COMPETITION COMMISSION

Stena AB and DFDS A/S merger inquiry

A report on the completed acquisition by Stena AB from DFDS A/S of certain vessels and assets operated on the Irish Sea

29 June 2011

Website: www.competition-commission.org.uk

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The Competition Commission has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

Page

Summary

1. On 8 February 2011, the Office of Fair Trading (OFT) referred the completed acquisition by Stena AB (Stena) of DFDS Seaways Irish Sea Ferries Limited and related assets from DFDS A/S (DFDS) to the Competition Commission (CC) for investigation and report by 25 July 2011. Our terms of reference required us to decide whether a relevant merger situation had been created and, if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods and services.

2. Stena AB (publ) is a private company registered in Sweden. Stena's Irish Sea operations include ownership of two ports in the UK (Holyhead and Stranraer). Before the acquisition its routes on the Irish Sea were Stranraer–Belfast, Holyhead–Dublin, Holyhead–Dun Laoghaire and Fishguard–Rosslare. Until 24 December 2010, Stena also operated a Fleetwood–Larne route, which was acquired from The Peninsular and Oriental Steam Navigation Company (P&O) in 2004.

3. DFDS operates a sea-based freight and passenger transport network in Northern Europe. Until 2011, it ran four routes on the Irish Sea: from Heysham to Belfast or Dublin, and from Liverpool to Belfast or Dublin.

4. Accordingly, before the acquisition, both Stena and DFDS ran freight and passenger ferry services in the Irish Sea. Freight services may cater for either accompanied freight (where the freight is accompanied by a dedicated driver) or unaccompanied freight (where the haulier leaves the trailer at a dock depot, the ferry operator loads, transports and unloads it, and the haulier arranges collection from the destination port). For ferry operators to offer passenger and accompanied freight services, they must operate 'ropax' ships that can accommodate passengers. To offer unaccompanied freight services, they can operate 'roro' ships that may carry only up to 12 passengers.

5. As a result of the acquisition, Stena took over two of the routes that DFDS had been operating: Liverpool–Belfast, and Heysham–Belfast. Following the acquisition, DFDS closed the two other routes that it had been operating (Liverpool–Dublin and Heysham–Dublin). Based on data supplied by Stena, we found that the acquisition satisfied the share of supply test set by the Act, and so it had created a relevant merger situation giving us jurisdiction.

6. Other ferry operators active on the Irish Sea include: Seatruck, which focuses on unaccompanied freight services, operating routes from Heysham to Warrenpoint, Larne and Dublin, and from Liverpool to Dublin; P&O, which operates routes from Cairnryan and Troon to Larne, and Liverpool–Dublin; Irish Ferries, which operates Holyhead–Dublin and Rosslare–Pembroke; and Fastnet, which operates a route between Swansea and Cork.

7. Ferry operators on the Irish Sea have experienced tough economic conditions over recent years. Following a period of rapid economic expansion, the UK and Irish economies have contracted. Simultaneously, ferry capacity has expanded, and continues to expand as ships ordered (particularly by Seatruck) during the boom are delivered during the aftermath of the recession.

8. A key initial question was our view of what would have happened absent the acquisition, ie the counterfactual. Stena's closure of Fleetwood–Larne happened at almost the same time as the acquisition. We found that the two events were linked as Stena's decisions about the acquisition and the closure were taken by the same

people at the same times, and it was part of Stena's strategy to transfer its business from Fleetwood to Liverpool.

9. However, we examined closely whether Stena would have shut Fleetwood–Larne in any event, and decided that it would. In particular, we found that the three ships running the route were old and near the end of their commercial lives. Fleetwood port had specific operational requirements in terms of draught and turning circle. This meant that new purpose-built ships would have been needed to operate from Fleetwood, and given current economic circumstances, competition and likely future demand we accepted Stena's submissions that this would not have been profitable. We also considered whether Stena would have maintained the route until it found another opportunity to migrate its business to Liverpool. This also did not appear profitable and entailed significant financial risk. Accordingly, we found that Stena would have shut Fleetwood–Larne in any event and would not have opened an alternative route within the diagonal corridor (ie routes from north-west England to Northern Ireland) in the foreseeable future. We found that DFDS would have continued to operate the Liverpool and Heysham to Belfast routes, and would have closed its Dublin routes absent the acquisition.

10. We investigated the ways in which the acquisition might have led to a substantial lessening of competition. Our principal concern related to loss of competition between routes that would have been controlled by different companies had the acquisition not proceeded. Compared with our counterfactual, under which Stena would have exited the diagonal corridor leaving two competitors DFDS and Seatruck, we found that the acquisition had not led to a substantial lessening of competition within the diagonal corridor.

11. We were also concerned that the acquisition may have reduced competition between routes previously operated by DFDS and Stena within a broader geographic area, since in the counterfactual DFDS would have operated diagonal routes while Stena operated on the northern and central corridors. The acquisition brings these routes under the control of a single company, Stena. To assess this, we considered first, the degree of competition between the relevant routes in different corridors, and second, the degree of competition Stena will face in each corridor following the acquisition.

12. To assess competition between the routes in different corridors, we gathered the views of other ferry and port operators. Broadly, they considered that routes within narrow corridors exerted the strongest competitive constraints on each other: the more distant the route, the weaker the competitive constraint.

13. We also analysed data provided by the ferry operators. While we found that proximate routes (with close ports of origin and destination) did respond to respective changes in capacity, we could not identify such responses between the former DFDS diagonal routes and Stena routes outside the diagonal corridor. We found that the routes drew customers from catchment areas that overlapped to some extent, but since consumers from similar origins or destinations may have particular reasons to choose a given route we came to the view that this evidence did not clearly indicate close competition between routes in different corridors.

14. We commissioned a survey of DFDS and Stena customers regarding which routes they saw as substitutes, and how they would respond to hypothetical route closures and price increases. The survey suggested more significant switching between diagonal routes and Stena's Stranraer and Holyhead routes. This evidence contrasted with the preponderance of non-survey evidence which suggested that the degree of competition between corridors was limited.

15. With regard to the degree of competition Stena faces in each corridor following the acquisition, in the northern corridor, we noted that P&O's services from Cairnryan to Larne compete directly against Stena's services in both the factual and counter-factual. In the central corridor, Stena's services face direct competition from Irish Ferries. In each case, there was no loss of direct competition within corridor resulting from the acquisition and the services provided by the direct competitor include both accompanied and unaccompanied freight. Each service currently has significant spare capacity.

16. In the diagonal corridor, the former DFDS services compete with Seatruck. In contrast to the southern and northern corridors, we noted that Seatruck's services are primarily for unaccompanied freight (although they can carry up 12 drivers accompanying cargo per sailing). We considered the extent to which accompanied and unaccompanied freight services were substitutes.

17. For ferry operators, there was a significant difference that involved choosing to operate ropax rather than roro vessels. For customers, we found that the key issue was having or establishing the infrastructure necessary to allow collection of freight from the destination port and its delivery to the customer. For larger hauliers, we found that this was not a significant obstacle. For smaller hauliers (of which there were significant numbers on the Liverpool–Belfast route), this might prove more difficult. Given this distinction, we examined Seatruck's capacity more closely, and found that it had sufficient spare capacity to accommodate smaller hauliers of accompanied freight that might wish to switch from (now) Stena's Liverpool–Belfast route. Accordingly, we found that in each corridor, Stena would continue to face substantial competition following the acquisition.

18. We considered whether entry would be likely to prevent any SLC that might otherwise arise. We examined possible barriers to entry to ferry operators considering establishing new routes. We focused on availability of ships and port berths. New ships are expensive and have long economic lives, while operating in markets that fluctuate with the economic cycle. Accordingly, operators need to be able to take a long view when ordering new ships. There are cheaper entry routes, by acquiring older ships or chartering. Both are subject to availability. We saw some evidence suggesting that ropax vessels were more bespoke, expensive, and expensive to run, and that availability was more limited.

19. With regard to berths, we found that there was availability on both sides of the Irish Sea, although availability of berths at peak slots (allowing late loading and early arrival) was more limited. Several ports could expand given appropriate investment.

20. There was clear evidence of past and likely future expansion by existing operators, and that they could respond rapidly to take advantage of profitable opportunities. However, in order to assess whether entry was likely, we also considered the incentives to enter. We found that, in current economic conditions, entry was unlikely, since the overriding consideration at present was reduced haulage arising from the weak state of the UK and Irish economies. Accordingly, we did not find significant competitive entry likely at least in the short term. However, since entry barriers did not appear overwhelming, there might be entry in the future if conditions changed to an extent that entry would be profitable.

21. Overall we found that *(a)* there was a limited degree of cross-corridor competition, *(b)* on each route the merged entity faced a direct competitor with significant spare capacity and *(c)* entry was unlikely given prevailing conditions, but entry barriers were not overwhelming so there might be entry in the future.

22. Therefore, taking the evidence as a whole, we did not find that the acquisition had led, or was likely to lead, to a substantial lessening of competition by reduction in competition across a broader geographic area in the provision of freight services.

23. While our inquiry focused on freight, we also considered the effect the acquisition might have on passenger traffic. We found the Liverpool–Belfast route to be a highly differentiated service: an 8-hour crossing of the Irish Sea meets a very specific demand. The views of ferry operators and the data we analysed indicated that the constraints offered by routes in other corridors to passenger services between Liverpool and Belfast were not substantial. Given our counterfactual finding, we did not find that the acquisition had led, or was likely to lead, to a substantial lessening of competition in the provision of services for these customers.

Findings

1. The reference

1.1 On 8 February 2011, the OFT referred the completed acquisition by Stena of DFDS Seaways Irish Sea Ferries Limited[1] and related assets to the CC for investigation and report. Our terms of reference are in Appendix A. They required us to decide whether a relevant merger situation had been created and, if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods and services. We were required to publish our final report by 25 July 2011.

1.2 Further information relevant to this inquiry, including versions of main-party and third-party submissions, and summaries of evidence, can be found on our website. We cross-refer to that further information where necessary.

2. The parties

Stena

2.1 Stena AB (publ) is a private company registered in Sweden. Stena AB, together with Stena Metall AB and Stena Sessan AB, are three parent companies collectively known as the Stena Sphere. The Stena Sphere group of companies is wholly owned by the Sten A Olsson family. In 2009, Stena Sphere reported a worldwide turnover of around £3.9 billion (SEK 47 billion), of which approximately £[✂] million (SEK [✂] billion) was achieved in the UK.

2.2 Stena AB (Stena) is the ultimate parent company of Stena Line, Stena Bulk, Stena RoRo, Stena RoPax, Stena Drilling, Stena Teknik, Northern Marine Management, Stena Property and Stena Adactum.

2.3 The two businesses involved in the merger transaction are Stena Line and Stena RoPax Limited. Stena Line is Stena's ferry-operating business and provides ferry services for freight and passengers in Scandinavia, the UK, the Republic of Ireland, the Netherlands, Germany, Denmark and Poland. Stena RoPax is a vessel owning entity within the wider Stena AB group.

2.4 Stena's Irish Sea operations include ownership of two ports in the UK (Holyhead and Stranraer). Stena holds an indirect 50 per cent share (via its subsidiary Stena Line Ports Limited) in the Fishguard and Rosslare Railways and Harbours Company, which owns the ports of Fishguard and Rosslare. In relation to ferry services from Great Britain, it operates passenger and freight services to the island of Ireland, Denmark and Holland.[2] On the Irish Sea, Stena's routes before the acquisition were Stranraer–Belfast, Holyhead–Dublin, Holyhead–Dun Laoghaire and Fishguard–Rosslare. Until 24 December 2010, Stena also operated a Fleetwood–Larne route, which it acquired from P&O in 2004.

2.5 Stena reported turnover from its ferries businesses on the Irish Sea of £[✂] million in the year ended 31 December 2010 (2009: £[✂] million), of which around £[✂] million related to freight.[3] Total earnings before interest, taxation, depreciation, amortization

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[1] Renamed post-acquisition to Stena Line (Irish Sea Ferries) Limited.
[2] Stena services between Denmark (Esbjerg) and Great Britain (Immingham and Harwich) are provided through a slot charter arrangement with DFDS.
[3] Other revenue categories are onboard and travel.

and charter costs (EBITDAc) were £[✂] million (2009: £[✂] million), a margin of [✂] per cent on turnover.

DFDS

2.6 DFDS is quoted on the NASDAQ OMX—The Nordic Exchange, Copenhagen. The leading shareholders in DFDS following the acquisition of Norfolkline are Lauritzen Fonden (36 per cent) and A P Møller Mærsk A/S (APMM) (31 per cent). The Clipper Group has a 9 per cent holding.[4] In 2009, DFDS reported a turnover of around £784 million (DKK 6,555 million).

2.7 DFDS operates a sea-based freight and passenger transport network in Northern Europe. DFDS's activities are organized in two core business areas, DFDS Logistics (land-based logistics) and DFDS Seaways (sea-based transportation and terminals). DFDS Logistics covers international road/rail transportation, logistics and container shipping, while DFDS Seaways covers roro, ropax and passenger shipping.

2.8 DFDS acquired four Irish Sea routes[5] as part of its acquisition of Norfolkline from APMM. This transaction was announced in December 2009 and received clearance from the European Commission on 17 June 2010.[6] The Norfolkline business comprised passenger and freight operations in the English Channel, the North Sea and the Irish Sea; as well as ownership of a port in Rotterdam, operation of another four port terminals and logistics activities in the UK, the Republic of Ireland, the Nordic region and the Continent.[7]

2.9 The roro and ropax business includes the Norfolkline operations (see paragraph 2.8) and offers freight and passenger routes in the North Sea/Scandinavia, the Continent, the Irish Sea and the Baltic Sea. Until January 2011, DFDS operated on the Irish Sea running the routes Liverpool–Dublin and Heysham–Dublin. DFDS also operated the two routes (Liverpool–Belfast and Heysham–Belfast) until December 2010 which are the subject of this inquiry.[8]

3. The transaction

3.1 The acquisition that is the subject of the reference to us was completed on 1 December 2010 and comprised Stena's acquisition of the entire issued share capital of DFDS Seaways Irish Sea Ferries Ltd and two vessel sale agreements for the vessels known as *Scotia Seaways* and *Hibernia Seaways*.[9] The acquisition of the share capital of DFDS Seaways Irish Sea Ferries Ltd included:

(a) the charter rights of the vessels known as *Lagan Seaways* and *Mersey Seaways*; and

(b) all relevant port contracts at Liverpool (Birkenhead), Heysham and Belfast, as well as all land-based assets, employees and crew employed on the relevant vessels, as required for the ongoing operation of the Liverpool–Belfast and Heysham–Belfast routes.

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[4] DFDS website, 8 March 2011.
[5] Belfast–Liverpool, Belfast–Heysham, Dublin–Liverpool and Dublin–Heysham.
[6] http://ec.europa.eu/competition/mergers/cases/decisions/M5756_20100617_20212_802533_EN.pdf.
[7] APMM press release, 17 December 2009.
[8] The route runs from the port at Birkenhead. Stena uses the terms Liverpool and Birkenhead interchangeably.
[9] These vessels are acquired through Memoranda of Agreements (MoA), which are in addition to the Sale and Purchase Agreement (SPA).

3.2 In essence, Stena's acquisition of DFDS Seaways Irish Sea Ferries Limited and related assets amounted to the acquisition of two routes, Heysham–Belfast and Liverpool–Belfast (together 'the Belfast routes'). The purchase price for the transaction was [✂][10] (approximately £40 million).[11] [✂].

3.3 Three relevant services may be affected by the acquisition.

(a) *Accompanied freight.* This is freight transported by an autonomous vehicle, ie a vehicle with its own traction. Typical examples comprise an articulated lorry (ie a tractor and trailer unit) or a rigid lorry. The driver accompanies the freight on the ferry crossing. Ships carrying more than 12 vehicles transporting accompanied freight therefore need to cater for the drivers as passengers and are known as ropax vessels.

(b) *Unaccompanied freight.* This is freight which lacks its own traction unit (and therefore mobile autonomy). Typically this consists of a lorry trailer which is decoupled from the tractor unit at the port of embarkation and stowed on the ferry vehicle decks. The driver bringing the trailer to the port of embarkation does not accompany the freight on the ferry crossing and in most cases, instead, collects an incoming trailer for onward delivery or return to its home base. This means that a driver may be able to achieve multiple drops and collections in a shift (subject to how far the driver must travel). Ships designed for unaccompanied freight (ie roro vessels) do not need to cater for drivers. Typically they can accommodate up to 12 passengers or drivers (should this number be exceeded, a different regulatory regime applies).

(c) *Passenger traffic.* This comprises foot passengers, private vehicles with driver and passengers and coach passengers. As for accompanied freight, ropax vessels are used for passenger traffic routes.

