

## Anticipated acquisition by Peel Ports Limited of the Mersey Docks and Harbour Company

The OFT's decision on reference under section 33(1) given on 12 August 2005. Full text of decision published 17 August 2005.

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### PARTIES

1. **Peel Ports Ltd (Peel)** is a wholly-owned subsidiary of Peel Acquisitions (Ports) Ltd. Peel's principal activities, carried out through its subsidiaries Clydeport Limited (Clydeport) and the Manchester Ship Canal Company, are the operation and maintenance of port facilities for freight traffic<sup>1</sup>.
2. The principal activities of the **Mersey Docks and Harbour Company (MDHC)** are the operation and maintenance of port facilities at the Port of Liverpool<sup>2</sup> (including both the Liverpool and Birkenhead dock estates), Heysham<sup>3</sup>, and the Medway Ports of Sheerness and Chatham.

### TRANSACTION

3. Peel proposes to acquire MDHC. A complete submission was received by the OFT on 24 May 2005.

### JURISDICTION

4. As a result of this transaction, Peel and MDHC will cease to be distinct. The UK turnover of MDHC exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes 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.

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<sup>1</sup> The Manchester Ship Canal is also a conduit for the transportation of freight - see paragraph 7

<sup>2</sup> Liverpool is both a freight and passenger port

<sup>3</sup> Heysham is situated on Morecambe Bay. Its ferry port provides 1-2 daily freight crossings to Belfast, Dublin and Warrenpoint and daily passenger and freight crossings to Douglas (Isle of Man)

## RELEVANT MARKET

5. A port is a facility situated at the edge of a body of water that accommodates the docking of ships and the transfer of cargo and in some cases passengers. Ports are equipped and manned to handle the loading and unloading (stevedoring) of freight. Typically, storage and processing facilities are within easy reach.
6. The Port of Liverpool (Liverpool) is the name for the enclosed dock system that runs from Princes Dock to Seaforth Dock on the east side of the River Mersey – combined with facilities built on the west side of the river in Birkenhead. Although MDHC operates the whole of the Liverpool port, there are further docks upstream of the River Mersey – including those at Bromborough (operated by the Victoria Group) and Garston (operated by Associated British Ports).
7. Opened in May 1894, the Manchester Ship Canal (the Canal) is, as its name suggests, large enough to accommodate some ocean-going ships. It links the city of Manchester directly (via the Wirral peninsula) to the Mersey estuary and onwards to the Irish Sea. Due largely to a decline in manufacturing industry and the fact that many of today's ocean-going vessels are too large for the Canal, the amount of freight carried on it has reduced significantly – although some six to seven million tonnes are still transported each year and a number of port facilities remain in operation along its 36 mile route.

## Product market

8. Peel and MDHC overlap in the operation and maintenance of port facilities for freight traffic, notably in the adjacent geographic areas of the Canal and Liverpool.
9. Their port facilities in this region comprise a wide range of docks which cater for the specialised stevedoring requirements of various types of freight falling into three principal categories:
  - a) 'dry bulk' goods – including agricultural bulks, cement, coal, forestry products, sand, scrap metal, stone, vehicles etc.
  - b) 'liquid bulk' goods – including crude oil, oil derivatives, liquid chemicals etc.
  - c) 'unitised containers' – a system of inter-modal cargo transport using standard ISO containers (containing many diverse goods, including perishables) that can be loaded onto ships, railway trains and trucks.
10. Some third party respondents have indicated that there is only limited substitutability between the parties' respective port facilities in Liverpool and on the Canal and that such substitutability tends to be one-way: whereas Liverpool can accommodate most of the vessels served by the Canal, many of the vessels using Liverpool are too large to use the Canal.

11. Customer demand is for services from a port that is
  - able to meet the docking and stevedoring requirements specific to the product being shipped and
  - located in a convenient position relative to the product's onward destination.

Demand side substitution is feasible only between ports that meet with both these criteria.

12. On the supply side, ease of substitution varies between the different products being docked. Third parties consulted in the course of the OFT's investigation suggested that it is relatively easy to switch to the supply of port facilities between a wide range of dry bulk products. Supply side switching to and between unitised goods appears to be more difficult. This is due to the need to provide adequate, specialised storage facilities when handling such goods. Switching to or between bulk liquid appears to be particularly difficult since dedicated storage facilities and infrastructure are required and because the handling of some products in this segment is subject to regulation.
13. In Peel Ports/Clydeport<sup>4</sup>, the relevant product market was considered to be as wide as dry bulk goods, due to the possibility of supply side substitution. Bulk liquids were considered to be a separate sector.
14. In the light of the above considerations, it may be that the provision of port facilities for (a) dry bulk, (b) liquid bulk goods and (c) unitised containers constitute separate product markets.
15. On the basis that this anticipated merger does not give rise to any substantial concerns for competition under any reasonable definition, it is not necessary to reach a firm conclusion on the scope of the relevant product market for the purposes of this case.

### **Geographic market**

16. Third party respondents indicate that the geographic scope for the provision of port facilities is the distance that a customer is prepared to transport its product inland either from or to the port. This is different for each type of good and also depends on the quantities being transported. The geographic scope may also depend on the location and supply chain assets (e.g. depots, processing facilities, etc.) of the customer.
17. Price discrimination may be possible between individual customers as prices are individually negotiated and particular customers' leverage in negotiations may depend on which other port or ports are credible alternatives for their needs.

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<sup>4</sup> ME/1656-02, Proposed acquisition by Peel Ports Ltd of Clydeport plc.

