

RESPONSE BY THE CHARTERED INSTITUTE OF LOGISTICS AND TRANSPORT IN IRELAND TO THE COMPETITION AUTHORITY'S PUBLIC CONSULTATION ON COMPETITION IN THE IRISH PORTS SECTOR

Introduction

The Chartered Institute of Logistics and Transport in Ireland (“the Institute”) is the independent professional body for people engaged in logistics and all modes of transport. The Institute is part of an international body with 30,000 members worldwide. As a professional body, the Institute does not lobby on behalf of any sectoral interest, but seeks to take an independent, objective and considered view on matters of public policy.

The Institute welcomes the opportunity to respond to the public consultation on competition in the Irish ports sector.

General Remarks

There is currently no convincing evidence of any serious competition problems in the Irish ports sector. In the view of the Institute, the very helpful preliminary analysis published by the Competition Authority broadly supports that conclusion. Since the Competition Authority is committed, under the Government’s Action Plan for Jobs, to carry out a full study of the sector, it is therefore most important that the Authority spends some time at the outset clearly defining the objectives of that study. This should involve an elaboration of the terms of reference, setting out a clear set of questions which the Authority wishes to see answered by the study. In so doing the Authority should be acutely aware of the maxim “if it isn’t broke, don’t fix it”.

There should be very strong objective evidence of serious market failure before any State intervention is contemplated in the sector. Any potential intervention should be targeted and proportionate. The positive and negative impacts of any potential intervention should be most carefully considered and intervention should only be proposed where the benefits clearly and demonstrably outweigh the downside impacts. The potential unintended consequences of State intervention should also be fully considered, though they are by their nature more difficult to identify (the so-called “unknown

unknowns”). The Authority will understand that, even where market failure exists, there may be circumstances in which State intervention is not appropriate. A regulatory impact analysis should be completed where an intervention is being contemplated.

The Institute welcomes the item in the terms of reference providing for an examination of the impact of competition from ports in Northern Ireland and strongly urges the Authority to take an all-island approach to the planned study. In previous decades, when Dublin Port was less efficient and cost effective than it is today, there was a substantial diversion of natural central corridor unitised traffic through Northern Ireland ports. Those ports also provide a natural geographical catchment for parts of the Republic. Where State intervention is being contemplated, the implications for Northern Ireland ports should be fully assessed.

We note, in paragraph 1.17 of your preliminary analysis, that the Department of Transport, Tourism and Sport plans to publish a new National Ports Policy early this year. While the publication of a draft policy document would be welcome, finalisation of the policy should surely await the conclusion of the full port competition study. Premature publication of the new policy might preempt some of the Authority’s work and the findings of your study might in turn necessitate an early revision of the new ports policy. This is an issue which the Competition Authority should raise with the Department, if it has not already done so.

The main focus of your preliminary analysis is on the current situation of the Irish ports and the potential implications for competition. The full study should also take a longer term strategic perspective and consider how the ports sector might develop. This should consider the impact of renewed strong economic growth in the medium term and possible changes in the pattern of international trade such as the growing importance of the Asia-region. It might also consider the potential implications of more visionary longer term proposals such as the possible development of deep sea trans-shipment facilities on the western seaboard ports, particularly the Shannon Estuary and Cork, providing a gateway between Europe and North America and an alternative to increasingly congested ports on the European mainland.

The rest of this submission seeks to address a number of the specific questions posed by the Authority in its preliminary analysis. Responses to some questions are omitted where the Institute has nothing useful to contribute.

The Competitive Environment

Q2.1 Is the presentation of the factors shaping the competitive environment of Irish ports in this section reasonable?

Broadly yes, but the provisional conclusions set out in Chapter 2 will need to be fully substantiated in the planned study, supported by relevant data analysis and evidence.

Paragraph 2.10 states that declining imports have increased available port capacity and the potential for greater inter-port and intra-port competition. This may be a potential rather than a real benefit until the domestic economy starts to grow again. In the short term it has led to consolidation of shipping services and a greater incidence of ship sharing which may be reducing rather than increasing competition.

There is a reference in paragraph 2.13 to the impact of product specialisation, particularly for bulk products, on inter-port competition. It points to Shannon having 45% of dry bulk traffic but this is accounted for principally by two specialised facilities at Aughinish and Moneypoint. Similarly the 37% share that Cork has of the liquid bulk trade is accounted for to a major degree by the Whitegate oil refinery. This competition concern is therefore to some extent a red herring. Many bulk products require specialised handling equipment which involves significant capital cost. They cannot therefore be easily relocated from one port to another. Competition occurs at the outset when a company is deciding which port to use but once that decision is implemented, relocation is unlikely.

