



# DETERMINATION OF MERGER NOTIFICATION M/23/001 – DFDS / MCBURNEY TRANSPORT

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## Section 21 of the Competition Act 2002

**Proposed acquisition by DFDS A/S of McBurney Transport Group Limited, Bondelivery NI Limited, McBurney Refrigeration (Ireland) Limited and Bond Delivery Ireland Limited**

**Dated 22 February 2023**

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### Introduction

1. On 13 January 2023, 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 DFDS A/S (“DFDS”) would acquire the entire issued share capital, and thus sole control, of each of McBurney Transport Group Limited, Bondelivery NI Limited, McBurney Refrigeration (Ireland) Limited and Bond Delivery Ireland Limited (together “McBurney Transport”) (the “Proposed Transaction”).

### The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a Share Purchase Agreement (“SPA”) dated 29 December 2022 between (i) DFDS and (ii) McBurney Holdings Limited and four private individuals, namely [...] (together, the “Sellers”). Under the terms of the SPA, DFDS will acquire the entire issued share capital, and thus sole control, of each of the companies comprising McBurney Transport from the Sellers.



## The Undertakings Involved

### The Acquirer – DFDS

3. DFDS is an international shipping and logistics company headquartered in Copenhagen, Denmark and listed on the Nasdaq Copenhagen stock exchange. DFDS operates through two divisions:
  - the ferry division, which operates a network of ferry routes across Europe and provides freight and passenger transport services and port terminal services; and
  - the logistics division, which provides full-load and part-load freight transportation services, warehousing services and logistics services.
4. DFDS is active in approximately twenty countries across Europe, including Ireland. In the State, DFDS provides ferry services, freight forwarding services,<sup>1</sup> inland transportation services<sup>2</sup> and warehousing services, in addition to supply chain management and customs clearance services.<sup>3</sup> DFDS operates ferry and shipping routes between several Irish ports and the Netherlands, France and Spain. DFDS also operates warehouses in Cavan, Tipperary and Belfast.
5. DFDS recently acquired Lucey Transport Logistics Limited (“Lucey Transport”), which acquisition was cleared by the Commission in September 2022.<sup>4</sup> Lucey Transport provides inland transportation on the island of Ireland and warehousing services to customers in the beverage, confectionary, fast-moving consumer goods and packaging sectors as well as freight forwarding services.
6. For the financial year ending 31 December 2021, DFDS’s turnover was approximately €2.4 billion, of which approximately €[...] was generated in the State.<sup>5</sup>

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<sup>1</sup> The term ‘freight forwarding’ is generally used to refer to the organisation of the transportation of goods on behalf of customers.

<sup>2</sup> The inland transportation of goods on behalf of customers.

<sup>3</sup> These services are provided in connection with freight forwarding services and inland transportation services.

<sup>4</sup> DFDS acquired sole control of Lucey Transport in 2022. This acquisition of sole control was approved by the Commission on 6 September 2022. See the Commission’s determination in M/22/035 *DFDS/Lucey Transport*, accessible at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2022/08/Public-Determination-M-22-035-DFDS-Lucey.pdf>

<sup>5</sup> The revenues of Lucey Transport for its financial year ending 30 September 2021 have been included in DFDS’s group revenue for its financial year ending 31 December 2021.



### The Target – McBurney Transport

7. As set out above, McBurney Transport comprises four private limited companies; two of these are registered in the State (i.e. McBurney Refrigeration (Ireland) Limited and Bond Delivery Ireland Limited) and the other two are registered in Northern Ireland (i.e. McBurney Transport Group Limited and Bondelivery NI Limited). McBurney Transport provides a range of inland transportation, distribution and warehousing services to businesses across the State and the UK.
8. McBurney Transport's transportation services include the operation of refrigerated trucks. McBurney Transport also provides ancillary services such as customs clearance and supply chain management, which are often provided to customers alongside its core transportation services.
9. For the financial year ending 31 December 2021, McBurney Transport's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

### Rationale for the Proposed Transaction

10. The parties state the following in the notification:

*“From DFDS's perspective, the Proposed Transaction enhances the scope of its customer offerings in relation to transport and logistics services in and between the UK and Ireland, providing further opportunities to connect its UK and Irish services with the existing DFDS network in the rest of Europe.*

*From the perspective of [McBurney Transport's] current shareholders, the Proposed Transaction provides [McBurney Transport] with new development opportunities and wider distribution coverage via access to DFDS's existing network to the benefit of customers.”*

### Third-Party Submissions

11. No third-party submission was received.



## Competitive Analysis

### Horizontal Overlap

12. DFDS and McBurney Transport are both active in the provision of inland transportation and warehousing services in the State. This gives rise to a horizontal overlap between the activities of the parties in the State.

