



DETERMINATION OF MERGER NOTIFICATION M/10/043 -

Stena/DFDS

Section 21 of the Competition Act 2002

Proposed acquisition by Stena AB of Certain Assets of DFDS A/S

Dated 14 January 2011

Introduction

1. Section 18 of the Competition Act 2002 ("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 Competition Authority (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 transaction prior to clearance by the Authority, and section 19(2) provides that contravention of section 19(1) will result in the merger or acquisition being void.
2. 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 certain assets from DFDS A/S (collectively the "Target Assets").
3. The Target Assets relate specifically to the business to be acquired by Stena Line (UK) Limited, namely passenger and freight transport services on the Irish Sea between Belfast and Liverpool and between Belfast and Heysham. The Target Assets include vessels, related assets, inventory, employees and contracts relating to the services currently operated by DFDS A/S, through its subsidiary DFDS Seaways Irish Sea Ferries Limited.¹

Background

Status of Notified Transaction

4. On 2 December 2010, prior to receiving the notification, Stena AB informed the Authority that it had completed its acquisition of the Target Assets on 1 December 2010.
5. By implementing this acquisition prior to clearance from the Authority, Stena AB and DFDS A/S, infringed section 19(1) of the Act.

¹ 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.

Consequently, as provided for by section 19(2) of the Act, this acquisition is void.²

6. In accordance with its procedures the Authority therefore treats the notification as a proposal to put the acquisition into effect, and has proceeded to assess the notified transaction in accordance with the provisions of the Act.

Hold Separate Undertakings

7. On 14 December 2010 Stena AB advised the Authority that Stena AB and Stena Line (UK) Limited had notified the transaction to the U.K. Office of Fair Trading ("OFT"), and had given undertakings to the OFT whereby the acquired business would be 'held separate' subject to the competition review of the transaction in the U.K. The effect of these undertakings is that the business acquired by Stena Line (UK) Limited from DFDS Seaways Irish Sea Ferries Limited (i.e. the routes and the Target Assets) will operate as a separate business from the remaining business of Stena pending the outcome of the OFT's review.
8. While relevant to the OFT's review, the undertakings by Stena AB and Stena Line (UK) Limited to the OFT do not alter the status of the proposed transaction in Ireland.
9. The Competition Authority had no part in or knowledge of the above-mentioned discussions prior to being informed about them on 14 December 2010.

Irish Sea Ferry Routes

10. The parties submit that prior to 1 December 2010 there were fifteen ferry service routes across the Irish Sea. The parties also submit that prior to 1 December 2010 there were six ferry companies, each providing services on one or more (but not all) of the fifteen routes. The routes, with operators providing services, are between:
 - Larne and Troon – P&O;
 - Larne and Cairnryan – P&O;
 - Larne and Heysham - Seatruck;
 - Larne and Fleetwood – Stena;
 - Belfast and Stranraer – Stena ;
 - Belfast and Heysham - DFDS;
 - Belfast and Liverpool³ - DFDS;
 - Warrenpoint and Heysham - Seatruck;
 - Dublin and Heysham - DFDS;

² The Competition Authority released a press statement on 21 December 2010 on this matter. See <<http://www.tca.ie/EN/News--Publications/News-Releases/Stena-Acquisition-of-Certain-Assets-of-DFDS-AS-Void--.aspx>>.

³ As submitted by the parties, and for the purposes of this list, Liverpool means Liverpool or Birkenhead.

- Dublin and Liverpool – DFDS, P&O, Seatruck;
 - Dublin and Holyhead - Irish Ferries and Stena;
 - Dun Laoghaire and Holyhead – Stena;
 - Rosslare and Fishguard – Stena;
 - Rosslare and Pembroke – Irish Ferries; and,
 - Cork and Swansea – Fastnet;
11. The proposed acquisition by Stena AB from DFDS A/S implies a change of operator on the routes between Belfast and Heysham and between Belfast and Liverpool.
12. In addition two other events have altered the configuration that existed prior to 1 December 2010:
- 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 Birkenhead and between Dublin and Heysham.

The Undertakings Involved

Acquirers

13. Stena AB, based in Goteborg, Sweden, Stena Sessan AB and Stena Metall AB (collectively known as the “Stena Sphere”) are owned and controlled by the Sten A. Olsson family.⁴
14. Stena AB, through its subsidiaries, is involved in various activities including international and domestic sea-based passenger and freight ferry services.⁵
15. Stena Line (UK) Limited and its subsidiaries currently operate ferry services on four Irish Sea routes, namely between: (i) Rosslare and Fishguard, (ii) Dublin and Holyhead, (iii) Dun Laoghaire and Holyhead, and (iv) Belfast and Stranraer. Stena also operated ferry services between Larne and Fleetwood until ceasing operations on 24 December 2010.

Target Assets

16. DFDS A/S, based in Copenhagen, Denmark, is involved in sea-based freight and passenger ferry services in Northern Europe, with services on the Baltic Sea, English Channel, Irish Sea and North Sea.⁶

⁴ See <<http://www.stena.com/en/>>.

⁵ For a summary of Stena AB activities see <<http://www.stena.com/en/Sphere/About+stena/Om+bolagen.htm>>.

⁶ For a summary of DFDS A/S activities see <<http://www.dfds.com/about/>>.

17. As noted above the Target Assets relate specifically to DFDS A/S passenger and freight transport services on the Irish Sea between Belfast and Liverpool and between Belfast and Heysham and include vessels, related assets, inventory, employees and contracts relating to the services as currently provided.

Analysis

18. The Authority has been unable at this stage to reach a determination that the proposed acquisition will not lead to a substantial lessening of competition in any market for goods or services in the State. Accordingly, the Authority intends to carry out a full investigation.

DETERMINATION

19. The Competition Authority, in accordance with section 21(2)(b) of the Competition Act 2002, has determined that it intends to carry out a full investigation under section 22 of the Act in relation to the proposed transaction whereby Stena AB would acquire control of certain assets from DFDS A/S.

For the Competition Authority

A handwritten signature in black ink, appearing to read 'Stanley Wong', with a long horizontal line extending to the right.

Dr. Stanley Wong

Member of the Competition Authority