

**CHANNEL TUNNEL
2012 REPORT
OF THE
JOINT ECONOMIC COMMITTEE TO
THE IGC
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FOLLOWING CONTRIBUTIONS FROM
EUROTUNNEL AND FINANCIAL
CORRECTIONS**

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0. Introduction

The Intergovernmental Commission (“IGC”) was set up to supervise, for and on behalf of both Governments, all matters relating to the construction and operation of the Channel Tunnel (called the “Fixed Link.”)

The functions of the IGC are defined by Article 10 of the Treaty of Canterbury:

“An Intergovernmental Commission shall be established to supervise, in the name and on behalf of the two Governments, all matters concerning the construction and operation of the Fixed Link.”

In particular, it holds prescriptive power and has a permanent surveillance and control function. As such it is concerned with the transposition of European directives having relevance within the limits of the Eurotunnel Concession.

Thus the Binational Regulation of 23 July 2009 (Article 12) has designated the IGC as the regulatory body in the terms of European Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

“Article 12 - Regulatory Body.

12.1. A railway undertaking or international grouping shall have a right of appeal to the Intergovernmental Commission if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the Concessionaires or, where appropriate, the railway undertaking, concerning:

- (a) the network statement;*
- (b) the criteria contained within it;*
- (c) the allocation process and its result;*
- (d) the charging scheme;*
- (e) the level or structure of infrastructure fees which it is, or may be, required to pay; and*
- (f) arrangements for access to the network.*

12.2. For the purpose of carrying out this appeal function the Intergovernmental Commission may call upon such bodies or experts appointed for that purpose in conformity with Article 10(7) of the Treaty.

12.3. The Concessionaires and other interested parties shall supply to the Intergovernmental Commission, without undue delay, all relevant information requested by that body. In particular, the Concessionaires shall supply to the Intergovernmental Commission all the information necessary to ensure that charges set by the Concessionaires are compliant with Chapter II of Directive 2001/14/EC and are non-discriminatory.

12.4. The Intergovernmental Commission shall take a decision and take action to remedy the situation within a maximum period of two months from receipt of all relevant information about an appeal or complaint, Notwithstanding Article 12.5, a decision of the Intergovernmental Commission shall be binding on all parties covered by that decision.

12.5. Pursuant to Article 76 of the Regulation of the Intergovernmental Commission on the safety of the Channel Fixed Link signed in London on 24 January 2007, the decisions of that Commission taken by virtue of bi-national regulations made pursuant to Article 10(3)(e) of the Treaty may be subject to judicial review by the authorities of either France or the United Kingdom under the conditions laid down by national law applicable to those authorities. The lodging of an application for judicial review before the authorities of one State precludes the lodging of an application for judicial review of the same matter before the authorities of the other State.

12.6 For the purpose of monitoring competition in the rail services market, in so far as it relates to the Channel Tunnel Fixed Link, the Intergovernmental Commission, without prejudice to the national laws of the two states on competition policy, may call upon such bodies or experts appointed for that purpose, in conformity with Article 10.7 of the Treaty.”

1. Subject of report

The IGC is responsible for ensuring that the railway undertakings using the Fixed Link are adequately informed and fairly treated, without discrimination, in their access to the Fixed Link (notably on the setting of usage fees and allocation of slots). Any railway undertaking or international grouping which feels discriminated against has the option of appealing to the IGC. To carry out these responsibilities, under Article 10(7) of the Treaty, the Intergovernmental Commission may call upon bodies or experts appointed for that purpose.

To facilitate the entry of new train operators to cross-Channel railway traffic, the IGC wishes to clarify the structure of the Eurotunnel Group and the separation of the roles of the Infrastructure Manager (“IM”) and other Eurotunnel businesses. This is needed in order to verify the compatibility of Eurotunnel’s operation with the European directives on the carriage of passengers and goods by rail.

The IGC entrusted this work to the Joint Economic Committee (“JEC”), which consists of experts from both countries who are responsible, under Article 12 of the 2009 Regulation, for advising and assisting the IGC in its control and regulatory task.

The JEC submitted a first report to the IGC in July 2011. It included a general survey of the structure of Eurotunnel Group, and the enforcement of the separation between IM and railway undertaking. It also described the implementation of the Rail Usage Contract (“RUC”), the negotiation of framework agreements, the setting of tunnel access charges and the admission of new entrants.

Having followed a procedure for cross-checking the report, and obtained Eurotunnel’s comments, the IGC decided to publish it on its website (<http://www.channeltunneligc.co.uk> / <http://www.cigtunnelmanche.fr>).

At its meeting of 7 December 2011, the IGC adopted the work programme for 2012 submitted to it by the JEC. This included the following points:

- Analysis of the Rail Usage Contract (RUC) and its present consequences.
- Understanding Eurotunnel’s financial and economic model.
- Supervision of the railway market
- Analysis of the network statement dealing with the following points:
 - (i) Set-up and monitoring of a performance regime
 - (ii) Information for calculating access charges and update of calculation method
 - (iii) Procedures for dispute resolution
 - (iv) Rules for allocation of slots.

This programme develops the approach for an analysis of the economic model for the tunnel.

This memorandum is an interim report. It is for the IGC to consider at its meeting on 18 July 2012. It will be supplemented or amended as necessary.

2. Current background: RUC and the Agreement of 2006

In 1987 the British Railways Board (BRB) and the French national railway (SNCF) entered into a joint long-term usage contract (the RUC) with Eurotunnel. This sets out the access charges for both the passenger and the freight operators using the Channel Tunnel alongside other commercial and operational arrangements for the use of the infrastructure. It is made under French law and runs until 2052.

Through the RUC, the Railways have the right to access up to 50% of the hourly capacity of the Fixed Link in each direction – that is, a minimum of 10 “standard paths” per hour in each direction. The charges defined by the RUC are composed of “Usage Charges” allowing trains to use the Tunnel, to which are added the “OPEX” or actual costs of operating railway services in the Fixed Link.

The Usage Charges included a fixed portion (7 million units of account per year) and a variable “toll” linked to the volume of traffic – number of passengers and tonnes of freight carried.

The “OPEX” includes general costs (administration, energy, insurance, rates and taxes, safety and security, traffic management and control), maintenance costs and some renewal costs (capex renewals). The RUC defines two principles for the allocation of these OPEX costs between the signatories of the RUC (“Railways” and “Concessionaires”):

- Principle A: Certain costs are shared between the Railways and the Concessionaires according to the contracted capacity ascribed to each party, that is 50% for the Railways.
- Principle B: Other costs are allocated based on actual usage, according to the geographic area and attributed to the types of activity taking place in each section (trains, Shuttles, or Eurotunnel ancillary activities).

In addition, the level of capex renewals payable is set by annual negotiation between the Concessionaires and the Railways (represented by Eurostar).

In order to simplify the various approaches to the sharing of OPEX costs, Eurotunnel and the Railways concluded an agreement in 2006 – “Agreement on Allocation of Operating Costs of Article 10 and Schedule 5 of the RUC” – which defined a stable framework of charges for the period between 2005 and 2014.

Under this agreement, instead of a calculation based on the costs actually incurred, the Railways’ contribution to OPEX now comprises an annually indexed fixed sum (or “forfait”) covering most of the general costs to which is added part of Eurotunnel’s total energy costs and part of Eurotunnel’s total insurance costs. The Railways’ contribution to capex renewals is determined by annual negotiations between the two parties.

As a consequence of railway privatisation in the UK the majority of BRB’s rights and obligations under the RUC were delegated to the rail freight operator Rail Freight Distribution (now English

Welsh and Scottish Railways - EWSI) , European passenger services (now Eurostar) , Railtrack (now Network Rail) and the Secretary of State for Transport via a 1994 Back-to-Back agreement. BRB remains the formal signatory to the RUC because Eurotunnel and SNCF would not consent to its novation to another party. The UK Government has stood behind BRB since rail privatisation and BRB's interest in the RUC has been administered by DfT since 2005.

The UK Government's responsibilities with respect to the RUC are principally derived from BRB's continuing obligations as formal signatory to the RUC and from supplementary agreements to the RUC. These were implemented to enable the privatisation of BRB's international passenger (and freight) businesses to allow for their operation by Eurostar and (what became) the rail freight operator English Welsh and Scottish Railway International (EWSI). These were legally transferred to the Strategic Rail Authority in 2001 and subsequently transferred to the Department for Transport ("DfT") in August 2005.

The DfT's responsibilities include handling RUC fixed and variable payments made to Eurotunnel on behalf of BRB, but these are effectively a pass through, given that they are refunded to the DfT the same day by the RUC passenger operator (Eurostar). The exception to this is the Eurotunnel Freight 'Opex' charge. The payment of this charge (approximately £8.2m p.a), which is fixed regardless of the number of trains which run, is a continuing BRB obligation under the terms of the RUC. It has been funded by DfT since November 2006 under an agreement which kept freight services running through the Channel Tunnel. Freight flows tolls are paid direct from the operators to Eurotunnel because the trains now run under direct contract with the company.

The privatisation of British Rail in 1996 did not affect the French section. SNCF has been the signatory and beneficiary of the RUC since its origin, there being no reason to change this normal situation which the European Court of Justice concluded in October 1996 was compatible with Community law.

Following the arrival of new entrants to the cross-Channel freight market, and wishing to encourage this traffic, in 2008 the French government ratified the modification of an SNCF company rule authorising it to transfer the "cross-Channel freight fixed costs" from the accounts of SNCF Freight into the accounts of the SNCF Group.

The contractual terms for the RUC were established on the basis of market conditions at the time and forecasts of the volumes of freight and passengers to be carried in 1996, when the Channel Tunnel became fully operational. In the event market conditions (for example the lower shuttle prices, the development of larger short distance sea ferries capable of operating at much lower unit costs) coupled with lower traffic volumes led, by 1995/6, to the railways achieving less than half the forecast volumes.

The RUC represents a significant funding stream for Eurotunnel both in terms of the funding it provides (tolls plus fixed (Opex) charges from SNCF and BRB combined for all the passenger and freight flows). This plus the fact that the contract runs to 2052 gives comfort and security to Eurotunnel's funders. It pre-dates the current European rail legislation. If the contracting parties were forced to re-negotiate significant terms of the agreement which affected the funding streams this could de-stabilise Eurotunnel's funding, and with it that for the Channel Tunnel.

