



**DETERMINATION OF MERGER NOTIFICATION
M/10/043 – Stena/DFDS**

Section 22 of the Competition Act 2002

Proposed acquisition by Stena AB, through its subsidiary Stena Line (UK) Limited, of certain assets of DFDS A/S

Dated 7 April 2011



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1. SECTION ONE: INTRODUCTION

Executive Summary

- 1.1 The notified transaction concerns an acquisition whereby Stena AB, through its subsidiary Stena Line (UK) Limited, would acquire sole control of vessels, related assets, inventory, employees and contracts relating to passenger and freight ferry services operated by DFDS A/S between Belfast and Heysham and between Belfast and Liverpool.
- 1.2 The parties had completed the transaction prior to obtaining clearance from the Competition Authority (the "Authority") in breach of Section 19(1) of the Competition Act 2002 (the "Act"). This meant the transaction was therefore void as provided for in Section 19(2) of the Act.
- 1.3 In accordance with its procedures the Authority treated the notified transaction as a proposal to put an acquisition into effect, and proceeded to assess the notified transaction in accordance with the provisions of the Act.
- 1.4 In addition to the notified transaction, there have also been contemporaneous events involving the parties: the cessation by Stena AB of ferry services between Larne and Fleetwood and the cessation by DFDS A/S of its remaining Irish Sea ferry services between Dublin and Heysham and between Dublin and Liverpool.
- 1.5 At the conclusion of the "Phase 1" investigation the Authority was not able to form the view that the result of the notified transaction would not be to substantially lessen competition in any markets for goods or services in the State. The Authority therefore proceeded to a full investigation.
- 1.6 Following an intensive "Phase 2" investigation, which included ongoing contacts with the parties and obtaining the views of both competitors and customers of the parties, the Authority concluded that the notified transaction will not lead to competition concerns in any markets within the State.
- 1.7 The notified transaction is also undergoing regulatory review in the UK. On 8 February 2011, the Office of Fair Trading ("OFT") referred the notified transaction to the UK Competition Commission. The UK Competition Commission at the time of writing is continuing with its investigation and is expected to report by 25 July 2011.¹

¹ See for example <http://www.competition-commission.org.uk/press_rel/2011/march/pdf/0711_issues_statement.pdf>

The Notification

- 1.8 On 17 December 2010, in accordance with section 18 of the Act, the Authority received a notification of a completed transaction whereby Stena AB, through its subsidiary Stena Line (UK) Limited, had purported to acquire sole control of certain assets from DFDS A/S.²
- 1.9 The assets (collectively the "Target Assets") include vessels, related assets, inventory, employees and contracts relating to the services operated by DFDS A/S, namely passenger and freight ferry services on the Irish Sea between Belfast and Heysham and between Belfast and Liverpool³ (the "Target Routes").

Completing the transaction prior to clearance from the Authority

- 1.10 On 2 December 2010, prior to submitting the notification, Stena AB advised the Authority that the parties (i.e., Stena AB and DFDS A/S) had already completed the transaction on 1 December 2010. This was subsequently confirmed in correspondence accompanying the notification.
- 1.11 Section 18 of the Act provides, *inter alia*, that where a merger or acquisition is agreed, and where the thresholds specified in the section apply, each of the undertakings involved must notify the Authority in writing of the proposal to put the merger or acquisition into effect. Section 19(1) prohibits the putting into effect of a merger or acquisition prior to obtaining clearance by the Authority, and section 19(2) provides that any contravention of section 19(1) will result in the merger or acquisition being void. The Authority informed the parties that they had contravened section 19(1) of the Act by correspondence dated 21 December 2010.⁴

² Stena AB, via its subsidiary, Stena Line (UK) Limited, entered into a Sale and Purchase Agreement dated 1 December 2010 (the "Sale and Purchase Agreement") pursuant to which it has acquired the entire issued share capital of DFDS Seaways Irish Sea Ferries Limited from DFDS Seaways Irish Sea Holding Limited, a wholly owned subsidiary of DFDS Seaways BV, which is in turn owned by DFDS A/S.

³ As submitted by the parties, and for the purposes of this notification, unless otherwise specified the term Liverpool includes the ports facilities and berths at both Liverpool and Birkenhead, U.K.

⁴ On 14 December 2010, also prior to submitting the notification, the Authority was advised by the parties that they had given undertakings, under Section 71 of the UK Enterprise Act 2002, to the United Kingdom Office of Fair Trading whereby the acquired business would be held separate subject to the competition review in the UK, where the transaction has also been notified. The effect of these 'hold separate' undertakings with the OFT, was that the DFDS Seaways Irish Sea Ferries Limited business acquired, i.e., the Target Routes and related assets, would continue to operate as a separate business from the remaining business of Stena AB, pending the outcome of the UK competition review. The Competition Authority released a press statement on 21 December 2010 on this matter and also on the parties' contravention of Section 19 (1) of the Act. See <http://www.tca.ie/EN/News--Publications/News-Releases/Stena-Acquisition-of-Certain-Assets-of-DFDS-AS-Void--.aspx>.

The Undertakings Involved

The Acquirer – Stena AB

- 1.12 Stena AB, based in Goteborg, Sweden, is owned and controlled by the Sten A. Olsson family.⁵ Stena AB, through its subsidiaries, is involved in various activities including international and domestic sea-based passenger and freight ferry services.⁶
- 1.13 Stena Line (UK) Limited and its subsidiaries currently operate ferry services on four Irish Sea routes, namely between: (i) Belfast and Stranraer; (ii) Dublin and Holyhead; (iii) Dun Laoghaire and Holyhead; and, (iv) Rosslare and Fishguard. Stena AB also operated ferry services between Larne and Fleetwood until ceasing operations on that route on 24 December 2010.

The Vendor - DFDS A/S

- 1.14 DFDS A/S, based in Copenhagen, Denmark, is involved in sea-based freight and passenger ferry services in Northern Europe.⁷ Prior to the completion of the notified transaction, DFDS A/S was active on the Baltic Sea, English Channel and North Sea as well as the Irish Sea.
- 1.15 On the Irish Sea, in addition to operating ferry services on the Target Routes, DFDS A/S, prior to the notified transaction, also operated ferry services on the routes between Dublin and Heysham and between Dublin and Liverpool. On 13 January 2011 DFDS A/S announced that it would cease to operate these routes from 31 January 2011.
- 1.16 DFDS A/S's presence on the Irish Sea arose from its acquisition of the entire Norfolkline ferry business from A.P. Moller Maersk A/S ("Maersk"). That transaction related to Norfolkline ferry services on all of the Irish Sea, North Sea and English Channel, and was completed following clearance from the European Commission on 17 June 2010.⁸

The Target Assets

- 1.17 The Target Assets relate specifically to the business of passenger and freight ferry services on the Target Routes. The Target Assets include vessels, related assets, inventory, employees and contracts relating to the services operated by DFDS A/S through its subsidiary DFDS Seaways Irish Sea Ferries Limited.⁹

⁵ Stena AB, Stena Sessan AB and Stena Metall AB (collectively known as the "Stena Sphere") are owned and controlled by the Sten A. Olsson family. For further information see <<http://www.stena.com/en/>>.

⁶ For a summary of Stena AB activities see <<http://www.stena.com/en/Sphere/About+stena/Om+bolagen.htm>>.

⁷ For a summary of DFDS A/S activities see <<http://www.dfds.com/about/>>.

⁸ Case No. COMP/M.5756 – DFDS/Norfolk.

⁹ The parties submit that subsequent to the completion of this acquisition, as advised by the parties to the Competition Authority on 2 December 2010, DFDS Seaways Irish Sea Ferries Limited has been renamed Stena Line (Irish Sea Ferries) Limited.

Rationale for the Notified Transaction

Stena AB

- 1.18 Stena AB states that the proposed transaction presents an opportunity to establish a viable long-sea¹⁰ presence on the Irish Sea between Northern Ireland and England. [...].

DFDS A/S

- 1.19 DFDS A/S states that its due diligence regarding the acquisition of Norfolkline indicated the Irish Sea element was [...] loss-making. Upon completion of the acquisition of Norfolkline, DFDS A/S resolved that action would need to be taken to address this situation with an onward sale of all or part of the Irish Sea business being one option. DFDS A/S states that, in this context, an onward sale of the Target Routes is an attractive course of action.

