

COMPLETED ACQUISITION BY SUBSIDIARIES OF GROUPE EUROTUNNEL SA OF CERTAIN ASSETS PREVIOUSLY OWNED BY SEAFRANCE SA

Undertakings given by Groupe Eurotunnel SA to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

- A. SeaFrance SA (SeaFrance) was a wholly-owned subsidiary of SNCF, which operated a fleet of four passenger and freight ferries across the English Channel between the ports of Dover and Calais. On 16 November 2011, the Commercial Court of Paris (the Court) ordered SeaFrance to be placed into liquidation but permitted SeaFrance to continue to trade until 28 January 2012. However, SeaFrance ceased operations on its ferry services between Dover and Calais on 16 November 2011. The Court subsequently sought to identify a purchaser for sale of the ex-SeaFrance business as a going concern. No purchaser was found and the Court formally liquidated SeaFrance on 9 January 2012.
- B. Groupe Eurotunnel SA (GET) holds the concession to the Channel Tunnel connecting Coquelles, Pas-de-Calais in France with Folkestone, Kent in the UK. The Channel Tunnel is open to all rail companies transporting passengers or goods. A subsidiary of GET, the Channel Tunnel Group Limited (Eurotunnel), operates a passenger vehicle and freight shuttle transport business through the Channel Tunnel (the Eurotunnel business).
- C. On 4 May 2012, GET submitted to the Court an offer to acquire certain of the liquidated SeaFrance assets. On 11 June 2012, the Court declared GET the transferee of the assets and the transfer was completed on 2 July 2012, when GET took ownership through two wholly-owned subsidiaries, Euro-Transmanche 1 and Euro-Transmanche 2 (now called My FerryLink SAS), of some of the tangible and intangible liquidated SeaFrance assets for a total consideration of €65 million.
- D. The acquired assets included three of SeaFrance's four vessels; SeaFrance logos, brand and trade name; computer software; websites and domain names; IT systems; technical and spare parts inventories; IT hardware and office equipment; as well as various databases and files including a database of SeaFrance's freight customers and passengers.
- E. Concurrently, Euro-transmanche 1 entered into a bareboat charter party with Société Cooperative et Participative (SCOP), a co-operative of certain former SeaFrance employees, under the terms of which Euro-transmanche 1 leases the three vessels to SCOP and SCOP provides crews to, and operates, the vessels in return for a fee. The ferry services began operating on the short-sea ferry routes across the English Channel between the UK and France and Belgium under the MyFerryLink brand on 20 August 2012.
- F. On 29 October 2012, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by GET of the SeaFrance assets.
- G. On 30 October 2012, the CC adopted under section 80 of the Act Initial Undertakings accepted by the OFT pursuant to section 71 of the Act for the purposes of preventing pre-emptive action. The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the

CC's decisions on the reference. Therefore, the adopted undertakings are superseded by these undertakings.

- H. The reference has not been finally determined in accordance with section 79(1) of the Act.

Now GET hereby gives to the CC the following Undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action. These Undertakings supersede the Initial Undertakings accepted by the OFT and adopted by the CC on 30 October 2012.

