British Columbia Ferry Commission

IN THE MATTER OF

Section 45.1 of the Coastal Ferry Act, S.B.C. 2003, c. 14

And Regulation of Competitive Advantage

Respecting BCFS' Drop Trailer Services on Its Major Routes

Reasons for Determination for Order 11-01

29 April 2011

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1 Overview

Background

British Columbia Ferry Services Inc ("BCFS"), an independent company, is the only ferry operator having a Coastal Ferry Services Contract with the Province. As such, it is the only ferry operator regulated by the British Columba Ferries Commissioner under the Coastal Ferry Act, S.B.C. 2003, c. 14 ("Act").

In 2009, BCFS began to offer a drop trailer service onboard its existing roll-on roll-off vessels on its scheduled sailings across Georgia Strait.

In providing drop trailer service on its major[1] routes, BCFS departed from its traditional transportation business: until 2009 it conveyed mainly passengers and their private vehicles, buses and "live" (i.e. accompanied-by-driver) commercial trucks and tractor-trailers. These comprise BCFS' historical traffic base, where it enjoys a virtual monopoly.

The new drop trailer service put BCFS into direct competition with two other ferry operators[2] already in the business. These other firms provide freight-only service across Georgia Strait using barge-type vessels. They promptly claimed that BCFS' new service was competing unfairly.

Amended Coastal Ferry Act

In June 2010 the provincial legislature amended the Act, adding, among others, provisions, requiring the commissioner to regulate a competitive service provided by a ferry operator if he finds that the ferry operator is pricing below cost, or if he finds the ferry operator has an unfair advantage.

Commissioner's Findings

In Memorandum 37 dated July 19, 2010, the commissioner found that BCFS' drop trailer service on its major routes across Georgia Strait is a competitive service as defined by section 1

[1] The major route group comprises three routes between the BC Lower Mainland and Vancouver Island, on two of which (routes 1 and 30) BCFS is offering drop trailer service. BCFS has long carried drop trailers on its northern route group.

[2] **Seaspan Ferries Corporation (Seaspan)** (formerly Seaspan Coastal Intermodal Company or SCIC) and **Van Isle Barge Services Ltd (Van Isle)**. These firms are described in Chapter 7: Appendix A.

of the Act. Having made that finding, the commissioner then began to determine under section 45.1 of the Act whether BCFS is pricing its drop trailer service below costs, or if BCFS has an unfair advantage in that competitive service.

In addition to receiving information and submissions from BCFS, the commissioner received submissions from stakeholders[3] and the public, and hired technical assistance.[4]

On February 7, 2011, the commissioner issued Order 11-01 in both non-confidential and confidential versions with reasons to follow. On the same date he issued Memorandum 42 which provided a summary of his determinations on the inquiry.

He concluded that BCFS (1) was charging its drop trailer customers less than the appropriate level of cost, and (2) has an unfair competitive advantage due to the price cap regulatory framework in which it operates and also due to its exemption from corporate income tax.

To regulate the service, the commissioner fixed a minimum average tariff that BCFS would be allowed to charge for drop trailers on its major routes, starting in April 2011. He also stated horizon traffic volume for drop trailers on BCFS which, if attained in the future, could trigger a commissioner's review of the level of the minimum tariff.

These are the reasons for Order 11-01. The reasons provide the commissioner's perspective on the origins of the unfair competitive advantage, describe the process of his inquiry, summarize the submissions received from BCFS, stakeholders and the public, and contain his findings and the reasons for his determinations.

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[3] The term stakeholders here means those with a direct commercial interest in the drop trailer services and, therefore, in the outcome of this inquiry. They include ferry operators, the trucking industry, and freight shippers.

[4] The commissioner engaged the firm of **PricewaterhouseCoopers** LLP to advise on the calculation of costs and the adjustments required to account for sources of unfair competitive advantage.

2 Statutory Definitions and Requirements

On 3 June 2010 Royal Assent was given to amendments to the Act. Section 45.1 was included in those amendments, and came into force on 25 June 2010.

The commissioner was given new powers under section 45.1 to regulate where an unfair competitive advantage is held by any ferry operator having a Coastal Ferry Services Contract with the Province.

The Act includes the following definitions:

“Coastal Ferry Services Contract” means a contract entered into by the minister under s. 27 of the Act, with the approval of the Lieutenant Governor in Council, under which the minister agrees on behalf of the government to authorize the other contracting party to operate one or more ferries on one or more specified ferry routes, and includes all related contracts that are specified in that contract as forming part of the Coastal Ferry Services Contract

“ferry operator” means each person who, under the terms of a Coastal Ferry Services Contract, is authorized to operate one or more ferries on one or more designated ferry routes

“ferry transportation services” means the transportation of vehicles and passengers on designated ferry routes, and does not include any ancillary services

“major route” means any designated ferry route identified as a major route in a Coastal Ferry Services Contract

"drop trailer service"[5] means a service in which a ferry operator

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[5] To use drop trailer service, truckers “drop” their highway trailers at the ferry terminal in fenced lots, for the ferry operator to load later onto vessels using its own specialized tractors called hostlers. The trailers are not accompanied by their highway tractors/drivers for the voyage, which can mean cost savings through better utilization of tractors and drivers’ time.

(a) loads on a vessel,

(b) transports on the vessel on a major route, and

(c) unloads from the vessel

a trailer left with the ferry operator for those purposes.

"competitive service" means a ferry transportation service, including, without limitation, a drop trailer service, that is the same as or substantially similar to a service being provided

(a) by a person other than a ferry operator, and

(b) in a geographical area that is sufficiently near to where the ferry transportation service is or may be provided that the two services could reasonably be in competition.

Section 45.1 of the Act provides that:

(1) If a ferry operator is providing a competitive service, the commissioner must determine whether the ferry operator is pricing the service below the direct costs and an appropriate proportion of the indirect costs associated with providing that ferry transportation service, or has an unfair competitive advantage, including, without limitation, an advantage resulting from the ferry operator having been provided with

(a) use of, access to or ownership of vessels or terminals that are or had been owned by the government or a government body within the meaning of the *Financial Administration Act*,

(b) any tax exemption, or

(c) any subsidy.

(2) If the commissioner makes the determination referred to in subsection (1), the commissioner must regulate the ferry transportation service in one of the following ways:

(a) make an order under section 69 (1)[6] and, after an alternative service provider satisfactory to the commissioner has been located through a competitive process established in a plan approved under section 69 (4) (a) or created under section 69 (4) (b) (i), order the ferry operator to arrange with that alternative service provider, under contract, franchise agreement or

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[6] Section 69 provides the commissioner with certain powers to control the process of locating Alternative Service Providers to deliver service on BCFS' ferry routes.

otherwise, for the alternative service provider to provide the ferry transportation service;

(b) calculate the amount that the commissioner considers would be charged as a tariff for that ferry transportation service to recover the direct costs and an appropriate proportion of the indirect costs attributable to providing the service were none of the factors referred to in subsection (1) of this section present, and order the ferry operator to charge at least that tariff when providing that ferry transportation service.

3 Origins of Inquiry and Key Finding

This chapter outlines the origins of the issue of unfair competitive advantage for BCFS' drop trailer services. It outlines the regulatory framework for BCFS and highlights the incentives under which it conducts its business.

At the same time, in this chapter the commissioner takes the opportunity to explain his key finding: the regulatory framework itself creates an unfair competitive advantage for BCFS.

a. Truck Market Partitioned

The issue underlying this inquiry is not a new one. In 1960 the Province began running ferries across Georgia Strait under the aegis of the BC Toll Highways and Bridges Authority. They carried roll-on roll-off traffic, including drop trailers.

