

Anticipated acquisition by DFDS of certain routes between the UK and continental Europe operated by Louis Dreyfus Armateurs SAS

ME/5500/12

The OFT's decision on reference under section 33(1) given on 7 August 2012. Full text of decision published 5 September 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. DFDS A/S ('**DFDS**') is a Danish company active in short sea shipping services and integrated logistics within Northern Europe. Its activities include container shipping, passenger shipping terminal services and freight forwarding. DFDS is present on the following routes: Dover/Dunkirk, Dover/Calais (through a joint venture with LD Lines)¹ and in the North Sea.
2. LD Lines and LD Transmanche Ferries are wholly owned subsidiaries of Louis Dreyfus Armateurs SAS ('**LDA**') which is in turn controlled by Louis Dreyfus Group. LD Lines is present on the following routes: Marseille/Tunis, Le Havre/Portsmouth and Gijon/Saint Nazaire. LD Transmanche Ferries operates the Dieppe/Newhaven route under a public concession scheme. The UK turnover of the target in the 2011 financial year was £[].

TRANSACTION

3. The transaction will result in the creation of a Danish holding company, NCH, owned by DFDS and LDA. DFDS's existing services on the Dover/Dunkirk route would be combined with LDA's services on the three

¹ DFDS and LDA began co-operation on a new Dover /Calais route on 17 February 2012.

routes of Portsmouth/Le Havre, Newhaven/Dieppe and Marseille/Tunis, in addition to the jointly operated DFDS/LDA Dover/Calais Service.

4. DFDS will hold 82 per cent of NCH while LDA will hold the remaining 18 per cent of shares.
5. The administrative deadline for the OFT to make a decision in this case is Tuesday 7 August 2012.

JURISDICTION

6. Given that both parties are contributing activities or parts of the activities of a businesses (including assets, employees, commercial records and goodwill) to the joint venture, the OFT believes that the proposed transaction would result in two or more enterprises ceasing to be distinct under section 23(2) of the Act. The parties overlap in the supply of ferry services on the short sea channel crossing and have an estimated share of supply of 28 per cent in the transportation of freight.² The share of supply test in section 23 of the Act is therefore met.
7. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RATIONALE FOR THE MERGER

8. DFDS submit that its joint venture with LDA will expand and consolidate DFDS' route network. It combines the capabilities and operations of LDA and DFDS, creating a company that is better positioned to provide its existing customers with a more comprehensive service and to grow its customer base.
9. The new company expands DFDS' route network in line with DFDS' strategy of creating an European shipping and logistics network.

² This share is for ferries only and excludes Eurotunnel.

MARKET DEFINITION

10. The parties operate maritime transport services for freight and passengers between the UK and Continental Europe. DFDS also provides terminal services, freight forwarding and contract logistics services, where the LDA-contributed business is not active.
11. Ferry operators often carry both freight and passengers on the same vessels, although some vessels are purpose-specific. Ferry operators offer freight services for unitised freight³ that can be carried on roll-on/roll-off (ro-ro) or lift on/lift off (lo-lo) vessels. Loading and unloading of roll-on/roll-off vessels is quicker and these vessels often carry passengers as well as freight.
12. The European Commission (the Commission) has previously considered cross channel ferry services on a number of occasions.⁴

Product scope

Freight shipping services

13. In its *DFDS/Norfolk* decision, the Commission identified a variety of factors including that some goods, such as cars, cannot be containerised and that transport on ro-ro is faster than transport on lo-lo, which could be decisive for transport of time sensitive products, suggesting that ro-ro and lo-lo vessels could be considered to be separate markets.
14. However, DFDS submit that the market for freight transportation should include all modes of transportation including lo-lo and ro-ro vessels and, for English Channel crossings, trains that use the Channel Tunnel.
15. The OFT notes that neither of the parties operate lo-lo vessels on the 'Short Sea'⁵ routes and therefore has not needed to conclude on whether ro-ro and lo-lo vessels should be part of the same or separate markets. The

³ Freight which is stored in various standardised forms such as driver-accompanied vehicles, unaccompanied vehicles and containers.

⁴ For example, M.2838 P&O/Stena Line 7 August 2002 and M.5756 DFDS/Norfolk 17 June 2010

⁵ The 'Short Sea' consists of routes across the narrowest sections of the English Channel and the Belgian Straits.

OFT has however considered whether accompanied and unaccompanied freight⁶ should be considered within the same product scope.

16. The Competition Commission, albeit in a case not involving routes between the UK and Continental Europe, found that services for the same type of freight (accompanied versus un-accompanied) were likely to be closer substitutes than services for different types.⁷ In this case, the majority of third parties contacted during the market investigation considered that accompanied and unaccompanied freight should be considered in the same product scope as the same goods are often carried in both types of containers. It was also commented that it is usual for a mix of accompanied and unaccompanied freight to be transported on the same vessel although unaccompanied freight takes considerably longer to load/unload than self-drive freight. Due to the relative quick turnaround in port required on Short Sea routes, one third party informed the OFT that unaccompanied freight currently represented a very small share of the freight transported on the Short Sea routes.
17. Both competitors and customers considered that Eurotunnel competes with the cross channel ferries for freight customers in terms of the frequency and price of its service. (It was however noted that a small percentage of goods and certain sized vehicles cannot use Eurotunnel services.)
18. Taking account of the approach taken in previous cases and comments from third parties, the OFT has assessed the merger on the basis of all freight (accompanied and unaccompanied) transported by ferry operators and Eurotunnel. However, as the merger does not raise competition concerns, the OFT has not needed to conclude on the precise product scope.

Passenger services

19. The Commission has considered there are two separate markets within passenger shipping services, being that for business passengers and that for tourist passengers. In the *DFDS/Norfolk* decision, the market

⁶ Accompanied freight refers to loads which are 'accompanied' by a driver during the ferry crossing. Unaccompanied freights are unhitched during the crossing and collected by a different traction had on arrival.

⁷ Competition Commission 'A report on the completed acquisition by Stena AB from DFDS A/S of certain vessels and assets operated in the Irish Sea', 29 June 2011, paragraph 5.22.

investigation suggested that for most passengers travelling by ferry, taking their vehicle on board is of major importance, although for the remaining passengers, rail and air transport could be a possible substitute.

20. In choosing a route, tourist passengers are likely to consider similar factors to those taken into account by freight customers, including the total cost of travel (fuel costs and crossing costs) and the duration and frequencies of services. Some operators were able to distinguish between business and tourist passengers; others were not although one ferry operator noted that its market research indicated that business travellers used Eurotunnel.
21. DFDS submit that the market for passenger transport comprises all existing means of transportation between England and Continental Europe, for both tourist as well as business passengers including low cost airlines. This view was to some extent supported by third parties who considered that low cost airlines do provide a viable alternative to passengers travelling between the UK and continental Europe, particularly with the option of competitive prices on car rentals.
22. The OFT notes the views expressed by the parties and third parties but has taken a cautious approach in assessing the merger and has considered the product scope for passenger services to include ferry operators and Eurotunnel only. However, as the merger does not raise competition concerns, the OFT has not needed to conclude on product scope in relation to passenger services.

Geographic scope

Freight shipping services

23. In its *P&O/Stena* decision, the Commission considered that there is a single freight market between England and mainland Europe, including the following routes:
 - a. the Short Sea consisting of routes across the narrowest sections of the English Channel and the Belgian Straits
 - b. the North Sea consisting of routes between ports on the east coast of England and ports in Belgium and the Netherlands, and

- c. the Western Channel consisting of routes between ports on the south coast of England and ports on the north coast of France.
24. Subsequent decisions⁸ have been assessed on this basis by using one or more of these segments.
 25. Third parties commented that the Short Sea was the main corridor for freight and passengers travelling between the Continent and the UK, but that there was some substitutability (depending on departure and final destination points) between the North Sea routes and the Short Sea on the one hand and the Western Channel and the Short Sea on the other. One competitor disagreed with the definition of the short sea and considered that the Newhaven/Dieppe and Ramsgate/Ostend routes to be distinct from the Dover/Calais, Dover/Dunkirk, Dover/Boulogne and Folkestone/Coquelles market.
 26. Taking account of third party comments, the OFT has assessed the merger on the basis of the Short Sea. However, irrespective of the relevant geographic scope used, the merger does not raise competition concerns and therefore it has not been necessary for the OFT to conclude on the precise geographic scope.

Passenger services

27. The Commission has previously found that tourist passenger services on the North Sea and the Western Channel are competitively constrained by services on the Short Sea but found no evidence of reverse substitutability suggesting that the constraint is asymmetric.
28. One operator indicated that its research indicated that business passengers used Eurotunnel, which is consistent with the view of another ferry operator that business passengers are sensitive to speed and frequency and that the vast majority of business travellers use Eurostar. The same operator considered it unlikely that business passengers would use the Western Channel where crossing times were longer.

⁸ See M.5756 DFDS/Norfolk 17 June 2010

29. Tourist passengers are likely to be more price than time sensitive. One operator noted that 'customers perceive only their time spent driving as travel time: they view time spent on board our ships as part of their holidays'. Operators use yield management systems to determine prices which are generally higher during peak periods and for tickets bought at short notice and this may cause switching between different geographic markets, although more evidence would be required to conclude on this point.
30. The OFT has therefore assessed the merger on the basis of the Short Sea. However, irrespective of the relevant geographic scope used, the merger does not raise competition concerns and therefore it has not been necessary for the OFT to conclude on the precise geographic scope.

HORIZONTAL ISSUES

Shares of supply

31. The parties provided share of supply estimates based on freight volumes using the IRN research⁹ and passenger numbers on the Short Sea. These estimates are consistent with those provided by third parties.
32. The shares of supply shown below include details for Eurotunnel since third party comments indicate that this is consistent with the economic market.

Freight shipping services

33. The table below provides volume-based shares of supply for parties operating on the Short Sea routes in the 12 months to May 2012 (latest available data).

⁹ The data reported in the IRN Research Report are based on figures submitted by the operators referred to in the Report. The Report distinguishes between Short Sea routes, Western Channel routes, Irish Sea routes and (some) North Sea routes.

Shares of supply of freight services on the Short Sea June 2011 -May 2012¹⁰

	Number of Units (Accompanied and Unaccompanied)	Share of supply
DFDS	594,659	16%
LDA (Transmanche)	40,451	1%
DFDS & LDA	635,110	17%
Eurotunnel	1,484,786	40%
P&O	1,280,333	35%
SeaFrance	281,604	8%
Total	3,681,833	

34. The parties have an estimated combined share of supply of 17 per cent of the supply of freight services on the Short Sea, with an increment of one per cent. Eurotunnel will remain the largest operator with a share of supply of 40 per cent and P&O will remain the largest ferry operator supplying cross channel freight services with a share of supply of 35 per cent offering up to 23 departures in each direction, daily.
35. The OFT notes that LDA's Newhaven/Dieppe route offers only two services in each direction daily which is far fewer than the services offered by DFDS on its Dover/Dunkirk route which range between eight and 12 departures daily. The OFT also notes that the duration of the Newhaven/Dieppe crossing of four hours is twice that for the DFDS Dover/Dunkirk route. The Dover/Calais joint venture route operates between eight to 10 departures daily and the duration of the crossing is one and a half hours. As noted above, freight passengers are likely to be particularly sensitive to the time spent waiting in port and the duration of the crossing. Therefore, in considering the frequency and duration of the crossings currently operated by the parties, the OFT does not consider DFDS and LDA to be close competitors on the Short Sea.

¹⁰ Transeuropa operates three ferries on the Ramsgate/Ostend route but no figures were provided by the parties as the IRN data does not include all ferry routes

36. Given the minimal increment resulting from the transaction and the strong constraint from existing competitors in the market, the OFT does not consider that the merger raises concerns over unilateral effects in the supply of freight services on the Short Sea.
37. In view of the fact that both parties operate services on the North Sea and the Western Channel in addition to the Short Sea, the OFT also considered what impact the transaction would have on a wider geographic market but found that the parties had similar shares of supply on the Short Sea & North Sea and the Short Sea & Western Channel segments.¹¹ The OFT therefore does not consider that the merger raises concerns over unilateral effects in the supply of freight services on these wider market segments.

Passenger services

38. The table below provides passenger numbers for parties operating on the Short Sea routes in the 12 months to June 2012.

Shares of supply of passenger services on the Short Sea July 2011- June 2012¹²

	Number of Passengers	Share of supply
DFDS	2,724,000	13%
LDA	234,000	1%
DFDS & LDA	2,958,000	14%
Eurotunnel	8,888,000	43%
P&O	7,579,000	37%
SeaFrance	1,063,000	5%
Total	20,488,000	

39. The parties have an estimated combined share of supply of 14 per cent of the supply of passenger services on the Short Sea, with an increment of one per cent. Eurotunnel will remain the largest operator with a share of supply of 43 per cent and P&O will remain the largest ferry operator

¹¹ In both cases, the combined share of supply is 15 per cent, increment one per cent.