18. The information provided by third parties also suggests that potential overlap might arise in the combination of Liverpool with ports on the Canal that might be considered important switching alternatives. The OFT's investigation has therefore focused on this area of overlap and the extent, if any, of competition between those ports. Ultimately, it has not been necessary to reach firm conclusions on geographic market definition as the merger does not give rise to a realistic prospect of a substantial lessening of competition under any reasonable definition.
19. For purposes of the competition assessment, the analysis has been organised in terms of the product segments identified above.

## **HORIZONTAL ISSUES**

### **Dry bulk**

20. In reply to questions put by the OFT, customers in the dry bulk segment indicated that they had not considered Peel and MDHC to be close competitors prior to the merger. When seeking to set up or maintain agreements for the provision of port facilities, very few customers had obtained simultaneous quotes from both parties or used competitive quotes as leverage in negotiating terms. Moreover, to the extent that Liverpool and the Canal were alternatives for some customers, this was also true of independently-controlled port facilities at Bromborough on the West side of the Mersey, and Garston on the East side. Accordingly, depending on the customer, the merger does not raise concerns in respect of any type of dry bulk shipment for one of two reasons: (i) Liverpool and the Canal were not competitive alternatives to begin with, or (ii) to the extent that they were, sufficient alternatives remain to which customers could switch (or threaten to switch) in order to discipline the merged entity.

### **Liquid bulk**

21. Customers in the liquid bulk segment also indicated that they had not regarded Peel and MDHC as close competitors. Being a deep sea port, Liverpool can accommodate large tankers such as those used to transport liquid and liquefied products such as crude oil and liquid petroleum gas. Ports along the Canal are not accessible to this type of vessel, given the limitations of the Canal's width and depth.
22. To the extent that Peel and MDHC can both accommodate smaller shipments of liquid bulk product, very few customers had obtained simultaneous quotes from both parties. Fewer still submitted that they had used competitive quotes as leverage when negotiating terms. No third party respondent argued persuasively that the loss of such leverage or potential leverage as a result of the merger would materially worsen their bargaining position. For example, none has provided evidence or otherwise quantified the extent to which exploiting such actual or potential competition between Peel and MDHC was realistic or effective.

23. In the light of customer responses, there is insufficient evidence to suggest that Liverpool and the Canal were important pre-merger alternatives between which customers credibly threatened to – or did – switch and thus obtained more favourable terms than they could otherwise have done. Furthermore, alternative sources of leverage would appear to be unaffected by the merger. Accordingly, there is no realistic prospect that the merger, by placing Liverpool and the Canal under common ownership, would substantially lessen competition to the detriment of customers.

### **Unitised containers**

24. MDHC provides port facilities in the container segment at Liverpool and Sheerness. Whilst Peel provides such facilities at Clydeport, there is very limited container traffic on the Canal. Customers support the parties' submission that Peel and MDHC were not realistic alternatives or, to the extent that they were, that sufficient alternative port facilities exist for the container segment. It is therefore unrealistic to suggest that the merger will give rise to a substantial lessening of competition in this respect.

### **Barriers to entry and expansion**

25. The acquisition of an existing port or the opening of a new port requires large capital investment.
26. Opening a new port requires not only the acquisition of a suitable site, but also compliance with environmental legislation. In many cases existing port owners also own the land surrounding their port facilities and they may therefore be reluctant to sell or lease this to a potential competitor.
27. There have been a number of instances where existing port facilities which had fallen into disuse have been acquired and successfully brought back into commercial use, or where the capacity of existing ports has been significantly expanded.
28. However, given that the merger does not appear to raise any significant competition concerns, there is there is no need to conclude on the extent to which barriers to entry and expansion are surmountable.

### **Buyer power**

29. Liverpool's customer base is very fragmented and as a consequence no single customer appears to have significant buyer power. One customer accounts for a very large share of the Canal's turnover, though it would account for a significantly lower share of the merged entity's turnover.

## **VERTICAL ISSUES**

30. The anticipated acquisition does not appear to give rise to any vertical issues.

## **THIRD PARTY VIEWS**

31. Third parties in a number of areas initially expressed concerns. However, on closer examination, a number of these concerns do not appear directly attributable to any loss of competition caused by the merger between Peel and MDHC. Several third parties withdrew their concerns in the course of the OFT's investigation.

## **ASSESSMENT**

32. Peel and MDHC overlap in the operation and maintenance of port facilities for freight traffic – on the Canal and Liverpool respectively.
33. The parties provide port facilities for the many different types of cargo loaded and unloaded at the docks within each of their commercial estates. However, the impact of this merger on competition has been assessed, in accordance with a previous OFT decision, on the basis of a product scope that comprises the provision of port facilities for all 'dry bulk' goods. The merger's impact on the provision of port facilities for all 'liquid bulk' goods and for 'unitised containers' has also been considered.
34. In the 'dry bulk' segment there is little evidence of actual pre-merger competition between the parties for customers. To the extent Liverpool and the Canal were alternatives, the evidence suggests that sufficient competitive constraint remains on the River Mersey in the port facilities at Bromborough and Garston.
35. In the 'liquid bulk' segment, the scope for competition between Liverpool and the Canal is limited to the extent that the Canal cannot accommodate large tankers such as those used for carrying crude oil and liquid petroleum gas. For smaller shipments of liquid bulk product, the available evidence does not sustain an objective belief, justified by relevant facts, that there is realistic prospect of a substantial lessening of competition.
36. In the 'container' segment, customers support the parties' submission that Peel and MDHC are not realistic alternatives and/or that other container ports remain as sufficient alternatives to Clydeport and Liverpool.
37. 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

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