



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.01.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M. 1045 - DFO/SCANDLINES**

Notification of 16.12.97 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 16/12/1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the undertakings Deutsche Bahn AG ("DB") and the Danish Ministry of Transport ("DMT") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Scandlines AG ("SAG"), a newly created company constituting a joint venture, into which DB and DMT will transfer their respective entire shareholdings in their subsidiaries Deutsche Fährgesellschaft Ostsee mbh ("DFO") and Scandlines A/S ("SAS").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 ('the Merger Regulation') and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES' ACTIVITIES AND THE OPERATION**

3. The relevant business activities of the undertakings concerned are :
  - for DB : rail transport services for passenger and freight in Germany, ferry and related activities in the Baltic region

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<sup>1</sup> OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

- for DMT : rail transport services for passenger and freight in Denmark, ferry and related activities in the Baltic region and operation of the Great Belt and the Øresund fixed links
- for DFO : ferry and related services in the Baltic region
- for SAS : ferry and related services in the Baltic region.

4. All the shares in SAG will be owned in equal proportions by DB and DMT, and their voting rights are in proportion to their shareholdings. Decisions require a majority. Each shareholder will appoint two of the four directors who comprise the Management Board. The Management Board's operations will be overseen by a Supervisory Board, comprising two members nominated by each of DB and DMT, plus two employee representatives. Initially, the Chairman of the Supervisory Board will be appointed by DB, and the Deputy chairman by DMT; thereafter the Supervisory Board will make its own appointments. The Chief Executive Officer is initially appointed by DB and DMT, but thereafter will be appointed by the Supervisory Board from the Management Board. SAG will take over the entire ferry operations of the two parents. The effect is thus to bring those operations, previously under the sole control of the respective party, under joint control. Accordingly, the notified operation constitutes a concentration for the purposes of the Merger Regulation.

## **II. COMMUNITY DIMENSION**

5. DB and DMT have a combined aggregate worldwide turnover in excess of ECU 5,000 million (DB, ECU 13.5 billion; and DMT (only for the SAS Group), ECU 624 million ). Each of them has a Community-wide turnover in excess of ECU 250 million (DB, ECU 13.4 million; and DMT (only for the SAS Group), ECU 624 million. The thresholds are accordingly met without taking into account the whole of DMT's turnover. The parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension; It does not constitute a cooperation case under the EEA Agreement.

## **III. COMPETITIVE ASSESSMENT**

### **A. General**

6. The operation will bring together a total of 21 Baltic sea ferry services currently operated by the parties individually (12 routes by SAS, one by DFO) , together (one route) or jointly with third parties (SAS, 5 routes, DFO two routes). They vary considerably in importance, from 'through routes' linking North Germany to Denmark and/or Sweden (eg Rødby-Puttgarden, Rostock-Gedser and Sassnitz-Trelleborg) and carrying road and rail traffic, both freight and passenger, to minor local routes between islands, carrying foot passengers only. The parties consider it necessary to merge their operations in order to rationalise them and so maintain profitability in the face of two developments which they believe will have significant effects on the sector. The creation of fixed links (tunnels and bridges) across the Great Belt (linking the Danish islands of Fyn, already linked to the mainland, and Sjaelland - the island on which is Copenhagen), and across the Øresund (between Sjaelland and the Swedish mainland near Malmö) will enable road and rail traffic to make an uninterrupted land journey between Northern Continental Europe and Scandinavia. The Great Belt link is already operational for rail traffic and will open for road traffic later this year; the Øresund link is due to open in

2000. The parties expect that this development will have a significant adverse effect on the volumes of traffic of all kinds using their services on 'through' routes, and also on certain local ones (a number of which they plan to close once the links are operational). DMT is the owner of the Great Belt link and co-owner (with the Swedish Government) of the Öresund link. However, the parties consider that neither DMT nor the national governments would have any interest in operating the fixed links in any way which would benefit the operations of SAG. The second development of concern to the parties is the planned abolition of duty-free concessions for intra-Community travel; this will, they suggest, further affect the profitability of many routes, since they rely heavily on income from such sales to help reduce ticket prices. [...]<sup>2</sup>

