Proposed acquisition by Montauban of Simon Group Plc

The OFT's decision on reference under section 33(1) given on 2 August 2006. Full text of decision published 21 August 2006.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Montauban S.A.** (**Montauban**) is a subsidiary of the CdMG group of companies, a holding and investment group with no operational activities. The CdMG group of companies is controlled by Mr Camille Cigrang, [ ] the **Cobelfret group of companies** (**Cobelfret Group**). Cobelfret Group is active in the supply of short-sea unitised freight shipping, including new car transportation, on Anglo-Continental routes. It is also owns or has interests in a number of port facilities both in the UK and on the Continent.

2. Given the connection between Montauban and Cobelfret Group, the OFT will treat the companies as associated persons pursuant to section 127 of the Enterprise Act 2002 (the Act) for the purposes of considering this transaction, collectively described as **Cobelfret**.

3. **Simon Group plc** (**Simon**) owns and operates two port facilities in the UK, one at Port Sutton Bridge in the Wash and Humber Sea Terminal (HST) at Killingholme, on the Humber Estuary. Simon's turnover for the financial year ended 31 December 2005 was £26,021,000, most of which was generated in the UK.

TRANSACTION

4. Montauban proposes to acquire the total issued share capital of Simon, taking its shareholding from 47 per cent at the date of notification, or de facto control, to de jure control of Simon.

5. Montauban notified the transaction to the OFT by merger notice of 21 June 2006. The statutory deadline, extended by 10 working days on 3 July 2006, is 2 August 2006.

JURISDICTION

6. As a result of this transaction Montauban and Simon will cease to be distinct. Montauban submits that the share of supply test is not met, as the merging parties' activities do not overlap. However, the OFT considers that self-stevedoring and third party stevedoring can be considered together for the purposes of the share of supply test in section 23 of the Act.

7. On the basis of the figures provided to us by Montauban, the merging parties would have an estimated combined share in the range of 35-40 per cent with an increment of over 10 per cent in the supply of stevedoring services (including self-stevedoring) on the Humber Estuary in respect of unitised freight and new cars taken together.

8. Traffic on the Humber Estuary as a whole totalled 84 million tonnes of freight, making it the third busiest port region in the UK. Considering that 95 per cent by volume and 75 per cent by value of the UK's international trade is transported by sea, the Humber Estuary is considered to qualify as a substantial part of the UK due to its economic significance.

9. The OFT therefore believes that the share of supply test in section 23 of the Act is met, and that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

PRODUCT MARKET

10. Of relevance to this case is the competitive environment in the upstream supply of port services (and stevedoring services in particular) and the downstream supply of short sea shipping of unitised freight and new cars. Simon provides port services and Cobelfret provides both short sea shipping and port services.

Supply of port services and stevedoring services

11. The services provided by HST, operated by Simon, can broadly be divided into the provision of basic berthing access in a port and the provision of stevedoring

services.[1] Demand-side considerations warrant segmentation of stevedoring services according to whether they serve deep sea or short sea vessels; or whether the cargo is loaded using roll-on roll-off (roro) or load-on load-off (lolo) stevedoring.

12. In past cases considered by the European Commission a distinction has been made between the supply of port services to deep sea and to short sea vessels, as only some ports are able to cater for deep sea vessels.[2] The constraint to some extent appears to be asymmetric, as third parties told us that short sea vessels are able to use deep sea ports, such as Liverpool, to a significant extent. The decision in this case does not turn on this issue and therefore the precise frame of reference can be left open.

13. Turning to roro and lolo stevedoring of short sea vessels, for a number of products only one type of stevedoring will be suitable and both the vessels and the port infrastructure required for the provision of roro and lolo stevedoring differ.[3] However, there is some possibility for supply side substitution between them. The parties have told us that suppliers of lolo stevedoring services can also provide roro services by developing pontoon access and roro suppliers can provide services for lolo vessels by investment in quayside infrastructure. In so far as Cobelfret operates in roro short sea shipping, in this case, the focus is on determining whether berths set up for operating lolo stevedoring, and lolo stevedore services providers, constrain roro stevedoring services and facilities. Third party east coast port operators agreed that conversion from lolo to roro was possible, while the costs of doing so and the time taken will vary. Given this, it would appear appropriate, for the purposes of market definition, to limit the product scope to roro stevedoring.

Short sea shipping of unitised freight and new cars

14. Downstream of port services, including stevedoring services, Cobelfret operates in freight shipping of unitised containers and new cars. As above, and in line with past European Commission decisions,[4] a distinction is drawn between short sea and deep sea vessels.

