

***Case No COMP/M.5480 -
DEUTSCHE BAHN/ PCC
LOGISTICS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 12/06/2009

***In electronic form on the EUR-Lex website under document
number 32009M5480***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.6.2009

SG-Greffe(2009) D/3326

C(2009) 4700

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5480 – Deutsche Bahn/ PCC Logistics
Notification of 5 May 2009 pursuant to Article 4 of Council Regulation
No 139/2004**

1. On 5 May 2009 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004¹ ("EC Merger Regulation") by which the undertaking Deutsche Bahn Mobility Logistics AG ("DB ML", Germany) belonging to Deutsche Bahn AG ("DB", Germany) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the Polish logistics operations conducted through the undertakings PCC Rail S.A., PCC Rail Rybnik S.A. and Trawipol Sp. (together "PCC Logistics", Poland) all belonging to PCC SE (Germany) by way of purchase of shares.

I. THE PARTIES

2. **DB** is the state-owned German-based railway company engaged in, *inter alia*, rail passenger transport and rail freight transport mainly in Germany, the UK, the Netherlands, Denmark, Spain and France. DB ML is the transportation and logistic division of DB and through its Schenker units provides freight forwarding and freight transport services.

¹ OJ L 24, 29.1.2004 p. 1.

3. **PCC Logistics** is engaged in railway transportation (mainly freight), freight forwarding and other railway and logistics activities including train haulage, terminal and sidings management, fleet management, maintenance and infrastructure management as well as port services and sand mining. PCC Logistics is nearly exclusively active in Poland (it generates more than [90-100]% of its turnover in Poland).

II. THE CONCENTRATION

4. The proposed concentration concerns the acquisition by DB, via its wholly owned company DB ML, of all shares in the three legal entities that make up PCC Logistics. The transaction does not include the German logistics business carried out by PCC SE. Only the Polish operations of PCC are subject to the Transaction. The sales and purchase agreement between DB and PCC SE was signed in January 2009.
5. The transaction leads to the acquisition of sole control by DB and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate turnover of the undertakings concerned exceeds EUR 5,000 million (DB: EUR 33,451 million, PCC Logistics: EUR [300-400] million). The Community-wide turnover of each undertaking concerned is more than EUR 250 million (DB: EUR [...] million, PCC Logistics: EUR [...] million). The Parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.
7. Therefore, the notified transaction has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

IV. RELEVANT MARKETS

8. The proposed transaction concerns mainly rail freight services in Poland and Germany and between these two Member States.

A. SEPARATE MARKETS FOR FREIGHT FORWARDING AND FREIGHT TRANSPORT

9. As explained below, the notifying party submits the market definition of an overall market for freight forwarding and all other logistics services with the exception of shipment of parcels and courier services. Such a market would also include freight transport services (including transport by all modes i.e. land (rail, road, inland waterways and pipelines) sea and air)². Such an overall market for freight forwarding and logistics can be according to DB segmented into *domestic* and *international* services. Alternatively, DB suggests a market segmentation according to *Die TOP 100 der Logistik* (TOP 100 Study)³, where the domestic logistics market is segmented into

² According to DB, *siding services* (“*Werksverkehre*”) for industrial customers, i.e. services which are designed for one specific customer on the customer’s own (production) site and including all activities connected with the customer’s internal railway network needs, also belongs to an overall market for freight forwarding and logistics and are not a market on its own.

³ *Die TOP 100 der Logistik*, 2008/2009, Deutscher Verkehrs-Verlag, 2008; see also Case COMP/M.4786 – Deutsche Bahn/Transfesa, para. 17; COMP/M.2905 Deutsche Bahn/Stinnes, para. 9.

12 categories, according to the type and volume of the goods transported, and the international logistics market into 3 categories, according to the mode of transport.