3. Findings

3.1. Traffic

The first traffic forecasts were made in 1985, as part of the concession procedure. When the tunnel first opened, they predicted the following (for 2003):

Passengers (million)	Forecast made in 1985	Actual (2003)
Total cross channel traffic	97.4	116
Tunnel traffic	37	15.2
of which shuttles	16.2	8.9
of which trains	20.8	6.3

These projections were based on the tunnel capturing 38% of traffic at the opening, In fact, transfer was only 13% of this figure, the shuttle having a larger share than trains.

Freight (Mt)	Forecast made in 1985	Actual (2003)
Total cross channel traffic	112.4	79
Tunnel Traffic	18.9	17.6
of which shuttles	7.5	15.9

of which trains	11.4	1.7
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For freight, the gap between forecast and actual was lower (27% of the traffic captured, produced 17.6 Mt compared with 18.9 Mt expected) but there was a reversal between the shuttle (20% instead of 7%) and trains (2% instead of 10%).

The financial data had to be adjusted accordingly:

M/Francis 2003	Forecast made in 1985	Actual (2003)
Income from shuttles	4333	2912
Income from trains	3027	2184
Other income	700	236
Total	8060	5333

These figures elicit several comments.

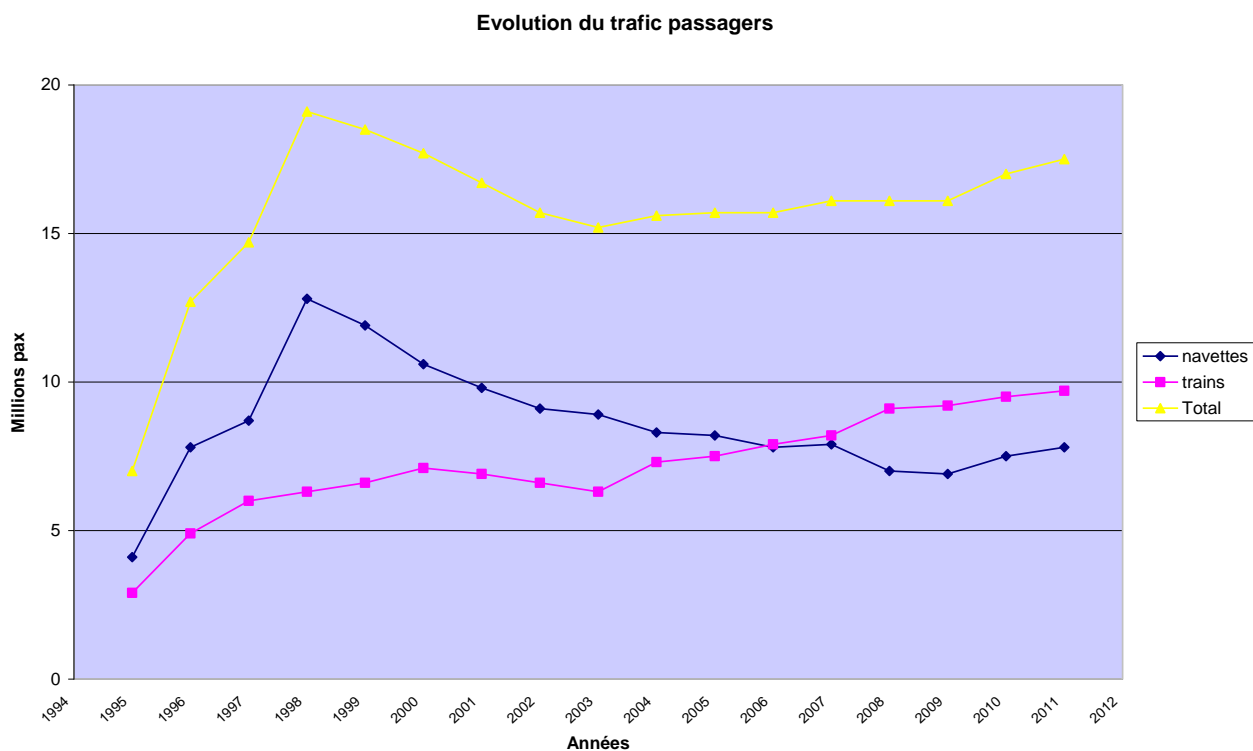
3.1.1. Passengers

The forecast provided by SETEC for France-Manche Group in October 1985 estimated overall demand between the United Kingdom and the continent using econometric models. These relied on GDP or income per head of population and on growth rates. Next, demand was modified by a price-time model.

In the modelling, passengers could use their own cars or a coach to take the shuttle, or could board a train (Eurostar). Pedestrian traffic in excess of 3 million was forecast for 2003, the 'trippers,' though this service never materialised.

Graph 1 – Development of passenger traffic.

Note: Several incidents have disrupted the operation of the Tunnel. On 18 November 1996, a shuttle fire resulted in the closure of one track in the tunnel for a month and halted freight traffic for seven months. On 11 September 2008, the truck fire on a freight shuttle in the tunnel caused heavy damage to the north tunnel and required several months of repair. Commercial operation of the tunnel was only interrupted for 5 days but it was necessary to wait for the work to be completed before traffic returned to normal (February 2009). The incidence of these events is visible on the freight graph below. An extract from Eurotunnel’s reports is given in Annex B.



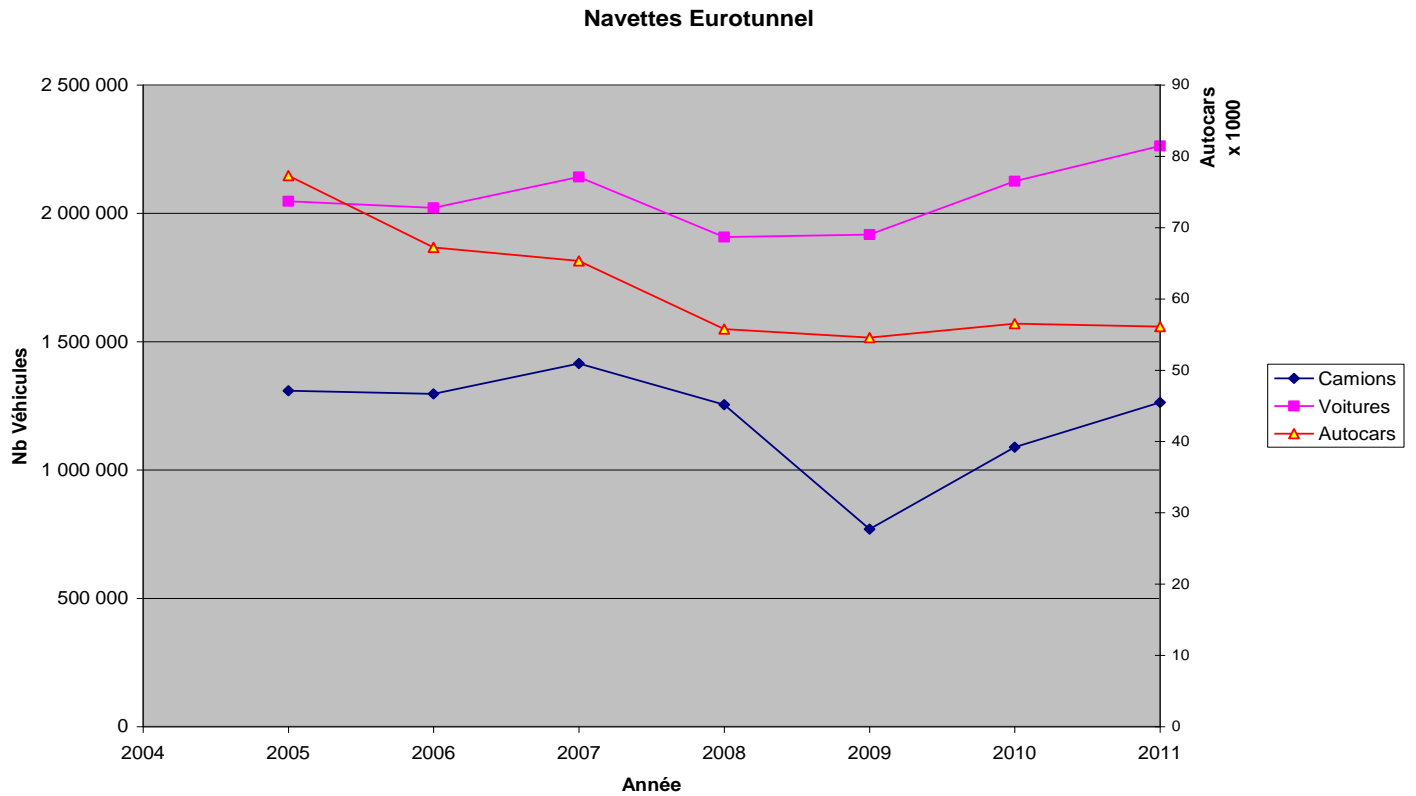
Present-day passenger traffic breaks down as follows:

Shuttle traffic

Shuttle traffic peaked in 1998 at 12 million pax. It has now declined to just under 8 million pax. It declined regularly from 1998 to 2008 and has progressed at a rate of 5% per annum since 2009.

This traffic breaks down into three sub-categories: cars, coaches and lorries.

Graph 2 – Eurotunnel shuttles



EUROTUNNEL SHUTTLES					
	Lorries	Cars	Coaches	Equivalent to pax (Mpax)	Eq Mt
2011	1 263 327	2 262 811	56 095	7.8	16.4
2010	1 089 051	2 125 259	56 507	7.5	14.2
2009	769 261	1 916 647	54 547	6.9	10
2008	1 254 282	1 907 484	55 751	7	14.2
2007	1 414 709	2 141 573	65 331	7.9	18.4

2006	1 296 269	2 021 543	67 201	7.8	16.9
2005	1 308 786	2 047 166	77 267	8.2	17

The number of cars was steady at 2.2 million per year in 2011, the level expected for 2003. The figure peaked in 1998, with 3.35 million vehicles. It has risen by around 5% per year in the past two years.

Lorry traffic is very sensitive to the economic cycle. It plummeted in 2009 (-40%) and has recovered in the past two years. It is now back to 2005 levels.

Coach traffic has been stable since 2008 at around 1.8 million pax (based on 30 passengers per coach).

