

## Chronology of events<sup>1</sup>

<i>Date</i>	<i>Event</i>
<b>28 April 2010</b>	SeaFrance applies for bankruptcy protection ('procédure de sauvegarde') and is placed under the protection of the French Commercial Court
<b>30 June 2010</b>	SeaFrance placed into court-induced receivership
<b>July 2010</b>	Court administrator searches for buyers in order to sell the business
<b>31 July 2010</b>	Offers received not considered serious and not presented to Court
<b>September 2010</b>	SNCF appoints Crédit Agricole to find a buyer (for shares)
<b>Early 2011</b>	No buyers found and sale process suspended
<b>February 2011</b>	Administrator informed of this  France submitted request for State Aid (SeaFrance recapitalization of €223 million) to the European Commission
<b>1 July 2011</b>	New call for offers by administrator
<b>26 July 2011</b>	Closing date for offers  Three bids received: <ul style="list-style-type: none"> <li>• DFDS/LDA (Louis Dreyfus) (final offer 20 October)</li> <li>• The SCOP</li> <li>• 'Being Bang' (investment firm)—bid withdrawn</li> </ul>
<b>7 October 2011</b>	SCOP formed by 14 ex-SeaFrance workers (not formally registered as a legal entity). Total contributions of €[€]
<b>24 October 2011</b>	EU Commission refused the State aid request (decided incompatible) <ul style="list-style-type: none"> <li>• €166.3 million increase in capital</li> <li>• €61 million + €61 million proposed loans by SNCF</li> </ul> Loan/decision of 18 October 2010—state aid to be repaid
<b>25 October 2011</b>	Court hearing of offers from DFDS/LDA and the SCOP

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<sup>1</sup> This chronology has been prepared using primarily the French Commercial Court Judgments of 16 November 2011, 9 January 2012 and the Excerpt from Minutes of the Judgment of 11 June 2012, as well as information request responses from the French liquidator. Several of the dates and events in this chronology have multiple sources. Where the correct date for an event is disputable, this has been noted. For more detail regarding sources, please see the 'Background to the transaction and reason for the period of inactivity' section contained in the main body of the provisional findings.

<b>15–16 November 2011<sup>2</sup></b>	<p>Business activities of SeaFrance ceased at midnight (actual cessation in practice)</p> <p>Immediately afterwards, the vessels stayed moored and no commercial activity was undertaken. No employees were made redundant between 15 November and 9 January</p>
<b>16 November 2011</b>	<p>Judgment: decision to liquidate while maintaining business activities until 28 January 2012</p> <p>New offers invited; liquidator nominated</p>
<b>30 November 2011</b>	Request from liquidator that, in the event no offer is received by deadline of 12 December 2011, activities of SeaFrance to be formally ceased
<b>12 December 2011</b>	Closing date for receipt of new offers
<b>19 December 2011</b>	Judgment: Court orders the SCOP's offer to be considered on 3 January 2012
<b>29 December 2011</b>	SCOP SeaFrance formally registered—[✂] subscribers (minimum contribution of €50)—‘société sans exploitation’
<b>3 January 2012</b>	<p>Hearing regarding the SCOP's offer adjourned until 9 January</p> <p>There are 800 SCOP associés on the day of the hearing. Minimum subscription = €100</p>
<b>9 January 2012</b>	<p>Court decision—the SCOP's offer insufficient as conditions not met (lack of finance)</p> <p>Formal order by Court to SeaFrance to cease operating. Company placed in to liquidation with formal cessation of activities</p> <p>Vessels put into hot lay-up</p> <p>GET announces intention to bid. GET and the SCOP have first meeting a few days later</p>
<b>24 January 2012</b>	<p>819 employees made redundant within 15 days of 9 January decision, as required by law</p> <p>Around 190 SeaFrance employees in total were retained by the liquidator: ~30 <i>Moliere</i>, ~34 <i>SeaFrance Berlioz</i>, ~34 <i>SeaFrance Rodin</i>, ~26 <i>Nord-Pas-de-Calais</i>, ~6 commercial, 1 director, ~18 finance, ~19 operations, ~15 HR and 2 others</p> <p>Disposal of assets (other than buildings) ordered through call for sealed bids</p>
<b>15 February 2012</b>	Court Receiver designates Parimar to assist liquidator with selling the ships

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<sup>2</sup> Albeit that the formal order to cease operating came on 9 January.

<b>January–May 2012</b>	GET/SCOP discussions ongoing
<b>10 May 2012</b>	Hearing to open sealed bids
<b>11 June 2012</b>	Judgment of Paris Commercial Court: awarded vessels and other assets to GET  The SCOP (responsible for recruitment) writes to subscribers inviting them to apply: CV and motivation statement required
<b>22 June 2012</b>	The SCOP placed adverts on maritime recruitment websites
<b>29 June 2012</b>	The SCOP and GET enter into Memorandum of Understanding (first formalization) and three bareboat charters
<b>1 July 2012</b>	[X] UK <sup>3</sup> employees hired—Managing Director, Operations Director and Human Resources Manager
<b>2 July 2012</b>	Completion of GET’s acquisition of vessels  SeaFrance’s customer records and harbour-side assets in Dover (of SeaFrance Ltd) (‘the Dover assets’) were sold for €[X] to MFL. This included a portakabin  CC’s assumed completion date  Initial activities of MFL begin (commercial activities commenced on 20 August 2012—see below)
<b>3 July 2012</b>	UK recruitment campaign launched
<b>9 July 2012</b>	Some UK employees entered into contracts of employment with the SCOP
<b>18 July 2012</b>	GET and the SCOP sign commercialization agreement
<b>1 August 2012</b>	MFL sold on the Dover assets to DCFL, which sold on the portakabin shortly thereafter
<b>20 August 2012</b>	MFL operations launched on Dover/Calais route using <i>SeaFrance Berlioz</i> and <i>SeaFrance Rodin</i>  The SCOP: ~[X] employees: [X] on ships; [X] in port at Dover/Calais. The majority of these were subscribers of the SCOP on its registration in December 2011  Note: between 2 July and 29 October: [X] employed by the SCOP [X] (so were eligible for the €25,000 indemnity under Article 3.3.3)
<b>29 October 2012</b>	The OFT refers merger to the CC
<b>7 November 2012</b>	Decision 12-DCC-154 of French Competition Authority on jurisdiction

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<sup>3</sup> Dover Calais Ferries Ltd, a wholly-owned subsidiary of the SCOP, was responsible for UK recruitment.

<b>23 January 2013</b>	Paris Commercial Court ruled the SCOP was entitled to indemnity under PSE3
<b>24 January 2013</b>	[X] of employee indemnity paid to the SCOP
<b>13 February 2013</b>	All three vessels available to operate at full capacity as <i>SeaFrance Nord Pas-de-Calais</i> became operational
<b>7 March 2013</b>	[X] of employee indemnity paid to the SCOP
<b>3 June 2013</b>	The SCOP applies to Paris Commercial Court for clarification on compatibility of CC remedy with Order of 11 June 2012
<b>6 June 2013</b>	CC report published
<b>7 June 2013</b>	[X] of employee indemnity paid to the SCOP
<b>15 October 2013</b>	Last UK employees to enter into contracts with DCFL
<b>4 December 2013</b>	CAT judgment
<b>2 January 2014</b>	[X] employee indemnity paid to the SCOP
<b>3 January 2014</b>	Out of [X] employees on permanent contracts of the SCOP (UK and France), [X] are ex-SeaFrance ([X] in France, [X] in the UK and [X] on board vessels). MFL employees—[X] ([X] of which are ex-SeaFrance)