10. The Commission has found in previous decisions that freight transport services constitute an input to freight forwarding services⁴. Freight forwarding providers offer a service to customers which is often sub-contracted to the transport carrier.⁵
11. The market investigation confirmed the position of the Commission in previous decisions. The respondents in their vast majority confirmed that freight transport and freight forwarding are not considered as substitutes but as separate service markets by customers and competitors, and that transport can be regarded as an input for freight forwarding⁶.

B. FREIGHT FORWARDING

1. Product Market Definition

12. Freight forwarding has previously been defined as “*the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs*”.⁷ It has been segmented into (i) domestic and international freight forwarding and (ii) freight forwarding by air, by land and by sea.⁸ Previous decisions have left open if further subdivisions, e.g. by corridors, for freight forwarding services might be appropriate.
13. For the purpose of this case the Commission assessed whether a further subdivision of land freight forwarding according to the different modes of transport, in particular rail and road, would be appropriate. The notifying party submits that such a distinction between the different modes would not reflect market conditions as freight forwarders could generally organize all modes of transport, especially as regards land transport.
14. As to the further segmentation between freight forwarding by rail and road, the market investigation confirmed that at least a partial substitutability exists between freight forwarding services by *rail* and *road*. In any case, since the concentration does not give rise to any competition concerns under any alternative market definition, it is not necessary to conclude whether further segmentations of freight forwarding are appropriate.

⁴ For the definition of freight forwarding, the notifying party refers to previous Commission decisions. See Case COMP/M.1794 *Deutsche Post/AEI*; COMP/M. 4045 *Deutsche Bahn/BAX Global*.

⁵ Case COMP/M.2905 *Deutsche Bahn/Stinnes*.

⁶ See also Case COMP/M.2905 *Deutsche Bahn/Stinnes*.

⁷ Case COMP/M.4045 *DB / BAX Global*, Case COMP/M.3971 *Deutsche Post / Exel*, Case COMP/M.3603 *UPS / Melto*, M. 3496 *TNT Forwarding Holding / Wilson Logistics*, Case COMP/M.3155 *Deutsche Post / Securicor*, Case COMP/M.2908 *Deutsche Post / DHL* and Case COMP/M.1794 *Deutsche Post / Air Express International*.

⁸ Case COMP/M.4746 *Deutsche Bahn / EWS*, Case COMP/M.4045 *DB / BAX Global*, Case COMP/M.3971 *Deutsche Post / Exel* and Case COMP/M.1794 *Deutsche Post / Air Express International*.

2. Geographic Market Definition

15. In its previous decisions, the Commission has left open whether the freight forwarding market or subdivisions thereof could still be considered as national due to language and regulatory barriers or as larger in view of a trend by major competitors to create networks which are trans-national or even EEA-wide.⁹
16. The notifying party suggests that the geographic market for domestic freight forwarding services (including possible subdivisions) is national. Similarly, the notifying party takes the view that there are still national markets for the provision of international freight forwarding services, because most players, in accordance with the customers' preferences, have a particular focus on outbound freight forwarding services from their home country. Only few clients seem to tender contracts for international freight forwarding at least for certain goods on a wider than national basis. If one were to distinguish freight forwarding services according to the mode of transport, DB submits that these narrower hypothetical freight forwarding markets would also be national.
17. The market investigation gave some indications that the provision of freight forwarding services may have a wider than national dimension, as some market players in freight forwarding have wider than national scope. However, the majority of respondents would agree with distinction of the national market for freight forwarding. In this case, the exact geographic dimension of the market for freight forwarding can be left open, since even under the narrower geographic market definition no competition concerns arise.

