision recognises that the Parties compete less closely for customers in this segment.
 - (d) Indeed, in response to the Phase 1 questionnaires, Non-Retail customers identified several other 3PLs as "strong or very strong" competitors to the Parties, including DHL, CEVA and XPO and a long list of other 3PLs.
- 1.5 This leaves Retail. Within this segment, the Decision's theory of harm and competitive concerns are centred on only a subset of customers, which are grouped together with reference to common characteristics. The Decision stops short of clearly defining this customer group though it does highlight "*larger retail customers with complex needs*" (the **Large Retail Customers**), and based on third party feedback, large grocery retail customers (the **Grocers**) in particular.
- 1.6 The Parties' competition case is that, after the Transaction:
 - (a) **There can be no SLC for non-Grocery Retail customers.** All non-Grocery Retail customers regardless of their size and whether they have omnichannel (including ecommerce) operations will continue to have a wide choice of 3PLs who can effectively meet their needs. The "complexity" of these customers' needs does not always align with their size and total CLS expenditure. And even in cases where such alignment exists, there have been multiple recent instances

of 3PLs (in addition to DHL) successfully winning significant opportunities with these customers in direct competition with the Parties. Large non-Grocery Retail customers will also have a ready option to insource some or all of their CLS requirements were the Merged Entity to seek to push through medium to long-term price increases after the Transaction.

- (b) **This leaves the Grocers as the main area of concern. The Parties understand why the Decision has a particular focus on Grocers.** The size of these customers in terms of both contract size and total CLS expenditure sets them apart from others; and at present, the fact is that the Parties and DHL account for most of the major outsourced warehouse contracts, although other 3PLs (e.g. Culina Group, XPO and other smaller 3PLs such as Lenhams) are also involved in Grocery CLS. There are also certain features of this sub-segment – frequent deliveries, tight delivery-to-store time slots and the need for temperature-controlled (*TC*) warehousing and fleet – that could be said to distinguish it from the rest of Retail CLS, although the Parties consider that several other 3PLs could satisfy these needs.
- (c) **The Parties submit that there can be no SLC for this group, for several reasons:**
 - (i) Nearly all Grocers can and do insource all or some of their CLS requirements. The extent to which Grocers choose to insource or outsource clearly has no impact on their ability to compete downstream, where competition is fierce.
 - (ii) Grocers are highly sophisticated, experienced and powerful purchasers of services in general and CLS in particular (as the Parties’ current [REDACTED] margins show).
 - (iii) Grocers control competition for their CLS needs. Although some Grocers currently choose to procure on a large scale, their modularised needs (multiple warehouses and transport networks) mean that they could - and many already do - choose to break these out into separate contracts of varying sizes and with staggered timings to: (i) strategically deploy multi- and mixed-sourcing procurement strategies to maximise their buyer power; and (ii) encourage and / or sponsor new entry and / or expansion. Post-Transaction, 3PLs who already have a Grocery Retail foothold (e.g. Culina Group and XPO) and / or established 3PLs with international Grocery Retail experience (e.g. CEVA) would be well placed to expand further or enter. Against this background, the Transaction cannot be expected to lead to increases in 3PL prices or deterioration in service offerings to Grocers.

1.7 **The Phase 1 process lacked the time and resources to examine the Transaction in detail, including the nuances of CLS provision to different customer groups.** The Parties contend that this should be the central focus of Phase 2, encompassing: (i) a full examination of the Parties’ Phase 1 submissions, particularly their insourcing submissions, which were not fully considered in the Decision; (ii) gathering and critically assessing detailed third-party empirical evidence (including data and internal documents); and (iii) a collaborative effort between the CMA and the Parties to develop further economic evidence that clearly tests both the strength of the competitive threat

posed by different 3PLs and the ability of Large Retail Customers to insource any or all their CLS needs.

- 1.8 **The Parties encourage the CMA to use the full range of its legal powers and institutional resources to facilitate its information gathering and analysis at Phase 2.** While the Parties recognise that it is for the CMA to determine how it conducts its Phase 2 inquiries, aligned with the collaborative spirit of the CMA’s new Phase 2 process, GXO has already made suggestions (Panel Letter dated 14 November 2024 (the *Panel Letter*) and Customer Outreach Materials dated 26 November 2024) on potential further avenues of evidential inquiry the CMA might find useful. The Parties look forward to discussing these proposals further at the Initial Substantive Meeting.
- 1.9 **The Parties are confident that the systematic collection and critical assessment of detailed third-party evidence will overcome the information gaps which have led to the Decision’s mischaracterisation of the market.** As the CMA is aware, GXO is keen to conclude the Transaction and unite the Parties’ employees as a single team, dedicated to providing UK customers with the best possible CLS. The review’s closure will also facilitate the realisation of the stated synergies and the intensification of GXO’s UK strategy of investing significantly in the UK economy, its supply chain security and workforce.
- 1.10 The Parties respectfully bring the Decision’s shortcomings to the CMA panel’s and staff team’s attention in this submission. These shortcomings are set out in more detail in the following sections but in summary are:
- (a) **Ambiguity around the identity of Large Retail Customers (Section 2).** While the Decision identifies a broad market for Mainstream CLS, the Decision identifies a narrower subset of “*larger retail customers with complex requirements*”. However, the Decision does not sufficiently define either “large” or “complex”.
 - (b) **The assumption that Large Retail Customers’ CLS requirements are necessarily “complex” (or more “complex”) than other customers’ requirements (Section 3).** However, a closer examination of these “complex requirements” reveals that they are within the capabilities of a wide range of 3PLs, as well as customers’ in-house operations.
 - (c) **The supposition that, inconsistent with market reality, the Parties and DHL (and CEVA, Culina Group and XPO to a lesser extent) have unique capabilities to service non-Grocery Large Retail Customers (Section 4).** The Decision relies on limited third-party feedback and selective evidence to reduce the set of effective 3PL competitors for these customers’ business down to the Parties and DHL. It concludes that that “*individually or cumulatively*” the 3PL competitive constraint on the Merged Entity after the Transaction will be insufficient to prevent an SLC.¹ This approach underplays the existing competitive strength of 3PLs including CEVA, Culina Group and XPO, as well as other 3PLs including transport providers.
 - (d) **A lack of appreciation that Grocery Retail is highly competitive notwithstanding the more limited competitor set (Section 5).** The Decision incorrectly implies that due to distinct features of Grocers’ demand being

¹ Decision, paragraph 135(c).

beyond most 3PLs' capabilities, Grocers will suffer from reduced choice post-Transaction. The Parties recognise that Grocery Retail operations present specific challenges (potentially over and above those presented by other Retail customers) and that the Grocers' current procurement strategies have limited their 3PL competitor set (see above). However, Grocers' CLS options are not limited to the current 3PLs servicing their contracts. If this were the case, it would be reasonable to expect these 3PLs to achieve higher margins on Grocery Retail contracts compared to those customers with access to a wider range of competitive alternatives. In reality, however, the opposite is true: the combination of (i) the threat of insourcing, (ii) the potential for Grocers to sponsor other 3PL entry or (more likely) expansion, and (iii) Grocers' significant buyer power together act as a powerful check on the current competitor set.

- (e) **The dismissal of the scope for “timely, likely and sufficient” new entry and / or expansion (Section 6).** As the Decision recognises, “*there are a number of market features that may support entry and / or expansion*” (e.g. procurement strategies, customers' ownership/control over assets, the widespread use of competitive tenders, the ability and widespread practice of customers multi-sourcing across different 3PLs and low barriers to switching). Given the timing limitations of the Phase 1 process, the Parties understand why the Decision has not explored new entry and / or expansion in depth. However, Phase 2 offers the CMA an opportunity to consider these features and how they have facilitated real-world expansion and sponsored entry (e.g. by ID Logistics, DSV, XPO, Maersk, Arvato and Bleckmann).
- (f) **Underplaying Large Retail Customers' effective use of insourcing to constrain the Parties by failing to differentiate between smaller and larger Retail customers (Section 7).** Based on mixed customer feedback, the Decision dismisses insourcing as a “*limited*” and “*highly uncertain*” competitive constraint for all Mainstream CLS customers. However, it is not the Parties' case that all Mainstream CLS customers have an equal ability to insource. Rather, the Parties' case is that insourcing is a credible option for a range of customers, in particular for Grocers and other Large Retail Customers. Almost all of the Parties' top 20 customers currently materially insource; and if the minority do not currently insource, the Parties contend that they could and would do in response to a non-transitory increase in price or deterioration in service quality.
- (g) **An incomplete and partial interpretation and deployment of internal documents to support the Decision's conclusions on the constraint exerted on the Parties by other 3PLs and insourcing (Section 8).** A properly contextualised reading of the Parties' documents supports their position that other 3PLs and / or in-house operations will be sufficient to constrain the Merged Entity post-Transaction.
- (h) **A lack of confirmation that the Transaction could not plausibly affect customers falling outside the Large Retail Customer cohort (Section 9).** The Parties' understanding is that the Decision's evidence base and analysis supports the conclusion that the Transaction could not plausibly result in an SLC for these customers.

1.11 **More generally, the Decision makes a number of market-wide inferences based on a necessarily partial and unrepresentative set of third-party views.** For example, the Decision rules out insourcing as a full in-market constraint for Mainstream CLS on the basis that many customers are unable to self-supply while others would find it costly to switch to or increase their self-supply. However, this approach does not consider the Parties' argument that insourcing is a ubiquitous constraint primarily for their largest customers though not necessarily for all customers across Mainstream CLS. Similarly, the Parties contend that the Decision cannot justifiably dismiss the cumulative constraint of a number of 3PLs across all Mainstream CLS on the basis that some customers do not necessarily consider them credible suppliers on an individual basis. The Decision also overlooks the fact that customers' ability to multisource from multiple 3PLs allows them to combine offerings from different providers with distinct strengths (e.g. transport and warehousing), rather than having to rely on a single full-service 3PL to meet all their requirements.

2. Scope of Large Retail Customer cohort of primary concern is unclear

- 2.1 The Decision identifies a realistic prospect of an SLC in the broad market for Mainstream CLS. The theory of harm and competitive concerns are then centred on a subset of customers. This position is consistent with the Merger Assessment Guidelines (the *MAGs*) which confirm that an SLC can affect just a part of a market.² The Parties therefore consider that it is appropriate and helpful to focus on just the key part of the relevant market in Phase 2.
- 2.2 There is, however, some ambiguity as to the exact parameters of the subset of customers on which the Decision principally focusses. The Decision states that it is not “*necessary to draw bright line distinctions between customer groups*”.³ Although the Parties agree that arbitrary categorisations can hinder analysis, the Parties believe it would be particularly helpful to clarify the distinguishing characteristics of this subset of customers early in Phase 2.
- 2.3 The Decision focusses on Large Retail Customers.⁴ It refers to “*omnichannel retailers and those active in groceries and fast-moving consumer goods*”⁵ (*FMCG*) but does not otherwise define the characteristics of “*larger*” retail customers with “*complex*” requirements. The Parties have therefore set out some views on these elements below.
- 2.4 Due to limitations of the Phase 1 process, it is understandable that the Decision has not clearly defined Large Retail Customers. It will be crucial that the CMA provides greater clarity on how this subset of customers should be defined early on in Phase 2 to ensure:
- (a) the CMA can fulfil its duty to make sufficient inquiries and reach robust conclusions which meet the higher Phase 2 evidential standard;
 - (b) the Parties are able to engage constructively with the CMA; and
 - (c) the Phase 2 process is fair with the Parties aware of the full case against them and provided with a reasonable opportunity to respond.
- (A) *The Decision does not define “large” or “larger” nor indicate to which customer characteristic(s) this descriptor applies.***⁶
- 2.5 As their internal documents demonstrate, neither GXO nor Wincanton use a consistent classification for “*large*” contracts in the ordinary course of business, nor is there a

² See *MAGs*, paragraph 9.1 as referenced in the Decision, paragraph 20 and the Issues Letter, paragraph 16 as reiterated at Decision, paragraph 20.

³ Decision, paragraph 116.

⁴ Decision, paragraph 11(b). The Decision uses a slight variation to identify the customer cohort in paragraph 52, labelling it “*large retailers with more complex requirements*”.

⁵ Decision, paragraph 11(b). The Decision uses a slight variation to identify the customer cohort in paragraph 52, labelling it “*large retailers with more complex requirements*”.

⁶ The following metrics are referred to in the Decision: (i) customer size (the Parties presume this is based on customer’s annual UK revenue); (ii) customer account size (for some customers, the Parties hold multiple contracts which are recorded under one customer account. These customer accounts formed the basis of the customer contact details submitted to the CMA in Phase 1 and therefore appear likely to be the underpinning for the CMA’s current classifications); and (iii) contract size. As examples of the Decision’s references to these metrics, see: for (i), paragraph 11(b) (“*The Parties [...] compete closely in the supply of mainstream CLS, particularly for larger retail customers with complex requirements [...]*”); for (ii), paragraph 120 (“*[...] the Parties are among the few suppliers capable of bidding successfully for large, national omni-channel retail CLS accounts.*”); and, for (iii), paragraph 72 (“*[...] in tenders with fewer alternatives, customers could invite additional suppliers, which is supported by a range of competitors winning large retail contracts*”).

sector-wide understanding of the term. The Parties have therefore considered whether any specific customer groups have uniquely “complex” needs.

(B) *The Decision does not define parameters for the Parties to identify “complex requirements” of some customers.*

2.6 The Decision’s references to “*complex*” (and variations of this term) are mainly restricted to reporting some customer feedback regarding “*complex needs*” (with no context regarding these needs)⁷ and the Parties’ internal documents. Importantly, the Decision does not assess what “*complex*” means in practice, either from a demand-side or supply-side perspective.⁸ As with “*large*”, the Parties’ internal documents do not consistently use, or define, “*complex*”. The term is often used in investor-facing documents and customer tender responses and less frequently in other documents. In relation to the internal documents cited in the Decision as referencing “*complexity*”:

- (a) A GXO document is described as a “*third party market study prepared for GXO [which] lists a number of trends, such as [REDACTED] in the next years which are expected to increase out-sourcing*”.⁹ The Decision misunderstands the document’s purpose – it does not reflect GXO’s views but rather is a compilation of financial analyst and industry commentator views. The page referenced in the Decision (page 14) is an RBC Capital Markets ordinary-course equity research note for release to RBC’s equity research clients – it was not prepared specifically for GXO. The document does not explore the term “*complexity*” in any depth, nor suggest the level of “*complexity*” is beyond the capabilities of certain 3PLs.
- (b) A draft Wincanton document is described as noting that “[*REDACTED*]”.¹⁰ The same slide of the document notes that [*REDACTED*]. The slide is labelled a “[*REDACTED*]” [*REDACTED*]. As the CMA knows, more than 50% of logistics are insourced in the UK and insourcing is particularly prevalent amongst the largest retailers whose needs, at least from a scale perspective, might be considered to entail a degree of “*complexity*”.¹¹ See further evidence of the extent to which Large Retail Customers insource at paragraphs 7.1–7.21.

2.7 References to “*complex*” in the Parties’ marketing materials are not unique to them – competitors also use the term in their public-facing materials. It is not surprising that 3PLs emphasise their sophistication and ability to handle “*complexity*” to investors and potential customers:

- (a) **CEVA** states that “...[*it*] support[s] companies of all types and sizes to respond to their complex challenges...” and “...create[s] value for [*its*] customers by consistently delivering exceptional end-to-end supply chain solutions that answer even their most complex needs”;¹²

⁷ Decision, paragraph 144(a).

⁸ For example, paragraphs 52, 130 and 144(a).

⁹ Decision, paragraph 129(b) and footnote 232. Relevant document is GXO_00001973, ‘[*REDACTED*]’, July 2022.

¹⁰ Decision, paragraph 130 and footnote 234. Relevant document is WIN_00006422, ‘[*REDACTED*]’, February 2023.

¹¹ For example, Merger Notice, paragraph 385 (Non-Retail CLS) and paragraphs 454 and 457 (Retail CLS).

¹² Accessible here: <https://www.cevalane.com/en/who-we-are/about-ceva-logistics/our-vision-and-mission.html> (Accessed: 21 November 2024).

- (b) **Culina Group** states that “...[it has] the competitive edge in today’s fast-paced and complex logistics landscape...”;¹³
- (c) **DSV** states that “...[it has] gained a high level of expertise and experience in providing solutions to complex supply chain challenges...”;¹⁴
- (d) **Unipart** states that “...[its] experience of change management and large-scale, complex implementations means customers can have confidence in a seamless transition and an agile partner...”;¹⁵ and
- (e) **XPO** states that “...[it] is perfectly positioned to provide the seamless integration and optimisation of complex supply chains”.¹⁶

¹³ Accessible here: <https://www.culina.co.uk/industrial-support-services/> (Accessed: 21 November 2024).

¹⁴ Accessible here: <https://www.dsv.com/en-gb/why-dsv-#:~:text=a%20strong%20partnership-experience,industry%20and%20business%20by%20heart>. (Accessed: 21 November 2024).

¹⁵ Accessible here: <https://www.unipart.com/logistics/sectors/technology/> (Accessed: 21 November 2024).

¹⁶ Accessible here: <https://europe.xpo.com/en/value-added-services/4pl/> (Accessed: 21 November 2024).

3. Large Retail Customer requirements are not especially “complex”

- 3.1 The Decision finds that only DHL, GXO, Wincanton, and to a lesser extent Culina Group have capabilities¹⁷ to supply Large Retail Customers who have “*more complex requirements*”.¹⁸ The Parties have sought to identify what the potentially more “complex” requirements of these customers might be that could narrow the viable competitor set.¹⁹
- 3.2 Although requirements differ between customers, the Parties do not find the requirements of Large Retail Customers to be especially “complex” (**Section 3**) or beyond the capabilities of a wide range of 3PLs (**Section 4**). However, there are some distinct characteristics of Grocers’ requirements, which are considered separately in **Section 5**.
- 3.3 The Parties consider that Large Retail Customer requirements are not especially “complex” for the following reasons, which are set out further below:
- (a) Technology (IT systems & Automation) – Use of technology to enhance operational efficiency is a dimension on which 3PLs compete. However, no 3PL controls any “must-have” technology – Large Retail Customers either procure the technology themselves or maintain control via contractual mechanisms. Specialist technology expertise and solutions are also readily available from many third-party specialists (**Section (A)**).
 - (b) Scale is of limited relevance because:
 - (i) key assets and staff are typically provided by the customer, or can be readily obtained on the open market when needed;
 - (ii) customers can and do break up their CLS procurement into several contracts, splitting their supply chain regionally, by depot and / or activity (e.g. transport vs. warehousing);
 - (iii) scaling up and down resource to meet fluctuations in customer demand is a core “business as usual” capability for all 3PLs; and
 - (iv) there are no significant economies of scale that prevent a wide range of 3PLs from competing effectively (**Section 3(B)**).
 - (c) Track record, sector experience and reputation are relevant customer requirements, but in practice 3PLs are able to meet these requirements by pointing to experience in similar industry verticals or other countries (**Section 3(C)**).
- 3.4 Omnichannel and FMCG (excluding Grocers who are covered separately in **Section 5**) retailers do not have any distinct CLS requirements which would narrow the competitor set (**Section 3(D)**).

¹⁷ Decision, paragraph 135(b).

¹⁸ Decision, paragraph 52.

¹⁹ Building on requirements mentioned in the Decision such as technology (IT systems and automation) and scale.

3.5 The Parties also outline in **Section 3(E)** where they would welcome the opportunity to engage with the CMA to better understand the requirements of different Retail customer groups and the options available to customers to contract with different 3PLs.

(A) Technology²⁰ is not a key driver of customer requirement “complexity”

3.6 The Decision cites technology as being an “*important parameter of competition*” differentiating 3PLs’ capabilities and those of in-house operations.²¹ Although technology is primarily referenced in the Decision when assessing the threat of insourcing, rather than to differentiate between the capabilities of different 3PLs, the Parties nonetheless clarify below how 3PLs engage with logistics systems technology.

3.7 The core competency of 3PLs is the disciplined operation of warehouses and transport infrastructure on behalf of their Large Retail Customers. With that experience, their role in logistics technology – whether IT systems or automation – tends to focus on providing operational know-how and expertise to support the configuration of third-party technology solutions for their customers. Large Retail Customers tend to handle the more “complex” aspects of logistics technology procurement, design, and implementation themselves regularly with the help of third-party experts. Customers will sometimes draw on 3PLs in their capacity as expert operators to leverage the best third-party software, hardware and expertise available.

3.8 3PLs’ technology operational experience and skillset are nonetheless a dimension on which they compete with other 3PLs and the threat of insourcing.

(a) However, the extent of any competitive advantage a 3PL can gain from an edge in technology is limited by three factors:

(i) As mentioned above, 3PLs’ roles in technology reflect their operational focus – whilst they have useful expertise, they do not own or control “must have” tech or intellectual property that customers would require behind the duration of the 3PL current contract (**subsection 3(A)(i)**).

(ii) Conversely, Large Retail Customers tend to control the logistics technology they use (whether via ownership or contractual mechanisms), and drive the design, procurement, and implementation of technology solutions. 3PLs typically must leave behind any technology solutions they help to implement once a contract ends (**subsection 3(A)(ii)**).

²⁰ The Decision contains various references to both “*technology*” and “*automation*”. The Parties refer to both as “*technology*” and have adopted the following terminology in this Response:

(i) “*IT systems*” refers to the various types of software required for the supply of CLS including the enterprise resource planning (**ERP**), integration software, transport management system (**TMS**), and warehouse management system (**WMS**); and

(ii) “*automation*” refers to the hardware and software required for the supply of automation CLS including the warehouse control system (**WCS**), and autonomous material handling equipment (**MHE**) which includes conveyors, sorters, carousels, automated storage and retrieval systems (**ASRS**), cobots, and automated guided vehicles (**AGVs**). In CLS, all customers require IT systems – unlike automation which is limited to a sub-set of warehouse customers with specific needs.

²¹ See, for example, Decision: (1) “...while self-supply is an option, [customers] actively maintain some operations internally and externally to benefit from the technology and expertise of 3PLs”, paragraph 126(a)(ii), footnote 213; and (2) “...non-price factors that the CMA understands are important to customers and may not be replicable when self-supplying (eg around automation and the quality of services)” paragraph 132, footnote 237.

- (iii) Large Retail Customers rely on third party specialists for the more “complex” aspects of their technology solutions, rather than 3PLs (**subsection 3(A)(iii)**).
 - (b) These factors mean that technology is not an impediment to Large Retail Customers bringing 3PL contracts back in-house (**subsection 3(A)(iv)**).
 - (c) Although the Parties’ internal documents reference their technology offerings, such statements are matched by similar claims by a wide range of rivals (**subsection 3(A)(v)**).
- (i) *Technology role of 3PLs reflects their operational focus*
- 3.9 GXO considers its experience to be illustrative of the usual scope of 3PLs’ technology responsibilities. As set out in footnote 20 above, GXO divides logistics technology into IT systems (ERP, TMS, WMS) and automation (WCS, MHE, ASRS, cobots, AGVs).²²
- 3.10 GXO’s technology strategy [REDACTED]. For both software and hardware, GXO relies on third party systems that are either supplied by the customer or procured / licensed from third parties and handed over at the end of the contract. By way of example, GXO often licenses BlueYonder’s WMS for use at customer sites.
- 3.11 In relation to automation, GXO distinguishes between large scale automation and smaller scale projects in its warehouses.
- (a) **Large scale automation** affects all or most site activity and is usually implemented as a part of the design of new facilities. An example of large-scale automation was the [REDACTED] warehouse that the CMA saw at the site visit (which was an opportunity that [REDACTED]). On large scale automation opportunities, 3PLs can be included in cross-party teams comprised of the customer, technology providers and consultants, which are responsible for the design, configuration and implementation of the solution. 3PLs can be included to provide operational insight supporting the tailoring of third-party tech solutions for a specific site. However, customers or designers almost always lead the projects. For example, GXO has [REDACTED]. 3PLs can also be asked by clients to advise on their technology procurement strategies to leverage 3PLs’ operational expertise. For example, [REDACTED].
 - (b) **Smaller scale projects** tend to be implemented to support just one part of a facility – usually at an existing site. On small-scale technology projects, 3PLs’ operational experience helps them to identify productivity opportunities and implement new solutions at existing sites. They may even lead on implementing the solution under gainshare arrangements with the customer. An example is GXO’s introduction of 6 River Systems’ “cobots” to reduce staff walk time at an existing customer facility.²³ Other examples could include supporting the addition of Cognext’s scanning solutions or Breathetech’s WMS at existing customer sites.

