Chronology of events[1]

Date	*Event*
28 April 2010	SeaFrance applies for bankruptcy protection ('procedure de sauvegarde') and is placed under the protection of the French Commercial Court
30 June 2010	SeaFrance placed into court-induced receivership
July 2010	Court administrator searches for buyers in order to sell the business
31 July 2010	Offers received not considered serious and not presented to Court
September 2010	SNCF appoints Crédit Agricole to find a buyer (for shares)
Early 2011	No buyers found and sale process suspended
February 2011	Administrator informed of this France submitted request for state aid (SeaFrance recapitalisation of €223 million) to the European Commission
1 July 2011	New call for offers by administrator
26 July 2011	Closing date for offers Three bids received: • DFDS/LDA (Louis Dreyfus) (final offer 20 October) • The SCOP • 'Being Bang' (investment firm) – bid withdrawn

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

7 October 2011	SCOP formed by 14 ex-SeaFrance workers (not formally registered as a legal entity). Total contributions of €[✂]
24 October 2011	EU Commission refused the state aid request (decided incompatible) • €166.3 million increase in capital • €61 million + €61 million proposed loans by SNCF Loan/decision of 18 October 2010 – state aid to be repaid
25 October 2011	Court hearing of offers from DFDS/LDA and the SCOP
15–16 November 2011[2]	Business activities of SeaFrance ceased at midnight (actual cessation in practice) Immediately afterwards, the vessels stayed moored and no commercial activity was undertaken. No employees were made redundant between 15 November and 9 January
16 November 2011	Judgment: decision to liquidate while maintaining business activities until 28 January 2012 New offers invited; liquidator nominated
30 November 2011	Request from liquidator that, in the event no offer is received by deadline of 12 December 2011, activities of SeaFrance to be formally ceased
12 December 2011	Closing date for receipt of new offers
19 December 2011	Judgment: Court orders the SCOP's offer to be considered on 3 January 2012
29 December 2011	SCOP SeaFrance formally registered – [✂] subscribers (minimum contribution of €50) – 'société sans exploitation'
3 January 2012	Hearing regarding the SCOP's offer adjourned until 9 January There are 800 SCOP associés on the day of the hearing. Minimum subscription = €100

[2] Albeit that the formal order to cease operating came on 9 January.

9 January 2012	Court decision – the SCOP's offer insufficient as conditions not met (lack of finance)
	Formal order by Court to SeaFrance to cease operating. Company placed in to liquidation with formal cessation of activities
	Vessels put into hot lay-up
	GET announces intention to bid. GET and the SCOP have first meeting a few days later
24 January 2012	819 employees made redundant within 15 days of 9 January decision, as required by law
	Around 190 SeaFrance employees in total were retained by the liquidator: ~30 *Moliere*, ~34 *SeaFrance Berlioz*, ~34 *SeaFrance Rodin*, ~26 *Nord-Pas-de-Calais*, ~6 commercial, 1 director, ~18 finance, ~19 operations, ~15 HR and 2 others
	Disposal of assets (other than buildings) ordered through call for sealed bids
15 February 2012	Court Receiver designates Parimar to assist liquidator with selling the ships
January–May 2012	GET/SCOP discussions ongoing
10 May 2012	Hearing to open sealed bids
11 June 2012	Judgment of Paris Commercial Court: awarded vessels and other assets to GET
	The SCOP (responsible for recruitment) writes to subscribers inviting them to apply: CV and motivation statement required
22 June 2012	The SCOP placed adverts on maritime recruitment websites
29 June 2012	The SCOP and GET enter into Memorandum of Understanding (first formalisation) and three bareboat charters

1 July 2012	[✂] UK[3] employees hired – Managing Director, Operations Director and Human Resources Manager
2 July 2012	Completion of GET's acquisition of vessels
	SeaFrance's customer records and harbour-side assets in Dover (of SeaFrance Ltd) ('the Dover assets') were sold for €[✂] to MFL. This included a portakabin
	CC's assumed completion date
	Initial activities of MFL begin (commercial activities commenced on 20 August 2012 – see below)
3 July 2012	UK recruitment campaign launched
9 July 2012	Some UK employees entered into contracts of employment with the SCOP
18 July 2012	GET and the SCOP sign commercialisation agreement
1 August 2012	MFL sold on the Dover assets to DCFL, which sold on the portakabin shortly thereafter
20 August 2012	MFL operations launched on Dover/Calais route using *SeaFrance Berlioz* and *SeaFrance Rodin*
	The SCOP: ~[✂] employees: [✂] on ships; [✂] in port at Dover/Calais. The majority of these were subscribers of the SCOP on its registration in December 2011
	Note: between 2 July and 29 October: [✂] employed by the SCOP [✂] (so were eligible for the €25,000 indemnity under Article 3.3.3)
29 October 2012	The OFT refers merger to the CC
7 November 2012	Decision 12-DCC-154 of French Competition Authority on jurisdiction
23 January 2013	Paris Commercial Court ruled the SCOP was entitled to indemnity under PSE3
24 January 2013	[✂] of employee indemnity paid to the SCOP

[3] Dover Calais Ferries Ltd, a wholly-owned subsidiary of the SCOP, was responsible for UK recruitment.

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

Details of assets acquired by GET/SCOP

Assets bought out of French liquidation

Total bid (for all of SeaFrance's tangible assets and intangible assets necessary for their operation): €65 million.[1]

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

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

UK assets bought

'Dover Assets' (bought from UK subsidiary of SeaFrance S.A): total of €[✂]:[2]

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

Other assets

- staff (transferred to the SCOP)
- goodwill
- lease of premises at Whitfield Court in Dover

[2] No apportionment of purchase price was made for the individual assets.

The vessels

1. This appendix sets out the evidence we received on the characteristics of the acquired vessels as follows:

   (a) the suitability of the acquired vessels for the Dover–Calais route;

   (b) effect of the period of inactivity on these assets, including hot lay-up; and

   (c) vessel valuations and the cost and availability of alternative options for GET/SCOP to commence operations on the short sea.

Suitability of the acquired vessels for the Dover–Calais route

2. In regard to the requirements for vessels to operate on the Dover–Calais route, P&O told us that:

   (a) The berths in the ports of Dover and Calais were ‘male’ and were designed to fit ‘female’ vessels. In other words, the linkspan dropped on to the ships for a port fit.

   (b) The Dover ships, due to the high frequency and high turnaround, were usually through ships with the ability to load and unload at both bow and stern.

   (c) The berths in Dover were ‘double tier’, ie the vessels that fitted needed to have two points of entry for vehicles, or if that was not possible, then the vessel must have internal ramps.

   (d) Dover–Calais was a short crossing and therefore the fuel capacity of the vessels was small – the ships did not need huge tanks (like an overnight vessel). This ruled out some ships from operational efficiency.

   (e) Dover–Calais was a ‘sea area 1’ and this had a set requirement for communication equipment which might not correspond to vessels that operated in other ‘sea areas’.

   (f) Dover–Calais was a day crossing of approximately 90-minute journeys. Ships designed for overnight routes (with cabins) would not be operationally suitable.

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

3. DFDS told us that the ports were narrow and suffered from heavy winds; in addition, they had very busy schedules. Because of these factors very good manoeuvrability was required and vessels not purpose built for the short sea would often need to be fitted with additional side thrusters and/or improved rudders in order to operate without delays.

4. DHB also told us that ferries for the short-sea route had two key differences from those that operated on other short routes such as in the Baltic or the Mediterranean, being: the ship-to-shore connection was 'female' in Dover and 'male' for other vessels and routes; in order to ensure its renowned efficiency, Dover delivered all sizes of vehicles including lorries via centre line link-bridges at two levels (and foot passengers at a third level on the vessel's centre line), whereas most other ships delivered vehicles via a single ramp, and even where there was an additional connection, it was usually neither on the centre line nor suitable for all classes of vehicle.

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

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

Hot lay-up

6. During the liquidation period the *SeaFrance Rodin* and *SeaFrance Berlioz* were laid up in Calais. The *SeaFrance Nord Pas-de-Calais* was transferred to Dunkirk where it was laid up. On 15 November 2011 commercial operations ceased but the vessels stayed moored functioning normally (albeit with no commercial activity undertaken). The vessels were placed into hot lay-up following the judgment of the French Court on 9 January 2012, which ordered the liquidation with cessation of activities.

7. At the time of lay-up, the vessels were classified by Bureau Veritas (BV).[1] BV's *Guidance for Lay-Up of Ships*[2] explains lay-up in the following terms.

8. The extent to which a ship owner will lay up its ship depends on various factors, including: *(a)* the expected period of lay-up; *(b)* need to reduce over-head running and operational costs; *(c)* the anticipated time to resumption of trading; *(d)* the time and expenses needed for recommissioning; *(e)* the intended situation after recommissioning (trade, repair yard, scrap yard); and

[1] BV is one of a number of classification societies that assess and classify ships for conformity with specific sets of rules. Others include Lloyds Register and DNV.
[2] Bureau Veritas Guidance for Layup of Ships Guidance Note NI 545 DNS R00 E (April 2009).

