Submission to Public Consultation for Review of National Ports Policy

Department of Transport

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Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí
Competition and Consumer Protection Commission

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Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to respond to the Department of Transport's (DoT) Review of the National Ports Policy 2013 Issues Paper. The CCPC acknowledges the critical importance of goods trade through ports for Irish economic growth and development. It is therefore vital that competition in the ports sector is working well because competition keeps prices and costs down, drives efficiency and service quality, all of which help determine national competitiveness[1].

The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition, and the CCPC's submission reflects this mandate.

In providing a response, the CCPC builds on the comprehensive market study of the Irish ports sector, published by its predecessor organization, the Competition Authority (TCA), in 2013[2]. The study found that the characteristics of the Irish ports sector are such that competition between ports (i.e., inter-port competition) appears limited. This means that ensuring that competition within a port (i.e., intra-port competition) works well is especially important. In the Irish context, it is particularly important that there is a healthy competitive dynamic within Dublin Port, given its preeminent market position.

The Irish ports sector has demonstrated its agility in adapting to the post-Brexit landscape, market forces having facilitated the reconfiguration of supply chains, notably the significantly reduced use by hauliers of the UK Landbridge, with increases seen in direct RoRo[3] and LoLo[4] traffic to mainland EU ports. However, the CCPC is concerned that concentration in the Irish ports sector has continued to increase since 2013 across the most important shipping modes, while several key recommendations from the 2013

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[1] Sanchez, R.J. et al (2003), "Port Efficiency and International Trade", 'Maritime Economics and Logistics', Volume 5(2), accessed at: [EconPapers: Port Efficiency and International Trade: Port Efficiency as a Determinant of Maritime Transport Costs (repec.org)].

[2] The full report can be accessed at: [Competition in the Irish Ports Sector, Competition Authority, 2013].

[3] Roll-on/roll-off ships are cargo ships designed to carry wheeled, self-propelled cargo such as trucks, cars and other such vehicles. This includes trucks designed to carry unitised containers. Vehicles may travel either accompanied by their driver or unaccompanied.

[4] Lift-on/lift-off ships are cargo ships designed to carry cargo that is loaded and unloaded using cranes, whether on-board or dockside. This cargo typically takes the form of unitised containers.

market study aimed at stimulating competition within Dublin Port have not been implemented, nor appropriate alternatives identified.

The CCPC has made the following recommendations in this response to promote competition and the consumer interest, as set out in more detail below:

Recommendations remaining relevant – and adapted, as appropriate – from the 2013 market study:

1. Dublin Port Company should take further steps to reduce the exceptionally long duration of the LoLo terminal leases of two incumbent operators in order to address their anti-competitive impact. For the same reason, the clause which appears to allow the repeated renewal of the licence of the third Lo-Lo terminal operator should be amended to facilitate new entry. Future terminal leases and licences should be awarded for shorter periods on a fair, reasonable and non-discriminatory basis and should include efficiency incentives that are enforced by Dublin Port Company.

2. In Dublin Port, at least two new general stevedore licences should be issued by Dublin Port Company - one on the Northside and one on the Southside of the port. As stated in Recommendation 1, the clause in the existing stevedore licences which appears to allow the repeated renewal of the existing stevedore licence at the licensee's option and on identical terms should be amended.

3. DoT should incorporate the promotion of effective intra-port competition as a key objective for port authorities in the mandates to Board Members and Directors upon appointment to port companies.

4. While public investment in port-related infrastructure may be justified for a number of reasons, it is unlikely to be warranted exclusively on competition grounds. Investment in ports' road connectivity, in line with NDP 2021-2030, and rail connectivity, in line with the All-island Strategic Rail Review, is paramount.

5. Building on efforts to introduce a performance measurement system for Ports of National Significance (Tier 1 and Tier 2) by 2016, DoT should prioritise the

collection and development for publication of new, comparable data metrics and port performance measures.

New recommendations:

6. Facilitating a competitive and effective market for maritime transport services must remain a core objective of National Ports Policy going forward.

7. Long-range planning of port capacity to 2040 and beyond, including any decision on establishing a new port, should take into account the possible impact on competition both between and within ports.

8. The Department of Transport should assist port companies and other relevant private sector undertakings in accessing EU funding for port infrastructure, with due regard for the competitive dynamic in the ports sector.

9. Any policy shift away from the current exclusion of exchequer funding for port investment must ensure strong safeguards to protect the level playing field within the ports sector.

10. In the absence of establishing an independent port company, or contracting a third party, to manage Rosslare Europort, Iarnród Éireann should be tasked with preparing a long-term action plan to explore further possibilities for private sector investment, within given legal constraints, to ensure it can fulfil its full potential in the post-Brexit landscape.