There are three main reasons for the gap between the forecasts and current traffic:

- (a) During the 1990s, tax-free sales boosted cross-Channel traffic. This ended in 1998, causing a sharp drop in traffic, both on the ferries and in the shuttles.
- (b) Holidaymaking patterns have changed radically. The development of low-cost flights competes with car use to cross the Channel.
- (c) The studies predicted that 40% of passenger traffic would have switched to the tunnel by 2003. In fact the tunnel took 13% of passengers.

Railway passenger traffic

This first hit a plateau in 2000, then returned to growth from 2003 at a rate of 4%. This has lasted for the past six years. A slowdown has been noted, with +1% from 2010 to 2011. Note that in 2006 passenger rail traffic (Eurostar), which has doubled in the last 20 years, overtook that of passenger shuttles.

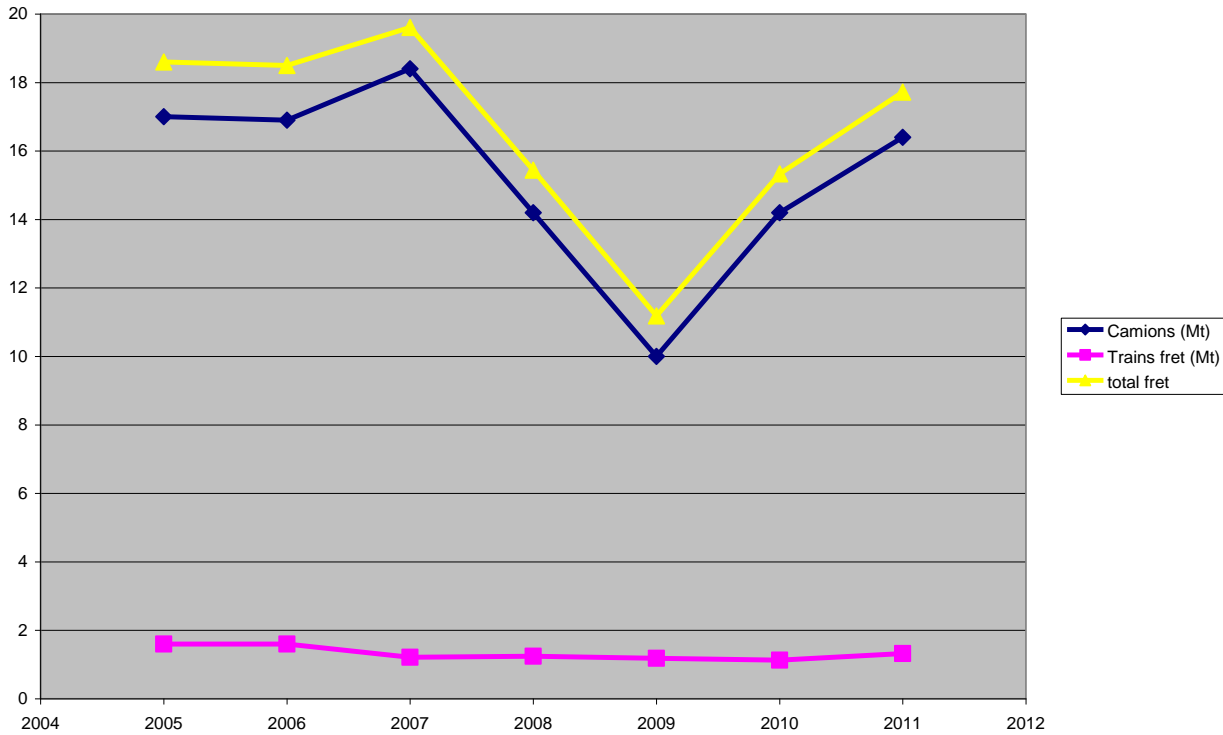
3.1.2. Freight

Around 90 Mt of goods are carried between the Continent and Great Britain per year. In 1985, for the Tunnel, 18 Mt was forecast for 2003. The actual traffic (as mentioned below) was 17.6Mt, close to the forecast level, but with a reversal of share in favour of the Shuttles – which saw more rapid growth than railway services.:

	Freight traffic by 2003	Actual traffic 2003	Traffic 2011
Tunnel Traffic	18.9	17.6	17.72
Including shuttles	7.5 (40%)	15.9 (90%)	16.40 (92%)

Including trains	11.4 (60%)	1.7 (10%)	1.32 (8%)
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Therefore cross-channel rail freight now holds **less than 2% of the market** (1.32MT/100Mt)



approximately).

Lorries (Mt)

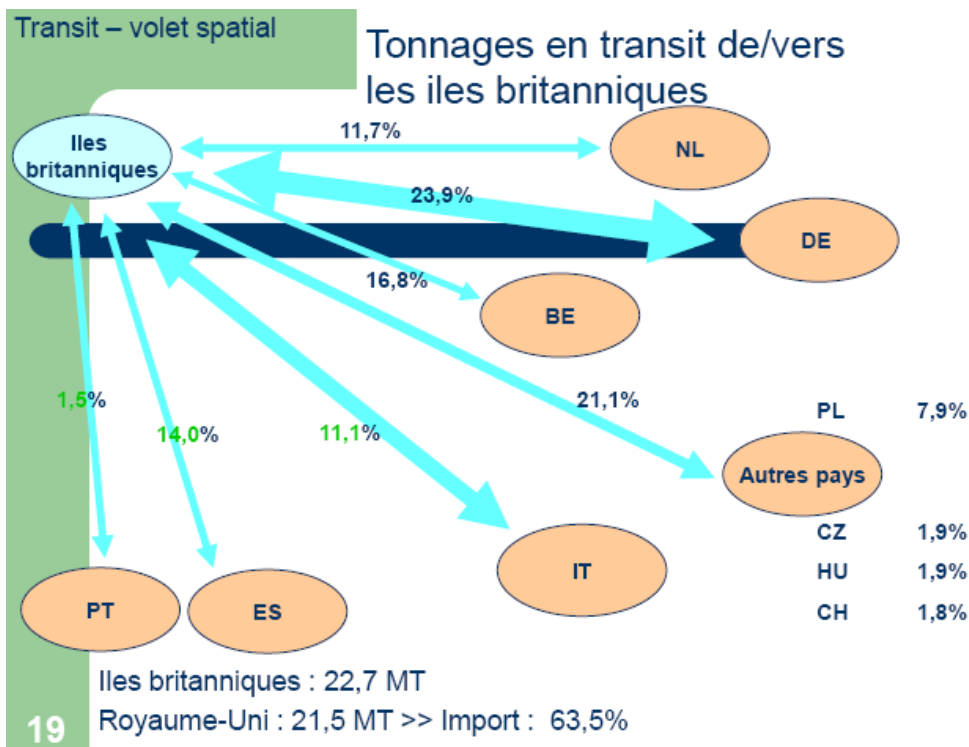
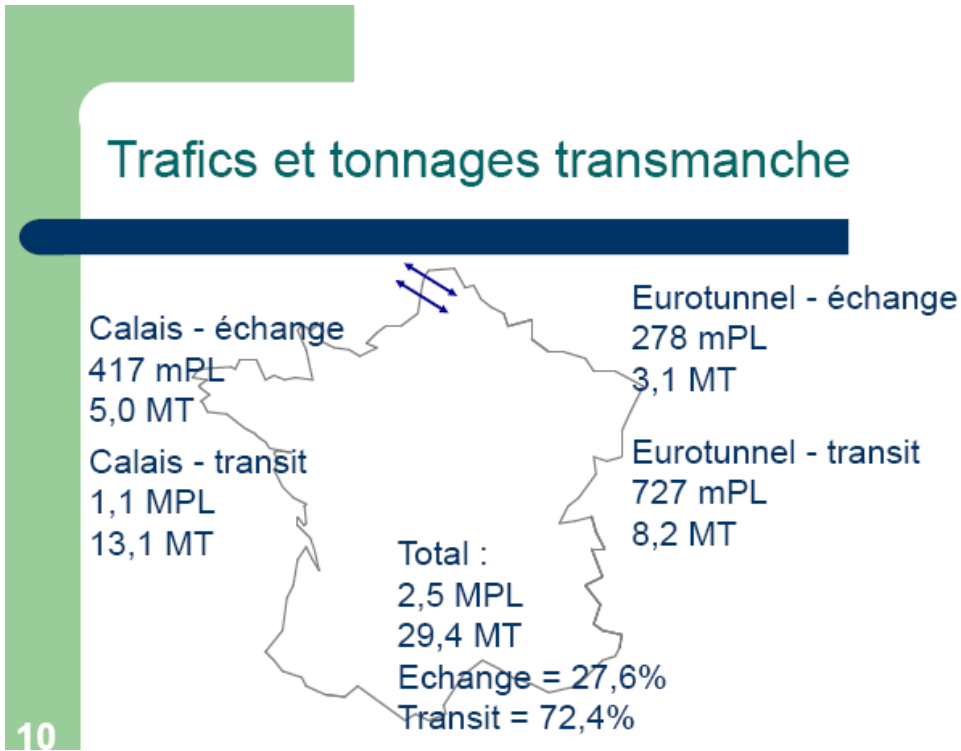
Freight trains (Mt)

Total freight

Note the reversal of the figures for trains and shuttles. The forecasts were for 1/3 of traffic to go by shuttle (i.e. lorries) and two-thirds by freight train. In reality, rail freight traffic has never taken off, despite opening to competition. Lorries account for more than 90% of Tunnel traffic. This development is broadly beneficial to Eurotunnel, which operates the shuttles.

After recovery from the reduction in 2009, rail traffic should return to around 18 Mt.

The survey (of cross-border services conducted by France in 2010 alongside other EU member states) found traffic of 2.5 M lorries across the channel, consisting of 1 million HGVs by tunnel (40%) and 1.5 million via the ferries at Calais¹.



¹ This is transit traffic, not counting traffic originating from France.

N.B: these figures are for transit traffic alone, i.e. crossing France from or to the British Isles.

Eurotunnel's accounts confirm that rail freight activity is marginal:

EUR million	2011	%
Exchange rate €/£	1.148	
Shuttles	399	58
Rail network	278	40
- including freight tolls	9.978	2
- including Eurostar tolls	268*	98
Other income	10	2
Total fixed link income	687	100

3.2 Financing the investment

The financing of the construction of Eurotunnel went through several stages. Needs for finance increased very significantly after the original plan. This was initially because extra investment costs had to be met. Then the debt needed to be restructured, with bankruptcy impending, since income was insufficient to meet both the operating costs and the debt servicing.

