



**MCCAA**

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**MALTA COMPETITION AND  
CONSUMER AFFAIRS AUTHORITY**

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**Assessment of Proposed Acquisition of Rimorchiatori Mediterranei S.p.A. by SAS Shipping  
Agencies Services S.a.r.l., part of the MSC Group**

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**Office for Competition - Case COMP/MCCAA/15/2022**

**29 December 2022**

**Decision on Proposed Acquisition in terms of Regulations 6(1)(ii) of the Control of  
Concentrations Regulations (LN 294 of 2002 as subsequently amended)**

**NON-CONFIDENTIAL VERSION**

**Members of the Office for Competition who conducted the Assessment of this concentration**

Melchior Vella (Director, Primary Manufacturing and Retail Markets)

**Director General of the Office for Competition**

Godwin Mangion

The Office for Competition would also like to thank Alexia Farrugia (Senior Professional Officer) and Timothy Farrugia (Senior Professional Officer) for their valuable contributions.

Done at the Office for Competition, Malta Competition and Consumer Affairs Authority, Mizzi House, National Road, Blata l-Bajda

**Note: Confidential information in the original version of this Decision has been redacted from the published version available on the MCCA website. Redacted confidential information in the text of the published version of the Decision is indicated by [X].**

## 1. SUMMARY

1. On Monday 21st November 2022, the Office for Competition at the Malta Competition and Consumer Affairs Authority received notification of a proposed concentration pursuant to Article 6 of the Control of Concentrations Regulations (Subsidiary Legislation 379.08) between SAS Shipping Agencies Services S.a.r.l. (Luxembourg) and Rimorchiatori Mediterranei S.p.A. (Genoa, Italy). The nature of the concentration is an acquisition of Rimorchiatori Mediterranei S.p.A. by MSC Mediterranean Shipping Company SA, through its wholly owned subsidiary SAS Shipping Agencies Services S.a.r.l.
2. The MSC Group provides worldwide container liner shipping services and ancillary services combining shipping, with rail, river and road transport, as well as terminal services. The MSC Group, through MSC Cruises, Grandi Navi Veloci and SNAV is also involved in the cruises and ferry industries. The group offers limited towage services in the ports of Sines (Portugal), Rotterdam (Netherlands) and Gioia Tauro (Italy). MSC Cruises, together with Palumbo Group S.p.A., jointly controls Palumbo Shipyard Ltd, which manages and operates ship repair and maintenance yard facilities in the Grand Harbour. Rimorchiatori Mediterranei S.p.A. offers harbour towage services both in Malta and abroad, and, marginally, off-port services, as well as emergency services, such as salvage, fire-fighting and anti-pollution services. Through its subsidiary, Tug Malta Limited, it currently holds a harbour towage services concession in Malta for the ports of Marsaxlokk and Grand Harbour (including Palumbo Shipyard).
3. After a competitive assessment of the proposed concentration, the Office concludes that the concentration will not lead to a significant impediment to competition in the affected markets, since, among other things, the provision of port towage services and their tariffs are governed by a detailed regulatory framework. These harbour towage regulations limit the ability of the concentration parties to harm competitors in the affected markets.

## 2. THE PARTIES

4. SAS Shipping Agencies Services S.a.r.l. (hereinafter “**SAS**” or “**the Notifying Party**”), having company registration number B113456, is a limited liability company incorporated under the laws of the Grand Duchy of Luxembourg. Its registered office is at 11B, Boulevard Joseph II, L-1840 Luxembourg, Grand Duchy of Luxembourg. In 2021, it generated a worldwide turnover of [REDACTED] (approx. [REDACTED]).<sup>1</sup> The Notifying Party is a company [REDACTED], so that, SAS is a wholly owned subsidiary of the MSC Group. The Notifying Party is the acquirer in the proposed transaction.
5. The MSC Group (“**MSC**”) is globally active in transport and logistics through the provision of worldwide container liner shipping services and ancillary services combining shipping with rail, river and road transport, as well as terminal services. The group, through MSC Cruises S.A (“**MSC Cruises**”), Grandi Navi Veloci and SNAV is also involved in the cruises and ferry industries. Additionally, the group offers limited towage services in the ports of Sines (Portugal), Rotterdam (Netherlands) and Gioia Tauro (Italy). MSC Cruises, together with Palumbo Group S.p.A., jointly controls Palumbo Shipyard Ltd (“**Palumbo Malta**”), which manages and operates the ship repair and maintenance yard facilities in the Grand Harbour. In 2021, MSC generated a turnover of some [REDACTED] in Malta.
6. Rimorchiatori Mediterranei S.p.A. (“**RM**” or “**the Target**”), is public liability company incorporated under the laws of Italy, registered with the Companies' Register of Genoa under number

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<sup>1</sup> The average exchange rate for 2021 stood at USD 1 = EUR 0.8458.

02391860992. Its registered office is at Via Ponte Reale 2, 16124, Genoa, Italy. It is jointly controlled by Rimorchiatori Riuniti S.p.A. (“**RR**”) and, through Riviera S.à.r.l. (“**Riviera**”), by DWS Alternatives Global Limited, which is the sole investment manager of the Pan-European Infrastructure II funds, which are the sole owners of Riviera. RM offers harbour towage services, and also off-port services, as well as emergency services, such as salvage, fire-fighting and anti-pollution services. Through its subsidiary, Tug Malta Limited (“**Tug Malta**”), the Target currently holds a harbour towage services concession in Malta for the ports of Marsaxlokk, Grand Harbour and Palumbo Shipyard. RM is also active in Italy (where it holds concessions for the ports of Genoa, Salerno, Ravenna, Ancona, Vasto-Ortona-Pescara, Trieste, Augusta, Syracuse, Catania, Pozzallo, Termoli, Messina and Milazzo), Singapore, Colombia, Norway, and Malaysia. RM registered a worldwide turnover of around [REDACTED].

7. The Notifying Party and the Target shall together be referred to as “**the Parties**”.
8. Tug Malta is a limited liability company registered under the laws of Malta with a company registration number C4594. Its registered office is at 37, Sir Luigi Preziosi Square, Floriana, Malta. It is engaged in the business of ship towage and salvage services. It has been entrusted since 1980 by Transport Malta with the provision of harbour towage services, as a service of general economic interest by means of a Harbour Towage Agreement (“**HTA**”),<sup>2</sup> in Malta. In 2021, the Target generated a turnover of some [REDACTED] in Malta.

### 3. TRANSACTION

9. Pursuant to the Sale and Purchase Agreement (“**SPA**”) signed on [REDACTED], the proposed transaction involves the acquisition by SAS of the entire share capital of RM (hereinafter referred to as the “**Proposed Transaction**”). [REDACTED]. Therefore, upon completion of the Proposed Transaction, SAS will hold the entire share capital and will exercise sole control over the Target.
10. [REDACTED].<sup>3</sup>
11. [REDACTED].
12. The economic and strategic rationale of the Proposed Transaction is to support the Target as a strong global player in the harbour towage sector. Furthermore, through this Transaction, MSC “*continues to confirm its willingness to further improve towage service efficiency across all Rimorchiatori Mediterranei’s operations [...] [and to] continue to deliver the full potential of Rimorchiatori Mediterranei*”<sup>4</sup> by “*making available to the Target its decades of experience in the marine/port sector.*”<sup>5</sup>

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<sup>2</sup> The HTA dates [REDACTED].

<sup>3</sup> [REDACTED].

<sup>4</sup> *Press Release: MSC to Acquire Rimorchiatori Mediterranei* < [www.msc.com/en/newsroom/press-releases/2022/october/mscacquiresrimorchiatorimediterranei](http://www.msc.com/en/newsroom/press-releases/2022/october/mscacquiresrimorchiatorimediterranei) > last accessed 6 December 2022, 23 October 2022

<sup>5</sup> Form CN, pg. 58.