Management of the MyFerryLink business until determination of proceedings

1. Except with the prior written consent of the CC, GET undertakes that it will not during the specified period take any action which might prejudice the reference concerned or impede the taking of any action under the Act by the CC or other party which may be justified by the CC's decisions on the reference, including any action which might lead to the further integration of the MyFerryLink business with all or any part of GET, or otherwise impair the ability of the MyFerryLink business to compete independently in any of the markets affected by the acquisition.
2. Further and without prejudice to the generality of paragraph 1, except with the prior written consent of the CC, GET will at all times during the specified period, procure that:
 - (a) the MyFerryLink business (including, but not limited to its sales and marketing functions and website) is carried on separately and under a separate brand identity from the Eurotunnel business and separate sales are maintained;
 - (b) the MyFerryLink business is maintained as a going concern and sufficient resources are made available for the development of the MyFerryLink business;
 - (c) except in the ordinary course of business:
 - (i) the assets of the MyFerryLink business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the MyFerryLink business is disposed of; and
 - (iii) no interest in the assets of the MyFerryLink business is created or disposed of;
 - (d) the nature, description, range and standard of services supplied in the United Kingdom by the MyFerryLink business at the date of these undertakings are in all material respects maintained and preserved;
 - (e) there is no further integration of the information technology systems (including booking systems) of the MyFerryLink business with the information technology systems of GET and the software and hardware platforms of the MyFerryLink business shall remain unchanged, except for routine changes and maintenance;
 - (f) the customer lists of each of the MyFerryLink and Eurotunnel businesses shall be operated and updated separately and any negotiations with MyFerryLink's customers in relation to the MyFerryLink business will be carried out by the MyFerryLink business alone and for the avoidance of doubt Eurotunnel will not negotiate on behalf of MyFerryLink or enter into any joint agreements with MyFerryLink. Furthermore GET shall procure that the list of former SeaFrance

customers which it acquired on 11 June 2012 is retained within the MyFerryLink business and is not shared directly or indirectly with Eurotunnel;

- (g) all existing contracts continue to be serviced by the business to which they were awarded;
 - (h) no changes are made to key staff or to the organizational structure of the MyFerryLink business or to the management responsibilities within the MyFerryLink business;
 - (i) no further key staff are transferred between the MyFerryLink and GET businesses;
 - (j) all reasonable steps are taken to encourage all key staff to remain with the MyFerryLink business; and
 - (k) subject to paragraph 3 below, no Confidential Information relating to the MyFerryLink business or the former SeaFrance business shall pass, directly or indirectly, from the MyFerryLink business (or any employees, directors, agents or affiliates associated with that business) to Eurotunnel (or any of its employees, directors, agents or affiliates with the exception of [X] and [X]), or vice versa, except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.
3. Without prejudice to the generality of paragraph 2(k) above, [X] may be provided by Eurotunnel with Confidential Information relating to Eurotunnel provided that at all times such Confidential Information is limited to information strictly necessary for the sole purpose of the performance of his functions as [X] of GET and shall not at any time include any of the following information:
- (a) Information relating to Eurotunnel's pricing strategy including current or future freight customer prices or current or future passenger prices (including details of any discounts or rebates) of Eurotunnel;
 - (b) the identity of customers of Eurotunnel;
 - (c) the value or volume of future customer bookings of Eurotunnel, except that he may receive details of gross traffic volume forecasts of shuttles and trains using the Tunnel, but only to the minimum extent and where strictly necessary for him to discharge his obligations of purchasing electricity for use by GET;
 - (d) Eurotunnel sales data;
 - (e) information relating to Eurotunnel's commercial strategy; and
 - (f) current capacity utilisation or future capacity of Eurotunnel.

Inter-availability agreements

4. GET shall procure that all agreements relating to the inter-availability between transport operators of passenger services across the English Channel to which Eurotunnel is a party are maintained in the same form as they were at 2 July 2012.

Compliance

5. GET shall procure that each of its subsidiaries complies with these Undertakings as if it had given them.
6. GET shall forthwith provide to the CC such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by GET and its subsidiaries with these Undertakings. In particular, on the 29th December 2012 and subsequently on the 29th of each month (or, where the 29th does not fall on a working day, the first working day thereafter), the Chief Executive Officer of GET shall provide a monthly statement to the CC on behalf of GET confirming compliance with these Undertakings in the form set out in the Appendix to these Undertakings.
7. At all times, GET will actively keep the CC informed of any material developments relating to the MyFerryLink business which includes but is not limited to:
 - (a) details of staff who leave or join the MyFerryLink business;
 - (b) any MyFerryLink business vessel breakdowns which have halted ferry services for more than 24 hours or changes in the MyFerryLink business's service arrangements which have affected the working pattern of more than five MyFerryLink business employees;
 - (c) all substantial customer volumes won or lost by the MyFerryLink business including any substantial changes in customers' demand; and
 - (d) substantial changes in the MyFerryLink business contractual arrangements or relationships with key suppliers.
8. GET shall comply with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