The Procedure

Preliminary Investigation ("Phase 1")

Third Party Submissions

- 1.20 Two third party submissions were received by the Authority during the Phase 1 investigation. These submissions did not appear to relate directly to the acquisition of the Target Routes. Rather, the submissions highlighted the following concerns:

- the potential for Stena AB to exert an influence on haulier choices of ferry routes and/or ferry operators, e.g., by bundling together services on different routes; and,
- the viability of DFDS A/S's remaining routes between Dublin and Heysham and Dublin and Liverpool if DFDS A/S were to cease operating services on those routes.

Contemporaneous Events Involving the Parties

- 1.21 Subsequent to the proposed transaction being notified to the Authority, both of the parties made further changes to their ferry services on the Irish Sea, namely:

- On 24 December 2010 Stena AB ceased to offer ferry services between Larne and Fleetwood; and,
- On 13 January 2011 DFDS A/S announced its decision to withdraw ferry services from its two remaining Irish Sea routes, between Dublin and Liverpool and between Dublin and Heysham, and these services ceased on 31 January 2011.

- 1.22 The Authority had been advised in the notification of [...].

¹⁰ As illustrated in Table 1 in Section 2, long-sea journeys on the Irish Sea are typically between 7 and 9 hours. Short-sea journeys on the Irish Sea are typically no more than 4 hours.

Phase 1 Determination

- 1.23 Having considered all the available information in its possession at the time, and having become aware of the contemporaneous events involving the parties subsequent to the notification, the Authority was unable to form the view at the conclusion of the Phase 1 investigation that the result of the proposed acquisition would not be to substantially lessen competition in any markets for goods or services in the State.
- 1.24 Accordingly, on 14 January 2011, the Authority determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22(2) of the Act.

Full Investigation ("Phase 2")

Third Party Submissions

- 1.25 The Authority received one third party submission during the Phase 2 investigation. The submission did not focus on the acquisition of the Target Routes but rather highlighted issues surrounding the potential impact of the cessation of DFDS A/S from its routes between Dublin and Heysham and Dublin and Liverpool.
- 1.26 The Authority initiated discussions with customers of both Stena AB and of DFDS A/S for services into and out of Dublin. In a number of instances these sets of customers overlap. Also in a number of instances these customers are also customers on the Target Routes. The Authority also sought the views of competing ferry service operators on the Irish Sea.¹¹

On-going Contacts between the Authority and the Parties

- 1.27 The Authority requested, on an on-going basis, further information and clarifications from the notifying parties. The information requested covered both the notified transaction and contemporaneous events. These included the cessation by Stena AB of ferry services between Larne and Fleetwood; the [...]; and, the cessation by DFDS A/S of its remaining Irish Sea ferry services between Dublin and Heysham and between Dublin and Liverpool.
- 1.28 Following written communications with the parties, most notably letters sent on 28 January 2011 and 10 February 2011, the Authority met with representatives of Stena AB and DFDS A/S, on 2 and 3 March 2011, respectively. At those meetings the Authority sought and subsequently received further written submissions from the parties on 7 and 8 March, respectively.

¹¹ The Authority contacted competitors operating between (i) the island of Ireland and (ii) Northwest England and Northern Wales.

2. SECTION TWO: BACKGROUND - FERRY SERVICES ON THE IRISH SEA

Ferry Services

- 2.1 Two types of ferry services are operated on the Irish Sea:
- Carriage of freight in lorry containers – whether accompanied by a truck driver or unaccompanied; and,
 - Carriage of passengers – by coach, car or on foot.
- 2.2 Each service is described in turn below following a summary of Irish Sea ferry service routes.

Irish Sea Routes

- 2.3 Customers, both freight and passengers, have a choice of Irish Sea crossings. On the western side of the Irish Sea, there are various ports ranging from Larne to Cork. On the eastern side of the Irish Sea there are various ports ranging from Troon to Swansea.
- 2.4 The various Irish Sea routes differ from each other most fundamentally in two ways: (i) geography and (ii) sailing duration. The parties submit that routes with the most similar geographic and other characteristics, such as travel time to final destination compete most closely.
- 2.5 The parties further submit that the various routes can be classified into “corridors” on the basis of consumer preferences which, in turn, are influenced by geographical proximity and convenience of different ports on either side of the Irish Sea.
- 2.6 Prior to December 2010, there were fifteen ferry service routes across the Irish Sea and six ferry companies, as indicated below, each providing services on one or more (but not all) of these routes.
- 2.7 Ferry services can also be distinguished in terms of the services offered to hauliers and to passengers. For example, a much greater range of services is available on ships designed for carrying large numbers of passengers when compared to ships designed primarily or exclusively for the carriage of freight.
- 2.8 By way of illustration it is possible to describe ferry services, immediately prior to the notified transaction, on the Irish Sea as follows, in terms of corridors, routes and ferry service operators:
- (i) a “Northern Corridor” between Northern Ireland and Scotland comprising crossings between:
- Larne and Troon – P&O;
 - Larne and Cairnryan – P&O; and,
 - Belfast and Stranraer – Stena AB.

- (ii) a "Diagonal Corridor" between Northern Ireland and Northwest England comprising crossings between:
 - Larne and Fleetwood – Stena AB;
 - Larne and Heysham – Seatruck;
 - Belfast and Heysham – DFDS A/S;
 - Belfast and Liverpool - DFDS A/S; and,
 - Warrenpoint and Heysham – Seatruck.
- (iii) a "Long Sea Central Corridor", comprising crossings between Dublin Bay, (i.e., Dublin and Dun Laoghaire) and Northwest England;
 - Dublin and Heysham – DFDS A/S; and,
 - Dublin and Liverpool – DFDS A/S, P&O and Seatruck.
- (iv) a "Short Sea Central Corridor", comprising crossings between Dublin Bay (Dublin and Dun Laoghaire) and North Wales;
 - Dublin and Holyhead - Irish Ferries and Stena AB; and,
 - Dun Laoghaire and Holyhead – Stena AB.
- (v) a "Southern Corridor", comprising crossings between Counties Wexford and Cork and Southwest Wales;
 - Rosslare and Fishguard – Stena AB;
 - Rosslare and Pembroke – Irish Ferries; and,
 - Cork and Swansea – Fastnet.

2.9 Appendix A contains a map of the routes and ferry service operators described above.¹²

2.10 For the purposes of examining the notified transaction and the impact of the contemporaneous events described in Section 1 above, the Authority has focused its analysis on the routes on the Diagonal and Central corridors as identified by the parties. That is, the routes between the island of Ireland ports of Larne, Belfast, Warrenpoint, Dublin and Dun Laoghaire and the Northwest England and Northern Wales ports of Fleetwood, Heysham, Liverpool and Holyhead.¹³ The key features of these routes are further summarised in Table 1 below.¹⁴

2.11 These are routes that are more likely to be affected by the notified transaction and the contemporaneous issues, than would, for example, the routes between Northern Ireland and Scotland or the routes between Counties Cork and Wexford and Southwest Wales.

¹² The map in Appendix A was supplied by the parties as part of the notification documentation and describes the situation prior to the notification.

¹³ The table presents information provided by the parties in the Notification.

¹⁴ These routes indicate the services as existed prior to 1 December 2010.

