

GROUPE EUROTUNNEL S.A. AND SEAFRANCE S.A. MERGER INQUIRY ORDER 2014

Background

1. On 29 October 2012, the Office of Fair Trading (OFT) in exercise of its powers under [section 22](#) of the Enterprise Act 2002 (the Act) referred the completed acquisition by Groupe Eurotunnel S.A. (GET) of certain assets of former SeaFrance S.A. (SeaFrance) to the Competition Commission (CC) for investigation.
2. The CC published *Groupe Eurotunnel S.A. and SeaFrance S.A. merger inquiry: A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A.* (the Report) on 6 June 2013.¹ In the Report, the CC concluded, in accordance with [section 35](#) of the Act, that:
 - (a) a relevant merger situation had been created as a result of the acquisition;
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the market for the supply of transport services to passengers on the short sea (the passenger market) and within the market for the supply of transport services to freight customers on the short sea (the freight market) and accordingly there was an anticompetitive outcome pursuant to [section 35\(2\)](#) of the Act;
 - (c) in accordance with [section 35\(3\)](#) of the Act, the CC should take action for the purpose of remedying, mitigating or preventing the SLC concerned or the detrimental effect on customers so far as it has resulted, or may be expected to result, from the SLC.
3. By applications made before the Competition Appeal Tribunal (the CAT), respectively dated 18 June 2013 and 3 July 2013, GET and the Société Coopérative de Production de SeaFrance S.A. (the SCOP) challenged some of the CC's findings in the Report pursuant to [section 120](#) of the Act. One of the grounds of challenge was that the CC had erred in concluding that there

¹ CC Eurotunnel Final Report (June 2013).

was a relevant merger situation since the assets acquired were not an enterprise.

4. By judgment dated 4 December 2013,² the CAT found that the question of whether the CC had jurisdiction in this case should be remitted to the CC for its reconsideration.
5. On 27 June 2014, the Competition and Markets Authority (CMA) published a report (the Remittal Report) setting out its decision on the remitted question as well as its assessment and conclusions in respect of the question, pursuant to [section 41\(3\)](#) of the Act, whether it is still appropriate to remedy the effects of the merger as envisaged in the Report.
6. The CMA decided that GET and the SCOP had acquired an enterprise and therefore that a relevant merger situation had arisen and that the effect of this was to reinstate the Report on all other matters. The CMA also concluded that there had been no material change of circumstances (or special reason) within the meaning of [section 41\(3\)](#) so that it remained appropriate to remedy the effects of the merger in a manner consistent with the decision in the Report (see paragraph 2 above).
7. By applications made before the CAT, respectively dated 22 July 2014 and 24 July 2014, GET and the SCOP have challenged some of the CMA's findings in the Remittal Report pursuant to [section 120](#) of the Act.
8. The CMA published a Notice on 23 July 2014 of its intention to make this Order to remedy the adverse effects on competition that it had identified. On the making of the Order the reference has now been finally determined.
9. The Order may be varied or revoked by the CMA under [section 84](#) of the Act.
10. This Notice and a non-confidential version of the Order will be published on the CMA website. The CMA has excluded from the non-confidential version of the Order information which it considers should be excluded having regard to the three considerations set out in [section 244](#) of the Act. These omissions are indicated by [✂].

² [Groupe Eurotunnel S.A v Competition Commission \[2013\] CAT 30.](#)

THE ORDER

The CMA makes this Order in performance of its duty under [section 41](#) and in exercise of the powers it has in [section 86](#)(1) to (5) and [section 87](#), [section 84](#)(1), (2) and (3) and paragraphs 2, 11, 12, 13, 14, 19, 21, 22, and 24 of [Schedule 8](#) to the Enterprise Act 2002, for the purpose of remedying, mitigating or preventing the SLC and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the SLC specified in the Report.

1. Title, commencement, application and scope

- 1.1 The title of this Order is the 'Groupe Eurotunnel S.A. And SeaFrance S.A. Merger Inquiry Order 2014'.
- 1.2 This Order comes into force on the Commencement Date.
- 1.3 Given GET and SCOP's applications to the Competition Appeal Tribunal pursuant to [section 120](#) of the Act in respect of decisions set out in and/or related to the Remittal Report, the provisions of this Order will apply as follows:
 - 1.3.1 the provisions of Article 5.2 will apply from the Commencement Date and continue in full force and effect until the Effective Commencement Date;
 - 1.3.2 the provisions of Schedule 5 will apply from the Commencement Date;
 - 1.3.3 all other provisions of this Order will apply from the Effective Commencement Date.
- 1.4 The Order applies to GET, any Affiliate of GET and any person who is an associated person with respect to GET.
- 1.5 The Order shall continue in force until such time as it is varied or revoked under the Act. The variation or revocation of the Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