## **B. Relevant Product Markets**

7. The notifying parties have identified four possible relevant product markets: for freight, passengers, duty-free sales and tourist excursions, in the Baltic region. However, it is not necessary to further delineate relevant product markets because, in all alternative market definitions considered - notably, for individual routes, for freight or for passenger transport - effective competition would not be significantly impeded in the EEA or any substantial part of that area. There is no overlap on individual routes, and as described further below, shares and/or overlaps on other bases are small.
8. The parties' interest in excursions is small (it accounts for less than [...]<sup>3</sup> of their total turnover) and competition is, and is expected to remain, very intense as the business is highly price-sensitive and there are a large number of actual and potential operators. As regards the suggested duty-free market, the parties estimate that currently around [...]<sup>4</sup> of their foot passenger and coach traffic on the short sea routes (ie Gedser-Rostock and Rødby-Puttgarden) undertakes the journey solely or mainly in order to make duty-free purchases. However as indicated above this trade is expected to end in 1999 with the expected abolition of the duty-free concession for intra-Community travel. Accordingly and in the absence of any indication having been found during the Commission's examination that the merger may have significant adverse effects on competition in these areas, they will not be considered further.
9. Both parties' interests also include port facilities. The operation of port services has been identified in a Commission decision of 1993 concerning the provision of port services at the port of Rødby<sup>5</sup> as a separate market. SAS owns the ports of Gedser and Rødby. DB owns the land-based facilities at the port of Puttgarden, where DFO owns the ferry terminal. However the merger should not have any significant impact in this area. Its only effect is to bring under the same control the port facilities at Puttgarden with those of Rødby, and in practice these facilities will have already been operated in close conjunction with each other, since DFO and SAS have for some time operated their Rødby- Puttgarden ferry service as a joint venture.

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<sup>2</sup> deleted as business secret

<sup>3</sup> deleted as business secret

<sup>4</sup> deleted as business secret

<sup>5</sup> OJ No. L55 26.02.94

### C. Geographic Dimension

10. It is the notifying parties' view that the relevant geographic market is the market for international transportation over land, sea or air, between Scandinavia, on the one hand, and Continental Europe. However it is not necessary to further delineate relevant geographic markets because, on all alternative geographic market definitions considered, the merger would not significantly impede effective competition in the EEA or any substantial part of that area.
11. The parties do not operate competing services on any route. The merger's principal impact on competition is therefore limited to the loss of DFO and SAS as potential competitors on any individual route or groups of routes which may be substitutes for each other. As regards possible inter-route competition (ie, competition between routes) on the through-routes, the port of Rødby decision already referred to found that the Rødby-Puttgarden service could not easily be substituted by other ferry links between Denmark and Sweden and Germany, some of which are operated by third parties. That decision observed in particular that there was no motorway link from Western Germany to Rostock and Warnemünde, by contrast with Puttgarden, which was in any case nearer to Hamburg (through which most traffic between Western Europe and Scandinavia must pass). It also observed that the crossing-time was notably longer via Rostock, and that traffic flows were much lower on the easterly routes than on the more westerly route. Finally it added that use of the fixed links (which were at that time planned but not built) would still require the payment of a toll.
12. The parties argue that improvements in third parties' services on the other routes, both as to time and frequency, plus the opening of the Great Belt for rail traffic, mean that for many customers there are now a number of viable alternatives to the Rødby-Puttgarden route, and that with the completion of the links these alternatives will appeal to an even larger proportion of customers than they do at present. They point to a reduction of nearly [...]<sup>6</sup> across the board in volumes of traffic on the Rødby-Puttgarden route between 1991 and 1996, and a significant growth in traffic on certain of the more easterly routes (eg Rostock-Trelleborg, up [...]<sup>7</sup> over the same period). As regards the fixed link tolls, the parties advise that current proposals for the Great Belt would result in prices well below those currently charged for the ferry crossing (30-50% lower). Pricing for the Øresund link has yet to be decided; but the parties expect that prices will be pitched at a level that, in combination with the Great Belt link and the improved ferry services on the other routes, would have a negative effect on their traffic volumes, and in consequence on profitability; [...]<sup>8</sup>.
13. It is difficult to assess precisely the impact of all these present and future developments on the extent to which inter-route competition exists (or will do so) and will be affected by the merger. However, if inter-route competition is a reality on any of the ferry routes affected by the merger, then it is most likely to arise between Rødby-Puttgarden and Gedser-Rostock, since these are the closest geographically. If these routes are indeed in competition with each other (and it should be noted that unlike Rødby-Puttgarden, Gedser-Rostock carries no rail traffic) then the merger's main effect would be to remove DFO as a potential entrant to Gedser-Rostock. This possibility, and its effect, are considered further below.