Table 1: Ferry Services Between Ireland and Northwest England and Northern Wales¹⁵

Route	Operator	Vessel(s) and Vessel type	Frequency (per route)	Crossing Time
Larne – Fleetwood	Stena AB	Pioneer (ro/pax) Leader (ro/pax) Seafarer (ro/pax)	3 round trips (Tue-Thur) 2.5 round trips (Mon and Fri) 2 round trips (Sat and Sun)	8 hours
Larne – Heysham	Seatruck	Clipper Ranger (ro/ro) Arrow (ro/ro)	2 round trips (Tue – Fri) 1 round trip (Sat – Mon)	9 hours
Belfast - Heysham	DFDS A/S	Scotia Seaways (ro/ro) Hibernia Seaways (ro/ro)	2 round trips per day (Mon – Fri) 1 round trip per day (Sat –Sun)	8 hours
Belfast – Liverpool	DFDS A/S	Lagan Seaways (ro/pax) Mersey Seaways (ro/pax)	2 round trips per day (Tue – Sun) 1 round trip Mondays	8 hours
Warrenpoint - Heysham	Seatruck	Clipper Point (ro-ro) Clipper Panorama (ro-ro)	2 round trips per day (Tue-Fri) 1 round trip (Sat - Mon)	7-9 hours
Dublin – Heysham	DFDS A/S	Anglia Seaways (ro-ro)	1 round trip per day (Mon-Sun)	8 hours
Dublin - Liverpool	DFDS A/S	Dublin Seaways (ro-pax) Liverpool Seaways (ro-pax)	2 round trips per day (Tue – Sat) 1 round trip per day (Sun-Mon)	7 hours

¹⁵ All vessels are labelled as either ro-ro, i.e., vessels designed exclusively for the carriage of freight, or ro-pax, i.e., vessels designed for carriage of passengers and freight services. Frequency refers to frequency of service on the route rather than frequency of any particular vessel.

Dublin - Liverpool	P&O	Norbank (ro-pax) Norbay (ro-pax) Norcape (ro-ro)	3 round trips per day (1 freight only)	7-8 hours
Dublin - Holyhead	Stena AB	Stena Adventurer (ro-pax) Stena Nordica (ro-pax)	4 round trips per day	3-4 hours
Dublin - Holyhead	Irish Ferries	Ulysses (ro-pax) Jonathan Swift (ro-pax)	4 round trips per day	3-4 hours 2 hours
Dun Laoghaire - Holyhead	Stena AB	Stena Explorer (ro-pax) Stena Express (ro-pax)	1 round trip per day	2 hours

Source: The Authority from information supplied in the Notification Form

2.12 As can be seen from Table 1 above, there are a variety of types of vessels, providing a range of services and a variety of frequencies and travel times. This has implications for possible market definition, discussed further in Section 3.

Freight Services

2.13 Roll-on/roll-off services, as listed above, are provided either by vessels designed exclusively for the carriage of freight ("ro-ro"), or by vessels designed for carriage of passengers and freight services ("ro-pax"). Both types of vessels are deployed by ferry service operators on the Irish Sea.

2.14 Freight traffic volumes for roll-on/roll-off services are measured in terms of lane metres or space occupied. A standard lane meter measure is the typical length of a truck trailer, i.e., around 40-45 feet or between 12 and 14 metres.

2.15 Freight services can be further subdivided into two categories:

- accompanied freight; and,
- unaccompanied freight.

- 2.16 In the case of accompanied freight, a driver will accompany the vehicle and freight, e.g., a container or bulk tanker, from the port of departure to the port of destination and beyond.
- 2.17 Unaccompanied freight, also known as drop trailer freight, typically consists of a truck trailer which has been decoupled at the port of departure. The driver who has brought the trailer to the port of departure does not accompany the freight (i.e., the trailer and cargo) on the ferry crossing. Rather, in most cases the driver will collect an incoming trailer for onward delivery, either to a customer or return to the haulier's home base depot.
- 2.18 The most obvious difference between accompanied and unaccompanied freight is the presence or absence of the cab and driver on board. The two modes do, however, have some other differences in typical characteristics. As submitted by the parties, and supported by market enquiries, prices for accompanied freight are typically higher than for unaccompanied freight on any crossing, not least because of the additional space taken up on deck.
- 2.19 Voyage duration can also be significant in terms of how hauliers manage the time of drivers and the productivity of vehicles. For example, whereas the trailer carrying freight must necessarily be in transit for the duration of a voyage, this is not the case for drivers, which in turn influences the choices of hauliers between accompanied and unaccompanied freight services.
- 2.20 Regulatory requirements allow ro-ro services to carry up to twelve passengers, usually drivers of accompanied freight. Thus, there is usually at least some accompanied freight as well as unaccompanied freight on ro-ro vessels.
- 2.21 Load on and Load off ("lo-lo") services are in certain circumstances an alternative to roll on-roll off transport. However, lo-lo services freight is usually transported in containers loaded onto vessels by the use of specialised cranes located at terminals.¹⁶

Demand for Freight Services

- 2.22 The level of demand for freight services is reflective of the overall demand for goods and services, particularly imports and exports. Given an overall level of demand, the choice of freight transport mode and route will be influenced by a number of factors including, for example, time sensitivity and cost.
- 2.23 Hauliers' choices of route reflect not only their own requirements but also the requirements of the ultimate customers, e.g., the freight consigner, or sender, and the freight recipient.
- 2.24 The choice between accompanied and unaccompanied freight also reflects the time-sensitivity of cargo being carried. For example, in contrast to the short-sea routes which have a relatively higher proportion of accompanied freight, the Target Routes, being long-sea

¹⁶ Comparisons of ro-ro and lo-lo volumes are complicated because historically containers were twenty feet long - half the size of a typical trailer. Hence combined data for of ro-ro and lo-lo volumes are typically presented in terms of twenty foot equivalent ("TEU") units, i.e., approximately 6 metres in length. It is also the case, however, that forty foot equivalent, or twelve metre, containers which require an entire trailer are increasingly prevalent.

routes, have a relatively higher volume and proportion of unaccompanied freight. The parties submit that long-sea routes suit goods that can take three days in transit (i.e., "day one collection/day two transit/day three delivery").

- 2.25 In contrast, time-sensitive products, such as fast-moving consumer goods, require as little time as possible in transit which can be achieved by minimising total transport time (i.e., two days or less from collection to delivery). This implies a likely preference for shorter sailing times and for accompanied freight to minimise shorter time spent between road and ferry (at both ends of the ferry trip). For example foodstuffs and other perishables, would be more likely to be transported on a quicker service utilising the shorter Irish Sea route services. On the other hand, less time-sensitive cargo would be more likely to be transported on longer route services, or even on lo-lo services.
- 2.26 As submitted by the parties and confirmed by market enquiries, there is limited transparency in pricing for freight services. Ferry operators typically do not publicise freight rates and prices. Rather, negotiations between ferry operators and hauliers are on a client-by-client basis.
- 2.27 Hauliers, typically the larger customers, may negotiate directly with ferry service operators. Alternatively, and typically for smaller operators, negotiations with ferry service operators may be undertaken by third party agents.
- 2.28 Market enquiries indicate two forms of arrangement between hauliers and ferry services operators. Some hauliers conclude a formal contract for spaces and rates, whereas other hauliers procure services by a verbal understanding regarding rates and space allocation.
- 2.29 The parties submit, and market enquiries confirm, that it is common practice for hauliers and third party agents to negotiate spaces with more than one ferry service operator. This provides hauliers with a degree of flexibility in the event that capacity is constrained or rates are increased by any one ferry service operator.

Supply of Services

- 2.30 The supply of ferry services depends on the availability of vessels, availability of port facilities and sufficient demand to warrant any new investment. The parties submit that there are no major barriers to entry or exit.¹⁷
- 2.31 Market enquiries would generally support these views although some market participants consider that there may be limitations on available berths, particularly in Liverpool.¹⁸ Those concerns notwithstanding, there has been evidence in recent times of entry, e.g., Seatruck entering the route between Larne and Heysham in May 2010. This, together with the responses of Seatruck and P&O to the cessation of services by DFDS A/S into and out of Dublin, as discussed in Section 5, indicates that there is scope for timely entry and/or responses by incumbent operators.

¹⁷ [...].

¹⁸ In M/10/06 – Stena/P&O the Authority did express some concerns about the availability of berths on the Central corridor.