The prohibitions

2. The prohibition on ferry operations at the Port of Dover

- 2.1 During the Initial Prohibition Period, GET must not, directly or indirectly through any Affiliate or associated person:

- 2.1.1 enter into or give effect to any agreement to provide passenger ferry services or freight ferry services at the Port of Dover, using any vessel, including, but not limited to the Vessels; or
 - 2.1.2 enter into or give effect to any agreement under which GET, or any Affiliate, derives any financial or economic benefit from the provision of passenger ferry services or freight ferry services at the Port of Dover, using any vessel, including but not limited to the Vessels, other than financial or economic benefit derived from an Effective Lease;
 - 2.1.3 without prejudice to the generality of the prohibitions in Articles 2.1.1 and 2.1.2, give effect to any obligations under the agreement dated 18 July 2012 between MFL and SCOP relating to the provision of ferry services in so far as those obligations relate to the provision of passenger ferry services or freight ferry services at the Port of Dover.
- 2.2 During the Prohibition Period, GET must not directly or indirectly through any Affiliate or associated person:
- 2.2.1 enter into or give effect to any agreement to provide passenger ferry services or freight ferry services at the Port of Dover, using the Vessels; or
 - 2.2.2 enter into or give effect to any agreement under which GET, or any Affiliate, derives any financial or economic benefit from the provision of passenger ferry services or freight ferry services at the Port of Dover, using the Vessels, other than financial or economic benefit derived from an Effective Lease.
 - 2.2.3 without prejudice to the generality of the prohibitions in Articles 2.2.1 and 2.2.2, give effect to any obligations under the agreement dated 18 July 2012 between MFL and SCOP relating to the provision of ferry services in so far as those obligations relate to the provision of passenger ferry services or freight ferry services at the Port of Dover, using the Vessels.
- 2.3 For the purposes of this Order, the operation of any Inter-Availability Arrangement shall not be deemed to breach the prohibitions in Articles 2.1 and 2.2.

3. Sale or lease of the Vessels

- 3.1 Subject to Articles 4.2 and 4.4 the prohibitions in Article 2.2 will not apply in the event of an Effective Disposal.

- 3.2 In the event of an Effective Disposal, the prohibitions in Article 2.1 shall continue to apply.
- 3.3 Subject to Article 3.5 the prohibitions in Article 2.2 will not apply in the event of an Effective Lease.
- 3.4 In the event of an Effective Lease, the prohibitions in Article 2.1 shall continue to apply.
- 3.5 In the event that during the Prohibition Period, an Effective Lease is terminated for any reason or otherwise no longer binding, the prohibitions in Article 2.2 shall apply for the remainder of the Prohibition Period.
- 3.6 Without prejudice to the reporting obligations under Article 7, in circumstances where Article 3.5 applies, GET must promptly (but no later than five working days after the end of the Effective Lease) notify the CMA that the Effective Lease has ended.
- 3.7 Subject to Article 3.8 and 10.8, GET may divest the Vessels to one or more bodies corporate that are part of the same group of interconnected bodies corporate as Groupe Eurotunnel S.A. provided that:
 - 3.7.1 GET provides the CMA with no less than five working days prior written notice of the details of such divestment; and
 - 3.7.2 in giving notice under Article 3.7.1, GET must also provide the CMA with written confirmation that the divestiture will not have the effect of circumventing this Order or of impeding its effectiveness.
- 3.8 In the event of a divestment by GET under Article 3.7, the prohibitions in Article 2.1 and 2.2 will continue to apply.

4. Prohibition on reacquisition of the Vessels

- 4.1 In the event of an Effective Disposal pursuant to Article 3.1, the prohibition in Article 4.2 shall apply.
- 4.2 Subject to Article 4.4, GET shall not without the prior written consent of the CMA, directly or indirectly through any Affiliate or associated person, acquire any interest in, or Control of:
 - 4.2.1 the Vessels; or
 - 4.2.2 any person which itself has an interest in, or Control of, the Vessels.

- 4.3 The prohibition in Article 4.2 shall continue in force during the Prohibition Period, along with all relevant reporting obligations under Article 7.
- 4.4 In the event that during the Prohibition Period, GET directly or indirectly through any Affiliate or associated person, acquires any interest in or Control of the Vessels or of any person which itself has an interest in or Control of the Vessels, the prohibitions in Article 2.2 shall apply for the remainder of the Prohibition Period.

Interim measures

5. Interim measures

- 5.1 During the period starting on the Effective Commencement Date and ending on the Prohibition Date (or such earlier date as GET ceases to provide, directly or indirectly, passenger ferry services or freight ferry services at the Port of Dover) (the Specified Period), the Interim Measures described in Schedule 2 shall apply.
- 5.2 The Interim Undertakings given by GET and accepted by the CC on 29 November 2012 will continue to apply from the Commencement Date until the Effective Commencement Date.

