

## Terms of reference and conduct of the inquiry

### Terms of reference

1. On 29 October 2012, the OFT sent the following reference to the CC:
  1. In exercise of its duty under section 22(1) of the Enterprise Act 2002 ('the Act') to make a reference to the Competition Commission ('the CC') in relation to a completed merger, the Office of Fair Trading ('the OFT') believes that it is or may be the case that:
    - (a) a relevant merger situation has been created in that:
      - (i) enterprises carried on by or under the control of Groupe Eurotunnel S.A. have ceased to be distinct from enterprises comprising certain assets of former SeaFrance S.A.; and
      - (ii) the condition specified in section 23(3) of the Act is satisfied; and
    - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services, including the supply of passenger and freight transport services on the short sea channel crossing.<sup>1</sup>
  2. Therefore, in exercise of its duty under section 22(1) of the Act, the OFT hereby refers to the CC, for investigation and report within a period ending on 14 April 2013, on the following questions in accordance with section 35(1) of the Act:
    - (a) whether a relevant merger situation has been created; and
    - (b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods and services.

**Amelia Fletcher**  
**Office of Fair Trading**  
**29 October 2012**

### Conduct of our inquiry

2. On 30 October 2012, we posted on our [website](#) an [invitation to express views to us](#) about the merger, and on 15 November 2012 (subsequently updated), we posted an administrative timetable for our inquiry.
3. We also invited a wide range of interested third parties to comment on the merger, including competitors, customers, port operators, shipbrokers and trade associations. We sent detailed questionnaires to competitors, customers and port operators and we gathered oral evidence through seven hearings with selected third parties. Evidence was also obtained through telephone contacts and through further written requests. Summaries of our hearings with third parties are published on our [website](#).

---

<sup>1</sup> The short-sea route consists of routes across the narrowest sections of the English Channel and the Belgian Straits.

4. Members of the Inquiry Group, accompanied by staff, visited GET's offices and travelled on the Eurotunnel and MFL ferry service. They were also given a presentation by GET on the operation of its business.
5. On 17 December 2012, we published an [issues statement](#) on our website, setting out the areas of concern on which the inquiry would focus.
6. We received written evidence from GET, and [a non-confidential version of its main submission](#) is on our website. We also held a hearing with GET on 17 January 2013.
7. In the course of our inquiry, we sent to GET and other parties some working papers and extracts from those papers for comment.
8. On 19 February 2013, we published a Notice of provisional findings, a summary of our provisional findings report and a Notice of possible remedies on our [website](#). A non-confidential version of our provisional findings report was published on our website the following day. [Non-confidential versions of responses to our provisional findings report and Notice of possible remedies](#) are published on our website.
9. We published a [supplementary Notice of possible remedies](#) on 2 April 2013. [Non-confidential versions of responses to our supplementary Notice of possible remedies](#) are published on our website.
10. On 2 April 2013, we issued a [Notice of extension](#), due to the scope and complexity of the inquiry. This changed the statutory deadline to 9 June 2013. On 3 April 2013, we also published a [revised administrative timetable](#).
11. We held response hearings with GET on 19 March and 10 May 2013. We also held response hearings with third parties.
12. We sent to GET a remedies working paper for comment. In response to this paper, GET provided a remedies proposal on 7 May, which it further commented upon on 14 May.
13. A non-confidential version of our final report has been placed on our [website](#).
14. We would like to thank all those who have assisted in our inquiry.

### **Interim measures**

15. We took steps to ensure the separate and independent operation of GET and the acquired SeaFrance assets during the course of our inquiry.
16. GET gave [initial undertakings](#) to the OFT under [section 71](#) of the Act on 12 July 2012 for the purpose of ensuring the separate management of GET and the acquired SeaFrance assets whilst the OFT proceedings were ongoing.
17. The CC adopted these undertakings on 30 October 2012. We then considered whether any further changes were necessary to prevent pre-emptive action by the parties which might prejudice the reference or impede the application of effective remedies at the end of our inquiry should they be required, including assessing the need for a hold-separate manager or a monitoring trustee.
18. After considering evidence from GET on the post-merger structure of the companies and the arrangements between the parties, we decided that the appointment of a

monitoring trustee was necessary and issued directions for the appointment of a monitoring trustee on 21 December 2012. The monitoring trustee was required to:

- (a) ascertain the current level of compliance by GET with the undertakings; and
- (b) assess the arrangements made by GET for compliance with the undertakings and what changes to those arrangements, if any, are necessary to preserve the possibility of the CC taking any remedial action, if required.

The monitoring trustee continues to perform this function and report to the CC on a monthly basis.

## GET's financials

### GET: financial performance

1. GET is a public company and its shares are listed on NYSE Euronext Paris as its reference market and have a secondary listing in London. At 15 May 2013 it had a market capitalization of €3.5 billion (£3.0 billion). Its shares are widely held by retail and institutional investors, in the latter case often in long-term infrastructure funds. According to GET's most recent Registration Document for the year ended 31 December 2012, as at 22 September 2011 The Goldman Sachs Group Inc held 15.64 per cent of the company's share capital (giving it 26.05 per cent of the voting rights) on behalf of funds managed by it. As of 6 February 2012, no other party owned more than 5 per cent of GET's share capital.
2. The summarized consolidated financial results of GET taken from its annual financial report for the four years ended 31 December 2009, 2010, 2011 and 2012 are set out in Table 1.

TABLE 1 Summarized financial results of GET, 2009 to 2012

	€ million			
	Years ended 31 December			
	2009	2010	2011	2012
Turnover	640.3	736.6	854.2	1,023.1
Operating expenses	-195.3	-234.8	-266.5	-336.9
Employee expenses	-120.0	-165.7	-184.4	-225.1
Depreciation	-163.9	-156.3	-156.1	-161.4
Trading profit	161.1	-179.8	247.2	300.0
Other operating income/expense	0.2	10.1	24.8	-4.3
Operating profit	161.3	189.9	272.0	295.5
Net cost of financing	-192.2	-248.1	-263.8	-269.3
Other financial income/charges	32.5	1.8	3.6	8.0
Income tax	-0.2	-0.4	-0.5	-0.2
Profit/loss for the year	1.4	-56.8	11.3	34.0
EBITDA*	325.2	336.1	403.3	461.2
EBITDA margin† (%)	44.8	45.6	46.6	43.4
Exchange rate £1=€	1.119	1.169	1.148	1.230

Source: GET annual financial reports.

\*Earnings before interest, taxation, depreciation and amortization (excluding other operating income/expense).

†Calculated as EBITDA divided by turnover (after adjusting for exceptional revenue of €69 million in 2009, €9 million in 2011 and €30 million in 2012).

3. GET's turnover grew by 60 per cent or €383 million between 2009 and 2012. This was largely attributable to an increase in revenue from the Fixed Link (see paragraph 8), Eurotunnel's recovery after the tunnel fire and general market recovery from the economic crisis, together with the acquisition of the French Europorte companies in November 2009, and GBRf in May 2010. The Europorte business accounted for a turnover of €209 million in 2012. EBITDA grew by €136 million or 42 per cent over the same period and the EBITDA margin (after adjusting for the exceptional income in 2009, 2011 and 2012) was broadly stable at 44.8 per cent in 2009, 45.6 per cent in 2010, 46.6 per cent in 2011 and 43.4 per cent in 2012 (Europorte made a small EBITDA loss in 2010 and 2011 and a small EBITDA profit in 2012). GET's stated

rationale in acquiring Europorte and GBRf was to create an integrated logistics chain to be a new growth vehicle for the group.<sup>1</sup>

4. GET's main business was significantly affected by a fire in the tunnel on 11 September 2008. A section of the tunnel remained closed until 9 February 2009 and (according to GET) both the financial years 2009 and 2010 experienced a reduction of turnover as a consequence of the ongoing commercial impact of the fire on freight traffic. Insurance covered losses, including loss of trading profits arising from the fire for a period of two years (ie until September 2010), but the amount of the insurance payment to GET was only finally agreed with insurers in November 2012. Accounting for part of these insurance indemnities was reflected in the reported results in 2009, 2011 and 2012, with €69 million, €9 million and €30 million respectively of compensation being included in the results for these years which has been added back in calculating the EBITDA margin in Table 1.
5. Table 2 sets out the summarized consolidated balance sheets of GET at 31 December 2009, 2010, 2011 and 2012.

TABLE 2 Summarized balance sheets of GET, 2009 to 2012

	€ million			
	31 December			
	2009	2010	2011	2012
<b>Assets</b>				
<i>Non-current assets</i>				
Intangible assets	-	29.1	28.9	28.5
Tangible assets	6,763.1	6,691.3	6,626.8	6,647.7
Financial assets	<u>12.3</u>	<u>2.3</u>	<u>133.5</u>	<u>155.2</u>
	<u>6,775.4</u>	<u>6,722.7</u>	<u>6,789.2</u>	<u>6,831.3</u>
<i>Current assets</i>				
Stocks	-	1.4	2.3	3.3
Debtors	142.3	143.4	150.7	164.4
Cash at bank	<u>251.2</u>	<u>316.3</u>	<u>275.5</u>	<u>256.2</u>
	<u>393.5</u>	<u>461.1</u>	<u>428.5</u>	<u>423.9</u>
Total assets	<u>7,168.9</u>	<u>7,183.8</u>	<u>7,217.7</u>	<u>7,255.2</u>
<b>Equity and liabilities</b>				
Equity	<u>3,071.2</u>	<u>2,820.4</u>	<u>2,400.4</u>	<u>2,182.4</u>
<i>Non-current liabilities</i>				
Retirement benefit obligations	17.7	29.8	26.2	22.2
Financial liabilities and derivatives	<u>3,927.7</u>	<u>4,147.1</u>	<u>4,599.5</u>	<u>4,790.3</u>
	<u>3,945.4</u>	<u>4,176.9</u>	<u>4,625.7</u>	<u>4,812.5</u>
<i>Current liabilities</i>				
Provisions	5.9	8.7	2.3	1.7
Financial liabilities	10.7	5.3	5.1	53.8
Creditors	<u>135.7</u>	<u>172.5</u>	<u>184.2</u>	<u>204.8</u>
	<u>152.3</u>	<u>186.5</u>	<u>191.6</u>	<u>260.3</u>
Total equity and liabilities	<u>7,168.9</u>	<u>7,183.8</u>	<u>7,217.7</u>	<u>7,255.2</u>

Source: GET annual financial reports.

6. GET is financed by a mixture of equity and debt. At 31 December 2012, equity amounted to €2.2 billion and the debt was principally provided by a term loan. The term loan comprises a number of tranches, with different conditions attached to each tranche, and amounts in total to €3.9 billion. The average effective rate of interest on

<sup>1</sup> GET Reference Document for the year ended 31 December 2010, paragraph 6.3.1. [www.eurotunnelgroup.com/uploadedFiles/assets-uk/Shareholders-Investors/Regulated-Information/Access-To-Information/Annual-Financial-Reports/2010ReferenceDocumentUKGroupeEurotunnelSA.pdf](http://www.eurotunnelgroup.com/uploadedFiles/assets-uk/Shareholders-Investors/Regulated-Information/Access-To-Information/Annual-Financial-Reports/2010ReferenceDocumentUKGroupeEurotunnelSA.pdf).

the term loan at 31 December 2012 was 5.78 per cent. These figures exclude the interest rate hedging contracts in place.

## Financial information on the Fixed Link

7. The Fixed Link generates revenue from three sources: the provision of shuttle services, payments from other users of the railway through the tunnel and from other revenues, principally retail activities in the passenger terminal buildings.
8. Table 3 sets out the revenues and profits of the Fixed Link for the four years to 31 December 2010, 2011, 2012 and 2013 (budget). These figures have been extracted from management accounting information and from forecasts and budgets provided to the CC by GET.

TABLE 3 GET: profitability of the Fixed Link, 2010 to 2013

*€ million at budgeted exchange rate*

	<i>Years ended 31 December</i>			
	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>Budget*</i> <i>2013</i>
<i>Revenue</i>				
Cars	[X]	[X]	[X]	[X]
Coaches	[X]	[X]	[X]	[X]
Trucks	[X]	[X]	[X]	[X]
Shuttle services	371.0	407.9	472.2	[X]
Railway network	266.6	284.2	282.2	[X]
Other revenue	<u>9.9</u>	<u>9.9</u>	<u>12.7</u>	[X]
Revenue	647.5	702.0	767.1	[X]
Operating losses indemnity	-	<u>9.3</u>	<u>30.0</u>	[X]
Turnover	<u>647.5</u>	711.3	797.1	[X]
Tunnel expenses	[X]	[X]	[X]	[X]
Corporate expenses	[X]	[X]	[X]	[X]
EBITDA	346.3	415.3	463.6	[X]
Depreciation	<u>-151.9</u>	<u>-148.9</u>	<u>-149.7</u>	[X]
Trading profit	194.4	266.4	313.9	[X]
EBITDA margin†	53.5	57.8	56.5	[X]
Freight yield‡	[X]	[X]	[X]	[X]
Car yield§	[X]	[X]	[X]	[X]

Source: GET management accounts and 2013 budget.

\*Budget dated December 2012.

†EBITDA (excluding operating losses indemnity) divided by revenue.

‡Yield is derived by dividing revenue by volume.

9. The financial result in 2011 was a significant improvement on 2010. Aside from the exceptional impact of the insurance indemnity credit of €9.3 million on turnover, this was due to increased revenues from cars and trucks. GET's share of the truck market fell significantly following the fire in 2008 but by 2011 it had recovered to its former level. Revenue from the railway network also increased in 2011, with the start of new services [X].
10. [X] The outcome for 2012 was a trading profit of €313.9 million, which comfortably exceeded the budget. The main changes compared with 2011 were increases in freight and passenger revenue and a larger receipt from the insurance indemnity, partially offset by increases in tunnel and corporate expenses.

## Event analysis—freight and passenger cross-Channel ferry and tunnel services

### Introduction

1. This appendix analyses data on the volume and price of cross-Channel ferry and tunnel services. The primary focus is a number of significant events that occurred during the last five years in the short-sea region of the English Channel and led to significant volume shifts between modes and/or competitors. The analysis has a number of key objectives:
  - (a) To analyse the competitive interaction between services provided via the channel tunnel and those provided by ferry operators. A key objective is to demonstrate empirically the extent to which services provided via the tunnel and ferries are relatively close substitutes and the extent of diversion of volumes between these modes of transport.
  - (b) To analyse the competitive interaction between ferry operators. As well as the general relationship between the tunnel and the competing ferry operators, we are interested in examining the way that any volume diverted either from Eurotunnel or from other ferry operators is distributed between the other competing ferry operators.
  - (c) To analyse the extent of competitive interaction between the short-sea routes and other neighbouring ferry routes. The primary objective is to investigate empirically whether there is evidence of significant or relatively limited interaction with geographically neighbouring routes, or whether there is any evidence of significant diversion to other modes of travel or exit from the short sea (as evidenced by significant reductions in volumes travelling by tunnel or ferry that have not been re-captured on neighbouring routes).
2. We acknowledge that many factors can influence the distribution of volumes between operators in practice during a particular event and that some of those factors are unobservable. It is therefore not the goal of this analysis to estimate the diversion between operators precisely, but instead to establish whether such diversion exists, whether it is significant and where possible to generate a reasonable estimate of the scale of diversion between services and operators.

### Data

3. The main source of the data for this appendix is the IRN Ferrystat data for freight and passengers.<sup>1</sup> IRN Research is an external market research company that consolidates monthly historic data for ferry operators and Eurotunnel. This data includes volumes (passengers, cars, coaches, accompanied and unaccompanied freight traffic), as well as sailings/departure numbers for each route.
4. For passengers, the data set available to us covers the short sea, Western Channel and North Sea routes for the period from 2007 to 2012. For freight, the data set covers the short sea and Western Channel for the years 2004 to 2012 and North Sea routes for the years 2007 to 2012. Some North Sea operators do not submit their

---

<sup>1</sup> This has been provided to us by GET.

figures to IRN Research, but GET submitted that the key figures for around 75 per cent of the routes on the North Sea corridor were provided.

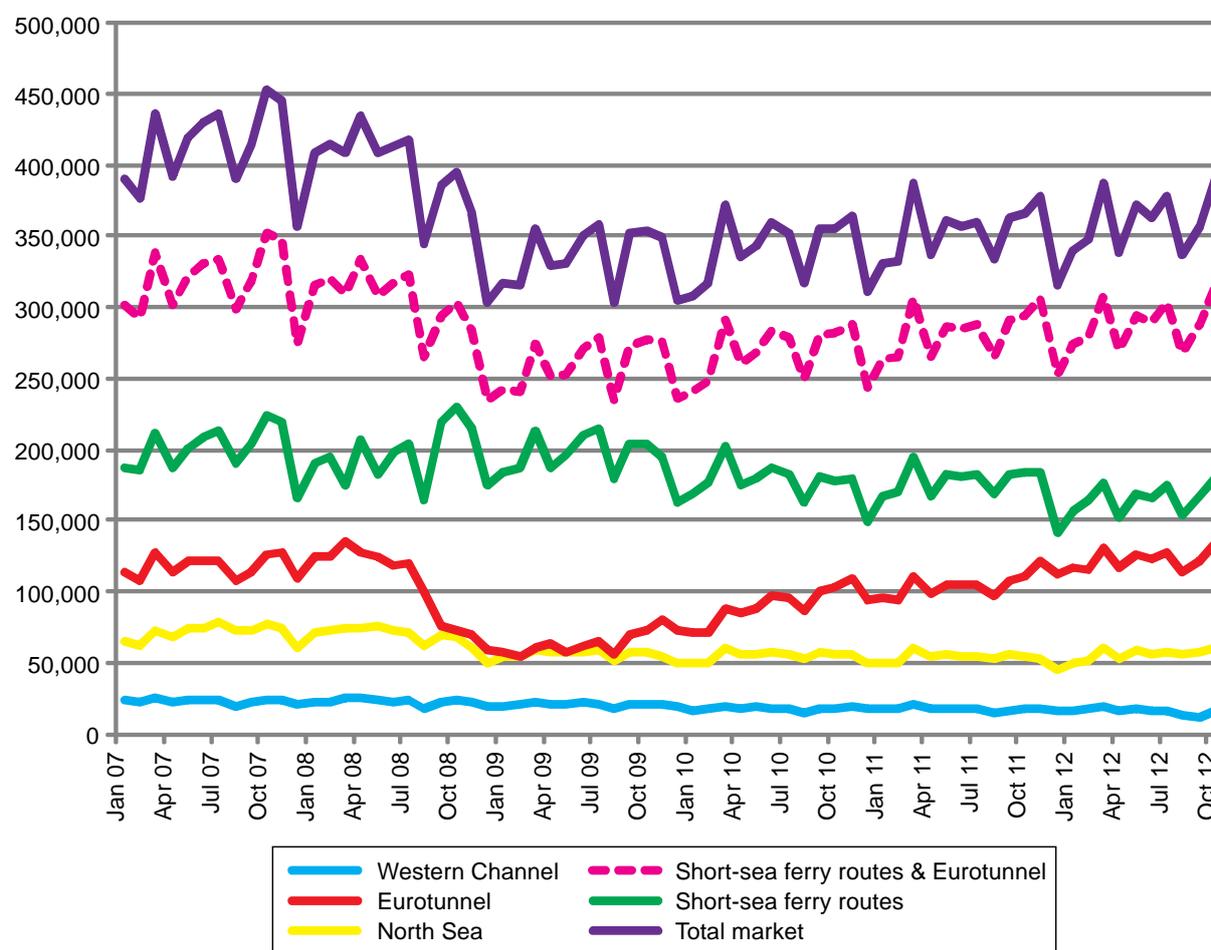
## Freight analysis

### **General market dynamics and the relationship between the short sea, Western Channel and North Sea routes**

- Figure 1 below provides an analysis of the volumes of freight traffic across the main routes between the UK and the north-west coastal region of the Continent. These are grouped by the main regions recognized by the industry—known as the ‘short-sea’ routes (in the vicinity of Dover–Calais), the North Sea routes that cross from the east coast of the UK to the north-west coast of the Continent and the Western Channel routes that are west of the short sea and cross between the south coast of the UK and the north coast of France.

FIGURE 1

#### **Freight traffic on the short sea, Western Channel and North Sea (number of vehicles), 2007 to 2012**



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

- The volume analysis exhibits a number of features of interest:

- (a) The commanding position that the short sea (including Eurotunnel) holds as a trade route is evident. The short-sea ferry and tunnel routes accounted for 80 per cent of volume<sup>2</sup> in 2012, whereas the North Sea<sup>3</sup> accounted for 16 per cent and the Western Channel for only 4 per cent.
- (b) There is some seasonality in freight volumes. This is driven by factors such as quiet periods for commercial activity coinciding with major holiday periods (for example, freight volumes fall in August and over the Christmas/New Year holiday period) and differences in the length of months throughout the year.
- (c) A significant fall in overall volumes is evident between 2007 and 2009 due to the onset of the financial crisis.
- (d) One of the most significant events of the last five years—the fire that affected Eurotunnel in September 2008—is clearly visible. We note the lack of any significant volume increase on the North Sea and Western Channel routes at the time of this event.

7. There is evidence that the short sea has been gaining share of volume over time when compared with the North Sea and Western Channel routes. The Western Channel in particular appears to be in steady decline (see Table 1).

TABLE 1 Shares of freight traffic on the short sea, Western Channel and North Sea (by number of vehicles), 2007 to 2012

Year	<i>per cent</i>		
	<i>Short sea</i>	<i>Western Channel</i>	<i>North Sea</i>
2007	77	6	17
2008	77	6	17
2009	77	6	17
2010	79	5	16
2011	80	5	15
2012 Jan–Oct	80	4	16

Source: IRN Research.

---

Note: Includes accompanied and unaccompanied traffic.

8. The impact of the fire which caused a severe reduction in the capacity supplied by Eurotunnel from September 2008 onwards is shown in Figure 2, which provides an analysis of volume shares over time across regions. The loss of volume share from Eurotunnel to the competing ferry operators on the short-sea routes is evident from the data. It is notable that at the time of the fire the combined share of the short-sea ferry operators and Eurotunnel remained relatively static at just under 80 per cent of total volumes while the volume shares of the North Sea and Western Channel routes also remained relatively static. This supports the view that there is little, if any, competitive interaction between the short sea, North Sea and Western Channel routes. This event is studied in more detail in the following section.

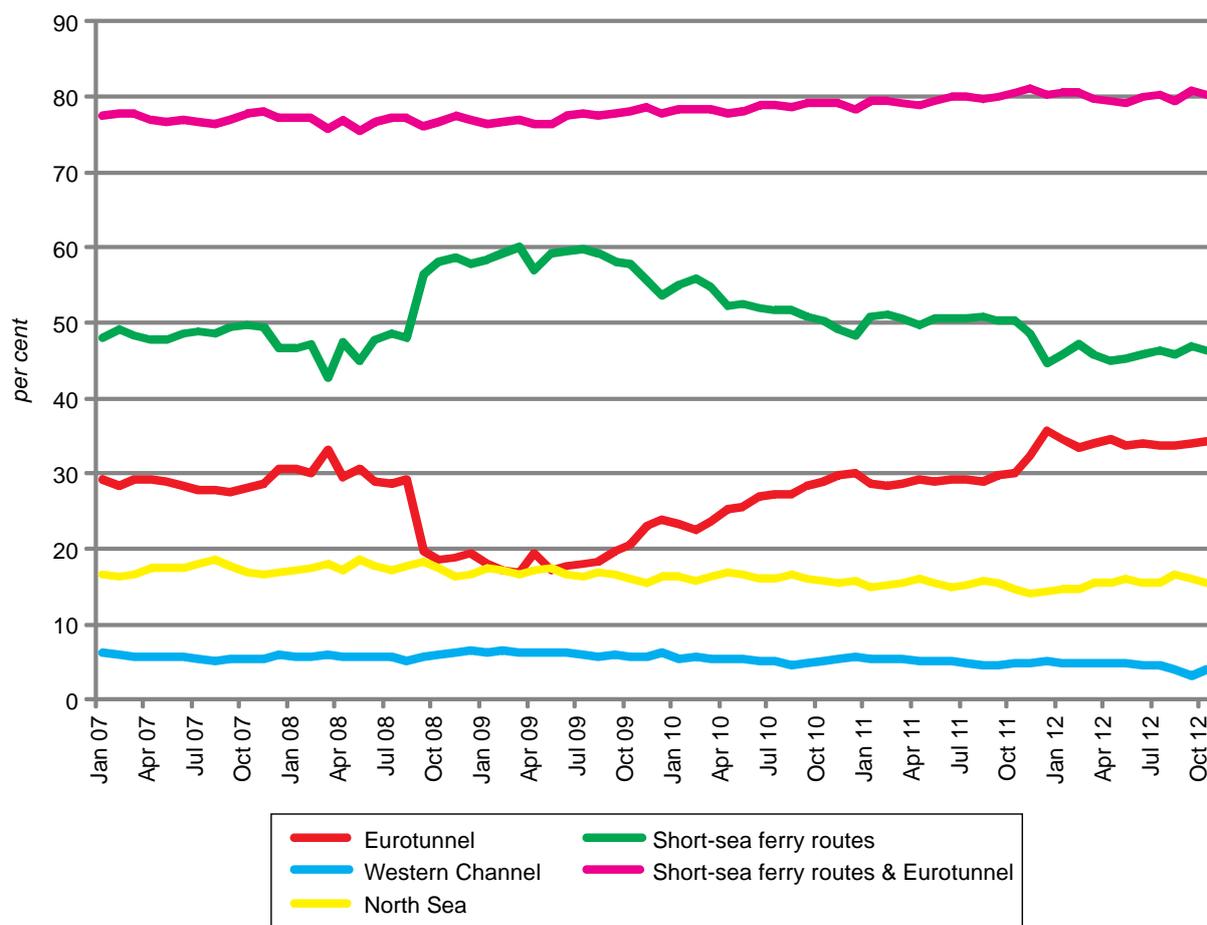
---

<sup>2</sup> Including both accompanied and unaccompanied traffic.

<sup>3</sup> As indicated above, we only have partial data for the North Sea (around 75 per cent by volume, as stated by GET), but even when accounting for this fact, the major importance of the short-sea routes remains a valid conclusion.

FIGURE 2

**Relative shares of short sea, Western Channel and North Sea  
(percentage of total freight market), 2007 to 2012**



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

- Table 2 and Figure 3 show average yearly freight prices charged by Eurotunnel and ferries on the short sea and ferry prices on the Western Channel and North Sea. We note that the pricing trend on the short sea has been quite different from that of the North Sea and Western Channel. Short-sea ferry prices have decreased steadily since 2008, whereas North Sea and Western Channel prices have increased over time. This observation is inconsistent with the North Sea and Western Channel being in the same economic market as the short sea.<sup>4</sup>

<sup>4</sup> If the regions were in the same economic market price levels might differ, but we would expect price trends to be similar.

TABLE 2 Average freight prices for one crossing, 2007 to 2012

£

Operator	2007	2008	2009	2010	2011	2012 Jan–Oct
Eurotunnel	[X]	[X]	[X]	[X]	[X]	[X]
Short-sea ferries	[X]	[X]	[X]	[X]	[X]	[X]
North Sea: P&O	[X]	[X]	[X]	[X]	[X]	[X]
Western Channel: Brittany Ferries	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

Notes:

1. P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; Brittany Ferries price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.
2. N/A = not available.

FIGURE 3

**Average freight prices, £, 2007 to 2012**

[X]

Source: Operators, CC calculations.

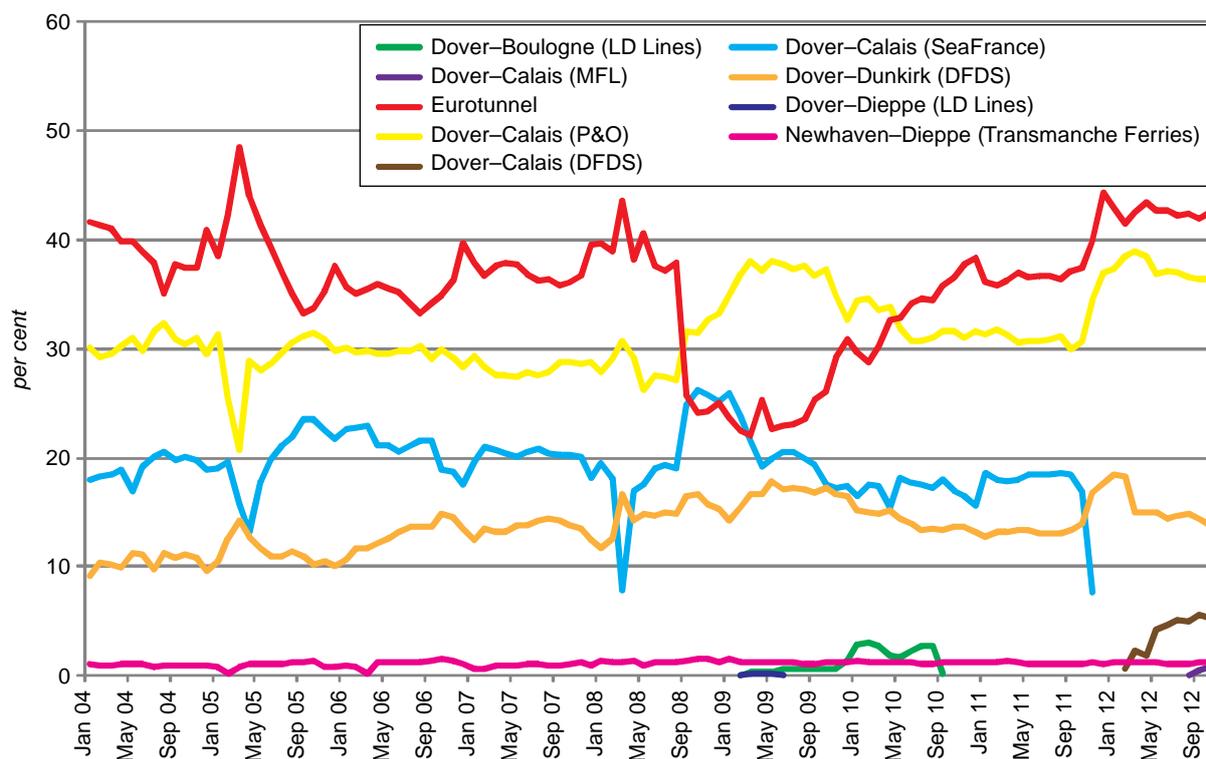
Note: P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; Brittany Ferries price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

*Seasonality and market event analysis*

10. As noted above, freight traffic exhibits reasonably predictable seasonal patterns. However, we note that while Eurotunnel experiences similar seasonal patterns for most of the year, it typically sees its share slightly contract during August compared with the ferry operators, while in December its volumes (compared with November) decline to a lesser extent than those of ferry operators, resulting in increased share. This can also be seen from the shares of freight volume shown in Figure 4. We think this is due to capacity constraints in the tunnel in August during the peak holiday period, while at Christmas the volumes are low so the tunnel is able to absorb a greater share of the seasonal traffic. In August, Eurotunnel usually decreases the number of freight shuttle services it operates in favour of more passenger shuttle services.

FIGURE 4

**Shares of freight traffic on the short sea, 2004 to 2012 (per cent)**



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

**Event analysis**

*Event selection*

11. We have selected for detailed analysis a number of events that significantly affected short-sea transport services. The relevant events have been chosen by comparing lists of potentially competitively important events submitted by GET and third parties with market data to identify events that both appeared likely to be significant and actually resulted in significant shifts of freight volume in the data that were suitable for analysis. We have focused on events that took place during the last five years. The chosen events are:

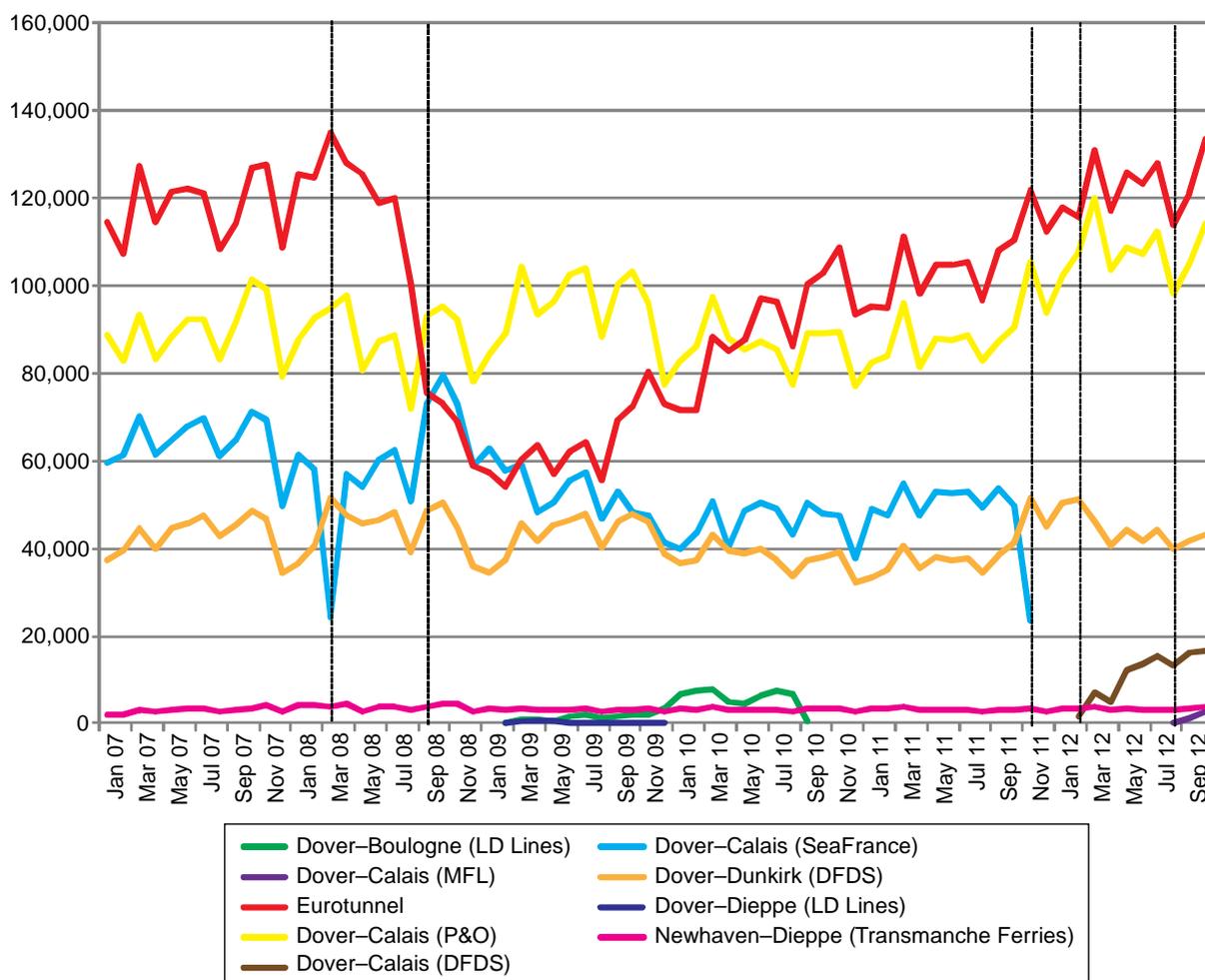
- (a) the exit of SeaFrance in November 2011 and the subsequent entry on to the Dover-Calais route of DFDS in February 2012 and MFL in August 2012;<sup>5</sup>
- (b) the fire in the tunnel in September 2008; and
- (c) a strike by SeaFrance staff in March 2008.

12. These events are marked in Figure 5.

<sup>5</sup> We use the terms exit and entry in this context for convenience. However, for the purposes of our jurisdictional assessment we have concluded that the acquisition by GET of the former SeaFrance assets, combined with its existing operations and the arrangements with the SCOP, mean that GET acquired an enterprise.

FIGURE 5

**Freight traffic on the short sea (number of vehicles), 2007 to 2012**



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

*SeaFrance exit in 2011*

13. SeaFrance ceased sailings in November 2011. Its exit led to a significant reduction of capacity on the market in the short run, which from February 2012 onwards was reversed by entry events. The exit of SeaFrance provides a natural experiment which allows us to review the redistribution of ex-SeaFrance customers to see which operators or routes gained business as a result. Because the exit of SeaFrance was followed relatively quickly by entry events that constitute significant competitive events in their own right, we have split the analysis in a number of ways. First, in this section we analyse the redistribution of SeaFrance business both in the period immediately following the exit (but before new entry takes place) and then over the longer period starting at the date of the exit of SeaFrance and finishing at the latest date for which we hold data. The analysis is therefore split into a comparison of:

- (a) volumes in the period between the exit of SeaFrance up to the entry of DFDS on the Dover-Calais route (December 2011 to January 2012) with the same period 12 months earlier (December 2010 to January 2011); and

(b) volumes in the period after the SeaFrance exit until the most recent data period available (December 2011 to October 2012) with the same period 12 months earlier (December 2010 to October 2011).