Interpretation

9. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
10. For the purposes of these Undertakings:

'the acquisition' means the acquisition on 2 July 2012 by GET through its subsidiaries of the SeaFrance assets;

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'the CC' means the Competition Commission;

'Confidential Information' means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these Undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

'the decisions' means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

'Eurotunnel' means the Channel Tunnel Group Limited and its subsidiaries;

'the Eurotunnel business' means the passenger vehicle and freight shuttle transport business through the Channel Tunnel operated by the Channel Tunnel Group Limited;

'the former SeaFrance business' means the ferry business operated by SeaFrance on the English Channel using the SeaFrance assets prior to 16 November 2011;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the MyFerryLink business' means the ferry business operating across the English Channel since 20 August 2012 using the SeaFrance assets;

'GET' means Groupe Eurotunnel SA and its subsidiaries;

'the GET businesses' means the businesses of GET and its subsidiaries (including but not limited to the Eurotunnel business) carried on as at 2 July 2012;

'the OFT' means the Office of Fair Trading;

'the ordinary course of business' means matters connected to the day-to-day supply of services by the MyFerryLink business and does not include matters involving significant changes to the organizational structure or related to the post-merger integration of the MyFerryLink business;

'the SeaFrance assets' means all of the tangible and intangible assets, including three of SeaFrance's vessels (the SeaFrance Nord-Pas-de-Calais, the SeaFrance Rodin and the SeaFrance Berlioz), trademarks, domain names and IT records including customer records of the former SeaFrance business acquired by GET on 2 July 2012;

'the specified period' means the period beginning on the date of these Undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended);

Compliance statement for Groupe Eurotunnel SA (GET)

I confirm on behalf of GET that:

- (a) GET has complied with the Undertakings given by it and accepted by the CC on (‘the Undertakings’) in the period from to .
- (b) GET’s subsidiaries have also complied with the Undertakings in the period from to .
- (c) No action has been taken by GET or its subsidiaries in the period from to that will impede the taking of any action by the CC which may be justified by its decisions on the reference.
- (d) GET and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the MyFerryLink business in accordance with paragraph 7 of the Undertakings.
- (e) The MyFerryLink business has been maintained as a going concern.
- (f) The MyFerryLink business’s customer and supplier lists have been operated and updated purely for the purposes of the MyFerryLink business without any involvement of GET or its subsidiaries.
- (g) All customer and supplier negotiations for the MyFerryLink business have been carried out independently of Eurotunnel.
- (h) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the United Kingdom by the MyFerryLink business.

Assets—including facilities and goodwill

- (i) Except in the ordinary course of business, none of the assets of the MyFerryLink business have been disposed of.
- (j) Except in the ordinary course of business, no interest in the assets of the MyFerryLink business has been created or disposed of.

Contracts

- (k) All existing contracts awarded to the MyFerryLink business continue to be serviced by MyFerryLink.

Information technology systems

- (l) There have been no changes to the software and hardware platforms of the MyFerryLink business, beyond routine changes and maintenance.

Staff

(m) No changes have been made to or to the key staff of the MyFerryLink business or to the management responsibilities within the MyFerryLink business.

Material developments

(n) Except as listed in paragraph (o) below there have been no:

- (i) vessel breakdowns at the MyFerryLink business which have halted ferry services for more than 24 hours or changes in the MyFerryLink business's ferry services which have affected the working pattern of more than five employees of the MyFerryLink business;
- (ii) substantial customer volumes won or lost for the MyFerryLink business and no substantial changes to the MyFerryLink business's customer contracts; or
- (iii) substantial changes in the MyFerryLink business contractual arrangements with key suppliers.

(o) [list of material developments]

Confidential information

(p) Subject to paragraph 3 of the Undertakings, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the MyFerryLink business, has passed, directly or indirectly, from MyFerryLink (or any of its employees, directors, agents or affiliates) to Eurotunnel (or any of its employees, directors, agents or affiliates with the exception of [X] and [X]), or vice versa.

FOR AND ON BEHALF OF GROUPE EUROTUNNEL SA

Signature

Name

Title

Date