Competition in the Irish Ports Sector, 2013

The CCPC's predecessor organization, the Competition Authority (TCA), published a comprehensive market study in 2013, *Competition in the Irish Ports Sector*. Acknowledging Ireland's dependence on goods trade through ports for future economic success, the study examined the level of inter-port competition (competition between ports) and intra-port competition (competition within ports) for different cargo types. The main focus was on unitised cargo (i.e., Lo-Lo and Ro-Ro cargo in containers) and bulk cargo (e.g., liquid fuel, coal, fertiliser and animal feed), given that the former dominated exports while the latter dominated imports.

The study was based on over 40 meetings with stakeholders, a public consultation process, Requests for Information (RFIs), quantitative analysis and reference to the economic literature. The key findings of the study were as follows:

- The characteristics of the Irish ports sector are such that competition between ports (i.e., inter-port competition) appears limited.
- Ensuring that competition within a port (i.e., intra-port competition) works well is especially important.
- The leasing and licensing arrangements for Lo-Lo terminal operators in Dublin Port may have the effect of restricting competition.
- The current licensing arrangements for general stevedore services in Dublin Port also appear to have the effect of restricting competition.
- There is a lack of data collection and performance measures within the Irish ports sector.

Based on these findings, the study made six key recommendations. Of these, one recommendation can be considered to have been fully implemented on a sustained basis, and is therefore no longer of relevance going forward. With respect to port closure and amalgamation, the recommendation that DoT "should be required to seek the views of the Competition Authority" (now CCPC) where a merger is being proposed was deemed to have been satisfactorily addressed when DoT officials agreed to include a requirement that they should seek formal advice regarding mergers from the Commission as part of their formal procedures.

However, five of the six recommendations contained in the 2013 market study do not appear to have been fully and satisfactorily implemented in the interim or, given developments in the sector, remain relevant going forward. These recommendations, their rationale, and developments of relevance since 2013 are detailed below, while the recommendations are updated and adapted to current circumstances where necessary.

Leasing and licensing of Dublin Lo-Lo terminals

Dublin Port has three competing, privately-operated container terminals. Two of these operate on very long-term leases while the third lease appears to allow repeated renewal on identical terms every 20 years[5]. The 2013 market study recommended that Dublin Port Company (DPC) "take further steps to reduce the exceptionally long duration of the LoLo terminal leases of two incumbent operators in order to address their anti-competitive impact" and to amend the clause that allows the lease of the third operator to be repeatedly renewed to facilitate new entry. It does not appear that the terms of these leases have been substantially modified in the interim.

The *DPC Franchise Policy* was published in May 2014[6]. The aim of the Franchise Policy is to maximise the utilisation of land and make Dublin Port work better for port users[7]. Although the Franchise Policy does not explicitly acknowledge that the leasing and licensing arrangements are having harmful effects on competition, it nonetheless sets out DPC's aspiration that container terminal franchises would be of fixed term related to the economic life of the terminal's cargo handling equipment (typically 20-30 years), to be followed by an open tender competition to determine renewal, while DPC would control dwell times and free time given for containers on the terminal. While these aspirations are well-aligned with the recommendation from the 2013 market study, it does not appear to

[5] This lease was renewed in 2014.
[6] The full franchise policy can be accessed at: https://www.dublinport.ie/wp-content/uploads/2019/06/Dublin-Port-Franchise-Policy-Doc.pdf
[7] Dublin Port's land is utilised by a variety of mostly private sector companies on the basis of a number of types of commercial agreements. These include leases, licences, jetty agreements and, in some cases, long-standing historical arrangements which are not formalised in writing. DPC groups all such agreements as 'franchises'.

have had any impact on the prevailing competitive dynamic given that it has not impacted on the three incumbents.

A new inland container depot was opened at Dublin Inland Port in December 2023 to help ease the capacity constraints at DPC's quayside terminals. This was the second such licence awarded at Dublin Port, following that issued to Dublin Ferryport Terminals (DFT) in October 2021. While the new operation licence was granted to CGM Inland Services (CGIS), a leading global provider of such services, this project is a joint venture with Doyle Shipping Group (DSG)[8], which already holds the long-term, renewable license for general stevedoring and LoLo terminal operation at Dublin Port. DFT holds one of the other long-term LoLo terminal franchises. This may thus represent a missed opportunity to further increase intra-port competition.

In 2021, DPC announced the third and final phase[9] of its infrastructure development plan set out in its 2040 Masterplan[10]. Amongst other elements, this phase envisages construction of the largest container terminal in the country with an annual throughput capacity of 360,000 containers (612,000 TEU). It is critically important that the lease for this new terminal reflects the aspirations for contract design set out in the Franchise Policy as well as in the recommendation below. Construction is due to commence in 2026 with a view to completion during the 2030-2035 period.