### Relevant Markets

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has previously considered the provision of inland transportation of goods and the provision of warehousing in the State in its determination in *M/22/035 – DFDS / Lucey Transport*.<sup>6</sup> In that determination, the Commission, while ultimately leaving the precise market definition open, assessed the competitive impact of the proposed transaction by reference to three potential relevant markets. Two of these are also relevant to the Proposed Transaction, namely (i) the provision of inland transportation of goods on behalf of customers in the State and (ii) the provision of warehousing in the State.
14. In this instance, it is not necessary for the Commission to define the precise relevant product markets because doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. For the purposes of its horizontal competitive assessment, the Commission has found no reason to depart from its previous approach in *M/22/035 – DFDS / Lucey Transport* and, accordingly, the Commission has assessed the Proposed Transaction by reference to the potential relevant product markets for:
  - the provision of inland transportation of goods on behalf of customers; and
  - the provision of warehousing.
15. In its determination in *M/22/035 – DFDS / Lucey Transport*, the Commission, while ultimately leaving the precise geographic market definition open, assessed the competitive impact of the proposed transaction by reference to the State.

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<sup>6</sup> Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/08/Public-Determination-M-22-035-DFDS-Lucey.pdf>



16. In this instance, it is not necessary for the Commission to define the precise relevant geographic markets because doing so will not alter the Commission’s assessment of the competitive effects of the Proposed Transaction. Both parties are active in the State and the Commission has not identified any narrower local area issues in this case. Considering this, and following the approach previously adopted by the Commission in *M/22/035 – DFDS / Lucey Transport*, the Commission has assessed the likely impact of the Proposed Transaction with respect to the State.

### Competitive Assessment

#### The provision of inland transportation on behalf of customers in the State

17. In the notification, the parties provided market share estimates in the provision of inland transportation<sup>7</sup> in the State based on internal revenue data and a third-party report (the “IBIS Road Transport Report”)<sup>8</sup>, as shown in Table 1 below.

*Table 1: Estimated shares in the provision of inland transportation in the State in 2021*

Provider	By value	
	Revenue (EUR millions)	Estimated Share (%)
DFDS	[...]	[0-5] %
McBurney Transport	[...]	[0-5] %
<b>Combined</b>	[...]	<b>[0-5] %</b>
Kuehne & Nagel (Ireland) Limited	[...]	[0-5]%
Schenker (Ireland) Limited	[...]	[0-5]%
DHL Supply Chain (Ireland) Limited	[...]	[0-5]%

<sup>7</sup> In the notification, the parties use the terms ‘road transportation services’ and ‘road transport services’. They note that road transport services are also known as ‘inland transportation’.

<sup>8</sup> John Griffin, “Industry Report H49.410IE: Freight Road Transport in Ireland” (IBISWorld 2022).



Wincanton Ireland Limited	[...]	[0-5]%
Others	[...]	86.7%
<b>TOTAL</b>	[...]	<b>100.0%</b>

Source: IBIS Road Transport Report and information provided by the parties in the notification

18. As shown in Table 1 above, DFDS would have an estimated share of only [0-5]% in the provision of inland transportation of goods on behalf of customers in the State following the implementation of the Proposed Transaction. Furthermore, alternative suppliers, such as Kuehne & Nagel (Ireland) Limited, Schenker (Ireland) Limited and DHL Supply Chain (Ireland) Limited, will continue to exert a competitive constraint on DFDS following the implementation of the Proposed Transaction.
19. The market share estimates provided by the parties list “Others” as holding an estimated 86.7% share in the provision of inland transportation of goods on behalf of customers in the State. The IBIS Road Transport Report states that “the industry is dominated by microbusinesses that consist of a single owner-driver or have only one or two employees”.<sup>9</sup> It is unclear to the Commission whether all providers included under the heading “Other” exercise a competitive constraint on the parties, on account of the small size and dispersed nature of many of them. Consequently, out of an abundance of caution, the Commission has also conducted an analysis of the provision of inland transportation of goods on behalf of customers in the State by reference to only the parties and their four principal competitors, as indicated by the parties in the notification. Table 2 shows the estimated shares when such an approach is taken.

Table 2: Estimated shares in the provision of inland transportation in the State in 2021

Provider	Revenue (EUR millions)	Estimated Share (%)
<b>DFDS</b>	[...]	[15-20] %
<b>McBurney Transport</b>	[...]	[0-5] %
<b>Combined</b>	[...]	[20-25] %
<b>Kuehne &amp; Nagel (Ireland) Limited</b>	[...]	[35-40]%

<sup>9</sup> IBIS Road Transport Report, p.21.