(f) the age of the ship and the value of the ship in respect of scrap/recycling value. There are two types of lay-up: hot and cold.

9. *Hot lay-up* is normally appropriate if the vessels are to be out of commission for up to 12 months. The ship has reduced crew on-board as the ship's manning is generally reduced below the manning level required under the flag state safe manning document and in accordance with any applicable requirement from other involved parties, namely local authorities and insurance companies. The ship has some of the machinery maintained under working conditions and kept operational by the skeleton crew on board. The ship can be reactivated with reduced cost, time and effort, normally in the range of less than one week recommissioning time.

10. *Cold lay-up* is normally appropriate if the vessels are to be out of commission for more than 12 months. Specialist lay-up personnel may be employed, possibly only one or more watchmen, in order to deal with emergency requirements related mainly to fire, flooding, mooring and security aspects. Requirements and/or guidance from the flag state, the local authorities and the insurance companies should also be investigated and complied with by the owner, before deciding on the final manning level. The machinery is normally shut down.

11. The ship is normally recommissioned within a period of three weeks, or more depending on the effective period of lay-up and on the level and scope of maintenance and preservation implemented by the owner. The ship might need to be directly dry-docked before trading, depending on the efficiency of the hull preservation during the lay-up period, on the possible hull degradation and on the classification requirements for maintenance of class (in case the bottom survey in dry dock became overdue during the lay-up period). On modern ships, the efficient preservation maintenance of automated systems, computerised equipment and electronic gears is to be carefully planned and considered by the owner, in order to ensure that these sophisticated systems will not deteriorate and will restart correctly.

12. More generally speaking, a 'cold' lay-up situation is to be carefully prepared by the owner, in terms of manning, lay-up site, mooring arrangements, safety and security conditions, preservation, maintenance and inspection measures, classification survey requirements, in collaboration and consultation with all other parties, in order to avoid machinery or hull degradation, long-term damages to the machinery and a subsequent costly and long reactivation.[3]

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[3] ibid, section 2 (Types of Lay-Up).

13. During a ship's lay-up, the ship's class is maintained.[4] The requirements for maintenance of class are detailed in BV's Rules and include: an initial laying-up survey; annual lay-up condition surveys; and a recommissioning survey.[5]

14. For completeness, we also considered the guidelines for lay-up issued by Lloyds Register and Det Norske Veritas (DNV). These guidelines explain that during hot lay-up a vessel will still need to comply with classification and flag state requirements as well as local port authority requirements (including oil pollution coverage, wreck removal or minimum manning). If a vessel is laid up for less than three months, recommissioning time can be as short as 24 hours. For a lay-up period of up to 12 months, recommissioning can occur within a week. If a vessel is in hot lay-up for more than three months but less than 12 months, manning may be reduced below the safe manning certificate level in agreement with the flag state, the classification society, other local authority and insurance companies.

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

15. GET stated that there was a significant volume of work required to get the vessels ready for use once they had been acquired: rebranding, flash-docking and certification visits were carried out concurrently. It stated that even with working around the clock, it still took over six weeks for the vessels to be ready for operation.[6] GET in its initial submission (19 November 2012) submitted that around €[✂] million had been spent on the vessels to get them operational by 20 August 2012, estimating at this time that a further €[✂] million would be required for further work which could not be completed within this initial period.[7]

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

    (a) The insolvency proceedings had led to a reduction in the quality of the technical maintenance of the vessels in certain respects. This was

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[4] This does not allow the vessels to be operated commercially. Vessels also tend to keep classification in cold lay-up (SCOP/SeaFrance).
[5] Guidance Note NI 545 DNS R00 (April 2009), section 4.
[6] GET response to remittal notice, paragraph 14.1.
[7] GET response to remittal notice, Annex 1, extract from GET's Initial Submission, paragraph 7.11.1. GET told us that these figures were based on the information available to it at that time and the SCOP would have more accurate figures as it oversaw the refurbishment.

particularly acute in relation to the *SeaFrance Nord Pas-de-Calais* but was also the case for the *SeaFrance Berlioz* and the *SeaFrance Rodin*.

(b) The vessels had been out of operation for over four months by this point, and had been in a state of reduced operational administration (meaning that they were able to vacate their berths in the ferry terminals and to make journeys to the shipyard for the mandatory technical repairs but had not been maintained beyond what was strictly necessary) since they ceased to operate in November 2011.

(c) The vessels were also not in a fit state to be operated with passengers on board:

(i) for administrative reasons (lack of sailing permit, invalidity of certain certificates);

(ii) because of the interruption in technical (classification) and operational (safety) tests; and

(iii) because of the mandatory technical repairs, which had fallen due but which had not been undertaken.

(d) In order to recommence operations at the standard required for passenger ferries, with a technical reliability close to that of SeaFrance[8] and to restore their business image, it was considered absolutely necessary to bring the vessels in for technical repairs.

(e) In addition, work on the vessels was required over and above the technical repairs to bring them up to a standard at which they could be used as passenger ferries.

(f) Works of this nature included repairs to, and maintenance of, the footbridge and other structures, passengers' facilities, safety and security mechanisms, structure and infrastructure, cargo access, steering equipment, and engineering and electricity generation services (including propellers, motors, heaters, etc).

(g) It was not considered possible to carry out work on all three vessels at once; instead, the vessels needed to be renovated one by one.

17. MTC ISS estimated the costs for the three vessels as: mechanical work €[✂] million; and bringing them up to passenger ferry standard, €[✂] million.

[8] We understand this to mean putting the vessels back into their previous condition under SeaFrance, ie the technical reliability is not greater than that previously achieved under SeaFrance.

It estimated a time period for the work of 8.5 to 9 weeks: 3 weeks for each of the *SeaFrance Berlioz* and the *SeaFrance Rodin* and 2.5 to 3 weeks for the *SeaFrance Nord Pas-de-Calais.*

18. The SCOP submitted that none of the crucial elements required to operate a ferry business between Dover and Calais came with the acquisition. It stated that the vessels had lost their operational certificates (excluding class certificates), new certificates had to be obtained[9] and a significant amount of work was undertaken to bring the vessels up to an operational standard and to obtain the necessary equipment.

19. With respect to certificates, the SCOP noted that this included the requisite navigation certificates, obtaining insurance covers, making the necessary declarations to the International Maritime Organisation and registering with the maritime authorities in the UK and France.[10] The SCOP stated that a number of other certificates had to be obtained, including International Air Pollution Prevention Certificates, Sewage Pollution Prevention Certificates, Interim Ship Security Certificates, Interim Safety Management Certificates, Passenger Ship Safety Certificates and certifications under the MARPOL 73/78, an international convention for the prevention of pollution at sea. The SCOP told us that significant additional works were also required in order for these certificates to be made permanent.

20. The SCOP told us that the work it had to undertake on the vessels included:

    (a) updating navigational alarm systems on the bridge, purchasing protection treatment for the circuit motors (of the *SeaFrance Berlioz*), updating the safety equipment (for example, the installation of an additional fire hose on the *SeaFrance Rodin*, flares and line throwers), necessary renovations to the passenger areas, maintenance and renovations to the engines, propellers and gears and necessary work on the superstructure, loading bays and cargo doors, repairs to the galley, repainting of the vessels, removing rust, cleaning, and the purchase and fitting of a variety of other new parts (both technical and non-technical); and

    (b) rebranding of the vessels to MFL.

21. The SCOP told us that in order for it to obtain provisional certificates to commence operations in August 2012, it had to undertake essential renovations to the *SeaFrance Rodin* and the *SeaFrance Berlioz,* at a cost to GET in excess

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[9] The SCOP stated that it was required to apply for limited certificates to enable the vessels to be moved to Dunkirk for the period of flash docking. Subsequently, the SCOP was only able to obtain provisional certificates valid for the six months to February 2013 for the *Berlioz* and only to November 2012 for the *Rodin.*
[10] SCOP response to remittal notice, paragraph 4.7.

of [€1–€3] million (not including the cost of rebranding). These works took place over a period of around seven weeks during July/August 2012.[11] The SCOP told us that the total cost of the refurbishment and necessary works to the vessels in order to gain their five-year certification had exceeded €[✂] million by February 2013. This was in addition to the €[✂] million paid by GET to the SCOP to manage the work. The SCOP argued that this was significantly greater than the typical cost (and time) of conversion required to enable vessels to operate on the Dover–Calais route (see paragraph 52).

22. The SCOP business plan of 6 January 2012 suggested that each vessel would have needed to go in for three weeks of technical repairs in 2012.

23. The SCOP submitted that GET instructed an external agency to develop the MFL brand and this took two weeks. This work was carried out concurrently with the other work carried out during the seven-week period to 20 August 2012.

24. DFDS argued that as a result of the age of the *SeaFrance Berlioz* and *SeaFrance Rodin (*both less than ten years old) and the fact that they were purpose built for the Dover–Calais route, MFL gained significant advantages over other available tonnage in terms of allowing swift recommencement of operations on the Dover–Calais route. These advantages were in having no requirement to reconfigure the passenger areas or modify the hull to fit the specific berthing and ramp requirements of Calais and Dover (both of which could cost millions of pounds); high levels of flexibility and reliability (no need for modification of the engine configuration); and reduced start-up costs. By acquiring bespoke vessels, GET avoided costly modifications and reduced its start-up costs.[12]

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

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

[11] The *SeaFrance Nord Pas-de-Calais* was not refurbished during this initial period and did not enter into full-time service until February 2013.
[12] DFDS response to remittal notice, paragraph 3.5.