## Details of assets acquired by GET/SCOP

### Assets bought out of French liquidation

Total bid (for all of SeaFrance's tangible assets and intangible assets necessary for their operation): €65 million.<sup>1</sup>

- Three vessels (priced by vessel, including their associated assets such as audiovisual equipment and furniture): €61.4 million:
  - *SeaFrance Berlioz*—€30 million.
  - *SeaFrance Rodin*—€28.4 million.
  - *SeaFrance Nord Pas de Calais*—€3 million.
- Total price for other tangible and intangible assets: €3.6 million.
- Total price for intangible assets: €2.8 million:
  - Trademarks (also: trade names, logo and brand): €500,000.
  - SeaFrance domain names and internet sites: €500,000.
  - Information systems/computer software/data files of all types (including database of SeaFrance freight and passenger customers incorporating 2,058 freight customers, 1,173 coach customers and at least 217,497 individual passengers): €1.8 million.
- Total price for other tangible assets: €800,000:
  - Furniture, fixtures and facilities in Calais: €100,000.
  - Computer equipment in Paris, Calais and Dover: €500,000.
  - Paul Devot warehouse stock (workwear, office supplies, cleaning products, etc): €150,000.
  - Residual movable assets of any kind (eg stocks of spare parts and technical equipment, maps, books, etc): €50,000.

### UK assets bought

'Dover Assets' (bought from UK subsidiary of SeaFrance S.A): total of €~~8~~].<sup>2</sup>

- included furniture, IT equipment, SeaFrance branded uniforms, three vehicles, a back-up generator and a portakabin.

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<sup>1</sup> The asset transfer was also subject to a five-year inalienability clause and a half-yearly review by the official receiver of the operating conditions of the assets assigned.

<sup>2</sup> No apportionment of purchase price was made for the individual assets.

**Other assets**

- Staff (transferred to the SCOP).
- Goodwill.
- Lease of premises at Whitfield Court in Dover.

### **The vessels**

1. This appendix sets out the evidence we received on the characteristics of the acquired vessels as follows:
  - (a) the suitability of the acquired vessels for the Dover–Calais route;
  - (b) effect of the period of inactivity on these assets, including hot lay-up; and
  - (c) vessel valuations and the cost and availability of alternative options for GET/SCOP to commence operations on the short sea.

### **Suitability of the acquired vessels for the Dover–Calais route**

2. In regard to the requirements for vessels to operate on the Dover–Calais route, P&O told us that:
  - (a) The berths in the ports of Dover and Calais were ‘male’ and were designed to fit ‘female’ vessels. In other words the linkspan dropped on to the ships for a port fit.
  - (b) The Dover ships, due to the high frequency and high turnaround, were usually through ships with the ability to load and unload at both bow and stern.
  - (c) The berths in Dover were ‘double tier’, ie the vessels that fitted needed to have two points of entry for vehicles, or if that was not possible, then the vessel must have internal ramps.
  - (d) Dover–Calais was a short crossing and therefore the fuel capacity of the vessels was small—the ships did not need huge tanks (like an overnight vessel). This ruled out some ships from operational efficiency.
  - (e) Dover–Calais was a ‘sea area 1’ and this had a set requirement for communication equipment which might not correspond to vessels that operated in other ‘sea areas’.
  - (f) Dover–Calais was a day crossing of approximately 90-minute journeys. Ships designed for overnight routes (with cabins) would not be operationally suitable.

(g) The ships that operated need to be highly manoeuvrable due to the specific operating conditions in both ports.

3. DFDS told us that the ports were narrow and suffered from heavy winds; in addition they had very busy schedules. Because of these factors very good manoeuvrability was required and vessels not purpose built for the short sea would often need to be fitted with additional side thrusters and/or improved rudders in order to operate without delays.
4. DHB also told us that ferries for the short sea route had two key differences from those that operated on other short routes such as in the Baltic or the Mediterranean, being: the ship-to-shore connection was 'female' in Dover and 'male' for other vessels and routes; in order to ensure its renowned efficiency, Dover delivered all sizes of vehicles including lorries via centre line link-bridges at two levels (and foot passengers at a third level on the vessel's centre line), whereas most other ships delivered vehicles via a single ramp and even where there was an additional connection, it was usually neither on the centre line nor suitable for all classes of vehicle.

### ***The effect of the period of inactivity on these assets including hot lay-up***

5. In the following section we first look at what hot lay-up constitutes, second we look at the work required on the vessels to bring them back into operation after having been laid up.

#### ***Hot lay-up***

6. During the liquidation period the *SeaFrance Rodin* and *SeaFrance Berlioz* were laid up in Calais. The *SeaFrance Nord Pas-de-Calais* was transferred to Dunkirk where it was laid up. On 15 November 2011 commercial operations ceased but the vessels



stayed moored functioning normally (albeit with no commercial activity undertaken). The vessels were placed into hot lay-up following the judgment of the French Court on 9 January 2012, which ordered the liquidation with cessation of activities.

7. At the time of lay-up, the vessels were classified by Bureau Veritas (BV).<sup>1</sup> BV's *Guidance for Lay-Up of Ships*<sup>2</sup> explains lay-up in the following terms.
8. The extent to which a Ship Owner will lay-up its ship depends on various factors, including: (a) the expected period of lay-up; (b) need to reduce overhead running and operational costs; (c) the anticipated time to resumption of trading; (d) the time and expenses needed for recommissioning; (e) the intended situation after recommissioning (trade, repair yard, scrap yard); and (f) the age of the ship and the value of the ship in respect to scrap/recycling value. There are two types of lay-up: hot and cold.
9. *Hot lay-up* is normally appropriate if the vessels are to be out of commission for up to 12 months. The ship has reduced crew on-board as the ship's manning is generally reduced below the manning level required under the flag state safe manning document and in accordance with any applicable requirement from other involved parties, namely local authorities and insurance companies. The ship has some of the machinery maintained under working conditions and kept operational by the skeleton crew on board. The ship can be reactivated with reduced cost, time and effort, normally in the range of less than one week recommissioning time.
10. *Cold lay-up* is normally appropriate if the vessels are to be out of commission for more than 12 months. Specialist lay-up personnel may be employed, possibly only one or more watchmen, in order to deal with emergency requirements related mainly

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<sup>1</sup> BV is one of a number of classification societies that assess and classify ships for conformity with specific sets of rules. Others include Lloyds Register and DNV.

<sup>2</sup> Guidance Note NI 545 DNS R00 (April 2009).

[www.veristar.com/content/static/veristarinfo/images/4706.17.545NI\\_2009\\_04.pdf](http://www.veristar.com/content/static/veristarinfo/images/4706.17.545NI_2009_04.pdf).

to fire, flooding, mooring and security aspects. Requirements and/or guidance from the flag state, the local authorities and the insurance companies should there again also be investigated and complied with by the owner, before deciding on the final manning level. The machinery is normally shut down.

11. The ship is normally recommissioned within a period of three weeks, or more depending on the effective period of lay-up and on the level and scope of maintenance and preservation implemented by the owner. The ship might need to be directly dry-docked before trading, depending on the efficiency of the hull preservation during the lay-up period, on the possible hull degradation and on the classification requirements for maintenance of class (in case the bottom survey in dry-dock became overdue during the lay-up period). On modern ships, the efficient preservation maintenance of automated systems, computerized equipment and electronic gears is to be carefully planned and considered by the owner, in order to ensure that these sophisticated systems will not deteriorate and will restart correctly.
12. More generally speaking, a 'cold' lay-up situation is to be carefully prepared by the owner, in terms of manning, lay-up site, mooring arrangements, safety and security conditions, preservation, maintenance and inspection measures, classification survey requirements, in collaboration and consultation with all other parties, in order to avoid machinery or hull degradation, long term damages to the machinery and a subsequent costly and long reactivation.<sup>3</sup>

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<sup>3</sup> Guidance Note NI 545 DNS R00 (April 2009), section 2 (Types of Lay-Up).