²² The Parties discuss the role of automation in further detail in the Merger Notice at paragraphs 256 to 263.

²³ GXO, “GXO signs global agreement with 6 River Systems to expand supply of collaborative robots”, 19 July 2024, https://gxo.com/news_article/gxo-expand-partnership-with-6-river-systems/ (Accessed: 2 December 2024).

- 3.12 GXO considers these to be “business as usual” capabilities for all 3PLs, who have the benefit of the third-party technology provider actively working to ensure 3PLs are proficient with their solutions and are therefore able to confidently pitch their technology to customers.
- 3.13 As previously submitted,²⁴ GXO does not own any proprietary automation technology but prefers to be “agnostic”, working with the third-party suppliers it considers best suit the customer’s needs. To date GXO has competed successfully without this capability as has Wincanton. However, Wincanton has recently sought to differentiate itself from other 3PLs by acquiring Invar, a systems integrator (March 2024), an evergreen license for Zeus, a platform for hauliers to engage with Wincanton (February 2024) and deploying its EyeQ technology. The long-term impact of this technology-orientated strategy has not yet become apparent.

(ii) Large Retail Customers usually control the technology assets, which 3PLs operate

- 3.14 The Decision recognises that, “*assets are generally customer owned, inherited or leased*”.²⁵ This includes technology assets. Large Retail Customers with dedicated warehouse sites typically either own their technology and assets or ensure they have contractual rights to ensure the technology transfers at the end of the CLS contract (whether to another 3PL or back in-house).²⁶
- 3.15 The fact any technology solution that a 3PL helps to implement is typically left behind at the end of a contract, for the next 3PL or the customer to insource, limits the durability of any competitive advantage a 3PL can obtain via it supporting the implementation of new technologies. The 3PL must continuously improve its offering (including its use of technology) and prove it can operate more efficiently than rivals or insourced solutions to retain a customer’s business.

Contractual controls over technology

- 3.16 Typical contractual rights that ensure Large Retail Customers retain control over it include the following:
- (a) **Novation rights** allowing the customer to novate leased technology assets or purchase technology assets at fair market value.²⁷
 - (b) **Transitional assistance obligations**, which compel the incumbent 3PL to support a smooth transition to a new service provider or in-house solution through an exit plan.²⁸

²⁴ Merger Notice, Question 18.

²⁵ Decision, paragraph 143.

²⁶ By exception, GXO owns assets used to service [REDACTED] each at one frozen distribution centre: [REDACTED].

²⁷ For example, many of the Parties’ Large Retail Customers have rights to acquire any assets/leases held by the Parties including: [REDACTED]; and [REDACTED].

²⁸ For example, many of the Parties’ Large Retail Customers have contractual rights which require the Parties to implement an exit plan to ensure transition which generally range from six months to 2 years, including: [REDACTED]; and [REDACTED].

- (c) **Rights to data generated or held by 3PLs.** Where 3PLs supply the WMS, Large Retail Customers typically have a contractual right to receive WMS data to ensure continuity for future operations.²⁹

Staff with relevant operational know-how transfer with the contract

- 3.17 Staff with operational know-how regarding the use of technology to service a particular contract are a part of the group of employees who must by law TUPE across with the CLS contract when the customer switches 3PLs or brings the contract back in-house. All 3PLs are familiar with and experienced in handling TUPE legal obligations – it is one of the key CLS facilitators.
- 3.18 More sophisticated technology expertise is also often provided via separate third-party specialists who contract separately with the customer. Their expertise also remains available to an incoming 3PL. For instance, at the [REDACTED], [REDACTED] has engineers based on site to operate the technology, in addition to providing a call-out service. While the maintenance contracts are with GXO (under which GXO staff undertake the ‘regular’ maintenance tasks), this contract could easily be novated to [REDACTED] of another 3PL if required. Similarly, at the [REDACTED] distribution centre, whilst Wincanton warehouse staff operate the hardware technology, [REDACTED] contracts directly with [REDACTED] for management and maintenance of the hardware technology.

(iii) *Large Retail Customers rely on third-party specialists for the more “complex” aspects of technology solutions*

- 3.19 Third party expertise extends to the procurement and design of technology solutions. As discussed at the site visit, [REDACTED] designed the [REDACTED] site and the automation and technology it uses with the assistance of a third-party consultant, [REDACTED]. GXO was asked to input as an operations expert in the configuration of the solution, but the process was led by the customer and [the third-party consultant].
- 3.20 Third parties who help customers to deliver Technology solutions include:
- (a) *Full-suite automation suppliers* who tend to deploy their own proprietary hardware and software to customers (and 3PLs) include Swisslog, Körber, Knapp and Geek+, amongst others.³⁰
 - (b) *Integrators* supply their own proprietary integration software and use a mixture of other third-party software and hardware to provide customers (and 3PLs) with end-to-end automated supply chain solutions. Integrators will design, procure, install, support, maintain and take liability for the performance of the end-to-end automation system. To illustrate, ASDA used AMH as an integrator to provide an end-to-end automation Geek+ solution for its Sherburn site. Integrators active in the UK include AMH, Breathe Technologies, Logistex and Fortna, amongst others.³¹

²⁹ For example, many of GXO’s Larger Retail Customers have contractual rights to WMS data: [REDACTED].

³⁰ The Parties’ Merger Notice, submitted 5 September 2024 (*Merger Notice*), paragraph 578.

³¹ Merger Notice, paragraph 578.

(c) *Pure-play consultants* including Miebach, Bastian and Bearing Point provide customers (and 3PLs) with technological expertise and experience on-demand, which can be deployed on an ongoing basis or for specific projects.

(iv) *Technology is not an impediment to Large Retail Customers insourcing 3PL contracts.*

- 3.21 The scope of 3PL’s usual technology role, customer control over technology and the availability of third-party expertise discussed above all mean that technological sophistication is not an impediment to Large Retail Customers insourcing their logistics requirements (whether from the outset or taking them back in-house from a 3PL).
- 3.22 This is reflected in customer behaviour – there are numerous examples of Large Retailer Customers designing and delivering their own technological solutions themselves without needing to use 3PLs. For example, in February 2024, John Lewis introduced the tallest autonomous robots in Western Europe as part of its £400 million investment at its new Milton Keynes RDC which has “*delivered £1 million in cost savings for the retailer and a 75 per cent improvement in storage capacity*”.³² Moreover, [5-10] out of GXO’s top 20 largest retail customers have at least some activities with a high degree of automation in their warehouses – [REDACTED]³³. Other examples include Next, Aldi, Lidl, H&M, Zara and Primark. In all these cases, the automation assets are owned by the customer.
- 3.23 Whether a customer insources or outsources depends on whether a 3PL can demonstrate their ability to achieve incremental operational efficiency gains that the customer does not think they can achieve internally, of a magnitude sufficient to justify the 3PL’s management fees. In fact, as the Decision recognises, Wincanton “*benchmarks its capabilities in [REDACTED] against ...customers*”.³⁴

³² The Times, “Robots Help John Lewis Stack Its Christmas Gifts High”, 27 November 2024, <https://www.thetimes.com/article/f93d6147-d99b-4cc8-bf31-8b1c08b2da95?shareToken=2fd6ccc78a5efa35dbfa8a9a6ccd6295> (Accessed: 28 November 2024).

³³ In fact, Tesco is itself without 3PL support building a highly-automated frozen and chilled distribution centre in Aylesford, Kent, to help Tesco contribute to plans to achieve £500 million in efficiency savings. See, Coldchain News, “Tesco Builds robotic fresh food distribution centre”, 11 April 2024, <https://www.coldchainnews.com/tesco-builds-robotic-fresh-food-distribution-centre/#:~:text=Aylesford%2C%20Kent%3A%20Tesco%20expects%20a,%C2%A3500m%20in%20efficiency%20savings>. (Accessed: 2 December 2024) and Logistics Matters, “New Kent DC for Tesco”, 15 January 2024, <https://www.logisticsmatters.co.uk/New-Kent-DC-for-Tesco> (Accessed: 2 December 2024).

³⁴ Decision, paragraph 128(a); Wincanton’s Internal Document, WIN_00001968, ‘[REDACTED]’, July 2022, slide 53.

(v) 3PLs make similar technology capability claims to those in the Parties' internal documents

3.24 The Decision cites internal documents in which the Parties reference their technology capabilities.³⁵ However, all 3PLs make similar statements regarding their own capabilities – for example:

- (a) **iForce**, a **Culina Group** company, states that it offers a combination of in-house and outsourced automation solutions and works to integrate “*cutting-edge technologies*” to transform customer supply chains;³⁶
- (b) **XPO** refers to automation and intelligent machines as one of its four key technology pillars.³⁷ It also has a track record of rapidly adopting cutting-edge third-party technologies – e.g. the Hunic Exoskeleton technology, which it has implemented at various UK warehouses;³⁸
- (c) **CEVA** states that it offers a mix of in-house and outsourced automation solutions such as their myCEVA platform using “*AI to provide transportation route options*” as well as warehousing solutions which “*leverage AI-powered robotics and IoT*”;³⁹
- (d) **Unipart** states that it offers in-house advanced warehouse management solutions such as their UDES system and WMS implementation, automated and semi-automated storage solutions, and order processing and fulfilment;⁴⁰ and
- (e) **Yusen Logistics** states that it offers in-house automation solutions such as Yusen Vantage which provides “*supply chain management*” for “*end-to-end logistics*”.⁴¹

(B) Scale requirements are limited and are easily met

3.25 The CMA’s Phase 1 market testing found that when choosing a 3PL, some customers “*value whether it has the sufficient scale to meet their complex needs*”.⁴² It lists a wide range of indications of scale in a footnote,⁴³ but focusses on three in particular: “*national*

³⁵ Decision, paragraph 129(b); GXO’s Internal Document, GXO_00000312, ‘[REDACTED]’, March 2022, pages 1 to 2.

³⁶ Accessible here: <https://www.iforcegroup.com/technology-driven-partner/powering-efficiency-through-automation/> (Accessed: 29 November 2024).

³⁷ Accessible here: <https://europe.xpo.com/en/technology/> (Accessed: 30 November 2024).

³⁸ Accessible here: <https://europenews.xpo.com/en/2959/xpo-logistics-rolling-out-hunic-exoskeleton-to-all-parts-of-the-uk-and-ireland/> (Accessed: 29 November 2024).

³⁹ Accessible here: <https://www.cevalogistics.com/en/ceva-insights/artificial-intelligence-and-innovation-in-today-s-world-of-logistics> (Accessed: 29 November 2024).

⁴⁰ Accessible here: <https://www.unipart.com/logistics/services/advanced-warehouse-solutions/> (Accessed: 29 November 2024).

⁴¹ Accessible here: https://www.yusen-logistics.com/gb_en/digital-solutions/yusen-vantage (Accessed: 29 November 2024).

⁴² Decision, paragraph 144(a).

⁴³ Decision, footnote 252, “*size of company; number of employees; length of trading; geographic footprint; technological reach, investment and sophistication of the solutions offered; the ability to meet the changing demands of the business at varying peaks during the year; the ability to support the longer term growth strategy of the business, in terms of scale, capacity, compliance and standards, innovation and financial stability; and to bring economies of scale to influence price.*”.

transport capabilities”,⁴⁴ “a 3PL’s ability to rapidly scale operations in response to increased demand at peak periods or as they grow their businesses” and “economies of scale”.⁴⁵

3.26 However, the Decision does not seek to identify the level of scale that would be sufficient to meet customers’ requirements, or whether other 3PLs have the requisite scale. An examination of the three specific factors cited in the Decision suggests that a wide range of 3PLs do in fact have the capability to handle the “complexity” of a Large Retail Customer needs:

- (a) pre-existing national transport capabilities are of limited importance, as the relevant national coverage is provided when a new 3PL inherits assets from the incumbent provider (**subsection 3(B)(i)**);
- (b) the ability to rapidly scale up to meet customer demand is a core competency of 3PLs that is not unique to the Parties (**subsection 3(B)(ii)**); and
- (c) economies of scale in 3PL are less relevant for Large Retail Customers who rely principally on dedicated transport networks and warehouses and own / control the relevant assets (**subsection 3(B)(iii)**).

3.27 Experience, track record, and reputation are considered separately in **section 3(C)** at paragraphs 3.38 to 3.47 below, as these are distinct from scale.

(i) National warehouse and transport capabilities are not a pre-requisite

3.28 The Decision asserts that “large national retailers”⁴⁶ have more “complex” CLS needs as they require “national logistics suppliers”⁴⁷ with “national transport capabilities”.⁴⁸ However, 3PLs do not need a pre-existing national transport capability to win large opportunities for three key reasons:

- (a) customers typically provide the assets necessary to achieve national coverage;
- (b) any assets not provided can readily be obtained when an opportunity is won; and
- (c) Large Retail Customers sometimes contract their warehouse and transport needs separately.

Large Retail Customers generally provide the transport assets

3.29 As the Decision confirms, assets are generally customer-owned, inherited or leased (i.e. assets come with the contracts).⁴⁹ This applies to transport as much as to warehouses – particularly for Large Retail Customers. A pre-existing nationwide warehouse or transport network is therefore not a prerequisite to win business from these customers.

⁴⁴ Decision, paragraph 107(a)(iii), “Another grocery retailer submitted that some other suppliers of CLS lack scale in comparison to DHL, GXO and Wincanton, which all have national transport capabilities and specific capabilities to supply grocery customers.”.

⁴⁵ Decision, paragraph 107(c).

⁴⁶ Decision, paragraph 107(c).

⁴⁷ Decision, paragraph 119(b).

⁴⁸ Decision, paragraph 107(a)(iii).

⁴⁹ Decision, paragraph 143.

Rather, 3PLs generally manage the warehouse or transport fleet owned by the customer, as is the case in the vast majority of grocery and other large retail contracts.⁵⁰

Any assets not provided by the customer can readily be obtained

- 3.30 To the limited extent that Larger Retail Customers do not already own / control the necessary warehouse or transport assets, all 3PLs are able to source them on broadly the same market terms either directly or using agents. Large Retail Customers generally use dedicated warehouses rather than shared warehouses, and the Parties do not hold empty dedicated warehouses on their books just in case they win a new opportunity, as it would not be commercially viable to do so. The Parties are therefore in the same position as any other 3PL if a Large Retail Customer wants a 3PL to provide additional dedicated warehouse space. Any such space is then usually contracted for by the customer, or by the 3PL on a back-to-back basis (so that the next 3PL can take them over on being awarded the contract).⁵¹

Large Retail Customers sometimes procure warehousing and transport separately

- 3.31 As explained previously by the Parties, many large retailers employ mixed and / or multisourcing procurement strategies when tendering their CLS needs to leverage buyer power.⁵² This sometimes involves tendering their warehousing and transport requirements separately. For instance, many Grocers split up both their transport and warehouse opportunities by national / regional distribution centre.⁵³ Similarly, large retailers such [REDACTED] and [REDACTED] take a similar approach. See **Annex 001** which provides a breakdown of logistics arrangements for the largest Grocers.

(ii) *Scaling up to meet customer demand is 'business as usual' for 3PLs*

- 3.32 The Decision confirms that 3PLs are required to “*rapidly scale up operations in response to increased demand at peak periods or as they grow their businesses*”.⁵⁴ Both types of scaling are important 3PL capabilities. However, these are basic competencies for any 3PL.
- 3.33 As the CMA will appreciate, all 3PLs with Retail experience are well-versed in preparing CLS operations in the run-up for peak periods like Black Friday and Christmas – it is standard market practice for 3PLs to make detailed arrangements and ramp up labour forces often months in advance of peak periods. This is business-as-usual for 3PLs who pride themselves on operational excellence during golden quarters and seasonal peaks. Moreover, it is common across the CLS industry for customers’ actual volumes to differ from forecasts, so 3PLs typically include the ability to flex throughput into their resource planning.
- 3.34 In any event, as explained below, to the extent scalability is required on an urgent basis, additional labour or warehouse / fleet capacity is easily accessible.

⁵⁰ For example, (i) XPO uses IKEA’s fleet for its distribution network, (ii) [REDACTED], (iii) [REDACTED], (v) Culina Group and DHL use Morrisons’ fleet to run its national food distribution network, (vi) [REDACTED], (vii) [REDACTED], (viii) [REDACTED], (ix) [REDACTED]; and (x) [REDACTED].

⁵¹ See Merger Notice, paragraphs 209 to 239 regarding asset availability.

⁵² See Merger Notice, paragraphs 157 to 193.

⁵³ See Annex 005 to the Parties’ Annotated Response to the Issues Letter, submitted 10 October 2024 (*AIL*), section 3 and Annex B.

⁵⁴ Decision, paragraph 144(a).

- (a) *Labour is readily available and not a scarce resource.* As explained at the site visit, 3PLs make use of agency labour to supplement their core employees (whether in warehouse or for drivers). This allows 3PLs to maintain a core operational workforce for a large retailer’s warehouse or fleet and to rely on temporary agency staff to mirror customers’ demand cycles. All 3PLs as well as self-supply customers (including many of GXO’s top retail customers such as [REDACTED]) take the same approach in using staff agencies such as Blue Arrow, CastUK, Manpower, Pertemps, Adecco and Multistaff (among others).
- (b) *Assets are generally customer-owned, with short-term fleet and warehouse capacity readily accessible on the open market.* Large Retail Customers typically own their own assets and are used to fluctuating demand based on past experience. The space they have is generally sufficiently large (e.g. warehouses have overflow space) and / or some customers [REDACTED] (fleet) may have an existing pool of assets which can be used to flex depending on CLS requirements. In the rare instances where additional assets are required they can be sourced on the open market.

(iii) *There are no significant economies of scale that prevent a wide range of 3PLs from competing effectively*

3.35 3PL business models are not capital intensive, meaning that economies of scale do not play a material role in shaping competition.

3.36 The insignificance of economies of scale in the context of CLS is illustrated by the fact that variable costs – and especially labour costs – typically make up the large majority of the 3PL’s cost base in serving Large Retail Customers (and Grocers in particular). More fundamentally, however, it is important to distinguish between economies arising from a 3PL’s own overall scale, and economies arising from the scale of a particular customer’s logistics needs or contract size. Economies arising from the scale of a customer’s logistics needs are not specific to any particular 3PL, since as noted above many customers – and especially Large Retail Customers – own or directly lease all the facilities and assets involved in their warehousing and transport operations. This means that whichever 3PL wins a large customer’s business automatically inherits the same scale benefits, irrespective of the 3PL’s own overall scale.

3.37 The size of the 3PL itself therefore does not drive significant economies compared to smaller rivals, as the vast majority of the assets a 3PL uses are dedicated to specific customer contracts, in particular for Large Retail Customers.

(C) *Track record, sector experience and reputation are surmountable customer requirements*

3.38 The Decision finds that customer preferences for 3PLs with “*experience and track record*” supplying customers in their specific sector,⁵⁵ “*reflect the complex and often bespoke requirements of customers in specific sectors*”. The Decision finds that the Parties (along with DHL and to a lesser extent Culina Group) are “*distinguished by their track record*”,⁵⁶ citing customer feedback that “*the majority of customers listed track record as an important factor when selecting a CLS supplier*”⁵⁷ and “*reputation and a*

⁵⁵ Decision, paragraphs 42(a) and 109.

⁵⁶ Decision, paragraph 135(b).

⁵⁷ Decision, paragraph 144(c).

proven track record which favour larger and established suppliers".⁵⁸ The terms "track record", "sector experience", and "reputation" are largely synonymous when used by customers to describe 3PLs, and are used interchangeably in this section.

3.39 Track record is clearly a factor customers consider when choosing 3PLs. However, 3PLs who do not have experience in the relevant sector in the UK are nonetheless able to impose effective constraints on the Parties for the following reasons:

- (a) 3PLs are winning contracts in practice despite not having sector experience, which shows that customers are willing to try new 3PLs (section 3(D)(i)).
- (b) Customers have limited incentive to consider 3PLs with less experience given how competitive the market is at present, but that would change rapidly if the Merged Entity sought to raise prices or reduce quality (section 3(D)(ii)).
- (c) 3PLs can leverage international customer relationships and overseas experience in the relevant vertical (section 3(D)(iii)).
- (d) 3PLs can leverage experience in adjacent verticals or markets in the UK (section 3(D)(iv)).

(i) 3PLs are winning business despite not having sector experience

3.40 3PLs regularly win business despite not having sector experience, which demonstrates that it is not an essential criterion when customers select a 3PL. Examples include:

- (a) **XPO**, historically a specialist in transport and distribution, is aggressively seeking to expand in warehousing – see paragraph 4.35 for further details.
- (b) **3T**, a software-as-a-service technology company, won a Heinz transport contract from Wincanton in 2021, which reflects the growing constraint from a number of transport technology companies.⁵⁹ Other customers of 3T include JCB and BMI ([REDACTED]).
- (c) **Sodexo**, a food service and facilities management player, that won a major HMRC contract from Wincanton in 2023, for providing CLS to support UK customs arrangements at inland border facilities. Sodexo was able to leverage its experience servicing HMRC in other markets (e.g. cleaning, waste, meeting room management services) to win against Wincanton in this segment. A Wincanton Strategy workshop presentation in 2023, discussing reasons for Wincanton's loss of the contract, mentioned that [REDACTED].⁶⁰

(ii) Reputation is only helpful if customers remain satisfied

3.41 The Decision does not reflect that customers are currently well-served by existing providers and receive high-quality service at competitive prices. This means that customers have limited incentive to choose suppliers with a shorter track record or less experience at present – i.e. there is no need for customers to consider switching away from incumbents when the 3PL service offering is competitive.

⁵⁸ Decision, paragraph 117.

⁵⁹ Merger Notice, paragraph 380(c).

⁶⁰ Merger Notice, Annex 016.07, page 10.

3.42 Of course, the incentives for customers to consider a wider set of 3PLs would change in case of any deterioration in the Merged Entity’s offering, and that threat itself acts as a strong ongoing constraint on the Merged Entity post-Transaction. As noted below as proposed next steps, the Parties encourage the CMA to consider this issue when engaging with customers as part of its in-depth Phase 2 investigation.