Given that the recommendation from the 2013 market study has not been implemented in the interim vis-à-vis incumbent container terminal operators, while a new container terminal is on the horizon, all elements of the 2013 recommendation remain relevant[11].

Recommendation 1: Dublin Port Company should take further steps to reduce the exceptionally long duration of the LoLo terminal leases of two incumbent operators in order to address their anti-competitive impact. For the same reason, the clause which appears to allow the repeated renewal of the licence of the third Lo-Lo terminal operator should be amended to facilitate new entry. Future terminal leases and licences should

[8] 'Dublin Port issues licence to French container group at its logistics hub', The Irish Times (18 Dec 2023). Accessed at: Dublin Port issues licence to French container group at its logistics hub

[9] The development plan can be accessed at: https://www.dublinport.ie/masterplan/3fm/

[10] DPC's 2040 Masterplan was published in 2012 and can be accessed at: Masterplan 2012-2040 - Dublin Port. Its first mid-term review was published in 2018 and can be accessed at: DPC_Masterplan_2040_Reviewed_2018.pdf (dublinport.ie).

[11] See Section 2 of the CCPC response for a fuller analysis of market concentration.

be awarded for shorter periods on a fair, reasonable and non-discriminatory basis and should include efficiency incentives that are enforced by Dublin Port Company.

Stevedore licensing

Dublin Port currently has two competing general stevedore licences in operation that allow for the direct provision of stevedore services in the common user quays on the Northside and Southside of the port where most dry bulk handling takes place. The need to provide cranes and warehousing means that one stevedore service provider generally provides stevedore services on the Northside while the other provides stevedore services on the Southside of the port. These companies therefore enjoy effective monopolies in their respective licensed areas[12].

The 2013 market study concluded that the current licensing system appears overly restrictive and could be limiting competition from more efficient stevedores. It further noted that "if Dublin Port were to experience a spike in bulk tonnage, the incumbents could charge a higher price and offer a lower quality of service than would be the case in the presence of robust competition where there is a threat of entry." Indeed, the DPC itself noted in 2014 that "as volumes grow, the pressure on land and berths will increase and the opportunities for general stevedores will become more constrained"[13]. Between 2013 and 2022, bulk tonnage throughput at Dublin Port increased by 23%[14].

In its 2014 *DPC Franchise Policy*[15], the company set out the two circumstances in which it could envisage issuing new general stevedoring licences: "Firstly, where an operator made a robust business case, DPC would agree the terms of the new franchise by direct negotiation. Secondly, where market conditions clearly indicate that to issue a new licence would improve the competitiveness of the port, DPC would issue a new licence on the basis of an open tender process."

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[12] See: Competition in the Irish Ports Sector, Competition Authority, 2013.
[13] 'Franchise Policy', Dublin Port Company (2014). Accessed at: https://www.dublinport.ie/wp-content/uploads/2019/06/Dublin-Port-Franchise-Policy-Doc.pdf
[14] CCPC calculations using IMDO data.
[15] 'Franchise Policy', Dublin Port Company(2014). Accessed at: https://www.dublinport.ie/wp-content/uploads/2019/06/Dublin-Port-Franchise-Policy-Doc.pdf

In November 2014, DPC granted Irish cement producer Ecocem a new self-handling licence. This allows the company to handle its cargo in a more cost-effective manner. Previously, Ecocem was required to hire one of the two licensed general stevedores to handle its cargo[16]. The scope for further such self-handling licenses should be explored, on a demand-led basis, to further raise the level of competition facing incumbent terminal operators.

While introduction of the first self-handling licence represented a step in the right direction, there has otherwise been no change in the competitive dynamic with respect to the provision of stevedore services in Dublin Port since 2013. Furthermore, the reduction in surplus capacity as throughput has increased may have served to reduce competitive pressures.

Regulation (EU) No 352/2017, the 'Port Services Regulation', entered force on 24 March 2017, with Member State implementation required by 24 March 2019. The Regulation aims to put in place a framework to ensure openness, transparency and competition with regard to market access to port services. It applies *inter alia* to Dublin Port, where intra-port competition is deemed particularly important. Under the Regulation, a port authority can limit the number of port service providers for one or more specified reasons, including the scarcity of space, characteristics of the port infrastructure or the nature of the port traffic, and the need to ensure safe, secure and environmentally sustainable port operations. However, cargo handling, i.e. stevedoring, is exempted from coverage by the relevant Article (6) of the Regulation[17].

Recommendation 2: In Dublin Port, at least two new general stevedore licences should be issued by Dublin Port Company - one on the Northside and one on the Southside of the port. As stated in Recommendation 1, the clause in the existing stevedore licences which appears to allow the repeated renewal of the existing stevedore licence at the licensee's option and on identical terms should be reviewed.