6. Monitoring Trustee

- 6.1 The role of the Monitoring Trustee shall continue during the Specified Period and any Extended Period subject to the requirements of Schedule 3.

Compliance

7. Reporting Obligations

- 7.1 GET must submit to the CMA:
- 7.1.1 such information or statement of compliance as the CMA may from time to time require for the purposes of monitoring compliance by GET with the requirements of Schedule 2 to this Order. In particular, during the Specified Period, on the day that is one month from the Effective Commencement Date and subsequently on the same day of each month, (or, where the day does not fall on a working day, the first working day thereafter) the Chief Executive Officer of GET must provide a monthly statement to the CMA on behalf of GET confirming compliance with the requirements of Schedule 2 to this Order in the

form set out in Schedule 4 to this Order (Interim Compliance Report); and

7.1.2 five working days before the Prohibition Date, a report signed by the Chief Executive Officer of GET confirming that GET has taken all necessary steps to cease passenger ferry services and freight ferry services at the Port of Dover in accordance with the requirements of Articles 2.1 and 2.2 from the Prohibition Date for the duration of the Initial Prohibition Period and the Prohibition Period as appropriate (Prohibition Period Compliance Report).

7.2 Subject to any additional or different requirements that the CMA may impose pursuant to Schedule 5 to this Order:

7.2.1 with effect from the day that is three months from the Effective Commencement Date and subsequently on the same day of every third month thereafter, (or, where the day does not fall on a working day, the first working day thereafter) the Chief Executive Officer of GET must provide a statement to the CMA on behalf of GET confirming compliance with the requirements of this Order (Continuing Compliance Report). The Continuing Compliance Report must include, for the relevant reporting period:

- (a) steps taken to ensure compliance with the terms of the Order; and
- (b) details of any incidences of non-compliance, the particular Articles of the Order which have been breached and steps taken to rectify the non-compliance;

The Interim Compliance Report and the Continuing Compliance Report may be submitted as one document so long as the matters referred to in Articles 7.1.1 and this Article are reported separately.

7.2.2 in the event that at the end of the Initial Prohibition Period GET restarts passenger ferry services or freight ferry services at the Port of Dover, for the remainder of the Prohibition Period the Continuing Compliance Report submitted by GET to the CMA must confirm that GET is not using the Vessels for those operations.

7.3 GET must ensure each Compliance Report includes a signed certificate stating that:

7.3.1 the relevant Compliance Report has been prepared in the accordance with the requirements of this Order; and

7.3.2 for the period to which the Compliance Report relates, GET has complied in all material aspects with the relevant requirements of this Order and is reasonably expected to continue to do so.

7.4 Other than the report under 7.1.2, a Compliance Report may be submitted within five working days from the due date in each case.

8. Directions by the CMA as to compliance

8.1 GET must comply with such written directions as the CMA may from time to time give to take such steps as are necessary for the purpose of carrying out or securing compliance with this Order.

8.2 The CMA may give directions falling within Article 8.1 to:

8.2.1 a person specified in the directions; or

8.2.2 a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

8.3 Directions fall within this Article if they are directions:

8.3.1 to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or

8.3.2 to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

8.4 In Article 8.3.1 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of GET carries out, or secures compliance with, this Order.

8.5 The CMA may vary or revoke any directions so given.

9. Extension of time limits

9.1 The CMA may, in exceptional circumstances where the CMA considers it is appropriate, in response to a written request from GET showing good cause or otherwise at the CMA's own discretion, grant an extension:

9.1.1 of any period specified in this Order within which GET must take action; or

9.1.2 to any date from which any obligations or prohibitions set out in this Order shall apply.

- 9.2 Any reference in this Order to a specified date shall be construed as being subject to any extension granted pursuant to Article 9.1.
- 9.3 Where the CMA has granted an extension of time pursuant to Article 9.1, it shall notify its decision to such persons as it deems to be materially affected by the granting of the extension and in such manner as it deems appropriate.

10. Procedure for consent and notification

- 10.1 Where the consent or approval of the CMA is required by GET (however that requirement is expressed in the Order) it will seek the consent or approval in writing which shall include email.
- 10.2 Any application by GET for the CMA's consent or approval must make full disclosure of every fact and matter within its knowledge that it reasonably believes is relevant to the CMA's decisions (the Relevant Information). Where the CMA considers that full disclosure has not been provided, it shall promptly inform GET, and GET must promptly provide such additional information as the CMA requires.
- 10.3 Where the CMA grants consent or approval on the basis of misleading or incomplete information, and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 10.4 In the event that GET discovers that an application for consent or approval has been made without full disclosure of the Relevant Information to the CMA, GET must:
- 10.4.1 inform the CMA in writing identifying the Relevant Information that it omitted to include in the application for consent within two working days of becoming aware that the Relevant Information is misleading or incomplete; and
- 10.4.2 at the same time, or no later than two working days starting with the date on which it has informed the CMA of the omission in accordance with Article 10.4.1 above, provide to the CMA an application for consent that includes the missing information.
- 10.5 GET must use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five working days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of the Order.