(iii) 3PLs are successfully leveraging international experience and customer relationships

3.43 Customers are often willing to sponsor entry and expansion by 3PLs into new sectors where they may not have prior sector experience in the UK, a track record or reputation. Leveraging a track record abroad is a real and credible pathway for entry and expansion in the UK, particularly with Large Retail Customers. For example:

- (a) In 2024, Bleckmann successfully leveraged its existing relationship with Superdry in continental Europe to win the major fashion brand’s entire logistics operations in the UK.⁶¹ Bleckmann was able to TUPE across almost [REDACTED] employees to seamlessly take control of operations at this site.
- (b) In 2023, Inditex (Zara) sponsored the entry of ID Logistics into the UK by awarding its returns business based on its existing relationship with ID Logistics in Spain and Poland.⁶² This was in part because Inditex wanted to diversify its supply chain away from GXO and use a number of different CLS providers.
- (c) In 2023, [REDACTED] tendered its largest network overhaul: [REDACTED]. Despite strong credentials and experience across similar projects, including its [REDACTED] contract, GXO failed to advance, [REDACTED]. GXO considers it possible that [REDACTED].
- (d) In April 2022, Arvato may have been able to leverage its existing relationship supplying Mango’s European logistics, including in Poland, to be invited to tender for some of Mango’s UK logistics (which it was subsequently awarded to Arvato based on credibility).
- (e) In 2021, CEVA won an Amazon warehouse contract despite a lack of track record in e-commerce in the UK, leveraging its existing relationship with Amazon in Europe.
- (f) In 2021, Geodis leveraged its existing relationship supplying Amazon’s European logistics and won a warehousing contract in Lutterworth (despite a lack of track record and experience in the UK).

3.44 In this vein, the Parties note that other 3PLs have customer relationships with large retailers in Europe that are also active in the UK which present good opportunities for entry and expansion. For example: (i) ID Logistics supplies Screwfix in France; and (ii) CEVA supplies Carrefour in France, one of Europe’s largest Grocers.

⁶¹ Merger Notice, paragraph 297(b).

⁶² See https://www.id-logistics.com/media/2023/07/PR_ID-LOGISTICS_IMPLANTATION-UK_July23.pdf (Accessed: 2 December 2024).

(iv) 3PLs are successfully leveraging strength in adjacent markets

- 3.45 Competitors with existing UK CLS retail experience can point to related experience to secure contracts in related segments despite a lack of track record. More widely, 3PLs can point to expertise in adjacent markets (or prior experience in the same market)⁶³.
- 3.46 For example, the Decision dismissed Maersk as a competitive constraint in part because some customers referred to its limited scale as a reason why they did not rate it as more than a “moderate” current competitor.⁶⁴ However, its position is evolving rapidly. It is one of the world’s largest container logistics companies, traditionally active in shipping and freight forwarding. It leveraged its strength in these areas to quickly build a position in CLS (including in the UK) through aggressive organic growth as well as attracting people and talent from other existing market players. Maersk is particularly targeting retail customers that have end-to-end requirements (including container shipping requirements), which allows Maersk to offer highly competitive rates by reducing its freight costs and balancing these off any warehousing costs.⁶⁵
- 3.47 Maersk has been actively recruiting in the Retail segment, poaching [REDACTED], [REDACTED] in the [REDACTED] unit at Wincanton. As a direct result of this hire, [REDACTED]. Furthermore, Maersk has been targeting grocery expertise, poaching the [REDACTED]. In February 2023, Maersk announced that ASOS appointed it as its strategic global logistics partner. The Parties understand that Maersk supplies CLS to Samsung from its Tamworth warehouse facility.
- 3.48 Maersk is already a shipping partner for many Grocers such as Tesco and Sainsbury’s, and the Parties believe it is actively marketing these adjacencies in conversations with customers to gain a foothold to enter the Grocery Retail. It is well positioned to continue leveraging its existing customer relationships and further build its position in the supply of Retail CLS in the UK.
- 3.49 Other players are also leveraging their experience in adjacent markets to successfully enter and expand in CLS. A part of the CMA CGM Group, a global marine freight management and service group, CEVA has leveraged its experience in the freighting business to become a credible competitor in the UK CLS market (and 160 countries around the world).⁶⁶ For further details on CEVA’s activities and customers in the UK see paragraphs 4.38 and 4.39 below.

(D) *No omnichannel or FMCG retailers have CLS requirements which narrow down the competitor set*

- 3.50 The Decision refers to “*omnichannel retailers and those active in groceries and fast-moving consumer goods*”⁶⁷ as being among Large Retail Customers. However, as the following paragraphs show for omnichannel and FMCG (and **Section 5** for Grocers),

⁶³ For example, CEVA and Unipart both previously serviced Grocery Retail contracts. See **Section 5(D)** below.

⁶⁴ Decision, paragraph 111(f).

⁶⁵ See, for example, Maersk’s omnichannel and 3PL offering at <https://www.maersk.com/news/articles/2023/06/26/stepping-forward-together-solution-orientated-logistics>.

⁶⁶ CEVA, “CEVA Logistics history”, <https://www.cevalogistics.com/en/faq/when-ceva-logistics-was-founded> (Accessed: 2 December 2024).

⁶⁷ Decision, paragraph 11(b). The Decision uses a slight variation to identify the customer cohort in paragraph 52, labelling it “*large retailers with more complex requirements*”.

there are no specific CLS requirements which differentiate these customers from the rest of non-Grocery Retail.

3.51 **Omnichannel.** The Decision does not identify what the uniquely “complex” requirements of omnichannel retailers could be or explain why only a narrower subset of 3PLs would be able to meet those needs.⁶⁸ Furthermore, it is unclear who these customers are given the Parties did not use the term “omnichannel” in any of their submissions, including the Retail sub-segment customer contact details.⁶⁹ In the ordinary course the Parties treat the majority of their customers, including Grocers,⁷⁰ as omnichannel (with the exception of pure e-commerce retailers like ASOS).

(i) *The distinct characteristic of omnichannel is the use of several distribution channels*

3.52 The only differentiating demand-side factor distinct to omnichannel retailers is the range of channels through which goods are delivered and fulfilled: the Decision describes an omnichannel retailer as a customer that, “*distribute[s] through a number of different channels, eg bricks-and-mortar and e-commerce*”.⁷¹ In practice, a CLS contract for an omnichannel retailer may require the dispatch of products from a warehouse through multiple channels including: (i) brick-and-mortar stores, (ii) e-commerce to direct customers, (iii) wholesalers, or (iv) other retailers such as Amazon.

3.53 From a supply-side perspective, while omnichannel retailers may provide a variety of delivery options to customers,⁷² all omnichannel customer orders involve the same set of supply-side requirements.

(ii) *Multiple distribution channels are not a challenge for a wide range of 3PLs*

3.54 Although CLS requirements differ for each channel, they are not unique or especially “complex”. As set out in **Section 4**, many 3PLs have the capabilities to service these supply-side requirements.

3.55 The key “complexity” is the solution design of the warehouse layout to create the workflow and operational processes required to deliver the number of channels of the omnichannel retailer. This expertise is widely available on the market with a broad range of third-party consultants who specialise in providing solution design expertise to design the base layer and warehouse solution, which is easily implemented by 3PLs. Furthermore, many large omnichannel retailers have in-house solution design teams. For example, GXO is currently bidding for an [REDACTED] contract which is [REDACTED]. Wincanton understands that, for example, [REDACTED] have sophisticated in-house teams with solution design experience.

3.56 In any event, many omnichannel Large Retailer Customers split their sites by channel – i.e. e-commerce and store retail are served from different warehouses. Indeed, this is the case for the [REDACTED] customers that the CMA visited on the site visit, which

⁶⁸ Decision, paragraphs 30, 42(b), 107(b).

⁶⁹ Merger Notice, Annex 041.

⁷⁰ To the extent the Decision’s conclusions regarding omnichannel rely on feedback from Grocers, we recommend considering that feedback in the Grocery Retail context.

⁷¹ Decision, paragraph 40.

⁷² For example, omnichannel retailers may provide options to their direct customers, including: (i) shop in store, (ii) order in store for home delivery, (iii) click and collect, and (iv) order online for home delivery.

each split e-commerce and Retail CLS operations. Other retailers with split e-commerce and retail include [REDACTED], [REDACTED] and [REDACTED].

3.57 **FMCG (excluding Grocers).** The Parties did not categorise customers as FMCG in their initial submissions except in relation to Retail customer contact details.⁷³ This omission reflects the Parties' belief that the majority of FMCG customers are upstream and, therefore, Non-Retail (e.g. food and drink manufacturers such as [REDACTED]). For customer contact details, only [1-5] out of the [10-20] FMCG details submitted were not Grocers – [REDACTED][REDACTED]. However, none of these [1-5] customers have specific CLS requirements. In fact these customers' CLS needs are similar to the rest of non-Grocery Retail: the goods in question ([REDACTED][REDACTED]) are non-perishable and do not require just-in-time delivery or any other distinctive handling, while to the extent these customers have omnichannel requirements these are covered above. There is therefore no basis for splitting this customer cohort out from the rest of Retail.

(E) Areas for potential CMA engagement

3.58 The Parties would welcome the opportunity to engage with the CMA on customer requirements in the following respects:

- (a) *First*, understanding the core capabilities that different types of customers look for when choosing a 3PL (including how omnichannel and FMCG customers consider their requirements differ from other parts of non-Grocery Retail), and then exploring which 3PLs have those capabilities;
- (b) *Second*, assessing whether there are 3PLs who could credibly supply a subset of customer needs today, (even if they could not immediately fulfil all customer needs) and what services fall within that subset (e.g. transport operations, warehousing operations or operations at specific sites);
- (c) *Third*, understanding, from the customers' perspective, what the main barriers are in relation to certain 3PLs not being able to supply customer needs and whether these 3PLs could likely overcome these barriers in the future. For example, if the main barrier is track record in serving large-scale customers, it would be important to understand the 3PL's ability to develop this over time by supplying a subset of the customer's services;
- (d) *Fourth*, understanding a customer's ability to test the services of a new 3PL without a track record by awarding a subset of customer activities (e.g. warehousing and / or transport operations) at a subset of customer sites, and any barriers that a customer would face to do this;
- (e) *Fifth*, the degree to which a customer would be willing to mix and match different 3PLs based on their different strengths in response to a small but significant non transitory deterioration in offering and what combinations the customer would consider; and
- (f) *Sixth*, understanding the degree to which a customer could insource their CLS needs, in particular through the CMA engaging with third-party consultants and

⁷³ Merger Notice, Annex 041.

automation providers who engage directly with customers without the input of a 3PL.

4. Many 3PLs can compete effectively for almost all customers, including non-Grocery Large Retail Customers

- 4.1 As the Parties showed in the Merger Notice and AIL,⁷⁴ post-Transaction Large Retail Customers will continue to have both a sufficient number of effective 3PLs and in-house supply as viable options for their CLS needs. However, the Decision dismisses all 3PLs (apart from DHL and to a lesser extent CEVA, Culina Group and XPO), asserting that they impose limited or no competitive constraints to conclude that: “*individually or cumulatively they [do not] exert a sufficient constraint across the mainstream CLS market to prevent competition concerns arising*”.⁷⁵
- 4.2 This conclusion appears to have been largely based on a belief that other 3PLs are incapable of meeting the “complex” requirements of some customers. As **Section 3** above demonstrates, even Large Retail Customers’ requirements are not particularly “complex”. In reality, a number of 3PLs are capable of meeting the CLS needs of almost all Retail customers, regardless of the scale and / or “complexity” of their CLS solutions.
- 4.3 Rival 3PLs impose both an individual (per tender) and cumulative (cross-segment) competitive constraint on the Parties. As substantiated previously,⁷⁶ the Parties’ experience shows that Retail CLS opportunities are highly competitive with strong competition from a range of 3PLs.
- 4.4 For Grocery Retail in particular, though the competitor pool may be more limited today, it is nonetheless sufficient – and will remain so in the future, including with the potential for 3PLs to expand or enter into the vertical. Moreover, insourcing is particularly widespread and a strong constraint on 3PLs’ commercial offerings (see **Section 5** and **Section 7** below).
- 4.5 In this section the Parties outline:
- (a) why 3PLs do not need to compete across the board to impose a competitive constraint on the Parties;
 - (b) how the bidding data has been misinterpreted to understate the extent of competition between the Parties;
 - (c) biases in the customer survey that limit its probative value;
 - (d) evidence demonstrating that XPO, CEVA and Culina Group compete beyond the narrow specialisms alleged in the Decision; and
 - (e) evidence demonstrating the strength of a wider range of 3PLs including Unipart, DSV, Yusen, Bleckmann, ID Logistics and Maersk.

(A) 3PLs do not need to compete across the board to constrain the Parties

- 4.6 The Decision states that individual examples of other 3PLs winning contracts from the Parties do “*not demonstrate that such suppliers impose a competitive constraint on the Parties across the full range of opportunities for which they compete*”,⁷⁷ as “*the*

⁷⁴ See, for example, Merger Notice, paragraphs 431 to 465 and AIL, R35 and R39.

⁷⁵ Decision, paragraph 135(c).

⁷⁶ See, for example, Merger Notice, paragraphs 413 to 439, and AIL, R35.

⁷⁷ Decision, paragraph 62.

*presence of a competitor in one tender does not imply they would be considered a credible supplier in another”.*⁷⁸

- 4.7 This misunderstands the CLS environment, where competition for Large Retail Customers takes place on a tender-by-tender basis, sometimes split by module (e.g. warehousing by warehouse, etc.), rather than on an ‘all or nothing’ basis for the Large Retail Customer’s entire logistics demand. As set out in more detail in **Section 4(F)** below, these customers have a range of levers at their disposal to maintain competitive tension for their outsourced logistics needs.
- 4.8 3PLs often do not know the identities of competing bidders with any certainty, but they do know that there will be significant competition for each tender. It is this expectation of other credible options which constrains competing bidders: different 3PLs constrain the Parties in different tenders and collectively impose a cumulative constraint across the Retail segment. This outcome is the logical corollary of the fact that (as the Decision recognises) “*customer requirements may differ significantly*”⁷⁹: if customers’ requirements vary, it is to be expected that their 3PL preferences and tender competitor sets will vary too. The CMA’s own analysis shows that the Parties frequently encounter other 3PLs.⁸⁰
- 4.9 The Decision’s position also assumes that only those 3PLs a customer invited to tender are capable of competing for the customer’s business. Yet, in reality, other factors drive a customer to limit the number of tender participants. For example, customers will seek to run an efficient, cost-effective tender process, and will evaluate the incremental benefit of inviting each additional participant against the incremental cost of doing so.

(B) *The Decision’s interpretation of the bidding data overstates the overlap between the Parties and underplays the competitive constraint of 3PLs*

- 4.10 The Decision acknowledges that information on third-party winners of tenders in which the Parties participated is “*not always known, meaning the analysis may underrepresent the presence of individual alternative suppliers*”.⁸¹ However, contrary to the Parties’ previous submissions which show limited overlap between them,⁸² the Decision then computes and weights its analysis of won and lost opportunities in a way that inflates the overlap between the Parties and underplays the overlap with other 3PLs and the constraint imposed by insourcing.

(i) Tender overlaps

- 4.11 The Decision presents findings both in terms of the number of opportunities in which the Parties faced each other;⁸³ as well as on the value of the overlapping tenders as a share of the overall value captured by the data.⁸⁴ This took account of the Parties’ matching exercise, as described in the Merger Notice.⁸⁵

⁷⁸ Decision, paragraph 72.

⁷⁹ Decision, paragraph 72.

⁸⁰ Decision, footnote 95.

⁸¹ Decision, paragraph 53.

⁸² See, for example, Merger Notice, paragraphs 358 to 363, and AIL, R8.

⁸³ Decision, paragraph 50.

⁸⁴ Decision, paragraph 51.

⁸⁵ Merger Notice, paragraphs 572 to 575.

- 4.12 The Decision does not acknowledge the conservative assumptions on which the Parties undertook this matching exercise. For instance, by deploying conservative similarity thresholds, the exercise adds [10-20] opportunities not matched by any similarity criteria to the overlapping tender account, as one Party identified the other as the winner of that opportunity. As noted previously,⁸⁶ this methodology risks the inclusion of ‘false positives’, which means the Decision likely overestimates the overlap between the Parties. As noted below, Phase 2 represents a good opportunity for the CMA to use its customer and competitor outreach to increase the robustness of these data.
- 4.13 Even taking into account the conservative approach above, the Decision recognises that “*there is relatively limited overlap [between the Parties] in terms of the number of opportunities*” they bid for [in Mainstream CLS]:⁸⁷ [0-10]% of tenders for GXO and [0-10]% for Wincanton. However, the Decision then places a disproportionate weight on the value of tenders; for Retail CLS, the figures are [10-20]% and [30-40]% respectively.⁸⁸ However, even assessing opportunities on a value basis demonstrates the extent to which other 3PLs are constraining the Parties. For example, the Decision identifies that Wincanton was not present in [60-70]% of the Retail opportunities GXO participated in when assessed on a value basis.
- 4.14 As the Parties have previously noted,⁸⁹ it is natural that they overlap more in larger tenders as: (i) more 3PLs bid for these tenders; and (ii) the Parties generally target high-value tenders. The Decision does not conduct a comparative exercise for other 3PLs (e.g. DHL, CEVA, Culina Group and XPO) to ascertain whether the proportionate overlap between GXO and Wincanton is meaningfully higher than that with third parties. Furthermore, it does not consider the evidence presented elsewhere in the Decision showing that most customers had [1-5] or more other 3PLs to choose from (in addition to GXO and Wincanton), consistent with there being a large pool of credible bidders exerting a competitive constraint on the Parties.
- 4.15 Further, the Decision excludes from its overlap analysis opportunities that were lost to insourcing, which inflates the overlap between the Parties. The Decision does so on the basis that such opportunities may represent customers benchmarking their own insourcing operations or who may not have had a strong interest in outsourcing.⁹⁰ As detailed below in paragraph 7.19, this assumption does not consider that the costs and effort incurred by both customers and 3PLs in engaging in a tender process demonstrates the customer’s willingness to outsource; it also does not consider customers’ track record of outsourcing.

(ii) Win / loss data

Limited overlap between the Parties on lost opportunities

- 4.16 On GXO’s analysis, it only lost [0-10]% of Retail CLS tenders to Wincanton ([0-10]% in value), which includes large opportunities with retail customers won by [REDACTED].⁹¹ On Wincanton’s analysis, it lost [20-30]% of all Mainstream CLS

⁸⁶ Merger Notice, Annex 50, paragraphs 6, 15 and 16.

⁸⁷ Decision, paragraph 51.

⁸⁸ To caveat this segment field contains [REDACTED] for Wincanton and therefore the share for Wincanton is likely to be [REDACTED].

⁸⁹ AIL, paragraph R8.

⁹⁰ Decision, paragraph 54.

⁹¹ AIL, Table R9.1, Figure R9.2.

opportunities to GXO by contract value.⁹² While this is a higher proportion, as noted in the AIL,⁹³ within the largest opportunities [REDACTED]. While its data does not systematically capture information relating to participating competitors as the CMA acknowledges, in Wincanton's experience, several other 3PLs would have been capable of delivering the services being contracted out for each of those tenders. For example, in several of those lost tenders, the incumbent provider was either another 3PL or an in-house solution. This suggests it is unlikely that Wincanton was the strongest competitor to GXO in those tenders.

- 4.17 The Decision notes that the CMA had not been able, in the time available, to further interrogate this issue with the customers. The Parties would encourage the CMA to consider this further in its Phase 2 investigation, and to consider these issues when considering expanding its customer outreach (as noted below in relation to the customer survey).

Losses data shows other suppliers winning contracts from the Parties

- 4.18 The Decision dismisses evidence of other 3PLs winning contracts from the Parties in their loss data by favouring its customer survey and assessment of internal documents – both of which include a number of shortcomings (see below at paragraphs 4.21-4.25 and **Section 8**).⁹⁴ For instance, the Decision notes that, for Retail CLS overall, switches away from GXO as the incumbent, [10-20]% were to Culina Group, [0-10]% were to DHL and [0-10]% were to Wincanton (all by value).⁹⁵ For Wincanton, although [REDACTED], and therefore cannot be representative of wider trends.⁹⁶
- 4.19 More broadly, the data cited in the Decision clearly shows the significant cumulative constraint posed by rivals other than DHL, including losses to Culina Group for customers such as Morrisons, Tesco, Waitrose and Co-op and to Arvato for Uniqlo. 3PLs other than DHL and Wincanton collectively beat GXO in [30-40]% of Retail CLS opportunities by number and [20-30]% by value,⁹⁷ which is [0-10] times as often as Wincanton beat GXO by number of opportunities (just [0-10]%⁹⁸), and [0-10] times as often by value (only [0-10]%⁹⁹). The Decision dismissed the constraint imposed by third parties other than DHL as “*more limited*”, and yet they are collectively far more likely to beat GXO for retail opportunities.¹⁰⁰

Third-party tender data

- 4.20 The Decision notes that evidence received from the Parties' customers regarding their tenders indicates that the Parties and DHL are close competitors, with limited competitive pressure from other 3PLs. The Parties acknowledge that they and DHL, together with Culina Group and XPO, are currently the main suppliers of CLS to Grocers, alongside insourcing and some smaller players (e.g. Lenhams). However, the

⁹² Note these percentages for GXO and Wincanton include opportunities lost to insourcing which the Parties respectfully suggest should be included (see paragraph 4.15).

⁹³ AIL, paragraph R9.

⁹⁴ Decision, paragraph 62.

⁹⁵ Decision, paragraph 66.

⁹⁶ Decision, paragraph 65.

⁹⁷ Decision, Table 3 (sum of DHL, Culina Group, Arvato, ID Logistics, and Others).

⁹⁸ Decision, Table 3 ([REDACTED] lost opportunities out of [REDACTED]).

⁹⁹ Decision, Table 3 (% of GXO opportunities lost to Wincanton by total value).

¹⁰⁰ Decision, paragraph 75.

Parties have not had an opportunity to review these data, and consequently are not able to fully assess or comment on its robustness. Nevertheless, the Parties note that the Decision’s analysis of customer bidding information is drawn from a narrow pool of customers (accounting for [10-40]% Retail CLS revenue in 2023 for GXO, and [30-60]% for Wincanton).¹⁰¹ This suggests the analysis may only be based on a handful of tenders and is therefore not sufficiently robust.

(C) The CMA’s Phase 1 customer questionnaire has limitations and cannot be relied upon to rule out the constraint imposed by other 3PLs

- 4.21 The Decision relies on evidence from the CMA’s third-party questionnaire to assess closeness of competition between the Parties and the comparative strength of other 3PLs. The CMA appears to have asked Retail and Non-Retail customers of the Parties to list the suppliers that they would consider credible in a CLS tender, and to comment on the strength of these suppliers. On the basis of this evidence, the Decision noted that each Party’s Retail customers mentioned the other Party as a “*very strong*” or “*strong*” alternative, indicating closeness of competition between the Parties.
- 4.22 In the AIL, the Parties’ highlighted limitations with the approach adopted in the Issues Letter, which were not addressed in the Decision.¹⁰² In particular, the Decision appears to have discounted the constraint that would be imposed by a number of competitors that survey respondents considered “*moderately*” strong constraint. Competitors marked as “*moderately*” strong also constrain the Parties. These players are well placed to win business were the Merged Entity to ever reduce its quality or raise prices. The Parties expect the full extent of the constraint these players impose will be determined during the CMA’s in-depth Phase 2 investigation.
- 4.23 In any event, the results included in Figure 1 of the Decision that excluded “*moderate*” strength ratings nonetheless highlight the collective constraint imposed by smaller 3PLs. Players *other than* Culina, XPO, CEVA, K+N or Maersk were collectively rated “*strong*” or “*very strong*” just as frequently as Wincanton.¹⁰³ This suggests that the long tail of smaller players in the industry collectively impose just as strong a constraint on GXO in the Retail segment as Wincanton. This survey evidence reinforces the danger in dismissing the constraint imposed by the tail of smaller rivals.
- 4.24 The results of the survey are likely to be biased for other reasons:
- (a) Where Supply Chain Directors responded on behalf of customers, the results may have been biased by their focus on managing existing contracts with Parties on an ongoing basis. Procurement specialists would likely have a more balanced view of the range of credible suppliers.
 - (b) Only seeking feedback from the Parties’ existing customers means that there is a strong selection bias. Only those customers who contract with one of the Parties – and presumably therefore have a particularly favourable view of GXO or Wincanton – were surveyed. These customers are likely to be highly satisfied with the Parties and are unlikely to be actively considering alternative 3PLs. While the CMA has prioritised the Parties’ customers in Phase 1, the Parties

¹⁰¹ Decision, footnote 94.