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[16] 'First self=stevedoring licence for Dublin Port', The Irish Times (1 Dec 2014). Accessed at: http://www.irishtimes.com/business/retail-and-services/first-self-stevedoring-licence-for-dublin-port-1.2020493

[17] See 'Marine Notice No. 07, 2019', Department of Transport, Tourism and Sport (2019). Accessed at: MN 07 of 2019 Port Services Regulation.pdf (imdo.ie)

CCPC

Modify existing ownership and management models

During stakeholder meetings in preparation of the 2013 market study, the willingness of management personnel to recognise and maximise the benefits of competition - particularly intra-port competition - was identified as being of greater importance than the ownership or management model in place[18]. The study thus recommended that DoT should mandate the promotion of effective intra-port competition as a key objective for port authorities that is imposed by regulation or legislation, as appropriate. Subsequent to publication of the market study, consultations with DoT have suggested that this objective could most appropriately be achieved through insertion in Ministerial mandates given to Board Members and Directors upon appointment rather than in legislation[19].

Recommendation 3: DoT should incorporate the promotion of effective intra-port competition as a key objective for port authorities in the mandates to Board Members and Directors upon appointment to port companies.

Government investment in port-related road and rail infrastructure

The 2013 market study highlighted the importance of quality internal connectivity to maximise inter-port competition. In particular, the quality of the national road and rail network can affect competition by encouraging demand-side substitution among port users and customers. Thus, while enhancing connectivity is important for all ports, improving the relative degree of connectivity of ports other than Dublin Port through

[18] See: Competition in the Irish Ports Sector, Competition Authority, 2013.
[19] Currently, the mandate requests directors to pay particular personal attention to: 1) Being aware and supportive of National Ports Policy and giving due regard to it in the Board's decision making process; and 2) Participating on the Board to ensure that appropriate commercial decisions are made and ensuring that the consideration of future development plans of the Port Company are carried out in a prudent fashion

judicious prioritisation can have the effect of stimulating inter-port competition vis-à-vis the port with a pre-eminent market position.

As noted in the National Development Plan 2021-2030[20] (NDP), "strengthening access routes to Ireland's ports through investment to upgrade and enhance the road and rail transport network to improve journey times is and remains a government priority." Moreover, the draft All-island Strategic Rail Review[21], published in July 2023, made recommendations to improve rail connectivity at Dublin, Foynes, Waterford, Cork and Rosslare Europort and to reduce track access charges for freight.

Recommendation 4: Investment in ports' road connectivity, in line with NDP 2021-2030, and rail connectivity, in line with the All-island Strategic Rail Review, is of paramount importance. The sequencing of such transport infrastructure investment should be cognisant of its potential impact on the underlying competitive dynamic in the ports sector.

Data collection and port performance measures

A cross-comparison of port charges and efficiency, both nationally and internationally, can provide an indication of the competitive environment that ports are operating in. To this end, it is essential that comparable data is collected and analysed on a regular basis. This has not historically been the case in Ireland, however.

The National Ports Policy included a commitment that a performance measurement system for Ports of National Significance would be introduced by 2016. Such a system has the potential to alleviate concerns regarding the lack of data collection and port performance measures within the Irish ports sector. The Irish Marine Development Office (IMDO) undertook preparatory research to inform the development of a port performance measurement system, culminating in a report (unpublished) to DoT.

[20] 'National Development Plan 2021-2030', Government of Ireland. Accessed at: a36dd274-736c-4d04-8879-b158e8b95029.pdf (www.gov.ie)
[21] 'All-Island Strategic Rail Review', Department of Transport and Department of Infrastructure (2023). Accessed at: All-Island Strategic Rail Review - Draft Report 8 August 2023 - a839ee26-16c4-407d-bd5b-327ce0e067f5.pdf (www.gov.ie)

The existence of a robust port performance measurement system would serve to inform policy development over the longer term. One recent academic study of Irish port performance[22] used case studies, in the absence of homogenous datasets of sufficient size, to draw policy insights from the relative productivity performance of four Irish ports over the 2000-2016 period. The study found, for example, that while "performance overall has largely mirrored that of the Irish economy", "there was a notable divergence in performance post-recession" due to factors such as "demand-side structural change, labour rationalisation, business model choice, and cargo mix choices". The study also found "that larger ports have advantages relative to smaller ports, in regions limited by low volumes of demand for port services". The latter suggests that economies of scale could be important drivers of the continued concentration seen in the Irish port sector since 2013.

With the aim of further improving the availability of comparable data, the CCPC also welcomes and endorses the recommendation included in the Irish Ports Capacity Study, 2023[23], that "a standardised form of reporting by the Irish ports for capacity indicators in Tier 1 and Tier 2 ports is needed, in conjunction with the Northern Irish ports to ensure uniformity of reporting."

