Eurotunnel/SeaFrance merger inquiry remittal

Provisional consideration of possible material change of circumstances

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✄].

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Summary

1. In this document we consider whether, in light of events since the publication in June 2013 of the report on the completed acquisition by Groupe Eurotunnel SA (GET) of certain assets of former SeaFrance (the report),[1] it is still right to remedy the substantial lessening of competition (SLC) that we expected to arise as a result of the merger by prohibiting GET from operating ferry services at the port of Dover.

2. The decision in the report was challenged by GET and the SCOP[2] on the basis that we had erred in concluding that there was a relevant merger situation. The question of whether or not GET and the SCOP acquired an enterprise was remitted to us by the Competition Appeal Tribunal (CAT).

3. The Act provides little guidance on our obligations in the context of a remittal. Such cases are exceptional and must be considered on their particular facts. Our starting point is that we are bound by our previous findings where these have not been challenged, or where they have been unsuccessfully challenged. Accordingly, we took the view that because the CAT did not uphold the challenge to our decision on the SLC or remedy as set out in the original report, those decisions stand. This is, however, subject to the constraints of public law, and in particular the obligation to take into account all relevant circumstances, as well as section 41(3) of the Act.

4. In March this year we published our provisional findings on the remitted question; we found that GET and the SCOP had acquired 'an enterprise' and therefore a relevant merger situation had arisen. We invited comments on our provisional findings. Given that more than nine months had elapsed since the publication of the report, we also invited comments on whether or not there had been a material change of circumstances (or special reason) (MCC) within the meaning of section 41(3) of the Enterprise Act 2002 (the Act) since the publication of the report.

5. Section 41(3) requires us to ensure that our decision on remedies shall be consistent with the report unless there has been a material change of circumstances since the preparation of the report or we otherwise have a special reason for deciding differently.

6. We considered the submissions that we received from GET, the SCOP and third parties.

[1] *A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A.*
[2] The SCOP is a workers' cooperative founded on 7 October 2011 by a group of 14 former SeaFrance employees.

7. GET and the SCOP submitted that demand on the short sea had grown more than envisaged by us, particularly on the Dover–Calais ferry route. They submitted that this, together with projections of growth for 2014 and 2015, constituted a change of circumstances sufficiently material to alter our SLC finding and hence impact on the remedies set out in the report.

8. In relation to the finding in the report that DFDS would be likely to exit, GET and the SCOP both submitted that a material change in circumstances had occurred as a result of the improved financial performance of DFDS. GET submitted that the improved performance of DFDS now placed DFDS in a strong competitive position, undermining its assertion that it would exit the Dover–Calais route if MFL continued operating. The SCOP submitted that there was no credible evidence to suggest that DFDS would exit the Dover–Calais route. DFDS disagreed, submitting that it was still a long way from break-even on its Dover–Calais operation and reiterating that it would exit if MFL did not.

9. We assessed the impact of the demand growth that had taken place in 2013 and the impact of possible further growth to 2015. We do not find that this growth materially changes our analysis that DFDS would exit the Dover–Calais route and there is therefore no reason to amend our calculation of internalisation effects.

10. We considered the financial performance of DFDS but found no evidence that would change our original conclusion that it would exit the Dover–Calais route if the MFL service continued in its current form and ownership.

11. We therefore provisionally conclude that there has not been an MCC.

12. We have considered whether there has been a material change of circumstances or other special reason that has arisen since the publication of the report that would lead us to reach a different view on remedies. In this context, we believe that the change of circumstances or special reason must not only be material in its nature, but also should be relevant to the decisions that we are required to take when assessing whether a remedy is as comprehensive a solution to the SLC, or resulting customer detriment, as is reasonable and practicable. Accordingly, we have had regard to all relevant considerations, including alleged relevant changes in the market and material changes in the factors that were relevant to our original remedies decision.

13. In their submissions to us about the MCC, GET, the SCOP and DFDS put forward proposals for alternative remedies, or changes to the remedy set out in the report.

14. We found that the GET remedy proposals were unchanged in substance from those in the original investigation and would not be effective in addressing the SLC. The SCOP submitted a remedy to us that it had not proposed at the time of the report. Although the proposal was in draft form it was similar to a remedy concerning the sale of the MFL business that was considered in the report, which at the time of the report was rejected on the basis that the only likely purchaser was DFDS, who was not interested in a divestiture that involved taking over the commercialisation contract with the SCOP.

15. At that time the SCOP was not considered as a potential acquirer of that business, nor did it put itself forward as a potential purchaser. However, the SCOP has indicated that its improved financial position and establishment on the market as a reliable provider meant that it may be able to obtain the funding to enable it to take on the commercial risk associated with the operation of the MFL business. Accordingly we have considered whether the SCOP's changed circumstances are such as to lead us to believe that the remedy proposal put forward by the SCOP would be a viable effective remedy that would represent as comprehensive a solution to the SLC as is reasonable and practicable.

16. We found that the SCOP remedy did not provide a timely solution to the SLC . We noted that there were significant risks associated with the SCOP proposal. The proposal had not been discussed in detail with GET; there are substantial doubts over the ability of SCOP to finance the proposal; and the three-year implementation period creates significant uncertainty of outcome for both the funder and the transaction parties. We also had concerns over whether the SCOP would be wholly independent from GET under these arrangements, and any lack of independence would result in a failure of the proposed remedy to address the SLC. The SCOP proposal would also require monitoring for the three-year implementation period. The proposed remedy also raises issues about charter length and the risk of circumvention.

17. The concerns over the SCOP remedy are such as to lead us provisionally to conclude that in its current form there is not the requisite degree of timeliness and certainty that this proposal will produce an effective solution to address the SLC identified in the report.

18. DFDS raised a number of points that in its view amounted to an MCC such that it would be appropriate to reduce the implementation period set out in the report from six months to three months. We disagree that circumstances had changed to such an extent that such a reduction is appropriate.

19. We provisionally conclude that there has been no material change of circumstances, or special reason within the meaning of section 41(3).

20. Subject to consideration of responses to our provisional conclusions, the remedies remain consistent with the conclusion in the report, namely a ten-year prohibition on GET operating ferry services at the port of Dover with the *Berlioz* and the *Rodin* (with an alternative of divesting the *Berlioz* and the *Rodin* to a purchaser approved by us within six months from the date of the CMA order to implement the remedy, provided that anti-avoidance provisions detailed in paragraphs 10.116 to 10.121 of the report also applied - see paragraphs 10.181 to 10.187 of the report) and a two-year prohibition on GET operating ferry services at the port of Dover with any vessel from the date the prohibition comes into effect.

Provisional consideration of possible material changes of circumstance

1. Introduction

1.1 On 6 June 2013, the Competition Commission (CC) published a report on the completed acquisition by GET of certain assets of former SeaFrance. [3] We found that the transaction constituted a relevant merger situation within the meaning of the Act, and concluded that it may be expected to result in an SLC in the market for the supply of transport services to passengers on the short sea and in the market for the supply of transport services to freight customers on the short sea.

1.2 By applications made before the CAT, respectively dated 18 June 2013 and 3 July 2013, GET and the SCOP challenged our decision, pursuant to section 120 of the Act. One of the grounds of challenge put forward by the SCOP was that we had erred in concluding that there was a relevant merger situation since the assets acquired by GET were not an enterprise.

1.3 By judgment dated 4 December 2013 (the judgment),[4] the CAT unanimously found that the question of whether the CC has jurisdiction in this case should be remitted to the CC for its reconsideration: 'The question is whether this is a case of two enterprises ceasing to be distinct within the meaning of section 26(1) of the Act, such that a relevant merger situation arises within the meaning of section 35(1)(a) of the Act.'[5]

1.4 The Act provides little guidance on our obligations in the context of a remittal. Such cases are exceptional and must be considered on their particular facts. Our starting point is that we are bound by our previous findings where these have not been challenged, or where they have been unsuccessfully challenged. Accordingly, we took the view that because the CAT did not uphold the challenge to our decision on the SLC or remedy as set out in the original report, those decisions stand. This is, however, subject to the constraints of public law, and in particular the obligation to take into account all relevant circumstances.

1.5 In the provisional findings published on 21 March 2014 we set out our provisional view that this is a case of two enterprises ceasing to be distinct within the meaning of section 26(1) of the Act, such that a relevant merger

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[3] *A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A*.
[4] *Groupe Eurotunnel S.A. v Competition Commission* [2013] CAT 30; no remittal order was issued.
[5] ibid, paragraph 432.

situation arises within the meaning of the Act, in particular that GET and the SCOP acquired an ‘enterprise’.

1.6 We duly invited comments on our provisional findings. Given that more than nine months had elapsed since the publication of the report we also invited comments on whether or not there had been a material change of circumstances (or special reason) within the meaning of section 41(3) of the Act (MCC) since the publication of the report. Section 41(3) requires us to ensure that our decision on remedies shall be consistent with the report unless there has been a material change of circumstances since the preparation of the report or we otherwise have a special reason for deciding differently.

1.7 We received submissions from a number of parties that there had been such changes. In light of these submissions we carried out an assessment of whether or not it would still be appropriate to remedy the effects of the merger as envisaged in our original report (as provided by section 41(3) of the Act).

1.8 This document sets out the possible MCCs put forward by GET, the SCOP and third parties and our provisional assessment of whether we need to amend any element of the remedies in light of any MCCs. It first summarises the submissions we received relating to possible MCCs; we then set out our consideration of these submissions. We provisionally conclude that it remains appropriate to remedy the effects of the merger as envisaged in our original report. The Competition and Markets Authority’s (CMA’s) discretion to depart from those conclusions arises only where it can point to a ‘material change of circumstances’ or other ‘special reason’ for deciding differently.

1.9 Finally, in the remedies section, we consider a remedy that was put forward by the SCOP in the context of the remittal that it had not proposed at the time of the report. At that time the SCOP was not considered as a potential acquirer of the MFL business, nor did it put itself forward as a potential purchaser. However, the SCOP has indicated that its improved financial position and establishment on the market as a reliable provider meant that it may be able to obtain the funding to enable it to take on the commercial risk associated with the operation of the MFL business. Accordingly we have considered whether the SCOP’s changed circumstances are such as to lead us to believe that the remedy proposal put forward by the SCOP would be a viable effective remedy that would represent as comprehensive a solution to the SLC as is reasonable and practicable.

2. Summary of the MCCs put forward by GET and the SCOP

2.1 There were two MCCs put forward by GET and the SCOP. The first concerned Dover–Calais demand growth and the second concerned arguments made in the report about the exit of DFDS from the Dover–Calais route.

Demand growth

2.2 GET/MFL submitted that an MCC had occurred since demand has risen faster on the short sea and on the Dover–Calais ferry route than had been anticipated by the report. According to GET, this means that:

(a) the market will very soon be large enough to support profitably three ferry operators; and

(b) our SLC finding and the remedies in the report were based on the assumption that DFDS would exit the market, and, this no longer being the case, we should reconsider both our SLC and our remedies.

2.3 The SCOP made similar submissions, with data showing that the capacity utilisation of MFL's ships was [✂], which the report had identified as being necessary for sustainable operation.

2.4 GET argued that the demand increase in 2013 and the higher projected demand increases meant that current capacity could operate on the short sea at sufficiently high utilisation rates to be profitable. In the report, we argued that the ferry segment of the market last appeared sustainable in 2007, when utilisation rates were 54% on the entire short sea. GET argued that these utilisation rates were close to being achieved, and would be achieved soon with demand growth. It argued that capacity reduction would therefore not be necessary on the route.

2.5 GET/MFL said that new environmental legislation that had been introduced (the International Convention for the Prevention of Pollution from Ships (MARPOL)) that would require ships operating within the North Sea and English Channel to reduce the content of their fuel from 1% to 0.1% by 1 January 2015, or to install equipment which would reduce pollution by at least the same amount as by using the lower-sulphur fuel. Since fuel with a lower sulphur content is more expensive, GET said that this would impact on the economics of ferry routes and increase demand on short-sea routes such as Dover–Calais since ferries would use less fuel on these routes compared with longer routes.[6]

2.6 GET noted that P&O's short-sea freight share had decreased to 28.7% in 2013 from 36% in Q4 2012 and said that the decline was linked to the

[6] MARPOL is described in more detail in Appendix A.

improvement in performance of DFDS and MFL in the same period. GET said that this indicated strongly that, of all the ferry operators, P&O should rationalise its capacity on the short sea. GET also noted that Eurotunnel's freight share had reduced, from 42.9% in 2012 to 38.2% in 2013. GET argued that MFL and DFDS appear to be gaining market share at the expense of P&O and Eurotunnel, rather than from each other. GET also said that the MFL growth had not occurred as a result of MFL charging aggressively low prices only made possible through subsidisation by Eurotunnel.

2.7 GET and the SCOP submitted to us that a DFDS exit was now unlikely and that we therefore ought to reconsider the internalisation and competition-weakening analyses that led to our SLC decision.

MCC arguments in relation to the exit of DFDS

2.8 GET and the SCOP both argued that an MCC had also occurred as a result of:

(a) the improved financial performance of DFDS; and

(b) DFDS's continuing operation on the Dover–Calais route using the *Molière*.

2.9 GET argued that DFDS was 'objectively stronger, certainly not weaker than was the case at the time of the June 2013 Report'. It believed that the results published in its 2013 annual report indicated that DFDS's financial performance on the short sea had improved.[7] GET also believed that this position would continue to improve, given that Dover–Calais was the biggest UK route, was most likely to benefit from the introduction of MARPOL and had experienced a materially greater increase in volume than was envisaged at the time of the report.