In 1966 the summer peak of tourist demand on BC Ferries began to exceed capacity. The Premier announced that in the following summer drop trailers would be restricted to make more space for cars. This continued every summer until 1973, when drop trailers were entirely banned from BC Ferries' major Island-Mainland routes. At the same time the competing ferry subsidiary of the Canadian Pacific Railway, which was eventually acquired by Seaspan, significantly expanded its drop-trailer capacity by adding a new state-of-the-art vessel.

In effect, the truck market was partitioned. Most trucks travelling with drivers would be handled by BC Ferries, along with passengers, cars and buses onboard the same vessels. Truck trailers to be ferried without their tractors and drivers, logistically rather different, would be handled by the private sector in a completely separate operation. For several decades, the issue lay dormant.

b. Independent BCFS Created

In 2003 the Province created BCFS, successor to the crown British Columbia Ferry Corporation, as a company under the Company Act (British Columbia)[7] and as a ferry operator

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[7] Since 2004 called the Business Corporations Act (British Columbia).

under the new Coastal Ferry Act. The new company was independent, owned at arm's length[8] from the Province by a corporation without share capital also created by the Coastal Ferry Act, the BC Ferry Authority.

Ownership of the former crown corporation's vessels passed to BCFS. The new company pre-paid a 60-year lease for exclusive use of ferry terminals (ownership of these being retained by the Province) and shouldered financial responsibility for making improvements to them.

There were fresh emphases on financial sustainability, efficiency and productivity, customer-orientation and a commercial approach to the delivery of ferry service. While BCFS was expected to be more entrepreneurial than its predecessor, the written record does not show that serious consideration was given to the possibility that BCFS might venture outside the confines of its traditional traffic base into competitive territory, or to impacts on existing private ferry operators.

c. Regulator Established

When it created BCFS, the Province also established the office of the commissioner. He oversees BCFS as the sole ferry operator[9] to have a service contract (described in more detail below) with the Province.[10]

As regulator, the commissioner is to guard ferry customers from potential abuses by BCFS, which is effectively a monopoly in most of its market segments—e.g. by over-charging and/or under-serving, or by inefficiency or complacency. He is also to protect the well-being of the ferry operator by acting as a buffer from politically expedient decisions by government. In particular the commissioner is required to set fare caps every four years at a level which enables BCFS to be financially sustainable.

d. Minimum Service Obligations Exist

Under a 60-year service Coastal Ferry Services Contract with the Province, BCFS committed to provide route-specific levels of ferry service on 25 saltwater routes that were designated as regulated.

[8] This structure was a key factor in BCFS' ability to raise debt from lenders having no recourse to the Province.

[9] Notably, the commissioner was not charged with regulating the wider market for coastal ferry services, which serves various other marine passenger and freight traffic (such as bulk commodities, break-bulk, containers, cruise tourism) and other, private ferry operators not contracted with the province, where market forces determine the supply of services.

[10] A number of other, smaller ferry operators have contracts with the Province for freshwater services in the BC interior.

Under this contract, the three major routes connecting Vancouver Island to the Lower Mainland (including the two routes now offering drop trailer service) do not receive ongoing taxpayer support.[11] Nonetheless BCFS' service contract requires it to maintain minimum levels of ferry service on the major routes, measured by three main parameters (see box).

Implicit to these minimum service levels are public policy goals of government: basic accessibility of coastal communities by water, and a reasonable degree of convenience for ferry users. Most of BCFS' routes are lifelines for islands and isolated communities on the mainland coast.

In spelling out BCFS' minimum output, the service specifications drive BCFS' decisions about long-lived assets, i.e. fleet size and composition, vessel performance, and terminal facilities. They also determine operating schedules.

In summary, in the commissioner's view, BCFS was granted several advantages in the market for ferry services in coastal BC. The legal and contractual framework largely protects BC Ferries from meaningful competition in its traditional markets.

Three Parameters for BCFS' Service Obligation

BCFS' service requirement is expressed in terms of values for each of three main parameters for each route or route group:

- minimum frequency in round-trip sailings per day and/or per year;
- number of hours of service in the day; and
- annual traffic-handling capacity.

BCFS has exclusive use of its terminals, which are facilities of major strategic and competitive significance to an operator. On 22 of its routes (those other than the three major routes), BCFS is the sole recipient of taxpayer support. The company is also income-tax exempt. It has the advantages of a large, incumbent operator with flexibility in vessel deployment, and the ability to take advantage of economies of scale and network coverage. These give the company a low risk profile from the investors' perspective and result in a comparatively low cost of borrowing.

Accordingly, although BCFS has weighty service obligations and is not free to withdraw from service at will, it also enjoys the privileges as a near-monopoly in the marine transportation of people and drive-on drive-off vehicles. There are few existing competitors against whom to benchmark BCFS. The market and regulatory structure does not foster the emergence of such competitors in future.

In conducting oversight through his inspection of BCFS' quarterly and annual reports as required under the Act, the commissioner has found that BCFS has consistently met its contractual obligations to provide service on each route, and has performed to high standards of service quality in terms of

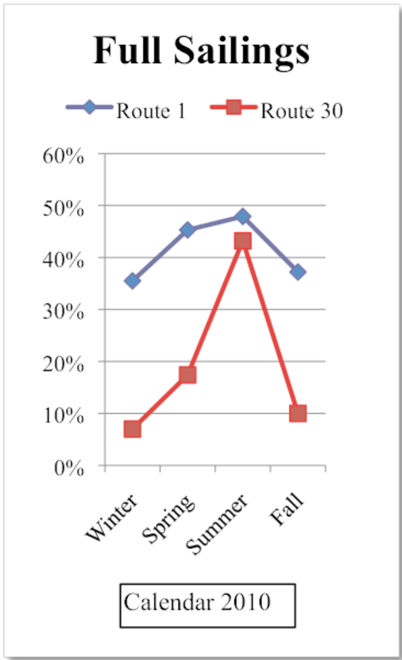
[11] The other 22 (non-major) routes all receive support through a provincial service fee and a portion of a Federal subsidy.

reliability and punctuality. In doing so, it has also charged fares within the commissioner-established price caps.

e. Service Obligations Create Surplus Capacity

As a matter of public policy, the minimum amount of service to be delivered by BCFS is not determined in an open marketplace for transportation, but is prescribed. Service is allowed to vary in only a limited way with the ups and downs of the travel market.

Chart 1



Source: Sailing Overloads BCFS Quarterly Reports to the Commissioner

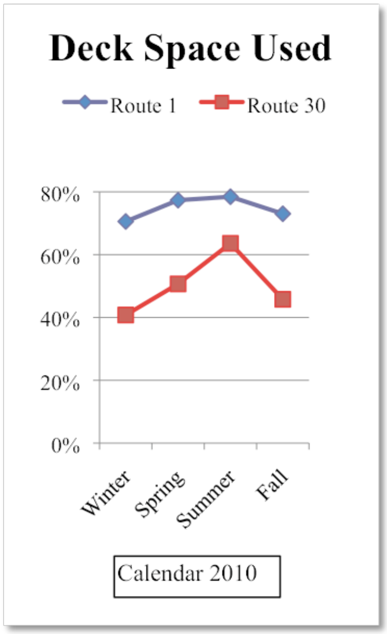
For some periods (e.g. busy holiday weekends) BCFS will mount extra sailings, choosing to exceed the minimum service requirements on the major routes, judging that it will profit from extra sailings. Generally speaking, though, the minimum service requirement results in the delivery of more service, especially in the off-peak demand periods and times-of-day, than BCFS would have chosen to provide—if it were to maximize its earnings unconstrained by a service requirement. In other words, the obligations in the Coastal Ferry Services Contract result in surplus capacity.