- 2.32 Providing ferry services involves a relatively high level of fixed costs and relatively low variable costs. Consequently, the financial viability of operating ferry services depends crucially on a high level of utilisation of vessel capacity. This in turn is affected not only by the level of demand but also by the level of supply of ferry services.
- 2.33 The parties submit that as a consequence of the general economic downturn there has been under-utilisation of vessels and consequent excess capacity in the supply of freight services on the Irish Sea. The parties submit that this has resulted in negative consequences for the financial viability of ferry operators. Market enquiries would tend to confirm this to be the case. Further, the Marine Institute has, in a recent publication, commented as follows:

*"2008 saw the first decline in all-Ireland roll-on/roll off (ro-ro) freight traffic volumes in over ten years and this downward trend continued in 2009 when ro/ro freight fell by 9 per cent The supply and demand capacity balance will continue to challenge operators this year as the market seeks to realign volume changes."*¹⁹

Passenger Services

- 2.34 In the context of ferry services, passenger services include individuals travelling, separately or in groups, by foot, car or coach. The parties submit that demand for passenger services is seasonal and peaks during summer months.
- 2.35 Passenger services are provided by a number of operators and on a variety of vessels, e.g., ro-pax vessels and also fast service vessels. Both Irish Ferries and Stena AB operate express passenger ferry services.
- 2.36 The parties submit that, in general, passengers typically place a high premium on: (i) getting to their destination as quickly as possible and (ii) enjoying the maximum possible time in the country of destination. Passengers travelling by vehicle generally value good motorway access to ports and require regular and punctual services allowing maximum flexibility. In contrast to freight services, the purchase of passenger services is highly transparent both in terms of prices paid and numbers of passengers and/or vehicles to be transported.
- 2.37 With specific reference to the Target Routes, the parties submit that passengers choosing this longer ferry crossing sailing are unusual, as they show a preference for a longer time at sea on vessels which are primarily targeted at freight services.
- 2.38 More generally, in relation to passenger services, the parties submit that in addition to choices between ferry service operators, passengers also have options other than sea travel, in particular low-cost air transport.

¹⁹ The Irish Maritime Transport Economist April 2010, pages 22 and 23. For further information see < <http://www.imdo.ie/IMDO/shipping/transport-economist>>.

3. SECTION THREE: RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the key relevant markets that are likely to be affected by the proposed acquisition are defined in terms of product and geographic dimensions. The views of the undertakings involved are summarised and the Authority's views and conclusions set out.

Relevant Product Market

3.2 There are essentially two issues to be addressed regarding possible relevant product markets for ferry services on the Irish Sea:

- whether freight and passenger services, i.e., passengers on foot, in cars or on coaches, should be considered part of the same market; and,
- whether freight ferry services, defined previously as carriage of unitised freight, should be further separated into different markets for accompanied and unaccompanied freight.

Views of the Undertakings Involved

3.3 Regarding passenger and freight ferry services, the parties note that the Authority has previously distinguished between (i) passengers and passenger vehicles and (ii) freight services.²⁰ The parties also note that the distinction between tourist passengers and freight services has also been confirmed by the European Commission.²¹

3.4 The parties focus on freight services rather than passenger services stating that passenger services are very much secondary to freight services on the services and routes directly affected by the transaction.

3.5 In particular, the parties state that total passenger turnover is no more than [0-10]% of total turnover on the Stena AB ferry services between Larne and Fleetwood.²² The parties also state that less than [0-5]% of passenger turnover on the Target Routes is derived from traffic originating from or destined for the State.

3.6 The parties submit that the relevant product market for analysis is a single market for the transport of unitised freight which includes carriage of both accompanied and unaccompanied freight by ro-ro. The parties also submit that containers carried by lo/lo vessels, while not in the same market, also represent a competitive constraint.

²⁰ Decisions M/04/016 – Stena/P&O and M/05/059 – Norfolkline Shipping/Norse Merchant Group Limited

²¹ European Commission Decision Case No COMP/M.2838 – P&O Stena Line (Holding) Limited, 7 August 2002; OFT Reference Decision Bretagne-Angleterre-Irlande S.A / P&O Ferries, 7 December 2004; European Commission Decision Case No COMP/M.5756 – DFDS/Norfolk, 17 June 2010.

²² This figure includes all passenger traffic, i.e., the proportion of passenger traffic originating from or destined for the State would be much less than [0-10] %.

- 3.7 In support of this market definition the parties cite previous decisions of the European Commission²³ and also decisions of the Authority²⁴ that have not made a distinction between accompanied and unaccompanied freight.

Views of the Competition Authority

- 3.8 Previously in M/04/016 - Stena/P&O, the Authority left open the market definition for passenger services and freight services. At that time however, the Authority noted passenger and freight appeared to be complementary rather than competing services. In M/05/059 - Norfolkline Shipping / Norse Merchant Group Ltd. the Authority did distinguish between freight and passenger ferry services.
- 3.9 For purposes of assessing the notified transaction, the Authority concurs with the European Commission in COMP/M.5756 - DFDS/Norfolk, i.e., that tourist passenger services and freight services are different markets.
- 3.10 Market enquiries regarding freight services indicate a variety of views ranging from unaccompanied and accompanied freight being very different markets to the opposite view that the distinction between the two has been reducing over time and is not significant now.
- 3.11 Market enquiries also indicate that the shorter routes are more popular than longer routes for accompanied traffic. This is also consistent with there being a preference for sending time sensitive products via shorter ferry routes and as accompanied freight.
- 3.12 The Authority considers that these factors do not necessarily indicate that there are two separate markets for the two modes of freight traffic. The Authority has previously stated, in its Determination in M/04/016 Stena / P&O, that:
- "There are different characteristics between accompanied and unaccompanied freight. However, the limitations of unaccompanied freight service providers to handle high value or time sensitive goods are steadily reducing. Also, there is supply-side substitutability between accompanied and unaccompanied services".*
- 3.13 There do not appear to be strong reasons for the Authority to depart from its previously stated views as summarised above concerning accompanied and unaccompanied freight.

²³ European Commission Decision Case No. COMP/M.2838 - P&O Stena Line (Holdings) Limited, 7 August 2002 and European Commission Decision Case No. COMP/M.5756 - DFDS/Norfolk, 17 June 2010.

²⁴ M/04/016 – Stena/P&O.

Relevant Geographic Market

- 3.14 The key issue to be addressed in the context of geographic markets is the extent to which competition is strongest between closest competitors, e.g., within the corridors described in Section 2 above, compared to competition from services on less proximate routes.
- 3.15 In deciding the geographical scope of the markets, the cost and time of sea travel, which is of greatest significance for the ferry services operators' immediate customers, i.e., freight hauliers and passengers, is not the only important factor. Also significant is the location of the ultimate customers, i.e., the sender and recipient of the cargo.
- 3.16 To the extent that sea travel is only one part of the total journey time and cost, then the preferences of final customers and other factors such as the quality of land transport infrastructure can be expected to expand the range of transport options and expand the geographic market, i.e., the area within which responses to price increases by one operator might be expected to become apparent.

Views of the Undertakings Involved

- 3.17 The parties stress the importance of the closest competitors either in determining a relevant geographic market or for evaluating competition within a relevant geographic market. In particular, the parties state that ferry service operators within the Diagonal Corridor compete most closely with each other, and should be considered as a separate relevant market. As noted above in Section 2, the Diagonal Corridor routes, as identified by the parties, are between:
- Larne and Fleetwood;
 - Larne and Heysham;
 - Belfast and Heysham;
 - Belfast and Liverpool; and,
 - Warrenpoint and Heysham.
- 3.18 The parties also present a wider geographical market comprising all of the corridors listed earlier in Section 2, i.e., the Northern, Diagonal and both of the Long and Short Central corridors. The parties submit, with reference to the so-called "binary fallacy"²⁵ that even within a broader geographic definition the strongest competitive constraints will be applied by ferry operators' closest competitors. That is, the parties submit that within any defined market those competitors which offer the closest substitute products or services will provide the strongest competitive constraint.

²⁵ As submitted by the parties, in this context the binary argument emphasises the importance of the closest competitor as a competitive constraint, rather than potentially fallacious conclusions that might be drawn, e.g., from market shares in a market where there is a significant degree of differentiation between products or services.