The geographical location of ports (paragraphs 2.14 to 2.16) will always be a major factor in determining competition in the market for port services. For example, the east coast ports will always have a competitive advantage over other ports on the Island for RoRo services because they are closer to our main import/export markets. They also facilitate shorter sea journeys favoured by

freight operators and which result in better ship utilisation, more frequent sailings and overall a more competitive environment. Dublin has a major geographical advantage because of the size of the market for imports, the large number of exporting firms in its catchment area and the quality of road access from all parts of the Island.

It is therefore important that the planned study carefully analyse the impact of geographical factors on port selection by mode, thereby ensuring that realistic conclusions are reached about the scope for competition for each mode.

The development of the motorway network, coupled with the Dublin Port Tunnel, referenced in paragraphs 2.22 to 2.24, is likely to have strengthened the competitive position of Dublin Port. It has increased the effective geographical catchment of the port with the widest range of services, has reduced journey times and most importantly improved journey time reliability. The study could usefully analyse the impact of improved motorway access and confirm or otherwise the anecdotal evidence. A related factor which should be considered is the quality of local road access. In the past local access to Dublin Port through congested city streets was a significant negative factor and the quality of road access to other ports, such as Foynes, has been repeatedly been raised by the port itself and potential users as a factor inhibiting its competitive position.

We agree that the scope for rail freight is limited (paragraph 2.25). Rail freight comes into its own for longer journeys (typically over 200 km) and where there are substantial volumes of laden units to be moved in both directions. It also works best where direct rail access can be provided to shipside for unitised freight and to specialised loading/unloading facilities for bulk products. The key is to avoid the additional cost and time delays of multiple movements (in the case of imports this could involve ship to quay, then road to rail and then transfer from rail to road for final delivery and in the case of exports road to railhead and then rail to port and possibly road to shipside). It would nevertheless be useful for the planned study to assess in what circumstances

direct rail access might improve the competitive position of ports and what influence public policy might have in this regard. For example what, if any, would be the competition impacts of a Government policy which favoured the transfer of certain traffics to rail and the use of targeted financial incentives to encourage it?

Q2.2 Are there other factors that need to be considered by the Competition Authority?

Prompted by the analysis in Chapter 2, the Institute suggests that the following issues should be considered in the planned study:

- In some cases port terminal operators also operate shipping services or provide freight forwarding or logistics services. The study might usefully consider whether such integrated operations have any impact on competition between terminals within ports, between ports or more widely in the transport and logistics sector.
- Ship sharing by operators, and therefore consolidation of shipping services to particular ports, has increased since the advent of the sustained economic downturn. While this is an understandable commercial development and may well ensure the continued provision of particular shipping services, its impact on competition should be considered.
- As referenced in paragraphs 2.17 to 2.19, there is an increasing trend towards end to end supply chain management, of which the port operation is only a small part. The cost and efficiency of port services may only form a small proportion of the overall cost and the time taken to move a product from primary producer to end user. Providers of integrated supply chain services may themselves be port operators and/or suppliers of shipping services. The study should therefore consider the extent to which these developments, as distinct from port costs and efficiency alone, influence the choice of port. Regulatory requirements, such as compliance with the EU Driving Time and Working Time Directives, are also factors taken into account in determining the routes chosen for freight forwarding and should be considered.

- The study should consider the role that the positioning of empty containers has in determining choice of port. This is particularly important for Ireland because of the demonstrable imbalance by region between unitised imports and exports.
- Regional development policy should also be taken into account, particularly the role that easy access to ports with appropriate shipping services and access to empty equipment plays in attracting industries to the regions.

Inter-Port Competition

3.1 Does the analysis presented in this section reflect how inter-port competition in the Irish RoRo sector is working?

We broadly agree with your analysis.

3.2 To what extent do Rosslare and ports in Northern Ireland compete with Dublin for RoRo trade and vice versa?

To a large extent these ports serve different markets. As well as the factors mentioned in paragraph 3.9, choice of port will also be influenced by the ultimate destination at the other end of the trip, the efficiency and cost effectiveness of the other port in the supply chain and the quality of road access to that port. Regulatory requirements such as compliance with the Driving Time and Working Time Directives may also be a factor because time spent on a ferry counts as a rest period for a driver. The choice of port may also be influenced by the wider supply chain considerations mentioned earlier in this submission. Physical factors also have to be taken into account and these could include the efficiency of the port layout, the quality of the road network in the immediate vicinity and the impact of weather and tidal factors.