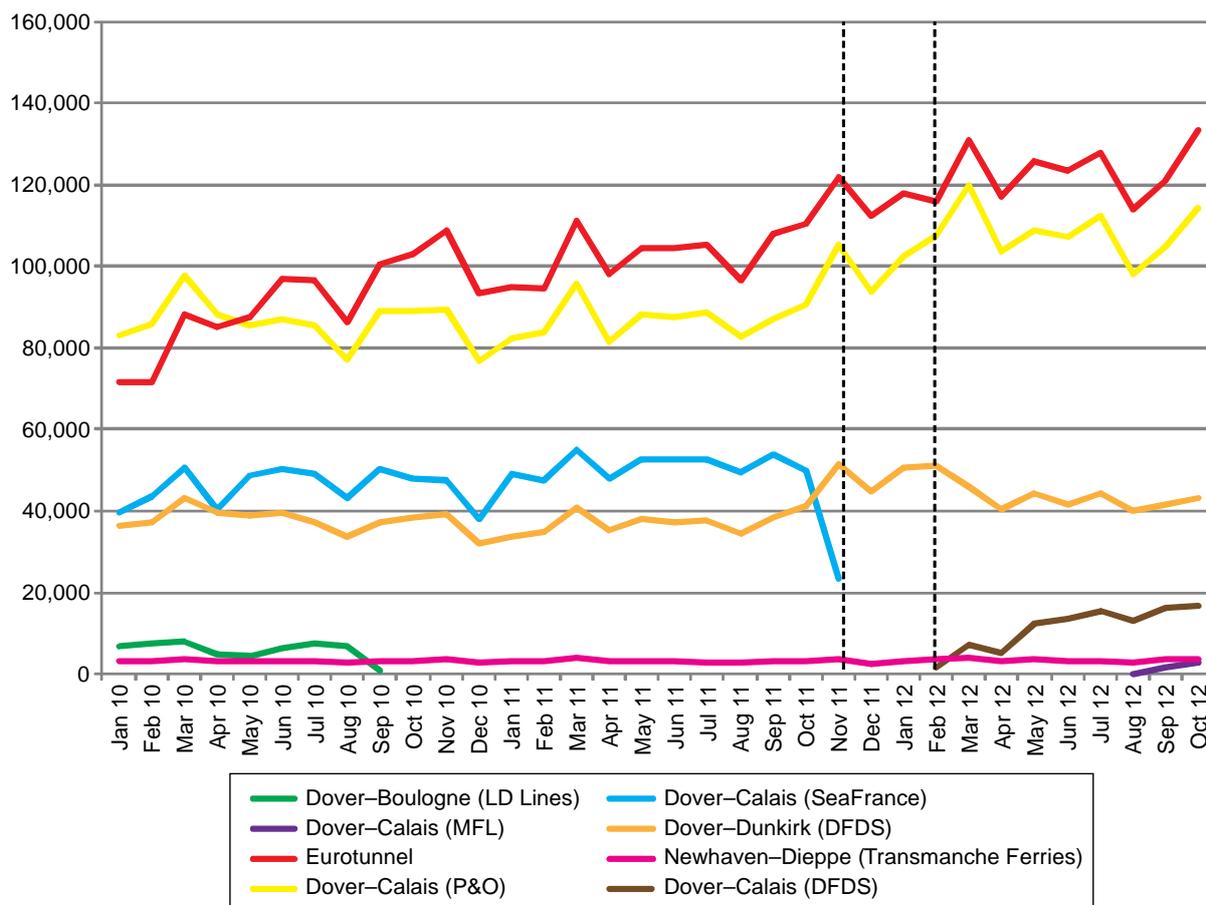
14. In the following section we look in more detail at the DFDS and MFL entry events.

### Overview of the SeaFrance exit

15. Figure 6 shows freight traffic on the short sea between January 2010 and October 2012. The date of the exit of SeaFrance in November 2011 is marked, as is the launch of the DFDS Dover–Calais service in February 2012. Following the exit of SeaFrance, it can be seen that the freight volumes of P&O, DFDS and Eurotunnel went up significantly. Overall volumes on the short sea grew by 4.2 per cent (year-on-year) in the period December 2011 to January 2012. This compares with overall growth of trade between the UK and the Continent of 0.7 per cent. Similarly volume grew during the longer analysis period of December 2011 to October 2012 by 2.9 per cent (year-on-year) compared with overall decline of trade between the UK and the Continent of –3.5 per cent. This suggests strongly that effectively all SeaFrance freight business was recaptured during that period by short-sea providers and that there was no material substitution to more geographically remote routes.

FIGURE 6

### Freight traffic on the short sea (number of vehicles), 2010 to 2012



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

16. As noted, overall volumes on the short sea have grown over the period of our analysis. In order to analyse diversion of ex-SeaFrance business, we need to allow for this growth. To do this, we have calculated the total traffic growth in the relevant analysis period (for December 2011 to January 2012, traffic grew by 4.2 per cent compared with the same period 12 months earlier) and then using this growth rate we have calculated a hypothetical volume for each operator in the relevant period assuming that market shares had remained constant. We then calculated an estimate of the volume gain associated with the exit of SeaFrance using the difference between the actual volumes and our hypothetical volumes. Finally, we calculated the diversion ratios by dividing the difference between the hypothetical and actual volumes for each operator by the total hypothetical volume that might otherwise have been carried by SeaFrance.

*Immediate post-SeaFrance exit analysis*

17. Table 3 summarizes the results of the analysis of the period immediately after the exit of SeaFrance but before the DFDS entry - December 2011 to January 2012.

TABLE 3 Diversion of freight volumes from SeaFrance to other operators, December 2011 to January 2012

Operator	Dec 2010–Jan 2011			Dec 2011–Jan 2012				Diver- sion from SeaFrance, %
	Volume, '000	Share, %	Share, % (excluding SeaFrance)	Volume, '000	Share, %	Hypothetical volume, '000	Differ- ence, '000	
	A	B	C	D	E	F=A x 1.042	G=D–F	
Dover–Calais (P&O)	159	31	38	196	37	166	30	33.3
Dover–Dunkirk (DFDS)	66	13	16	95	18	68	27	29.8
Dover–Calais (SeaFrance)	87	17	-	-	-	90	-90	-
Eurotunnel	188	37	45	230	44	196	34	37.4
Newhaven–Dieppe (Transmanche Ferries)	6	1	1	6	1	6	0	-0.5
Total short sea	506	100	100	528	100	528	0	100

Source: IRN Research, CC calculations.

Note: Includes accompanied and unaccompanied traffic. Volumes do not add up precisely due to rounding.

18. Our calculations show that 33.3 per cent of SeaFrance volumes diverted to P&O, 37.4 per cent to Eurotunnel, and 29.8 per cent to the DFDS Dover–Dunkirk route. Approximately two-thirds of traffic substituted to competing ferry operators, while one-third diverted to Eurotunnel. This can be interpreted as showing that all three competitors (DFDS, P&O and Eurotunnel) were similarly close substitutes for ex-SeaFrance freight customers. We note that Eurotunnel captured a smaller proportion (37.4 per cent) of SeaFrance volumes than its share of short-sea freight volumes (45 per cent) would predict. Both P&O and DFDS increased their capacities immediately following the SeaFrance exit; at the same time Eurotunnel capacity utilization in December to January was high, which, together with the fact that ferries are closer substitutes to each other than to Eurotunnel, may explain the higher diversion to ferries.
19. Following the SeaFrance exit, absolute (as well as relative) prices on the short sea did not experience any dramatic changes. The relative price of Eurotunnel versus ferries remained stable in October 2011 to April 2012. Prices on the Western Channel decreased somewhat during 2012 compared with 2011, while prices on the North Sea remained on the same level.

*Extended SeaFrance exit analysis*

20. Table 4 shows how the SeaFrance freight business was redistributed between other short-sea operators using our second approach, comparing December 2011 to October 2012 with the equivalent prior year period of December 2010 to October 2011. We used the same methodology as above, calculating that total traffic in December 2011 to October 2012 grew by 2.9 per cent compared with the same period 12 months before. To allow for this growth, we calculated a hypothetical (projected) volume for each operator in December 2011 to October 2012 assuming that shares of the short-sea freight traffic had remained constant by multiplying their volumes in December 2010 to October 2011 by 1.029. We then calculated an estimate of the volume gain associated with the exit of SeaFrance using the difference between the actual volumes and the hypothetical volumes we calculated. Finally, we calculated the diversion ratios by dividing the difference between the hypothetical and actual volumes for each operator by the total hypothetical volume that might otherwise have been carried by SeaFrance.

TABLE 4 Diversion of freight volumes from SeaFrance to other operators, December 2011 to October 2012

Operator	Dec 2010–Oct 2011			Dec 2011–Oct 2012				Diver- sion from SeaFrance, % H=G/564
	Volume, '000 A	Share, % B	Share, % (excluding SeaFrance) C	Volume, '000 D	Share, % E	Hypothetical volume, '000 F=Ax1.029	Differ- ence, '000 G=D–F	
	Dover–Calais (DFDS)				101	3	-	
Dover–Calais (P&O)	945	31	38	1,173	37	973	200	35.5
Dover–Dunkirk (DFDS)	404	13	16	488	16	416	72	12.8
Dover–Calais (MFL)				4	0	-	4	0.8
Dover–Calais (SeaFrance)	548	18		-	-	564	-564	N/A
Eurotunnel	1,122	37	45	1,340	43	1,155	185	32.8
Newhaven–Dieppe (Transmanche Ferries)	35	1	1	37	1	36	1	0.2
Total short sea	3,054			3,143		3,143	0	100

Source: IRN Research, CC calculations.

Notes:

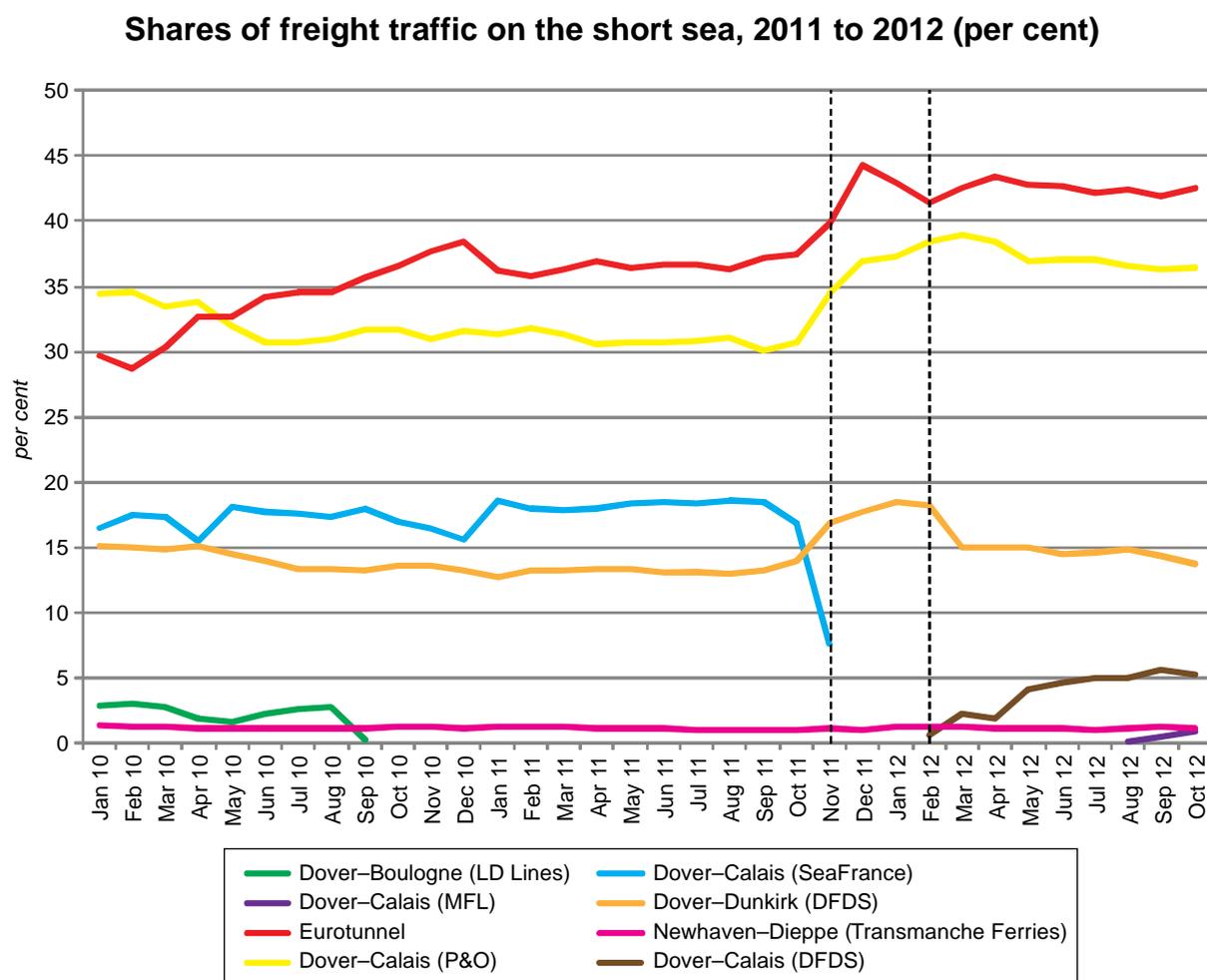
1. Includes accompanied and unaccompanied traffic.
2. N/A = not applicable.

21. Our calculations show that over the longer period for which we have data (and taking into account subsequent entry events) we estimate that 35.5 per cent of SeaFrance volumes diverted to P&O, 32.8 per cent to Eurotunnel, 17.9 per cent to the DFDS Dover–Calais route, and 12.8 per cent to the DFDS Dover–Dunkirk route. Comparing these diversion ratios with operators' shares of freight volume in December 2010 to October 2011 (excluding SeaFrance), we note that Eurotunnel captured a smaller proportion (32.8 per cent) of SeaFrance volumes than its share (45 per cent) would predict. This is consistent with the view that for ferry customers the closest possible substitute to a SeaFrance crossing is another ferry on the same route, although it is clear that Eurotunnel is a significant competitive option. We also note that Eurotunnel's share of ex-SeaFrance business (32.8 per cent) has fallen significantly when compared with the immediate two months post SeaFrance exit, which we estimated at 37.4 per cent. This fall understates the actual fall as the second period of analysis includes periods both with and without entry by DFDS and MFL. This is consistent with the view that entry by ferry operators directly (adversely) impacts Eurotunnel freight volumes.

## DFDS and MFL entry on the Dover–Calais route in 2012

22. In February 2012, DFDS launched a ferry service on the Dover–Calais route, and MFL entered the same route in August 2012.
23. Figure 7 shows the volume shares of short-sea operators between January 2011 and October 2012. For DFDS, we show shares of its individual routes (Dover–Dunkirk and Dover–Calais). After the initial increase in the shares of the remaining operators after the exit of SeaFrance, shares of P&O (Dover–Calais) and DFDS on the Dover–Dunkirk route seem to have suffered after the entry of DFDS to the Dover–Calais route. We note that P&O increased capacity at the time of the DFDS Dover–Calais entry, which is likely to have limited its loss of share somewhat.

FIGURE 7



Source: IRN Research, CC calculations.

Note: Includes accompanied and unaccompanied traffic.

24. In Table 5 we compare the volume shares of the operators over two periods: (a) February 2012 to April 2012 (initial stage of entry of DFDS on the Dover–Calais route), and (b) May 2012 to October 2012 (after DFDS volumes on the Dover–Calais route have stabilized). During the period between May and October 2012, DFDS on the Dover–Calais route achieved a volume share of 5 per cent, which appears to have come mostly at the expense of DFDS’s Dover–Dunkirk route and P&O.

TABLE 5 Change of freight volume shares on the short sea following DFDS entry in February 2012

Operator	per cent		
	Feb 2012– Apr 2012	May 2012– Oct 2012	Change in share
Dover–Calais (DFDS)	1.6	5.0	+3.4
Dover–Dunkirk (DFDS)	16.1	14.5	–1.6
DFDS total	17.7	19.5	+1.8
Dover–Calais (P&O)	38.6	36.7	–1.9
Eurotunnel	42.5	42.5	0.0
Newhaven–Dieppe (Transmanche Ferries)	1.2	1.1	–0.1
Dover–Calais (MFL)	-	0.2	+0.2

Source: IRN Research, CC calculations.

Note: Includes accompanied and unaccompanied traffic. Numbers do not add up perfectly due to rounding.

25. In Table 6, we assess the effect of the entry of DFDS on the Dover–Calais route using the same methodology as previously applied to the exit of SeaFrance. That is, we estimate the effect of entry by comparing actual freight volumes with a hypothetical distribution of volumes that would have been expected during May to October 2012 if the shares of volume had remained the same as during February to April 2012. The analysis suggests that the growth of DFDS on the Dover–Calais route came primarily from P&O and DFDS's Dover–Dunkirk route, and the tunnel's volumes were not significantly affected by it.

TABLE 6 Change in freight volumes following DFDS entry in February 2012

Operator	Actual shares, Feb–Apr 2012 %	Volumes in May–Oct 2012 distributed according to shares in Feb–Apr 2012 '000	Actual volumes, May 2012–Oct 2012 '000	Difference '000
Dover–Calais (DFDS)	1.6	28.3	87.5	+58.8
Dover–Dunkirk (DFDS)	16.1	282.2	255.0	–33.7
DFDS total	17.7	310.5	342.2	+31.7
Dover–Calais (P&O)	38.6	679.2	645.6	–33.7
Eurotunnel	42.5	746.4	745.7	–0.7
Newhaven–Dieppe (Transmanche Ferries)	1.2	21.6	20.0	–1.6
Dover–Calais (MFL)	-	-	4.3	+4.3
Total		1,757.8	1,757.8	0

Source: IRN Research, CC calculations.

Notes:

1. Includes accompanied and unaccompanied traffic.
2. Numbers do not add up perfectly due to rounding.

### SeaFrance strike in March 2008

26. In March 2008, SeaFrance employees went on strike for at least eight days.<sup>6</sup> As Figures 4 and 5 show, this event coincides with a sharp (but temporary) decline in both the volume and share of SeaFrance, and an increase in the volumes and shares of its short-sea competitors.

27. SeaFrance share of short-sea freight traffic fell in March 2008 to 8 per cent, compared with its share of 19 per cent in the previous six months. Its volumes contracted by 66 per cent compared with March 2007, and by 58 per cent compared with February 2008 (as opposed to average expected growth of 13 per cent that SeaFrance

<sup>6</sup> [www.aferry.co.uk/news/SNCF\\_called\\_upon\\_to\\_break\\_SeaFrance\\_deadlock-994.htm](http://www.aferry.co.uk/news/SNCF_called_upon_to_break_SeaFrance_deadlock-994.htm). Accessed on 21 December 2012.

usually experienced in March compared with February). However, immediately after the strike, the share of SeaFrance recovered to an average 18 per cent over the period April to August 2008.

28. Since this event does not seem to have had lasting effects, with SeaFrance volumes and share recovering immediately after this incident, we use the average shares of the previous six months to construct hypothetical volumes in March 2008 that operators would have had if there were no strike. Table 7 contains our calculations.

TABLE 7 Change in short-sea freight volumes following SeaFrance strike in March 2008

Operator	Actual volumes in Mar 2008 '000	Actual shares, Mar 2008 %	Actual shares, Sep 2007–Feb 2008 %	Hypothetical volumes in Mar 2008 '000	Difference '000	Diversion ratio from SeaFrance %	For comparison: actual volume shares excluding SeaFrance, Sep 2007–Feb 2008 %
Dover–Calais (P&O)	95.0	31	29	88.6	+6.4	17.9	35.5
Dover–Dunkirk (DFDS)	51.5	17	13	40.5	+11.0	30.7	16.8
Dover–Calais (SeaFrance)	24.2	8	19	60.1	-35.9	-	-
Newhaven–Dieppe (Transmanche Ferries)	3.7	1	1	3.5	+0.2	0.5	1.4
Eurotunnel	135.1	44	38	116.8	+18.3	51.0	46.8
Total	309.5	100	100	309.5	-	-	-

Source: IRN Research, CC calculations.

Notes:

1. Includes accompanied and unaccompanied traffic.
2. Numbers do not add up perfectly due to rounding.

29. Our analysis estimates that due to the strike SeaFrance lost 35,900 single trips in March 2008, of which 51 per cent of the total was diverted to Eurotunnel, 31 per cent to DFDS and only 18 per cent to P&O. If we compare these ratios with the actual shares of freight traffic of these operators in the six months preceding the strike (excluding SeaFrance), we note that during this event P&O captured a much smaller proportion of SeaFrance customers than its share would suggest, and the biggest 'winner' (among the ferry operators) was DFDS, which captured 31 per cent of SeaFrance's lost volumes compared with its share of 17 per cent. This provides some evidence that the Dover–Dunkirk route is a relatively close substitute for Dover–Calais crossings. By comparison, the very limited level of substitution to Transmanche is evidence that routes outside the immediate short-sea area are of limited competitive importance. There was no significant change of volumes in the North Sea or Western Channel either.

30. GET stated that at the time of the SeaFrance strike in March 2008 the port of Calais was blockaded, which explains the low diversion to P&O, which relies on access to Calais. We note that the volumes carried by P&O in March 2008 grew by only 2 per cent compared with February 2008 (as opposed to the usual average growth in March of 14 per cent), which is consistent with the view that P&O's business was also disrupted at this time.

### *Tunnel fire in September 2008 and its aftermath*

31. A fire occurred on 11 September 2008 in the tunnel, and its service was suspended for 36 hours.<sup>7</sup> Following the fire, [✂]. This incident had a long-lasting effect on both

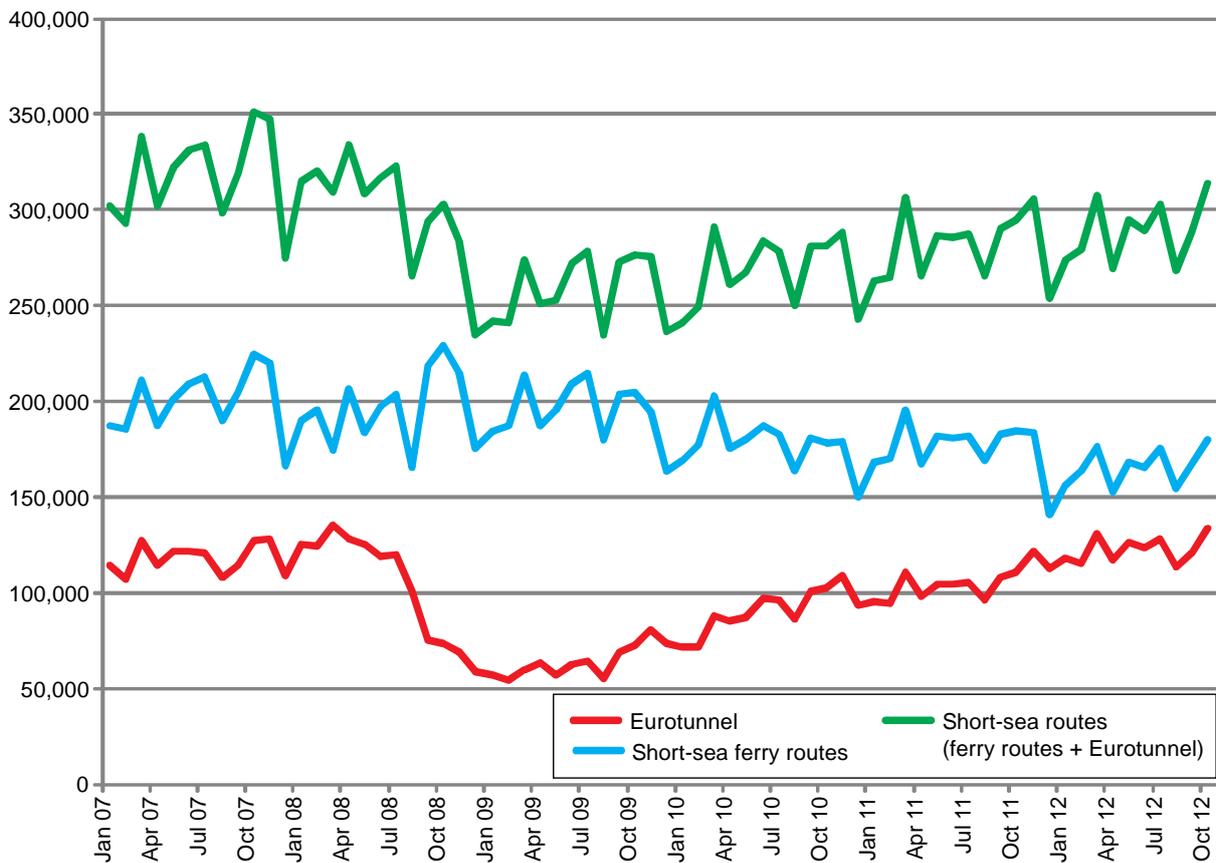
<sup>7</sup> <http://news.bbc.co.uk/1/hi/world/europe/7610919.stm>. Accessed on 23 December 2012.

volumes and share of Eurotunnel, which was only able to regain the pre-fire volume levels in [✂].

32. The fire was a very significant event that considerably constrained the tunnel's capacity for an extended period. All else equal, we would expect to see a significant drop in Eurotunnel business and a similar increase in ferry traffic if the relevant market is the short sea and the ferries have sufficient capacity to accommodate the volume lost by the tunnel.
33. Figure 8 shows the evolution of volumes transported via the short sea during the period 2007 to 2012. While we do observe the expected volume fall via the tunnel, we do not see a large equivalent jump in ferry volumes; rather, ferry volumes are broadly static. The reason for this appears to be that the total market shrank during this period, as shown by the following analysis.

FIGURE 8

**Freight traffic on the short sea (number of vehicles), 2007 to 2012**



Source: IRN Research.

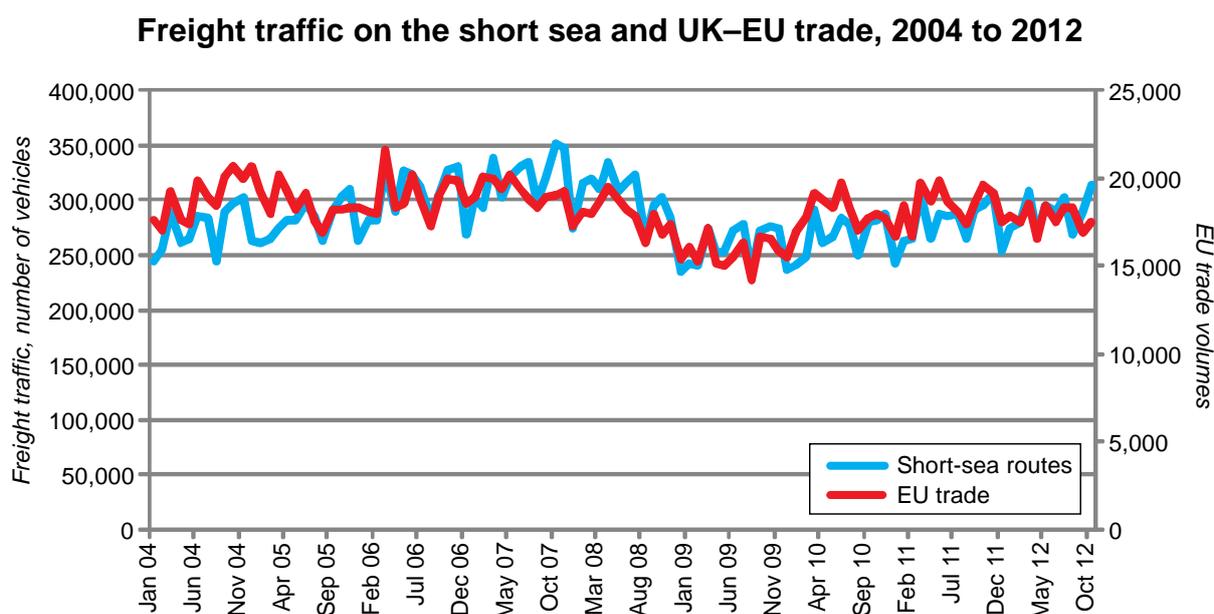
Note: Includes accompanied and unaccompanied traffic.

34. There are two likely explanations for the overall fall in volume on the short sea during the period of the fire. Either the volume migrated to other routes (or modes), or the market shrank due to the financial crisis that struck during 2008, as these events coincide with the beginning of the financial crisis. The UK economy started to contract in Q2 2008, and quarter-on-quarter GDP growth remained negative until Q2

2009.<sup>8</sup> UK trade volumes with the EU started to contract year-on-year in Q4 2007 and exhibited negative growth until Q1 2010.<sup>9</sup>

35. To test whether the fall in volume on the short sea is primarily driven by the overall economic downturn or might indicate migration to other routes or modes, we have compared the change in volume on the short sea with the overall level (and change in level) of goods traded between the UK and the EU. Figure 9 shows that the total volume of freight transported via short-sea ferries and the tunnel mirrors the total volumes of trade between the UK and the EU relatively closely. In 2008/09 UK–EU trade showed a marked decline. The analysis suggests that the primary cause of the fall in demand on the short sea was an overall fall in demand for freight transport, which led to a decline in total freight traffic via the short sea.

FIGURE 9



Source: IRN Research, [www.uktradeinfo.com](http://www.uktradeinfo.com).

Notes:

1. Includes accompanied and unaccompanied traffic.
2. EU trade is a sum of arrivals (proxy for imports) and dispatches (proxy for exports).

36. The view that the fall in demand overall resulted from the economic downturn rather than substitution to other modes or routes is reinforced by the observation that freight volumes on the North Sea and Western Channel also fell over this period. Between 2007 and 2009, volumes on the North Sea fell by 21 per cent and volumes on the Western Channel fell by 12 per cent.
37. The evidence suggests that at the time of the fire the overall market was contracting substantially. However, because of the fire the ferry operators were able to benefit from volumes that diverted from the tunnel with the net effect that ferry operators broadly maintained their volume of business. The evidence is also consistent with the diversion of business from the tunnel following the fire remaining virtually exclusively on the short sea.

<sup>8</sup> ONS, *Economic Review*, July 2012. [www.ons.gov.uk/ons/dcp171766\\_274087.pdf](http://www.ons.gov.uk/ons/dcp171766_274087.pdf).

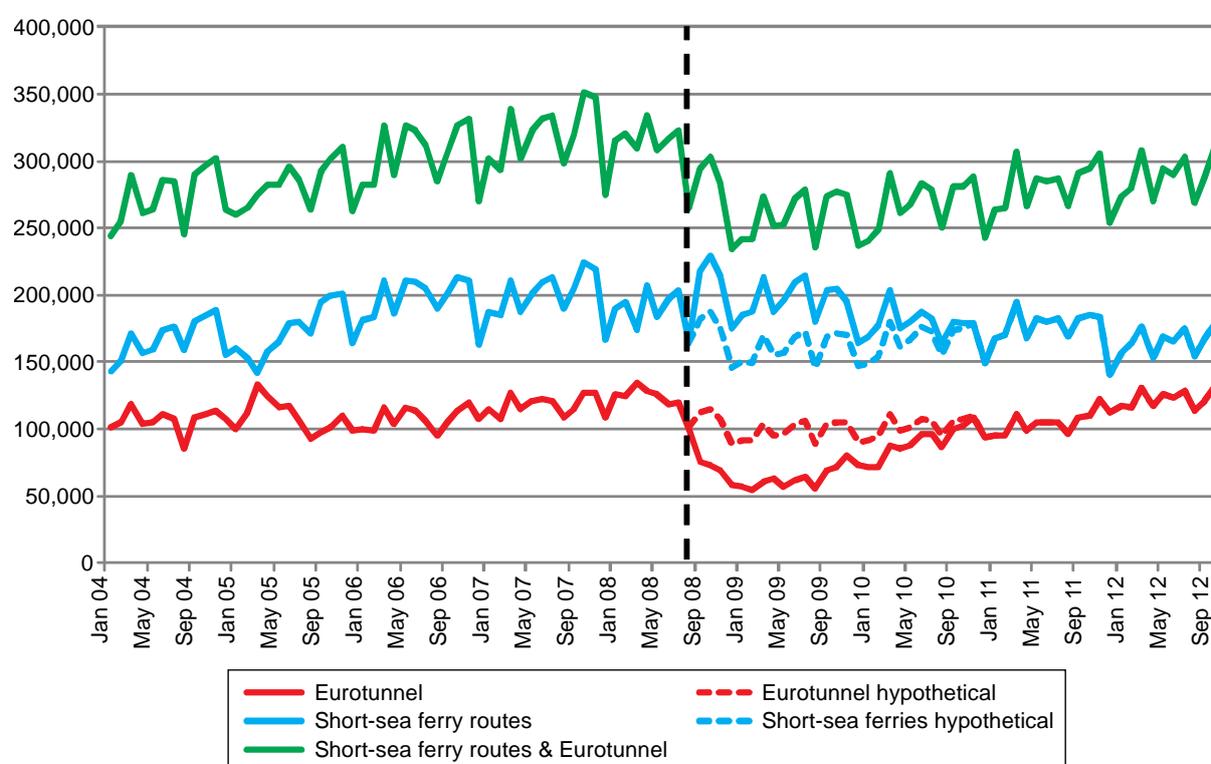
<sup>9</sup> CC calculations based on data from [www.uktradeinfo.com/Statistics](http://www.uktradeinfo.com/Statistics).

*Analysis of diversion within the short sea following the fire*

38. The next step in our analysis of diversion following the tunnel fire is to construct an estimate of the traffic volumes that the tunnel and the ferries would have serviced if the fire had not occurred. We note that although both the economic crisis and the decline in EU trade had started before September 2008, the shares of freight traffic of Eurotunnel and ferry operators remained relatively stable. Therefore we assume that the economic downturn itself was likely to affect all operators in a similar fashion (absent the fire), and thus we use the average shares over the period of September 2007 to August 2008 (excluding March 2008 when the SeaFrance strike occurred) in order to construct a hypothetical volume distribution. We apply these shares to the total volume of short-sea traffic between September 2008 and November 2010, when Eurotunnel regained its pre-fire share of 38 per cent. This analysis is shown in Figure 10.

FIGURE 10

**Freight traffic on the short sea, 2004 to 2012**



Source: IRN Research, CC calculations.

Note: Includes accompanied and unaccompanied traffic.

39. Tables 8 and 9 below show our analysis of diversion from Eurotunnel to ferry operators in two periods: (a) September 2008 to February 2009 (the period following the fire itself and associated reduced capacity of the tunnel), and (b) September 2008 to August 2009 to capture a longer time period. We take the pre-September 2008 shares of short-sea freight volume (average shares in September 2007 to August 2008, once again excluding March 2008 when SeaFrance experienced a strike), and apply them to the two time periods we analyse to calculate the hypothetical volumes of operators.

40. The first analysis is shown in Table 8 below. During the period September 2008 to February 2009, SeaFrance captured 47 per cent of volumes diverted from Eurotunnel,

followed by P&O (38 per cent) and DFDS (14 per cent). Extending the period until August 2009, Table 9 shows that P&O increases its share capturing 51 per cent of Eurotunnel's volumes, followed by SeaFrance with 27 per cent and DFDS with 18 per cent. Diversion to Newhaven–Dieppe is minimal over both periods of analysis.

TABLE 8 Change in freight volumes following the tunnel fire in September 2008 to February 2009

Operator	Actual volumes in Sep 2008–Feb 2009 '000	Actual shares, Sep 2008–Feb 2009 %	Actual shares,* Sep 2007–Aug 2008 %	Hypothetical volumes in Sep 2008–Feb 2009 '000	Difference '000	Diversion ratio from Eurotunnel %	For comparison: actual shares* excluding Eurotunnel, Sep 2007–Aug 2008 %
Dover–Calais (P&O)	532.0	33.3	28.1	449.8	82.2	37.6	45.4
Dover–Dunkirk (DFDS)	251.2	15.7	13.8	220.5	30.7	14.0	22.2
Dover–Calais (SeaFrance)	404.7	25.3	18.9	302.6	102.0	46.6	30.5
Newhaven–Dieppe (Transmanche Ferries)	21.8	1.4	1.1	18.3	3.5	1.6	1.8
Eurotunnel	388.0	24.3	38.0	606.9	–218.9	-	-
Total	1,598.1	100	100	1,598.1	-	-	-

Source: IRN Research, CC calculations.

\*Excluding March 2008.

Notes:

1. Includes accompanied and unaccompanied traffic.
2. Numbers do not sum perfectly due to rounding.
3. LD lines routes Dover–Boulogne and Dover–Dieppe were included in calculations but not shown due to their low volumes.

TABLE 9 Change in freight volumes following the tunnel fire in September 2008 to August 2009

Operator	Actual volumes in Sep 2008–Aug 2009 '000	Actual shares, Sep 2008–Aug 2009 %	Actual shares,* Sep 2007–Aug 2008 %	Hypothetical volumes in Sep 2008–Aug 2009 '000	Difference '000	Diversion ratio from Eurotunnel %	For comparison: actual shares* excluding Eurotunnel, Sep 2007–Aug 2008 %
Dover–Calais (P&O)	1,120.7	35.5	28.1	889.8	230.9	51.3	45.4
Dover–Dunkirk (DFDS)	518.4	16.4	13.8	436.2	82.2	18.3	22.2
Dover–Calais (SeaFrance)	722.2	22.8	18.9	598.7	123.5	27.4	30.5
Newhaven–Dieppe (Transmanche Ferries)	40.4	1.3	1.1	36.1	4.3	1.0	1.8
Eurotunnel	750.7	23.7	38.0	1,200.6	–449.9	-	-
Total	3,161.4	100	100	3,161.4	-	-	-

Source: IRN Research, CC calculations.

\*Excluding March 2008.

Notes:

1. Includes accompanied and unaccompanied traffic.
2. Numbers do not sum perfectly due to rounding.
3. LD lines routes Dover–Boulogne and Dover–Dieppe were included in calculations but not shown due to their low volumes.

41. Overall the analysis shows strong diversion from Eurotunnel to the ferry operators. The analysis of changes in total volumes across the short sea suggests strongly that little, if any, volume diverted outside of the short-sea region.

## Passenger analysis

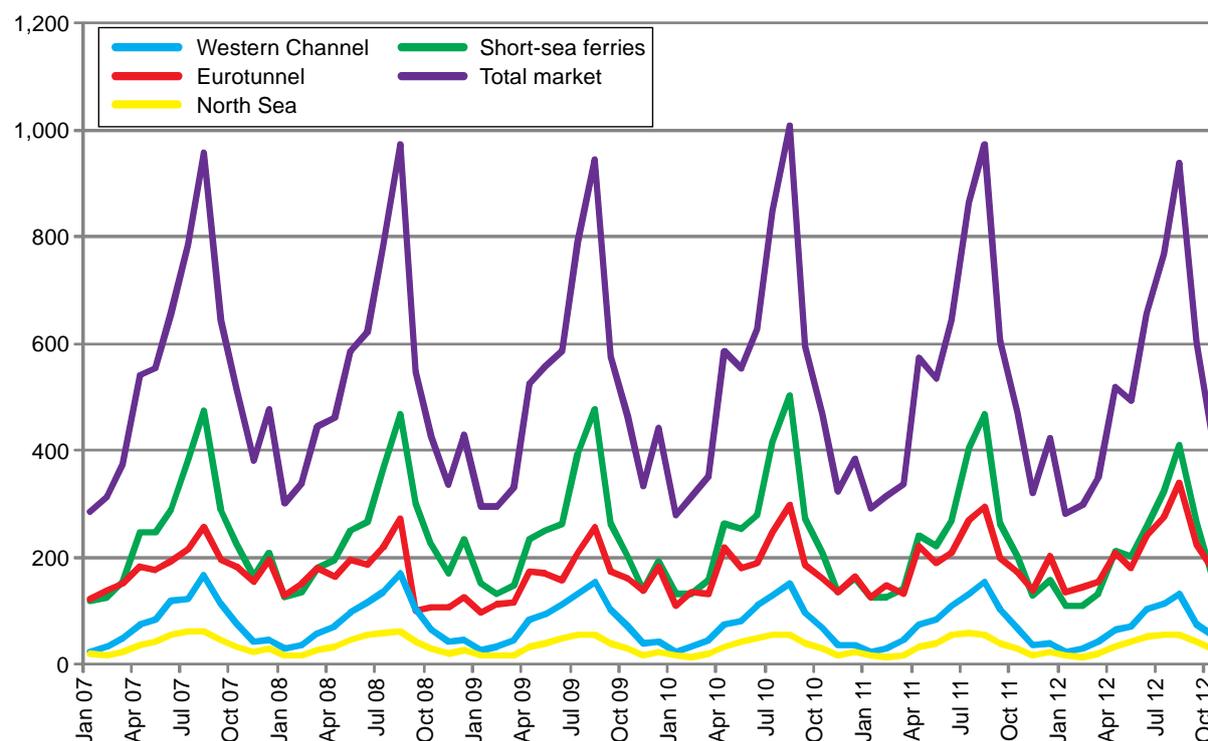
### General market dynamics

#### Cars

42. Passenger traffic is much more seasonal than freight traffic, with much of the traffic concentrated in the summer months of May to August—see Figure 11. Traffic peaks sharply in August, with another smaller peak in December during the Christmas/New Year holiday period.