13. During a ship's lay-up, the ship's class is maintained.<sup>4</sup> The requirements for maintenance of class are detailed in BV's Rules and include: an initial laying-up survey; annual lay-up condition surveys and a recommissioning survey.<sup>5</sup>
14. For completeness, we also considered the guidelines for lay-up issued by Lloyds Register and Det Norske Veritas (DNV). These guidelines explain that during hot lay-up a vessel will still need to comply with classification and flag state requirements as well as local port authority requirements (including oil pollution coverage, wreck removal or minimum manning). If a vessel is laid up for less than three months, recommissioning time can be as short as 24 hours. For a lay-up period of up to 12 months, recommissioning can occur within a week. If a vessel is in hot lay-up for more than three months but less than 12 months, manning may be reduced below the safe manning certificate level in agreement with the flag state, the classification society, other local authority and insurance companies.

*Work required on the vessels to enable them to operate on the short sea*

15. GET stated that there was a significant volume of work required to get the vessels ready for use once they had been acquired: rebranding, flash-docking and certification visits were carried out concurrently. It stated that even with working around the clock, it still took over six weeks for the vessels to be ready for operation.<sup>6</sup> GET in its initial submission (19 November 2012) submitted that around €[REDACTED] had been spent on the vessels to get them operational by 20 August 2012, estimating at this time that

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<sup>4</sup> This does not allow the vessels to be operated commercially. Vessels also tend to keep classification in cold lay-up (SCOP SeaFrance).

<sup>5</sup> Guidance Note NI 545 DNS R00 (April 2009), section 4.

<sup>6</sup> GET response to remittal notice paragraph 14.1

a further €[X] would be required for further work which could not be completed within this initial period.<sup>7</sup>

16. GET submitted a report by Marine Technical Consultancy—Independent Superintendent Services (MTC ISS) who had been engaged by GET to carry out a thorough physical inspection of the vessels in March 2012 and to prepare details and cost of the work required in order to prepare the Vessels for operations as passenger ferries. The MTC ISS report stated<sup>8</sup> that:

- (a) The insolvency proceedings had led to a reduction in the quality of the technical maintenance of the vessels in certain respects. This was particularly acute in relation to the *SeaFrance Nord Pas-de-Calais* but was also the case for the *SeaFrance Berlioz* and the *SeaFrance Rodin*.
- (b) The vessels had been out of operation for over four months by this point, and had been in a state of reduced operational administration (meaning that they were able to vacate their berths in the ferry terminals and to make journeys to the shipyard for the mandatory technical repairs but had not been maintained beyond what was strictly necessary) since they ceased to operate in November 2011.
- (c) The vessels were also not in a fit state to be operated with passengers on board:
  - (i) for administrative reasons (lack of sailing permit, invalidity of certain certificates);
  - (ii) because of the interruption in technical (classification) and operational (safety) tests; and
  - (iii) because of the mandatory technical repairs, which had fallen due but which had not been undertaken.

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<sup>7</sup> GET submission on Jurisdiction ANNEX 1 extract from GET's Initial Submission, paragraph 7.11.1. GET told us that these figures were based on the information available to them at that time and the SCOP would have more accurate figures as it over saw the refurbishment.

<sup>8</sup> Executive summary.

- (d) In order to recommence operations at the standard required for passenger ferries, with a technical reliability close to that of SeaFrance<sup>9</sup> and to restore their business image, it was considered absolutely necessary to bring the vessels in for technical repairs.
- (e) In addition, work on the vessels was required over and above the technical repairs to bring them up to a standard at which they could be used as passenger ferries.
- (f) Works of this nature included repairs to, and maintenance of, the footbridge and other structures, passengers' facilities, safety and security mechanisms, structure and infrastructure, cargo access, steering equipment, and engineering and electricity generation services (including propellers, motors, heaters, etc).
- (g) It was not considered possible to carry out work on all three vessels at once; instead, the vessels needed to be renovated one by one.

17. MTC ISS estimated the costs for the three vessels as: mechanical work €[X]–€[X] million; and bringing them up to passenger ferry standard, €[X] million. It estimated a time period for the work of 8.5 to 9 weeks: 3 weeks for each of the *SeaFrance Berlioz* and the *SeaFrance Rodin* and 2.5 to 3 weeks for the *SeaFrance Nord Pas-de-Calais*.
18. The SCOP submitted that none of the crucial elements required to operate a ferry business between Dover and Calais came with the acquisition. It stated that the vessels had lost their operational certificates (excluding class certificates), new certificates had to be obtained<sup>10</sup> and a significant amount of work was undertaken to

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<sup>9</sup> We understand this to mean putting the vessels back into their previous condition under SeaFrance ie the technical reliability is not greater than that previously achieved under SeaFrance.

<sup>10</sup> The SCOP stated that it was required to apply for limited certificates to enable the vessels to be moved to Dunkirk for the period of flash docking. Subsequently, the SCOP was only able to obtain provisional certificates valid for the six months to February 2013 for the *Berlioz* and only to November 2012 for the *Rodin*.

bring the vessels up to an operational standard and to obtain the necessary equipment.

19. With respect to certificates, the SCOP noted that this included the requisite navigation certificates, obtaining insurance covers, making the necessary declarations to the International Maritime Organisation and registering with the maritime authorities in the UK and France.<sup>11</sup> The SCOP stated that a number of other certificates had to be obtained, including International Air Pollution Prevention Certificates, Sewage Pollution Prevention Certificates, Interim Ship Security Certificates, Interim Safety Management Certificates, Passenger Ship Safety Certificates and certifications under the MARPOL 73/78, an international convention for the prevention of pollution at sea. The SCOP told us that significant additional works were also required in order for these certificates to be made permanent.
20. The SCOP told us that the work it had to undertake on the vessels included:
  - (a) updating navigational alarm systems on the bridge, purchasing protection treatment for the circuit motors (of the *SeaFrance Berlioz*), updating the safety equipment (for example, the installation of an additional fire hose on the *SeaFrance Rodin*, flares and line throwers), necessary renovations to the passenger areas, maintenance and renovations to the engines, propellers and gears and necessary work on the superstructure, loading bays and cargo doors, repairs to the galley, repainting of the vessels, removing rust, cleaning, and the purchase and fitting of a variety of other new parts (both technical and non-technical); and
  - (b) rebranding of the vessels to MFL.
21. The SCOP told us that in order for it to obtain even provisional certificates to commence operations it had to undertake essential renovations to the *SeaFrance Rodin*

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<sup>11</sup> [SCOP response to remittal notice](#), paragraph 4.7.

and the *SeaFrance Berlioz* at a cost to GET of in excess of [€1–€3] million (not including the cost of rebranding) over a period of around seven weeks.<sup>12</sup> The SCOP told us that the total cost of the refurbishment and necessary works to the vessels in order to gain their five-year certification had exceeded €[X] by February 2013 over and above the €[X] paid by GET to the SCOP. The SCOP argued that this was significantly greater than the typical cost (and time) of conversion required to enable vessels to operate on the Dover–Calais route (see paragraph 52).