- 10.6 The CMA shall use reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in Article 10.5 above. This provision is without prejudice to the CMA's duties under the Act.
- 10.7 Where in GET's reasonable opinion, it has identified a candidate purchaser or candidate lessee for the Vessels, GET must promptly apply to the CMA for a decision on whether or not the candidate purchaser or candidate lessee is an Approved Purchaser, or as the case may be, an Approved Lessee. In order for the candidate purchaser or candidate lessee to satisfy the CMA's Purchaser Approval Requirements or, as the case may be, the CMA's Lessee Approval Requirements as set out in Schedule 1 to this Order, GET must use its reasonable endeavours to assist the CMA in obtaining further information from the candidate purchaser, or as the case may be, the candidate lessee, where necessary.
- 10.8 In order to bring about an Effective Disposal or Effective Lease or a divestment under Article 3.7, the CMA's approval of any binding agreement relating to the divestment or, as the case may be, the leasing of the Vessels is required. The final draft agreement and all sale or leasing documentation must be sent to the CMA promptly for approval but not later than five working days before the day on which the agreement will be signed. The CMA may require reasonable changes to the final draft agreement before granting approval.

11. Service

- 11.1 Any communication from GET to the CMA under this Order must be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

12. Interpretation

- 12.1 Words and expressions defined in the recitals to the Order have the same meaning in the Order.
- 12.2 In this Order, the word 'including' means including without limitation or prejudice to the generality of any descriptions, definition, term of phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 12.3 The headings used in the Order are for convenience and have no legal effect.

- 12.4 Expressions in the singular include the plural and vice versa.
- 12.5 References to a 'person' includes any individual, firm, partnership, body corporate or association.
- 12.6 References to any statute or statutory provisions shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 12.7 References to a government department, a non-ministerial department, a non-departmental public body, or organization or person or place or thing includes a reference to its successor in title.
- 12.8 References to recitals, articles, paragraphs and schedules are references to the recitals to, articles of, paragraphs and subparagraphs of, and schedules to the Order unless otherwise stated.
- 12.9 The Schedules to this Order form part of the Order.
- 12.10 This Order gives effect to the findings of the CMA in Part 10 of the Report and shall be construed consistently with and give effect to those findings.
- 12.11 Unless otherwise indicated in this Order, the terms used in this Order are to be construed consistently with the definitions used in the Act.
- 12.12 The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined or a contrary definition is used in the Report or in the Act.
- 12.13 In this Order, the following definitions apply:

the Act means the Enterprise Act 2002;

Affiliate a person is an affiliate of another person if they or their respective enterprises are to be regarded as under common control for the purposes of [section 26](#) of the Act or if, in the opinion of the CMA, they are in a relationship of economic dependence and the CMA will not regard a person as being in a relationship of economic dependence where the commercial links between them are limited to the existence of an Approved Lease and the operation of the Inter-Availability Arrangement;

Approved Agreement	means a binding agreement relating to the divestment of the Vessels to an Approved Purchaser, the terms of which have been approved by the CMA in accordance with Article 10.8;
Approved Lease	means a binding agreement relating to the lease of the Vessels to an Approved Lessee, the terms of which have been approved by the CMA in accordance with Article 10.8;
Approved Lessee	means a lessee of the Vessels pursuant to an Approved Agreement, who has been approved by the CMA in accordance with the Lessee Approval Requirements and who is not an Affiliate of GET or a person who is an associated person with respect to GET;
Approved Purchaser	means a purchaser of the Vessels pursuant to an Approved Agreement, who has been approved by the CMA in accordance with the Purchaser Approval Requirements;
associated person	a person is associated with another person if they would be treated as associated by section 127 of the Act as at the date of the Effective Disposal or Effective Lease;
business	has the meaning given to it by section 129(1) and (3) of the Act;
CC	means the Competition Commission and with effect from 1 April 2014 means the CMA;
Commencement Date	means the date of signature of this Order;
Confidential Information	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;
Control	has the meaning given to it by section 26 of the Act and includes the ability, directly or indirectly to control or materially influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise;
Compliance Report	means an Interim Compliance Report or a Prohibition Period Compliance Report or a Continuing Compliance Report in each case as required by Article 7;