C. FREIGHT TRANSPORT

1. Product Market Definition

18. In previous cases the Commission has found that not all modes of transport are generally substitutable to each other in view of the geographic situation of the customer as well as the specific characteristics of the goods to be transported¹⁰. In this regard, the Commission has found in previous cases that there are indications for a distinct market for the transport of goods by rail. However, the Commission has not taken a definite position on such segmentation which depends on a number of factors including the type of good transported, volume and weight, distance, etc., and has to be decided on a case by case basis¹¹.
19. The market investigation largely confirmed that a distinction between the different modes (land, air, sea) of freight transport might be necessary. Each mode of freight transport has different characteristics in relation to timing, prices and cost structure and geographic availability¹².

a) Rail Freight Transport

⁹ See Case COMP/M.4045 *DB/BAX Global*, Case COMP/M.3971 *Deutsche Post/Exel*, Case COMP/M.4786 *Deutsche Bahn/Transfesa* and Case COMP/M.1794 *Deutsche Post/Air Express International*.

¹⁰ Case COMP/M.4294, *Arcelor/SNCF/CFL Cargo*, Case COMP/M.3150 *SNCF/Trenitalia*, Case COMP/M.5096 *RCA/MÁV Cargo*.

¹¹ Case COMP/M.3971 *Deutsche Post/Exel*, Case COMP/M.4746 *Deutsche Bahn/EWS*.

¹² Based on replies to the market investigation. See also COMP/M.5096 *RCA/MÁV Cargo*.

20. In line with the outcome of market investigations in previous cases, also in this case the market investigation provided evidence for a possible further distinction of land freight transport into rail, road and inland waterways. It confirmed that the reasons for the choice of different transport modes depends mainly on the volume of the goods to be transported, the access to infrastructure, geographic availability, environmental concerns and transport time. Inland waterways in and between Poland and Germany are in general not seen as a viable substitute for other modes of land transport.
21. Some respondents indicated that they consider rail freight transport and road freight transport only to some extent interchangeable and that there would be limited competition between these modes of land transport. The majority of the customers pointed out that their choice of transport mode depends on a number of different conditions including type of transported goods, volume and weight, distance as well as quality of service, i.e. factors like transport time, safety and punctuality. Moreover some customers pointed to particular transport needs or access to infrastructure which would either require or considerably favour rail over road. Customers who invested into their own railway infrastructure at their industrial premises often favour rail. For some products due to size or classification as dangerous goods, road is not an option. Finally some customers have indicated that also environmental reasons might influence their choice for rail freight transport versus road freight transport.
22. Therefore, the market investigation confirmed previous decisions and gave indications that there is a separate market for rail freight transport. However, as the transaction under any alternative product market definition does not raise serious doubts as to its compatibility with the common market, the exact market definition can be left open.

b) Possible subdivision of rail freight into Single wagon and Block trains

23. In the present case a distinction between *block train services* and *single wagon train services* might be considered. PCC Logistics does not provide single wagon train services. Only incumbent rail operators like DB or PKP are in a position to provide these services. Block trains are entire trains running from a single point of origin to a single point of destination. Single wagon trains are assembled in a marshalling yard in the region of origin, transported to a marshalling yard in the region of destination and disassembled into single wagon loads for transport to their final destination (often by intermodal transport). The provision of single wagon services requires a more complex organisational structure, a large rail network and a sufficient scale of operations. In previous decisions, the Commission has not excluded such a subdivision between single wagon and block train services.¹³
24. With regard to a distinction between block train services and single wagon train services the majority of customers and competitors perceive these two types of rail freight transport services as not substitutable, and the choice thereof depending mainly on the quantity of goods to be transported.
25. Whether the rail freight transport market should be further segmented between block train services and single wagon train services can be left open in this case, since the proposed concentration does not raise competitive concerns under any alternative market definition.

¹³ Case COMP/M.4746 *Deutsche Bahn/EWS*.

c) Siding services

26. The notifying party defines siding services¹⁴ as services for one specific customer on the customer's own (production) site including all activities connected with the customer's internal railway network needs. Siding services are provided on railway infrastructure owned by the respective customers. The contracting of railway siding services is done in a number of ways, in particular by public tendering.
27. According to the notifying party, siding services do not form a separate market but are included in the overall freight forwarding and transport markets.
28. The market investigation provided some indications that due to technical specificities and requirements of rail siding services these services may be considered a distinct market. As the parties' activities do not overlap with regard to siding operations it can be left open whether rail siding services constitute a distinct market.

