

***Case No COMP/M.2838 -
P & O STENA LINE
(HOLDING) LIMITED***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 07/08/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07/08/2002

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.2838 - P&O/P&O Stena Line

Notification of 05.07.2002 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 5 July 2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, whereby The Peninsular and Oriental Steam Navigation Company (P&O) would acquire full control over P&O Stena Line (Holdings) Limited ("P&OSL), in which P&O already has 60% of the share capital, and Stena Line (UK) Limited ("Stena Line UK") has 40%.

I. THE PARTIES

2. P&O is a UK listed parent company of a diversified group with interests including international container terminal operations, ferry services for freight and passengers, logistics and cargo shipping. Stena Line UK is one of two businesses within the corporate group of Stena AB (Stena), a Swedish company, which operates ferry services in the UK. Stena Line UK operates a number of tourist and freight ferry routes between Great Britain and Ireland across the Irish Sea. Stena Line BV operates ferry services between Great Britain and mainland Europe across the North Sea.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. The current joint venture between these parties, P&O SL, operates freight and passenger ferry services on two routes between Great Britain and mainland Europe (Dover/Calais and Dover/Zeebrugge). It was formed through the combination of P&O's and Stena Line UK's ferry operations on the Short Sea (see paragraph 6 below) and commenced operation in 1998. The Commission initially granted the creation of the P&O SL joint venture a three year exemption under Article 81(3) EC,² which was later renewed for a further six year period.³ The proposed concentration would in effect be a de-merger of P&O's and Stena's interests in this area.

II. THE OPERATION AND THE CONCENTRATION

4. P&O SL is currently jointly controlled by P&O and Stena Line UK. The transaction brings about a change from joint to sole control which constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.⁴ After the completion of the transaction P&OSL intends to close its freight service on the Dover/Zeebrugge route and to concentrate on the Dover/Calais route. The closure of its Dover/Zeebrugge service is likely to lead to a reduction in the size of P&O SL's fleet from 10 to 8 vessels.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregated world-wide turnover of more than EUR 5 billion (P&O EUR6,833 million and P&O SL EUR 667 million)⁵. Each of P&O and P&O Stena Line has a Community-wide turnover in excess of EUR 250 million (P&O EUR [] million and P&O SL EUR [] million), but they 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.

IV. INTRODUCTION TO THE MARKET

6. The transaction concerns ferry transport services for freight and passengers between mainland Europe and Great Britain (the Anglo/Continental market). This geographical area can in broad terms be divided in (a) the Short Sea, consisting of routes across the Short French Sea (routes between Dover, Folkstone, Ramsgate, Newhaven and Calais, Dieppe, Boulogne, Dunkirk and the Channel Tunnel) and the Belgian Straits (Ramsgate and Ostend), (b) the North Sea, consisting of routes between ports on the east coast of England and ports in Belgium and the Netherlands and (c) the Western Channel, consisting of routes between ports on the south coast of England and ports on the north

² Commission decision of 26 January 1999 in case IV/36.253 – *P&O Stena Line I*.

³ Case COMP/D2/37.939 – *P&O Stena Line II* – see press release IP/01/806 issued on 7 June 2001.

⁴ Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentration between undertakings, point 16.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

coast of France. The duration of a crossing of a Short Sea service is considerably shorter than a crossing on the North Sea or the Western Channel and the Short Sea offers the highest number of frequencies. The bulk of the demand for both freight and tourist/passenger services is served by Short Sea services.