Continuing Compliance Report	means a report as required by Article 7.2;
CMA	means the Competition and Markets Authority established by the Enterprise and Regulatory Reform Act 2013;
Effective Commencement Date	means the day following the date on which proceedings of the Competition Appeal Tribunal pursuant to the applications by GET and SCOP pursuant to section 120 in respect of decisions set out in or related to the Remittal Report are finally determined or, in the event the Competition Appeal Tribunal does not uphold the CMA's finding that the acquisition by GET and SCOP as associated persons of the SeaFrance assets constituted a relevant merger situation and an appeal has been brought by the CMA, the day following the date on which an appellate court publishes its decision upholding the CMA's finding that such acquisition constituted a relevant merger situation;
Effective Disposal	means the completed sale and purchase of the Vessels under an Approved Agreement to an Approved Purchaser within the Specified Period (or the Extended Period as the case may be) as a means of satisfying the prohibition in Article 2.2;
Effective Lease	means the completed lease of the Vessels under an Approved Lease to an Approved Lessee within the Specified Period (or the Extended Period as the case may be) as a means of satisfying the prohibition in Article 2.2;
Eurotunnel	means the Channel Tunnel Group Limited and its subsidiaries;
the Eurotunnel business	means the passenger vehicle and freight shuttle transport business through the Channel Tunnel operated by the Channel Tunnel Group Limited;
Extended Period	means an extension to the period within which GET may complete an Effective Disposal or Effective Lease pursuant to Article 3;

Final determination of the proceedings of the Competition Appeal Tribunal	means the date on which the Competition Appeal Tribunal publishes its decision on GET and SCOP's applications pursuant to section 120 in respect of decisions set out in or related to the Remittal Report, upholding the CMA's finding that the acquisition by GET and SCOP as associated persons of the SeaFrance assets constituted a relevant merger situation and reinstatement of the Report on all other matters;
the former SeaFrance business	means the ferry business operated by SeaFrance on the English Channel using the SeaFrance assets prior to 16 November 2011;
GET	means Groupe Eurotunnel S.A. and its subsidiaries, and any interconnected body corporate of Groupe Eurotunnel S.A. or of any of its subsidiaries, from time to time;
the GET businesses	means the businesses of GET and its subsidiaries (including but not limited to the Eurotunnel business) carried on as at 2 July 2012;
Interim Compliance Report	means a report as required by Article 7.1.1;
Initial Prohibition Period	means the two-year period beginning on the Prohibition Date and ending on the second anniversary of the Prohibition Date;
Inter-Availability Arrangement	means any arrangement between GET and a provider of passenger ferry services at the Port of Dover pursuant to which: <ul style="list-style-type: none"> (a) in the event of an interruption to or suspension of the Eurotunnel business GET may seek to arrange for passenger customers of the Eurotunnel business to be transported by a provider of passenger ferry services operating at the Port of Dover and who is not an Affiliate of GET or a person who is an associated person with respect to GET; and (b) in the event of an interruption to or suspension of the operations of the provider of passenger ferry services at the Port of Dover it may seek to arrange for its

passenger customers to be transported by the Eurotunnel business;

interconnected bodies corporate	has the meaning in section 129(2) of the Act;
Interim Measures	means the provisions set out in Schedule 2;
Interim Undertakings	means the undertakings given by GET and accepted by the CC pursuant to section 80 of the Act on 29 November 2012;
Lessee Approval Requirements	means the information and evidence provided for in Schedule 1 that the CMA requires to approve a potential lessee of the Vessels;
MFL	means MYFERRYLINK SAS;
the MyFerryLink business	means the ferry business operating across the English Channel undertaken by or on behalf of MFL since 20 August 2012 using the SeaFrance assets;
Monitoring Trustee	means the monitoring trustee appointed by GET pursuant to the directions issued by the CC on 20 December 2012, whose functions as amended by Schedule 3 shall continue during the Specified Period pursuant to Article 6.1;
Notice	means a written communication sent by post, fax, personal delivery or, with prior consent of the recipient, by email;
OFT	means the Office of Fair Trading and with effect from 1 April 2014 means the CMA;
Prohibition Date	means the date six months from the Effective Commencement Date;
Prohibition Period	means the ten-year period beginning on the Prohibition Date and ending on the tenth anniversary of the Prohibition Date;
Prohibition Period Compliance Report	means a report as required by Article 7.1.2;
Purchaser Approval Requirements	means the information and evidence provided for in Schedule 1 that the CMA requires to approve a potential purchaser of the Vessels;

Relevant Information	means the information as required by Article 10.2;
Remittal Report	means the CMA's final report entitled <i>Eurotunnel/SeaFrance merger inquiry remittal: Final decision on the question remitted to the Competition and Markets Authority by the Competition Appeal Tribunal on 4 December 2013 and consideration of possible material change of circumstances under section 41(3)</i> published on 27 June 2014;
Report	means the CC's final report entitled <i>Groupe Eurotunnel S.A. and SeaFrance S.A. merger inquiry: A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A.</i> , published on 6 June 2013;
SCOP	means Société Coopérative de Production SeaFrance S.A.;
the SeaFrance assets	means all of the tangible and intangible assets, including three of SeaFrance's vessels (the SeaFrance <i>Nord-Pas-de-Calais</i> , the SeaFrance <i>Rodin</i> and the SeaFrance <i>Berlioz</i>), trademarks, domain names and IT records including customer records of the former SeaFrance business acquired by GET on 2 July 2012;
the Specified Period	means the period beginning on the Effective Commencement Date and ending on the Prohibition Date (or such earlier date as GET ceases to provide, directly or indirectly, passenger ferry services or freight ferry services at the Port of Dover);
subsidiary	has the meaning given by section 1159 of the Companies Act 2006;
Vessels	means the vessels named Rodin and Berlioz as at the date of the Remittal Report formerly owned by SeaFrance and acquired by GET pursuant to an order of the Paris Commercial Court dated 11 June 2012;
working day	means any day except for Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