¹⁰² AIL, R32.

¹⁰³ Decision, Figure 1.

would expect that the CMA would expand its outreach to non-customers as part of its in-depth Phase 2 investigation.

- 4.25 These limitations remain relevant, and the CMA now has the opportunity to address them in a revised questionnaire at Phase 2. The Parties are eager to support the CMA in devising an appropriate questionnaire.

(D) Dismissing key competitors as “specialists” underestimates their strength

- 4.26 The only competitor the Decision concedes constrains the Parties is DHL. This goes against the findings of the CMA’s own market-testing, which records that XPO, CEVA and Culina Group were “*identified as alternatives to the Parties by a number of retail customers*”.¹⁰⁴ Yet, the Decision dismisses them on the basis that they only compete for “*specific types of opportunity within retail*” due to their “*strengths in the supply of transport, CLS to fashion retailers and CLS for ambient and chilled products respectively*”.¹⁰⁵ The Decision uses incomplete and partial internal documents to support this conclusion, as outlined further in **Section 8**.

- 4.27 “Specialism” is a term of relative, not absolute, strength and usually denotes a 3PL’s heritage as leveraged in its marketing material. However, specialisms do not detract from a 3PL’s broader ability to perform “non-specialist” contracts, nor limit “*their ability to compete in areas where they have more limited experience*”.¹⁰⁶ Furthermore: (i) customers’ and competitors’ perceptions of specialisms may be based on outdated views (e.g. if customers have not conducted recent tenders as they are satisfied with their current 3PL and / or insourcing arrangements) which may mean they do not reflect 3PLs’ current capabilities; and (ii) given individual customer requirements and preferences, it is not straightforward to assume which 3PL capabilities may be required to serve a specific customer contract. To the extent evidence shows a 3PL competing and winning in other areas, its perceived specialism does not diminish its competitive strength outside that purported specialism.

- 4.28 The paragraphs below show that:

- (a) service-specialist 3PLs currently constrain the Parties individually as Large Retail Customers sometimes split transport and warehousing opportunities, bringing in additional specialist players; and
- (b) based on contemporaneous evidence, XPO, Culina Group and CEVA cannot be credibly compartmentalised as just serving specific types of CLS (i.e. transport) or Retail CLS sub-segments (e.g. fashion and apparel).

- 4.29 Consequently, the Merged Entity will continue to face strong individual and cumulative constraints from a varied collection of 3PLs, including in particular each of XPO, Culina Group and CEVA. The competitive constraint of a wide field of 3PLs is considered in **Section 4E** below.

¹⁰⁴ Decision, paragraph 112.

¹⁰⁵ Decision, paragraph 112. See also paragraph 135(c).

¹⁰⁶ Decision, paragraph 42(a).

(i) Large Retail Customers sometimes procure transport and warehousing separately

4.30 Large Retail Customers' procurement practices maximise competitive tension by ensuring that specialist 3PLs compete on a par with generalists 3PLs. As set out at **Section 3**, Large Retail Customers sometimes modularise their CLS requirements, tendering their warehousing and transport separately and / or separately tendering different geographic parts of their business. Of the Parties' top 20 Retail customers, [REDACTED] have a different mix of 3PLs between their transport and warehouse contracts.¹⁰⁷

4.31 Transport tenders draw in a broader competitor set including transport-focused 3PLs and transport technology platform providers. In line with its transport heritage, sometimes Wincanton's internal documents [REDACTED].¹⁰⁸ These documents [REDACTED].

4.32 The Transaction will not affect these competitive dynamics; Large Retail Customers will continue to leverage their modularised CLS needs to extract the best commercial terms and service from competing 3PLs (regardless of the 3PLs' focus).

(ii) Characterising XPO as a "transport specialist" underestimates the competitive constraint it exerts across transport and warehouse CLS

4.33 The Decision implies that XPO is "fairly specialist", and only a competitor for CLS transport contracts, and therefore poses only a "limited constraint" on the Parties.¹⁰⁹

4.34 Wincanton has traditionally been perceived as a more-transport focused 3PL based on its origin as a milk haulier.¹¹⁰ Indeed, based on provisional figures, Wincanton expects [REDACTED] of its revenue will be derived from transport CLS in 2025. However, the Decision has not dismissed Wincanton's competitive strength across the market based on its transport heritage and current focus. It would therefore be inconsistent to apply such an approach to XPO. Even more so because it is clear from the facts that XPO is vigorously competing for warehouse contracts, as well as transport contracts. When GXO was spun out of XPO in August 2021, it was considered that XPO would focus on its global freight transportation services. Since the expiry of XPO's CLS non-compete in August 2023, XPO has begun to [REDACTED].

4.35 Recent tenders have shown XPO beating the Parties for warehouse contracts by using aggressive commercial tactics. In 2023 GXO lost a contract opportunity with [REDACTED] worth £[REDACTED] million to XPO. XPO also won a contract to supply warehousing and transport contract to Christy England in the same year.¹¹¹ In 2024, XPO won a contract worth £[REDACTED] million to supply warehousing and

¹⁰⁷ For example: [REDACTED] transport 3PLs are Wise and parcel carriers for FMD and warehouse 3PLs are GXO, ID Logistics and Wise; [REDACTED] transport 3PLs are DHL and parcel carriers for FMD and warehouse 3PLs are GXO, DHL and Culina Group (as well as in-house); and [REDACTED] transport provider is Wincanton and warehouse providers are DHL and GXO (as well as in-house).

¹⁰⁸ See, for example: [REDACTED] (WIN_00014509; WIN_00016425; WIN_00016066; WIN_00015177; WIN_00013190; WIN_00012037; WIN_00011307; WIN_00010929; WIN_00010560; WIN_00010004; WIN_00009220; WIN_00022121; WIN_00021634).

¹⁰⁹ Decision, paragraph 92.

¹¹⁰ From 1 January 2024 to 28 November 2024, Wincanton was referenced as a "haulier" 48 times and a "transport specialist" 61 times in media articles. Data provided through Cision.

¹¹¹ Motor Transport, "XPO Seals Multi-Year Partnership Deal with Retailer Christy England", 18 April 2023, <https://motortransport.co.uk/xpo-seals-multi-year-partnership-deal-with-retailer-christy-england/17055.article> (Accessed: 28 November 2024).

transport services to Crown Paint at Hull and Darwen from the incumbent, CEVA. [REDACTED]. Also, [REDACTED].

- 4.36 These developments demonstrate that although XPO’s focus may previously have been transport, it: (i) has established a credible position in both warehousing and Retail CLS within just twelve months of its non-compete with GXO expiring; and (ii) does not only compete for “*specific types of opportunities within Retail*” as the Decision alleges.¹¹²
- 4.37 Furthermore, the Decision reports third-party feedback that “*XPO was a very weak alternative as it did not have the capacity to supply grocery customers*”.¹¹³ This statement is not credible given XPO already provide transport CLS to Tesco, the UK’s largest supermarket chain (e.g. from Tesco’s Widnes RDC) and given that, as noted at paragraph 4.30 above, customers can and do split their warehouse and transport needs and supply the relevant assets (i.e. scale is not meaningful in this context). The Decision also relies on the Parties’ internal documents to support its position, which the Parties have rebutted in **Section 8** below.

(iii) *Dismissing CEVA as a “fashion” specialist underestimates its strength across Retail CLS*

- 4.38 As the AIL Cover Letter and AIL stated,¹¹⁴ the Parties consider CEVA an effective competitive constraint for all types of retail customers. In addition to [REDACTED] and [REDACTED], some of GXO’s Retail customers, including [REDACTED] and [REDACTED] have stated in [REDACTED] that they consider CEVA to be among GXO’s primary competitors.¹¹⁵ The Decision asserts that CEVA is “*only a limited constraint*” for “*certain contracts*” due to its fashion retail specialism based on excerpts from internal documents.¹¹⁶ The Parties consider this an overly definitive conclusion drawn from a limited number of document references, and one at odds with the CMA’s Phase 1 customer survey, where half of the Parties’ Retail customers identified CEVA as an alternative. Given the Parties only provided contact details for [5-10] fashion retailers out of a total of [20-30] Retail customers (i.e. over [70-80]% were not fashion retailers), this result confirms that a wide range of Retail customers outside the fashion vertical consider CEVA to be an effective competitor.
- 4.39 Similarly, the fact that CEVA may have been “*acquiring grocery and consumer expertise*”¹¹⁷ with its anticipated bid for Wincanton does not necessarily mean it currently lacks this expertise but rather that it planned on supplementing it:
- (a) CEVA already had demonstrable customer expertise. For example, in 2019 CEVA started providing CLS to LUSH Cosmetics across the UK and Ireland.¹¹⁸ CEVA also works with IKEA globally, and cites “*successful working*

¹¹² Decision, paragraph 112.

¹¹³ Decision, paragraph 111(b).

¹¹⁴ AIL Cover Letter, paragraph 19 and AIL, R35.

¹¹⁵ See GXO_00000241, ‘[REDACTED]’; GXO_00002054, ‘[REDACTED]’; GXO_00002426, ‘[REDACTED]’; GXO_00000031, ‘[REDACTED]’; and GXO_00007718, ‘[REDACTED]’.

¹¹⁶ Decision, paragraph 92.

¹¹⁷ Decision, paragraph 90(b).

¹¹⁸ American Journal of Transportation, “CEVA Logistics signs three-year deal with LUSH in UK and Ireland”, 8 May 2019, <https://www.ajot.com/news/ceva-logistics-signs-three-year-deal-with-lush-in-uk-and-ireland> (Accessed: 2 December 2024).

partnerships” with IKEA in the UK – where in 2016¹¹⁹ it started operating the Ikea Corby warehouse – when discussing its expanding global partnership.¹²⁰ In fact, GXO and Wincanton have both regularly bid for and lost contracts to CEVA.¹²¹

- (b) The fact CEVA does not currently supply UK Grocers does not mean that it could not do so if offered the opportunity. CEVA has strong European grocery expertise supplying one of the largest grocery retailers in France, Carrefour. Given Grocers’ requirements are similar between countries, this provides CEVA with skills and track record that are highly transferable to the UK context.¹²² CEVA is understood to regularly bid in tenders for grocery contracts, which clearly suggests its interest and appetite to enter and grow in this space. [REDACTED] and [REDACTED]. **Section 8** below discusses the internal documents’ position on this issue.

(iv) Dismissing Culina Group as an “ambient and chilled” specialist underestimates its strength across other Retail CLS sub-segments

4.40 As the Parties emphasised at Phase 1,¹²³ Culina Group encompasses a stable of different brands,¹²⁴ a fact not necessarily advertised or known to customers. This misconception may have affected some of the survey responses regarding Culina Group’s competitive strength. The Culina Group brands include some with a specialist non-food Retail focus:

- (a) **Stobart** is a “*retail specialist*”¹²⁵ offering logistics solutions across the Retail sector and is seen as a “*leading ambient transport and logistics business*”.¹²⁶ Stobart is “*the partner of choice*”¹²⁷ and its customers include “*top UK retail brands*” such as Next.¹²⁸
- (b) **Great Bear** provides service to “*a range of companies over a variety of sectors*” including e-commerce and FMCG.¹²⁹ Great Bear also offers various Non-Retail solutions for the Automotive & Industrial and Healthcare sectors and is a “*true full-service provider*”.¹³⁰ Customers include PZ Cussons, Unilever, and Reckitt Benckiser.¹³¹

¹¹⁹ Logistics Manager, “Ceva to manage new IKEA warehouse”, 5 January 2016, <https://www.logisticsmanager.com/ceva-to-manage-new-ikea-warehouse/> (Accessed: 2 December 2024).

¹²⁰ CEVA, “CEVA Logistics expands global partnership with Ikea as it opens New York Distribution Centre”, 23 March 2023, <https://www.logisticsmanager.com/ceva-to-manage-new-ikea-warehouse/> (Accessed: 2 December 2024).

¹²¹ AIL, paragraph 3.35(b).

¹²² CEVA has strong European grocery expertise from supplying CLS to, among others, Carrefour.

¹²³ Merger Notice, paragraph 415(c), and AIL, R35.

¹²⁴ Culina Group brands include Culina, Stobart, iForce, Great Bear and Warrens among others (<https://www.culina.co.uk/>) (Accessed: 2 December 2024). See also AIL, R35 for further detail on Culina Group’s operations.

¹²⁵ Stobart, <https://eddiestobart.com/services/retail-logistics/> (Accessed: 2 December 2024).

¹²⁶ Culina Group, <https://www.culina.co.uk/> (Accessed: 2 December 2024).

¹²⁷ Stobart, <https://eddiestobart.com/services/retail-logistics/> (Accessed: 2 December 2024).

¹²⁸ Stobart, <https://eddiestobart.com/services/retail-logistics/> (Accessed: 2 December 2024).

¹²⁹ Great Bear, <https://www.greatbear.co.uk/sectors/> (Accessed: 2 December 2024).

¹³⁰ Great Bear, <https://www.greatbear.co.uk/sectors/automotive-industrial/> (Accessed: 2 December 2024).

¹³¹ Klipspringer – Great Bear’s temperature monitoring partner, <https://www.klipspringer.com/case-studies/great-bear-distribution/> (Accessed: 2 December 2024).

- (c) **iForce** is “*at the forefront*” of e-commerce fulfilment¹³² and is seen a “*one-stop shop for seamless multi-channel fulfilment*”.¹³³ It also offers returns management, returns repair, re-commerce and carrier management.¹³⁴ Its customers include Screwfix, B&Q, John Lewis, The Works, Mayborn and Dunelm.
- 4.41 These Culina Group brands service the CLS needs of a variety of Retail customers (e.g. [REDACTED], [REDACTED], [REDACTED],¹³⁵ [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). These customers’ requirements include: timely delivery, TC, automation, reverse logistics and serving a wide range of store locations. It is therefore reductive for the Decision to suggest Culina Group – as a food and drink “*specialist*” – only competes effectively for “*ambient and chilled*” Retail CLS contracts. Indeed, the Parties have provided evidence to the contrary, as well as evidence of significant losses to Culina Group including outside of food and drink.¹³⁶
- 4.42 The Parties’ position is supported by the Decision’s acknowledgement that “*half of retail customers*” in the CMA’s Phase 1 customer survey *identified Culina [Group] as an alternative*”.¹³⁷ Given the Parties’ only provided contact details for [5-10] Grocers out of a total of [20-30] retail Customers (i.e. over [70-80]% were not Grocers), this result confirms a wide range of Retail customers without food / drink requirements consider Culina Group an effective competitor.
- 4.43 Other evidence cited in the Decision is also consistent on this point as “*internal documents show that Culina [Group] poses a competitive constraint on the Parties*”¹³⁸ (see paragraph 8.3(b) below) and “*Culina [Group] accounts for a material portion of opportunity losses for both parties*” (including outside of food and drink, see paragraph 8.5(c)(i) below).¹³⁹
- (E) The Decision appears to rely significantly on internal documents and does not take proper account of ‘real world’ evidence establishing the strength of much of the wider 3PL competitor set**
- 4.44 As well as dismissing Culina Group, CEVA and XPO, the Decision concludes that, based on evidence in the Parties’ internal documents, several 3PLs including Unipart, DSV, Yusen, Bleckmann, ID Logistics and Maersk do not “*exert a meaningful competitive constraint*” on the Parties.¹⁴⁰ These 3PLs’ capabilities and track records – set out below – are persuasive evidence to the contrary.
- (a) **Unipart** has an established reputation as a CLS provider amongst Large Retail Customers. Customers include Kimberley-Clark, Apple, JD Williams and Waterstones. The Parties regularly bid against and lose opportunities to Unipart, illustrating that it is an effective and credible competitor. For example, in

¹³² Culina Group, <https://www.culina.co.uk/> (Accessed: 2 December 2024).

¹³³ iForce, <https://www.iforcegroup.com/services/your-multi-channel-fulfilment-partner-scalable-solutions-for-every-size/> (Accessed: 2 December 2024).

¹³⁴ iForce, <https://www.iforcegroup.com/> (Accessed: 2 December 2024).

¹³⁵ See AIL Cover Letter, paragraph 19 and following table.

¹³⁶ See AIL, R35(a).

¹³⁷ Decision, paragraph 111(d).

¹³⁸ Decision, paragraph 87.

¹³⁹ Decision, paragraph 59.

¹⁴⁰ Decision, paragraphs 97 and 98.

[REDACTED] Wincanton bid for a contract with [REDACTED] worth £[REDACTED] million which it lost to Unipart. One of the reasons cited for the loss was [REDACTED]. Also, GXO understands that it was competing against Unipart for the [REDACTED] contract and that the consultant, [REDACTED] that worked with [REDACTED] on the tender process considered Unipart to be the preferred 3PL for the contract. GXO urges the CMA to discuss this tender with [REDACTED] to understand Unipart’s capabilities in more depth. Unipart would be more than capable of serving other Large Retail Customers, including the likes of B&Q and Screwfix.¹⁴¹

- (b) **DSV** has a significant presence in the UK with 19 offices and several prominent retail customers including Procter & Gamble, Lego, Elizabeth Arden and Estee Lauder. The Decision states that DSV is “*sometimes listed as having a focus in aerospace and defence, fashion, automotive, healthcare and industrial*”.¹⁴² This supports the reality that DSV is already a credible competitor for a broad range of CLS. Its competitiveness is illustrated by its growth: over the last four years DSV has achieved annualised revenue growth of 23% in the UK. This has been possible due to its expansion efforts and numerous high-profile Retail wins.¹⁴³

DSV competes in the same tenders as the Parties. For example, as stated in the AIL,¹⁴⁵ in [REDACTED] GXO lost a CLS opportunity with [REDACTED] worth £[REDACTED] million [REDACTED] to DSV. [REDACTED]. Finally, DSV’s presence in the UK is underpinned by its strong global business, which has a market capitalisation of £36 billion following its acquisition of DB Schenker in 2024.

- (c) **Yusen** is a global 3PL that provides CLS to UK Retail customers. In 2021, GXO lost a [REDACTED] contract worth £[REDACTED] million to Yusen which included high-security requirements.¹⁴⁶ Other retail customers include Charlotte Tilbury and Howdens ([REDACTED]).¹⁴⁷
- (d) **Bleckmann** has significantly expanded its operational footprint to meet the demands of Retail customers, particularly fashion and lifestyle brands with recent contract wins including [REDACTED] ([REDACTED]) in 2023 and Amazon, Lovevery and Superdry in 2024.¹⁴⁸ These contracts involve intricate systems, highly automated warehouses, high SKU counts and often involve omnichannel operations.¹⁴⁹ As mentioned in paragraph 3.43(a) above, Bleckmann was able to leverage its international customer relationships to help it win the [REDACTED] opportunity from GXO, which included the TUPE of

¹⁴¹ Merger Notice, paragraph 415(k) and AIL, R35(d).

¹⁴² Merger Notice, footnote 142.

¹⁴³ For example, the Parties understand that DSV supplies CLS to Philips, Lego and Siemens in the UK.

¹⁴⁴ Merger Notice, paragraphs 415(f) and AIL, R7 and R35(c).

¹⁴⁵ See AIL, R9.

¹⁴⁶ AIL, Table R9.1 and paragraph R35(f).

¹⁴⁷ Merger Notice, paragraph 415(k).

¹⁴⁸ Merger Notice, paragraph 297(b).

¹⁴⁹ For example, Bleckmann’s Superdry operation in Burton upon Trent uses Hikrobot autonomous mobile robots.

[REDACTED]. This example demonstrates that Bleckmann is a current and credible competitor to GXO in the UK.¹⁵⁰

- (e) **ID Logistics** has been actively expanding its presence in the UK, building on its 2023 win for a contract with [REDACTED] worth £[REDACTED] million [REDACTED]) and successfully winning contracts from GXO to service [REDACTED] collectively worth c.£[REDACTED] million). As mentioned in paragraph 3.43(b), ID Logistics was able to leverage the strength of its international relationship with Zara’s parent company Inditex to expand from continental Europe into UK market. Throughout 2024, ID Logistics has been securing warehouse capacity and recruiting its management team.¹⁵¹ The Parties expect it to be a strong competitor in new opportunities in the UK going forward.¹⁵²
- (f) **Maersk** is actively expanding in the UK, leveraging its strength in shipping and freight forwarding with UK retail customers including ASOS and Samsung. Maersk has recruited senior management from 3PLs (including [REDACTED])¹⁵³ and actively monitored by the Parties in their internal documents (see paragraph 8.4(b) below). Maersk’s expansion has been recognised in its award of “3PL Company of the Year” in the UK and its “Best Use of Robotics” award in 2024. These awards recognising its effective use of automation, including a Robotic Shuttle Put Wall System to improve upstream batch inventory picking at its East Midlands facility.^{154 155}

(F) Customers capitalise on the wide range of effective 3PLs to maximise competition among them and optimise the commercial outcome for the customer

4.45 Customers capitalise on the wide range of 3PLs in the following ways:

- (a) *widespread multi-sourcing* – as set out in the Merger Notice,¹⁵⁶ multi-sourcing is inherently pro-competitive:
 - (i) by relying on multiple providers across their sites (or multiple providers for different services at the same site), customers are able to create direct competition and constant competitive pressure between 3PLs, who are aware that their performance, commercial offering and contractual terms can easily be benchmarked against those competitors at similar sites;
 - (ii) multi-sourcing also allows a customer to parcel its business into smaller contracts, which can de-risk the involvement of a new supplier and rely

¹⁵⁰ See Merger Notice paragraphs 446 and 449(b)(ii).

¹⁵¹ See for example, <https://www.logisticsmatters.co.uk/ID-Logistics-triples-UK-space> (Accessed: 28 November 2024). In the first half of 2024 alone, ID Logistics recruited its UK Managing Director from DSV and its Head of Business Development from Wincanton.

¹⁵² Merger Notice, paragraph 449(b)(vi) and AIL, R35(h).

¹⁵³ See Decision, footnote 142 regarding [REDACTED].

¹⁵⁴ Maersk, “Maersk awarded “3PL Company of the Year” for the second consecutive year”, 5 July 2024, <https://www.maersk.com/news/articles/2024/07/05/maersk-awarded-with-3pl-company-of-the-year-for-the-second-consecutive-year> (Accessed: 28 November 2024); Robotics and Automation Magazine, “Maersk and Dexory win ‘Best Use of Robotics’ at Supply Chain Excellence Awards 2024!”, <https://www.roboticsandautomationmagazine.co.uk/news/awards/maersk-and-dexory-win-best-use-of-robotics-at-supply-chain-excellence-awards-2024.html> (Accessed: 28 November 2024).

