COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE NO. 1217/4/8/13

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the "Rules"), the Registrar gives notice of the receipt on 3 July 2013 of an application for review under section 120 of the Enterprise Act 2002 (the "Act"), by the Société Coopérative de Production SeaFrance S.A. (the "SCOP") against a decision dated 6 June 2013 (the "Decision") made by the Competition Commission (the "Commission") concerning the acquisition by Groupe Eurotunnel S.A. ("GET") of certain assets of the former SeaFrance S.A ("SeaFrance"). The SCOP is represented by Reynolds Porter Chamberlain LLP of Tower Bridge House, St Katherine's Way, London E1W 1AA (ref: Stephen Smith / Lambros Kilaniotis).

The Decision concerns in particular ferry services provided by a subsidiary of GET, My FerryLink SAS ("MFL"), using vessels formerly owned by SeaFrance prior to its collapse. GET acquired those vessels (and other assets) under an order of the Paris Commercial Court by which SeaFrance's assets were liquidated. MFL currently operates between Dover and Calais.

The Commission found that the acquisition was a 'relevant merger' situation within the meaning of the Act and that it may be expected to result in a substantial lessening of competition ("SLC") in the freight and passenger markets on the short sea compared with the counterfactual situation. By way of remedy, the Commission prohibited GET from directly or indirectly operating ferry services at the port of Dover, commencing on the date six months from the date of any order to implement the remedy, for a period of 10 years in respect of two of the ex-SeaFrance vessels and for a period of two years in any event. The 10 year prohibition would cease to apply if two of the vessels - the *Berlioz* and the *Rodin* - were sold, but the two year prohibition would remain.

The SCOP provides commercial services to MFL in connection with its ferry operations, in particular by supplying the crew and operating the vessels. Many (but not all) of the SCOP's employees formerly worked for SeaFrance, but were made redundant, following which they were out of work for (at least) six months until MFL commenced its business. The Application states that the consequence of the Decision is that GET and, in practice, the SCOP are prohibited from operating ferry services at the port of Dover. Further, the SCOP reasons that a fundamental part of the Decision is that GET has control of the SCOP's staff; absent that finding, the Commission had no jurisdiction to consider the merger and could not have imposed onerous remedies preventing the SCOP from carrying on its business.

By its Notice of Application, the SCOP challenges two aspects of the Decision:

1. The Commission did not have jurisdiction to consider the merger:

    a. the Commission erred in concluding that GET and the SCOP were "associated persons";

    b. but, if they were "associated persons", the Commission erred in concluding that two enterprises ceased to be distinct because the "associated persons" only obtained assets (i.e. the vessels) which did not constitute an enterprise;

    c. alternatively, if they were not "associated persons", the Commission erred in concluding that GET had material influence over the SCOP; and

d. further or alternatively, there was no proper basis for the Commission to find that GET acquired "the activities of a business" (being the definition of an "enterprise" under section 129 of the Act) in circumstances where SeaFrance had ceased all activity some 7½ months before the transaction took place.

2. Secondly, the SCOP challenges the remedy imposed by the Commission, which as noted above applies in practice to the SCOP as well as to GET. In particular:

   a. the Commission breached the SCOP's right to a fair hearing in making findings that (contrary to the SCOP's position) its remedy was compatible with the order of the Paris Commercial Court; and

   b. the Commission erred in assessing whether its chosen remedy was proportionate, particularly by failing to take into consideration the costs to the SCOP and its employees arising from the loss of hundreds of jobs.

By way of relief, the SCOP seeks:

1. a declaration that the Commission's decision is unlawful;

2. an order quashing the Commission's decision;

3. an order referring the matter back to the Commission to reconsider the matter in accordance with the ruling of the Tribunal;

4. an order that the Commission pay the SCOP its costs of the application; and

5. such further or other relief as the Tribunal considers appropriate.

In Case No. 1216/4/8/13, GET has also applied for review of the Decision. The SCOP was granted permission to intervene in those proceedings during a case management conference on 24 June 2013. The Tribunal has indicated that it will hear the SCOP's application at the same time as GET's application.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules. Pursuant to the Order of the Chairman (made 4 July 2013) abridging time for applying for permission to intervene, any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received **no later than 5pm on 9 July 2013**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

Published 4 July 2013