FIGURE 11

### Passenger traffic on the short sea, Western Channel and North Sea ('000 cars), 2007 to 2012



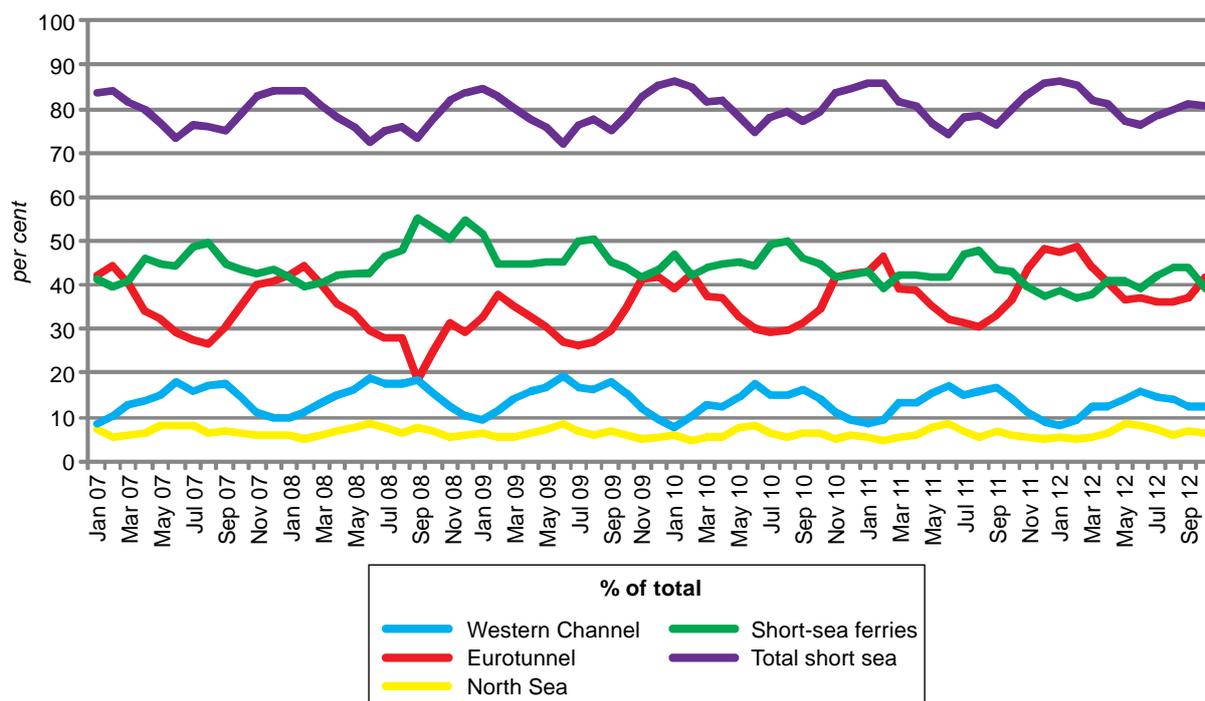
Source: IRN Research.

Note: Cars only.

43. Figure 12 shows the relative shares of the short sea, Western Channel and North Sea as a percentage of the total traffic in the three regions. The calculated shares follow a seasonal pattern, with the short-sea share going up in winter and falling in summer (due particularly to the relatively limited winter season travel on the Western Channel and North Sea routes relative to the short sea). Similarly to freight traffic, the short sea accounts for the majority of passenger traffic—averaging about 80 per cent of all traffic.

FIGURE 12

**Relative shares of short sea, Western Channel and North Sea  
(percentage of total passenger volume), 2007 to 2012**

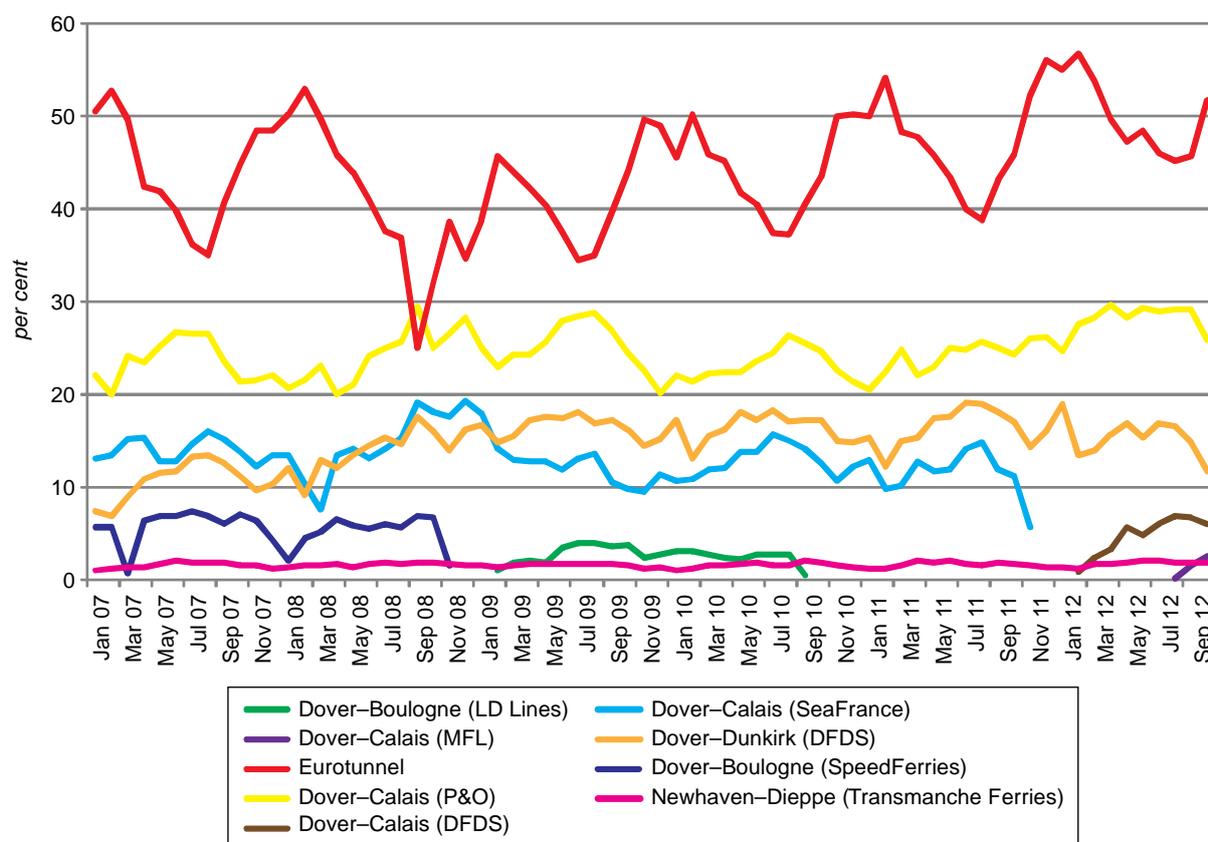


Source: IRN Research.  
Note: Cars only.

44. Figure 13 shows that shares of individual operators on the short sea are also seasonal. In particular (and similar to freight traffic), Eurotunnel's share seasonally fluctuates, typically peaking around 50 per cent in December to February and reaching a low 35 to 37 per cent in August. This could be driven by capacity limits in August in the tunnel, and/or by greater preference of passengers to use ferries in the summer. The major ferry operators (P&O in particular) exhibit a broadly inverse pattern to that of Eurotunnel. Further data tables showing the yearly dynamic of operators' volumes, shares and growth of volumes over time are at [Annex 1](#).

FIGURE 13

Shares of passenger traffic on the short sea, 2007 to 2012 (per cent)



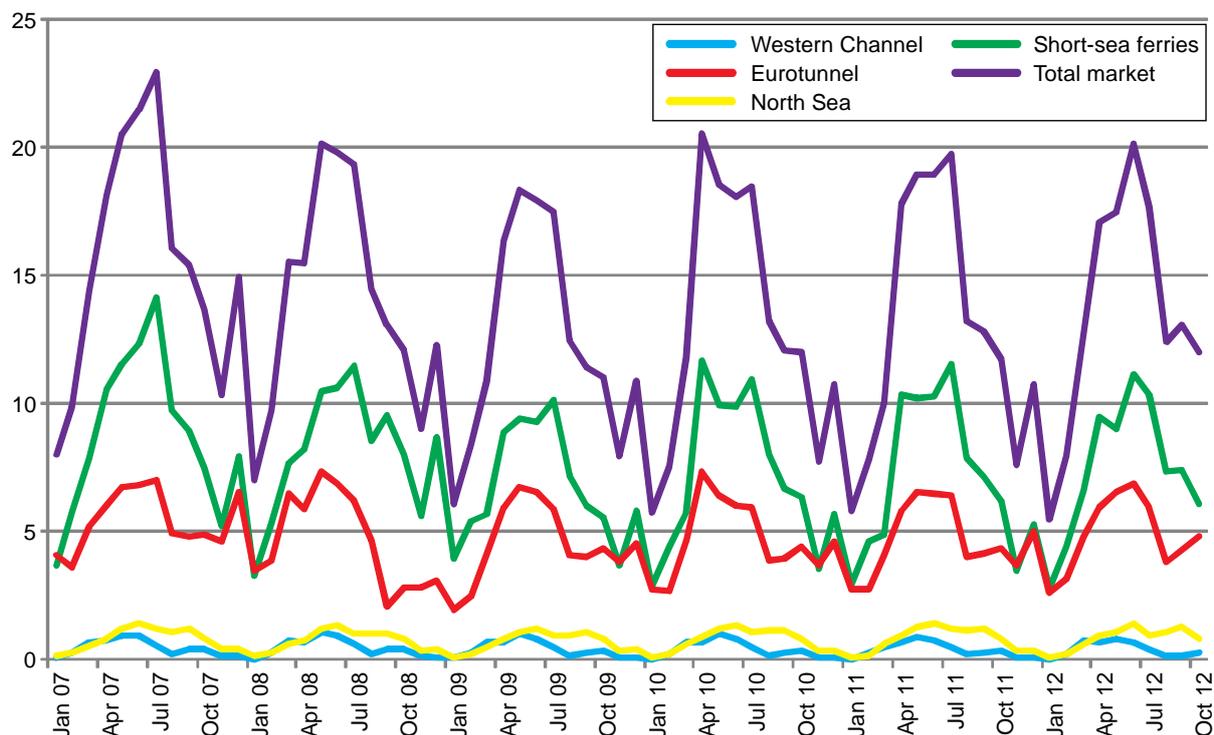
Source: IRN Research.  
 Note: Cars only.

Coaches

- 45. Coach traffic exhibits a seasonal pattern similar to car traffic—see Figure 14. The short sea dominates coach travel to an even greater extent than it does passenger and freight traffic—accounting for 91 per cent of volume in January to October 2012.

FIGURE 14

**Coach traffic on the short sea, Western Channel and North Sea ('000 coaches), 2007 to 2012**

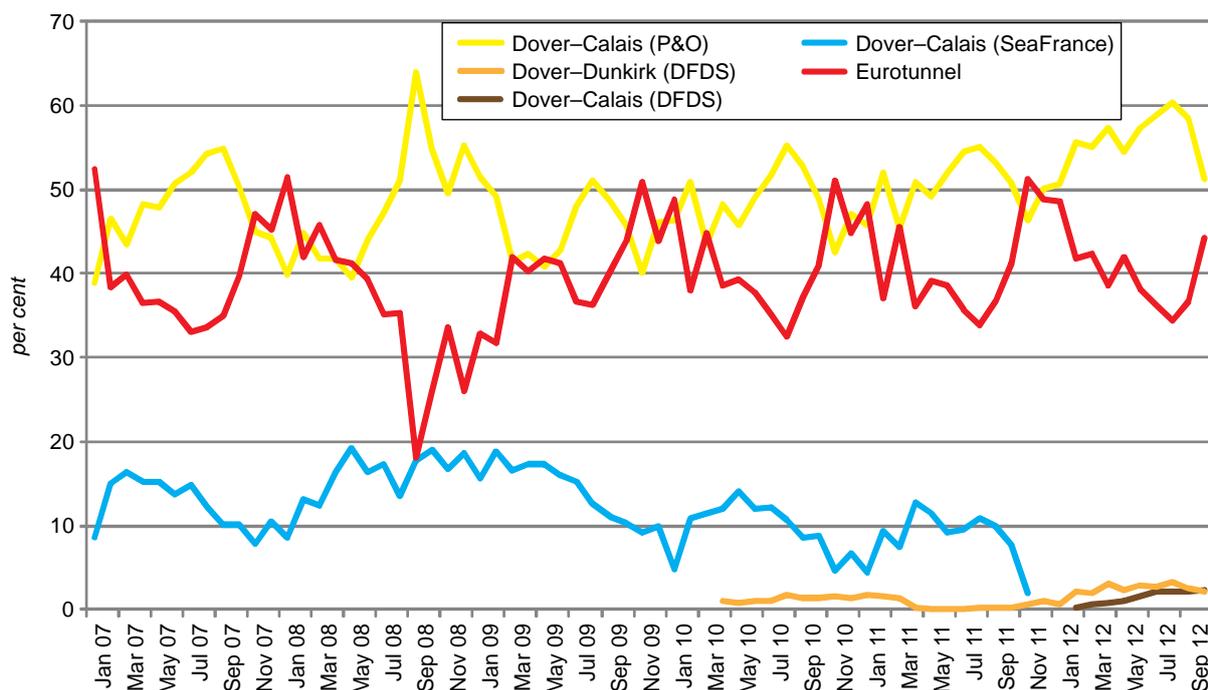


Source: IRN Research.

46. As well as being highly concentrated on the short-sea area, coach traffic is almost entirely carried by the major competitors on the Dover–Calais route—P&O is generally the largest provider, followed by Eurotunnel and then SeaFrance (prior to its exit). Figure 15 shows that prior to the exit of SeaFrance, P&O and Eurotunnel typically accounted for more than 80 per cent of traffic. Since the exit of SeaFrance, these two competitors have maintained well over 90 per cent of the short sea.
47. Figure 15 shows that after SeaFrance stopped its operations, P&O’s share of coach traffic increased on average, while Eurotunnel’s share maintained a similar level to the prior year.

FIGURE 15

**Shares of coach traffic on the short sea,  
2007 to 2012 (per cent)**



Source: IRN Research.

48. Coach traffic represents a relatively small proportion of passenger traffic, accounting for approximately [%] per cent of Eurotunnel passenger revenue (see Table 10). Therefore, for the purposes of the event analysis we concentrated on car volumes, which account for the majority of the passenger traffic.

TABLE 10 Revenue from car traffic as a percentage of total revenue from passenger traffic, 2007 to 2012

Operator	per cent					
	2007	2008	2009	2010	2011	Jan-Oct 2012
Eurotunnel	[%]	[%]	[%]	[%]	[%]	[%]
P&O Dover-Calais	[%]	[%]	[%]	[%]	[%]	[%]
DFDS Dover-Dunkirk	[%]	[%]	[%]	[%]	[%]	[%]
DFDS Dover-Calais	[%]	[%]	[%]	[%]	[%]	[%]
MFL	-	-	-	-	-	[%]

Source: Operators' sales data, CC calculations.

Note: The remaining revenue is attributed to coaches.

**Event analysis**

49. We have analysed the same events as used for the analysis of changes in freight volumes, with the exception of the SeaFrance strike in March 2008. This is because the lost volume and share of passengers was relatively low, as March is a low month for passenger traffic. The low volumes combined with the high variability and seasonality of both volumes and shares in the passenger market means that we are not confident of being able to construct an appropriate counterfactual scenario against which to measure diversion during this event. The events analysed are therefore:

- (a) the exit of SeaFrance in November 2011 and the subsequent entry on the Dover–Calais route of DFDS in February 2012 and MFL in August 2012; and
- (b) the fire in the tunnel in September 2008.

### *SeaFrance exit in 2011*

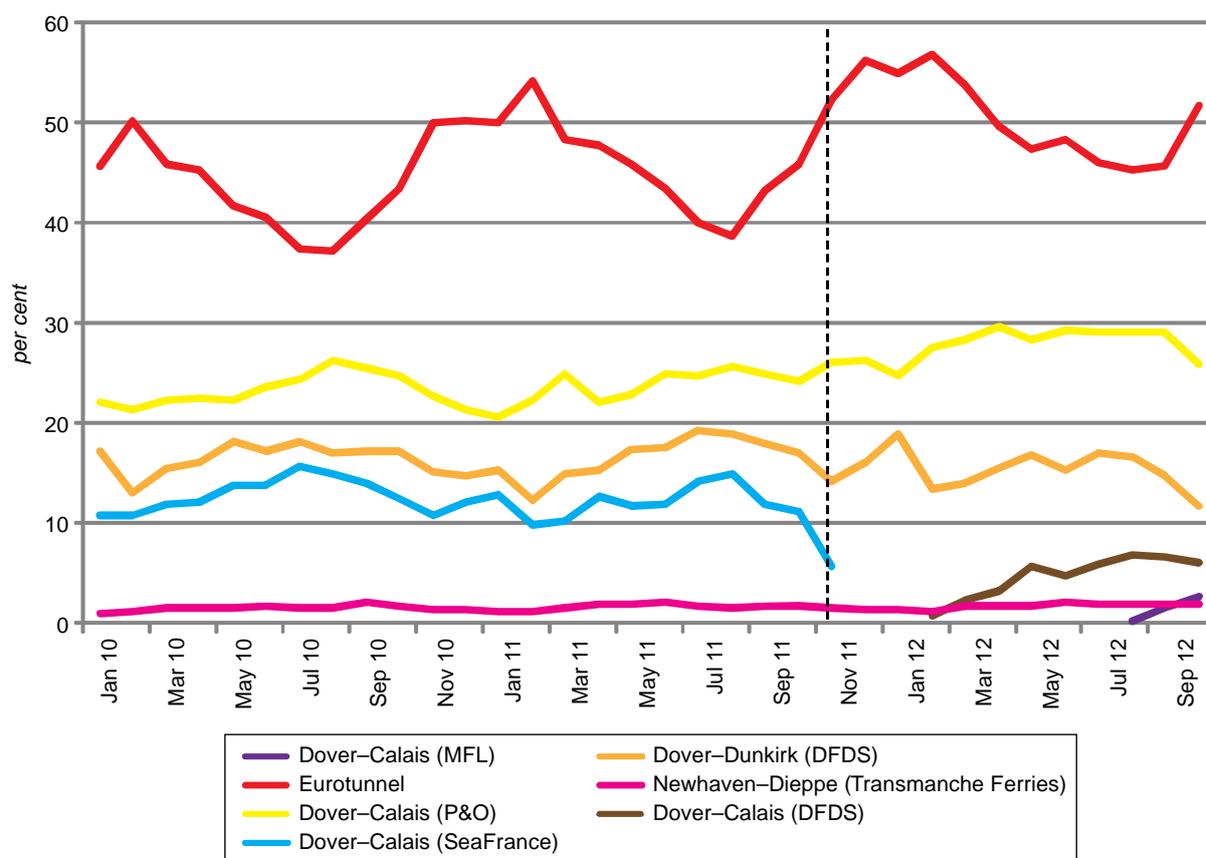
50. SeaFrance ceased sailings in November 2011. Its exit resulted in a significant reduction of capacity on the short sea in the short run, which from February 2012 onwards was reversed by entry events. The exit of SeaFrance provides a natural experiment which allows us to review the redistribution of ex-SeaFrance customers to see which operators or routes gained business as a result. Because the exit of SeaFrance was followed relatively quickly by entry events that constitute significant competitive events in their own right, we have split the analysis in a number of ways. First, in this section we analyse the redistribution of the SeaFrance business both in the period immediately following the exit (but before new entry takes place) and then over the longer period starting at the exit of SeaFrance and finishing at the latest date for which data was available to us. The analysis is therefore split into a comparison of:
- (a) Volumes in the period immediately after the SeaFrance exit but before the entry of DFDS on the Dover–Calais route (December 2011 to January 2012) compared with the same period 12 months earlier (December 2010 to January 2011); and
  - (b) volumes in the period immediately after the SeaFrance exit until the most recent data period available (December 2011 to October 2012) compared with the same period 12 months earlier (December 2010 to October 2011).
51. In the following section we look in more detail at the DFDS and MFL entry events.

### *Overview of the SeaFrance exit*

52. Figure 16 shows volume shares of passenger traffic on the short sea from January 2010 to October 2012. The fact that both volumes and shares change over time in a seasonal pattern means that the effect of SeaFrance's exit is not as readily visible in the data as in the analysis of changes in freight traffic. In order to analyse the effect of the exit, we construct an estimate of what individual operators' volumes would have been absent SeaFrance's exit, using the percentage change of the total short-sea traffic between the period of our analysis and the prior year's volume. This is similar to the approach we used in the analysis of movements in freight traffic.

FIGURE 16

Shares of passenger traffic on the short sea, 2010 to 2012 (per cent)



Source: IRN Research, CC calculations.

Note: Cars only.

*Immediate post-SeaFrance exit analysis*

53. In order to separate the effect of the SeaFrance exit from subsequent entry effects, we initially analyse the period of December 2011 to January 2012. The general approach is the same as we used for the analysis of freight traffic on the short sea. We calculated that the total traffic in December 2011 to January 2012 grew by 4.8 per cent compared with the same period 12 months earlier. Based on this, we calculated hypothetical volumes for each operator in December 2011 to January 2012 by multiplying their volumes in December 2010 to January 2011 by 1.048. Then we calculated the difference between the factual volumes and the hypothetical volumes we calculated, and assumed that this difference is due to gains because of the exit of SeaFrance. Then we calculated the diversion ratios by dividing the difference between hypothetical and actual volumes for each operator by the total hypothetical volume lost by SeaFrance. The results are shown in Table 11.

TABLE 11 Diversion of volumes from SeaFrance to other operators, December 2011 to January 2012

Operator	Dec 2010–Jan 2011			Dec 2011–Jan 2012				Diversion from SeaFrance, % H=G/76
	Volume, '000	Share, %	Share, % (excluding SeaFrance)	Volume, '000	Share, %	Hypothetical volume, '000	Difference, '000	
	A	B	C	D	E	F=Ax1.048	G=D–F	
Dover–Calais (P&O)	122	21	24	156	26	128	28	37
Dover–Dunkirk (DFDS)	87	15	17	105	17	91	14	18
Dover–Calais (SeaFrance)	72	12	-	0	-	76	-76	-
Eurotunnel	290	50	57	337	56	304	34	44
Newhaven–Dieppe (Transmanche Ferries)	8	1	1	9	1	8	1	1
Total short sea	578	100	100	606	100	606	0	100

Source: IRN Research, CC calculations.

Note: Cars only.

54. Our calculations estimate that 37 per cent of SeaFrance volumes diverted to P&O, 44 per cent to Eurotunnel, and 18 per cent to the DFDS Dover–Dunkirk route. We note that Eurotunnel is estimated to have captured a larger share of SeaFrance customers than P&O, though less than its share of volume (excluding SeaFrance). At the same time, P&O seems to have captured a larger proportion of SeaFrance customers than its share of short-sea passengers would predict.
55. We have not seen any evidence of significant diversion to North Sea or Western Channel routes. In December 2011 to January 2012, traffic on the North Sea contracted by 3 per cent and traffic on the Western Channel did not change compared with the same period 12 months earlier. Table 12 and Figure 17 show average yearly passenger prices charged by Eurotunnel, short-sea ferry operators and ferry operators on the Western Channel and North Sea.

TABLE 12 Average prices (passengers), 2007 to 2012

Operator	£					
	2007	2008	2009	2010	2011	2012 Jan–Oct
Eurotunnel, cars only	[£]	[£]	[£]	[£]	[£]	[£]
Short-sea ferries, cars only	[£]	[£]	[£]	[£]	[£]	[£]
North Sea: P&O	[£]	[£]	[£]	[£]	[£]	[£]
Western Channel: BF	[£]	[£]	[£]	[£]	[£]	[£]

Source: Operators, CC calculations.

Notes:

- P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; Brittany Ferries price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.
- N/A = data not available.

FIGURE 17

### Average prices (passengers), £, 2007 to 2012

[£]

Source: Operators, CC calculations.

Note: P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; Brittany Ferries price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

56. As in the analysis of movements in freight volumes, we note that the pricing trend on the short sea has been different from that of the North Sea and Western Channel.

Short-sea ferry and tunnel prices have been stable since 2008, whereas North Sea and Western Channel prices have increased over time. This observation is inconsistent with the North Sea and Western Channel being in the same economic market as the short sea.<sup>10</sup>

### Extended SeaFrance exit analysis

57. Using the same overall approach, we calculated that the total traffic in December 2011 to October 2012 fell by 2.5 per cent compared with the same period 12 months before, and calculated a hypothetical volume for each operator in the period from December 2011 to October 2012 by multiplying their volumes in December 2010 to October 2011 by 0.975. Then we calculated the difference between the actual volumes and the hypothetical volumes we calculated, and assumed that this difference occurred because of the exit of SeaFrance. Finally, we calculated the diversion ratios by dividing the difference between hypothetical and actual volumes for each operator by the total hypothetical volume 'lost' by SeaFrance (584,000 vehicles). Table 13 shows the results of our analysis.

TABLE 13 Diversion of passenger volumes from SeaFrance to other operators, December 2011 to October 2012

Operator	Dec 2010–Oct 2011			Dec 2011–Oct 2012				Diversion from SeaFrance, % H=G/584
	Volume, '000	Share, %	Share, % (excluding SeaFrance)	Volume, '000	Share, %	Hypothetical volume, '000	Difference, '000	
	A	B	C	D	E	F=Ax0.975	G=D-F	
Dover–Calais (DFDS)	-	-	-	211	5	0	211	36
Dover–Calais (P&O)	1,139	24	27	1,313	28	1,111	202	35
Dover–Dunkirk (DFDS)	811	17	19	725	16	791	-66	-11
Dover–Calais (MFL)	-	-	-	19	0	0	19	3
Dover–Calais (SeaFrance)	599	13	-	-	-	584	-584	-
Eurotunnel	2128	45	51	2,289	49	2,075	214	37
Newhaven–Dieppe (Transmanche Ferries)	81	2	2	84	2	79	5	1
Total short sea	4,758	100	100	4,640	100	4,640	0	100

Source: IRN Research, CC calculations.

Note: Cars only.

58. Our calculations estimate that in the longer term, and following the entry of DFDS on Dover–Calais, 35 per cent of SeaFrance volumes diverted to P&O, 37 per cent to Eurotunnel and 36 per cent to the DFDS Dover–Calais route. The DFDS Dover–Dunkirk route appears to have lost volume overall compared with its hypothetical level. If we view both DFDS routes together, then DFDS has jointly captured 36%–11% = 25% of ex-SeaFrance volumes over its two routes.
59. We have not seen any evidence of significant diversion to North Sea or Western Channel routes. Between December 2011 and October 2012, traffic on the North Sea contracted by 1 per cent and on the Western Channel by 13 per cent compared with the same period 12 months earlier. At the same time, prices fell slightly on both of these routes compared with 2011.
60. Overall we note that in both analyses Eurotunnel captures less than its pre-existing share of volume (excluding SeaFrance), which is consistent with Eurotunnel being somewhat differentiated from the ferries. Nonetheless a significant proportion of volume diverts to Eurotunnel, consistent with the view that it is a close competitor to

<sup>10</sup> If the regions were in the same economic market price levels might differ, but we would expect price trends to be similar.

the ferries. We also note that, similar to the analysis of the movements in freight traffic, the entry of DFDS appears to have taken volume from Eurotunnel.

### *DFDS and MFL entry on to the Dover–Calais route in 2012*

61. In February 2012, DFDS launched a ferry service on the Dover–Calais route, and MFL entered the same route in August 2012. The evolution of volumes and shares can be seen in Figures 11 and 13 above.
62. We use several steps in our analysis in order to construct a counterfactual that allows for the exit of SeaFrance and then the introduction of MFL and DFDS on the Dover–Calais route:
  - (a) We project the operators' individual volumes in May to October 2012 using the total short-sea passenger volume growth rate compared with May to October 2011<sup>11</sup> (total volume declined by 3.2 per cent, thus we apply this figure to individual operators' volumes to obtain the hypothetical volumes).
  - (b) We redistribute hypothetical SeaFrance volumes among Eurotunnel, DFDS and P&O using two alternative approaches:
    - (i) using shares of short-sea passenger volumes (excluding SeaFrance) in May to October 2011; and
    - (ii) using diversion ratios calculated in the previous section for December 2011 to January 2012.
  - (c) We compare projected volumes (after redistribution of SeaFrance volumes) with actual volumes achieved and find the main sources of volumes of the new entrants: DFDS and MFL.
63. Table 14 shows our analysis. We compared the hypothetical situation in which each operator's volumes changed in line with change in total short-sea volumes and SeaFrance volumes were redistributed according to operators' shares of the short sea in May to October 2011 with the actual situation with DFDS and MFL operating. We can see that P&O actually appears to have benefited from the entry, gaining volume against its counterfactual forecast. This apparently perverse result reflects that there are other changes taking place at the time—in particular, P&O expanding capacity in February 2012 with the *Spirit of France*. DFDS's Dover–Dunkirk route seems to have suffered the most, as with its own entry on Dover–Calais and capacity expansion by P&O volume that had moved to Dover–Dunkirk immediately after the exit of SeaFrance migrated back to Dover–Calais, being distributed across P&O, MFL and DFDS (Dover–Calais).

---

<sup>11</sup> We start in May because that was the first month when DFDS volumes became more stable following the period of initial entry in February to April.

TABLE 14 Diversion of passenger volumes to DFDS and MFL on Dover–Calais route, May to October 2012: Approach 1 (diversion using shares), '000 cars

	P&O	Sea France	MFL	DFDS D–C	DFDS D–D	Newhaven –Dieppe	Eurotunnel	Total
Volume, May–Oct 2011	786	413	-	-	579	57	1,337	3,171
Actual shares, May–Oct 2011 (%)	24.8	13.0	-	-	18.2	1.8	42.2	100
Share excl SeaFrance (%)	28.5	-	-	-	21.0	2.0	48.5	100
Projected volume, May–Oct 2012 (3.2% decline)	761	399	-	-	560	55	1,294	3,070
Volume after redistribution of SeaFrance volumes	875	-	-	-	644	63	1,488	3,070
Actual volume, May–Oct 2012	881	-	19	188	480	60	1,442	3,070
Actual shares (%)	28.7	-	0.6	6.1	15.7	1.9	47.0	100
Difference between projected and actual volumes	6	-	19	188	-163	-3	-46	0

Source: IRN Research, CC calculations.

Note: Cars only.

64. It should be noted that (as our analysis in the previous section shows) shares in 2011 excluding SeaFrance may not be the best predictor of where the SeaFrance customers diverted to. Therefore we repeat our analysis, using diversion ratios calculated in the previous section to construct the predicted volumes. Table 15 shows this approach.

TABLE 15 Diversion of passenger volumes to DFDS and MFL on Dover–Calais route, May to October 2012: Approach 2 (diversion ratios pre-DFDS entry), '000 cars

	P&O	Sea France	MFL	DFDS D–C	DFDS D–D	Newhaven –Dieppe	Eurotunnel	Total
Volume, May–Oct 2011	786	413	-	-	579	57	1,337	3,171
Actual shares, May–Oct 2011 (%)	24.8	13.0	-	-	18.2	1.8	42.2	100
Projected volume, May–Oct 2012 (3.2% decline)	761	399	-	-	560	55	1,294	3,070
Diversion ratio from SeaFrance (%)	37.0	-	-	-	17.8	0.8	44.4	-
Volume after redistribution of SeaFrance volumes	909	-	-	-	631	58	1,472	3,070
Actual volume, May–Oct 2012	881	-	19	188	480	60	1,442	3,070
Actual shares (%)	28.7	-	0.6	6.1	15.7	1.9	47.0	100
Difference between projected and actual volumes	-28	-	19	188	-151	2	-30	0

Source: IRN Research, CC calculations.

Note: Cars only.

65. If we compare the hypothetical situation in which each operator's volumes changed in line with change in total short-sea passenger volumes and SeaFrance volumes were redistributed according to the diversion that occurred in December 2011 to January 2012 with the actual situation with DFDS and MFL operating, we can see that all main operators (P&O, DFDS's Dover–Dunkirk route and Eurotunnel) lost volumes to the new entrants. As noted, the DFDS Dover–Dunkirk route seems again to have suffered the most, as its volume moved back to the short sea (to MFL and DFDS Dover–Calais in particular).

66. Both approaches above are based on the construction of a counterfactual situation. However, if we look at the actual 'net result' of the exit of SeaFrance and entry of DFDS and MFL in Dover–Calais, by looking at short-sea passenger volumes and shares in the period from May to October 2011 and in the period from May to October 2012, we note that although total traffic declined by 3.2 per cent, P&O volumes increased by 12 per cent and Eurotunnel's by 8 per cent, while DFDS's Dover–Dunkirk volume fell by 17 per cent. P&O and Eurotunnel saw an increase in their

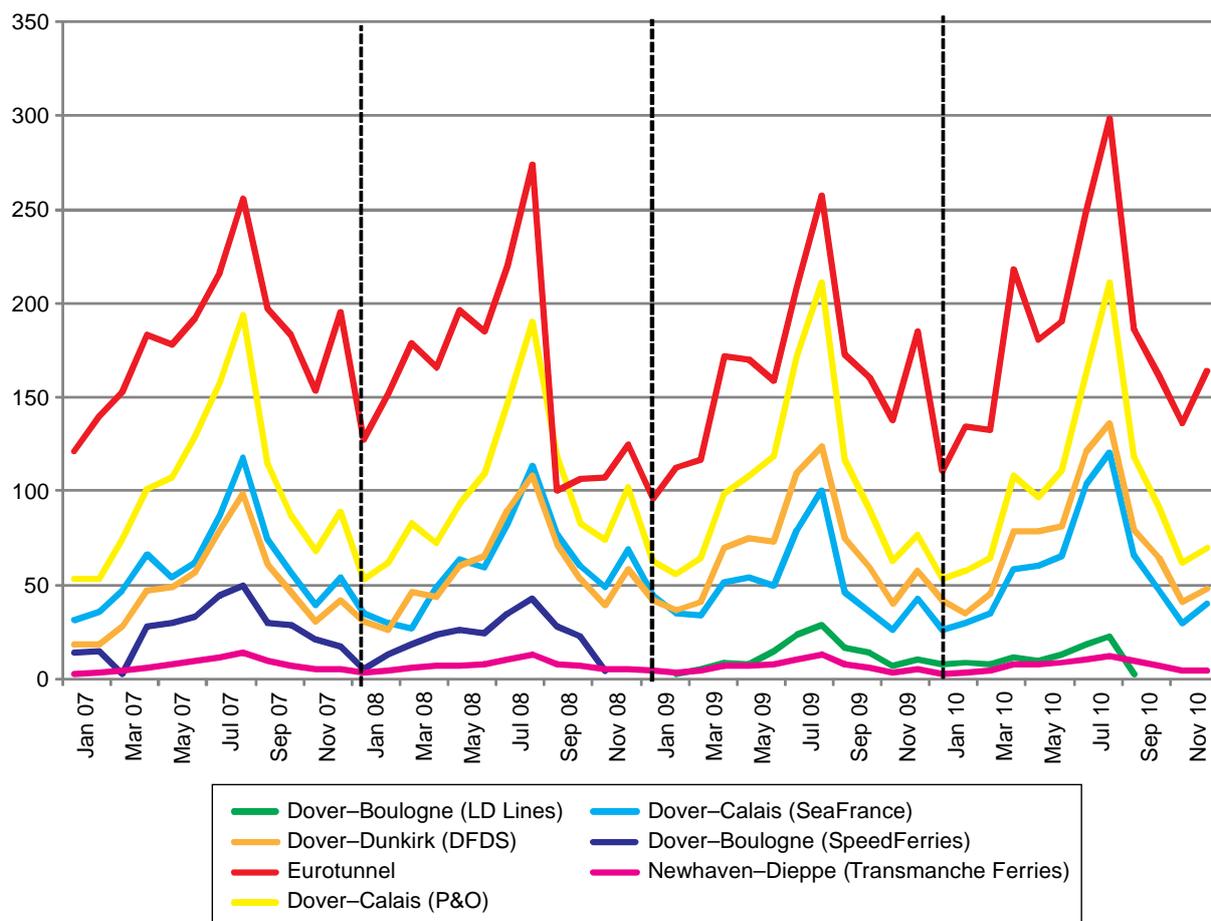
shares of short-sea passenger traffic from 25 to 29 per cent and from 42 to 47 per cent respectively, while DFDS's Dover–Dunkirk share of short-sea passenger traffic fell from 18 to 16 per cent. However, as seems clear, DFDS 'cannibalized' a significant amount of its own business from the Dover–Dunkirk route when it entered Dover–Calais, therefore it is likely to be better to look at both DFDS routes together. Using this approach, total DFDS volumes grew by 15 per cent in May to October 2011 compared with May to October 2010, and DFDS share (combined) grew from 18 to 22 per cent. Also, irrespective of the approach used (see Tables 14 and 15 above), DFDS as a whole experienced a net gain from the entry to the Dover–Calais route, as it gained volumes compared with both hypothetical situations.

### *Tunnel fire in September 2008 and its aftermath*

67. Figure 18 shows the evolution of volumes transported via the short sea in 2007 to 2010, and Figure 19 shows shares of short-sea passenger volumes in the same period. Analysing the effects of the fire on passenger volumes is more difficult than for freight, because at the same time SpeedFerries (which carried a material volume of passengers) was ceasing operations and LD Lines was starting a new service (February 2009), and similarly to freight the economic crisis was a significant background factor complicating these events.