BCFS' service contract is not the only reason for surplus or unused deck space. BCFS shares with all transportation firms the management challenge of shaping its service to the demand profiles of its customers, and coping with the daily, weekly and seasonal fluctuations in travel needs. Since ships and terminals are of a fixed capacity, since labour agreements mean crews work minimum-length shifts, and since other rigidities pervade service delivery, some unused capacity is a fact of life.

BCFS offers drop trailer services on its Route 1 (Tsawwassen-Swartz Bay) and Route 30 (Tsawwassen-Duke Point). Annual drop trailer traffic on both is roughly the same, and currently accounts for a small fraction of the total traffic on each route. For total traffic, Route 1 is the busiest of all BCFS' routes. However, as Chart 1 shows, on Route 1 in 2010, even in the peak summer quarter (July through September), less than half of sailings departed full. On Route 30, which is the least busy of the three major routes, in the winter low season (January through March) only 7% of sailings departed full.

BCFS has asked its contracting partner, the Province, for more flexibility in the name of cost-savings, but policy has leaned towards only small adjustments in the service specification. On some routes, notably on Route 30 on which it started drop trailer services, BCFS sought to trim what it considered to be excess capacity, for example by cutting low-utilized sailings, but so far met with limited success in this endeavour.

Chart 2



Source: AEQ traffic and capacity. BCFS Quarterly Reports to the Commissioner

In terms of deck space utilization in 2010, Chart 2 shows that for Route 1 the average sailing was nearly 80% full in the spring and summer. In the winter quarter (January-March) on Route 30, sailings average 41% full.

Though it is not the only reason for unused space on Routes 1 and 30, BCFS' contracted service obligation evidently creates some empty capacity on BCFS' two major routes offering drop trailer service, most notably on Route 30.

The minimum service requirement is peculiar to BCFS. It does not apply to BCFS' competitors in the drop trailer business, for instance, who are not parties to a Coastal Ferry Services Contract and are free to adjust their delivery of service as they wish.

The above is the first reason underpinning the commissioner's finding of unfair competitive advantage in the provision of drop trailer service, and is due to the regulatory framework in which BCFS operates.

Whatever the source of surplus or unused capacity, BCFS is motivated, by intention of the regulatory framework, to fill it by whatever means it can.

f. Why BCFS Entered the Drop Trailer Market

On 20 October 2008, BCFS wrote to the commissioner, stating that it planned to offer unused space on its vessels for a drop trailer service, starting on the Tsawwassen (Delta)-Duke Point (Nanaimo) route (route 30). The company said it saw an opportunity to make its existing assets and operations more efficient[12] by adding revenue-generating business to otherwise empty capacity.

BCFS' launch of its drop trailer service was propelled by the imperative to improve capacity utilization and increase earnings. Rewards for achieving these important corporate objectives are built into the regulatory framework.

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[12] Like other ferry operators with drop trailer service, BCFS acquired hostler units and set up secure holding compounds. However, certain innovations were needed: on its major routes BCFS' vessels spend only 20 to 25 minutes at dock to unload/load traffic between sailings. For most of this period loading ramps are filled with moving traffic. To load/unload trailers on/off its vessels quickly, BCFS' solution was to leave its hostlers (unaccompanied by their drivers) attached to the trailer throughout its voyage. This feature distinguishes BCFS' service from that of its rivals, where the hostler does not remain onboard. Also, BCFS' drop trailer service uses a reservation system of a kind not seen in other services, offering two classes of service: one provides certainty of delivery within two sailings, and the other within four.

g. Fares Set to Pay for Surplus or Unused Capacity

The second reason supporting the commissioner's finding of unfair competitive advantage relates to regulation of fares. The commissioner protects the financial sustainability of BCFS by periodically (i.e. every four years) setting fare caps high enough to cover BCFS' costs, *including the cost of the surplus or unused capacity that results in part from the minimum service obligation.*

No other ferry operator looks forward four (or less) years expecting a restoration of its viability through a price increase that will pay for operations including surplus or unused capacity.

Specifically, the Act calls for the commissioner to set a *maximum* or cap on the *weighted average fare* before the start of every four year period (called a performance term). The cap is to be set at a level which will allow BCFS to recover its costs and make a profit, at a rate[13] set by the commissioner, after adjusting for the change in productivity that the commissioner considers BCFS should achieve in the upcoming term.

In setting the price caps for the second performance term in 2007, the commissioner did not factor into the calculations any traffic (such as drop trailers) outside BCFS' traditional traffic base.

The commissioner recognizes that the price caps he sets will produce BCFS' allowed rate of return only if BCFS reaches the commissioner's productivity target (other things being equal), and that BCFS views its entry into the drop trailer market is part of its effort to do so. The commissioner acknowledges the legitimacy of that effort.

From BCFS' point of view, the entire capacity of its vessels and terminals is "already there", being required by contract. To benefit its bottom line, revenues from drop trailers need to cover only the short run incremental costs (e.g. for terminal hostling, a secure holding compound for trailers, and incremental administration).

This does not take away from the commissioner's point that he set the price caps for the second performance term at a level intended to cover the cost of providing the unused capacity resulting from the minimum service requirement. If the service level required on the major routes had been specified lower, costs of delivering the service would have been lower, and the

[13] In 4-year performance term number two (ending March 31 2012) the commissioner-established pre-income-tax rate of return is 13.16% on equity.

commissioner would have set price caps lower, other things being equal.

h. Pricing Mechanism Induces Low Drop Trailer Mark-Up

The regulatory framework, coupled with the existence of its monopoly traffic base, opens up pricing strategies advantageous to BCFS, that are uniquely available to BCFS, as explained below.

While the weighted average[14] fare is controlled by commissioner-set price caps, *individual* fares (e.g. for a car, bus or passenger carried on a given route) are not separately capped. BCFS has wide latitude in charging individual fares: once the cap has been set and the performance term begins, BCFS may design its tariff structure, in any way it sees fit, and re-tune it at any time, provided it complies with the cap on the average.[15]

There are many possible ways to fashion the tariff structure, all of which are allowed: e.g. by charging more or less any given traffic type; by setting premiums for high or long vehicles; by varying seasonal/peak period charges; by offering temporary "promotional" fares; by offering frequent-user or bulk-buy discounts; or by bundling fares with each other or with other products.[16]

Each route group,[17] including the major route group on which BCFS offers its drop trailer service, has its own cap.

Given this latitude to set individual fares, there is an incentive for BCFS to maximize its revenues by charging relatively more for traffic types that are less price-sensitive, and charging less to the more-price-sensitive traffic, to boost total traffic volume and total revenue. This well-understood strategy for monopolies, i.e. setting a price mark-up inverse to the price elasticity of demand, is known as Ramsey Pricing.

Drop trailer demand across Georgia Strait is already substantial, having existed for 50 years or more. Therefore BCFS can attract drop trailers from the existing operators, if it provides at least equivalent service quality and prices

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[14] , The technical interpretation of the term "weighted average fare" in the Act is not straightforward and is also prescribed by the commissioner.

[15] The commissioner checks, every three months through the term, that this is the case. Since 2003, he has found BCFS to be in compliance for every route group.

[16] The commissioner has observed BCFS making appropriate use of its pricing freedom to manage traffic demand and achieve some efficiencies, filling otherwise under-utilized off-peak capacity, and reducing wasteful queuing at peak times.