In broad outline, the initial finance plan concluded in 1987 before the start of the works and procurement of the equipment (estimated at the time at FRF 48 739 million² or EUR 9 182 million³) comprised equity capital of FRF 10 230 million (EUR 1 560 million) and a set of long-term bank loans totalling FRF 50 000 million (EUR 7 622 million). On completion of the tunnel, in August 1994, the investment cost had risen significantly to the equivalent of EUR 13 555 million. The funds raised at the time were the equivalent of EUR 3 601 million in capital and EUR 10 205 million by borrowing from a pool of international banks and the European Investment Bank.

After the cross-Channel railway service had been commissioned, with shuttles for saloon cars, coaches and lorries and high-speed train services run by BRB and SNCF, Eurotunnel's income

² Amounts quoted in sterling were converted to FRF at the reference exchange rate (10) adopted by Eurotunnel for presentation of its accounts and provisional balance sheets.

³ Euro amounts are quoted as a guide for the period up to 31 December 1998. Sums quoted in French francs (FRF) are converted to euro at the euro/franc parity at the time of launch of the euro on 1 January 1999: 6.55957.

proved insufficient to meet its liabilities. Therefore it was necessary to restructure its finances. This took place in two stages. First, following the company's stay of debt interest payments from September 1995, its capital was increased in July 1997. That was preceded by a reduction of the previous capital from FRF 12 232 million (including issue premiums) to FRF 3 956 million (EUR 603 million). The capital increase raised FRF 8 972 million (EUR 1 368 million) from the pool banks, by debt conversion. The operation was accompanied by a bond issue in November that year, worth FRF 19 782 million (EUR 3 016 million), and a reduction of the debt to the banks to FRF 48 288 million (EUR 7 361 million), i.e. to 62.62 percent of the original debt.

As the debt burden continued to exceed Eurotunnel's resources, on 13 July 2006 the company petitioned Paris Commercial Court to make it a ward of court, as part of a Safeguarding Plan. A second, more drastic, restructuring then proved necessary. This led to the reduction of the EUR 9.4 billion debt as at 31 December 2006 to EUR 4 164 million, refinanced by a series of bank loans from a new international banking pool. Due dates for repayment were spread from 2041 to 2050. Since that date, only debt optimisation operations have been carried out, sometimes buying back some portions and issuing new debt in substitution for them. Eurotunnel's long-term indebtedness as at 31 December 2011 stood at EUR 3 872 million.

These major stages are detailed below. The detail of the capital-raising operations appears in Annex C.

Eurotunnel raised all its finance from the capital markets and banks, without any contribution by the French and British Governments.

The initial finance of FRF 60 230 million (EUR 9 182 million) raised from 1985 to 1987 had been based on an estimated need for finance of FRF 48 739 million (EUR 7 430 million), including around FRF 28 400 million (EUR 4 330 million) for the works. This was at the time of signature of the construction contract on 13 August 1986. The funds were raised in stages, as follows:

- FRF 10 230 million (EUR 1 560 million) of capital.
 - a) Capital FRF 460 million (EUR 70 million) contributed in May 1986 by the building and public works contractors and the banks promoting the project: Bouygues, Dumez, SAE , SGE, SPIE-Batignolles, Crédit Lyonnais, BNP, and Banque Indosuez on the French side; and Balfour Beatty, Costain, Tarmac Construction, Taylor Woodrow, Wimpey, Granada Group, Mobil Oil, NatWest and Midland on the British side. These funds served to cover the costs of preparing the invitation to tender for the concession and the initial studies.
 - b) Private placement of FRF 2 060 million (EUR 314 million) of capital in October 1986 (Equity II) with institutional investors to cover the cost of continued studies, pending the raising of funds on the stock market.
 - c) Placement on the stock market of FRF 7 700 million (EUR 11 174 million) in November 1987 with the general public on the London Stock Exchange and Paris Bourse.

- Bank loans of FRF 50 000 million (EUR 7 622 million) taken out on 4 November 1987, including FRF 10 000 million of standby credit to meet unforeseen cost increases. The loans were initially underwritten by 50 banks, but later syndicated with a group of nearly 200 international banks.

Extra finance had to be raised during the construction period, to cover the overrun of investment costs, which had taken the fixed assets granted on concession to FRF 94 573 million (EUR 14 418 million) on completion of the work in August 1994. The overrun had also taken the total

project costs, including financial expenses, to around FRF 100 000 million (EUR 15 250 million). This extra finance amounted to FRF 41 952 million (EUR 6 395 million) in the following forms:

- Extra capital of FRF 13 140 million (EUR 2 005 million) via two capital increases, as follows:
 - (a) One increase of FRF 5 600 (EUR 855 million) on 3 December 1990;
 - (b) One increase of FRF 7 540 million (EUR 1 150 million) in May 1994, mainly from individual shareholders (Bombardier, the shuttle manufacturer, contributed EUR 53 million)

The total amount of capital and premia shown in the balance sheet of 1994 was FRF25,225 million (EUR 3,845 million).

- Extra bank loans of FRF 28 812 million (EUR 4 392 million):
 - a) FRF 17 335 million (EUR 2 642 million) on 25 October 1990, by additional drawing on the lines of credit in place.
 - b) FRF 3 000 million (EUR 457 million) contributed on the same date by the European Investment Bank, on top of the FRF 10 000 million (EUR 1 525 million) guaranteed by bank letters of credit counted in the total bank debts s.
 - c) FRF 2 000 million (EUR 305 million) by CECA in November 1991.
 - d) FRF 6 477 million (EUR 987 million) in May 1994, in the form of senior debt contributed by a pool of 60 banks.

Eurotunnel's total debt in December 1994, as shown in the balance sheet, was the equivalent of EUR 10 203 million).

When the Eurotunnel group proved unable to service the bank debt, it decided in September 1995 to stay payments of interest. Financial restructuring then began in 1997. It was completed by vote of the meeting of shareholders on 10 July 1997, and approval by the banks on 26 November 1997. It gave Eurotunnel a shot in the arm by removing momentarily the possibility of its filing for bankruptcy. This restructuring took place as follows:

- Capital: first-stage reduction of the amount from FRF 12 232 million (including issue premiums) to FRF 3 956 million (EUR 603 million), then capital increase from FRF 8 972 million (EUR 1 368 million) underwritten by the pool banks, by debt conversion.
- Debt: issue of bonds worth FRF 19 782 million (EUR 3016 million) and reduction of the bank debt to FRF 48 288 million (EUR 7 361 million), i.e. 62.62 percent of the initial debt, including FRF 34 779 million (EUR 5 302 million) of junior debt, i.e. 45.10 percent of the pre-conversion total. Several operations took place together:

- (a) Issue of bonds to be reimbursed in shares for FRF 8 972 million (EUR 1368 million) in the lenders' favour, by debt conversion.
- (b) Issue of profit-sharing bonds in the lenders' favour worth FRF 10 810 million (EUR 1648 million) by debt conversion.
- (c) Conversion of 11.68 percent of the bank debt into capital (see above).
- (d) Conversion of 11.68 percent of the bank debt into bonds for reimbursement in shares (see above).

(e) Conversion of 14.02 percent of the bank debt into profit-sharing bonds (see above).

(f) Conversion of 17.52 percent of the bank debt into a line of credit with revisable interest, i.e. FRF 13.509 million (EUR 2059 million).

The balance of the bank debt, namely FRF 34 779 million (EUR 5 302 million), is governed by a revised credit facility agreement.

From 1997 to 2005, Eurotunnel proceeded with a series of capital increases totalling EUR 901 million. It redeemed both bond and senior debts, reducing its debt on its 31 December 2005 balance sheet to EUR 8 981 million. That consisted of EUR 1 257 million of profit-sharing bonds, EUR 673 million of credit facility with revisable interest rate, EUR 785 million of advances and stabilisation bonds, and EUR 6 265 million for the various bank and similar debts.

Given the growing uncertainty whether the company could continue trading after 2006, the Board of Directors resolved on 13 July 2006 to petition Paris Commercial Court to make the company a ward of court, in the context of a Safeguarding Procedure (defined by Law 2005-845 of 26 July 2005). Negotiations then opened for a new financial restructuring. The plan, based on the agreements reached with the shareholders and banks, and ratified by the Commercial Court on 15 January 2007, consisted of restructuring the EUR 9 073 million debt as of 30 September 2006, reducing it to EUR 4 164 million by annulling 54 percent of its amount and partial refinancing it from a set of new bank loans from an international pool different from the initial group of banks. The maturities of those debts are spread between 2041 and 2050. In addition, Eurotunnel issued bonds redeemable in shares with a value of EUR 1,870 million, of which EUR 1,154 million was redeemable.

The 2007 restructuring stabilised Eurotunnel's financial situation. The company therefore proceeded with a capital increase of EUR 800 million on 28 May 2008 and several active debt management operations, including the issue on March 6, 2008 of EUR 800 million of subordinated notes redeemable in shares with a maturity of 18 months (converted in full). These two operations have enabled the reimbursement and redemption of EUR 1,549 million of bonds redeemable in shares.. As of 31 December 2011, the balance sheet appeared as follows:

- Equity: EUR 2 400 million, of which EUR 1,994 million is capital and premia
- Long-term debt: EUR 3 872 million (buy back of reduced debts for a sum of EUR 144 million in 2011), of which EUR 272 million is in the form of variable rate bonds.

3.3 Works payable by the railways

Please note, large parts of this section of the report have been removed at the request of Eurotunnel.

The RUC set rules for the allocation of costs between Eurotunnel and the Networks.

In this agreement, the Networks and Eurotunnel therefore agreed how to distribute the operating costs, explicitly including renewal expenditure (capex renewals).

As far as we know, this is the only instance where the IM (Eurotunnel) makes the user (Eurostar) share in renewal of the built work, which the Concession is expected to outlast.

The RUC was supplemented by an agreed settlement dated 23 December 2005, specifying the conditions of allocation of the operating costs. This confirms the principles outlined above. Eurotunnel and the Networks meet annually to decide the distribution. As far as we know, this is the only instance where the user of a rail network is asked to share directly in the network maintenance and renewal costs. Generally, by contrast, the IM includes a provision for works in the user fees it collects.

