JOINT VENTURES (FERRIES): THE P & O / STENA CASE

Subject: Joint ventures

Industry: Ferry services

Parties: P & O
Stena

Source: Commission Statement IP/99/56, dated 28th January 1999

(Note. There is some irony in the fact that a year ago the Commission fined P & O, Stena and others for concerted practices in price-fixing - see the report in our April, 1998, issue on page 80 - while it is now sanctioning a cooperative joint venture between the two principal parties. An interesting reason for the Commission's approval is its belief that the combined ferry service and the Channel Tunnel service will compete with one another and not "act in parallel to raise prices". We shall see. Meanwhile, the Commission has wisely chosen to limit the duration of its approval, so that it can re-examine the situation in two years' time.)

The Commission has approved the joint venture between P & O and Stena operating cross-Channel ferry services. P & O and Stena have combined their respective ferry operations in a joint venture company, P & O Stena Line. The Commission's decision exempts the joint venture from the prohibition of anti-competitive agreements set out in Article 85(1) of the EC Treaty for the period ending on 9 March 2001.

On 31 October 1996, P & O and Stena notified their proposal to the Commission for an exemption under Article 85(3) of the EC Treaty. Following the publication of a summary of the proposal on 13 March 1997 in the Official Journal of the European Communities, the Commission on 10 June 1997 sent the parties a letter of serious doubts setting out reasons why it was continuing its investigation into the proposal. On 6 February 1998, the Commission published a notice in the Official Journal indicating its intention to exempt the joint venture.

The joint venture started operations on 10 March 1998. It operates a service between Dover and Calais, as well as P & O's former freight-only service on the Dover/Zeebrugge route, and Stena's former service on the Newhaven/Dieppe route.

The overall benefits to consumers of the creation of the joint venture arise even if, as it recently announced, it stops operating its Newhaven/Dieppe service. In this context, the Commission notes that the economic impact of the closure on the local economies at both ends of the route will be lessened by a new ferry service to be started on the route by another ferry operator from April and initially for the 1999 summer season.

In its letter of serious doubts the Commission set out its concern that the

creation of the joint venture could lead to a duopolistic market structure conducive to parallel behaviour of the joint venture and Eurotunnel on the short sea crossing tourist market. After further investigation, the Commission concluded that the characteristics of the market were such that the joint venture and Eurotunnel could be expected to compete with each other rather than to act in parallel to raise prices.

The case also posed difficulties because of uncertainties as to the future developments in market for cross-Channel ferry services, including the effects of the ending of duty free concessions in mid-1999. It is in view of these uncertainties that the Commission has decided to limit the duration of the exemption to three years from the date of implementation of the agreement, that is, until 9 March 2001. This will enable the Commission to re-examine the impact of the joint venture on the cross-Channel ferry market after the summer season in the year 2000.

The joint venture has also been approved under national merger control rules in France and in the United Kingdom. □

State aid to film production in the Netherlands

The Commission has decided not to raise any objections to aid of 6.275m ECUs to be granted to film production over a five-year period by the Dutch Government via a Mez-Stichting foundation which will administer a public shareholding in an operational company Film Investors Netherlands BV. It considers that the aid scheme does not affect trading conditions and competition to an extent contrary to the common interest. The project follows an integrated approach comprising a financing mechanism and tax measures, both of which contain aid elements. The tax measures are intended to promote film production in the Netherlands by attracting risk capital. The Ministry for Economic Affairs is setting up a Mez-Stichting foundation to administer a public shareholding in an operational company Film Investors Netherlands BV (Fine BV). The sum of 6.275m ECUs will be a one-off investment in this financing structure.

Fine BV will be accessible to any private producers or investors, including those from abroad, provided that they are taxable in the Netherlands. The aim of the Dutch authorities is to retain the shareholding for no more than five years. Within that time, the structure should become financially autonomous and profitable. In order to be eligible for financing, productions should have a net yield of around 15%. Fine BV's role would be restricted to that of a minority partner. Subsequent investments by the foundation would have to be financed exclusively out of the profits generated by previous productions. The Commission has decided not to raise any objections to the aid to be granted by the Dutch Government to film production since, in its view, the aid is compatible with Article 92(3)(d) of the EC Treaty. This was a provision introduced by the Treaty on European Union. Source: Commission Statement IP/98/1028.