[17] There are currently four route groups: major, northern, minor and Horseshoe Bay-Langdale.

competitively. BCFS' drop trailer traffic is likely to be, generally speaking, more price-sensitive than its traditional monopoly base traffic. Ramsey-type logic applies: it induces BCFS to lower drop trailer prices to attract higher volumes.

While this pricing strategy is shared with other operators, what they do not share is the ability to increase prices on other traffic. In the case of BCFS, other, traditional and less price sensitive traffic can then be charged more: indeed this is expected under the price cap regulation of the average fare.[18]

A third reason, therefore, is that the existing pricing mechanisms allow and encourage BCFS to price its drop trailer services with a low mark-up and allows it to price other (monopoly) services higher.

i. Three Reasons Summarized

To summarize, three reasons that the regulatory framework creates an unfair competitive advantage for BCFS in the drop trailer service are:-

1. the Coastal Ferry Services Contract minimum-service obligations, which are not shared by other operators, create empty capacity;
2. BCFS can expect the commissioner to set fare levels to cover costs, including the cost of surplus or unused capacity;
3. BCFS is able and incentivized to charge low mark-up prices for drop trailers to attract higher volumes, and this incentive is amplified by BCFS' ability to increase mark-ups on traffic that is less price-sensitive.

j. BCFS Not Necessarily Using All Unfair Advantages

In its submissions, BCFS stresses that it has not been its policy to charge only marginal costs, or even only average costs, as defined by BCFS. BCFS asserts that if it were to do so its current drop trailer prices would go down, not up. The commissioner has not taken the position that BCFS is making use of all of its unfair competitive advantages today.

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[18] The commissioner was most concerned about this short-term outcome for other ferry users, which he considers undesirable: that by lowering prices for competitive drop trailer business BCFS would create headroom to increase its fares for its traditional monopoly base customers. BCFS' freedom to price in this way rests partly upon the details of the commissioner's mathematical formula for calculating price indices. To help forestall this outcome (but not eliminating it entirely), the commissioner required that the drop trailers were to have a new and separate traffic category in the formula for the average fare calculation, and not be melded with the existing "live" truck category. However, the enforcement mechanism still operates in such a way that if BCFS lowers drop trailer fares to give only a small mark-up, it will be able to mark up fares on other traffic correspondingly. The point is that this opportunity does not occur in the unregulated sector.

Nonetheless, he concludes that those advantages do exist for the reasons stated above.

k. Benefits Ultimately Captured for Users

In closing this chapter there is an important footnote to the above reasons for the finding of unfair competitive advantage.

In setting price caps, the commissioner is forward-looking: he does not set low caps in order to force BCFS to draw down on its retained earnings from the past; that would be de-motivating to BCFS. Instead, BCFS is allowed to keep its earnings. Since the caps are set for an entire four-year performance term, if BCFS maximizes its traffic volumes during the term it will maximize its revenues. Only in setting the caps for the upcoming term will the commissioner recognize newly attained traffic levels, thereby capturing the benefit for ferry users in the form of lower-than-otherwise fares.

This means that in the short term (within a performance term), for a few years BCFS can improve its earnings by filling surplus or unused capacity (e.g. with drop trailers). However, in the longer term (going into the next performance term), the commissioner will capture the earnings for the benefit of all ferry users, in the form of lower fare levels.

l. Income Tax Exemption Is Also Unfair Competitive Advantage

In addition to finding unfair competitive advantage due to the regulatory framework, the commissioner also found an unfair competitive advantage due to BCFS' exemption from income taxes. This is discussed in chapter 6.

4 Process of This Inquiry

This chapter describes the process undertaken by the commissioner in initiating and conducting his inquiry. It is ordered chronologically.

On 3 June 2010 Royal Assent was given to amendments to the Act contained in Bill 20.

As noted in chapter 2, on 25 June 2010 the amendments came into effect. The commissioner was given additional duties including the regulation of unfair competitive advantage. The new definition of "competitive service" includes a drop trailer service as a ferry transportation service.

a. Exploratory Discussions with Stakeholders Held

On 14 June 2010, the commissioner and deputy commissioner met BCFS' CFO and senior staff at BCFS headquarters in Victoria for their regular quarterly meeting. One item on the agenda addressed the provisions of Bill 20 and the process that the commissioner would undertake to determine whether an unfair competitive advantage exists with respect to its drop trailer service. Following discussion, BCFS indicated that it believed it had competitive advantages, but that these were not unfair. The commissioner said that BCFS would be asked to provide its case in writing.

On 15 June 2010, the commissioner and deputy commissioner visited the Seaspan Ferries Corporation executive at their Tilbury Island terminal for a briefing on Seaspan's drop trailer services and to discuss the commission's approach to section 45.1 of the Act. The commissioner received an unsolicited submission from Seaspan's counsel with commentary on the process that should be followed under section 45.1 of the Act.

On 23 June 2010 the commissioner and deputy held a similar meeting at the offices of Van Isle Barge Limited in Vancouver.

In June and July the commissioner received two unsolicited telephone calls from two trucking firms, which use drop trailer services, with a discussion of their operations and the merits of various types of ferry service.

b. Technical Advisors Engaged

On 16 July 2010 the commissioner engaged PricewaterhouseCoopers LLP (PwC) as technical advisor on regulation of a competitive service. The scope of PwC's work was to include:

- review of BCFS' Submission (see below) dated August 31, 2010;
- review of subsequent comments and submissions by competitors and the public provided to the Commission;
- meetings with the Commissioner and BCFS management;
- review of financial information on the drop trailer service; and
- analysis of tax and other impacts related to the drop trailer service.

c. BCFS Submission Requested

On 19 July 2010, the commissioner issued Memorandum 37, which found that BC Ferries' drop trailer service was a competitive service as defined under the Act.

To enable the commissioner to make the necessary further determinations under s. 45.1 of the Act he asked BCFS by 31 August 2010 to:

- provide full details of the scope of the company's drop trailer business, its marketing plan and tariff structure for such business: details on existing contracts together with any pricing incentives should also be provided;
- state, with supporting evidence, whether or not the company considers itself to be pricing its drop trailer service below the direct costs and an appropriate portion of the indirect costs associated with it; and
- state, with reasons and supporting data, whether or not the company considers itself to have an unfair competitive advantage resulting from (a) use of, access to or ownership of vessels or terminals that are or have been owned by the government or a government body within the meaning of the Financial Administration Act, (b) any tax exemption, or (c) any subsidy.

In a letter dated 30 July 2010 Seaspan suggested that it would be useful if Seaspan had an opportunity to comment on the information BCFS was to file. BCFS responded to Seaspan's request on 5 August 2010 addressing the confidentiality issue. Seaspan responded to the BCFS response on 17 August 2010.

d. Non-Confidential BCFS Material Published

BCFS filed a Submission with the Commission on 31 August 2010. It argued that "(its) drop trailer service is priced in a manner that reflects BC Ferries' direct costs and an appropriate proportion of indirect costs associated with providing drop trailer service," and had no unfair competitive advantage over other companies transporting drop trailers between the Lower Mainland and Vancouver Island.

BCFS' submission comprised a non-confidential body and confidential appendices. The commissioner published the non-confidential material on his web site on 31 August 2010, stating that the commissioner was studying the submission and considering next steps.

e. Stakeholders Accommodated

In the week of 6 September 2010 the commissioner telephoned both Seaspan and Van Isle executives as key stakeholders, to enquire how long a period they would like to have to make comments on BCFS' 31 August 2010 submission, and was told 1 October 2010. He later established a deadline of 1 November 2010.