This wholly original system is justified by the parties' ignorance at the start of operations of the costs of upkeep and maintenance of such a built structure. At this stage of the analysis, it prompts four questions.

1) The European directives create separate roles for the infrastructure manager (IM) and railway undertakings (RUs). The IM sets charges for the RUs in exchange for access to the network.

In this sense, Directive 91/440 states that the access charges, "calculated in such a way as to avoid any discrimination between railway undertakings, may in particular take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure."

The process described in the RUC associates the RUs with the maintenance of the infrastructure and requires them to contribute to expenditure on renewals. The compatibility of this with the the European framework is questionable. In fact, Directive 2001/14 introduced the possibility for an IM to request a railway undertaking to share the risk associated with investments:

Article 8 – 2: "For specific investment projects, in the future, or **that have been completed not more than 15 years before the entry into force of the present Directive**, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/or cost-effectiveness and could not otherwise be or have been undertaking. **Such a changing arrangement may also incorporate agreements on the sharing of the risk associated with new investments.**"

2) A second question is to understand how the approach set out in the RUC can apply to newcomers.

In practice, the annual discussion of a flat-rate formula for the allocation of investments (%) between the IM and railway companies now takes the form of a bilateral discussion between Eurotunnel and Eurostar (this has been so since the opening of the tunnel). Minutes have to be drawn up.⁴ Admission of a newcomer, not party to the RUC, does not seem to jeopardise the application of Article 8-2 but does necessitate extending the negotiations, to avoid any discrimination.

The possibility of examination of the investment projects, allowed to the Railways by Article 8-2, must not introduce a significant distortion of competition with new entrants. Failing this, the newcomers can refer to the IGC as regulating authority, for any clarification.

⁴ The IM and railway companies were separately asked by the JEC for the minutes of their meetings during the last five financial years. They had not been supplied at the time of writing the present report.

3) Does the allocation of maintenance and renewal costs in practice conform with the provisions of the RUC?

Please note – large parts of this section of the report have been removed at the request of Eurotunnel

The RUC provides a breakdown of operating expenses in various categories. It seems that in practice the allocation of expenses provided by Eurotunnel uses a different nomenclature. A detailed analysis of these elements (which the JEC has not been able to do in the absence of detailed information on this point) is needed to assess the level of fees charged by Eurotunnel to the Railways.

4) The freight companies are not parties to the RUC. Therefore they have no direct share in renewal finance. Clarification must be provided on how the costs incurred by Eurotunnel (after the Railways' share is deducted) are added to the charges, and how the corresponding expenses are amortised. In fact the Railways' share in capex is equivalent in accounting terms to a subsidy, which it is necessary to take into account in deducting the expenditure eligible for amortisation.

How these items are accounted for in the shuttle costs also needs explanation.

3.4 Calculation of charges under the RUC

The charges that railway undertakings (passenger and freight) pay under the RUC comprise three building blocks:

1. A fixed annual usage charge
2. A variable toll per passenger or tonne of freight carried
3. A contribution to Eurotunnel's operating costs.

Each part of the charges is calculated as follows (see also the diagram):

1. Fixed annual usage charge

The quantity of the fixed annual charge was set at 7M units of account when railway services started in 1994. Under the terms of the RUC, this quantity has been revised downwards by 1.1% annually.

The value of a unit of account was set at £1 plus 11.7FF in 1994. Under the terms of the RUC, this value has been adjusted annually by the rate of inflation (RPI for £, IMP for FF and subsequently €)

The total fixed annual usage charge is divided between passenger operators, who pay 72.5% of it, and freight operators, who pay 27.5%.

2. Variable toll

The RUC set the quantity of the variable toll at 3.5 units of account per passenger carried and up to 3 units of account per tonne of freight carried when services started in 1994. Under the terms of

the RUC, the quantity of units of account per passenger or per tonne of freight has been revised downwards by 1.1% annually.

Under the RUC, the variable toll is calculated by multiplying a given operator's quantity of passengers or tonnes of freight carried by the adjusted number of units of account. In this way, the real value of the variable toll reduces annually by 1.1%.

3. Operating costs contribution

Unlike the fixed and variable tolls, this element of the charge is not calculated in units of account but rather in £ and € based on the actual costs incurred by Eurotunnel related to railway services under eight headings described in the RUC:

- i. Energy
- ii. Insurance
- iii. Maintenance and renewal capex
- iv. Maintenance and renewal opex
- v. Rates and taxes
- vi. Signalling
- vii. Train control
- viii. Support and management functions (such as finance, human resources etc.)

The effect of the 2006 agreement was to combine parts iv-viii of the operating costs into one, fixed sum which is inflated annually by RPI (£) and IMP (€). This part of the charge is known by its French name: le forfait.

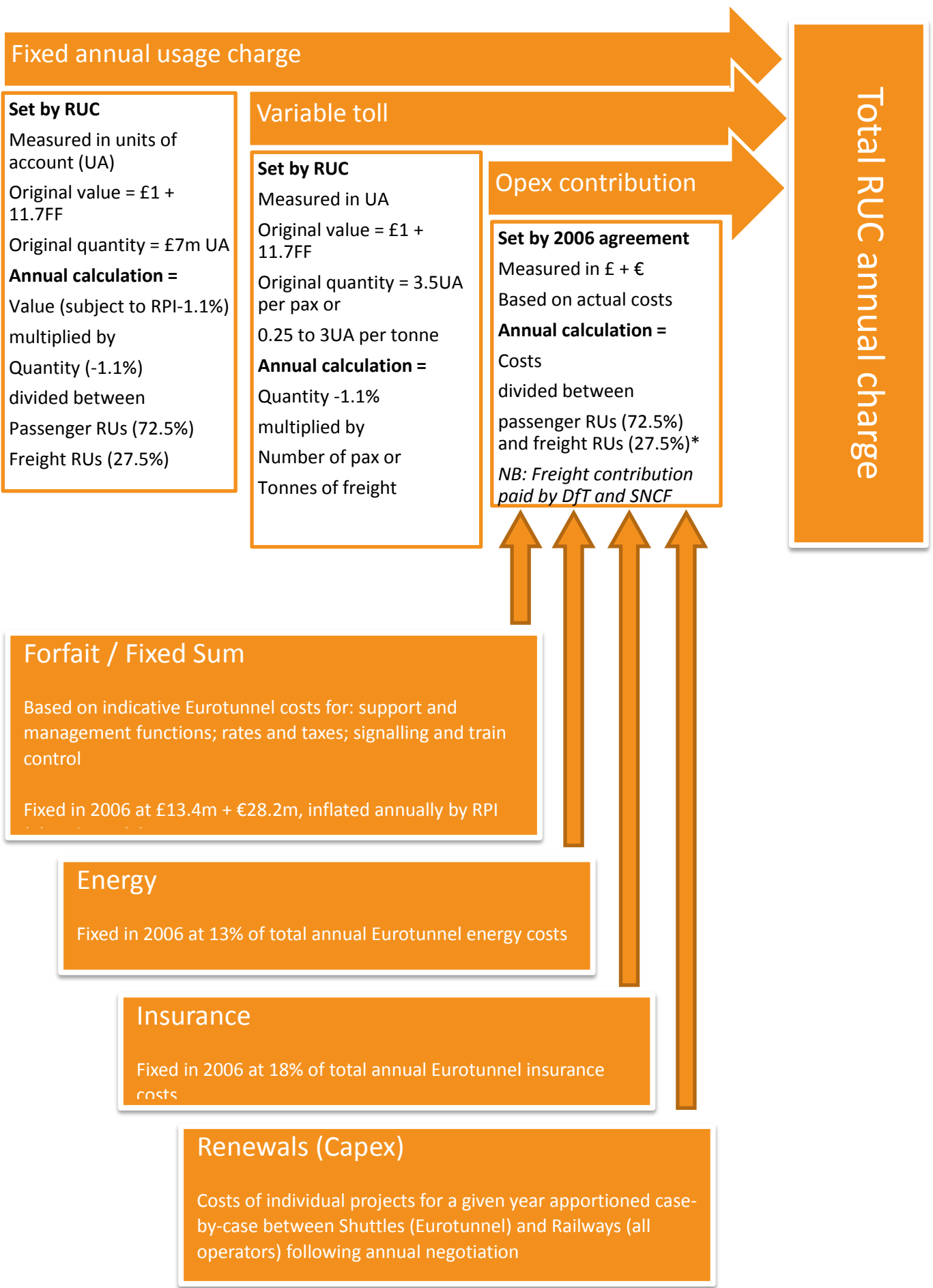
In respect of energy and insurance, the 2006 agreement fixed the percentage of Eurotunnel's actual annual costs payable by railway undertakings. The railways pay 13% of Eurotunnel's actual annual energy costs and 18% of ET's actual annual insurance costs in this part of the charge.

The proportion of the costs the railways pay towards Eurotunnel's capital expenditure projects is negotiated on a project-by-project basis and agreed annually.

The railways' share of each of the components of the operating costs charge is divided (like the fixed annual charge) on the basis of 72.5% by passenger operators and 27.5% by freight. The freight element is paid directly by the Governments, rather than by the actual operators.

Note: The RUC included a provision for a "minimum usage charge" to be applied up until and including 2005. This charge was set at a level based on the traffic forecasts for the Tunnel from 1994. The charge was payable by the railways instead of the fixed annual usage charge and the variable toll if the sum of the fixed charge and the variable toll was less than the value of the minimum usage charge. The minimum usage charge was applied every year from 1994-2005 as traffic fell well short of forecasts. The minimum usage charge provision expired in 2005 as per the

terms of the RUC. It was not relevant to the 2006 agreement as the operating costs contribution was unaffected by the minimum usage charge.



4 Monitoring the market for rail services through the Channel Tunnel

Background

Like all regulatory bodies, the IGC is required⁵ to monitor proactively the state of the market for rail services in the area of its jurisdiction. On 3 May 2012, acting on IGC's behalf, the JEC launched a survey aimed at passenger and freight railway undertakings, their customers, adjacent infrastructure managers, representative bodies and other key stakeholders in the Channel Tunnel market.

The JEC received eleven responses to the survey, representing a good cross-section from the above groups – including both existing and prospective players. A summary of the data is included at Annex D.