2. Geographic Market Definition

29. As for the geographic market definitions of rail freight transport services the Commission has previously held that in view of different technical and regulatory requirements the markets for domestic and for international rail freight services tend to be national¹⁵, but could become international on certain routes which are part of a corridor¹⁶. In certain situations the Commission also found that a corridor-based approach might best reflect the competitive situation.¹⁷ In a recent decision, the Commission considered a distinct market for cross-border rail freight transport services between two neighbouring countries¹⁸.
30. The notifying party argues that no distinct market for cross-border rail freight transport services between two neighbouring countries would exist. Traditionally, rail freight operators cooperate with another railway operator for on-transport beyond national borders.¹⁹ The cooperation between railway operators would form part of a possible international rail freight market, which is irrespective of the country of destination. While few operators following liberalisation of the European rail freight markets in 2007 have started to offer "seamless" services into other Member States, the notifying party argues that from a demand side point of view seamless traffic is interchangeable with cross-border traffic on the basis of the traditional cooperation model. The main

¹⁴ Some of the PCC Logistics companies provide siding services for industrial customers in Poland.

¹⁵ Case COMP/M.2905 *Deutsche Bahn/Stinnes*, Case COMP/M.4746 *Deutsche Bahn/EWS*, Case COMP/M.5096 *RCA/MÁV Cargo*.

¹⁶ Case COMP/M.4746 *Deutsche Bahn/EWS*, Case COMP/M.4786 *Deutsche Bahn/Transfesa*.

¹⁷ A corridor-based approach considers that transport services between certain regions are, due to mainly geographical or technical reasons, only offered on one certain route or corridor, where other possible routes are not equally feasible either economically or technically. In that case, each corridor has to be regarded as one distinct geographical market. See e.g. Case COMP/M.3150 *SNCF/Trenitalia* regarding the tunnel of Fréjus between France and Italy.

¹⁸ Case COMP/M.5096 *RCA/MAV Cargo* regarding cross-border rail services between Austria and Hungary.

¹⁹ These co-operations are based on the COTIF/CIM model, i.e. the model for the international carriage of goods by rail in which one rail operator provides part of a journey in his territory and the other rail operator "takes-over" at the border and continues the journey.

difference would be time efficiency because of reduced time at the border, thus seamless traffic would be a better product, but not a separate market. Furthermore, the notifying party claims that no specific corridor for border-crossing rail transport between Germany and Poland exist.

31. The market investigation in this case largely confirmed the view of the Commission in previous decisions. With respect to the rail freight transport market there are still valid reasons that this market is still national though a trend to an EEA-wide market can be observed. Respondents also indicate that there might be a specific cross-border market between Germany and Poland as cross-border rail transport requires knowledge of the relevant regulations, languages and acquiring the necessary licences of both countries. Also the technical requirements differ between the countries and locomotive safety and electric currents are not at all similar and provide barriers to entry.
32. Given that the proposed concentration does not give rise to any serious competition concerns under any alternative geographic market definition, the geographic dimension of the alternative transport markets can be left open in this case.

