



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE NO: 1235/4/12/14

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Rules”), the Registrar gives notice of the receipt on 24 July 2014 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”), by Société Coopérative de Production SeaFrance S.A. (“SCOP”) of Place Henri Barbusse, 62100 Calais, France against a decision dated 27 June 2014 (the “Decision”) made by the Competition and Markets Authority (“CMA”) titled “Eurotunnel / SeaFrance merger inquiry remittal”. The SCOP is represented by Reynolds Porter Chamberlain LLP of Tower Bridge House, St Katherine’s Way, London E1W 1AA (ref: Lambros Kilaniotis / Paul McComb).

By its judgment of 4 December 2013 in *Groupe Eurotunnel S.A. & Or v. Competition Commission* ([2013] CAT 30 (the “December Judgment”)), the Tribunal remitted to the Competition Commission (“CC”) the question of whether the acquisition by Groupe Eurotunnel S.A. (“GET”) of certain assets of the former SeaFrance S.A. (“SeaFrance”) (the “Transaction”) amounted to two enterprises ceasing to be distinct within the meaning of section 26(1) of the Act.

In the Decision, the CMA (which took over the functions of the CC from 1 April 2014) determined that remitted question, and also considered whether there had been a material change of circumstances (“MCC”) since the date of the CC’s original report of 6 June 2013 (the “Original Report”) in relation to the acquisition. The CMA concluded that the collection of tangible and intangible assets (including the transferred ex-SeaFrance employees) acquired by GET and SCOP (as associated persons) met the legal definition of an enterprise in that together they constituted the activities or part of the activities of a business. The CMA further concluded that there had been no MCC within the meaning of section 41(3) of the Act.

According to its notice of application, SCOP challenges the CMA’s finding that the Transaction gives rise to a relevant merger situation and hence that the CMA has jurisdiction to consider the Transaction under Part 3 of the Act. SCOP submits that, to establish jurisdiction, the CMA had to find that GET acquired the “activities” of SeaFrance. However, SeaFrance ceased any and all activity in November 2011, some 9 months before MyFerryLink S.A.S. commenced operations. GET did not acquire any “activities” and the Decision fails to establish any lawful or rational basis for finding that it did.

SCOP submits further that the CMA’s reasoning depends on findings for which there was no or no adequate evidence, takes account of irrelevant considerations, and fails to take account of relevant considerations. Further, SCOP submits that the CMA appears to have erred in taking a deliberately expansive approach to the legal test, the effect of which was to seek to expand the CMA’s statutory jurisdiction beyond that created by Parliament.

By way of final relief, SCOP seeks:

1. A declaration that the Decision is unlawful;
2. An order quashing the Decision and the Original Report;
3. An order that the CMA pay the SCOP its costs of this application;
4. Such further or other relief as the Tribunal considers appropriate.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules. Any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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