

Response from third party B to the CMA's invitation to comment on remedies

GXO Proposals

Two remedies have been proposed by GXO:

1. **3PL Sponsorship Remedy** - this would involve GXO making a financial fund available to each Grocery Customer currently served by GXO and/or Wincanton for the purposes of sponsoring the entry or expansion of a new 3PL to supply Dedicated Warehousing to UK Grocery Customers.

View: It is not believed that this proposed remedy would work for a number of reasons, including:

- **Fragmentation** - the proposed fund appears to be fragmented between various customers and so is likely to be dissipated across numerous 3PLs, resulting in no one credible competitor being established. It also does not help any of the new 3PLs gain access to the necessary experience and track record which the CMA identified as significant barriers to entry in this market. This means that there is a significant risk that the substantial lessening of competition identified is not addressed, as even if customers made use of this fund, they could do so for their smaller, less complex contracts and leave only GXO and DHL as the credible bidders for the high value / higher risk contracts;
- **GXO Involvement** - although some short term contractual protections for customers are suggested, this means that GXO would retain those customers, making it harder for any new 3PL to establish itself credibly;
- **Customer Focus** - this proposed remedy places the onus on the customers to establish a new 3PL in the market, so as one of those potential 3PLs, the concern would be that customers would not want to dedicate the time and resource to doing this, meaning it would be ineffective;
- **Access to the Fund** - it is not clear how much would be available to each sponsored entrant and what control and access to information GXO would retain. There would be significant concerns if GXO could obtain insights into the entry and expansion plans of the participating 3PLs through their funding requests.

Ultimately, it is considered that this behavioural remedy will be hard to implement and supervise and would only protect Grocery Customers for a short duration without actually creating a viable competitor that would be a constraint against the merged GXO/Wincanton entity and DHL.

Given that there is a feasible structural remedy readily available, which would be easier to implement, with less risk and which actually addresses the substantial lessening of competition created by the horizontal overlap between GXO and Wincanton, it is strongly believed that this would not be a suitable remedy.

2. **Divestiture Remedy** - this would involve the divestment of only Wincanton's Dedicated Warehousing business to UK Grocery Customers, including relevant customers (presumably by way of novation of contracts) and all tangible or intangible assets, employees (including senior management with grocery expertise) and supplier contracts to service those customers.

View: It is believed that this remedy, or a variation of it, could work. The elements that would need to be considered further / clarified include:

- **Scope** - the divested business currently only includes assets related to the Dedicated Warehousing business, even though in its Interim Report, the CMA found that most of these assets are owned or leased by the Grocery Customers themselves. To be viable, this would have to include multiple dedicated warehouses across multiple customers, specifically all Shared Warehousing services to Grocery Customers as well (we note from the Table B4 and B5¹ that most / a significant part of Wincanton's Retail business sits in the £1m - £10m contract value and we understand that the Dedicated Warehousing contracts are taken to be those over £15m or £20m in value²). To the extent that a Shared Warehouse is used for a Grocery Customer and another non-retail customer, that warehouse and all its contracts should be transferred in order to avoid split ownership / operators in the warehouse;
- **Automation** - at least one warehouse would need to include automation to establish the incoming 3PL with that capability in the grocery market. To the extent that Wincanton has its own in-house IT systems and/or modified systems (both in relation to automation and the relevant operations generally), a licence should be made available to cover the

¹ Appendix B to the CMA's Interim Report.

² It is not entirely clear which Dedicated Warehousing contracts would be included. Para 5.27 refers to Dedicated Warehousing contracts starting at £15m, whereas para 5.37 refers to contracts above £20m being for Dedicated Warehousing. It is believed that the Shared Warehousing services for Grocery should be included in the scope, but if not then the lower contract value should be taken as the starting point for the included Dedicated Warehousing Services that would be transferred as part of this remedy.

duration of all existing customer contracts (and any contract extensions) in order to minimise the disruption to the customers and allow the purchaser to ensure it has the necessary systems in place;

- **Contract Novations** - the customer contracts being divested would have to be good quality and not capable of being terminated prematurely and all related approvals forthcoming. For example, if the transfer of these contracts is still subject to Grocery Customer consent and a portion of them do not agree, this will significantly impact the viability of the transferred business - in these circumstances GXO should be required to add other contracts beyond the Wincanton Grocery contracts (e.g. from GXO) to supplement the package. Also, it would need to be clear if it would only be the contract for the Dedicated Warehousing that would be transferred, as it may be problematic if the Grocery Customer also has Shared Warehousing services and/or Transport services. It is believed that the entire customer relationship for Warehousing Services should be transferred (Dedicated and Shared);
- **Transition** - as this remedy is a carve out of an integrated existing business, appropriate protection would need to be agreed to facilitate an orderly transition and set up and support for the associated costs included (e.g. a minimum of a [six] month Transitional Services Support Agreement from GXO);
- **GXO Protection** - if any of the transferring contracts were due to expire within a relatively short period (e.g. within three years), the 3PL taking on the divested business would need protection against GXO tendering again to rewin the business in order to allow the 3PL a period to build up its credibility in the grocery market. As part of this, it is important that GXO does not retain copies of contracts and other confidential information relating to the Divestiture Business from Wincanton;
- **Employees** – it is understood that the remedy would include the transfer of some employees, which could be a concern if these employees are dedicated full time to the Dedicated Warehousing services for Grocery Customers. Some of the more experienced and relevant senior management who would help to transfer some of the needed credibility, track record and innovation may not be full time on this narrow scope of the Wincanton Dedicated Warehousing Business, so it should include the right employees required to transfer the required experience and track record;

- **Unviable Contracts and/or Dilapidated Assets** - following due diligence on the Divestiture Business, the purchaser should have the right to choose to exclude from the divestment package (or substitute) any particular contracts or assets that are loss making or other onerous, to ensure that it is a viable business that is transferred;
- **Timing** - GXO should remain subject to the Initial Enforcement Order and not be allowed to integrate the Wincanton business until the Wincanton Divestiture Business has been transferred to the new (CMA approved) purchaser.

CMA Alternative Remedy

The CMA has also confirmed that it is considering a potential third remedy of a divestiture of a potentially broader and/or differently configured standalone business than the proposed divestiture from GXO.

View: If this option could be structured to overcome the points listed above relating to the Divestiture Remedy, then it is believed that this could work.