Views of the Competition Authority

- 3.19 The Authority has previously divided the Irish Sea into separate geographic markets on the basis of corridors. In particular, in M/04/016 - Stena/P&O the Authority indicated that there were three distinct corridors within the Irish Sea, namely:
- a Northern Corridor (for routes between Northern Ireland and Southwest Scotland and North Western England);
 - a Central Corridor (for routes between Dublin Bay and Northwest England and also routes between Dublin Bay and North Wales); and,
 - a Southern corridor (for routes between the South of Ireland and South Wales).
- 3.20 The Diagonal Corridor identified by the parties is a subset of those routes previously identified by the Authority in M/04/016 - Stena/P&O as being part of a Northern corridor.²⁶
- 3.21 Market enquiries indicate that in the event of a given route becoming unavailable, or too expensive, hauliers' preferences typically will be to be carried on a similar route. That is, switching is more likely between routes within a similar corridor rather than to a more distant route.
- 3.22 Market enquiries also suggest, however, that the geographical separation between routes may become weaker in future. There have been significant improvements in road infrastructure out of Dublin port and between Belfast and Dublin. Market enquiries also indicate that the route between Warrenpoint and Heysham is something of a hybrid between a Diagonal and Central Route.

Conclusion on the Relevant Product and Geographic Market

Passenger Services

- 3.23 For the purposes of assessing the notified transaction, the Authority agrees with the parties' view that passenger services are of secondary importance due to the minimal proportion of passenger traffic originating from or destined for the State in relation to the Target Routes.

Freight Services

- 3.24 While there do appear to be differences in the characteristics of unaccompanied and accompanied traffic in terms of cost, travel time and time sensitivity of goods in transit, it is not clear that these differences necessarily imply distinctly separate markets. It is not necessary, for the assessment of the notified transaction, to distinguish between accompanied and unaccompanied freight.

²⁶ As indicated previously the Authority has focused its analysis on the routes between the Island of Ireland and Northwest England and Northwest Wales because, in the context of the notified transaction, these routes have more direct relevance to competition and consumers within the State, than the routes between Northern Ireland and Scotland.

- 3.25 For the purposes of reviewing the notified transaction, the Authority considers the narrowest relevant product market to be total freight on roll-on/roll-off services, i.e., combined accompanied and unaccompanied freight.
- 3.26 The choice of geographical market, i.e., Diagonal corridor versus a broader market, will not materially alter the competitive impact of the notified transaction in the State due to, in part, the importance of the closest competitors and also, as discussed subsequently in Section 4, the limited impact in the State of the notified transaction. Consequently, the issue of the appropriate geographic market can be left open.
- 3.27 However, for the purposes of reviewing the notified transaction, the Authority considers the narrowest relevant geographic market to be the Diagonal routes as identified by the parties.

4. SECTION FOUR: COMPETITIVE EFFECTS ON TARGET ROUTES

Introduction

- 4.1 The Authority's merger review function is to determine whether or not a notified merger or acquisition will, or will not, substantially lessen competition in markets for goods or services in the State.
- 4.2 The Authority's analysis of the notified transaction involves assessing the following:
 - i. The relevant counterfactual – i.e., the state of competition in the relevant market in the absence of the notified transaction. In this context, the Authority also considers whether Stena AB's decision to cease ferry services between Larne and Fleetwood is connected to its acquisition of the Target Assets and the Target Routes.
 - ii. The competitive effects within the State from the notified transaction.

Views of the Undertakings Involved

Counterfactual

- 4.3 The parties submit that Stena AB would have ceased ferry services between Larne and Fleetwood irrespective of the notified transaction and the appropriate counterfactual should not take those services into account. Further, the parties submit that Stena AB is, therefore a new entrant on the Diagonal routes,²⁷ and consequently there is no overlap in the provision of ferry services.
- 4.4 The parties argue that the notified transaction is essentially the replacement of one ferry service provider on the Target Routes with another ferry service provider. Consequently, the parties submit that the notified transaction "*will not result in any change to the competitive landscape of the Diagonal Routes market.*"²⁸
- 4.5 On the basis of a counterfactual not taking account of Stena AB's ferry services between Larne and Fleetwood, the parties estimate changes in market shares of total freight measured by volume as follows:²⁹

²⁷ Stena AB's other Irish Sea operations are the Loch Ryan crossing (between Belfast and Stranraer); its two Short Sea Central Corridor routes (between Dublin and Holyhead and between Dun Laoghaire and Holyhead); and its Southern Corridor route (between Rosslare and Fishguard).

²⁸ Notification to the Competition Authority, page 56.

²⁹ Implicit in these market share estimates is an estimate of how much traffic previously carried by Stena AB between Larne and Fleetwood would divert to other routes, primarily to the other Diagonal routes, i.e., the routes between (i) Larne and Heysham and Warrenpoint and Heysham operated by Seatruck and (ii) between Belfast and Heysham and Belfast and Liverpool operated by Stena AB.

Table 2: Diagonal Route Market Shares Excluding Larne Fleetwood

Operator	Pre Transaction	Post Transaction
DFDS	[55-65]%	0%
Seatruck	[35-45]%	[35-45]%
Stena	0%	[55-65]%

Source: Information provided by the parties

Competitive Effects

4.6 Specifically with reference to the State, the parties state that the notified transaction gives rise to no more than a minimal impact. The parties submit that the vast majority of traffic on the Diagonal Routes between Northern Ireland and Northwest England originates from or is destined for either Northern Ireland or Britain. That is, the volume of freight and passenger traffic originating from or destined for customers in the State is insignificant.

4.7 In support of this the parties state the following:

- Approximately €[...] million out of a total Target Route turnover for freight and passengers³⁰ of approximately €[...] million, i.e., less than [0-10]% is derived from traffic that originates from or is destined for customers in the State; and,
- Out of the total traffic on the route between Larne and Fleetwood, only [0-10]% of traffic by volume originates from or is destined for customers in the State.

Views of the Competition Authority

Counterfactual

4.8 An alternative to that proposed by the parties is to take account of Stena AB’s ferry services between Larne and Fleetwood in the counterfactual. That is, rather than taking Stena AB as a new entrant, and there being no overlap in the provision of ferry services, the notified transaction would imply an acquisition reducing market participants from three to two with an increased market share for the largest incumbent. In this counterfactual the change in market shares would be as follows.³¹

³⁰ The parties state that only approximately [0-10]% of the turnover on the Target Routes derived from customers within the State is derived from passengers.

³¹ Letter dated 9 February from Stena AB to Competition Authority. These figures are from Appendix 3.

Table 3: Diagonal Route Market Shares Including Larne / Fleetwood

Operator	Pre Transaction	Post Transaction
DFDS	[45-55]%	0%
Seatruck	[20-30]%	[20-30]%
Stena	[20-30]%	[70-80]%

Source: Information provided by the parties

4.9 The Authority notes that in the UK the OFT referred the notified transaction to the Competition Commission, in part on the grounds of ambiguity over the appropriate counterfactual. For example, the OFT stated:

*"In assessing the acquisition the OFT considered whether Stena would have exited the Fleetwood-Larne route regardless of the merger. If so, then the closure and not the merger may be the reason for the loss of any competition between the parties. However the evidence available to the OFT was not compelling enough to dismiss its concerns that the closure of the route may have been influenced by the merger."*³²

4.10 It is also the case that even if the parties' counterfactual is accepted, then any expansion of the geographic market north or south will result in Stena AB having a presence prior to the transaction. This implies there is an overlap between Stena AB and DFDS in the provision of ferry services.³³

4.11 The cessation of services by Stena AB on its route between Larne and Fleetwood is, however, of less significance within the State. That is, irrespective of the choice of counterfactual, it is not likely that the acquisition by Stena AB of the Target Routes will give rise to competition concerns within the State. The volumes and proportions of traffic originating from or destined for customers in the State on either of the Target Routes, or the route between Larne and Fleetwood are minimal.

4.12 Consequently, the Authority does not need to reach a conclusion regarding Stena AB's services between Larne and Fleetwood.

³² OFT Press release dated 8 February 2011. See < <http://www.oft.gov.uk/news-and-updates/press/today?prid=774560>>

³³ Stena AB argues, however, that none of these routes compete closely with the Target Routes.