7. Ferry operators can carry both freight and passengers (passengers accompanying a vehicle or foot-passengers). Most of the ferry operators who offer passenger services operate with so called multi-purpose vessels carrying both passengers and freight on the same vessel, which allows capacity to be shifted between the two services, depending on the specific demand for a particular sailing. Approximately 7,5 million tourist vehicles were transported on the Anglo/Continental market in 2000, with the Short Sea accounting for almost 80%.
8. Ferry operators offer freight services for unitised freight i.e. freight which for the purpose of transport is stored in various forms of standardised modes (such as driver-accompanied vehicles, unaccompanied vehicles and containers). Unitised freight can be carried on roll-on/roll-off (ro-ro) or lift-on/lift-off (lo-lo) vessels as well as by shuttle service and freight trains via the Channel Tunnel.
9. In 2000, roughly 5200 thousands freight units were carried by the above-mentioned modes of transport on the whole Anglo/Continental market, with the Short Sea accounting for about half of that volume.
10. Besides P&O, the following main operators are active on the Anglo/Continental freight or tourist passenger market.
11. Eurotunnel carries freight and passenger vehicles (including passengers accompanying a vehicle) on separate shuttles through the Channel Tunnel. SeaFrance is a wholly owned subsidiary of SNCF and one of the main operators both for freight and tourists services on the Short Sea. Norfolkline - belonging to the A.P. Møller group - operates freight and multipurpose ferries on the Short Sea and the North Sea. In 2000 it successfully entered the Short Sea with two mixed passenger and freight ferries between Dover and Dunkirk. The French Brittany Ferries is offering tourist and freight services on the Western Channel. Stena Line BV is a part of the wider Stena Sphere, whose subsidiaries operate a significant number of ferry routes in Scandinavia and around the UK. Apart from its share in P&O SL which is to be sold by the current transaction, it currently operates two routes in the North Sea, where it also plans to extend its services. Hoverspeed offers passenger only services on the Short Sea and Cobelfret offers freight only services on the North Sea.
12. P&O is the only operator who is present on the Short Sea, the Western Channel and the North Sea.

V. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

13. In the P&O Stena Line I decision⁶ the relevant product and geographic markets have been defined as follows.

⁶ See footnote 2 above.

14. The market for tourist passenger services (passengers and passenger vehicles) on the Short Sea routes (see paragraph 6 above) (the Short Sea tourist market). Although the Commission found that tourist passenger service operations on the Western Channel and the North Sea respectively were competitively constrained by services on the Short Sea, there was no evidence of reverse substitutability, which suggested a one-way substitutability.
15. The market for unitised freight services (maritime services and door-to-door intermodal services) between England and mainland Europe consisting of a variety of routes on the Western Channel, the Short Sea and the North Sea, (the Anglo-Continental freight market).
16. The parties maintain that these market definitions are still valid. For the purposes of this decision, it is not necessary to decide whether this market delineation is still justified as, irrespective of the market definition retained, the proposed transaction does not raise serious doubts as to its compatibility with the common market.

VI. COMPETITIVE ASSESSMENT

Freight market

17. The market share-situation of operators of cross-Channel freight services in different alternative geographical market scenarios will be as indicated in the following table:

Table 1: Freight market 2001*

	Anglo/ Continental	Short-Sea	North-Sea	Western Channel	Short Sea + North Sea	Short Sea + Western Channel
P&OSL**	[15-25]	[25-35]	[0-10]	-	[15-25]	[20-30]
P&O total	[30-40]	[25-35]	[30-40]	[40-50]	[25-35]	[25-35]
Eurotunnel	[20-30]	[35-45]	-	-	[20-30]	[30-40]
Cobelfret	[5-15]	-	[15-25]	-	[5-15]	-
Seafrance	[5-15]	[15-25]	-	-	[5-15]	[10-20]
Norfolkline	[5-15]	[5-15]	[0-10]	-	[5-15]	[0-10]
Dartline	[0-10]	-	[0-10]	-	[0-10]	-
Brittany Ferries	[0-10]	[0-10]	-	[50-60]	-	[0-10]
Stena	[0-10]				[0-10]	
Through trains***	[0-10]	[0-10]			[0-10]	[0-10]
Other operators****	[0-10]		[10-20]		[0-10]	
Total	100	100	100	100	100	100

Source: Form CO

* The table is based on the number of freight units carried by ro/ro (roll-on/roll-off) ferries and freight services via the Channel Tunnel. As seen in para. 9 above, the Commission does not exclude that other forms of maritime transport services, such as lo/lo (lift-on/lift-off) and door-to-door transport providers will be a part of the same market, which would further reduce the market shares indicated in the table above. Apparent mathematical errors are a result of rounding.

** P&OSL route Dover/Calais classifies as Short Sea whereas its Dover/Zeebrugge-service classifies as North Sea. P&O plans to close down the Dover/Zeebrugge route at the end of 2002.