2.10 GET said that DFDS's recent comments in the financial press and in relation to its accounts were at odds with any intention to exit the Dover–Calais route. It submitted that DFDS's key message regarding its future as noted in the press release for its annual report was that 'DFDS is strongly positioned, both financially and strategically' for 2014, that it 'will continue to work on creating synergies by expanding [its] European network through acquisitions' and that 'streamlining will continue at full strength'.[8] In addition, GET highlighted a number of recent press articles that discussed DFDS's intentions for the

[7] GET noted that DFDS's 2013 annual report quantified its improvement on the short sea as a market share increase of 5% in the short-sea freight market, up from 19% in 2012 to 24% in 2013. In addition, the most recent market share figures (for February 2014) record DFDS with a 22.1% share of this market.
[8] GET response to invitation to comment on MCC, paragraph 6.1.

Dover–Calais route and which GET argued showed that DFDS did not intend to exit the route.[9] These are further detailed in Appendix B.

2.11 The SCOP submitted that the exit of DFDS from Dover–Calais was a fundamental link in the chain of causation that was the substance of the CC's theory of harm. It argued that as DFDS was still operating and showing a strong performance on the route and in light of DFDS's growth on the short sea, there was no credible evidence to suggest that DFDS would exit the Dover–Calais route either in the short term or otherwise.[10]

2.12 GET also argued that Dover–Calais was at the heart of the DFDS route network for Europe. It believed that this was shown by a map of DFDS's routes in its annual report,[11] with Dover–Calais at the 'heart of its route network for Europe' as well as press articles (paragraph 2.10). GET said that it was inconceivable that DFDS would remove itself from the biggest route that was going to benefit most from the increase in MARPOL regulations and that had already increased in size.

2.13 GET argued that the extension of the charter by DFDS of the *Molière* until November 2014 showed both DFDS's commitment to the short sea in seeking this extension, and its overstatement of the urgency and likelihood of its exit during the initial merger inquiry. In addition, GET said that as DFDS had not made any claims during the remittal process relating to any plans to exit the short sea in general, or the Dover–Calais route in particular, DFDS presumably anticipates being able to procure a ready replacement for the *Molière.* This, it argued, undermined the CMA's claims in the remittal provisional findings dated 21 March 2014 that 'there is a lack of alternative vessels which could operate the route at any one point in time'.[12]

2.14 The SCOP argued that despite DFDS telling the CC that its charter of the *Molière* would expire in October 2013 and that the charter did not have an option for extension,[13] the *Molière* was still being used by DFDS on the Dover–Calais route, and that the charter had been extended to November 2014.[14]

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[9] These included an article in *le Journal de la Cote d'Opal, Edition Nord Littoral***,** on 25 April 2014 in which John-Claude Charlo (Managing Director, DFDS Seaways in France) said, 'If the question is: "Would DFDS leave Calais in the event of an unfavourable decision from the Competition Commission for our company?", the answer is no. The Calais–Dover line is a line in which the group believes. But we cannot forget that its chronic overcapacity brought about the demise of SeaFrance. What we say, is what the market says. DFDS is not against competition. Our company was born out of competition, but today the economic situation does not justify the commissioning of that many ships.'
[10] SCOP response to invitation to comment on MCC, paragraph 1.2.
[11] DFDS annual report 2013, p6.
[12] GET response to invitation to comment on MCC, paragraph 7.3.
[13] The report, paragraph 8.68.
[14] SCOP response to invitation to comment on MCC, paragraph 4.14.

3. Assessment of the MCCs proposed by GET and the SCOP

3.1 In this section we consider:

(a) the arguments put forward by GET and the SCOP that the demand growth seen on the short sea in 2013, and particularly on the Dover–Calais ferry route, together with projections of growth for 2014 and 2015 constitute a change of circumstances sufficiently material to alter our SLC finding (paragraphs 3.3 to 3.32); and

(b) the arguments put forward by GET and the SCOP about the improvement in DFDS's financial performance (paragraphs 3.40 to 3.62) and whether any changes that GET and the SCOP submit have occurred materially affect our assessment in the report of the likelihood that DFDS will exit the Dover–Calais route.

3.2 We note at the outset that caution should be exercised in drawing conclusions from 2013 given the strategic uncertainties caused by the present inquiry.

Comparison of the CC's June 2013 and GET's current demand projections

Overall short sea demand

3.3 GET offered updated 2013 demand figures and a demand projection for the short sea and Dover–Calais routes for 2014/15. Appendix C provides a detailed account of the differences between the CC's June 2013 demand assumptions and GET's figures. Figures 1 and 2 provide summaries of the differences for the short sea as a whole and for the Dover–Calais ferry route respectively.

3.4 A substantial portion of the difference between the GET and original CC figures comes from different 2013 numbers, and this difference in turn can be traced to two factors: *(a)* demand growth has been higher than anticipated by the CC and *(b)* GET has used a different conversion factor to get from numbers of cars, trucks and coaches to lane metres than did the CC.

3.5 Although we do not necessarily accept the GET calculations, for the purpose of assessing the materiality of GET's proposed demand figures, our method is to assess the impact of GET's assumptions rather than critically to examine those assumptions. We agree that demand has grown faster than anticipated in 2013 (see Appendix C). When it comes to lane metre conversion rates and projections of growth into 2014 and 2015, we do not examine the likelihood that GET's assumptions are or will prove accurate. We take GET's numbers as if they were correct and assess the overall impact of GET's proposed projections.

3.6 Figure 1 shows the different effects leading to the difference between the CC's June 2013 starting point and the highest 2015 projections from GET.

FIGURE 1

A comparison of the CC June 2013 demand projections and GET's demand projections for the short sea

[✂]

Source: CMA calculation.
Note: We have excluded Ramsgate–Ostend demand.

3.7 The first element is a higher starting point for 2013. Growth on the whole short sea was approximately 4% in 2013, taking a weighted average of growth in freight, passengers and coaches whereas the report had assumed 2% (the difference is shown as 'Higher base'). The next element added by GET to the CC's numbers is an adjustment made for the different assumptions made about lane metres per vehicle (shown as 'Conversion assumption'). The CC had assumed 2.4 metres per car and 7.2 metres per coach. GET assumed 3.3 metres per car and 12 metres per coach. Both assume 16.5 metres per truck. The original data for actual volumes comes from industry sources – Ferrystat and Freightstat – and these measurements are in actual numbers of cars, coaches and trucks. In order to make comparisons with capacity levels, both GET and the report convert the vehicle numbers into lane metres using conversion rate assumptions. The GET assumption has the effect of increasing lane-metre demand compared with the CC assumption. As will be seen in paragraph 3.15 below, GET and the CC's estimation of capacity on the short sea is very similar. The effect of the different conversion rate assumptions is to make the GET capacity utilisation rates higher than the CC's figures in the report.

3.8 The CC assumed 2% growth for 2014 in the market in its report, while GET proposed to extend the stronger 4% weighted average growth rate into 2014 and 2015. The 2014 element of CC growth is shown in the stack chart (Figure 1), followed by the incremental GET growth. This is repeated for 2015.

3.9 Finally, two different scenarios of the impact of MARPOL are added to the baseline 2015 number – GET's assessment of a low and a high effect. These are shown as the last two additions to the stack chart. GET's assumptions suggest MARPOL might add up to 3.5% to total demand. See Appendix A for further background information on MARPOL.

Demand projections for the Dover–Calais ferry segment

3.10 In Figure 2, we repeat the comparison for the Dover–Calais ferry route.

FIGURE 2

Comparison of the differences between the GET and CC (June 2013) demand figures for the Dover–Calais ferry segment

[✄]

Source: CMA calculation.

3.11 The same elements are present in Figure 2 as for Figure 1. A much larger portion of the difference between the GET and CC numbers is made up of a higher actual level of demand in 2013. The GET analysis shows that the Dover–Calais ferry market grew 18% in 2013. The other elements of the chart are commensurate with those in Figure 1.

3.12 According to Ferrystat and Ferryfreight, growth in 2013 was 18%, as it is for the GET projections. This has come about from growth in the overall short-sea market and a shift away from Eurotunnel and Dover–Dunkirk. We have identified two contributing causes to this growth in the Dover–Calais route: increased frequency on the Dover–Calais ferry route because of MFL's and DFDS's presence; and reduced prices on the Dover–Calais ferry route. Within the Dover–Calais route, P&O has lost volume, while DFDS and MFL have increased (see paragraph 3.29). Figure 3 (paragraph 3.21) shows that P&O's weighted average price has been higher than DFDS's or MFL's, while the frequency of DFDS and MFL has increased relative to P&O. We have not formally tried to separate out the effects of average price and frequency on demand, but we consider that it is reasonable to believe that price reductions for both freight and passengers will have been a significant contributor to the demand shift between routes and from P&O and Eurotunnel to DFDS and MFL.

CC and GET capacity estimates and capacity utilisation

3.13 In paragraph 2.4 we noted GET's arguments that the demand increase in 2013 and the higher projected demand meant that current capacity could operate profitably on the short sea. GET noted that in the report we said that the ferry segment of the market last appeared sustainable in 2007, when utilisation rates were 54% on the entire short sea. GET argued that these utilisation rates would be achieved with projected demand growth and that capacity reduction would therefore not be necessary on the route.

3.14 The 2007 benchmark in the report did not fix a level of utilisation that would be profitable irrespective of any other circumstances. Break-even is a function of average realised prices and costs as well as capacity utilisation. We do not believe that it is right to disregard the average revenue levels at which utilisation levels are achieved. We have evidence of substantial average revenue decreases in the short-sea ferry market in 2013, which suggests that the increased capacity utilisation level, achieved by volume growth in 2013 and possibily in 2014 and 2015, is not sustainable because of the impact of these falls in average revenue on profitability.

3.15 GET provided capacity estimates for MFL for 2013 and assumed that the capacity would stay constant in 2014 and 2015. Table 1 describes our and GET's daily capacity estimates in lane metres for all short-sea operators and Dover–Calais ferries. The difference in these estimates is small and can be explained by assumptions regarding the lane-metre conversion rate made by GET when estimating MFL's own capacity.[15]

TABLE 1 **GET and CC estimates of capacity on the short sea and on the Dover–Calais ferry segment**

	Capacity, lane metres	
	2012	*2013*
CC June 2013, short sea	349,569	388,214
GET MCC submission, short sea		389,583
GET/CC discrepancy (%)		0
CC June 2013, D–C ferries	168,601	198,208
GET MCC submission, D–C ferries		199,569
GET/CC discrepancy (%)		1

Source: GET, CC and CMA calculation.

3.16 These capacity figures are combined with demand projections to determine capacity utilisation rates. Table 2 shows and analyses the difference between the utilisation rates based on the report and the utilisation rates derived by GET. The CC's estimate of 2007 utilisation rates is also presented.

[15] In calculating MFL's own capacity, GET used a number of units of freight, passengers and coaches that the ships could load and converted this to lane-metres.

TABLE 2 **A comparison of CC/CMA and GET calculations of capacity utilisation rates on the short-sea**

	2007	*2013*	*2014*	*No MARPOL 2015*	*Low MARPOL 2015*	*High MARPOL 2015*
Capacity						
CC	126,833,485	141,698,110	141,698,110	141,698,110		
GET		[✂]	[✂]	[✂]	[✂]	[✂]
Demand						
CC	68,951,439	69,636,390	71,058,179	72,508,997		
GET, GET conversion		78,351,162	[✂]	[✂]	[✂]	[✂]
GET, CC conversion		72,002,098	[✂]	[✂]	[✂]	[✂]
Utilisation (%)						
CC target utilisation (CC conversion)	54					
CC utilisation	54	49	50	51		
GET utilisation, GET conversion		[✂]	[✂]	[✂]	[✂]	[✂]
GET utilisation, CC conversion		51	[✂]	[✂]	[✂]	[✂]

Source: CMA calculation.

Note: We have excluded demand and capacity for Ramsgate–Ostend.

3.17 In comparing utilisation rates, it is important to take care to use consistent conversion ratios from freight, coach and passenger units to lane metres. GET and the CC have used different conversion rates.

3.18 In the report, we estimated capacity utilisation to be 54% in 2007.[16] This was derived on the basis of CC conversion rates for demand and CC estimates of capacity. On the basis of the CC's June 2013 projection of demand, utilisation by 2015 is 51%. In 2013, on the other hand, GET assumptions yield a utilisation rate of [✂]% based on its estimate of capacity (which is very close to ours) and its estimate of lane-metre demand. The [✂]% grows to [✂]% in 2015 before any MARPOL effects. However, those utilisation figures are not directly comparable with the CC's 2007 benchmark utilisation level of 54%. That is because the benchmark and the GET figures are based on different assumptions for the conversion of units to lane metres. We therefore recalculate the GET demand numbers based on the CC lane-metre conversion in order to derive comparable utilisation figures. These are given in the last row of Table 5. The GET utilisation forecast for ferries on the Dover–Calais route achieves 2007 levels in 2015, before any MARPOL effect.

3.19 We do not take the fact that utilisation in 2015 is higher than in 2007 necessarily to be an indication that three operators can be sustained in 2015 on the Dover–Calais ferry route. In order to assess the argument that the market can now profitably sustain three ferry operators, including DFDS, we

[16] The report, paragraphs 8.44–8.46, & Appendix E, paragraph 31.

examine in detail below the relationship between average revenues, volumes and capacity utilisation required for DFDS break-even.