#### 4. JURISDICTION

13. The Office's task is to promote competition for the benefit of consumers. Part of that responsibility is investigating concentrations between undertakings to ensure they do not significantly affect competition, once effected.
14. In terms of Regulation 2 of the Control of Concentrations Regulations (S.L. 379.08), a concentration refers to
  - a. *the merging of two or more undertakings that were previously independent from each other; or*
  - b. *to the acquisition by one or more undertakings or by one or more persons already controlling at least one undertaking whether by purchase of securities or assets, by contract or by other means, of direct or indirect control of the whole or parts of one or more undertakings.*
15. The Proposed Transaction brings about the acquisition of RM by SAS and the aggregate turnover of the undertakings concerned in the preceding financial year exceeds EUR 2,329,373.40 and each of the Parties had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover in Malta of the undertakings concerned. It therefore falls within the meaning of the Regulation 2 of the Control of Concentrations Regulations.
16. Regulation 4 of the said regulations stipulates that it is the duty of the Director General of the Office for Competition (hereinafter "**the Office**") to determine whether a concentration leads to a substantial lessening of competition in the Maltese market.
17. Regulation 6(1)(ii) of the Control of Concentrations Regulations (Legal Notice 294 of 2002) states that:

*"where he [the Director General of the Office for Competition] finds that the concentration notified, although falling within the scope of these Regulations, does not raise serious doubts about its lawfulness in terms of the provisions of these Regulations, he [the Director General of the Office for Competition] shall decide not to oppose it and shall declare it to be a lawful concentration and such a declaration shall also cover restrictions directly related and necessary to the implementation of the concentration."*
18. As a result of the Proposed Transaction, SAS and RM will no longer be distinct, with SAS becoming the sole shareholder of RM and having full control over RM. Thus, the Proposed Transaction constitutes a concentration within the meaning of Regulation 2 of the Control of Concentrations Regulations.

## 5. PROCEDURE

19. The Office conducted meetings with the authorised representatives of the Notifying Party and also had a number of exchanges prior to the notification of concentration. The notification of concentration was deemed complete on 21 November 2022.
20. The filing and acceptance of the concentration notification was notified to the public through a notice that appeared in a local daily newspaper, on the Malta Competition and Consumer Affairs Authority's website and a public notice that appeared in the Government Gazette (No. 20,965) on Friday 25 November 2022.<sup>6</sup> No third-party objections were received by the Office.
21. In compiling the competitive assessment, the Office relied on the relevant guidelines on the assessment of non-horizontal mergers<sup>7</sup> issued by the European Commission, and on European competition case law.
22. In its assessment, the Office relied on four main sources of data (i) documents submitted by the Notifying Party (ii) Requests for Information (“**RFI**”) sent to the Notifying Party, (iii) RFI sent to the Authority for Transport in Malta (hereinafter “**Transport Malta**”), and (iv) RFI sent to other entities. Among other things, in the RFI, the Office asked for views on the proposed acquisition as to whether it would significantly reduce competition.

## 6. MARKET DEFINITION

23. Regulation 2 of the Control of Concentrations Regulations defines the relevant market as

*“...the market for the products or services whether within Malta or limited to any particular area or locality within Malta or outside Malta, and whether or not restricted to a particular period of time or season of the year.”*
24. Moreover, as stated in the European Commission's notice on the definition of the relevant market (97/C/372/03),

*“...the main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure.”<sup>8</sup>*
25. The parties do not overlap in any of the services they provide, however, the notified concentration will create a vertical link between SAS and RM. Vertical mergers involve companies operating at different levels of the supply chain.<sup>9</sup>

<sup>6</sup> *Notification of Concentration* < [www.mcaa.org.mt/section/content?contentId=8308](http://www.mcaa.org.mt/section/content?contentId=8308) > last accessed 25 November 2022, 25 November 2022.

<sup>7</sup> (2008/C 265/07) *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings*.

<sup>8</sup> (97/C 372/03) *Commission Notice on the definition of the relevant market for the purposes of Community competition law*, para 2.

<sup>9</sup> (2008/C 265/07) *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, para 4.

26. On one hand, SAS, through MSC, renders the services of container liner shipping and oceanic cruises. On the other hand, RM is active on the Maltese markets through Tug Malta, which offers harbour towage services both in Malta and abroad, and, marginally, off-port services, as well as emergency services, such as salvage, fire-fighting and anti-pollution services. Therefore, the transaction will create a vertical link between SAS and RM. In past cases, the European Commission also concluded that harbour towage services are vertically related to container liner shipping services.<sup>10</sup>

## 6.1. Product Scope

27. The European Commission Notice on market definition states that “a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use.”<sup>11</sup>
28. The Office considers that due to the proposed vertically connected link, there are three product markets as relevant. The relevant markets examined are:
- harbour towage services,
  - container liner shipping services, and
  - oceanic cruise services.

This is in line with the submissions made to the Office by the Notifying Party. A potential vertical link also exists in off-port services, for example, in cases where the ship has lost its ability to manoeuvre and therefore needs to be towed. However, due to the marginal extent of the Target's activities in this sector this will not be considered as an affected market in this Decision.

### 6.1.1. Harbour towage services

29. In past cases, the European Commission defines harbour towage services as services provided to large vessels (container ships, bulk vessels, cruise ships, etc.) which includes precise manoeuvring, positioning assistance, safe berthing, un-berthing and passing narrow gateways.<sup>12</sup>
30. The European Commission considers harbour towage services to be a separate product market, although in its previous decisions the definition has been left open.<sup>13</sup>
31. The HTA defines harbour towage service as

“[redacted]”<sup>14</sup>

32. In addition to towage carried out in ports, towage may be requested in emergency situations. Under the HTA, harbour towage services requested in emergency situations, are defined as:

“[redacted]”<sup>15</sup>

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<sup>10</sup> Cases M.8120 - Hapag-Lloyd/United Arab Shipping Company, recital 148; M.8330 - Maersk Line/HSDG, recital 41; M.7268 - CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG, recital 48.

<sup>11</sup> (97/C 372/03) Commission Notice on the definition of the relevant market for the purposes of Community Competition Law, para. 7.

<sup>12</sup> Cases M.8330 - Maersk LINE/HSDG, recital 41; M.8120 - Hapag-Lloyd/United Arab Shipping Company, recital 31; M.7268 - CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG, recital 47; M.3829 - Maersk/PONL, recital. 24.

<sup>13</sup> Cases M.8330 - Maersk LINE/HSDG para 42; M.7268 - CSAV/HGV/Kühne Maritime/Hapag-Lloyd AG, recital. 49; M.8120 - Hapag-Lloyd/United Arab Shipping Company, recital. 33.

<sup>14</sup> See [redacted]

<sup>15</sup> Ibid.

33. Tug Malta is entrusted as the sole provider of harbour towage services, as well as emergency services under the HTA. It uses the same vessels and resources to provide towage and emergency services.

### *Emergency Services*

34. In view of definition of emergency services in the HTA, the Parties argue that firefighting and anti-pollution should be considered as part of the same market. The Parties consider harbour towage services and emergency services to be part of the same relevant market, particularly because
- a. *“Tug Malta Limited is entrusted with a public service obligation to provide harbour towage services in all ports in Malta and further to provide such auxiliary services in all ports in Malta, along Malta’s coastline and within Malta’s territorial waters.*
  - b. *Tug Malta Limited is granted exclusivity rights with respect to the provision of such public service obligations.*
  - c. *Tug Malta Limited uses the same vessels and resources to provide harbour towage services and emergency services.”<sup>16</sup>*
35. The Parties contend that this definition can be left open in the present case, as the revenue from such emergency services represents a very small proportion ( $\ll$ ) of the total harbour towage market.
36. The Office concurs with this market definition that includes emergency services with harbour towage services. Tug Malta is entrusted as the sole provider of harbour towage services and emergency services and that it uses the same vessels and resources to provide such services. Furthermore, the granting of exclusivity rights in relation to the provision of such services significantly limits the scope of delineating towage as harbour towage and emergency services separately. In any case, for the purpose of the present decision, it may be left open whether or not there are separate markets for harbour towage services and emergency services, as either definition would not change the outcome of the competitive assessment.

#### *6.1.2. Container liner shipping services*

37. In previous decisions, the European Commission had found that the product market for container liner shipping includes the provision of regular, scheduled liner services for the transport of cargo by container. The containers are typically transported on large container ships, which are then loaded onto the ship at a container terminal and then transported to the port of destination, where they are unloaded and delivered to their final destination.
38. The European Commission considers the container liner shipping services to constitute a distinct product market from the non-liner shipping services.<sup>17</sup> On the one hand, container liner shipping services use larger container ships that are specifically designed to carry larger number of containers and operate on a regular and frequent schedule service between specific ports. On the other hand, non-containerised transport use a variety of different ships, such as bulk cargo, tanker cargo, or specialised cargo, to transport a wide range of cargo, that are generally different

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<sup>16</sup> Form CN, p. 26.

<sup>17</sup> Case M.8594 – Cosco Shipping / Ooil para. 11.

from container liner shipping services.<sup>18</sup> Furthermore, non-liner shipping services are not as frequent or scheduled as container liner shipping services.

39. In the container liner shipping sector, shipping companies provide their services either individually with their own (owned or chartered) vessels or through cooperation agreements with other shipping companies. Co-operation agreements may consist of slot charter agreements or slot exchange agreements, consortia (also called vessel sharing agreements) and alliances, which are essentially vessel-sharing agreements covering several bundles of routes instead of a single bundle.<sup>19</sup>
40. The European Commission has looked at a possible narrower definition for container liner shipping services in the case of refrigerated containers. In past cases, it has looked separately at reefer and non-refrigerated (warm) containers only in the case of legs of trade with a share of reefer containers in relation to all containerised cargo of 10% or more in both directions. The European Commission left it open whether to segregate the markets further as it would not change the outcome of the competitive assessment.<sup>20</sup>
41. The European Commission also distinguishes between deep-sea container liner shipping services and short-sea container liner shipping services.<sup>21</sup> Deep-sea container liner shipping services involve the transport of containers on long-distance voyages, typically across oceans. Short-sea container liner shipping services involve the transportation of containers on shorter journeys, typically within a specific region.
42. For reasons mentioned above, the Office considers the container liner services market to be separate but leaves the exact definition open due to there being no competition concerns in the market.

### *6.1.3. Oceanic cruise services market*

43. Oceanic cruises involve a journey on board a ship undertaken for leisure purposes in maritime waters. Oceanic cruises generally combine cabins, restaurants, bars, casinos, swimming pools, spas, gyms, theatres, and shopping into a floating resort. Cruises typically embark from one port and then visit a number of destinations, either for a day or overnight, before returning to the same port or a different port to continue the journey.<sup>22</sup>
44. In previous decisions, the European Commission considered the national market for the provision of sea cruises as separate from the market for the provision of coastal ferry and river cruise services and also considered it separate from shore holidays.<sup>23</sup> In a previous decision, the Office also had considered there to be limited substitutability between oceanic cruises and land-based holidays.<sup>24</sup>
45. The European Commission has also examined differences in the overall ocean cruise market, that is between contemporary, premium, luxury and expedition cruises and whether these differences justify a distinct market definition.<sup>25</sup>

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<sup>18</sup> Cases AGCM decision No. 21971 of 22 December 2010; C10853 - Merit Corporation-Yildirim Holding/CMA CGM, pag. 2; European Commission decision of 15 December 2017, M.8594 - Cosco Shipping/Ooil.

<sup>19</sup> Cases AGCM decision No. 27917 of 25 September 2019; C12255 - Marinvest-Gruppo Messina/Ignazio Messina & C.-Ro-Ro Italia, par. 16.

<sup>20</sup> Cases M.9221 – CMA CGM / CEVA para 31; M.8594 – Cosco Shipping / OOIL para 13; M.8120 – Hapag-Lloyd/United Arab Shipping Company para 11; M.7908 – CMA CGM/NOL, para 9; M.7268 – CSAV / HGV / Kühne Maritime / Hapag-Lloyd AG, para 18.

<sup>21</sup> Refer to, inter alia, Commission Decision of 10 April 2017, Case M. 8330 - Maersk Line/HSDG, para. 19.

<sup>22</sup> Case M.9778 - TUI AG / RCCL / Hapag-Lloyd Cruises, para. 15.

<sup>23</sup> Cases M.2706 - Carnival Corporation / P&O Princess, para.99; M.3071 - Carnival Corporation / P&O Princess (II), para.7; M.4600 – TUI / First Choice, para. 62.

<sup>24</sup> Case Comp-CCD/28/11 – SMS Group Ltd/Mondial Investments Ltd, paras.40, 42.

<sup>25</sup> Cases M.2706 - Carnival Corporation / P&O Princess; M.9778 - TUI AG / RCCL / Hapag-Lloyd Cruises, paras. 70-77.

46. In a previous decision, the Office also examined whether the cruise market can be further subdivided by itinerary and whether the Mediterranean route can be further subdivided into Malta-to-Malta cruises and Mediterranean cruises, except from Malta-to-Malta where a passenger has to take a flight arrive at the departure point.<sup>26</sup> The Office left it open on whether or not the market should be segregated further due to no competition concerns arising from the concentration.

## 6.2. Geographic Scope

47. The European Commission Notice defines the relevant geographic market as the market that

*“...comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area.”<sup>27</sup>*

### 6.2.1. Harbour towage services

48. Demand for harbour towage, and therefore the geographic scope of harbour towage, is derived from the demand by shipping companies for port services.
49. In its practice, the European Commission is inclined to define the geographic market for harbour towage services with the individual port.<sup>28</sup>
50. Given Malta's context, and the fact that the HTA's geographical scope captures all of Malta's ports, then the Parties submit that the geographic market definition for harbour towage services should be national in scope.<sup>29</sup>
51. The Office considered that there was no need to define the relevant market narrower geographically than nationally as the supply of harbour towage services is regulated in all relevant ports in Malta. A single port definition would be too narrow in view of the harmonised regulations and towage tariffs. Therefore, the Office considers that there is no geographical scope to define the relevant market in each port in order to assess the impact of the Proposed Transaction.

### 6.2.2. Container liner shipping services

52. The relevant geographic market for container liner shipping services would be the area in which the container liner offers its services and competes with other providers of container shipping services. The relevant geographic market would depend on the legs of trade, that is the specific routes and destinations served by the liner. This could be a specific leg of trade, such as westbound or eastbound within a given trade, or it could be a range of ports, such as Northern Europe – North America eastbound. In recent cases, the European Commission has concluded that liner shipping container services operate on a given bundle of routes and are defined by distinguishing the inbound from the outbound bundle of routes the legs of trade.<sup>30</sup>

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<sup>26</sup> Case Comp-CCD/28/11 – SMS Group Ltd/Mondial Investments Ltd, paras.40, 42.

<sup>27</sup> Commission Notice on the definition of the relevant market for the purposes of Community Competition Law, *Official Journal of the European Communities*, para. 8.

<sup>28</sup> Cases M.3829 – Maersk/PONL, paragraph 24; M.8330 - MAERSK LINE / HSDG, para.43.

<sup>29</sup> Form CN, p. 27.

<sup>30</sup> Cases M.9221 – CMA CGM / CEVA paragraph 34; M.8120 – Hapag-Lloyd/United Arab Shipping Company, para. 19; M.8330 – Maersk Line / HSDG, para. 16.

53. In past cases, the European Commission defined the geographical short-sea container shipping market to be based on (i) either a single trade or a corridor defined by the range of ports served at both ends of the service; or (ii) single leg of trades, that is by the direction of trade flows.<sup>31</sup> However, in its prior decisional practice, the European Commission left the exact geographic scope as open for there were no competition concerns.<sup>32</sup>
54. The Notifying Party submits that the appropriate geographic scope for container liner shipping services is determined by the legs of trade to and from the Mediterranean Sea.
55. In this case, the Office has not found it necessary to conclude on the precise definition of the geographic market of container liner shipping services because the Proposed Transaction does not raise competition concerns.