*** Through trains' (through the Channel Tunnel) carryings have been estimated by reference to the annual tonnage of freight carried, where 20 tonnes of freight are equivalent to 1 ro/ro unit.

**** DFDS, Trans European, Ferryways and Sammarina

No single dominance

18. The proposed transaction will not lead to an addition of market shares. As can be seen from the table, P&O would on an Anglo/Continental freight market as defined in the above table have a market share of [30-40]%, followed by Eurotunnel with [20-30]% and a number of smaller operators with a collective market share of [25-35]%. On the Short Sea, which accounts for more than 50% of the freight traffic illustrated above, Eurotunnel is the biggest competitor. In all of the above alternative geographical market scenarios which includes the Short Sea, the level of market shares held by P&O and the existence of alternative competing supply are not indicative of any possible existence of market power. This situation will not be altered by the proposed transaction.
19. However, in view of the fact that P&O is the only operator present on the Short Sea as well as the North Sea and the Western Channel, concerns have been raised that acquiring full control of P&O SL would increase P&O's possibility to use its profits from its Short Sea service to cross-subsidise its ferry operations on the Western Channel and/or the North Sea in order to drive competitors out of the market. Depending on how the market would be defined, this would amount to cross-subsidisation within the same market (if the market would constitute a single Anglo/Continental freight market) or into a closely related market (if each of the Western Channel and North Sea would constitute separate markets, however competitively constrained by the Short Sea).⁷ The issue to be investigated is therefore whether the sole control of P&O SL will give P&O the incentives and ability to engage in predatory behaviour with a view of eliminating competition on the Western Channel and/or the North Sea.
20. The Commission investigation has indicated that this concern does not appear to be justified. Already today, the chances to successfully drive the necessary amount of competitors out of the market by predatory pricing are unlikely considering that P&O – at least on the North Sea- has to target several competitors, some of which have substantial financial backing and/or are vertically integrated.⁸ Even if it would be possible to eliminate competition on a market where less operators are involved – such as the Western Channel - evidence provided during the investigation has showed that barriers to entry are low and that vessels and port capacity are easily available. Furthermore, prices on the Western Channel and the North Sea are constrained by prices on Short Sea routes. This would imply that the prospect of any market player of recouping the losses incurred by predatory pricing on either the Western Channel or the North Sea by raising prices to a non-competitive level would not appear to be very realistic. The change in control of P&O SL would therefore not alter this situation.

⁷ See points 14 -16 above.

⁸ As an example, Norfolkline is a part of the A.P. Møller group with major interest in various global shipping activities, including port infrastructure facilities, freight forwarding and road haulage business relevant for cross-Channel operations.

No collective dominance between P&O and Eurotunnel

21. On the Anglo/Continental freight market P&O and Eurotunnel will have combined market share of [40-50]% with the nearest competitor accounting for [5-15]%. On the Short Sea these two operators even reach combined shares of [65-75]% with the nearest competitor holding [15-25]%. Other market scenarios involving the Short Sea show a similar allocation of market shares.
22. It has therefore to be established whether the fact that Stena Line UK will withdraw from P&O SL will alter the market structure in such a way as to create or strengthen any collective dominant position on the part of Eurotunnel and P&O.
23. Apart from the high combined market shares the market does not show the characteristics conducive to tacit collusion.
24. Firstly, as seen in the tables above, the market share allocation between Eurotunnel and P&O is not symmetrical in any of the possible market scenarios. Also the cost structures are not similar, neither with regard to the composition of costs nor to the cost base. Eurotunnel and P&O offers transport services with different characteristics and are exposed to different cost factors which further reduces the likelihood of co-ordination. Furthermore, the investigation has shown that there remains significant spare capacity on the market if capacity utilisation is considered over a full year and that both Eurotunnel and P&O have plans to increase freight capacity further. Eurotunnel has purchased nine new freight shuttles, which will increase its freight fleet size from 7 (in 1998) to 16 by 2003. It has announced that further capacity increases will be possible. P&O has announced that it intends to further increase capacity on the Short Sea (where it directly competes with Eurotunnel) and the Western Channel in the very short term.
25. Duopolistic behaviour would also be constrained by other actual and potential competitors, especially in a market where barriers to entry are low and switches between operators are a realistic and timely option. The investigation has shown that entries have occurred during the last years and the successfully recent entry of Norfolkline has shown that new entry is possible also on the Short Sea. Lastly, the Anglo/Continental freight market is expected to grow by a rate of about 5 % per annum for the coming five years, which gives the operators an incentive to compete for new demand.
26. The market conditions as set out above will not be changed as a result of the removal of Stena Line UK as a shareholder in P&O SL.
27. The proposed transaction raises therefore no doubts as to the creation or strengthening of a dominant position of P&O in the freight market.