22. The SCOP business plan of 6 January 2012 suggested that each vessel would have needed to go in for three weeks of technical repairs in 2012.
23. The SCOP submitted that GET instructed an external agency to develop the MFL brand and this took two weeks. This work was carried out concurrently with the other work carried out during the seven-week period to 20 August 2012.
24. DFDS argued that as a result of the age of the *SeaFrance Berlioz* and *SeaFrance Rodin* (both less than ten years old) and the fact that they were purpose built for the Dover–Calais route, MFL gained significant advantages over other available tonnage in terms of allowing swift recommencement of operations on the Dover–Calais route. These advantages were in having no requirement to reconfigure the passenger areas or modify the hull to fit the specific berthing and ramp requirements of Calais and Dover (both of which could cost millions of pounds); high levels of flexibility and reliability (no need for modification of the engine configuration); and reduced start-up costs. By acquiring bespoke vessels, GET avoided costly modifications and reduced its start-up costs.<sup>13</sup>

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<sup>12</sup> The *SeaFrance Nord Pas-de-Calais* was not refurbished during this initial period and did not enter into full-time service until February 2013.

<sup>13</sup> [DFDS response to remittal notice](#), paragraph 3.5.

***Vessel valuations and the cost and availability of alternatives options for GET/SCOP to commence operations on the short sea***

25. In this section we first set out the broker valuations for the SeaFrance vessels and what GET actually paid. Second, we look at the cost and availability of alternative options for GET to commence operations on the short sea: bespoke build, and purchase or charter and modify.

*Cost of acquired assets*

26. The Minutes of the French Court (page 33) set out valuations for the SeaFrance vessels from three separate brokers which were submitted when they were applying to the court to be appointed as an expert. These are shown in Table 1 below as well as the actual price paid by GET. The highest values were given by Parimar which was the expert appointed by the French Court.
27. Parimar's report to the French Court (page 30) noted that it is a 'buyer's' market but that prices may have stabilized. It gives some examples of prices paid for other ferries. These included €75 million for the *Moby Freedom* by Eckero (Finland) and four Ropax vessels acquired by Stena from a bank (2005 to 2008) for a total €130 million. There is though no indication in the report as to how these purchase prices may provide a guide to determining the potential purchase price for the three SeaFrance vessels.



TABLE 1 Broker estimates for the SeaFrance vessels and GET's offer

	Broker estimates*			Actual paid
	BRS	Aminima	Parimar	GET
<i>Berlioz</i>	55–70	41–45	78–81	30
<i>Rodin</i>	40–55	40–44	68–70	28.4
<i>Nord Pas-de-Calais</i>	<u>2–4</u>	<u>9–12</u>	<u>7–8</u>	3
Average total	113	95.5	156	
Estimated remedial costs†	<u>–11</u>	<u>–11</u>	<u>–11</u>	
Total	102	84.5	145	61.4

Source: Judgment of French Court, 11 June 2012, pp33 & 34.

\*The Brokers' values were based on the assumption that the vessels were fully seaworthy, maintained continuously according to the custom of the industry and had all valid class and navigation certificates.

†This is the amount estimated by GET as required to make the vessels suitable for passenger services on Dover–Calais. In its report Parimar deducted this amount off the broker valuations to arrive at an estimated value for the vessels given by the brokers. The GET figure assumes this amount is already taken into account in the price paid.

### *Bespoke build*

28. The SCOP indicated that P&O had paid €360 million for two new vessels for the Dover–Calais route. The vessels took two years and four months to enter service after they were commissioned.
29. Parimar told the French Court that: 'Under normal circumstances, new construction is generally required, as was the case with SeaFrance or DFDS and more recently for P&O. Today, a new ship similar to the *SeaFrance Rodin* would cost about €135–140 million with a delivery period of 20/24 months'.<sup>14</sup>
30. P&O estimated that at 2008 prices a *SeaFrance Berlioz* or *SeaFrance Rodin* type vessel would have cost €130 million to build (excluding financing and project management). A *SeaFrance Nord Pas-de-Calais* type vessel would be less given its size and lack of tourist capacity (about €100 million). An independent expert ([X]) believed a new build similar to the *SeaFrance Berlioz* or *SeaFrance Rodin* would cost in excess of €150 million.

<sup>14</sup> Minutes of French Court, 11 June 2012, p31.

31. P&O told us that its most recent vessels built for the short sea, the *Spirit of Britain* and *Spirit of France*, were built for €[redacted] million each (2008 prices).<sup>15</sup> It stated that the vessels were built to the requirements of the P&O brand; this was reflected in the cost. It commented that another company may have different requirements and therefore a different total cost. However, P&O believed the vessel build costs would be broadly similar.<sup>16</sup>
32. DFDS submitted that the cost of a vessel would depend on a variety of factors such as the vessel specification, chosen construction yard and the number of vessels ordered. It estimated it would cost between \$175 million and \$200 million each for two new 'D' type vessels (ie new and updated version of the *Dover Seaways* and *Dunkerque Seaways*—currently used on the Dover–Dunkirk route).<sup>17</sup>
33. P&O told us that a typical time period from inception to delivery was three to four and a half years. The most recent vessels that P&O Ferries has built are the *Spirit of Britain* and the *Spirit of France*. It stated that work commenced from early 2007 with the vessels being commissioned for build with the chosen yard mid-2008. They were delivered early in 2011 and 2012 respectively.
34. DFDS estimated that it took around two and half to three years, although this would vary depending on the precise specification of the vessels and the construction yard. An independent expert ([redacted]) told us that the building of a ferry from start to finish could take as long as three years.

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<sup>15</sup> Prices reflect a European build to European standards.

<sup>16</sup> P&O provided a percentage split of the build costs for the two vessels. This indicated that: around [redacted] per cent reflected steel, machinery, electric and hull costs; [redacted] per cent labour and procurement; and [redacted] per cent interior costs.

<sup>17</sup> DFDS stated that the 'D' vessels cost \$92 million in 1994.

## *Purchase or charter and convert*

### *Availability*

35. Both the SCOP and GET believed that there were vessels available that could either be purchased or chartered and then converted for use on the Dover–Calais route.
36. GET provided a list of vessels which it believed could easily be operated on the short sea, the Western Channel or the North Sea (see Annex 1).<sup>18</sup> The SCOP told us that the European Seaway was currently available for purchase or charter.<sup>19</sup> In addition, GET submitted that DFDS had chartered three vessels on its short-sea routes, whilst LD Lines was able to deploy five different vessels on the Boulogne–Dover, Le Havre–Portsmouth and Ostend–Ramsgate routes in an 18-month time frame (between February 2009 and August 2010).
37. Parimar told the French Court that: ‘Existing ships of this type [*SeaFrance Berlioz* and *SeaFrance Rodin*] are rare’.<sup>20</sup> Similarly, P&O and DFDS argued that the bespoke nature of the Dover–Calais route limited the number of vessels suitable for purchase or charter.
38. P&O told us that the route’s specific requirements (see paragraph 2 above) limited the number of vessels available (if any) at any given point in time for purchase or charter. In particular, the majority of ships available would require modification for the particular Dover and Calais linkspan design, the ability to load and unload at bow and stern; neither of which are a common configuration.

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<sup>18</sup> GET provided the same list in the report. It stated that although the vessels may change over time, it had no reason to believe that the list was not a good indication of the approximate number of vessels which might be available at any particular point in time.

<sup>19</sup> The *European Seaway* operated on the Dover–Calais route as recently as April 2013, when it was taken out of service and laid up in Tilbury.

<sup>20</sup> Minutes of French Court 11 June 2012, p31.