3.4 We develop and consider the differences between these three services when we assess the competitive constraints on each (see Sections 10 and 12).

4. Jurisdiction

4.1 Under section 35 of the Act, and our terms of reference (see Appendix A), we are required to decide whether a relevant merger situation has been created by the acquisition.

4.2 Under section 23 of the Act, a relevant merger situation is created if two or more enterprises have ceased to be distinct within the statutory period for reference and either the share of supply test or the turnover test specified in the Act is satisfied.

4.3 An 'enterprise' is defined by section 129(1) of the Act for these purposes as meaning the activities, or part of the activities, of a business, and the definition of 'business' includes any 'undertaking in the course of which goods or services are supplied otherwise than free of charge'. We concluded that the effect of the acquisition has been to transfer to Stena part of the activities of the business controlled by DFDS and that two or more enterprises have ceased to be distinct. The parties agreed with this view.

[10] To be adjusted for cash, third party indebtedness and working capital.
[11] Stena Line press release 6/12/2010.

4.4 Under section 23 of the Act, the share of supply test is met if, as a result of the acquisition, the merged enterprises will collectively supply or acquire 25 per cent or more of goods or services of a particular description in the UK or in a substantial part of it. Our guidance states that the share of supply test is different from a market share and goods or services to which the share of supply test is applied need not amount to the market defined for the economic analysis,[12] and for the purpose of deciding whether the share of supply test is met, we can apply such criteria as we consider appropriate.[13]

4.5 Stena told us that, based on 2009 data, its share of supply of Great Britain/island of Ireland freight ferry services on the Irish Sea would increase from approximately 27 per cent to 41 per cent as a result of the acquisition, and that its share of supply of Great Britain/island of Ireland tourist passenger ferry services would increase from 54 to 58 per cent as a consequence of the acquisition. Excluding Fleetwood–Larne volumes (see Section 7), Stena's shares would be 19 and 33 per cent respectively for freight ferry services and 54 and 57 per cent for passenger services. Accordingly, we decided that the share of supply test was met and that, under our terms of reference, we were not required to consider also whether the turnover test was met.

4.6 For these reasons, we decided that a relevant merger situation under section 23(1) of the Act had been created by the acquisition.

5. The ferry operators, their Irish Sea services, and relevant markets

Operators

5.1 Stena and DFDS are described in paragraphs 2.1 to 2.8. The other ferry operators active on the Irish Sea relevant to our analysis are Seatruck, Irish Ferries and P&O.[14]

Seatruck

5.2 Seatruck is owned by Clipper Group, a privately-owned business that operates in the following sectors: bulk, tankers, project cargo, domestic ferries and cruise. Clipper Group also has a 31 per cent investment in Nordic Tankers, a company that controls 70 chemical and product tankers and a 9 per cent stake in DFDS.

5.3 Clipper Group is a private company registered in the Bahamas. It does not publish public accounts. It has investments in the publicly listed Nordic Tankers, which has market capitalization of Danish krone 274.6 million (£32.5 million), and in DFDS A/S with market capitalization of Danish krone 6,388 million (£756 million).[15] Its share in these businesses therefore totals around £80 million.

5.4 Seatruck is the only Clipper Group business that operates international ferry services, and it is only active on the Irish Sea. Clipper Group is involved in Danish domestic ferry services. Seatruck solely operates roro vessels that can carry up to 12 passengers or drivers. Accordingly, its business model focuses on moving unaccompanied freight on the long sea routes. Seatruck believed that unaccompanied freight help it to keep costs down, and to offer the best possible year-round service to freight customers avoiding conflicts that arose for combined services at peak holiday

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[12] *Merger assessment guidelines*, CC2 (revised), September 2010, ('the Guidelines'), section 3.3.5.
[13] Section 23(5) Enterprise Act 2002.
[14] Fastnet also operates a ferry service between Swansea and Cork; this route is in the southern corridor. We do not consider the southern corridor relevant to our analysis and therefore we do not consider Fastnet further.
[15] Market cap as per Bloomberg.com 12 May 2011.

times (when passenger demand peaked). Seatruck said that its long sea routes were out of ports that were close to the origin and destination of its customers, enabling hauliers to minimize road mileages and fuel costs.

5.5 Seatruck has considerably expanded its services in recent years. It has taken delivery of four new roro vessels, built in Spain, over the past two and a half years and has four more roro vessels under construction in Flensburg, Germany, which it expects to be delivered in 2011 and 2012. Seatruck told us that it was considering its options for these vessels. It said that it was unlikely to operate all its existing vessels and the new vessels on the Irish Sea. Table 1 gives details of Seatruck's current fleet and services.

TABLE 1 **Seatruck's fleet**

Route	*Route entry date*	*Vessel*	*Capacity Lane metres*	*Comment*
Heysham–Warrenpoint	Apr 1996	Clipper Point Clipper Panorama	1,800 1,800	These two new vessels commenced in 2008
Liverpool–Dublin	Sep 2007 (purchased from Celtic Link Ferries)	Clipper Pace Clipper Pennant	1,800 1,800	These two new vessels commenced between 2008 and 2009
Heysham–Larne	May 2010	Clipper Ranger Arrow	1,000 1,000	One vessel introduced in May 2010, the other from October 2010
Heysham–Dublin	Feb 2011	Anglia Seaways	1,700	

Source: Seatruck.

Note: All vessels are roro.

Irish Ferries

5.6 Irish Ferries is part of the Irish Continental Group Plc, a shipping, transport and leisure group listed on the Irish Stock Exchange. Irish Continental Group Plc had a turnover of €262.2 million in 2009. The Ferries division (including services to France) had a turnover of €153.7 million.[16]

5.7 Irish Ferries is a multi-purpose ferry operator, carrying passengers and freight on routes from the Republic of Ireland to Great Britain (and Northern France). It operates two routes on the Irish Sea, using three vessels:[17] Holyhead–Dublin and Pembroke–Rosslare. Irish Ferries carries around 1.5 million passengers each year across all routes. Historically its revenue was split fairly evenly between passengers and freight, but currently earns more from passengers.

5.8 Irish Ferries told us that since the 1990s operators had been seeking economies of scale through the introduction of larger vessels. Irish Ferries operates the *Ulysses*, the largest car ferry on the Irish Sea, between Holyhead and Dublin. Its other two vessels on the Republic of Ireland–Great Britain routes are the *Jonathan Swift*, a fast ferry operating between Holyhead and Dublin, and the *Isle of Inishmore*, operating between Pembroke and Rosslare.

[16] ICG Plc Statement of results for 2010 dated 14 March 2011.
[17] It also operates the Rosslare–France route using one vessel, the *Oscar Wilde*, between the ports of Roscoff and Cherbourg.

P&O

5.9 P&O is owned by Dubai World, a worldwide ferries, ports and logistics business. In the UK, P&O operates routes on the Irish Sea, between Dover and Calais and between north-east England and Belgium/Netherlands.

5.10 Its Irish Sea routes are Liverpool–Dublin, Cairnryan–Larne and Troon–Larne. These services use eight vessels and carry freight and passengers (except for Troon–Larne in the winter months which is a freight-only service). P&O also owns the port of Larne and the port of Cairnryan.

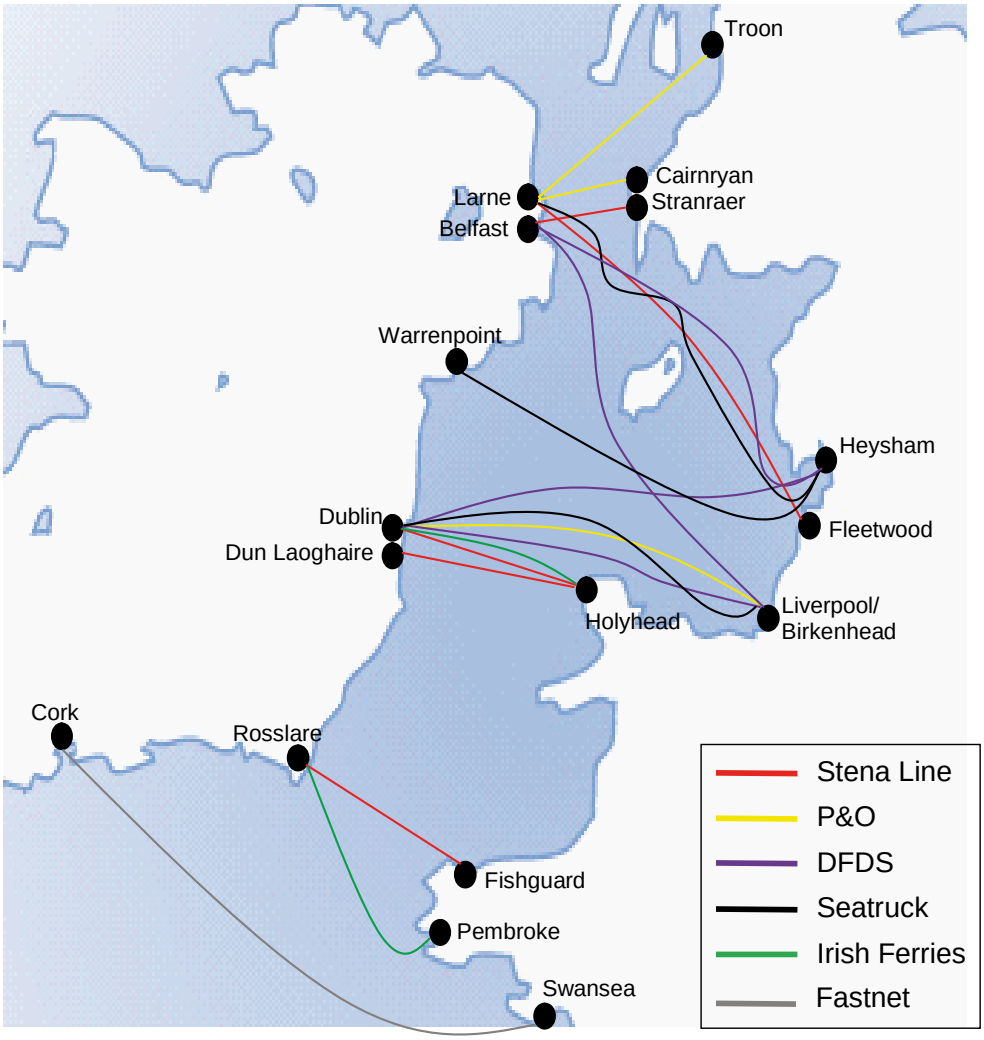
5.11 On its Cairnryan–Larne service P&O operates a fast craft, the *Superstar P&O Express,* during the summer months, and two superferries, the *European Causeway* and *European Highlander*. Two ferries operate on the Troon–Larne service: the *European Mariner* (freight only), and a fast craft during the summer months, the *P&O Express*. The Liverpool–Dublin route uses three ferries: the *Norbay* and *Norbank* which are ropax vessels (but take only a limited number of passengers) and, until February 2011, the *Norcape* which is a roro vessel. From February 2011, the Norcape vessel was replaced by the 'superferry' *European Endeavour*—a ropax vessel capable of taking a greater number of passengers similar to the *European Highlander* and *European Causeway* vessels operated on the northern corridor.

Services

5.12 Figure 1 shows the routes each operator ran on the Irish Sea before the acquisition.

FIGURE 1

Irish Sea operators and routes, December 2010



Source: Stena.
Note: No Ireland–Continent routes included.

5.13 Stena said that although terminology varied, the Irish Sea was essentially viewed by the industry as comprising the following five segments:

(a) crossings between Scotland (Loch Ryan and Troon) and Northern Ireland (the 'northern corridor');

(b) 'diagonal' crossings between northern England and Northern Ireland (the diagonal routes);

(c) the long-sea crossings between northern England and the area around Dublin (the 'long-sea central corridor');

(d) the short-sea crossings between Wales (Holyhead) and the area around Dublin (Dublin Bay) (the 'short-sea central corridor'); and

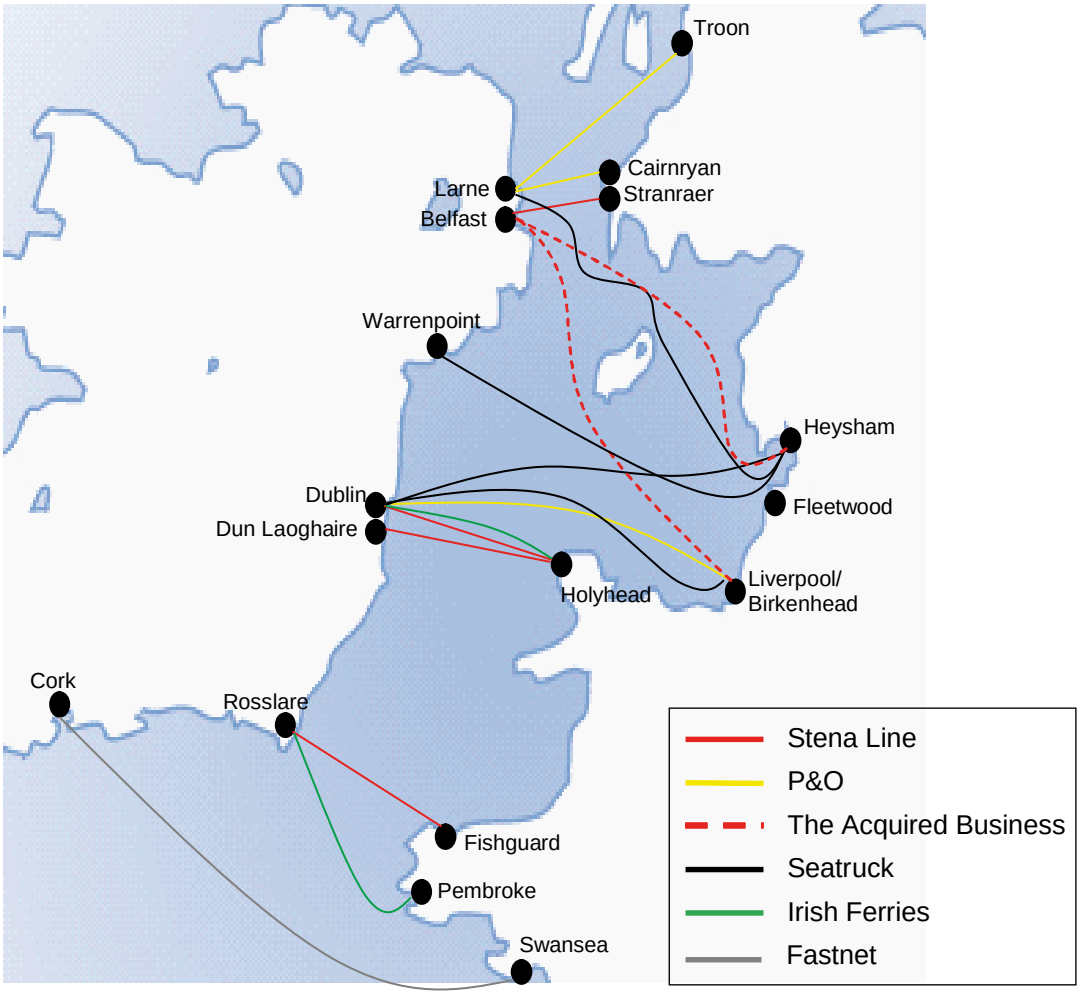
(e) crossings between Wales and southern Republic of Ireland (the 'southern corridor').

5.14 We have adopted this terminology throughout this report unless the context indicates otherwise.

5.15 Figure 2 shows the operators and their routes as of May 2011.

FIGURE 2

Irish Sea operators and routes, May 2011



Source: CC.
Note: No Ireland–Continent routes included.

5.16 In terms of services, Stena (including the Acquired Business) operates ropax vessels on its Holyhead–Dublin, Holyhead–Dun Laoghaire, Liverpool–Belfast, Fishguard–Rosslare and Stranraer–Belfast routes (so offering accompanied and unaccompanied freight services and passenger services on those routes). It operates roro vessels on its Heysham–Belfast route (offering principally unaccompanied freight services).

5.17 P&O and Irish Ferries operate ropax vessels and so offer accompanied, unaccompanied and passenger services.

5.18 Seatruck operates only roro vessels and so principally offers unaccompanied freight services (although it can accommodate up to 12 drivers accompanying freight per sailing).

Relevant markets

5.19 We aimed to identify relevant markets in order to provide us with a framework to analyse the competitive effects of the acquisition.[18] The relevant market is the market within which a merger may give rise to an SLC. It contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are immediate determinants for the effects of the merger. Relevant markets will contain, as a minimum, the substitute services of the merging firms.

5.20 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of the acquisition in any mechanistic way. In assessing whether the acquisition may give rise to an SLC, we took into account segmentation within the relevant market, and other ways in which some constraints are more important than others.

