

P&O Response to Supplementary Notice of Possible Remedies

We have reviewed the supplementary notice of possible remedies for the ET acquisition of certain SeaFrance assets (the "Acquisition"). We were concerned to read that the ability of the Competition Commission to address the significant lessening of competition ("SLC"), that it has found to be caused by the Acquisition, is being severely hampered by the order of the French courts. It appears that the interests of the French employees concerned is to take precedence over the damaging impact that the Acquisition could have on the market in question.

That said, we comment on the individual remedies suggested as follows:

1. Sale of the assets to a purchaser who will protect the interests of the employees - we would question the statement that P&O was not a potential purchaser or charterer for the vessels. Legal advice indicates that P&O could purchase/charter at least one of the vessels, particularly given the recent decrease in P&O market shares and increase in DFDS market shares. However, the process of going through the French courts (particularly if the potential purchaser was a non French company) is likely to be a slow one and one fraught with uncertainty and difficulty. This remedy, therefore, seems a difficult and uncertain one to execute successfully and quickly.

2. Sale of assets in 2017 with behavioural remedies before then - We would question how effectively behavioural remedies could be monitored. If such remedies were put in place we would suggest the following as possibilities. If a strong combination of restrictions along these lines were put in place, then that may help to address the SLC:

- a) a cap on market share for the joint MFL/ET business (eg 50% for both tourist and freight);
- b) a prohibition on ET block buying space on MFL which we understand currently happens - this appears to be a way of ET subsidising the loss making MFL business;
- c) limiting the MFL business to freight only (the tourist market share being the most concerning);
- d) transparent and commercial charter rate for the chartering of the ferries to MFL and a prohibition on ET providing any financial support to MFL;
- e) no joint negotiation between ET and MFL with customers or suppliers.

3. Prohibition on MFL operating on the Short Sea - This would be our preferred option. It would avoid having to revert to the French courts, would address the SLC and would protect the employment interests of the SCOP employees as the vessels could be deployed on other routes.

4. Price controls on ET and MFL - this does not appear to be workable and would be very hard to monitor, particularly with all operators using dynamic pricing.

5. Purchase by SCOP - SCOP have attempted to do this before and failed to obtain funding that was not an illegal state subsidy. Therefore, this remedy does not appear to be practical