39. P&O also told us that with chartering there was an added complexity in that converting a chartered ship was converting a vessel that was not your asset. This reduced the attractiveness of conversion and had a significant impact on a decision to charter and/or convert.
40. P&O believed that there were few vessels that could be economically converted due to the bespoke nature of the ships required.
41. DFDS told us that to its knowledge there were no purpose-built vessels in operation which the owners were willing to charter out. It said that it had chartered the *Barfleur/Deal Seaways* but this vessel proved unsuitable to the demands of the Dover–Calais route (despite extensive modifications) and had to be returned to its owners. [REDACTED]<sup>21</sup>
42. DFDS believed that there were currently two potential vessels<sup>22</sup> which could be used on the route. It noted that these were relatively small vessels.

#### *Charter rates*

43. We received a number of differing views on the costs to charter a vessel. The estimates we received suggested a bareboat charter range of €8–€10,000 per day (€2.9–€3.7 million a year) and a manned charter cost of around €15,000 per day (€5.5 million a year).
44. P&O told us that it chartered the *Pride of Burgundy* (including deck and engine crew) for 24 hours for £45,000 (bareboat estimated at £30,000).<sup>23</sup> It believed that this also would be a typical charter rate, bare boat for the *SeaFrance Rodin* and *SeaFrance*

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<sup>21</sup> DFDS response to remittal notice, paragraphs 3.6–3.8.

<sup>22</sup> *Fortuny and Sorolla* were operated on Spanish routes by Acconia Transmediterranea.

<sup>23</sup> The high rate quoted by P&O would appear to be related to the very short length of charter period.

*Berlioz*, whilst the *SeaFrance Nord Pas-de-Calais* would be less by about €2,000 per day given her age, size and condition.

45. The SCOP believed the *European Seaways* (P&O Dover–Calais until 2013—laid up in Tilbury) was available manned for €15,000 per day and bareboat less than €10,000.
46. GET believed that a charter would cost around £3 million per year (about €8,200 per day).
47. An independent expert ([REDACTED]) estimated that a suitable vessel for the short sea would cost between €8,500 and €10,000 per day plus the additional cost of any required modifications.

#### *Purchase costs*

48. The SCOP stated that it believed that the *European Seaway* was currently available for purchase for €14 million.
49. DFDS believed that there were currently two potential (although relatively small) vessels<sup>24</sup> which could be used on the route which were on sale for \$30 million each.
50. An independent expert ([REDACTED]) also told us that it believed that the *Dieppe Seaways* (previously *Jean Nicoli*, *Molière*) was sold to Stena Group for around €35–€40 million (including the balance of the present charter to DFDS until November 2014).

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<sup>24</sup> *Fortuny* and *Sorolla* were operated on Spanish routes by Acconia Transmediterranea. *Fortuny* is currently laid up in Palma de Mallorca, *Sorolla* is currently laid up in Malaga. Both were built in 2001 and each has a capacity of 1,000 passengers and 330 cars. In comparison, *SeaFrance Rodin* and *SeaFrance Berlioz* each have a capacity of 1,900 passengers and 120 lorries or 700 cars.

*Modification costs and time required*

51. GET considered that operating these vessels on the short sea would only require limited investment to adapt the interface between the vessel and the gateways and some interior changes might have to be made (eg the removal of some cabins).
52. The SCOP believed that there were a number of ferries available that would either not require any conversion, or for which conversion costs would be minimal (and likely significantly less than the sums paid by GET in bringing the vessels up to an operational standard).
53. Evidence regarding modification costs related primarily to the cost of changing the linkspan arrangements. Whilst this may not be the only modification required, it would appear to be the principal one that all ferries that are not bespoke require. Conversion costs were generally in the range of €1–€1.5 million. Higher figures were also provided but the extent of work to be undertaken on these vessels was not stated:
- (a) DFDS told us that it spent around €1.5 million converting the *Barfleur*. The vessel was also renamed the *Deal Seaways* for use on the Dover–Calais route. The work undertaken was:
- (i) design, fabrication and installation of a forward ‘cow-catcher’ (a ‘cow-catcher’ is a metal structure welded to the vessel to support the ramp when deployed. Ferries used on the Dover–Calais route require ‘cow-catchers’ because, unlike berths at other ports where the vessel’s internal ramps lower on to the linkspan, the berths at Dover and Calais have a ramp that is lowered on to the vessel);
  - (ii) installation of a connection box between the ‘cow-catcher’ and the hull, and moving the existing ramp cutting to the extremity of the ‘cow-catcher’;
  - (iii) design, fabrication and installation of a new aft platform on deck 3;

- (iv) modification and installation of hand rails and barriers on deck 5 aft;
  - (v) design and installation of internal brackets and intermediate frames on the forward peak;
  - (vi) reinforcement of the connection between the aft plinth and aft deck extension; and
  - (vii) repainting and rebranding of the vessel.
- (b) P&O submitted that conversion costs could run into millions of pounds. It stated that the expensive parts of any conversion were the door and ramp conversions for berth fit, the updating of passenger areas (and/or removal of cabins) and increase in capacity if deemed necessary.
- (c) An independent expert ([§]) stated that all vessels which were not in trade on the Dover–Calais route would probably need to have their bow and stern ramps removed, as the ramps were provided by the shore facilities. It stated that it had no documentary evidence to prove the cost of this alteration but understood this to be in the region of €1–€1.5 million.

54. The SCOP told us that it believed that DFDS was able to convert the *Barfleur* for a cost of substantially less than €1 million. In addition, the SCOP said that it had considered chartering the *Cotentin* from Brittany Ferries and considered that the conversion costs would be similar.

55. DFDS estimated that it would cost around €11–€12 million to convert each ferry (referred to in paragraph 49) with an additional €5 million to be spent on each to ensure operational reliability on the short sea.<sup>25</sup>

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<sup>25</sup> DFDS submitted that anecdotally it cost SeaFrance €15 million to convert the *Molière* in 2008.

56. P&O believed that when SeaFrance acquired the *Jean-Nicoli* to turn it into the *Molière* €20–€30 million was spent on conversion. P&O did not say how much work was involved in this conversion.
57. In terms of time required:
- (a) The SCOP submitted that the length of time that it would take to convert an existing ferry would depend on the features of the particular ferry.<sup>26</sup>
  - (b) In the context of the vessels DFDS noted were available for purchase, DFDS estimated that it would take around five months to modify, comprising four months' lead time for design and preparation and one month at the shipyard.
  - (c) P&O submitted that a timeline of six months of design and architecture work and a further three months at refit in a yard would be typical for a conversion including the elements set out in paragraph 53(b).
  - (d) The SCOP submitted that DFDS converted the *Barfleur* in less than ten days.

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<sup>26</sup> For example, vessels that have been fitted for night services and which therefore include passenger cabins would need to be converted appropriately for use on shorter routes. For use on the Dover–Calais route, a vessel should also have access ramps at both the front and rear of the vessel and platforms to enable the safe docking of the vessel.



**GET list of vessels<sup>27</sup>**

<i>Ferry</i>	<i>Owner</i>	<i>Route</i>
Cotentin	Brittany Ferries	Poole–Cherbourg/Santander
Armoorique	Brittany Ferries	Plymouth–Roscoff
Bretagne	Brittany Ferries	Portsmouth–Saint Malo
Pont-Aven	Brittany Ferries	Cork/Plymouth/Portsmouth–Roscoff-Santander
Normandy Express	Brittany Ferries	Portsmouth–Caen/Cherbourg
MV Mont Saint-Michel	Brittany Ferries	Portsmouth–Caen
MV Normandie	Brittany Ferries	Portsmouth–Caen
M/F Wawel	Polferries	Ystad (Sweden)–Swinoujscie (Poland)
M/F Oleander	Seabourne navigational Company	Laid up in Almeria
M/F Bari	Bari-Durres Ventouris Ferries	Italy–Albania
M/F Daniya	Balearics	Spain–Balearics
M/F Stena Germanica	Stena Lines	Goteborg–Kiel
M/F Stena Nautica	Stena Lines	Grena (Sweden)–Varberg (Denmark)
M/F Gardenia	TransEuropaFerries	Ostende–Ramsgate
M/F Larkspur	TransEuropaFerries	Ostende–Ramsgate
Atlantic Vision	Marine Atlantic	Port aux Basque–North Sydney (Canada)
Stena Superfast VII	Stena	Cairnryan–Belfast
Stena Superfast VIII	Stena	Cairnryan–Belfast
Moliere	Now leased to DFDS	
Cote d'Albatre		At dock in Dieppe
Norman Arrow (which became KatExpress 1)	Mols Linien	Aarhus–Odden (Denmark)

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<sup>27</sup> Accurate as at 26 November 2012.