<b>Schenker (Ireland) Limited</b>	[...]	[20-25]%
<b>DHL Supply Chain (Ireland) Limited</b>	[...]	[15-20]%
<b>Wincanton Ireland Limited</b>	[...]	[0-5]%
<b>TOTAL</b>	[...]	100%

Source: IBIS Road Transport Report and information provided by the parties in the notification

20. As shown in Table 2 above, on the basis of this analysis, DFDS would have an estimated [20-25]% share in the provision of inland transportation of goods on behalf of customers in the State following the implementation of the Proposed Transaction. Furthermore, alternative suppliers that represent a similar or larger estimated share in the provision of inland transportation of goods on behalf of customers in the State, such as Kuehne & Nagel (Ireland) Limited, Schenker (Ireland) Limited and DHL Supply Chain (Ireland) Limited, would continue to exert a competitive constraint on DFDS following the implementation of the Proposed Transaction. Lastly, the above approach does not include estimated shares for certain key competitors, such as CLdN Links SA, Nolan Transport Limited and Perennial Freight Limited. If these competitors were included, DFDS's share following the implementation of the Proposed Transaction on the basis of this analysis would be less than [20-25]%.
21. The parties state in the notification that providers of inland transportation services may sub-contract the provision of inland transportation services to a third party, often on an ad-hoc basis. Following engagement with the parties, the Commission has not identified an 'upstream' and 'downstream' market for sub-contracting these services. Providers of inland transportation services appear to sub-contract to other providers active at the same level of the supply chain, and do so on an ad-hoc basis. Consequently, the Commission has not assessed the practice of sub-contracting these services separately from its horizontal competitive assessment above, as the Commission considers that, for the purposes of its assessment of the competitive effects of the Proposed Transaction, providers sub-contracting these services can be regarded as equivalent to any other customer of inland transportation services.



22. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise horizontal competition concerns in the provision of inland transportation of goods on behalf of customers in the State.

The provision of warehousing in the State

23. The parties provided market share estimates in the provision of warehousing in the State based on internal revenue data and a third-party report (the “IBIS Warehousing Report”),<sup>10</sup> as shown in Table 3 below.

Table 3: Estimated shares in the provision of warehousing in the State in 2021

Provider	By value	
	Revenue (EUR millions)	Estimated Share (%)
DFDS	[...]	[0-5] %
McBurney Transport	[...]	[0-5] %
<b>Combined</b>	[...]	<b>[0-5] %</b>
DHL Supply Chain (Ireland) Limited	[...]	[0-5]%
Store-All Logistics Limited	[...]	[0-5]%
Wincanton Ireland Limited	[...]	[0-5]%
Others	[...]	92.8%
<b>TOTAL</b>	[...]	<b>100.0%</b>

Source: IBIS Warehousing Report and information provided by the parties in the notification

24. As shown in Table 3 above, DFDS would have an estimated share of only [0-5]% in the provision of warehousing in the State following the implementation of the Proposed Transaction. Furthermore, alternative suppliers, such as DHL Supply Chain (Ireland) Limited,

<sup>10</sup> Mia Fraser, “Industry Report H52.100IE: Warehousing & Storage in Ireland” (IBISWorld 2022).





Store-All Logistics Limited and Wincanton Ireland Limited, will continue to exert a competitive constraint on DFDS following the implementation of the Proposed Transaction.

25. The market share estimates provided by the parties list “Others” as holding an estimated 92.8% share in the provision of warehousing in the State. The IBIS Warehousing Report states that the average provider is estimated to have fewer than 12 employees.<sup>11</sup> The IBIS Warehousing Report also states that “[l]arger firms generally provide services to businesses operating in a diverse range of industries, while smaller players focus on a narrower market segment”<sup>12</sup> and that “larger players operate have [sic] a wider geographical presence, compared with smaller firms that typically tend to provide services in a single region often managing one site”.<sup>13</sup> It is unclear to the Commission whether all providers included under the heading “Other” exercise a competitive constraint on the parties on account of the small size and dispersed nature of many of them. Consequently, out of an abundance of caution, the Commission has also conducted an analysis of the provision of warehousing in the State by reference to only the parties and their three principal competitors, as indicated by the parties in the notification. Table 4 shows the estimated shares when such an approach is taken.