Cost of acquired assets

26. The minutes of the French Court set out valuations for the SeaFrance vessels from three separate brokers which were submitted when they were applying to the court to be appointed as an expert. These are shown in Table 1 below as well as the actual price paid by GET. The highest values were given by Parimar, which was the expert appointed by the French Court.

27. Parimar's report to the French Court noted that it was a 'buyer's' market but that prices may have stabilised. It gave some examples of prices paid for other ferries. These included €75 million for the *Moby Freedom* by Eckero (Finland) and four Ropax vessels acquired by Stena from a bank (2005 to 2008) for a total €130 million. There is no indication in the report as to how these purchase prices may provide a guide to determining the potential purchase price for the three SeaFrance vessels.

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

€ million

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

Source: Judgment of French Court, 11 June 2012

*The brokers values were based on the assumption that the vessels were fully seaworthy, maintained continuously according to the custom of the industry and had all valid class and navigation certificates.
†This is the amount estimated by GET as required to make the vessels suitable for passenger services on Dover–Calais. In its report Parimar deducted this amount from the broker valuations to arrive at an estimated value for the vessels given by the brokers. The GET figure assumes that this amount is already taken into account in the price paid.

Bespoke build

28. The SCOP indicated that P&O had paid €360 million for two new vessels for the Dover–Calais route. The vessels took two years and four months to enter service after they were commissioned.

29. Parimar told the French Court that: 'Under normal circumstances, new construction is generally required, as was the case with SeaFrance or DFDS and more recently for P&O. Today, a new ship similar to the *SeaFrance Rodin* would cost about €135–140 million with a delivery period of 20/24 months'.[13]

[13] Minutes of French Court, 11 June 2012.

30. P&O estimated that at 2008 prices a *SeaFrance Berlioz* or *SeaFrance Rodin* type vessel would have cost €130 million to build (excluding financing and project management). A *SeaFrance Nord Pas-de-Calais* type vessel would be less given its size and lack of tourist capacity (about €100 million). An independent expert ([✂]) believed that a new build similar to the *SeaFrance Berlioz* or *SeaFrance Rodin* would cost in excess of €150 million.

31. P&O told us that its most recent vessels built for the short sea, the *Spirit of Britain* and *Spirit of France,* were built for €[✂] million each (2008 prices).[14] It stated that the vessels were built to the requirements of the P&O brand; this was reflected in the cost. It commented that another company may have different requirements and therefore a different total cost. However, P&O believed that the vessel build costs would be broadly similar.[15]

32. DFDS submitted that the cost of a vessel would depend on a variety of factors such as the vessel specification, chosen construction yard and the number of vessels ordered. It estimated that it would cost between $175 million and $200 million each for two new 'D' type vessels (ie new and updated version of the *Dover Seaways* and *Dunkerque Seaways*—currently used on the Dover–Dunkirk route).[16]

33. P&O told us that a typical time period from inception to delivery was three to four and a half years. The most recent vessels that P&O Ferries has built are the *Spirit of Britain* and the *Spirit of France*. It stated that work commenced from early 2007 with the vessels being commissioned for build with the chosen yard mid-2008. They were delivered early in 2011 and 2012 respectively.

34. DFDS estimated that it took around two and a half to three years, although this would vary depending on the precise specification of the vessels and the construction yard. An independent expert ([✂]) told us that the building of a ferry from start to finish could take as long as three years.

[14] Prices reflect a European build to European standards.
[15] P&O provided a percentage split of the build costs for the two vessels. This indicated that: around [✂]% reflected steel, machinery, electric and hull costs; [✂]% labour and procurement; and [✂]% interior costs.
[16] DFDS stated that the 'D' vessels cost $92 million in 1994.

Purchase or charter and convert

Availability

35. Both the SCOP and GET believed that there were vessels available that could either be purchased or chartered and then converted for use on the Dover–Calais route.

36. GET provided a list of vessels which it believed could easily be operated on the short sea, the Western Channel or the North Sea (see Annex 1 for the list and our analysis of it).[17] The SCOP told us that the *European Seaway* was currently available for purchase or charter.[18] In addition, GET submitted that DFDS had chartered three vessels on its short-sea routes, whilst LD Lines was able to deploy five different vessels on the Boulogne–Dover, Le Havre–Portsmouth and Ostend–Ramsgate routes in an 18-month time frame (between February 2009 and August 2010).

37. Parimar told the French Court that: 'Existing ships of this type [*SeaFrance Berlioz* and *SeaFrance Rodin*] are rare'.[19] Similarly, P&O and DFDS argued that the bespoke nature of the Dover–Calais route limited the number of vessels suitable for purchase or charter.

38. P&O told us that the route's specific requirements (see paragraph 2 above) limited the number of vessels available (if any) at any given point in time for purchase or charter. In particular, the majority of ships available would require modification for the particular Dover and Calais linkspan design and the ability to load and unload at bow and stern, neither of which are a common configuration.

39. P&O also told us that with chartering there was an added complexity in that converting a chartered ship was converting a vessel that was not its asset. This reduced the attractiveness of conversion and had a significant impact on a decision to charter and/or convert.

40. P&O believed that there were few vessels that could be economically converted due to the bespoke nature of the ships required.

41. DFDS told us that to its knowledge there were no purpose-built vessels in operation which the owners were willing to charter out. It said that it had

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[17] GET provided the same list in the report. It stated that although the vessels may change over time, it had no reason to believe that the list was not a good indication of the approximate number of vessels which might be available at any particular point in time.
[18] The *European Seaway* operated on the Dover–Calais route as recently as April 2013, when it was taken out of service and laid up in Tilbury.
[19] Minutes of French Court, 11 June 2012.

chartered the *Barfleur/Deal Seaways* but this vessel proved unsuitable to the demands of the Dover–Calais route (despite extensive modifications) and had to be returned to its owner. [✂][20]

42. DFDS believed that there were currently two potential vessels[21] which could be used on the route. It noted that these were relatively small vessels.

Charter rates

43. We received a number of differing views on the costs to charter a vessel. The estimates we received suggested a bareboat charter range of €8–€10,000 per day (€2.9–€3.7 million a year) and a manned charter cost of around €15,000 per day (€5.5 million a year).

44. P&O told us that it chartered the *Pride of Burgundy* (including deck and engine crew) for 24 hours for £45,000 (bareboat estimated at £30,000).[22] It believed that this also would be a typical charter rate, bareboat for the *SeaFrance Rodin* and *SeaFrance Berlioz*, whilst the *SeaFrance Nord Pas-de-Calais* would be less by about €2,000 per day given her age, size and condition.

45. The SCOP believed that the *European Seaway* (P&O Dover–Calais until 2013 – laid up in Tilbury) was available manned for €15,000 per day and bareboat less than €10,000.

46. GET believed that a charter would cost around £3 million per year (about €8,200 per day).

47. An independent expert ([✂]) estimated that a suitable vessel for the short sea would cost between €8,500 and €10,000 per day plus the additional cost of any required modifications.

Purchase costs

48. The SCOP stated that it believed that the *European Seaway* was currently available for purchase for €14 million.

[20] DFDS response to remittal notice, paragraphs 3.6–3.8.
[21] *Fortuny and Sorolla* were operated on Spanish routes by Acconia Transmediterranea.
[22] The high rate quoted by P&O would appear to be related to the very short length of charter period.

49. DFDS believed that there were currently two potential (although relatively small) vessels[23] which could be used on the route which were on sale for $30 million each.

50. An independent expert ([✂]) also told us that it believed that the *Dieppe Seaways* (previously *Jean Nicoli, Molière*) was sold to Stena Group for around €35–€40 million (including the balance of the present charter to DFDS until November 2014).

Modification costs and time required

51. GET considered that operating these vessels on the short sea would only require limited investment to adapt the interface between the vessel and the gateways and some interior changes might have to be made (eg the removal of some cabins).

52. The SCOP believed that there were a number of ferries available that would either not require any conversion, or for which conversion costs would be minimal (and likely significantly less than the sums paid by GET in bringing the vessels up to an operational standard).

53. Evidence regarding modification costs related primarily to the cost of changing the linkspan arrangements. Whilst this may not be the only modification required, it would appear to be the principal one that all ferries that are not bespoke require. Conversion costs were generally in the range of €1–€1.5 million. Higher figures were also provided but the extent of work to be undertaken on these vessels was not stated:

(a) DFDS told us that it spent around €1.5 million converting the *Barfleur*. The vessel was also renamed the *Deal Seaways* for use on the Dover–Calais route. The work undertaken was:

(i) design, fabrication and installation of a forward 'cow-catcher' (a 'cow-catcher' is a metal structure welded to the vessel to support the ramp when deployed. Ferries used on the Dover–Calais route require 'cow-catchers' because, unlike berths at other ports where the vessel's internal ramps lower on to the linkspan, the berths at Dover and Calais have a ramp that is lowered on to the vessel);

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

(ii) installation of a connection box between the 'cow-catcher' and the hull, and moving the existing ramp cutting to the extremity of the 'cow-catcher';

(iii) design, fabrication and installation of a new aft platform on deck 3;

(iv) modification and installation of hand rails and barriers on deck 5 aft;

(v) design and installation of internal brackets and intermediate frames on the forward peak;

(vi) reinforcement of the connection between the aft plinth and aft deck extension; and

(vii) repainting and rebranding of the vessel.