3.3 Could Rosslare, Belfast or any other port place more competitive pressure on Dublin for RoRo trade and how might this be achieved?

As mentioned earlier, there is evidence that RoRo trade will move if the efficiency of a port is poor and cost of operation through it is high. However since Dublin took the necessary steps to address these issues in the 1980s its

competitive position has improved very substantially and it has won back the trade it lost to the northern corridor. Its competitive position has also been strengthened by the range of competing services it now operates, the size of its catchment and the improvements to the road network accessing it. It is therefore difficult to see the other ports putting competitive pressure on Dublin Port in the immediate future, especially when one also takes into account its strong financial position compared with potential competitor ports. If the economy returns to strong growth and available capacity becomes more constrained, it may be possible for other ports to compete more effectively. Dublin could, for example, become a victim of its own success and find itself with capacity constraints which were not easy to address. Dublin Port has for some time sought to reclaim land to facilitate the expansion of its operations and has not been successful to date. To what extent might that constrain future capacity growth or would more intensive use of its existing estate provide an adequate alternative way of increasing capacity?

3.4 Does the analysis in this section reflect how inter-port competition in the Irish LoLo sector is working?

We broadly agree with your analysis. However the comparisons with European ports have limited validity given the size of those ports, the scale of their hinterlands and the significance for them of deep sea shipping.

3.5 To what extent do the other LoLo ports compete with Dublin for trade and vice versa?

There is limited competition for this trade. The scope for competition is limited by a range of factors mentioned in your narrative, but consideration should also be given to other factors such as the maximum size of vessel that can be accommodated, the equipment available and the services offered by a particular port, the range of shipping services offered and the wider factors mentioned earlier in this submission such as total supply chain considerations.

3.6 Could any other ports place more competitive pressure on Dublin for LoLo trade and how might this be achieved?

Waterford Port has the facilities, a rail connection and adequate spare capacity. However there might be some issues with the ability of the port to

handle larger vessels due to draught constraints, coupled with the cost of road access from a wider catchment and with the ready availability of empty containers. The development of a rail consolidation centre on the M50 corridor might also help improve the potential to develop rail freight access from the Port of Waterford.

The upgrading of road access and the provision of quality rail access could also be factors in enabling other ports to compete for LoLo traffic.

3.7 Does the analysis in this section reflect how inter-port competition in the Irish bulk sector is working?

We broadly agree with your analysis.

Q3.8 Is there scope to improve the level of inter-port competition for bulk trade generally?

There is little scope for increased competition for bulk trade which involves large quantities and/or requires specialised handling equipment. For example, the specialised handling facilities for the large volumes for Aughinish, Moneypoint, Tara Mines and Whitegate are unlikely to move. There may be scope for competition in respect of smaller volumes which do not require specialised handling equipment. There is also scope for competition in respect of new high volume trade requiring specialised handling, for example the output from the planned new mine at Pallasgreen, Co Limerick. In this latter case quality rail access could be a key factor influencing the level of competition between ports.

3.9 Does the analysis in this section reflect Dublin's position vis-à-vis other ports on the island of Ireland?

Subject to the comments we made earlier in this section, yes.

Intra-Port Competition

One of the factors that needs to be considered when looking at intra-port competition is whether the terminals are common user facilities or are operated by a company or group which also provides shipping and/or freight

forwarding services. In the latter case, it is important to ask whether access is available to other companies and the quality and terms of that access. The Authority should use the planned study to undertake a thorough analysis of this issue, provide greater transparency than currently exists and obtain assurance that there are no anti-competitive practices.

Q4.1 Apart from Dublin and Belfast, is there scope for competing terminals in any port in Ireland? How might this be brought about?

There is no such scope for the immediate future. Competing terminals require a substantial volume of trade, a sufficient number of shipping services and adequate facilities to provide or develop competing terminals. Paragraph 4.9 suggests that a port such as Cork, handling more than 100,000 TEUs per annum, is big enough to have competing terminals. However there are only five LoLo services per week to Cork at present and this is hardly enough to justify competing terminals even if the necessary facilities were available.

Q4.2 Are the LoLo terminals in Dublin Port competing vigorously with each other?

Yes, but that might change as the economy improves and capacity utilisation increases. As mentioned earlier, it is also important to look at the impact of the combined operation of terminals and shipping/freight forwarding services by the same companies or groups.