Table 4: Estimated shares in the provision of warehousing in the State in 2021

Provider	Revenue (EUR millions)	Estimated Share (%)
<b>DFDS</b>	[...]	[15-20] %
<b>McBurney Transport</b>	[...]	[0-5] %
<b>Combined</b>	[...]	[20-25] %
<b>DHL Supply Chain (Ireland) Limited</b>	[...]	[50-55]%
<b>Store-All Logistics Limited</b>	[...]	[15-20]%
<b>Wincanton Ireland Limited</b>	[...]	[5-10]%
<b>TOTAL</b>	[...]	100%

<sup>11</sup> IBIS Warehousing Report, p. 20.

<sup>12</sup> IBIS Warehousing Report, p. 20.

<sup>13</sup> IBIS Warehousing Report, p. 20.



*Source: IBIS Warehousing Report and information provided by the parties in the notification*

26. As shown in Table 4, on the basis of this analysis, DFDS would have an estimated [20-25]% share in the provision of warehousing in the State following the implementation of the Proposed Transaction. Furthermore, alternative suppliers that represent a similar or larger estimated share in the provision of warehousing in the State, such as DHL Supply Chain (Ireland) Limited and Store-All Logistics Limited, would continue to exert a competitive constraint on DFDS following the implementation of the Proposed Transaction. Lastly, the above approach does not include estimated shares for certain key competitors, such as Primeline Logistics Unlimited Company, PRL Logistics Unlimited Company and Masterlink Distribution Limited.<sup>14</sup> If these competitors were included, DFDS's share following the implementation of the Proposed Transaction on the basis of this analysis would be less than [20-25]%.
27. The parties state in the notification that providers of warehousing may sub-contract the provision of warehousing to a third party, often on an ad-hoc basis. Following engagement with the parties, the Commission has not identified an 'upstream' and 'downstream' market for sub-contracting these services. Providers of warehousing services appear to sub-contract to other providers active at the same level of the supply chain, and do so on an ad-hoc basis. Consequently, the Commission has not assessed the practice of sub-contracting the provision of warehousing separately from its horizontal competitive assessment above, as the Commission considers that, for the purposes of its assessment of the competitive effects of the Proposed Transaction, providers sub-contracting the provision of warehousing can be regarded as equivalent to any other customer of warehousing services.
28. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise horizontal competition concerns in relation to the provision of warehousing in the State.

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<sup>14</sup> This information was not provided by the parties.



### Vertical Relationship

29. There is an existing vertical relationship between the parties, as DFDS provides RoRo<sup>15</sup> ferry freight services (including both accompanied and unaccompanied freight) to McBurney Transport.

30. DFDS provides RoRo ferry freight services between locations in the State, the Netherlands, France and Spain. McBurney Transport currently sources RoRo ferry freight services from various providers for transport between several ports in Northern Ireland, the State and the UK, as well as between the State and mainland Europe.<sup>16</sup> This vertical relationship is unlikely to give rise to vertical foreclosure concerns for the following reasons:

- In relation to input foreclosure, while McBurney Transport does source a very small amount of RoRo ferry freight services from DFDS on the Rosslare-Dunkirk route, DFDS does not provide RoRo ferry freight services on the majority of the routes used by McBurney Transport, namely (i) between ports in Northern Ireland (Larne, Belfast and Warrenpoint) and Great Britain (Cairnryan, Heysham and Liverpool); and (ii) between the State (Dublin port) and Great Britain (Heysham, Holyhead and Liverpool). For these reasons, DFDS will have neither the incentive nor ability to engage in input foreclosure in the provision of RoRo ferry freight services following the implementation of the Proposed Transaction.
- In relation to customer foreclosure, as stated above, while McBurney Transport sources a limited amount of RoRo ferry freight services from DFDS on a single route, DFDS does not provide RoRo ferry freight services on the majority of the routes used by McBurney Transport. McBurney Transport primarily sources these services from P & O Ferries (Ireland) Limited, Stena Line Ireland Limited, Seatruck Ferries (Ireland) Limited and Irish Ferries Limited, and will continue to do so following the implementation of the Proposed Transaction, given DFDS's absence from the relevant routes.

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<sup>15</sup> 'RoRo ferry freight services' refers to 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).

<sup>16</sup> McBurney Transport obtained capacity on [...] sailings between ports in the State and mainland Europe in 2021, compared to more than 30,000 sailings between ports in the State and the UK in the same period.



31. Consequently, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion of Competitive Analysis**

32. 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**

33. No ancillary restraints were notified.



## **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 DFDS A/S would acquire the entire issued share capital, and thus sole control, of each of McBurney Transport Group Limited, Bondelivery NI Limited, McBurney Refrigeration (Ireland) Limited and Bond Delivery Ireland Limited, 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**