Competitive Effects

- 4.13 Information supplied by the parties indicates that that turnover on the Target Routes from traffic that originated from or destined for customers in the State is approximately €[...] million and less than [0-10]% of total customers. This suggests that the proposed transaction will not lead to a significant impact on competition within the State.
- 4.14 Also, the notified transaction does not impact on the choices of ferry services from ports within the State. The acquisition of the Target Routes does not in itself have an impact on the routes and services into and out of Dublin, Rosslare, or Cork.
- 4.15 Market enquiries support the view that the acquisition by Stena AB of the Target Routes will have at most a minimal impact within the State. Consequently, there is little scope within the State for any substantial competitive effects (unilateral, coordinated or otherwise) arising from Stena AB's acquisition of the Target Routes.
- 4.16 As noted previously in Section 1, a third party raised a concern that subsequent to its acquisition of the Target Routes, Stena AB would be in a position to (i) bundle together spaces on Stena AB services on different routes services and (ii) influence hauliers' choice of ferry service operator to those hauliers operating on more than one corridor.
- 4.17 It is not clear, however, that this concern necessarily relates specifically to the notified transaction. It is unclear how the notified transaction necessarily changes any existing incentives for Stena AB to bundle services on different routes together. Furthermore, such bundling would not necessarily be to the detriment of hauliers or final consumers. Rather, harm would arise only if there was an abuse of a dominant position, an issue more appropriately addressed by the Authority in the context of its enforcement powers rather than as part of merger review in this instance.

Conclusion

- 4.18 In light of the above, particularly the minimal impact of the notified transaction within the State, the Authority considers that the acquisition by Stena AB of the Target Routes will not result in negative competitive effects within the State.
- 4.19 The above conclusion holds irrespective of whether the appropriate counterfactual includes or excludes Stena AB's services between Larne and Fleetwood.
- 4.20 However, before it can conclude that the proposed transaction may be put into effect, the Authority must consider whether other contemporaneous events are so connected with the acquisition by Stena AB of the Target Routes as to form part of the same transaction.

5. SECTION FIVE: CESSATION OF DUBLIN DFDS ROUTES

Introduction

- 5.1 In addition to the notified transaction regarding the Target Assets and the Target Routes there have also been two contemporaneous events concerning ferry services provided by DFDS A/S between Dublin and Liverpool and between Dublin and Heysham (the "DFDS Dublin Routes"), namely:
- On 13 January 2011 DFDS A/S announced its decision to withdraw ferry services from 31 January 2011 from the DFDS Dublin Routes; and,
 - [...].³⁴
- 5.2 The cessation of services on the DFDS Dublin Routes has a much greater potential competition impact within the State because, in contrast to the acquisition of the Target Routes and the closure of the services on the route between Larne and Fleetwood, the vast majority of traffic into and out of Dublin originates from or is destined for customers in the State.
- 5.3 However, before it can take the cessation of services on the DFDS Dublin Routes into account as part of its analysis of the proposed acquisition, the Authority must be satisfied that the cessation of services and/or the [...] are so connected to the proposed acquisition as to form part of the same transaction.
- 5.4 If the notified transaction is part of a larger transaction including the [...] and/or the cessation of DFDS Dublin services then any competitive effects can be considered as merger-specific, i.e., a consequence of the notified transaction. In contrast, if there is no interconnection, then any competitive effects arising out of the cessation of services on the DFDS Routes cannot be considered a consequence of the notified transaction.
- 5.5 Of particular interest regarding competitive effects is a view, expressed by a number of respondents during the Authority's market enquiries. Customers expressed the view that freight prices have risen or are expected to rise on routes into and out of Dublin. Some respondents to market enquiries have questioned whether any such rises, and/or the cessation of services on the DFDS Dublin Routes, are the result of coordinated behaviour by ferry service operators at the time of, or subsequent to, the notified transaction.

³⁴ [...].

Connection Between Notified Transaction, [...] and Cessation of DFDS Dublin Routes

Views of the Undertakings Involved

- 5.6 In summary, the parties submit that there is no essential connection between Stena AB's acquisition of the Target Routes, the [...], or the cessation of services on the DFDS Dublin Routes.
- 5.7 The parties acknowledge that both the Sale and Purchase Agreement and the [...] were negotiated and signed at the same time. However, the parties argue that the simultaneous signing of the two agreements does not in itself imply that the [...] and/or the cessation of services on the DFDS Dublin Routes, should be considered directly related or necessary to the notified transaction. In particular, the parties submit that:
- There is no inter-conditionality between the Sale and Purchase Agreement for the notified transaction, and the [...], i.e., the conditions of one agreement are not subject to conditions in the other.
 - [...].
 - Stena AB was not aware in advance of DFDS A/S's decision to cease services on the DFDS Dublin Routes on 31 January 2001, as announced on 13 January 2011, and thereby exit the Irish Sea entirely.
 - [...].³⁵
 - DFDS A/S sought expressions of interest from other Irish Sea ferry operators, both before and after signing the [...].
- 5.8 The parties submit that the above factors are not consistent with any mutual understanding or commitments, at the time of the parties agreeing the notified transaction, that DFDS A/S would cease services on the DFDS Dublin Routes.
- 5.9 Consequently, the parties submit that neither the [...] nor the subsequent cessation of the DFDS Dublin Routes should be considered along with the notified transaction as one transaction.
- 5.10 The parties further submit that the appropriate counterfactual against which to measure any competitive effects, in this context, should not assume the continuation of DFDS A/S services into and out of Dublin in the absence of the notified transaction. Rather, the counterfactual should include the cessation of the DFDS Dublin Routes.
- 5.11 DFDS A/S entered the Irish Sea as result of its acquisition of the entire Norfolkline ferry business from A.P. Moller Maersk A/S ("Maersk"). That transaction was agreed between DFDS A/S and Maersk in December 2009 and related to the Irish Sea, the North Sea and the English Channel. The transaction was completed following clearance from the European Commission on 17 June 2010. DFDS A/S states that even as early as negotiations with Maersk, it was clear the

³⁵ [...].

"acquisition of Norfolkline would be in spite of rather than because of the latter's activities on the Irish Sea."³⁶

- 5.12 DFDS A/S states that its Irish ferry operations were making [...] losses and, as noted above, this was apparent at the time DFDS A/S acquired Norfolkline. [...].

Views of the Competition Authority

- 5.13 Although the [...] and the notified transaction were agreed simultaneously, this does not in itself indicate that both are integral parts of one greater transaction. As indicated by the parties, there is no inter-conditionality between the [...] and the transaction as notified.
- 5.14 Stena AB was not aware in advance of DFDS A/S's decision to cease services on the DFDS Dublin Routes. The [...] did not provide any certainty that DFDS A/S would exit the Irish Sea. Even in the event of DFDS A/S exiting the Irish Sea the [...] did not imply that DFDS A/S's assets on the DFDS Dublin Routes would exit the market, as opposed to being acquired, or chartered by another competitor.
- 5.15 An alternative mechanism to explicit inter-conditionality would be to induce exit through the price of the [...]. That is, a high price might induce either (i) exit from Dublin DFDS Routes rather than remaining on the DFDS Dublin Routes, or (ii) a faster exit than might otherwise have been the case. The evidence is that this is not the case.
- 5.16 The information provided by the parties indicates that there was no premium paid and indeed the parties submit that the [...] price was at a discount rather than a premium. Further, as confirmed by the parties, during negotiations the [...] was proposed by DFDS A/S rather than Stena AB.
- 5.17 The evidence available to the Authority, including internal documents requested from the parties, strongly indicates no realistic prospect of DFDS A/S continuing to provide services into and out of Dublin beyond the very short term.³⁷

Conclusion Concerning the Notified Transaction, [...] and Cessation of DFDS Dublin Services

- 5.18 In light of the above, and on the basis of the evidence in its possession, the Authority considers that the decision of DFDS A/S to exit the DFDS Dublin Routes was not connected with the proposed transaction, and therefore does not form part of it.

³⁶ Letter to the Authority, dated 9 February 2011, from William Fry, solicitors and legal representatives of DFDS A/S.

³⁷ The sale of its Dublin routes to another ferry service operator might have represented a more attractive option to DFDS A/S than the exit of DFDS A/S and its assets from the Dublin Routes. It remains the case, however, that DFDS A/S continuing services on the DFDS Dublin Routes in the absence of the merger, which would be necessary for the appropriate counterfactual to be the situation prior to December 1 2010, was not a viable option. As events transpired, DFDS A/S ceased services on the DFDS Dublin Routes on 31 January 2011.