D. OTHER MARKET – TERMINAL SERVICES

Product and geographic market definition

33. PCC Logistics operates bimodal terminals (rail/road) and trimodal terminals (road/rail/inland water vessels and road/rail/deep-sea vessels) for different kind of goods. In addition, PCC Logistics operates a terminal where goods are reloaded from rail wagons used on Western European gauge tracks to wagons used on broad gauge tracks towards CIS and vice versa.
34. In previous decisions, the Commission has not definitely decided on the relevant markets for terminal services. The Commission considered that handling services in terminals (involving loading, unloading, storage, etc.) are a market on their own.²⁰ The interchangeability of bimodal and trimodal terminals depends on the substitutability of the modes of transport.²¹ For container terminal services in deep-sea ports the Commission held that they involve the loading, unloading, storage, and land-side handling for inland transportation of containerised cargo.²² The handling of containers could be regarded as distinct from services for other cargo types (such as bulk, liquid bulk etc.²³). In addition, a distinction between hinterland traffic and transshipment traffic may be justified.²⁴ As regards the geographic market definition for terminal services, the Commission considered that for terminal services in deep sea ports, the relevant geographic market is determined by the geographic scope the terminal generally serves. For midland terminal services, the Commission took the view that the relevant geographic market is determined through the distance from the terminal to the customer (consignor or consignee of the sending).

²⁰ Case COMP/M.2632 – *Deutsche Bahn/ECT International/United Depots*, para. 16.

²¹ Case COMP/M.2632 – *Deutsche Bahn/ECT International/United Depots*, para. 15.

²² Case COMP/M. 5066 – *Eurogate/APMM*, para. 10.

²³ Case COMP/M. 5066 – *Eurogate/APMM*, para. 12.

²⁴ Case COMP/M. 5066 – *Eurogate/APMM*, para. 13; COMP/M.1674 – *Maersk/ECT*, para 9; COMP/M. 5450 – *Kühne/HGV/TUI/Hapag-Lloyd*.

35. The notifying party submits that there would be an overall market for terminal services. Due to substitutability of modes of transport in most cases, a further segmentation would not be appropriate. Furthermore, with the exception of reloading of cars and the need for special equipment, no segmentation into transported goods is correct.
36. For the present case, the market definition for terminal services can be left open as under any alternative market definition the transaction raises no competition concerns.

V. COMPETITIVE ASSESSMENT

37. The transaction results in very limited overlaps in certain plausible freight forwarding markets²⁵ but does not lead to geographic overlap in the Parties' current activities on the national rail freight markets in Germany or Poland. While PCC Logistics is currently active only in Poland²⁶ in this respect, DB is active in rail freight in several Member States including Germany, Denmark, France, Italy, The Netherlands and the UK, but not in Poland. In Poland DB provides cross-border rail freight services by cooperating with Polish National Railways ("PKP"). PCC Logistics is not active in other countries and provides cross-border rail freight transport only by co-operation with DB or private rail companies.

A. Freight forwarding

38. DB has a strong position in the domestic freight forwarding market in Germany with its 2008 market share estimated at [10-20], and [40-50]% in the narrowest plausible market, the German international rail freight forwarding market (and [40-50]% in domestic rail freight forwarding in Germany). PCC Logistics is not active in the German freight forwarding market.
39. PCC Logistics's position on the Polish market is less significant. The markets where the parties' activities in freight forwarding overlap to the greatest extent is (i) the domestic Polish freight forwarding market, however the combined market share of the parties on this hypothetical market amounts to not more than around [5-10]% (with an increment of [0-5]%) and (ii) the domestic Polish rail freight forwarding market where according to the parties the combined entity would achieve a market share of [5-10]% with a slight increment of [0-5]% due to DB's jointly controlled company Polzug. On the Polish international rail freight forwarding market both parties hold together [0-5]% of the market.
40. The majority of respondents to the market investigation do not perceive the transaction to have any impact on the freight forwarding markets, with some respondents specifying that this lack of impact relates to the very limited role of PCC on these markets.
41. In light of the above, competition concerns in relation to the markets for freight forwarding can thus be excluded under any alternative product and geographic market definition.

B. Rail freight transport services

²⁵ DB ML's Schenker units are active in the Polish domestic freight forwarding market with a [0-5]% market share in 2008. PCC Logistics has a [0-5]% market share in the same market.

²⁶ Only companies which are located and registered in Poland are subject to the transaction.