Summary of findings

Access to infrastructure – path allocation

There was a mixed response on this topic. In general, freight operators were more positive than passenger operators. All acknowledged that there was a clear process for path allocation contained in both the Network Statement and the RUC, yet both existing and potential passenger operators were concerned about potential inconsistency between the two. The existing operator also indicated there was a lack of transparency about how paths are prioritised during disruption to the network.

Access to infrastructure – service facilities

There was a limited response to this question, perhaps reflecting the fact that Eurotunnel (legitimately) does not provide many service facilities to operators. Those who did respond, particularly freight operators, expressed generally positive views about the availability of access to such service facilities as there are.

Pricing structure of infrastructure access charges

Respondents who are subject to the RUC were more critical of the structure of charges than respondents who are (potentially) subject to the Network Statement. The RUC attracted concerns from respondents about its consistency with European legislation and its suitability for a liberalised market. The Network Statement attracted positive comments for its clarity.

Level of access charges – freight

All freight operators noted that charges for use of the Tunnel remain very high, in comparison to either neighbouring infrastructures or competing modes (e.g. short sea shipping). One respondent

⁵ Directive 91/440/EEC as amended by Directive 2001/12/EC, Article 10.7 states as follows:

“Without prejudice to Community and national regulations concerning competition policy and the institutions with responsibility in that area, the regulatory body established pursuant to Article 30 of Directive 2000/14/EC, or any other body enjoying the same degree of independence shall monitor the competition in the rail services markets, including the rail freight transport market.”

noted the further problem of the security charge that RFF (the infrastructure manager of the French network) began levying on cross-Channel freight services earlier in 2012.

Level of access charges – passenger

Current and potential passenger operators were unanimous in their strong criticism of the level of passenger tolls. The level of charges is perceived as a significant obstacle to the development of new services. Respondents drew attention to how the level of charges compares unfavourably with neighbouring infrastructures and other modes (e.g. short haul passenger air travel).

Authorisation of rolling stock

Perhaps unsurprisingly in a context where only one type of passenger train and one type of freight locomotive have been authorised and operated in the Tunnel since its opening, issues around the authorisation of rolling stock attracted strong, detailed and wide-ranging negative feedback from respondents. Responses focused on two areas of this topic, both of which were held to hinder the development of new services:

- (a) The additional requirements for vehicles (passenger and freight) IGC asks operators/manufacturers to meet – which attracted negative comments about their necessity, transparency and costliness.
- (b) The process for demonstrating to IGC compliance with the requirements for vehicles – which was criticised for being unclear, expensive, and slow.

Licensing of railway undertaking

There was a very limited response to this question, probably due to the fact that a specific additional licence is not required to operate in the Tunnel (and that IGC does not have a role in licensing).

Safety certification of railway undertaking

Responses on this subject were mixed. The existing passenger operator (who has recently been re-certified by IGC) was positive about the IGC's processes and guidance. Potential operators (and a representative body for railway undertakings) were critical of the clarity, cost and pace of the process, reflecting the widely-known difficulty and delay that potential operators have experienced in gaining the necessary certification.

Quality of infrastructure

Respondents were generally positive about the quality of the Tunnel infrastructure, and the level of investment made by Eurotunnel in maintaining quality and performance levels. However, several respondents also challenged Eurotunnel to drive forward greater technical harmonisation. The existing passenger operator also raised concerns about the current and long-term allocation of costs for infrastructure enhancements.

Conclusions

Stakeholders identified technical and safety regulatory barriers as being an equally if not more significant barrier to market development in the Tunnel than the structure and level of access charges.

It is perhaps unsurprising that concerns about overcoming the barriers to entering the market in the first place are of more immediate concern to potential operators (and potential beneficiaries of new services) than the level of charges which will apply only once operation has commenced. IGC has undertaken much work, with Eurotunnel's co-operation, in the last year to sensibly streamline

and clarify the technical and safety requirements for rolling stock using the Tunnel. This work is due to conclude in Autumn 2012, and it will be interesting to assess its impact on the market when this survey is next repeated.

This is not to diminish the impact of charges on the market, where Eurotunnel clearly has much work to do to convince its (existing and potential) customers that its very high access charges are justifiable, are established in accordance with the relevant European legislation, and guarantee a level-playing field between different users. It should be noted that the existing passenger operator was much more concerned by the charges than by safety and technical barriers to entry.

5 - JEC hearings and information exchanges

Summary

The JEC's working methodology for carrying out proactive supervision of the conditions for access to the Tunnel comprises three areas of activity:

- a) Examination of information in the public domain (e.g. financial information that Eurotunnel and operators publish to meet other regulatory requirements);
- b) Requests for information from Eurotunnel, in accordance with the IGC's obligations and powers as regulatory body, and analysis of the information provided;
- c) Regular meetings with Eurotunnel and operators to elaborate on the information we have obtained, to check our understanding and to discuss our emerging views.

(This does not include the JEC's market monitoring activity, which is described in Chapter 4 of this report.)

The JEC is also responsible, in accordance with the legislation, for advising the IGC on any appeals or complaints from parties who are adversely affected by the access arrangements to the Tunnel. For the record, the IGC has received no such formal appeals on complaints during the time period covered by this report.

A full list of the JEC's sources of information is contained below.

Meetings

<i>Date (venue)</i>	<i>Participants</i>			
	JEC	Eurotunnel	Eurostar	Other
4 November 2011 (Paris)	✓	✓		
12 January 2012 (London)	✓	✓		
16 February 2012 (Paris)	✓		✓	
8 March 2012 (London)	✓	✓		
10 May 2012 (London)	✓		✓	

23 May 2012 (London)	✓	✓		
8 June 2012 (videoconference)	✓			
29 June 2012 (Paris)	✓	✓		

JEC has held eight meetings during the period covered by this report. All of the JEC's meetings have been quorate (i.e. attended by both co-chairs). As the focus of this report has been on Eurotunnel's operating costs and its charging framework, Eurotunnel has been most regularly invited to attend part of the JEC's meetings.

As it is critical to understand how Eurotunnel's access arrangements impact on operators, the JEC has also met Eurostar (Eurotunnel's largest user for rail services) on two occasions. The JEC is grateful to Eurostar for the time and effort it has put into these productive exchanges.

The JEC is keen to engage more regularly with other current and prospective users of the Tunnel. The JEC's market monitoring activity (see Chapter 3.2) is likely to stimulate more formal contact with them.

Information requests: Eurotunnel

<i>Date of request</i>	<i>Subject</i>	<i>Author</i>	<i>Deadline for ET reply</i>	<i>Date of ET reply</i>
16 November 2011	Rail Usage Contract (and Eurotunnel debt structure)	JEC	9 December 2011	No reply
1 February 2012	Follow up to 17 November letter	IGC	29 February 2012	No reply
20 February 2012	Follow up and clarification of RUC questions	JEC	29 February 2012	6 March 2012
27 April 2012	ET operating costs	JEC	16 May 2012	No reply
28 May 2012	Follow up to 27 April letter and 23 May meeting	JEC	End June 2012	29 June 2012

Note this table only covers information requests directly pursuant to this report into the application of the established charging framework. The JEC (and the IGC) has also engaged in detailed correspondence with Eurotunnel on the development of its Network Statement and with Eurotunnel and Eurostar on IGC's role in supervision of the arrangements.

Information in the public domain

Groupe Eurotunnel SA's financial accounts and "registration document" for 2011

<http://www.eurotunnelgroup.com/uk/shareholders-and-investors/get-sa/regulated-information/annual-financial-reports/>

Eurotunnel half-yearly financial reports

<http://www.eurotunnelgroup.com/uk/shareholders-and-investors/get-sa/regulated-information/half-yearly-financial-reports/>

Eurotunnel quarterly and annual traffic and revenue data for 2011

<http://www.eurotunnelgroup.com/uk/shareholders-and-investors/get-sa/regulated-information/Quarterly-financial-information/>

Eurotunnel's financial data for 2011 are attached in Annex E.

6. Conclusions

As a result of the work we have completed, and the information we have gathered, we have been able to form a number of conclusions regarding the issues described in this report.

Is the RUC a framework agreement?

We have considered whether the RUC is a framework agreement. According to Article 2 of Directive 2001/14/EC, a framework agreement is defined as:

“a legally binding general agreement on the basis of public or private law, setting out the rights and obligations of an applicant and the infrastructure manager or the allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period.”

In Article 2, an “applicant” is defined as either a licensed railway undertaking, or an international grouping of licensed railway undertakings, or any other person or legal entity with a public service or commercial interest in procuring infrastructure capacity for operation of railway service on its territory.

It follows that the two state railways, British Railways Board and SNCF, are applicants. Equally, the RUC is a legally binding agreement that sets out the rights and obligations of British Railways Board and SNCF (as applicants) and the Concessionaires (as infrastructure manager), in relation to the infrastructure capacity to be allocated and the charges to be levied in respect of the Channel Tunnel, for a period longer than one working timetable period. According to Article 17 of Directive 2001/14 EC, framework agreements may be concluded with an applicant which specify *“the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.”*

We have noted that the RUC is an agreement between the Concessionaires and the two state railways (British Railways Board and SNCF). In turn, these parties have assigned certain rights under the RUC to Eurostar, which is also an “applicant” for the purposes of Directive 2001/14/EC, either originally as an international grouping of licensed railway undertakings or currently as a single licensed railway undertaking, and Eurostar uses its rights in order to operate trains through the Channel Tunnel. The RUC provides for such use of the infrastructure for an extended period and sets out the terms on which it is used. **We therefore consider that the characteristics of the RUC are consistent with the definition of a framework agreement.**

Is the RUC’s duration consistent with the legal requirements?

Article 2(4) of Directive 2007/58 EC states:

“Article 17(5) [of Directive 2001/14 EC] shall be replaced by the following:

“5. Framework agreements shall in principle cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

5a. For services using specialised infrastructure referred to in Article 24 which requires substantial and long-term investment, duly justified by the applicant, framework agreements

may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

The applicant's requirements may in this case call for detailed definition of the capacity characteristics — including the frequency, volume and quality of train paths — which are to be provided to the applicant for the duration of the framework agreement. The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 27.