Recommendation 5:

Building on efforts to introduce a performance measurement system for Ports of National Significance (Tier 1 and Tier 2) by 2016, DoT should prioritise the collection and development for publication of new, comparable data metrics and port performance measures.

[22] O'Connor (E), (2019), 'Understanding port performance: An examination of challenges in the contextualisation of performance in support of policy design in the port sector', NUI Galway. Accessed at: Thesis _ EOC_hardbound.pdf (nuigalway.ie)

[23] 'Irish Ports Capacity Study', Irish Marine Development Office (2023). Accessed at: https://www.gov.ie/pdf/?file=https://assets.gov.ie/274073/b39b9cbc-d9f5-4ec5-aa13-01b90e105090.pdf#page=null

Recent Market Developments

Shipping volumes, modal shifts and route changes

Irish shipping tonnage surpassed its pre-GFC peak only in 2017, reaching a new all-time high in 2018. Due to the effects on trade of Covid-19 and Brexit, tonnage has stagnated since 2018, registering a 1% annual contraction in 2022, for example. Annual shipping tonnage has averaged 56.7m tonnes during 2018-2022[24], some 17% above its 2012-2013 levels.

Brexit and, to a lesser extent, the Covid pandemic have led to rapid and significant route reconfiguration as well as intermodal competition, both within the RoRo segment and between the RoRo and LoLo segments. By comparison, such competition would not be expected to figure prominently in dry[25] and liquid[26] bulk shipping given the relatively lower degree of demand-side substitution inherent in these markets due to the final-land destination of these harder-to-transport goods.

The IMDO has noted that "competition between shipping companies operating on direct EU services, and those operating on the UK Landbridge, has greatly increased since the introduction of the Brexit trading arrangements.[27]". Albeit smaller in scale, there was also a shift away from use of the so-called 'Irish Landbridge' by Northern Irish hauliers, resulting in reduced traffic at Dublin Port in favour of ports in Northern Ireland.[28].

These shifts were facilitated by the addition of capacity on direct services to the EU by the four incumbent operators as well as two new entrants to the RoRo market, DFDS on the

[24] These figures are based on the IMDO's iShip Index, covering ports in ROI only. Accessed at: https://www.imdo.ie/Home/sites/default/files/IMDOFiles/IMDO_Docs/IMDO%20IMTE%20Vol%2020%202023.pdf

[25] A dry bulk commodity is a raw material that is shipped in large unpackaged parcels. Dry bulk consists of mostly unprocessed materials such as grain, metal, and energy materials.

[26] Liquid bulk cargo is carried unpackaged in liquid form, usually in commonly referred to as tankers. Liquid bulk may consist of consumable commodities - such as cooking oil and juices - or non-consumable products like gasoline or crude oil.

[27] In 2021 alone, for example, the volume of direct traffic to EU countries from Ireland's three RoRo ports – Dublin Port, Rosslare Europort and The Port of Cork – doubled to 380,000 units, accounting for a third of all their RoRo traffic. This largely represented a shift away from use of the UK Landbridge rather than increased exports to the EU. Full details can be accessed at: 14298 IMDO IMTE Vol 19 2022 (003).pdf

[28] Some of this latter phenomenon had begun to reverse by 2022, however, due to both competitive pressures from Rosslare and Dublin ports as well as adaptation to post-Brexit trading arrangements allowing hauliers to revert to prior practices. Full details can be accessed at: IMDO IMTE Vol 20 2023.pdf

Rosslare-Dunkirk route and Grimaldi on the Cork-Antwerp route. These latter destinations, in addition to Le Havre and Porto, were new direct links from Irish ports to added in 2021. The number of direct RoRo services to mainland European ports thus increased from five to thirteen, while the number of sailings increased from approximately 30 to over 60, implying a doubling in capacity[29].

The IMDO has also noted that competition between RoRo and LoLo cargo modes has intensified post-Brexit, again driven by the preference to avoid the UK Landbridge. Given that "the majority of LoLo services offer direct routes to large European port hubs, that market was well placed to satisfy the increase in this demand.[30]"

These developments suggest there were important degrees of spare capacity, competitive dynamism, and both demand and supply-side substitution in the Irish ports sector considered as a whole. Nonetheless, there is little room for complacency in these aspects, particularly in light of the increased market concentration evident in the sector.

Market concentration

Ireland's ports tend to specialise in handling specific types of cargo. Since 2012, Dublin Port has further entrenched its pre-eminent market position, particularly in container traffic[31], while it has also increased its market share in bulk trade[32], albeit from a lower base. A concentrated market is one with a small numbers of firms with a large market share, while an unconcentrated market is one with a large number of firms with a small market share. If the Irish ports sector is becoming more concentrated, the market power of major ports like Dublin, Cork and Shannon Foynes is likely to increase which can limit the scope for inter-port competition[33].