FIGURE 18

Passenger traffic on the short sea ('000 cars), 2007 to 2010



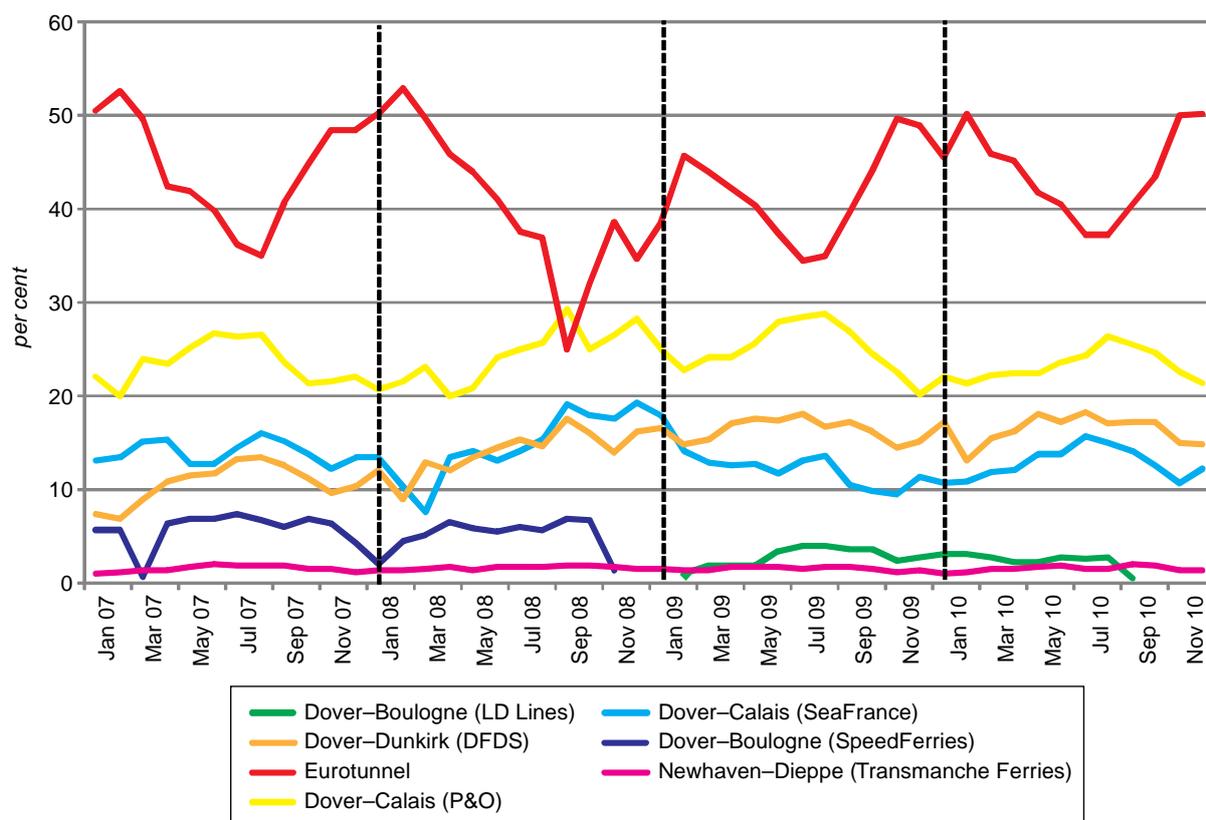
Source: IRN Research.

Notes:

- 1. Cars only.
- 2. Dotted lines show January.

FIGURE 19

Shares of passenger traffic on the short sea, 2007 to 2010



Source: IRN Research, CC calculations.  
 Note: Cars only. Dotted lines show January.

68. Annex 1, Tables 1 to 3, show that in 2008 total short-sea passenger volumes contracted by 5 per cent, Eurotunnel's volumes fell by 11 per cent and its share of short-sea passenger volumes fell from 43 per cent in 2007 to 40 per cent in 2008. However, different dynamics appear if we look at different time periods within the year—see Table 16.
69. During the first eight months of 2008 the total short-sea passenger traffic remained stable compared with the same period in 2007 (see first section of Table 16). At the same time, individual operators saw their volumes change a lot. P&O and SeaFrance were losing volumes whereas DFDS and Eurotunnel were gaining them.

TABLE 16 Change in short-sea passenger volumes following the tunnel fire in September 2008

	Speed Ferries	P&O	SeaFrance	DFDS	Trans- manche	Euro- tunnel	Total short sea
Volume, Jan–Aug 2007 ('000)	215	870	500	394	59	1,438	3,476
Volume, Jan–Aug 2008 ('000)	189	809	458	469	58	1,499	3,482
Change (year-on-year) (%)	-12.2	-6.9	-8.5	19.2	-1.5	4.2	0.2
Share, Jan–Aug 2007 (%)	6	25	14	11	2	41	100
Share, Jan–Aug 2008 (%)	5	23	13	13	2	43	100
Volume, Sep–Oct 2007 ('000)	58	202	131	107	16	381	894
Volume, Sep–Oct 2008 ('000)	50	201	137	124	14	207	734
Change (year-on-year) (%)	-13.3	-0.4	4.6	16.2	-8.6	-45.7	-17.9
Share, Sep–Oct 2007 (%)	6	23	15	12	2	43	100
Share, Sep–Oct 2008 (%)	7	27	19	17	2	28	100
Hypothetical volume, Sep–Oct 2008, using market shares in Sep–Oct 2007 ('000)	47	166	107	88	13	312	734
Difference from actual volume, Sept–Oct 2008 ('000)	2.7	35.4	29.4	36.6	1.5	-105.5	0
Diversion ratio (%)	3	34	28	35	1		
Shares (excl Eurotunnel), Sep– Oct 2007 (%)	11	39	25	21	3		

Source: IRN Research, CC calculations.

Note: Cars only.

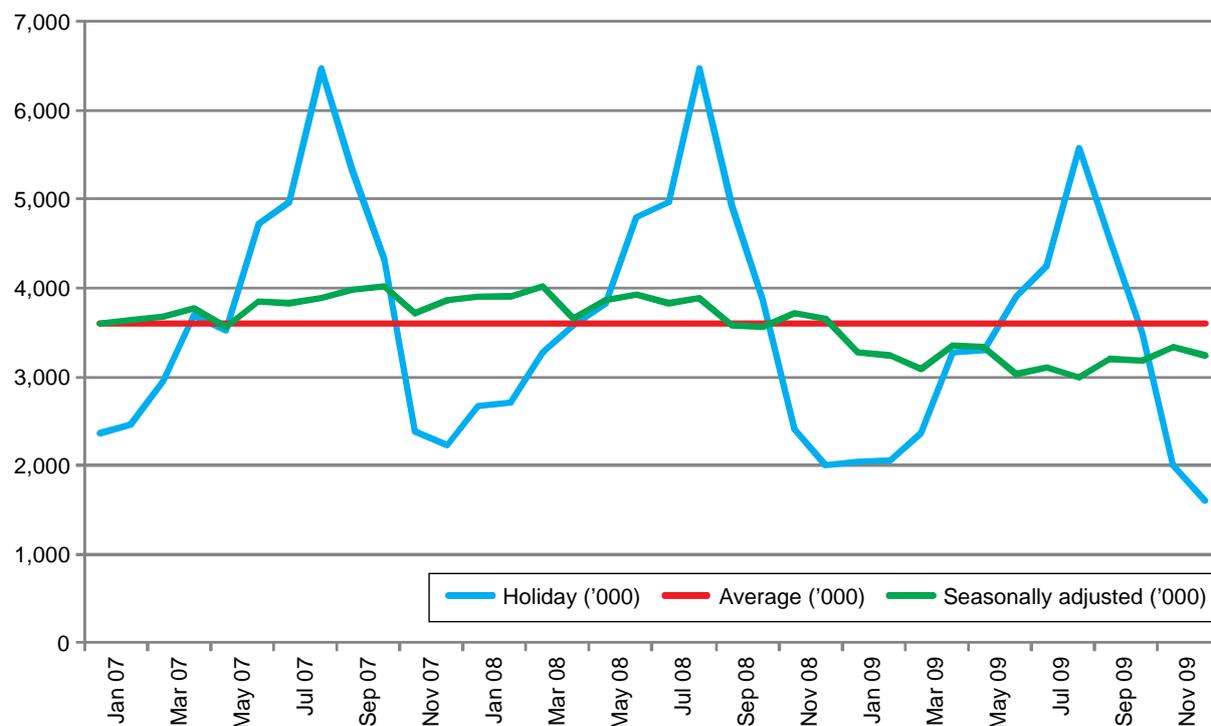
70. In order to separate the effect of the exit of SpeedFerries, we analyse the period of September to October 2008 (see Table 16). We apply the shares of September to October 2007 to the total short-sea passenger volume in September to October 2008. However, as noted above, it may be the case that some Eurotunnel volumes left the short sea and thus total short-sea passenger volume reduced. Also, looking at pre-September 2008, we see that DFDS was gaining share, and so applying 2007 shares of passenger volumes may overestimate the volumes DFDS gained from Eurotunnel. With these caveats in mind, we find that in September to October 2008, 34 per cent of volumes lost by Eurotunnel went to P&O, 28 per cent to SeaFrance, and 35 per cent to DFDS. DFDS seems to outperform other operators in capturing Eurotunnel's customers when compared with looking at the potential distribution of volumes according to shares of short-sea passenger traffic.
71. Looking at other routes, in the first eight months of 2008 passenger volumes in the North Sea contracted by 2 per cent compared with January to August 2007, and in the Western Channel they grew by 7 per cent. However, similar to the short sea, September to October 2008 was disappointing, and volumes on both routes contracted year on year by 8 per cent and 12 per cent respectively.
72. To determine whether the decline of passenger traffic at the end of 2008 reflected the general trends in tourism, we looked at 2007 to 2009 monthly data provided by the Office for National Statistics (ONS) on UK residents travelling overseas. We looked at both the number of people travelling on holiday and the number of people travelling to the EU and find very similar trends as shown in the figures below. After seasonal adjustments,<sup>12</sup> we find that the number of travellers started to fall around October 2008 following the effects of the economic downturn. However, a sharper decline did not occur until mid-2009.

<sup>12</sup> Seasonal adjustments are calculated by first finding the residual volume for each month (actual number of passengers minus the monthly average across all three years). The residuals for the same month across the three years are then averaged to produce the seasonal factor. Finally, the seasonally adjusted value is produced by the sum of the actual volume and the seasonal factor.

73. The analysis suggests that the relatively sharp contraction of volume on the short sea in September to October 2008 following the tunnel fire (approximately 18 per cent) may have been due to both to the onset of the economic slowdown and the loss of some traffic from the short sea. The simultaneous (and significant) contraction in traffic on the smaller Western Channel and North Sea routes suggests that there was not significant migration to these routes.

FIGURE 20

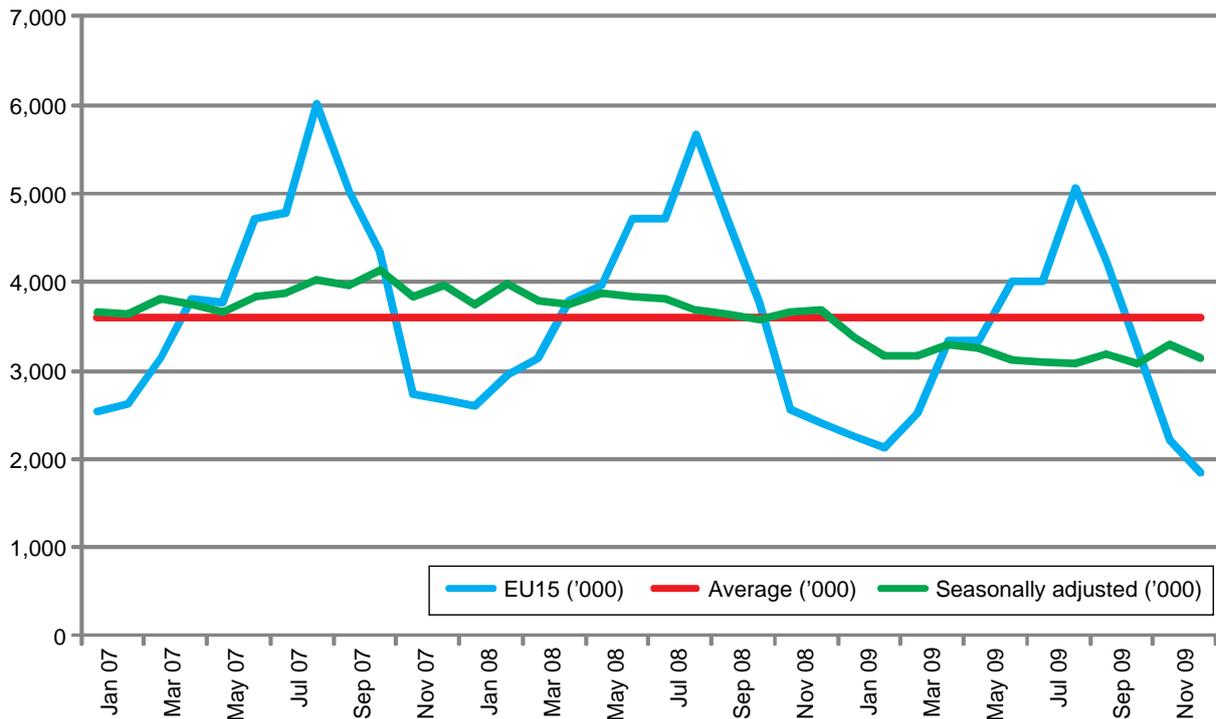
**UK residents' overseas holiday travel, 2007 to 2009**



Source: Overseas Travel and Tourism, Dec 2009, Table 5b (provided by the ONS).

FIGURE 21

**UK residents' overseas travel to EU15, 2007 to 2009**

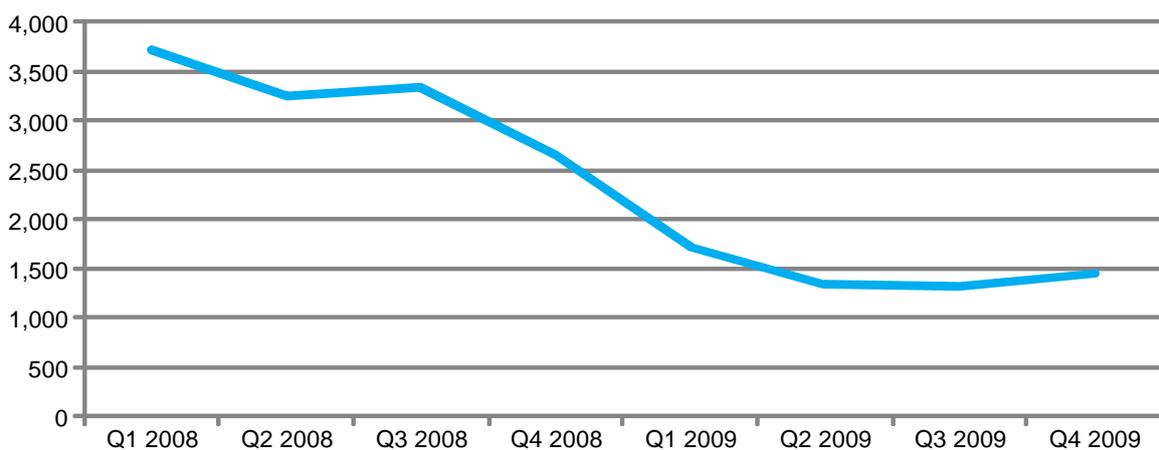


Source: Overseas Travel and Tourism, Dec 2009, Table 4b (provided by the ONS).

74. At the same time, we note that the expenditure on the tourism sector as part of GDP took a significant hit in around the fourth quarter in 2008. This is shown in Figure 22 using data provided and seasonally adjusted by the ONS. The downward trend shows a more dramatic drop starting in Q4 2008 and continuing in Q1 2009.

FIGURE 22

**Household expenditure on tourism (2005 prices), seasonally adjusted**



Source: Quarterly National Accounts, Fourth Quarter 2009, Table E3 Household Final Consumption Expenditure by Purpose – Chained Volume Measures.

## Passenger data tables

TABLE 1 **Passenger traffic on the short sea, 2007 to 2012**

Operator	'000 cars					
	2007	2008	2009	2010	2011	2012
Dover–Boulogne (LD Lines)	-	-	138	100	-	-
Dover–Boulogne (SpeedFerries)	311	243	-	-	-	-
Dover–Calais (DFDS)	-	-	-	-	-	242
Dover–Calais (P&O)	1,229	1,186	1,238	1,206	1,235	1,363
Dover–Calais (SeaFrance)	724	712	600	679	575	-
Dover–Calais (MFL)	-	-	-	-	-	46
Dover–Dunkirk (DFDS)	573	691	802	850	859	737
Newhaven–Dieppe (Transmanche Ferries)	84	83	77	82	86	89
Short-sea ferries	2,921	2,914	2,855	2,917	2,754	2,477
Eurotunnel	2,168	1,938	1,949	2,161	2,307	2,466
Total short sea	5,089	4,852	4,804	5,078	5,061	4,943

Source: IRN Research.

Note: Cars only.

TABLE 2 **Shares of passenger traffic on the short sea, 2007 to 2012**

Operator	per cent					
	2007	2008	2009	2010	2011	2012
Dover–Boulogne (LD Lines)	-	-	3	2	-	-
Dover–Boulogne (SpeedFerries)	6	5	-	-	-	-
Dover–Calais (DFDS)	-	-	-	-	-	5
Dover–Calais (P&O)	24	24	26	24	24	28
Dover–Calais (SeaFrance)	14	15	12	13	11	-
Dover–Calais (MFL)	-	-	-	-	-	1
Dover–Dunkirk (DFDS)	11	14	17	17	17	15
Newhaven–Dieppe (Transmanche Ferries)	2	2	2	2	2	2
Short-sea ferries	57	60	59	57	54	50
Eurotunnel	43	40	41	43	46	50
Total short sea	100	100	100	100	100	100

Source: IRN Research.

Note: Cars only.

TABLE 3 **Growth of volumes of passenger traffic of selected operators on the short sea, 2007 to 2012**

Operator	per cent				
	2008	2009	2010	2011	2012
Dover–Calais (P&O)	-3	4	-3	2	10
Dover–Calais (SeaFrance)	-2	-16	13	-15	-
Dover–Dunkirk + Dover– Calais (DFDS)	20	16	6	1	14
Short-sea ferries	0	-2	2	-6	-10
Eurotunnel	-11	1	11	7	7
Total short sea	-5	-1	6	0	-2

Source: IRN Research.

Note: Cars only.

## Freight data tables

TABLE 1 Freight traffic on the short sea, 2007 to 2012

Operator	'000 vehicles					
	2007	2008	2009	2010	2011	2012
Dover–Boulogne (LD Lines)	-	-	16	53	-	-
Dover–Calais (DFDS)	-	-	-	-	-	133
Dover–Calais (P&O)	1,076	1,061	1,139	1,034	1,068	1,282
Dover–Dieppe (LD Lines)	-	-	2	-	-	-
Dover–Dunkirk (DFDS)	518	536	517	452	468	523
Dover–Calais (MFL)	-	-	-	-	-	11
Dover–Calais (SeaFrance)	771	712	628	549	533	-
Newhaven–Dieppe (Transmanche Ferries)	36	45	37	38	38	40
Short-sea ferries	2,400	2,354	2,340	2,127	2,107	1,989
Eurotunnel	1,415	1,254	769	1,089	1,263	1,465
Total short sea	3,815	3,608	3,109	3,216	3,371	3,454

Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic. In several cases, IRN data for accompanied and unaccompanied freight did not coincide with total freight traffic, as published by IRN Research. We summed up the underlying data for accompanied and unaccompanied traffic. Other discrepancies may also result from rounding.

TABLE 2 Shares of freight traffic on the short sea, 2007 to 2012

Operator	per cent					
	2007	2008	2009	2010	2011	2012
Dover–Boulogne (LD Lines)	-	-	1	2	-	-
Dover–Calais (DFDS)	-	-	-	-	-	4
Dover–Calais (P&O)	28	29	37	32	32	37
Dover–Dieppe (LD Lines)	-	-	0	-	-	-
Dover–Dunkirk (DFDS)	14	15	17	14	14	15
Dover–Calais (MFL)	-	-	-	-	-	0
Dover–Calais (SeaFrance)	20	20	20	17	16	-
Newhaven–Dieppe (Transmanche Ferries)	1	1	1	1	1	1
Short-sea ferries	63	65	75	66	63	58
Eurotunnel	37	35	25	34	37	42
Total short sea	100	100	100	100	100	100

Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic. In several cases, IRN data for accompanied and unaccompanied freight did not coincide with total freight traffic, as published by IRN Research. We summed up the underlying data for accompanied and unaccompanied traffic. Other discrepancies may also result from rounding.

TABLE 3 **Growth of volumes of freight traffic of selected operators on the short sea, 2007 to 2012**

Operator	<i>per cent</i>					
	2007	2008	2009	2010	2011	2012
Dover–Calais (P&O)	-1	-1	7	-9	3	20
Dover–Dunkirk + Dover– Calais (DFDS)	9	3	-3	-13	4	40
Dover–Calais (SeaFrance)	1	-8	-12	-13	-3	-
Short-sea ferries	2	-2	-1	-9	-1	-6
Eurotunnel	9	-11	-39	42	16	16
Total short sea	4	-5	-14	3	5	2

Source: IRN Research.

---

*Note:* Includes accompanied and unaccompanied traffic. In several cases, IRN data for accompanied and unaccompanied freight did not coincide with total freight traffic, as published by IRN Research. We summed up the underlying data for accompanied and unaccompanied traffic. Other discrepancies may also result from rounding.

## Prices and volumes

### Freight analysis

#### Introduction

1. In this appendix we analyse the prices and volumes of freight on the short sea, Western Channel and North Sea during the period 2007 to 2012.

#### Data

2. The data used in this section was provided by GET, P&O, DFDS and Brittany Ferries.

#### Composition of freight traffic

3. Freight represents around [x] per cent of the total revenues of ferry operators.<sup>1</sup> For Eurotunnel since 2009 it has been around [x] to [x] per cent. Table 1 shows relative shares of freight in total revenues (from freight and passengers) of operators during the period 2007 to 2012.

TABLE 1 Freight share in total revenues, 2007 to 2012

Operator	per cent					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[x]	[x]	[x]	[x]	[x]	[x]
P&O	[x]	[x]	[x]	[x]	[x]	[x]
DFDS Dover–Dunkirk	[x]	[x]	[x]	[x]	[x]	[x]
DFDS Dover–Calais						[x]
MFL						[x]

Source: Operators, CC calculations.

4. A significant number of freight customers negotiate their rates directly with operators. We have detailed information only for Eurotunnel and P&O—see Table 2.

<sup>1</sup> We excluded revenue from foot passengers for P&O.

TABLE 2 Types of accounts by volume, 2007 to 2012

Operator						<i>per cent</i>
	2007	2008	2009	2010	2011	Jan–Oct 2012
<i>Eurotunnel*</i>						
Negotiated account	[X]	[X]	[X]	[X]	[X]	[X]
Standard rate	[X]	[X]	[X]	[X]	[X]	[X]
Distributor	[X]	[X]	[X]	[X]	[X]	[X]
<i>P&amp;O</i>						
Negotiated account	[X]	[X]	[X]	[X]	[X]	[X]
Standard rate	[X]	[X]	[X]	[X]	[X]	[X]
Distributor	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

\*For Eurotunnel, the type of account was provided as of 2012.

- DFDS informed us that on average, [X] per cent of its freight volumes were sold at negotiated rates, distributors accounted for [X] per cent and standard rates applied to [X] per cent.
- For P&O, the volume of freight traffic is generally balanced in both directions, to and from the Continent, whereas for Eurotunnel the volume of freight traffic coming from France is usually slightly greater—see Table 3. There were no significant monthly changes in these patterns.

TABLE 3 Volume by direction of travel, 2007 to 2012

Operator						<i>per cent</i>
	2007	2008	2009	2010	2011	Jan–Oct 2012
<i>Eurotunnel</i>						
Calais–Folkestone	[X]	[X]	[X]	[X]	[X]	[X]
Folkestone–Calais	[X]	[X]	[X]	[X]	[X]	[X]
<i>P&amp;O</i>						
Calais–Dover	[X]	[X]	[X]	[X]	[X]	[X]
Dover–Calais	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

- Large vehicles account for most of the volume of both P&O and Eurotunnel—see Table 4. For Eurotunnel, there is a difference in traffic composition between negotiated accounts and standard account holders, with smaller vehicles being quite important for the latter. For P&O, there is no significant difference in traffic composition for different types of accounts. We did not find any significant differences in traffic composition depending on the direction of travel.

TABLE 4 Share of volume by type of vehicle (freight), 2007 to 2012

Operator	2007	2008	2009	2010	2011	Jan–Oct 2012
<b>Eurotunnel</b>						
<i>Negotiated account</i>						
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Standard account</i>						
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
<b>P&amp;O—all types of account</b>						
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

8. Eurotunnel provided us with data showing which currency was used for billing—euros or British pounds (GBP)—this is analysed in Table 5.

TABLE 5 Eurotunnel share of freight volume billed in euros, 2007 to 2012

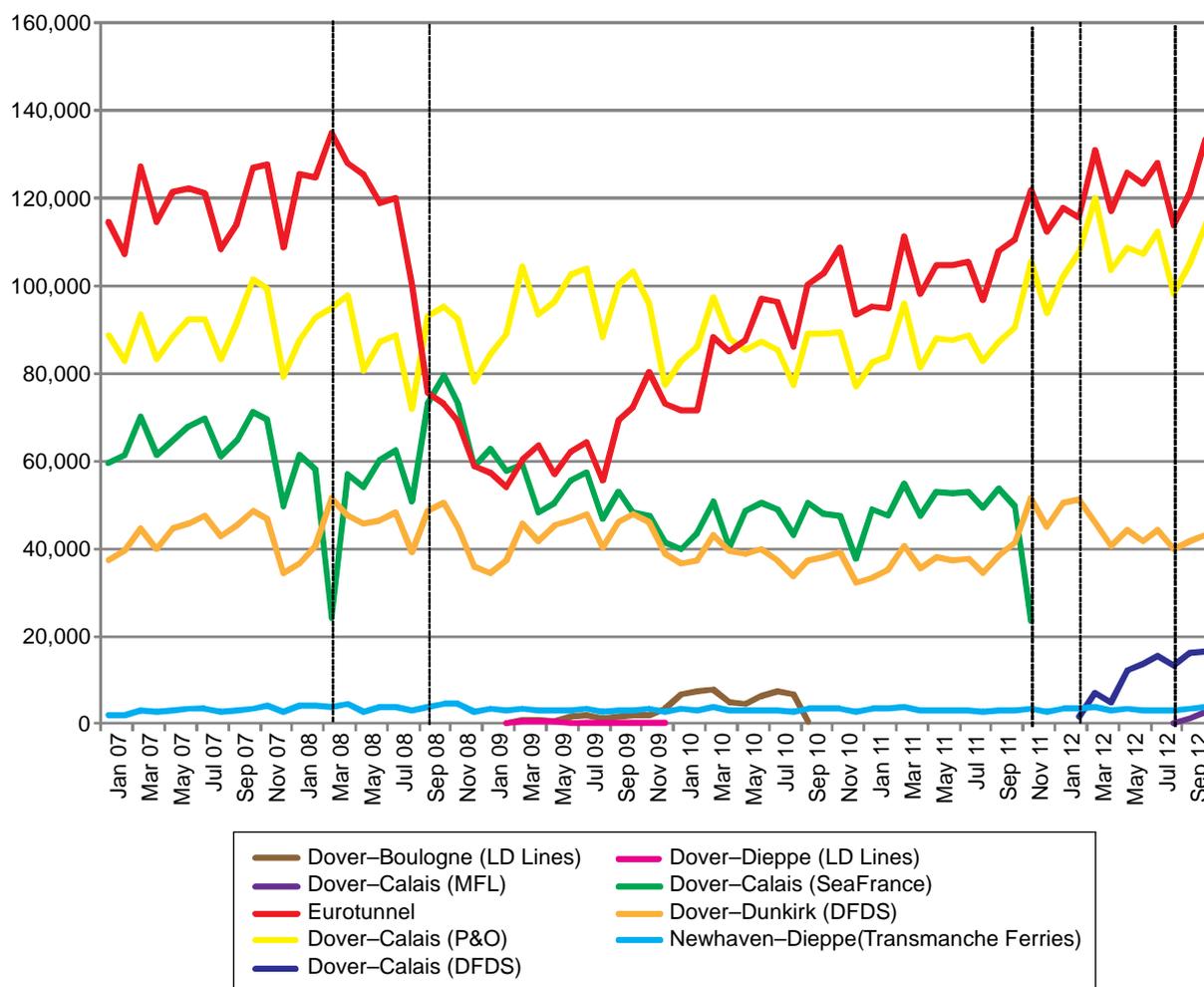
	2007	2008	2009	2010	2011	Jan–Oct 2012
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: GET, CC calculations.

9. Figure 1 shows the development of volume over time on the short sea during the period 2007 to 2012. Dotted lines represent significant events. We did not have volume data for the Ramsgate–Ostend route operated by Transeuropa Ferries, as this data is not reported to IRN.

FIGURE 1

**Freight traffic on the short sea (number of vehicles), 2007 to 2012**



Source: IRN Research.

Note: Includes accompanied and unaccompanied traffic.

**Prices**

- Table 6 shows average yearly prices in GBP for one single-leg vehicle journey.<sup>2</sup> Table 7 shows the respective prices recalculated in euros using average monthly exchange rates. These average prices include all account types and all vehicle types.

<sup>2</sup> These are not prices billed in GBP only, but average prices where all revenue is recalculated into GBP using average monthly exchange rates, and then divided by total volume (excluding internal traffic). We then applied monthly exchange rates to calculate the same prices but in euros, which, again, are not the same as the average of prices that were billed to the customer in euros.

TABLE 6 Average freight prices, GBP, 2007 to 2012

£

Operator	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[X]	[X]	[X]	[X]	[X]	[X]
P&O	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Dunkirk	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Calais						[X]
MyFerryLink						[X]

Source: Operators, CC calculations.

TABLE 7 Average freight prices, euros, 2007 to 2012

€

Operator	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[X]	[X]	[X]	[X]	[X]	[X]
P&O	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Dunkirk	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Calais						[X]
MyFerryLink						[X]

Source: Operators, CC calculations.

11. [X]

12. Figures 2 and 3 show yearly prices in GBP and euros respectively (these are based on Tables 6 and 7 above). [X] It seems that changes in the exchange rate between the euro and the British pound have affected the relative prices calculated.

FIGURE 2

**Freight price per crossing, GBP, 2007 to 2012**

[X]

Source: Operators, CC calculations.

FIGURE 3

**Freight price per crossing, euros, 2007 to 2012**

[X]

Source: Operators, CC calculations.

13. Figure 4 shows that there is significant premium of Eurotunnel's price when compared with DFDS and P&O ferry prices. In 2009, the premium increased significantly. Eurotunnel's price went up relative to ferry operators in 2009, from a [X] per cent premium in 2008 to [X] per cent, and then fell again in 2010, and has remained relatively stable since then.

FIGURE 4

**Eurotunnel’s ‘premium’ over prices of DFDS and P&O, 2007 to 2012 (per cent)**

[✂]

Source: Operators, CC calculations.

14. Figures 5 and 6 show monthly prices and show the relevant exchange rates (on the right-hand axis). As noted above, these are average prices expressed in either GBP or euros, and cover all volumes irrespective of currency in which they were billed in (we analyse prices by billing currency in sections below). Figure 5 shows that Eurotunnel’s prices expressed in GBP seem to follow the exchange rate very closely, which would be consistent with prices being set in euros and most volumes being billed in euros as well. When the GBP exchange rate against the euro went from 0.79 in October 2008 to 0.92 in January 2009 (16 per cent depreciation), Eurotunnel’s prices went up by [✂] per cent. There was another Eurotunnel price increase in March 2009, when price went from £[✂] to £[✂] ([✂] per cent increase), whereas the exchange rate went up by only 3 per cent.
15. The ferries’ prices experienced a short-lived increase in December 2008 as the GBP fell against the euro, but by only [✂] per cent, and then prices quickly went down again. The difference in pricing behaviour could be because Eurotunnel bills a larger proportion of volume in euros than ferry operators. Alternatively, ferry operators may simply have been quicker to react to a change in the exchange rate.
16. P&O informed us that in 2008, [✂] per cent of its volumes were billed in euros, then in 2009 and 2010 [✂].

TABLE 8 P&O: currency used for billing

Dep year	per cent	
	£	€
2007	[✂]	[✂]
2008	[✂]	[✂]
2009	[✂]	[✂]
2010	[✂]	[✂]
2011	[✂]	[✂]
2012	[✂]	[✂]

Source: P&O.

17. As discussed further below, it appears that some of Eurotunnel’s price increase was (at least initially) primarily due to exchange rate movements where Eurotunnel chose to maintain its euro rates and become less competitive in GBP. However, it appears that towards the end of the period of post-fire capacity restriction on the tunnel, a decision was made to attempt to maintain a higher price premium over ferry prices. This resulted in significant market share loss to the short-sea ferries, and ultimately a reversal of the policy during 2009 and 2010. These developments are illustrated in the figures below.

FIGURE 5

**Monthly freight prices, GBP, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

FIGURE 6

### Monthly freight prices, euros, 2007 to 2012

[✂]

Source: Operators, CC calculations.

18. Figure 7 shows the ratio of Eurotunnel's price to the average price of P&O and DFDS, and how this ratio is related to Eurotunnel's share of short-sea freight volumes. It seems that while the initial drop in share Eurotunnel experienced in September 2008 can be explained by the fire, the extended period of low share was precipitated by the price ratio rising significantly following the period effect by the fire.

FIGURE 7

### Relative prices versus shares of short-sea freight volumes, 2007 to 2012

[✂]

Source: Operators, CC calculations.

#### **Prices billed in different currencies**

19. Figures 8 and 9 show Eurotunnel prices for volumes billed in euros and pounds, for vehicles classified as '[✂]'. GET confirmed that the currency in which volume is billed is the same currency in which the price was set, and so separating prices billed in each currency would eliminate the effect of the exchange rate changes.

FIGURE 8

### Eurotunnel's prices for vehicles above 15m, billed in GBP, 2007 to 2012

[✂]

Source: GET, CC calculations.

FIGURE 9

### Eurotunnel's prices for vehicles above 15m, billed in euros, 2007 to 2012

[✂]

Source: GET, CC calculations.

20. Eurotunnel prices billed in GBP rose slowly during 2007/08, and then there was a spike in February to March 2009, when the average price went up from £[✂] in January 2009 to £[✂] in March, an increase of [✂] per cent. In April 2010, there was a slight drop in prices, and after that prices slowly rose, reaching £[✂] in October 2012.
21. Prices billed in euros exhibit a different pattern, remaining more or less constant in 2007/08, then increasing from €[✂] to €[✂] in January to March 2009 (a [✂] per cent increase), then gradually dropping to €[✂] in July to August 2010, and then slowly rising since then, reaching €[✂] in October 2012.

22. These figures suggest that the initial increase of October 2008 to January 2009 that we see in Figure 5 can be attributed to the change in exchange rates. However, the subsequent increase in February to March 2009 occurred in both currencies and was not solely related to exchange rate changes. We note that this increase occurred around the time of the return of the tunnel to normal operating capacity in February.
23. [✂]

### **Prices by vehicle and account type**

24. We received detailed data by type of vehicle and account from P&O and Eurotunnel. Figures 10 and 11 below show prices for vehicles [✂] (for Eurotunnel) and tractor trailers for P&O. For Eurotunnel we show standard and negotiated accounts and for P&O negotiated accounts only. Figure 10 shows prices in GBP (unlike the previous section, this price includes all volumes billed in all currencies recalculated into pounds using monthly exchange rates), and Figure 11 shows the same price, but recalculated in euros using monthly exchange rates.
25. [✂]

FIGURE 10

#### **Prices for vehicles above 15m and tractor trailers, GBP, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

FIGURE 11

#### **Prices for vehicles above 15m and tractor trailers, euros, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

26. [✂]

### **Western Channel and North Sea**

27. Figure 12 shows prices per vehicle on Brittany Ferries' Western Channel routes, and Figure 13 shows prices on P&O's North Sea routes.

FIGURE 12

#### **Prices in Western Channel, GBP, 2009 to 2012**

[✂]

Source: Operators, CC calculations.

FIGURE 13

**Prices in the North Sea, GBP, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

28. Table 9 and Figure 14 show average yearly prices for Eurotunnel, the short-sea ferries and on the Western Channel and North Sea. We note that the pricing trend on the short sea has been quite different from that on the North Sea and Western Channel. Short-sea ferry prices have decreased steadily since 2008, whereas North Sea and Western Channel prices have increased over time. This observation is inconsistent with the North Sea and Western Channel being in the same economic market as the short sea.<sup>3</sup>

TABLE 9 Average freight prices, GBP, 2007 to 2012

Operator	£					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Short-sea ferries	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
North Sea: P&O	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Western Channel: BF	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Operators, CC calculations.

Notes:

1. P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; BF price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

2. N/A = not available.

FIGURE 14

**Average prices, GBP, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

Note: P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; BF price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

**Passengers: prices and volumes**

**Introduction**

29. In this section, we analyse the trends in prices<sup>4</sup> and volumes of passenger traffic on the short sea, the Western Channel and the North Sea between 2007 and 2012.

<sup>3</sup> If the regions were in the same economic market, price levels might differ, but we would expect price trends to be similar.

<sup>4</sup> GET expressed its concern about our use of the term ‘average yearly prices’. Eurotunnel uses the term ‘average yearly yield (passenger)’, as there are many ticket types for the same vehicles. The combination of these produces an average yield (and there may not actually be any tickets sold at that ‘price’). However, we refer to ‘price’ as the price of a crossing by a vehicle and we believe that this term is not misleading to a reader in this context.

## Data

30. The data used in this section was provided by GET, P&O, DFDS and Brittany Ferries.<sup>5</sup>

### Composition of passenger traffic

31. There are two broad types of passenger traffic on the short sea, car and coach, with car representing the significant majority of revenue—see Table 10.

TABLE 10 Revenue shares of cars in passenger traffic, 2007 to 2012

Operator	per cent					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[ <del> </del> ]					
P&O	[ <del> </del> ]					
DFDS Dover–Dunkirk	[ <del> </del> ]					
DFDS Dover–Calais	[ <del> </del> ]					
MFL	[ <del> </del> ]					

Source: Operators, CC calculations.