5.21 In this case, Stena said that the relevant freight product market included both accompanied and unaccompanied freight, as has been confirmed by previous competition authority decisions. Stena also said that geographic markets were corridor specific, with the diagonal corridor being the relevant market for both passenger and freight traffic, with the closest constraint outside this market being the long-sea routes to Dublin from Liverpool and Heysham which had more similar characteristics, geography and cost profiles than the short-sea routes from Scotland or Holyhead. Stena also commented that airlines were a significant constraint on passenger ferry services.

5.22 In identifying the relevant markets, we considered that services across the Irish Sea were likely to be differentiated, so that routes that operated within the same corridor were likely to be closer substitutes than those in different corridors (other things being equal), and services for the same type of freight (accompanied versus unaccompanied) were likely to be closer substitutes than services for different types. We considered that this differentiation should be properly assessed within a single relevant market for the provision of ferry services for freight across the Irish Sea.

5.23 For passengers, our view was that the relevant market for passengers is the provision of ferry services across the Irish Sea (although we were aware of the potential constraint from low-cost air travel).

6. Prevailing economic conditions and capacity operated

6.1 Demand for both freight and passenger services is heavily influenced by the state of the economy, so all operators on the Irish Sea are subject to prevailing economic conditions. We set out in this section a description of the economic conditions at the time of our inquiry and how they have affected the ferry operators.

6.2 The UK and Irish economies entered into a period of recession in 2008 following a sustained period of economic growth (particularly in the Republic of Ireland).

6.3 Figure 3 plots movements in the Republic of Ireland GDP and construction index, and Northern Ireland gross value added (GVA). It shows that in recent years the economies both in the Republic of Ireland and in Northern Ireland contracted, the former much more so than the latter, and that the construction industry in Ireland suffered a severe reduction in output between 2006 and 2010.

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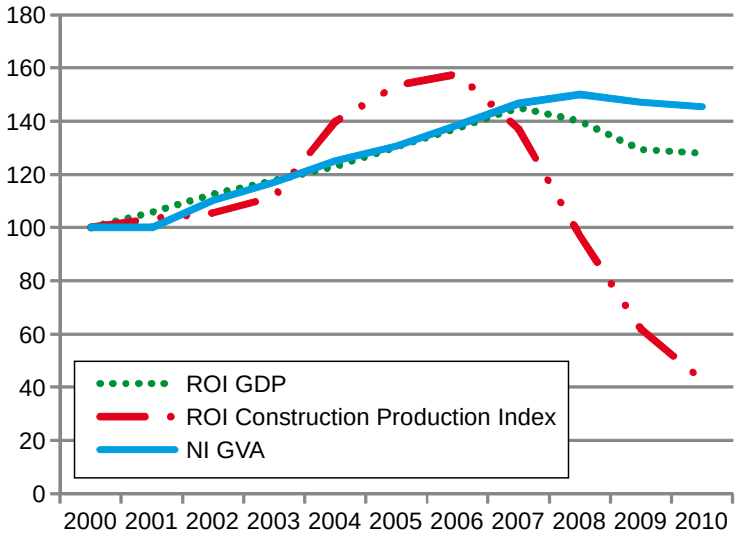
[18] In line with our *Merger Assessment Guidelines, CC2 (Revised),* paragraph 5.2.1.

FIGURE 3

Movements in Republic of Ireland GDP and construction index, and Northern Ireland GVA (2000 to 2010)



Source: CSO Ireland for Irish GDP and Irish Construction Production Index, and ONS for Northern Ireland GVA
Note: ROI = Republic of Ireland; NI = Northern Ireland; GVA = gross value added.

6.4 Table 2 shows vessel capacity, number of sailings and utilization in the Irish Sea between 2007 and 2010 (the longest data series we could obtain from the Irish Marine Development Office (IMDO)).[19]

6.5 Freight capacity increased during the economic boom and has continued to do so since capacity was added in 2007, 2009 and 2010. Such increased capacity has led to pressure on prices. Revenues have fallen in real terms in both 2009 and 2010 as a result of price pressure and falling volumes. The volume of freight on the Irish Sea fell 13.1 per cent (by volume) in the period 2007 to 2010—see Table 2.

TABLE 2 **Capacity metrics for the Irish Sea, 2007 to 2010**

Year	*Capacity utilization %*	*Ship capacity Lane metres '000*	*Sailings per year*	*Freight volumes Lane metres*
2007	52	48,489	30,680	1,749,984
2008	52	46,539	30,420	1,654,409
2009	45	49,653	30,576	1,486,293
2010	40	51,846	31,512	1,521,498
% change (07–10)	–22.5	6.9	2.7	–13.1

Source: IMDO.

Note: The IMDO calculated capacity by multiplying ship lane capacity by the number of sailings.

6.6 This shows that ship capacity in lane metres (as reported by the operators to the IMDO) increased from 48.5 million in 2007 to almost 52 million in 2010, an increase of 6.9 per cent. The number of sailings increased from about 30,700 in 2007 to 31,500 in 2010, an increase of 2.7 per cent. Over the same period, capacity utiliz-

[19] We had several data sources but decided to use this one as IMDO collects the data on a consistent basis directly from the operators.

ation fell from 52 per cent to about 40 per cent. The IMDO told us to treat the capacity utilization figures with caution. Indeed some other sources imply capacity utilization of about 50 per cent for 2010.[20]

6.7 Capacity increased on the diagonal routes in particular due to Seatruck's expansion. Seatruck ordered tonnage before the recession but it was delivered at a time when demand had fallen (2009 and 2010).[21] Further, Seatruck has ordered four more new vessels (intended for the Irish Sea), with first delivery due at the end November 2011.

6.8 Norfolkline also expanded capacity on the diagonal routes in 2009. On the Heysham –Belfast route it replaced the existing vessels with two larger and faster vessels (*Maersk Exporter* and *Maersk Importer*, both 1,680 lane metres). On its Heysham–Dublin route, it replaced one of the vessels with *Maersk Anglia* (1,680 lane metres).

6.9 Stena said that all operators and corridors on the Irish Sea have been affected by the downturn. It said that a combination of the downturn, leading to reduced demand and the increased capacity in the sector, has meant that there is significant overcapacity and the majority of routes are currently operating at a loss due to inefficient capacity utilization. P&O, Seatruck and Irish Ferries agreed that freight volumes had declined and that financial losses were being incurred in the sector.[22] No one that we spoke to thought that demand for ferry services would improve rapidly in the short term.

7. The counterfactual

7.1 We assessed the competitive effects of the acquisition relative to the degree of competition that would have prevailed had it not occurred (the 'counterfactual'). Our Merger Assessment Guidelines explain that we may examine several possible counterfactual scenarios and must select the most likely scenario absent the acquisition.[23] The guidelines note that 'the CC will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments'.[24] One situation where a counterfactual different from the prevailing conditions of competition may be used is the 'exiting firm' scenario, which we consider below (paragraphs 7.5 and 7.6). In considering an argument that a firm would have exited in any event, we are particularly interested in evidence that has not been prepared in contemplation of the acquisition.[25]

7.2 Stena's Fleetwood–Larne route closed at almost the same time as it completed the acquisition.[26] Whether it would have done so absent the acquisition is a key issue that led the OFT to refer the acquisition to us, and is something that we must decide as part of our assessment of the counterfactual.

7.3 We structured our counterfactual analysis as follows. First, we set out our approach to exploring the counterfactual in paragraphs 7.5 to 7.8. Second, we review the counterfactual in three sections, considering:

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[20] Report by Peter Baker Associates and IMDO.
[21] Seatruck introduced new vessels on: Dublin–Liverpool in 2009, Warrenpoint–Heysham in 2009, and Larne–Heysham in 2010 (two vessels).
[22] See P&O, Seatruck and Irish Ferries hearing summaries on the CC website.
[23] *CC and OFT Merger Assessment Guidelines, CC2 (Revised)* (*CC2*), paragraph 4.3.6.
[24] *CC2*, paragraph 4.3.6.
[25] *CC2*, paragraph 4.3.9.
[26] The acquisition was announced on 2 December 2010, the same day as the closure of Fleetwood–Larne was announced. The Fleetwood–Larne route was closed on 24 December 2010.

(a) what Stena would have done absent the acquisition, namely whether it would have closed its existing diagonal route (Fleetwood–Larne) in any event, and whether it would have started operating another diagonal route (paragraphs 7.9 to 7.53);

(b) the options available to DFDS for each route that it sold to Stena (paragraphs 7.54 to 7.59); and

(c) whether any other party would have bought the Belfast routes or started operating another diagonal route had Stena not acquired the Belfast routes (paragraphs 7.60 and 7.61).

7.4 Third, we set out our views on the counterfactual in paragraphs 7.62 and 7.63.

Our approach

7.5 In considering the counterfactual, we aimed to assess which operators would have operated which Irish Sea routes absent the acquisition. To do this, it was necessary to determine the factors that would lead an operator to maintain, expand, open or close a route. We spoke with Stena, DFDS, P&O, Irish Ferries and Seatruck. It is complicated for them to maximize profits since vessels can be costly and have lengthy economic lives (possibly exceeding 35 years), while demand and costs fluctuate over shorter economic cycles. We note that such vessels might be re-deployed to other routes, and both chartering in and out are options.[27] Further detail of the analysis operators typically undertake in deciding whether to open a route is contained in Appendix B, paragraphs 5 to 8.

7.6 With regard to route closure, in general, the CC is aware that parties to a merger may have strong incentives to claim that one of them would have exited the market in any event, as this can remove significant competition concerns. This is relevant given Stena's submissions (see paragraphs 7.11 to 7.15). Our guidelines[28] state that in forming a view on such an exiting firm scenario, we will consider:

(a) whether the firm would have exited (through failure or otherwise); and if so

(b) whether there would have been an alternative purchaser for the firm or its assets; and

(c) what would have happened to the sales of the firm in the event of its exit.

7.7 We consider that our guidelines are also applicable to a 'closing route' scenario. After considering the operators' views (see Appendix B, paragraphs 9 to 16), we found that in considering closure of a single route, operators consider factors such as:

(a) short-term profitability;

(b) sunk costs such as port charges, redundancy pay, investment write-downs, etc;

(c) what improvements could be made (for example, cost reductions, capacity changes, frequency changes); and

(d) the outlook for medium/long-term profitability.

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[27] Indeed, Stena said that the majority of vessels (both roro/ropax) operating on the Irish Sea could be easily switched to other routes and equally, that vessels from routes outside the Irish Sea could easily be deployed on the Irish Sea.
[28] *CC2*, paragraph 4.3.8.

7.8 In addition to such route-specific financial factors, our view is that there may be strategic reasons that might lead an operator to run a specific route at a loss, for a period of time, in order to maximize the company's profits as a whole across its network. These include:

(a) maintaining custom until this can be transferred to more viable routes;

(b) the benefits of running a comprehensive network;

(c) providing a service to customers using other routes;

(d) demonstrating commitment to a route that is expected to become profitable in the long run;

(e) avoiding loss of trade to competitors which may improve the viability of those competitors' routes; and

(f) possibly deterring potential entrants.

Stena's activities in the counterfactual

7.9 Stena submitted that absent the acquisition it would have closed its Fleetwood–Larne route in any event, and would not have opened any alternative diagonal route.

7.10 We reviewed Stena's submissions and internal documents with regard to the route closure. We considered the operational and financial performance of the route, and considered whether there were non-route-specific (ie strategic) reasons promoting continued operation of either Fleetwood–Larne or an alternative diagonal route.

Fleetwood–Larne closure

Stena's submissions

7.11 Stena said that its decision to close the Fleetwood–Larne route was taken at the [✂] board meeting on 22 September 2009, independent of and prior to the decision to acquire any routes from DFDS. Stena said that DFDS did not own the Belfast routes when the decision to close Fleetwood–Larne was made and that preliminary agreement with DFDS of the heads of terms was only reached in August 2010, after Stena had served notice (in June 2010) on the port of Fleetwood and the board had resolved to close the route by the end of 2010.

7.12 Stena said that its 'board documentation and route analyses clearly demonstrate that the route is not viable, relocation of the route would not be profitable, and that the closure decision was taken independent of this transaction'. It told us that it had planned to close its Fleetwood–Larne route in any event since Fleetwood–Larne was at a competitive disadvantage to its close competitors on the diagonal routes as:

(a) Customers suffered uncertainty in sailing times as at low water vessels were unable to enter/exit Fleetwood port.

(b) The vessels were old and increasingly unreliable; they had suffered an increasing number of breakdowns and required a full dry-dock examination (lasting approximately two weeks) on an annual basis.

(c) Continuous dredging was required to maintain access to the port, and the shallow draught meant that the maximum size and type of vessel was restricted which limited their ability to replace the vessels.

(d) Road access to the port was relatively poor.

(e) Competitors (Seatruck and Norfolkline/DFDS) had increased capacity in 2009 and 2010 (see paragraphs 9.5 to 9.7), putting pressure on all operators as demand was not increasing and the new vessels were more efficient and reliable. Stena also told us that Seatruck was committed to delivery of four more vessels to be added to its fleet in 2011/12, which were all larger than its current tonnage.

7.13 Stena argued that the economic evidence showed that the Fleetwood–Larne route was loss-making with no chance of improvement, primarily because of the need for investment in new vessels capable of operating from Fleetwood. It said that the Fleetwood–Larne route was making substantial (even 'catastrophic') losses and was forecast to continue doing so for the foreseeable future. Its contract with ABP (the owner of Fleetwood port) contained a break clause that meant Stena could terminate with six months' notice effective 31 December 2010 without cost. If it missed that point, it was bound until 2014 at annual costs of around £[✂] million (£[✂] million in total).

7.14 Stena said that in theory it could have reversed its September 2009 closure decision had the acquisition not proceeded, but this would have been at material cost and at the risk of significant reputational damage and loss of market credibility. It also said that steps had been taken that meant the route would close unless Stena took positive steps to prevent this, for example entering into a new contract at Fleetwood.[29]

7.15 Stena announced the acquisition on 2 December 2010 at the same time as it announced the closure of the Fleetwood–Larne route. It closed the Fleetwood–Larne route on 24 December 2010. Stena said that its delay in announcing the closure of Fleetwood–Larne to December 2010 was caused by prolonged negotiations with DFDS, and Stena did not want DFDS to know of its closure plans. Such knowledge might have affected DFDS's willingness to reach an agreement or its price for the routes.

Third-party views

7.16 Third parties (ferry operators, port operators) told us that the vessels Stena used on the Fleetwood–Larne route were old and that they expected them to need replacement in the near term. There was a general view that no other use for the vessels would be found on the Irish Sea or in the northern European market. No operator was interested in purchasing the vessels. The most likely options for the vessels were considered to be sale to another market such as Asia or scrap. However, ABP told us that Stena had indicated in 2008 that the vessels would be able to operate for another ten years (ie until around 2018).

7.17 Third parties in the main (ABP dissenting) considered that Fleetwood port suffered intrinsic competitive disadvantages: shallow draught, accessibility limited by tides (which resulted in irregular sailing times), and a small turning circle. ABP told us that dredging could have increased the depth of the channel to enable a wider variety of vessels with draught of around 5.5 metres to use the port.

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[29] Submission to CC, Annex F, paragraph 38.

7.18 Accordingly, there was a general expectation among market participants that the Fleetwood–Larne route would close at some point, although third parties could not predict accurately the timing of such closure.

Our analysis

7.19 Stena argued that there was no linkage between its decision to close Fleetwood–Larne and its decision to complete the acquisition. We accept that there was no linkage in terms of conditions attached to the notification given to ABP or to the agreements with DFDS. However, our review of Stena's internal documents (see Appendix C) shows that the two decisions were taken by the same Stena personnel at the same meetings. We did not accept that the closure decision was irreversible. Further, Stena wanted to manage any exit from Fleetwood–Larne in the best manner for its business. This included consideration of the effects of leaving vacant port space, the competition between Stena and P&O within the northern corridor and transfer of custom to other Stena routes. Accordingly, we think that Stena's closure and purchase decisions were linked.

7.20 However, such linkage does not determine the question of whether Fleetwood–Larne would have remained open in the counterfactual. To decide this, we considered first, the continuing operational viability of the vessels used on the route; second, operational requirements at the port of Fleetwood; and third, the financial considerations for Stena in deciding to close the route.

7.21 We note that in 2009 the Fleetwood–Larne route carried [✂] freight units, making it the second largest diagonal route behind DFDS's Liverpool–Belfast route ([✂] freight units).[30] It was therefore a significant diagonal route, and as such we think that Stena would not have taken lightly a decision to close the route.