¹⁵⁵ Merger Notice, paragraph 449(a), and AIL, R35(g). See also paragraphs 3.54 to 3.56 above.

¹⁵⁶ Merger Notice, paragraphs 157 to 164.

on suppliers who may have a more limited track record in a given segment. There is evidence, [REDACTED], that 3PLs other than the Parties have a long-standing track record of serving larger providers by providing services at specific sites.¹⁵⁷

(iii) These factors result in improved customer commercial leverage to extract more advantageous commercial terms – particularly for Large Retail Customers.¹⁵⁸

(b) *the use of firms of external consultants* – customers can and do rely on firms of external consultants for: (i) the creation of RfPs and identification / assessment of 3PLs in the tender process; (ii) advice on how to optimise operational design for warehouse layouts and processes, transport networks, advanced technology and automation services; and (iii) in-house support, including supporting insourcing initiatives, training on in-house operations and facilitating change management. For example, Visku, is currently assisting [REDACTED] with its CLS needs at its [REDACTED] (and see paragraphs 3.18 and 3.19 above regarding [REDACTED] and [REDACTED]).

4.46 As noted in **Section 7**, insourcing is also a serious option for Large Retail Customers, including all Grocers.

(G) Areas for potential CMA engagement

4.47 As the Decision notes, the Parties submitted a significant volume of evidence during Phase 1 including a detailed AIL and papers on the competitive threat from insourcing, mixed sourcing and multi-sourcing and on customer-level margins earned by the Parties, together with underlying data.¹⁵⁹ Whilst recognising it is for the CMA to determine how it runs its Phase 2 investigation, the Parties encourage the CMA to fully engage with the evidence already provided to investigate the following matters set out in the Panel Letter and Customer Outreach Material (among others):

(a) *First*, understanding the core capabilities that different types of customers look for when choosing a 3PL, and then exploring which 3PLs have those capabilities.

(b) *Second*, assessing whether there are 3PLs who could credibly supply a subset of customer needs today (even if they could not immediately fulfil all customer needs) and what services fall within that subset (e.g. transport operations, warehousing operations, or operations at specific sites).

(c) *Third*, understanding, from the customers' perspective, what the main barriers are in relation to certain 3PLs not being able to supply customer needs and whether these 3PLs could overcome these barriers in the likely future. For example, if the main barrier is track record in serving large-scale customers, it would be important to understand a 3PL's ability to develop this over time by supplying a subset of the customer's services.

¹⁵⁷ AIL Annex 005, Annex B.

¹⁵⁸ AIL Annex 005, paragraph 41. Examples include (i) Wise for [REDACTED] and (ii) ARCT and Unit Movements for [REDACTED].

¹⁵⁹ Decision, paragraph 7.

- (d) *Fourth*, understanding a customer's ability to test the services of a new 3PL without a track record by awarding a subset of customer activities (e.g. warehousing and / or transport operations) at a subset of customer sites, and any barriers that a customer would face to do this.
- (e) *Fifth*, exploring Large Retail Customers' reaction to a small but significant non-transitory increase in price (*SSNIP*) including whether these customers would be willing to switch to a different 3PL and which 3PLs / combinations of 3PLs these customers would be willing to consider.
- (f) *Sixth*, exploring with the customers of rival 3PLs of the capabilities that they are looking for when choosing a 3PL, the reasons for choosing a rival 3PL and the extent to which it fulfils the expectations. The Parties would encourage the CMA to reach out to customer contacts with suitable levels of experience and expertise (rather than those who may be new to logistics and / or the customer). The Parties would be willing to assist the CMA in this respect.
- (g) *Seventh*, probing rival 3PLs' capabilities, future plans (including in relation to CLS Large Retail Customers), and how closely they compete or plan to compete in the future with the Parties. Again, the Parties would urge the CMA to reach out to third party contacts with suitable credentials.
- (h) *Eighth*, seeking consultants' views on: (i) Large Retail Customers' CLS needs and the relative capabilities of a range of 3PLs to satisfy them (including any limitations and comparative strengths compared to the Parties); (ii) Large Retail Customers' decision-making processes – whether regarding the choice among rival 3PLs' offers or whether to move from or back to in-house operations; (iii) how the capabilities of other 3PLs compare to the Parties; (iv) the barriers which do not allow certain 3PLs to service specific customer needs and whether these can / cannot be overcome in the future; and (v) the field of 3PLs in past, current and future tenders.¹⁶⁰

¹⁶⁰ See GXO's response to section 109(3), Q7 (29 November 2024).

5. Competitive dynamics in Grocery Retail are distinctive yet effective

- 5.1 The Phase 1 investigation was not able to actively consider how the specific features of the Grocery Retail sub-segment – including frequent deliveries, tight delivery-to-store time slots and need for multi-temperature warehousing and fleet, as well as a strong and omnipresent insourcing constraint and strong buyer power – impact competitive dynamics. Instead, the Decision relies on limited market feedback to narrow the Grocery Retail 3PL competitor set.¹⁶¹
- 5.2 The Decision implicitly justifies this approach based on material barriers to entry and expansion.¹⁶² However, closer examination reveals that the limited 3PL competitor set is due to factors which currently limit a Grocer’s incentive to consider other 3PLs – namely, that competition among three 3PLs is sufficient to deliver favourable pricing and terms and high levels of service. If Grocers wanted to consider one or more other 3PLs post-Transaction, a wide range of additional 3PLs have the requisite capabilities.

(A) *No unique 3PL capabilities required to service Grocery Retail contracts*

- 5.3 The Decision correctly captures several Grocery Retail contract characteristics. However, perhaps given the limited focus the CMA could afford to give this sub-segment at Phase 1, the Decision’s suggestion that such characteristics act as barriers to servicing Grocery Retail contracts does not align with the Parties’ understanding or experience of operating within the sub-segment. To assist the CMA with its Phase 2 investigation, the Parties discuss these characteristics below.

(i) National warehouse and transport capabilities are not a pre-requisite

- 5.4 While the Decision cites two Grocers’ belief that “national transport capabilities”¹⁶³ or capabilities in both warehousing and transport¹⁶⁴ are required to service Grocers, that belief is misplaced for the reasons set out at paragraphs 3.28-3.31 above. National capabilities are also not in any way unique to the Parties:¹⁶⁵ all the competitors listed in Table 14 of the Merger Notice (including CEVA, Culina Group, DHL, DSV, EV Cargo, Gist,¹⁶⁶ and XPO) amongst others are able to supply CLS throughout the entire UK. A 3PL’s core offering is its ability to manage logistics, not the geographic coverage of its pre-existing assets. 3PLs tend to bid and service national contracts for Grocers (and other Large Retail Customers) using assets provided by the Customer or inherited from the incumbent 3PL.

(ii) Scaling up to meet customer demand is ‘business as usual’ for 3PLs

- 5.5 The Decision identifies the “number of employees” as a factor contributing to whether a 3PL has “sufficient scale” to service Grocers.¹⁶⁷ While Grocery Retail contracts are more labour intensive (usually involving 300-1,000 employees per site) with lower levels of automation, as set out at paragraph 3.17 above, the relevant staff (together with their skills, expertise and customer knowledge) tend to TUPE across with the

¹⁶¹ Decision, paragraph 107(a).

¹⁶² Decision, paragraph 144.

¹⁶³ Decision, paragraph 107(a)(i).

¹⁶⁴ Decision, paragraph 107(a)(iii).

¹⁶⁵ Merger Notice, paragraph 341(b).

¹⁶⁶ Gist has since been acquired by M&S.

¹⁶⁷ Decision, footnote 252 and paragraph 144(a).

contract.¹⁶⁸ 3PLs then manage short-term or seasonal demand fluctuations with agency staff as for any other contract (see paragraph 3.34 above).

(iii) Temperature control (TC) requirements do not limit the competitor set

5.6 The Decision refers to customer¹⁶⁹ and competitor¹⁷⁰ feedback which does not reflect the realities of how most Grocery Retail contracts are operated. Not all Grocery Retail contracts will include TC but, if a contract includes a TC element, the principles on asset ownership (see paragraphs 3.14 to 3.16 above) apply equally to TC assets, including the asset themselves and associated servicing and maintenance (i.e. all TC capabilities are ordinarily provided with the contract when awarded), while the relevant expertise transfers with TUPE. Customers own the TC assets for [REDACTED]¹⁷¹ of GXO's Grocery Retail contracts and [REDACTED] of Wincanton's Grocery Retail contracts and provide the necessary maintenance and servicing coverage.¹⁷² The Parties expect that the position is similar for other 3PLs' Grocery Retail contracts.

5.7 In the unlikely event TC assets and / or expertise are not provided with the contract, all 3PLs can independently obtain them on an equal basis. TC transport assets can be leased as with non-TC assets (see paragraphs 3.30 and 3.34 above). Numerous companies specialise in providing partitioned TC warehouse solutions, such as Westgate Global¹⁷³, Star Refrigeration¹⁷⁴, Star Cold¹⁷⁵, DD Cooling¹⁷⁶, Stancold¹⁷⁷ and ISD Coldstores¹⁷⁸. If any further maintenance / engineering services are required, there are multiple providers which already supply a variety of customers and 3PLs, including Star Refrigeration, J&E Hall, Cold Control, Polar Pumps Ltd, Cooltherm UK Ltd, Foster Refrigerator, Hawco and Thermotech Refrigerator.

(iv) The Decision portrays final mile delivery in Grocery Retail as a specific capability

5.8 In line with how customers think about final mile delivery, the Decision defines final mile delivery as transport “directly to end consumers” (i.e. B2C generally provided by parcel carriers) and cites customer feedback which implies the provision of final mile delivery narrows the competitor set.¹⁷⁹ However, B2C final mile delivery is usually irrelevant for Grocers when choosing a 3PL, as they largely prefer to service B2C

¹⁶⁸ For example, when GXO was awarded the [REDACTED] contract in [REDACTED] over [REDACTED] of employees transferred across with the contract.

¹⁶⁹ Decision, paragraph 107(a)(i): “other suppliers are less able to supply CLS to Grocery Retail customers which have specific requirements (such as chilled and frozen warehousing and transport capabilities...)”

¹⁷⁰ Decision, paragraph 50: “having access to a bigger pool of specialised infrastructure assists with scaling up market shares and is particularly useful in sectors such as grocery”.

¹⁷¹ GXO own assets used to service [REDACTED] each at one frozen distribution centre: [REDACTED].

¹⁷² While [REDACTED]Wincanton's Grocers own the TC assets necessary to service TC contracts, Wincanton is responsible for maintenance of refrigeration / chiller assets at the [REDACTED].

¹⁷³ Accessible here: <https://westgate-global.com/resource-hub/insights/creating-a-temperature-controlled-warehouse-in-a-simple-and-cost-effective-way/> (Accessed: 29 November 2024).

¹⁷⁴ Accessible here: <https://www.star-ref.co.uk/sectors/storage-distribution/> (Accessed: 29 November 2024).

¹⁷⁵ Accessible here: <https://starcold.co.uk/walk-in-cold-rooms/> (Accessed: 29 November 2024).

¹⁷⁶ Accessible here: <https://ddcooling.co.uk/cold-stores/> (Accessed: 29 November 2024).

¹⁷⁷ Accessible here: <https://stancold.co.uk/services/food-facilities/> (Accessed: 29 November 2024).

¹⁷⁸ Accessible here: <https://www.isd-solutions.co.uk/divisions/coldstores/> (Accessed: 29 November 2024).

¹⁷⁹ Decision, footnote 35.

requirements in-house to remain close to their customers (and so B2C would not typically even be included in a 3PL CLS contract).¹⁸⁰

5.9 The Decision also specifically refers to “*final mile delivery service for convenience stores*” (*FMD*) as a potential barrier to competing in Grocery Retail. However, there is no justification for differentiating this service from the rest of Grocery Retail transport CLS as:

- (a) the general transport CLS under a Grocery Retail transport contract includes transport from a distribution centre to all of the customer’s store network (i.e. including supermarkets and convenience stores). That is because Grocers do not differentiate between different store types for these purposes;¹⁸¹ and
- (b) Grocers tend to own the assets for all their transport contracts (including those encompassing FMD), the relevant staff (and expertise and experience) TUPE across and a 3PL’s main role is to provide labour and transport management.

5.10 3PLs therefore do not require standalone FMD capabilities, experience and assets to compete successfully in Grocery Retail.

(B) *Distinct dynamics apply to Grocery Retail*

(i) *Fewer 3PLs may successfully win Grocery contracts at present but the threat of expansion and / or entry (as well as insourcing) provides a significant competitive constraint*

5.11 There are currently fewer 3PLs servicing Grocers than non-Grocery Retail Customers. The Grocers’ currently meet their CLS needs principally from the Parties, DHL, Ocado (ecommerce operations for Morrisons),¹⁸² Culina Group (currently transport only), Lenhams and XPO (currently transport only). However, this list is only a sub-set of the 3PLs who compete for Grocery Retail CLS contracts. For instance, and as noted at paragraph 4.39 above, [REDACTED].

5.12 Certain features have historically set Grocery Retail apart from non-Grocery Retail, but none of these pose insurmountable obstacles to other 3PLs successfully competing:

- (a) Grocers require a wide variety of products to be delivered to a wide variety of destinations (ranging from individual homes to small convenience stores to large mega-stores) at a variety of different temperatures. While none of these

¹⁸⁰ For completeness, GXO [REDACTED]. Wincanton [REDACTED]. The Parties are aware of only limited other examples of Grocers outsourcing B2C delivery and not to traditional 3PLs (e.g. Ocado for Marks & Spencer and Morrisons). In non-Grocery Retail, the Parties may administer customer-owned agreements with parcel carriers (e.g. Evri, Royal Mail, Yodel etc.) and occasionally sub-contract with them but, as above, rarely provide FMD themselves except for specialist services such as a 2PHD where only Wincanton has a meaningful presence and there are several specialist providers (e.g. DX, Panther – see Merger Notice, paragraph 294).

¹⁸¹ Convenience store-only transport contracts are the exception that proves the rule. For instance, [REDACTED]. GXO is not aware of any other 3PLs servicing convenience store-only distribution networks.

¹⁸² Ocado Group is split between three distinct business units: (i) Ocado Retail (a 50:50 Ocado/Marks & Spencer -owned Grocer in its own right); (ii) Ocado Logistics (a 3PL and fulfilment business) which counts Ocado Retail and Marks & Spencer as customers; and (iii) Ocado Technology Solutions (a software and robotics platform business). Ocado’s three business units has its own management team, distinct business model, and separate P&L (see, e.g., Ocado’s 2023 annual report at https://cdn.prod.website-files.com/667974bf1bf45146cf81ef19/66a0b9702bdfd06a6a12d121_ar23-compressed.pdf) (Accessed: 2 December 2024).

characteristics is individually unique to the Grocery Retail sub-segment (e.g. food manufacturers often require TC operations and DIY retailers sell a wide variety of products), Grocers are distinct in requiring this combination of characteristics;

- (b) these Grocery-specific CLS requirements increase the level of risk in serving in these contracts, since Grocers have a lower tolerance for failure (e.g. a delay to a delivery of products to a DIY store may risk costly stock shortages, but the products themselves are unlikely to lose their value; whereas delays to the delivery of food products to a supermarket will narrow the window in which the Grocer can sell these goods before they spoil);
- (c) Grocery Retail is a tough operating environment with experienced and sophisticated procurement departments with exacting performance standards and the ability to control their own CLS destiny via the modularisation of their CLS needs and deployment of different procurement strategies; and
- (d) strong, established and experienced in-house operations with near 100% customer coverage vying with the Parties across Grocery Retail.

(ii) Grocery Retail margins are [REDACTED] low, limiting incentive to try new 3PLs

- 5.13 The [REDACTED] low margins 3PL earn on large retail contracts including Grocery Retail contracts¹⁸³ are evidence of strong competition and reflect the range of options available to Grocers (including other 3PLs and insourcing).
- 5.14 Grocers have a limited incentive to consider new 3PLs with a more limited track record today, as they are already extracting particularly favourable deals from 3PLs with whom they are satisfied. This is not indicative of any shortcoming in other 3PLs' capabilities, but rather a consequence of customer choice and high satisfaction levels with existing providers. Grocers could and would turn to a wider set of 3PLs if the Merged Entity sought to impose a SSNIP – their significant buyer power, procurement sophistication and modularised requirements all facilitate switching between 3PLs. For example, other 3PLs, including Culina Group¹⁸⁴ and XPO¹⁸⁵, already have a track record of providing CLS to Grocers today (or indeed have provided services to Grocers previously, including Unipart¹⁸⁶ which managed a warehouse contract for Sainsbury's). Furthermore, CEVA supplies Carrefour in France (one of the largest grocers in France) and other 3PLs could easily acquire credibility by adding senior staff with grocery

¹⁸³ Average margins for GXO and Wincanton top 5 contracts were [0-10]% and [0-10]% respectively compared to average margins for other Retail contracts of [0-10]% and [0-10]% respectively.

¹⁸⁴ MotorTransport, "Wincanton woes mount as Morrisons switches £70m transport contract to Stobart", 22 March 2023, <https://motortransport.co.uk/wincanton-woes-mount-as-morrisons-switches-70m-transport-contract-to-stobart/16859.article> (Accessed: 2 December 2024).

¹⁸⁵ In 2022, and building upon Tesco awarding a TC distribution contract to XPO, XPO was further awarded a multi-year contract renewal by Tesco to distribute fuel to Tesco consumer filling stations throughout the UK. XPO, "XPO Logistics and Tesco Renew Partnership for UK Fuel Distribution", 3 May 2022, <https://euopenews.xpo.com/en/2771/xpo-logistics-and-tesco-renew-partnership-for-uk-fuel-distribution/> (Accessed: 2 December 2024).

¹⁸⁶ The Grocer, "Sainsbury's hands Unipart non-food logistics deal", 21 May 2009, <https://www.thegrocer.co.uk/news/sainsburys-hands-unipart-non-food-logistics-deal/200023.article> (Accessed: 2 December 2024).

experience to build upon experience already generated in the UK market.¹⁸⁷ The absence of any “high” barriers to expansion, coupled with the fact other 3PLs already provide (transport) CLS to Grocers, underlines the realistic prospect of expansion in this sub-segment.

(iii) Grocers have significant buyer power

5.15 3PLs are consistently under pressure to deliver Grocers continuous improvement and optimal performance. In particular, their buyer power is highlighted in the contractual terms 3PLs are often forced to accept and the way in which they structure tenders / satisfy outsourced CLS needs.

5.16 Sophisticated procurement departments – Grocers’ procurement departments are sophisticated and experienced at running tenders and commercial negotiations. Their position is strengthened by their widespread use of open book contracts which gives them an insight into 3PLs’ cost base and helps drive down costs. The majority of the Parties’ Grocery contracts contain a combination of these provisions, including:

(a) Service malus clauses which impose penalties (of up to 100% of the management fee) for underperformance against agreed KPIs. These provisions are common for Grocers (e.g. GXO has such provisions in its contracts with [REDACTED] and Wincanton in [REDACTED]).

(b) Underwrite clauses which are typically linked to continuous improvement over all (or less commonly part) of the contract period. For example, GXO has an underwrite provision in its contract with [REDACTED]. GXO has a similar condition in its contract with [REDACTED] where [REDACTED] and Wincanton has an underwrite provision in its contract with [REDACTED].

(c) Gainshare clauses whereby 3PLs and customers agree to share any cost savings which go above and beyond an underwrite commitment are typically weighted in favour of the customer. GXO [REDACTED] has gainshare terms in its Grocery Retail contacts, including [REDACTED]. For example, [REDACTED]. Equally, Wincanton has gainshare provisions in its contracts with [REDACTED].

5.17 Modularisation is commonplace (see paragraph 4.30 above) and, of all Large Retail Customers, Grocers are best placed to split out their CLS needs due to their operational scale and localised requirements. As **Annex 001** shows:

(a) All of the Parties’ Grocery Retail customers – and indeed all of the UK’s ten leading Grocers – have multiple warehouses – ranging from at least five to more than 20.

(b) Grocers take advantage of this modularity by bringing in multiple 3PLs to operate different locations (as well as by mixed-sourcing across 3PLs and in-house provision).

¹⁸⁷ Food Manufacture, “130 jobs at risk at distribution centre for Tesco: a distribution centre for Tesco at Middlewich, Cheshire – operated by CEVA Logistics – faces closure with the potential loss of 130 jobs”, 8 April 2013, <https://www.foodmanufacture.co.uk/Article/2013/04/09/130-distribution-jobs-at-risk-at-distribution-centre-for-Tesco/> (Accessed: 2 December 2024).

- (c) Furthermore, Grocers sometimes tender out the transport and warehousing CLS associated with those sites separately, resulting in an average of over 30 different modules per Grocer.
- 5.18 This results in Grocers typically using multiple 3PLs simultaneously – for example [REDACTED] simultaneously uses four 3PLs as well as insourcing, and others, including [REDACTED] and [REDACTED] each use three 3PLs plus insourcing.
- 5.19 The prevalence of multi-sourcing and mixed-sourcing only serves to heighten the competitive pressure on 3PLs. In addition to allowing Grocers to benchmark 3PLs’ performance, it significantly reduces barriers to entry and expansion for other 3PLs. This is because instead of having to switch all their operations in their entirety, a Grocer has the ability to test out a new 3PL with a subset of their operations (e.g. just the transport operations and / or warehousing operations at a single location) and then progressively reward good performance. Grocers have complete freedom to split up and tender out different parts of their operations in any way they prefer – [REDACTED].

(C) Grocers insource more than other customers

- 5.20 For the reasons set out above, the Decision’s conclusion that “*the strength of the [insourcing] constraint is highly uncertain and may be limited (or not present) for many customers, including larger Retailers*”¹⁸⁸ reflects a limited range of customer evidence at Phase 1 and does not match the Parties’ experience.¹⁸⁹
- 5.21 The Parties acknowledge that several smaller respondents to the Phase 1 customer questionnaire may be less well placed to insource; but this is less relevant than assessing the ability and willingness of Large Retail Customers to insource, which evidence shows they do frequently.¹⁹⁰
- 5.22 In the Grocery Retail sub-segment, the Parties highlight that even if Grocers expressed scepticism about their ability and willingness to insource, this is inconsistent with their own historic and current practices:¹⁹¹
- (a) As set out in paragraph 7.13 below, nine out of ten grocers have insourced operations already. The only exception is [REDACTED], which could easily insource its operations if it wanted. Like all other Grocers, [REDACTED] operates at several locations and has a modular set-up – there is simply no reason to think that [REDACTED] could not insource its operations given that all ten of its largest Grocery Retail competitors, who as national supermarket chains have a similar set of logistical requirements to [REDACTED], insource a large proportion (and in several cases all) of their operations. [REDACTED] could insource its operations within a short timeframe [REDACTED]. The only new input [REDACTED] would require to make this shift would be [REDACTED]. In terms of GXO’s operations, [REDACTED].

¹⁸⁸ Decision, paragraph 134.

¹⁸⁹ See paragraphs 7.5 to 7.9 for the Parties further concerns on the Phase 1 customer questionnaire and associate evidence.

¹⁹⁰ As explained in more detail in the AIL, paragraph R32.

¹⁹¹ AIL Annex 005, Annex B.