(b) P&O submitted that conversion costs could run into millions of pounds. It stated that the expensive parts of any conversion were the door and ramp conversions for berth fit, the updating of passenger areas (and/or removal of cabins) and increase in capacity if deemed necessary.

(c) An independent expert ([✂]) stated that all vessels which were not in trade on the Dover–Calais route would probably need to have their bow and stern ramps removed, as the ramps were provided by the shore facilities. It stated that it had no documentary evidence to prove the cost of this alteration but understood this to be in the region of €1–€1.5 million.

54. The SCOP told us that it believed that DFDS was able to convert the *Barfleur* for a cost of substantially less than €1 million (although we note that DFDS said that the cost was €1.5 million). In addition, the SCOP said that it had considered chartering the *Cotentin* from Brittany Ferries and considered that the conversion costs would be similar.

55. DFDS estimated that it would cost around $11–€12 million to convert each ferry (referred to in paragraph 49) with an additional $5 million to be spent on each to ensure operational reliability on the short sea.[24]

56. P&O believed that when SeaFrance acquired the *Jean-Nicoli* to turn it into the *Molière*, €20–€30 million was spent on conversion. P&O did not say how much work was involved in this conversion.

57. In terms of time required:

[24] DFDS submitted that anecdotally it cost SeaFrance €15 million to convert the *Molière* in 2008.

(a) The SCOP submitted that the length of time that it would take to convert an existing ferry would depend on the features of the particular ferry.[25]

(b) In the context of the vessels DFDS noted were available for purchase, DFDS estimated that it would take around five months to modify, comprising four months' lead time for design and preparation and one month at the shipyard.

(c) P&O submitted that a timeline of six months of design and architecture work and a further three months at refit in a yard would be typical for a conversion including the elements set out in paragraph 53*53(b*).

(d) The SCOP submitted that DFDS converted the *Barfleur* in less than ten days.

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

Assessment of availability of vessels suitable for use on the Dover–Calais route

1. GET provided us with an illustrative list of ferries which it believed could be easily operated on the short sea, the Western Channel or the North Sea (see Table 1) in support of entry or expansion. It said that a number of these vessels would require some (limited) investment.

TABLE 1 **GET list of vessels suitable for short sea***

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

Source: GET.

*Accurate as at 26 November 2012.

2. In its response to our provisional findings, GET alleged that the CMA analysis was focused on the current availability of alternative vessels to the *Berlioz* and *Rodin*. It suggested that the CMA should assess what vessels were available at the relevant date.

3. We therefore reviewed the list of vessels which GET had provided to establish whether the vessels had indeed been available for charter at that time, and what modification (if any) would have been required for them to operate on the short sea.

4. In our review we contacted Brittany Ferries and Stena which together owned or chartered 11 out of the 21 vessels on GET's list. We also contacted DFDS in respect of M/F Wawel and Balearics who operated the *M/F Daniya*.[1] In

[1] Balearics did not respond to our requests for information.

relation to the other vessels, we reviewed various sources of information, including company websites and press articles, to ascertain the availability of the other vessels in July 2012.[2] In our analysis of these vessels we assumed that if the vessel was operating in July 2012 and November 2012 it was not available for charter by MFL at that time.

5. The responses from Brittany Ferries and Stena showed that all 11 ferries they owned or operated were not available for charter in July 2012. Brittany Ferries told us that the *Cotentin* was potentially available but only from September 2012. Although this was after the merger and also the launch of services by MFL, for completeness we looked at its suitability for Dover–Calais.

6. The *Cotentin* is a freighter. It has limited passenger capacity. Passenger capacity could be increased providing modifications were made to the layout of the vessel, such as removing the cabins[3] and increasing the safety equipment. Brittany Ferries told us that to operate on the Dover–Calais route it would need to be installed with 'cow catchers'. It estimated that this would cost between €500,000 and €800,000 and take two weeks for the installation works and ten days for reinstatement. The *Cotentin* could therefore have been available in October/November, although it may have required additional time and cost to refurbish the interior to cater for passengers rather than freight customers.

7. We noted that of the other ferries on GET's list:

   (a) The *MS Bari*,[4] *MS Daniya*,[5] *Atlantic Vision*,[6] the *Cote d'Albatre*,[7] *MS Gardenia* and *MS Larkspur*[8] have all been in service with the same operator since before July 2012 (five out of six were owned and operated by the same company).

   (b) The *Norman Arrow* went into service with Mols Linien in May 2012 as *Kat Express 1*.

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[2] GET argued that we should assess the availability of the vessels on the list as at the reference date (26 October 2012). We considered that the relevant dates for assessment of the list were *(a)* the date on which the list was compiled, 26 November 2012; and *(b)* the date of the completion of the transaction, 2 July 2012, as this was the date when GET was committed to acquiring the *SeaFrance Nord Pas-de-Calais*, *SeaFrance Berlioz* and *SeaFrance Rodin* and thus chose not to charter alternative vessels. We did not consider that the reference date had any significance on our assessment of the availability of alternative vessels in our assessment of Jurisdiction.
[3] The passenger capacity of the vessel without cabins is not known.
[4] Owned and operated by Ventouris Ferries on Bari–Durres since 2010.
[5] Owned and operated by Balearics from March 2012 onwards. The *Daniya* has previously served on the Dover–Calais route as the *SeaFrance Manet*.
[6] Owned by Tallink and operated by Marine Atlantic since 2009.
[7] Owned by Conseil Général de la Seine-Maritime and operated by Transmanche Ferries on Newhaven–Dieppe.
[8] *MS Gardenia* and *MS Larkspur* owned and operated by TransEuropa Ferries until early 2013 when filed for bankruptcy.

(c) The *MS Oleander* was chartered by a number of operators between Spain and Morocco and its availability as well as suitability at July 2012 is unknown.

(d) The *Molière* was available in July 2012 but was chartered by DFDS in October 2012.

(e) The *MS Wawel* had been chartered by DFDS, although this charter ended before July 2012. We note though that the ferry is small and over 30 years old, although we note the vessel had previously operated on the Dover–Calais route as the *Stena Fantasia*.

8. The SCOP said there were two other vessels not listed by GET that were also available in 2012 – the *Pride of Calais* and the *Pride of Dover*. We note that the *Pride of Calais* was in service with P&O until end October 2012 and was then chartered to TransEuropa Ferries from December 2012 until April 2013. The vessel was then kept in warm lay-up[9] until she was sent for recycling in October 2013. We note that the *Pride of Dover* ended its service with P&O in December 2010, but was kept in warm lay-up until October 2012 and in November 2012 was sold for recycling.

[9] We note that P&O has three classifications of lay-up. P&O defines 'hot' lay-up as where a vessel is crewed and ready to immediately return to service; 'warm' lay-up as where the vessel has minimum crew but with engines/ generators turned over/running in order to keep the vessel in a state of preparedness; and 'cold' lay-up as where the vessel has no crew. We consider that our definition of 'hot' lay-up is similar to the P&O definition of 'warm' lay-up.

Evidence regarding acquired non-vessel assets

Trademarks/domain names

1. GET told us that the acquired SeaFrance brand was not exploited by MFL (other than to inform people of the discontinuance of SeaFrance) and that the Dover–Calais ferry now operated under a new and entirely distinct brand, namely MyFerryLink.[1]

2. In relation to the SeaFrance website, GET and the SCOP told us that:

   - The SeaFrance website remained available after SeaFrance ceased commercial activity on 15 November 2011, but it was no longer possible to make bookings via this website. The website stated that SeaFrance had entered into liquidation and was no longer operating services.

   - When MFL commenced operations, it created its own website. While MFL was waiting for a licence to manage the content for this new domain name, reservations on the MFL website used the reservations pages on the old SeaFrance website. According to GET and the SCOP, this was a technical redirection that was unseen by most users. The pages carried the MFL brand and only the URL (web address) pointed to the former SeaFrance.com site. This technical background redirection ceased on 25 September 2012.

   - At this stage, the SeaFrance website continued to state that SeaFrance had gone into liquidation and had added to it an option to be redirected to the MFL site, although this redirection was not automatic. The period during which this link was in place was 25 September 2012 to 30 August 2013.

   - Since August 2013, the former SeaFrance website had shown non-branded tourist information.

3. GET stated that MFL had never used the SeaFrance.com website for commercial operations, despite the fact it was legally entitled to do so, having purchased the domain name and the software. GET also provided ‘Google Analytics’ reports showing redirections to the MFL UK and continental websites. For the period 2 July 2012 to 30 January 2014, the proportion of total web channel traffic to the MFL website represented by traffic redirected

[1] GET response to DFDS submission, paragraphs 3.11 & 3.12.1.

from the SeaFrance domain names represented [✂]% of MFL revenue ([✂]% by bookings) for the UK MFL site, and [✂]% of MFL revenue ([✂]% by bookings) for the continental MFL websites. The redirections were currently negligible, and had been for the last four months. No MFL revenue was generated by redirections from the SeaFrance domain name before April 2013.