32. For P&O and Eurotunnel, we received data at a more disaggregated level. For Eurotunnel, the category ‘car’ includes sub-categories: campervan, campervan towing, car, car + caravan, car + trailer, clubclass, large van, large van towing, minibus, minibus towing, and motorcycle, with subcategory ‘car’ representing [] to [] per cent of both volume (calculated as number of vehicles) and revenue.
33. For P&O, the category ‘car’ consists of subcategories: cars, large tourist, motorcycle, other, towed vehicles, and van. ‘Cars’ account for [] per cent of volume and [] to [] per cent of revenue of the category ‘car’. For DFDS, we did not receive information about sub-categories of car and coach. Therefore, for consistency we use only the two types of passenger traffic: car and coach, simply summing up the volume of the sub-categories in each category.
34. Car traffic is evenly balanced in both directions for both Eurotunnel and P&O.

<sup>5</sup> We excluded foot passengers from P&O data. We excluded traffic recorded as ‘no ticket’ type from Eurotunnel volumes and financial adjustment from its passenger revenues, as it was not clear how this adjustment should be applied across vehicle types and directions of traffic.

TABLE 11 Volume by direction of travel (passenger), 2007 to 2012

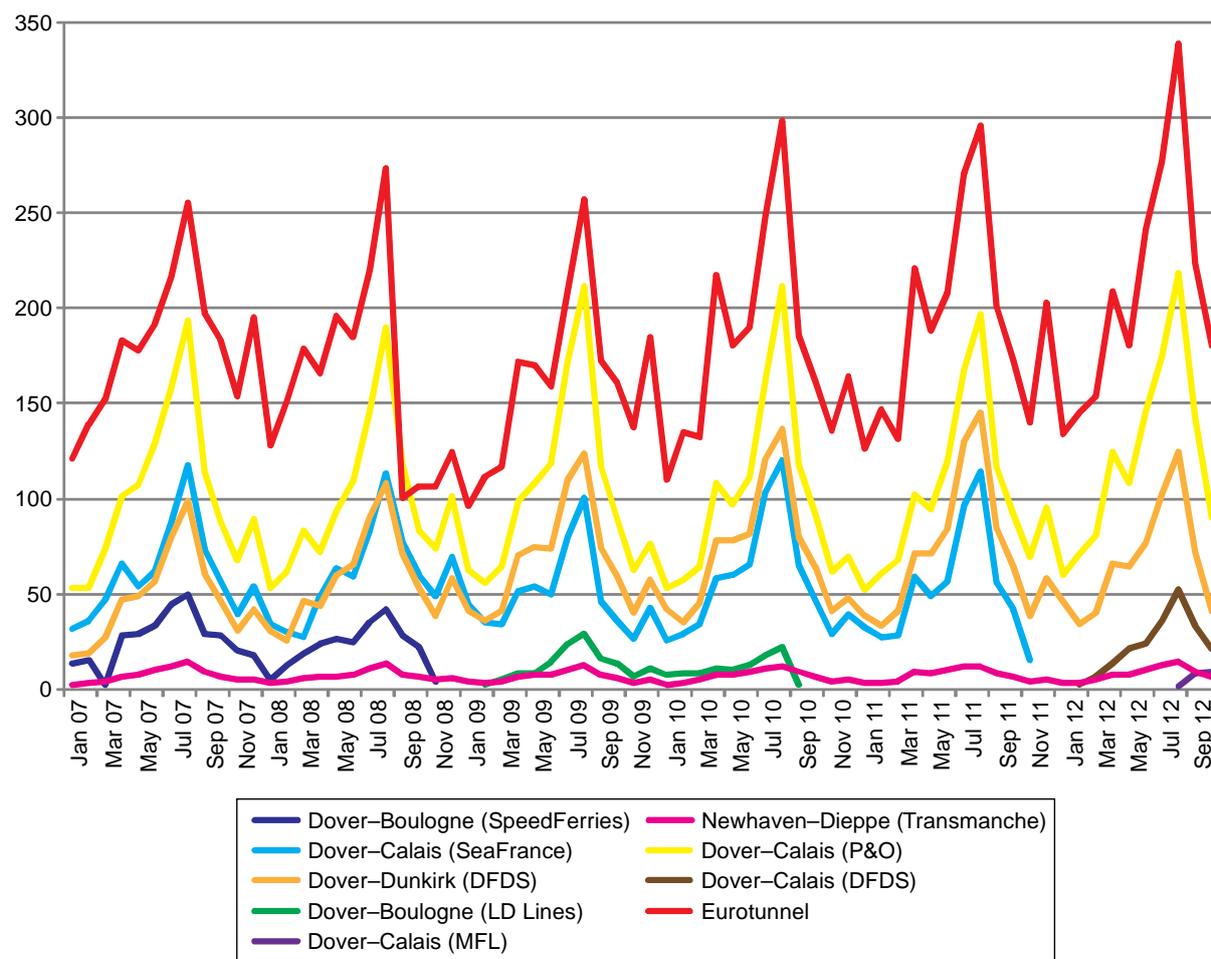
Operator	2007	2008	2009	2010	2011	per cent
						Jan–Oct 2012
Eurotunnel, car:						
Calais–Folkestone	[X]	[X]	[X]	[X]	[X]	[X]
Folkestone–Calais	[X]	[X]	[X]	[X]	[X]	[X]
Eurotunnel, coach:						
Calais–Folkestone	[X]	[X]	[X]	[X]	[X]	[X]
Folkestone–Calais	[X]	[X]	[X]	[X]	[X]	[X]
P&O, car:						
Calais–Dover	[X]	[X]	[X]	[X]	[X]	[X]
Dover–Calais	[X]	[X]	[X]	[X]	[X]	[X]
P&O, coach:						
Calais–Dover	[X]	[X]	[X]	[X]	[X]	[X]
Dover–Calais	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

35. Figure 15 shows volumes over time on the short sea during the period from 2007 to 2012. As previously noted, volume data for the Ramsgate–Ostend route operated by Transeuropa Ferries is not available.

FIGURE 15

Passenger traffic on the short sea ('000), 2007 to 2012



Source: IRN Research.  
Note: Cars only.

## Prices

36. Table 12 shows average yearly prices<sup>6</sup> in GBP for a car trip. Eurotunnel is [X] to [X] per cent more expensive than P&O, and [X] to [X] per cent more expensive than DFDS.

TABLE 12 Average yearly prices (passenger), car, 2007 to 2012

Operator	£					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[X]	[X]	[X]	[X]	[X]	[X]
P&O	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Dunkirk	[X]	[X]	[X]	[X]	[X]	[X]
DFDS Dover–Calais						[X]
MFL						[X]

Source: Operators, CC calculations.

37. Only Eurotunnel and P&O carry significant volumes of coach traffic. Table 13 shows average coach prices. For coaches, unlike for cars, Eurotunnel's prices are at broadly the same level as P&O's.

TABLE 13 Average prices, coach, 2007 to 2012

Operator	£					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel	[X]	[X]	[X]	[X]	[X]	[X]
P&O	[X]	[X]	[X]	[X]	[X]	[X]

Source: Operators, CC calculations.

38. Passenger traffic is very seasonal. For ferries, the summer months account for about [X] per cent of the yearly traffic, while for Eurotunnel the equivalent figure is [X] per cent.

39. Figure 16 shows monthly car prices. Prices also follow a seasonal pattern, with significant increases around holidays, particularly in August.

FIGURE 16

### Monthly passenger prices for cars, GBP, 2007 to 2012

[X]

Source: Operators, CC calculations.

40. Figure 17 shows the ratio of (average) Eurotunnel prices over average ferry prices for car traffic. Unlike trends in relative freight prices, relative prices for passenger traffic have been relatively stable over the period from 2007 to 2012, fluctuating around [X] to [X].

<sup>6</sup> Passenger prices are highly seasonal. For 2012, we show only the average price for January–October; therefore without November and December, the average price in 2012 seems higher than the price of previous years.

FIGURE 17

**Relative price of Eurotunnel, 2007 to 2012**

[✂]

Source: Operators, CC calculations.

**Western Channel and North Sea**

41. Figure 18 shows prices per vehicle on Brittany Ferries' Western Channel routes, and Figure 19 shows prices on P&O's North Sea routes.
42. P&O provided data on the total number of vehicles and total revenue on these routes, without separation between cars and coaches; therefore the overall price is a mix of the two categories. However, according to Ferrystat data, coach traffic is very low across the North Sea: in January to October 2012 P&O transported [✂] coaches and [✂] cars on the Hull–Rotterdam and Hull–Zeebrugge routes.
43. Brittany Ferries also did not separate passenger traffic between car and coach, but as with the North Sea, coach traffic across the Western Channel is limited: according to Ferrystat, in January to October 2012 a total of [✂] coaches were transported via all Western Channel routes, compared with [✂] cars. Therefore we believe that the prices shown are a good approximation of prices for cars only.

FIGURE 18

**Prices in Western Channel (passenger), GBP, 2009 to 2012**

[✂]

Source: Operators, CC calculations.

FIGURE 19

**Prices in the North Sea (passenger), GBP, 2006 to 2012**

[✂]

Source: Operators, CC calculations.

44. Table 14 and Figure 20 show the average yearly passenger prices for Eurotunnel, the short-sea ferries and the ferry routes crossing the Western Channel and North Sea.

TABLE 14 Average prices (passenger), 2007 to 2012

Operator	£					
	2007	2008	2009	2010	2011	Jan–Oct 2012
Eurotunnel, cars only	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Short-sea ferries, cars only	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
North Sea: P&O	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Western Channel: BF	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Operators, CC calculations.

Note: P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; BF price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

FIGURE 20

### Average prices (passenger), GBP, 2007 to 2012

[✂]

Source: Operators, CC calculations.

Note: P&O price is based on Hull–Zeebrugge and Hull–Rotterdam routes; BF price is based on Caen–Portsmouth, Cherbourg–Poole, Roscoff–Plymouth and St Malo–Portsmouth routes.

45. As in the analysis of freight prices, we note that the pricing trend on the short sea has been quite different from that of the North Sea and the Western Channel. Short-sea ferry and tunnel prices have been stable (or slightly decreasing) since 2008, whereas North Sea and Western Channel prices have increased over time. This observation is inconsistent with the North Sea and Western Channel being in the same economic market as the short sea.<sup>7</sup>

<sup>7</sup> If the regions were in the same economic market, price levels might differ, but we would expect price trends to be similar.

## Capacity and its utilization

### Introduction

1. The evidence we have received consistently shows that there is currently excess capacity on ferry services on the short sea. The purpose of this appendix is to quantify this excess capacity to assist in our assessment of whether, and if so when, one of the existing ferry operators on the short sea may need to withdraw services and in turn aid our assessment of the competitive constraints that are likely to be faced by GET in the future.
2. There are inherent difficulties in estimating and interpreting the level of capacity and capacity utilization in this industry for three key reasons:
  - (a) Demand from passengers in particular is highly seasonal, and there are also daily and weekly peaks for both passenger and freight traffic. There is also a need to maintain reasonably frequent departures throughout the day and week, to maintain an acceptable service level, particularly for freight customers. These factors mean that aggregate capacity will in the normal course of business exceed aggregate demand by a significant margin, in order to allow for peak demand periods and to maintain a quality service in terms of availability of suitable departures.
  - (b) It is difficult to construct exactly comparable measures of capacity across the different operators. This is both because the operators have different approaches to tracking capacity internally, and because the different vessels and modes (tunnel/ferry) differ in their ability to switch capacity between freight and passenger business.
  - (c) As is the case in other transport sectors, the aggregate level of capacity utilization is endogenous: in the short run, for a given level of assets, capacity can be expanded or contracted by adding or removing sailings or shuttle journeys, while in the long run, assets (vessels or shuttles) can be added or removed.<sup>1</sup>
3. In this appendix, we first set out the comments made by GET and ferry operators on the level of spare capacity on the short sea, both in the context of our inquiry but also in internal papers and in response to previous inquiries (in particular the FCA's consideration of the transaction and the European Commission's consideration of SeaFrance's application for state aid).
4. We then set out various estimates of capacity:<sup>2</sup>
  - (a) estimates calculated by GET;
  - (b) our own estimates based on GET's model;
  - (c) estimates provided by P&O; and

---

<sup>1</sup> This effect is limited for a small ferry operator where capacity will largely be established by the need to maintain a competitive schedule of departures. It will be more significant where capacity can be changed in (relatively) small increments.

<sup>2</sup> We also asked DFDS and P&O whether there were any rules of thumb for the minimum average load factors required for a ship and what load factors could be expected to be achieved across routes. Both companies told us that there no such rules of thumb and that they had no comparable route to the short sea.

(d) estimates provided by DFDS.

5. Taking into account all the evidence and analysis, we draw together a range of capacity utilization estimates and draw conclusions on the level of excess capacity in 2013 compared with what can be considered to be sustainable load factors.

## Parties' views on the level of excess capacity

### GET

#### GET's submissions

6. In its representations to the European Commission, FCA and our inquiry, GET has consistently argued that there is a considerable amount of spare capacity on the short sea.

7. In its 2011 submission to the European Commission in the context of the European Commission's consideration of SeaFrance application for state aid,<sup>3</sup> GET stated:

we can observe that capacity utilisation in 2010 was only 62,000 lane meters, which corresponds to an average load of 59 per cent. There is self-evidently significant overcapacity in this market. At the beginning of the year, SeaFrance was able to operate only two out of its four vessels without any problem. The market therefore does not need any additional capacity and supply could even be reduced without any disruption.

8. Similar comments were made by GET in its submission to the FCA on 4 May 2012:

... the markets in which SeaFrance was active are marked by **significant overcapacity** [p13] ... the entity resulting from the Transaction will remain confronted by the competition of operators who are firmly planted in the market, including in particular P&O and DFDS. That competition is all the fiercer given that there are very significant overcapacities on the market [p129] ... the market is subject to very high levels of overcapacity (that is, that the available capacity largely exceeds the volume of traffic) ... the effective use rate of capacity is historically low regardless of the operator considered (about 40% to 70% by operator and year considered). [p132–133]

9. In its Initial Submission to our inquiry GET stated that:

There is currently considerable spare capacity on the Short Sea route, and also on other routes. This capacity has of course been supplemented by GET's acquisition of the Vessels, two of which have so far resumed day-to-day operational service with MFL. Given its nature as a new start-up, MFL has considerable spare capacity on the Berlioz and Rodin.

10. GET emphasized that:

---

<sup>3</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_32600](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32600): SA.32600 Aide à la restructuration en faveur de SeaFrance.

... there is already significant spare capacity on the Short Sea route which is being further increased as a result of recent announcements by GET's competitors and by MFL beginning operations, replacing the ex-SeaFrance capacity which had been removed from the market. GET does not recognise the comment in the Decision that there are general capacity constraints on the Short Sea. For its part, the FCA in its decision found 'the existence of excess capacities in the cross-channel transport market, the overall average capacity usage rates of the maritime operators being between 50% and 70% over the period from January to June 2012, this being a period when MFL's ships were not in service. Eurotunnel's average capacity usage rates over the same period were around 76% for freight and 55% for passengers'.

11. However, in response to our provisional findings report, GET commented that, based on the analysis the CC had carried out (in which we had compared the current level of capacity to the level of capacity operated in 2010), 'the CC's conclusion that the market is characterised by unsustainable excess capacity must be subject to considerable doubt'. This was because GET believed that the recent increase in P&O's capacity had been reversed somewhat and the increase in demand since 2010 meant that capacity utilization in 2013 could be expected to be broadly comparable in 2013 to the capacity as at the end of 2010. GET concluded: 'the most recent market evidence disproves the conclusions in the provisional findings that the Short Sea is characterised by unsustainable excess capacity'. However, as noted in paragraph 12 below, GET's own internal documents indicate that there was substantial excess capacity in 2010.

#### *GET's internal documents*

12. GET's internal documents record the company's ongoing concerns regarding over-capacity on the short sea since January 2010:
- (a) In a presentation to the GET Management Forum in January 2010, the slide entitled 'Difficult business environment in 2009' notes the 'Continued expectation of ferry market rationalisation' and the 'Over capacity caused by economic crisis'.
  - (b) In a presentation to the GET board on truck shuttle performance made on 26 May 2010, the 'Continuation of over-capacity in the Short Straits market' is noted on the slide 'Today's competitive horizon'.
  - (c) The minutes of the meeting of the GET board on 18 June 2010 record that 'the Board exchanged views on a useful consolidation alternative in order to contain the Cross-Channel over-capacity problem'.
  - (d) A presentation to the GET board dated 1 October 2010 identified overcapacity on the Dover Straits as a fact acknowledged by all operators and asked: 'who will initiate the necessary rationalisation?'
  - (e) In a presentation to the GET Management Forum in January 2011, the slide 'A difficult competitive environment' refers to 'Overcapacity of the offer by at least 20%'.
  - (f) The minutes of the 29 February 2012 GET board meeting record that 'In the context of a transport overcapacity in the Short Straits, [X] pointed out the importance of targeting the objective assigned to this new operator in terms of capacity and prices'.

## **P&O**

13. Referring to the level of capacity since 2006, P&O told us that the short-sea market had experienced significant excess capacity. It added that the exit of four vessels of SeaFrance was not sufficient to remove this excess capacity (even in the absence of any subsequent addition of capacity).
14. Assuming freight and passenger growth of 3 per cent and 2 per cent respectively, and capacity based on current schedules, P&O estimated that the average load factor on the short sea<sup>4</sup> would be 57 per cent in 2013. It considered that the long-term achievable utilization level was 70 per cent (which had been achieved in 2007, and surpassed in 2008, but partly due to the tunnel fire). Using this utilization level as the benchmark against which to assess the estimated load factor in 2013, P&O calculated that the volume that would need to exit the short sea to reach a long-term sustainable level of capacity was equivalent to three ferries (see calculations below).

## **DFDS**

15. DFDS told us that this market had been characterized by overcapacity due to the SeaFrance situation where SeaFrance had simply maintained capacity that was not viable.
16. DFDS assumed that demand from the freight customers would grow by 2 per cent in 2013 and passenger demand would be flat. DFDS estimated that on average across the whole of 2012 capacity utilization on the Dover–Calais route had been 67 per cent and it calculated that this would fall to 40 per cent in 2013. In its view, this level of capacity utilization was not sustainable and could not deliver acceptable levels of profitability across the operators. It concluded that if such levels of utilization persisted, one or more operators would be forced to leave the market.

## **Calculations of capacity utilization**

### ***GET's analysis***

17. GET submitted a report 'Critical loss analysis' prepared by Compass Lexecon on its behalf. This report and accompanying numerical analysis include estimates of total and spare capacity in the short sea over 2001 to 2011. Table 1 below presents the assessment of average daily capacity and load factors taken from that analysis.<sup>5</sup>

---

<sup>4</sup> It included Dover–Calais, Dover–Dunkirk and the tunnel. As shown in Table 2 and Table 3 of the final report, other routes on the short sea account for less than 2 per cent of traffic on the short sea.

<sup>5</sup> GET used average number of daily sailings, but P&O and DFDS told us that schedules changed within a year, that ships were withdrawn from service for maintenance each year and that there were fewer departures on weekends. The effect of this was that there was less capacity available, and hence utilization was higher, than suggested by multiplying the number of weekday sailings by the number of days in the year. The GET and CC estimates of P&O vessels' capacities are higher than those used by P&O itself, given that P&O focuses only on freight capacity (disregarding 'low' space available for cars).

TABLE 1 GET's estimates of capacity and utilization in the short sea

	<i>million lane metres</i>				
	2007	2008	2009	2010	2011
<i>Dover Straits*</i>					
Eurotunnel annual capacity	[X]	[X]	[X]	[X]	[X]
Ferries annual capacity	91.7	92.5	92.0	88.2	81.8
Total	[X]	[X]	[X]	[X]	[X]
Load factor (%)	58	57	53	55	58

Source : 'Critical loss analysis' report, underlying excel tables.

\*Dover Straits = Port of Ostend, Dunkirk, Calais + Eurotunnel.

18. The Compass Lexecon model suggested that overall utilization on the short sea was between 53 and 58 per cent over the period 2007 to 2011. However, the model estimated ferry utilization rates as being significantly lower than this average figure with individual ferry operator utilization rates ranging between 37 and 53 per cent over this period, while Eurotunnel utilization rate was estimated at being between [X] and [X] per cent (though most commonly around [X] per cent).
19. GET provided estimates of capacity utilization in 2013 and compared these estimates with 2010. GET estimated that in 2013 daily capacity on the short sea had increased by 10 per cent compared with 2010. It estimated that in 2010 the utilization level was 47.7 per cent on the short sea on the whole, and 51.1 per cent on the Dover–Calais route. GET constructed a forecast of 2013 utilization using seasonally adjusted indices and based its forecast of volumes on December 2013 levels, and projected that in 2013 utilization on the short sea will be 46.4 per cent, and 48.3 per cent on Dover–Calais route. GET's interpretation of the analysis is that it shows that utilization on the short sea (or Dover–Calais) will not be significantly different from the position in 2010 as the demand growth since 2010 largely consumed the increase in capacity over the same period.<sup>6</sup>

TABLE 2 GET's estimates of average daily capacity and utilization on the short sea\*

	<i>Lane metres</i>	
	2010	2013
Daily capacity	354,086	389,656
December demand	164,043	180,735
Load factor (%)	48	46

Source: GET.

\*Includes Ramsgate–Ostend and Dieppe–Newhaven.

### **CC's analysis based on GET's model**

20. In order to estimate average daily capacity we used GET's model, which we adjusted with estimates of the number of daily rotations as well as ships' capacities provided to us directly by the ferry operators. We also adjusted the model to exclude the relatively minor and remote Ramsgate–Ostend and Dieppe–Newhaven routes (thus making the calculations more consistent with those provided by P&O). We used IRN research data for traffic volumes, and assumed a relatively optimistic 2 per cent market growth in 2013 compared with 2012. This is based on the range of forecasts

<sup>6</sup> However, as noted in paragraph 12, GET itself considered in 2010 that there was substantial excess capacity at the time.

of demand that we received from parties (see paragraph 2.9 of our final report). Table 3 below shows our estimates.

TABLE 3 CC's calculations of average daily capacity and utilization, using GET's model

	<i>Lane metres</i>						
	2007	2008	2009	2010	2011	2012	2013
P&O	[x]	[x]	[x]	[x]	[x]	[x]	[x]
SeaFrance	80,354	79,989	76,688	60,720	53,130	0	0
Eurotunnel	[x]	[x]	[x]	[x]	[x]	[x]	[x]
DFDS Dover–Dunkirk	[x]	[x]	[x]	[x]	[x]	[x]	[x]
DFDS Dover–Calais	[x]	[x]	[x]	[x]	[x]	[x]	[x]
MFL	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Capacity	<b>374,489</b>	<b>346,483</b>	<b>361,013</b>	<b>344,463</b>	<b>342,604</b>	<b>349,569</b>	<b>388,214</b>
<i>Daily traffic volumes</i>							
All operators	203,586	192,408	169,532	174,970	184,361	187,044	190,784
Ferries	124,093	121,868	120,868	110,312	111,001	103,445	105,514
Dover–Calais ferries	96,926	93,115	92,273	84,219	84,183	75,224	76,728
<i>per cent</i>							
<i>Utilization</i>							
All operators	54	56	47	51	54	54	49
Ferries	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Dover–Calais ferries	[x]	[x]	[x]	[x]	[x]	[x]	[x]

Source: CC calculations.

Note: The average daily capacity for MFL was estimated using the average number of daily crossings projected for 2012 and number of months of operation. This differed from the actual number crossings operated but we did not consider the difference to be material.

## P&O's analysis

21. P&O estimated capacity and consumption in terms of passenger car equivalent units (PCUs). Its estimates of capacity and consumption on the key short-sea routes since 2006 are shown in Table 4 below.

TABLE 4 P&O's analysis of capacity and utilization on the short sea

	<i>million PCUs</i>							
	2006	2007	2008	2009	2010	2011	2012	2013
Capacity	33.9	34.4	31.4	34.0	33.3	33.0	34.0	39.4
Consumption	22.8	24.0	22.6	20.1	20.8	21.9	22.2	22.6
<i>per cent</i>								
<i>Utilization</i>								
All operators	67	70	72	59	62	66	65	57
Ferries	67	68	69	66	64	65	63	N/A
Dover–Calais ferries	67	68	68	64	64	65	59	N/A

Source: P&O.

Note: N/A = not available.

22. P&O's analysis shows that its aggregate utilization over the period 2006 to 2012 has been in the region of 66 to 72 per cent, while it estimates that utilization on the market overall has been between 59 and 72 per cent. The lowest year for utilization across the market was 2009, the year after the onset of the financial crisis but before the benefits of SeaFrance's restructuring and the exit of capacity from smaller operators occurred. Against these figures, P&O currently forecast an expected utilization figure of 57.2 per cent for the short-sea market in 2013—worse than in 2009.

23. Assuming that a long-term sustainable utilization level is 70 per cent (which was achieved in 2007 and exceeded in 2008), P&O calculated the capacity required to serve the forecast market volume as being 32.2m PCU,<sup>7</sup> whereas the forecast for the capacity likely to be supplied in 2013 is 39.4m PCU. This calculation suggests current overcapacity of 7.2m PCU.

### **DFDS's analysis**

24. DFDS provided us with estimates of the capacity in lane metres of ferry operators on the Dover–Calais route between 2011 and 2013. These figures cannot be directly compared with the analysis provided by P&O above, as the P&O analysis is based on PCUs and considers all operators on the core short-sea routes (Dover–Calais and Dunkirk) including Eurotunnel.
25. DFDS estimated that the traffic volume on the Dover–Calais route<sup>8</sup> was approximately 32.4 million lane metres in 2012. Table 5 shows DFDS estimates of capacity on Dover–Calais route for 2011 to 2013. According to DFDS, capacity only decreased slightly in 2012, but is then forecast to increase by 33 per cent in 2013 assuming that both MFL's and DFDS's current operations remain in place for the full year. DFDS did not provide utilization or consumption figures.

TABLE 5 DFDS's analysis of capacity on the Dover–Calais route

	<i>million lane metres</i>		
	2011	2012	2013
Capacity	51	48.4	65.5

Source: DFDS.

### **Conclusions**

26. As noted in paragraph 2, there are difficulties in estimating and interpreting the level of capacity and capacity utilization across the short-sea operators.<sup>9</sup> However, we think it reasonable to assume that individual parties' estimates of their own capacity utilization will be informative and relatively reliable. Based on this principle, it seems clear that the ferry operators' utilization rates have generally been higher than suggested by the Compass Lexecon model (or our calculations based on the Compass Lexecon model). While we have not been able to reconcile accurately the source of the differences, it seems the most likely sources of a systematic underestimation of the load factors of the ferry operators are:
- (a) insufficient allowance in the modelling for ferry time lost to maintenance and the effect of reduced sailings over the weekend;<sup>10</sup> and
  - (b) different assumptions as to the equivalent lane metre lengths for different vehicle types across operators. This is particularly significant with respect to cars, where GET/Compass Lexecon appear to assume in their model that a car is equivalent to 2.4 lane metres, whereas DFDS assumes 5.2 lane metres.

<sup>7</sup> This is calculated using a forecast market volume of 22.6m PCU divided by 0.7 (the assumed sustainable utilization level).

<sup>8</sup> This analysis excludes Dover–Dunkirk route, but capacity on that route has been stable over many years and is not expected to change significantly in 2013.

<sup>9</sup> GET also submitted to us that it found it difficult to construct reliable comparisons of capacity.

<sup>10</sup> P&O told us that its vessel lost approximately 20 days a year to maintenance. Adjusting for this increases P&O utilization by 5.5 per cent compared with the Compass Lexecon model.

27. Although the parties' submissions to us use different assumptions and we have reason to believe that the analysis carried out by GET/Compass Lexecon systematically understates the level of utilization of the ferry operators, there are nonetheless a number of consistent results from the analysis.
28. The analysis provided to us by GET (and adjusted by us) and P&O is shown Table 6.

TABLE 6 Short-sea capacity utilization forecast

	<i>per cent</i>							
	2006	2007	2008	2009	2010	2011	2012	2013
CC*		54	56	47	51	54	54	49
P&O	67	70	71	59	62	66	65	57

Source: P&O, CC calculations.

---

\*Compass/Lexecon model adjusted with data obtained from ferry operators.

29. The analysis suggests that the level of utilization on the short sea in 2013 will be:
- (a) well below the level experienced before the effects of the financial crisis took full effect in 2009;
  - (b) potentially lower than experienced in 2009, the worst year in the recession, following which SeaFrance sold two vessels in an attempt to adjust its cost base to the new market reality, LD Lines closed its Dover–Boulogne service and Transeuropa Frries reduced its Ramsgate–Ostend service; and
  - (c) almost certainly lower than in 2010, the year before the liquidation of SeaFrance and withdrawal of its four remaining vessels from the Dover–Calais route.
30. We considered whether 2010 or 2007 (as suggested by P&O) could be used as a reasonable benchmark of the sustainable level of capacity on the short sea in general (and the Dover–Calais route in particular). There are a number of reasons why we consider that the level of capacity in 2007 is more likely to be a reasonable benchmark than that experienced in 2010:
- (a) As shown in paragraph 12(a) to (d), throughout 2010, GET's management considered that rationalization of capacity was necessary.
  - (b) Commenting on the level of capacity on the short sea in 2010, GET told the European Commission that: 'despite the level of overcapacity on the short sea, even while the Tunnel was being repaired after the 2008 fire, the Ferries have continued to invest massively in high capacity vessels, thus increasing the already excessive level of supply;' and 'supply is already twice as high as demand, even without taking account of the possibility of increasing the capacity of the Fixed Link'. GET noted elsewhere that in any event there had been considerable over-supply since 2000.
  - (c) The failure of SeaFrance in 2011 is consistent with the view that the level of capacity utilization in 2010 was not sustainable.
  - (d) P&O told us that it considered the level of capacity utilization in 2007 as representative of the long-term achievable utilization level.

(e) SeaFrance returned a profit in 2007, while its losses significantly worsened in 2010. SeaFrance noted in its 2007 accounts that competition was more stable in 2007 than it had been in previous years.

31. We therefore consider that 2007 is a reasonable benchmark for the purpose of estimating the level of excess capacity currently operated in the market. We note that in any event, our calculations show that the level of capacity utilization will be lower in 2013 than it was in 2010. Whilst GET suggested that the level of capacity utilization would be broadly comparable to the level achieved in 2010, GET itself recognized that there was overcapacity at that time.
32. As noted in paragraph 14, P&O estimated that the level of excess capacity was around three ferries. Using our own estimates of capacity and demand (as per Table 6 above) and comparing the year 2013 to 2007, we estimate that the level of spare capacity in 2013 will be around 26,500 lane metres per day, which represents over 70 per cent of the capacity operated by either DFDS or MFL on the Dover–Calais route and is broadly equivalent to one and a half vessels. We therefore consider that the level of excess capacity on the short sea (excluding the minor routes) is between two and three vessels.
33. This result is consistent with the fact that both DFDS and GET are anticipating significant losses on the Dover–Calais route. Each plans to operate two vessels that transport both passengers and freight<sup>11</sup> during 2013.

---

<sup>11</sup> MFL also operates the *Nord Pas-de-Calais*, which transports freight only and represents [3%] per cent of the estimated capacity operated by MFL in 2013.

## Bundling of tunnel- and ferry-based services

### Bundling and potential competition concerns

1. A number of third parties raised concerns that as a result of the acquisition GET is potentially able to sell a bundle of its shuttle and MFL services, and that this might raise competition concerns.<sup>1</sup> With the exception of coach operators, all the third parties we have spoken to confirm that most passengers are occasional rather than frequent users of cross-Channel services, and hence there is little likelihood of bundling strategies being employed in the passenger market.<sup>2</sup> The concerns raised, and the analysis below, focus on the freight market.
2. In analysing the potential for competitive harm from bundling, the first question to consider is whether it is likely that a bundling strategy would involve pure or mixed bundling. Pure bundling means that the goods will only be available as a bundle (this strategy can also be referred to as 'tying'). Mixed bundling means that the goods can be purchased as either a bundle or on a stand-alone basis. The distinction is important because the likely theories of harm differ between the two types of bundling.
3. A company with a very strong market position in a particular product might be able to leverage this position by unilaterally imposing a pure bundling strategy without offering additional benefits to customers. The most likely competition concern that would arise from a pure bundling strategy is customer foreclosure—that is, a concern that the strategy would reduce the demand available to the company's competitors, perhaps to the extent that competitors are forced to exit the market. As noted above, with a pure bundling strategy there may be little or no offsetting benefit to customers.
4. A mixed bundling strategy implies that customers' option to purchase individual services is maintained. In this case, the bundle is normally sold by offering some form of additional benefit to customers from purchasing the bundle (most likely to be some form of discount). With mixed bundling, competitive foreclosure concerns tend to be reduced as not all customers are likely to purchase the bundle, meaning that competitors that supply only part of the bundle still have some customers available to them.
5. In this case, a pure bundling strategy would involve requiring freight customers that want to use Eurotunnel to *only* use MFL on short-sea routes. We received mixed feedback from third parties when we asked whether it was likely that such a strategy would be practical to implement, and if so, how it might be implemented. Most thought it unlikely that GET could force a bundle on customers. However, at least one third party suggested that GET might achieve this by requiring key customers that require the speed of the tunnel also to purchase crossings on MFL in exchange for maintaining reserved space on the tunnel during peak demand periods. We note that if this involved freight customers who would otherwise use rival ferry operators with more attractive crossing schedules to MFL, then this strategy would amount to a form of price increase to customers who required access to the tunnel at peak times. We would expect that if Eurotunnel were able to increase price to customers of this type, it would already have done so pre-merger (to the maximum extent possible),

---

<sup>1</sup> For example, submission from [REDACTED], 29 November 2012.

<sup>2</sup> The conditions of competition for coach operators are very similar to those for freight customers. Our views on the issues raised by bundling in the freight market therefore also apply to coach operators.

which in turn suggests that it is unlikely that Eurotunnel would be able to extract further value from the customer via a bundling strategy.

6. We have found no evidence in GET's internal documents suggesting that a pure bundling strategy has been contemplated by GET.
7. Under a mixed bundling strategy, freight customers would be able to purchase GET's tunnel and ferry services either individually or as a bundle. This would require GET to offer an incentive to customers to purchase the bundle. The most likely incentive would be a discount on either the ferry or the tunnel, or both. Whatever the precise form of the discount, the effect would be that the customer would be offered lower prices for using a combination of both the tunnel and ferry services in order to incentivize increased use of MFL's ferry services. Similarly, whether the discount was offered on the price of the ferry or the tunnel crossing or both, the net economic effect within GET would be that it would be discounting MFL ferry services. This is because the incremental sales that would be achieved would be additional ferry sales, and similarly any incremental cost in the form of reduced revenue due to the discount offered would also be associated with those additional ferry sales. Similarly, whatever the precise form of the discount offered by GET, the economic effect on its ferry-based competitors is that in order to prevent business being lost, they would need to offer a similar level of discount on their own ferry services.

### ***Anti-competitive concerns—mixed bundling***

8. Mixed bundling sold by way of offering a discount would result in lower prices to customers. In itself, this is not anti-competitive. Freight customers benefit at least in the short run from the lower prices achieved. For bundling to become a theory of competitive harm, we would need to be satisfied that this was likely to lead to increased prices to customers in the longer term. The most obvious way this might occur is via customer foreclosure. If the strategy successfully attracted sufficient traffic away from GET's rival ferry operators, the combination of low demand and low prices in the supply of ferry services could lead to the exit of DFDS (or P&O). This might then, under certain assumptions, allow the surviving operators to increase prices above the competitive level.

### **Compass Lexecon report on bundling and profit sacrifice**

9. Compass Lexecon submitted on behalf of GET an analysis of a possible bundling strategy. The report considers whether there is the potential for anti-competitive bundling to occur by recognizing that the most aggressive form of anti-competitive bundling is equivalent to a predation strategy in the supply of ferry services: that is, a strategy that applies a discount (via a bundle) such that the effective price<sup>3</sup> in the supply of ferry services is less than the average avoidable cost of a ferry operator. This is because once prices are below average avoidable cost, a ferry operator will (putting considerations of strategic behaviour aside) find it optimal to shut down and exit the market.
10. Using this predation-based approach to the issue,<sup>4</sup> Compass Lexecon calculated the likely cost of such a strategy which showed that the implied financial costs were very

---

<sup>3</sup> The term 'effective price' here refers to the net price achieved on the sale of the ferry service, after discounts have been subtracted from the pre-bundle ferry price that would otherwise have applied, if the ferry service was purchased outside the bundle.

<sup>4</sup> We note that as the strategy modelled involves selling the services of MFL at less than the AAC of a ferry operator, this would be considered predation. See, for example, European Commission, [Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings](#), paragraphs 63–64.

significant. The costs were estimated to be in the region of [X] per cent of Eurotunnel's freight revenue, assuming Eurotunnel was required to offer the full discount to all customers, while if it was possible to avoid offering the discount to 'captive' customers who must use the tunnel, the cost could be lowered to [X] per cent of freight revenue. Compass Lexecon argued that for the strategy to be economically rational, it would be necessary for GET to be able then to expect to recoup the losses incurred in forcing the exit of a ferry competitor, and that this would require a very significant increase in MFL prices and profits after exclusion. Compass Lexecon argued that this would not be plausible, as any increase in prices would attract entry or re-entry of a ferry operator given the limited barriers to entry on the short sea, and GET would still face strong competition from the remaining actual competitors. Finally, Compass Lexecon noted that as the bundling strategy only applied in the freight market and not the passenger market, and short-sea ferry operators serve both markets, the strategy was even less likely to be successful than suggested by the analysis of the potential cost of the strategy and argued lack of ability to recoup the lost profits.

11. The Compass Lexecon report provides a useful framework for evaluating the costs of a hypothetical anti-competitive bundling strategy in the freight market. In principle, we agree with the choice of average avoidable cost (AAC)<sup>5</sup> as a benchmark for examining exclusionary effects, which is in line with guidelines issued by the European Commission and the UK competition authorities.<sup>6</sup>
12. We think that the estimated costs of a hypothetical bundling strategy calculated by Compass Lexecon are more likely to be an upper bound estimate of the likely costs of the strategy than a central estimate. This is for two reasons. First, while it is correct that AAC is a useful benchmark in that a ferry operator forced to price below AAC should choose to shut down, it may not be necessary to price this low, as losses will be made if prices are below average total cost. Exit may occur at higher prices (than AAC) if the competitor does not believe that prices will cover total costs in the longer term.<sup>7</sup> Second, the model used assumes that the full discount needed to drive prices below AAC in the supply of ferry services is applied to all the units sold in the bundle. This is a reasonable assumption if prices are 'posted' and linear. However, in a business-to-business market with individual contract negotiation, it would be possible to employ non-linear pricing strategies with targeted discount structures that resulted in deep discounts being offered on marginal sales of MFL services rather than all GET sales. This could have the effect of driving prices below AAC in the supply of ferry services, but at a significantly reduced overall cost.
13. Compass Lexecon argued that it would be difficult to recoup any significant costs incurred via higher prices on MFL. We agree that it is unlikely that MFL would be able to increase its price unilaterally above the competitive level in the supply of ferry services to recoup the costs of a bundling strategy. However, we note that if a competitor exited the market, significant incremental profit could result from higher volumes on MFL even if prices did not rise above the competitive level. We also note that a full analysis of the profit impact would require consideration of any price and volume benefits that might accrue to Eurotunnel should a competing ferry operator exit the market.