- (b) The mixture of outsourced / insourced activities varies across Grocers, indicating flexibility to decide how much to insource.
- (c) For Large Retail Customers – and Grocers in particular – the costs of bringing activity in-house would be small compared to the costs associated with a SSNIP.¹⁹²

5.23 The CMA at Phase 2 has the time and resources to access a greater range of evidence on customers’ ability to insource, which the Parties submit would merit greater evidential weighting than the limited customer opinions gathered at Phase 1. Evidence of actual competitive conduct demonstrates that self-supply is not only a viable alternative, but is often the strongest alternative for Grocers (see further detail in **Section 7**). At the same time, the Parties urge the CMA to use the opportunity afforded by the Phase 2 process to engage in more in-depth interviews with Grocers about their willingness to insource if this were necessary to avoid a SSNIP, since they firmly believe it is inconceivable that Grocers would accept a small-but-significant and non-transitory increase in the relative cost of using 3PLs (or an equivalently small-but-significant and non-transitory deterioration in service quality) rather than take activity back in-house.

(D) Areas for potential CMA engagement

5.24 The Parties would welcome the opportunity to engage further with the CMA on evidence collection from Grocery Retail CLS. The areas for further engagement discussed at paragraph 3.58 above are equally applicable to Grocery Retail CLS.

5.25 However, for Grocery Retail CLS it will be particularly important for the CMA to collect the evidence necessary to:

- (a) *First*, allow it to properly assess the willingness and ability of each Grocer to insource their CLS needs. Including:
 - (i) whether each Grocer would readily insource if necessary in anticipation of, or response to, a SSNIP or an equivalent degradation in service quality;
 - (ii) the speed at which each Grocer could insource, noting that the majority of Grocers have CLS operations in-house today;
 - (iii) Grocers’ own asset ownership and the capabilities of in-house teams; and
 - (iv) the current and past use of insourcing by each Grocer.
- (b) *Second*, interrogating the reasons why a Grocer might consider its CLS needs to be more “complex” or require a 3PL to possess any “specific capabilities”;
- (c) *Third*, if there are qualities which Grocers consider it essential for their 3PL to demonstrate, (i) whether each alternative 3PL would demonstrably be unable to service the Grocers CLS needs; but (ii) importantly, whether Grocers are willing and able to ‘sponsor’ entry / expansion within Grocery Retail CLS (as Iceland effectively did with GXO).

¹⁹² See paragraph 7.17 below and AIL Annex 005 with accompanying Annex E (‘[REDACTED]’) reattached to this Response as Annex 004.

6. The Parties firmly believe that new entry and / or expansion would be “timely, likely and sufficient” to drive effective competition

6.1 The Decision notes that several market features may support entry and / or expansion (e.g. multi- or mixed-sourcing, high levels of customer control over assets and prevalent tenders).¹⁹³ The Parties have submitted a wide range of evidence in Phase 1 to support their understanding of the market i.e. that barriers to entry and expansion in Mainstream CLS for retail customers are low, ensuring that competitive pressure on the Merged Entity will remain high.¹⁹⁴

6.2 However, the Decision downweights these features and evidence in favour of (i) some limited but significant third party comments which questioned sufficiency and (ii) two internal documents (which the Parties submit have been misinterpreted).¹⁹⁵ The Parties are confident that these comments and documents can be placed into their appropriate context over the course of Phase 2.

6.3 The Decision (i) concludes “*barriers to entry and expansion could be high*”¹⁹⁶ due to the purported importance of scale, incumbency, reputation/track record and capex; and (ii) dismisses the track record of new entry and expansion by Maersk, Arvato and Bleckmann. The Decision does not include a detailed assessment of whether any new entry and / or expansion would be timely, likely and sufficient to prevent an SLC, including the likelihood and viability of sponsored entry, and the Parties would encourage the CMA to consider these points in Phase 2.

(A) *New entry and / or expansion for Large Retail Customers will be “timely, likely and sufficient” post-Transaction.*

6.4 Under the MAGs, the relevant test is whether entry or expansion will be timely, likely and sufficient to prevent an SLC.¹⁹⁷ The limited “complexity” of Large Retail Customers’ CLS requirements (as set out in **Section 3**) and capabilities of a range of 3PLs to service these requirements (as set out in **Section 4**) show that this test is met.

(a) Timely. The relevant duration to fulfil the “timeliness” limb will depend on the “industry and the characteristics and dynamics of the market” and although two years is generally considered effective, “the CMA may consider a period of time...longer than this”.¹⁹⁸ As previously submitted,¹⁹⁹ the average contract length for Mainstream CLS (and both Retail and Non-Retail individually) is three to five years. The CMA should therefore use this contractual cycle as the time horizon for any potential new entry/expansion. However, even if the CMA were to use the two years suggested in the guidance, the Parties consider the 3PLs highlighted below would still be able to expand their presence significantly based on their current contractual win rate.

(b) Likely. According to the MAGs, 3PLs would need both the ability and incentive to service Large Retail Customers, bearing in mind any barriers.²⁰⁰ As shown

¹⁹³ Decision, paragraph 143.

¹⁹⁴ Merger Notice, paragraphs 440 to 449 and AIL R40 to R45.

¹⁹⁵ Decision, paragraphs 144 to 145.

¹⁹⁶ Decision, paragraph 144.

¹⁹⁷ MAGs, paragraph 8.31.

¹⁹⁸ MAGs, paragraph 8.33.

¹⁹⁹ Merger Notice, paragraphs 206 to 207.

²⁰⁰ MAGs, paragraph 8.35.

below and elsewhere in the response,²⁰¹ there are numerous 3PLs (including CEVA, Culina Group, XPO) with sufficient capabilities to enter into new sub-segments and expand within sub-segments where they are already competing. This ability is facilitated by the market features cited in the Decision²⁰² and the absence of material barriers to entry/expansion (see paragraphs 6.5 to 6.25 below).

- (c) Sufficient. According to the MAGs, entry or expansion should be of “*sufficient scope and effectiveness*” and “*successful over a sustained period of time*”.²⁰³ As examined in **Section 4**, there are numerous effective 3PLs capable of supplying both warehouse and transport CLS, either separately or combined, for Large Retail Customers. The typical length of contracts and ability for 3PLs to expand their relationships with customers (see paragraph 6.11 below) means that entry or expansion would be over a sustained time horizon. In addition, the MAGs note that “*sufficiency to constrain the merged entity may come from a single entrant or firm expanding or from several, in aggregate*”.²⁰⁴ As **Section 4** sets out in further detail, different 3PLs constrain the Parties in different tenders and collectively impose a cumulative constraint across the Retail CLS segment. Therefore, even if the entry or expansion of a single 3PL were not sufficient to prevent an SLC (which the Parties maintain is not the case) it is likely that the cumulative effect of multiple 3PLs entering or expanding would be.

(i) 3PL size is not a predictor of success

6.5 The Decision states that “[competitors] *noted that 3PLs need scale to be able to compete on the Mainstream CLS markets*”.²⁰⁵ This statement elides the significant variation in CLS needs of diverse customers (from Grocers to start-ups) to identify a market-wide barrier to entry into Mainstream CLS. However, Mainstream CLS contract values vary significantly. For instance, while there are a small number of large tenders for opportunities running to tens of millions of pounds in annual value, there is a long tail of much smaller opportunities: as the win/loss data that the Parties have shared with the CMA shows, the average size of opportunities that the Parties have bid for is just £[REDACTED] million a year for Mainstream CLS, and just £[REDACTED] million a year for the Retail CLS segment. This broad spread gives 3PLs of all sizes the chance to compete successfully and sustainably for the majority of Mainstream CLS customers.²⁰⁶ Furthermore, scale is not always an advantage as some customers may consider size to be a disadvantage. For example, during [REDACTED].²⁰⁷

6.6 The Decision also states that “*several customers noted that when choosing a 3PL, they value whether it has the sufficient scale to meet their complex needs*”.²⁰⁸ As explained above (paragraphs 3.25-3.37 and paragraphs 5.3-5.5 for Grocers) and in previous submissions,²⁰⁹ the TUPE legal obligation, high levels of customer asset

²⁰¹ See paragraphs 4.26 to 4.44 of the Response.

²⁰² Decision, paragraph 143.

²⁰³ MAGs, paragraph 8.37.

²⁰⁴ MAGs, paragraph 8.37.

²⁰⁵ Decision, paragraph 144(a).

²⁰⁶ For further detail see Merger Notice, paragraph 416(a), AIL R44, and paragraph 4.31 of the Response.

²⁰⁷ See: GXO_00000241, ‘[REDACTED]’ and GXO_00007286, ‘[REDACTED]’.

²⁰⁸ Decision, paragraph 144(a).

²⁰⁹ Merger Notice, paragraph 236 and AIL R43 (see “*There are ample opportunities for 3PLs to service large scale operations*”).

ownership/control and the modularity of Large Retail Customers' needs minimise the relevance of a 3PL's size; the assets and personnel tend to follow the contract and the 3PL's offering generally focuses on labour management.

(ii) *Incumbency is not a definitive advantage for customers constantly seeking the best service*

6.7 The Decision states that “*several customers and one competitor indicated that incumbency is an important factor when customers choose their CLS supplier*”.²¹⁰ While it is reasonable to assume that retaining the incumbent provider will typically be one option that customers consider when a 3PL contract comes up for renewal, customers will not prefer incumbent 3PLs if they consider another 3PL (or in-house operations) could provide a superior service and / or commercial terms. As set out at paragraphs 3.41 – 3.42 above, it is only an advantage if the customer is satisfied with its current 3PL's service offering.

6.8 During the tender process, an incumbent's customer knowledge does not constitute a material advantage. To enable competing 3PLs to estimate costs accurately and tailor their solution appropriately, customers tend to share significant amounts of data with them and offer them multiple opportunities to discuss customer preferences. These practices mitigate any incumbency knowledge advantage.

(iii) *Customers factor in reputation and track record but neither is determinative*

6.9 The Decision states that “*some customers and competitors also considered reputation to be an important factor in choosing the 3PL*” and that “*the majority of customers listed track record as an important factor when selecting a CLS supplier*”.²¹¹ Reputation and track record are clearly important competitive parameters. However, as shown at paragraphs 3.45 – 3.49 above, 3PLs can also win business by leveraging their expertise from adjacent product markets (e.g. freight-forwarding and non-CLS transport)²¹² and adjacent geographic markets (e.g. mainland Europe).²¹³

6.10 Furthermore, as set out at paragraphs 3.40 and 3.43 – 3.44 above, 3PLs do not need a long-standing or extensive track record to win business and gain instant credibility. This is shown by XPO, a transport-focused 3PL with no UK warehouse experience, beating the Parties to win the [REDACTED] warehousing contract in 2023.²¹⁴ As noted above, Retail customers with multiple warehouses also have the option of testing out new 3PLs with a subset of their operations and then progressively reward good performance, rather than having to award all their operations to a single 3PL in one go.

6.11 The Decision states GXO's expansion of its grocery offering “*supports the view that any entry or expansion in response to the Merger would not be sufficiently timely and effective [because GXO] needed a number of years and significant effort to establish*

²¹⁰ Decision, paragraph 144(b).

²¹¹ Decision, paragraph 144(b) and (c).

²¹² Wincanton notes that it lost its CLS contract for [REDACTED] to Maersk in [REDACTED]. Maersk is particularly targeting retail customers that require end-to-end requirements, which allows Maersk to offer highly competitive rates by reducing its freight costs and balancing these off any warehousing costs. In February 2023, Maersk announced that ASOS appointed Maersk as its strategic global logistics partner. The Parties understand that Maersk also supplies CLS to Samsung from its Tamworth warehouse facility.

²¹³ See paragraph 3.43 for examples where ID Logistics, DSV, Arvato, CEVA and Geodis leveraged pre-existing European relationships.

²¹⁴ See also paragraph 4.35.

itself and achieve its current scale and market position".²¹⁵ However, this conclusion overlooks the fact GXO was able to expand rapidly and build a significant position in Grocery Retail CLS within one contractual cycle (three-five years) by leveraging the credibility it gained instantly from winning the [REDACTED] contract.²¹⁶

(iv) *Capex – and consequently 3PL economies of scale – is not a significant consideration for the large majority of Large Retail Customers’ contracts*

6.12 The Merger Notice and AIL showed that capex requirements are not in fact significant and do not prevent new entry because:

- (a) for most customer contracts, 3PLs do not need to undertake significant capex as many customers own / have control overall their major assets; and
- (b) the prevalence of open book contracts (especially for large customers) means that many customers directly cover their costs and merely pay a “management fee” to the 3PL.²¹⁷

6.13 However, the Decision notes that “*some competitors stated that 3PLs would need to incur high levels of capex to enter or expand their businesses, recruit and retain staff or achieve sufficient scale to compete effectively in the market, particularly in the retail CLS segment*”.²¹⁸ The Parties’ experience does not support these assertions.

6.14 Between 2022 and 2024, GXO’s general CLS capex averaged [0-10]% of revenues, while over the last three years Wincanton’s capex averaged c.[0-10]% of revenues.²¹⁹ In FY2024 [REDACTED]. For Wincanton, [REDACTED]. The Parties consider these low capex levels are standard for Retail CLS and therefore do not constitute a material barrier to entry.

6.15 The Decision reports a competitor’s view that “*high initial set-up investment costs are required to automate warehouses, which are important for servicing large-scale retail CLS operations*”.²²⁰ However, this statement is based on two mistaken assumptions:

- (a) the Decision assumes that large scale Retail CLS operations require automated warehouses, but this is not the case with many Large Retail Customers (e.g. Grocers) having limited or no automation as shown on the site visit; and
- (b) the decision assumes 3PLs need to provide the capex for automation, but in fact, most large retailers use their own capex to design and install technology directly with third party providers and continue to own the assets post-installation.²²¹

²¹⁵ Decision, paragraph 147.

²¹⁶ For further detail see AIL, R35 (Case study A: [REDACTED]).

²¹⁷ See Merger Notice, paragraph 595 and AIL, R43. The Parties estimate that approximately 75% of Mainstream CLS contracts for retail customers are open book; for FY2023, [more than two thirds]% of GXO’s Mainstream CLS (Retail) and [more than three quarters]% of Wincanton’s Mainstream CLS (Retail) turnover was derived from open book contracts.

²¹⁸ Decision, paragraph 144(d).

²¹⁹ Even for newly won contracts, GXO and Wincanton’s capex requirements are only [0-10]% on average and never exceed [0-10]%.

²²⁰ Decision, paragraph 144(d).

²²¹ If external capex is necessary, logistics landlords are often a ready and available source of capital for automation and fit-out. GXO has previously pitched several landlord sources of capital to help customers pay for automation needs.

6.16 However, even if high levels of capex were a competitive pre-requisite, a sufficient number of 3PLs active in Retail CLS are well capitalised (e.g. CEVA, DHL, DSV, Yusen) and so would be well positioned to constrain the Merged Entity.²²²

(B) *The lack of material barriers is evidenced by the recent successful entry of Maersk, Arvato and Bleckmann*

6.17 While, the Decision recognises Maersk, Arvato and Bleckmann as new entrants it states that “*evidence from third parties indicates that these suppliers have not been able to expand successfully since entering the mainstream CLS market*”.²²³ This evidence is misleading as: (i) it implies 3PLs are only credible if universally considered so by customers. However, as discussed above,²²⁴ customers’ preferences and requirements differ and so do their 3PL supplier sets. Consequently, the dismissal of a 3PL’s ability by a single customer cannot be used to dismiss that 3PL’s capabilities; and (ii) does not take into account real life-evidence of these players’ successful entry.

6.18 Maersk.²²⁵ The Decision states that “*a number of customers submitted that Maersk is relatively new to the market and therefore lacks the relevant track record and scale, lacks experience or has a weak offering*”.²²⁶ This view is not uniformly held by customers given Maersk’s string of significant contract wins since entering the UK market in 2022 including Samsung (2023) and ASOS (2024). Furthermore, Maersk has publicly stated that it will “*strengthen its position further by providing a larger array of services...to its customers*”²²⁷ and is poaching other 3PLs’ staff to consolidate its position.²²⁸ See further regarding Maersk at paragraphs 3.46 – 3.48 and 4.44(f) above, and the Merger Notice at paragraph 449(a)(i).

6.19 Arvato. The Decision states that “*a couple of customers noted that Arvato participated in recent tenders [but] did not progress...due to ‘incorrect business fit’ or ‘technical ability’*”.²²⁹ The Decision does not point to any evidence regarding Arvato’s competitiveness. Every 3PL (including the Parties) will be unsuccessful in tenders due to these, and many other, reasons.²³⁰ Two instances where Arvato did not win a contract are not a basis on which to dismiss its entry and expansion. Further, it does not take into account market reality. Since entering the UK market, Arvato has gained a string of significant Retail CLS customers including Hugo Boss (2022 – [REDACTED]) Uniqlo (2022 – a £30.8 million p.a. revenue contract [REDACTED] [REDACTED]), Mango (2022) and Avon (2024). See further at paragraph 449(b)(i) of the Merger Notice.

²²² Even if high levels of capex were required to supply CLS to the Large Retail Customers, a sufficient number of established international 3PLs and established UK 3PLs with existing Retail CLS capabilities are well capitalised. See Issues Meeting Presentation, slides 24 and 25 and AIL Annex 004 (Profiles of key suppliers for larger customers).

²²³ Decision, paragraph 146.

²²⁴ See paragraph 4.6 to 4.9 of the Response.

²²⁵ For further information on Maersk see paragraphs 3.46 to 3.48, 4.44(f), and 8.4(b) of the Response.

²²⁶ Decision, paragraph 146(a).

²²⁷ Accessible here: <https://www.maersk.com/news/articles/2023/04/04/maersk-expands-warehouse-offering-for-its-customers-in-uk> (Accessed: 29 November 2024).

²²⁸ In H2 2023 alone Maersk hired three managers and a business unit director from GXO. In addition, the Parties note that Maersk’s UK&I Logistics and Services Director was previously an Operations Director for DHL.

²²⁹ Decision, paragraph 146(b).

²³⁰ For example, GXO has recently lost opportunities on account of an alternative supplier being “*a better industry fit*” [REDACTED] and the alternative provider offering a superior [REDACTED].

- 6.20 Bleckmann.²³¹ The Decision states that “*one customer noted that Bleckmann has only a small capacity in the UK*”.²³² The Decision does not point to any other customer feedback or wider evidence to support its assertion that Bleckmann has “*not been able to expand successfully since entering the mainstream CLS market*”.²³³ Contrary to the Decision’s evidence, as set out in paragraph 4.44(d) above, Bleckmann has steadily gained Retail CLS customers since its 2014 entry, including Lululemon (2023 – [REDACTED]), Serapahine (2023 – [REDACTED]), Lovevery (2024), Superdry (2024) and Amazon (2024). Further, Bleckmann itself is confident about its growth prospects. It recently stated that “*the UK is an important growth market*” and that “*over the last 4 years we have grown from serving 5 clients in just 1 warehouse to managing the operations for 60 brands across 7 logistic centres*”.²³⁴ See further at paragraph 449(b)(ii) of the Merger Notice.
- 6.21 The successful entry and continued expansion of these new entrants (including other 3PLs who are entering and expanding, see **Section 4(D)** above) is compelling evidence that – notwithstanding third-party perspectives on theoretical barriers – they are in practice readily surmountable and not material.
- (C) *Post-Transaction, Larger Retail Customers could easily sponsor effective new entry and / or expansion***²³⁵
- 6.22 The MAGs recognise that sponsored entry (“*when a third party is encouraged and supported by customers to enter or expand*”)²³⁶ may be able “*to restore competitive conditions to the levels that would have prevailed absent the merger*”.²³⁷ To be effective, sponsored entry must meet the “*timely, likely and sufficient requirements*” and prevent “*the merged entity from raising prices or worsening quality of service for other customers*” (not just the sponsoring customer).²³⁸
- 6.23 As set out above, the likelihood and variety of entry and / or expansion sponsored by Large Retail Customers would meet these two limbs. Furthermore, Large Retail Customers already have a history of sponsoring new 3PLs to service their requirements. In addition to ID Logistics / Zara and other examples mentioned in paragraph 3.43 above, other sponsored entry examples include TJX (parent company of TK Maxx) and Wickes. [REDACTED] [REDACTED]. [REDACTED].
- 6.24 Furthermore, it is clear that efficient and established 3PLs would take advantage of any attempt by the Merged Entity²³⁹ to raise prices to enter / expand their offerings in certain sub-segments.

²³¹ For further information on Bleckmann see paragraphs 3.43(a) and 4.44(d).

²³² Decision, paragraph 146(c).

²³³ Decision, paragraph 146.

²³⁴ Accessible here: <https://www.bleckmann.com/press/bleckmann-adds-two-new-sites-in-the-united-kingdom-operational-capacity-passes-the-2-8-million-square-feet-262-000-sqm>, 19 June 2024 (Accessed: 2 December 2024).

²³⁵ Merger Notice, paragraphs 22(d) and 159.

²³⁶ MAGs, paragraph 8.44.

²³⁷ MAGs, paragraph 4.19.

²³⁸ MAGs, paragraph 8.45.

²³⁹ See, for example, Merger Notice, paragraph 450, AIL, R36 and R39, as well as paragraphs 4.22 and 6.7 of this Response.

(D) *The Parties’ internal documents do not attest to high barriers to entry and / or expansion*

6.25 The Decision states that third party evidence “*is...supported by the Parties’ internal documents*”.²⁴⁰ However, this conclusion relies on two out of 1,500 internal documents which have been shared with the CMA. As put forward in the AIL, the CMA’s reading of both of these documents does not take into account their appropriate context:

- (a) The intended purpose of WIN_00013265, [REDACTED] is to [REDACTED]. Therefore, the document emphasises [REDACTED] and should be read in that context.
- (b) Similarly, GXO_00010435, [REDACTED] is a [REDACTED]. Given that GXO markets its ability to manage “complex” supply chains (like many other 3PLs), it is [REDACTED]. Other 3PLs make similar claims regarding their ability to handle “complexity” – see a selection of similar claims by other 3PLs at paragraph 3.24 above.

(E) *Areas for potential CMA engagement*

6.26 *Phase 2 provides the CMA with the opportunity to evaluate all of the evidence on entry and expansion in more detail than was possible in Phase 1. Specifically, it will have the opportunity to consider the following, appropriately nuanced depending on the Retail CLS sub-segment:*

- (a) Examine the potential impact of a SSNIP on new entry / expansion including independent and sponsored entry.
- (b) Collect and evaluate further evidence on new entry / expansion including international 3PLs’ UK expansion plans, recent wins and pipeline.
- (c) Test customers’ ability to sponsor new entry / expansion by modularising their CLS needs.
- (d) Assess the drivers (e.g. highly competitive environment with existing competition driving low margins) underpinning more limited participation in certain sub-segments (e.g. Grocery Retail).²⁴¹

6.27 The Parties are confident that on a closer examination of these points in Phase 2, it will be clear that there is a real threat of significant new entry and expansion in this market, which will continue to discipline the Merged Entity and mitigate any SLC risk.

²⁴⁰ Decision, paragraph 145.

²⁴¹ Further details are set out in the Annex to the Panel Letter, attached to this Response as **Annex 002**.