The impact of market growth

3.20 In our analysis of GET's argument, we use GET's demand projections and then ask whether it is the case that three ferry operators are or soon will be profitable on the route

Will three ferry operators soon be profitable on the Dover–Calais route?

3.21 We have updated our model of DFDS's break-even level of operation to take account of demand growth. The result is summarised in Figure 3, and our methodology described in detail in Appendix D.

FIGURE 3

DFDS break-even analysis and GET-based demand projections

[✄]

Source: CMA calculation.

3.22 The line in Figure 3 represents combinations of average revenue and average monthly demand that allow DFDS to break even. This line is based on an analysis of DFDS's costs. This analysis updates the analysis described in paragraph 8.34 of our report and adopts the same methodology. The break-even analysis is conducted as far as possible on the basis of DFDS avoidable costs. We have therefore excluded depreciation charges from fixed vessel costs. This is a conservative assumption, in that if the vessel that DFDS owns were not on the Dover–Calais route, it would be likely to be employed elsewhere and likely to generate a contribution. In this exercise, we have assumed that amount to be zero. We have sought to repeat the analysis that led to the conclusion in the report that DFDS would exit the market (the report, paragraph 8.98), but at different levels of prices and demand.

3.23 Figure 3 shows the average revenue (price)/volume point achieved by DFDS in 2012 and in 2013. The revenue includes on-board sales. As expected from the 2013 Dover–Calais ferry route demand growth, this represents a significant increase in volume served over 2012 – more than doubling (DFDS only started operations in March 2012). However, this volume growth has been accompanied by a steep decline in average revenue for DFDS – with average revenue per lane metre falling by [✂]%.[17]

3.24 Figure 3 also shows the weighted average prices achieved by MFL in 2013, shown with and without the contribution to revenues of on-board sales. MFL has achieved out-turn prices slightly above DFDS. P&O's weighted average price during 2013 was substantially above MFL's and DFDS's. The weighted average price points have been reviewed and validated by the parties.

3.25 MFL reported a loss of €[✂] million in 2013. This compares with GET's announcement in January 2013 where it said it anticipated that MFL would make losses of €25 million in the first 18 months of operation.[18] Therefore losses in 2013 have been higher than forecast while volumes have also been higher than forecast. This means that MFL's actual average revenue has been lower than it had forecast, which requires that realised weighted average prices have fallen against projected levels in 2013.

3.26 The finding of a fall in average revenues in 2013 relative to 2012 is consistent with our finding in the report, where we write (paragraph 8.34, footnote 174) that:

> as at 25 January 2013, DFDS estimated that, based on its forecast at that time for 2013, it would achieve a market share of [✂] per cent of freight and [✂] per cent of passenger, that an increase of [✂] freight units ([✂] per cent market share) and [✂] passengers ([✂] per cent market share) would be required to break even on Dover–Calais—or in terms only of freight, an additional [✂] freight units ([✂] per cent market share).

In 2013, DFDS outperformed these increases in volumes by a considerable amount – it had an increase of 221,000 freight units and 481,000 passengers. There has been no substantial change in costs, and losses on the route have continued to be substantial. Only a reduction in average revenues can account for these facts together.

3.27 The DFDS average revenue reduction between 2012 and 2013 means that break-even has remained elusive to DFDS. This is confirmed by an examination of DFDS's financial statements (see paragraphs 3.42 to 3.46

[17] This decline in average revenue is a combination of price falls for freight and passengers together with a shift of relative volumes towards freight, which has a lower average revenue per lane metre. [✂] of the fall in DFDS's average revenues is due to the shift to freight, and [✂] to price falls.
[18] The report, paragraph 3.49.

below), which show that DFDS's profits for the Dover–Calais route worsened in 2013 from 2012.

3.28 The three vertical lines show the demand increase that DFDS can hope to enjoy by 2015 based on GET's demand projections and DFDS's 2013 market shares, with the lowest line representing the no-MARPOL case and the two other lines each representing one of the MARPOL scenarios. The assumption that DFDS can maintain its 2013 market shares is generous given (see the report, paragraph 8.74) that we would expect P&O to cease to accommodate the increased DFDS and MFL shares. While this demand growth might have been sufficient to bring DFDS to break even at 2012 average revenues, it is far from sufficient at 2013 levels. This can be seen in the diagram from the fact that the 2012 average revenue level intersects the vertical demand lines above the break-even curve, while the 2013 price level intersects all three lines well below the break-even curve.

3.29 P&O does not appear to have lost average revenue to such an extent during 2013. It said that 'price competition on this route has been very intense since the commencement of both the DFDS Calais service and the MyFerryLink service'. It said that it had experienced some price reductions but had not participated in price reductions to the same extent as DFDS or MFL. We see in Table 3 that P&O has lost both freight (20%) and passenger (7%) volume over this period, which is consistent with its not having implemented price reductions of similar magnitudes.

TABLE 3 **Short-sea market volumes by operator, 2012/13**

		'000 passengers
	2012	*2013*
Passengers		
P&O	8,430	7,843
MFL	137	1,261
DFDS D–C	851	1,332
DFDS D–D	2,497	2,293
Eurotunnel	10,040	10,328
		No of trucks
Freight		
P&O	1,282,078	1,025,892
MFL	11,417	326,269
DFDS D–C	133,509	355,117
DFDS D–D	522,647	500,026
Eurotunnel	1,464,880	1,362,849

Source: FerryStat and FreightStat.

3.30 GET suggested that the reduction in demand served by P&O indicated that P&O had the strongest incentive to reduce capacity on the route (paragraph 2.6). In the report, we argued that P&O was unlikely to reduce capacity before the exit of one of the smaller operators (paragraph 8.51). We note that P&O has maintained capacity and we do not accept GET's argument that there is any new indication that P&O is likely to accommodate entry in the medium term.[19]

3.31 We believe that market conditions during 2013 are as we would expect in a situation of overcapacity in which each operator is waiting for capacity reductions from another operator. Price has been unsustainably low and appears insufficient to support three ferry operators on the Dover–Calais route. We believe that price and quantity movements during 2013 do not represent movements to a sustainable state.

3.32 We conclude from this analysis that the recent growth in demand, accompanied as it has been by reduced average revenues on the Dover–Calais ferry segment, is unlikely to enable three ferry operators to break even by 2015 or earlier. We therefore continue to believe that the most likely scenario for capacity reduction, absent an intervention, is a DFDS exit from the route.

Internalisation and competition-weakening analyses

3.33 As noted in paragraph 2.7, GET and the SCOP submitted that if demand were to be sufficient now or in the near future to sustain all of GET/MFL, DFDS and P&O on the Dover–Calais segment, then we ought to reconsider the internalisation and competition-weakening[20] analyses that led to our SLC decision and recompute indicative price rises (IPRs) and gross upward pricing pressure indices (GUPPIs) in light of new market shares. However, we do not believe that the change in demand and likely future demand has been such as to put us into this situation. We believe that it remains the case that DFDS is likely to exit (see also the analysis of DFDS's financial performance and evidence relating to the chartering of the *Molière* below).

3.34 The SCOP further argued that price increases arising from internalisation in a scenario in which demand had grown and GET/MFL, DFDS and P&O were all sustainable operators on the Dover–Calais maritime route could be counteracted by a competition-weakening effect in this case compared with one in which DFDS and P&O alone operated the route, suggesting that DFDS might also choose to restrict Dover–Calais capacity in order to benefit its existing ferry services elsewhere in the short sea (specifically Dover–Dunkirk).

[19] We also note that the SCOP told us that P&O was 'a little bit more aggressive than the last period in terms of price' – this is consistent with P&O moving to protect market share.
[20] The competition-weakening effect is discussed in paragraph 8.128 of the report:

> Competition between ferry operators affects the price of ferry crossings on the short sea and in turn constrains the price that Eurotunnel can charge. The vigour of competition between ferry operators therefore has an impact on the level of profit achieved by Eurotunnel. It follows that if GET manages Eurotunnel and MFL in a way that maximizes profits across the two businesses, it could be the case that MFL would compete less vigorously against other ferry operators in order to avoid damaging the profitability of Eurotunnel.

3.35 We considered the SCOP comments. We note that if it were the case that demand was or would be expected to be such as to sustain three ferry operators on the Dover–Calais route and a ferry operator was seeking to increase capacity by purchasing the GET ferries, we would evaluate whether there were competitive concerns from the acquisition. Since we do not believe it likely that demand is at such a level, nor is expected to be, we consider that these are hypothetical questions that we do not need to consider at this time.

3.36 In performing calculations for IPRs and GUPPIs, the report chose levels of prices, short-term margins and market shares for MFL that were argued to be consistent with sustainable, profit-making levels of operations. These levels were also consistent with what we believed would be the likely behaviour of P&O. We do not believe that 2013 short-term margins and market shares are a good basis for estimating the appropriate prices, margins and market shares because a substantial part of the price and volume movements during 2013 is likely to have been the result of short-term competition due to overcapacity on the route. We therefore believe that the margins and market shares in the report continue to be the right basis on which to judge expected levels of IPRs and GUPPIs.

Provisional conclusion on demand growth

3.37 GET and the SCOP provided evidence that there had been growth in demand in 2013 and that there would be further growth through to 2015. In our provisional view, and without reaching any conclusions as to the likelihood of such growth in demand materialising, we do not believe that this materially changes our analysis and conclusions that there exists overcapacity on the route which cannot sustain three ferry operators and that DFDS is likely to exit the Dover–Calais maritime segment.

3.38 GET and the SCOP submitted that we ought to redo our SLC analysis to take account of DFDS remaining on this route. We do not consider that this is appropriate in the light of our analysis that shows that DFDS is still likely to exit the route.

3.39 We believe that the margins and market shares in the report continue to be the right basis on which to judge expected levels of IPRs and GUPPIs.

DFDS's financial performance

Background

3.40 In the report, we concluded that:

on the balance of probabilities DFDS will exit the Dover–Calais route, if the MFL service continues in its current form and ownership. Given the size of the losses being incurred by DFDS on this route, we expect this outcome to be reached in the short term and as early as [✂].[21]

3.41 In arriving at this conclusion, we said:

(a) ‘Both companies [DFDS and GET] anticipated losses on the Dover–Calais route in the next 12 months. We note that GET anticipated that it would continue to fund losses until the end of [✂]. We have seen no evidence to suggest that DFDS would be prepared to sustain losses for as long a period of time [as GET].’[22]

(b) ‘We consider that they both [GET and DFDS] have the financial strength to sustain losses on the Dover–Calais route.’[23]

(c) ‘Although both companies view the Dover–Calais route as strategic … we consider that GET has significantly stronger incentives[24] than DFDS to continue operating a loss-making service on the route. GET would also incur significantly greater exit costs.’[25]

DFDS financial performance

3.42 We first set out and assess the evidence in relation to DFDS’s financial performance. DFDS Group’s financial statements show an improved financial performance in 2013 compared with 2012. DFDS stated in its annual report[26] that:

(a) The growth in revenue for the year was ‘mainly driven by the full-year effect of the addition of the French shipping company Louis Dreyfus Armateurs and increased activity on Dover–Calais, which opened with only one ship on the Channel during Q1 2012’.[27]

[21] Report, paragraph 8.98.
[22] Report, paragraph 8.95.
[23] Report, paragraph 8.96.
[24] Report, paragraphs 8.85–8.87. These covered the ability to recoup losses in the long term; the strategic importance of the Dover–Calais route to their businesses; the visibility of losses to their shareholders; size of exit costs; and nature of their business model.
[25] Report, paragraph 8.97.
[26] DFDS 2013 annual report, Management Review, p9.
[27] ibid, p9.

(b) The increase in profit was 'mainly driven by higher earnings from the freight and passenger activities in the North Sea'.[28]

(c) Its return on invested capital was 5.8%, excluding special items, implying a gap of 4.2 percentage points to the goal of a 10% return. Around 2.5 percentage points of the gap was due to the extraordinary situation on the Channel.[29]

3.43 The annual report figures show that Group revenue increased from €1,568 million to €1,622 million. The Channel Business Area (the Channel)[30] also increased revenue from €186 million to €249 million. The DFDS Group profit increased, with EBIT increasing from €121 million to €201 million. The Channel recorded an EBIT loss (before overheads) of €14 million, also an improvement from the 2012 EBIT loss (before overheads) of €18 million..

3.44 Revenue for the Dover–Calais route[31] was €70.9 million in 2013, a substantial increase from €43.7 million in 2012. However, the 2013 EBIT loss (before overheads) for Dover–Calais of €14.6 million[32] was greater than the loss reported for the Channel business area overall and greater than the 2012 EBIT loss (before overheads) for Dover–Calais of €12.8 million. These figures are set out in Table 4.

TABLE 4 **DFDS summary financial performance**

€ million

	Group		*Channel*		*Dover–Calais*	
	2013	*2012*	*2013*	*2012*	*2013*	*2012*
Revenue	1,622	1,568	249	186	71	44
EBITDA*	163	146	-	-	-	-
EBIT*	67	57	–14	–18	–15	–13
Cash flow from operating activities	201	121	-	-	-	-
ROIC (%)	5.7	3.4				

Source: DFDS annual reports and management accounts

*Before special items, Dover–Calais before overheads.
Note: Exchange rate €:DKK: 2013 1:7.458, 2012 1:7.462.

28 DFDS 2013 annual report, Management Review, p9.
29 DFDS 2013 annual report, Financial Goals, p8.
30 The Channel business area includes Dover–Dunkirk, Dover–Calais, Portsmouth–Le Havre and Newhaven–Dieppe.
31 Management accounts.
32 Figures taken from DFDS route management accounts.

