

# DETERMINATION OF MERGER NOTIFICATION M/22/050 – CLDN/SEATRUCK FERRIES

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## Section 21 of the Competition Act 2002

### Proposed acquisition by CLdN Links SA of sole control of Seatruck Ferries Holding Ltd

Dated: 28 October 2022

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#### Introduction

1. On 21 September 2022, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition whereby CLdN Links SA (“CLdN”) would acquire 100% of the shares in, and thus sole control, of Seatruck Ferries Holding Ltd (“Seatruck Ferries”) (“the Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction will be implemented by means of a Share Purchase Agreement dated 16 September 2022 between CLdN and Clipper Group SA (the “Seller”) (the “SPA”) pursuant to which CLdN will acquire 100% of the shares of, and thus sole control over, Seatruck Ferries from the Seller.

#### The Undertakings Involved

##### The Purchaser – CLdN

3. CLdN is a Société Anonyme De Droit Luxembourgeois (i.e., a public company under Luxembourg law), headquartered in Luxembourg and is active in the provision of: (i) short sea ‘roll-on / roll-off’ (“RoRo”) shipping services (through its affiliate CLdN RoRo SA (“CLdN RoRo”)); (ii) port terminal services (through its affiliate CLdN Ports SA (“CLdN Ports”)), and (iii) multi-modal door-to-door cargo transport (through its affiliate CLdN Cargo SA (“CLdN Cargo”)) which

is focussed on the main CLdN RoRo activity. CLdN is not active in passenger transport services, including roll-on roll-off passenger services ("Ro-Pax").

4. For the financial year ending 31 December 2021, CLdN's turnover was approximately €[...], of which approximately €[...] was generated in the State.

### The Target – Seatruck Ferries

5. Seatruck Ferries is part of the Clipper Group Ltd. (the "Seller group"). The Seller group is a family-held international shipping group dedicated to global dry bulk shipping via its subsidiary Clipper Bulk A/S and RoRo services via Seatruck Ferries.
6. Seatruck Ferries ships three types of traffic: (i) drop units;<sup>1</sup> (ii) mobiles;<sup>2</sup> and, (iii) self-drives.<sup>3</sup> The vast majority of Seatruck Ferries traffic is made up of drop units. Mobiles and self-drive each account for less than [...] % of Seatruck Ferries' traffic. Seatruck Ferries has a limited capacity on its vessels for self-drive freight.
7. For the financial year ending 31 December 2021, Seatruck Ferries turnover was approximately €[...], of which €[...] was generated in the State.

### Rationale for the Proposed Transaction

8. The parties state the following in the notification:

*"The Proposed Transaction is complementary to CLdN's existing European footprint, in that the Target is active where CLdN is not, and the Proposed Acquisition also provides a good expansion opportunity. CLdN also regards the Target's unaccompanied RoRo freight business as a potential growth segment within the wider freight sector. After the Proposed Transaction, CLdN currently intends to operate the Target within its wider shipping group and CLdN would hope that that it can create additional opportunities for the Target and CLdN (through, by way of example, flexibly sharing vessels within an expanded CLdN fleet)."*

### Market Enquiries

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<sup>1</sup> Drop unit freight typically consists of a truck trailer which has been decoupled from the unit at the port of departure. Customers 'drop' the trailer at the port of departure and pick up a trailer from the vessel. The trailers are loaded on and off the vessel with tugging vehicles.

<sup>2</sup> Mobiles include trade cars, vans, and caravans which can drive on and off the vessel. Mobiles can be used to fill gaps on vessels and maximise usage of space and capacity.

<sup>3</sup> Self-drive traffic involves a driver travelling on a vessel with the trailer and cab unit.

9. During the course of its review of the Proposed Transaction, the Commission contacted relevant third parties, including competitors of the parties. This included the issuance of written queries to competitors of the parties and a follow-up telephone call with two competitors.

