

cc:  
Public prosecutor  
TPG  
court officer  
Mr PIERREL, Counsel  
Mr LELOUP THOMAS,  
counsel  
administrator  
Mr LE GUERNEVE, counsel  
Mr HESS, Counsel  
Debtor/Counsel  
Registered letter to the debtor  
SCP FOUCAUD  
TCHEKHOFF  
POCHET – Law Firm P010  
VEIL JOURDE – LAW FIRM  
T06  
BREMOND Law Firm (T06)

## PARIS COMMERCIAL COURT

DECISION HANDED DOWN ON 2 AUGUST 2006

SUPPLEMENTARY VACATION HEARING – 2.30 PM

**R.G. : 2006047559**

13/07/2006

Case No: 2006/1908

### **APPLICATION TO COMMENCE A SAFEGUARD**

Filed by EUROTUNNEL FINANCE LIMITED, an English company with its registered office at UK Terminal, Ashford Road, Folkestone, Kent, United Kingdom, CT18 8XX, and registered with Companies House under company number 020411864.

Represented by Mr Jacques GOUNON, chairman, of 4 avenue de Camoens 75116 Paris, assisted by:

Antoine TCHEKHOFF, Bruno ROBIN and Rajeev SHARMA-FOKEER, Counsels (T010)

Jean VEIL and Georges JOURDE, Counsels (T06),

Guilhem BREMOND and Céline DOMENGET-MORIN, Counsels (T06).

### **APPEARING BEFORE THE COURT**

- **Mr Claude Lienard**, Finance Manager, 4 Route Nationale 62380 SENINGHEM, present,
- **Mrs Claire PICCOLIN**, Legal Counsel, BP 69 – 62904 COQUELLES, present,
- **Mr Kenneth MORRISSON**, Assistant to the Head of Legal Department, BP 69 – 62904 COQUELLES, present,
- **Mr Patrick CHAULET**, Legal Counsel to the Finance Department, 5 rue de la Boétie – 75008 Paris, present,
- **Mr Yves PETIT**, Finance Department, BP 69 – 62904 COQUELLES present,
- **Mr Jean-Alexis SOUVRAS** Legal Counsel, BP 69 62904 COQUELLES present,
- **Mrs Séverine Garnham**, Company secretary, BP 69 62904 COQUELLES, present,
- **Mr Jean-Pierre TROTIGNON**, Operational director, BP 69 – 62904 COQUELLES, present.

**FOLLOWING FILING OF THE APPLICATION WITH THE OFFICE OF THE PUBLIC PROSECUTOR, AND FOLLOWING THE COURT'S CONSIDERATION OF THE SAME**

**PROCEDURE**

By declaration filed on 11 July 2006 with the registry of the Paris commercial Court, Mr Jacques GOUNON, legal representative FOR EUROTUNNEL FINANCE LIMITED, applied for the commencement of a safeguard procedure and for the application to be considered as soon as possible.

In support of his application, the CEO disclosed all of the items referred to in the provisions of article 50 of the decree of 20 December 2005. He specified that EUROTUNNEL FINANCE LIMITED was never subject to an ad hoc mandate or conciliation in the 18 months preceding his application.

His application was disclosed to the Public Prosecutor who, having been informed of the hearing date, participated on 13 July 2006 in the hearing of the Court sitting in chambers which examined his application.

Considering that the company does not have any employees, the provisions of article 51 of the decree of 28 December 2005 do not apply.

Mr Jacques Gounon appeared without notice before the Court sitting in chambers on 13 July 2006, assisted by his legal advisers and legal, financial and operational managers. At the end of the hearing, the Court announced that it would hand down its decision on 25 July 2006 at 14.30 pm.

At the 14.30 pm supplementary vacation hearing on 25 July,, the Court made it known that it was still deliberating and that its judgment would be handed down on 2 August 2006 at 2.30 pm.

**FACTS AND PRESENTATION OF THE APPLICATION**

EUROTUNNEL FINANCE LIMITED is an English company set up in 1986 whose object is to provide funding to the other companies of the Eurotunnel Group.