- *The vessels*

7.22 Stena acquired the Fleetwood–Larne route from P&O in 2004. The route employed three vessels, the *Stena Seafarer,* the *Stena Pioneer* and the *Stena Leader* (the existing Fleetwood vessels). In 2004, Stena assumed the vessels to have a useful remaining life of seven years (ie until 2011). The vessels were 35 years old at the time of our inquiry. Stena told us that in 2004 it had planned to operate the route indefinitely and to invest in new vessels to enable this.

7.23 Stena told us, and other operators agreed, that ship design had evolved in favour of bigger, faster ships. The three Fleetwood vessels, even if functioning to their best capability, were no longer state of the art. Freight customers and passengers favoured newer ships due to their reliability, speed and comfort. Further, larger ships operating at capacity had lower unit costs.[31] Accordingly, to offer services competitive with the new ships that Seatruck was bringing into service on the diagonal corridor from Heysham, Stena would need to invest in new ships in order to operate the Fleetwood–Larne route in the medium to long term.

7.24 In 2006 and 2007, Stena assessed designs for bespoke vessels to meet the specific needs of the Fleetwood port (the 'Fleetwood-max' or 'F-max' vessels). However, Stena told us that the change in the economic climate, coupled with expensive quotes from shipyards, caused it to delay an investment decision. Stena also looked

[30] The other routes were Seatruck's Heysham–Warrenpoint route ([✂] units) and DFDS's Heysham–Belfast route ([✂] units). These figures are for 2009, ie prior to Seatruck's expansion on to Heysham–Larne.
[31] Irish Ferries told us that there were economies of scale with larger ferries.

at options to extend the life and operating capacity of the existing vessels (see Appendix C, paragraphs 2 to 9).

7.25 Stena told us that older ships had increasing maintenance costs and reliability issues. It said that while it could continue to operate the Fleetwood vessels until 2015, beyond 2011 it would be a highly unreliable service which would be at risk of breakdown or decertification. The vessels had suffered significant breakdowns in 2009 (between April and August) which had damaged Stena's revenues and its reputation for reliability. In particular, the *Stena Leader* was out of service from the end of June to 21 July due to a breakdown and the *Stena Pioneer* was also out of service during this time, leaving only the smallest vessel, the *Stena Seafarer*, to operate between 29 June and 3 July, causing significant service problems.[32] Other operators agreed that older vessels were likely to be expensive to operate and unreliable, particularly once they passed the age of 30, where certification requirements involved higher costs.

7.26 We accepted that the Fleetwood vessels needed to be replaced or at least modernized, although the timing for such replacement or modernization is not certain. We consider that the vessels could have been operational for a further period (although probably for less than five years).

Conditions at Fleetwood port

7.27 The Fleetwood port has a long, narrow, shallow and tidal channel. Sailing times vary with the tide, which means that a timetable with constant sailing times is not possible. Vessels operating from there must have a shallower draught than at other ports. Dredging is required at a cost of approximately £[✂] million a year.[33] This cost is borne by just one operator (unlike at the port of Heysham where there are three operators and a larger number of sailings to support a similar annual charge).

7.28 Stena argued that customers suffered from poor road access and uncertain timetables and from increased competition from operators at Heysham. Our review of freight volumes over time (Appendix B, Figure 1) supports Stena's argument that there was an adverse effect on demand at Fleetwood following the introduction of DFDS's vessels at Heysham.

7.29 The Fleetwood port contract ran to December 2014 with an option to terminate in December 2010, without penalty, if notice was given in June 2010. Stena estimated that port charges in 2011 to 2014 would be £[✂] million in total. ABP told us that it would have been willing to renegotiate those port charges.

7.30 We accept that the issues with operating at Fleetwood (dredging, uncertainty in sailing times, road access, competitive pressure from Heysham operators) made the continued operation of a route from that port unattractive to Stena.

Financial analysis

7.31 Stena reviewed forecasts for the financial performance of the Fleetwood–Larne route in September 2009 and again in June 2010.[34] Stena reviewed three options for the

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[32] Stena submission, 11 March 2011, paragraph 4.10.
[33] Submission to CC,paragraph 4.11.
[34] Stena said that it had no interest in the Fleetwood–Larne route following the closure decision in September 2009 beyond consideration of a 'relocation' of the route. It said that updated route projections in June 2010 were 'merely to show that the route projections had substantially worsened since the route closure decision was made in September 2009'. The F-max option was not considered in June 2010.

Fleetwood–Larne route: *(a)* invest in two new vessels (ie F-max vessels specifically designed for operation in Fleetwood port); *(b)* continue operations in the same manner as before (ie 'as is') or to reduce the capacity used on the route; and *(c)* close the route. We consider each option in turn.

- *New F-Max vessels*

7.32 We reviewed Stena's September 2009 F-max forecast (see Appendix B, paragraphs 56 to 61). The forecasts showed that the new vessels could be put into service in 2015, with an assumed useful economic life of [20–25] years. We note Stena's view that:

> Although the business plans continue to plot the possibility of the F-max vessels, the likelihood of Stena making the investment was increasingly remote and the fact the projections plotted the existing Fleetwood vessels until 2015 reflected how the business plan had become increasingly unrealistic.

7.33 We considered whether Stena would have pursued this option. The forecasts indicated positive incremental contributions from year nine. However, several factors indicated that significant risks and uncertainties attached to this option, in particular the large scale of the capital investment needed for the two F-max vessels (approximately £[✂] million). This investment would be in bespoke vessels designed specifically for the Fleetwood port, with higher capital cost than other diagonal route tonnage. This bespoke design (and in particular the higher cost) might make them less attractive for use elsewhere (the ships would be wider than standard tonnage, with shallow draught, but able to withstand the conditions on the Irish Sea). The issues with operating at Fleetwood port noted above (paragraph 7.30) did not favour this option. The market conditions in September 2009 were depressed, with excess supply and likely depressed future demand. There would be a time delay between taking the decision to invest and delivery of the ships. Stena knew that Seatruck was going to receive delivery of four new vessels which it potentially could deploy on the Irish Sea. The route was not forecast to make a positive incremental contribution for nine years and continued operation of Fleetwood–Larne between placing the order and receipt of the vessels would result in a loss of some £[✂].[35] Finally, long-term forecasts are inherently uncertain.

7.34 Accordingly, we accept that it is unlikely that Stena would have made such an investment in the counterfactual. We note that in fact had this option been considered in June 2010, when Fleetwood–Larne's performance had weakened, the forecast performance would have been worse.

7.35 Stena said that in practice no other vessels could be used at Fleetwood port; and while roro vessels could technically be used, Stena said that these had low capacity and would therefore struggle to compete with competitors' offerings. On balance, we agree with this submission. We noted ABP's views regarding the possibility of increasing the draught at Fleetwood port (see paragraph 7.17) (and so the range of ships that could dock there). However, other ferry operators said that Fleetwood's draught would make it necessary for bespoke vessels to be ordered.

7.36 Operating with a 12-passenger capacity roro vessel, while possible, was generally seen to be inefficient and would not provide a competitive alternative to the Heysham operations. We also note that using roro vessels would mean a change in the

[35] On an NPV basis 2010–2014—see Appendix B, paragraph 60

Fleetwood customer base from around one-third accompanied to a majority of unaccompanied traffic, which in our view would likely involve at least some customer losses and/or customer acquisition costs.

7.37 We therefore do not find Stena operating from Fleetwood with new or alternative vessels to be likely.

- *Continue 'as is' or reduce capacity*

7.38 On the basis of our scrutiny of the June 2010 forecasts and the significantly negative incremental contribution (of around –£[✂] million a year[36]) that these forecast, we consider that Stena would have only continued with the route beyond December 2010 if there was a strategic reason for sustaining these losses (such as to facilitate opening a new diagonal route). We accept that Stena would not have incurred losses of this scale on a purely speculative basis (for example, to wait to see what changes competitors made in the market as a result of the market conditions). Our detailed review of Stena's financial forecasts is set out in Appendix B.

- *Close Fleetwood–Larne*

7.39 The net closure costs for Fleetwood–Larne were estimated to be around £[✂] million on the basis that the route closed in December 2010 (see Appendix B, Table 6).[37] The costs related to staff redundancy, and port dues at Larne (as only 6 months' notice out of the full 12 would be given).[38] Stena assumed that the vessels would be sold or scrapped, recovering a value of £[✂] million. The actual closure costs are estimated (as a worst case scenario) to be £[✂] million assuming a £[✂] million recovery from the vessels.[39] These are higher than forecast as they include 12 months' notice at Larne, additional crewing agency fees and additional berthing costs required under the OFT/CC undertakings.

7.40 We found that, in comparison with the negative contribution forecast under the scenarios outlined above (paragraphs 7.32 to 7.38), these closure costs are small and represent the least expensive option.

Our view on operational and financial aspects of Fleetwood–Larne

7.41 The existing vessels for the Fleetwood–Larne route were old and would have had a limited remaining useful life (although could have been used beyond December 2010). The Fleetwood port contract had a termination option for December 2010 which provided a natural focus point for Stena in terms of considering its options. However, we consider that the port could have been used beyond December 2010, possibly at more advantageous rates and on a more flexible time frame. The financial forecasts for options involving Fleetwood–Larne show that the least costly option was to close the route.

7.42 Accordingly, our view is that Stena would likely have closed the Fleetwood–Larne route absent the acquisition. However, the timing of such closure is not certain. The port contract provided a convenient exit date, but we think it is possible that it could

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[36] This is on a continued operations basis; the forecasts for reduced capacity were slightly less negative—see Appendix B, paragraph 69.
[37] These cost estimates did not change significantly between September 2009 and June 2010.
[38] A provision in the Fleetwood port contract meant that if Stena gave notice in June 2010, it could terminate the contract in December 2010 without further penalty. The contract at Larne required 12 months' notice in order to terminate the agreement.
[39] Vessel recovery at May 2011 is estimated at £[✂] million.

have been extended if there was a strategic (ie non-Fleetwood–Larne route-specific) reason to do so. We consider whether Stena would have such strategic reasons for continuing to operate Fleetwood–Larne in paragraphs 7.51 and 7.52.

Opening an alternative diagonal route

7.43 Following the decision to close Fleetwood–Larne in September 2009, Stena undertook a review of the opportunities to relocate the service to alternative ports and considered operating Heysham–Belfast or Liverpool–Belfast services. In June 2010 it decided not to pursue any of these options.

Stena's submissions

7.44 Stena said that it was commercially desirable to continue to operate a service on the diagonal routes if this made financial sense. However, operation of a diagonal service was not imperative for its business and there were very few broad network benefits from operating on multiple routes across the Irish Sea. Stena said that the failure to offer a diagonal service would not have a negative effect on Stena's Irish Sea operations as a whole.[40]

7.45 Stena said that for the foreseeable future the market was likely to be well served and that there would be no opportunity for Stena to enter profitably.

Our analysis

7.46 We reviewed Stena's June 2010 assessment of alternative route options (Heysham–Belfast or Liverpool–Belfast) and considered whether Stena might have opened any alternative diagonal route.

7.47 On the basis of our financial and operational assessment (see Appendix B, paragraphs 89 to 99), we do not consider it likely that Stena would have pursued the option to operate a Heysham–Belfast route using the existing Fleetwood vessels. The higher capital costs incurred if using new or newer vessels on this route make such an option even less likely.

7.48 Our assessment also indicates that the most likely option for a new diagonal route would have been to operate Liverpool–Belfast with suitable tonnage. Given that Stena had considered the forecast for an option with positive route-specific net present value (NPV) and expressed a commercial desire (see paragraph 7.44) to operate a financially viable diagonal route, we considered whether, absent the acquisition, it would have commenced operating a Liverpool–Belfast diagonal route with new vessels (see Appendix B, paragraphs 100 to 140).

7.49 We noted that the positive NPV forecast did not take account of losses that Stena would have incurred in the interim by continuing to operate the Fleetwood–Larne route: when included, these result in a negative NPV over Stena's investment planning horizon. Further, the investment required would have been substantial, of the order of £[✂] million in both port facilities and vessels and would take between two and three years to become operational due to the investment required. Given the evidence we received regarding the economic climate and the overcapacity in the market (see Section 6), on balance we considered this to be unlikely.

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[40] Stena's submission to the CC, paragraph 4.24.

7.50 Accordingly, we found that it was not likely that Stena would have commenced operating an alternative diagonal route in the counterfactual (see further Appendix B, paragraphs 141 to 145).

Strategic reasons for Stena to maintain a diagonal route in the counterfactual

7.51 As noted above (see paragraph 7.8), ferry operators might contemplate supporting losses on a route if this would maximize profits for its network as a whole. Possible reasons included *(a)* reputation, *(b)* network benefits, *(c)* effect of actions on rivals and *(d)* avoiding customer reacquisition costs if a new route were to be opened in the future. However, as set out in Appendix B, paragraphs 161 to 171, we were not convinced that any of these reasons were sufficiently strong enough to justify the losses that maintaining Fleetwood–Larne (either in its own right or in advance of opening a new diagonal route) was likely to entail. Although Stena is part of a larger group and the losses incurred on Fleetwood–Larne in comparison with the size of the group are relatively small, we did not consider that the fact that Stena could afford to continue to fund the Fleetwood–Larne route meant that it would be prepared to do so.

7.52 None of the third parties we spoke to expressed surprise by the closure of Fleetwood –Larne, and none identified a compelling reason why Stena would have remained on the diagonal routes in the counterfactual.[41] We examined examples of other routes which Stena had continued to operate which were loss-making, and found that Stena's decisions with regard to these routes ([✂] and [✂]) were designed to be the most profitable (or least costly) over the medium term (see Appendix B, paragraphs 150 to 158).

Finding on Stena's operations in the diagonal corridor in the counterfactual

7.53 On the basis of our operational, financial and strategic assessment of all the evidence, we find that absent the acquisition Stena would have closed the Fleetwood–Larne route and would not have commenced operation of an alternative route in the diagonal corridor.

DFDS

DFDS views and evidence

7.54 We obtained evidence from DFDS to ascertain what it would have done absent the sale of the routes to Stena. DFDS had acquired four Irish Sea routes as part of its acquisition of the Norfolkline business from APMM in June 2010 (see paragraph 2.8) because APMM wanted to divest all of its Norfolkline business as a whole. DFDS said that it identified the Irish Sea routes as a liability, not an asset.

7.55 According to the DFDS management accounts (see Appendix B, Table 15), the Irish Sea routes were loss-making overall and in 2009 and 2010 only the Belfast–Liverpool route made a profit. DFDS told us that when corporate costs and interest were considered, even that route was in fact loss-making.

7.56 After completing the acquisition of Norfolkline, DFDS established a 'turnaround team' to assess the future of the Irish Sea routes. It found that structural measures were required to improve the profitability of the routes significantly (ie acquisition, sale or a

[41] See hearing transcript summaries with Seatruck, DFDS and P&O on the CC website.

joint venture of some kind). However, no operator was prepared to sell routes to DFDS at an acceptable price, and only Stena expressed a genuine interest in buying DFDS's diagonal routes (ie Heysham–Belfast and Liverpool–Belfast).

7.57 DFDS thought that absent the sale of the routes to Stena, it would not have been able to sell the Belfast routes at an acceptable price to another buyer. It told us that, given the extent of its contractual commitments at Belfast, it would not have closed down the Belfast operations (see Appendix B, paragraph 174). Therefore it would have continued to run the Belfast routes in the hope of an economic upturn, and would have closed the Dublin routes.

Our view

7.58 We accept that DFDS would have been unlikely to find an alternative buyer for the Belfast routes (see paragraphs 7.56 and 7.60), and in particular we saw no evidence that any new entrant would have purchased them. We consider that DFDS would have continued to operate those routes absent the acquisition. This is because the port contract costs are effectively sunk costs, and with these unavoidable costs excluded from the financial assessment, the Belfast routes would make a positive contribution (see Appendix B, paragraph 174).[42] Had Stena closed Fleetwood–Larne (as we think likely), DFDS would have been more likely to have been able to run its diagonal routes profitably in the counterfactual.

7.59 We accept that this would not have been the case for the Dublin routes. We find that DFDS would have closed its Dublin routes (as in fact happened). DFDS's Dublin traffic would have primarily gone to the overlapping services provided by P&O and Seatruck, rather than to alternative diagonal routes to Belfast; as such, the traffic movements would not be affected by the acquisition, and therefore the closure of the Dublin routes has no effect on our counterfactual.

Third parties

7.60 We considered the likely actions of third parties with regard to *(a)* the Belfast routes, *(b)* Fleetwood–Larne and *(c)* other diagonal routes. None expressed an interest in the Belfast routes (although Irish Ferries was not approached by DFDS with regard to these routes).[43] No third-party ferry operator was interested in operating a route from Fleetwood, or starting a new diagonal route.

7.61 Accordingly, our counterfactual for third parties is that they would have operated the same routes as they operate following the acquisition. We consider it likely that Seatruck may have added some additional capacity in the short term as its new tonnage became available (see paragraph 5.5).