### Third Party Submissions

10. No third-party submissions were received.
- 11.

### Competitive Analysis

#### Horizontal Overlap

12. Both CLdN and Seatruck Ferries are involved in the provision of freight ferry services to and from the State. Freight ferry services can be categorised as follows:
  - a. RoRo shipping services whereby cargo is driven on and off the vessel either on its own wheels or using a platform vehicle (such as trucks and trailers);
  - b. Ro-Pax passenger services where vessels are designed to carry passengers and freight; and,
  - c. Load-on/Load-off (“LoLo”) services whereby vessels are loaded by means of dock cranes (such as container ships).
13. Specifically, CLdN and Seatruck Ferries are both active in the provision of RoRo freight shipping services to and from the State. RoRo freight shipping services can be divided into two categories:
  - a. Accompanied freight: whereby a driver will accompany the vehicle and freight from the port of departure to the port of destination and beyond (this includes self-drives and some mobile freight); and,
  - b. Unaccompanied freight: whereby a truck trailer which has been decoupled at the port of departure. The driver who has brought the trailer to the port of departure does not accompany the freight on the ferry crossing (this includes drop units and some mobile freight).

14. Seatruck Ferries owns eight vessels and operates RoRo freight shipping services along the following three routes across the Irish Sea:

- a. Liverpool – Dublin;
- b. Dublin – Heysham; and,
- c. Heysham – Warrenpoint.

13. Figure 1 below sets out the routes operated by Seatruck Ferries across the Irish Sea.

Figure 1: Seatruck Ferries routes across the Irish Sea



Source: <https://www.seatruckferries.com>

15. CLdN operates RoRo freight shipping services along the following direct routes to and from the State:

- a. Santander – Dublin;
- b. Rotterdam – Dublin;
- c. Zeebrugge – Dublin; and,
- d. Zeebrugge – Cork.

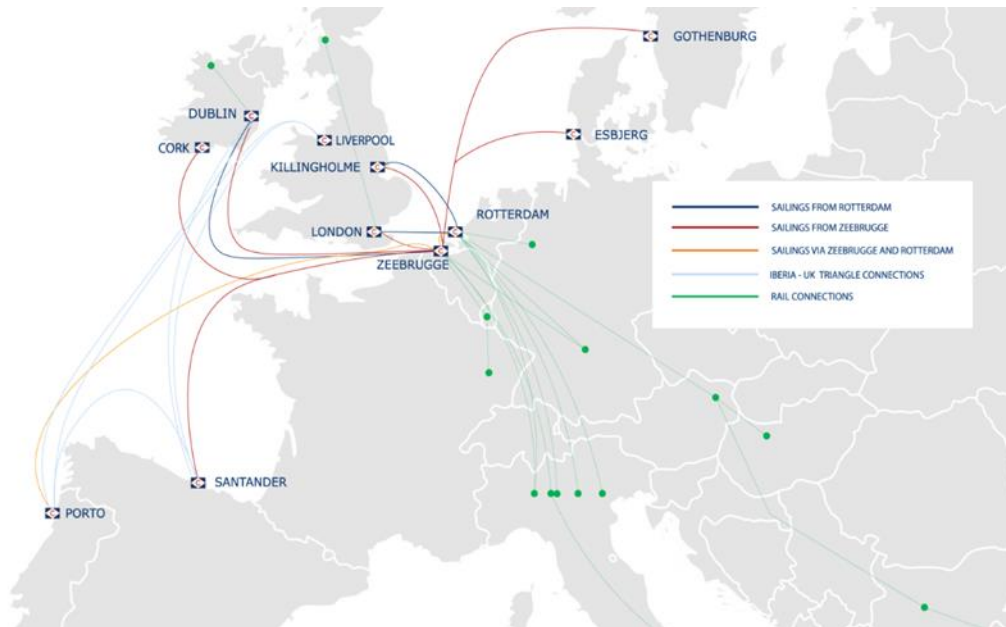
16. CLdN operates RoRo freight shipping services along the following indirect routes to and from the State:

- a. Goteborg – Dublin (via Zeebrugge);
- b. Esbjerg – Cork (via Zeebrugge); and,

c. London – Dublin (via Zeebrugge).

