



COURT 74
Appeal No

C3/2015/0226

FRIDAY 15TH MAY 2015

IN THE COURT OF APPEAL

ON APPEAL FROM THE COMPETITION APPEAL TRIBUNAL

123541214

BEFORE LADY JUSTICE ARDEN
LORD JUSTICE TOMLINSON
AND SIR COLIN RIMER

B E T W E E N

SOCIÉTÉ COOPÉRATIVE DE PRODUCTION SEAFRANCE S.A.

Appellant

and

THE COMPETITION AND MARKETS AUTHORITY

1st Respondent

and

DFDS A/S

2nd Respondent

UPON HEARING LEADING COUNSEL FOR THE PARTIES

AND UPON CONSIDERING WRITTEN SUBMISSIONS FROM THE PARTIES IN CONNECTION WITH MATTERS CONSEQUENTIAL UPON THE COURT'S JUDGMENT

IT IS HEREBY ORDERED THAT

1. The Appellant's appeal is allowed.
2. The order of the Competition Appeal Tribunal in paragraph 97 of its Judgment of 9 January 2015 [2015] CAT 1 is set aside.
3. The following are quashed:
 - a. The Report of the Competition Commission "*A report on the completed acquisition by Groupe Eurotunnel SA of certain assets of former SeaFrance SA dated 6 June 2013*"
 - b. the Report of the First Respondent "*Eurotunnel/SeaFrance merger inquiry remittal Final decision on the question remitted to the Competition and Markets Authority by the Competition Appeal Tribunal on 4 December 2013*" dated 27 June 2014 and
 - c. the CMA's Order imposing remedies dated 18 September 2014 (the Remedies Order").
4. Applications of the First Respondent ("CMA") and the Second Respondent ("DFDS") for permission to appeal to the Supreme Court are



refused.

5. Until and including 10 July 2015 or the determination by the Supreme Court of any application for permission (whichever first occurs), the quashing of the following provisions in Schedule 2 to the Remedies Order is stayed - namely paragraph 1, paragraph 2(a), paragraphs 2(d), 2(e), 2(f), 2(g) and paragraph 3, with Schedule 2, paragraph 2(f) to be applied as if the words "*in accordance with the requirements of Article 2*" were deleted. For the avoidance of doubt, it will be for the CMA to seek from the Supreme Court, if so minded, any continued stay of the quashing of the Remedies Order pending the determination of any appeal for which permission may be given. In the event that it appears unlikely that any decision from the Supreme Court as to permission will be received before 10 July 2015, the CMA is at liberty to apply to the Court of Appeal on notice to the other parties on an oral hearing for any further interim protective relief to which it considers it ought to be entitled.
6. The CMA shall pay the Appellant's costs of its application to the Competition Appeal Tribunal below on the standard basis to be assessed, if not agreed.
7. The CMA shall pay 90% of the Appellant's costs of its appeal to the Court of Appeal on the standard basis to be assessed, if not agreed.
8. DFDS shall pay 10% of the Appellant's costs of its appeal to the Court of Appeal on the standard basis to be assessed, if not agreed.
9. The Appellant's costs of its appeal to the Court of Appeal shall include the costs of the Appellant's applications for permission to appeal and expedition as reserved by paragraph 5 of the Court's Order of 6 February 2015, but there shall otherwise be no order as to the costs reserved by paragraph 5 of that Order.
10. The CMA shall repay to the Appellant the sum which the Appellant paid to the CMA in respect of the costs of the proceedings before the Competition Appeal Tribunal below, plus interest at 1% above base rate.
11. Without prejudice to the Appellant's entitlement to interest on the costs payable under paragraphs 6 to 10 above, those paragraphs shall not take effect until:
 - a. the expiry of time for the CMA to seek permission to appeal to the Supreme Court, if no such application is made; or
 - b. if permission to appeal is refused by the Supreme Court, the date on which permission to appeal is refused; or
 - c. if permission to appeal is granted by the Supreme Court, but that appeal is unsuccessful, judgment is handed down on that appeal.
12. In the event that any of the events in paragraphs 11(a) 11(b) or 11(c) occur:
 - a. The costs payable under paragraph 10 above shall be paid within 14 days of such event.
 - b. there shall be no order as to the costs incurred by the parties in connection with the issue of any interim payment and/or the



timing of the payment of the costs to be ordered by the Court of Appeal.

13. If permission to appeal is granted by the Supreme Court, and that appeal is successful, the costs referred to in paragraph 12b shall be paid by the Appellant to the CMA.



By the Court

FRIDAY 15TH MAY 2015
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ON APPEAL FROM
THE COMPETITION APPEAL TRIBUNAL

ORDER

Copies to:

Hogan Lovells
Atlantic House
Holburn Viaduct
London
EC1A 2FG
Ref: 5693946

Rebekah Black And Malcolm Abraham
solicitors
Competition And Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD
Ref: LUI4/0296/SJ/RB

Reynolds Porter Chamberlain Llp
Dx 600
London/City
Ref: SRS

Competition Appeal Tribunal
Victoria House
Bloomsbury Place
London
WC1A 2EB

* This order was drawn by Mr J Hebden (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr J Hebden, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7073 4831