On 7 September at his regular quarterly meeting with BCFS he informed BCFS that the non-confidential parts of BCFS' 31 August Submission would be posted on his web site.

f. Disclosure of Confidential Information Requested by Seaspan

On 17 September Seaspan wrote to the commissioner requesting disclosure of a subset (the "Confidential Exhibits") of the Confidential Appendices in BCFS' 31 August Submission.

g. Public Comment Invited

On 24 September 2010, the commissioner announced a period for public comments on his website and through his e-mail contact list of parties who had earlier expressed interest in receiving news from him. Details and a summary of the public's comments appear in chapter 5.

On 27 September the commissioner issued to BCFS a Third Party Notice under the Freedom of Information and Protection of Privacy Act (FOIPPA).

On 1 October 2010, BCFS became a "public body" under FOIPPA. As a result, s. 17 of FOIPPA applied to BCFS rather than s. 21 for information requests made on or after 1 October.

h. Procedural Fairness Issues Raised

On 15 October 2010 Seaspan wrote to the commissioner asking him to direct BCFS to answer some 22 questions.

On 18 October BCFS made a written submission arguing against release of confidential information. On 21 October BCFS submitted that third parties like Seaspan do not have the right to issue information requests on the drop trailer inquiry.

On 22 October BCFS provided answers to Seaspan's questions to the commissioner, on his request.

On 26 October by letter to Seaspan the commissioner issued a decision not to release to Seaspan the Confidential Appendices, based on s. 54 of the Act and s. 21 of FOIPPA. He stated that access to the confidential information would likely allow a competitor such as Seaspan to target easily identifiable high volume drop trailer customers of BCFS with potentially predatory pricing incentives which would likely erode BCFS' customer base. He concluded that disclosure would be harmful to the business interests of BCFS.

On 27 October Seaspan sought withdrawal or reconsideration of the commissioner's 26 October decision not to disclose, arguing it would be procedurally unfair not to provide Seaspan with the information requested. Seaspan argued that concerns about prejudice to BCFS could be addressed by disclosure to counsel and experts for Seaspan on a confidential basis. Seaspan also requested an extension of the 1 November deadline for submissions. On 2 November BCFS responded with arguments against release.

i. Additional Material Disclosed

On 10 November 2010 the commissioner sent to Seaspan by e-mail BCFS' responses of 22 October, edited to withhold material the disclosure of which, in the commissioner's view, could be harmful to financial or economic interests of BCFS. On the same day Seaspan replied, requesting a complete response to its letter of 27 October and requesting an extension to 19 November for Seaspan's comments on BCFS' 31 August Submission.

i Numerical Data Removed

On 15 November 2010 the commissioner issued Order 10-01, granting Seaspan's request for reconsideration in part. He made a line-by-line review of the Confidential Exhibits and concluded that provided numerical data (containing price and cost data) were removed, table titles, column and row headings could be released on 19 November. This date was to allow BCFS the opportunity to take any additional steps it considered were required. On 17 November BCFS responded that it did not intend to prevent the disclosure, and the commissioner released the redacted Confidential Exhibits to Seaspan.

ii No Release to Seaspan Experts

In Order 10-01 the commissioner noted that Seaspan had asked (on 27 October) that confidential information be disclosed to counsel or experts engaged by Seaspan, i.e. such that the information would be kept confidential from Seaspan itself. The commissioner did not agree to this request as (1) it is not contemplated in the Coastal Ferry Act or in FOIPPA and

(2) it is not required by the level of procedural fairness to which Seaspan is entitled in this drop trailer inquiry: Seaspan could make meaningful submissions without access to the confidential information. Also, the commissioner had engaged PricewaterhouseCoopers LLP to review BCFS' filings.

The commissioner extended to 26 November Seaspan's deadline for filing its response to BCFS 31 August Submission, which Seaspan met with a 41-page submission.

j. Stakeholder and Public Responses Published

On 1 December 2010 the commissioner published the 25 responses from stakeholders and the public on his website, including a consultant's report submitted by Seaspan.

On 8 December BCFS replied to the submissions published on 1 December, asserting that its pricing appropriately reflects costs, and that it is competing on a fair basis.

On 15 December Seaspan submitted a response to BCFS' reply of 8 December.

Also on 15 December at his regular quarterly meeting with BCFS the commissioner advised that he believed he had all the information he required to make his determinations, but if more were needed he would come back with specific questions for clarification. He anticipated making a ruling before his tenure as commissioner ended on 30 April 2011.

On 17 December the commissioner wrote thanking BCFS and Seaspan for their submissions, stating that he was beginning his consideration of the matter, and that the window for submissions was now closed.

On 2 January 2011 the commissioner asked for additional confidential data from BCFS, forwarding a memo dated 31 December 2010 from his technical advisor, PwC. The memo sought further detail on BCFS' expenses for the drop trailer services, and clarification of drop trailer volumes, revenues, overheads and assets. On 5 January BCFS supplied the information.

k. Minimum Tariff Decision Released

On 7 February 2011 the commissioner issued Order 11-01 which formally ordered BCFS to price drop trailers above a commissioner-defined minimum allowed average tariff (MAAT) and to provide information allowing the commissioner to monitor compliance. The MAAT figure he considered to be commercially sensitive and did not make public. Also not published was the threshold or Horizon Traffic Volume which could trigger a review of the MAAT.

On the same date the commissioner published Memorandum 42 summarizing his key determinations, and again omitting commercially sensitive information. Memorandum 42 was intended to serve as explanatory background material for stakeholders and the public.

On 9 February 2011 the commissioner released two additional items to BCFS only, due to their commercially sensitive nature. They were:

- a technical report by PwC dated 31 January 2011, titled "Review of Section 45.1(1) of the Coastal Ferry Act as it relates to the Drop Trailer Service" and
- a spreadsheet used by the commissioner to calculate costs and prices.

l. Seven Errors Alleged by BCFS

On 11 February 2011 BCFS alleged that the commissioner erred in the calculation of the minimum tariff given in Order 11-01. On 14 February the commissioner stated he was prepared to consider BCFS' detailed observations for the purpose of identifying any material errors, including arithmetic, and mistakes in transcription or interpretation of the source materials provided by BCFS in its submissions. He was not prepared to consider submissions on the methodology used in arriving at the figures in Order 11-01. On 23 February BCFS sent a letter with a 13 page appendix describing seven alleged errors by the commissioner, which he published.

m. Four Letters Submitted by Seaspan

Seaspan wrote four letters to the commissioner concerning procedural fairness and disclosure of confidential information and giving Seaspan's viewpoint on the seven errors alleged by BCFS. They are dated 21 February, 22 February (to which BCFS replied on 24 February), 2 March and 4 March, all of which the commissioner considered.

n. Two Errors Corrected by Commissioner

On 4 March the commissioner responded to BCFS' allegations of error by publishing Memorandum 43. Of the seven issues, he found two to be valid and sufficiently material to warrant correction. The commissioner had adopted a methodology of which one step required BCFS costs to be allocated between passengers and vehicles. While he had applied this step to the major cost component (vessel-related costs on Routes 1 and 30) he had neglected to apply it to (1) terminal costs and (2) system overhead costs which are allocated to routes 1 and 30 by revenue share. Correction of these two errors produced a modest reduction in the $/vessel-foot figure for the minimum tariff. There were no other changes to the original Order.

o. Order Appealed by Seaspan

Also on 4 March, Seaspan made an application for leave to appeal Order 11-01 to the BC Court of Appeal. The grounds of the appeal are that (1) the commissioner erred in law by denying procedural fairness and natural justice to Seaspan and other stakeholders and (2) the Order requires the minimum tariff to be set at an undisclosed quantum and sets an undisclosed drop-trailer volume threshold at which the minimum tariff will be reset; and until the undisclosed portions of the Order and undisclosed information are disclosed, Seaspan cannot assess what other grounds of appeal may be present.