¹² Transeuropa operates three ferries on the Ramsgate/Ostend route but no figures were provided by the parties as the IRN data does not include all ferry routes.

supplying cross channel passenger services with a share of supply of 37 per cent.

40. The OFT also found that assessing the merger on a wider geographical basis, that is including the North Sea or Western Channel did not impact on the findings in this case. Given the minimal increment resulting from the transaction and the strong constraint from existing competitors in the market, the OFT does not consider that the merger raises competition concerns over unilateral effects in the supply of passenger services on the Short Sea.

Co-ordinated effects

41. The OFT considered whether there is a realistic prospect that the merger would create or strengthen coordination between cross-channel freight and passenger services. In doing so, the OFT examines whether there was pre-existing coordination, ferry operators could reach and monitor terms of coordination and coordination would be internally and externally stable.¹³
42. No evidence of pre-existing coordination was submitted to the OFT.
43. Moreover, the merger will result in only a small increment (of one per cent) to DFDS' share and there is no evidence that LDA was a market 'maverick' (thereby the merger does not significantly strengthen any internal stability of coordination in the marketplace). The OFT also notes that as a result of this transaction, the combined entity will remain significantly smaller than that of the other competitors, that is, P&O and Eurotunnel, operating on the Short Sea, maintaining a lack of symmetry in market shares. Several third parties commented that Eurotunnel enjoyed a significant cost advantage over ferry operators (because of its funding and ability to use electricity rather than marine oil) and this difference in cost base makes co-ordination between the two biggest players unlikely. In addition, differences between frequencies and crossing times means that the service on offer is not homogenous. These factors would reduce the effectiveness of any coordination by substantially reducing the internal stability of a coordinated outcome. The OFT does not therefore consider that the transaction will create or increase the likelihood of coordination in the

¹³ OFT and Competition Commission, '*Merger Assessment Guidelines*', OFT1254, September 2010, paragraphs 5.5.1–5.5.19.

provision of freight and passenger services on the Short Sea and it has not found it necessary to assess the other criterion (on external stability).

Barriers to entry and expansion

44. As the merger does not raise competition concerns, the OFT has not needed to conclude on the strength of barriers to entry and expansion in the provision of cross-Channel freight and passenger services.

Buyer power

45. As the transaction does not raise competition concerns, it has not been necessary for the OFT to conclude on the extent of buyer power post merger.

VERTICAL ISSUES

46. As DFDS is also active on the markets for terminal services, freight forwarding and contracts logistics, the OFT considered whether any vertical concerns arise as a result of the merger. However, in each market, DFDS's share of supply is estimated to be below five per cent. Further, DFDS only offers terminal handling services at Immingham, and this is a terminal that LDA does not call at. Therefore, on the evidence provided, the OFT does not consider that vertical effects concerns arise in this case.

THIRD PARTY VIEWS

47. None of the third party competitors who were contacted during the course of this investigation raised competition concerns about the merger. It was considered that the market was very competitive, highly commoditised and price sensitive. Similarly, no freight customers raised concerns about the merger.
48. The OFT also included this case in a pilot project aimed at eliciting views from final consumers who it would be impractical to contact on an individual basis but who overall represent a significant proportion of customers of the merging parties. Through this exercise, the OFT received submissions from 18 customers who were on the whole unconcerned by the merger.

ASSESSMENT

49. The parties overlap in the provision of freight and passenger services between the UK and Continental Europe.
50. The merger has been assessed on the basis of the Short Sea, consisting of routes across the English Channel and the Belgian Straits. The parties have an estimated combined share of supply of 17 per cent of the supply of freight (accompanied and unaccompanied) services on the Short Sea with an increment of one per cent. The parties have an estimated combined share of supply of 14 per cent of the supply of passenger services on the Short Sea with an increment of one per cent.
51. For both freight and passenger services, Eurotunnel will remain the largest operator on the Short Sea with a share of supply of 40 per cent and 43 per cent respectively while P&O will remain the largest ferry operator with a share of supply of 35 per cent and 37 per cent respectively.
52. Given the minimal increment resulting from the transaction and the strong constraint from existing competitors in the market, the OFT does not consider that the merger raises concerns over unilateral effects in the supply of freight services on the Short Sea.
53. In addition, the OFT does not consider that the merger raises a realistic prospect of coordinated effects arising.
54. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

55. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.