

Rail Freight Group

Response to the Supplementary notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

REFERENCE RELATING TO THE COMPLETED ACQUISITION BY GROUPE EUROTUNNEL S.A. OF CERTAIN ASSETS OF FORMER SEAFRANCE S.A.

General comments

The background comments and criteria set out in paragraphs 6 to 12 appear to us to be reasonable, but we do not believe that any remedy involving the need to consult a French court will be effective. It is likely to take a very long time to achieve any change, we suspect that GET will fight it all the way and, in any case, the result is unlikely to favour any remedy that goes against the employment rights of the employees involved.

Thus, any remedy should, if possible, allow the operation of the ferry service to continue. However, it would appear that this could be achieved either by chartering the vessels and crews to another provider or by operating the ferries between ports sufficiently far removed from the Dover Calais route to reduce the possible effects of a dominant position on the short sea sector.

We agree with the CC's statement in paragraphs 14 and 15.

Part A

For reasons stated above, we do not think that the divestiture of MyFerryLink SAS will be effective in achieving the objectives of the CC because of the need to seek court approval. If sold, it should not go to P&O.

Part B

This possible remedy does initially look attractive, but we reject it for two reasons:

The time taken before the divestiture happens is much too long and would expose competitors to potentially unfair competition for a significant period. Secondly, the suggestion of price control (para 27) in the interim period is particularly problematical here, since the Intergovernmental Commission is in the process of checking whether the costs and therefore the charges of the various elements of the GET services are attributed correctly. Until the work is concluded, we consider it unwise to bring in any form of price control; there is evidence that the current allocation of costs may favour the shuttle traffic at the expense of the passenger and freight services.

We agree that a market investigation, provided that it covered both the sea and shuttle services, as well as the through passenger and rail freight services, would be a good idea but, again, we are unsure whether this would produce a credible result until the IGC investigations are complete. In addition, as we have said above, we do not believe that the behavioural remedies and price controls listed in paragraph 26 would be effective.

Part C

We support this option as being the cleanest and fairest way of reducing the market share of GET on the short sea route. The preferred option would be to require MFL to cease operation on the present route, and not start a new service from Kent ports or Boulogne, Calais or Dunkerque, but this may be difficult with the arrangements with SCOP. In that case, a continental port in France

may be necessary, and either Folkestone to Boulogne or Ramsgate to Dunkerque would be better than the present. It is essential however that neither the port of Calais nor Dover is allowed to continue to receive Sea France ferries.

Part D

The introduction of a short term price control could be attractive, if it could have some immediate effect. However, there must also be the option of revisiting the control mechanism when the IGC has finally reported on the issues outlined in our comments on Part B above. Again, a methodology must take into account the possible cross-subsidy of the shuttle by the through services; in theory of course this should not need an independent monitoring trustee, since the IGC should be able to have the independence and competence to fulfil that role.

Part E

We believe that this option will do nothing to improve the SLC situation. The structure of the Channel Tunnel owning company is currently the subject of on-going infraction proceedings by the European Commission because of the alleged failure to separate the infrastructure manager, the shuttle service and Eurotunnel's train operations. So we believe it unwise to rely on any commitment to Chinese walls, staff transfers etc. Such remedies are regularly proposed by the railway industry as a means of avoiding full transparency, and we cannot see them being any more effective in this case. We would therefore oppose any adoption of this option because we do not believe it would be effective.

Costs

Paragraph 44 invites comments on costs. Clearly these may be an issue, but we suggest that Eurotunnel must surely have been aware of the potential referral to the Competition Commission and would have taken steps to minimise any adverse effects on the financial situation of CET. They should also not hide behind any potential adverse effect of the remedy proposed on the staff or SCOP. They must have been aware of this too.

Potential customer benefits

We agree with the likely benefits listed in paragraph 45. The real benefits will come when charges for rail services are also reduced. Although the scope of this inquiry does not cover these issues, we believe that there will be some knock-on benefits and, with the IGC investigations complete, we would hope that a genuine competitive market is created for both road and rail traffic across the short sea route.

Conclusion

We believe that Part C is the only acceptable option to remedy the situation in a cost effective and reasonably speedy timescale, and would urge the CC to go forward with this one. A much less good second option would be Part D.

Tony Berkeley
8th April 2013