Its registered office is in FOKELSTONE, KENT, UK.

79% of its share capital is held by EUROTUNNEL PLC, the group's English holding company, and 21% is held by FRANCE-MANCHE, which is one of the two concessionaires companies.

EUROTUNNEL FINANCE LIMITED holds 10% of the share capital of EUROTUNNEL SERVICES GIE, which is responsible for the recruitment in France of EUROTUNNEL's employees.

The company does not have any employees.

The company did not post any turnover in 2004 and 2005. As at 31 December 2005, its negative shareholders' equity amounted to 15,284 pounds.

The company is one of two entities – the other being France – MANCHE – bearing the debt of EUROTUNNEL, in the amount of 3,227,566 pounds.

EUROTUNNEL FINANCE LIMITED's current liabilities, as referred in this application, are up to date, and its current assets are in the amount of 135,177 pounds (194,655 €)

However, the company is a member of the Owing Group, and as such, is the guarantor of the entire financial debt which amounts to €9,099,346,264.

Like all entities which form part of EUROTUNNEL, the company is facing the same financial difficulty: namely an indebtedness which exceeds their assets.

It is useful to reiterate, in brief, that:

- the funding of the project for the English Channel Tunnel's infrastructure entirely private, with funds originating from the founders of the company, important institutional investors, a public offering and bank loans.
- Several debt restructurings have already taken place.
- EUROTUNNEL's debt which, as at 31 December 2006, amounted to 9 billion euros, is divided in various tranches. Only interest has been paid on the debt to date and the share capital is repayable on different dates; EUROTUNNEL knows it will not be able to honour the repayment of the first tranche which is currently set for January 2007.
- EUROTUNNEL, having considered all options, took the necessary measures to improve its profitability by amending its service offer to increase the load factors of its shuttles, while reducing its workforce or while terminating a number of subcontracts; however, the significant improvement of the operational results, approximately 300 million euros per year, is not sufficient to allow EUROTUNNEL to repay a debt of 9 billion euros.
- Thus, a financial restructuring of the group, which started in late 2003, was again attempted. EUROTUNNEL informed its shareholders and the financial community, that unless it managed to restructure the group by the end of 2006, EUROTUNNEL would become insolvent in January 2007.
- The negotiation process with the creditor banks and the bond holders led to the execution, on 23 May 2006, of a financial restructuring preliminary agreement and the set up of an "ad hoc Committee" of creditors representing more than 50% of the total debt.

This preliminary agreement was followed by a supplementary agreement signed on 30 May 2006, which ensured the integral funding of the restructuring by various financial institutions.

These two agreements were subject to the condition precedent that the majority of the subordinated bond holders reach an agreement.

Considering that this condition precedent was not satisfied, the entities that form part of EUROTUNNEL and that are members of the Owning Group, have chosen to place themselves under the protection of the Court and to request the opening/commencement of safeguard procedures.

- The cash flow forecasts as at the date of the applications show a total balance which is constantly positive up to the end of 2006, save for a diminution which is always possible, of the income or operational fee caused by the reaction of certain customers or suppliers to the announcement of the difficulties faced by EUROTUNNEL.

The CEO concluded that only the commencement of a safeguard procedure and the implementation of a financial restructuring plan within the context of this procedure will ensure the survival of the enterprise.

He specified that the current structure of the group, namely numerous companies which share EUROTUNNEL's various responsibilities, is the fruit of a legal strategy which results from the company's history and the manner in which it was set up, but adds that all these entities do not constitute one and the same company EUROTUNNEL, whose centre of main interests is in Paris.

He added that there are no financial flows between these various entities of which the Court should be made aware.

Mrs SARZIER, the vice prosecutor representing the public prosecutor's office, declared that she was in favour of the commencement of a safeguard procedure.