4. GET told us that there were no agreements in place with search engine providers regarding sending traffic heading towards SeaFrance websites to MFL sites instead. GET said that SeaFrance keywords formed part of the pay-per-click strategy for MFL, and that anyone using Google AdWords could bid for the SeaFrance keywords. GET told us that the cost of these advertisements was £[✂] from 4 February 2013 (when MFL internalised management of this spend) to date, representing [✂]% of MFL's 2013 marketing budget.

5. DFDS submitted that until at least the end of September 2012, visitors to the MFL and SeaFrance websites were directed to the SeaFrance booking page. According to DFDS, from December 2012, they were directed to the MFL booking page. Further, DFDS told us that the SeaFrance website retained its original branding until at least the end of August 2012 and at some point before December 2012 it became more explicitly MFL branded, whilst retaining the SeaFrance name. DFDS argued that MFL sought to utilise the goodwill retained by the SeaFrance brand through continuance of the SeaFrance website and an intentional blurring of the distinction between MFL and SeaFrance operations.[2]

Information systems/software/data files

6. GET submitted MFL felt that it was likely that using as a basis the previous SeaFrance IT systems rather than searching for and using a possible alternative commercially available IT system gave GET no material benefit when launching MFL. GET noted that considerable resources were required to implement IT systems that could support the MFL business. For example, it took five people two months working 12 hours a day, 6 days per week (from 1 July to end of September 2012) to implement IT systems which could support the MFL business.

7. In the time between completion of the transaction and the commencement of MFL operations, GET told us that:

    - As it was unable to use *SeaFret* to provide a freight client database, it had to use the Internet to identify potential clients in order to make initial

[2] DFDS response to remittal notice, paragraphs 3.26–3.28.

approaches to them by telephone, and that this had considerable resource implications.

- It also had to undertake considerable work to build a passenger client database; this included developing software interfaces for agents that had previously contracted with SeaFrance for the reselling of ferry passages and which thus had the capacity to interconnect with SeaFrance's systems. GET cites MFL's dealings with DerTour, a major agent for the German tourist market, in this respect. DerTour had previously contracted with SeaFrance for the reselling of ferry passages, and thus had the capability to interconnect with SeaFrance's systems. When MFL sought to enter into similar arrangements with the company, it encountered significant difficulties and expense in doing so through DerTour's system provider, Amadeus, notwithstanding the previous connection between DerTour and SeaFrance. Indeed, MFL was required to rewrite its interface software in order to establish a connection with the latest version of the DerTour Amadeus software. When MFL queried the amount charged by Amadeus for setting up this connection, it received the response that: 'the ex SeaFrance connection has not been temporarily disabled. All settings had been cancelled with the [termination] of the contract. So for that reason, the set up for [MFL] is just like new connection for Amadeus.' (See paragraph 12 below regarding DerTour further.)

8. The SCOP said that the acquisition of the IT systems in no way enabled the MFL business to 'hit the ground running'. The SCOP said that an entire IT infrastructure had to be set up, including:

- Workstations and printers.

- Installation of a variety of applications, including the SeaPax and SeaFret distribution and booking systems. In particular, the SCOP told us that SeaPax had been shut down during the liquidation period with the result that, when it was acquired by GET, it had a completely empty database and MFL had to establish a fresh set of parameters within that database.

- Initialising the reference data which the software needs in order to operate.

- Integration of SeaPax, SeaFret and the website with other building blocks of the IT infrastructure such as the accounting system (which is different to that used by SeaFrance).

9. The SCOP argued that MFL could have opted to purchase other distribution and booking systems that were available on the open market, for example from The Travel Gateway, which offered Dover Calais Ferries Limited (DCFL)

a ‘white-label’ website together with complete access to its booking system as back-up should it be required by MFL. The SCOP told us that DCFL estimated that the lead time for setting up a system of this nature would be in the region of one week, and therefore it could have been operational faster than SeaPax. Further, the SCOP argued that there was no evidence to suggest that the use of SeaPax and SeaFret enabled MFL to commence operations more quickly and efficiently than would have been the case had other options been procured instead.

10. The SCOP told us that, despite the large amount of resources devoted to developing the IT systems in the run-up to the launch of MFL services, it took a further year to adapt SeaPax to the tourist market. This work in particular related to developing the software to enable MFL to use the Unicorn interface, which enables the travel industry, including the SCOP’s agents, to make bookings directly on the MFL system.

11. DFDS told us that when it acquired the Norfolkline business in 2010 (which included the Dover–Dunkirk service), in order to ensure ongoing operations, it was necessary to retain Norfolkline’s booking system and IT expertise. DFDS said that, when it attempted to integrate Norfolkline’s system into the existing DFDS systems, it became evident that DFDS’s existing booking systems were not suited to use in a high frequency/multi departures per day service (that is, the type of service operated on the short sea routes). The existing DFDS systems were designed for longer, lower frequency routes and could not handle issues such as amending and transferring bookings. DFDS said that it took almost two years to develop a new booking platform that it introduced on the Dover–Calais route in October 2012, even though DFDS was able to use source code acquired from Stena during its development. DFDS said that it estimated the total development costs of this booking system for hardware, system purchase and external consultant costs to be around €5 million to date, and also involved substantial use of internal resources.

12. DerTour, a German travel company, told us that it used the:

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

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

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

The French Competition Authority's decision

1. This appendix sets out the key elements of and context for the French Competition Authority's decision, following GET's notification to it of GET's acquisition of SeaFrance assets.

2. In its decision 12-DCC-154 of 7 November 2012,[1] the French Competition Authority set out in paragraphs 6 and 7 its views on whether the transaction was a merger falling within L430-1 of the French Commercial Code:

> It will constitute a merger as far as these assets will allow Eurotunnel to generate a related turnover.[2] This is the case, in particular, of the vessels, but also other tangible and intangible assets such as the brand (even if it is not used, as no competitor can use it), customer records or web sites and domain names. It transpires from the terms of the takeover offer of Eurotunnel that 'the Eurotunnel group wished (…) to present *a global and indivisible offer* relating at the same time to the vessels and other tangible and intangible assets, in the context of an industrial project'[3] and that 'the project proposed will allow them to ensure the continuity of the services (of SeaFrance) by taking over the interrupted interoperability agreements'. Eurotunnel did not thus want to introduce a new maritime activity but take over the activity of SeaFrance by purchasing all the assets necessary to revive it. For example, the web site http: // www.seafrance.com is still active and forwards customers to the MFL[4] web site where bookings are possible.
>
> The notified transaction is therefore a merger under the article L. 430-1 of the commercial code.[5]

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

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

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[1] FCA decision on Eurotunnel SeaFrance merger.
[2] Guidelines of the Autorité de la Concurrence in relation to merger control.
[3] Original emphasis.
[4] MyFerryLink SAS, a subsidiary of GET that operates ferry services on the Dover–Calais route. MFL recommenced operation of ex-SeaFrance vessels on the Dover–Calais route on 20 August 2012.
[5] In their submission, the parties simply noted that since the transaction involves Eurotunnel's acquisition of exclusive control over the assets of SeaFrance, the transaction constitutes a merger as defined in article L.430-1 of the Commercial Code. They also noted that the undertakings involved in the transaction were, on the one hand, the Eurotunnel Group and, on the other hand, the SeaFrance assets acquired by Eurotunnel Group.

1° two or more previously independent undertakings merge;

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

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

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

- ownership or the right to use all or part of the assets of an undertaking;

- rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an Undertaking.[6]

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

> An undertaking is said to be '**any entity carrying out an economic activity, independently of the legal status** of this entity and of its financing means', with economic activity being understood as '**involving the offer of goods and services on the market**'. A merger can relate to all of one or more firms, but also to asset elements that constitute part of a corporation, such as brands or patents, as of the moment when these asset elements constitute an activity that results in a presence on a market, to which a turnover can unambiguously be attached.
>
> The notion of 'person' mentioned in point I-2 of Article L. 430-1 includes legal persons governed by private law, public bodies5, including the State itself, and individuals. …
>
> Whether in name or in deed, concentrations are subject to merger control as of the moment when they **lead to a combination of the activities of formerly independent firms** within a single

[6] Act No 2001-420 of 15 May 2001, Article 86, Official Gazette of 16 May 2001.

economic unit. The existence of single and lasting economic management is one of the conditions that is needed to determine if one is in the presence of such a concentration. To determine this, the Autorité takes into consideration all legal and factual circumstances that serve to characterize the operation. [emphasis added]

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

[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.

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.