42. PCC Logistics offers rail freight transport only in Poland, while DB provides rail freight transport service in Germany and many other Western European Member States (such as the UK, France, Denmark, the Netherlands and Italy). There is no direct geographic overlap between the rail freight transport activities of the Parties²⁷.
43. The 2008 market share of DB on the German market for domestic rail freight services amounts to [80-90]% while PCC Logistics is not active in the German market. In Poland, according to the parties' estimates PCC Logistics holds [5-10]% of the market. DB does not provide rail freight services within Poland. Therefore, as indicated above, there are no overlaps in the respective markets of the parties. As the state-owned incumbent PKP still holds a market share of [70-80]%, the proposed transaction might according to the parties give the merged entity the ability to effectively challenge the market position of the incumbent in the Polish rail freight market.
44. DB does not currently provide any *siding services* in Poland and PCC Logistics does not provide any siding services in Germany. Therefore, the transaction will not lead to any overlaps on these plausible markets.
45. Both parties provide *cross-border rail freight services between Poland and Germany* only by cooperating with other rail freight companies for on-transport beyond the border. While DB in most cases cooperates with PKP (and to a small extent with PCC Logistics) on the Polish side, PCC Logistics uses DB and private German railway companies. According to the notifying party, there are no overlapping activities as both sides are only active on their respective national side. While PCC Logistics only has very limited activities in cross-border rail transport at all, DB is the German side partner for most of the cross-border activities.
46. As a result of liberalisation, some private railway companies like CTL, the second biggest private Polish railway company, have already started to provide seamless cross-border rail freight transport between Germany and Poland without the need to cooperate with an incumbent. According to the notifying party and in general confirmed by the market investigation, other railway companies like ITL, a subsidiary of SNCF, and ERS have acquired all the necessary means to provide seamless transport and are expected to provide this service in the very near future. Currently DB is not able to provide this service as it lacks among other things the necessary safety licences for Poland. According to DB, one of the main rationales for the transaction is that it will give DB the possibility to provide its customers with direct seamless freight transport²⁸ and forwarding services from Germany to Poland and vice versa.
47. The broad majority of the respondents to the market investigation did not see any impact of the transaction on the German rail freight market. With respect to the Polish rail freight market, the majority of respondents indicating any impact of the transaction state that a strong partner for PCC Logistics will allow it to compete more actively with the Polish incumbent. This would lead to better (lower) prices and better quality of service. This would be due among other things to a transfer of know-how from DB to PCC,

²⁷ PCC via its subsidiary PUT Trans Pak is also active in road transportation; however, the company only operates 45 trucks, with the turnover related to these operations amounting to approx. [...] million EUR in 2008.

²⁸ Seamless freight transport by rail relates to cross-border traffic and can be provided by a railway operator that obtained the relevant licenses for rail transport in both countries of the journey.

securing a stronger financial base for the necessary investments in the rolling stock and a wider choice of services.

48. Some of the respondents underlined that the transaction will further strengthen the already significant role of DB in Europe. More specific comments related to the transaction allowing DB to gain an even stronger position in offering rail freight transport services between Germany and the former CIS countries, due to taking control over PCC operating in the transit country – Poland. According to the notifying party, PCC is currently offering freight forwarding but not rail freight transport services to and from the Ukraine and Russia (through Belarus or the Ukraine). [...]. Currently, PKP is in principle the only company which is providing cross-border rail transport to these countries by exclusively cooperating with the state-owned undertakings in these countries. Therefore, the proposed transaction might even increase competition in such markets.
49. With regard to cooperation between rail operators on cross-border traffics the market investigation indicates that there seem to be number of alternative rail operators on the respective domestic markets for both the German and the Polish rail operators to offer services in cooperation with the rail operator from the other respective market.