Tourist passenger market

28. The market shares of operators of cross-Channel tourist passenger services in different alternative geographical market scenarios are indicated in the following table.

Table 2 : Tourist passenger market (2001)*

	Short Sea	North Sea	Western Channel	North Sea + Short Sea	Short Sea + Western Channel	Anglo-Continental
P&OSL	[25-35]	[0-10]	-	[20-30]	[15-25]	[15-25]
P&O total	[25-35]	[35-45]	[35-45]	[25-35]	[25-35]	[25-35]
Eurotunnel	[45-55]	-	-	[40-50]	[35-45]	[35-45]
Seafrance	[5-15]		-	[5-15]	[5-15]	[5-15]
Hoverspeed	[10-20]	-	-	[5-15]	[0-10]	[5-15]
Norfolkline	[0-10]	-		[0-10]	[0-10]	[0-10]
Stena	-	[35-45]	-	[0-10]	-	[0-10]
Brittany Ferries			[55-65]		[5-15]	[5-15]
DFDS	-	[10-20]	-	[0-10]	-	[0-10]
Total	100	100	100	100	100	100

Source: Form CO

* based on the number of tourist vehicles (cars and coaches) carried. Apparent mathematical errors are a result of rounding.

29. The proposed transaction will not lead to an addition of market shares. As can be seen from the table P&O has in no market scenario sufficiently high market shares to allow it to act independently from its closest competitors. On the Short Sea, which accounts for almost 80% of the Anglo/Continental tourist passenger as illustrated in the table above, Eurotunnel is the biggest operator holding a market share of [45-55]%, compared to P&O's [25-35]%. The fact, that after the merger, P&O will control the business of P&O SL alone will not alter this situation.

30. However, in view of the close links between the Short Sea and the Western Channel and the North Sea respectively,⁹ the concerns raised regarding cross-subsidisation and future predatory behaviour have also been investigated for the tourist passenger market. As seen above, cross-Channel ferry operations are mostly operated by multi-purpose vessels carrying not only passengers but also freight.¹⁰ The Commission investigation has shown that the characteristics of the freight market which were of relevance for the conclusions on the likelihood of a successful predatory pricing strategy in that market (notably low barriers to entry and availability of vessels and port capacity)¹¹ indeed also apply for the tourist passenger market.

⁹ See points 14 - 16 above.

¹⁰ See point 9 above.

¹¹ See point 20 above

No collective dominance between P&O and Eurotunnel

31. As seen in the table above, P&O and Eurotunnel will on a market limited to the Short-Sea have a combined market share of [75-85]%. On the Anglo-Continental market the market share will still be [60-70]%.
32. The investigation has in this respect confirmed the Commission's findings in the P&O Stena Line I and II decisions, that the characteristics of the market are such that the operators can be expected to continue to compete with each other rather than act in parallel to raise prices. Eurotunnel and P&O have different costs structures, there is asymmetry in their market shares and there has been a successful new entrant on the market (offering both freight and passenger services).¹² As in the freight market, there appears to be sufficient spare capacity on the market and both SeaFrance's and P&O's future investments will affect also the tourist passenger market. Equally to the situation on the freight market the withdrawal of Stena Line UK from P&O SL will not alter this situation.
33. The proposed transaction raises therefore no doubts as to the creation or strengthening of a dominant position of P&O in the tourist passenger market.

VII. CONCLUSION

34. 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 Articles 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Chris PATTEN
Member of the Commission

¹² See points 24 and 25 above.