Ruling on all entities applying for the protection of the Paris Commercial Court, she declared that:

- with respect to the Court's jurisdiction, pursuant to the provisions of the European regulation on insolvency and the rules on jurisdiction which binds the Court, this Court has jurisdiction to commence safeguard procedures; that the seventeen applicant entities do in fact form one and the same company, which is aimed at providing a public service and of which the centre of interests is in France;

- with respect to the conditions that are required for the commencement of the procedures, the three legal criteria are satisfied since:

- the company is not actually insolvent. Even if cash flow is poor, it is sufficient to ensure the usual operation of the company;
- EUROTUNNEL is facing insurmountable difficulties, since it will not be able to abide by its January 2007 deadline ;
- the restructuring contemplated will ensure its survival and will allow the company to retain its employees.

In addition, the public prosecutor required that two receivers and two court officers be appointed.

## **ON THIS BASIS, THE COURT**

### **WITH RESPECT TO THE COURT'S JURISDICTION**

Considering that EUROTUNNEL FINANCE LIMITED is an English company with its registered office in the UK ;

That article 3 of the European Regulation 1346/2000 of 29 May 2000 does not contemplate the situation in which the companies of a group are established in several EU States ; that this requires that the position of each entity of the group be examined separately ; that its article 3 provides that it is the Court of the Member State where the debtors has its centre of main interests which has jurisdiction to commence an insolvency procedure ; that this article applies to the commencement of safeguard procedures referred to in Appendix A to the said insolvency regulation.

Considering that article 3 of regulation 1346/2000 provides for the presumption that, in the absence of evidence to the contrary, the centre of main interests is the place of the company's registered office as specified in the articles of association.

But that its recital 13 defines the centre of main interests as the “place where the debtor usually manages its interests and which is therefore verifiable by third parties”.

That, in accordance with the jurisprudence of the European Court of Justice, the concept of centre of main interests has an autonomous meaning and must be interpreted uniformly and independently of national legislations.

That it is necessary, pursuant to well established European jurisprudence, to rely on criteria which are objective and verifiable by third parties, enabling proof of the existence of an actual situation different to that reflected in the articles of association (which provides for the location of the registered office).

That a set of corroborating clues verifiable by third parties demonstrate that the centre of main interests of the various Eurotunnel entities is in France and, more particularly, in Paris, since:

- the strategic and operational management of the various EUROTUNNEL entities is exercised by a joint Committee which sits in Paris, at the seat of EUROTUNNEL SA, and on which sit a number of French nationals ;
- the registered office of the two main French companies of the group EUROTUNNEL SA and FRANCE MANCHE – is in Paris ;
- its financial management which is responsible for the accounting of the various entities is also located in France (56 employees out of 63) ;
- the main part of the activities, the employees and assets is equally located in France;

- the negotiations for the debt restructuring, on which the survival of each applicant entity depends , are carried out mainly in Paris, under the direct supervision of Mr Jacques GOUNON who is a French national and is chairman of most entities.

That, even if the European regulation does not specifically deal with the situation whereby French companies of a group are located in several Member States, many of which are now within the unified European market, the regulation aims at an efficient and homogenous administration of justice in all countries in which it is applied.

Considering that it is good practice to find a unique solution to the same financial difficulty threatening the seventeen applicant entities guarantors of a debt which exceeds their assets;

That, consequently, this Court finds that it has jurisdiction to rule on EUROTUNNEL FINANCE LIMITED's application.

### **WITH RESPECT TO THE APPLICATION TO COMMENCE A SAFEGUARD PROCEDURE**

Considering that under article L620-1 of the commercial Code, a safeguard procedure may be opened on application by a debtor if the following conditions are satisfied:

- if the debtor is able to provide justification for the difficulties that it says it is not able to overcome;
- if these difficulties are of a nature which would otherwise lead to the debtor's insolvency ;
- the procedure is aimed at facilitating the reorganisation of EUROTUNNEL, in order to enable the continuation of its economic activity, the retention of its employees and the settlement of liabilities.

Considering that it follows from the facts presented, the items disclosed and the information collected by the Court sitting in chambers, that the financial capabilities of the various entities which form part of EUROTUNNEL do not allow the repayment of a debt which amounts to 9 billion euros without the restructuring of the indebtedness which EUROTUNNEL was not able to achieve on its own.