On 10 March the commissioner filed a Notice of Appearance.

5 Public Comments Received

a. Public Invited to Comment

On 24 September 2010 the commissioner invited public comment on BCFS Submission of 31 August 2010, via his web site and e-mail notification to existing contacts. On and about 30 September 2010 he placed newspaper advertisements in the *Vancouver Sun* and *Victoria Times-Colonist*. The deadline for receipt was 1 November. Below is a copy of the advertisement.

This chapter[19] summarizes the comments received. They were published on the commissioner's website in their entirety on 1 December with the permission of their respective authors. Two stakeholders—BCFS itself and Seaspan—made other unsolicited submissions throughout the inquiry, mainly but not exclusively concerning issues of fair process and of access to confidential information. These are recorded in chapter 4.

Opportunity to Comment on BC Ferries' Drop Trailer Services

The British Columbia Ferry Commission, the independent regulator of BC Ferry Services Inc., is seeking public comment on BC Ferries' submission on its drop trailer services offered on its major routes.

If the commission finds that these services are priced below cost or have an unfair competitive advantage over other companies' drop trailer services, it must order BC Ferries to (a) handle drop trailers through an alternative ferry service provider or (b) charge a commission-specified minimum tariff for them.

BC Ferries' 64-page submission is available at **www.bcferrycommission.com/DropTrailer.pdf**; at the 5th floor reception at 1321 Blanshard Street, Victoria BC; or by mail at BC Ferry Services Inc., 1321 Blanshard Street, Victoria BC, V8W 0B7.

Deadline for public comments is November 1, 2010. Comments to the commission may be published on our website.

Comments can be emailed to **info@bcferrycommission.com**
or mailed to the BC Ferry Commission, PO Box 1497, Comox, BC, V9M 8A2.

For further information, see "What's New" at **www.bcferrycommission.com**

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[19] This chapter was drafted by Ms. Mary Stambulic, Communications Manager for the commissioner, and edited by the commissioner.

b. Number and Nature of Comments Received

The table below categorizes the number and nature of responses received:

Responses	Opposed	Neutral	Support	Total
Individuals	6	3	4	13
Industry (freight / trucking)	6	0	1	7
Business	2	0	0	2
Government	2	0	0	2
Ferry Advisory Committees	0	0	1	1
Total	16	3	6	25

c. Opposition to BCFS' Drop Trailer Services

The commissioner received 25 responses, the vast majority opposed to BCFS drop trailer services arguing that as a corporation receiving government subsidies, it is given an unfair advantage and that it is not competing on a fair basis with the incumbent providers of drop trailer service, given its vessels, terminals, tax exemptions and subsidies.

Some respondents who wrote to the commission asserted that BCFS drop trailer service impacts non-commercial access to peak capacity and displaces passengers. Bob Painton wrote that he "had been left behind, on both sides, as (he) watched them load drop trailers…Once (he) was on the loading ramp and told to back off so they could load a drop trailer."

Several representatives from the trucking industry and the freight distribution sector provided comments. Grant Renton wrote that knowing the costs involved in providing a drop trailer service, that "BC Ferries is not charging anywhere what they should" and are overcharging recreational and over-length traffic as a result. Jim and Ann Fisher wrote that they did not understand how BCFS could provide this service at a lower cost when "it has 40 new trucks and people only drive on the ship and get off and wait for two hours to move the next truck."

Alex Dugan, an independent business owner wrote that the incremental costs do not "come close to capturing the real cost of carrying the drop trailer service" that they must be "fully costed and include the cost of assets being used." Gino Crisanti, President of 3Plogix Group of Companies (within which Van Isle Barge Services operates) wrote that BCFS' approach in factoring only the direct additional costs of the drop trailer service in its costing is flawed: "There is an opportunity cost to the space being (used) for this service and there is a utilization of facilities and equipment that would not be offered at no cost to a contracting third party."

Mr. Crisanti questioned how BCFS is "positioning the revenue they are charging" or "how the total revenue being charged for the customer's door-to-door move is being allocated to the marine portion (BC Ferries) and the drayage service." Mr. Crisanti also noted that there is no mention in BCFS' submission of how the drop service rates compare to the "main live service that BC Ferries offers" and questioned the relativity and reasonableness of those rates given that "…more costs for the drop service and more space is occupied with non-paying tractor footage for each customer's trailer." Mr. Crisanti believed that a "government-linked, monopoly-based economic model can not be extended to private industry."

Comment of a Respondent Re: Public-Private Sector Competition

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"There are examples in other markets where subsidized, government sanctioned monopolies leveraged their privileged position to compete unfairly in markets outside their core mandate. BC Hydro, Terasen Gas, (BC Gas), Canada Post, Telus (BC Tel) and ICBC… are examples and all entered markets outside their core service mandate but have since been prevented from cross subsidizing and undercutting their private sector competition. This needs to happen in the BC Ferries case as well."

Jeannie Kanakos
Senior Consultation Specialist
Golder Associates
Delta BC

Another respondent echoed this comment (see box, left).

Many argued that BCFS has an unfair advantage given its annual government subsidy and, as John Chapman writes, that BCFS' ability to provide this service was "built on tax dollars." Mr. Chapman argued that BCFS' cost structure should be more transparent if they want the public to believe them and that the statement by EES Consulting president Gary Saleba that BCFS' charges and cost calculations are fair was not enough to gain public trust.

Vicki Huntington, MLA Delta South, asserted that BCFS' use of previously publicly-funded infrastructure, coupled with its practice of cross-subsidizing its core service revenue to compete in the drop trailer market, creates an uneven playing field. Ms. Huntington argued that BCFS, as a quasi-public corporation, and before that a Crown corporation, has a number of advantages over the private sector. These include tax advantages (a preferential position with regard to municipal property tax, transit tax levies, fuel taxes and corporate income tax exemptions) and asset costs (did not have to purchase land or build its terminals). The private sector, on the other hand, must factor in "not only greater tax obligations but also the costs of assets such as land, terminals, mobile equipment and ships." Ms. Huntington went on further to add that as BCFS passenger and vehicular traffic bears the costs of operating the service, and as the company has a monopoly on this traffic, the company is using its monopoly position to "subsidize a drop trailer service with rates that undercut those the private-sector must charge simply to recover costs."

Craig Long, President of City Transfer Inc., argued that the value of BCFS' 60-year terminal lease is virtually zero relative to the true value of the facilities which allows the company to have a false cost structure and can be considered as another "significant form of long-term subsidy."

Michael P. Robinson thought BCFS' pricing strategy from the outset was to "undercut the competition to establish a viable level of business" to justify the start-up and staffing costs and equipment acquisition. Mr. Robinson concluded that the drop trailer service is subsidized by the core service components of ferry customers:

> *"…EES Consulting…methodology is appropriate for a cost allocation pricing method and makes the application methodology quite clear that the components being allocated do not include a full costing formula.*
>
> *There is no discussion…that indicates that neither drop trailer service rates are established on the same basis as core services or does that the rates determined from the applied methodology have any relationship to market rates charged by the competing drop service providers. Relative to the market and the rate methodology established for core services, it must be concluded that the drop trailer service is subsidized by the core service components of BCF customers and, due to the marginal cost allocations, are artificially and significantly below what the market competition can match. If this pricing regime is allowed to continue, it does constitute an unfair competitive advantage. Unfair to the private sector providers and unfair to the core service users of BCF services."*

Mr. Robinson went on to warn the commissioner that if it becomes unsustainable for the private sector to continue service then the volumes of traffic for drop trailer services will increasingly displace core service capacity.

d. Support for BCFS' Drop Trailer Services

Respondents who supported BCFS' submission argued that any advantages come from the company being efficient, not from any unfair advantages gained through the company's public subsidy or taking ownership of ships and terminals from the government.