### *6.2.3. Oceanic cruise services market*

56. The geographic market for oceanic cruise services would typically be national in scope.<sup>33</sup> There are a number of factors which the European Commission took into account when conducting a competition analysis as to why the relevant geographic market is national in scope. The European Commission concluded that the market for cruise voyages in the European Member States is country-specific, in particular due to the different penetration rates, different distribution channels, which are predominantly operated at national level, and marketing and promotions are usually carried out at national level, and the pricing strategies could also depend on the country they are marketed to. The European Commission also noted that some cruise brands are only or mainly marketed in certain Member States.<sup>34</sup>
57. The Parties submitted that the market should be defined as national. Moreover, in a previous SMS Group Ltd/Mondial Investments Ltd decision, for the same reasons outlined in paragraph 56 of this Decision, the Office had concluded that the geographic market is national in scope.<sup>35</sup> While the online market may have changed the way pricing strategies are conducted, the Office still considers the geographic market to be predominantly national.

## **6.3. Other Markets**

### *6.3.1. Off-port services*

58. Tug Malta is also involved in off-port services that are provided outside the boundaries of the port or harbour. Off-port services play an important role in the safe and efficient operation of platform assistance services, helping to ensure the smooth and orderly movement of vessels within these environments. However, what is different from other harbour towage service, is that off-port services are outside the scope of the HTA and are generally provided under contracts with the companies that manage the platforms and can be offered both by towage companies with port concessions and by other entities. Off-port services are subject to fierce competition between operators, particularly in the Mediterranean region, with competition being driven by price, efficiency and promptness. Given that it is outside the scope of concessions, the Parties therefore

<sup>31</sup> Case M.9016 – CMA CGM / Container Finance, para. 41.

<sup>32</sup> Cases M.8330 – Maersk Line / HSDG, paragraph 20; M.7523 – CMA CGM / OPDR, parags. 53, 60, 61; M.9093 - DP World Investments/Unifeeder, paras. 36 and 38.

<sup>33</sup> Case M.334 - Costa Crociere/Chargeurs/Accor; M.2706 - Carnival Corporation/P&O Princess; M.3071 - Carnival Corporation/P&O Princess (II); M.4600 - TUI/First Choice.

<sup>34</sup> Cases M.2706 - Carnival Corporation/P&O Princess, paras. 26, 27; M.9778 - TUI AG / RCCL / Hapag-Lloyd Cruises, para. 45; M.10082 - CPPIB / TPG / The Torstein Hagen Interest in Possession Settlement / Viking, paras.15-16.

<sup>35</sup> Case Comp-CCD/28/11 – SMS Group Ltd/Mondial Investments Ltd, para. 45.

believe that these services constitute a separate product market from harbour towage services. The Office concurs with this market definition which does not include off-port services in the harbour towage product market.

59. The Parties claim that the off-port services market is not a vertically affected market as Tug Malta has minimal revenue generated from such services (less than [%], equivalent to [%] of total Tug Malta turnover in 2021) and estimates a less than 25% market share. It is also worth noting that Tug Malta did not provide such services to [%] for the last three years, 2019 – 2021. Furthermore, MSC does not offer off-port services, hence there is no horizontal overlap.<sup>36</sup>
60. The Office considers that due to the minimal revenue from such a service, concerns about market competition from the proposed concentration will be less likely, and as a result, off-port services will not be considered further in its decision.

### *6.3.2. Ship repair and minor conversion services*

61. As stated in paragraph 5 of this Decision, MSC Cruises controls part of Palumbo Malta, which manages and operates the ship repair and maintenance yard facilities in the Grand Harbour. As such the Proposed Transaction creates vertical links between these product markets: on the one hand, harbour towage services, and, on the other hand, ship repair and minor conversion services, which MSC Cruises jointly controls Palumbo Malta.
62. In its prior decisional practice, the European Commission assumed that the broadest possible geographical market definition should be worldwide due to the low transport costs of ships and no significant trade barriers.<sup>37</sup> In a past decision, the Office did not contest this point but added that, in any case, a more limited geographic market definition, such as Europe or even Southern Europe or the Mediterranean Sea, would not affect the competitive assessment and was therefore left open.<sup>38</sup>
63. As Tug Malta's purchases are minimal, accounting for only [%] of Palumbo Malta's sales, this is very small for the relevant market and even smaller when defined at European or global level. Considering the small share, the vertical overlap between Tug Malta and Palumbo Malta is highly unlikely to give rise to anticompetitive foreclosure concerns for the supply of ship repairs and minor conversions.
64. While it may be more difficult for an undertaking with a small market share to engage in anticompetitive behaviour, it is also unlikely for the Parties to engage in anticompetitive tactics for the supply of harbour towage services. This is because Tug Malta is the appointed exclusive harbour towage company and as communicated by MSC, Tug Malta is the only Malta based towage customer of Palumbo Malta therefore there could be no involvement in predatory pricing or other tactics to create barriers for other companies in the enter market.
65. For the reasons outlined in paragraphs 63 and 64, the Office does not consider that the market for ship repair and minor conversion services requires further consideration.

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<sup>36</sup> Form CN, p. 27.

<sup>37</sup> Case No COMP/M.2772 - HDW / FERROSTAAL / HELLENIC SHIPYARD para. 39.

<sup>38</sup> Case COMP-MCCAA/05/2020 – Acquisition of Joint Control by MSC Cruises SA of Palumbo Malta Shipyard Limited and Palumbo Shipyard Limited, paras. 17 and 18.

## 7. COMPETITIVE ASSESSMENT

### 7.1. General characteristics of the harbour towage services market

66. Harbour towage service is an integral part of the Maltese port infrastructure as it is vital in ensuring the overall safety of big ships when entering, manoeuvring, mooring and unmooring a port.<sup>39</sup>
67. Towage service could be required by ships arriving in or departing from ports in order to facilitate the manoeuvres that need to be carried out in close contact with port infrastructures or with other ships in transit or laying. Tugs ensure safe docking, departure and manoeuvring of ships in ports. In addition to towage carried out in ports, towage may be provided as off-port towage services, for example, in cases where the ship has lost its ability to manoeuvre and therefore needs to be towed. Unlike the off-port towage services, harbour towage service is governed by a detailed regulatory framework at both national and European level.
68. At national level, Towage in Malta is regulated in terms of the Authority for Transport in Malta Act (Cap. 499), Towage (Tariff of Rates) Regulations (S.L. 499.49) of the Laws of Malta, Port Notices issued by Transport Malta, particularly the Minimum Towage Requirements – Revision 1.0,<sup>40</sup> and Port Security Regulations.<sup>41</sup> Towage is always under the supervision and regulation of Transport Malta.
69. The Authority for Transport in Malta is empowered, by virtue of Article 8 of the Authority for Transport in Malta Act (Cap. 499) *inter alia*
- a. to regulate transport by sea and use of boats and ships,
  - b. to regulate and control navigation within the limits of any port,
  - c. to provide, maintain, develop, improve and operate ports in Malta and any of their facilities, and to provide, maintain and operate therein and in the approaches thereto adequate and efficient services, and facilities as it may from time to time consider necessary or advantageous for the proper, safe and efficient functioning of such ports or as the Authority may otherwise deem it proper to provide in the public interest,
  - d. to provide and maintain in Malta adequate and efficient navigational aids and services at such places, including the territorial waters of Malta, as the Authority may deem appropriate, and
  - e. to provide and use or to ensure the provision and use of ships, boats, yachts and vehicles and other means for the salvage or protection of life and property.
70. At European Union level, harbour towage service is regulated by Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (hereinafter referred to as “**EU Regulation**”).<sup>42</sup>

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<sup>39</sup> Paulauskas, Vytautas et al. “The Influence of Port Tugs on Improving the Navigational Safety of the Port.” *Journal of Marine Science and Engineering* (2021).