That EUROTUNNEL FINANCE LIMITED, and in its capacity as member of the Owing Group guarantor of the debt of the whole group, is not insolvent, since the cash flow forecast is positive up to the end of 2006, according to the document disclosed.

That if, however, the financial restructuring of EUROTUNNEL's debt was not achieved by December 2006, EUROTUNNEL FINANCE LIMITED and all members of the Owing Group would not be able to abide by the January 2007 deadline to reimburse the capital and would therefore become insolvent.

Considering that the financial restructuring of the company alone is capable of enabling the continuation of its economic activity and the settlement of its liabilities,

Considering that the Court finds that the conditions for the commencement of a safeguard procedure pursuant to the provisions of article L620-1 of the commercial Code, are satisfied,

That it is therefore necessary to declare the application of Mr Jacques GOUNON well founded and to commence a safeguard procedure for the benefit of EUROTUNNEL FINANCE LIMITED.

### **ON THESE GROUNDS**

#### **THE COURT**

Having considered these grounds, and ruling in public, at first instance, by way of adversarial decision,

In view of the European regulation 1346/2000 of 29 May 2000, decides that it has jurisdiction,

Commences a safeguard procedure in accordance with the provisions of article L621-1 *et seq* of the commercial Code with respect to :

English Private Limited Company  
EUROTUNNEL FINANCE LIMITED  
Trading name: EUROTUNNEL  
Centre of main interests:  
19 BOULEVARD MALESHERBES  
75008 PARIS  
Activity : management of companies  
Paris Trade Register No : non registered  
Registered office registered at the English Companies House under no  
02041864,  
UL TERMINAL ASHFORD ROAD FOLKESTONE KENT CT18 8XX  
(UNITED KINGDOM)

Appoints Mr Bernard SOUTUMIER official receiver and Mr Jean-Philippe KLOTZ alternate official receiver,

Appoints Messrs Laurent LE GUERNEVE, 41 rue du Four – 75006 Paris and Emmanuelle HESS, 114 rue Pierre Tal Coat – 27000 EVREUX, administrators whose responsibility is to supervise together the management of the debtor,

Appoints Mr PIERREL, Counsel, 169 bis rue du Chevaleret – 75013 Paris and Mr LELOUP-THOMAS, 169 bis rue du Chevaleret – 75013 Paris, of SELAFA MJA, court officers,

Appoints SCP BOSCHER-FLOBERT, 4 rue de la Grande Bateliere – 75009 Paris and SCP KAPNDJI-MORHANGE, 46 bis passage Jouffroy – 75009 PARIS as '*commissaires-priseur judiciaires*' [those responsible for auctioning the company's assets], in order to carry out an inventory and the pricing referred to at article L622-6 of the commercial Code,

Starts a six-month observation period in accordance with the provisions of articles L621-3 of the commercial Code and 64 of the decree of 29 December 2005,

The creditors are invited to produce their debt securities to the court officers within two months of the publication of the present decision in the BODACC [French official journal for the publication/registration of commercial-related information/documents],

Decides that the time limit within which the court officers must set out the list of the declared debts pursuant to the provisions of article L624-1 of the commercial Code,

States that the judgment is enforceable as of right,

States that the costs of the present decision which is liquidated at 85,40 euros (13,99 euros being VAT), and expenses related to publication and notice of this judgment, will be treated as safeguard privileged expenses,

At the 13 July 2006 hearing of the Court sitting in chambers, the following judges were sitting:

Mrs Rey, Messrs SOUTUMIER, KLOTZ,

Considered by the same judges and stated at the supplementary vacation hearing in the presence of Mr LECUE substitute of the Director of Public Prosecution at which the following individuals were sitting:

Mrs REY, chairman of the Court, presiding over the hearing, Mr SOUTUMIER, chairman of chambers, Mr ELMALEK, judge, assisted by Mrs VILLANUEVA, clerk.

The minutes of the decision are signed by **Mrs REY**, chairman of the discussions and **Mrs VILLANUEVA**, clerk.

[signature]

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