- 5.19 The relevant counterfactual, in the context of the cessation of services on the DFDS Dublin Routes, should not assume the continuation of those services. That is, any competitive effects arising from the cessation of services on the DFDS Dublin Routes are not a direct consequence of the notified transaction.

Effects of Cessation of Services on DFDS Dublin Routes

- 5.20 Even if it were the case that the cessation of services by DFDS A/S on its Dublin routes is part of the proposed transaction, the Authority is satisfied that the proposed transaction would not result in a significant lessening of competition. The Authority's reasoning is set out as follows.
- 5.21 The cessation of services by DFDS A/S from its Dublin routes signalled an immediate reduction in capacity on routes into and out of Dublin and potentially, a significant competitive impact on hauliers and customers in the State. Two issues arise for an assessment of competitive effects:
- i. Whether coordinated behaviour by the parties, or by the parties and third parties, would account for the cessation of services by DFDS A/S and/or any price rises that might occur.
 - ii. The impact of the cessation of services by DFDS A/S on capacity for freight and passenger services into and out of Dublin and any competitive responses by other ferry service operators.

Views of the Undertakings Involved

Coordinated Effects

- 5.22 The parties submit the following arguments regarding coordinated behaviour in relation to price increases on routes into and out of Dublin and in relation to the cessation of ferry services on the DFDS Dublin Routes:
- the DFDS A/S exit from the DFDS Dublin Routes was a unilateral decision rather than by agreement between the parties and/or the parties and others;
 - weak financial performance of ferry service operators on the Irish Sea implies there is no reward for coordinated behaviour and hence no incentive to engage in such behaviour; and,
 - price increases, to the extent that they occur, will be the result of ferry service operators seeking to end a period of continuous losses, rather than being as a result of coordinated behaviour.

5.23 The parties also submit that there are characteristics of the ferry business which mitigate against coordinated behaviour, namely:

- differentiation of ferry services (e.g., by geography, voyage duration, frequency of service, type of service etc.);
- limited transparency regarding prices (i.e., prices are negotiated more on a one-to-one basis than a well-known “going rate”) which mitigates the effectiveness of monitoring and disciplining mechanisms required to sustain coordinated behaviour;
- buyer power particularly on the part of larger hauliers, and also final customers, who can respond quickly and switch between ferry service operators in the event of price changes; and,
- potential entry of new operators, albeit unlikely given prevailing levels of demand, which is a credible threat to the sustainability of coordinated behaviour.

5.24 In summary, the parties submit that the above factors are not consistent with the conditions normally considered supportive of coordinated behaviour, namely:

- the ability to monitor rivals’ behaviour;
- internal sustainability, i.e., strong incentives for rivals not to deviate from a prearranged coordinated strategy; and,
- external sustainability, i.e., sufficient barriers to entry to any new entrant.

Cessation of DFDS Dublin Routes

5.25 The parties submit that there has been an observable response to the cessation of services on the DFDS Dublin Routes and the immediate consequence of a reduction in freight and passenger capacity. In particular the parties note that:

- Seatruck has introduced a new service between Dublin and Heysham to replace the former DFDS A/S service,³⁸ and,
- P&O has replaced the freight-only *Norcape* with the larger *European Endeavour* implying significantly greater P&O capacity.

5.26 The parties submit that these two events will mitigate substantially any capacity reductions for freight and passenger services arising from the cessation of the DFDS Dublin Routes.

³⁸ Seatruck chartered the “*Anglia Seaways*” which was formerly operated by DFDS A/S on this route.

Views of the Authority

Coordinated Effects

- 5.27 Information supplied by the parties and market enquiries indicate that, prior to December 2010 there was overcapacity on ferry services into and out of Dublin and that ferry services were not delivering sustainable financial results, including to the extent of sustained losses in a number of cases. In such a situation it would be expected that ultimately there would be a market correction involving upward adjustments in price and/or downward adjustments in capacity.
- 5.28 The Authority has no evidence to support a theory of harm of coordinated behaviour between the parties and/or third parties as an explanation of any actual or expected increases in freight prices on routes into and out of Dublin. Furthermore, the immediate beneficiaries of the cessation of the DFDS Dublin Routes are DFDS A/S's closest competitors on those routes, namely P&O and also Seatruck subsequent to its entry into the route between Dublin and Heysham. This suggests that for a theory of harm from coordinated behaviour to be applicable in this instance it would have to include not only the parties but also P&O and Seatruck. The Authority has not, in the course of evaluating this transaction, found evidence to suggest that is the case.

Effects of the Cessation of DFDS Dublin Routes

5.29 Prior to the cessation of services on the DFDS Dublin Routes market shares of volumes on routes in an out of Dublin for total freight carried were as follows:³⁹

Table 4: Market Shares for Freight on Dublin Routes including DFDS A/S

Route	Operator	Annual Volume	Market Share
Dublin - Heysham	DFDS A/S	[...]	[0-10]%
Dublin - Liverpool	DFDS A/S	[...]	[10-20]%
Dublin - Liverpool	P&O	[...]	[20-30]%
Dublin - Liverpool	Seatruck	[...]	[10-20]%
Dublin - Holyhead	Irish Ferries	[...]	[10-20]%
Dublin - Holyhead	Stena AB	[...]	[20-30]%
Dun Laoghaire - Holyhead	Stena AB	[...]	[0-10]%
Total		[...]	

Note - Shares may not sum to 100% due to rounding

Source: The Authority from information from parties

5.30 The figures set out in Table 4 above imply market shares for each operator on the routes into and out of Dublin as follows:

- DFDS A/S [20-30]%;
- Irish Ferries [10-20]%;
- P&O [20-30]%;
- Seatruck [10-20]%; and,
- Stena AB [20-30]%.

³⁹ Figures are from information provided by DFDS A/S on 11 February 2011.

5.31 Consequently, the immediate impact of the DFDS A/S exit is a reduction of between one fifth and one quarter of the volume of freight carried on routes into and out of Dublin. Within the subset of the long-sea routes into and out of Dublin (i.e., between Dublin and Heysham and between Dublin and Liverpool) the immediate impact of the DFDS A/S exit is a reduction of [30-40]% of volume.⁴⁰

5.32 Also in the period since the exit of DFDS A/S both Seatruck and P&O have responded by increasing services across the Irish Sea into and out of Dublin. The parties have submitted analysis, set out in Table 5, indicating that the overall effect of the exit of DFDS A/S and the subsequent actions of P&O and Seatruck would yield the following volumes and market shares for freight ferry services.

Table 5: Market Shares for Freight on Dublin Routes excluding DFDS A/S

Route	Operator	Annual Volume	Market Share
Dublin - Heysham	Seatruck	[...]	[0-10]%
Dublin - Liverpool	Seatruck	[...]	[15-25]%
Dublin - Liverpool	P&O	[...]	[25-35]%
Dublin - Holyhead	Irish Ferries	[...]	[10-20]%
Dublin - Holyhead	Stena AB	[...]	[20-30]%
Dun Laoghaire - Holyhead	Stena AB	[...]	[0-10]%
Total ⁴¹		[...]	

Source: The Authority from information from parties

⁴⁰ These percentages will overstate the effect of the capacity reduction to the extent that there was an under-utilisation of space on ferries. Underutilisation of space implies that some of the former DFDS A/S volumes can be accommodated on services already provided by existing suppliers.

⁴¹ The difference between the total TEU figures, pre and post the cessation of the DFDS Dublin Routes, indicates that there will be a minimal loss in total capacity. [...]

- 5.33 The above figures imply market shares for each operator on the routes into and out of Dublin as follows:
- Irish Ferries - [10-20]% (up from [10-20]%);
 - P&O – [25-35]% (up from [20-30]%);
 - Seatruck – [20-30]% (up from [10-20]%); and,
 - Stena AB – [20-30]% (up from [20-30]%).
- 5.34 On the basis of the above, the effect on market shares for routes into and out of Dublin from both the DFDS A/S exit and the subsequent responses suggest that the largest market share diversions will go to P&O and Seatruck.
- 5.35 Within the subset of freight services on the long-sea routes into and out of Dublin (i.e., between Dublin and Heysham and between Dublin and Liverpool) the effect is that whereas DFDS A/S was previously a large operator by volume, with [30-40]%, the largest operator by volume will now be P&O with [45-55]% of volume. Seatruck will have just under [45-55]% of volume.
- 5.36 Market enquiries would largely support the view that, notwithstanding any price increases, the Seatruck and P&O responses will substantially address any reduction in freight capacity arising from the cessation of the DFDS Dublin Routes.