<sup>40</sup> *Minimum Towage Requirements – Revision 1.0* < <https://www.transport.gov.mt/include/filestreaming.asp?fileid=6042> > last accessed on 1 December 2022

<sup>41</sup> Subsidiary Legislation 499.35.

<sup>42</sup> OJ [2017] L 57/1. It is submitted that the Government of Malta appears to have taken the view that Regulation 2017/352 is directly applicable in Malta without the need for any further transposition into national law. In fact, the Government of Malta has notified to the European Commission that the Office for Competition within the Malta Competition and Consumer Affairs Authority is, amongst others, responsible for complaints in terms of the same Regulation: <https://transport.ec.europa.eu/system/files/2020-12/port-services-regulation-notifications-articles-16-17.pdf> last accessed on 1 December 2022.

71. In line with the EU Regulation, the Notifying Party submits that the Government of Malta views the harbour towage service as a service of general economic interest (hereinafter “SGEI”), which must be provided in compliance with precise operational standards and obligations as set out by Transport Malta. The rationale behind the classification of harbour towage service as an SGEI can be traced back to reasons of public interest, i.e., the need to ensure in addition to the safety of port operations, the accessibility of port services throughout the year to all without discrimination.
72. By virtue of the HTA, [REDACTED], Tug Malta is a legal monopoly, that has a mandate to operate as the sole service provider of harbour towage services in exchange for the right to be monitored and regulated. The justification for the existence of the legal monopoly stems from the fact that it is in the public interest to allow a single operator to be the sole service provider. Transport Malta is able to regulate tariffs and monitor the continuity, quality and the affordability of the towage services.<sup>43</sup>
73. The Notifying Party submits that the Government of Malta deems that harbour towage service is a service of general economic interest and this is expressly stated in [REDACTED] of the HTA which reads as follows:
- “[REDACTED]”
74. Limiting the provision of towage services to a single operator, is also fully consistent with the provisions of the applicable European framework.<sup>44</sup>
75. Transport Malta recognises that the harbour towage industry is a natural monopoly because it would not be economically viable for more than one service provider to undertake harbour towage services.<sup>45</sup> Indeed, the Parties argue that the most substantive costs incurred in the operation of towage are mostly fixed and semi-fixed costs.<sup>46</sup>
76. By virtue of the HTA, Tug Malta has been entrusted as a single operator for a [REDACTED]<sup>47</sup> [REDACTED].
77. Tug Malta has been entrusted to provide, maintain and operate the ports of Malta, in particular; the Grand Harbour, Marsamxett Harbour, Marsaxlokk Harbour,<sup>48</sup> Saint Paul's Bay and Mġarr Gozo and also other landing places across the Maltese Islands, including Ramla-il Bir and iċ-Ċirkewwa (hereinafter “**Relevant Ports**”).
78. Tug Malta provides the harbour towage services in the Relevant Ports and in the approaches under the terms and conditions set out in the HTA. The tariffs are fixed by law and are subject to changes. By virtue of the HTA and EU Regulation, the provision of harbour towage services is also regulated by the Authority. This is to ensure that the delivery of services is in accordance with the precise operational standards and obligations established by the Authority. The reason for such regulation can be traced back to reasons of public interest, that is the need to ensure, in addition to the safety of harbour operations, the year-round accessibility of port services for all

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<sup>43</sup> See HTA [REDACTED]

<sup>44</sup> See Article 6 ‘Limitations on the number of providers of port services’ of Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports.

<sup>45</sup> See HTA [REDACTED].

<sup>46</sup> Form CN, p 24.

<sup>47</sup> See HTA [REDACTED].

<sup>48</sup> As submitted by Transport Malta in its reply to RFI on 2 December 2022, the terminals/berthing facilities covered in the Harbour Towage Agreement in the Marsaxlokk Harbour are St Lucian Terminal, Malta Freeport Terminal, Marsaxlokk Dolphin, Oil Tanking Malta, Delimara Power Station, LNG Terminal and 31<sup>st</sup> March Terminal. [REDACTED]

without discrimination. Non-discrimination is also enshrined in the EU Regulation which imposes on operators “a regulatory obligation to grant non-discriminatory access to all customers”.<sup>49</sup>

79. Booking a tugboat to assist small boats is not compulsory in Malta. However, for boats longer than 100 m, it is mandatory to use towing boats to facilitate or assist in docking and undocking of the vessel. The minimum requirements vary depending on ship's length, port and ship type.<sup>50,51</sup> In addition, in case of distressed vessels, cold movers or exceptional circumstances, the minimum tugboat requirements may be increased based on an assessment carried out by the Ship's Masters and the Pilot and confirmed by the Harbour Master.<sup>52</sup>
80. Cruise Liners, scheduled Liner Ro-Ro & Ro-Pax vessels together with Authorised Bunker Barges and Authorised High Speed Craft (HSC) are normally exempt from minimum tug requirements, subject to Master/Pilot Information Exchange and vessels passage plan taking into account the prevailing weather circumstances and conditions.

## 7.2. Overview of provision of the Harbour Towage Agreement and tariffs

81. The Parties submit that, in terms of the HTA, Tug Malta has undertaken obligations which ensures:
- a. the availability of the port service to all port users, at all berths, without interruption, day and night, throughout the year;
  - b. the availability of the service to all users on equal terms;
  - c. the affordability of the service for certain categories of users; and
  - d. the safety, security or environmental sustainability of port operations.<sup>53</sup>
82. [REDACTED].
83. The tariffs for the harbour towage services are fixed by law and [REDACTED].
84. Tug Malta is in no position to decide to whom to provide harbour towage services first or to which berth the ship will be towed, as these decisions are solely vested in Transport Malta by law. The Notifying Party also notes that Transport Malta shipping movement and direction, allocation of berths, anchoring methods along with the order or removal of any ship from the berth.<sup>54</sup> The latter is further regulated by the Ports Regulations.<sup>55</sup>
85. Failing to adhere to such regulations, Tug Malta is subject to a number of conditions to incentivise the Target to perform its obligations under the HTA. These conditions can serve as a deterrent in order to meet the terms of the contract, and provide a [REDACTED] for non-compliance, in particular [REDACTED].<sup>56</sup>

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<sup>49</sup> See Articles 6 and 7 of Regulation (EU) 2017/352.

<sup>50</sup> Port Notice No. 14 of 2020.

<sup>51</sup> Port Notice No.1 of 2021.

<sup>52</sup> Ibid.

<sup>53</sup> See Form CN, pg. 22

<sup>54</sup> Article 6(2) of the Authority for Transport in Malta Act (Chapter 499 of the Laws of Malta).

<sup>55</sup> Subsidiary Legislation 499.01.

<sup>56</sup> [REDACTED].

### 7.3. Guidelines on revision in tariffs

86. [REDACTED].<sup>57</sup>

87. In addition to the reasons specified in paragraph 86, the Guidance Notes on the implementation of the revision of Tug Malta (hereinafter referred to as “**Guidance Notes**”) lays down the general principles:

“[REDACTED]”.<sup>58</sup>

88. [REDACTED].<sup>59</sup>

89. Pursuant to the agreed methodology on principles applicable in the tariff revision, [REDACTED].

90. [REDACTED].<sup>60</sup>

91. [REDACTED].<sup>61</sup>

92. Transport Malta submits that the process for a revision in tariffs, as indicated in paragraph 86, entails the following procedure:

- a. Tug Malta submits a claim prepared by an audit firm;
- b. Transport Malta engages another independent audit firm to validate the claim;
- c. Any variances (due to different interpretation) are discussed in a reconciliation meeting between Transport Malta and Tug Malta and the appointed auditors;
- d. Once an agreement is reached on the applicable percentage Transport Malta submits a recommendation to Cabinet to amend the Towage (Tariff of Rates) Regulations (SL 499.49) and issues a Port Notice to notify industry and port users accordingly.<sup>62</sup>

93. Tug Malta submits that the Guidance Notes shall continue to apply to the determination of tariffs.<sup>63</sup>

### 7.4. Assessment framework

#### 7.4.1. Market share

94. As provided in Regulation 4 of the Control of Concentrations Regulations, in assessing whether a concentration leads to a substantial lessening of competition in the Maltese market, the Director General of the Office shall consider, *inter alia*:

- a. *“the need to maintain and develop effective competition in the Maltese market in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outside Malta;*

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<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED]

<sup>59</sup> [REDACTED]

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

<sup>62</sup> As submitted by Transport Malta in its Reply to RFI on 2 December 2022.