Our view

7.62 Our view of the counterfactual is therefore that: DFDS would have closed its Dublin routes and continued operating its Belfast routes; Stena would have exited the Fleetwood–Larne route and not opened an alternative diagonal route; and the behaviour of third parties would have been the same as it has been in fact.

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[42] Assuming the Birkenhead contract is split evenly between the Belfast and Dublin services.
[43] See hearing summaries with Irish Sea operators on CC website.

7.63 In accepting that the Fleetwood–Larne route would have closed absent the acquisition, we have not taken the pre-acquisition situation as our counterfactual. In terms of exiting-route considerations (see paragraph 7.6), we found no evidence that any other party would have acquired the Fleetwood–Larne route with a view to operating it in the long term. We consider what would have happened to the Fleetwood–Larne traffic (under our counterfactual) in our competitive effects assessment (see paragraph 9.23).

8. Theories of harm

8.1 At the outset of this inquiry, we identified three theories of harm in our Issues Statement.[44]

Loss of actual competition

8.2 The first theory of harm was that the acquisition removed competition between Stena and DFDS that would otherwise have constrained their behaviour.

8.3 We focused initially on the effect on the competitive constraints on routes within the diagonal corridor, since Stena had taken over DFDS's Belfast routes, removing rivalry between two (Stena and DFDS) of the three operators (Stena, DFDS and Seatruck) that were active in the diagonal corridor before the acquisition. However, since we found that Stena would not be present in the diagonal corridor in the counterfactual (see paragraph 7.62), there is no reduction in the number of competitors within the diagonal corridor as a result of the acquisition and so we are satisfied that the acquisition has not removed actual competition in the diagonal corridor.

8.4 We also considered whether the acquisition reduced competition over a wider area than the diagonal corridor. If services from the northern corridor and/or the central corridor act as a substantial competitive constraint on the diagonal routes, then, in the counterfactual, Stena's northern and central routes would have constrained DFDS's Liverpool–Belfast and Heysham–Belfast routes. The acquisition would have removed this competition: following the acquisition, Stena operates its northern and central routes as well as the diagonal routes previously owned by DFDS and so the acquisition reduced the number of competitors in this wider area.

8.5 To assess this theory of harm, we considered, first, whether there was substantial competition between the Belfast routes and Stena's northern and central routes. Accordingly, we focused on the extent of competition that existed between the Belfast routes and routes operated by Stena in other parts of the Irish Sea, namely Stranraer–Belfast in the northern corridor, and Holyhead–Dublin and Holyhead–Dun Laoghaire in the central corridor (see Section 9 regarding freight, and Section 12 regarding passengers).

8.6 Second, we considered the extent of the remaining competitive constraints on Stena within each corridor. On the northern and central corridors, after the acquisition, Stena faces direct competition from similar services.[45] On the diagonal route, the remaining competitor is Seatruck, which focuses primarily on unaccompanied freight, and so we considered the extent of competition between accompanied and unaccompanied freight (see Section 10) and the extent of barriers to entry and expansion to the relevant markets (see Section 11).

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[44] www.competition-commission.org.uk/inquiries/ref2011/stena_dfds_merger_inquiry/pdf/issues_statement.pdf.
[45] Provided by P&O on the northern routes and Irish Ferries on the central corridor.

Loss of potential competition

8.7 The second theory of harm was that the acquisition may have removed potential competition. This would be a concern if we thought that Stena was more likely than another operator to start a route that would have constrained DFDS in the counterfactual. However, we found that Stena would not have opened an alternative diagonal route in the counterfactual, and we found no evidence that Stena would have been more likely to effect such entry than others (see paragraph 7.62). Accordingly, we are satisfied that the acquisition has not substantially reduced potential competition.

Increased likelihood of coordinated effects

8.8 We considered a third theory of harm relating to 'coordinated effects' in our Issues Statement. In order to find coordinated effects, we would need to establish that:

(a) firms can reach and monitor the terms of coordination;

(b) coordination is internally sustainable among the coordinating group—ie firms must have incentives to adhere to the coordinated outcome; and

(c) coordination is externally sustainable, in that there is little likelihood of coordination being undermined by competition from outside the coordinating group.

8.9 With regard to pre-acquisition coordination, we identified no evidence, and no one complained, that the ferry operators on the Irish Sea had been coordinating. We considered the Bunker Adjustment Factor (ie a fuel surcharge) as a way to coordinate, but having examined historic data, did not find evidence that this had been used by operators to coordinate prices.

8.10 We noted that provision of ferry services is quite transparent: it is obvious which operators are running which routes, the vessels they are using and the times they are sailing. Accordingly, we thought that it would be easy for operators to monitor each other's capacity. Further, operators carry out 'port reviews' of each other's services, from which they also learn about each other's customers (since much freight is carried in branded trailers). While capacity is observable, demand is not to the same extent and the reasons for changes in demand are not easily associated with the behaviour of the ferry operators, for instance demand for traffic on the Irish Sea can change due to the behaviour of freight operators (ie offering lower rates) and/or their customers. This feature of the market has not been affected by the acquisition, except to the extent that there will be one less ferry operator on the Irish Sea.

8.11 However, within the ferry freight services market, there is significant differentiation: long- versus short-sea routes, accompanied versus unaccompanied freight, and differing origin and destination ports. Freight pricing is individually negotiated, and so opaque. We found that this would make reaching and monitoring the terms of tacit coordination difficult.

8.12 The prospects for coordinated effects have been weakened by the changes to the structural links between the existing operators on the Irish Sea. Clipper Group, which owns Seatruck, also owns a 9 per cent stake in the DFDS and DFDS no longer operates on the Irish Sea.

8.13 While arguments can be made that excess capacity supports or undermines the prospects for coordinated effects, in the Irish Sea excess capacity is not equally distributed and much of it, especially in the diagonal corridor, is in the hands of one

operator, Seatruck. We think that this is likely to undermine the sustainability of co-ordination since Seatruck operates a different model from other operators, akin to the model originally used by the low-cost airlines. It focuses on providing one type of service (unaccompanied freight) which helps it to keep costs down.

8.14 Accordingly, we do not find that the acquisition has or is likely to reduce competition substantially by increasing the risk of coordination or the ability to coordinate.

9. Evidence on the extent to which freight services on different routes constrain each other

9.1 To assess the extent of competition between the operators' various routes, we gathered and analysed the following evidence:

(a) the relationship between volumes, capacity and revenues on different routes;

(b) a survey of Stena's and DFDS's former customers (the GfK survey);

(c) information on the origin and destination of Stena's freight customers;

(d) information on customer accounts; and

(e) views of ferry operators and ports.

Relationship between volumes, capacity and revenues on different routes

9.2 We considered the monthly route level data on freight volumes, revenue and capacity which we collected from Stena and other ferry operators, split into accompanied and unaccompanied where possible.[46] We focused on assessing how the operators' revenue and volumes vary in response to changes in relative capacity and quality of services as we could not derive robust data for prices (see Appendix D). If two routes are in close competition, we expect their volumes and revenues to be affected by the changes in their relative capacity and service levels.

9.3 The operators provided us with lists of key events on the Irish Sea, which could be expected to affect their volumes, values and profitability. We identified four recent changes in capacity and service levels:

(a) In the diagonal corridor, in March/October 2009, Norfolkline (NFL, DFDS's predecessor) introduced two E-type vessels to the Heysham–Belfast route. This improved NFL's quality of service and increased the capacity on that route. In May 2010, Seatruck commenced operating the Heysham–Larne service.

(b) In the central corridor, in November 2008, Stena replaced the *Stena Seatrader* with the *Stena Nordica* on the Holyhead–Dublin route. This improved Stena quality of service and increased the capacity on the central corridor.

(c) In the northern corridor in November 2009, Stena reduced the number of trips operated by the high-speed service (HSS) vessel *Voyager* from four to two per day. It introduced a slower vessel which suffered from poor reliability of service.

[46] Only Stena and DFDS provided us with historic capacity figure on a monthly basis.

(d) In the diagonal corridor, on 24 December 2010, Stena closed its Fleetwood–Larne route.

9.4 We assessed the effect of each event in turn.

Diagonal corridor events: NFL introduction of E-type vessels and Seatruck introduction of Heysham–Larne route

9.5 The Acquired Business told us that before 2009, NFL operated various smaller roro vessels on its Heysham–Belfast route and that the service on that route had been subject to numerous disruptions. In 2009, NFL introduced two E-type vessels to the Belfast–Heysham route. These new, larger and more efficient vessels allowed NFL greatly to improve service levels and reliability on the route, and increased the capacity by about 40 per cent.

9.6 The Acquired Business told us that NFL introduced a sales strategy targeting companies using the competing Fleetwood–Larne and Heysham–Warrenpoint routes. It also told us that traffic flows on the northern routes, including Stena's Stranraer–Belfast service, had not been individually targeted, as those routes were not considered a competitive alternative to the Acquired Business's routes.

9.7 Seatruck started its Heysham–Larne service in May 2010 and it expanded this service to two ships in October 2010.

9.8 We assessed freight volumes (separately for accompanied and unaccompanied freight) for Stena's Fleetwood–Larne service, DFDS's Heysham–Belfast service and Seatruck's Heysham–Larne services (see Appendix D, paragraphs 18 to 31).

9.9 Our key observations were that until the middle of 2009, Stena's freight volumes remained broadly at the same level year on year for both accompanied and unaccompanied traffic. Following the introduction of new E-type vessels by NFL in June and December 2009, there was a marked decline in Stena's freight volumes (both accompanied and unaccompanied) until the service was terminated in December 2010. There was a corresponding increase in NFL traffic (see Appendix D, paragraphs 24 to 26).

9.10 We considered whether NFL's introduction of additional capacity on Heysham–Belfast could be related to changes in Stena's freight traffic in other corridors. This would be consistent with services from different corridors competing against each other. However, we could detect no such relationship (see Appendix D, paragraphs 27 and 28).

9.11 Further, we note that shortly after Seatruck started its Heysham–Larne service (May 2010) and it expanded this service to two ships in October 2010, there was a sharp drop in both accompanied and unaccompanied freight on Stena's Fleetwood–Larne service (November and December 2010). This is relevant to competition between accompanied and unaccompanied freight (see Appendix D, paragraphs 29 to 31.

Central corridor event

9.12 Stena replaced the *Stena Seatrader* (a roro vessel) with the larger-capacity, faster ropax *Stena Nordica* on the Holyhead–Dublin route on 12 November 2008. According to Stena, this increased freight capacity in the central corridor and improved Stena's quality of service.

9.13 We assessed Stena's and Irish Ferries' freight volumes on the Holyhead–Dublin route (see Appendix D, paragraphs 32 to 35). We identified a downward trend in Irish Ferries' volume on Dublin–Holyhead that began around the time Stena introduced new capacity and improved service levels. However, there was no corresponding increase in the volumes carried by Stena on the same route over and above the historic trend.

9.14 We also found that volumes of accompanied freight on the diagonal routes had declined somewhat in recent years. However, this decline appeared to be part of a longer-term trend rather than a downward shift coinciding with an increase in the capacity and improvement in service levels on the central corridor (see Appendix D, paragraphs 36 and 37).

Northern corridor event

9.15 In November 2009, Stena reduced its high-speed sailing trips on the Stranraer–Belfast route to two round trips per day. At the same time, an additional conventional vessel, *Stena Navigator*, was introduced in an attempt to keep costs as low as possible while maintaining an acceptable service to customers. However, according to Stena, the loss of high-speed sailings, together with poor reliability of service due to problems with *Stena Navigator*, resulted in a loss of accompanied traffic to P&O's Cairnryan–Larne service.

9.16 We assessed freight volumes carried by Stena on Stranraer–Belfast and P&O on Cairnryan–Larne. The effect was visible although its size appears fairly small. P&O's freight volumes were falling until November 2009 after which they stabilized and remained at broadly the same level. At the same time, there appears to be a drop in volumes carried by Stena after the same date (see further Appendix D, paragraphs 38 to 40).

9.17 We also assessed annual growth rates for accompanied freight carried by Stena on its Stranraer–Belfast route and the accompanied freight carried by DFDS and Stena on the diagonal corridor. We found that spikes in the growth rates of freight on one corridor correspond to troughs in growth rates of freight on the other corridor. This is consistent with the view that there may be some switching of the accompanied freight between the diagonal and the northern routes.

9.18 Stena argued that it was inappropriate to draw comparisons between a single route in one corridor (Stranraer–Belfast) with a complete corridor (the diagonal), since this disregarded the effect of intra-corridor competition facing Stranraer–Belfast as well as route-specific performance variations due to weather or technical reasons. It said that there was a similar correlation between Cairnryan–Larne (P&O's route) and Stena's Stranraer–Belfast route—higher growth on Cairnryan–Larne being associated with lower growth on Stranraer–Belfast. Stena said that comparing corridors as a whole (eg diagonal routes versus northern routes) showed that monthly growth rates follow a common pattern—suggesting no substitution between them. A common pattern may be more reflective of seasonality and demand following wider economic trends across the Irish Sea

9.19 We accepted this point. A strong negative correlation between accompanied traffic volumes in the diagonal corridor and Stena's accompanied traffic on Stranraer–Belfast is consistent with the view that there may be some switching of accompanied freight between the diagonal and the northern routes. However, we cannot exclude the possibility that this negative correlation may be coincidental and that, as Stena pointed out, it is competition from Cairnryan–Larne that is driving the performance of Stranraer–Belfast.

Diagonal corridor event: closure of Fleetwood–Larne

9.20 On 24 December 2010, Stena closed its Fleetwood–Larne route. As this was a recent event it was not possible for us to analyse its full effect. However, we gathered and assessed the available data: three months, January to March 2011.

9.21 Fleetwood–Larne had been a major route that carried approximately [✂] units of accompanied freight and [✂] units of unaccompanied freight in 2010. Its closure meant that there was only one ropax diagonal route remaining: Liverpool–Belfast. While various factors could affect a direct comparison (see Appendix D, paragraph 46), we found that much of the traffic diverted to other routes within the diagonal corridor (see Appendix D, paragraph 48). Our analysis of actual volume data indicates that more of the Fleetwood–Larne traffic moved to Seatruck's diagonal services than to the Acquired Business (see Appendix D, Table 3).

9.22 Our regression analysis suggested that the growth of accompanied traffic on the Liverpool–Belfast route accelerated by about 15 per cent following the closure of Fleetwood–Larne. We did not find evidence of any change in growth on Stranraer–Belfast and Holyhead–Dublin that could be attributed to the closure of Fleetwood–Larne (see Appendix D, paragraphs 50 to 53).

9.23 For purposes of assessing where Fleetwood–Larne traffic would have gone in the counterfactual (as we need to in any failing route analysis), we note that other evidence, including our survey results, suggests that some traffic would transfer outside the corridor (see survey results on our website). We have not found evidence to suggest that the pattern of transfer of traffic from Fleetwood–Larne in the counterfactual would have been different from that which has in fact occurred or will occur.

Our view

9.24 The evidence we obtained with regard to interaction between corridors showed that there was very little switching between corridors in response to capacity changes in one corridor. This suggested to us that competition is most intense within corridors.

The GfK survey

9.25 We commissioned a survey from GfK, to obtain the views of Stena's[47] customers. It asked over 400 customers (drawn from a combined population of Stena and the Acquired Business's customers of some 1,400) a set of questions. It aimed to gather evidence on the question of which routes customers saw as substitutes by asking how they would respond in the event of hypothetical route closures or price rises.

9.26 The majority of the combined customer population hauled accompanied freight, but we were able to consider responses for accompanied and unaccompanied freight customers separately. We focused our analysis on accompanied freight, due to the extensive spare capacity that Seatruck had for unaccompanied freight on its diagonal routes (see paragraph 5.5), and the evidence set out above that competition is most intense within corridors (see paragraph 9.24).

9.27 The survey results are published on our website.[48] Given the theory of harm we focused on (that the competition between DFDS's diagonal and Stena's northern and

[47] Customers included previous DFDS customers from the last 12 months.
[48] www.competition-commission.org.uk/inquiries/ref2011/stena_dfds_merger_inquiry/pdf/GfK_Irish_Sea_Ferries_Consumer_Survey_Report.pdf.

central routes that would have existed in the counterfactual has been removed by the acquisition; see paragraphs 8.12 to 8.14), we are particularly interested in the following diversion ratios:

(a) from Liverpool–Belfast to Stranraer–Belfast and Holyhead–Dublin (ie from diagonal corridor to northern and central corridors);

(b) from Heysham–Belfast to Stranraer–Belfast and Holyhead–Dublin (ie from diagonal corridor to northern and central corridors);

(c) from Stranraer–Belfast to Liverpool–Belfast and Heysham–Belfast (ie from northern corridor to diagonal corridor); and

(d) from Holyhead–Dublin to Liverpool–Belfast and Heysham–Belfast (ie from central corridor to diagonal corridor).

