

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

Notice of provisional findings on remittal

and

**Notice inviting comments on material change of circumstances and/or special
reason within the meaning of section 41(3) of the Enterprise Act 2002**

Introduction

1. On 6 June 2013 the Competition Commission (CC) published its report into the completed acquisition by Groupe Eurotunnel S.A. (GET) of certain assets of former SeaFrance S.A. (the Report). The Report concluded that:
 - (a) a relevant merger situation had been created within the meaning of the Enterprise Act 2002 (the Act); and
 - (b) the acquisition had resulted, or may be expected to result, in a substantial lessening of competition within the markets for transport services to passengers and freight customers on the short sea (an anticompetitive outcome).
2. The CC's reasons for finding an anticompetitive outcome are set out in full in the Report.
3. The Report also concluded that the most effective and proportionate remedy was to prohibit GET from operating ferry services at the port of Dover:
 - (a) with *any* vessel for a period of two years; and
 - (b) with the *Berlioz* and *Rodin* for a period of ten years.The prohibition was to commence six months from the date of the CC's Order implementing the remedy in order to enable GET to divest the two vessels to a purchaser approved by the CC.
4. By judgment of the Competition Appeal Tribunal (the CAT) dated 4 December 2013, the question whether two enterprises had ceased to be distinct within the meaning of section 26(1) of the Act, such that a relevant merger situation arose within the meaning of section 35(1)(a) of the Act was remitted to the CC for its reconsideration.¹
5. To this extent the decision of the CC in the Report was quashed.² Neither the CC's finding of an anticompetitive outcome nor its proposed remedies were affected by the CAT's judgment.

¹ Groupe Eurotunnel SA v Competition Commission and Société Coopérative De Production Sea France SA v Competition Commission [2013] CAT 30 (the Judgment).

² See paragraph 432 of the Judgment.

Provisional findings on the remitted question and invitation to comment

6. The CC inquiry group (the Group) appointed to consider the remitted question has provisionally decided that GET/SCOP SeaFrance acquired an 'enterprise' and therefore a relevant merger situation has been created within the meaning of the Act. The Group's reasons are set out in full in the provisional findings report published on 21 March 2014.
7. Any person wishing to comment on the Group's provisional findings in relation to the remitted question is now invited to provide the Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
8. These reasons should be received by the Inquiry Manager, on behalf of the Group, no later than **5.00pm on 10 April 2014**.
9. The Group will have regard to any such reasons in making its final decision on the remitted question.

Invitation to comment on material change of circumstances/special reason

10. If, after having considered any representations in respect of our provisional findings on the remitted question, we decide to confirm our provisional findings, the effect of our decision will be to reinstate the Report on all matters. In those circumstances, the CC would come under a duty pursuant to section 41 of the Act to take remedial action. Pursuant to section 41(3) of the Act, the CC's decision on remedial action must be consistent with the Report unless there has been a material change of circumstances since the preparation of the Report or the CC otherwise has a special reason for deciding differently.
11. Any person wishing to comment on whether there has been a material change of circumstances since the preparation of the Report or that there is a special reason for the CC to take remedial action other than as proposed in its Report, is now invited to do so.
12. These reasons should be received by the Inquiry Manager, on behalf of the Group, no later than **5.00pm on 3 April 2014**.
13. The Group will have regard to any such reasons in making its final decision on remedial action.

(signed) ALASDAIR SMITH
Group Chairman
21 March 2014

Notes:

- (i) A copy of this notice and the provisional findings report will be placed on the [CC website](#) on 21 March 2014. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.
- (ii) The CC requests that, in accordance with its guidance ([CC7 \(Revised\): Chairman's Guidance on Disclosure of Information](#)), all parties making submissions to it to

provide both a confidential and non-confidential version of those submissions. The non-confidential submissions will either be published on the CC website (along with a summary of any hearing which the CC holds) or, in cases of sensitivity, will be provided to the main parties and selected third parties.

- (iii) Comments should be received by the relevant deadline (**5.00pm on 10 April 2014** for the provisional findings on the remitted question and **5.00pm on 3 April 2014** for material change of circumstances) and should be submitted by email or in writing, to:

Eurotunnel.SeaFrance@cc.gsi.gov.uk

or

Inquiry Manager, Eurotunnel/SeaFrance remittal inquiry
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD