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Inquiry Manager
Eurotunnel/SeaFrance merger inquiry
Competition Commission
Victoria House
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LONDON
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4th January 2013

Dear Sirs,

We write in response to the Competition Commission's Inquiry into the Completed Acquisition by Groupe Eurotunnel SA of certain assets formerly owned by SeaFrance SA, and the CC's Statement of Issues dated 17 December 2012.

The Rail Freight Group is the representative body of the UK rail freight industry, and has as one of its main objectives the growth of rail freight both within the UK and across the Channel to the continent.

As members of the European Rail Freight Association, on whose Board I sit, we also take part in a number of issues relating to rail liberalisation and competition in the rail sector across Europe and support the Commission's proposals for taking this issue forward. There are a number of examples of anti-competitive behaviour in the rail sector in many member states, the most recent being in France and Germany, which have been the subject of investigations both by the French competition authorities and the European Commission. In addition, there are serious issues raised by the Commission in respect of lack of transparency between different companies within a holding company structure, which is one of the greatest problems preventing the rail market from opening up to fair competition. I attach a copy of an English translation of the latest letter from the Commission to the German Government as part of the on-going infraction proceedings. We can supply many other examples, but my main reason for bringing this to the attention of the Competition Commission now is to urge extreme caution in relying on assurances about transparency and non-discriminatory access in the transport sector. They are difficult to police. Difficult to enforce and especially difficult to find evidence, especially if the complainant is likely to be put out of business in the process.

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We have a number of specific concerns relating to this Inquiry which we set out below.

We strongly believe that the addressable markets for freight must include both accompanied and unaccompanied freight and include rail freight (which is effectively unaccompanied) as well. From the work that RFG has done over the years, we are fully aware that road and rail freight are in competition across the channel. Many freight customers use third party logistics companies to handle the movement of their goods, and the latter are generally free to choose the mode of transport that suits them and their customers best, in terms of price, reliability and delivery time. It would be illogical not to include one mode of transport (rail) whilst including road transport when the two modes are readily interchangeable for many customers. The Channel Tunnel can accommodate most freight carried by road vehicles (the exception being some dangerous goods) and the competition between the road and rail sector should be strong, particularly in the newer markets for higher speed intermodal traffic demanding high reliability.

However, volumes of rail freight carried through the Channel Tunnel remain low, with some 5 trains per day per direction compared with enough trucks carried by shuttle or ferry on the short sea routes to fill 200 freight trains. There have been many reasons for this low percentage of rail freight through the tunnel (compared with a market share of around 12% in tonnes.miles in the UK and more in Germany) over the years, but the current thinking is that it is mainly due to charges through the Tunnel, which are around ten times the charge per mile on the UK or French rail network. This issue was investigated in some detail by the House of Lords European Committee in its Report 'Tunnel Vision? Completing the European rail market' (24th Report, Session 2010-12, HL Paper 229).

You will also be aware that the European Commission is currently conducting a Pilot investigation into whether the Channel Tunnel complies with the First Railway Package in terms of structure, charges etc and that the Channel Tunnel Inter Governmental Commission has recently published the first of a series of reports which relate to the issues of charges for rail passenger and freight services, and whether the structure of the holding company Eurotunnel SA, which includes the management of the tunnel infrastructure as well as the rail freight operating company Europorte, complies with the European rail legislation.

Finally, you will be aware that, whereas the Channel Tunnel infrastructure and rail operations come within the European rail legislation, the operation and charges for le Shuttle are exempt. One of the issues as yet unresolved is whether the operating costs of the infrastructure are correctly allocated between the through passenger and freight services and le shuttle.

All these issue potentially have the ability to influence the allocation of costs and therefore possibly the charges made either by the Eurotunnel infrastructure managers or by le

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Shuttle. There is concern that costs and therefore charges are being unfairly allocated by Eurotunnel infrastructure to rail freight and probably passenger services as well) in favour of the Shuttle traffic.

For these reasons, we strongly urge the Competition Commission to include within the market definition both accompanied and unaccompanied freight, and rail freight as well as road freight.

The additional ownership of a ferry operating on the short sea route as well could further exacerbate an already unsatisfactory situation.

In respect of the possible purchase or lease by Eurotunnel of the ports of Calais and Boulogne, we have less direct concerns in respect of rail freight, but again the European Commission and member states in respect of previous rail legislation that common ownership of infrastructure and operation is not compatible with the principles of the single market. This would seem to apply equally to ports and ferry services. The operation of rail freight services in the ports by Europorte is also of less concern, not least because in this case the company is challenging the virtual monopoly of SNCF.

We note your comments in the Theories of Harm sections, and do share many of the concerns expressed. This investigation comes at an unfortunate time in respect of the Channel tunnel rail traffic since the future of the rail freight services very much depends on the current investigations both by the IGC and the EC. For example, if they force Eurotunnel to reduce their charges for rail freight, then volumes could increase dramatically. This could increase Eurotunnel's rail freight revenue, but reduce the capacity of the Tunnel for shuttle services. Alternatively, as Eurotunnel argue, reducing rail freight charges would also reduce their revenue, although Eurotunnel has never submitted any evidence that, in a competitive market such as the cross-Channel freight one, if one reduces one's charges, traffic volumes would decrease.

In conclusion, we urge the Competition Commission to include both accompanied and unaccompanied freight and both rail and road in its investigations, and make such recommendations or requirements that will bring more and fairer competition to this market which is so important to the UK.

Yours sincerely,

Tony Berkeley
Chairman

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