9.28 The survey did ask questions which allowed us to examine the diversion ratios to the Holyhead–Dublin route but not from the Holyhead–Dublin route as, for the latter, there is an overlapping service provided by Irish Ferries.

Stena's view

9.29 Stena had misgivings regarding the survey. It said that the survey had undue focus on very small customers which would distort any overall results which were based on the number of respondents. Stena said that a consideration of the responses in terms of volumes (as opposed to number of respondents) dramatically changed the overall response pattern and made it far more consistent with what Stena would have expected. It said that there were several examples of 'worrying internal inconsistency' in the survey which raised questions over the quality of the survey evidence. Finally, Stena highlighted that survey respondents were not offered the opportunity to consider switching between accompanied and unaccompanied freight, despite the evidence and precedent suggesting that they will do so.

Our analysis

9.30 We considered Stena's points and note that the CC survey was designed to be representative by ensuring that the sample of customers from each revenue band was in proportion to the population of customers provided. To assist analysis where relevant, we weighted the results by volume (see paragraph 9.32). Stena pointed out some internal inconsistencies in the survey results as well as some implausible answers, but these were of a relatively low level and no different from levels expected in any sample survey.

Survey results and analysis

9.31 We report two sets of results from the survey. One is where each response is weighted by the quantity of freight shipped by the respondent on the relevant route. This is useful in giving us an overall picture of what would happen if Stena were to increase its prices to all of its customers. Second, results disaggregated according to the size of haulier, to take into account that ferry operators, including Stena, charge different prices to different customers often related to traffic volumes with higher-volume clients obtaining better rates.

- *Weighted results*

9.32 The results from the weighted data (presented in Appendix D, paragraphs 60 and 61) show that:

(a) In the case of the hypothetical closure of Liverpool–Belfast, 38 per cent would divert to Holyhead–Dublin, 10 per cent of freight would divert to other diagonal routes, and 2 per cent would divert to Stranraer–Belfast.

(b) In the case of the hypothetical closure of Stranraer–Belfast, 45 per cent would divert to P&O's Cairnryan–Larne service, 15 per cent to other diagonal routes, and 12 per cent to Holyhead–Dublin (we note that Stena operated both the Holyhead and Stranraer routes before the acquisition and so the diversion between those two routes is not affected by it).

9.33 An important point to note is that a Holyhead–Dublin service is operated by both Stena and Irish Ferries, so the diversion ratios associated with switching to that route are likely to overestimate the diversion to Stena's service. On the basis of Stena's share of Holyhead–Dublin (just under 60 per cent), we would expect diversion from Liverpool–Belfast to Stena's Holyhead–Dublin service to be just over 20 per cent.

9.34 For the reasons explained in paragraphs 9.38 to 9.41, we considered it necessary to interpret diversion ratios from and to Stranraer–Belfast and Cairnryan–Larne with caution. However, overall the weighted survey results expressed in paragraph 9.32 suggest some competition between corridors.

- *Disaggregated results*

9.35 Prices for most customers in the freight market are individually negotiated so that the competitive effects of the acquisition may vary between groups of customers. In particular, the results of our survey cause us some concern as to whether the acquisition would enable Stena to increase prices to smaller customers, particularly if those customers did not have the necessary facilities and/or organizational capabilities that would allow them to switch easily from accompanied to unaccompanied freight within the diagonal corridor (see further Section 10).

9.36 To assist us with assessing this concern, we split the survey respondents into three groups according to the size of their annual expenditure on ferry services:[49] *(a)* small accompanied hauliers (less than £10,000); *(b)* medium accompanied hauliers (£10,000–£49,999); and *(c)* large accompanied hauliers (£50,000 and over), and calculated separate diversion ratios for each group.

9.37 The results from the unweighted data (presented in Appendix D, paragraphs 62 to 64) show that:

(a) In the case of Liverpool–Belfast's hypothetical closure, approximately equal numbers of small accompanied customers said that they would switch to Holyhead–Dublin (26 per cent) and to Stranraer–Belfast (24 per cent) and very few would remain within the diagonal corridor (3 per cent). In contrast, many large and medium-sized customers (about one-third) said that they would switch to Holyhead–Dublin; very few large customers would remain within the diagonal corridor whereas about one-quarter of medium-sized customers would do so.

[49] This refers to annual spend on the route in question.

(b) In the case of the closure of Stranraer–Belfast, marginally more small customers said that they would switch to Holyhead–Dublin (24 per cent) than to the nearby P&O's Cairnryan–Larne service (22 per cent). A sizeable number of small customers (17 per cent) said that they would also switch to the diagonal corridor. In contrast, most large and medium-sized customers would switch to P&O's Cairnryan–Larne service, about two-thirds and one-third respectively.

9.38 In interpreting the diversion ratios from the survey, we took into account the following. First, switching from Stranraer–Belfast to Cairnryan–Larne seemed low for some respondents. These two routes are geographically very close and a finding that broadly the same proportion of small respondents would switch to nearby Cairnryan–Larne and the much more distant Holyhead–Dublin was counter-intuitive. P&O and Stena told us that some hauliers may have associated these two routes with 'Stranraer–Belfast' and therefore could have interpreted questions about the hypothetical closure of the Stranraer–Belfast route as referring to the closure of both routes. We note that some small respondents said that they would switch to Cairnryan–Larne following the closure of Stranraer–Belfast (so they clearly knew of the nearby alternative). P&O also told us that its Cairnryan–Larne route carried many small customers.

9.39 Second, the number of small customers answering the question about the closure of the Liverpool–Belfast route was small (34), which would give a large statistical error to any associated findings.[50]

9.40 Third, there is some inconsistency between the results from the survey and the actual switching we observed following the closure of Fleetwood–Larne (see paragraphs 9.20 to 9.22). However, such comparisons need to be assessed with caution as the survey showed switching by sizes of customer whereas the actual switching did not. To a lesser extent, there was some inconsistency between the diversion ratios from the survey and the lack of overlap in the origin and destination of traffic, although again caution is required when making such comparisons.

9.41 Fourth, the proportion of respondents who could not answer the relevant question was large.

Information on origin and destination of Stena's freight customers

9.42 Stena provided us with the aggregated origin/destination data of its freight traffic for all its Irish Sea routes, derived from surveys it carried out in 2007, 2008 and 2010. We used this data to analyse the overlap in catchment areas between different ports in both Great Britain and the island of Ireland. Detail is contained in Appendix D, paragraphs 74 to 97.

9.43 While the catchment areas analysis does not directly provide information on the sensitivity of customers to prices charged by ferry operators (which is our main concern), it can be informative about the likely degree of competition between ferry services from different ports. Specifically, if all the freight that originates in a given area uses one port exclusively, we consider it probable that customers operating from this area are less likely to switch in response to a price or quality change than if a significant proportion of freight from that area uses another port.

9.44 Stena told us that it did not believe that undue weight should be placed on the survey data due to various limitations, including the significant number of 'unknown'

[50] Ten did not know what they would do, one switcher could not name the route, and the rest (23) answered the question fully.

responses and the possibility (with regard to unaccompanied freight) that delivery drivers may not be well informed regarding destination. We bore these points in mind when considering the survey's findings.

9.45 Overall, our analysis of Stena's survey of customer origin and destinations shows that there is some overlap in catchment areas between Stranraer–Belfast and Fleetwood–Larne (see detail provided in Appendix D). On the Great Britain side, a significant proportion of traffic comes from north England (approximately 25 per cent for Stranraer–Belfast and 50 per cent for Fleetwood–Larne).

9.46 On the Irish side, virtually all of Stranraer–Belfast's and Fleetwood–Larne's freight comes from or is destined for Northern Ireland. However, at a more granular level, the catchment area overlap is modest. For example, the Belfast area accounts for approximately 50 per cent of Stranraer–Belfast freight, but for only around 10 per cent of Fleetwood–Larne freight traffic. Fleetwood–Larne and Holyhead–Dublin have sizable overlaps in broad catchment areas on the Great Britain side. Virtually all of their traffic comes from England, but again the catchment area overlap is less on a more granular level. There is very little overlap between the catchment areas for those two routes on the Irish side. Around 90 per cent of Fleetwood–Larne traffic comes from, or is destined for, Northern Ireland, whereas Holyhead–Dublin draws a similar percentage of traffic from the Republic of Ireland.

9.47 Overall, we did not observe substantial catchment overlap between different ports. This suggests that competition between the routes from different corridors may be limited. If there is competition between different corridors, it is more likely to take place between the diagonal routes and the short Scottish (Loch Ryan) routes than between the diagonal routes and the routes in the central corridor as the catchment areas for the latter pair do not overlap on the Irish side.

9.48 However, the latter finding is qualified due to the way the survey questions were asked. In relation to the traffic on the Irish side, all that we can say from the survey results is that few of the respondents who make deliveries in the Republic of Ireland alone (or at least as a first destination) use the Northern Ireland ports (and thus diagonal or northern routes). Similarly, few of the respondents making deliveries in Northern Ireland alone (or at least as a first destination) are likely to use the Holyhead–Dublin route in the central corridor. The Stena survey results cannot show us whether hauliers are making multiple deliveries or collections across catchment areas.

9.49 We note that the operators and ports told us that the transport links between Belfast and Dublin are now very good (see paragraphs 9.61 to 9.64) and that they would expect hauliers to be more willing to switch between these two ports than between distant ports on the Great Britain side (eg Stranraer and Heysham).

Information on customer accounts

9.50 We obtained detailed customer lists from Stena and DFDS which show the quantity of freight shipped by those customers in every year between 2007 and 2010 on each of the routes operated by Stena and DFDS. We also obtained customer lists from Seatruck, Irish Ferries and P&O, but without the route level information. We combined these lists in order to find out[51] the number of DFDS and Stena's customers

[51] We were not able to split this data into accompanied and unaccompanied freight.

who had used diagonal routes and also used ferry services on other corridors.[52] This may indicate the level of competition between services from different corridors.

9.51 We observed that the number of customers who use both the diagonal and the northern corridor is only marginally bigger than the number of customers who use the diagonal and the central corridor (see Appendix D, paragraphs 101 and 102). If we could assume that multi-corridor use is a proxy for the degree of switching that takes place between different corridors, this would lead us to conclude that customers who use the diagonal corridor view central and northern routes as equally good substitutes. This finding applies equally to accompanied and unaccompanied freight.

9.52 However, the fact that operators use multiple routes may be solely a function of the origin and destination of the specific unit of freight shipped, and not the result of any switching of freight between different corridors in response to changes in price and/or quality of service. Accordingly, we found this evidence inconclusive.

Views of ferry operators and ports

9.53 We have published summaries of the hearings we held with third-party ferry operators and operators of ports on the Irish Sea on our website.[53] We set out the key evidence relating to competition between routes or corridors below.

Ferry operators

9.54 Broadly, the ferry operators considered that the closer two routes, the more intense the competition between them. The principal geographic constraints were within corridors (as described in paragraph 5.13) although views differed as to the degree of interaction between corridors.

Stena

9.55 Stena told us that head-to-head competition was the main competitive constraint in ferry markets, and that the further a route was from the routes being analysed, the less likely it was to constrain competitively the routes under consideration.[54] It pointed out that diagonal routes differed from other routes in a number of relevant characteristics (such as duration of crossing, frequency of crossings and overall journey cost) which made them poor substitutes for short-sea routes in the central or the northern corridors.[55]

9.56 Stena said that diagonal routes were attractive to the hauliers seeking to minimize overall journey costs and this was reflected in the higher proportion of less valuable unaccompanied freight on these routes. The diagonal routes were not attractive for time-sensitive freight which hauliers preferred to ship using the short-sea routes in the central or the northern corridors.

9.57 Stena submitted analysis showing that *(a)* there is a significant price difference in relation to the overall cost of transporting freight on the diagonal routes in comparison with using either the Scotland/Northern Ireland routes or the central corridor

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[52] We could not robustly carry out this analysis across all the operators as we were not confident that we could identify all the customers who use more than one operator from their lists due to differences in how customer names are recorded.
[53] www.competition-commission.org.uk/inquiries/ref2011/stena_dfds_merger_inquiry/Post_issues_statement_oral_evidence_hearing_summaries.htm.
[54] Stena's submission to the CC, paragraph 5.8.
[55] Stena's submission to the CC, paragraph 3.7(a).

routes; and *(b)* the ferry cost is a relatively small element of the overall journey costs. This analysis was undertaken for two indicative routes: Manchester–Belfast and London–Belfast.

9.58 As part of its notification to the OFT dated 22 December 2010, Stena submitted a survey it had undertaken on the issue of differentiation of diagonal routes and other routes from the perspective of the users. In particular, Stena analysed the preferences of three categories of its customers: *(a)* Fleetwood–Larne users; *(b)* Liverpool–Belfast users; and *(c)* Loch Ryan users. According to Stena, this evidence showed the differentiation between the users of the diagonal routes and the Loch Ryan routes. The diagonal routes were preferred for lower-cost and less urgent freight, while the Loch Ryan routes were preferred for urgent and time-sensitive deliveries.

9.59 Stena maintained that on a wider market definition incorporating the diagonal routes plus northern routes and central corridor routes, there was no loss of direct or close competition as those routes were several hours away and offered customers entirely different services in terms of overall journey costs. In any case, Stena said that it faced strong direct head-to-head competition from P&O's Cairnryan–Larne service in the northern corridor, and from Irish Ferries' Holyhead–Dublin route in the central corridor.

Seatruck

9.60 Seatruck said that there was a distinct northern corridor into Northern Ireland, a central corridor covering Dublin Bay and a southern, corridor. There was considerable interaction between the northern and central corridors.[56]

P&O

9.61 P&O told us its views of the options for ex-Fleetwood–Larne traffic. Driver-accompanied freight travelling east–west could, for example, travel to Cairnryan in order to cross to Larne or Belfast, or it could drive down to Heysham to cross to Larne. The latter route had seen an increase in traffic since the Fleetwood–Larne closure. Accompanied freight was more likely to cross from Cairnryan (over half of the freight P&O handled through Cairnryan was accompanied), and unaccompanied freight from Heysham. P&O thought that the improved road network between Dublin and Belfast gave logistic providers more options as to which port on the Irish side they used. This meant that there was increasing competition between the central and diagonal corridors.[57]

Irish Ferries

9.62 Irish Ferries said that hauliers wished to take the most direct route, having regard to costs. This entailed reducing road miles as much as possible, particularly given recent increases in fuel costs. Irish Ferries provided quotes to hauliers using the Liverpool–Belfast and Heysham–Belfast routes, so that they could consider switching to moving freight through Dublin. The road network in Ireland had improved immeasurably during the boom so that Dublin–Belfast took approximately 2 hours.[58]

[56] Seatruck summary, paragraph 26.
[57] P&O summary, paragraphs 14–15.
[58] Irish Ferries summary, paragraph 17.

Acquired Business

9.63 The Acquired Business told us that within the diagonal routes, for accompanied freight customers on the Heysham–Belfast or Liverpool–Belfast routes, the best alternative available options were Heysham–Larne, Heysham–Warrenpoint and Heysham–Dublin. The Scottish ports were a long drive away, which would not appeal to many customers due to the higher fuel and driver and vehicle costs involved. P&O's Liverpool–Dublin service was the next most likely alternative for accompanied freight if none of the diagonal routes was available. Holyhead–Dublin would be another option, but Liverpool–Dublin would be chosen in preference. On the Irish side of the Irish Sea, improved road links between Dublin and Belfast had reduced driving time between the two cities to less than 2 hours. The Acquired Business said that it had observed some route switching between the Liverpool–Belfast and Liverpool–Dublin services.[59]

Ports

9.64 We asked port operators about the extent to which the Irish Sea ports are inter-changeable. The consensus view was that the ports were more interchangeable on the Irish side than on the British side due to higher costs on the British side as a result of distances between ports. They also told us that the road infrastructure within Ireland had improved significantly in recent years, and in particular between Belfast and Dublin where the journey now took approximately 2 hours (previously it could take up to 5 hours).