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[1] Loading or unloading the cargo of a ship.

[2] See, for example, Case COMP/JV.55 - Hutchison/RCPM/ECT (3 July 2001) and Case COMP/M.3576 – ECT/PONL/Euromax (22 December 2005)

[3] While it appears possible to adapt lolo infrastructure to load roro vessels – for instance, containers can be double-stacked onto a mafi, which is in turn towed to the roro vessel – this appears to only be an option for certain product types.

[4] Supra n2.

15. In past cases, freight shipping has been further subdivided by type of cargo, including the unitised freight carried by Cobelfret. Third parties confirmed this can be carried on either roro or lolo vessels. Cobelfret however only operates roro vessels.

16. Cobelfret also operates in the short sea shipping of new cars. Third party views were mixed as to whether shipping new cars constitutes a separate market from that of standard roro traffic (of unitised freight). Demand is fully fragmented according to cargo type. On the supply side, Cobelfret argues that, as new cars can be carried on either customised roro vessels or less so, on standard roro vessels (on trailers or driven on individually), and not just on vessels dedicated to the transportation of cars, general roro traffic can be substituted for new car transport. Cobelfret has provided evidence of costs involved in converting standard roro vessels to transport cars. Such work appears to take a matter of days rather than months to complete, although the cost per vessel of such work is broadly in the region of [ ].

17. Third party views were mixed. Some corroborated Cobelfret's views, but others argued that as shipping of new cars is significantly less profitable relative to the shipping of unitised freight, it would not switch supply. As our conclusions in relation to the competitive assessment do not turn on whether short sea shipping is a separate market or not, the precise market definition can be left open.

GEOGRAPHIC MARKET

18. Cobelfret operates short sea roro shipping between HST and the Continent. The extent of competition between ports, namely the geographic scope in the supply of port services and stevedoring services, is in most part derived by the demand by customers of short sea shipping companies. Therefore, the geographic scope of the downstream market is instrumental in determining the upstream geographic scope.

19. Cobelfret suggested that all ports on the east coast of England, as well as the Channel tunnel, may be considered as substitutes for the shipment of freight to and from the Continent. The customers of shipping companies in new cars and unitised freight that we spoke to all agreed that the Channel tunnel was not a viable alternative, for reasons of cost, location or safety. Their responses also suggested that a narrower market than the ports on the east coast of England

was appropriate; so-called 'land miles' (transport cost per unit of distance) are more expensive than 'sea miles', so it is important to operate from ports that are as close to the shippers' customers as possible. All of the customers we spoke to shipped from a number of different, and geographically dispersed, ports on the east coast. In terms of a narrower geographic area than the east coast, we considered whether the following ports are an effective substitute to HST at Killingholme:

- Tees - most shipping companies and their customers said that Tees was too far north to be considered a substitute for HST, in that haulage mileage made it too costly to transport cargo from Tees to north west England and the Midlands.
- Hull (and Goole) - while some shippers and some downstream customers considered all ports on the Humber Estuary as alternatives, a number of shippers said that Hull was not an effective substitute to HST. In particular, they submitted that Hull primarily serves north of the Humber Estuary and, in competing with ports and shippers operating from south Humber, it is disadvantaged by the cost of the Humber Bridge toll levied on subsequent road carriage.
- Grimsby - although more customers saw Grimsby as an alternative than Hull (and Goole), some shippers raised concerns about its berthing facilities and ability to accommodate larger vessels.
- Immingham - almost all third parties saw HST and Immingham as alternatives, although some third parties highlighted features that made Immingham inferior to HST, including higher levels of airborne pollution (with an impact on quality of new cars), and the presence of locks which significantly increase transit times and limit vessel size available.

20. Shippers tend to have long term contracts with ports, such that any switching will take place only on an occasional basis. Few examples of switching were provided by the parties, most of which were between HST and Immingham, controlled by Associated British Ports (ABP) but which also has a terminal run by DFDS, an independent shipper. While Immingham may place the greatest constraint on HST, the precise market definition as regards the constraints of the other ports on the Humber is of less relevance given that Grimsby and Hull are both owned by ABP, the owner of Immingham; in other words, a wider market definition beyond Immingham does not result in inclusion of further independent competitors.

21. Therefore, for the purposes of the competitive assessment we have considered the Humber Estuary as the relevant geographical market for the frame of reference, but have also considered the extent to which ports within the Humber Estuary constraint each other.