3.45 In its 2014 budget for the Channel Business area DFDS budgeted for an EBIT loss (before overheads) of €[✄] million. DFDS budgeted for a higher loss for Dover–Calais in 2014 with the EBIT loss (before overheads) of €[✄] million.[33]

3.46 DFDS provided actual financial performance figures for Dover–Calais route for the first 14 weeks of 2014 are set out in Appendix E. The data shows that DFDS generated revenue of €[✄] million in the first 14 weeks of 2014 and a positive contribution before vessel costs. Once vessel costs are taken into account, Dover–Calais shows a negative contribution (loss after vessel costs) of €[✄] million. DFDS provided a schedule of additional costs which are not included in its weekly reports but are included in its annual EBIT figures. These showed that in the 14-week period the Dover–Calais route continued to make a loss, totalling €[✄] million EBIT (before overheads). Further details are provided in Appendix E. This loss is similar to the first 14 weeks of 2013 where DFDS had revenue of €[✄] million and an EBIT loss (before overheads) of €[✄] million.[34]

DFDS views on the viability of the Dover–Calais route

3.47 DFDS argued[35] that the viability and likelihood of exit of the relevant operators on Dover–Calais remained the same as at the time of the report. It said that it was still a long way from break-even on its Dover–Calais operation and reiterated that it would exit if MFL did not. DFDS told us that:

> the economical fact asserts that we will have to exit the Calais route if GET/MFL are allowed to operate on this Calais route … There is no way that higher growth rates, MARPOL or cost saving initiatives on our side can change the structural challenge [of overcapacity] we are seeing.

3.48 DFDS told us that as a result of GET's continued presence on the Dover–Calais route, its losses continued to mount.[36] It estimated the value of additional business that DFDS would gain were MFL no longer to operate on the route (per the CMA's proposed remedy) to be approximately £[✄] a week on average.

3.49 DFDS told us that Dover–Calais was not at the 'heart' of its network of maritime routes and that there was no 'emotional attachment' to continuing to

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[33] DFDS Shipping Division 'budget 2014 Channel', prepared for presentation to DFDS's Executive Board, shows a budgeted loss of €[✄] million. DFDS told us that this was revised to €[✄] million (€[✄] million after overheads were allocated).
[34] The two periods are not exactly comparable given differences in charter day rates, changes in the way terminal charges are levied and the number and when vessels were in dry dock.
[35] DFDS response to invitation to comment on MCC, paragraph 3.2.
[36] DFDS response to invitation to comment on MCC, paragraph 2.5(c).

operate on the route. It said that it did not arrive on the Dover–Calais route until 2012 and it had only entered the Dover–Dunkirk route as a consequence of acquiring Norfolkline in July 2010. It said that it was a listed company but ‘for two years [DFDS] had been destroying value … solely because of [the Dover–Calais] route’. DFDS said that its return on invested capital is below [its] cost of capital and it was under pressure from shareholders and analysts.

3.50 DFDS’s annual report states in relation to the Channel that:

> The operating loss will continue as long as the overcapacity on the Dover Strait persists. The financial outlook for 2014 is, therefore, contingent on when the UK Competition Commission’s Eurotunnel/SeaFrance merger inquiry is finalised and the outcome of the inquiry.[37]

3.51 At DFDS’s AGM,[38] Niels Smedegaard[39] answered a question on how DFDS would be impacted in the event that the UK competition authorities would not uphold the current preliminary findings concerning Eurotunnel:

> We would rather not speculate at this point in time. We are strongly convinced that the competition authorities will uphold the decision now made. We have previously stated – and we maintain that statement – that we are currently in an untenable position and as I stated earlier today it is a strategic priority for the company to be represented on the Channel. We strongly believe that we can achieve our aim but it is obvious that if something happens which means that it will not happen we still have a very serious challenge that we will need to consider how to deal with. We have also previously announced – also to the UK competition authorities – that if no solution is found we will have to withdraw from that route. We simply cannot become successful on the Channel through cutting down costs as this is a structural problem. But as mentioned we trust that we are on our way to a sensible solution.[40]

[37] DFDS 2013 annual report, p20.
[38] 26 March 2014.
[39] DFDS President and CEO.
[40] Extract from minutes of Annual General Meeting of DFDS A/S held on 26 March 2014.

- *Charter of the Molière*

3.52 We noted GET's arguments about the charter of the *Molière* (paragraphs 2.13 and 2.14). [✂][41] DFDS's board minutes of 19 November 2013 stated:

> In spite of earlier hopes for a decision by mid-October there is still no decision in the competition case concerning Eurotunnel/ MyFerryLink. Consequently Dieppe Seaways [previously Molière] has been extended for 12 months, following attempts by the owner to achieve a sale or alternatively a 24 month extension. There are still no real alternatives to Dieppe Seaways available in the market, so reluctantly the company has extended for 12 months.

3.53 DFDS told us that it had been aware of the owner of the *Dieppe Seaways/ Molière* was looking to sell the vessel. DFDS told us that it was not at that time in a position to make a bid. To do so would have been speculative and risky given the ongoing uncertain position of DFDS on the Channel, and the fact that the vessel would not obviously and easily fit into DFDS's operations elsewhere. DFDS's board minutes for the meeting on 14 January 2014 stated:

> The chartered vessel Molière has been sold to Stena, and the company was informed of the sales process in December, but considering the unsettled situation on the Channel the executive board had not found it relevant to approach the board for an authority to make a bid. Currently Stena is not completely unwilling to consider a short term charter for the period beyond October 2014, but the plans of Stena seem to involve using the vessel [✂].

3.54 DFDS stated that it continued to face significant challenges in procuring and maintaining suitable tonnage for the Dover–Calais route.[42] [✂][43]

CMA assessment

3.55 We noted that DFDS's financial performance as a Group had improved in 2013 from 2012. However, its Channel routes, whilst showing an improved performance, were still loss-making. Statements in DFDS's annual report indicate that the losses on the Channel had a negative 2.5 percentage point effect on DFDS's return on invested capital. The Dover–Calais route (part of the Channel) made a loss in 2013 of €[✂] million, which was increased from a

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[41] DFDS response to invitation to comment on MCC, paragraph 2.5(d).
[42] DFDS response to invitation to comment on MCC, paragraph 3.2.
[43] DFDS response to invitation to comment on MCC, paragraph 2.5(d).

€[✄] million loss in 2012. This loss was greater than DFDS's overall loss on the Channel.

3.56 DFDS had also budgeted a loss of €[✄] million (before overheads) for the Dover–Calais route in 2014 and had made a loss in the first 14 weeks of 2014 of €[✄] million. MFL also made substantial losses on the Dover–Calais route with an EBITDA loss in 2013 of €[✄] million. DFDS's and MFL's losses suggest that there is substantial overcapacity on the route.

3.57 We considered that DFDS's financial performance on Dover–Calais had not improved in the period since the report and was not forecast to improve by DFDS whilst there were three operators on the route.

3.58 We also note that DFDS sets out in its annual report the financial effect of losses on the Channel and the structural problems of overcapacity on the Dover–Calais route. These are consistent with the report findings on the losses incurred by DFDS and also the likelihood of its exit from Dover–Calais if the MFL service continues in its current form and ownership. We also consider that DFDS's statements in relation to Dover–Calais in the press releases and articles highlighted by GET (see paragraph 2.10), are consistent with the DFDS statements to investors – in particular that the route suffers from overcapacity and the present situation is unsustainable.[44]

3.59 We note GET's argument that Dover–Calais was at the 'heart of [DFDS's] route network for Europe' and as such had significant importance to it from a geographical perspective. We found in the report that Dover–Calais was seen as strategically important by DFDS (paragraph 8.97) but that its incentives to remain on a loss-making route long term, even if strategic, were not as strong as GET's. We do not consider that this conclusion is changed by GET's 'heart of network' argument.

3.60 We set out in the report in paragraph 8.86 our view of DFDS's incentives to remain on Dover–Calais given its statement at the time of launch of its strategic importance, as well as the resultant losses that it has sustained (and the prominence of these in its accounts), its historical willingness to exit routes and its alternative options for redeployment of its resources. We consider that the evidence submitted by GET, the SCOP and DFDS does not change our view of DFDS's incentives. DFDS still states the importance of being on the short sea but continues to make significant losses and has recently exited a number of routes.[45]

[44] [✄]

[45] Harwich–Esbjerg and Newhaven–Dieppe, both in early 2014.

3.61 With regard to GET's and the SCOP's arguments that DFDS was still operating on Dover–Calais and had extended the charter of the *Molière* (paragraphs 2.13 to 2.14), we consider that the uncertainty caused by the appeal of the report had a fundamental effect on DFDS's continued operation on the route using the *Molière.* At the time that the charter of the *Molière* expired, the CAT's decision relating to the appeal had not been made and therefore the outcome of this appeal was uncertain. DFDS's board minutes note this uncertainty and the role it played in its decision not to either acquire the *Molière* or to take up the offer of a 24-month charter. It chose to extend the charter for only one year.

3.62 We consider that DFDS continuing to operate on Dover–Calais in the short term, given the uncertainty of the CAT appeal and the subsequent remittal, is consistent with DFDS's statement set out in the report that [✂].[46] They are also consistent with the statements made by Niels Smedegaard at the AGM that the outcome of the CMA inquiry is key to DFDS's continued operation on Dover–Calais.

Provisional conclusion

3.63 We provisionally conclude that for the reasons set out in paragraphs 3.55 to 3.62 we do not consider that DFDS's financial performance has materially improved; we also do not consider that the submissions of GET and the SCOP relating to the extension of the charter of the *Molière* and various statements made in the press affect materially the conclusion in the report that DFDS is likely to exit the Dover–Calais route, if the MFL service continues in its current form and ownership.

Provisional conclusion on the MCCs proposed by GET and the SCOP

3.64 In the report we concluded that DFDS would be likely to exit the Dover–Calais route if the MFL service continued in its current form and ownership. We have assessed submissions from GET and the SCOP that there had been material changes since the date of the report which mean that DFDS would exit. These possible material changes related to *(a)* the impact of the growth in demand in 2013 through to 2015; and *(b)* DFDS's financial performance as well as various press statements attributed to DFDS. In relation to each of these factors individually (and all of them collectively), we do not consider that they are such as to impact materially on our assessment and conclusions in the

[46] Report, paragraph 8.58.

report that DFDS is likely to exit; our provisional conclusion is therefore that no MCC has arisen in this regard.

4. Remedies

4.1 We have considered whether there has been a material change of circumstances or other special reason that has arisen since the publication of the report that would lead us to reach a different view on remedies. In this context, we believe that the change of circumstances or special reason must not only be material in its nature, but also should be relevant to the decisions that we are required to take when assessing whether a remedy is as comprehensive a solution to the SLC, or resulting customer detriment, as is reasonable and practicable.[47] Accordingly, we have had regard to all relevant considerations, including alleged relevant changes in the market and material changes in the factors that were relevant to our original remedies decision.

4.2 In their submissions to us about the MCC, GET, the SCOP and DFDS put forward proposals for alternative remedies, or changes to the remedy set out in the report.

Alternative remedies proposed by GET

4.3 GET submitted that the CMA should, in devising any remedies in the event that the SLC finding stands, take account of the fact that the short-sea market is evolving significantly and quickly. GET said that any remedies imposed on it should therefore be temporary, proportionate and take account of imminent highly likely market changes (eg growth in short-sea freight volumes as a result of the MARPOL regulations and GDP growth). GET said that this meant that the long-term structural remedies previously adopted by the CMA were no longer appropriate.

4.4 GET submitted the following remedy options:

(a) Option 1: Maintain the current French Competition Authority (FCA) Hold Separate regime for an additional period in order to allow for the impact of the MARPOL regulations and market growth to become evident (eg three years or until June 2017 to coincide with the expiry of the Inalienability

[47] Under section 41(3), a decision by the CMA as to the action it should take to remedy the SLC and resultant detriment through its undertaking or order-making powers shall be consistent with its decisions as included in its report, unless there has been a material change of circumstance since the preparation of the report or the CMA otherwise has a special reason for deciding differently. This reflects the CMA's duty of consistency between its findings, as set out in its report, and the action that it takes as a result of those findings.

Clause).[48] At the end of this period, the CMA could then decide whether to open a market study into whether further action (ie a full market investigation reference) is needed in relation to the provision of ferry services on the short-sea route.

(b) Option 2: Maintain the current, more stringent, UK type of Hold Separate regime for the same further period, and with the same potential for a CMA market study, as outlined in Option 1.

(c) Option 3: Temporarily suspend operating the *Nord Pas-de-Calais* from the Port of Dover.

4.5 We concluded in the report that behavioural remedies of this type would not be effective in addressing the SLC.[49] We also found in the report that other remedies (including our chosen remedy) would address the SLC in a more timely manner than a market investigation. Moreover, we noted that the CMA could undertake a market study at its own discretion without the need for a recommendation or a remedy to that effect.[50] In addition, in assessing these remedy options we noted that GET told us that if there had been no change to the SLC in the report it considered its proposals would not be effective.

4.6 Given our provisional conclusion set out in paragraph 3.64, we conclude that none of GET's proposed remedy options would be effective in addressing the SLC.

Alternative remedy proposed by the SCOP

4.7 The SCOP submitted a remedy to us that it had not proposed at the time of the report. Although the proposal was in draft form and not fully developed, it was similar in some respects to the remedy concerning the sale of the MFL business that was considered in the report (paragraph 10.53). At the time of the report, this remedy was rejected on the basis that the only likely purchaser was DFDS, which was not interested in a divestiture that involved taking over the commercialisation contract with the SCOP. We also found that the SCOP thought it would be unlikely that a purchaser would want to take over the commercialisation contract.

