

EUROTUNNEL/SEAFRANCE MERGER INQUIRY

Summary of hearing with DFDS held on 4 January 2013

Background and company information

1. DFDS was a listed company with annual revenue of 12 billion Danish krone (£1.6 billion). One-third of the business was logistics (primarily road transport) and two-thirds shipping. The company was present in most northern European countries and its largest combined operation was in the UK. Through its partnership with Louis Dreyfus (LD) DFDS also operated a route between Marseille and Tunis.
2. The shipping business consisted of:
 - (a) ro-ro (primarily unaccompanied freight on the North Sea: Benelux and Scandinavia to the UK);
 - (b) ro-pax (such as routes from Lithuania to Germany and Sweden);
 - (c) services primarily aimed at passengers (cruise-like sailings from Copenhagen to Oslo and Amsterdam to Newcastle); and
 - (d) the short-sea services from Dover to Calais and Dunkirk.
3. The short-sea routes used ro-pax ferries, though these routes required a different configuration of vessel from those deployed on, for example, the company's Baltic Sea routes that required overnight cabins. The ro-pax ferries from other routes were, therefore, not interchangeable with those on its short-sea routes. The DFDS Group's main interest was in freight. However, it thought that a viable business on the short sea was only achievable if it was strong in both passenger and freight sectors.
4. Across the DFDS shipping routes, the company owned all of its passenger ferries, which required frequent facility upgrades, but only owned half of its freight ships, as these were more interchangeable. The one exception to this was the ro-pax *Dieppe Seaways/Moliere*, which it had chartered.
5. DFDS stated that the ferry operator Norfolkline, which DFDS later acquired, started operating a ferry service between Dover and Dunkirk in the year 2000. At the time, Norfolkline operated a logistics arm and, as a consequence of high prices for Channel crossings, started operating on the Dover–Dunkirk route, initially with some vessels that were not suited to the route and which required refitting. The new route was successful for Norfolkline and, in 2005 and 2006, the company invested in three new ships specifically designed for this route. Norfolkline also attempted to secure berthing slots at the port of Calais, but these requests were refused by the port authorities.
6. One of the attractions of Norfolkline to DFDS (which acquired the company in 2010) was its presence on this cross-Channel route. The increase in fuel costs meant that it was important for DFDS to have a presence on the short sea. It considered that the Dover–Dunkirk service that it offered was particularly appealing to traffic heading north-east on the European Continent.
7. DFDS had a strategy of offering customers bundles of routes across its network but had realized that few customers were actually interested in this type of bundled

product. It believed that its reputation for reliability across its network did work to its advantage on its short-sea routes.

8. DFDS Logistics was itself a large user of cross-Channel ferry services, and of Eurotunnel. Around 22,000 units per year were carried across the Channel by the logistics arm of DFDS. DFDS explained that time-sensitive cargo had to travel through the Channel Tunnel. Between 30 and 40 per cent of DFDS Logistics' volumes needed to go through the tunnel for this reason. Travelling via the tunnel also meant that a same-day return was possible for some freight customers. Working time restrictions on drivers meant that this might not be possible if travelling via ferry. As a ferry operator, DFDS could not compete for this traffic.

Operation of the short-sea routes

9. When DFDS saw signs that SeaFrance was in financial trouble and that disruptive industrial action was affecting the service, it approached the port of Calais with a view to securing berthing slots. Its request was refused by the port authorities, on grounds that sufficient slots were not available for a new operator. DFDS teamed up with LD, [REDACTED]. LD had itself, unsuccessfully, operated a service between Dover and Boulogne.
10. The companies launched a joint venture (New Channel Company) for this purpose and secured access to Calais as soon as SeaFrance ceased operations in November 2011. DFDS said that it was required to fly the French flag for the vessels that called at Calais, and to employ French workers. DFDS agreed to comply with these requirements in order to gain access to Calais, in the expectation of then being able to acquire the ex-SeaFrance vessels. In November 2011, DFDS deployed a fourth ship, *Norman Spirit*, chartered from LD on Dover–Dunkirk in response to the reduction in capacity brought about by the SeaFrance exit. *Norman Spirit* was put on the Dover–Calais route in February 2012.
11. The company thought that there were some synergies in running operations to both Calais and Dunkirk. For example, the staff in Dover were shared and the business unit management would have been the same regardless of whether it was running one route or two. DFDS had also received requests from its customers on other routes to offer the Dover–Calais service.
12. The DFDS group targeted a return on invested capital of 10 per cent. In the short term it hoped to earn a return on Dover–Calais equal to its cost of capital, which was 6.5 per cent and, in the long-term, 10 per cent. DFDS was expecting to take [REDACTED] of the market share of SeaFrance, before it ceased operation, which was around 18 per cent. The company had expected P&O to take [REDACTED] of the ex-SeaFrance market share. It did not expect that ferry customers would move in significant numbers to the tunnel, which was a different type of product. If DFDS could have taken a [REDACTED] per cent market share from SeaFrance on Dover–Calais, it would have had combined market share of [REDACTED] per cent across the Dover–Calais and Dover–Dunkirk routes.
13. P&O had announced that it intended to reduce capacity on the route from six to four ships but, on the exit of SeaFrance, decided against this. The approach of Eurotunnel to the exit of SeaFrance was much more competitive than DFDS had anticipated. It succeeded in taking one-third of the SeaFrance market share through low pricing.
14. The company believed that it could achieve a return of [REDACTED] year period, and a higher return in the longer term. It considered that it would have been a more efficient operator than SeaFrance had been, on account of lower overheads, smaller workforce