---

<sup>5</sup> We note that Compass Lexecon used an estimate of 40 per cent for the variable/avoidable ship costs, based on publicly available estimates of the operating costs of a fast car ferry services.

<sup>6</sup> See, for example, European Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings*, 2009.

<sup>7</sup> Though we note that pricing above AAC may result in a longer time period before exit, increasing the likely total cost of forcing exit.

## Undertakings to the French competition authority

14. We note that GET has given undertakings to the FCA that it will not bundle shuttle and ferry services for a period of five years. We note that by the time these undertakings expire it would be reasonable to expect that if MFL is still operating, GET would by then have succeeded in establishing MFL as a viable ferry operator. This suggests that, even if an incentive to bundle currently existed to assist in the development of MFL, there could be less incentive to offer bundles that would involve significant discounts at the time of the expiry of the undertakings.

## The ability of DFDS to bundle

15. GET submitted to us that it faced competitors that were capable of engaging in their own bundling strategies. In particular, GET submitted that DFDS and P&O operated a network of ferry routes across Europe and that they were able to bundle across these routes, potentially offering a more attractive bundle than GET could offer via Eurotunnel and MFL. GET provided documents showing that this was DFDS's stated strategy.
16. DFDS [REDACTED].<sup>8</sup>
17. An analysis of volumes over time on the short sea shows that when DFDS purchased the former Norfolkline ferry operation on Dover–Dunkirk at the end of 2009, the Dover–Dunkirk route had an approximate share of the freight market of 15 per cent. We note that in 2010 and 2011, operating under DFDS the route broadly maintained a share of 15 per cent. The lack of market share growth after acquisition of this route by DFDS is consistent with the argument [REDACTED].

## Conclusions

18. Bundling is a strategy that might be used to assist in the process of forcing a competitor out of the market via customer foreclosure. Our analysis shows that the question of interest from a competition policy perspective is whether the MFL operation is likely to displace one of the other ferry operators on the short sea taking into account the likely short-run costs of intensive competition. We deal with this concern in our consideration of whether we think that one of the ferry operators is likely to withdraw some or all of its service from the short sea.

---

<sup>8</sup> [DFDS hearing summary](#), paragraph 7.

## Horizontal unilateral effects

### Effect of the transaction on pricing incentives in a differentiated product market

1. Cross-Channel transport services provided by Eurotunnel shuttle and ferry are differentiated services. As noted in the Merger Guidelines,<sup>1</sup> where products are differentiated, effects are more likely where the merger companies' products compete closely. In order to assess whether the merger results in unilateral effect concerns, the CC may analyse the change in the pricing incentives of the merger companies created by bringing their differentiated products under common ownership or control.
2. Unilateral effects may arise because a price increase becomes less costly when the products of the two companies are brought under common ownership or control. Without the merger, it is costly for one of the merger companies to raise its prices because it will lose the profit on diverted sales as a result. The cost is composed of two elements:
  - (a) the profit on lost sales from customers who switch to the products of the other merger company; and
  - (b) the profit on lost sales from customers who switch to the products of companies other than the other merger company.
3. After the merger, it is no longer as costly for the merged company to raise the price of any of the products: it will recoup the profit on recaptured sales from those customers who would have switched to the products of the other merger company. In the context of this transaction, the concern is that pre-merger the value of business lost by Eurotunnel to the ferries is entirely lost from GET. Post-merger, however, if Eurotunnel increases prices, some proportion of its lost customers are likely to divert to MFL, retaining within GET some previously lost profit.
4. The scale of this incentive will depend on the diversion ratio between the two businesses (how much lost volume is 'recaptured' by MFL) and the relevant margin on the MFL business.<sup>2</sup>

### *Incentive analysis*

5. In order to gain additional insight into the implications of the merger for GET's incentives to compete, we have calculated two metrics intended to be relatively simple tools that provide an indication of the change in incentives caused by the merger. These tests are known as the 'Indicative Price Rise' indicator (IPR) and the 'Gross Upward Pricing Pressure Index' (GUPPI). Both IPR and GUPPI require two main inputs—estimates of diversion ratios between the merging products and the margin on the 'target' product in the merger (in this case, the MFL ferry service).

---

<sup>1</sup> See CC2, section 5.4.

<sup>2</sup> There could also be a similar effect from MFL to Eurotunnel. However, we view the ferries as being relatively homogeneous competitors, and therefore think this effect is likely to be small as a large volume of business would be likely to divert to competing ferry operators if MFL unilaterally increased its price on the short sea. This is explained in more detail below.

## Estimating diversion ratios

6. MFL has only been operating for a brief period, and is expected by GET to grow over time. We therefore do not have direct evidence of the likely diversion ratio between Eurotunnel and MFL based on historical analysis of events on the short sea. To calculate likely diversion ratios we have assumed that lost tunnel sales divert to MFL broadly in proportion to its expected future share of ferry volumes. This seems a reasonable approach in this case as ferry operators are differentiated by frequency of sailings and destination (Calais versus Dunkirk in particular), and it seems reasonable to assume that market shares broadly capture the effects of these differences and hence the likelihood of diversion to a particular ferry operator. This approach is, in our view, supported by the evidence provided in our event analysis. It is also in line with the approach used by the parties' economic adviser, Compass Lexecon.
7. Eurotunnel typically has a share of freight volume crossing the short sea of around 40 per cent (of total ferry and tunnel volume), implying that ferry operators account for approximately 60 per cent of volume on average.<sup>3</sup> GET's initial target market share for MFL was [X] per cent.<sup>4</sup> At [X] per cent, the diversion ratio from Eurotunnel to MFL is estimated as being [X] per cent in the freight market.<sup>5</sup> For the passenger market, Eurotunnel typically maintains a higher share of the market, so for passengers we have assumed that Eurotunnel has (on average) a market share of 45 per cent of the market, with ferries carrying the remaining 55 per cent of volume.<sup>6</sup> GET's initial target market share for MFL was [X] per cent of passengers.<sup>7</sup> This generates an estimated diversion ratio of [X] per cent in the passenger market.
8. Table 1 shows the short-sea market shares of the two smaller but established ferry operators in 2010, the year prior to the exit of SeaFrance. These operators provide an independent estimate of the scale of operation of smaller but mature ferry competitors on the short sea that have operated recently. The data shows that SeaFrance and DFDS (Calais–Dunkirk) had market shares in the range of 13 to 17 per cent.

TABLE 1 Market shares of DFDS and SeaFrance, 2010

	per cent	
	Freight	Passengers
SeaFrance	17	13
DFDS (Dunkirk)	14	15

Source: IRN Research.

9. The market shares of SeaFrance and DFDS in 2010 suggest that MFL's initial share targets (of [X] per cent in the freight market and [X] per cent in passenger) are likely to be a conservative estimate of the stable market share of a smaller but committed competitor on the short sea. A 15 per cent market share equates to a 25 per cent diversion ratio in freight, and 27 per cent in passengers.

<sup>3</sup> Excluding the year of the fire and its aftermath (2008 and 2009), Eurotunnel has had freight market shares of between 35 and 44 per cent since 2000. We note that Eurotunnel typically has a higher share of the passenger market (4 per cent higher in 2012).

<sup>4</sup> *Draft global offer for the acquisition of the operating assets of SeaFrance*, Presentation to the GET SA Board meeting: 11 April 2012. We note that the plans forecast freight share to grow to [X] per cent by [X], which has subsequently been revised to [X] per cent (see paragraphs 8.16–8.17 of the main report).

<sup>5</sup> Calculated as [X].

<sup>6</sup> The tunnel has had passenger market shares between 40 and 48 per cent of the market since 200.

<sup>7</sup> *Draft global offer for the acquisition of the operating assets of SeaFrance*, Presentation to the GET SA Board meeting: 11 April 2012. We note that the plans forecast passenger share to grow to [X] per cent by [X], which has subsequently been revised to [X] per cent (see paragraphs 8.16–8.17 of the main report).

10. Based on the analysis above, we have based our calculations on a likely range of diversion ratios from Eurotunnel to MFL of between [X] and [X] per cent. These diversion ratios are equivalent to assuming that MFL stabilizes at a share of ferry volumes in the freight market that lies between approximately [X] and [X] per cent, while in the passenger market MFL achieves a market share between approximately [X] and [X] per cent. We note that these are conservative assumptions, when compared with the actual market shares of DFDS and SeaFrance prior to the exit of SeaFrance.

### **Margin assumptions**

11. There are two margins that may be relevant to the analysis. The first is a short-run margin estimate. This margin measures the value of adding additional passengers or freight volume to a ferry, on the assumption that the ferry has sufficient spare capacity to accommodate the additional volume. The relevant costs are those that vary with the addition of a car and its passengers or an HGV and its driver to a particular sailing. The second margin of potential interest is a longer-run margin that allows for the common (but avoidable) costs of additional ferry sailings—in other words, a margin that captures the (much higher) costs involved if volume changes cause more or less sailings to be required.
12. Compass Lexecon estimated short-run margins on MFL as being greater than [X] per cent and long-run margins of [X] per cent for MFL based on data from GET/MFL.<sup>8</sup>
13. We received information from P&O on its operating margins. [X] We also received margin data from DFDS. DFDS's short-run margin estimates were [X]. The overall DFDS service margin is not comparable due to the higher cost of the Dover–Dunkirk route.
14. P&O and DFDS's data [X] estimates [X] margin for a ferry operator than that used by Compass Lexecon in its analysis of MFL. We think that P&O's data is likely to be a reliable source of margin data on the Dover–Calais route, given its long history on this route. We have therefore used P&O data as our primary source of short-run margin data. [X] We note that this is close to the long-run margin calculated by Compass Lexecon using data from GET of [X] per cent. Given that the relationship with the SCOP means that MFL could have a slightly different cost structure from P&O, and that the estimates from third party sources are relatively close to the GET/Compass Lexecon margin estimate, we have used the [X] per cent estimate for MFL as the best estimate of an appropriate long-run margin in our calculations.

### **Adjusting for onboard sales**

15. For both freight and passenger markets, the value of a sale on Eurotunnel is greater than on the ferry, if the cost of travel only is considered. Our analysis of prices shows that, in general, Eurotunnel maintains a premium in freight of about [X] per cent, while in the passenger market the premium is typically around [X] per cent. This implies that, considering only the cost of purchasing a ticket on either Eurotunnel or a ferry, the ferry ticket is generally considerably cheaper (to the customer) and less

---

<sup>8</sup> We note that the report estimates a long-run margin of [X] per cent for freight, and [X] per cent for passengers. Given that the cost of the ferry is common to both services, it is not clear what this difference assumes. For the purposes of this analysis, we have used the overall average of [X] per cent. We note that in the data supplied to us neither DFDS nor P&O had attempted to measure an overall service margin split by passengers/freight.

profitable.<sup>9</sup> However, this is offset to some extent when onboard ferry sales are considered. Ferry operators have the ability to provide services other than just transport across the Channel—in particular, meals on board, foreign exchange sales and shopping. This increases the value of a sale diverted from Eurotunnel to a ferry. We have used data supplied to us by P&O and GET to estimate the effect of onboard sales on the prices and margins that are relevant to our analysis.

16. P&O provided us with data [REDACTED].<sup>10</sup>
17. We received a board presentation from GET that included revenue forecasts for MFL broken down into cars, coaches, HGVs and onboard sales.<sup>11</sup> [REDACTED] We therefore recalculated the relative value of a sale on MFL using this data. To do this, we made the conservative assumption that [REDACTED] per cent of onboard sales would be due to cars (passengers, excluding coaches) and, given the [REDACTED] value of onboard sales revenue forecast for MFL, that no additional value would be earned on freight sales.<sup>12</sup> This calculation resulted in the relative value of a passenger sale on the ferry increasing from [REDACTED] to [REDACTED] per cent for MFL after allowing for onboard sales, while the relative value of a freight sale (with no allocation) [REDACTED]. We used these adjusted figures in our GUPPI calculation, as the formula specifically allows for the differing value of sales on a ferry compared with Eurotunnel. We used the same allocation of onboard sales to adjust the margin figures that we had calculated (based on P&O data) [REDACTED]. The adjusted margins were [REDACTED] per cent for passenger traffic on MFL, and [REDACTED] per cent for freight traffic.

### ***Whether long- or short-run margins are appropriate for the analysis***

18. Our view is that short-run margins are most relevant to our analysis in this case. It is clear that frequency and reliability of service are key to success in this market, and as a result the size of MFL's fleet will be dictated for the immediate future by the need to have at least three ships in service in order to support a competitive schedule. GET's business plans and our calculations show that these ships will provide more than sufficient capacity to accommodate the share of the market MFL is aiming to capture.<sup>13</sup> Furthermore we note that the competitors on the short sea have the ability to discriminate significantly in their pricing, setting different prices for different times of the day, days of the week and seasons. In the passenger market, we note that both Eurotunnel and the ferries use yield management systems of the type employed by airlines. These systems allow prices to be adjusted in the short run to account for how demand is developing over time. This suggests that in the passenger market in particular, prices and volumes could be optimized in the short run across Eurotunnel and MFL, in which case the short-run margins are clearly the relevant margins to take into account. We therefore do not think that marginal gains in traffic on MFL following price increases on Eurotunnel are likely to result in investment in new vessels or additional crossings solely for the purpose of accommodating that traffic.<sup>14</sup>

---

<sup>9</sup> We note that Eurotunnel also makes some revenue from value added sales. However, the amount is [REDACTED] and was budgeted to account for less than [REDACTED] per cent of the passenger division revenue in 2012.

<sup>10</sup> See Appendix D. Prices used for comparing tunnel and ferry prices were 2012 year-to-date prices, in £.

<sup>11</sup> *Draft global offer for the acquisition of the operating assets of SeaFrance*, Presentation to the GET SA Board meeting: 11 April 2012.

<sup>12</sup> By 'conservative' here we mean using assumptions that lower the value of sales on MFL, and hence result in lower IPR and GUPPI figures than if we used figures closer to those of P&O.

<sup>13</sup> *Draft global offer for the acquisition of the operating assets of SeaFrance*, Presentation to the GET SA Board meeting: 11 April 2012.

<sup>14</sup> We note that adding crossings with existing vessels is not likely to be an optimal solution to accommodating small increases in traffic when capacity is becoming scarce, as capacity constraints are likely to be encountered at peak times when existing vessels will already be sailing as regularly as is practical.

## **IPR analysis**

19. A purely illustrative indicator of post-merger price rises can be calculated using the following formulae where  $d$  is the diversion ratio and  $m$  the margin:
- (a) change in price =  $md/(2(1 - d))$  for linear demand; and
- (b) change in price =  $md/(1 - m - d)$  for isoelastic demand.
20. The model makes a number of assumptions. It assumes that the company faces a downward-sloping demand curve for the relevant product: that is, that the company has the ability to set its price.<sup>15</sup> It also assumes the form of the demand curve (linear or isoelastic), and that all other factors remain constant—so, for example, competitors do not respond by changing their prices, and the price (and margin) of the product that demand is diverted to does not change as a result of the additional demand.<sup>16</sup> The simple formula used here assumes that the model is symmetric and does not allow for different prices being charged across the merging products. We deal with this issue by also calculating GUPPI estimates that specifically allow for the possibility of asymmetry.
21. If the IPR framework is to provide useful information in this case, it needs to be reasonable to treat the option to customers of using either Eurotunnel or the ferry as a choice between differentiated products and for competition to be primarily price driven (the underlying model is one of ‘Bertrand’ competition). We think these are reasonable assumptions based on the facts and evidence we have gathered for both the freight and passenger markets; in particular, we note the existence of significant spare capacity and evidence of price-based contractual negotiations with freight customers and the use of ‘yield management’ pricing systems for optimizing passenger traffic.
22. For the freight market, we have given additional consideration to whether the framework is appropriate, given the evidence we have gathered on the level of the price premium that Eurotunnel is able to charge over the ferry price in the freight market. The submissions of GET, corroborated by information that we have gathered during the investigation, suggests that the Eurotunnel freight price appears to be set at the ferry operators’ prices plus a margin of €[redacted] that appears to be primarily cost-based—reflecting the cost of driving additional kilometres to Dover (compared with boarding a shuttle at Folkestone) and driver time cost savings. This suggests that the Eurotunnel price is normally set by the propensity of marginal freight customers, that do not pay much extra (if anything) for the frequency advantage of Eurotunnel, to switch to the ferries if the price exceeds these cost-based benefits of using Eurotunnel. In turn, this could suggest that the freight demand curve may be more elastic if prices are increased beyond this premium than assumed in the IPR calculation. In other words, Eurotunnel’s demand curve might be somewhat ‘kinked’ at the point where the premium is approximately equal to the cost-based advantage over the ferries.
23. The facts available to us, however, suggest that demand is not so elastic at a particular point that the IPR model is invalid. We note that GET told us that it had during this year’s freight contract round [redacted] per cent of price on Eurotunnel, for which GET

---

<sup>15</sup> This can be contrasted with markets where price is exogenous to the firm and is set by the market. For example, a farmer selling a product like wheat where the farmer has no ability to set the price, but rather receives the market price for whatever volume he or she may have produced.

<sup>16</sup> See Bishop, Simon and Walker, Mike (2010) *The Economics of EC Competition Law*, Sweet and Maxwell: London, for a discussion of the derivation of these formulae.

thought Eurotunnel might [X] per cent of market share. We also note that the scenario analysis analysed below indicates an ability to trade yield for market share. These observations suggest that Eurotunnel has the ability to make the type of trade-off between price and volume that is assumed by the model.

24. Importantly, there does not seem to be any equivalent issue (of any potential step change in demand elasticity) on the passenger markets, where Eurotunnel maintains a larger premium over the ferry price than on the freight market.<sup>17</sup> As a result, we think the IPR framework is useful in both the passenger and freight markets. However, on the basis of our analysis of the source of the freight premium, we do not think the isoelastic formulation of IPR is appropriate in this market, and we have therefore not calculated isoelastic IPR estimates.<sup>18</sup>

25. The results of the IPR calculation are shown in Tables 2 and 3.

TABLE 2 **Indicative price rise calculations: freight**

	<i>per cent</i>				
	<i>Diversion</i>				
Margin	[X]	[X]	[X]	[X]	[X]
	[X]	[X]	[X]	[X]	[X]

Source: CC calculations.

TABLE 3 **Indicative price rise calculations: passengers**

	<i>per cent</i>				
	<i>Diversion</i>				
Margin	[X]	[X]	[X]	[X]	[X]
	[X]	[X]	[X]	[X]	[X]

Source: CC calculations.

26. The figures in bold indicate our base case assumptions—a (short-run) estimated margin of [65–85] per cent and diversion ratio of [X] per cent for freight (assuming [X] per cent market share in freight) and an estimated [65–85] per cent margin, and a diversion ratio of [X] per cent for passenger (assuming [X] per cent market share in passengers).

27. We do not interpret the ‘change in price’ in these formulae as a prediction of actual post-merger price rises. However, we do regard the formulae as providing guidance on how to combine margin and diversion ratio data to evaluate the relative lessening of competitive constraints that results from the combination of a ferry business and Eurotunnel on the short sea.

### **Upward price pressure analysis**

28. ‘Upward pricing pressure’ tests do not attempt to estimate an actual price rise, but rather measure the strength of the internalization incentive by measuring the value of

<sup>17</sup> We note that GET told us that [X].

<sup>18</sup> If demand is isoelastic, the price elasticity of demand is constant at different price levels. If demand is linear, the price elasticity rises as price rises which seems more reasonable in this market, particularly if the price rise on Eurotunnel does not coincide with an equivalent increase in the price of ferry crossings of the Channel.

sales that is recaptured as margin post-merger. This value is estimated by multiplying the margin on each unit sold on MFL by the proportion of Eurotunnel's lost sales that MFL would be likely to pick up (the diversion ratio). Finally, in the formula we use in this test a correction is applied to adjust for the relative value of sales. This adjustment accounts for the fact that if the value of a sale on MFL is lower (or higher) than Eurotunnel, then the incentive effect will be reduced (or increased).<sup>19</sup> The formula we have used is sometimes referred to as a GUPPI test.<sup>20</sup> The formula used is:

$$\text{GUPPI} = md(p2/p1), \text{ where } m \text{ is the margin on MFL, } d \text{ is the assumed diversion ratio of sale lost from Eurotunnel to MFL, } p2 \text{ is the price (sales value in revenue terms) of a sale on MFL and } p1 \text{ is the price of a sale on Eurotunnel.}$$

29. A GUPPI of 10 per cent means that, once relative price differences are allowed for, 10 per cent of the revenue lost on Eurotunnel if prices are increased is recaptured as margin on MFL. The larger the GUPPI measure, the more profit is retained in the merged company post-merger due to the internalization effect, and the stronger the incentive to increase price. This is because the additional profit (that did not exist pre-merger) has the effect of lowering the cost of increasing prices leading to a change in incentives in favour of a higher price.
30. Based on the inputs discussed above, the results of our GUPPI calculations are shown in Tables 4 and 5.

TABLE 4 **GUPPI: freight**

	<i>per cent</i>				
	<i>Diversion</i>				
Margin	[X]	[X]	[X]	[X]	[X]
	[X]	[X]	[X]	[X]	[X]

Source: CC calculations.

TABLE 5 **GUPPI: passengers**

	<i>per cent</i>				
	<i>Diversion</i>				
Margin	[X]	[X]	[X]	[X]	[X]
	[X]	[X]	[X]	[X]	[X]

Source: CC calculations.

31. The figures in bold indicate our base case assumptions. These are a short-run margin of approximately [X] per cent in freight combined with a [X] per cent diversion ratio (assuming [X] per cent market share in freight), and a margin of [X] per cent combined with a diversion ratio of [X] per cent for passenger (assuming [X] per cent market share in passenger). As noted above, these market share and

<sup>19</sup> As explained in detail above, after correcting for onboard sales (using forecasts for the MFL business), the ratio of ferry price to tunnel price that we used in our model is [X] per cent for passengers and [X] per cent for freight. We note that if MFL ultimately makes levels of onboard sales similar to those of P&O, [X]. In our base case of a [X] per cent diversion ratio in passengers, [X] the value of GUPPI is [X] per cent.

<sup>20</sup> For a detailed discussion the derivation and value of upward pricing pressure tests including GUPPI in merger analysis, see *The 2010 U.S. Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, Carl Shapiro at:

[www.justice.gov/atr/public/articles/263528.htm](http://www.justice.gov/atr/public/articles/263528.htm).

diversion ratios [X] when compared with actual market shares achieved by DFDS and SeaFrance prior to the exit of SeaFrance.

32. We regard the GUPPI formulae as providing guidance on how to combine margin and diversion ratio data to evaluate the relative lessening of competitive constraints that result from the combination of a ferry business and Eurotunnel on the short sea. The results suggest that the combination of a tunnel and ferry operation is likely to have a material impact on pricing incentives.

### **The Compass Lexecon critical loss analysis**

33. Compass Lexecon provided us with a report that estimates the critical volume loss (in lane metres) by Eurotunnel that would be required to (just) make a hypothetical price increase by Eurotunnel unprofitable. Compass Lexecon first modelled the critical loss excluding any consideration of the existence of MFL, and then modified the formula to allow for the potential effect of MFL recapturing some of the lost volume. Compass Lexecon’s conclusions are summarized on page 2 of the report. With respect to the impact of MFL, Compass Lexecon stated:

We also calculate the pre-Transaction critical loss and find that there is a relatively small change in Eurotunnel’s critical loss as a result of the Transaction. The change in the critical loss does not represent more than [X] per cent and [X] per cent of Eurotunnel’s sales for a [X] per cent and a [X] per cent price increase respectively. This implies that the Transaction is unlikely to materially affect Eurotunnel’s incentives to raise prices, which we consider to be low on the specific facts of this case.

34. We do not think that the observation that the change in critical loss is small relative to Eurotunnel’s overall sales is relevant to the question of the impact of MFL on Eurotunnel’s pricing incentives. Rather, the question is whether the addition of MFL significantly changes Eurotunnel’s incentives. In other words, the question is how significant the change in critical loss volume is compared with the pre-merger critical loss volume. The impact on the change in critical loss, based on Compass Lexecon’s calculations, is shown in Table 6. It suggests that the change in incentives is significant.

TABLE 6 **Change in critical loss (metres, allowing for customer variable costs)**

	<i>Critical loss (metres)</i>	<i>Change in loss due to MFL</i>	
Freight	[X]	[X]	[X]
Passengers	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Compass Lexecon.

35. We have calculated the change in critical loss using the formula supplied by Compass Lexecon and assuming a diversion ratio of [X] per cent and the long- and short-run costs used in the Compass Lexecon report, with the exception of the ferry margin where we have used the [X] short-run ferry margin (compared with that used by Compass Lexecon) used in our analysis above [X]. The results are shown in Table 7. As discussed above, our view is that the higher ferry margin is the most relevant to our analysis of the transaction.

TABLE 7 Change in critical loss due to addition of MFL to GET

	per cent		
	Tunnel margin		
MFL margin	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]

Source: CC calculations.

36. In summary, the results of analysing the changes in incentives by way of analysing the change in critical loss volume with the addition of MFL are, in our view, broadly consistent with the results of our analysis using IPR and GUPPI.

### The effect on competitive incentives of increasing market share on the short sea

37. A second unilateral concern is that MFL has less incentive to compete vigorously than an independent ferry competitor, with 'independent' in this context meaning an operator that has no corporate affiliation with Eurotunnel. Before explaining the nature of this concern in more detail, we explain the view we have formed of the nature of ferry competition, and how that relates to the constraint imposed on Eurotunnel.
38. Our analysis of the prices of major ferry operators and Eurotunnel on the short sea shows that while there is a significant difference between the price of a tunnel crossing and that of a ferry crossing in both the passenger and freight markets,<sup>21</sup> there is relatively little difference between the prices of the major ferry operators. For the freight market, this can be seen in Figure 1 below, which illustrates freight prices over time on the short sea. It shows that Eurotunnel operates at a significant premium to the ferry operators in the freight market, while [redacted].

FIGURE 1

#### Monthly freight prices, £, 2007 to 2012

[redacted]

Source: Operators, CC calculations.

39. Figure 2 provides the same analysis for the passenger market. The general pricing relationships are very similar to those in the freight market, except that the Eurotunnel premium (in percentage terms) is markedly higher, and there is evidence that DFDS [redacted].

FIGURE 2

#### Monthly passenger prices for cars, £, 2007 to 2012

[redacted]

Source: Operators, CC calculations.

<sup>21</sup> On average, the Eurotunnel price is typically [redacted] per cent more expensive than a ferry crossing in the passenger market and [redacted] to [redacted] per cent more expensive in the freight market (excluding onboard sales). See Appendix D.

40. Our general conclusion from the pricing analysis is that although there is some differentiation between the main ferry competitors on the short sea in terms of frequency of service and routes served, the level of differentiation is quite small in terms of the value placed on it by customers. For this reason, we view competition between the major ferry operators with a competitive departure schedule as being competition between firms offering a broadly homogeneous service offering. The implication is that we do not think individual ferry operators will be able to price unilaterally at a level that is significantly different from that of the other major ferry operators on the short sea without risking losing large volumes of business. This is the reason that we have not calculated IPR and GUPPI estimates for MFL, measuring the incentive of MFL to increase its price due to the internalization within GET of any volume that would divert to Eurotunnel from MFL as a result. Our view is that MFL will not be able to win a sustainable share of the market while operating at a price that is materially above its ferry competitors.
41. Given the analysis above, our view is that the intensity of competition between the ferry operators will affect the overall level of prices for ferry crossings on the short sea. The price of ferry crossings in turn, however, constrains the price Eurotunnel can charge. This is because although Eurotunnel is significantly differentiated from the ferries by way of its advantages in terms of departure frequency, speed of crossing and location advantage (shorter distance for hauliers in particular), ferry sailings are nonetheless the closest available substitute to crossings via Eurotunnel's shuttle. The evidence supports GET's statement that Eurotunnel operates at a premium, typically around €[X], compared with the ferry price in the freight market, while the figures above illustrate that tunnel profits are optimized when it maintains a broadly consistent premium above the ferry operators. This relationship provides a relatively direct link between the prices charged by ferry operators and on the ferry market overall, and the price that Eurotunnel can charge.
42. The link between the price level offered on the ferries and tunnel prices means that if MFL expands aggressively by adding capacity to try to gain market share in the ferry business, it is likely to drive down both ferry prices (in general, until other ferry competitors accommodate and reduce capacity) and Eurotunnel's price. As a result, GET (MFL plus Eurotunnel combined) will experience a greater cost than an independent ferry operator in the same situation. MFL will experience a similar loss of revenue from existing sales if it discounts prices to that of an equivalent independent operator. However, GET will also experience a significantly greater cost in lost revenue due to lower prices and/or fewer sales through Eurotunnel. Assuming that GET recognizes these interactions and manages Eurotunnel and MFL in a way that optimizes group profits, this effect will weaken competition between ferry operators as GET will have less incentive than an independent ferry operator to expand capacity on the short sea, with the associated risk of increased price competition.
43. We note that this is not a novel theory of harm. Rather, it reflects the fact that given the relatively close links in the market between Eurotunnel and the ferry operators, the combined market shares of a combined ferry and tunnel operator need to be taken into account. This concern is the traditional concern that as companies gain very large shares of a market, they will have increasingly less incentive to discount due to the increasing cost to their existing business of discounting.
44. We are aware that in the counterfactual case—DFDS purchasing the ex-SeaFrance vessels and operating them on the Dover–Calais route—DFDS would experience a similar effect due to the depressing effect on its profits on its existing Dover–Dunkirk business should it expand capacity on the Dover–Calais route. However, we think the effect is more concerning in the case of MFL. This is because if the decision being contemplated is the addition of a vessel by either DFDS or MFL on its Dover–Calais

route, the impact on capacity and prices on the short sea will be similar, and the potential benefit from expansion will also be similar. But both the volume and value of DFDS's existing business on Dover–Dunkirk is significantly lower than that of GET's business through Eurotunnel. This is illustrated in Table 8. DFDS's volume on Dover–Dunkirk is approximately 15 per cent of the volume of the short-sea market, whereas Eurotunnel has a 40 to 45 per cent share of volume. This means that the cost to existing business will be much higher for GET than for DFDS, implying that it is less likely that MFL and GET will consider future capacity expansion on the short sea to be profitable overall.

TABLE 8 Comparison of market shares between the post-merger situation and counterfactual

<i>Post-merger</i>	<i>MFL</i>	<i>ET</i>	<i>GET combined</i>
<i>Volume</i>			
Freight	[X]	40.0	[X]
Passenger	[X]	45.0	[X]
<i>Value</i>			
Freight	[X]	[X]	[X]
Passenger	[X]	[X]	[X]
<i>Counterfactual</i>	<i>DFDS–DC</i>	<i>DFDS–DD</i>	<i>DFDS combined</i>
<i>Volume</i>			
Freight	[X]	15.0	[X]
Passenger	[X]	15.0	[X]
<i>Value</i>			
Freight	[X]	[X]	[X]
Passenger	[X]	[X]	[X]

Source: Operators, CC calculations.

### **Compass Lexecon comments on unilateral effects concerns**

45. Compass Lexecon provided us with a report raising a number of issues with our analysis. We provide our view on the arguments put forward that relate to our unilateral effects concerns in this section. We only reply to those points that are not adequately addressed elsewhere in the report.
46. In relation to our business internalization concern, Compass Lexecon raised two key issues:
  - (a) the static nature of IPR/GUPPI analysis and the constraint from the strength of ferry competition on the short sea, particularly given the level of excess ferry capacity on the market; and
  - (b) the need to take into account the counterfactual.
47. Compass Lexecon also provided further arguments and evidence on the relevant diversion ratios for our analysis. We consider each point in turn.

#### *Static nature of IPR/GUPPI and the impact of excess capacity*

48. Compass Lexecon noted that IPR/GUPPI analysis was static, and did not take into account the response of competitors. This is correct, but we do not think it is a significant weakness of our analysis in this case.
49. Our internalization concern relates to the fact that the incentives within GET change due to the incorporation of a short-sea ferry operation in the Group in a way that will,

all else equal, increase Eurotunnel's optimal price. The size of the incentive is a function of the scale of MFL and the likely diversion ratio, and the profitability of the ferry business. Dynamic considerations would then involve considering whether competitive entry or repositioning would remove the concern over possible price increases. As the primary concern is an increase in optimal Eurotunnel prices and Eurotunnel is significantly differentiated from the ferry businesses, the first question is whether a small increase in Eurotunnel prices might incentivize entry into the Eurotunnel segment of the market. We do not think any party has suggested that this is likely. The next issue would be whether the diversion of some volume of business to the ferries might change the ferry segment such that prices would fall materially on the ferries, which might in turn then cause Eurotunnel to lower its price again. It is not clear to us how or why this would happen. On the basis of Compass Lexecon's own analysis, the marginal changes in volume would be likely to be small and the ferry segment typically supplies sufficient spare capacity to accommodate marginal changes in volume. There is therefore no obvious mechanism for a small increase in volume in the ferry segment to cause a fall in ferry prices. It is more likely that, if anything, it would cause prices to rise due to the increased demand which would allow Eurotunnel to further increase price. We therefore do not think dynamic considerations alter our analysis.

50. Compass Lexecon argued that we had not taken into account the level of excess capacity in our analysis of either the business internalization or competition weakening concerns. This is in our view incorrect. The IPR and GUPPI analyses implicitly assume the ferry-based competitors can fully accommodate any diverted capacity and do so at current market prices; in other words, spare capacity is an underlying assumption. Furthermore this is, for the reasons outlined above, a conservative assumption—relaxing this assumption and introducing capacity constraints would tend to result in larger price increases than IPR would suggest, as competitors would then be likely to increase prices in response to an increase in prices on Eurotunnel, further reducing the competitive constraints on Eurotunnel. Similarly our 'competition weakening' analysis considers the incentive of MFL and GET to expand capacity. We agree that this is not a concern at the current time due to the excess capacity that exists today in the ferry market. However, it may become a significant concern in the future should ferry capacity exit the short sea.

### *Impact of the counterfactual*

51. Compass Lexecon argued that we needed to consider any SLC against our counterfactual, and that the counterfactual of DFDS purchasing the ex-SeaFrance vessels would in itself involve concerns over horizontal unilateral effects. This was because DFDS would have similar internalization incentives as GET, except instead of between Eurotunnel and MFL, the same mechanism would operate between DFDS's operations on Dover–Dunkirk and Dover–Calais, with the merger providing DFDS with an incentive to increase prices on Dover–Dunkirk.
52. The reason we think this does not raise the same concerns is explained in the section above, where we outline our view that competition between the major ferry operators is best approximated as competition between (relatively) homogeneous services. The IPR/GUPPI analysis is based on there being sufficient differentiation that a company has some degree of freedom to balance price against volume for the modelled products.
53. In support of this view, we note that, [REDACTED]. This shows that the price on Dover–Dunkirk is tightly constrained by ferry prices on Dover–Calais. For passengers, it appears that [REDACTED]. We also note that following the SeaFrance exit, significant volumes migrated rapidly to the Dover–Dunkirk route, but then returned equally rapidly to

Dover–Calais when additional capacity was introduced on the Dover–Calais route.<sup>22</sup> These facts support the view that it would not be possible for DFDS profitably to increase price on Dover–Dunkirk. We therefore do not think that the counterfactual involves similar unilateral effects concerns as the MFL transaction.

### *Diversion ratio estimation*

54. Compass Lexecon argued that diversion ratios based on MFL target market shares might be too high because:
- (a) The target market shares were above the current market shares.
  - (b) Our calculation ignored possible switching outside the short-sea routes.
  - (c) Market shares did not allow for the differences in service quality (number of departures in particular).
  - (d) Eurotunnel freight customers that might switch to ferry services would be more time sensitive than the average existing ferry customer.
55. Merger analysis is inherently prospective. The CC needs to form a view on the impact on competition of the merger over an appropriate time horizon. When considering entry, the horizon is normally considered as being at least two years, though the appropriate time horizon is decided on a case-by-case basis.<sup>23</sup> In this case, we do not think it is reasonable to base our analysis on current market shares when the MFL business is clearly expected to grow significantly over the next [X] years and is targeted with exceeding the market shares we have used in our analysis by the end of [X].<sup>24</sup>
56. With respect to switching outside the short sea, we have conducted analysis of a number of significant short-sea events and found that there is no material evidence of switching outside the short sea (in either freight or passengers) even in response to major disruptions within the short-sea market. The analysis also supports the view that in broad terms market shares are a reasonable proxy for rates of diversion. The analysis is contained in Appendix C.
57. Market shares on the short sea will, in our view, take into account the difference in service quality, and in particular the differences in the number of rotations, and are therefore likely to be a good proxy for diversion ratios.<sup>25</sup> Compass Lexecon noted that our analysis of the Eurotunnel fire showed that the share of diverted business that DFDS captured on the Dover–Dunkirk route captured was about [X] per cent less than its market share while P&O captured some [X] per cent more than its market share. This is consistent with the geographic differentiation one would expect—customers using Eurotunnel (which goes to Calais) would be expected to be somewhat more likely to divert to a Dover–Calais ferry than a Dover–Dunkirk crossing. As MFL will be operating to Calais, it would not be subject to differentiation due to this factor.
58. Compass Lexecon argued that Eurotunnel freight customers might be more time sensitive than average ferry customers, and hence might be more inclined to switch

---

<sup>22</sup> See Appendix C.

<sup>23</sup> CC2, paragraph 5.8.11.

<sup>24</sup> See paragraphs 8.16 & 8.17 of the main report.

<sup>25</sup> We note that if the service quality differences did not exist, capacity share could have been a better proxy for likely diversion ratios.

to P&O than MFL. We think this argument is dealt with by our analysis of actual diversion, and the comments above. However, we also note that this argument is inconsistent with the evidence and argument put forward by GET that the Eurotunnel premium that exists today in the freight market is broadly related to cost (distance and driver time), which suggests that marginal freight customers of Eurotunnel may not be significantly different from other ferry customers.