4.8 The SCOP was not considered as a potential acquirer of that business, nor did it put itself forward as a potential purchaser. However, the SCOP indicated

[48] An Order made by the French Commercial Court on 11 June 2012 which authorised the sale of the Vessels and certain other assets formerly owned by SeaFrance to GET contained a provision declaring the Vessels to be 'inalienable' for a period of five years (the inalienability clause) which prohibited their sale. See the report, paragraph 10.23, and Appendix J, paragraphs 12–20.
[49] The report, paragraphs 10.152–10.153 & 10.62–10.64.
[50] The report, paragraph 10.173.

that its improved financial position and establishment on the market as a reliable provider meant that it may be able to obtain the funding to enable it to take on the commercial risk associated with the operation of the MFL business. Accordingly we have considered whether the SCOP's changed circumstances are such as to lead us to believe that the remedy proposal put forward by the SCOP would be a viable effective remedy that would represent as comprehensive a solution to the SLC as is reasonable and practicable.

4.9 The SCOP's proposal consisted of:

(a) the complete separation of the MFL business from GET, with all MFL SAS staff transferring to the SCOP. The SCOP would be responsible for marketing and ticket sales (freight and passenger);

(b) behavioural remedies to match those offered to the FCA;

(c) a staggered reduction over time in the revenues available to GET (as opposed to capacity), with corresponding reductions in the per-crossing price paid to the SCOP;

(d) extension of the SCOP's existing bareboat charters and commercialisation agreement (as amended in light of the above) to June 2017 to tie in to the end of the inalienability provisions in the French Commercial Court judgment of 11 June 2012;

(e) an option for the SCOP to extend its bareboat charter on arm's-length terms for a further period, not to expire before June 2017; and

(f) agreement that if the remedy could not be implemented within six months, or in the event that the SCOP subsequently ceased operating the vessels, the CMA's existing prohibition on GET operating services to the Port of Dover would apply for an appropriate period. The six-month period would run concurrently with the six-month period for the implementation of the remedy set out in the report.

4.10 The SCOP submitted[51] that the proposal met the requirements of section 35(4) of the Enterprise Act to achieve 'as comprehensive a solution as is reasonable and practicable' in light of the constraints on divestment imposed by the French Commercial Court judgment. The SCOP considered that this new remedy proposal, if properly developed, would result in the complete exit of GET from the MFL operation by June 2017 at the latest. It argued that its proposal removed any concerns in the short term that GET would continue to

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[51] SCOP response to invitation to comment on MCC, paragraph 5.12 to 5.13.

have an interest in the SCOP's financial success with the only remaining interest for GET consisting of the arm's-length bareboat charter fees payable by the SCOP. It also argued that it would eliminate the possibility for any internalisation effect as GET's revenues under the commercialisation agreement would be reduced on a staged basis from 100% to 0% over the period.[52]

Review of the SCOP remedy

4.11 The SCOP's remedy proposal is intended to separate the MFL SAS business from GET with the SCOP taking over both the risk and reward of operating the three vessels owned by GET on the Dover–Calais route. It is a structural remedy involving the divestiture (through the transfer) of the business (excluding the vessels) of MFL SAS by GET to the SCOP over a three-year period with interim behavioural remedies to match those offered to the FCA over the three-year divestiture period.[53]

4.12 In our consideration of the SCOP's remedy, we first look at its effectiveness by considering: its level of development, its timeliness, and its risk profile in respect of purchaser risk, composition risk and asset risk. If we conclude that the remedy could be effective, we then look at the proportionality of the remedy. In carrying out this assessment, we have looked at the remedy on a stand-alone basis against the CMA guidelines.[54]

The effectiveness of the structural remedy

- *Development of the proposed remedy*

4.13 The CMA's guidelines[55] state that the CMA will seek remedies that have a high degree of certainty of achieving their aims. Further the scope and likely content of these remedies should be reasonably clear at the time our final

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[52] The rate and timing of the reduction over this period was not set out in the remedy proposal.
[53] The remedies given to the FCA were:

- 'Eurotunnel Group undertakes not to grant, on its rail freight tariffs, any rebates conditional on the customers using its maritime freight transport service and in particular not to take into account the freight volumes transported by its maritime service when negotiating tariffs related to its rail freight transport service.'
- 'Eurotunnel Group also undertakes not to discriminate in any way [against] customers who do not use its maritime transport service as opposed to those customers who do use them.'
- 'To ensure the effectiveness of this undertaking, Eurotunnel Group commits to conclude separate contracts for its rail and maritime freight transport services and to assign the sales of its maritime transport service to a specific team, separate from the team in charge of the marketing of its rail transport service so that both teams are trading independently from each other.'

These undertakings were specified to have a duration of five years from the date of the decision by the FCA authorising the notified transaction, subject to a review clause. GET also gave certain undertakings to the FCA that would come into effect if GET were successful in its tenders for the contracts to operate the ports in Boulogne-sur-Mer and Calais.
[54] *CC8.*
[55] *CC8*, paragraph 1.8*(d)*.

report is published, so that a view can be formed as to their likely effectiveness. We do not consider it consistent with our statutory duties to accept a remedy that is reliant on further negotiation between parties following publication of the report.

4.14 The SCOP told us that the proposal was in draft form and as such:

(a) not all the elements of the proposal had been fully developed;

(b) [✄] (see paragraph 4.25); and

(c) it had discussed its remedy proposal in principle but had not held detailed discussions with GET (see paragraph 4.30).

4.15 We note that the draft nature of the remedy and the fact that no detailed discussions with key entities have taken place is in direct contrast to the detailed nature of the chosen remedy in the report.

- *Implementation period*

4.16 The CMA's guidelines[56] state that 'Remedies that act quickly in addressing competitive concerns are preferable to remedies that are expected to have an effect only in the long term or where the timing of the effect is uncertain'.

4.17 In assessing the SCOP's remedy proposal, we note that our chosen remedy has an implementation date of six months from the date of the CMA order to implement the remedy. This timescale is consistent with the CMA's normal maximum divestiture period for a structural remedy.[57]

4.18 We looked at the SCOP's proposed remedy and considered that it had the following timeliness risks and risks about certainty of outcome:

(a) The SCOP's proposal has a three-year period before it is fully implemented. This has the effect that the SLC would continue to persist for three years. This is significantly longer than the divestiture period of our chosen remedy in the report and that in CMA guidelines,

(b) Throughout the three-year implementation period GET and the SCOP retain some level of inderdependence. There is no interdependence in the remedy in the report after six months. The interdependence in the SCOP remedy consists of:

[56] *CC8*, paragraph 1.8.
[57] *CC8*, paragraph 3.24.

(i) GET retaining an economic interest in the SCOP. The SCOP argued that any possible internalisation effect would be reduced as GET's revenues would decrease over the three years. We note in this regard that the SCOP suggested that the revenue percentage may not need to be zero at the end of the implementation period. We consider that a remedy based on a percentage of revenues being paid to GET this does not address our internalisation concerns.

(ii) The SCOP would continue to have commercial interdependence with GET during the three-year implementation period. In the report we said that the financial dependency of the SCOP (in connection with GET's structural remedy option) would have a direct effect on independence of the SCOP. We consider that our assessment in that case is relevant to this remedy. We stated that:

> To offset the resulting competition-weakening aspect of the SLC, it would be necessary for the SCOP to stand as a wholly independent competitive force in the market. However, we considered that in so far as the SCOP continued to be under the material influence of GET and to take GET's interests into account in formulating and implementing its business plans, the SCOP would not have the necessary independence.[58]

(iii) The three-year period would also be subject to uncertainty. If the SCOP did not make enough profit over the three years, it might be unable to take on the full MFL business after three years.

(c) Funding would be required to be in place to cover at least the three-year implementation period. Further funding may also be required beyond this period as it is unclear as the remedy is drafted what would happen if, for example, MFL is not profitable by this point. This funding will need to cover MFL losses until it achieves profitability. The longer the time period over which funding is required, the greater the business risk and that funding is either insufficient to meet the business's requirements or withdrawn by the funder. This leads to significant risks around the certainty of the outcome of the remedy and it effectiveness at addressing the SLC. Financing of the SCOP's remedy is discussed in more detail in paragraphs 4.21 to 4.28.

(d) The SCOP proposal includes behavioural remedies to match those given to the FCA. These remedies would require monitoring for a three-year

[58] The report, paragraph 10.106.

period. We consider that this necessarily increases the risks over monitoring and compliance, and circumvention.

4.19 We consider that for the reasons set out in paragraph 4.18, the SCOP's proposed implementation period is not sufficiently timely and there is a significant degree of uncertainty that it will address the SLC.

- *Purchaser risk*

4.20 In assessing the nature of purchaser risk, we have looked at: financial risk relating to the SCOP obtaining sufficient funding; and third party risk relating to GET's agreement to the divestiture.

  - *Financial risk*

4.21 The SCOP's proposed remedy requires it to take over the entirety of the business risk of operating the *Rodin*; the *Berlioz* and the *Nord Pas-de-Calais* . This would mean a fundamental change to the SCOP's business model, including its financial and operating structure.

4.22 The SCOP currently operates the vessels and provides the crews. It is responsible for the pricing, marketing and selling of freight and passenger tickets as agent of MFL (although it subcontracts the marketing of services to freight customers back to MFL). MFL buys ferry crossings from the SCOP and receives income from sales of passenger and freight crossings (and a commission on onboard sales), thus effectively assuming the commercial risk from the operation. After the implementation period the SCOP would assume all these responsibilities and the risk and reward associated with them.

4.23 We note that in the report the SCOP told us that 'it did not have the financial capability to operate the MFL business independently because the operation was not profitable, and the SCOP did not expect to have such financial capability for [✂]'.[59] Whilst it told us that its financial position had improved since the report, we note that there is still a significant difference in the relative sizes of the SCOP and MFL and in the level of the SCOP's profits and financial resources compared with MFL's losses.The SCOP recorded an EBIT of €[✂] for the year ended 31 December 2013 and had capital of €[✂]. It also had a cash balance of €[✂]. The SCOP told us that its capital was now €[✂] and was [✂]. The SCOP is budgeting in 2014 to achieve an EBIT of €[✂].[60]

[59] The report, paragraph 10.104.
[60] The SCOP told us that it was expecting a [✂].

4.24 In comparison with the SCOP, MFL has been loss making since it started services on Dover–Calais in August 2012. MFL recorded a loss for 2013 of €[✂] million and is not forecast to be profitable until 2016.[61] We examined the MFL budget and note that in 2016 MFL is budgeting to [✂].[62] The SCOP's remedy does not include the ownership of the vessels; these would be chartered from GET. As such, we consider that the €[✂] more accurately reflects the profitability of the MFL business under the remedy in 2016; although we note it is likely that cost savings would be made by the SCOP taking over the MFL SAS business.

4.25 The SCOP said that it has had [✂]. However, we note that it has [✂]. As a consequence, the level of finance required to enable the effective implementation of the remedy has not been determined.

4.26 In addition, as set out in paragraph 3.32, we consider that the Dover–Calais route is unlikely to be able to sustain three operators. This raises fundamental issues as to whether the SCOP would be able to raise the necessary finance to fund its proposal.

4.27 We would need to look at the nature of the funding under our assessment of purchaser suitability.[63] We would need to ensure that sufficient funding was availiable to enable the remedy to be effective. We would also need to assess whether the source and/or conditions related to the funding raised issues of independence and/or regulatory and competition concerns. We note in this regard that funding from GET or state aid could raise such concerns.

4.28 We consider that, for the reasons set out above, there is a significant financial risk associated with the SCOP's proposal.

- *Third party risk*

4.29 GET's consent is fundamental to the remedy being effective.

4.30 The SCOP told us that it had discussed its remedy proposal in principle with GET but had not held detailed discussions with GET. We note that in the report one of the reasons for rejecting GET's structural remedy proposal was that the proposal had not been discussed with the SCOP, 'without whose full and active support the whole scheme collapses at the outset'.[64]

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[61] The SCOP said, however, that significant increases in traffic levels in Q1 2014 compared with the same period in 2013 had resulted in GET reporting around a [✂]% increase in revenues for MFL.
[62] MFL forecast profitability in 2016 assumes MFL is a fully integrated business with the SCOP, including ownership of the vessels.
[63] *CC8*, paragraph 3.15.
[64] Report, paragraph 10.108*(a)*.

4.31 We note that the SCOP's proposal would fundamentally change the relationship between GET and the SCOP. It reduces the costs GET would incur and the proportion of revenues passing back to GET under the commercialisation agreement from its current position of 100% to 0% over the three-year implementation period. As a result, after implementation GET's only return would be through chartering the vessels.

4.32 We consider that GET's agreement, whilst possible, lacks an appropriate degree of certainty, especially given the fundamental change in the nature of the relationship with the SCOP and its return on its investment in the vessels. We consider that the requirement to obtain GET's agreement is a significant risk to the effectiveness of the proposed remedy.

4.33 We note that the chosen remedy in the report is not affected by third party risk.

- *Composition risk*

4.34 We assessed the composition risk[65] of the SCOP proposal. We said in the report that it was unlikely that a purchaser could be found for the sale of MFL SAS without the vessels. We also found that it was unlikely that a purchaser would take over the commercialisation contract with the SCOP. As such, we considered the sale of MFL SAS unlikely to be an effective remedy.[66] As noted in paragraph 4.8, the SCOP was not considered as a potential acquirer of that business. However, under its remedy proposal the SCOP has now indicated that it would be willing to take on the commercial risk associated with the operation of the MFL business and this would negate the need for a third party purchaser.