9.65 Belfast Harbour Commissioners said that its catchment area extended beyond Northern Ireland. It primarily served an area north of a line drawn from Drogheda to Sligo, but it had customers from as far away as Cork. There was no obstacle to crossing the border between the Republic of Ireland and Northern Ireland. It saw its main competitor ports, for accompanied and unaccompanied roro customers, as Larne, Warrenpoint, Dublin, and to a lesser extent, Dun Laoghaire.[60]

9.66 Larne Harbour had, until relatively recently, seen its catchment area as being north of a line drawn west from Drogheda, but said that this line had now moved. However, not all traffic would pass through Larne: some would use Warrenpoint and some would use Belfast. Larne Harbour saw its main competitors as being Belfast and Warrenpoint; and, since road links to Dublin had been vastly improved, Dublin too.[61]

9.67 Warrenpoint Harbour Authority said that its direct competitors overall were Dublin and Belfast, together with smaller ports on the Republic side of the border such as Drogheda and Dundalk, although this was mainly for bulk and other products. For roro specifically, the only competitors were Dublin, Belfast and Larne.[62]

9.68 ABP characterized three markets: the central corridor (essentially between Liverpool, Heysham and Dublin); the northern diagonal (routes out of Liverpool, Fleetwood and Heysham into Northern Ireland); and the northern corridor (Cairnryan and Stranraer to Northern Ireland). There was some overlap between these markets, but they were seen as being separate from the Fishguard, Pembroke and Swansea routes into the

[59] Acquired Business summary, paragraph 15.
[60] Belfast Harbour Commissioners summary, paragraph 2.
[61] Larne Harbour summary, paragraphs 5–6.
[62] Warrenpoint summary, paragraph 2.

Republic of Ireland. Following Stena's closure of Fleetwood–Larne, traffic had largely switched to Liverpool or Heysham, although some had gone to Holyhead too.[63]

9.69 Peel Ports told us that that the relevant catchment areas for the ports depended on the type of transport and type of journey. Unaccompanied freight hauliers would generally aim to minimize road miles and so fuel costs (given the price of road diesel). Trailers from a large part of Great Britain pass through Liverpool or Birkenhead ports since this minimizes road miles. Given the road network (in particular, the route from Scotch Corner across east to west), Peel Ports said that hauliers from the North-East could use Heysham or Stranraer. Those from south of the Manchester/Preston area were unlikely to go further north than Liverpool. It said that the principal competition to Liverpool/Birkenhead would come from Holyhead, and Stranraer under certain circumstances. Stranraer represented a viable alternative to Heysham due to its location, especially for those hauliers with a source point or destination point on the Cumbria to North-East route. There was evidence of traffic switching between Birkenhead and Holyhead, and likewise between Stranraer and Heysham.[64]

Our view of competition within and between corridors

9.70 The evidence we gathered, in terms of the views of ferry operators and port owners, analysis of data and the GfK survey, indicated that significant competitive constraints are exerted by routes that have similar origins and destinations. Our analysis of key events (see paragraph 9.3) indicated that there was significant competition between routes in the same corridor. This accorded with operator, port and customer views (the latter as revealed by the GfK survey), and our views of switching between accompanied and unaccompanied freight (see Section 10).

9.71 We found evidence of some interaction between corridors. In particular, the GfK survey indicated switching between corridors in the event of hypothetical route closures or price rises. However, we could not detect substantial interaction by means of our event analysis. Other evidence (origin/destination data) suggested some interaction between corridors. Operator and port views did not support completely discrete catchment areas: at the margin, some customers might be able to choose between equally attractive routes.

10. Extent of competition within corridors and between unaccompanied and accompanied services

10.1 Given the evidence of competition between routes in different corridors that we found (in Section 9), we considered the extent of competition that remains within corridors.

10.2 In the northern corridor, Stena continues to face direct competition from P&O. To date, P&O has carried more traffic in this corridor than Stena. Stena had a share of [20–30] per cent in 2010 (see Appendix D, Table 1).

10.3 In the central corridor, Stena faces competition from Irish Ferries, and P&O also operates the longer Liverpool–Dublin route. Within this corridor, Stena had a share of [20–30] per cent. [✂]

[63] ABP hearing summary, paragraphs 4–5.
[64] Peel Ports summary, paragraph 2.

10.4 In the diagonal corridor, Stena's only competitor is Seatruck. Seatruck told us that it focused on unaccompanied freight. It currently had excess capacity (see paragraph 5.5), and was due to take delivery of four new roro ships designed for operation from Heysham in 2011 and 2012 that would be available for service on the Irish Sea.

10.5 Accordingly, there might be a competitive concern with regard to accompanied freight services if unaccompanied services exert no (or only a limited) competitive constraint on them. Hauliers needing accompanied freight services within the diagonal corridor would have to seek one of the 12 places per sailing offered by Seatruck from Heysham to Larne or to Warrenpoint. We therefore assessed the extent of competition between accompanied and unaccompanied services to allow us to form a view of whether customers could easily switch mode. If they can, this means that Stena will face significant competition within the diagonal corridor. It is also relevant to our assessment of competition between corridors, in that (if switching mode is easy) hauliers faced with increasing prices or decreasing service levels might switch mode rather than corridor.

Evidence and analysis

10.6 We considered four factors in our assessment of competition between accompanied and unaccompanied freight services. First, the key difference is that accompanied freight requires a driver for the duration of the journey. This has consequences for routing, since regulation limits drive times (which is particularly relevant for long-distance trips). It also means that operators must provide on-board facilities for drivers, which entails operating ropax ferries if they are to carry more than 12 drivers per sailing.

10.7 Second, some operators (Irish Ferries and the Acquired Business) told us that valuable freight was more likely to be accompanied.[65] However, Seatruck[66] and Stena told us that this was no longer the case: Stena detailed extensive security arrangements that could be applied to very high-value unaccompanied freight entailing tracking, filming, locking, sealing, and releasing unaccompanied cargoes only to identified drivers.

10.8 A third differentiating factor is time sensitivity. Unaccompanied freight is left at the port by the haulier, loaded and unloaded by the operator, and collected at the destination port. The loading and unloading takes (somewhat) longer than for accompanied freight, where the driver drives on and off. Some operators expected time-sensitive freight to be accompanied (Acquired Business[67] and Seatruck[68]). Stena agreed that genuinely time-sensitive freight which required early arrival or late consolidation must travel accompanied, but it said that such freight would travel on short-sea crossings rather than diagonal routes. It said that freight which travelled on the diagonal routes was inherently less time sensitive and such freight was not transported on the diagonal routes.

10.9 Finally, there are some infrastructure differences, in that the haulier must arrange for pick-up at the destination of unaccompanied freight. Seatruck told us that smaller hauliers found it uneconomic to have the permanent infrastructure or subcontracting arrangement on both sides of the Irish Sea necessary for unaccompanied freight.[69] Stena considered that infrastructure differences should not be exaggerated: it could

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[65] Irish Ferries summary, paragraph 13; Acquired Business summary, paragraph 7.
[66] Seatruck summary, paragraph 22.
[67] Acquired Business summary, paragraph 7.
[68] Seatruck summary, paragraph 23.
[69] Seatruck summary, paragraph 22.

be easier to send freight unaccompanied since there was no need to own and operate tractor units, arranging pick-up for a port was as easy as arranging pick-up from a customer, and the depot needs were equivalent for each mode.

10.10 Stena referred us to previous UK, Irish and EU decisions on the issue of accompanied and unaccompanied freight services.[70] We note that these decisions found that the services are differentiated, although they are in the same product market. We interpret this to mean that the services were found to be substitutes to some extent, but not to be perfect substitutes for all customers. Stena also told us that [✂] had almost doubled the proportion of its traffic that it sent unaccompanied between 2007 and 2011.

Our view

10.11 Our view is that accompanied and unaccompanied freight services are differentiated products. The obstacles to a ferry operator switching mode are those associated with choosing to operate ropax rather than roro vessels. A ropax vessel can carry either mode at will. However, an unaccompanied operator would have to switch vessels to offer accompanied capacity of more than 12 places per sailing (see Appendix E, paragraph 10).

10.12 Our view is that freight that is very time sensitive will be accompanied and will be transported on the short northern and central routes. For a large haulier moving significant volumes of freight on the diagonal routes, we found no significant barriers to switching from accompanied to unaccompanied freight, since it would be capable of establishing the necessary infrastructure on both sides of the Irish Sea.

10.13 The obstacles may be somewhat higher for small hauliers carrying accompanied freight on diagonal routes. In particular, they may be less able to establish the infrastructure necessary at the port of destination to switch easily to unaccompanied freight.

10.14 Stena contested this in its response to our provisional findings, stating that: small hauliers had greater flexibility to fill space in busy sailings; they could subcontract to third party agents of larger hauliers for unaccompanied services in the short term while preparing to switch to unaccompanied operation. Further, Stena said that the practice was increasing whereby a haulier sent one load accompanied, then used that driver to pick up unaccompanied loads during the week, which avoided the need for a permanent infrastructure on both sides of the Irish Sea.

10.15 We also received one response from a haulier that stated that capacity had reduced on the one remaining accompanied route (Liverpool–Belfast), making it harder to obtain space on board specific sailings. One end-user also had concerns about the loss of capacity on the diagonal corridor.

10.16 Given our concern regarding small hauliers, we examined Seatruck's capacity for accompanied freight (see Appendix D, paragraphs 71 to 73). We found that Seatruck could easily accommodate the accompanied freight currently shipped by small and medium customers on Stena's Liverpool–Belfast route. We note that there need only be enough capacity for marginal small customers to be able to switch from Liverpool–Belfast to Seatruck's service in order to defeat any attempt by Stena to increase price

[70] 2004 CC Stena/P&O decision, Irish Competition Authority decision dated 7 April 2011, European Commission decision M.5756 DFDS/Norfolkline.

and/or reduce service levels on the diagonal routes. Our view was not changed by the limited responses we received to our provisional findings.

11. Barriers to entry, expansion and exit

11.1 We found some competition between corridors but that substantial competition is likely to remain within each corridor despite the acquisition. We also considered whether entry (or the threat of entry) by a potential entrant would constrain any ability that Stena obtained by means of the acquisition to raise prices above or reduce service below competitive levels.

11.2 Potential (or actual) competitors may encounter barriers which adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the market.[71] Barriers to entry are specific features of the market that give incumbent firms advantages over potential competitors.[72] We also considered the incentives and intent of firms to enter.[73]

11.3 We assessed *(a)* entry, *(b)* exit and *(c)* customer switching costs as the principal possible barriers to entry. We also *(d)* reviewed recent examples of entry and *(e)* gathered evidence on likely future entry.[74]

Entry costs

11.4 Operators told us that the principal possible barriers to entry were ship and berth availability (Appendix E sets out the evidence we gathered).

Ship availability

11.5 In summary, with regard to ship availability, we think that purchasing ships, even second hand, is a significant investment. They are substantial assets with long economic lives, and if not actively deployed may result in significant losses for the operator.

11.6 We were told that in general, demand for ropax vessels was more limited and bespoke than for roro vessels, and that the running costs of ropax vessels were generally higher than for roro vessels, although they offered more revenue opportunities. The cost of ropax vessels varies significantly (depending on the age, size and quality of the relevant vessel): we found ships available between £7 million (used) and £100 million (new build). We note that Stena in assessing possible Liverpool–Belfast entry could not find suitable large vessels in the charter market.

11.7 Costs of roro vessels can also vary significantly, but in general roro vessels seem to be more standard and have greater availability. That said, we note that Seatruck commissioned new build ships (costing [over €30] million) designed to operate most efficiently from Heysham port, with specific requirements relating to length and draught.

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[71] *CC2*, paragraph 5.8.3.
[72] *CC2*, paragraph 5.8.4.
[73] *CC2*, paragraph 5.8.8.
[74] We also describe the applicable regulation in Appendix E, paragraphs 2 to 6, but did not find it a significant barrier for any undertaking active in the maritime sector.

11.8 Chartering may provide an option for lower-cost entry, and was used by Seatruck when it first started operations on the Irish Sea. The Acquired Business is also currently chartering vessels. Available tonnage for charter varies with the market.

Berth availability and port costs

11.9 Berth availability might act as an absolute barrier to entry: unless a ferry operator can obtain attractive slots in suitable ports, it cannot operate a commercial service. The hearing summaries on our website[75] and Appendix E, paragraphs 33 to 40, contain the evidence we obtained regarding such availability. We found that berths were available on both sides of the Irish Sea, although the availability of attractive slots at peak times (ie for diagonal routes allowing departures from Great Britain late in the evening and arrival on the island of Ireland early in the morning) was more limited.[76] This is in contrast to 2004 where we found limited evidence of appropriate berth availability and associated facilities in certain areas of the Irish Sea (the central corridor).

11.10 Several ports could offer expanded capacity given appropriate investment. Typically, ports undertake investment to build facilities, and recoup their cost via a contract with the ferry operator. The size of investment would vary with the degree of infrastructure needed. Stena broadly accepted this analysis (regarding berth availability and port costs), although it submitted further detail on ship and berth availability and the investment necessary to increase capacity, arguing that there were no major barriers to acquiring vessels or obtaining access to berths on the Irish Sea.

Exit costs

11.11 Vessels no longer needed on a given route may be sold or chartered out. Demand varies with broader economic conditions, but may be limited if ships were bespoke to specific routes and ports. For instance, Stena told us (and other ferry operators agreed) that a ropax vessel with an optimal design for a Fleetwood–Larne service would not necessarily be economic on other routes, and so could entail a significant exit cost. We were told that in general ropax vessels tended to be built with specific routes and conditions in mind, and so they may not be well suited to alternative routes. We heard that roro vessels tended to be more generic, and so were easier to sell or charter out. However, Stena noted that increasingly ropax vessels were built as standard and that some of the vessels used on the Irish Sea had operated in other markets or on other routes before.

11.12 With regard to port exit costs, Stena said that barriers to exit varied depending on the type of contract with a port and in particular whether any long-term commitments had been made. This was a consensus view: detail is provided in Appendix E, paragraphs 45 to 49.

Customer switching costs

11.13 See Appendix E, paragraphs 50 to 56. We did not identify specific switching costs in terms of contractual or other commitments that might impede switching. There might be certain costs for larger hauliers setting up infrastructure (ie depots) associated with a particular port.

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[75] www.competition-commission.org.uk/inquiries/ref2011/stena_dfds_merger_inquiry/Post_issues_statement_oral_evidence_hearing_summaries.htm.
[76] For the long-sea routes (ie the diagonal routes plus Liverpool or Heysham to Dublin), peak slots are overnight.

Recent entry or expansion in the Irish Sea

11.14 Stena told us that the relatively low barriers to entry and exit historically meant that there had consistently been dynamic competition between operators. It gave us the following examples of entry or expansion on the Irish Sea.[77]

11.15 P&O added a new third vessel on Liverpool–Dublin in May 2008 and a larger ropax vessel (the *European Endeavour*) in place of the smaller roro *Norcape* on the Liverpool–Dublin service in February 2011.

11.16 Norfolkline introduced the *Maersk Exporter* and *Maersk Importer*, both with 1,694 lane metres, to the Heysham–Belfast route in 2009, together with a new sailing schedule and an additional Monday morning sailing.

11.17 Seatruck added a third vessel on Heysham–Warrenpoint in 2006. It expanded tonnage on the Heysham–Warrenpoint route with two brand new, significantly larger vessels (*Clipper Point* and *Clipper Panorama*) in 2008. It expanded capacity on Liverpool–Dublin by replacing vessels with two brand new, significantly larger vessels (*Clipper Pace* and *Clipper Pennant*) between 2008 and 2009. It entered on Heysham –Larne in May 2010 and expanded to a two-vessel service from October 2010. Following DFDS's announcement on 13 January 2011 regarding the closure of its Liverpool–Dublin and Heysham–Dublin routes from 31 January 2011, Seatruck on 14 February 2011 commenced a new roro service between Heysham and Dublin.

11.18 Fastnet Line commenced a new route between Swansea and Cork in March 2010.

11.19 Stena replaced the *Stena Seatrader* with a larger-capacity and faster *Stena Nordica* on the Holyhead–Dublin route on 12 November 2008 and added a further round trip sailing with the *Stena Nordica* on Holyhead–Dublin from March 2009.

11.20 We note that three established players (Stena, P&O and Seatruck) account for the majority of these entry or expansion cases.[78] There has been both roro and ropax expansion, ie expansion in accompanied, unaccompanied and passenger markets.

Plans for entry and expansion

11.21 We spoke with Stena, Seatruck, Irish Ferries, P&O and DFDS concerning their future plans. Stena plans to [✂], and is moving its Scottish operations to Loch Ryan port. Seatruck is taking delivery of further vessels, and is considering how best to deploy them. [✂]. DFDS has no plans to restart operations on the Irish Sea.

11.22 All were heavily influenced by the prevailing economic conditions (described in Section 6). Stena told us that entry on the diagonal using ropax vessels on a scale that would be profitable in competition with existing operators was unlikely in the current economic climate. While Stena considered that it might be possible to obtain vessels and gain access to ports, the scale of operation required to compete effectively with current operators was likely to make the cost of entry too high to be economically justifiable. This view is consistent with our findings in the counterfactual, where as at December 2010 we found that Stena (and by implication another operator) would not enter the diagonal routes.