Passenger Services

5.37 There is some impact on passenger ferry services on the Irish Sea arising from the cessation of the DFDS Dublin Routes. Information supplied by the parties as set out in Table 6 below indicates the following passenger numbers and market shares on services into and out of Dublin Bay, prior to the cessation of the DFDS Dublin Routes.⁴²

Table 6: Passenger Volumes and Market Shares - Dublin Routes

Route	Operator	Passengers per annum	Market Share
Dublin - Liverpool	DFDS	[...]	[0-10]%
Dublin - Liverpool	P&O	[...]	[0-10]%
Dublin - Holyhead	Irish Ferries	[...]	[45-55]%
Dublin - Holyhead	Stena AB	[...]	[30-40]%
Dun Laoghaire – Holyhead	Stena AB	[...]	[0-10]%
Total		[...]	

Source: The Authority from information from parties

5.38 Specifically in relation to services between Dublin and Liverpool the exit of DFDS A/S, which carried approximately [55-65]% of passenger traffic on that route, leaves P&O as the only operator. The introduction of the “*European Endeavour*” has the potential to increase P&O’s passenger capacity on the route between Dublin and Liverpool.

5.39 As indicated above, within a larger geographic market and a larger set of passenger ferry services, the ending of DFDS A/S passenger ferry services between Dublin and Liverpool implies a much less significant impact. It will also remain the case that there are short-sea alternatives between Dublin and Holyhead and Dun Laoghaire and Holyhead, and indeed a long-sea alternative via Belfast.

⁴² These figures are taken from the original notification on 17 December 2010. As noted above any effects of the cessation of services on the DFDS Dublin Routes are not merger-specific as the cessation of the DFDS Dublin Routes is not part of the notified transaction. Rather the relevant counterfactual in this context does not include the continuation of services by DFDS into and out of Dublin.

Conclusion Concerning the Cessation of DFDS Dublin Services

- 5.40 The Authority has not found evidence to support a theory of harm of coordinated behaviour by the parties, or by the parties and third parties, for any actual or expected price rises for freight services.
- 5.41 The Authority has not found evidence to support a theory of harm of coordinated behaviour by the parties, or by the parties and third parties, for the cessation by DFDS A/S of services on the DFDS Dublin Routes subsequent to the notified transaction.
- 5.42 The Authority notes that there have been market responses to mitigate substantially the immediate decrease in freight capacity which arose from cessation of freight services on the DFDS Dublin Routes.
- 5.43 The Authority also notes that there has been a reduction in capacity for passenger services between Dublin and Liverpool arising out of the cessation of services on the DFDS Dublin Routes. Furthermore, P&O, the remaining operator, has the potential to increase passenger capacity on this route and there remain alternative routes and ferry services across the Irish Sea.

6. SECTION SIX: ANCILLARY RESTRAINTS

Ancillary Restraints

- 6.1 As part of the proposed transaction the Sale and Purchase Agreement contains a non-compete covenant for a duration of [...] after completion of the transaction. The Authority considers this restriction to be directly related and necessary to the implementation of the proposed transaction.

Relevant International Obligations

- 6.2 Before making a determination on this matter, the Authority, in accordance with Section 22(8) of the Act, considered whether any relevant international obligations of the State existed and concluded that there were none.

7. SECTION SEVEN: THE DETERMINATION

The Competition Authority, in accordance with Section 22(3)(a) of the Competition Act, 2002 has formed the view that the result of the proposed acquisition whereby Stena AB, through its subsidiary Stena Line (UK) Limited, would acquire control of certain assets of DFDS A/S, will not be to substantially lessen competition in markets for goods and services in the State and, consequently, the Authority hereby determines that the acquisition may be put into effect.

For the Competition Authority

Declan Purcell

Chairperson of the Competition Authority

Member of the Competition Authority

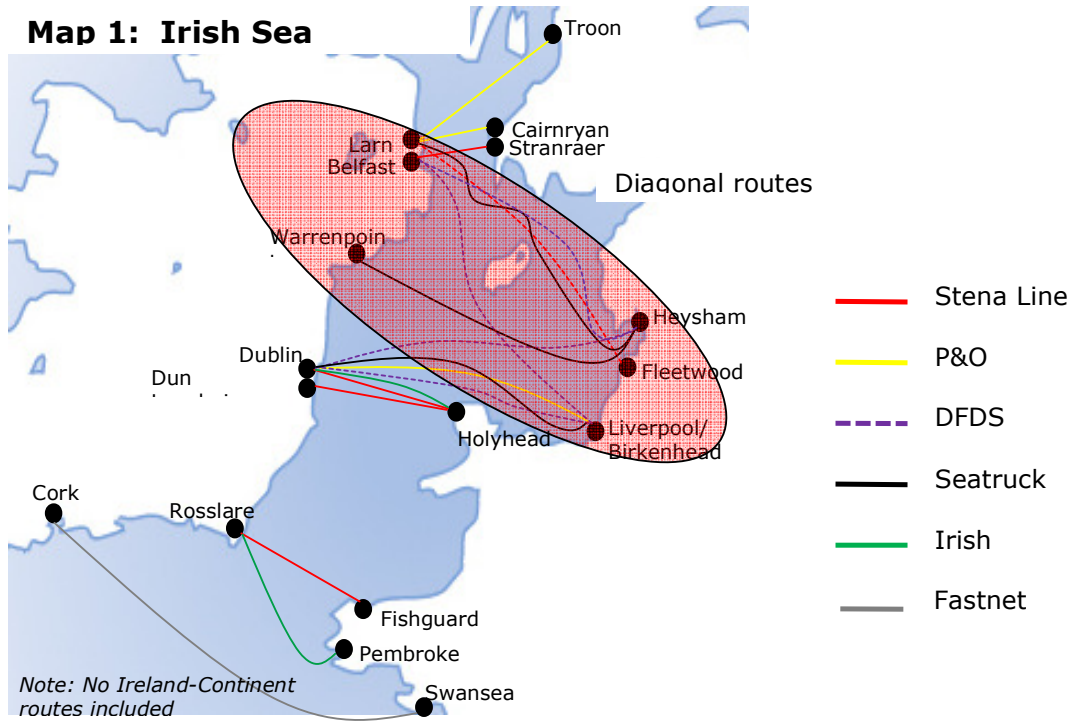
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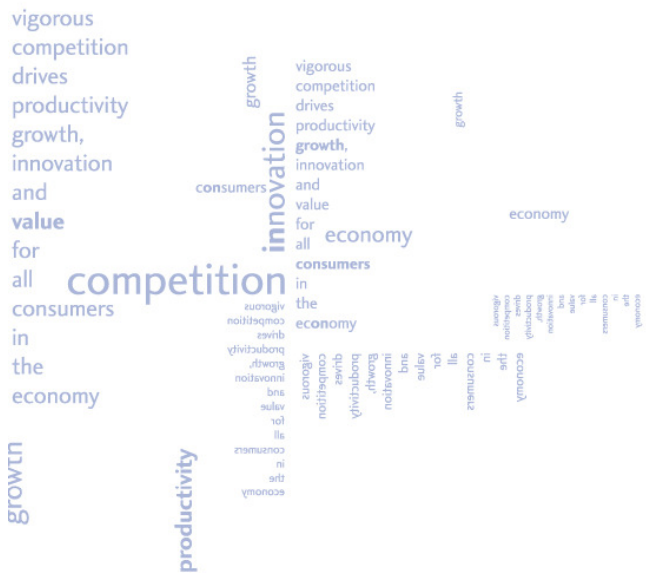
Member of the Competition Authority

Ciaran Quigley,

Member of the Competition Authority

APPENDIX A: IRISH SEA FERRY ROUTES





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