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<sup>6</sup> deleted as business secret

<sup>7</sup> deleted as business secret

<sup>8</sup> deleted as business secret

14. As regards the extent to which the fixed links should be considered as substitutes for the Germany-Scandinavia ferries generally, this too is unclear as the links are not yet fully operational. Moreover, as already described, the parties (and the relevant national governments) have some interest in them, although, according to the parties, the national governments have no interest in operating them in such a way as to benefit the parties' ferry operations. There is also the difficulty of assessing customers' preferences in terms of time and cost. For example, to reach Copenhagen from Hamburg via the Great Belt link will involve an additional road journey of about 150km by comparison with the route via the Rødby-Puttgarden ferry. But in terms of total journey time, allowing for the one-hour ferry crossing, the difference between the routes is likely to be small - less than an hour for road traffic. As for the costs of the alternative methods, there will be some additional fuel involved in using the Great Belt link, however on the parties' information the toll will be significantly less than the ferry fare, so on that basis the road route should be cheaper overall, and in some instances (eg at peak times, when ferry fares are highest) substantially so. Some professional drivers may however not be able to use the fixed links as an alternative to the ferry, in view of their need to comply with statutory limits on the number of hours they spend at the wheel. Whether they will be sufficiently numerous to allow the parties to price-discriminate (which would probably involve raising prices for all truck-drivers, since the parties could not readily identify those who were likely to be affected by the limitation) is unclear, but does not appear likely. If the fixed links are substitutes for the ferries, then the creation or reinforcement of dominance as a result of the merger is much less likely; but even if they are not, the merger's primary effect is on potential rather than actual competition, and on the basis of the assessment below, that effect is not likely to be significant. Market definition can therefore be left open.

#### **D. Assessment**

15. The merger creates no direct overlaps between the parties in terms of individual routes. The shares and/or overlaps in terms of individual types of traffic are small. The parties do not compete directly with each other over any individual route, so the merger will not lead to any increased market share in any product category on that basis. On a wider basis, their combined shares of all international freight (excluding air freight, and also rail freight, which they no longer carry except on one route operated by DFO with third parties) between Scandinavia and Northern Continental Europe are estimated by the parties at [...]<sup>9</sup>, the bulk of this accounted for by a single route - the jointly operated Rødby-Puttgarden crossing. So far as can be established, there are no significant categories of freight in which the merger will create or enhance large market shares. As regards passengers, they estimate their current combined share of all passenger traffic between Northern Continental Europe and Scandinavia (excluding rail) at [...]<sup>10</sup>. Moreover the increment arising from the merger is minimal ([...]<sup>11</sup>, derived from the addition of the Sassnitz-Trelleborg route, operated jointly by DFO and SAB of Sweden) and one of the main SAS routes concerned (Halsskov - Knudshoved, responsible for [...]<sup>12</sup>) will close next year as it parallels the crossing made by the Great Belt link. All three passenger train routes (Rødby-Puttgarden, Sassnitz-Trelleborg and Rostock-Trelleborg) are already operated by DFO jointly with either SAS, in the case of Rødby-Puttgarden, or SAB. Consequently, since these arrangements