and higher volumes (if including Dover–Dunkirk). The company thought that it required in the region of an additional [REDACTED]. This could be achieved through better utilization of capacity on its existing ships. [REDACTED] DFDS thought that the pricing on Dover–Dunkirk was constrained by pricing on Dover–Calais but that the reverse was not true.

15. DFDS did not think that it was likely that there would be any new entrant on to the Dover–Calais route, owing to the high fixed cost of running such a business.
16. DFDS planned to operate a total of five or six vessels in total, split between the Dover–Calais and Dover–Dunkirk routes, in order to achieve reasonable economies of scale and to provide the required level of flexibility for customers. The split of vessels between the Calais and Dunkirk routings could be adjusted during the year based on the requirements of its customers. DFDS considered that the minimum required frequency of service was between eight and ten departures per day to each of the ports. This meant that at least two vessels were needed on the Dover–Calais route and three on the Dover–Dunkirk route.
17. The Dover–Dunkirk sailings were up to an hour longer than those between Dover and Calais, which meant that more fuel was used on each journey. The longer sailing time also meant that a ship operating this route could do fewer round trips than a ship deployed on the Dover–Calais route. The combination of these two factors meant that a sailing between Dover and Dunkirk was approximately 50 per cent more expensive than a sailing from Dover to Calais.
18. When it failed to secure the ex-SeaFrance vessels through the liquidation process, it chartered for a short period, from April 2012, another vessel (*Deal Seaways/Barfleur*) from Brittany Ferries to run on Dover–Calais. This vessel did not have the right speed for the route and required works costing €1.5 million so that it could enter both ports. [REDACTED]
19. DFDS thought that it was important during this period to show a strong presence on the route to potential freight customers. It would otherwise have been running a single ship on Dover-Calais.
20. The company highlighted the difficulties that it had experienced in sourcing appropriate vessels for its short-sea routes. The company had chartered another of the ex-SeaFrance vessels (*Dieppe Seaways/Moliere*) for a period of [REDACTED].
21. [REDACTED]
22. Though contracts with freight customers did not include minimum volume requirements, DFDS believed that some customers did not wish to enter into contracts with DFDS over concerns that, if it exited the market, they would not be treated favourably by P&O or Eurotunnel, in terms of the allocation of capacity during peak periods. Therefore, customers were tending to put most of their volumes with P&O and Eurotunnel. Contractually, DFDS could not penalize customers for failing to deliver predicted volumes, though a lack of credibility on the part of customers could be reflected in pricing negotiations in subsequent years.
23. [REDACTED] However, the company believed that, if allowed to compete fairly, it could establish itself as a viable third competitor on the route in both the short and long term.
24. [REDACTED]

25. [✂] It was not considered a viable option to wait until the decisions of the competition authorities had been reached before deciding whether to acquire another vessel as the offering of a one-ship service on Dover–Calais was not acceptable to most customers.
26. [✂]
27. [✂]
28. [✂]