<sup>63</sup> As submitted by the Parties in their Reply to RFI on 30 November 2022.

- b. *whether the business, or part of the business, of a party to the concentration, has failed or is likely to fail;*
- c. *the nature and extent of development and innovation in a relevant market;*
- d. *the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition."*

95. To set the framework for the analysis of the competitive effects of the concentration, the Office refers to Section 6(III) of the Concentration Notification Form (annexed to the Control of Concentrations Regulation) whereby *affected markets* are defined as relevant product markets where in the Maltese territory or a relevant part thereof:

- a. *"two or more of the parties to a concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15% or more, or*
- b. *one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market share is 25% or more, regardless of whether there is or is not any existing supplier customer relationship between the parties to the concentration."*

96. These markets would be vertically affected by the Proposed Transaction, if MSC or its controlling parents hold a 25% share in one of those upstream or downstream markets or if the Parties are over 25% in the related container liner shipping and oceanic cruises markets.

97. For the harbour towage services market, the total market size is extracted from the Tug Malta's own sales data.

98. The methodology that was used in the submitted Concentration Notification Form for the calculation of volume and market shares data in the container liner shipping services market are based on the data obtained from Container Trades Statistics Ltd. The data is provided at the level of trade flows Malta/rest of the world and the rest of the world/Malta. Only market data on volume has been provided as the Notifying Party believes that it provides an accurate and better representation of the market size and position of the different players. The data does not include the transshipment volume (so-called "moves" carried out by the container terminals in Malta of containers transhipped from one vessel to another when the container is not originated from (or destined to) Malta. Transshipment volume would only be relevant to the decision if the Proposed Transaction involved container terminals, which is not the case here since neither MSC nor RM hold any shareholding in the container terminals in Malta. [REDACTED].<sup>64</sup>

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<sup>64</sup> Internal communication between the Office and the Notifying Parties.

99. The Office has authorised the Parties to provide market data on the volume of trade flows from Malta to the rest of the world and vice versa. This is because the Office can determine the size of MSC and its competitors in the market, as well as assess the vertical link between the container liner shipping services market and harbour towage in Malta, and its impact, using the data from these trade flows, which is sufficient, more meaningful, and more reliable.
100. The Notifying Party reports data on the total market size of oceanic cruises from the Cruise Lines International Association (CLIA) reports. This data is only available in volume. According to the geographic market definition of the ocean cruising market, the volumes reported for MSC relate to cruises sold by MSC in Malta. In 2020 the market ground to a halt due to the pandemic and no data was released by CLIA to Malta for 2021.

#### *7.4.2. Consortia*

101. It is the European Commission's general practice, when assessing the impact of the concentration, not only to rely on the parties' individual market shares and the market share increments brought about by the transaction in the various affected markets, but also to take into account any consortia or inter-company agreements which entered into by the Parties to the concentration in the affected markets.
102. The Parties submit that there are no important cooperative agreements (horizontal or vertical) in place by the Parties in the concentration in the affected markets, except for container liner shipping services market. In container liner shipping, consortia can be formed for a variety of purposes, e.g., to run a joint service on a specific trade route, to negotiate with ports and terminals, or to pool resources to purchase ships and other equipment.<sup>65</sup>
103. The Parties submit that consortia/alliances are not relevant with respect to the assessment of vertical relationships with the harbour towage service market. This is because a container liner shipping company manages directly and autonomously its contractual relationships with the operators providing harbour towage services in the ports where the liner shipping companies decides to service through cooperation agreements.
104. The Office considers that since Tug Malta deals individually with container liner shipping company, consortia cannot potentially reduce competition, increase barriers to entry, or lead to higher prices in the harbour towage services market. For this reason, and the vertical nature of this concentration, the competitive assessment in this Decision will be based on the Parties' individual market shares.

#### *7.4.3. Foreclosure*

105. In theory, there are several competition concerns related to vertical integration in the market:
  - a. **Foreclosure:** When a company is vertically integrated, it may deny its competitors access to inputs or distribution channels, that would otherwise have provided absent the concentration, giving the integrated company a competitive advantage.<sup>66</sup> In theory, these can take two forms:

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<sup>65</sup> Consortia are groups of shipping companies that come together to pool their resources and offer a shared service.

<sup>66</sup> References to 'foreclosure' in this decision should be read as references to input foreclosure. The term 'foreclosure' refers to either partial or total foreclosure unless stated otherwise.

*i. Customer Foreclosure*

In its Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings<sup>67</sup>, the European Commission explains that:

*“Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals’ costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.”<sup>68</sup>*

*ii. Input Foreclosure*

In its Guidelines, the European Commission explains that:

*“Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals’ costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition. As indicated above, for input foreclosure to lead to consumer harm, it is not necessary that the merged firm’s rivals are forced to exit the market. The relevant benchmark is whether the increased input costs would lead to higher prices for consumers. Any efficiencies resulting from the merger may, however, lead the merged entity to reduce price, so that the overall likely impact on consumers is neutral or positive.”<sup>69</sup>*

These competition concerns may lead to reduced competition and higher costs from its downstream competitors as they find it more difficult to obtain inputs at similar prices and conditions compared to a situation without the concentration taking place. Input foreclosure could thus lead to price increases on the downstream market and thus impede effective competition.

- b. **Discrimination:** A vertically integrated company may discriminate against its competitors by preferential treatment of its own products or services, e.g., by allocating them more resources or charging lower prices.
- c. **Exclusivity Deals:** A vertically integrated company may enter into exclusivity agreements with distributors or retailers, preventing them from carrying competing products.
- d. **Increased Market Power:** A vertical integrated firm can use its control over multiple stages of production to increase its market power and charge higher prices for its products.

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<sup>67</sup> OJ [2008] C 265/6.

<sup>68</sup> OJ [2008] C 265/6, para. 58.

<sup>69</sup> Ibid, para. 31.

- e. **Other non-coordinated effects:** vertical integration allows the Parties to the concentration to gain access to commercially sensitive information about competitors' upstream or downstream activities and their relevance to competing competitors.

106. The Office's approach in assessing vertical theories of harm is to analyse:

- i. **Ability to foreclose access to inputs:** would the merged entity have the ability to harm competitors, for example by increasing prices or refusing to supply inputs to competitors in the market?
- ii. **Incentive to foreclose access to inputs:** would it be profitable to do so?
- iii. **Effect on competition:** would the effects of any action by the merged entity be sufficient to restrict competition in the affected market to the point of leading to a significant reduction in competition in that market?

107. The European Commission's guidance on assessing non-horizontal mergers states that when assessing the likelihood of an anticompetitive input foreclosure scenario, it considers whether the merged entity would be able to substantially foreclose access to inputs after the merger. In this context, the Office assessed whether the merged entity could influence the conditions available on the (upstream) market, from which downstream competitors can obtain inputs, in a way that significantly affects its operations.

## 7.5. Third-Party Objections

108. As mentioned in paragraph 22, the Office did not receive any third-party objections. Nevertheless, the Office reached out to several entities to see if they have views, if any, on the Proposed Transaction. One entity commented on the fact that the Target is the sole tugboat operator and there is no competition in the market. Another entity argued that the Notifying Party's vessels calling at the port could directly or indirectly have an advantage in towage charges, especially when considering that towage charges are a significant portion of the port cost for each call. These views will be taken into consideration in the next section of the Office's Assessment.