Q4.3 To what extent has excess capacity affected the level of competition?

It has improved competition.

Q4.4 Is there scope for new entrants and what are the main barriers to entry?

No. The principal barriers are the current non-availability of sites to develop additional terminal facilities and the capital costs involved.

Q 4.5 Would changes to the current leasing/licensing arrangements improve competition and efficiency?

According to your preliminary study, two LoLo terminals are subject to long term leases: DFT (110 years to run) and MTL (80 years). On the face of it, this

provides little scope to improve competition and efficiency. However it would be necessary for the planned study to look in detail at the lease provisions and assess what powers Dublin Port has retained to intervene in the event of competition or efficiency concerns and the effectiveness of those powers. We note that the BSG terminal operates under a short term licence which gives Dublin Port a facility to influence the efficiency of terminal use.

In principle, the shorter the leasing/licensing period the better. The optimum period has to balance the need to give the operator sufficient time to make an adequate return on investment with the need to ensure that the terminal is operated in an efficient manner and in a way which facilitates competition.

Any lease or licence should include sufficient provisions to ensure that the terminal is used efficiently and that its efficiency is improved over time. It should also include provisions to promote competition and enable the port authority to intervene to address emerging anti-competitive practices and ensure that there is equitable access. The relevant provisions should be clear and precise so as to be fair to both parties and avoid the potential for dispute and litigation. Simple and precise performance metrics, based on international best practice, should be developed to assess efficiency. For example, in the case of RoRo that might include turnaround time and ramp utilisation data and in the case of LoLo it might include container lifts per hour and overall utilisation data. Critical to the successful deployment of these powers is access by the port authority to the necessary data and information. There should also be “use or lose it” provisions which specify a minimum level of utilisation. If use is below that minimum level for a specified period, termination of the lease or licence should be invoked.

A key consideration in devising such arrangements should be the ease with which new entrants to the shipping market can gain access to the port.

Q4.6 How do Dublin LoLo terminals compare internationally in terms of price, service and efficiency?

We are not in a position to answer this question, but note the findings of research quoted in paragraph 4.16 which suggest that the efficiency of the LoLo terminals in Dublin Port is lower than at similar sized international terminals. The research for the planned study should seek to provide clear

answers to this question and thereby give much greater transparency than currently exists. It will also be important to obtain information on actual prices (including discounts) as distinct from published prices. We acknowledge that pricing information is commercially sensitive, but it should be possible for the Authority to access such information on a confidential basis and publish an overall analysis without compromising the commercial interests of the relevant companies.

Q4.7 Is the current situation whereby Dublin Port is the only provider of RoRo facilities within Dublin Port a major competition concern for port users?

No, because there is competition between the providers of shipping services and customers can move between these services.

Q4.8 Would ferry operators prefer to use intermediary terminals that operate as separate entities or continue to operate terminals under licence from Dublin Port?

In our view, the latter because the operators are likely to prefer having direct control of the terminals they operate from.

Q4.9 How would a potential entrant who wished to provide RoRo services in Dublin Port gain access to terminal facilities?

In practice, there would appear to be few options at present. In principle the following options exist:

- Negotiate a slot at an existing terminal
- Develop new bespoke or common user facilities
- Dublin Port uses its powers under leasing and licensing arrangements to ensure that facilities are efficiently used and that access to slots is provided on an equitable basis.

See also the response to Q4.5.

Q4.10 Is there scope for competing bulk terminals within Dublin Port?

It is doubtful given the specialised handling and/or storage requirements of much of the bulk throughput of Dublin Port and the high capital cost of providing specialised facilities.

Q4.11 Are the current arrangements for the licensing and provision of ancillary services fair, transparent and non-discriminatory?

Generally yes, recognising the constraints imposed by the low volume of business in some ports and the costs of entry to the relevant market. There are some issues in relation to access to stevedoring licences and this is an area which should be reviewed during the planned study.

Issues for Exploration

Q5.1 Are there structural and/or regulatory changes which would stimulate greater inter-port competition, particularly competition with Dublin?

In principle, privatisation of one or more of Dublin's competitor ports might stimulate greater inter-port competition and provide access to necessary investment capital. However in practice this option would be fraught with difficulties. None of the competitor ports are particularly attractive prospects for sale given current difficult market conditions, poor balance sheets and pension liabilities. There would also be competition and regulatory issues. For example, would shipping companies be allowed to buy a port and how would any equitable access and competition concerns be addressed? Would an independent regulator be required to ensure a level playing field in the sector?