The Herfindahl-Hirschmann Index (HHI) is used to describe market concentration[34]. This index is used by competition authorities as a measure of concentration in a market, and

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[29] 'The Irish Maritime Transport Economist, Volume 19', IMDO (2022). Accessed at: 14298 IMDO IMTE Vol 19 2022 (003).pdf

[30] 'The Irish Maritime Transport Economist, Volume 20', IMDO (2023). Accessed at: IMDO IMTE Vol 20 2023.pdf

[31] According to IMDO data, Dublin Port's market share in LoLo traffic increased from 55% in 2012 to 59% in 2012.

[32] Dublin Port's market share in liquid bulk increased from 25.6% in 2012 to 34.2% in 2022, although its share in dry (and break) bulk decreased from 11.9% to 8.3% over the same period.

[33] See: Competition in the Irish Ports Sector, Competition Authority, 2013.

[34] The HHI is calculated as the sum of the square of the market share of all market participants.

the CCPC regularly employs it to assist in assessing, for example, the effects of a merger on competition. The HHI can be applied to examine how market concentration in the Irish ports sector has changed over a period of time. In this case, we examine the change in the level of market concentration for each cargo category between 2005 and 2022 on an all-island basis[35]. The thresholds of market concentration indicate that any HHI above 2000 indicates that the market is highly concentrated[36]. In this case, the market concentration for all cargo types is between 2,039 and 4,206. Thus, the market for all cargo types is highly concentrated, while concentration has further increased since 2012 for LoLo, RoRo and liquid bulk cargo.

Table 1: HHI Index for the Irish ports sector

	2005[37]	2012[38]	2022[39]
LoLo	2,878	3,993	4,206
RoRo	2,432	2,932	3,357
Liquid bulk	2,377	2,269	2,780
Dry bulk	2,430	2,444	2,039

In light of increased market concentration in the Irish ports sector since 2012, it is imperative that continued efforts are made to promote competition, both between and within ports.

Recommendation 6: Facilitating a competitive and effective market for maritime transport services should remain a core objective of National Ports Policy going forward.

[35] The HHI calculations for 2005 and 2012 were published the 2013 market study. Calculations for 2022 were carried out using data from the Irish Maritime Development Office.
[36] 'Guidelines for Merger Analysis', Competition and Consumer Protection Commission (2014). Accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf
[37] See: Competition in the Irish Ports Sector, Competition Authority, 2013.
[38] *Idem.*
[39] Calculations by CCPC, on the basis of IMDO data.

CCPC Responses to Questions Raised in the Issues Paper

1. Can expansion at existing ports address any future capacity deficit or should a new port be planned to offset port capacity requirements as we approach 2040?

The CCPC notes the findings and main recommendations of the Irish Ports Capacity Study, 2023[40], suggesting that on the current trajectory Dublin Port is likely to further consolidate its pre-eminent market position in LoLo and RoRo shipping out to 2040 while the Irish ports sector as a whole likely has sufficient capacity – including capacity under development or planned – for LoLo, RoRo, Dry and Break Bulk until at least the late-2030s. Although there is a high degree of uncertainty around demand for trade vehicles and liquid bulk imports over the medium to long term – largely due to the transition away from hydrocarbons and internal combustion engines – expansions in port capacity to handle these goods may be necessary by the late 2020s. However, even on the basis of current port masterplans and capacity expansion plans, it is clear that capacity constraints could become acute by the late 2030s in the LoLo and RoRo segments in a high economic growth scenario. Given the very long lead-times involved in developing port infrastructure – and to developing a large new port, in particular – serious consideration needs to begin at the earliest opportunity of optimal long term port configuration, including the desirability of establishing a new port.

Looked at purely through a competition lens, the prospect of a new port on the East Coast – whether to complement, or to partially replace, capacity at, Dublin Port – represents a generational opportunity to increase inter-port competition[41]. Ultimately, any decision to develop a new port – or to fully or partially relocate Dublin Port – will be informed by a range of social, economic and environmental factors, of which the impact on competition is unlikely to prove decisive. Nonetheless, given the dependence of Ireland's future

[40] 'Irish Ports Capacity Study', Irish Marine Development Office (2023). Accessed at: https://www.gov.ie/pdf/?file=https://assets.gov.ie/274073/b39b9cbc-d9f5-4ec5-aa13-01b90e105090.pdf#page=null

[41] If feasible, the wholesale relocation of Dublin Port to another site would not increase the number of ports over the long term, negating any positive effect on inter-port competition. Similarly, the Port of Cork is currently operating two terminals, but the new Ringaskiddy terminal is due to replace rather than complement the Tivoli docks terminal over the longer term as the M28 motorway connecting Cork City to Ringaskiddy is finalized, allowing the new terminal to operate at its full capacity. However, this would represent an opportunity to improve intra-port competition in the largest port in the country, for instance by issuing new licenses for terminal operation, stevedoring and other ancillary services at the new port. As detailed elsewhere, the contractual arrangements for franchise operators a that currently prevail in Dublin Port have anti-competitive effects.

economic development on the import and export of goods through our ports and, by extension, the importance of an efficient port sector to national competitiveness, the potential impact on competition of these decisions should not be excluded from consideration.