SCHEDULE 1

Purchaser and Lessee Approval Requirements

Purchaser Approval Requirements

1. As the Vessels are subject to an inalienability provision by virtue of the order of the Paris Commercial Court dated 11 June 2012, the sale of the Vessels to an independent purchaser would require the revocation of the inalienability provision by the Paris Commercial Court or the authorization of the Paris Commercial Court for such a sale. If GET wishes to pursue an Effective Disposal, GET must provide the CMA with information regarding the steps that it is taking to secure such revocation or authorization and provide evidence of this having been given.
2. Potential purchasers of the Vessels will be invited to demonstrate to the CMA their suitability as a purchaser in the form of written submissions (and possibly via face-to-face meetings). The suitability criteria and evidence requirements to satisfy the criteria are set out below. During the assessment process, the CMA may seek further information or clarification. The CMA will make an assessment of the suitability of the potential purchaser and communicate this decision to the purchaser and to GET.

Report on steps taken by GET to secure the approval of the Paris Commercial Court

3. GET must provide the CMA with evidence that the Paris Commercial Court has revoked the inalienability provision set out in its order of 11 June 2012 or has otherwise authorized the sale by GET of the Vessels.
4. Pending receipt of any such revocation or authorization, GET must inform the CMA of steps being taken to secure the revocation by or authorization of the Paris Commercial Court referred to in paragraph 1 to this Schedule, including providing copies of all correspondence and submissions relating to such approval.
5. GET must provide the CMA with the information in paragraphs 3 and 4 to this Schedule promptly, and no later than two working days after any relevant revocation, authorization, correspondence or submissions.

Independence from GET

6. The existence of significant economic relationships between the potential purchaser and GET would be a major area of concern for the CMA and will be

subject to assessment on a case-by-case basis. This includes any pre-existing relationships or any ongoing relationship that would be created as a result of entering into the Approved Agreement.

7. The evidence requirements with respect to independence would include:
 - identity of potential purchaser, including details of the ownership of the purchaser and identity of Board Members of the purchaser;
 - details of any interest in the equity or debt of GET and its Affiliates held by the potential purchaser at any time in the last five years;
 - details of any interest that GET or its Affiliates have held in the potential purchaser at any time in the last five years; and
 - details of any other commercial or economic relationship between the potential purchaser and GET at any time in the last five years.
8. A potential purchaser should have sufficient financial resources to acquire the Vessels without any continuing links to GET.
9. The evidence requirements with respect to financial resources would include a description of any necessary funding arrangements, including sources of finance for the acquisition of the Vessels, evidence that the financing would not involve unauthorised state aid and details of investments not funded by retained cash flow (including details of any expressions of interest, highly confident or commitment letters from relevant financing providers, if available).

No further competition concerns

10. The acquisition of the Vessels by the potential purchaser should not give rise to new competition concerns.
11. The evidence requirements would include details of any existing passenger or freight ferry operations on routes to or from the UK, and in particular in relation to routes operating on the short sea, in which the potential purchaser has an economic interest.

Lessee Approval Requirements

12. The requirements in paragraphs 3 to 11 inclusive are equally applicable to potential lessees. References to 'sale', 'purchaser', 'Approved Agreement', 'acquire' or 'acquisition' in each of these paragraphs shall be deemed to be

references to 'leasing', 'lessee', 'Approved Lease', 'lease' and 'leasing' respectively.