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[77] Stena's submission to the CC, Annex J, paragraph 35.
[78] Stena noted that Fastnet represented an example of small-scale entry, that Seatruck had become an established player since 2004 (when it was a new entrant) and that customer-sponsored entry was feasible.

Our view of competitive entry

11.23 With regard to entry and exit costs, we note that this is a sector that entails significant investment and the need to take a long-term view. We saw no examples of 'hit-and-run' entry. There are lower-cost entry options, entailing ship charter, although this depends on the state of the charter market. We saw some evidence that ropax vessels (necessary to offer accompanied freight services) were more expensive to obtain and to run, although they could offer the opportunity of higher returns. There appear to be berths available, although peak slot availability is more limited. We saw many examples of expansion and upgrading by incumbent operators. Such entry can be implemented very rapidly if one of the current operators identifies a profitable opportunity: Seatruck opened its Heysham–Dublin routes within two weeks of DFDS ceasing to operate that route.

11.24 However, we also noted that the overriding concern at the time of our inquiry was the depressed state of the Irish and UK economies. Against this background we were not able to conclude that entry would have been timely, likely and sufficient. However, we noted that barriers to entry were not overwhelming should conditions improve in the longer term.

12. Passengers

12.1 The diagonal routes Stena acquired (Heysham–Belfast and Liverpool–Belfast) principally carry freight, and that is the main subject of our investigation. However, we have also considered the effects that the acquisition may have on passengers (meaning people other than drivers accompanying freight.)

Stena's case

12.2 Stena told us that it had only limited experience of passenger traffic on the diagonal routes: in 2010, it carried just 18,000 passengers on its Fleetwood–Larne route. It said that passenger services accounted for a minimal proportion of revenues and volumes on the diagonal routes, and the only current significant passenger offering was the Liverpool–Belfast service, which was operated by the Acquired Business. According to Stena, this service accounted for less than 4 per cent of overall passenger volumes of Irish Sea ferry services.

12.3 Stena said that it did not consider that passenger services on the diagonal routes competed with its main passenger products on the routes from Stranraer or Holyhead. Its view was that this passenger service was a highly differentiated product with no close competition post-acquisition or in the counterfactual:

(a) Customers who currently chose this long-sea crossing were likely to consider sailing from Liverpool to Dublin on P&O (which also offered a long sailing time) or try to find space on a diagonal Seatruck sailing as the closest alternative to the Liverpool–Belfast route.

(b) The other alternatives available, namely: (i) taking a flight (and hiring a car if necessary); or (ii) using one of the short-sea crossings (Loch Ryan or Holyhead–Dublin Bay), would not be as attractive for passengers who had a preference for a long-sea crossing. In this context, flying was at least as attractive an alternative as the short-sea crossing for many passengers as it offered direct connection between the same points (Liverpool and Belfast). Airline services had been consistently attracting a share of the wider passenger market away from ferries on the Irish Sea.

(c) There was also the possibility of supply-side intervention to offer more long-sea passenger capacity on the diagonal routes in the event that demand required it.

Third-party views

12.4 In general, ferry operators told us that there was little competition between the routes from different corridors for passengers and that the main competitive constraint, other than from directly overlapping services, came from the low-cost airlines.

12.5 The Acquired Business told us that the Liverpool–Belfast passenger service did not have a close competitor as it was significantly differentiated from other ferry routes whose ports of departure and/or arrival were a substantial distance away and had very different overall journey cost and time profiles. However, it also told us that prior to the closure of Stena's Fleetwood–Larne route, the two services were in competition for passengers. It saw airline services direct from north-west England (Manchester and Liverpool) to Belfast as a significant competitive constraint on its services due to the very low prices offered; the possibility of combination with car hire; and the added convenience and short duration of air travel. The increase in airline market share relative to ferries in recent years demonstrated customer migration from ferries to airlines.

12.6 Irish Ferries told us that the decision made by a customer of any ferry company was usually dictated by two things: where they lived, and the final destination. The choice of route (assuming passengers were taking the quickest line to their destination) would usually be based on either the timing of a particular sailing or perhaps the price. In its experience, customers were willing to pay somewhat more in order to get to their destination faster. Ultimately the primary consideration was the quickest road route to their destination.

Our analysis

12.7 The analysis we undertook with regard to passengers is explained in detail in Appendix F. We considered traffic volumes, prices and corridor shares for the routes which carry passenger traffic. Stena is now the only operator that provides a service to Belfast on the diagonal corridor. Its Liverpool–Belfast route was used by [✂] [170,000–210,000] passengers in 2010. Around 1.8 million passengers used each of the northern and the central corridor, and Stena's share in these corridors is around 50 per cent.

12.8 We found that the prices for travelling on the long-sea routes are higher than for the short crossings, although the gap between the two has narrowed over time. The prices on the long-sea routes fell in real terms between 2005 and 2010: by 8 per cent on Liverpool–Belfast, by 7 per cent on Liverpool–Dublin and by 1 per cent on Fleetwood–Larne. At the same time, the price on Holyhead–Dublin increased by almost 19 per cent, and by 6 per cent on Stranraer–Belfast.

12.9 In assessing the degree of competition between the routes in question, we considered the movements over time in passenger numbers and prices, in particular:

(a) the prices of different routes and their movements;

(b) how passenger volumes interact with each other; and

(c) a catchment area analysis.

Price movements

12.10 We compared prices between corridors as a whole and observed that:

(a) The gap between the sets of prices for short and long crossings had narrowed over time. The price series for long crossings remained broadly stationary (in nominal terms) whereas the prices on short crossings increased.

(b) The two sets of prices are subject to different seasonal patterns. The prices for short crossings display a regular seasonal pattern which is characteristic of the leisure industry: prices peak in the summer months and around Christmas. The pattern on the diagonal routes appears to change from one year to another.

12.11 The implication of our observation as set out in paragraph 12.10*(a)* is ambiguous. The fact that there is a sizeable gap over time between the two sets of prices, and that they are moving in opposite directions, can indicate that these are not in close competition. However, it may be that the short crossings have become more attractive for passengers relative to long crossings, and that this has resulted in the narrowing of the pricing gap between the two. Stena said that no evidence supported this interpretation and that volume trends did not suggest switching between long-sea and short-sea crossings. Stena also noted that we had not taken into account cheap air travel in this analysis. The fact that the two types of route displayed different seasonal price patterns (paragraph 12.10*(b)*) suggested that they were not in close competition.

12.12 We undertook an analysis of price correlation between routes (see Appendix F, paragraphs 7 to 10). We are primarily interested in the correlation coefficient between Liverpool–Belfast and other routes. Specifically, high correlations between Liverpool–Belfast and Stena's short crossing routes would suggest that the two compete, in which case we may be concerned that the merger may result in an SLC. We found that the correlation coefficients of interest were positive but small to modest in size (0.39 between Liverpool–Belfast and Holyhead–Dublin, and 0.42 between Liverpool–Belfast and Stranraer–Belfast). Once we controlled for seasonality, both correlation coefficients become very small. In fact, the only correlation coefficient which remained largely unchanged was between the Liverpool–Dublin and Liverpool–Belfast long-sea routes. This is consistent with a view that those two routes were in competition, although the size of the coefficient is modest. In interpreting this evidence, we note that positive price correlations can occur even if routes are not substitutes if these routes experience positively correlated demand or cost movements. In this instance, there are reasons to expect that cost and demand conditions are positively correlated across routes—in particular, oil prices and highly correlated economic conditions should be expected to induce some positive correlation in observed prices even if the routes are not good substitutes.

Passenger volumes

12.13 We considered how passenger volumes change in response to price changes. The data was strongly seasonal, and so we considered growth rates which should not be affected by seasonal variation.

12.14 We saw several instances in recent years where individual operators recorded exceptionally high or low growth rates. However, we could not relate this convincingly to effects on other routes, and so this analysis did not indicate that the Liverpool–Belfast route competes with the routes in the central or northern corridors (see Appendix F, paragraphs 11 to 18).

Catchment areas

12.15 We considered origin and destination data for Stena's passengers deriving from online booking information and sample data from Stena's 2010 Car Lane Questionnaire. Stena told us that the two data sets (ie the booking database and the survey) were consistent in terms of passenger coverage, except that the destination information was not collected for Fleetwood–Larne passengers as it could not be justified on commercial grounds.

12.16 We observed that:

(a) Scottish passengers almost exclusively use the Stranraer–Belfast route.

(b) The biggest catchment area overlap is in north-west England with Fleetwood–Larne, Holyhead–Dublin and Stranraer–Belfast drawing respectively 52, 31 and 16 per cent of their passengers from this part of the country.

(c) All three routes draw more than 10 per cent of their passengers from the North-East of England.

(d) Holyhead–Dublin and Fleetwood–Larne also draw 10 or more per cent of their passengers from the South-East of England and the Midlands.

(e) Overall, the data we analysed above suggests that there is more overlap between Fleetwood and Holyhead than between Fleetwood and Stranraer.[79]

12.17 Stena stated that catchment areas were not reliable in relation to passenger travel as they did not reflect the reasons why particular routes were chosen. While passengers were apparently more likely to choose a service which was geographically convenient, the key differentiator between (for example) passengers from the North-West of England that were prepared to travel Fleetwood–Larne, Holyhead–Dublin or Stranraer–Belfast was likely to be *(a)* the differing destinations of such passengers and *(b)* the willingness of such passengers to consider a long (8-hour) sailing on what were essentially freight vessels (and indeed an awareness of such a service, which Stena considered was very low profile in the wider market), as against a preference for a short sailing and a longer drive to use vessels and ports with more sophisticated and dedicated passenger facilities. In summary, Stena said that these routes offered differentiated products; therefore, even if passengers originated in the same area, they might well not consider the routes to be substitutes. On this basis, Stena considered that the data on catchment areas should not be used to draw inferences about competition between routes in the northern, diagonal and short-sea central corridors.

Our view

12.18 The operators told us that there was little competition between the routes from different corridors for passengers who tended to choose the quickest road route to their destination. Stena and the Acquired Business told us that the Liverpool–Belfast passenger service did not have a close competitor as it was significantly differentiated from other ferry routes on short crossings.

[79] Even though Fleetwood is shut in our counterfactual, this evidence may be informative on the degree to which diagonal services compete with northern or central corridor services.

12.19 We tested these arguments by examining prices and volumes, and their movements over time, for both diagonal and short-crossing routes. We found no evidence that the two sets of routes may be competing to the extent that the removal of that competition through the acquisition would result in an SLC in the passenger market.

12.20 The evidence from the survey data suggested that there is a fair degree of overlap in passenger origin on the Great Britain side between the diagonal and the short crossings (Holyhead–Dublin in particular). However, this itself is not the evidence that Liverpool–Belfast and Holyhead–Dublin compete, as passengers from the same place of origin may differ significantly in their preferences for the two services, given the markedly different journey times and frequencies. We are inclined to place more weight on the evidence from the operators about the extent to which the diagonal services are significantly differentiated from other ferry routes, and on our own analysis of prices and volumes which shows no indication that there is competition between the service in the diagonal corridor and the short crossings.

13. Findings on the SLC

Counterfactual

13.1 For the reasons given in Section 7, we conclude that Stena would have closed its Fleetwood–Larne route regardless of the acquisition, and that it would not have opened any other diagonal route in the counterfactual. DFDS would have continued to operate its Belfast routes and would have closed its Dublin routes. Other operators would have acted as they have in fact. Accordingly, the effect of the acquisition has been to change the identity of the operator of the Liverpool–Belfast and Heysham–Belfast routes from DFDS to Stena.

13.2 In light of this, we must decide on the extent of the constraint that Stena's Holyhead–Dublin and Stranraer–Belfast routes would have exerted on DFDS's Liverpool–Belfast and Heysham–Belfast route in the counterfactual (and vice versa). If such a constraint would have existed, then it has been removed by the acquisition.

Competitive constraints

13.3 We assessed the position with regard to the three services that the two acquired routes offered, ie transport of unaccompanied freight, accompanied freight, and passengers.

13.4 We noted the significant product differentiation between the long diagonal routes and the shorter northern and central routes. In particular, the former entail approximately 8-hour crossings while the latter take 2 to 3 hours.

13.5 With regard to competition between corridors (our key concern given the counter-factual), ferry and port operators suggested that this existed, but was modest. Using data provided to us by the ferry operators, we did not find substantial historic evidence of switching from diagonal to the northern or central routes, including following the closure of Fleetwood–Larne. The evidence provided by the GfK survey results suggested more significant switching between the routes in different corridors (see Section 8).

13.6 Accordingly, we examined the strength of competition remaining in each corridor. Stena continues to face direct competition in the northern and central corridors, from P&O and Irish Ferries respectively. The diagonal corridor offers a significantly differ-entiated product, due to long crossing times. We found that very time-sensitive freight

would not use these routes. Further, the competitive position was complicated by the fact that Stena's most direct rival, Seatruck, operates roro vessels that are permitted to carry only up to 12 passengers/drivers per sailing. However, Seatruck has significant capacity (see paragraph 5.5 and Appendix D, paragraph 18) and is due to take delivery of four further ships in 2011 and 2012. Accordingly, Stena faces direct competition for unaccompanied freight in the diagonal corridor.

13.7 For accompanied freight, hauliers must switch mode to unaccompanied freight, or switch corridor. We examined the obstacles to switching mode (see Section 10). We considered that unaccompanied freight requires a somewhat more sophisticated logistical system, in that the haulier must arrange pick-up from the destination port and delivery to its customer. We did not find this a significant barrier for larger operators, and noted evidence from Seatruck and Stena of increased switching to this mode.

13.8 For smaller customers, we found that there could be an obstacle to switching to unaccompanied freight, in the form of the requirement to arrange collection from the destination port and delivery. This could indicate that there would be a need to switch outside the corridor and hence that there had been a lessening of competition for these customers. However, we noted that Seatruck's accompanied freight capacity from Heysham was likely to be sufficient to offer a viable alternative within the diagonal corridor for small accompanied hauliers currently using Liverpool–Belfast.

13.9 Accordingly, we did not find an SLC caused by the acquisition for the provision of freight services, either accompanied or unaccompanied.

13.10 Regarding passengers, we found the Liverpool–Belfast route to be a highly differentiated service: an 8-hour crossing of the Irish Sea meets a very specific demand. The views of ferry operators and the data we analysed indicated that the constraints offered by routes in other corridors to passenger services between Liverpool and Belfast were not substantial. Given our counterfactual finding, we identified no effect on competition caused by the acquisition for these customers (see Section 12).

Entry, expansion, exit

13.11 We considered the likelihood of competitive entry and/or expansion (see Section 11). We found that entry was unlikely in the short term, given reduced demand for haulage arising from the weak state of the UK and Irish economies. All operators have surplus capacity. However, we noted that the barriers relating to the ability to acquire the assets needed to enter were not overwhelming (see paragraphs 13.12 and 13.13), raising the possibility of entry in the future should conditions change to an extent as to make entry profitable.

13.12 In terms of specific barriers to entry, acquiring ships may be very expensive. They have long economic lives (up to and possibly exceeding 35 years) and such investments are not taken lightly. A lower-cost entry route is via purchasing older ships or chartering.

13.13 Broadly, the berths necessary to operate a competitive service appeared to be available, though the supply of peak slots is more limited. Several ports could offer expanded capacity if an operator was prepared to invest (by committing to a contract that would reimburse the port for investment it undertook).

13.14 In terms of exit costs, we found that ships could be sold or chartered out, although their attractiveness depended on the specific ship: the more highly tailored a ship was to a specific route, then the lower the likely sale price or charter rate it could

obtain. We noted the evidence that ropax vessels tended to be more tailored. Port costs appeared to be sunk, in that ferry operators were bound by contracts with ports. However, ports have a duty to mitigate their losses, which may reduce the amount that ferry operators have to pay on early exit.

Conclusion

13.15 We find that Stena's Stranraer–Belfast and Holyhead–Dublin routes would have offered some competition to DFDS's Liverpool–Belfast and Heysham–Belfast routes in the counterfactual for the supply of accompanied or unaccompanied freight services.

13.16 However, we do not consider that the evidence supports the view that Stena will be able to raise prices and/or worsen services as a result of the acquisition. In particular, the loss in competition across corridors appears modest and Stena will continue to face substantial competition in each of the three corridors in which it operates, for the business of large and small hauliers of both accompanied and unaccompanied freight from existing operators. We do not find an SLC with regard to the supply of freight services.

13.17 We also do not find an SLC with regard to the supply of passenger services (see paragraph 13.10).

13.18 We stated our findings with regard to the other theories of harm we considered in Section 8. To recap: the acquisition had not and was unlikely to produce an SLC with regard to loss of competition within the diagonal corridor, by reducing potential competition, or by increasing the risk of coordination.

13.19 Accordingly, we do not find that the acquisition has resulted or may be expected to result in an SLC within any market in the UK for goods or services.