7. Threat of insourcing provides a powerful additional competitive constraint on 3PLs (particularly in Grocery Retail)

7.1 The Decision notes that self-supply is utilised by customers and that this may impose a constraint on the Merged Entity. It also recognises that “*larger retail customers may be better able to self-supply*”.²⁴² Nevertheless, the Decision was unable to give this constraint its full weight due to uncertainty around the extent it can take place and its availability to some customers.²⁴³

7.2 The Parties recognise that the CMA had a limited window to investigate the evidence during Phase 1 and welcomes the opportunity to work through this evidence with the CMA in more detail in Phase 2. The Parties also acknowledge that insourcing may not be a viable option for all Mainstream CLS customers. However, there is clear and compelling evidence that insourcing is a viable and ever present option for at least Large Retail Customers, and particularly for Grocers.²⁴⁴

- (a) *First, insourcing (and mixed-sourcing) is a standard practice among Large Retail Customers.* As noted above, the majority of Large Retail Customers, including the Parties’ own Largest Retail Customers and nine of the UK’s ten largest Grocers, self-supply a material proportion of their logistics requirements. These customers are demonstrably capable of self-supplying all the operations currently managed by 3PLs, including those with a high level of automation.²⁴⁵ This is shown by the fact that several of the UK’s largest Retail customers fully insource all their operations. Within Grocery Retail for example, Lidl, Aldi and Ocado are fully insourced, while Tesco and ASDA insource the majority of their operations. Only one large Grocer – [REDACTED] – is fully outsourced but that is a choice rather than a reflection of its (in)ability to insource. This is clearly evidenced by the fact that competing Grocers with logistics needs that are very similar to those of [REDACTED] choose to insource their activity. Indeed, [REDACTED], it could take operations back in-house if this were to change.
- (b) *Second, Large Retail Customers have flexibility in deciding how much activity to insource and outsource.* The modular nature of CLS means that a customer’s decision to insource or outsource is not binary. Large Retail Customers in particular often operate multiple warehouses and choose to outsource operations at some warehouses while insourcing at others. Similarly, at each warehouse location a customer may choose to outsource some services (e.g. just the warehousing operations or just the transport operations) while insourcing others.²⁴⁶ A systematic assessment of the Parties’ top 20 Retail customers submitted at Phase 1 shows that – while the large majority mixed-source across in-house and 3PL provision – the mixture of services they outsource and insource varies widely from customer to customer even within the same sub-segment (e.g. Grocery Retail). This variety of approaches adopted by customers

²⁴² Decision, paragraph 130.

²⁴³ Decision, paragraph 134.

²⁴⁴ See the Parties’ previous submissions regarding insourcing in the Merger Notice, paragraphs 454 to 465 and AIL R39.

²⁴⁵ AIL, page 59.

²⁴⁶ For example, at its [REDACTED] site, [REDACTED] outsources warehousing operations to GXO while transport operations are insourced ([REDACTED]); at its [REDACTED] site, [REDACTED] outsources transport operations to [REDACTED] while warehousing operations are insourced.

(including by Retail customers operating in the same market segment as one another with very similar needs) underscores that Retail customers have complete flexibility in deciding how much to outsource or insource.²⁴⁷

- (c) Third, there are no material differences between Large Retail Customers' insourced and outsourced operations. Outsourced operations for Large Retail Customers could be insourced with minimal disruption. This is for two fundamental reasons. *First*, as explained previously by the Parties, the majority of Large Retail Customers own the relevant assets including the property lease, fleet, MHE, and IT systems – therefore, the large majority of the underlying assets are customer-owned regardless of the identity of the CLS service provider. *Second*, with TUPE, all relevant staff typically move with the contract. This is because the outgoing supplier would have the legal obligation to transfer the staff across to the new supplier, for which the incoming supplier bears little cost.²⁴⁸ Therefore, in practical terms, the warehouse, the fleet and the people stay the same and the only noticeable difference between insourcing and outsourcing for Large Retail Customers is that – in layman's terms – the logos and badges on the shirts change. By way of example, [REDACTED] while [REDACTED]. Similarly, Tesco insources the majority of its sites, while [REDACTED] run a smaller number of sites / services for this customer. Market evidence of this substitutability of insourcing and outsourcing include five recent examples included in Table R39.1 of the AIL, which cover [REDACTED]. Other examples include: [REDACTED].²⁴⁹
- (d) Fourth, the cost of insourcing is lower than the cost of accepting a small-but-significant non-transitory deterioration in an incumbent 3PL's offering. This is because:
- (i) as noted above, most Large Retail Customers already own or lease the relevant warehouse, transportation and technology assets used by 3PLs (or, if they do not, typically have the contractual right to move these assets across when the 3PL contract terminates);
 - (ii) the outgoing supplier (i.e. the 3PL) has the legal obligation to transfer the staff across to the new supplier (i.e. in the case of insourcing, the customer), for which the incoming supplier bears little cost; and
 - (iii) there may be some limited incremental ongoing costs to the extent that the customer needs to hire a small number of additional central management staff (which Frontier Economics took into account in their modelling of Large Retail Customers' ability and incentives to insource to avoid a small-but-significant deterioration in the service offered by 3PLs);²⁵⁰ and
 - (iv) beyond these cost items, any other costs of bringing activity in-house are minimal (e.g. purchase of uniforms) and in most cases would also be incurred when moving to a competing 3PL – so they are not a specific barrier to insourcing.

²⁴⁷ AIL, page 60.

²⁴⁸ AIL, R39.

²⁴⁹ Merger Notice, Table 7.

²⁵⁰ AIL, Annex 005.

7.3 Therefore, the credible threat of insourcing by Large Retail Customers imposes a meaningful competitive constraint on 3PLs that serve these customers today and will continue to do so post-Transaction. Because of the ease and speed with which these customers can insource, 3PLs regard insourcing as a rivalrous competitive threat in the same way that they see other 3PLs. The competitive threat of insourcing is further illustrated by a number of examples of sizeable Retail customers taking activity back in-house and threatening to do so as part of tender negotiations.²⁵¹

7.4 The Parties have reviewed the reasons set out in the Decision for limiting the strength of the competitive threat and consider these reasons to be based on a misinterpretation of the evidence, for several reasons:

- (a) *first*, the Decision’s approach to the collection and interpretation of customer views on insourcing suffers from a number of limitations;
- (b) *second*, the Decision’s conclusions sit at odds with hard evidence that Large Retail Customers insource extensively in practice;
- (c) *third*, the Decision does not appear to have had time to engage fully with the Parties’ modelling work demonstrating customers’ willingness to insource to avoid a SSNIP, and their ability to do so in a timely manner;
- (d) *fourth*, the Decision inappropriately discounts evidence of insourcing as a constraint in the Parties’ bidding data;
- (e) *fifth*, the Decision does not recognise adequately that the competitive constraint posed by insourcing is especially pronounced among Grocers; and
- (f) *sixth*, the Decision misinterprets the Parties’ submission that lower margins for CLS contracts for Grocers and other large Retail customers are indicative of a strong set of options for these customers, including insourcing.

7.5 The Parties discuss each of these points in turn below.

(A) *The Decision’s approach to the collection and interpretation of customer views on insourcing suffers from a number of limitations.*

7.6 The Decision points to third-party responses to conclude that insourcing “*may be an alternative for some of the Parties’ customers but that a significant proportion of customers would find it costly to switch to (or increase their) self-supply limiting any disciplining effect self-supply may have on the commercial offerings of 3PLs*”.²⁵² The Decision’s approach to the collection and interpretation of customer views suffers from three limitations:

(i) *First, the market test appears not to have asked customers the key question about their ability and willingness to insource in response to a 3PL SSNIP*

7.7 The CMA appears to have asked customers whether insourcing is an alternative to outsourcing. It does not appear to have asked customers to consider the critical question – whether they would consider insourcing in response to a small-but-significant non-transitory deterioration in the offer of 3PLs (whether service quality, price or other

²⁵¹ See paragraph 7.2(c) of this Response and Merger Notice, Table 7.

²⁵² Decision, paragraph 126.

parameters of competition). The Parties recognise that while insourcing is already widespread, the critical question for the CMA to consider is whether customers would take additional business back in-house if 3PLs were to reduce the competitiveness of their offer.

7.8 It is also unclear whether the CMA had sufficient time at Phase 1 for steps to be taken to ensure respondents had the same understanding of the question for their responses to be comparable – for example, by providing clarity on the degree of operations to be insourced (partially vs. fully insourced) or the types of operations to be insourced (e.g. warehouse operations vs. transport operations vs. both).

(ii) Second, an assessment of the respondents that the Decision reports as having “mixed” views appears to support the credibility of insourcing as a constraint

7.9 The Decision states that some respondents who “gave mixed views, indicate[ed that] while self-supply is an option, they actively maintain some operations internally and externally to benefit from the technology and expertise of 3PLs”.²⁵³ The Parties consider these responses to support the credibility of insourcing as a constraint as:

- (a) the Decision itself clearly states that these customers consider insourcing as an option (despite the benefits that they derive from using 3PLs);
- (b) the Decision seems to base its classification of this feedback as “mixed” on the assumption that these customers would need to fully insource their operations in order for insourcing to impose a material competitive constraint on 3PLs, when this is not the case. On the contrary, the ability of customers to modularise their operations to different providers and solutions sharpens the competitive threat that these different options pose by: (i) providing a direct ‘stalking horse’ point of comparison; and (ii) reducing the costs of switching by allowing customers to progressively ramp up or down their mix of in-house and outsourced provision.

(iii) Third, the CMA at Phase 1 was not able to explore the nuances of customers that expressed negative or mixed views about insourcing absent a SSNIP²⁵⁴

7.10 While the Decision reported that some respondents highlighted some potential barriers to switching, such considerations in themselves do not mean that customers would not insource in response to a small-but-significant non-transitory deterioration in the service offered by 3PLs. It also appears that at least some customers interpreted the CMA’s questions about insourcing as encompassing all of their operations instead of only those activities currently outsourced to either of the Parties.

²⁵³ Decision, paragraph 126(a)(ii).

²⁵⁴ For example: (i) one customer with negative views noted that “bringing its outsourced logistics services in-house would not be a viable alternative, as it would require investment in its systems and expertise” (Decision, paragraph 126(a)(i)); (ii) one customer with negative views noted that “it lacks the skills and expertise to self-supply its warehousing and transportation logistics” (Decision, paragraph 126(a)(i)); (iii) one customer with mixed views said that “self-supply is viable in some circumstances but that it would be very disruptive to transition all of its outsourced supply” (Decision, footnote 211); and (iv) one customer with mixed views said that “while it was possible to self-supply all of its logistics, self-supply CLS operations require substantial effort and resources, and it would require significant forward-planning to rebuild its internal systems” (Decision, footnote 211).

- 7.11 Moreover, it is unclear to the Parties: (i) how the CMA engaged with third parties (e.g. through a written survey or bilateral calls with opportunities to clarify the questions and responses); (ii) what type of customers responded (e.g. Large Retail Customers vs. other customers); (iii) the role and level of experience of the individuals who responded for each customer; (iv) the context the CMA provided to help the customers understand the questions; and (iv) the exact questions asked. While recognising the time constraints present at Phase 1, these are all important considerations which the Parties assume the CMA will take into account in Phase 2 in forming a view about how the responses should be interpreted and how much weight can be placed on the feedback.²⁵⁵
- 7.12 Notwithstanding these issues, the third-party responses to the CMA’s Phase 1 outreach still indicated that **at least half of the Parties’ customers would consider insourcing as a viable alternative to outsourcing** in at least some circumstances. This evidence does not justify the Decision’s choice to downplay the competitive constraint posed by insourcing, nor is this evidence inconsistent with the Parties’ view that insourcing is a serious option for Large Retail Customers (as opposed to all customers).

(B) *Large Retail Customers insource extensively in practice.*

- 7.13 If Large Retail Customers did express scepticism about their ability and willingness to insource this would directly contradict their own practices. The Parties’ urge the CMA to corroborate such feedback against Large Retail Customers’ CLS current sourcing practices. The Decision states that the ability to insource “*varies on a customer-by-customer basis and the CMA found that a number of large retailers (including grocery retailers) indicated that self-supply was not a viable alternative for their outsourced supply*”.²⁵⁶ However, as the CMA will know:
- (a) Almost all of each Parties’ top 20 Retail customers insource at least some part of their operations and are therefore demonstrably capable of managing in-house operations (including highly automated ones) efficiently. In the Grocery Retail sub-segment, nine out of ten Grocers have insourced operations already (and, as explained at paragraph 5.22(a) above, [REDACTED] could easily insource its operations if it wanted to).
 - (b) A systematic assessment of each Parties’ top 20 Retail customers shows that the large majority of them mixed-source and the mixture of services they outsource and insource varies widely from customer to customer. This indicates that Retail customers have a high degree of flexibility in deciding how much to insource / outsource.
 - (c) For Large Retail Customers the costs of bringing activity in-house would be small compared to the costs associated with a small-but-significant deterioration in the 3PL offering.²⁵⁷ Most of the Large Retail Customers already own or lease the relevant assets or, if they do not, they typically have a contractual right to move these assets across at the end of the 3PL contract should they wish to do

²⁵⁵ Frontier Economics has shared its comments and recommendations for the CMA’s customer outreach process in Phase 2 in a separate document shared on 26 November 2024 (see Annex 003).

²⁵⁶ Decision, paragraph 131.

²⁵⁷ The Parties also submitted a modelling exercise which shows that for each of GXO’s top 20 Retail customers, the cost of accepting a small-but-significant increase in 3PL prices would significantly outweigh these costs of insourcing (AIL Annex 005). See **Subsection E** below for further discussion of the Decision’s limited comments on this analysis.

so. The outgoing supplier has a legal obligation to transfer the staff. Other costs beyond these costs are *de minimis* and / or not specific to moving the operations to insourcing (as opposed to moving them to another 3PL).²⁵⁸

- (d) There are a number of examples of customers, including Large Retail Customers, taking activity back in-house – see paragraph 7.2(a).

(C) *The Decision does not appear to have had time to engage fully with the Parties’ modelling work demonstrating customers’ willingness insource to avoid a SSNIP.*

7.14 The Decision correctly states that insourcing “*would only exercise a meaningful competitive constraint on the Parties to the extent that customers would switch to self-supply in response to a small but significant deterioration in the offering of external suppliers*”.²⁵⁹ However, the CMA does not appear to have had time at Phase 1 to engage fully with the detailed bottom-up modelling evidence that the Parties submitted in the AIL which shows that Large Retail Customers would be incentivised to bring activity in-house in response to just such a small-but-significant non-transitory deterioration in the offer of 3PLs. The Decision discounts the Parties’ detailed evidence by noting that it has only seen limited examples of switching due to changes in competitive conditions and states that the Parties’ examples of customers taking activity in-house may have been for purely commercial reasons.²⁶⁰ However, the Decision’s logic here appears somewhat circular: the Parties’ firm belief is that it is precisely because of the strength of the competitive threat from insourcing (alongside the ability of customers to switch other credible 3PLs) that there are few instances of 3PLs degrading their services or demanding unjustified price increases that would spur customers to act. It was for this reason that the Parties undertook the bottom-up modelling exercise to help substantiate this.

²⁵⁸ The tendency to own the majority of assets among Large Retail Customers contradicts one of the customer views cited by the CMA. The CMA classified the customer as being positive about insourcing, yet noted that “*while self-supplying its warehousing was viable, particularly as it owns the warehouse, it would be too expensive to self-supply its transport logistics as it lacks the infrastructure*” (Decision, footnote 214). While not clarified in the Decision, the Parties understand that by ‘infrastructure’, the customer primarily means the ownership/ lease of sufficient fleet. Since, the majority of large retail customers will tend to own/ lease their fleets, the customer either (i) is not one of the Large Retail Customers or (ii) is an outlier – with limited transport asset ownership – among Large Retail Customers. In case of the former, the customer also has among its options a wide array of 3PLs. In case of the latter, if the customer wanted to insource, leases could be novated to the customer within a relatively short period of time – 3 months. In case a 3PL owns the assets, a number of options would be possible, the easiest of which is for the customer to purchase these assets from an incumbent 3PL (procurement of new fleet independently may take up to 12 months). However, under most of these scenarios, the difficulties of switching to insourcing would not be different from those of switching to another 3PL.

²⁵⁹ Decision, paragraph 125. The Parties note that the small-but-significant deterioration must be non-transitory. Frontier’s modelling exercise considered an increase in 3PL costs over a 3-year time horizon on the basis that:

- the shortest realistic time period for which a 3PL could hypothetically increase its prices to a customer would be for the duration of a single contract;
- such contracts typically last 3 to 5 years; and
- Frontier conservatively took the short end of this range when modelling the costs of accepting a small-but-significant increase in 3PL costs. This is conservative because if Frontier had assumed a longer contract period (or a permanent 3PL cost increase) for the modelling exercise, this would further increase the cost to customers of accepting a 3PL price increase and further strengthen customers’ incentives to bring activity in-house to avoid this.

²⁶⁰ Decision, footnote 206, which states that major strategic decisions to self-supply “*could plausibly be driven by changes in the customer’s demand that are independent of competitive dynamics*”.

- 7.15 To recap, Frontier Economics, working together with GXO, conducted an analysis to assess how the costs of insourcing an activity compare to the small but significant deterioration in the offering of 3PLs. This exercise provides a bottom-up analysis of the costs for each of the GXO’s top 20 Retailer customers associated with insourcing operations currently outsourced to GXO (both one-off switching costs as well as the ongoing costs). The exercise then compares these individualised costs to a 5% price increase in GXO services for each customer over the course of a standard 3–5-year contract.²⁶¹
- 7.16 The analysis showed that for [REDACTED] Retail customers, the cost of accepting a small-but-significant increase in 3PL prices would [REDACTED] – outweigh the costs associated with moving to insourcing, even when such costs are measured on a conservative basis. The analysis also showed that it would typically only take [REDACTED] for these customers to insource their operations in this way.²⁶² Therefore, the exercise, together with other evidence provided by the Parties in the AIL shows that **customers would have ability and incentive to insource their operations in case of SSNIP or deterioration in service quality.**
- 7.17 The insourcing modelling work that the Parties presented provides detailed evidence that Large Retail Customers would have the ability and incentive to insource in case of SSNIP. The Decision notes that such an analysis does not consider all of the factors which may affect the decision to insource.²⁶³ The Parties respectfully disagree with this assessment the following reasons:
- (a) *First*, the Decision contends that the evidence submitted by the Parties “*does not consider the complexity or timeliness of switching to self-supply,*”²⁶⁴ but this is simply incorrect. On the contrary, the Parties’ modelling exercise considers both the complexity and timeliness of switching to self-supply through a detailed bottom-up analysis of the steps that GXO’s largest 20 Retail customers would need to take, specifically focusing on (i) the costs and (ii) timeframes associated with such a switch. As the Parties noted in the AIL submission to the CMA, this analysis indicates that it would take around 3 months for customers to insource their operations and the process would only involve a limited number of steps (whether both warehousing and transport or only one of the activities).²⁶⁵ Moreover, most of these steps are the same as the steps that would be involved in switching to another 3PL, rather than being specific to insourcing.
 - (b) *Second*, the Decision is not justified in dismissing the Parties’ analysis on the basis that it “*does not take into account the non-price factors that [...] may not be replicable when self-supplying (eg around automation and the quality of*

²⁶¹ In practice Frontier Economics’ modelling assumed a 3-year contract (i.e. the lower end of this range). This is a conservative assumption.

²⁶² For more detailed information, please see AIL Annex 005 with accompanying Annex E (‘Insourcing paper calculations’) reattached to the Response as **Annex 004**.

²⁶³ The Decision, at paragraph 132, states that the analysis “*does not consider the complexity or timeliness of switching to self-supply, nor does it consider whether the rise in the management fee would actually make outsourcing less cost effective than self-supply. Furthermore, it does not take into account the non-price factors that the CMA understands are important to customers and may not be replicable when self-supplying (eg around automation and the quality of services). In addition, this evidence is contrary to the views of a number of large retailers, as set out above*”.

²⁶⁴ Decision, paragraph 132.

²⁶⁵ AIL Annex 005, paragraphs C2 and C3. For the length of time that it would take to implement each step in the insourcing exercise, please see AIL Annex E, tab “Cost components”.

services)”.²⁶⁶ With regard to automation, most Large Retail Customers already own / lease their assets (both the equipment and warehouse management systems), meaning that they would not need to be transferred or purchased in the event that the customer took the activity in-house. With regard to quality of service, the fact that most Large Retail Customers already choose to insource many of their operations provides clear evidence that they are capable of running these operations to a competitive standard. The Decision provides no grounds for thinking that insourcing would create more risk for a 3PL (in terms of quality of service provision) than switching to another 3PL.

- (c) *Third*, the views of customers require further probing in light of the limitations with the Phase 1 outreach process listed above, especially given that a number of the views that the Decision has reported do not correspond to the observed behaviour of Large Retail Customers in practice.

7.18 The Parties recognise that the CMA may have had limited time to engage with their modelling evidence in Phase 1 and that it now has the opportunity to do so in more depth on Phase 2. The Parties look forward to engaging further with the CMA on this evidence.

(D) *The Decision discounts evidence of insourcing as a constraint in the Parties’ bidding data.*

7.19 The Decision contends that “a [REDACTED] proportion of opportunities lost to self-supply likely represent the Parties unsuccessfully seeking business from customers that self-supply (and indeed may never have outsourced). In these instances, self-supply may act as a material competitive constraint, though it is not clear that current customers of the Parties (for whom the impact of the Merger is most pronounced and who currently outsource) would be protected by these competitive dynamics”.²⁶⁷ The Parties understand the Decision’s concern is that customers who were originally insourcing may not have been seriously considering outsourcing in the first place, meaning that these ‘losses to insourcing’ do not provide reliable evidence of the willingness of customers to consider outsourcing and insourcing as real alternatives in a truly competitive tender. The Parties respectfully disagree with this interpretation of the bidding evidence for the following reasons:

- (a) *First, 3PL participation in tenders requires the allocation of valuable time and resources.* From request for proposal (RFP) release to contract finalisation, typical tender processes take from 3-6 months for small projects to 12-24 months for significant projects. There are multiple steps to tenders each requiring substantial input from the bidding 3PLs as competitive tension increases, including:
- (i) an **initial RFI** process involving a wide net of potential 3PLs;
 - (ii) the “**qualification**” stage in which an RFP is released to a subset of these 3PLs. On receipt of a RFP, a 3PL will complete an opportunity assessment, prepare its response to the RFP and adjust solution design and pricing to client specifications;

²⁶⁶ Decision, paragraph 132.

²⁶⁷ Decision, footnote 206.

- (iii) bid **configuration and price quote** in which a 3PL will engage in Q&A with the customer on specific design and pricing points, settle price quotes and finalise its proposals. Multiple requotes can be given;
- (iv) a “**shortlisting**” stage in which shortlisted 3PLs will conduct further negotiations with the customer and be given feedback – an iterative process; and
- (v) the “**negotiation**” stage in which, if a preferred 3PL is selected, commercial negotiations on contractual terms such as performance and continuous improvement will continue.

Therefore, where the Parties submitted bids for tenders that were subsequently insourced, they only did so where they believed that these were serious opportunities which they could reasonably hope to win.

- (b) Second, opportunities included in the Parties’ bidding datasets, which form the basis of the Decision’s analysis, exclude any early-stage, exploratory opportunities that the Parties considered but decided not to bid for. This may have been because the Parties concluded there was no realistic prospect of winning the opportunity. Therefore, the contention in the Decision that these tenders may relate to customers “[REDACTED]” is incorrect.²⁶⁸ At the very least, the Parties believed that the customers were seriously considering their options, since otherwise they would not have gone to the effort of participating fully in the bidding processes for these opportunities.
- (c) Third, several tender opportunities that were lost to insourcing were previously outsourced to another 3PL. This indicates that the customer was likely to have considered keeping these services outsourced as one option, and was not simply ‘benchmarking’ its internal logistics operations.
- (d) Fourth, most tender opportunities that were insourced were run by customers with a prior history of outsourcing at least some of their CLS needs. This further indicates that 3PLs taking part in such tenders could have reasonably expected that the tendered services would be awarded to a 3PL.