As from 1 January 2010, an initial framework agreement may be drawn up for a period of five years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 30 shall be responsible for authorising the entry into force of such an agreement.”;

We have looked at the duration of the RUC against the background of the provisions set out above. We note that, given that the RUC predates the legislation, the parties could not have contemplated the legislative requirements with any accuracy. However, we note that “Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.” We have therefore considered whether the RUC falls into this category. In doing this, we note that the Directive does not prescribe any formula or quantitative mechanism which can be used in order to calculate the permissible duration precisely. The approach taken in the Directive is, rather, a qualitative one, which simply describes the circumstances in which a duration of more than 15 years is permissible. Even then, no maximum duration is set.

We consider that the channel tunnel is an exceptional case, for a number of reasons:

- It was a completely new piece of railway infrastructure when the parties entered into the RUC
- It was constructed without any state subsidy and was therefore entirely reliant on private sector funding
- The nature of the project was inherently higher risk from the point of view of its construction
- The nature of the project was also inherently higher risk because it involved developing an entirely new rail flow
- The size and scope of the associated risks has, of course, become clearer since the project began.

In addition, by reference to the legislation:

- There was large-scale investment (£10.54 billion)
- The investment was long-term (the concession was for 99 years)
- The investment was covered by contractual commitment (the concession agreement between the concessionaires and the French and British governments).

On the other hand:

- Only a proportion of the investment relates to the development of railway infrastructure;
- The cost of the investment borne by the infrastructure manager has been reduced after the fact by the restructuring of Eurotunnel's debt.

From this analysis, we believe it follows that, if the RUC had been entered into after the current legislation was in force, it would certainly have qualified for a duration considerably in excess of 15 years. How much longer would clearly have been a matter of regulatory judgment, which would have been exercised having regard to the precise size of the investment, the nature of the risks associated with it, and the likely period over which the investment would be remunerated. From what we currently know, the agreed duration of 65 years seems long – but not so long that it is clearly inconsistent with the legislation.

Access charges

So far, we have been able to draw some preliminary conclusions about the structure of Eurotunnel's access charges. We note that these are preliminary in that we are still studying information provided by Eurotunnel. In some cases, too, the work we have done so far has indicated the need for us to make further enquiries before we can finalise our views. We have now also begun work on an initial, top-down, analysis of Eurotunnel's costs. Once complete, this should enable us to make an approximate assessment of the extent to which Eurotunnel's costs are the cost directly incurred as the result of railway traffic; the extent to which they relate to the long-term cost of facilities used by the railways; and the extent to which Eurotunnel's access charge income exceeds the sum of those two categories of cost.

Unfortunately, whilst we had expected to complete this initial assessment in time for this report, Eurotunnel was not able to deliver the information we needed within the necessary timescales, and so we have not been able to complete our work. **We therefore intend to produce a supplementary report by the end of October 2012, containing our additional conclusions.**

Structure of charges

The RUC provides for a very precise calculation of access charges, which comprise:

- a **fixed charge**, the pass-through of a number of charges relating to operation maintenance and renewal (allocated on a customised basis), and
- a passenger **toll**, or weight toll, for passenger and freight trains, respectively.

The toll, which for Eurostar amounts to approximately 75% of its access charges, is subject to an RPI- X formula. The effect of this has been to reduce the real cost of the passenger toll in the period of the tunnel's operation by 17%. The fact that such a large component of the access charges is subject to an annual reduction in real terms is entirely consistent with the legal requirement that the infrastructure manager should be incentivised to improve its efficiency and to pass on the benefit of that improvement to train operators using the facility. However, the toll is also very unusual: it has potential to affect the ability of new operators to enter the market. This is because the cost of using the tunnel varies according to the number of passengers on a train: a full train costs more than a half empty one, even though there is virtually no additional impact on Eurotunnel's costs.

We have not reached any final conclusions on the effect of this charge. On the one hand, it could encourage new entrants, by reducing charges for trains early on when the market is still being developed. On the other hand, it will make it more difficult for operators to fill trains by offering low cost tickets to attract marginal passengers. Before we can decide whether this charge is, in any way, anti-competitive, we should need to study the evidence for the effect it has on the market.

In addition to calculating access charges for existing users through the mechanisms provided by the RUC, Eurotunnel publishes a network statement which contains charges which would apply to any new users. To date, these charges have not been used for passenger operators – although they have for freight operators. For passenger operators, therefore, there is currently a potential difference between the charges paid under the RUC, and the charges in the network statement. The latter are calculated by Eurotunnel with the intention of being as close as possible to the projected charges for the relevant year to be paid under the RUC. Eurotunnel has told us that, in practice, there would be no difference between the two. However, we have still to understand exactly how that process works. However, we have noted that, under the network statement, the passenger toll appears to be subject to a minimum level, whereas no similar provision exists in the RUC.

Eurotunnel has confirmed that it understands the need to ensure that train operators are charged for access in a non-discriminatory way. It considers that it already does this, but it accepts that the mechanisms by which it does so are far from transparent.

As our next step, the joint economic committee expects to work with Eurotunnel in order to:

- Clarify the current outcomes from the application of the charges, with the aim of confirming that it is applied in a consistent and non-discriminatory way to all the different operators;
- Achieve a much greater level of transparency of how the charges are justified and published;
- Examine if it would be possible to apply the terms of the RUC or a similar framework agreement to all the operators who use the Tunnel .

Annex A – Summary of the Rail Usage Contract

Please note – this section has been removed at the request of Eurotunnel

Annex B

Incidents affecting the operation of the Tunnel.

Extract from Tunnel annual reports for 2008 and 2009

Eurotunnel annual report 2008

The unexpected reduction in available capacity during the last quarter of the year, resulting from the fire [of 11 September 2008], had a damaging impact on traffic. Shuttle turnover shrank by 7% in 2008, a similar rate to the previous year. However, during the first quarter of 2008, HGV traffic had grown by 7%. To limit the effects of the unavailability of Interval 6, Eurotunnel decided to favour its contracted freight transport clients with the aim of maintaining a high quality service while availability was momentarily reduced. The optimisation of available capacity allowed the reduction in the number of HGVs carried during the fourth quarter of 2008 to be limited to 45%, despite a reduction in capacity of the order of 50%.

In addition, the charging policy allowed a minor average price increase during the year, which partially offset the 11% decline in traffic.

In spite of a 4% increase in traffic during the first quarter of 2008, tourist vehicle activity declined eventually by 11% over the year. For the fourth quarter, the reduction in the number of vehicles transported (-37%) was less than the reduction in capacity (-50%).

Variable charging allowed an increase in average price for tourist transport during the year, without however compensating for the reduction in volumes of 11%.

ET annual report 2009

Reflecting the economic downturn, the cross-channel market for HGV transport shrank by around 20% in comparison to 2007 (the last year for which figures are available). Due to a number of carriers not renewing their annual contract at the end of 2008 and the effect of the economic crisis on the market, HGV Shuttle traffic declined by 39% in 2009 compared to 2008.

On the other hand, traffic grew in the fourth quarter (+ 12% compared to the fourth quarter of 2008 during which reconstruction works disrupted and partially closed part of the Tunnel), and the fourth

quarter showed a significant improvement with an increase of 17% by comparison to the previous quarter – despite the restrictions on traffic imposed by the wintry conditions at the end of the year.

Passenger Shuttle activity (cars) grew slightly (+ 0.5% for cars) over the year, the decline seen in the first quarter being compensated for by the strong growth witnessed in the second quarter. The fourth quarter of 2009 saw the Eurotunnel Group regain its share of the market for cross-channel car transport. Coach traffic reported a slight decrease over the year (- 2%).

Eurostar restarted full service on 23 February 2009, two weeks after the reopening of Channel Tunnel Interval 6. The number of passengers using the Fixed Link on these high-speed trains was 6% fewer in the first quarter of 2009 compared to the same period the previous year, but the growth in traffic in the third and fourth quarters (respectively +9% and +8%) translated into an increase in annual traffic of close to 1% in comparison to 2008. This positive trend was achieved in spite of the breakdown of five Eurostar trains on 18 December 2009 and the very serious service disruptions that followed.

Annex C

Detail of finance operations

(Amounts in EUR million⁶)

Dates of financial operations	Equity	Debt		Comments
		Bonds	Bank debt	
Initial finance				
May 1986: shareholders' capital contribution	460			
October 1986: Private placement	314			
November 1987: stock market placement	1174			
November 1987: bank loan			7 622	
Period 1987 - 1995				
December 1990: capital increase	855			
October 1990: loan increase			2 642	
October 1990: EIB loan			457	

⁶ For operations prior to the launch of the euro on 1 January 1999, the amount is based on the reference exchange GBP/FRF exchange rate of 10 and the EUR/FRF rate of 6.55957.

November 1991: CECA loan			305	
May 1994: capital increase	1150			
May 1994: loan increase			987	As of 31 December 1994, the level of capital including share premia had a value equivalent to EUR 3,845 million and the debt was EUR 12,220 million.
1995 - 1997 restructuring				
July 1997: capital increase	1 368			
November 1997: bond issue reimbursable in shares		1 368		
November 1997: issue of profit-sharing bonds		1648		
November 1997: reduction of bank debt			- 4394	As of 31 December 1994, the level of capital including share premia had a value equivalent to EUR 3,845 million and the debt was EUR 12,220 million.
Period 1997 - 2005				
Redemption of profit-sharing bonds		-189		
Capital increase	396			
Capital increase	250			
Issue of stabilisation advances			40	
Early repayment of bonds for		-188		

reimbursement in shares				
Capital increase	255			
Redemption of profit-sharing bonds (million)		- 167		
Redemption of lines of credit with variable interest			- 306	
Redemption of stabilisation advances.			- 25	
Debt redemption			- 15,25	
Securitisation of EUR 1 800 million of junior debt with junior with 27 percent rebate				
Reimbursement of debts and bonds reimbursable in shares		?	?	Total = 686 million
Bond issue		1 137		
Debt redemption			- 1 291	
Debt reduction by leasing operations			- 219	
2006 -2007 restructuring				
Issue of bonds for reimbursement in shares			1870	
Debt reduction			9073	Of which EUR 4,164 million was refinanced
New loan (set of facilities from a new bank pool)			4 164	
Subsequent operations				

Increase in capital	800			
Issue of subordinated notes redeemable in shares		800		
Repayment and redemption of the bonds redeemable in shares		-1549		

Annex D – IGC market monitoring survey 2012 – response data

Note on the data

11 responses were received:

- 4 responses from freight operators or customers
- 4 responses from passenger operators or passenger RU representative bodies
- 1 response from a rolling stock manufacturer
- 1 response from an adjacent infrastructure manager
- 1 response from a business representation organisation

Respondents were not required to answer all of the questions. The majority of respondents focused their answers on areas of direct interest to them e.g. passenger operators did not generally comment on freight charges, and vice versa.