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

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'1 and that the company 'plans to develop its Calais and its Dunkirk routes'.[2] 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.[3]

2. An article in *le Journal de la Cote d'Opal, Edition Nord Littoral*, on 25 April 2014, in which John-Claude Charlo[4] 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

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

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 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**

		CC	*GET*	*volume lane metres*
2015	Growth 2.5% per year (freight only) and no MARPOL effect	72,508,997	90,167,341	If high MARPOL regulation effect
			88,375,189	If low MARPOL regulation effect
			87,299,898	If no MARPOL regulation effect
2014	Growth 2.5% per year (freight only)	71,058,179	82,695,849	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.

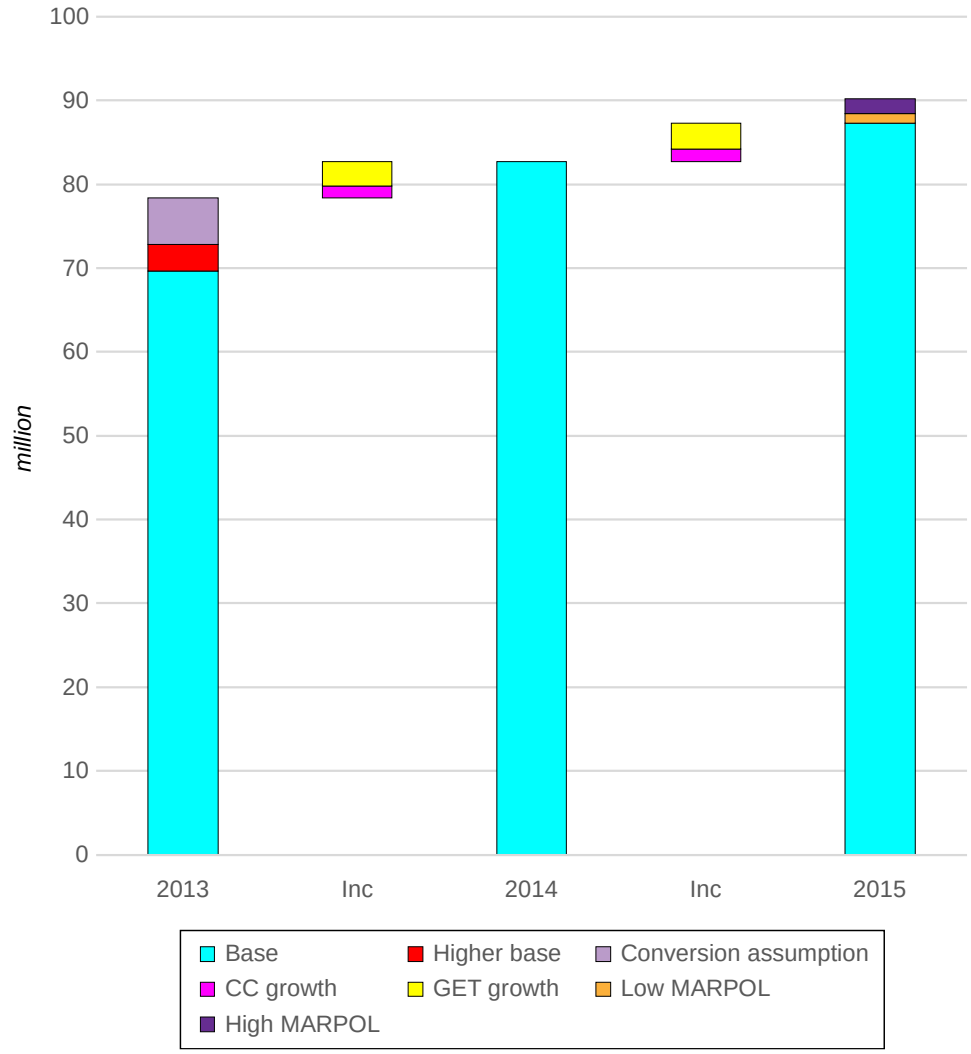
2. Table 1 shows the CC projected 2013 demand to be around 70 million lane metres rising to 72.5 million lane metres in 2015, whereas GET has 2013 demand as 78 million lane metres (including both a higher actual figure for 2013 and a different assumption for converting units to lane metres) rising, in its highest scenario, to 90 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	40,813,089	If high MARPOL regulation effect
			39,965,232	If low MARPOL regulation effect
			39,456,517	If no MARPOL regulation effect
2014	Growth 2.5% per year (freight only)	28,504,867	37,329,448	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

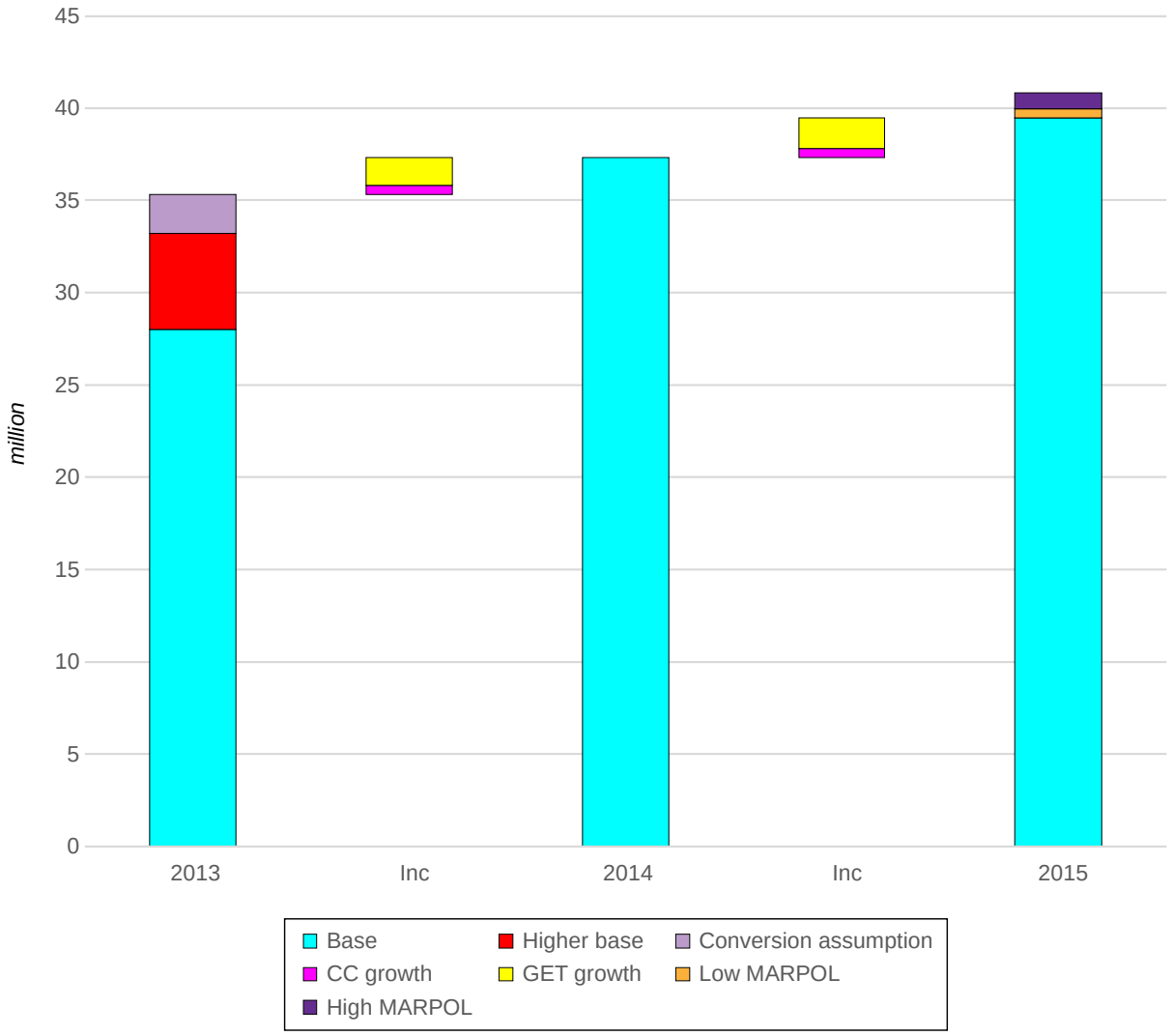
Source: GET, CC and CMA calculations.

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 41 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.[1]

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. It appears that DFDS would have avoided losses in 2013 for the volumes it achieved either if the average revenue had been around 20% higher, or if it achieved around 22% higher volumes, or by achieving a combination of higher average revenues and higher volumes.

[1] We note that DFDS figures here include on-board sales revenues.

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. 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 if total ferry segment growth submitted by GET and on our assumption that DFDS will maintain the same market share in the Dover–Calais ferry route as observed from May 2013 to April 2014 inclusively.[2] 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 slightly below €[✂] per lane metre for DFDS to break even, which would require an increase of around [✂]% from the 2013 average revenues. In the absence of a price increase, DFDS would need to achieve lane-metre volumes that would be around [✂]% higher than currently projected for 2015. This would imply a [✂]% 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 DFDS's account of the financial performance of its operations on the Dover–Calais route for 2012 and the corresponding projected figures for 2013;

[2] Based on the reported volumes in Ferrystat/Freightstat for 2013 and 2014, we calculated that in the period between May 2013 and April 2014 inclusively DFDS transported around 19% of all lane metres on the Dover–Calais ferry route. Over the same period P&O transported 61% and MFL transported 20%. GET, in information provided which underlies its demand scenarios, made the same assumption that DFDS would maintain 2013 market shares into 2014 and 2015. 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.