Recommendation 7: Long-range planning of port capacity to 2040 and beyond, including any decision on establishing a new port, should take into account the possible impact on competition both between and within ports.

2. Is further action required at a national level to ensure the port sector can attract sufficient funding, particularly private sector investment?

The ability of the port sector to meet the challenges set out in the issues paper will require significant investment over the coming years. Since current rules mean the sector cannot rely on Exchequer funding, much of the needed investment will have to come from the private sector. This will require the port sector to be considered an attractive investment opportunity to these investors. While the onus will rightly be on individual ports themselves to show why their projects are worthy of investments, this does not mean that there is no role for the Government at the national level that could help unlock private sector investment. This may add particular value for those ports that are more resource-constrained to compete with Dublin Port's preeminent market position. However, any such government intervention should be carried out with due regard to the potential impact on the competitive dynamic within the sector.

The implementation of measures outlined elsewhere in this response to create a more competitive environment should be a central objective of any Government ports policy. In particular, public investment in road and rail infrastructure to improve hinterland connectivity can boost ports' competitiveness, as well as the potential return on private investment in them. But, there should also be focus on a range of other policy areas that will also impact the attractiveness of the ports sector to private investors. These areas include improvements to the planning system and the electricity network, and support for the development of a labour force with the required skills set.

The involvement of the Government in helping ports obtain European Union funding may also help to attract private sector investment. By assisting eligible applicants in an appropriate manner, the Government can help Irish ports present the best possible case as to why they should attract the available funding. If this type of funding is in place, this could unlock investment from the private sector, as EU level funding can be used to cover a range of activities that would reduce upfront financial costs for private investors and their exposure to uncertainties. These types of activities include project preparations, feasibility studies, environmental impact assessments, and technical assistance. In this way, limited public funding from EU sources can catalyse significantly greater levels of private sector funding.

Recommendation 8: The Department of Transport should assist port companies and other relevant private sector undertakings in accessing EU funding for port infrastructure.

3. How can ports best progress projects with a strong value case but a negative business case?

As set out above, we believe that with Government support, Ireland's ports could be well positioned to fund their required capital investments through a combination of sources that includes funding from the private sector. However, we recognise it may remain challenging for ports to implement projects which are financially unattractive to private investors, but which have wider societal benefits.

In these circumstances, the best means of resolving this challenge would be through appropriate available EU funding. In particular, ports that can access the Connecting Europe Facility (CEF) could receive significant support, with the potential for up to 50% of eligible costs for studies and up to 30% of infrastructure work costs. This level of support would go a considerable way in allowing ports to invest in projects that have a strong societal value. For ports not on the TEN-T Network and therefore not available to access

CEF[42], there is other EU funding available, such as the European Regional Development Fund[43], that may be of benefit.

However, we do acknowledge that the CEF and other types of funding may not always be sufficient. This may mean that additional forms of funding may also be required to fully fund investments in projects that may not have a strong business case. Private investments may still be forthcoming for these types of projects if EU funding de-risk some of the upfront costs, but other mechanisms may need to be explored where this does not materialize.

It is the view of the CCPC that it is preferable to maintain the current approach to Exchequer funding. That approach was put into place in order to allow ports the freedom they required to act commercially and to provide more cost-effective services in order to meet the needs of their customers and the wider economy. Since its implementation the sector appears to be more efficiently run than before. However, if this policy were to change, strong safeguards must be put in place to ensure any funding is very targeted and only used for projects which demonstrate characteristics of a public good, and where efforts to attract private investment have been unsuccessful or are judged impossible. These safeguards must also take into account the impact of wider competitiveness of, and competition within, the sector. Moreover, as the issue paper rightly states, any funding must, at a minimum, be fully compliant with State aid rules.

It has been suggested that updates to the General Block Exemption Regulation imply that current State aid rules may not be a roadblock to Government support for certain port infrastructure projects with a negative business case[44]. Moreover, European port infrastructure is often partially funded by the public sector, to allow for a reduction in the 'funding gap' for projects that demonstrate high societal value[45]. It would be important

[42] As the CEF is only open to Dublin, Cork, Shannon Foynes, Rosslare, Waterford and Galway ports, this will mean that it's not available to Dún Loaghaire, Drogheda, Wicklow and New Ross ports.