4.35 In the report[67] we considered that:

> a number of contractual arrangements would be required to address issues associated with the time-limited nature of the existing contracts: for example … GET should be required to renew the charters to the SCOP upon their expiry; … and GET should be prohibited from entering into any new commercialization contract with the SCOP or any other party for the operation of the Vessels and from operating the Vessels itself.

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[65] The risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.
[66] Report, paragraph 10.53.
[67] Report, paragraph 10.50.

4.36 The SCOP's proposal includes: the extension of the SCOP's existing bareboat charters and commercialisation agreement to June 2017 to tie in to the end of the inalienability provisions in the French Commercial Court judgment of 11 June 2012; and the option for the SCOP to extend its bareboat charter on arm's-length terms for a further period not to expire before June 2017.

4.37 We consider that for the remedy to be effective it would require certainty in respect of the charter's time period. In addition, the charter would need to be of a sufficient length to prevent circumvention of the remedies by GET. Circumvention could occur, for example, by GET terminating the charter at the end of its initial period (or extension) and carrying out an asset swap with a third party ferry company. This would allow it to operate on Dover–Calais within the ten-year period set out in the report.[68] The remedy would appear though to negate the need for a commercialisation agreement with GET as the business of MFL would be transferred from MFL to the SCOP and GET's revenue from the vessels' operation would end in June 2017.

4.38 We consider that for the remedy to be effective it would require a long-term charter (ten years) and sufficient additional restrictions to be placed on GET in respect of how it uses the vessels in the event of the termination of the GET–SCOP contract within the ten-year period. In addition, any other contracts (including any form of commercialisation agreement) entered into at or before the remedy is fully implemented would need to be reviewed and agreed by the CMA to ensure independence of the SCOP and the ferry services from Dover to Calais is maintained. The safeguards set out in the report (see paragraph 10.183) would also need to apply.

- *Asset risks*

4.39 We consider that GET and the SCOP have the incentive to ensure that there is not a material risk that the competitive capabilities of the assets would be allowed to deteriorate.

Provisional conclusion on the effectiveness of the SCOP proposal

4.40 We consider that the SCOP's proposal has significant risks in relation to:

(a) the draft nature of the proposal;

[68] Report, paragraph 10.183.

(b) the timeliness of the proposal in addressing the SLC and the certainty that the remedy would be effective at the end of the three-year implementation period;

(c) the ability of the SCOP to raise sufficient finance given the level of MFL losses; the period to its forecast break-even; the change in the SCOP's business risk; and the ability of the Dover–Calais route to sustain three operators;

(d) the ability of the SCOP to obtain GET's approval for the proposal without whose full and active support the remedy could not be implemented;

(e) the independence of the SCOP from GET during the three-year implementation period; and

(f) the requirement for monitoring and enforcement during the three-year implementation period.

4.41 We also consider that the remedy has risk specifically over the proposed charter length and the ability of GET to circumvent the remedy.

4.42 Furthermore we consider that the SCOP's remedy does not provide a timely solution to the SLC . In addition, the SCOP's remedy entails significant risks and an unacceptably high level of uncertainty.

4.43 Given the risks identified above, and specifically in respect of the three-year implementation period, we have not assessed the effectiveness of the behavioural aspects of the SCOP's proposal (paragraph 4.9).

4.44 We therefore provisionally conclude that the SCOP's remedy proposal would not be effective in addressing the SLC.

Proportionality

4.45 Given our provisional conclusion above that the remedy proposal would not be an effective remedy to address the SLC, we have not assessed the proportionality of the SCOP's proposed remedy.

DFDS's proposed amendment to the report remedy

4.46 DFDS submitted that the period of six months from the date of the CC's Order in which to implement the remedy, as set out in the report, was too long. It argued that a period of three months was appropriate and that this was particularly imperative given the time that had by then elapsed since publication of the report.

4.47 DFDS submitted that the following factors in combination should be regarded by the CMA as a material change of circumstances and/or special reason pursuant to section 41(3) of EA02 that would justify the originally envisaged six-month period to be shortened to three months (at a maximum):[69]

(a) Six months would effectively allow MFL to operate for the whole of 2014. This would be at odds with selecting remedies that effectively addressed the identified anticompetitive outcome and that were the least costly, effective remedies.[70]

(b) GET had been aware of the CC's decision and proposed remedy since early June 2013 (and arguably since the CC's provisional findings in February 2013). It had therefore already had many months to consider what arrangements would need to be made in order to implement the remedy. Further, the sale of the vessels could easily be completed to an approved purchaser within three months (and potentially even more swiftly).[71] Any objection by GET to a three-month period would, in DFDS's view, merely reflect its interest in further prolonging the process and causing additional loss to DFDS.

(c) DFDS's losses as a result of GET's continued presence on the Dover–Calais route continued to mount.

(d) [✂][72] The vessel had now been sold to Stena by its previous owner. [✂]

4.48 DFDS told us that GET had submitted a letter and shown an interest in the upcoming tender for Dieppe–Newhaven and that this showed that it had already been looking for alternative routes for redeployment of the vessels. In addition, it said it considered that disruption for customers would be limited, as interoperability agreements were in place between ferry operators which would enable freight and passengers to still cross the Channel.

4.49 GET told us that three months was too short a period to ensure an orderly implementation of the remedy. It said that three months would negatively affect not just GET/MFL but would also would create 'a sales disruption in the market and serious disruption for customers', who were already booking trips for the rest of the year. It stated that it would also lead to issues during the peak summer period when capacity of ferry operators and Eurotunnel was constrained. In addition, GET told us that due to the uncertainty around the

[69] DFDS response to invitation to comment on MCC, paragraph 2.5.
[70] See *CC8*, paragraph 2.13. See also paragraph 3.24, which states that the divestiture period 'will depend on the circumstances of the case, but will normally have a maximum duration of six *months*' (emphasis added). This is a case where a period significantly shorter than the usual maximum is appropriate.
[71] DFDS commented that a vessel sale could easily be completed within a month.
[72] The charter period was due to come to an end in October 2013.

outcome of the appeal and the remittal, no preparatory work on remedies had been undertaken and as such, GET was no closer to be in a position to implement the remedy than it was at the time of the report.

Review of DFDS remedy proposal

4.50 DFDS's arguments set out in paragraphs 4.46 to 4.49 concern the negative effects on DFDS of maintaining the six-month implementation period given the length of time since the report was published.

4.51 We considered in the report[73] the different timescales submitted by parties to sell a vessel(s), if GET chose to do this, and the appropriate time period for GET to apply to the Court to lift the inalienability clause. DFDS has not provided any new evidence to show that our conclusion on these issues is incorrect.

4.52 We also considered[74] the time to: effect an orderly exit of the MFL ferry services from the port of Dover; and to make arrangements to operate on other routes, should GET wish to do so. We do not consider that DFDS's arguments change our view on GET's ability to make an orderly exit from Dover and transfer operations to other routes. DFDS argued elsewhere in its submissions on the MCC that the appeal and the subsequent remittal had led to a period of uncertainty in relation to the decision set out in the report. Therefore it is reasonable that GET would not have undertaken preparatory work in the period since the report in respect of implementing the remedy.

4.53 We note that DFDS argued that interoperability agreements would mean that disruption for customers would be limited. However, we consider that even with such agreements in place it would cause significant disruption for passengers, many of whom book in advance. It would also affect freight customers who may be looking to take advantage of volume discount in framework agreements and therefore also plan their journeys in advance.

4.54 We note DFDS's arguments in respect of the financial effect of MFL continuing operating out of Dover and on its decision whether to charter or acquire an alternative vessel to the *Molière.* However, we consider that following the implementation of the Order, DFDS has certainty in respect of GET's continued operations out of Dover. Our view is that this provides the necessary certainty of outcome to DFDS to allow it to take long-term strategic decisions. We do not consider that the additional three-month period to DFDS's proposed three months would have a material effect on the long-term

[73] Report, paragraph 10.114.
[74] Report, paragraph 10.113.

strategic decisions that DFDS will need to take in relation to its operation on Dover–Calais.

Provisional conclusion on DFDS's proposal

4.55 We provisionally conclude that circumstances have not changed so materially as to affect our conclusion on timescale for implementation of the remedy as set out in the report.

Provisional conclusion on remedy proposals

4.56 We considered GET's remedy proposals. We note that GET had submitted similar remedies during the original inquiry to those it has submitted now and provisionally conclude that we see no reason to amend our remedy to take account of the GET proposals.

4.57 We considered the remedy proposal from the SCOP. We noted that there were risks with this proposal. The proposal has not been discussed in detail with GET; there are substantial doubts over the ability of SCOP to finance the proposal; and the three-year implementation period creates significant uncertainty of outcome for both the funder and the transaction parties. We also have concerns over whether the SCOP would be wholly independent from GET under these arrangements, and any lack of independence would result in a failure of the proposed remedy to address the SLC. The SCOP proposal would also require monitoring for the three-year implementation period. The proposed remedy also raises issues about charter length and the risk of circumvention.

4.58 The concerns over the SCOP remedy are such as to lead us provisionally to conclude that in its current form there is not the requisite degree of certainty that this proposal will produce a comprehensive solution in addressing the SLC identified.

4.59 We considered the DFDS proposal to reduce the time for implementation of the remedy and provisionally conclude that there is no reason to change our conclusion on timescale set out in the report.

4.60 We provisionally conclude that it remains appropriate, subject to our consideration of any responses to our consultation, to take remedial action consistent with our decisions as set out in the report.

MARPOL regulations

Introduction

1. MARPOL is the term used to describe the International Convention for the Prevention of Pollution from ships developed by the International Maritime Organisation (IMO) in 1973 (modified in 1978).

2. The SCOP and GET submitted that changes to the MARPOL regulations due to be implemented in January 2015 were a new development since the report, would lead to a significant growth in volumes on the Dover–Calais route, and therefore amounted to an MCC.[1] This was disputed by DFDS.

3. This appendix provides an overview of the changing regulations concerning the sulphur content of fuel and their implications for ferry operators. It is based on the government impact assessment,[2] an industry report on the impact of MARPOL on jobs and the economy,[3] as well as party submissions and hearings.

Background

4. It is recognised that air pollution damages human health and the environment, and steps have been taken to reduce the release of contaminants into the atmosphere. In recent years the EU has limited the sulphur content of fuels for land and air transport, but the target reduction in air pollution has not been met.

5. Shipping is expected to be responsible for over 50% of sulphur emissions in the EU by 2020, and fuel used by shipping contains far more sulphur than other fuel types. Shipping is therefore now the focus of efforts to reduce air pollution.

Regulatory developments

6. In response to the growing awareness of the contribution of shipping to air pollution, the IMO developed MARPOL Annex VI, Regulations for the Prevention of Air Pollution from Ships, which was adopted in 1997 and

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[1] SCOP and GET responses to invitations to comment on MCCs.
[2] Impact Assessment on Prevention of Air Pollution from Shipping – Implementation of Directive 2012/33/EU by the Department of Transport and the Maritime and Coastguard Agency, 7 November 2013.
[3] UK Chamber of Shipping report on Impact on Jobs and the Economy of Meeting the Requirements of MARPOL, Annex VI, by AMEC Environment & Infrastructure UK Limited, March 2013 (AMEC report).

entered into force in October 2005. This set limits on emissions from ship exhausts, including a cap on the sulphur content of fuel oil and provisions for special Sulphur Emission Control Areas (SECAs).[4]

7. At the same time, the EU Sulphur Content of Marine Fuels Directive entered into force in July 2005, limiting the sulphur content of marine fuels, linking it to MARPOL Annex VI.

8. It was recognised that the requirements of MARPOL Annex VI needed to be strengthened to reduce air pollution, and there were extensive negotiations for two years within the international community. This resulted in a revised MARPOL Annex VI which was adopted in October 2008.

9. The European Commission then published in 2010 a proposal for a Directive that would mostly align European legislation with the MARPOL revision. After negotiations, the revised Directive entered into force on 21 November 2012 and largely but not completely mirrors MARPOL Annex VI.

10. There then followed discussions in member countries to introduce the requirements of the EU Directive into national legislation by a deadline of 18 June 2014. In the UK, this included lobbying by representatives of the shipping industry to limit the impact of the legislation[5] by requesting exemptions or a delay in implementation. However, the UK Government has now decided to introduce legislation to comply with the Directive.

Requirements of new legislation

11. The requirements of the proposed legislation on emissions are:

- to reduce sulphur limits by mass in marine fuel for ships operating within a designated SECA from 1% (in force from July 2010) to 0.1% from 1 January 2015, or to install equipment to reduce pollution in emissions to at least that which would be achieved through use of the lower sulphur fuel

- outside of designated SECAs, a global cap of 3.5% will be introduced from 18 June 2014, and this limit will be further reduced to 0.5% on 1 January 2020

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[4] The North Sea and Channel are defined as a SECA.
[5] AMEC report

Complying with the legislation

12. To enable ships to meet the reduced sulphur emission requirements, there are three realistic options for shipping operators:

- change to a low sulphur fuel
- retrofit 'scrubbers' to vessels
- use an alternative low-sulphur fuel, such as liquefied natural gas (LNG)

Low-sulphur fuel

13. The simplest way to comply with the new regulation is to switch from a high-sulphur fuel to a low-sulphur fuel. However, this would lead to significantly higher fuel costs (estimated to be 35 to 50% more expensive than current fuel costs).[6] Although the fuel premium is by far the biggest cost, there may also be additional costs incurred modifying equipment on vessels to use low-sulphur fuel.