(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 and the first quarter of 2014.

8. To convert freight, car and coach volumes to lane metres, we adopted the conversion factors used by GET.[3] We also performed a sensitivity analysis 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:[4]

(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

[3] These assume 16.5 lane metres per freight unit, 3.333 lane metres per car unit and 12 lane metres per coach unit.
[4] We have only included costs that are directly related to the route, as submitted by DFDS. Therefore, this does not include overhead costs.

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).[5]

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 forecast 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/

[5] We note that the sensitivity that assumes 20 sailings per day also addresses a concern that GET had that using DFDS's achieved number of crossings, which was lower than planned, has led to a higher cost per crossing.

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;[6]

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

(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.[7]

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.[8] 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

[6] These assume 16.5 lane metres per freight unit, 2.4 lane metres per car unit and 7.2 lane metres per coach.
[7] 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.
[8] This is because the CC assumed a lower number of lane metres per unit of freight, car or coach than GET.

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 yielded an average revenue of only €[✂]. 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.

FIGURE 3

DFDS break-even given different numbers of crossings per day

[✂]

Source: CMA calculations.

Comparison with MFL's break-even frontier

22. Finally, we estimate the break-even frontier of MFL in 2013, based on the breakdown of costs submitted by the SCOP. We apply the same methodology as for the DFDS analysis above. We take a conservative approach, that is, we exclude a number of cost items that are not directly comparable with DFDS's cost items.[9] The estimated frontier is plotted in Figure 4. We note that MFL's curve lies further right than DFDS's, implying that for any given level of prices MFL needs a higher volume of sales to break even than DFDS. A 42% increase of MFL's volumes from the 2013 level would be required for MFL to reach break-even.

FIGURE 4

DFDS and MFL's break-even analysis

[✂]

Source: CMA calculations.

[9] These are legal fees, building rent and vehicle charges, and 'other' fixed costs. The inclusion of these costs in the model would shift MFL's break-even curve to the right. We exclude these costs in order to make the analysis comparable to the DFDS analysis, where we have sought to include only route-level costs and no overhead costs.

DFDS Dover–Calais actual, 2014

1. DFDS provided its weekly reporting for the Dover–Calais route. This is used by senior management to monitor DFDS's performance by route on a weekly basis. The weekly reports show route contribution before and after vessel costs. As set out in paragraph 5.107 of this report we considered that EBIT before the allocation of central overheads was the most appropriate measure for the performance of the Dover–Calais route on an annual basis. To show this figure on a weekly basis DFDS provided additional information on direct and non-direct route costs which it considered were Dover–Calais route specific. We have included in Figure 1 and Table 1 both contribution after vessel costs as well as EBIT (before overheads), for completeness.

2. The constituent parts of revenue and costs included in Figure 1 and Table 1, and the assumptions underlying them are:

   (a) Contribution – Freight, Passenger, Coach and On-board services contribution which is gross revenue by sector less estimates for rebates; external commissions payable to agents; internal commissions payable to non-UK agencies; variable costs attributable to the transportation costs levied by the ports and cost of goods sold for on-board consumption.

   (b) Vessel costs – estimates are made, based on budgeted figures, for vessel costs which include bunker costs, the costs per call (Harbour dues, mooring, pilotage etc), Charter hire (which includes maintenance, technical, deck and engine costs, depreciation and dry dock amortisation).

   (c) Other costs:

      (i) Passenger marketing costs – these are calculated as an amount per vehicle.

      (ii) Freight sales marketing costs – these are the allowances made for the free meals given to freight drivers on the route.

      (iii) Terminal operations – these are the establishment and Wages and Salaries costs for staff who are located in the Calais port.

      (iv) Passenger and Freight Agency costs for the internal UK agency – these are additional to those costs included in the weekly report.

      (v) Depreciation – this is zero.

(vi) On-board services Time charter costs – these are costs per day that are additional to those included on the Time charter for Deck and Engine noted above.

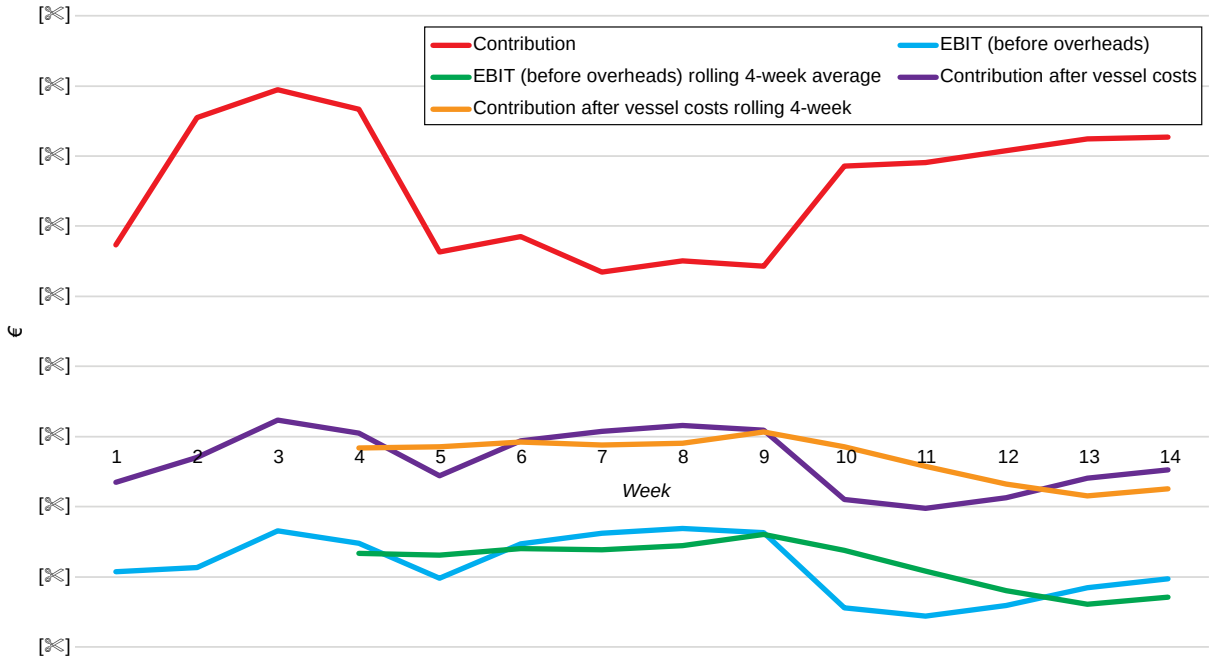
3. We reviewed the principles underlying DFDS's cost allocation. We noted that there was no general allocation of any central overheads or Channel business area costs included in these figures. Specifically in relation to the costs of DFDS's Channel commercial team (which were highlighted by the SCOP as a potential area for cost misallocation) we noted that these costs represented commissions paid only on the Dover–Calais route, with no overhead included. Where estimates were used these were based on annual budgeted figures. Furthermore, the cost categories and the description of costs included within them were consistent with reported annual EBIT (before overhead) figures.

4. We considered, based on our review, that the inclusion and assumptions underlying the costs included within Figure 1 and Table 1 were reasonable given the nature of these costs and the weekly production of the reports.

5. We noted that within the first 14 weeks of 2014, the Dover–Calais route EBIT (before overheads) has fluctuated between [✂] per week. DFDS told us that between weeks 4 and 8, each vessel (one at a time) was docked and therefore not operational. At this time the route did not incur vessel costs leading to an increase in EBIT (before overheads) despite the lower contribution. In the period from week 9 onwards, the charges included depreciation of docking expense. DFDS told us that as the *Dieppe Seaways* (former *Molière)* is chartered, its docking expenses were depreciated over the period to the end of the charter (Q4 2014) rather than the usual 2 to 2½ years between dockings. We noted that although this increased the weekly costs by around €35,000–€40,000 per week on the Dover–Calais route, the removal of these costs would still mean that the weekly route loss was still significant.

FIGURE 1

DFDS Dover–Calais weekly profitability, 2014



Source: DFDS weekly reports.

TABLE 1 **DFDS Dover–Calais weekly profitability, 2014**

	Week													
	1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*
Contribution	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Contribution after vessel costs	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Rolling 4-week				[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
EBIT (before overheads)	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Rolling 4-week				[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: DFDS management accounts.

Decision on remedies in the Report

1. The remedies are summarised in paragraphs 10.181 to 10.187 of the Report. These paragraphs are set out below.

Decision on remedies

10.181 We have decided that GET (and any interconnected body corporate of GET) directly, or indirectly through arrangements with any associated person or other body over which it has control,[1] should be prohibited from operating ferry services at the port of Dover, commencing on the date six months from the date of the CC order to implement the remedy. In the meantime, GET would be permitted to divest the *Berlioz* and the *Rodin* as a means of remedying the SLC to a purchaser (or purchasers) satisfactory to the CC (provided that the anti-avoidance provisions described in paragraphs 10.116 and 10.121 would also apply).