Elimination of potential competition

50. As regards the German rail freight market and the Polish rail freight market respectively, PCC Logistics and DB are not currently actual competitors. While PCC Logistics offers rail freight transport services only in Poland, DB is active in several EU Member States but not in Poland. For the time being, there are no direct geographic overlaps between the rail freight transport activities of the parties and, therefore, competition concerns could only arise with respect to elimination of potential competition.
51. For a merger with a potential competitor to raise serious competition concerns, it is in principle necessary to show the following²⁹:
- (i) A significant likelihood that the potential competitor would act currently as a significant competitive constraint or that, absent the merger, it would grow into an effective competitive force in the market at stake in the foreseeable future.
 - (ii) The absence of a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.

PCC as a potential competitor in the German market for rail freight transport

52. The analysis conducted by the Commission has found no indications that PCC Logistics has planned to enter the German rail market. PCC Logistics has traditionally a strong regional focus on the industrialized regions of Poland, with a significant share of its transport activities focussed on siding services, which by their nature are bound to their locality in Poland. Furthermore, as a family-owned business, PCC Logistic does not have the required financial strength to expand internationally.
53. The German rail freight market is characterised by a number of actual competitors, which are in a position to exert to a certain extent competitive pressure on DB.

²⁹ See paragraph 60 of the Guidelines on the assessment of horizontal mergers, OJ 2004, C 31, 05.02.2004, p. 11.

Currently, there are more than 250 licensed companies that provide rail freight transport in Germany. The main competitors are: RAIL4CHEM, belonging to Veolia Cargo, TX Logistik, belonging to the Italian incumbent Trenitalia, ITL belonging to the French incumbent SNCF, the Swiss incumbent SBB Cargo AG, CTL, owned by the private equity investor Bridgepoint, ERS Railways, Häfen und Güterverkehr Köln (HGK) etc. DB's overall market share in rail freight transport decreased from 100% to approximately [80-90]% over the last years.

54. On this basis, it can be concluded that PCC Logistic – taking into account that it holds only [5-10]% market share in the Polish home market – neither currently provides a significant competitive constraint on DB, nor, absent the merger, would it grow into an effective competitive force in the German rail freight market in the foreseeable future.

DB as a potential competitor in the Polish market for rail freight transport

55. DB is currently not active in the Polish rail freight transport market. However, as a large European player, it has analysed options for market entry. DB explained that a stand-alone entry into the Polish rail freight market, even for a large player like DB, would lead to significant start-up costs and very high risks. The main factors are long lasting administrative processes to receive the required licences, long times to qualify used German locomotives³⁰, high costs to invest in necessary maintenance stations, rolling stock depots and driver facilities, as well as an estimated [...] years of operation to reach a critical mass. It previously intended to operate East West Railways³¹ as a joint venture together with PCC Rail, which became subsequently redundant due to the planned acquisition of PCC Logistics. DB was unable for East West Railways to even acquire the necessary safety licences.
56. There is some evidence from the market investigation that, due to the size of the Polish market, market entry on a significant scale is not easily achievable. DB would be the first major European railway company entering the Polish market. On other comparable larger geographical markets, market entry from major foreign rail freight transport companies took place only by acquiring existing railway operations in the respective country, for example, Trenitalia acquiring TX Logistik AG or SNCF acquiring ITL in Germany.
57. In addition, there are some indications that even after the transaction there are a number of other potential competitors which are currently considering entering the Polish rail freight market. ITL for example which is a subsidiary of SNCF got a licence for Poland in January 2009 and has an office in Wroclaw. SNCF publicly indicates that it is considering to enter the Polish rail freight market³². The market investigation showed that also other companies, for example ERS, have plans to provide seamless rail freight transport between Germany and Poland³³. Other companies like Rail4Chem have

³⁰ DB states that new locomotives were not competitive in price against the existing locomotives of the incumbent PKP.

³¹ For the intended establishment of a JV with PCC Rail which was withdrawn because of the proposed transaction see Case COMP/M.4794 – *Railion/PCC Rail/JV*.

³² See SNCF, press release from 7.4.2008.

³³ See non confidential answer of ERS to the market investigation.

applied for the necessary licence and are expected to enter the Polish market in the near future.