Retrofit scrubbers

14. 'Scrubbing' technology can remove 90 to 95% of SO_2 from exhaust gases. This is emerging technology for shipping, but is well proven in other applications (eg power generation). It is expected that marine scrubber systems will become more effective and cheaper to install as experience increases.

15. We were told that a scrubber installation currently typically costs €6 million per vessel.

16. Scrubbers are not suitable for retrofitting to all vessels, due to space requirements and impact on the stability of vessels.

Alternative fuels

17. LNG is already established as a viable alternative to traditional heavy fuels within shipping, and some industry estimates suggest that up to 30% of ships could be utilising dual-fuel or pure gas engines by 2020.

[6] GET response to invitation to comment on MCC, paragraph 4.4.

18. Infrastructure is required in ports to support the use of LNG by vessels. There has been limited investment in the UK, although there has been significant investment in other parts of Europe, such as in the Baltic.

19. Although new-builds are increasingly using LNG, converting existing vessels for LNG is technically possible but is expensive and few have been converted as yet.

Impact on short-sea operators

20. There are generally accepted implications of the new regulations on ferry operators:

(a) Complying with the new regulations will lead to higher costs for ferry operators.

(b) Changing to low-sulphur fuel will result in significantly higher fuel costs, affecting the longer sea routes more than the shorter sea routes.

(c) Installing scrubbers on vessels will require significant capital cost.

(d) The costs of complying with regulation will be passed on to customers, where competition allows, resulting in increased ferry prices, particularly on the longer sea routes.

(e) An increasing differential between marine and road mileage costs may result in traffic (particularly freight) driving further to ports with shorter shipping routes. This may lead to higher volumes on the short-sea routes, and reduced volumes on the longer sea routes.

(f) The new regulations will affect the ferry operators which use marine fuel, but will have no cost impact on Eurotunnel, which uses electricity.

Press articles concerning DFDS highlighted by GET

1. An article published in the *Journal de Marine Marchand* on 28 February 2014, which stated that 'After an atypical financial year, DFDS Seaways is finding its groove again'7 and that the company 'plans to develop its Calais and its Dunkirk routes'.[8] The article also states that DFDS had decided to invest €12 million to refurbish its cross-Channel terminal at Loon-Plage, Dunkirk and its road access at the West Port.[9]

2. An article in *le Journal de la Cote d'Opal, Edition Nord Littoral*, on 25 April 2014, in which John-Claude Charlo[10] said, 'If the question is: "Would DFDS leave Calais in the event of an unfavourable decision from the Competition Commission for our company?", the answer is no. The Calais-Dover line is a line in which the group believes. But we cannot forget that its chronic overcapacity brought about the demise of SeaFrance. What we say, is what the market says. DFDS is not against competition. Our company was born out of competition, but today the economic situation does not justify the commissioning of that many ships.'

3. An article in *la Voix du Nord* on 25 April 2014 in which John-Claude Charlo said, 'Neither we, nor our competitors are philanthropists. This situation cannot last very long. Now, it is up to each and every one to set their own limits, psychological or financial. As for us, we are fortunate to have behind us a healthy and profitable group which sees its losses more as investments. My objective is to limit such losses as much as possible.'

   'Our future in Calais does not depend on the opinion of the Competition Commission. It is an independent body which started an investigation on its own initiative … Competition has never scared us. We just want the competition rules to be clear, healthy and fair. Are they like this today? It is not for us to say, it is for the Competition Commission. Our strategic vision has not changed: we want to establish ourselves sustainably on this line'.

4. DFDS press release of 29 April relating to the closure of its Harwich–Esbjerg route which cited MARPOL regulations as a reason for the closure and listed

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[7] *Après un exercice atypique,* DFDS Seaways retrouve son rythme.
[8] *Compte développer ses lignes tant à Calais qu'à Dunkerque.*
[9] GET response to invitation to comment on MCC, paragraph 6.4. Article published in the *Journal de Marine Marchand* on 28 February 2014.
[10] Managing Director, DFDS Seaways in France.

Dover–Calais as an alternative route (among others), and the decision to stop its Newhaven–Dieppe service in 2014.

Analysis of the difference between GET demand projections and CC June 2013 projections

1. GET offered updated 2013 demand figures and a demand projection for the short sea and Dover–Calais routes for 2014/15. Table 1 and Figure 1 describe, for all short-sea routes, why the CC and the GET projections differ.

TABLE 1 **Short-sea demand projections from GET and CC projections from the report**

volume lane metres

		CC	*GET*	
2015	Growth 2.5% per year (freight only) and no MARPOL effect	72,508,997	[✂]	If high MARPOL regulation effect
			[✂]	If low MARPOL regulation effect
			[✂]	If no MARPOL regulation effect
2014	Growth 2.5% per year (freight only)	71,058,179	[✂]	High growth in 2014/15
			78,351,162	Conversion assumptions
2013	Low start base	69,636,390	72,862,164	Higher base

Source: GET, CC and CMA calculations.

Note: We have excluded Ramsgate–Ostend from totals.

2. Table 1 shows the CC projected 2013 demand to be around 70 million lane metres rising to 72.5 million lane metres in 2015, whereas GET has 2013 demand as 78 million lane metres (including both a higher actual figure for 2013 and a different assumption for converting units to lane metres) rising, in its highest scenario, to [✂] million lane metres in 2015.

3. GET/MFL said that new environmental legislation that was to be introduced (MARPOL) would impact on the economics of ferry routes and would reduce the sulphur limits for emissions from ships operating in the North Sea and English Channel from 1% (in force from July 2010) to 0.1% from 1 January 2015. GET/MFL said that this would increase demand on short-sea routes such as Dover–Calais since ferries would use less fuel on these routes compared with longer routes. MARPOL is described in more detail in Appendix A.

4. Figure 1 shows the different effects leading to the difference between the CC's June 2013 starting point and the highest 2015 projections from GET.

FIGURE 1

A comparison of the CC June 2013 demand projections and GET's demand projections for the short sea

[✄]

Source: CMA calculations.

5. The first element is a higher starting point for 2013. Growth on the whole short sea was approximately 4% in 2013, averaging over all of passengers, freight and coaches, whereas the June 2013 report had assumed 2% (the difference is shown as 'Higher base'). The next element added by GET to the CC's numbers is an adjustment made for different assumptions made about lane metres per vehicle (shown as 'Conversion assumption'). The CC had assumed 2.4 metres per car and 7.2 metres per coach. GET assumed 3.3 metres per car and 12 metres per coach. Both assume 16.5 metres per truck. The original data for actual volumes comes from industry sources – Ferrystat and Freightstat – and these measurements are in actual numbers of cars, coaches and trucks. In order to make comparisons with capacity levels, both GET and the report convert actual numbers into lane metres using conversion rate assumptions. The GET assumption has the effect of increasing lane-metre demand compared with the CC assumption.

6. The CC assumed 2% growth for 2014 in the market in its report, while GET proposed to extend the stronger 4% growth rate into 2014 and 2015. The 2014 element of CC growth is shown in the stack chart (Figure 1), followed by the incremental GET growth. This is repeated for 2015.

7. Finally, two different scenarios of the impact of MARPOL are added to the baseline 2015 number – a low and a high effect. These are shown as the last two additions to the stack chart. In all, GET estimated that MARPOL might add 3.5% to total demand. See Appendix A for further background information on MARPOL.

Demand projections for the Dover–Calais ferry segment

8. In Table 2 and Figure 2, we repeat the comparison for the Dover–Calais ferry route. This is important, because it underpins GET's argument that DFDS is (or soon will be) operating its ships at capacity utilisation levels that are sustainable.

TABLE 2 **GET and CC demand assumptions for the Dover–Calais ferry segment**

volume lane metres

		CC	*GET*	
2015	Growth 2.5% per year (freight only) and no MARPOL effect	29,012,709	[✂]	If high MARPOL regulation effect
			[✂]	If low MARPOL regulation effect
			[✂]	If no MARPOL regulation effect
2014	Growth 2.5% per year (freight only)	28,504,867	[✂]	High growth in 2014-2015 after recession
			35,323,668	Conversion assumptions
2013	Low start base	28,005,914	33,197,780	Higher start base

Source: GET, CC and CMA calculations.

9. The CC in June 2013 projected demand for 2013 to be 28 million lane metres and that this would grow to 29 million by 2015. GET, on the other hand, started 2013 demand at 35 million lane metres and had this growing to a maximum of approximately [✂] million lane metres.

10. Figure 2 illustrates the difference between the two projections.

FIGURE 2

Comparison of the differences between the GET and CC (June 2013) demand figures for the Dover–Calais ferry segment

[✂]

Source: CMA calculations.

11. The same elements are present in Figure 2 as for Figure 1. A much larger portion of the difference between the GET and CC numbers is made up of a higher actual level of demand in 2013. The GET numbers show that the Dover–Calais ferry market grew 18% in 2013. The other elements of the chart are commensurate with those in Figure 1.

12. Because the 2013 demand figures are now a matter of fact rather than assumption, as they were at the time of our June 2013 report, we examined Ferrystat and Ferryfreight data for 2013 to ascertain whether GET's higher base for 2013 as compared with the CC's projection is justified. Table 3 presents the results.

TABLE 3 **CC (June 2013) and GET demand for 2012 and 2013 on the Dover–Calais ferry segment**

	2012 Lane metres	*2013 Lane metres*	*Growth 2012/13 %*
CC June 2013 report	28,005,914	28,504,867	2
GET's MCC submission	30,015,735	35,323,668	18
GET's MCC submission, CC lane metre conversion factors	28,087,022	33,197,780	18
Ferrystat, GET lane metre conversion factors	30,018,969	35,323,668	18
Ferrystat, CC lane metre conversion factors	28,090,256	33,197,780	18
GET discrepancy with Ferrystat (%)	0	0	
CC June 2013 discrepancy with Ferrystat (%)	0	–16	

Source: GET, CC and CMA calculations

13. According to Ferrystat and Ferryfreight, growth in 2013 is 18%, as it is for the GET projections. Moreover, the GET and Ferrystat/Ferryfreight numbers are very close. We therefore conclude that there has been growth of approximately 18% on the Dover–Calais ferry route in 2013. Demand has shifted from the Tunnel and the Dover–Dunkirk route to the Dover–Calais ferry route.

Break-even analysis of DFDS operations on the Dover–Calais route

Introduction

1. This appendix sets out the methodology of our analysis of the feasibility of DFDS operating on the Dover–Calais route alongside the other two ferry operators (P&O and MFL) and Eurotunnel. We first summarise the findings and then describe the calculations and assumptions used in the analysis.

Results

2. We modelled the volumes that would be needed for DFDS to break even on the Dover–Calais route given varying prices. For the sake of simplicity, we used lane metres to calculate sales volumes, and calculated revenues per lane metre sold. We then compared these break-even volumes and revenues per lane metre with the actual volumes and revenues of DFDS in 2013 and with the volumes that DFDS can be expected to achieve given the level of demand projected by GET/MFL in 2015.

3. Figure 1 below summarises our findings. The curve represents the volume–price combination where DFDS would break even. A volume–price combination to the left of (below) this curve would indicate that DFDS is making operating losses, whereas combinations to the right of the line would lead to operating profits. The separate dots mark the volume and average revenues that DFDS achieved in 2012, what DFDS then expected its performance would be in 2013, and the actual performance of DFDS in 2013.

4. The results show that DFDS achieved significantly higher volumes in 2013 than it had anticipated. However, revenues per lane metre have decreased and as a result DFDS still made losses in 2013. In fact, it appears that DFDS would have avoided losses in 2013 for the volumes it achieved only if the average revenue had been as high as it was in 2012, or if it achieved significantly higher volumes which would require capacity utilisation at 67 per cent.

FIGURE 1

DFDS break-even analysis and GET-based demand projections

[✂]

Source: CMA calculations.

5. We also compare the average revenue per lane metre of DFDS with that of MFL and P&O in 2013. Figure 1 plots two results for MFL volumes and revenues: one without revenues from on-board sales (as submitted by MFL) and one with on-board sales revenues that were submitted by the SCOP. We note that this figure excludes the commission that the SCOP pays to MFL from on-board sales, so the true revenue per lane metre for MFL may be higher. The realised prices charged by MFL appear to be slightly higher than DFDS. The P&O average revenue and volume figure is plotted as a cross, and the revenue includes on-board sales.

6. Finally, we plot the demand DFDS is expected to face in 2015. The three dashed lines in Figure 1 represent three demand scenarios that are based on the forecast submitted by GET and on our assumption that DFDS will maintain the same market share in the Dover–Calais ferry route as in 2013.[1] All three scenarios suggest that DFDS volumes will increase. However, this growth is not sufficient for DFDS to break even if average revenues remain at the same level as in 2013. At the projected volumes, average revenues would need to be around €[✂] per lane metre for DFDS to break even, which would require an increase of around [✂] per cent from the 2013 average revenues. In the absence of a price increase, DFDS would need to achieve lane-metre volumes that would be around [✂] per cent higher than currently projected for 2015. This would imply a [✂] per cent market share of DFDS on the Dover–Calais ferry route in 2015.

