

EU Competition Law 2010
Mock Exam
Hand-in: 26 October

The Ferry operator "Sail-Away" owns and operates a ferry terminal in Bayport, at the southwest coast of Ireland. In that area, it is the only terminal capable of receiving larger combined passenger & cargo ships. The closest alternatives are ferry from Cork or Dublin, or from Cork/Dublin via the UK (Southampton or other connections at the UK south coast). Both alternative routes take one extra day. The terminal handles most of the cargo transport to the continent. Sail-Away operates two ships; "Princess Anne" and "Henry 8th". Both ships are large vessels with great passenger and cargo capacity.

The terminal is also used by a smaller operator, "Southline". Southline was established in 2006, and has gained about 20 % of the cargo traffic between Bayport and the Continent. It has proven to be more difficult to establish business in the passenger market, i.a. because Southline has not been allowed to have tax-free sales on its ferries. Southline and Sail-Away are the only companies operating from Bayport. Recently, they have faced "leaks" to the other ports, especially in the passenger market.

Before the summer season 2009 Sail-Away adopted several measures in order to strengthen its position. First, prices have been cut considerably in the passenger market, in that it offers a special "round trip package" with cabin free of charge at the price of €10. Because of the inclusion of cabin, the price does not cover the actual cost incurred. Sail-Away covers these losses with cross-subsidizes from the tax-free sales. At the shareholders' assembly, the CEO of Sail-Away stated that "We'll break the neck of Southline as long as we keep tax-free to ourselves."

Secondly, Sail-Away offered large road-hauling companies a 10 % "Summer Season Rebate" on the condition that each company reached a "trigger" for number of roundtrips during the season. The trigger was set individually at 105 % of the number of trips for the previous season.

Lastly, Sail-Away increased the harbour fees collected from Southline to three times the amount it applied for its own internal accounts (The internal transfer price).

Southline contacted a lawyer and asked whether the measures implemented by Sail-Away were lawful. It also asked whether it was possible to take legal action against Sail-Away.

Discuss whether Sail-Away is abusing its dominant position contrary to Article 102 TFEU, and how Southline may enforce its rights under EU law.