Some respondents felt that the company's drop trailer service was good for the trucking industry and other ferry users. John Chapman wrote that "some competition would be a good thing", a sentiment echoed by Robin Holmgren who said that "…competition does not like to compete unless it has to."

Robin Holmgren, who supports BCFS' drop trailer service, further added that it "provides an alternate service and utilizes vacant space on the ferries." Bob Tritschler of Parksville, BC, agreed with BCFS if "all the legal requirements are met, no tax dollars are subsidizing the service and BC Ferries is showing a profit…" Jakob Knaus argued that making use of unfilled deck space during periods of low traffic made "sound" business sense and "is enhancing the financial viability of BC Ferries" particularly since in the last two years the company has not earned its 14 per cent return on equity.

Bruce Coleman suggested that he would support a reduction in drop trailer fares if travelling off hours (similar to motor homes, truck-trailer, diesel pushers or other recreational vehicle users).

Dale Rosling, Transportation Superintendent at Summit Logistics that services Safeway stores in BC, wrote that, although not an easy decision for them to have made, they moved to BCFS' drop trailer services from Seaspan due to more frequent sailings and regular times going to and from Victoria and Nanaimo. This move "is much better for our drivers' work schedules, as well as for the Safeway stores in more accurately estimating load arrival times so they can efficiently staff for restocking."

e. Summary

The vast majority of respondents opposed BCFS' drop trailer services, in general, believing that BCFS, as a quasi-government corporation, has an unfair competitive advantage over the private sector creating an uneven playing field for its competitors. Those supporting BCFS' drop trailer service held the opposite view: that any advantage gained was the result of company efficiencies and that the service made efficient and viable use of underutilized deck space.

6 Findings and Reasons

a. BCFS is providing a "Competitive Service"

As recorded in chapter 4, in mid-2010 the commissioner held brief discussions with three ferry operators including BCFS and one trucking company. These were held separately and at the respective initiatives of these parties, and without prejudice to any future decisions of the commissioner. The commissioner listened to the parties' views and learned the nature of their business as background to their concerns.

By Memorandum 37 dated 19 July 2010 the commissioner found that the drop trailer service offered by BCFS on its major route group is substantially similar to services being provided by Seaspan and Van Isle.[20] Those companies provide drop trailer services across Georgia Strait between terminals near to those of BCFS. They are sufficiently near that the commissioner considered that BCFS drop trailer service to be in competition with Seaspan and Van Isle.

b. Further Determinations Triggered

The commissioner also found in Memorandum 37 that BCFS' drop trailer service on its major routes is a competitive service as defined in s.1 of the Act. This finding triggered a requirement for him to make further determinations under s. 45.1 of the Act.

i Approach to Assessment

The Act requires the commissioner to determine whether BCFS is pricing its competitive service below direct costs and an appropriate portion of indirect costs, and whether BCFS has any unfair competitive advantage. However, it gives no guidance on how to assess these conditions.

The commissioner's approach was as follows.

- With the help of his technical advisor PwC, the commissioner examined the revenues and expenses to date for the drop trailer service, and the traffic volumes handled. Prices charged to drop trailer customers were checked against invoices and contracts between BCFS and drop trailer customers. A price and cost analysis was

[20] See chapter 7: Appendix A for a description of the services of Seaspan and Van Isle

based on (1) actual traffic volumes and financial performance to date, as well as (2) on a target "mature" state for the volume of trailers handled by BCFS, which BCFS estimates will take from 5 to 7 years to develop.

- Revenues and expenses were analyzed in absolute dollar terms and on a unit basis. To compare price and costs for his technical analysis, the commissioner expressed both prices and costs in averages, in dollars per vessel-foot. Vessel-feet are the lane-feet on a vessel occupied by a trailer and its attached BCFS hostler unit.
- Where allocation formulae were required, methods already accepted for purposes of the commissioner's Performance Term Two price cap review were used, where available.
- The approach to determining unfair competitive advantage was to first consider whether a competitive advantage exists and secondly whether it is unfair.
- Where an unfair competitive advantage exists, the approach took into account whether it is feasible to calculate the financial impact on the drop trailer service.
- Materiality and the ability to calculate the impact of an unfair competitive advantage in a transparent and verifiable fashion were also considerations.

ii Direct Costs

For costs *directly* attributable to the drop trailer service, according to BCFS' submission, the components are for:

- Hostling units (leasing, maintenance, fuel, insurance and return on equity at the pre-tax rate);
- Holding compounds and portable office spaces (leasing, property tax, utilities, maintenance, security, insurance and return on equity at the pre-tax rate);
- Employees (salaries, benefits, uniforms and travel);
- Telecommunications and office equipment, including return on equity at the pre-tax rate; and
- Office supplies and materials.

iii Indirect Costs

According to BCFS' submission, the *indirect* costs include:

- all operations, maintenance and general and administration expenses related to the drop trailer service;
- amortization expenses associated with drop trailer service assets;

- an allocation of interest expenses based on an assumed 65% debt associated with the capital on the major routes that is applied to the book value of the drop trailer service assets.

Most of these costs do not increase proportionately with traffic volume, reflecting some economies of utilization. BCFS projected their variation with traffic volume, estimating lower unit costs in future.

The commissioner accepted (1) BCFS' submissions of data for fiscal 2010 and (2) BCFS' statement of the decline in costs, due to economies of utilization, at higher throughput of drop trailers at a target "mature" state some years in the future. A diagram showing declining costs with volume appears at the end of this chapter.[21]

c. Commentary on Costs Recognized by BCFS

The commissioner uses below the term "route overhead" to mean the cost of providing and operating vessels and terminals (i.e. other than the direct and indirect drop trailer-related costs recognized by BCFS listed on the previous page) on the routes on which BCFS offers drop trailer service.

BCFS considers only one element of route overhead to be applicable to drop trailers. These are costs spread to types of service by revenue such as regional management and corporate overhead.[22][23]

However, BCFS does not consider it appropriate to allocate another element of route overhead—i.e. a portion of the costs of providing, operating and maintaining vessels and terminals—to drop trailer service. Such costs include crew wages, fuel costs, ship maintenance, marine insurance, terminal operation and maintenance, amortization and financing expenses associated with ships and terminals.

BCFS argues that the drop trailer service is incremental to its traditional traffic base, using capacity which would otherwise be empty, essentially on the grounds that these have to be provided whether drop trailers are carried or not.

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[21] Referring to the diagram, economies of utilization of inputs dedicated to drop trailer service are the reason for the downward slopes of lines A, B and C.

[22] BCFS Submission dated 31 August 2010, Appendix C, Page 9 Paragraph 7

[23] One step in this process requires an allocation between passengers and vehicles carried on the route. BCFS elected to use the deck area dedicated to passengers vs. dedicated to vehicles as the basis of this allocation, a method that the commissioner adopted as precedent for allocating the additional indirect costs that he considered to be attributable to drop trailer service.