Data and assumptions

7. We used several sources of data for this analysis:

   (a) revenue and cost figures based on analysis submitted by DFDS of the financial performance of its operations on the Dover–Calais route for 2012 and the corresponding projected figures for 2013;

   (b) actual 2013 revenues and costs figures submitted by DFDS and by MFL/GET; and

   (c) Ferrystat and Freightstat figures for actual sales volumes in 2013.

8. To convert freight, car and coach volumes to lane metres, we adopted the conversion factors used by GET.[2] We also performed a sensitivity analysis

[1] Based on the reported volumes in Ferrystat/Freightstat for 2013, we calculated that DFDS transported 19% of all lane metres on the Dover–Calais route. Over the same period P&O transported 62% and MFL transported 19%. These market shares were calculated using GET's factors of unit to lane metre conversions, but do not change materially if the CC's conversion factors are used.
[2] These assume 16.5 lane metres per freight unit, 3.333 lane metres per car unit and 12 lane metres per coach unit.

using the conversion factors assumed by the CC (see below). We assumed that any achieved volume of lane metres translates to fixed proportions of freight, cars and coaches. These fixed proportions were calculated based on actual DFDS volumes in 2013.

Costs and revenues to model break-even

9. For the purposes of calculating the break-even frontier we simulated a profit and loss account per sailing. In each sailing we included three types of operating costs:

   (a) Volume-related costs were calculated based on the average variable costs for freight, cars and coaches per lane metre. These were calculated based on DFDS's submission of operating expenses in 2013. In addition, we calculated the cost of on-board sales as a percentage of on-board sales revenues.

   (b) We calculated bunker costs, harbour dues and other direct variable costs as a fixed cost per sailing based on the analysis of projected 2013 costs submitted by DFDS. These costs were assumed to be independent of the volume of lane metres transported in the sailing.

   (c) We calculated a fixed cost component per sailing as the annual vessel cost divided by the number of sailings made in the year. We excluded depreciation from this cost.

10. DFDS submitted that it made 6,726 crossings on the Dover–Calais route in 2013 and noted that this was lower than planned due to technical reasons and poor weather conditions. We have used this number of crossings to calculate the vessel cost per sailing for our main analysis presented in Figure 1. This corresponds to an average of around 18.5 crossings per day if 365 days of operation were assumed.

11. We also noted that the CC considered that a minimum of 20 crossings per day are required to provide the necessary frequency of service for freight and passengers (see paragraph 8.31 of the report). This is also in line with the number of crossings DFDS was initially planning to make in 2013, which was 7,272. The CC also noted that the parties suggested that the minimum number of sailings may be 16 to 20 sailings per day. Taking these considerations into account, we checked the sensitivity of our results to an assumption of 20 or 16 sailings per day (see below).

12. Revenues in our model were determined by the revenue per lane metre and number of lane metres transported in the sailing. In addition, for the purposes of calculating the costs of on-board sales we separately modelled on-board

sales revenues by assuming a fixed on-board sales revenue per passenger and a fixed number of passengers per lane metre transported. The latter number was calculated using the actual 2013 numbers of DFDS lane metres and passengers.

13. Using the above cost structure, we have calculated the number of lane metres that would be required to make zero profit/loss at a number of different revenue per lane metre points. These points form the curve in Figure 1.

Actual and forecasted performance

14. The DFDS 2012 actual and DFDS 2013 forecast figures plotted in Figure 1 were calculated based on the analysis of the Dover–Calais route submitted by DFDS. The revenue figures in these calculations include freight, car, coach, on-board sales and other revenues. The freight revenues figure included revenues from the bunker adjustment factor. The number of lane metres was calculated using the same conversion factors as above (see paragraph 8).

15. The DFDS 2013 actual figures were calculated based on DFDS's submission of freight, car, coach, on-board sales and other revenues in 2013 and on our calculations of lane metres based on Ferrystat/Freightstat volumes.

16. The MFL figure without on-board sales was calculated using MFL's submission of 2013 revenues and using lane-metre calculations from Ferrystat/Freightstat. We have then added on-board sales that were submitted by the SCOP.

17. The P&O figure includes revenues from on-board sales and the fuel surcharge, and volume in lane metres was calculated as above. P&O submitted monthly revenues in British pounds, which we then converted to euros using the exchange rate submitted by P&O.

Sensitivities

18. We tested the sensitivity of our analysis to a number of assumptions by:

(a) using the CC's set of conversion factors to translate freight, car and coach units to lane metres;[3]

(b) assuming 16 sailings per day or 20 sailings per day for 365 days of the year; and

[3] These assume 16.5 lane metres per freight unit, 2.4 lane metres per car unit and 7.2 lane metres per coach.

(c) calculating the DFDS average revenue in 2013 from March to December only. This was done because data on DFDS's performance in 2012 is only available for March to December, which may distort the average revenue in 2012 if prices tend to be lower in the winter months.[4]

19. The results of the first sensitivity are presented in Figure 2 below. The actual revenue per lane metre figures appear to be higher than in Figure 1 because the number of lane metres is lower.[5] However, DFDS still appears to be below the break-even level.

FIGURE 2

DFDS break-even given CC conversion factors

[✂]

Source: CMA calculations.

20. The results of the sensitivity assuming 16 or 20 sailings per day (365 days of the year) are presented in Figure 3 below. It can be seen that the break-even line shifts to the left when the number of sailings is lower, and to the right when it is higher. This is because a lower number of crossings implies a larger number of lane metres (or units) per any single crossing, holding fixed the annual volume transported. The result assuming 16 crossings per day shows that DFDS is still not close to breaking even at current average revenues given the volume projections for 2015. Moreover, we consider it unlikely that a reduced number of crossings would achieve the same level of annual lane metre volume.

21. Finally, calculating the DFDS revenue per lane metre figure for 2013 using March to December figures only yielded an average revenue of €[✂]. This is very similar to the revenue that uses all months in 2013 (€[✂], as pictured in Figures 1 and 3, or €[✂] if 'other revenues' are excluded, as they were not available on a monthly basis). We therefore do not consider that the exclusion of January and February from the calculated revenue in 2012 affected the results materially.

[4] A low number of revenues was already recorded in February 2012. However, we did not consider this sufficient to represent a full month's operations.
[5] This is because the CC assumed a lower number of lane metres per unit of freight, car or coach than GET.

FIGURE 3

DFDS break even given different numbers of crossings per day

[✄]

Source: CMA calculations.

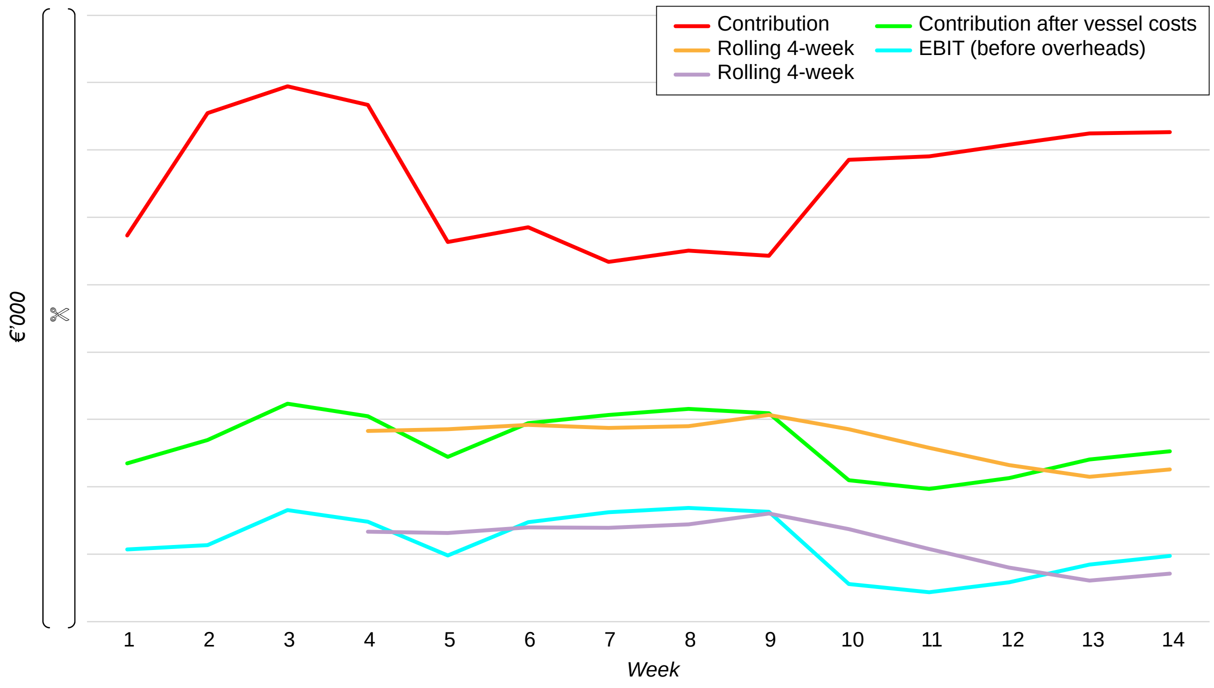
DFDS Dover–Calais actual, 2014

1. Within this period, the Dover–Calais route contribution (after vessel costs) has fluctuated between break-even/small positive contribution and large negative contribution (up to €[✂] per week). The rolling four-weekly average was fairly consistent at around €[✂] negative contribution until week 10. At this point the losses increased substantially before starting to reduce in the last week of the period. DFDS told us that between weeks 4 and 8, each vessel (one at a time) was docked and therefore not operational. During the docking period the route was not charged vessel costs. In the period week 9 onwards, the charges included depreciation of docking expense. As the *Dieppe Seaways* (former *Molière)* is chartered, these expenses are depreciated over a relatively short period, thus increasing vessel costs.

FIGURE 1

DFDS's financial performance, Dover–Calais, 2014

Contribution and rolling average



Source: DFDS weekly reports.

TABLE 1 **[✂]**

	Week													
	1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*
Cont	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Vessel cost	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Cont after VC	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Rolling 4-week				[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: DFDS management accounts.

Glossary

Act	Enterprise Act 2002.
Bareboat charter	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.
CAT	Competition Appeal Tribunal.
CC	Competition Commission.
CMA	Competition and Markets Authority, the UK's primary competition and consumer authority. From 1 April 2014 it took over the functions of the **CC** and the competition and certain consumer functions of the **OFT**.
DFDS	DFDS A/S, a ferry operator and land-based logistics provider, operating in northern Europe.
EBITDA	Earnings before interest, taxation, depreciation and amortisation.
Eurotunnel	Eurotunnel is the operator within the **GET** group of the freight and **passenger vehicle** shuttle business through **the tunnel**.
FCA	French Competition Authority.
Ferrystat	Industry source of ferry market data.
Freightstat	Industry source of freight market data.
Freight unit	A driver-accompanied freight vehicle, an **unaccompanied trailer**, or a container.
French Court	Tribunal de Commerce de Paris (Paris Commercial Court). **SeaFrance** was placed in administration by this court on 30 June 2010.
GET	Groupe Eurotunnel S.A. The parent company of the **Eurotunnel** group of businesses. The company is registered in France and listed on the London and Paris stock exchanges.
GUPPI	Gross upward pricing pressure index.

IMO	International Maritime Organisation.
IPR	Indicative price rise.
Lane metre	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.
LNG	Liquefied natural gas.
MARPOL	International Convention for the Prevention of Pollution from Ships.
MCC	Material change in circumstance.
MFL	MyFerryLink SAS. A ferry company operating on the Dover–Calais route. The vessels used by MFL are owned by **GET** and chartered to the **SCOP**. MFL recommenced operation of the transferred assets on the Dover–Calais route on 20 August 2012 (*Rodin* and *Berlioz* vessels*)* under this name. (The *Nord Pas-de-Calais* was expected to enter into service on a permanent basis in February 2013.)
Molière	Ship previously leased by **Sea France** and operated on the **short sea**.
OFT	Office of Fair Trading.
P&O	The Peninsular and Oriental Steam Navigation Company and its subsidiary companies.
Passenger vehicles	Cars, vans, coaches, caravans and campervans, whether used for tourism or business travel.
Passengers	Foot passengers or individuals travelling with **passenger vehicles**. Excludes drivers accompanying freight.
ROIC	Return on invested capital.
SCOP SeaFrance	Société Cooperative et Participartive de SeaFrance. A group of former **SeaFrance** employees who established a workers' cooperative, with the initial purpose of acquiring the **SeaFrance** business.
Scrubbers	Equipment fitted to a vessel to remove SO_2 from exhaust gases.

SeaFrance	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.
SECA	Sulphur Emission Control Areas.
Short sea	The **short sea** consists of routes between Dover, Folkestone, Ramsgate, Newhaven in the UK and Calais, Dieppe, Boulogne, Dunkirk in France, as well as **the Tunnel** and the routes across the Belgian Straits (Ramsgate/ Ostend).
Shuttle	The passenger and freight rail shuttle services operated by **Eurotunnel** and travelling between Folkestone and Coquelles via **the Tunnel**. The services are marketed under the 'Le Shuttle' brand.
SLC	Substantial lessening of competition.
SNCF	Société Nationale des Chemins de fer Francais. The French state railway company and former owner of **SeaFrance**.
Stena	Stena Line, ferry operator, and current owner of ***Molière***.
The judgment	Judgment handed down by the **CAT** on 4 December 2013 on appeals by **SCOP SeaFrance** and **GET** against the **report**.
The report	**CC** report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A., 6 June 2013.
The Tunnel	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.
The vessels	The three vessels acquired by Eurotunnel: **SeaFrance** *Berlioz*, **SeaFrance** *Rodin*, and **SeaFrance** *Nord Pas-de-Calais*.