59. Compass Lexecon provided an analysis of a number of periods during November and December when, due to operational difficulties, Eurotunnel lost significant volumes of freight business. Compass Lexecon calculated estimates of the level of diverted traffic and found that (depending upon the approach) the weighted average diversion rate ranged between 3 and 7 per cent. GET told us that MFL had a market share of [redacted] per cent in November, and [redacted] per cent in December. Assuming that ferries account for approximately 60 per cent of the market (by volume), a diversion ratio estimated by market share would therefore be [redacted] per cent. All of Compass Lexecon's estimates exceed this amount (two of the three by a considerable amount). We think the analysis supports the view that market shares are a reasonable, or perhaps conservative, proxy for the likely diversion ratio from Eurotunnel to MFL.

### **GET pre-merger business planning documents**

60. GET provided us with documents relating to the decision to bid for the ex-SeaFrance vessels and launch MFL. These include a high-level financial model assessing the possible revenue impacts of the decision to start supplying ferry services. Some of the key assumptions in the plan are summarized in Table 9.

TABLE 9 Scenario analysis

Scenario	ET yield €	Ferry price €	ET share %	ET revenue €m	Increment €m
1. SF exit, no replacement	[redacted]		[redacted]	[redacted]	[redacted]
2. P&O/DFDS/Other ferry op (three ships, aggressive price)		[redacted]			
(a) Eurotunnel aggressive price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
(a) Eurotunnel soft price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
3. P&O/DFDS/Other ferry op (three ships, rational price)		[redacted]			
(a) Eurotunnel aggressive price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
(a) Eurotunnel soft price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
4. ET Enters with MFL	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: GET.

61. The purpose of assessing the assumptions in the model is to understand the extent to which those assumptions are consistent or otherwise with concerns over potential unilateral effects. The primary focus is therefore the pricing assumptions shown for Eurotunnel and the ferry operators. With these objectives in mind, our interpretation of the model is that it shows the following features of interest: [redacted].<sup>26</sup>
62. GET explained the logic behind the scenario 4 calculations. It told us that scenario 4(c) in the model assumed that MFL operated like any other ferry operator and there

<sup>26</sup> These are shown to be less profitable than the lower price strategy, which is consistent with the current premium (about €[redacted]) being optimal given the current traffic mix on the short sea and with GET having no ownership in interest in a short-sea ferry operator.

was no commercial coordination with the Eurotunnel operation. Hence the assumed Eurotunnel yield and market share assumptions ([§]) are the same as Eurotunnel's optimal position in scenario 3 when another operator purchases the ex-SeaFrance assets and operates them employing a rational pricing strategy. We note that this implies that MFL will operate with a rational pricing strategy and will avoid aggressively chasing volume based on price (illustrated in scenario 2).

63. The other scenario of interest in the model was labelled 4(a). This scenario assumed a higher tunnel yield and market share ([§]), and a higher price but substantially lower market share on MFL ([§]). GET told us that the higher yield did not indicate higher prices, but rather a mix benefit, as yield is an average price measure. The benefit resulted from diverting lower-value traffic [§]. Diverting low-value traffic to MFL while maintaining all else constant would increase yield without increasing the actual price paid by existing high-value traffic, but it would also (all else equal) imply lower volume and market share. The higher yield and volume combination assumed therefore implies that the volume of vehicles paying higher prices has increased substantially, more than replacing the lower-value traffic sacrificed, which in our view represents an overall assumed price increase. We also note that customers that previously used the premium Eurotunnel service at the lower discounted prices have now been moved to a lower-quality service, which is, from the perspective of a competition authority, a reduction in the quality of service for those customers.
64. Overall, the model appears to be broadly consistent with potential concerns over unilateral effects noted above. The relatively high assumed price for MFL is consistent with the view that GET will prefer MFL not to compete aggressively in the provision of ferry services if it optimizes its portfolio of businesses, though we accept that MFL operating as a 'rational' ferry competitor is one of the modelled options.<sup>27</sup> We also think there is some evidence of the business internalization effect, which implies that the optimal tunnel price will be higher if the businesses are considered together.

---

<sup>27</sup> 'Rational' here means not pricing aggressively, but also not pricing *higher* than the high end price likely to be set by any other competitor that should operate the ex-SeaFrance assets.

## Likelihood of entry

### Introduction

1. Entry (or threat of entry) by a potential entrant, or expansion (or threat of expansion) by an operator that is already active on the short-sea crossing could prevent any lessening of competition resulting from the acquisition. For this to be the case, entry and expansion needs to be likely, sufficient and timely. In this appendix, we consider the factors that affect the ease with which a ferry operator could start a new service on the short sea in competition with existing operators or could expand its existing services on the short sea, and the likelihood that it would do so.<sup>1</sup> Our assessment was focused on the Dover–Calais route, given that it is the route on which both DFDS and MFL have chosen to enter following the failure of SeaFrance, and given the relative lack of attraction of the Dover–Dunkirk route due to its longer crossing distance and time and associated higher costs. We have not considered entry on other short-sea routes that do not involve the port of Dover, as the evidence is that they do not exert a significant competitive constraint on the routes operating to and from Dover, and we do not foresee circumstances in which they would do so.

### Considerations regarding entry

2. We have identified the following factors that might affect the ease and likelihood of entry and expansion on the short sea, particularly the Dover–Calais route:
  - (a) scale and reliability (see paragraphs 3 to 5);
  - (b) lead time (see paragraph 6);
  - (c) financial risk (see paragraph 7);
  - (d) excess capacity (see paragraph 8);
  - (e) views on the number of viable operators (see paragraph 9);
  - (f) vessel costs (see paragraphs 10 to 12);
  - (g) vessel availability (see paragraphs 13 to 19);
  - (h) availability of berthing slots (see paragraphs 20 to 26); and
  - (i) regulation (see paragraphs 27 and 28).

### Scale and reliability

3. GET told us that it was feasible for an operator to enter the short sea with one or two vessels given that the fixed costs of operating a ferry service, such as maintaining an office and advertising, were relatively small compared with the variable costs, such as the number staff required, fuel costs and the port fees payable which depend on

---

<sup>1</sup> We have not discussed entry into the freight and passenger markets by way of opening a new tunnel link between England and France as it is not a feasible option given that the construction of such a tunnel would need approval by the UK and French Governments and would take many years and very considerable financial investment.

the number of ships operated and number of crossings made. On the other hand, GET also told us that it was important for a new operator to offer sufficient sailings to attract freight customers who typically would not book a sailing at a given time but instead would take the first available ferry, as otherwise these customers would use an operator providing a more frequent service.

4. DFDS told us that on the Dover–Calais route a ferry operator needed to offer a minimum of eight crossings in each direction (ie eight rotations) per day, which would require a minimum of two vessels, in order to provide a sufficiently frequent service to attract freight customers.
5. Several major freight customers told us that critical considerations for them in determining which ferry operator to use were the frequency and reliability of the service because it was important that lorries and drivers were not waiting in port for long periods before the next sailing. They also noted that the credibility of new operators was important because a feature of the freight market was that freight companies and ferry operators agreed annual contracts around the calendar year end, and if the freight companies used a ferry operator which withdrew from the route partway through the year, they might fail to benefit from volume discounts or rebates with one of the remaining operators.

### ***Lead time***

6. DFDS noted that entry on a new service was subject to a lead time for planning. It estimated that the lead time to establish a new service, assuming that suitable vessels were available, would be six months if the operator already had a presence at the relevant ports and at least nine months if it did not have an existing presence.

### ***Financial risk***

7. We identified that the combination of the lead time which might be required to build freight and passenger traffic on a route and the cost of operating a ferry might increase an operator's perception of the financial risk of entry and therefore deter entry:

(a) Lead time to build volume:

- GET told us that it would take time to build freight traffic as freight customers would delay entering into a contract with a new operator until they were convinced that the operator would provide a reliable service.
- P&O noted that freight customers could switch to a new service quickly, but tourist traffic took longer to build as it relied to some extent on brand recognition.
- [✂]
- As noted in paragraph 5, a characteristic of the freight market is that freight companies and ferry operators agree annual contracts around the calendar year end, so it may be difficult for a new entrant to build up freight volume during the course of the year in which it enters.

(b) Cost of operating a ferry:

- P&O submitted that the annual cost of operating a ferry between Dover and Calais was between £[~~20~~] million and £[~~30~~] million per year.
- DFDS told us that the cost of operating a ferry on the short sea was between €20 million and €30 million per year.
- GET noted that restrictions on sulphur emissions from vessels in connection with the international convention for the prevention of pollution from ships were expected to come into effect in 2015 and would require modifications to non-compliant vessels. GET estimated that it would need to invest €[~~20~~] million to make the *Berlioz* and the *Rodin* compliant.

### **Excess capacity**

8. Excess capacity is another factor that might influence an operator's perception of the financial risk of entry and therefore the likelihood of entry:<sup>2</sup>
- (a) In the period from 2004 to September 2012, GET estimated that no ferry operator on the short-sea crossing achieved average capacity utilization of greater than 60 per cent.
- (b) An equity research report by Nordea estimated that in June 2012, P&O and DFDS were achieving capacity utilization of just over 50 per cent and approximately 40 per cent respectively on their short-sea services.<sup>3</sup>
- (c) The Nordea equity research report also noted that freight traffic on the short-sea crossing was expected to grow by 2 to 3 per cent per year, which implies that the level of capacity utilization experienced by the ferry operators would not increase significantly in the medium term if the same amount of capacity continued to be deployed.

### **Views on the number of viable operators**

9. An operator's perception of the financial risk of entry might also be influenced by the equity market's perception that only two ferry operators can be viable on the Dover–Calais route:
- (a) The Nordea equity research report commented: 'DFDS or MyFerryLink has to give in eventually ... we do not believe that the [Dover–Calais] route will leave room for four operators in the long term'.<sup>4</sup>
- (b) The Nordea equity research report also estimated that DFDS would make a loss of DKK 129 million (approximately €17.3 million)<sup>5</sup> on the Dover–Calais route in 2013.<sup>6</sup>
- (c) In an equity research report dated 24 October 2012, Exane BNP Paribas stated that it believed that three ferry services on the Dover–Calais route and one on

---

<sup>2</sup> We consider the issues related to capacity and capacity utilization in more detail in Appendix E.

<sup>3</sup> Nordea equity research report on DFDS dated 10 September 2012.

<sup>4</sup> *ibid.* The four operators at the time were Eurotunnel, P&O, DFDS and MFL.

<sup>5</sup> €1 = DKK 7.4608 at 9 January 2013.

<sup>6</sup> *ibid.*

Dover–Dunkirk route was unsustainable and that DFDS would decide to exit because of the losses it was making.<sup>7</sup>

### **Vessel costs**

10. A London shipbroker estimated that the cost of a new vessel similar to the *Berlioz* or the *Rodin* now operated by MFL would be at least €150 million.<sup>8</sup> P&O's new ferries, the *Spirit of Britain* and *Spirit of France*, which came into service on the Dover–Calais route in 2011 and 2012 respectively, cost €180 million each.<sup>9</sup> These ferries have been called 'super-ferries' as they are the largest to operate on the cross-Channel routes and have 2,700 lane metres of capacity capable of carrying up to 180 lorries or 1,000 cars. For comparison, the *Berlioz* and *Rodin* each have 2,000 lane metres of capacity and can carry up to 120 lorries or 700 cars.
11. The capital cost of acquiring vessels in the second-hand market is likely to be less than new vessels. The Court minutes record that the shipbrokers who were invited to tender for the appointment to assist the Receiver with the sale of the vessels estimated the value of the *Berlioz* at between €43 million and €80 million and the *Rodin* at between €42 million and €69 million (before taking account of refurbishment costs estimated at €[redacted] million). The bids submitted for the *Berlioz* and the *Rodin* in the liquidation of SeaFrance were in the range of €25–€30 million.
12. The capital cost of acquiring a vessel can be avoided by chartering a vessel. A London shipbroker estimated that the cost of chartering a suitable vessel would be €8,500 to €10,000 per day.<sup>10</sup> DFDS told us that it would prefer to own the combined freight and passenger ferries it used on the short sea as when a vessel was chartered the charterer only benefited from expenditure on modifications and improvements to a vessel during the term of the charter.

### **Vessel availability**

13. Entry with a new vessel is subject to a lead time while the vessel is constructed. P&O commented that it might take up to three years for a new vessel to be delivered. When P&O entered into a contract with a shipyard for the *Spirit of Britain* and *Spirit of France* in August 2008, they were expected to enter into service in January 2011 and September 2011 respectively.
14. Acquiring a second-hand vessel or chartering a vessel can enable a new entrant to enter the market more quickly than with a new vessel. DFDS commenced operations on the Dover–Calais route with a vessel chartered from Louis Dreyfus Lines, the *Norman Spirit*,<sup>11</sup> three months after SeaFrance ceased operations, and added a second vessel, the *Barfleur*, two months later. DFDS/LD subsequently chartered the *Moliere* (which had formerly been operated by SeaFrance) to replace the *Barfleur*. Brittany Ferries, which operates in the Western Channel, commented that it would be reasonably easy for a new entrant on the cross-Channel market to find one or more vessels to charter, and CLdN Group, which operates in the North Sea, also noted that it would be relatively easy for a new entrant to acquire vessel capacity in the current market.

---

<sup>7</sup> Exane BNP Paribas, 24 October 2012.

<sup>8</sup> [redacted]

<sup>9</sup> [www.poferries.com/tourist/content/pages/template/\\_footer\\_About\\_about\\_P&O\\_Ferries\\_press\\_releases\\_PR\\_-\\_Delivery\\_of\\_second\\_new\\_ship.htm](http://www.poferries.com/tourist/content/pages/template/_footer_About_about_P&O_Ferries_press_releases_PR_-_Delivery_of_second_new_ship.htm).

<sup>10</sup> [redacted]

<sup>11</sup> The ownership of the *Norman Spirit* was subsequently transferred to DFDS/LD.

15. However, the availability of vessels suitable for the Dover–Calais route is affected by the design of the berths at Dover and Calais where, unlike most ports, the loading ramps are part of the port infrastructure. Therefore vessels which are not designed for the route and have integral ramps may need some modification for use at Dover and Calais. DFDS also noted that in order to keep the turnaround time in port to a minimum and achieve the required frequency of crossings, vessels needed ‘drive-through’ capability on several decks and sufficient engine power and manoeuvrability. In addition, the short time required for the short-sea crossing meant that fewer cabins were required than in vessels used on longer crossings. Similarly, P&O noted that optimal fuel consumption could only be achieved on the short-sea route by vessels with specific propeller, thruster and engine configuration, and that the short-sea vessels were designed for a 90-minute crossing and so had facilities that were relevant for this length of crossing (eg self-service restaurants designed to feed high numbers quickly and no passenger cabins).
16. DFDS told us that it was very difficult to find vessels suitable for the short sea in the chartering market and that there were no second-hand vessels available (at December 2012). DFDS noted that when it chartered the *Barfleur*, the vessel needed extensive structural modifications to enable it to use the berths at Dover and Calais, which cost €1.5 million. Moreover, once the *Barfleur* was in operation, DFDS found that the vessel did not have sufficient power to keep to schedule when delayed by bad weather or operational problems.
17. A London shipbroker told us that it would not be easy to charter a suitable vessel, and that the last suitable vessel to become available, the *Moliere*, was chartered by DFDS/LD (and renamed the *Dieppe Seaways*) in October 2012.<sup>12</sup>
18. On the other hand, GET told us that there were a large number of vessels that could easily be operated on the short sea, the Western Channel or the North Sea routes, including vessels currently serving routes from Plymouth and Portsmouth and Irish Sea and Scandinavian routes. GET commented that when DFDS/LD chartered the *Barfleur* for use on the Dover–Calais route, it had been reported that the modifications cost in the order of €5 million, and GET’s view was that given this moderate investment, many vessels could be relocated to the short sea. The *Barfleur* had previously been used on the Poole–Cherbourg route. GET also noted that there were other examples of ferries having been transferred to the Dover–Calais route from other routes, including:
  - (a) the *Norman Spirit*, which had previously operated on Dover–Dunkirk, Portsmouth–Le Havre, Ramsgate–Ostend, Dover–Boulogne and Dover–Ostend; and
  - (b) the *Dieppe Seaways*, which previously operated on Dover–Dunkirk and Hango–Rostock.
19. P&O told us that the time it would take for a new entrant to commence operations would depend, among other things, on the availability of suitable ships and how much modification would be required to fit the port infrastructure.
20. The SCOP told us that it could be very expensive to modify a vessel in order to make it suitable for use on another route. For example, it said that SeaFrance spent more than €20 million modifying the *Moliere* in order to use it on the Dover–Calais route (eg removing passenger cabin space not required for short journeys).

---

<sup>12</sup> [X]

## **Availability of berthing slots**

21. P&O and Stena Line both noted that the availability of port capacity and berthing slots was a potential barrier to entry. CLdN Group noted that obtaining good sailing slots might be difficult for a new entrant in the cross-Channel market. DFDS told us that it had not been able to obtain berthing slots in Calais while SeaFrance was calling there. DFDS also told us that, in its view, it was more difficult for a non-French ferry operator to obtain berthing slots in Calais than for a French ferry operator. [36]
22. Brittany Ferries noted that berthing slots were available at the following Channel ports: Plymouth, Poole, Weymouth, Roscoff, Saint Malo, Cherbourg, Le Havre, Dieppe, Boulogne and Ouistreham. Brittany Ferries noted that it was not able to comment on the availability of berthing slots at Dover and Calais.
23. GET told us that MFL had experienced no problems in obtaining berthing slots at Dover and Calais.
24. The Dover Harbour Board told us that:
  - (a) Ferry operators were granted slots to use a berth at a certain time. Operators did not have exclusive use of slots, although certain vessels tended to use particular berths owing to the configuration of the ship and berth, and operators did not have an automatic right to use a berth outside the slot time.
  - (b) The Dover ferry terminal had six berths and a maximum of 114 slots per day, assuming that all six berths were available and allowing for 1-hour slots plus 15 minutes for manoeuvring the vessels in and out of the berths, of which 59 were allocated. There were slots available to be allocated throughout the day.
  - (c) All ferry operators were subject to the same charges.
  - (d) The charges comprised harbour dues based on gross tonnage of the vessel (subject to a minimum charge), passenger dues paid according to the number of passengers, wharfage charges paid per vehicle and charges for the provision of security paid per vehicle.
  - (e) Factors that the Dover Harbour Board would take into account before granting approval of a new operator as a scheduled ferry operator would include whether:
    - the Dover Harbour Board deemed the operator to be financially capable of sustaining a cross-Channel ferry service on a regular basis for at least one year;
    - the operator appeared to be capable of managing its proposed schedule efficiently;
    - the traffic forecast by the operator could be accommodated and managed by the manpower available to handle it; and
    - the vessels that the operator proposed to use were capable of using the berths safely and speedily.

Before approving a new operator, the Dover Harbour Board would also consult with existing ferry operators, the cargo terminal operator and the UK and French border agencies.

25. CCI Côte d'Opale (CCICO), the operator of the ports of Calais and Boulogne, told us:
- (a) With its existing capacity, it would be difficult for the port of Calais to accommodate more than the ten ferries that were operating from the port in December 2012.
  - (b) Calais had five berths, but CCICO's policy was to treat one as 'spare' to allow normal service to be maintained while maintenance or repairs were undertaken. The maximum number of sailings to/from a berth was 17 per day, not including night-time slots between 11pm and 5am when operators had little interest in running services because of the lack of passenger demand. However, the practical optimum was 13 or 14 sailings (ie 52 to 56 per day using four berths) because the port had to keep some capacity in reserve to accommodate delays due to weather conditions or unforeseen incidents. CCICO noted that P&O and DFDS ferries generally made five return crossings (rotations) per day and MFL ferries made four rotations, which would equate to 48 sailings, although at peak times ferries could make up to six rotations on the Dover–Calais route. On 3 December 2012 there were 44 scheduled sailings (26 by P&O, 10 by DFDS/LD and 8 by MFL).
  - (c) Operators were not granted exclusive use of any of the berths. Some ferries could not access all the berths (for example, because they were too long or less manoeuvrable).
  - (d) The ferries used at Calais had to be designed or adapted to use the double-deck 'linkspans' (bridge structures linking the quay to the ferry) which enabled the upper and lower vehicle decks to be unloaded simultaneously. In CCICO's view, it would be difficult to acquire a ferry capable of operating from Calais.
  - (e) The space available at the port area for vehicle movements was also a constraint on the capacity at Calais.
26. The capacity of the Calais port will be increased by the Calais port 2015 development scheme, which is intended to enable the port to accommodate the traffic forecast for 2020 to 2025. However, the first berths are not expected to enter service until 2017/18.
27. The Port of Ramsgate told us that it had spare capacity for additional ferry services. It had three berths, one of which was used to facilitate the offshore energy business based at Ramsgate. Number 3 berth had 'Dover-style' loading ramps which were lowered on to ships' decks. Number 1 and Number 2 berths were adjustable free-board pontoon berths so were suitable for use by vessels with their own ramps. The Port of Ramsgate told us that it could provide 32 slots per day at Number 2 and Number 3 berths (allowing 1.5 hours for the arrival and departure of each vessel) of which, in December 2012, four were being used by Transeuropa Ferries. The Port of Ramsgate noted that the new ferry service to Boulogne proposed by Euroferries could require up to four of the available slots. The Port of Ramsgate also noted that the only constraint on vessels that could use the port was that the dimensions of the approach channel meant that vessels could not be longer than 180 metres or have a draught greater than 7 metres. For comparison, the *Rodin* was 186 metres in length and had a draught of 6.5 metres.<sup>13</sup>

---

<sup>13</sup> [www.marinetraffic.com/ais/shipdetails.aspx?mmsi=227022800](http://www.marinetraffic.com/ais/shipdetails.aspx?mmsi=227022800).

## **Regulation**

28. GET told us that ferry operators in European waters were subject to a range of international, European and national regulations on technical and commercial aspects of operating vessels at sea.
29. As the regulations apply equally to existing operators and new entrants, we do not consider the regulations to be a barrier to entry.

## **Considerations regarding expansion**

30. We identified two means by which an existing operator could expand its operations on a route:
  - (a) expansion based on existing capacity by increasing the frequency of sailings; and
  - (b) expansion based on additional capacity by adding new ships.
31. DFDS told us that it could increase the number of sailings made by each vessel on its Dover–Dunkirk and Dover–Calais services. However, it noted that the vessels would need to operate at a higher speed to achieve additional crossings and that fuel cost increased significantly with speed. DFDS told us that on the Dover–Dunkirk route it would not be profitable to increase the number of sailings by a full rotation or even a single sailing per vessel because of the additional fuel cost, and that on the Dover–Calais route very high-capacity utilization would be required to cover the cost of an additional rotation.
32. P&O told us that it could expand its operations with its existing fleet by increasing the number of sailings, although the maximum number of sailings was limited by speed at which ferries could cross the Channel. The extra sailings would be during the night when P&O did not currently have the demand to justify a full timetable. The costs involved in increasing the number of sailings were principally the variable costs associated with each crossing (ie fuel and port dues), and the cost of a second crew when vessels were operated for more than 12 hours a day.
33. Brittany Ferries also submitted that it could, in response to additional demand, increase the number of sailings with its existing ferries, though it noted that there was less flexibility on the Western Channel routes because of the time taken to make the longer crossing. It also noted that whilst it could, in theory, modify the frequency of its sailings rapidly, brochures and timetables were issued in advance for the following year.
34. CLdN commented that it could relatively easily increase the capacity of its existing services by increasing the frequency within certain lines and/or switching larger and smaller vessels in its fleet between different routes. [REDACTED]<sup>14</sup>
35. An existing operator that wished to expand by adding additional ships would face the same constraints as a new entrant in relation to acquiring additional ships and the availability of berthing slots at ports. However, GET noted that if an operator owned a vessel that could be rerouted, the cost of expansion would be very low, comprising just additional staff and fuel costs and harbour dues. We considered that, in addition, it might be easier for an existing operator to expand than for a new entrant to enter a route because it would already have an established relationship with the relevant port

---

<sup>14</sup> [REDACTED]

operators (see paragraphs 16 and 25), and it might have a greater financial incentive as it would be better known to customers as an operator on that route and therefore might need less time to build brand recognition and traffic volumes.

## Analysis of GET's corporate documents and board minutes

### Background

1. GET's board comprises 11 members, including eight independent directors (ie non-executive directors who do not represent a shareholder). Members of the Executive Committee of GET are Jacques Gounon (also a director), Emmanuel Moulin, Michel Boudioussier, Jo Willacy, Patrick Etienne and Pascal Sainson. As shown in Table 1, these executives are also directors in subsidiaries of GET. The executives (and, as the case may be, other directors of GET subsidiaries) regularly report to the board on the activities of the group. The Executive Committee is supported by several management committees (eg Audit Committee, Health and Safety Committee, Remuneration Committee). The reports of these committees relate to the activities of the group in France and the UK and are regularly discussed by the board. The organizational structure is shown in Figure 1.

TABLE 1 GET: board and committee members

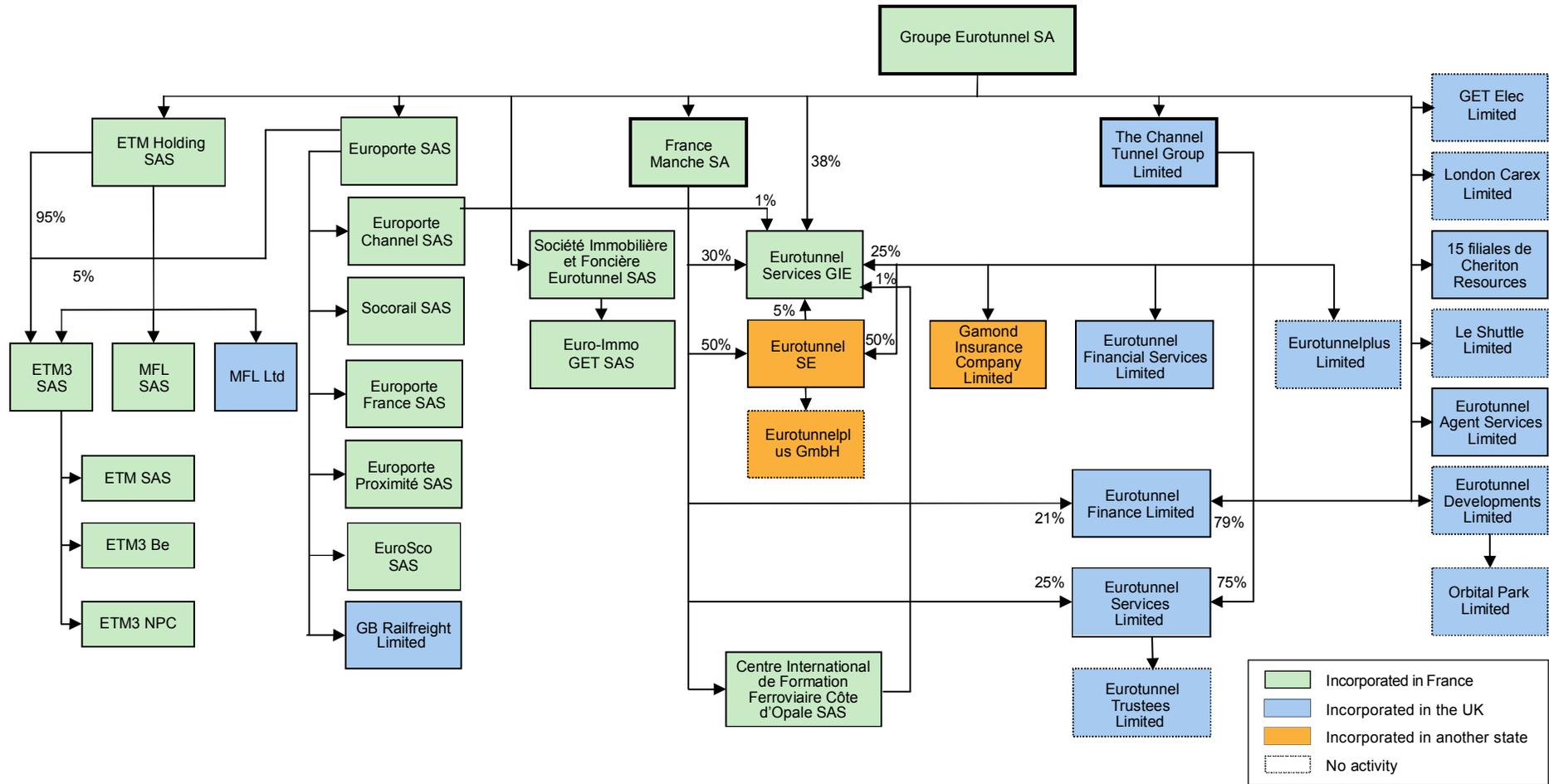
			Directors in French subs						Schuller	Morrisson	Rees	Willacy—Commercial Director	Moulin—Deputy CEO—Corporate	Hawley	Smith	Simons	Coart	Paternotte
	Trotignon	Camu	Gounon—CEO	Etienne—Business Services Directors	Sainson	Souvras	Bououssier—Deputy CEO/Channel Tunnel											
GET—non-independent directors	x	x	x															
GET—Executive Committee			x	x	x		x					x	x					
GET—Concession Committee			x			x	x						x					
<i>French subs</i>																		
ETM Holding				x														
MyFerrylink SAS				x														
ETM				x														
ETM 3				x														
ETM 3 Be				x														
ETM 3 NPC				x														
Europorte Channel					x													
France Manche			x				x	x										
<i>Subsidiaries incorporated in England</i>																		
Cheriton Resources								x	x	(x)								
Channel Tunnel Group			x						x			x						
Eurotunnel Agent Services								x	x									
Eurotunnel Developments							x		x									
Eurotunnel Finance			x					x										
Eurotunnel Financial Services			x									x						
Eurotunnel Services			x				x		x	x				x				
Eurotunnel Trustees			x											x				
Eurotunnelplus									x	x								
GB Railfreight					x								x		x	x	x	
GET Elec			x	x														
London Carex			x					x	x								x	x
Le Shuttle			x									x						
MyFerrylink Ltd				x														
Orbital Park							x		x									

Source: GET.

*Note:* Other independent directors in GET: P Hewitt, P Levene, C Lewiner, C Neuville, R Rochefort, P Vasseur, T Yeo, P Rey (Eurotunnel annual report 2012). We have not received corporate information with respect to some French subsidiaries (Europorte SAS, Socorail SAS, Europorte France SAS, Europorte Proximite SAS, Euroscos SAS, Societe Immobiliere et Fonciere SAS, Euroimmo GET SAS, Eurotunnel Services GIE, Centre International de Formation Ferroviaire Cote d'Opal SAS) nor to subsidiaries incorporated in Belgium (Eurotunnel SE) and Germany (Eurotunnelplus GmbH).

FIGURE 1

GET organizational structure



Source: GET.

2. Therefore the minutes of GET's board meetings contain the actual discussions on the business and financial affairs of the group. In particular, the GET board discusses the strategy of the group in the different markets (infrastructure management, shuttle activities, rail-freight activities) and for contemplated investments (eg [REDACTED], SeaFrance). The board approves the consolidated annual accounts for the group but also annual budgets and five-year plans. In other words, the GET board supervises the work of the management team and sets out a framework for the future actions to be implemented by the group and its subsidiaries. This approach was discussed by the GET board on [REDACTED] within the context of an evaluation of the corporate governance processes of GET. The board praised the fact that strategic decisions were quickly escalated to the top, such as for the [REDACTED] and SeaFrance projects, allowing a discussion of these issues at board level.
3. The GET board will typically set out the objective and general strategy, delegating further analysis and implementation to the CEO (or other executives). The actual entity through which the strategy is to be implemented (ie GET or a subsidiary) is usually left open. The main exception to this relates to certain services provided directly by GET as a legal entity (eg loan agreements) and decisions relating to GET's corporate life (eg appointment of GET directors, remuneration of managers, and issuance of shares). In some instances, the GET board intervenes more directly in the affairs of a subsidiary (see, for instance, paragraphs 29, 32, 39 and 40(d)).
4. The sections below set out the ways in which the GET board was involved in a variety of projects. These demonstrate a consistent pattern of detailed involvement in operation and strategic matters involving enterprises carrying on business in the UK.

## **GET board discussion of specific projects**

### ***SeaFrance acquisition***

5. The GET board has been monitoring the SeaFrance situation (liquidation process) since 2009. Board papers (6 April 2009, 29 May 2009, 1 October 2010, 18 June 2010, 1 October 2010 and 21 December 2011) show detailed consideration of the difficulties faced by SeaFrance, the problem of overcapacity and the dynamics of competition in the market.
6. On 20 May 2011, 21 June 2011 and 14 October 2011, the board discussed the investigation of the European Commission into the restructuring plan proposed by SNCF and the French Government. A dossier to be submitted to the European Commission was discussed by the board (board minutes 20 May 2011 and 'Eurotunnel's response to EU Commission questionnaire 9 May 2011').
7. SeaFrance pricing strategy was discussed on 1 September 2011.
8. From 21 December 2011, the board began discussing making an offer for the SeaFrance business. The team for the completion of the project was led by GET's Deputy Chief Executive, Claude Lienard (board paper 13 January 2012).
9. Several emails between Mr Gounon, GET's CEO, and Mr Lienard show that the CEO was personally involved in the project. For instance, on 8 January 2012 Mr Gounon wrote to Mr Lienard about the need to develop a business plan (clearly in reference to SeaFrance, the title of their email). On 17 January, in an email to Mr Lienard Mr Gounon noted [REDACTED] bid. Some emails (eg 10 January 2012, 1 February 2012, 15 May 2012) referred to the selection and appointment of advisory teams for the acquisition of the vessels and to the business plan. In an email of 20 January 2012, Mr Gounon referred to [REDACTED]. He visited one of the vessels (see email 26 March 2012).

Correspondence in April, May and June 2012 shows that Mr Lienard and Mr Etienne regularly updated Mr Gounon on the price and structure of the offer bid for the vessels, on the social context, on health and safety issues, and on the acquisition process. For instance, GET's draft offer for the vessels was sent for review by Mr Lienard to Mr Gounon on 30 April 2012. The latter replied the day after requiring some material changes.

10. Discussions at GET board level continued throughout 2012, with detailed consideration of the structure of the offer, the existence of alternative offers from competitors, the structure of the market, financing of the acquisition, relationship with the SCOP and how the various assets involved in the operation of the business would be held within the GET group (board papers on 6 January 2012, 13 January, 27 January, 29 February, 11 April).
11. The board discussed the profitability of the operations and approved the offer on 26 April 2012.
12. The board discussed merger notification issues on 11 April 2012 and 20 July 2012. [REDACTED]<sup>1</sup> The agreements entered into to acquire the former SeaFrance assets and provide ferry services on the short-sea route were those put to and approved by the GET board.

### ***SeaFrance/MyFerryLink activities***

13. Discussions regarding the running of the ferry business continued at GET board level and between GET's senior executives even after the completion of the acquisition.
14. On 13 June 2012 Mr Jacques Gounon wrote to Mr Claude Lienard mooted the idea of renaming the vessels to be more attractive to British customers. In his reply, Mr Lienard wrote that French and British UK sales agents preferred not to change the brand. In emails of 6 July 2012, Mr Lienard and Mr Gounon discussed the (re-) branding of SeaFrance, including the new logo.
15. On 11 October 2012, the GET board was given a presentation entitled '[REDACTED]'. This presentation discussed the passenger and car traffic, IT systems, procurement, financing arrangements, and other topics related to MFL.
16. An issue regarding a compensation payout (€9 million) from the liquidator of SeaFrance to certain ex-SeaFrance employees who invested in the SCOP was raised in November 2012. Mr Gounon intervened personally in this matter by writing on 26 November 2012 to the liquidator of SeaFrance.<sup>2</sup> This issue was mentioned during GET board meeting on 28 January 2013.
17. A report prepared for the board meeting on 13 December 2012 (full minutes of this meeting have not been provided to us) contains a description of the MFL situation in 2012 (including Business Plan, volume of freight, tourist activities in 2012, avenues for improvement), MFL forecasts for 2013 (including an analysis of costs), a market analysis of the strait market (including a breakdown of short-straits traffic by competitor) as well as an update on the situation of the SCOP and on competition issues. The board acknowledged the [REDACTED] in the UK and therefore Mr Gounon suggested hiring [REDACTED]. On 28 January 2013, MFL was again the subject matter of a GET board

---

<sup>1</sup> One GET director stated that [REDACTED]. The CEO outlined the steps already taken.

<sup>2</sup> Mr Gounon wrote that, although SCOP SeaFrance was an entity independent from GET, this situation had an impact on the contracts between the SCOP and MFL.

meeting, which discussed truck traffic volumes. On 28 February 2013, GET directors were presented with a report on MFL progress, including passenger volume, car volume, freight volume and EBITDA forecast for 2013. On 20 March 2013, the group analysed P&O and DFDS's market shares and discussed MFL's pricing policy.

18. On 19 April 2013, the GET board was given a presentation regarding the market for cars and coaches on the Channel route. The GET board was presented with figures showing the relative market share size of MFL and of P&O Ferries, DFDS and other competitors.

### **[REDACTED] ([REDACTED] in the UK and France)**

19. The pattern of detailed discussions by the board of bids made by the group can be seen in other cases indicating that it takes an active and interventionist role in such matters. The board discussed on several occasions the offer made for [REDACTED]. An offer of €[REDACTED] was approved on [REDACTED]. On [REDACTED], Eurotunnel entered into an agreement with [REDACTED] for a joint offer. It was confirmed on [REDACTED] that the deal had been completed.
20. The board discussed on [REDACTED] the opportunity to present an offer for [REDACTED]. On [REDACTED], [a senior GET executive] informed the board of the offer put forward by the group in respect of the proposed acquisition of [REDACTED] which was presented as being complementary to the [REDACTED] business in positioning the business as a [REDACTED] operator.
21. The operations of [REDACTED] (which encompass [REDACTED] and assets of [REDACTED]) have been frequently discussed by the GET board (see paragraphs 25 to 33 below for further details).

### **[REDACTED] in the UK**

22. Throughout 2010, the board extensively discussed the opportunity to present an offer, the strategic implications, the nature of the offer and the process for [REDACTED]. An offer was presented by a consortium between [REDACTED] and others. The offer was not successful.

### **Budget for the group and five-year plans**

23. The board discussed the budget for 2012 [REDACTED], and approved a final version on [REDACTED] of [REDACTED].<sup>3</sup> This plan covers the strategy and objectives of the group, as well as a forecast of income (eg for truck shuttle, passenger shuttle) and planned investments; specific comments are made on certain subsidiaries ([REDACTED]).
24. [REDACTED]–2015 on [REDACTED] and [REDACTED]. This plan ([REDACTED]<sup>4</sup>) covers objectives and strategies for subsidiaries such as [REDACTED] in France, [REDACTED] and [REDACTED] in the UK (expected results, growth of revenues in each segments—cars, coaches, lorries, trains—operational costs and investments, forecast balance sheet and income statement and cash statement).