## **Evidence regarding acquired non-vessel assets**

### **Trademarks/domain names**

1. GET told us that the acquired SeaFrance brand was not exploited by MFL (other than to inform people of the discontinuance of SeaFrance) and that the Dover–Calais ferry now operated under a new and entirely distinct brand, namely MyFerryLink.<sup>1</sup>
2. In relation to the SeaFrance website, GET and the SCOP told us that:
  - The SeaFrance website remained available after SeaFrance ceased commercial activity on 15 November 2011, but it was no longer possible to make bookings via this website. The website stated that SeaFrance had entered into liquidation and was no longer operating services.
  - When MFL commenced operations, it created its own website. While MFL was waiting for a licence to manage the content for this new domain name, reservations on the MFL website used the reservations pages on the old SeaFrance website. According to GET and the SCOP, this was a technical redirection that was unseen by most users. The pages carried the MFL brand and only the URL (web address) pointed to the former SeaFrance.com site. This technical background redirection ceased on 25 September 2012.
  - At this stage, the SeaFrance website continued to state that SeaFrance had gone into liquidation and had added to it an option to be redirected to the MFL site, although this redirection was not automatic. The period during which this link was in place was 25 September 2012 to 30 August 2013.
  - Since August 2013, the former SeaFrance website had shown non-branded tourist information.

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<sup>1</sup> [GET response to DFDS submission](#), paragraphs 3.11 & 3.12.1.

3. GET stated that MFL had never used the SeaFrance.com website for commercial operations, despite the fact it was legally entitled to do so, having purchased the domain name and the software. GET also provided 'Google Analytics' reports showing redirections to the MFL UK and continental websites. For the period 2 July 2012 to 30 January 2014, the proportion of total web channel traffic to the MFL website represented by traffic redirected from the SeaFrance domain names represented [%] per cent of MFL revenue ([%] per cent by bookings) for the UK MFL site, and [%] per cent of MFL revenue ([%] per cent by bookings) for the continental MFL websites. The redirections were currently negligible, and had been for the last four months. No MFL revenue was generated by redirections from the SeaFrance domain name before April 2013.
4. GET told us that there were no agreements in place with search engine providers regarding sending traffic heading towards SeaFrance websites to MFL sites instead. GET said that SeaFrance keywords formed part of the pay-per-click strategy for MFL, and that anyone using Google AdWords could bid for the SeaFrance keywords. GET told us that the cost of these advertisements was £[%] from 4 February 2013 (when MFL internalized management of this spend) to date, representing [%] per cent of MFL's 2013 marketing budget.
5. DFDS submitted that until at least the end of September 2012, visitors to the MFL and SeaFrance websites were directed to the SeaFrance booking page. According to DFDS, from December 2012, they were directed to the MFL booking page. Further, DFDS told us that the SeaFrance website retained its original branding until at least the end of August 2012 and at some point before December 2012 it became more explicitly MFL branded, whilst retaining the SeaFrance name. DFDS argued that MFL sought to utilize the goodwill retained by the SeaFrance brand through continuance

of the SeaFrance website and an intentional blurring of the distinction between MFL and SeaFrance operations.<sup>2</sup>

### **Information systems/software/data files**

6. GET submitted MFL felt that it was likely that using as a basis the previous SeaFrance IT systems rather than searching for and using a possible alternative commercially available IT system gave GET no material benefit when launching MFL. GET noted that considerable resources were required to implement IT systems that could support the MFL business. For example, it took five people two months working 12 hours a day, 6 days per week (from 1 July to end of September 2012) to implement IT systems which could support the MFL business.
7. In the time between completion of the transaction and the commencement of MFL operations, GET told us that:
  - as it was unable to use SeaFret to provide a freight client database, it had to use the Internet to identify potential clients in order to make initial approaches to them by telephone, and that this had considerable resource implications; and
  - it also had to undertake considerable work to build a passenger client database; this included developing software interfaces for agents that had previously contracted with SeaFrance for the reselling of ferry passages and which thus had the capacity to interconnect with SeaFrance's systems. GET cites MFL's dealings with DerTour, a major agent for the German tourist market, in this respect. DerTour had previously contracted with SeaFrance for the reselling of ferry passages, and thus had the capability to interconnect with SeaFrance's systems. When MFL sought to enter into similar arrangements with the company, it encountered significant difficulties and expense in doing so through DerTour's system provider, Amadeus, notwithstanding the previous connection between

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<sup>2</sup> DFDS response to remittal notice, paragraphs 3.26–3.28.

DerTour and SeaFrance. Indeed, MFL was required to rewrite its interface software in order to establish a connection with the latest version of the DerTour Amadeus software. When MFL queried the amount charged by Amadeus for setting up this connection, it received the response that: 'the ex SeaFrance connection has not been temporarily disabled. All settings had been cancelled with the [termination] of the contract. So for that reason, the set up for [MFL] is just like new connection for Amadeus.' (See paragraph 12 below regarding DerTour further.)

8. The SCOP said that the acquisition of the IT systems in no way enabled the MFL business to 'hit the ground running'. The SCOP said that an entire IT infrastructure had to be set up, including:
  - workstations and printers;
  - installation of a variety of applications, including the SeaPax and SeaFret distribution and booking systems. In particular, the SCOP told us that SeaPax had been shut down during the liquidation period with the result that, when it was acquired by GET, it had a completely empty database and MFL had to establish a fresh set of parameters within that database;
  - initializing the reference data which the software needs in order to operate; and
  - integration of SeaPax, SeaFret and the website with other building blocks of the IT infrastructure such as the accounting system (which is different to that used by SeaFrance).
9. The SCOP argued that MFL could have opted to purchase other distribution and booking systems that were available on the open market, for example from The Travel Gateway, which offered Dover Calais Ferries Limited (DCFL) a 'white-label' website together with complete access to its booking system as back-up should it be required by MFL. The SCOP told us that DCFL estimated that the lead time for

setting up a system of this nature would be in the region of one week, and therefore it could have been operational faster than SeaPax. Further, the SCOP argued that there was no evidence to suggest that the use of SeaPax and SeaFret enabled MFL to commence operations more quickly and efficiently than would have been the case had other options been procured instead.