SCHEDULE 2

Interim measures

1. Except with the prior written consent of the CMA, GET must not during the Specified Period take any action which might prejudice the measures set out in this Order.
2. Further and without prejudice to the generality of paragraph 1, except with the prior written consent of the CMA, GET will at all times during the Specified Period, procure that:
 - (a) the MyFerryLink business (including, but not limited to its sales and marketing functions and website), to the extent to which it is continued, is carried on separately and under a separate brand identity from the Eurotunnel business and separate sales are maintained;
 - (b) the Vessels are not disposed of except as part of an Effective Disposal or as part of an Effective Lease;
 - (c) no proprietary interest in the Vessels is created or disposed of except as part of an Effective Disposal or Effective Lease;
 - (d) there is no further integration of the information technology systems (including booking systems) of the MyFerryLink business with the information technology systems of GET;
 - (e) to the extent to which the MyFerryLink business is continued, the customer lists of each of the MyFerryLink and Eurotunnel businesses shall be operated and updated separately and any negotiations with MyFerryLink's customers in relation to the MyFerryLink business will be carried out by the MyFerryLink business alone and for the avoidance of doubt Eurotunnel will not negotiate on behalf of MyFerryLink or enter into any joint agreements with MyFerryLink. Furthermore GET must procure that the list of former SeaFrance customers which it acquired on 11 June 2012 is retained within the MyFerryLink business and is not shared directly or indirectly with Eurotunnel;
 - (f) until such time as GET ceases provision, directly or indirectly, of passenger ferry services and freight ferry services at the Port of Dover in accordance with the requirements of Article 2, and to the extent to which the MyFerryLink business is continued, all existing contracts continue to be serviced by the business to which they were awarded;

- (g) subject to paragraph 3 below, no Confidential Information relating to the MyFerryLink business or the former SeaFrance business shall pass, directly or indirectly, from the MyFerryLink business (or any employees, directors, agents or Affiliates associated with that business) to Eurotunnel (or any of its employees, directors, agents or affiliates with the exception of [REDACTED] and [REDACTED]), or vice versa, except where strictly necessary in the ordinary course of business and on the basis that, with effect from the Prohibition Date, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.
3. Without prejudice to the generality of paragraph 2(g) above, [REDACTED] may be provided by Eurotunnel with Confidential Information relating to Eurotunnel provided that at all times such Confidential Information is limited to information strictly necessary for the sole purpose of the performance of his functions as [REDACTED] of GET and shall not at any time include any of the following information:
- (a) information relating to Eurotunnel's pricing strategy including current or future freight customer prices or current or future passenger prices (including details of any discounts or rebates) of Eurotunnel;
 - (b) the identity of customers of Eurotunnel;
 - (c) the value or volume of future customer bookings of Eurotunnel, except that he may receive details of gross traffic volume forecasts of shuttles and trains using the tunnel, but only to the minimum extent and where strictly necessary for him to discharge his obligations of purchasing electricity for use by GET;
 - (d) Eurotunnel sales data;
 - (e) information relating to Eurotunnel's commercial strategy; and
 - (f) current capacity utilization or future capacity of Eurotunnel.

In the event that GET discontinues the MyFerryLink business in full, GET must notify the CMA within five working days of the cessation of the MyFerryLink business.

SCHEDULE 3

Directions to extend the term of appointment of the Monitoring Trustee and to vary the mandate of the Monitoring Trustee

1. On 20 December 2012, the CC issued directions pursuant to paragraph 8 of the Interim Undertakings given by GET to the CC on 29 November 2012. Those directions required GET to appoint a monitoring trustee (Monitoring Trustee) in accordance with the terms provided for in the annex to those directions and to comply with the obligations set out in that annex.
2. Pursuant to Article 8 of this Order, the CMA now issues written Directions that for the purposes of securing compliance with the Interim Measures set out in Schedule 2, GET must within two working days of the Effective Commencement Date, extend the appointment of the Monitoring Trustee such that the Monitoring Trustee shall continue to act during the Specified Period, subject to the terms set out in this Schedule 3.
3. GET must provide the CMA with a copy of the extended terms and conditions of appointment.

Functions

4. The functions of the Monitoring Trustee during the Specified Period will be to:
 - (a) ascertain the current level of compliance by GET with the Interim Measures;
 - (b) assess the arrangements made by GET for compliance with the Interim Measures and what changes to those arrangements, if any, are necessary to avoid prejudicing the effectiveness of the remedies set out in the Order;
 - (c) identify and supervise, if necessary, the arrangements made by GET for ensuring compliance with the Interim Measures;
 - (d) monitor compliance by GET with the Interim Measures;
 - (e) without prejudice to the right of GET to contact the CMA, respond to any questions which GET may have in relation to compliance with the Interim Measures, in consultation with the CMA.
5. The Monitoring Trustee must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including the monitoring of communications within and between GET and the

MyFerryLink business, such as written and electronic communications, telephone conversations and meetings.

6. The Monitoring Trustee must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by GET with the Interim Measures.

Obligations of GET

7. GET, its employees, officers, directors, advisers and consultants must cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance, and information as the Monitoring Trustee may reasonably require in order to discharge his or her functions, including but not limited to:
 - (a) the provisions of full and complete access to all personnel, books, records, documents, facilities and information of GET and the MyFerryLink business as the Monitoring Trustee may reasonably require; and
 - (b) the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.
8. If GET is in any doubt as to whether any action or communication would infringe the Interim Measures, it is required to contact the Monitoring Trustee for clarification.
9. If GET has any reason to suspect that the Interim Measures may have been breached, it must notify the Monitoring Trustee and the CMA immediately.