## 8. THE OFFICE'S ASSESSMENT

109. The activities of the Parties subject to this concentration have a 'vertical' relationship which the European Commission defines as a relationship involving "*companies operating at different levels of the supply chain.*"<sup>70</sup>

110. As per paragraphs 25 and 26 of this Decision, the Proposed Transaction will thus create vertical links between the Parties' operations in the upstream market for harbour towage service and (i) the container liner shipping services and (ii) the oceanic cruise services.

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<sup>70</sup> See Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the Control of Concentrations between undertakings (2008/C 265/07), para. 4.

## 8.1. Overview of the affected markets

### 8.1.1. Harbour towage services

111. Given that the Target has a 100% market share in the harbour towage market through Tug Malta, the overall size of this affected market is based in value on the sales that Tug Malta generates from the provision of harbour towage in Malta, while the volume market share is based on number of the tugboat jobs carried out in all relevant ports.
112. The size of the harbour towage services market amounted to [REDACTED] in 2021, up from [REDACTED] in 2019.
113. The number of tugboat jobs is produced in Table 1. [REDACTED]. This coincides with movement restrictions and lockdowns put in place in many countries to slow the spread of the Covid-19 virus, which has disrupted global trade and supply chains, leading to a drop in demand for shipping and related services such as harbour towage.

**Table 1: Number of Tug Jobs carried out by Tug Malta, 2019-2021**

<i>Relevant Ports</i>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<i>Marsaxlokk</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Grand Harbour</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Palumbo</i>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total Tug Jobs</b>	[REDACTED]	[REDACTED]	[REDACTED]

*Note: Data was submitted by the Notifying Party.*

### 8.1.2. Container liner shipping services

114. For deep-sea container liner shipping services, the market shares of MSC and its competitors in terms of volume (twenty-foot equivalent – TEU unit) are given in Table 2 and Table 3. Data are provided at the Malta/Rest of World and Rest of the World/Malta trade flow levels, that is, the volume of containerised goods (including MSC's) shipped to/from Malta as “country of origin” (export) or “country of destination” (import).
115. In Malta, the Notifying Party, provides neither deep-sea nor short-sea container liner shipping services, but it provides a liner shipping services of deep-sea containers in one of the relevant ports where the Target offers harbour towage services, that is, in Marsaxlokk, [REDACTED].

**Table 2:** Malta to rest of the world (market data in volume shown as a percentage)

<i>Shipping Line</i>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<i>CMA CGM</i>	[20-30]%	[30-40]%	[50-60]%
<i>COSCO Shipping + OOCL</i>	[5-10]%	[0-5]%	[5-10]%
<i>Evergreen</i>	[0-5]%	[0-5]%	[0-5]%
<i>Hapag-Lloyd + DAL</i>	[0-5]%	[0-5]%	[5-10]%
<i>Maersk Line + Safmarine + Hamburg Sud</i>	[10-20]%	[10-20]%	[0-5]%
<i>MSC + Messina</i>	[10-20]%	[5-10]%	[5-10]%
<i>NCL</i>	[30-40]%	[30-40]%	[10-20]%
<i>ONE Line</i>	[0-5]%	[0-5]%	[0-5]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Note: Data was submitted by the Notifying Party and was sourced from CTS (Container Trade Statistics)*

**Table 3:** Rest of the world to Malta (market data in volume shown as a percentage)

<i>Shipping Line</i>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<i>CMA CGM</i>	[30-40]%	[40-50]%	[40-50]%
<i>COSCO Shipping + OOCL</i>	[5-10]%	[10-20]%	[20-30]%
<i>Evergreen</i>	[5-10]%	[0-5]%	[5-10]%
<i>Hapag-Lloyd + DAL</i>	[0-5]%	[0-5]%	[0-5]%
<i>Maersk Line + Safmarine + Hamburg Sud</i>	[20-30]%	[10-20]%	[0-5]%
<i>MSC + Messina</i>	[5-10]%	[10-20]%	[10-20]%
<i>NCL</i>	[10-20]%	[10-20]%	[5-10]%
<i>ONE Line</i>	[0-5]%	[0-5]%	[0-5]%
<i>ZIM</i>	[0-5]%	[0-5]%	[0-5]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Note: Data was submitted by the Notifying Party and was sourced from CTS (Container Trade Statistics)*

116. For the container liner shipping services market, the Notifying Party competes with different players, such as [X]. As per the data compiled by the Notifying Party, the market share for container ships belonging to MSC shipped from Malta as the country of origin to the country of destination stood at [10-20]% in 2021, vis-à-vis its competitors on the market.
117. Table 4 below illustrates the number of tugboat jobs purchased by MSC for its container vessels. In 2021, the demand from MSC was higher than those registered in previous years. The reason being [X]. This can therefore be regarded as a one-off extraordinary circumstance.

**Table 4:** Total Number of Tug Jobs bought by MSC from Tug Malta, 2019-2021

	2019	2020	2021
<i>Marsaxlokk</i>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<i>Grand Harbour</i>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<i>Palumbo</i>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<b>Total</b>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<b>Share of Tug Jobs by MSC</b>	<b>[0-5]%</b>	<b>[5-10]%</b>	<b>[10-20]%</b>

Note: Data on the number of tug jobs that MSC bought from Tug Malta was submitted by the Notifying Party. Grand Harbour and Palumbo are not ports of call for MSC ships.

### 8.1.3. Oceanic cruise services market

118. In Malta, the Notifying Party is not directly active in the cruise market, but it is MSC that operates in the Maltese cruise market, through its subsidiary MSC Cruises. The ships of MSC Cruises call only at one of the relevant ports where the Target offers harbour towage services, that is, in the Grand Harbour.
119. MSC Cruises, operates on the contemporary sector of oceanic cruises and sells its services [~~0~~]. As a matter of fact, in Malta, MSC Cruises [~~0~~].
120. For the Cruise services market, the Notifying Party competes with different players, [~~0~~].<sup>71</sup> Table 5 shows the total market size of ocean cruising in 2019 from the Cruise Lines International Association (CLIA) reports. According to the geographic market definition of the ocean cruising market, the volumes shown for MSC relate to cruises sold by MSC in Malta. The market share of MSC Cruises in Malta, that is the number of cruises sold to customers residing in Malta, stood at [40-50]%. In 2020 the market was at a standstill due to the pandemic, whereas no data has yet been published for 2021.<sup>72</sup>

**Table 5:** Sales volume for oceanic cruises (Number of passengers), 2019-2021

<i>Malta</i>	2019	2020	2021
<i>MSC<sup>†</sup></i>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<i>Total</i>	[ <del>0</del> ]	[ <del>0</del> ]	[ <del>0</del> ]
<b>Share of MSC</b>	<b>[40-50]%</b>	[ <del>0</del> ]	[ <del>0</del> ]

Notes: Data was submitted by the Notifying Party and was sourced from CLIA.

<sup>†</sup> Sales in values of MSC amounted to [~~0~~].

121. Table 6 shows the number of tugboat jobs that the Notifying Party purchased for its cruise ships between 2019 and 2021. In 2021, [~~0~~] tugboat jobs were purchased by MSC, which is [0-5]% of the total tugboat jobs in 2021.

<sup>71</sup> As submitted by the Notifying Party.

<sup>72</sup> As submitted by the Notifying Party.

**Table 6:** Number of tug jobs that MSC bought from Tug Malta for its cruise ships, 2019-2021

Malta	2019	2020	2021
Marsaxlokk	[X]	[X]	[X]
Grand Harbour	[X]	[X]	[X]
Palumbo	[X]	[X]	[X]
<b>Total</b>	[X]	[X]	[X]
<b>Share of Tug Jobs by MSC</b>	<b>[0-5]%</b>	<b>[0-5]%</b>	<b>[0-5]%</b>

Note: Data on the number of tug jobs that MSC bought from Tug Malta was submitted by the Notifying Party.

