

ANTICIPATED ACQUISITION BY BRETAGNE-ANGLETERRE-IRLANDE S.A. OF CERTAIN ASSETS USED BY P&O FERRIES ON ITS PORTSMOUTH TO LE HAVRE SERVICE

SUMMARY OF WHY THE ANTICIPATED ACQUISITION WILL NOT LEAD TO A SUBSTANTIAL LESSENING OF COMPETITION

Overview

The present transaction arises from P&O's decision to exit from most of its Portsmouth operations and in particular to close its ferry services on the Portsmouth/Le Havre route. The transaction is small in size and is barely a relevant merger situation at all as it only involves:

- the charter (or sub charter) by BAI of two multi-purpose ferries currently operated by P&O on Portsmouth/Le Havre;
- the transfer of employees in Portsmouth and Le Havre currently dedicated to the route to BAI;
- very small consideration. [X]; and
- the assumption by BAI of certain P&O liabilities.

As set out in more detail below and in the parties' previous joint and separate confidential submissions (see Master Index document), if due weight is given to the dynamic nature of the relevant market and to the cumulative constraints that have been identified, it is submitted that the Competition Commission should conclude that this transaction may not be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom.

Moreover, it is submitted that the Competition Commission should conclude that there is no substantial lessening of competition even if it adopts the least favourable view of the

transaction such as that set out by the OFT in its reference decision of 7 December 2004¹. Given P&O's independent decision to exit, BAI would not be in a more favourable position as a result of the transaction than if the transaction had not taken place at all.

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Applying the least favourable view of the market that:

- the market is sufficiently narrow to give BAI a high share;
- but not narrow enough to be a single route; and
- that the barriers to entry are high;

leads to the conclusion that BAI would not be in a more favourable position than if this transaction did not proceed. The present transaction will at worst have no effect on the conditions of competition on a market for the supply of ferry services on the Western Channel and thus cannot be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom. In fact, it is submitted that there will also be significant customer benefits arising from the transaction in terms of continuity and the maintenance of the current all year round service on the route.

As to the question of the existence of an alternative purchaser on which the OFT's reference decision appeared to turn, please see the separate confidential submission by P&O on this issue.

No Substantial Lessening of Competition

Relevant market. In relation to both the freight and tourist markets, it is submitted that there is no compelling reason to move away from the approach consistently taken in past decisional

¹ i.e. that BAI has a high market share on a "Western Channel" market for the supply of ferry services and will have the ability to exercise market power post-merger due to the high barriers to entry to that market and the insufficiency of any competitive constraints to restrain BAI's conduct. See paragraphs 29-41 of the OFT's reference decision.

practice that the Portsmouth/Le Havre route competes within a geographic market that includes the Short French Sea crossings and the Channel Tunnel.

Competitive constraints. BAI's commercial freedom after the transaction will be limited by, *inter alia*, two factors: the competitive restraint upon both tourist and freight services of the Short French Sea (and in relation to tourist services, the impact of low cost airlines and high speed train services) and by a threat of targeted entry on other routes on each of the freight and tourist markets.

Application to counterfactual. Even if the (least favourable) positions such as those taken in the OFT's reference decision are retained and applied to the counterfactual, there is no basis for the finding of a substantial lessening of competition. In this regard,

- the reference decision asserts that the market is not only narrow, consisting of the "Western Channel", but also that barriers to entry are sufficiently high to prevent BAI being effectively constrained within this narrow geographical market.

If these points are correct, and

- it is accepted that, due to its considerable losses, P&O will withdraw from the Portsmouth/Le Havre route irrespective of whether this transaction proceeds; then
- the only plausible entry on this route would be from BAI as it can apply the network synergies to make the risk of entry on this route acceptable.

As a result, the Competition Commission should conclude that the transaction may not be expected to result in a substantial lessening of competition in the market for the supply of ferry services on the Western Channel or indeed an market within the United Kingdom.

On the question of the existence of alternative purchasers, please see the separate confidential submission by P&O.

Independent Entry by BAI. Moreover, when considered within a realistic commercial context this transaction does not entail sufficient change to what BAI would otherwise have achieved through independent entry to represent a substantial lessening of competition.

- BAI can deploy ships from its existing fleet or obtain ships on charter arrangements with crews (at an acceptable cost).
- There is plenty of capacity at both Portsmouth and Le Havre so that berths and slot times can easily be obtained.
- BAI has the necessary expertise of operating within Portsmouth and there is plenty of available expertise at Le Havre.
- All the necessary shore support would be to hand at Portsmouth through BAI expanding its existing operations and contracting with the relevant agencies in Le Havre.
- BAI clearly has all the marketing infrastructure in place.
- As explained in the notification, the arrangements do not *per se* provide for the transfer of passengers by P&O to BAI.
- BAI could also time any entry onto the route to coincide with P&O's withdrawal.

The only additional aspects of this transaction that BAI could not so readily achieve would be:

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It is submitted that these factors are insufficient on their own to lead to a substantial lessening of competition.

Customer Benefits. Finally, there are important customer benefits that accrue from the acquisition. When these benefits are weighed against the fact that P&O, in any event, will close its service on the route, then it becomes apparent that BAI represents the only operator that will ensure that both freight and tourist customers will be supplied with a high quality all

year round service on the route at a time when the cross-Channel market is undergoing significant structural changes.

Conclusion

It is submitted therefore that even on a least favourable basis, this anticipated acquisition cannot be expected to result in a substantial lessening of competition.