### **[REDACTED] [A French subsidiary of GET]**

25. The activities of [REDACTED] are a recurrent topic discussed by GET's board, with [REDACTED] Chairman sometimes attending the meeting. Remuneration of executives is linked with the performance of [REDACTED] (see below).

---

<sup>3</sup> Appendix 21 to Eurotunnel's response to the CC additional information request of 26 March 2013.

<sup>4</sup> Appendix 19 to Eurotunnel's response to the CC additional information request of 26 March 2013.

26. On [X], [a senior GET executive] informed the board of the administrative background of this subsidiary and its [X] licence, the delays in commencing its activity and the potential projects for development.
27. During the board meeting of [X], [X] joined the meeting, [X]. [X] went on to discuss recruitment, hiring and purchasing of [X], and the importance of [X] multiple skills.
28. On [X], [a senior GET executive] informed the board of plans to transfer the [X].
29. Following a comprehensive presentation, the annual budget of [X] and [X] was formally approved by the GET board on [X]. Progress on the implementation of the [X].
30. On [X], the board discussed the [X] sub-group; within this context, the board agreed [X]. The board asked [a senior GET executive] to investigate this issue and, as the case may be, organize [X].
31. On [X], [a senior GET executive] informed the board that [X] had been chosen by [X], a subsidiary of a [X], to administrate [X] on its [X] site [X] in [X] England.
32. On [X], the board approved the [X] and [X] and approved the underlying contracts, delegating to [X] of [X] and [X] the implementation of the decision. Further discussions occurred on [X] and [X] (including on the profitability targets for [X] and a joint venture between [X] and the [X] sub-group).
33. On [X], [X]; it was stated that [a member of the GET board] visited the plants of [a UK subsidiary of GET] and highlighted the skills of the new director.

### ***Shuttle and [X]***

34. Commercial issues relating to the shuttle traffic and [X] are frequently discussed:
  - (a) [X]: the board discussed [X] figures and their variations; shuttle capacity and increased loading.
  - (b) [X]: the board discussed a project for a partnership agreement with the contractors of the [X].
  - (c) [X]: the board discussed the seasonal effect on freight traffic in July/ August, the impact of the pricing policy introduced by the ferries following the fire and the reduction of operating costs.
  - (d) [X]: [a senior GET executive] presented an analysis of market and revenues (shuttle and [X]), commercial initiatives, drop in returns from the UK and France, price war with ferry companies and pricing policy. [A senior GET executive] proposed that this strategy be examined in detail during a specific meeting with [a senior GET executive].
  - (e) [X]: [a senior GET executive] summarized Eurotunnel's strategy and the actions envisaged (tests carried out and actions taken to guarantee the best possible positioning in terms of price/volume as described in Eurotunnel's Commercial Strategy plan).
  - (f) [X]: [a senior GET executive] reported to the board on the business evolution (shuttle and [X]), on the risk of [X] and on the key elements of 2010 prospects

concerning the shuttle business (market contraction, impact of economic crisis, pound/euro exchange rate and the competition of ferries operators).

- (g) [X]: after discussing a transfer of assets to [X], the board agreed to set up a strategy working group to monitor the evolution of the cross-Channel market (investments, orders, and other advanced indicators to anticipate developments and be proactive); the board also discussed the conclusions of the [X] report.
- (h) [X]: the board discussed [X], comparing the various tariffs, freight and passengers of the various existing infrastructures and the competitive position of Eurotunnel freight [X].
- (i) [X]: [a senior GET executive] briefed the board on the content of ongoing discussions with [X] regarding the [X] payment to [X] as a result of [X] due to [X].
- (j) [X]: the board discussed a [X] presentation regarding the growth perspectives for the Group Eurotunnel [X]. These reports review the group strategy and the growth opportunities ([X]).
- (k) [X]: the board discussed the market share of the undertaking in the trans-Channel market.
- (l) [X]: the board discussed the evolution of traffic between Folkestone and Calais and the need to renew some operational assets.

#### ***Remuneration/pensions/other benefits (stock option plans) issues***

- 35. Main employment issues are discussed and decided upon by GET board.
- 36. GET uses a stock option plan for the employees of the group ([X]). The minutes of [X] contain specific provisions with respect to [X].
- 37. The remuneration of GET executives are based on KPIs that include targets hit by [A subsidiary of GET] (board [X]).
- 38. During the meeting held on [X], the board approved the proposition made by the [X] Committee with respect to the [X] for the termination of the contract between [X] and [X].
- 39. The board discussed on [X] a potential strike in the UK, disruption to the shuttle service and negotiations with trade unions.

#### ***Investments/maintenance of infrastructures/acquisition of assets***

- 40. The board discusses issues relating to investments by its business operations including the maintenance of infrastructure and the acquisition of assets:
  - (a) [X]: the board approved the decision to purchase locomotives and discussed the financing of the acquisition.
  - (b) [X]: the board discussed the purchase of new assets from [X].
  - (c) [X]:[a senior GET executive] gave an update regarding the maintenance of [X].

(d) The minutes of [X] refer to Project [X], under which GET enters into a JV ([X]) with a third party ([X]) through a subsidiary, [X]. This project relates to the development of [X]. The subsidiary will enter into a [X] (the decision to enter into this [X] being clearly taken, however, by the parent company, GET, and not by the subsidiary itself). [X] is a director in GET, [X].

(e) [X]

### **Safety**

41. The board also discusses safety issues relating to its business operations:

(a) [X]: [a senior GET executive] explained to the board the circumstances of the [X]. Safety and security updates were given later in [X].

(b) Updates on safety (including [X], business planning risk, HR risks, and specific risks for [X] and [X]) are given regularly (eg [X]).

(c) [X]: the board discussed safety issues and technical specifications for new [X].

### **Legal and financial structure of the group**

42. The board also discusses and approves decisions relating to the legal and financial structure of group companies:

(a) On [X] the board approved the conclusion of a [X] Agreement between GET and several subsidiaries.

(b) On [X] and [X] the board approved the purchase of certain bonds [X] and gave power to [two senior GET executives] to implement these decisions.

(c) On [X] the board approved the creation of a [X] structure by GET with [X] and [X].

(d) [X]

(e) Simplification of the legal structure of the group [X].

(f) [X]

### **Banking powers**

43. Key people for passing orders to the bank, for GET and each of its subsidiaries, are: [X].

### **Subsidiaries**

44. Corporate documents of the subsidiaries contain very little information on the activities of these companies. This reflects the fact that decisions are taken by the GET board and by the executive management of GET.

## *French subsidiaries*

45. Eurotunnel has provided corporate documents in relation to some of its French subsidiaries, ie the entities of the ETM group (which is involved in its ferry operations) and Europorte Channel SAS (which operates rail-freight services through the Channel Tunnel):

*ETM group (ETM Holding SAS; MyFerryLink SAS (ETM2); ETM 3 SAS; ETM SAS; ETM 3 Be SAS; ETM 3NPC SAS)*

- (a) Patrick Etienne is the sole director of each of the entities of the ETM group, including the UK subsidiary MyFerryLink Ltd (prior to September 2012, GET's Deputy Chief Executive, Claude Lienard, was in office). [REDACTED] His role has been described to us as a Director of Business Services and a member of the Executive Committee of GET.
- (b) Patrick Etienne's powers in relation to these subsidiaries are limited, as the approval of the shareholder is required for any material decision. [REDACTED]
- (c) As ETM Holding SAS is held 100 per cent by GET, all the other relevant subsidiaries are held directly or indirectly by ETM Holding SAS, and as discussed in subparagraphs (a) and (b) above, each of the subsidiaries has the same type of structure with a sole director (Mr Etienne) and with limitations on the decisions that he can take. As a result, all decisions of substance that do not fall within Mr Etienne's remit are required to be taken by GET.
- (d) This is confirmed by the correspondence between Mr Etienne and Mr Gounon, CEO of GET. Several emails show that Mr Etienne regularly updates Mr Gounon on the evolution of the business (see, for instance, emails of 3 and 17 August 2012, 24 November 2012) and explicitly requires approval for budgets and expenses (see, for instance, emails dated 18 March 2013<sup>5</sup> and 1 October 2012<sup>6</sup>).

(e) [REDACTED]

[REDACTED]

(a) [REDACTED] is the sole director (until 2009 [a senior GET executive] was in office). [REDACTED]

(b) [REDACTED]

(c) The annual report for 2011 states that the increase in turnover (about 15x) is due to the development of activities in the UK.

(d) [REDACTED]

## *France Manche*

[REDACTED]

---

<sup>5</sup> Relating to a contract with a service provider.

<sup>6</sup> Relating to marketing expenses in France and UK.

### *UK subsidiaries*

46. Eurotunnel has provided corporate documents in relation to its UK subsidiaries. However, these documents contain little information on the business of these entities. Corporate documents relating to Channel Tunnel Group show, however, that the management of the tunnel is run jointly by The Channel Tunnel Group and France Manche.

#### *Channel Tunnel Group*

47. The Channel Tunnel Group and France Manche entered into a contract with [REDACTED] for purchase of new assets.
48. [REDACTED]

## **Assessment of the effect of the Order by the Court on the CC's ability to implement structural remedies**

### **Introduction**

1. We have received representations from GET, SCOP and DFDS on the interpretation and implications of the Court's Order, and in particular the clause of the Order that declares the Vessels inalienable for a period of five years, for our ability to implement structural remedies in this case. The purpose of this appendix is to summarize these representations and set out our own interpretation of the Order based on a detailed analysis of the Court minutes and the bid document submitted by GET to the Court. We consider three separate issues:
  - (a) the effect/scope of the Order regarding the inalienability of the Vessels and in particular whether it is incompatible with the structural remedies that we are considering;
  - (b) whether the Order could be modified; and
  - (c) whether we are bound by the decision of the Court by virtue of the insolvency regulations.
2. The Court minutes record the Order made by the Court Receiver on 11 June 2012 to authorize the sale of the Vessels to GET. The Order included a number of distinct clauses. It stated in particular that:
  - (a) 'the ships, given the low price offered and the financial consequences of a possible change of flag and to avoid any speculative transaction to the detriment of the creditors, shall be declared inalienable for a period of five years, within the meaning of Article L.642-10 of the French Commercial Code' (the inalienability clause); and
  - (b) 'with regard to the buyer's labour-related commitments and in the absence of a performance bond that Groupe Eurotunnel shall provide a report regarding the labour situation, the level of hiring and operating conditions every 6 months for a period of two years' from the date of the Order (the employment clause).
3. GET argued<sup>1</sup> that as a result of the Order approving GET as the purchaser of the Vessels, GET was expressly prohibited for a period of five years from selling the Vessels or taking steps that might render them 'alienable' as a matter of French law and that the 'inalienability' principle had a broad scope as a matter of French law. GET further argued that unless the Court gave an express derogation to the contrary:
  - (a) The French flag registration of the Vessels may not be changed.
  - (b) GET was clearly prevented from selling the Vessels during the five-year period.

---

<sup>1</sup> GET supported its views with a paper prepared by a law professor at the Université de Paris 1 (Panthéon-Sorbonne). This paper examined the legal effects of the inalienability of goods acquired within insolvency proceedings in general, rather than the effect of the inalienability clause included in the Court's Order made in the present case. Where appropriate, we refer to this paper as GET's Legal Opinion.

- (c) GET was prevented from in any way divesting itself of its ownership rights in the Vessels, including by a sub-charter of the Vessels to a third party, during the five-year period.
4. The SCOP echoed these views and further argued that the Court had effectively tied the operation of the Vessels by the SCOP as an integral part of the judgment. It argued that because the offer made by GET to the Court was a global offer which included a commitment to use the assets to create employment, it therefore considered that the prohibition to resell the vessels was for the Court, a guarantee that the offer made by GET would be executed, ie that the Vessels would continue to be operated and employment contracts protected.
  5. The SCOP also submitted that a remedy requiring GET to cease operating ferry services into Dover would be incompatible with the Order because it would not protect GET's labour-related commitments and would not avoid any speculative transaction to the detriment of creditors.<sup>2</sup>
  6. GET submitted that under European law, judgments handed down by a court which concerned the course and closure of insolvency proceedings, and compositions approved by that court, should be recognized with no further formalities. GET further noted that any member state was allowed to refuse to recognize insolvency proceedings 'where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy'<sup>3</sup> but that there was doubt as to whether this derogation could be applied in the case where an insolvency decision was incompatible with the application of competition law.<sup>4</sup> GET concluded that the CC would therefore be bound by the Court's judgment in so far as it related to the Vessels.
  7. GET argued that the only way to resolve such an inconsistency would be to seek to lift the sale interdiction ordered by the Court. It, however, stated that nothing, as a matter of French law, required the Court to take into account the CC's provisional findings or even its final decision when considering such a request. The SCOP stated that, while it would be possible to apply for a modification of the Order, there was no prospect that such an application would be successful, particularly given the publicity that had surrounded the liquidation process.
  8. By contrast, DFDS made the following points:
    - (a) DFDS's view<sup>5</sup> was that a decision of the Court should not have an impact on a ruling of a competition authority. DFDS's Legal Opinion stated that the FCA could have prohibited the acquisition 'without being bound by the Court's ruling or an authorization by a *Juge-Commissaire* and, in particular, irrespective of any inalienability clause provided in that decision'. Furthermore, DFDS's Legal Opinion stated that 'the principle according to which insolvency proceedings in France do not prevail over the competition law applies irrespective of the jurisdiction of the competition authority reviewing the transaction under consideration'.
    - (b) DFDS did not believe that the inalienability clause was linked to the parts of the GET offer concerning employment. DFDS understood that the reason that Court required bidders to make a commitment to retaining assets for a period of time was to prevent buyers acquiring assets cheaply and disposing of them for a windfall profit.

---

<sup>2</sup> The SCOP submitted a legal opinion in support of this view.

<sup>3</sup> Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings (the insolvency regulations).

<sup>4</sup> GET relied on the European Court's 11 May 2000 judgment in *Maximar/Renault* in support of this position.

<sup>5</sup> DFDS supported its views with a memorandum [3]. Where appropriate, we refer to this paper as DFDS's Legal Opinion.

- (c) DFDS believed that the sections of the French Commercial Code that were relevant to this transaction were those concerning a sale of assets, as opposed to those concerning the sale of a business. DFDS believed this because of the way that the sale had been structured and references in the tender materials to clauses of the French Commercial Code dealing with the sale of assets and because of references to the asset sale sections at the beginning of the Court's decision. However, other parts of the Court's decision refer to the sections of the French Commercial Code concerning the sale of a business and it is within these sections where the inalienability provisions lie. The clauses in the French Commercial Code concerning the sale of assets do not include equivalent inalienability provisions.

## **Implications of the insolvency regulations**

9. As discussed in previous paragraphs, there is some uncertainty as to whether a structural remedy imposed by the CC would be compatible with the Order.
10. We accept that Article 25 of the insolvency regulations requires that judgments handed down in one member state should be recognized in another member state. The compatibility of any Order made by the CC with the terms of the Order would therefore be determined by the English court. This would require the English court to interpret the Order. While this is a matter for the English court, the CC's interpretation of the Order is summarized in the following paragraphs.

11. Article 26, however, provides a public policy exception to this rule:

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgement handed down in the context of such proceedings where the effects ... would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

It is unclear whether this public policy exception would extend to an order properly made in the exercise of its powers and duties by the CC (although we note that under French law, the domestic competition authority is not bound by the decision of the Court).

## **Interpretation of the Order**

### ***The inalienability clause***

12. DFDS's Legal Opinion stated that the Court's decision 'incorporates incorrect references to the French Commercial Code, in an unusual mix of provisions relating to "plans de cession" (the sale of a business as a going concern) and those relating to the sale of single assets' and concluded that 'The reference to the inalienability provisions contained in the 11 June 2012 decision should be regarded as incorrect and the Juge-Commissaire may have exceeded the powers granted to him by applicable law'. We recognize that there is a technical inconsistency in the Court's use of two different articles of the French Commercial Code.<sup>6</sup>
13. Leaving aside any issue as to whether, pursuant to the French Commercial Code, the inalienability clause could properly be attached to an order for sale of the assets

---

<sup>6</sup> Articles L642-10 and L642-19 of the Code du Commerce.

out of liquidation, we first considered the general meaning of the term ‘inalienable’ under French Law. According to French law, alienation is the transfer of property of an asset (or a right). Inalienable assets cannot therefore exit the estate of the owner. They can be neither sold nor transferred. It therefore appears uncontroversial that the inalienability clause prohibits the sale of the Vessels for a period of five years.

14. The inalienability clause itself does not prohibit the chartering of the Vessels, as this is not a transfer of ownership. In fact, GET is chartering the Vessels to the SCOP. GET’s Legal Opinion states nevertheless that ‘it can be contended that court’s approval shall also be required may the acquirer intend to conclude a lease or a lease-management contract involving a purchased asset’. This statement appears to us to be tentative and in any event, as explained in the footnote to paragraph 3 above, GET’s Legal Opinion was provided in response to a general question on the legal effects of inalienability clauses rather than by reference to the specific aspects of this case. DFDS’s Legal Opinion noted that the Order did not contain any binding provision relating to the way the Vessels will be chartered in the future.
15. With regard to whether the sale of the subsidiaries that own the Vessels would breach the inalienability clause, DFDS’s Legal Opinion noted that the Order only referred to the inalienability of the Vessels and did not include any reference to the shares of GET and/or its subsidiaries. It argued that the inalienability of the shares under French law would be questionable and that since the shares were in companies established by GET, they were not a part of the assets divested by the liquidator. It concluded that therefore such a divestiture would not be a breach of the inalienability provisions. We were not persuaded by this line of argument, given that the objective of the inalienability clause was to prevent the speculative sale of assets, which could be implemented either through a direct sale of assets or the sale of the legal entities created purely for the purpose of holding the assets.
16. Taking into account the uncertainty as to the scope of the inalienability clause, and given the sanctions that could be applied for a breach of the clause, we accept that it would be reasonable for GET and a party intending to purchase or charter the Vessels or purchase the GET subsidiaries that own the Vessels to seek the Court’s approval. GET’s Legal Opinion states that the Court reached its decision for the sake of the interests under its protection and in order to uphold the balance between the creditors’ rights and the objective of saving all or part of the business while maintaining operation and retaining employees to the best extent possible. The rationale for such inalienability is to be found in the legislative intent to avoid speculative transactions and assignment to the sole benefit of the acquirer in the context of insolvency proceedings. By allowing the judge to declare certain goods inalienable, the statute protects such goods from quick resale to the short-term benefit of the acquirer, taking advantage of the depreciated price obtained in the first place, in exchange for a commitment to operate the acquired business personally and to maintain its operation. GET’s Legal Opinion further explains that the possibility to prohibit assignment by the acquirer was first introduced into French law by a statute of 10 June 1994, the aim of which was to ‘moralise assignment plans’ and to avoid ‘the carving up of the undertaking’, and that the meaning and the effect of the inalienability clause must be appraised in the light of this objective and with a concern to prevent the purchase of assets in insolvency proceedings from becoming an opportunity for speculative and short-term reassignment strategies. It goes on to explain that the interests upheld by Article L.642-10 appear to reach beyond those of the undertakings and of its employees, in order to protect the creditors, who have been wronged once when the assets of their debtor were subjected to insolvency proceedings and were assigned for a cheap price in exchange for the commitments of the acquirer in terms of activity and employment, and who would be wronged a second time if the acquirer were to infringe those commitments.

17. DFDS's Legal Opinion states that in the context of an asset sale, the aim of French law is only to preserve as much as possible the rights of the creditors. It adds that the spirit of the law is expressed clearly by the liquidator in the petition made to the Judge: 'since 9 January 2012, the SeaFrance Company, a 100%-owned subsidiary of SNCF, is in compulsory liquidation. The isolated assets must now be sold in order to allow the best compensation of creditors'.
18. The Order also specifically states that in putting in place the inalienability clause, the judge sought to address two issues: the possible change of flag and the risk of a speculative sale.
19. Taking these two points in reverse order:
  - (a) We consider that a sale ordered by a competition authority could not be speculative as it would not be carried out with the aim of profiting from the difference between the price paid in the liquidation process and the market value of the assets. In addition, we note the more general purpose of such clauses in French Law, as described in GET's Legal Opinion (see paragraph 16 above), which is to 'moralise assignment plans' and to 'avoid the carving up of the undertaking' as part of speculative strategies. This would clearly not be the intent or effect of an Order to divest made by the CC. DFDS's Legal Opinion further noted that if the price obtained by GET through a divestment ordered by the CC was higher than the price it had paid, the judge should logically ask GET to pay part of the price to the liquidator to the benefit of SeaFrance creditors, thus dealing with any risk that such a sale might be speculative.
  - (b) Brittany Ferries told us that it believed that the tax liability related to one of the ships only. It understood that this was because of a commitment to operate the ship for a period of eight years under the French flag as part of a tax scheme. Our examination of the accounts of SeaFrance showed that the tax liability arose as a result of the financing of the Vessels by SeaFrance under article 39CA of the French tax code. In order to take advantage of the provisions of the article, SeaFrance had committed to operate both the *Berlioz* and the *Rodin* under the French flag for a period of eight years from the date of the delivery of the ships. SeaFrance's accounts record that the *Rodin* was delivered on 13 November 2001 and that the *Berlioz* was delivered on 21 March 2005. Accordingly it seemed to us that there was no tax liability relating to the *Rodin* at the time of the liquidation process and that, as of 21 March 2013, the tax liability on the resale of the *Berlioz* that had been of concern to the Court would fall away. We note that GET told us that it had been unable to ascertain the reasons for the tax liability and how long it would continue to be relevant as it did not have access to the documentation concerning the purchase of the vessels by SeaFrance.<sup>7</sup> Similarly the SCOP has not provided an analysis of the origins of and/or the reasons for the tax liability that would support its position. We therefore have no reason to believe that a tax liability would still be incurred if the CC ordered a divestment of the Vessels.
  - (c) In conclusion, we consider that the purpose of the inalienability clause in this context is limited and in the circumstances we are considering, the inalienability clause does not appear to provide justification for preventing a divestiture required by a decision made by the CC.
20. We consider that there is a conflict of evidence as to whether the inalienability clause would prevent the sale or chartering of the Vessels by GET without consent of the

---

<sup>7</sup> As noted in paragraph 2 above, it had nevertheless submitted in its response to our Remedies Notice that 'the French flag registration of the Vessels may not be changed'.

Court, though we note that in its express terms the inalienability clause would not prevent chartering of the Vessels. While we accept that sale by GET pursuant to a divestiture order (whether directly or via the sale of the corporate vehicle owning them) would be likely, in the view of the inalienability clause, to require the consent of the Court, we are of the view that in the circumstances envisaged, such a sale would not undermine the policy purposes expressed to be protected by the inalienability clause. Further, as discussed in paragraphs 34 to 37, it is open to GET to seek the approval of the Court to a disposal.

### ***Extent to which the Order requires the continued operation of the ships by the SCOP***

21. As set out in paragraphs 4 and 5, the SCOP has argued that the effect of the Order, when read in the context of the Offer made by GET, is that any remedy that would put at risk the future of the SCOP would contravene the Order. This is particularly relevant to our consideration of the structural remedy options involving the chartering of the Vessels to another operator; and of the remedy option involving the prohibition of ferry services by GET at the port of Dover. In the following paragraphs we examine this assertion by reference to:
  - (a) the scope of the inalienability clause and the employment clause as suggested by the wording adopted by the Court (see paragraphs 22 to 24);
  - (b) the nature of the Offer made by GET (see paragraphs 25 to 30); and
  - (c) the policy and commercial context within which the Order should be interpreted (see paragraphs 31 and 32).
22. As explained in the section above, inalienability clauses are limited in purpose: they are specifically designed to protect the interests of creditors, who as explained in GET's Legal Opinion have already been wronged once by accepting a low price in order to protect employment and a certain level of business. This would appear to us to run contrary to the suggestion that the inalienability clause could somehow be closely associated with the continuing protection of employment.
23. In addition, the Order deals directly with employment issues in a separate clause which is limited in scope. The liquidator had commented that 'even though employment creation is not a relevant criterion in the sale of the assets in liquidation, it remains an important element to subjectively consider'. As noted in DFDS's Legal Opinion, the clause does not contain any binding order relating to the employment prospects of GET and/or the SCOP. If such an obligation had been imposed it might have taken the form of a performance bond. However, the Order specifically notes that there was no performance bond. Instead, it only requires GET to provide a report regarding the labour situation for a period of two years and does not impose any obligations as to the creation and maintenance of minimum levels of employment during that period, much less thereafter. Therefore, none of the structural remedies we are considering (sale or chartering of the Vessels; prohibition on operating ferry services at Dover) directly contravenes the clause of the Order on employment.
24. We also note that the specific clause of the Order dealing with employment issues runs only for a period of two years (ie to 11 June 2014), which is significantly shorter than the duration of the inalienability clause. This further suggests that the inalienability clause and labour protection commitments were viewed as two separate issues in the Order.

25. We next consider SCOP's argument that the Order should be interpreted to require the continued operation of the Vessels by the SCOP for the duration of the inalienability clause by virtue of the terms of GET's Offer.
26. SCOP seeks to argue that the 'global and indivisible' nature of GET's Offer that was accepted by the Court by necessary implication extended to the preservation of employment. We accept that, as stated in the preamble of the Order itself, factors that the Order took into account included the bids submitted, the reasons stated in the Court minutes and the supporting documents. We have therefore examined the Court minutes and offer made by GET to establish what the Court was likely to have understood GET to mean by the term 'global indivisible offer'.
27. The Court minutes describe the GET Offer as 'a comprehensive, integral bid bearing simultaneously on the ships and other tangible and intangible assets whose acquisition is proposed, as part of an industrial project integrating the participation, via a SCOP composed of SeaFrance's former employees'. The Order itself, however, does not refer to the fact that GET's offer was global and indivisible, either in its preamble or in any of the clauses of the Order.
28. The terms 'global and indivisible' are used by GET to describe their offer in several places in their Offer document. The Offer also envisages a 'long-term' partnership with the SCOP. However, there are reasons to believe that the relationship with the SCOP is a different matter from the 'global and indivisible' nature of the offer. As shown below, the Offer can be said to be 'global and indivisible' only in relation to the assets put up for sale by the Court and not in relation to GET's labour commitments which were set out in a separate section of the Offer:

- (a) GET's Offer defines what is meant by 'global and indivisible bid' in the preamble, but also in Section IV and Section F of the Offer. In the preamble it is first explained that two separate specifications were prepared by the Court: one for the ships and one for other assets. The preamble then goes on to state:

the Groupe Eurotunnel wished, as shall be outlined, to submit *an indivisible package deal* [emphasis added] concerning both the ships and the other items among the tangible and intangible assets the purchase of which is proposed as part of an industrial project that includes the involvement of former SeaFrance employees through a SCOP.

- (b) The Offer then describes the industrial project, ie GET's labour commitments separately (in Section II) from the description of the Scope of the purchase (in Section IV). It is only in Section IV and specifically with regard to the various assets that are being considered for purchase that GET refers to the 'indivisible package'. No such reference is made in the section discussing the industrial project.

- (c) Section F specifically defines what is meant by 'global and indivisible':

The present offer is for a global and indivisible package deal, *in that it includes the concomitant purchase both of vessels and of tangible and intangible assets of SeaFrance, the purchasing candidates excluding the possibility of recovering one of the other component assets* [emphasis added] and ..., Groupe Eurotunnel submits the present offer, as much in its own personal name as on behalf of any company in its group that it may wish to substitute in.

29. We therefore consider that the GET's 'global and indivisible' offer concerns only the package of assets and that this should not be read to include the employment of the SCOP.
30. In addition, we noted that the commitments of GET to recruit former SeaFrance employees through the SCOP is subject to a caveat:
- the project to bring together the former SeaFrance employees within the SCOP, insofar as the anticipated success is achieved among the former SeaFrance employees ... To date almost 400 former SeaFrance employees have voiced their support to the SCOP project by joining the latter, which would lead us to believe that it should meet the anticipated success. In any event, whatever hazards are encountered, Groupe Eurotunnel will implement the necessary measures to ensure the positive outcome of the operation.
31. We found that there were inconsistencies between the interpretation of the Order put forward by the SCOP and the commercial realities presented to us by GET and reflected in the contractual arrangements between GET and the SCOP:
- (a) Although the Offer made by GET referred to a long-term partnership with the SCOP, there was no mention of a five-year commitment. We note that the commercialization contract between GET and the SCOP runs for three years.<sup>8</sup>
- (b) The commercialization contract between GET and the SCOP includes a number of termination provisions, including for 'persistent or serious breach by SCOP of its service quality obligations' or 'breach of its exclusivity obligations'; the 'failure to agree revised annual per crossing charges' and 'failure to reach agreement on changes necessary as a result of unforeseen circumstances'.
- (c) GET told us that prior to making the Offer it had explored alternative suppliers for the operation of the ships. GET also told us that any interruption in the ability of the SCOP to provide its contracted services would have an immediate impact on MFL's ability to offer ferry services and could lead to the commercialization contract being terminated.
32. The SCOP extended its line of argument to our proposed remedy prohibiting the operation of services on the short sea and in particular on the Dover–Calais route, arguing that it would contravene the Order. This line of argument would imply that the Order sought to mandate in some detail how GET would be operating services and would in effect tie the hands of GET commercially for a period of five years. In policy terms, it would be surprising if the Court, in approving a sale out of liquidation primarily for the benefit of creditors, was at the same time imposing a business plan on the purchaser which required it to continue operations in a certain way regardless of future market conditions or unforeseen events such as the later intervention by the UK competition authorities.<sup>9</sup>
33. We therefore do not accept SCOP's argument that the Court's acceptance of GET's Offer, combined with the inalienability clause, by implication prevents the implementation of any remedies that could impact on the future of the SCOP.

---

<sup>8</sup> GET told us that when the contract was drafted, it was not aware of the five-year inalienability clause. The contract was, however, signed after the Order was made. We have seen no evidence that either GET or the SCOP sought to extend the contract to the full five-year period and consider that the SCOP had incentives to try to negotiate a longer period and could have been expected to do so, had it believed that the five-year inalienation period had the effect of protecting the SCOP.

<sup>9</sup> See the comment in paragraph 33 that in France a commercial court ruling would not prevail over French merger control proceedings.

## Scope for modification of the Order

34. Under Article L.642-19 of the French Commercial Code, which governs the liquidation process, it is open to the purchaser of the assets, ie in this case GET, to seek an authorization to modify the Order. Such an opportunity is not open to other parties. Such an application could be made on the basis of a ruling by the CC.
35. We understand that in considering an application to modify the inalienability clause, the judge would take into account the factors that were relevant to the imposition of that clause. GET's Legal Opinion states that the Court may suspend an assignment ban if the rationale for its provision, namely the interests it used to protect, are no longer under threat, and as a result the acquirer may be authorized to assign the assets, while still keeping the business in operation, in accordance with its commitments. DFDS's Legal Opinion sets out the view that, if GET sought from the Court authorization to sell the Vessels and was able to provide a 'legitimate reason' for doing so, the inalienability clause should be lifted by the Court. It stated the view that the order of a competition authority should constitute such a 'legitimate reason'. In such circumstances, GET would be expected to provide to the Court details of the prospective purchaser and the proposed sale price. If the proposed sale price was higher than that originally paid by GET, the Court 'should logically ask GET to pay part of the price to the liquidator', in order to protect the SeaFrance creditors.
36. Whilst we recognize that the Court would be likely to require details of the circumstances and terms of any divestment mandated by the CC, we note that such a sale would not appear inconsistent with the purposes underlying the inalienability clause (see paragraph 19(a)) and we understand that there have been several examples of inalienability clauses being lifted by the French courts for 'legitimate reasons'. We also note the French Minister of Justice's clarification that a commercial court's ruling does not prevail over the outcome of French merger control proceedings,<sup>10</sup> as relayed in DFDS's Legal Opinion. This suggests that the Court may be sympathetic to any application put forward by GET as a result of divestiture ordered by the CC.
37. However, the success of any application made by GET may depend on the vigour with which it is pursued and we recognize that in reaching a decision, the Court is required to seek advice from the relevant ministry.<sup>11</sup> Consequently the process for lifting the inalienability clause may be uncertain both in terms of timing and outcome.

---

<sup>10</sup> Response to a Parliamentary question on 15 February 2005. See: <http://questions.assemblee-nationale.fr/q12/12-48702QE.htm>.

<sup>11</sup> Under Article L642-10 of the French Commercial Court.

## Glossary

<b>Accompanied freight</b>	Freight transported on driver-accompanied freight vehicles.
<b>Act</b>	Enterprise Act 2002.
<b>Bareboat Charter</b>	The hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew.
<b>Capital cost</b>	Depreciation and opportunity cost of financing.
<b>CC</b>	Competition Commission.
<b>DFDS</b>	DFDS A/S, a ferry operator and land-based logistics provider, operating in northern Europe.
<b>EBITDA</b>	Earnings before interest, taxation, depreciation and amortization.
<b>Europorte SAS</b>	<b>Eurotunnel</b> controls Europorte, the holding company controlling a range of rail freight subsidiaries, port infrastructure (including responsibility for maintenance at Dunkerque Sea Port).
<b>Eurotunnel</b>	Eurotunnel is the operator within the <b>GET</b> group of the freight and passenger vehicle shuttle business through <b>the tunnel</b> .
<b>FCA</b>	French competition authority/L'Autorité de la Concurrence.
<b>Flash-docking</b>	A process designed to return vessels to an operational state.
<b>Freight unit</b>	A driver-accompanied freight vehicle, an <b>unaccompanied trailer</b> , or a container.
<b>GET</b>	Groupe Eurotunnel SA. The parent company of the <b>Eurotunnel</b> group of businesses. The company is registered in France and listed on the London and Paris stock exchanges.
<b>Guidelines</b>	The <i>Merger Assessment Guidelines</i> , CC2, form part of the advice and information published by the <b>OFT</b> and the <b>CC</b> under sections 106(1) and (3) respectively of the <b>Act</b> .
<b>GUPPI</b>	Gross upward pricing pressure index.
<b>Hot lay-by</b>	A minimum operating mode designed to maintain the condition of the ship, for example by running the engines regularly.
<b>Interavailability agreements</b>	These agreements provide that one operator will carry passengers for the other in the event that they are unable to carry passengers due to circumstances out of their control. These agreements are not entered into in relation to freight customers.
<b>IPR</b>	Indicative price rise.
<b>Lane metre</b>	An area of the deck of a ferry measuring 1 metre by 2 metres. Lane metres are used as units of measurement for the capacity of

ferries.

<b>Lo-lo</b>	A <b>ferry</b> with lift-on/lift-off vehicular access.
<b>MFL</b>	MyFerryLink SAS. A ferry company operating on the Dover–Calais route. The vessels used by MFL are owned by <b>GET</b> and chartered to the <b>SCOP</b> . MFL recommenced operation of the <b>transferred assets</b> on the Dover–Calais route on 20 August 2012 ( <i>Rodin</i> and <i>Berlioz</i> vessels) under this name. (The <i>Nord Pas-de-Calais</i> was expected to enter into service on a permanent basis in February 2013).
<b>MoU</b>	Memorandum of Understanding.
<b>Negotiated rates</b>	Rates which have been negotiated individually between <b>Eurotunnel</b> and a particular customer, and thus vary from contract to contract depending mainly on the volume that a particular freight operator offers to bring to <b>Eurotunnel</b> (thus enabling <b>Eurotunnel</b> to forecast traffic and make some degree of savings on costs).
<b>North Sea</b>	The North Sea routes consist of routes between ports on the east coast of England and ports in Continental Europe, other than the Ramsgate–Oostende route.
<b>NPV</b>	Net present value.
<b>OFT</b>	Office of Fair Trading.
<b>P&amp;O</b>	The Peninsular and Oriental Steam Navigation Company and its subsidiary companies.
<b>Parimar Franchise</b>	Shipbroking firm appointed by the court to assist with the sale of <b>SeaFrance</b> 's three ships ( <i>Berlioz</i> , <i>Rodin</i> and <i>Nord Pas de Calais</i> ) and other assets.
<b>Passenger vehicles</b>	Cars, vans, coaches, caravans and campervans, whether used for tourism or business travel.
<b>Passengers</b>	Foot passengers or individuals travelling with <b>passenger vehicles</b> . Excludes drivers accompanying freight.
<b>ROIC</b>	Return on invested capital.
<b>Ro-ro</b>	A <b>ferry</b> with roll-on/roll-off vehicular access.
<b>Ro-pax</b>	<b>Ro-ro</b> ferries with a larger passenger deck.
<b>SCOP</b>	Société Cooperative et Participative. A group of former <b>SeaFrance</b> employees who established a workers cooperative, with the initial purpose of acquiring the <b>SeaFrance</b> business.
<b>SeaFrance</b>	SeaFrance SA, the company which ran a fleet of passenger and freight ferries between Dover and Calais. SeaFrance was placed into receivership on 30 June 2010.

<b>Short sea</b>	The short sea consists of routes between Dover, Folkestone, Ramsgate, Newhaven in the UK and Calais, Dieppe, Boulogne, Dunkirk in France, as well as <b>the tunnel</b> and the routes across the Belgian Straits (Ramsgate/Ostend).
<b>Shuttle</b>	The passenger and freight rail shuttle services operated by <b>Eurotunnel</b> and travelling between Folkestone and Coquelles via <b>the tunnel</b> . The services are marketed under the 'Le Shuttle' brand.
<b>SLC</b>	Substantial lessening of competition.
<b>SNCF</b>	Société Nationale des Chemins de fer Français. The French state railway company and former owner of <b>SeaFrance</b> .
<b>Standard rates</b>	The rates available to any freight operator who has an account with <b>Eurotunnel</b> with no or very low-volume forecast. These rates are therefore set across the board and do not vary depending on the customer. There are no volume discounts, and the rates are identical regardless of the identity of the customer with whom the contract is made.
<b>The court</b>	<b>SeaFrance</b> was placed in administration by the French Commercial Court of Paris on 30 June 2010.
<b>The tunnel</b>	Comprises two railway tunnels under the English Channel and a third service tunnel with terminals at Folkestone in Kent, UK, and Coquelles in Pas-de-Calais, France.
<b>TUPE</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
<b>Unaccompanied freight</b>	Freight units carried on ferries and not accompanied by a driver.
<b>Unaccompanied trailer</b>	The trailer of an articulated lorry without the tractor unit and, hence, a driver.
<b>The Vessels</b>	The three vessels acquired by Eurotunnel: <b>SeaFrance Berlioz</b> , <b>SeaFrance Rodin</b> , and <b>SeaFrance Nord Pas-de-Calais</b> .
<b>Western Channel</b>	The Western Channel routes consist of routes between ports on the south coast of England and ports on the north coast of France, other than the <b>short-sea</b> routes.