HORIZONTAL ISSUES

22. No horizontal issues arise in this case. As is clear from the above analysis under geographic market, there is no evidence that Cobelfret's ports both in the UK and on the Continent materially compete with HST.

23. The OFT also considered whether Cobelfret could be a potential competitor to HST in relation to port services. Cobelfret has a long-term lease over the terminal facilities at HST, and we are not aware that there are any restrictions in its agreement with HST regarding the provision of port services to third parties. Cobelfret told us that DFDS, a roro operator who has a similar arrangement to Cobelfret with APB at Immingham, stevedores for third party shippers at its Nordic terminal inside the Immingham locks. However, there is no evidence before the OFT from Cobelfret or third parties that, in the absence of its bid for Simon, Cobelfret intended to provide port services to third parties at HST. Therefore, the OFT does not consider the merger to give rise to any material lessening of potential competition in port services.

VERTICAL ISSUES

24. Third parties alleged that a number of vertical issues would arise as a result of the merger. The primary concern raised was that, following the merger, Cobelfret will be in a position to raise its rivals' costs through its operation of services at HST. Another concern raised was that Cobelfret would foreclose stevedoring services at HST. One third party also suggested that Cobelfret will obtain an unfair advantage over rival shippers through accessing commercially sensitive information regarding competitors operations at HST. Each of these concerns raised by third parties is discussed below.

Raising rivals' costs

25. Some third parties suggested that, upon acquiring HST, Cobelfret would attempt to increase the costs of rivals in the downstream shipping market. It was suggested that this could be achieved in a number of ways: by refusing to

supply, reducing the quality or increasing the prices of port and stevedoring services and/or otherwise favouring Cobelfret over its shipping rivals.

26. In light of such concerns, the OFT tested the theory of harm that Cobelfret would have the ability and incentive to raise rivals shippers' costs in port services, enabling it either to (i) raise its own prices in the downstream shipping market, without the risk of losing customers to its competitors, or (ii) win business from those rivals if they raised their own prices as a result of Cobelfret raising their costs.

27. The OFT's Substantive assessment guidance provides that vertical mergers are often efficiency-enhancing. Nevertheless, they may give rise to competition concerns in certain cases where market power exists or is created in at least one market in the supply chain. Even if market power exists, a proper analysis of both the ability and incentive of the merged firm to engage in the strategies described above must be conducted. Both must be present for such a strategy to be profitable (successful) and to establish vertical concerns as well-founded.[5]

Ability to raise rivals' costs

28. As there are no horizontal issues, any pre-merger market power at the level of port services at HST will not be enhanced by the merger. Accordingly, Cobelfret will not have a greater ability to raise rivals' costs than Simon does pre-merger. The first issue, therefore, is the degree to which constraints exist on the ability of Simon to exercise market power (e.g. raise port service charges) at HST.

29. Two factors emerged from the evidence available to the OFT. First, the presence of rival ports in the Humber Estuary area, notably the ABP and DFDS facilities at Immingham, as well as others discussed under geographic market, above. (The degree to which customers can switch to these ports and the latter constrain Simon appears to depend on the circumstances of the customer or class of customer in question.)

30. Second, the practice of shipping customers is to leverage their demand over time into long-term contracts to improve their negotiating position vis-à-vis port operators such as Simon at HST and secure more favourable terms. The threat of foregoing long-term shipping custom enables shippers to ensure a measure of protection through price controls in long-term contracts. With one exception, HST's main customers for roro services all have at least five years left on their

[5] *Substantive assessment guidance* May 2003, at paras 5.1 and 5.4.

contracts, and evidence from both Simon and shippers at HST confirms that the ability of Simon to increase the price of port services would be difficult during the period of any contract due to the contractual limits on price increases that can take place. Less clear-cut is the degree of contractual limitation on the ability of the ports operator to reduce the services or quality of stevedoring. While one customer contract contained Key Performance Indicators (KPIs) covering quality of service (with set penalties for breaching the contract by not meeting these KPIs), another did not have comparable provisions. Even in the former case, any penalty paid by Cobelfret may be less than the benefits to Cobelfret as a result of the damage to the rival shipper's business of not meeting the KPIs. The longevity of the contracts suggests that, if service degradation was not adequately covered by the contracts, it might be difficult for shippers to switch away from HST.