DFDS bids and sale process

29. The initial bid for SeaFrance made by DFDS was for €1. Had DFDS been successful in this bid, it would have been required to take on all of the liabilities and employees of SeaFrance, of whom only 700 of the 1,500 staff were required to continue the business. A second bid of €5 million was later made. The SCOP was not in favour of an acquisition by DFDS. The court rejected these bids. During the bid process, DFDS had spoken to three unions, including the parent union of the SCOP. The SCOP itself, however, refused to speak to the company.
30. By this point, there had been three public tenders and the only credible bids made had been from the DFDS/LD joint venture. The court refused the bids and instead decided to sell the assets without the requirement for bidders to take on the employees and liabilities of SeaFrance. This decision enabled DFDS to increase its bid substantially. DFDS made a bid in the asset sale and deposited 10 per cent of the bid value to the liquidator. The bid made by DFDS was for €30 million for *Berlioz* and €25 million for *Rodin*, or €50 million if it acquired both vessels. It was particularly important to DFDS to secure at least one of the vessels (in addition to *Norman Spirit*, which would form part of the DFDS/LD JV), and this was reflected in the structure of its bid.
31. The company thought that, if Eurotunnel had not been awarded the vessels, the court would have had no choice but to award one or both of *Berlioz* and *Rodin* to DFDS. It believed that the court would have allowed new bids to be made, were this to have been the case.
32. DFDS thought it was possible that, prior to the opening of the sealed bids, the value of its bid might not have been kept confidential and could have been established based on knowledge of the value of the deposit at 10 per cent of the bid.
33. DFDS made another bid to the court of [✂]. It considered making this bid public in order to put pressure on the liquidator but was advised not to do so. The final bid made by DFDS that was not accepted included an offer for the *Nord Pas de Calais*. The company explained that it did not want to acquire this ship and would not have operated it on the short sea had this bid been successful. This third ship was included in the bid, as the company understood that the liquidator would not want to be left with this ship on its hands.
34. Had the sealed bids process been put aside and had the ex-SeaFrance assets gone to auction, DFDS would have continued with this final bid and would have been in a position to increase its offer.
35. DFDS understood that Eurotunnel had not been involved in any discussions to acquire the SeaFrance business prior to the asset sale. DFDS explained that, once the SeaFrance assets were put up for sale by the liquidator, Eurotunnel entered into

arrangements with the SCOP. Eurotunnel also had financial support from the Nord Pas-de-Calais regional government. DFDS believed that Eurotunnel would not be allowed to acquire the ex-SeaFrance ships on competition grounds.

36. If DFDS had been successful in its bid for the *Rodin* and/or *Berlioz*, it would not have increased the total number of vessels deployed on the short sea.
37. The ships *Berlioz* and *Rodin* had the same capacity for freight vehicles as the vessels that DFDS was using on Dover–Calais, but had around double the capacity for passengers. [REDACTED]
38. DFDS would have operated any vessel that it had acquired through the sealed bid process under the French flag. DFDS considered that it was likely that the *Rodin* and *Berlioz* would have ended up on the short sea, though noted that Stena had bid for one of the ships and understood that Stena ro-ro intended, if its bid was successful, to transfer *Rodin* to a British flag. This meant that the vessel would not be sailing to and from Calais.

DFDS views on the Eurotunnel acquisition

39. DFDS believed that Eurotunnel’s aim was to force DFDS from the Dover–Calais route and that, if this was achieved, it would immediately allow the company to increase prices for its rail shuttle business. [REDACTED]
40. [REDACTED]
41. DFDS did not think that part of Eurotunnel’s stated rationale for the acquisition—the ability to carry goods that it could not carry on its rail shuttles (such as dangerous goods or LPG-powered cars—was credible on account of the low volumes of this type of traffic.
42. DFDS considered that it was possible that, if there was a problem affecting the Channel Tunnel, Eurotunnel would direct customers to use MyFerryLink as an alternative (ie through interoperability agreements). MyFerryLink would not be able to transport large numbers of customers alone, though, in the event of a significant event affecting the tunnel.
43. DFDS thought that Eurotunnel might offer the lowest prices for its rail services only to those customers which shipped non-time-sensitive volumes with MyFerryLink.
44. The company believed that there was a natural distinction between those customers that wanted to use the ferry and those that wanted to use the tunnel. This, it believed, made the possibility of tacit collusion between Eurotunnel and P&O more likely. There was a high degree of transparency of pricing in the freight market, as customers would, as a part of the negotiating process, reveal offers received from rivals. It was also possible that prices could be revealed to competitors through the negotiations on prices contained in interoperability agreements.
45. DFDS had heard via investors and employees of MyFerryLink that Eurotunnel had committed to buying 50 spaces for trucks on each MyFerryLink sailing at a price of €145 per truck. Through this mechanism, MyFerryLink covered approximately three-quarters of its losses, which DFDS estimated to be around €1 million per week.
46. [REDACTED]