An alternative and probably preferable approach in current circumstances would be to further strengthen the governance and management arrangements for the competitor ports:

- Selecting board members solely on a basis that ensures that the port companies have the strongest possible commercial focus. It is critical that boards are in a position to give effective direction to, and constructively challenge, port management and that members are experienced and have an appropriate mix of skills (particularly business,

financial, project management, port operations, human resources and property management)

- Ensuring that the port companies have a clear and unambiguous mandate from Government as shareholder. It should be in writing, expressed in terms of a small number of relevant and clear commercial performance criteria, regularly updated and robustly monitored
- Strengthening port management, including an improved marketing capability where appropriate
- Implementing the regulatory oversight arrangements suggested in our response to Q4.5.

These comments also address Q5.3.

Q5.2 What ports offer the most potential to compete with Dublin in key areas?

In the Republic, Waterford has capacity for additional container traffic. Cork has potential for bulk while recognising constraints such as the need for specialised handling facilities and limitations on ship size. Rosslare also has the attraction of short sea crossings.

Q5.4 If either public or private ownership creates or maintains market power are there ways in which regulation could counterbalance this? Would the benefits of regulation be sufficient to outweigh the costs?

If the ports continue in public ownership, the Institute is not satisfied that there is a demonstrated need for regulation of the sector and would certainly be concerned that the costs would outweigh the benefits. Clearly a definitive response to this question will have to await the outcome of the planned study. We would also draw attention to the reservations we expressed in our General Remarks in relation to State intervention to address market failure.

Q5.5 Is amalgamation of ports likely to improve inter-port competition?

This issue should be considered in the planned study in line with the recommendation in the Report of the Review Group on State Assets and Liabilities that the Competition Authority be consulted concerning the

amalgamation process. A key part of that analysis should address the question you pose – where would amalgamation provide the greatest potential to improve inter-port competition?

The financial position of most of the commercial ports (other than Dublin) makes amalgamation superficially attractive. It might help to improve their financial position and allow them to invest in facilities which could improve their competitive position. An alternative view is that it would simply weaken the stronger port by leaving it with the liabilities of the weaker port. While amalgamation might strengthen the capacity of the amalgamated port to compete, it might also suppress competition between the amalgamated ports themselves. Would amalgamation be decided on the basis of geographical proximity or on the complementary positions and lack of overlap of port operations? What would be the impact on competition from Northern Ireland ports? Amalgamation would certainly simplify corporate governance of the sector and reduce governance overheads.

Q5.6 Are there other simple areas like improvements in infrastructure or changes to the structure of semi-state governance that could enhance the potential for inter-port competition?

Improvements to road and rail access would certainly be of some limited assistance in improving the competitive position of some commercial ports. For example improvement of the N69 access road to Foynes and reinstatement of its rail link for freight traffic would be of assistance. Rail freight access to any new terminal at Cork Port would strengthen its competitive position somewhat and is likely to be required in the light of the reasons for the An Bord Pleanála rejection of its earlier planning application.

We already commented on the improved governance of ports in our response to Q5.1 and would draw your attention to our response to Q4.5.

Q5.8 Given a landlord model such as Dublin Port, would changes in the ownership of the port company make any difference to the conditions of competition?

The implications of privatising Dublin Port, if that is what is envisaged in the question, would raise very serious issues given its market dominance and the

long term potential to make significant financial gains by redeveloping part of its port estate for non-port uses.

It would raise significant competition issues because of the strength of its position in the market, its robust balance sheet and the potential for abuse of a dominant position. There would almost certainly be a need for independent regulation of the port, the cost of which would most likely be passed on to port users.

While we accept that there is little or no prospect of realising the development potential of the port estate in the foreseeable future because of the depressed state of the economy and the overhang in the property market, there is a real risk in the longer term that a new owner could seek to maximise the value of the property assets at the expense of port operations. Accordingly there might need to be binding covenants in the sale agreement to ensure the continuing use of the port estate for port purposes and avoid the disposal for development purposes of lands potentially required for future port operations. It is a matter for consideration how effective such covenants would be and what effect those restrictive covenants would have on the sale price. Also would shipping companies or freight forwarders be permitted to bid for the company and what would be the potential competition implications of such a company acquiring the port?

Q5.9 Are other ports currently operating the appropriate models?

The tool port model is probably the most appropriate for the RoRo and LoLo ports. While the landlord model has attractions for LoLo, there are practical reasons why this might not be appropriate for other ports as outlined in our response to Q4.1.