17. Figure 2 below sets out the RoRo freight routes operated by CLdN to and from the State.

Figure 2: CLdN RoRo freight routes to and from the State



Source: CLdN, <https://www.cldnroro.com/european-network>

18. The Parties do not overlap in respect of RoRo freight services to continental Europe since Seatruck Ferries only sails across the Irish Sea to the United Kingdom.

19. Other than as noted below, the parties do not overlap in respect of RoRo freight services across the Irish Sea to the United Kingdom.

20. Although CLdN operates RoRo freight services between Dublin and Santander; and Santander and Liverpool, with the vessel crossing between Dublin and Liverpool, no RoRo freight service is provided by CLdN between Dublin and Liverpool. Specifically, the parties state the following in the notification: “no freight is carried that is loaded in Liverpool destined for Dublin, or vice versa”.<sup>4</sup>

21. In the notification, the parties further state the following:

*“CLdN no longer offers dedicated services on [the Dublin-Liverpool] route. CLdN operated a brief and limited RoRo freight service between Liverpool and Dublin*

<sup>4</sup> See page 10 of the merger notification form.

*(between mid-June 2020 and the end of December 2020) as part of its start-up of the Santander – Dublin and Santander – Liverpool route offering. The Liverpool – Dublin link has been discontinued since December 2020.”<sup>5</sup>*

22. However, for completeness, the Commission has assessed this historic and potential overlap in respect of RoRo services across the Irish Sea to the United Kingdom for the purposes of this determination.

## Relevant Market(s)

### Product market

23. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission’s predecessor, the Competition Authority (the “Authority”), previously examined a transaction involving the provision of ferry freight services on the Irish Sea in *M/10/43 Stena/DFDS*.<sup>6</sup> In respect of that transaction, the Authority distinguished between freight and passenger ferry services but noted that the findings from its market enquiries were inconclusive as regards whether a distinction should be drawn between accompanied and unaccompanied freight. Ultimately, the Authority assessed that transaction with reference to what it considered to be the narrowest relevant product market: total freight on RoRo services, and did not distinguish between accompanied or unaccompanied freight.<sup>7</sup>
24. The European Commission has also assessed transactions concerning the provision of ferry freight services. For example, in *M.6305 DFDS/C.RO Ports/Ålvsborg*,<sup>8</sup> the European Commission considered that the narrowest relevant market in respect of that transaction was short-sea RoRo shipping services (excluding cruise vessels), although it noted some substitutability between pure RoRo and Ro-Pax vessels. The European Commission explicitly excluded LoLo services from this market on the basis of lack of substitutability between RoRo and LoLo resulting from the different dock facilities for loading and unloading which are required on LoLo services (i.e., dock mounted cranes).

<sup>5</sup> See page 10 of the merger notification form.

<sup>6</sup> See the Authority’s determination in *M/10/43 – Stena/DFDS*, which is available here: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-10-043-Stena-DFDS-Public.pdf>

<sup>7</sup> See paragraph 2.8 of the Authority’s determination in *M/10/043 – Stena/DFDS*.

<sup>8</sup> See European Commission’s decision in Case No COMP/M.6305 - DFDS/ C.RO PORTS/ ÅLVSBORG, which is available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m6305\\_20120402\\_20310\\_2447237\\_EN.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m6305_20120402_20310_2447237_EN.pdf)

25. One competitor with whom the Commission engaged with during the course of its review of the Proposed Transaction expressed the view that the distinction which has previously been drawn between RoRo and LoLo vessels may no longer be as strong due to the advent of vessels and other facilities which can accommodate both types of freight. However, with regard to the Proposed Transaction, the Commission's conclusions would be unchanged regardless of any distinction between RoRo and LoLo freight shipping services.
26. The Commission sees no reason to depart from the approach previously used by the Authority and by the European Commission. Therefore, for the purposes of assessing the likely competitive impact of the Proposed Transaction, the Commission considers the relevant product market to be the provision of all RoRo ferry freight services (including both accompanied and unaccompanied freight).

#### *Geographic market*

27. In respect of a potential relevant geographic market, in *M/10/043 Stena/DFDS*, the Authority considered that the Irish Sea could be divided into several “corridors” of traffic. In its determination, the Authority identified the following corridors:<sup>9</sup>
- a. a “*Northern Corridor*” between Northern Ireland and Scotland comprising crossings between:
    - i. Larne and Troon;
    - ii. Larne and Cairnryan; and,
    - iii. Belfast and Stranraer.
  - b. a “*Diagonal Corridor*” between Northern Ireland and Northwest England comprising crossings between:
    - i. Larne and Fleetwood;
    - ii. Larne and Heysham;
    - iii. Belfast and Heysham;
    - iv. Belfast and Liverpool; and,

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<sup>9</sup> See paragraph 2.8 of the Authority's determination in *M/10/43 – Stena/DFDS*.

- v. Warrenpoint and Heysham.
  - c. a “*Long Sea Central Corridor*”, between Dublin Bay, (i.e., Dublin and Dun Laoghaire)<sup>10</sup> and Northwest England comprising crossings between;
    - i. Dublin and Heysham; and,
    - ii. Dublin and Liverpool.
  - d. a “*Short Sea Central Corridor*”, between Dublin Bay (Dublin and Dun Laoghaire) and North Wales comprising crossings between:
    - i. Dublin and Holyhead; and
    - ii. Dun Laoghaire and Holyhead.
  - e. a “*Southern Corridor*”, between Counties Wexford and Cork and Southwest Wales comprising crossings between:
    - i. Rosslare and Fishguard
    - ii. Rosslare and Pembroke; and,
    - iii. Cork and Swansea.
28. Although it ultimately left the precise relevant geographic market open, the Authority examined that transaction with reference to a geographic market consisting of the “*Diagonal Corridor*” in the Irish Sea.
29. In *M.6305 DFDS/C.RO Ports/Alvsborg*,<sup>11</sup> the European Commission also noted that the geographic scope of the relevant market in transactions concerning RoRo freight shipping could be considered to “*comprise overall geographic corridors*”.
30. In this instance, the Commission sees no reason to depart from the approach previously followed by the Authority and the European Commission. Given that the Proposed Transaction only gives rise to a historic and potential overlap between the undertakings involved in respect of the Long Sea Central Corridor (specifically, on the Dublin-Liverpool route), the Commission

<sup>10</sup> Since the Authority’s determination in *M/10/43 – Stena/DFDS*, ferry sailings from Dún Laoghaire have ceased.

<sup>11</sup> See European Commission’s decision in Case No *COMP/M.6305 - DFDS/ C.RO PORTS/ ÁLVSBORG*, which is available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m6305\\_20120402\\_20310\\_2447237\\_EN.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m6305_20120402_20310_2447237_EN.pdf)



will examine the likely competitive effects of the Proposed Transaction with respect to a hypothetical geographic market of the Long Sea Central Corridor in the Irish Sea.

### *Conclusion on relevant product and geographic markets*

31. The Commission considers that the precise product and geographic markets can be left open in the present case. For the purposes of framing its analysis, the Commission has assessed the likely competitive effects of the Proposed Transaction with reference to a hypothetical market for the provision of RoRo ferry freight services (including both accompanied and unaccompanied freight) in the Long Sea Central Corridor in the Irish Sea.

### **Competitive analysis**

#### *Horizontal Overlap*

The provision of RoRo ferry freight services (including both accompanied and unaccompanied freight) in the Long Sea Central Corridor in the Irish Sea

32. The Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the provision of RoRo ferry freight services (including both accompanied and unaccompanied freight) in the Long Sea Central Corridor in the Irish Sea for the reasons set out below.
33. First, as stated at paragraphs 21 and 22 above, the undertakings involved in the Proposed Transaction previously overlapped in respect of the Dublin-Liverpool route. Given that CLdN's activities on this route have ceased, [...] the parties contend that there is no current horizontal overlap between the parties. [...].
34. Second, the parties agree that that when CLdN was active on this route *“the bulk of CLdN's Liverpool – Dublin customers during this brief period in 2020 were tank / container unit customers that could not (operationally) ship with [Seatruck Ferries], as [Seatruck Ferries], handles drop units (not lift units such as containers).”*
35. The parties further explain that:

*“Containers require transfer lifting on / off ship slave equipment on terminal, before being loaded / unloaded on the vessel as RoRo. [Seatruck Ferries] does not offer this service. In order to provide lift services, substantial operational adaptation and*

*investment on land would be required (including, lifting equipment like reach stackers / fork-lifts, and tug-masters / tow tractors strong enough for mafi-roll-units, double stacked with containers able to climb steep internal vessel ramps). Likewise, vessel design would require adaption (e.g., deck height, deck strength for double stacking).*

*Additionally, it should be noted that CLdN's frequency on the historical Liverpool – Dublin route was once or twice weekly, compared to an estimated three sailings a day for the Target (and P&O which also operates on the route)."*

36. Third, the parties explain that CLdN's activities on this historical route were limited in comparison with other firms active on this route, stating that *"CLdN's frequency on the historical Liverpool – Dublin route was once or twice weekly, compared to an estimated three sailings a day for the Target (and P&O which also operates on the route)"*. This is also evident by the fact that CLdN moved [...] units during this time, in comparison to Seatruck Ferries traffic who moved [...] units on this route for the year 2021, and P&O who moved [...] units in 2021.<sup>12</sup>
37. Therefore, it is clear that even when CLdN was active on this corridor that it had [...] activities such that any overlap which existed between the parties was also minimal.
38. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the State.

### *Vertical Relationship*

39. There is no existing vertical relationship between the undertakings involved in the Proposed Transaction.
40. However, two competitors which compete with Seatruck Ferries in the Irish Sea (Stena Line Irish Sea Ferries Limited ("Stena"), and P&O) have a charter agreement for one ferry each with Seatruck Ferries as described below:
  - a. Stena currently charters the Seatruck Panorama vessel. This agreement is set to expire in September 2023.

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<sup>12</sup> Figures sourced from page 39, Seatruck Ferries confidential internal memorandum

- b. P&O charters the Clipper Pennant vessel. This agreement is set to expire at the end of 2022.
41. During the review of the Proposed Transaction, the Commission engaged with each of Stena and P&O. Stena did not express any concerns regarding the impact of the Proposed Transaction on this arrangement. Similarly, P&O did not express any concerns regarding the impact of the Proposed Transaction on its arrangement with Seatruck Ferries.
42. The Commission considers that vertical foreclosure concerns (specifically input foreclosure) concerns are unlikely to arise in respect of the Proposed Transaction for the following reasons:
43. First, the Commission considers that there are other undertakings from which Stena and P&O could potentially charter vessels following implementation of the Proposed Transaction and therefore CLdN would not have the ability to successfully implement an input foreclosure strategy.
44. Second, there are alternatives available to RoRo ferry operators such as P&O and Stena, such as utilising another vessel in lieu of the chartered vessel such as using other existing vessels in its fleet or through purchasing a new vessel.
45. In light of the above, the Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in the State.

### Conclusion on competitive analysis

46. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

47. The parties state in the notification that Clause 11 of the SPA contains restrictive covenants including non-compete and non-solicitation obligations which the parties consider to be directly related and necessary to the implementation of the Proposed Transaction.
48. The Commission notes that Clauses 11.1(a) and 11.1(c) of the SPA contain non-compete and non-solicitation obligations on the Seller. The duration of these non-compete and non-solicitation obligations, a period of [...], does not exceed the maximum duration acceptable to

the Commission.<sup>13</sup> The Commission considers these restrictive obligations contained in Clauses 11.1(a) and 11.1(c) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

49. The Commission notes that Clause 11.1(b) of the SPA contains non-solicitation obligations on the Seller. The Commission considers that the application of those restrictive obligations to [...], goes beyond the scope of what is considered to be acceptable to the Commission. The Commission is therefore of the view that Clause 11.1(b) of the SPA is not directly related and necessary to the implementation of the Proposed Transaction and will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

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<sup>13</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)

## Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby CLdN Links SA would acquire 100% of the shares in, and thus sole control, of Seatruck Ferries Holding Ltd, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**