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<sup>9</sup> deleted as business secret, under 25%

<sup>10</sup> deleted as business secret, 30 - 50%

<sup>11</sup> deleted as business secret

<sup>12</sup> deleted as business secret, 10 - 20%

(which include joint control of prices and timings) are expected to continue, the merger will not lead to any increment in the parties' share of this category. Moreover the parties expect their shares in all categories to fall significantly (by at least [...]<sup>13</sup>) following completion of the fixed links.

16. If inter-route competition exists at all, the merger's impact on it should be slight. The only potentially significant routes, from this point of view, appear to be the two adjacent Germany-Denmark routes, R<sup>u</sup>dby-Puttgarden (already jointly operated) and Gedser-Rostock, where the merger will have the effect of removing DFO as a potential competitor. However DFO does not appear to have been a likely entrant in any case; a few years ago it withdrew from a partnership with SAS on the route. [...]<sup>14</sup> and its total traffic is much less than on R<sup>u</sup>dby-Puttgarden (currently about [...]<sup>15</sup> in terms of freight and [...]<sup>16</sup> in terms of passengers). Since the fixed links seem likely to have some effect on the volumes of passengers and freight on these routes, even if they are not true substitutes (ie they do not constrain prices for the incumbents) they should nonetheless make entry on the ferry routes less attractive, and thereby further reduce the impact of the loss of DFO as a potential competitor to SAS on Gedser-Rostock, either in combination with R<sup>u</sup>dby-Puttgarden or (if there is no inter-route competition) alone.
17. This analysis, and the approach to market definition, was broadly borne out by the Commission's enquiries of customers, competitors and other interested parties. The majority of respondents were generally unconcerned by the merger, and considered that the fixed links would probably improve the competitive situation for Germany-Scandinavia traffic of all kinds, though their views varied as to the extent to which this would be the case. Some ferry operators expressed concerns, however. These concerns were broadly of two kinds: that the merged entity would have excessive financial power, enabling it to cross-subsidise operations and make long-term investments that would result in competitors being driven from the market; and that the merger would allow the parties to abuse their position as owners of the ports of, respectively, R<sup>u</sup>dby and (land-side facilities only) Puttgarden by denying access, at all, or on reasonable terms, to potential entrants - of whom there currently appear to be at least two.
18. The first concern does not appear to be justified. Both parties, individually, already have considerable financial strength, deriving in part from government involvement. It is unclear whether and if so to what extent the merger will lead to a strengthening of the merged entity's financial position. But increased financial strength is not of itself anti-competitive. The merger does not reduce competition significantly on an intra- route or inter-route basis, limiting the scope for improved profits, and no evidence has been found to suggest that a predatory pricing strategy by the merged entity would be rational or effective.
19. The second concern is, in effect, that barriers to entry on the relevant route will be increased as a result of the merger. The 1993 decision already referred to found, among other things, that DSB and DB (the predecessors of the parties to the present merger) had a dominant position on the route concerned (which they operated jointly) and that DSB was dominant in the provision of port services at R<sup>u</sup>dby. As discussed above, however, the

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<sup>13</sup> deleted as business secret - substantial

<sup>14</sup> deleted as business secret

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<sup>16</sup> deleted as business secret

merger does not materially affect competition in regard to port services and so does not create or strengthen a dominant position in them. Applications for entry at the two ports by operators wishing to offer a competing service on Rødbj-Puttgarden have been the subject of, or are currently under, consideration by the relevant national authorities in Denmark and Germany.

20. In view of the market position of the parties to the concentration as described above, it appears that the notified operation will not have a significant impact on competition in any relevant market in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

**V. CONCLUSION**

21. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

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