COMPLETED ACQUISITION BY SUBSIDIARIES OF GROUPE EUROTUNNEL S.A. OF CERTAIN ASSETS PREVIOUSLY OWNED BY SEAFRANCE S.A.

Notice of making the Final Order pursuant to section 84 of and Schedule 10 to the Enterprise Act 2002

1. On 29 October 2012, the Office of Fair Trading (OFT) referred the completed acquisition by Groupe Eurotunnel S.A. (GET) of certain assets of former SeaFrance S.A. (SeaFrance) under section 22 of the Enterprise Act (the Act) to the Competition Commission (CC) for investigation and report.

2. On 30 October 2012, the CC adopted under section 80(3) of the Act initial undertakings accepted by the OFT pursuant to section 71 of the Act for the purposes of preventing pre-emptive action.

3. On 29 November 2012 the CC accepted additional undertakings from GET in accordance with section 80(2) of the Act for the purposes of preventing pre-emptive action and which superseded the initial undertakings.

4. On 6 June 2013, the CC published *Groupe Eurotunnel S.A. and SeaFrance S.A. merger inquiry: A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A.* (the Report). In this Report, the CC concluded, in accordance with section 35 of the Act, that:

   (a) a relevant merger situation had been created as a result of the acquisition;

   (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the market for the supply of transport services to passengers on the short sea (the passenger market) and within the market for the supply of transport services to freight customers on the short sea (the freight market) and accordingly there was an anticompetitive outcome pursuant to section 35(2) of the Act; and

   (c) in accordance with section 35(3) of the Act, the CC should take action for the purpose of remedying, mitigating or preventing the SLC concerned or the detrimental effect on customers so far as it has resulted, or may be expected to result, from the SLC.

5. On 19 February 2013, the CC published a Notice of Possible Remedies setting out its provisional view that the divestiture of the MyFerryLink (MFL)

business or the assets employed in the business, including the vessels (namely the *Rodin*, the *Berlioz* and the *Nord Pas de Calais*) was likely to be an effective remedy. However, the CC found that the Court had prohibited the sale of the vessels for a period of five years and that this prohibition could only be lifted by the Court through a process involving consultation with relevant French government ministers. Because of the uncertainty this process would cause for the timing and outcome of divestiture, the CC was not satisfied that such a remedy would be effective.

6. The CC concluded that an effective and proportionate remedy would be to prohibit GET from operating ferry services at the port of Dover. It considered that prior to the prohibition coming into effect, GET should be permitted to divest the *Berlioz* and the *Rodin* to a purchaser satisfactory to the CC, as a means of remedying the SLC; and that a period of six months should be given to enable GET to pursue this divestment; to effect an orderly exit from Dover; and to make arrangements to operate on other routes, should it wish to do so. This divestiture would be subject to a ten-year prohibition on reacquiring the *Berlioz* and the *Rodin*.

7. The CC concluded that a prohibition on GET (and on any connected body corporate of GET) directly, or indirectly through arrangements with any associated person or other body over which it has control, operating ferry services at the port of Dover which commences six months from the date the Order comes into effect *(a)* with any vessel for a period of two years and *(b)* with the *Berlioz* and the *Rodin* for a period of ten years represents as comprehensive a solution to the SLC and its adverse effects as is reasonable and practicable.

8. By applications made before the Competition Appeal Tribunal (CAT), respectively dated 18 June 2013 and 3 July 2013, GET and the Société Coopérative de Production de SeaFrance S.A. (the SCOP) challenged some of the CC's findings in the Report pursuant to section 120 of the Act. One of the grounds of challenge was that the CC had erred in concluding that there was a relevant merger situation since the assets acquired by GET were not an enterprise.

9. By judgment dated 4 December 2013,[1] the CAT unanimously found that the question of whether the CC had jurisdiction in this case should be remitted to the CC for its reconsideration.

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[1] *Groupe Eurotunnel S.A v Competition Commission* [2013] CAT 30.

10. On 27 June 2014, the Competition and Markets Authority (CMA)[2] published a report (the Remittal Report) which set out its decision on the remitted question as well as its assessment and conclusions in respect of the question, pursuant to section 41(3) of the Act, whether it would still be appropriate to remedy the effects of the merger as envisaged in the Report.

11. The CMA decided that GET/SCOP acquired an enterprise and therefore that a relevant merger situation had arisen and that the effect of this was to reinstate the Report on all other matters. The CMA also concluded that there had been no material change of circumstances (including special reason) within the meaning of section 41(3) so that it remained appropriate to remedy the effects of the merger in a manner consistent with the decision in the Report (see paragraph 4 above).

12. On 23 July 2014, in accordance with paragraph 2 of Schedule 10 to the Act, the CMA gave notice of a proposed Order and invited written representations from any interested person or persons by 22 August 2014. It also noted that in the event of an application to the CAT pursuant to section 120 of the Act in respect of any decisions of the CMA in the context of the Remittal Report, whilst the CMA would expect to make the Order, it would not have effect while those proceedings are ongoing. By applications made before the CAT, respectively dated 22 July 2014 and 24 July 2014, GET and the SCOP have challenged some of the CMA's findings in respect of decisions set out in and/or related to the Remittal Report, pursuant to section 120 of the Act.

13. The CMA received three responses to its notice of 23 July 2014 and has considered carefully all representations it has received. In light of those representations the CMA has made some modifications to the draft Order. The CMA does not consider the modifications to be material in any respect and has decided, in accordance with paragraph 5 of Schedule 10 to the Act, that the Order, as modified, does not require any further consultation.

14. The CMA now gives notice of the making of the attached Order. The Order is made in accordance with section 41 and in exercise of the powers conferred by sections 84, 86, 87 of and Schedule 8 to the Act. It is made for the purpose of remedying the SLC, and any adverse effects resulting from it, as specified in the Report and reinstated by the Remittal Report.

15. The Order will come into force on 18 September 2014.

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[2] From 1 April 2014 the functions of the CC transferred to the CMA by virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order 2014.

16. The Order may be varied or revoked by the CMA under section 84(3) of the Act.

17. This Notice and a non-confidential version of the Order will be published on the CMA website. The CMA has excluded from the non-confidential version of the Order information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

(signed) ALASDAIR SMITH
Group Chair
18 September 2014