31. It is clear that the presence of alternative ports, at least for some customers, and contractual protection for rival shippers (against an increase in prices and potentially a degradation of service quality) during the term of the contract, complicate the ability of Cobelfret to raise rivals' costs. Nevertheless, the issue of ability is insufficient in and of itself to resolve vertical concerns due to the potential for price increases or changes to terms of service on contract renegotiation. Accordingly, the OFT proceeded to examine the second necessary condition of the vertical theory: Cobelfret's incentives to raise rivals' costs.

Incentives to raise rivals' costs

32. No vertical concerns arise if, irrespective of whether Cobelfret has the ability to raise rivals' costs, it has insufficient incentive to do so. Cobelfret will only undertake to raise rivals' costs if the profitability gains from extra business won in the downstream shipping market (or the increase in prices charged downstream) outweigh the profitability losses from lost business in the upstream market that would result from its actions. This loss in upstream business would include both current shippers using the port, as well as any new entrants into the Humber Estuary, as HST has significant development potential. The OFT considered a number of factors relevant to incentives.

Transaction rationale

33. As a general matter, the OFT is aware that a shipper acting as a ports operator is not uncommon. A relevant example is DFDS, a shipper who has long term leases on terminals at Immingham, and who lets out some of this terminal

capacity to third parties. DFDS has recently entered into a new long term lease at Immingham's new Riverside terminal, which has three berths with lock-free access. DFDS has stated publicly that it is attempting to attract third party business at its new terminal. One major shipping customer also stated in response to OFT inquiries in this case that, in principle, they suffered no competitive disadvantage in operating from ports controlled by rival shippers.

34. In response to OFT questioning on the rationale for this transaction, Cobelfret executives stated that (i) the ports business is a core part of its activities and not a side-line to its shipping business; (ii) Cobelfret's aim for HST is to develop its capacity at a superior rate and manner to that absent the merger; (iii) the capacity potential of HST it intends to exploit far exceeds Cobelfret's own needs at current growth rate and (iv) accordingly it would be profitable to release such new capacity to meet third party demand.

35. In the OFT's judgment, Cobelfret's pro-competitive rationale for the transaction withstood close scrutiny under questioning despite the lack of a clear evidentiary foundation by way of internal business documentation. The conclusion may have been different, however, had better evidence, including documentary evidence, been provided by concerned third parties to support their allegations. A single third party suggested that they had experienced difficulties accessing other ports owned by Cobelfret at Purfleet and Dartford. This allegation prompted the OFT to consider Cobelfret's record of operation of the Purfleet and Dartford ports, as well as their interests in ports at Zeebrugge, Flushing and Rotterdam. Cobelfret maintains that Dartford was a closed port (i.e. there are no third party shippers operating from them) before Cobelfret acquired it and that third parties have moved away from Purfleet for purely commercial reasons. In relation to Cobelfret's Continental ports at Zeebrugge, Flushing and Rotterdam, rival shippers make up only a very small proportion of total revenue at two of these ports, and at the third port we found no evidence that Cobelfret had actively sought business from rival shippers other than those shippers being present at the port upon Cobelfret acquiring its interest. Overall, the evidence on Cobelfret's past behaviour was inconclusive and does not sufficiently support an anticompetitive rationale for this transaction.

Margin evidence on profitability of raising rivals' costs

36. We obtained evidence from both Cobelfret and Simon regarding the relative margins of shipping and port services. This evidence suggested that margins for port services were relatively high compared to margins for shipping services,

although in absolute terms there were significantly larger revenues in the shipping market.[6] Nonetheless, any port business lost or foregone by Cobelfret attempting to increase rivals' costs would have to be compensated by a significant increase in the volume or margin of its shipping business (i.e. Cobelfret will need to capture a significant proportion of its rivals' business in the Humber). As such, this evidence did not materially support a profit incentive to raise rivals' costs.

Responses by rival shippers – switching to alternative ports

37. Cobelfret has suggested that, even if it does have the ability to raise rivals' costs, there are alternative port facilities to HST (assuming that shippers' can extract themselves from any long term contract with HST). Most third parties approached by the OFT at least considered Immingham (if not Hull and Grimsby) as an alternative to HST and there is evidence that it has spare capacity. Cobelfret suggested that although most of Immingham's current capacity appears to be within locks, which limit vessel size and add to journey times, it has lower charges. However, one customer suggested that this was a cost disadvantage in operating within the locks at Immingham. APB also has planning permission to build further river berths at Immingham.

38. While Immingham, Hull and Grimsby are all owned by ABP, as noted above DFDS has long term leases on terminals at Immingham, including at the new Riverside terminal, which has three berths with lock-free access. DFDS has stated publicly that it is attempting to attract third party business at its new terminal, which suggests that both APB and DFDS are alternatives for Cobelfret's rivals should Cobelfret attempt to raise rivals' costs at HST.

39. While it is conceivable that ABP and DFDS may see Cobelfret's actions as an opportunity to raise their own prices, there is no evidence to support this view; it is plausible if not likely that their best response might instead be try to increase market share by attempting to attract HST's customers (or any new customers), particularly given the infrequency which large business opportunities of sophisticated customers via long-term contracts becomes available. Therefore, there appears to be a real risk that, by attempting to raise rivals' costs, Cobelfret may lose business in the upstream market without necessarily

[6] For example, a margin of 5 per cent applied to revenue of £100 million will be the same, in absolute terms, as a margin of 50 per cent on £10 million. Therefore, the OFT has been cautious in simply comparing the margin information it has obtained during the investigation.

gaining an advantage in the downstream market, making a raising rivals' costs strategy unprofitable.

Responses by shipping customers – buyer power

40. None of Cobelfret's shipping customer expressed concerns about the merger, let alone concerns consistent with the theory of harm at issue. Cobelfret submits that the shipping market is highly competitive, with shipping customers such as car manufacturers and large door-to-door trailer and container operators, and claims that this buyer power exerts a strong competitive pressure on prices. Customers contract with shippers on either an ad hoc or short term basis, and would readily switch if prices rose. Customer responses in this case tend to corroborate this view. This was generally consistent with the responses of Cobelfret's shipping customers, none of whom had any concerns regarding the merger.

41. As well as constraining price increases on the Humber Estuary, such buyer power from shipping customers could be exercised on other shipping routes, such as to constrain Cobelfret from increasing prices through the threat of losing contracts elsewhere. It may also prevent Cobelfret's rivals from passing costs through to shipping prices. This buyer power, at least in respect of large customers such as car manufacturers, suggests that any increase in price by either Cobelfret or its competitors in the downstream shipping market will be resisted.

42. As suggested above, even if Cobelfret does have the ability to increase rivals' costs, Cobelfret submitted that these might be absorbed by the shippers through reduced margins rather than increased prices. Cobelfret submitted that stevedoring costs are only around [ ] per cent of the overall cost of providing a shippers' service. If this were to occur, Cobelfret will not be able to strengthen their position in the shipping market by increasing rivals' costs, and would still face the possibility of losing shipping business to DFDS or APB. Any attempt to frustrate rival shippers' contracts may also lead to negative reputation effects for Cobelfret, further limiting their ability to obtain shipping customers at the expense of their rivals: those downstream customers with buyer power will have an incentive to resist conduct by Cobelfret that leads to higher prices in the shipping market and/or disrupts their existing supplier relationships. Accordingly, the exercise of downstream buyer power unsettles the prediction that it would ultimately be profitable for Cobelfret to raise shipping rivals' costs.

Conclusion

43. The ability of Cobelfret will be constrained at least to some extent by the long term contracts negotiated for the use of HST and the presence of alternative port operators, notably ABP and DFDS. Moreover, the OFT does not consider the evidence sufficient to bear the conclusion that Cobelfret has the incentive to raise rivals' costs, due to the cumulative weight of complicating factors considered in turn above: the relatively small downstream margins, the alternatives to HST available to downstream competitors, and countervailing buyer power. The OFT therefore does not consider that there is sufficient evidence demonstrating that there is a realistic prospect that the transaction will substantially lessen competition by raising rivals' costs at HST.

Third party stevedoring

44. One third party suggested that, upon acquiring HST, Cobelfret may no longer allow third party stevedoring at the port, thereby removing competition for third party stevedoring services.

45. Cobelfret does not appear to have an increased post-merger ability, relative to Simon, to foreclose third party stevedoring. Nor does the OFT believe that the incentive to foreclose stevedoring materially changes as a result of the merger. On a horizontal level, Simon separately informed the OFT that there are efficiencies arising from port operators also providing stevedoring services and that it had sought to remove third party stevedoring.

46. In considering whether the incentive to foreclose third party stevedoring at HST will increase as a consequence of vertical integration – and therefore as a result of the merger – the OFT considered whether Cobelfret will lose any business that was tied into the provision of third party stevedoring rendering such action unprofitable. The same range of considerations already discussed above in relation to raising rivals' costs apply to removing third party stevedoring. As such, the OFT does not consider that Cobelfret has materially greater *incentive* than did Simon in relation to third party stevedoring; accordingly, the merger does not result in any material change.