(E) The competitive constraint posed by insourcing is especially pronounced among Grocers

7.20 Specific features to Grocery Retail intensify the competitive constraint posed by insourcing.²⁶⁹

- (a) High levels of asset ownership and control. [5-10] out of ten largest UK Grocers²⁷⁰ own or directly lease all of their assets. The remaining [1-5] range from owning at least 50% to almost all of their assets.²⁷¹
- (b) Significant scope for modularisation due to the volume of operations and number of warehouses and transport operations. [5-10] of the ten largest Grocers in the UK would have [10-20] warehouse sites (with the tenth, [REDACTED],

²⁶⁸ Decision, paragraph 54.

²⁶⁹ See the insourcing arrangements of Grocers at AIL Annex 005, Figure 1.

²⁷⁰ [REDACTED].

²⁷¹ [REDACTED].

having [5-10] sites). For [1-5] of these Grocers, the number of warehouse sites is greater than [20-30]. With the exception of [REDACTED] ([REDACTED]) as well as [REDACTED] and [REDACTED] (which fully insource), [REDACTED] of the ten largest grocers have varying degrees of insourced and outsourced activities, (and as noted above in many cases also use several different 3PLs simultaneously).

(F) *The Decision misinterprets the Parties’ submission that lower margins for CLS contracts for Larger Retail Customers are indicative of the strong set of options for these customers, including insourcing.*

7.21 The Decision notes that while lower margins are consistent with a competitive market, “margins can be driven by a range of factors, [...] and in any event are not probative as to the potential competitive effects of the Merger as the presence of lower margins for these customers does not indicate how these margins may change in the event that customers lose an outside option”.²⁷² However, the Decision misinterprets the argument that the Parties were making in citing this margin evidence – namely that the [REDACTED] margins earned by the Parties in Grocery Retail further corroborate the competitive constraint exercised by insourcing. Specifically, the Parties’ argument was that:

- (a) First, the [REDACTED] margins that the Parties earn on these Large Retail Customer contracts provide evidence of the particularly strong competitive outside options available to these Large Retail Customers when negotiating with 3PLs.²⁷³
- (b) Second, these particularly strong competitive outside options available to Large Retail Customers cannot simply be attributed to competition between GXO, Wincanton and DHL. This is because there is no reason to assume (and the Decision does not contend) that the intensity of competition between these 3PLs varies by contract value.
- (c) Third, this evidence therefore contradicts the hypothesis advanced in the Decision that competition between GXO, Wincanton and DHL may be especially important in driving value for Large Retail Customers. Instead, the most plausible explanation of the low margins in the Large Retail segment is that – in addition to having a range of 3PLs beyond DHL, GXO and Wincanton to choose between – these Retail customers are also particularly well-placed to insource their logistics requirements if they so choose and that this provides an additional competitive threat to 3PLs.

²⁷² Decision, paragraph 133.

²⁷³ The total margin earned across GXO’s top 20 Retail customers in 2023 was [0-10]%. The total margin earned across Wincanton’s top 20 Retail customers in 2024 was [0-10]%. For further information see AIL Annexes 006 and 006.01, attached to the Response as Annex 006 and 006.01.

8. Internal documents demonstrate constraint from insourcing and many 3PLs

8.1 The Decision does not appear to have taken into account the detailed factual explanations of the internal documents provided by the Parties in the AIL.²⁷⁴ The Decision: (i) misinterprets some documents; (ii) does not account for evolutions in the market since some documents were created; and (iii) adopts an inconsistent and overly simplistic framework to assess them.

(A) *The Decision misinterprets some internal documents*

8.2 The Decision misinterprets a number of internal documents, which are a mix of documents that the Parties previously explained in the AIL (but still appear to have been misinterpreted) and new documents that were not referred to in the Issues Letter.

8.3 A comprehensive evaluation of each internal document cited in the Decision is set out in **Annex 005**, and key examples are set out below:

(a) The Decision states that a “*GXO overview of competitors from March 2022 lists Wincanton, Clipper (now GXO) and DHL as GXO’s main competitors across the Retail CLS segment*”.²⁷⁵ However, this document does not list main competitors for Retail CLS. [REDACTED] are listed as competing in [REDACTED], but [REDACTED] are listed in competing in [REDACTED]:

(i) [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED].

(b) The Decision states that Culina Group is “*generally characterised as an ambient and chilled food and drink supplier*” in internal documents.²⁷⁶ However, the internal documents cited in the Decision confirm the Parties view the Culina Group competes more broadly. For example:

(i) a GXO document shows that [REDACTED];²⁷⁷

(ii) a GXO document states that [REDACTED];²⁷⁸

(iii) a GXO document shows that Culina Group is active in multiple Retail sub-segments such as [REDACTED];²⁷⁹ and

(iv) [REDACTED]²⁸⁰

(c) The Decision states that the CMA “*has not seen any detailed assessment or deep dives*” into a number of 3PLs including EV Cargo and ID Logistics.²⁸¹ The following documents provide deep dives on these players:

²⁷⁴ See AIL, R12 to R31 and Annex 002.

²⁷⁵ Decision, paragraph 80(a). Relevant document is GXO_00000048, ‘[REDACTED]’, 2 March 2022, sheet ‘UK competitors’.

²⁷⁶ Decision, paragraph 84.

²⁷⁷ GXO_00002609, ‘[REDACTED]’, July 2022.

²⁷⁸ GXO_00001141, ‘[REDACTED]’, 19 May 2022.

²⁷⁹ GXO_00006321, ‘[REDACTED]’, April 2023.

²⁸⁰ GXO_00006415, ‘[REDACTED]’, page 4.

²⁸¹ Decision, paragraph 98.

- (i) the eight substantive slides entirely dedicated to [REDACTED] in WIN_00011426 [REDACTED];
 - (ii) the company profile of [REDACTED] provided in a [REDACTED] report on the UK CLS market commissioned by GXO;²⁸² and
 - (iii) a Wincanton deep dive on [REDACTED] strategy.²⁸³
- (d) The Decision states that “[REDACTED]”.²⁸⁴ [REDACTED].²⁸⁵

(B) *The market has evolved since some internal documents were created*

8.4 Mainstream CLS is a dynamic and evolving market, and the Parties do not have perfect information when creating internal documents. Those documents often become outdated quickly as the competitive landscape shifts. The Parties are keen to provide the CMA with this relevant context as it turns its mind to different documents. For example:

- (a) The Decision points to Wincanton documents to indicate that “*Wincanton sees XPO as [REDACTED].*”²⁸⁶ Similarly, the Decision states that another document “*focuses on XPO’s [REDACTED] rather than [REDACTED].*”²⁸⁷ However, these documents were produced prior to August 2023, before XPO’s non-compete obligations with GXO had expired in August 2023. XPO was not able to fully compete in Mainstream CLS at the time, but its position is changing rapidly and it is now aggressively competing for – and winning – business beyond transport services, (see paragraph 4.35 above). Even if XPO was specialised in transport (which it is not), it still poses a strong competitive constraint on the Parties for the reasons set out at paragraph 8.5(c)(ii) below.
- (b) Maersk’s recent accelerated expansion in UK CLS is only partially reflected in the Parties’ documents. GXO’s [REDACTED],²⁸⁸ and [REDACTED]. For example: [REDACTED]²⁸⁹ [REDACTED]²⁹⁰ [REDACTED]²⁹¹ [REDACTED].²⁹² At a Wincanton [REDACTED].²⁹³ The full weight of its UK CLS presence (discussed in further detail in paragraph 449(a) of the Merger Notice) will take time to be reflected in the Parties’ documents, as it often takes several months for the winner of an opportunity to be made public.²⁹⁴

²⁸² AIL Annex 003, pages 176 to 179.

²⁸³ WIN_00021986, ‘[REDACTED]’.

²⁸⁴ Decision, paragraph 95.

²⁸⁵ See, for example: WIN_000173888, ‘[REDACTED]’; and GXW-000000588, ‘[REDACTED]’.

²⁸⁶ Decision, paragraph 89, WIN_00015033, ‘[REDACTED]’_ Win_00003792, ‘[REDACTED]’. [REDACTED].

²⁸⁷ Decision, paragraph 90(a), Win_00003792, ‘[REDACTED]’.

²⁸⁸ Of GXO’s documents submitted to the CMA in response to question 9 of the Merger Notice, [REDACTED].

²⁸⁹ GXO_00000001, ‘[REDACTED]’, page 7.

²⁹⁰ GXO_00007028, ‘[REDACTED]’, page 5.

²⁹¹ GXO_00010196, ‘[REDACTED]’, page 5.

²⁹² GXO_00010825, ‘[REDACTED]’ slide 32 and notes to slide 36.

²⁹³ WIN_00008102, ‘[REDACTED]’ pages 11 and 14.

²⁹⁴ Wincanton notes [REDACTED].

(C) *The Decision applies a simplistic assessment to assess references to rival 3PLs in internal documents*

8.5 The Decision appears to assess the extent to which the documents show the competitive constraint imposed by each 3PL on three primary criteria: (i) how frequently the competitor is referenced; (ii) whether there are any detailed assessments or deep dives on the competitor; and (iii) whether the competitor is discussed across all Mainstream CLS segments. This high-level approach has some shortcomings:

- (a) Despite the Decision stating that a “*purely quantitative analysis (such as counting how often a competitor name appears in the documents) is not a reliable way to assess the competitive strength of a particular competitor or how closely it competes with one of the Parties*”, it then states that “*there are very limited references to other competitors (including DSV, ID Logistics, EV Cargo, Menzies, Maersk and Bleckmann)*”.²⁹⁵ The Parties agree that, for Phase 2 proceedings, a more granular qualitative assessment of the documents is the right approach.
- (b) The Decision treats the level of detail about each 3PLs in internal documents as indicative of the competitive constraint they impose on the Parties.²⁹⁶ There are three issues with this approach:
 - (i) *First*, the Decision does not appear to consider detailed assessments of a variety of 3PLs as set out in further detail in paragraph 8.3(c) above. It also fails to give appropriate probative value to certain detailed assessments of some competitors simply because they “*recognise that [the 3PLs] are much smaller than the Parties...or recent entrants with limited presence*”.²⁹⁷
 - (ii) *Second*, there is no substantial body of comparative detailed assessments or deep dives of DHL or Wincanton in GXO’s documents. Instead, the Decision appears to chiefly point to the frequency with which DHL and Wincanton are identified as GXO’s primary competitors in GXO’s customer interview reports (which are not GXO’s own view of the competitive landscape).
 - (iii) *Third*, the Decision references a single series of Wincanton documents which “*show that Wincanton is closely monitoring GXO and analysing its performance*” as a comparison to the lack of detail provided on other competitors.²⁹⁸ As stated in the AIL, all of these documents were produced in H1 2022 following the announcement of GXO’s acquisition of Clipper. They are a one-off analysis triggered by the Clipper acquisition undertaken two and a half years ago, and are not indicative of any “close

²⁹⁵ Decision, paragraph 98.

²⁹⁶ In the Decision, DSV, ID Logistics, EV Cargo, Menzies, Maersk and Bleckmann are deemed to “*not exert a material constraint on the Parties’ mainstream CLS operations*” because the CMA “*has not seen any detailed assessment or deep dives into any of these suppliers*” (Decision, paragraphs 98 and 99). K+N, Unipart and Yusen Logistics are deemed to “[*not*] exert a meaningful constraint on the Parties” because “*few documents contain detailed references to [them]*” (Decision, paragraphs 93 and 97). XPO and CEVA “*exert only a limited constraint*” because they are “*discussed more superficially...than the Parties, DHL and Culina [Group]*” (Decision, paragraphs 88 and 92).

²⁹⁷ Decision, footnote 143.

²⁹⁸ Decision, paragraph 78(b).

monitoring” or indeed any particular closeness of competition between the Parties. See R14 of the AIL for further detail.

- (c) The Decision relies on references in internal documents to competitors competing in specific sub-segments of Mainstream CLS to dismiss the competitive constraint they pose outside those sub-segments. In some cases, the Decision relies on the Parties’ (incorrect) statements made in internal documents about competitor capabilities when those capabilities have been clearly established in other evidence. For example, the Decision’s view of the Retail CLS sub-segments in which Culina Group, XPO and CEVA compete and win business is more accurately reflected in these 3PLs’ current demonstrated capabilities rather than what is written in the Parties’ internal documents.
- (i) **Culina Group.** The Decision states that the Parties’ internal documents show that Culina Group has a “*focus on ambient and chilled food and drinks*” and that Retail customers indicated that Culina Group has “*strengths...in the supply of CLS for ambient and chilled products respectively*”.²⁹⁹ In fact, as set out in paragraph 8.3(b) above, the Parties’ documents actually assess the Culina Group in a far wider range of Mainstream CLS sub-segments. This reflects the fact that Culina Group’s range of established logistics brands collectively provide CLS across many sub-segments beyond ambient and chilled food and drink, as set out in paragraph 4.40 above.³⁰⁰
- (ii) **XPO.** The Decision states that the Parties’ internal documents show XPO is “*fairly specialist*” and transport focussed and that Retail customers also indicated that XPO has “*strengths in the supply of transport*”.³⁰¹ However, it provides a full range of CLS to Retail customers in the UK. As set out in paragraph 4.35 above, it is increasingly bidding for – and winning – warehousing.
- (iii) **CEVA.** The Decision states that the Parties’ internal documents indicate that CEVA’s “*strengths are in aerospace and defence, life sciences and healthcare*” but that Retail customers indicated that CEVA “*has strengths in the supply of...CLS to fashion Retailers*”.³⁰² In fact, the Parties’ documents show that CEVA is active in a range of Retail CLS sub-segments.³⁰³ This reflects the fact that CEVA offers many Retail-specific services such as just-in-time delivery. As set out in paragraph 4.38 and 4.39 above, its Retail CLS customer base extends beyond fashion retailers and includes consumer goods customers such as

²⁹⁹ Decision, paragraphs 83 and 112.

³⁰⁰ The Parties note that within ambient and chilled products, the Culina Group services a number of Grocers including Tesco, Morrisons (transport contracts operated by Eddie Stobart) and Waitrose (warehouse and transport contracts operated by iForce). Culina Group has an array of additional brands, but the Parties have extracted below the relevant ambient food and drink brands among other brands with more varied Retail and Non-Retail capabilities. For example, the Parties have not included Stobart Europe as their primary focus is Europe, and not the UK, or MMi Distribution as they are dedicated to Müller Milk distribution and do not compete for additional customers.

³⁰¹ Decision, paragraphs 88, 90, 92, 111(b) and 112.

³⁰² Decision, paragraphs 90 and 112.

³⁰³ For example: GXO_00006320, [REDACTED] notes CEVA is active in multiple Retail CLS sub-segments: [REDACTED]; and WIN_00009753, [REDACTED], shows CEVA as a “key competitor” with a presence in Retail CLS sub-segments including: [REDACTED] (page 43).

Amazon and Unilever. The Parties have lost tenders to CEVA in recent years including [REDACTED] in [REDACTED] (in which GXO unsuccessfully bid) and [REDACTED] in [REDACTED] (in which Wincanton unsuccessfully bid).³⁰⁴

³⁰⁴ See R35(b) of the AIL for further detail.

9. No prospect of SLC for Non-Retail customers

9.1 Although the Decision identifies a realistic prospect of an SLC in the supply of all Mainstream CLS, the Parties submit that (i) the analysis and evidence cited in the Decision do not support a conclusion that the Transaction risks substantially lessening competition in the supply of CLS to Non-Retail customers; and (ii) instead, the shares of supply, bidding data, third-party feedback, and internal documents all support the opposite conclusion – that there is no realistic prospect of an SLC in the supply of CLS to Non-Retail customers.³⁰⁵

(A) *Shares of supply for Non-Retail CLS are prima facie unproblematic*

9.2 Unlike for Mainstream and Retail CLS, the Decision does not set out or discuss Non-Retail shares, reflecting the Decision’s lack of focus on the segment. Although the Decision notes “*shares of supply provide only a partial indication of a supplier’s competitive strength*,”³⁰⁶ the evidence cited by the Decision in support of this proposition is based on feedback from Retail customers, limiting its applicability to Non-Retail. Furthermore, the Decision states that “*shares of supply can provide a useful indication of a supplier’s success winning past contracts and therefore competitive strength*”.³⁰⁷

9.3 The Parties’ combined shares in Non-Retail are low, reflecting their relative weakness in this segment. Over the past three years, the Parties’ combined share has been [10-20]% excluding insourcing, and only [5-10]% when accounting for insourcing.³⁰⁸ As the Decision itself acknowledges, shares of this magnitude do not raise *prima facie* competition concerns.³⁰⁹

(B) *Bidding data confirms the Parties compete infrequently in Non-Retail CLS*

9.4 The lack of Non-Retail tender overlaps in the Parties’ bidding data is reflective of their different specialisms and strategies. Wincanton is active across more Non-Retail verticals than GXO, providing CLS for public sector customers (e.g. HMRC) and specialist transport services in a variety of verticals, including for construction (e.g. Aggregate Industries, Marshalls) and energy (e.g. Valero).³¹⁰ In contrast, GXO is principally active in the industrials vertical (where its customers include BT, Daikin, [REDACTED] and Virgin).³¹¹ The Parties’ respective customer bases, corroborated in their bidding data, demonstrates that they are not close competitors and that they face significant constraints from other 3PLs.

9.5 The Decision identifies the Parties’ losses to each other in Non-Retail CLS as “*limited*”,³¹² and recognises that “*Wincanton [lost] a larger proportion of opportunities by value to DHL, Culina [Group], Sodexo, and CEVA than GXO*” and “*GXO [lost] a*

³⁰⁵ This is consistent with the Parties’ submissions in the Merger Notice, at the Issues Meeting and in the AIL. On Non-Retail customers see, for example, paragraphs 373 to 393 of the Merger Notice and R3 of the AIL. On smaller retail customers, see, for example, slide 12 of the Issues Meeting presentation and R35 of the AIL.

³⁰⁶ Decision, paragraph 42.

³⁰⁷ Decision, paragraph 43.

³⁰⁸ AIL, R3 and Merger Notice, Annex 038, Table 4.

³⁰⁹ Decision, paragraph 47 states that the Parties’ Retail CLS market shares (which are higher than their Non-Retail equivalents) “*are not at a level that raises prima facie competition concerns*”.

³¹⁰ See, for example, Merger Notice, paragraph 371.

³¹¹ See, for example, Merger Notice, paragraph 370.

³¹² Decision, paragraph 59.

larger proportion by value to DHL, Best Logistics and Culina [Group] than Wincanton”.³¹³ Applying the same conservative assumptions the Decision uses to estimate shares of losses in the Retail segment (but which it does not apply to Non-Retail),³¹⁴ the Parties estimate Wincanton loses a larger proportion of opportunities by value to DHL ([30-40]%), Culina Group ([0-10]%) and Sodexo ([0-10]%) than GXO ([0-10]%), and GXO loses a larger proportion of opportunities by value to DHL ([20-30]%), Best Food Logistics (previously Bidvest) ([10-20]%) and Culina Group ([0-10]%) than Wincanton ([0-10]%).

9.6 In fact, even if the Decision’s overly conservative interpretation of the Parties’ losses to one another is adopted,³¹⁵ the Decision cites just three instances of Non-Retail losses between the Parties. This indicates a share of losses from GXO to Wincanton (and vice versa) to be only [0-10]% and [0-10]% respectively (by volume) and [0-10]% and [0-10]% (by value).³¹⁶

(C) *Third-party feedback confirms the Parties are not particularly close competitors in Non-Retail*

9.7 The Decision notes that customer evidence is “consistent with the Parties competing less frequently” and “less closely”³¹⁷ in Non-Retail than in Retail CLS, and also confirms that there is a strong, alternative 3PL set:

- (a) The Parties’ Non-Retail CLS customers “less frequently” identify the other Party as being a “very strong or strong” alternative – which is corroborated by the Parties’ bidding data summarised in Subsection B above.³¹⁸
- (b) The Decision cites feedback from Non-Retail CLS customers that “other suppliers may be more credible in this segment.”³¹⁹ Customers identified XPO, CEVA, Culina Group and “a wider range of other suppliers” as well as DHL as “very strong or strong” alternatives to the Parties which supports the Parties’ submissions.³²⁰
- (c) New entrants have recently entered Non-Retail CLS, demonstrating entry and expansion are realistic threats that further enhance competitive pressure on the

³¹³ Decision, paragraph 59.

³¹⁴ The CMA’s approach is conservative because unassigned opportunities and opportunities lost to insourcing are excluded except for opportunities in which both GXO and Wincanton participated. Please refer to the Decision, Note to Table 3.

³¹⁵ See paragraphs 4.16 to 4.20 above.

³¹⁶ For completeness, (i) the [REDACTED] contract losses relate to the [REDACTED] segment where the Parties do not currently overlap, and which in any event falls outside Mainstream CLS and so is irrelevant for the purposes of assessing Non-Retail competitive dynamics (see Merger Notice, footnote 150); and (ii) the Decision appears to confuse the Parties’ bidding data, incorrectly referring to a Wincanton contract loss to Yusen which “was in fact ultimately won by GXO” (Decision, paragraph 67). The Parties have not been able to identify this contract and assume the Decision should instead refer to [REDACTED] bidding data as containing a contract recorded as lost to Yusen but which [REDACTED] have been won by [REDACTED]. However, this outcome is uncertain and has only been raised as a possibility based on the conservative methodology used to match the Parties’ bidding data sets.

³¹⁷ Decision, paragraphs 71 and 108.

³¹⁸ Decision, paragraph 108.

³¹⁹ Decision, paragraph 114.

³²⁰ In addition to CEVA, Culina Group, XPO and DHL, Hoyer, K+N, Unipart and Yusen are all already well established players in Non-Retail CLS who are accompanied by a long tail of other 3PLs serving a broad range of customers, including: Culina Group, DFDS, DSV, DX, EV Cargo, Gregory Distribution, Hellman Logistics, Malcolm Group, Menzies, Neovia, R Swain & Sons, Rhenus, and Turners Distribution.

Parties. In particular, constraints are posed by Maersk (see paragraphs 4.44(f) and 6.18 above) and Sodexo (which as mentioned in paragraph 3.40(c) above, recently won a HMRC contract from Wincanton), as well as SaaS technology providers (e.g. 3T to which Wincanton lost a Heinz contract in August 2021).³²¹

(D) *Internal documents confirm the strength of many rivals in Non-Retail SLC*³²²

9.8 The Decision does not appear to consider the Parties' internal documents in its assessment of competitive dynamics in Non-Retail SLC, which outline in detail the strengths of many 3LS competitors.

9.9 Wincanton's deep-dives from [REDACTED].³²³

9.10 In these internal documents, Wincanton's assessment is often very thorough, [REDACTED]. This is evidence of clear monitoring of the competitive landscape and the constraint of these players in Non-Retail.³²⁴

³²¹ Merger Notice, paragraph 380. SaaS technology providers can win work in this segment by winning contracts and fulfilling them through sub-contracted partners.

³²² AIL, R3.

³²³ See Wincanton's Internal Document, WIN_00009753, [REDACTED], July 2023, pages 61, 66, 69 and 70.

³²⁴ See Wincanton's Internal Document, WIN_00007897, '[REDACTED]', April 2023, page 9.