[43] Ireland was allocated some €881 through the ERDF for the 2021-2027 funding period, all of which was allocated to the 'greener Europe' priority objective. The next funding round will be agreed under the 2028-2023 multi-annual financial framework.

[44] See, 'We can build them: Supporting Irish ports to build offshore windfarms', Wind Energy Ireland (2023). Accessed at: Irish_Ports_Funding_Study.pdf (windenergyireland.com)

[45] See, 'The Infrastructure Investment Needs and Financing Challenges of European Ports', European Sea Ports Organisation (2018). Accessed at: Port Investment Study 2018_FINAL_1.pdf (espo.be)

that this is fully explored in the Irish context before any change is made to the current longstanding policy on Exchequer funding.

Recommendation 9: Any policy shift away from the current exclusion of exchequer funding for port investment must ensure strong safeguards to protect the level playing field within the ports sector.

4. What, if any, changes are required to facilitate the future development of Rosslare Europort?

The CCPC notes the conclusion of the strategic review of the current and future role of Rosslare Europort, carried out by Indecon Economic Consultants, in 2013 that "creating an independent port authority would be extremely difficult, given the port's complex legal structure", and its recommendation instead, "that the port remains in public ownership and that the possibilities for increased private sector involvement be investigated"[46].

In 2015, Iarnród Éireann, Port Authority for Rosslare Europort, conducted an assessment of interest in a concession with a third party to operate the port. At the time, the shortage of funds at Iarnród Éireann was cited as the rationale for seeking third party private sector investment[47]. Although that assessment "was largely positive in terms of the potential for increased private sector investment in the port… it did identify possible implementation issues due to the complicated legislative basis of the port". Subsequent advice from the Office of the Attorney General "identified a number of legal issues with any such proposal and those issues remain under consideration" by the Department of Transport[48].

We recall the importance placed in the NDP on "continuing investment to further improve the quality of port facilities, particularly those in the South-East such as Rosslare and the Port of Waterford given their role in maintaining transportation linkages with crucial EU markets". In light of the impact of Brexit on the configuration of Irish supply chains and

[46] 'Irish Ports Capacity Study', Irish Marine Development Office (2023). Accessed at: https://www.gov.ie/pdf/?file=https://assets.gov.ie/274073/b39b9cbc-d9f5-4ec5-aa13-01b90e105090.pdf#page=null
[47] 'Private Investment Sought at Rosslare Europort', South East Radio (20 May 2015). Accessed at: https://www.southeastradio.ie/private-investment-sought-at-rosslare-europort/
[48] Houses of the Oireachtas, Written Answer by Minister for Transport (22 Jan 2019). Accessed at: https://www.oireachtas.ie/en/debates/question/2019-01-22/526/

shipping patterns, and the importance of Rosslare Europort to this new configuration as the nearest crossing point to continental Europe, the Review of the 2013 National Ports Policy is an opportune moment to consider whether the cost-benefit analysis still suggests that establishment of an independent port company would be a sub-optimal solution. If it is not feasible to address the legal complexities to which the port is subject in the medium term, it is essential that port management develop a long-term action plan to attract private investment within the prevailing legal constraints.

As is the case with other Tier 1 and Tier 2 ports in Ireland, establishment of an independent port company need not mean an end to public ownership of port infrastructure. Moreover, continued public ownership is not necessarily inconsistent with a healthy competitive dynamic within a port where multiple private entities are contracted to operate economic infrastructure and provide ancillary services. However, ensuring Rosslare Europort is well-positioned to attract the private sector investment needed for it to reach its full potential can contribute to competition in the ports sector as a whole.

Recommendation 10: In the absence of establishing an independent port company, or contracting a third party, to manage Rosslare Europort, Iarnród Éireann should be tasked with preparing a long-term action plan to explore further possibilities for private sector investment, within given legal constraints, to ensure it can fulfil its full potential in the post-Brexit landscape.

5. How can our maritime transport routes and services be encouraged to distribute more uniformly across the port network?

As acknowledged in the Issues Paper, "diverting traffic in ways that are contrary to market preferences usually result in inefficiencies, increased costs and loss of competitiveness." Moreover, the 2013 market study concluded that characteristics of the Irish ports sector are such that competition between ports (i.e., inter-port competition) appears limited. Nonetheless, and as detailed elsewhere in this submission, public policy measures can help stimulate inter-port competition on the margin. Notably, public investments in road and rail infrastructure aimed at improving hinterland connectivity can affect competition by encouraging demand-side substitution among port users and customers.

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