58. However, at this stage, it can be left open whether the notifying party is a potential competitor on the Polish market as even in such a scenario the transaction does not raise serious competition concerns as the market position of the merged entity in the Polish market will be limited.
59. After the transaction the incumbent still dominates the market with [70-80]% market share while the merged entity will have a market share of [5-10]%. There are also other railway companies in the market which have notable market shares: CTL ([5-10]%), Lotos Kolej ([0-5]%) and PKN Orlen Koltrans ([0-5]%). Moreover there are a number of smaller private rail companies like Rail Polska, Freightliner PL and Kolej Bałtycka which are active on the Polish rail freight market.
60. The effect of the merger is that a potential competitor combines its forces with an actual competitor in the Polish market, which is much smaller than the incumbent. After the merger, the combined entity might have the ability to compete more effectively against the incumbent PKP on the Polish market. A very significant number of customers have confirmed this view and indicated in the market investigation that they expect the merged entity to more effectively compete with the incumbent PKP.
61. Therefore, the transaction does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement as regards rail freight transport services.

C. Terminal services

62. According to the parties, the transaction does not lead to any affected markets for terminals under any plausible market definition. PCC Logistics operates 4 terminals in Poland and DB operates 2 terminals in Poland (only for finished vehicles). In addition, Polzug Intermodal GmbH ("Polzug", Germany), a freight forwarding company jointly controlled by DB, PKP and Hamburger Hafen Logistic AG ("HHLA", Germany) which offers intermodal container transports from Germany to Poland to other Eastern European countries, operates 4 terminals in Poland. A large number of other terminals is operated by other companies, including PKP, Trade Trans and CTL. Most of the respondents to the market investigation did not see any impact of the transaction on the markets for terminals.
63. Some respondents to the market investigation pointed out that DB would gain, through co-operation agreements with terminals operated by PKP together with the terminals operated by PCC, the possibility to foreclose competitors for these services. It has to be noted that DB according to the parties does not have any [...] agreements with PKP concerning its terminals and therefore it is unlikely that DB would have the ability to execute such a strategy.
64. Furthermore, the transaction does not lead to a change as regards Polzug Intermodal GmbH ("Polzug", Germany)³⁴, which also operates terminals in Poland. Polzug is jointly controlled by DB, PKP and Hamburger Hafen Logistic AG ("HHLA", Germany).

³⁴ Polzug Intermodal GmbH ("Polzug", Germany) is a freight forwarding company. It offers intermodal container transports from Germany to Poland to other Eastern European countries.

As regards the foreseen acquisition of a [<25]% minority shareholding without control in PCC Intermodal, which also operates terminals in Poland, this minority shareholding of DB does not allow it to influence strategic business activities. Therefore, PCC Intermodal and Polzug are expected to continue to act independently of each other and PCC Intermodal is expected to act independently of PCC Logistics. The market investigation therefore did not raise any merger specific concerns.

65. Therefore, no serious competition concerns with respect to terminal services could be identified.

D. Cross-border traffic foreclosure

66. One respondent to the market investigation has raised the concern that after the transaction PCC logistics would not be available as a co-operation partner any more for cross-border traffic³⁵ for other German railway companies. With regard to cooperation between the rail operators on cross-border traffics the market investigation indicates that there seem to be a number of alternative rail operators on the respective domestic markets for both German and Polish rail operators to offer services in cooperation with the rail operator from the other respective market.

67. In particular, PKP is also currently co-operating not only with DB but also with other German private rail companies and is expected to continue to do so. If DB starts to shift capacity from co-operation with PKP to seamless cross-border traffic, PKP is expected to have the incentives to co-operate with other German rail companies.

VII. CONCLUSION

68. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Stavros DIMAS
Member of the Commission

³⁵ A rail operator willing to provide cross-border services not holding a licence in both countries needs to cooperate with a partner from the respective country.