47. Consequently, the OFT does not believe that there is a realistic prospect that the transaction will result in a substantial lessening of competition by removing competition for third party stevedoring services.

Commercially sensitive information

48. In addition to the concerns discussed above, one third party suggested that, following the transaction, Cobelfret would have access to commercially sensitive information regarding the third party's potential customers. The third party suggested that HST receives copies of the cargo manifest, containing customer names, unit numbers, cargo description and weights. Furthermore, that the cargo is accompanied by cargo documents, including invoices, which show the origin and destination of the cargo. The third party maintains that, as inland haulage costs are relatively fixed, following the transaction the parties would be in a position to calculate the final rate charged by competitors.

49. Cobelfret maintained that although it would gain access to information about the stevedoring rates that HST charges to roro customers, it did not consider that this information would be sufficiently sensitive as to lead a shipping operator to determine that HST was not a viable supplier. Cobelfret did not think that it would have access to any more information from HST that it could obtain in any event through observation at the port and through published data.

50. It is of note that none of the customers currently operating from HST have suggested that access by Cobelfret to commercially sensitive information would be a concern, and one customer suggested that operating into a harbour owned by a competitor would not, in itself, represent a weakened competitive position. Cobelfret also submitted that it was not uncommon for shipping lines to use ports owned by other shipping lines.

51. Overall, the OFT does not consider that that there is a realistic prospect that the merger will substantially lessen competition by allowing Cobelfret access to commercially sensitive information.

THIRD PARTY VIEWS

52. A number of third parties raised vertical concerns as set out above but customers of shipping companies (end consumers) generally did not raise concerns.

ASSESSMENT

53. This transaction combines a port owner in the Humber Estuary and one of its shipping customers. While Cobelfret also owns a number of port facilities, the transaction is not considered to raise horizontal issues given the geographical

location of Cobelfret's existing ports and the fact that, although it has a long-term lease on terminal space at HST, there is no evidence that it has considered providing port services at HST for third parties. However, a number of vertical concerns were alleged by third parties.

54. In terms of vertical concerns, it was suggested that, following the transaction, Cobelfret would seek to increase costs for rival shippers at HST to enable it to increase prices or capture business in the downstream shipping market. It was argued by third parties that this could potentially be achieved in a number of ways: by refusing to supply, reducing the quality or increasing the prices of port and stevedoring services and/or otherwise favouring Cobelfret over its shipping rivals.

55. We considered whether Cobelfret would have both the ability and the incentive to carry out such a strategy. Their ability will be limited to some extent by the long term contracts which HST has already entered into with a number of shippers, and which are considered by the OFT to restrain to some degree the ability to increase price or decrease service quality.

56. Coblelfret's incentive to raise rivals' costs (whether through an increase in prices charged or a decrease in the quality of services provided) is considered by the OFT to be limited by a number of factors. Firstly, the relatively high margin of providing port services compared to shipping services, which means that any loss of port business would need to be compensated by a substantial increase in shipping business. Secondly, the availability of alternatives means that Cobelfret risks losing business in both the upstream and downstream market as a result of any increase in prices. Finally, there is evidence to suggest that there may be countervailing buyer power.

57. Overall, we conclude that even if Cobelfret were to have any residual ability to increase rivals' costs, this would be outweighed by a lack of incentive to engage in such conduct post-merger, due to the risk to Cobelfret that any loss of current or future port business would more than outweigh any benefit that would accrue to Cobelfret through increased downstream prices or market share.

58. We also considered other alleged vertical issues, namely, refusal by Cobelfret to allow third party stevedoring at HST and access by Cobelfret to competitors' confidential information as a result of operating HST. In relation to the first issue, the OFT does not believe that the incentive to foreclose stevedoring

services will change as a result of the merger. In considering whether the incentive will change as a result of the merger, similar considerations to those relating to the ability and incentive of Cobelfret to raise rivals' costs exist, such that we do not believe that Cobelfret will have any increased incentive to refuse third party stevedoring.

59. In relation to access to confidential information, the OFT received conflicting evidence as to the amount of confidential information that Cobelfret will have access to as a result of owning HST. There were also conflicting views on the advantage that it was alleged would accrue to Cobelfret as a result of obtaining information in any case, particularly given that vertically integrated ports are not an uncommon feature of the shipping industry. The OFT does not consider that there is a realistic prospect that the transaction would substantially lessen competition by allowing Cobelfret access to commercially sensitive information.

60. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

61. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.