10. The SCOP told us that, despite the large amount of resources devoted to developing the IT systems in the run-up to the launch of MFL services, it took a further year to adapt SeaPax to the tourist market. This work in particular related to developing the software to enable MFL to use the Unicorn interface, which enables the travel industry, including the SCOP's agents, to make bookings directly on the MFL system.
11. DFDS told us that when it acquired the Norfolkline business in 2010 (which included the Dover–Dunkirk service), in order to ensure ongoing operations, it was necessary to retain Norfolkline's booking system and IT expertise. DFDS said that, when it attempted to integrate Norfolkline's system into the existing DFDS systems, it became evident that DFDS's existing booking systems were not suited to use in a high frequency/multi departures per day service (that is, the type of service operated on the short sea routes). The existing DFDS systems were designed for longer, lower frequency routes and could not handle issues such as amending and transferring bookings. DFDS said that it took almost two years to develop a new booking platform that it introduced on the Dover–Calais route in October 2012, even though DFDS was able to use source code acquired from Stena during its development. DFDS said that it estimated the total development costs of this booking system for hardware, system purchase and external consultant costs to be around €5 million to date, and also involved substantial use of internal resources.
12. DerTour, a German travel company, told us that it used the:

Amadeus System via a Unicorn connection and its front end SFS booking face to offer ferry services to end consumers and travel agencies. On that basis it is able to work with any ferry operator. The Amadeus Platform can be considered an 'off the shelf product' which can be operated on any route including Dover–Calais. However, Amadeus has built the front end booking face after DERTOUR specifications. To work with DERTOUR, ferry operators would have to program a Unicorn interface for their booking systems before a connection to DERTOUR content on Amadeus is available.

13. Entee Global Services (EGS) provides a system called WebRes, which is a reservation and distribution platform for ferry operations booking.<sup>3</sup> It does not deal with the loading pattern of the vehicles, although it does allow for weight loadings of decks to be input in the system. EGS told us the system is available 'off the shelf', and has been used by LD lines (now part of DFDS) for Dover–Boulogne, and also for Portsmouth–Le Havre and Newhaven–Dieppe. The same basic system is used in all cases, but not all the options are needed in all instances, for example the short sea does not need information about cabins. EGS told us there are no specific systems requirements for short-sea ferries—they do need a function for 'priority loading' but get round that using the 'Club Class Booking' function. There may be some customization needed for local requirements—that is carried out by EGS as the hosting provider (rather than the customer buying a package and customizing it themselves). EGS was unable to provide an indication of cost as this would depend on many factors such as set up fees, longevity, booking throughput and whether there is any related business in the group.

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<sup>3</sup> We understand SeaFrance used WebRes X25 from EGS in 2011, according to EGS's website; this was a single module of a WebRes product and not a full reservation system

### The French Competition Authority's decision

1. This appendix sets out the key elements of and context for the French Competition Authority's decision, following GET's notification to it of GET's acquisition of SeaFrance assets.
2. In its decision 12-DCC-154 of 7 November 2012, the French Competition Authority set out in paragraphs 6 and 7 its views on whether the transaction was a merger falling within L430-1 of the French Commercial Code:

It will constitute a merger as far as these assets will allow Eurotunnel to generate a related turnover.<sup>1</sup> This is the case, in particular, of the vessels, but also other tangible and intangible assets such as the brand (even if it is not used, as no competitor can use it), customer records or web sites and domain names. It transpires from the terms of the takeover offer of Eurotunnel that 'the Eurotunnel group wished (...) to present *a global and indivisible offer* relating at the same time to the vessels and other tangible and intangible assets, in the context of an industrial project'<sup>2</sup> and that 'the project proposed will allow them to ensure the continuity of the services (of SeaFrance) by taking over the interrupted interoperability agreements'. Eurotunnel did not thus want to introduce a new maritime activity but take over the activity of SeaFrance by purchasing all the assets necessary to revive it. For example, the web site [http: // www.seafrance.com](http://www.seafrance.com) is still active and forwards customers to the MFL<sup>3</sup> web site where bookings are possible.

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<sup>1</sup> Guidelines of the Autorité de la Concurrence in relation to merger control.

<sup>2</sup> Original emphasis.

<sup>3</sup> MyFerryLink SAS, a subsidiary of GET that operates ferry services on the Dover–Calais route. MFL recommenced operation of ex-SeaFrance vessels on the Dover–Calais route on 20 August 2012.



The notified transaction is therefore a merger under the article L. 430-1 of the commercial code.<sup>4</sup>

3. Article L. 430-1 of the French Commercial Code states:

I.- A concentration shall be deemed to arise where:

1° two or more previously independent undertakings merge;

2° one or more persons already holding control of at least one undertaking or when one or more undertakings acquire control of all or part of one or more other undertakings, directly or indirectly, whether by the acquisition of a holding in the capital or by purchasing assets, a contract or any other means.

II.- The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of this article.

III.- For the purposes of applying this title, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer all the possibility of exercising decisive influence on an undertaking, in particular by:

- ownership or the right to use all or part of the assets of an undertaking;
- rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an Undertaking.<sup>5</sup>

4. The French Merger Guidelines (paragraph 19 onwards) state:

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<sup>4</sup> In their submission, the parties simply noted that since the transaction involves Eurotunnel's acquisition of exclusive control over the assets of SeaFrance, the transaction constitutes a merger as defined in article L.430-1 of the Commercial Code. They also noted that the undertakings involved in the transaction were, on the one hand, the Eurotunnel Group and, on the other hand, the SeaFrance assets acquired by Eurotunnel Group.

<sup>5</sup> Act No 2001-420 of 15 May 2001, Article 86, Official Gazette of 16 May 2001.

An undertaking is said to be **‘any entity carrying out an economic activity, independently of the legal status** of this entity and of its financing means’, with economic activity being understood as **‘involving the offer of goods and services on the market’**. A merger can relate to all of one or more firms, but also to asset elements that constitute part of a corporation, such as brands or patents, as of the moment when these asset elements constitute an activity that results in a presence on a market, to which a turnover can unambiguously be attached.

The notion of ‘person’ mentioned in point I-2 of Article L. 430-1 includes legal persons governed by private law, public bodies<sup>5</sup>, including the State itself, and individuals. ...

Whether in name or in deed, concentrations are subject to merger control as of the moment when they **lead to a combination of the activities of formerly independent firms** within a single economic unit. The existence of single and lasting economic management is one of the conditions that is needed to determine if one is in the presence of such a concentration. To determine this, the Autorité takes into consideration all legal and factual circumstances that serve to characterize the operation. [emphasis added]

## Glossary

<b>Accompanied freight</b>	Freight transported on driver-accompanied freight vehicles.
<b>Act</b>	Enterprise Act 2002.
<b>Bareboat charter</b>	The hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew.
<b>Berthing slot</b>	The time period allocated by the port for a vessel to embark and disembark at a specific berth.
<b>Capital cost</b>	Depreciation and opportunity cost of financing.
<b>CAT</b>	Competition Appeal Tribunal.
<b>CC</b>	Competition Commission.
<b>CCICO</b>	The Chambre de Commerce et d'Industrie Côte d'Opale. Port Authority for Nord Pas de Calais region.
<b>Cold lay-up</b>	Method of maintaining a ship if expected to be out of commission for more than 12 months. Machinery is shut down and only a few personnel kept for emergency requirements.
<b>Comité d'entreprise</b>	Works council.
<b>DCFL</b>	Dover Calais Ferries Limited. UK subsidiary of <b>SCOP SeaFrance</b> .
<b>DFDS</b>	DFDS A/S, a ferry operator and land-based logistics provider, operating in northern Europe.
<b>DHB</b>	Dover Harbour Board.
<b>DNV</b>	Det Norske Veritas.
<b>EBITDA</b>	Earnings before interest, taxation, depreciation and amortization.
<b>Europorte SAS</b>	<b>Eurotunnel</b> controls Europorte, the holding company controlling a range of rail freight subsidiaries, port infrastructure (including responsibility for maintenance at Dunkerque Sea Port).
<b>Eurotunnel</b>	Eurotunnel is the operator within the <b>GET</b> group of the freight and <b>passenger vehicle</b> shuttle business through <b>the tunnel</b> .
<b>Flash-docking</b>	A process designed to return vessels to an operational state.
<b>Freight unit</b>	A driver-accompanied freight vehicle, an <b>unaccompanied trailer</b> , or a container.
<b>French Court</b>	Tribunal de Commerce de Paris (Paris Commercial Court). <b>SeaFrance</b> was placed in administration by this court on 30 June 2010.