Nil responses have been recorded as indicated the subject has neutral or no impact to the respondent. Two respondents did not complete the multiple choice section at all.

Multiple choice section

	1 v neg	2 neg	3 na/nil	4 pos	5 v pos
Access – path allocation		✓✓	✓✓✓	✓	✓
Access – service facilities			✓✓✓✓	✓✓	✓
Structure of charges	✓✓	✓✓	✓	✓✓	✓
Level of charges – freight		✓✓✓	✓✓✓✓		✓
Level of charges – pax	✓✓✓✓✓		✓✓		
Rolling stock authorisation	✓	✓✓✓	✓✓✓✓		

RU licensing		✓	✓✓✓✓✓	✓	✓
RU safety cert	✓	✓✓	✓✓✓✓		✓
Quality of infrastructure			✓✓✓✓	✓✓	✓✓
<i>Other</i>					
Regulatory processes	✓				
Network Statement				✓	

Free text comments section

<i>Subject</i>	<i>Positive</i>		<i>Negative</i>
Access allocation	SNCF; DBS		NS; EIL; HS1
Service facilities	SNCF		
Structure of charges	SNCF		EIL, HS1
Level of charges - freight			SNCF; DBS;
Level of charges - pax			DB; NS; EIL
Rolling stock authorisation	EIL		SNCF; DBS; DB; NS; ATOC; Siemens; HS1
RU licensing			
Safety certification	EIL		DBS; DB; ATOC; HS1
Quality of infrastructure	SNCF		

<i>Other:</i>			
Connectivity/availability of onward paths			SNCB; NS; HS1
RFF security charge			SNCB
Security/border control issues			NS
Technical compatibility			Siemens

Conclusions

- Widely positive response about the quality/performance of the infrastructure
- Positive views about the clarity of the charges and allocation of paths for freight.
- Passenger operators said that the high level of charges makes it difficult to develop compelling proposals for profitable services to new destinations.
- Freight operators/customers stressed that charges/costs were very high compared to other cross-Channel modes (as well as compared to other railways);
- Lack of pace and clarity around safety regulatory processes is equally if not more significant barrier than the high level of charges as it introduces additional costs and challenging project risks.
- Consistency of technical requirements/rules for rolling stock with European standards would increase traffic (by making authorisation processes easier and less costly; and by widening the possible types of permitted traffic).
- Licensing not an issue because no additional operating licence required to transit the Tunnel

Annex E

Eurotunnel's financial information for 2011

Eurotunnel's consolidated revenue for the 2011 financial year was €845 million, an increase of €115 million (16%) compared to the 2010 financial year – an increase of €87 million on a like-for-like basis⁷.

This increase is as a result of growth of both the Fixed Link and Europorte, and from the accounting of €9 million of other income in respect of indemnities against operating losses resulting from the 2008 fire.

Eurotunnel's operating margin and trading profit increased by €70 million to €403 million and €247 million respectively. Its operating profit amounted to €272 million, an increase of €85 million, of which a total of €29 million related to insurance indemnities for the fire in 2008.

The gross cost of servicing debt increased by €15 million, mainly as a result of the effect of the increase in inflation rates on the revaluation of the nominal value of the index-linked tranche of the debt, although the interest paid remained relatively stable at €211 million.

Eurotunnel's consolidated net result in 2011 was a profit of €11 million compared to a loss of €58 million in 2010.

Revenue

At €687 million, revenues for the Fixed Link for the 2011 financial year grew by €54 million (9%) compared to 2010.

At €158 million, Europorte segment's revenues increased by €33 million, (26%) on a like-for-like basis.

Fixed Link activity

Shuttle services

Compared to 2010, Shuttle Services revenues increased by 10% in 2011, to €399 million. The Short Straits cross-Channel truck market continued to grow in 2011: +5% compared to 2010. This still remains about 12% below 2007, prior to the economic crisis. The number of trucks transported by the Shuttles in 2011 increased by 16% compared to 2010 and the Truck Shuttle's market share improved by 3.6 points to reach more than 38% and stabilise at a level similar to that of before the fire in 2008.

The Short Straits cross-Channel car market contracted slightly (-0.4%) in 2011 compared to 2010 when it was boosted by the consequences of the eruption of the Icelandic volcano on air transport. Despite this decline, Le Shuttle's traffic continued to grow: the number of cars

⁷ "Like-for like" means that the comparative figures have been adjusted to include GB Railfreight's revenues (€28 million) and operating expenses (€27 million) for the period January to May 2010.

transported in 2011 increased by 6% and its market share improved by about 3 points to more than 46%.

Railway network

Eurotunnel earned revenues of €278 million through Eurostar passenger trains and freight train services in 2011, an increase of 7% compared to 2010.

In 2011, 9.68 million Eurostar passengers used the Tunnel, an increase of 1.6% compared to 2010. The creation of new rail freight services using the Tunnel in 2011 resulted in a growth in traffic of 14% in terms of the number of trains (compared to 2010). This growth includes both the creation of new intermodal services and the short term transportation of steel during the second and third quarters.

Operating margin (EBITDA⁸)

The operating margin of €403 million is up 21% compared to 2010, of which €9 million was due to insurance indemnities relating to the fire in September 2008, received and accounted for in 2011.

External operating expenses

At €267 million in 2011, external operating expenses increased by €16 million (7%) on a like-for-like basis mainly due to:

(c) a €24 million increase in costs associated with the growth in activity and the investment in training of train drivers prior to the start of new contracts in 2012 and beyond,

(d) an €8 million decrease in Fixed Link costs mainly due to the reduction in insurance premiums and local French taxes partially offset by a small increase in the cost of electricity and maintenance.

Operating profit (EBITDA)

The depreciation charge for 2011 remained stable compared to 2010, the increase resulting from the investment in rolling stock by subsidiaries being offset by a small decrease in the depreciation of other assets.

The €25 million of other net operating income mainly consisted of €20 million of insurance indemnities received in respect of final compensation for rolling stock considered irreparable following the fire in 2008 and which was written off during the 2008 and 2009 financial years. The operating result in 2011 was a profit of €272 million compared to €187 million in 2010.

Net cost of financing and debt service

Income from cash and cash equivalents decreased by €3 million in 2011, 2010 having benefitted from the receipt of penalty interest in respect of a VAT reimbursement which has been partially offset by €0.8 million of interest received on the floating rate notes purchased in the second half of 2011.

At €268 million in 2011, the gross cost of servicing debt increased by €15 million compared to 2010 at a constant exchange rate as a result of inflation rates in the UK (5.4% for 2011) and the resulting effect on the nominal amount of the index-linked tranche of the debt.

⁸ Earnings before interest, taxes, depreciation and amortisation

Cash flows relating to interest and related hedging payments on the term loan remain relatively stable at €211 million.

Cash flow

The Free Cash Flow⁹ generated in 2011 was €132 million. As at 31 December 2011, Eurotunnel held cash balances of €276 million compared to €316 million at 31 December 2010, after the acquisition of the floating rate notes for €128 million, the purchase of treasury shares for €40 million and €98 million of capital expenditure.

Comparison of income statement

Financial years ended 31 December 2010 and 31 December 2011

The table below outlines income for the financial years ending in 2010 and 2011.

In € million	2011	2010	% change 2011/2010
Exchange rate €/£	1.148	1.148	
Shuttle services	399	361	+10
Railway network	278	262	+7
Other revenue	10	10	=
Sub-total for Fixed Link	687	633	+9
Europorte	158	97	+63
Revenue	845	730	+16
Other income (insurance indemnities for operating losses)	9	0	
Total turnover	854	730	+17
External operating expenses	-267	-232	+15

⁹ The Group defines its Free Cash Flow as net cash flow from operating activities less net cash flow from investing activities (excluding the acquisition of shareholdings in subsidiary undertakings) and net cash flow from financing activities relating to the service of the debt (term loan and hedging instruments) plus interest received (on cash and cash equivalents).

Employee benefits expense	-184	-165	+12
Operating margin (EBITDA)	403	333	+21
Depreciation	-156	-156	=
Trading profit	247	177	+40
Other net operating income	25	10	
Operating profit (EBIT)	272	187	
Income from cash and cash equivalents	4	7	
Gross cost of servicing debt	-268	-253	+6
Net cost of financing and debt service	-264	-246	+7
Other net financial income and income tax expense	3	1	
Groupe Eurotunnel: Net result: profit/loss	11	-58	

Revenue broken down by quarter

The following tables break down the income listed above by quarter.

Quarter 1

REVENUE € million	1 st quarter 2011 (unaudited)	1 st quarter 2010 restated	% change
Shuttle services	81.7	71.6	+14
Railway network	59.9	57.0	+5
Other revenues	1.9	1.9	-1

Sub-total concession	143.5	130.5	+10
Europorte	35.7	14.3	+150
Revenue	179.2	144.8	+24

Quarter 2

REVENUE € million	2 nd quarter 2011 (unaudited)	2 nd quarter 2010 restated	% change
Shuttle services	100.2	94.7	+6
Railway network	76.7	66.6	+15
Other revenues	3.4	2.3	+45
Sub-total concession	180.3	163.6	+10
Europorte	36.6	15.4	+139
Revenue	216.9	179	+21

Quarter 3

REVENUE € million	3 rd quarter 2011 (unaudited)	3 rd quarter 2010 restated	% change
Shuttle services	116.5	108.1	+8
Railway network	73.7	69.2	+6
Other revenues	2.0	2.8	-28

Sub-total concession	192.2	180.1	+7
Europorte	39.5	30.4	+30
Revenue	231.7	210.5	+10

Quarter 4

REVENUE € million	3 rd quarter 2011 (unaudited)	3 rd quarter 2010 restated	% change
Shuttle services	100.5	88.1	+14
Railway network	68.1	68.2	0
Other revenues	2.4	2.5	-4
Sub-total concession	171.0	158.8	+8
Europorte	46.0	31.2	+48
Revenue	217.0	190.0	+14