10.182 In the event that by the prohibition date GET has made substantial progress towards the divestiture of the *Berlioz* and the *Rodin* to a purchaser or purchasers satisfactory to the CC, which includes the securing of all necessary approvals and agreement of terms with the purchaser, the CC may revise its timetable should the circumstances make it appropriate.

10.183 We have also decided that, as set out in paragraphs 10.116 and 10.121:

(a) The appropriate elements of the interim undertakings given by GET to the CC should be incorporated in the order and remain in effect until the earlier of the prohibition date and the date that the *Berlioz* and the *Rodin* are divested.

(b) GET (and any interconnected body corporate of GET) directly, or indirectly through arrangements with any associated person or other body over which it has

[1] Control within the meaning of section 26 of the Act.

control,[2] should be prohibited from operating ferry services at the port of Dover with the *Berlioz* and the *Rodin* for a period of ten years from the date the prohibition comes into effect. If GET divests the *Berlioz* and the *Rodin*, it should be prohibited from reacquiring or chartering them for a period of ten years from the date of divestiture.[3]

(c) Whether GET divests the *Berlioz* and the *Rodin* or the prohibition in subparagraph *(b)* above applies, GET should be prohibited from operating ferry services at the port of Dover with any vessel for a period of two years from the date the prohibition comes into effect.

10.184 We concluded in paragraph 10.110 that a prohibition on GET operating ferry services at the port of Dover would be an effective remedy and is less restrictive than prohibiting GET from operating on the short sea. We did not identify any other less intrusive remedies that we considered would be effective.

10.185 We concluded in paragraph 10.141 that a prohibition on GET operating ferry services at the port of Dover would also be a proportionate remedy given our assessment of the benefits of achieving a solution to the SLC. We have not identified any relevant third party costs.[4] To the extent that customers benefit from the current competitive situation, we expect that any benefits would only apply in the short term and are outweighed by the long-term cost of the SLC.

10.186 We also considered in paragraph 10.180 whether any potential RCBs arise from the merger and concluded that the potential benefits noted by the parties are not RCBs as defined in the Act. As such, we concluded that the consideration of RCBs did not have an effect on our assessment of our preferred remedy option.

10.187 We have concluded that our chosen remedy represents as comprehensive a solution to the SLC and its adverse effects as is reasonable and practicable. We would also consider it

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[2] Control within the meaning of section 26 of the Act.
[3] This is consistent with the approach described in CC8, paragraph 3.8. We consider that acquiring any interest in the vessels through a chartering arrangement would have equivalent effect to reacquisition in this case.
[4] We note that even if we were minded to treat the claimed costs of GET and the SCOP as relevant, they would be substantially outweighed by the benefits of eliminating the SLC and its consequential adverse effects on customers.

acceptable for GET to divest the *Berlioz* and the *Rodin* to a purchaser approved by us as an alternative to the ten-year prohibition on operations with these vessels at Dover, provided that such divestiture took place within the six-month period referred to above. This divestiture would be subject to a ten-year prohibition on reacquiring the *Berlioz* and the *Rodin*[5] (reacquisition for these purposes would include acquiring an interest in these vessels through chartering) and a two-year prohibition on operating ferry services at the port of Dover with any vessel.

[5] In accordance with CC8, paragraph 3.8.

Glossary

Accompanied freight	Freight transported on driver-accompanied freight vehicles.
Act	Enterprise Act 2002.
AMEC Report	UK Chamber of Shipping report on Impact of Jobs and the Economy of Meeting the Requirements of **MARPOL** annex VI by AMEC Environment & Infrastructure UK Limited, March 2013.
Autorité de la Concurrence	French Competition Authority.
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.
Berthing slot	The time period allocated by the port for a vessel to embark and disembark at a specific berth.
Capital cost	Depreciation and opportunity cost of financing.
CAT	Competition Appeal Tribunal.
CC	Competition Commission.
CCICO	The Chambre de Commerce et d'Industrie Côte d'Opale. Port Authority for Nord Pas de Calais region.
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**.
Cold lay-up	Method of maintaining a ship if expected to be out of commission for more than 12 months. Machinery is shut down and only a few personnel kept for emergency requirements.
Comité d'entreprise	Works council.
DCFL	Dover Calais Ferries Limited. UK subsidiary of **SCOP SeaFrance**.

DFDS	DFDS A/S, a ferry operator and land-based logistics provider, operating in northern Europe.
DHB	Dover Harbour Board.
DNV	Det Norske Veritas.
EBITDA	Earnings before interest, taxation, depreciation and amortisation.
Europorte SAS	**Eurotunnel** controls Europorte, the holding company controlling a range of rail freight subsidiaries, port infrastructure (including responsibility for maintenance at Dunkerque Sea Port).
Eurotunnel	Eurotunnel is the operator within the **GET** group of the freight and **passenger vehicle** shuttle business through **the Tunnel**.
FCA	French Competition Authority.
Flash-docking	A process designed to return vessels to an operational state.
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.
French Commercial Code	French primary commercial legislation set out in a code.
French Labour Code	Equivalent of **TUPE** regulations in the UK, dealing with the transfer of employees from one organisation to another.
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.

GET Offer Document	Document submitted to French Court with offer for certain assets formerly of **SeaFrance** under liquidation.
Guidelines	The *Merger Assessment Guidelines, CC2*, form part of the advice and information published by the **OFT** and the **CC** under sections 106(1) and (3) respectively of the **Act**.
GUPPI	Gross upward pricing pressure index.
Hot lay-up	A minimum operating mode designed to maintain the condition of the ship, for example by running the engines regularly. (Note, referred to in the June 2013 **CC** report as 'hot lay-by'.)
IMO	International Maritime Organisation.
Indemnity	Agreement of **SNCF** (previous owner of **SeaFrance**) to pay an amount to future employers of **SeaFrance** employees.
Interavailability agreements	These agreements provide that one operator will carry passengers for the other in the event that they are unable to carry passengers due to circumstances out of their control. These agreements are not entered into in relation to freight customers.
IPR	Indicative price rise.
The judgment of the CAT	Judgment handed down by the **CAT** on 4 December 2013 on appeals by **SCOP SeaFrance** and **GET** against the **Report**.
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.
LDA	Louis Dreyfus Armateurs, jointly bid with **DFDS** for **SeaFrance** vessels.
Liquidator	BTSG, appointed by the French Court to liquidate **SeaFrance**.
LNG	Liquefied natural gas.
Lo-lo	A ferry with lift-on/lift-off vehicular access.

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 **SeaFrance** and operated on the **short sea**.
MoU	Memorandum of Understanding.
MTC ISS	Marine Technical Consultancy – Independent Superintendent Services.
Negotiated rates	Rates which have been negotiated individually between **Eurotunnel** and a particular customer, and thus vary from contract to contract depending mainly on the volume that a particular freight operator offers to bring to **Eurotunnel** (thus enabling **Eurotunnel** to forecast traffic and make some degree of savings on costs).
NMM	Northern Marine Management.
North Sea	The North Sea routes consist of routes between ports on the east coast of England and ports in Continental Europe, other than the Ramsgate–Oostende route.
NPV	Net present value.
OFT	Office of Fair Trading.
P&O	The Peninsular and Oriental Steam Navigation Company and its subsidiary companies.
Parimar	Parimar Francharte. Shipbroking firm appointed by the court to assist with the sale of **SeaFrance**'s three ships (*Berlioz*, *Rodin* and *Nord Pas de Calais*) and other assets.

Passengers	Foot passengers or individuals travelling with **passenger vehicles**. Excludes drivers accompanying freight.
Passenger vehicles	Cars, vans, coaches, caravans and campervans, whether used for tourism or business travel.
PEC	Pilotage Exemption Certificate.
PSE3	Plan de sauvegarde de l'emploi. Plan to safeguard employment entered into by **SNCF**.
Remittal Notice	Conduct of Remittal Notice published by the **CC** on 8 January 2014.
The Report	**CC** report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A., 6 June 2013.
ROIC	Return on invested capital.
Ro-ro	A **ferry** with roll-on/roll-off vehicular access.
Ro-pax	**Ro-ro** ferries, built for passenger and freight vehicles with a larger passenger deck.
SCOP SeaFrance	Société Cooperative et Participative 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.
SeaFret	Ferry management software.
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**.
Standard rates	The rates available to any freight operator who has an account with **Eurotunnel** with no or very low-volume forecast. These rates are therefore set across the board and do not vary depending on the customer. There are no volume discounts, and the rates are identical regardless of the identity of the customer with whom the contract is made.
Stena	Stena Line, ferry operator, and current owner of ***Molière***.
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.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
Unaccompanied freight	Freight units carried on ferries and not accompanied by a driver.
Unaccompanied trailer	The trailer of an articulated lorry without the tractor unit and, hence, a driver.
The Vessels	The three vessels acquired by **Eurotunnel**: *SeaFrance Berlioz*, *SeaFrance Rodin*, and *SeaFrance Nord Pas-de-Calais*.
V Ships	V Ships Ltd. Ship manning company.
Western Channel	The Western Channel routes consist of routes between ports on the south coast of England and ports on the north coast of France, other than the **short-sea** routes.