<b>French Commercial Code</b>	French primary commercial legislation set out in a code.
<b>French Labour Code</b>	Equivalent of <b>TUPE</b> regulations in the UK, dealing with the transfer of employees from one organization to another.
<b>GET</b>	Groupe Eurotunnel S.A. The parent company of the <b>Eurotunnel</b> group of businesses. The company is registered in France and listed on the London and Paris stock exchanges.
<b>GET Offer Document</b>	Document submitted to the French Court with offer for certain assets formerly of <b>SeaFrance</b> under liquidation.
<b>Guidelines</b>	The <i>Merger Assessment Guidelines</i> , CC2, form part of the advice and information published by the <b>OFT</b> and the <b>CC</b> under sections 106(1) and (3) respectively of the <b>Act</b> .
<b>GUPPI</b>	Gross upward pricing pressure index.
<b>Hot lay-up</b>	A minimum operating mode designed to maintain the condition of the ship, for example by running the engines regularly. (Note, referred to in the June 2013 <b>CC report</b> as ‘hot lay-by’).
<b>Indemnity</b>	Agreement of SNCF (previous owner of <b>SeaFrance</b> ) to pay an amount to future employers of <b>SeaFrance</b> employees.
<b>Inter-availability agreements</b>	These agreements provide that one operator will carry <b>passengers</b> for the other in the event that they are unable to carry <b>passengers</b> due to circumstances out of their control. These agreements are not entered into in relation to freight customers.
<b>IPR</b>	Indicative price rise.
<b>Lane metre</b>	An area of the deck of a ferry measuring 1 metre by 2 metres. Lane metres are used as units of measurement for the capacity of ferries.
<b>LDA</b>	Louis Dreyfus Armateurs, jointly bid with <b>DFDS</b> for <b>SeaFrance</b> vessels.
<b>Liquidator</b>	BTSG, appointed by the French Court to liquidate <b>SeaFrance</b> .
<b>Lo-lo</b>	A ferry with lift-on/lift-off vehicular access.
<b>MFL</b>	MyFerryLink SAS. A ferry company operating on the Dover–Calais route. The vessels used by MFL are owned by <b>GET</b> and chartered to the <b>SCOP</b> . MFL recommenced operation of the transferred assets on the Dover–Calais route on 20 August 2012 ( <i>Rodin</i> and <i>Berlioz</i> vessels) under this name. (The <i>Nord Pas-de-Calais</i> was expected to enter into service on a permanent basis in February 2013).
<b>Moliere</b>	Ship previously leased by <b>Sea France</b> and operated on the <b>short sea</b> .
<b>MoU</b>	Memorandum of Understanding.

<b>MTC ISS</b>	Marine Technical Consultancy—Independent Superintendent Services.
<b>Negotiated rates</b>	Rates which have been negotiated individually between <b>Eurotunnel</b> and a particular customer, and thus vary from contract to contract depending mainly on the volume that a particular freight operator offers to bring to <b>Eurotunnel</b> (thus enabling <b>Eurotunnel</b> to forecast traffic and make some degree of savings on costs).
<b>NMM</b>	Northern Marine Management.
<b>North Sea</b>	The North Sea routes consist of routes between ports on the east coast of England and ports in Continental Europe, other than the Ramsgate–Oostende route.
<b>NPV</b>	Net present value.
<b>OFT</b>	Office of Fair Trading.
<b>P&amp;O</b>	The Peninsular and Oriental Steam Navigation Company and its subsidiary companies.
<b>Parimar</b>	Parimar Franchise. Shipbroking firm appointed by the court to assist with the sale of <b>SeaFrance</b> 's three ships ( <i>Berlioz</i> , <i>Rodin</i> and <i>Nord Pas de Calais</i> ) and other assets.
<b>Passenger vehicles</b>	Cars, vans, coaches, caravans and campervans, whether used for tourism or business travel.
<b>Passengers</b>	Foot passengers or individuals travelling with <b>passenger vehicles</b> . Excludes drivers accompanying freight.
<b>PEC</b>	Pilotage Exemption Certificate.
<b>PSE3</b>	Plan de sauvegarde de l'emploi. Plan to safeguard employment entered into by SNCF.
<b>Remittal Notice</b>	Conduct of Remittal Notice published by the <b>CC</b> on 8 January 2014.
<b>ROIC</b>	Return on invested capital.
<b>Ropax</b>	A roll-on roll-off vessel built for passenger and freight vehicles.
<b>Ro-ro</b>	A <b>ferry</b> with roll-on/roll-off vehicular access.
<b>Ro-pax</b>	<b>Ro-ro</b> ferries with a larger passenger deck.
<b>SCOP SeaFrance</b>	Société Cooperative et Participative de SeaFrance. A group of former <b>SeaFrance</b> employees who established a workers' cooperative, with the initial purpose of acquiring the <b>SeaFrance</b> business.
<b>SeaFrance</b>	SeaFrance S.A., the company which ran a fleet of passenger and freight ferries between Dover and Calais. SeaFrance was placed into administration on 30 June 2010.

<b>SeaFret</b>	Ferry management software.
<b>SeaPax</b>	Ferry management software.
<b>Short sea</b>	The <b>short sea</b> consists of routes between Dover, Folkestone, Ramsgate, Newhaven in the UK and Calais, Dieppe, Boulogne, Dunkirk in France, as well as <b>the tunnel</b> and the routes across the Belgian Straits (Ramsgate/Ostend).
<b>Shuttle</b>	The passenger and freight rail shuttle services operated by <b>Eurotunnel</b> and travelling between Folkestone and Coquelles via <b>the tunnel</b> . The services are marketed under the 'Le Shuttle' brand.
<b>SLC</b>	Substantial lessening of competition.
<b>SNCF</b>	Société Nationale des Chemins de fer Français. The French state railway company and former owner of <b>SeaFrance</b> .
<b>Standard rates</b>	The rates available to any freight operator who has an account with <b>Eurotunnel</b> with no or very low-volume forecast. These rates are therefore set across the board and do not vary depending on the customer. There are no volume discounts, and the rates are identical regardless of the identity of the customer with whom the contract is made.
<b>The Judgment</b>	Judgment handed down by the <b>CAT</b> on 4 December 2013 on appeals by <b>SCOP SeaFrance</b> and <b>GET</b> against the <b>report</b> .
<b>The report</b>	<b>CC</b> report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A., 6 June 2013.
<b>The tunnel</b>	Comprises two railway tunnels under the English Channel and a third service tunnel with terminals at Folkestone in Kent, UK, and Coquelles in Pas-de-Calais, France.
<b>TUPE</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
<b>Unaccompanied freight</b>	Freight units carried on ferries and not accompanied by a driver.
<b>Unaccompanied trailer</b>	The trailer of an articulated lorry without the tractor unit and, hence, a driver.
<b>The vessels</b>	The three vessels acquired by Eurotunnel: <b>SeaFrance Berlioz</b> , <b>SeaFrance Rodin</b> , and <b>SeaFrance Nord Pas-de-Calais</b> .
<b>V Ships</b>	V Ships Ltd. Ship manning company.
<b>Western Channel</b>	The Western Channel routes consist of routes between ports on the south coast of England and ports on the north coast of France, other than the <b>short-sea</b> routes.