## 8.2. Discussion on the Affected Markets

122. The relevant markets: (i) harbour towage services, (ii) container liner shipping services, and (iii) oceanic cruise services market are affected markets since they are markets where “one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market shares is 25% or more” (so-called ‘vertically affected markets’).
123. Table 7 shows the number of tugboat jobs purchased by MSC from Tug Malta. For completeness, Table 7 also includes repair and maintenance at Palumbo, which as discussed in paragraphs 63 and 64 it will not be considered in this Decision. Considering only the markets affected by the proposed transaction, as mentioned in paragraph 2 above, in 2021, [20-30]% of the tugboat orders operated by Tug Malta in 2021 were carried out by the Notifying Party for container and cruise vessels.

**Table 7:** Number of tug jobs that MSC bought from Tug Malta, 2019-2021

	2019	2020	2021
Container Ships	[X] [0-5]%	[X] [5-10]%	[X] [10-20]%
Cruise Ships	[X] [0-5]%	[X] [0-5]%	[X] [0-5]%
Repair and maintenance at Palumbo	[X] [0-5]%	[X] [0-5]%	[X] [0-5]%
<b>Total</b>	<b>[X] [0-5]%</b>	<b>[X] [5-10]%</b>	<b>[X] [20-30]%</b>

Note: Data on the number of tug jobs that MSC bought from Tug Malta was submitted by the Notifying Party. The figures in the parentheses are the share of tug jobs bought by MSC from Tug Malta.

124. The Office considers that the concentrated entity would have neither the ability nor the incentive to engage in an input or customer foreclosure strategy.
125. First, as discussed in paragraph 116, the market shares of MSC does not exceed [10-20]% in the container liner shipping services market, at the narrowest plausible geographic market for Maltese ports only. The Proposed Transaction in the container shipping market is therefore unlikely to lead to any significant changes in the competitive environment in this area. In addition, as per paragraph 120, MSC’s market position in the oceanic cruise market is almost [40-50]%, indicating that MSC has a large market share, and therefore the market is more susceptible to anti-competitive behaviour. However, the Office leaves open whether the Notifying Party has a

dominant position, as this does not change the outcome of this decision for the reasons mentioned hereunder.

126. Second, any input foreclosure strategy of the concentrated entity would be unlikely, since harbour towage services in the relevant ports are regulated by the HTA, and the Target has no possibility to influence the provision of services consumed by downstream companies in the container liner shipping and oceanic cruise services markets. Tugs are ordered directly from Transport Malta by the ship's agent. Transport Malta is responsible for ensuring the needs-based availability of tugs in accordance with the provisions of HTA.<sup>73</sup> Transport Malta has at least one tugboat in Grand Harbour and two tugboats in Marsaxlokk Harbour that is manned and available 24 hours a day.<sup>74</sup> If additional tugs are required for a specific manoeuvre, for example a tanker or a container ship requiring three tugs, the agent must place the order at least one hour before the expected time of the manoeuvre. Moreover, the allocation of berths is determined by the terminal operator and tug allocation prioritisation is based on berth allocation and priority. So, if there are two vessels that need tugs to enter (or leave) the harbour at the same time, Transport Malta assigns priority.<sup>75</sup> Furthermore, it is the port authority or terminal control officer and not the company, that decides which place in the port to tow the boat to.<sup>76</sup> Thus, it would be highly unlikely for Tug Malta: (i) to intervene with the order of precedence given to the vessels, (ii) to give preferential treatment of its own services, or (iii) to enter into exclusivity agreements with key players.
127. Third, tariffs are fixed by law, and so Tug Malta would have a limited capability to price discriminate against its competitors or influence the price, other than through the methodology agreed between Tug Malta and Transport Malta. The procedure for a tariff change is such that only relevant costs for Tug Malta are considered and the concentrated entity would not be able to pass on costs that are not relevant for towage to downstream players. Transport Malta confirmed that there are no ongoing or planned discussions in the near future that will materially change the terms of the HTA.<sup>77</sup> Therefore, the Office recognises that the terms and conditions in the HTA shall not be affected, which empowers Transport Malta to ensure that services in ports are proper in the public interest.
128. Fourth, a customer foreclosure strategy by the concentrated entity would be unlikely as Tug Malta is the sole provider of harbour towage services and any exclusive post-acquisition purchase agreements on the upstream operations of the merged entities would be nonsensical given the regulatory and contractual framework discussed in Section 7.2. Only if the HTA is not in place, the merged firm might be able to keep prices below competition levels as a way to restrict competition in the upstream market and make it more difficult for potential competitors to penetrate and cover their fixed costs. However, harbour towage is considered a service of public interest and, barring significant and substantial changes in the regulatory framework, these impacts could only materialise in the long term and are therefore the subject of some speculation. Furthermore, [redacted] and without the HTA, competition would not be significantly impeded because potential competitors have a sufficient customer base.
129. Fifth, the few replies received to the Office's request for views to the proposed concentration raise a concern related to the fact that there is a monopoly in the upstream market and the Target's vessels calling at the port could directly or indirectly have an advantage in towage charges. However, the Office recognises that the provision of harbour towage services is regulated both by national and European sources and the HTA. The Target is also obliged to respect the principle of non-discrimination and equal treatment of users, as also enshrined in the

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<sup>73</sup> RFI to Transport Malta of 25 November 2022.

<sup>74</sup> Port Notice 01/2021.

<sup>75</sup> Ibid.

<sup>76</sup> Port Notice 01/2021.

<sup>77</sup> RFI to Transport Malta of 25 November 2022.

EU Regulation which imposes on operators “a regulatory obligation to grant non-discriminatory access to all customers”.<sup>78</sup>

130. In addition to paragraph 129, the Notifying Party argues that harbour towage services tend to represent only a very small part of the cost structure incurred by container liner service operators in a given port. According to the Notifying Party’s estimates, harbour towing costs account for about [X] of the total port costs for container shipping and an even smaller percentage of the total costs for container liner shipping, as port costs represent only a part of the costs incurred for such activities.<sup>79</sup> The Notifying Party further argues that the low share of towing costs in the total costs is even more evident in relation to cruise services as cruise ships do not always require the use of towing services to berth. The Office also notes that [X] states that Transport Malta is desirous that in performing its service obligations, the Operator remains sensitive to the requirement to maintain efficiency and competitiveness of the Relevant Ports, particularly in relation to the Port of Marsaxlokk due to its importance as a central Mediterranean port of call. Otherwise, Transport Malta can exercise its supervisory powers under the law to ensure that the applicable legal and regulatory framework and the HTA are adhered to. This not to mention that there are a number of conditions in the HTA that serve as sufficient deterrents to prevent Tug Malta from engaging in practices that violate the HTA.
131. Lastly, the Parties believe that there is no risk of possible coordination as the Notifying Party will not be able to access commercially sensitive information about the downstream activities of competitors via Tug Malta given the nature of harbour towage services. Given that harbour towage services are subject to the HTA and for the reasons explained in paragraph 126, the Office does not envisage post-acquisition access and use of commercially sensitive information by the Parties, which poses significant coordination risks.

## 9. CONCLUSION

132. In view of the above, the Office concludes that the concentration will not lead to a substantial lessening of competition and the involved parties will continue to face strong competition in the relevant markets concerned.

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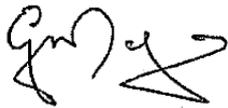
<sup>78</sup> See Articles 6 and 7 of Regulation (EU) 2017/352.

<sup>79</sup> Form CN, p. 33.

## 10. DECISION

133. In light of the above considerations, and in terms of Regulation 6(1)(ii) of the Control of Concentrations Regulations, it is therefore decided:

- a. That the Concentration falls within the scope of the Regulations on Control of Concentrations;
- b. That the Concentration does not raise serious doubts as to its lawfulness; and
- c. Not to oppose the notified Concentration and to declare it is a lawful Concentration.



Mr. Godwin Mangion,  
Director General (Competition)