Reporting functions

10. The Monitoring Trustee is required to provide, by no later than one month starting on the Effective Commencement Date and monthly thereafter, a statement to the CMA stating whether or not in his or her view, GET has complied with the Interim Measures. At the same time, the Monitoring Trustee must provide the CMA with a report setting out the following:
 - (a) The basis for the Monitoring Trustee's view that the Interim Measures have or have not, as the case may be, been complied with and in particular whether:
 - (i) anything has caused him or her to be concerned as to whether GET has complied with the Interim Measures, and if it has, whether those concerns have been resolved and why;

- (ii) he or she has any remaining doubts or uncertainties as to whether GET has complied with the Interim Measures; and
 - (iii) anything that causes him or her to be concerned about a possible future breach of the Interim Measures (whether deliberate or inadvertent);
 - (b) the extent to which GET has cooperated with the Monitoring Trustee in his or her task of monitoring its compliance with the Interim Measures and details of any aspects of the cooperation of GET that he or she considers could be improved;
 - (c) the extent to which the Monitoring Trustee considers that he or she is in an appropriate position to monitor the compliance of GET with the Interim Measures and if there is anything that the Monitoring Trustee considers would assist him or her in monitoring compliance;
 - (d) any current or anticipated requests for consent of the CMA to take action that would otherwise be prohibited by the Interim Measures; and
 - (e) the information he or she used to compile the report.
11. When providing reports to the CMA the Monitoring Trustee must ensure that he or she does not disclose any information or documents to the CMA which GET would be entitled to withhold from the CMA on the grounds of legal privilege.
12. The Monitoring Trustee must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Interim Measures have been breached, or if he or she considers that he or she is no longer in a position to carry out his or her functions effectively. In that situation the Monitoring Trustee must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligation referred to in paragraph 11 above).
13. All communications between the Monitoring Trustee and the CMA (including the statements and reports referred to in paragraph 10 above) are confidential and should not be disclosed to GET, save with the prior written consent of the CMA. The Monitoring Trustee must not disclose such communications to third parties.

SCHEDULE 4

Interim Compliance Report for Groupe Eurotunnel S.A. (GET)

I [] confirm on behalf of GET that, subject to any matters reported under headings (m) and (n) below:

- (a) GET has complied with the requirements of Schedule 2 of the Order made by the CMA on 18 September 2014 ('the Order') in the period from [] to [].
- (b) GET's subsidiaries have also complied with the requirements of Schedule 2 of the Order in the period from [] to [].
- (c) No action has been taken by GET or its subsidiaries in the period from [] to [] that might prejudice the measures set out in the Order.
- (d) GET and its subsidiaries remain in full compliance with the requirements of Schedule 2 of the Order.
- (e) To the extent to which the MyFerryLink business is continued, the MyFerryLink business's customer and supplier lists have been operated and updated purely for the purposes of the MyFerryLink business without any involvement of GET or its subsidiaries.
- (f) To the extent to which the MyFerryLink business is continued, all customer and supplier negotiations for the MyFerryLink business have been carried out independently of Eurotunnel.
- (g) In circumstances where the MyFerryLink business has been discontinued in full, this remains the case.

Assets

- (h) Except in order to give effect to an Effective Disposal or Effective Lease, the Vessels have not been disposed of or leased.
- (i) Except in order to give effect to an Effective Disposal or Effective Lease, no proprietary interest in the Vessels has been created or disposed of.

Contracts

- (j) Until such time as GET ceases provision, directly or indirectly, of passenger ferry services or freight ferry services at the Port of Dover in accordance with the requirements of Article 2, all existing contracts awarded to the MyFerryLink business continue to be serviced by MyFerryLink.

Confidential information

- (k) Subject to paragraph 3 of Schedule 2 to the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the MyFerryLink business, has passed, directly or indirectly, from MyFerryLink (or any of its employees, directors, agents or Affiliates) to Eurotunnel (or any of its employees, directors, agents or affiliates with the exception of [X] and [X]), or *vice versa*.
- (l) The first compliance report to include confirmation that, in accordance with paragraph 2(k) of the Interim Undertakings, any Confidential Information relating to the MyFerryLink business that has been passed to Eurotunnel (or any employees, directors, agents or affiliates associated with that business with the exception of [X] and [X]) or *vice versa* has been returned to the relevant business and any copies destroyed.

Non-compliance

- (m) Details of any incidences of non-compliance and the particular Articles of the Order which were breached.
- (n) Steps taken to deal with the incidences described in (m) above.

FOR AND ON BEHALF OF GROUPE EUROTUNNEL S.A.

Signature

Name

Title

Date

SCHEDULE 5

Supply of information to the CMA

1. Any person to whom this Order applies is required to provide to the CMA any information and documents required for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
2. Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.
3. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
4. Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.