The commissioner disagrees and shares the view expressed by Seaspan and several other respondents: the appropriate portion of these costs that should be allocated to drop trailer services is not zero.

BCFS' approach is unsatisfactory and inappropriate to the commissioner for two reasons. The first is that, while the commissioner does accept that drop trailer service for the most part utilizes otherwise-empty capacity, it has some impact, greater if drop trailer traffic volume grows, on the service experienced by other customers:

- currently, drop trailers, can be transported on virtually all sailings and all have reservations. Drop trailers always take priority over "live" trucks not having a reservation, so, though unplanned by BCFS, some displacement of "live" trucks already occurs as an operational reality;
- in future, in order to achieve BCFS' target market share of drop trailers, drop trailers will occupy a significant percentage of the deck space on Routes 1 and 30. The commissioner is sceptical that this can be achieved without further displacement of the traditional traffic base.

The second reason was given in chapter 3, which explained how the regulatory framework produces unfair competitive advantage. In other words, the commissioner is of the view that if the following circumstances, none of which apply to other operators, did *not* apply to BCFS, i.e.

1. a service obligation to the Province, creating surplus or unused capacity;
2. an expectation that the commissioner will periodically set fare caps to cover costs, including the cost of surplus or unused capacity; and
3. an incentive to charge prices with low mark-ups for drop trailers to attract higher volumes, which is amplified by the ability to increase mark-ups on other traffic that is less price-sensitive,

then, BCFS would be recognizing, in its costing and pricing of its drop trailer service, the general route overheads incurred in providing, operating and maintaining vessels and terminals for the routes on which drop trailer service is offered.

d. Commissioner Applies a Route Overhead Charge

One remedy is for the commissioner to prescribe a "route overhead charge" as part of the "appropriate portion of the indirect costs" mentioned in s. 45.1(1) of the Act.

The commissioner's approach to estimating the route overhead charge is to allocate the annual vessel- and terminal-related costs between passengers and vehicles; and then to divide those vehicle costs by the total route capacity (in lane-feet of vessel deck space per year) to arrive at a per-foot route overhead charge. The inclusion of the route overhead charge explains most[24] of the difference between the height of lines A (BCFS' cost) and B (commissioner's cost) on the drop trailer price and cost diagram at the end of this chapter.

These calculations were performed on a spreadsheet designed for the commissioner by PwC.

e. Return on Equity is Not a Cost

BCFS included as a cost attributable to drop trailers a return on equity. The equity attributable to the drop trailer service was computed by multiplying the net book value of the drop trailer service assets by 35% of the book value. The regulated pre-tax rate of return on equity from Performance Term 2 of 13.16% was used.

In this respect the commissioner disagrees with BCFS' submission. Section 45.1(1) of the Act is clear that costs are to be considered but makes no mention of a profit or return on capital. Elsewhere in the Act, i.e. sections 40 and 41 addressing price cap setting, a distinction is made between costs and return on equity. The commissioner considers that a return on equity is not a cost, and so should not be included in the calculation of costs, direct or indirect, of the drop trailer service.[25]

f. Future Mature vs. Initial Traffic Volumes

The commissioner recognizes that BCFS' unit costs cannot reasonably be based on an initial start-up volume of drop trailer traffic, which might be expected to increase quickly from a small base. On the other hand, basing the unit cost on BCFS target "mature" volume which is a multiple of current volumes and five to seven years in the future also seems unreasonable. Accordingly, the commissioner accepts the expected costs at a horizon volume of traffic which is less than BCFS' target mature state. This is illustrated by the position of the upper, blue star in the diagram at the end of this chapter.

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[24] The rest of the difference is explained by (1) BCFS' inclusion of a return on equity discussed in the next paragraph and (2) an adjustment for exemption from income tax explained later in this chapter.

[25] To illustrate the impact of this determination, Line C on the diagram includes a return on equity at the after-tax rate equivalent to the pre-tax rate of 13.16% ruled by the Commission as applicable for setting price caps for the second performance term. Line C has no other purpose and is not used in setting a minimum tariff.

g. BCFS Prices Drop Trailer Service Below Costs

The above determinations and analysis result in a commissioner-estimated dollar cost per vessel foot for drop trailer service.

That cost is to be compared with the price (similarly measured) that BCFS is charging.

By taking total revenues[26] from all drop trailer customers and dividing by the total lane-feet of vessel space used by the drop trailer service, the commissioner arrived at an average price per vessel-foot charged by BCFS in fiscal 2010.

The commissioner finds that this average price:

a) is below the above-described commissioner estimate of direct cost plus an appropriate portion of indirect cost for fiscal 2010, and also for some years afterward using BCFS' assumed growth in volume of drop trailers it handles; and
b) in BCFS' target "mature" state, is above that cost.

In the diagram at the end of this chapter, these two findings are illustrated by the position of the lower, red star (BCFS price today, i.e. fiscal 2010) relative to the blue Line B and the green Line C.

Accordingly, the commissioner finds that BCFS is pricing the drop trailer service below the direct costs and an appropriate portion of the indirect costs associated with providing it.

h. When is Competitive Advantage Unfair?

Section 45.1(1) also requires the commissioner to determine whether BCFS has an unfair competitive advantage.

BCFS took the position in its submissions that the guidelines employed by the federal Competition Bureau provide an appropriate approach for determining whether a pricing policy constitutes unfair competition.[27]

However, "unfair competitive advantage" as used in the Act must be interpreted in a manner consistent with the three examples of possible sources of unfair competitive advantage listed in s. 45.1(1) of the Act: use of or access to vessels or terminals that are or had been owned by government; tax exemptions; or subsidy.

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[26] BCFS charges a range of prices to drop trailer customers: it offers two classes of service and charges different customers different prices. There is a fixed (terminal) charge per trailer plus a charge that varies with trailer length. Appendix B contains the published drop trailer tariff.

[27] BCFS Submission of 31 August 2010 (pages 33-34 of Appendix C).

For the purposes of the Act, a competitive advantage occurs when a ferry operator secures or develops attributes that allow it to outperform rival ferry operators.

Fair

The competitive advantage is fair where it results from the ferry operator being well-run, e.g. arising from the firm's own diligence, risk-taking, sound investment, productivity or ingenuity. Such attributes are, in principle, acquirable or developable by any ferry operator.

Fair competitive advantage could arise, for example, from innovations to reduce fuel consumption not adopted by a rival, or from a management-labour relationship which results in higher labour productivity and/or lower wage costs.

BCFS operates vessels which carry a variety of traffic types (cars, passengers, trucks…), so that the larger vessel and terminal costs are spread over a larger traffic base. This may or may not be a source of competitive advantage, but it is a service delivery model in principle open to other ferry operators.

BCFS' ability to spread its system overhead across all routes, including those not carrying drop trailers, may also be a competitive advantage, but not of itself unfair.

Unfair

The competitive advantage becomes unfair under the Act if it is secured or developed not on the firm's own merit but through a privilege, benefit or protection conferred upon it from outside and which is not available to its rivals, i.e. from an unlevel playing field.

The Act's three examples of sources of possible unfair competitive advantage are addressed in turn below.

i Use of Government-Owned Vessels/Terminals

When BCFS was created, it acquired the use of already existing vessels and terminals from its predecessor.

BCFS asserts that it "paid fair value for all the vessels it owns and terminals it leases"[28] whereas Seaspan states that BCFS "enjoys the use of terminal lands and water lots through the disposition of the assets its predecessor had previously obtained from or with the assistance of the Province. This is a benefit not enjoyed by private competitors."[29]

To determine whether BCFS has an unfair competitive advantage, the commissioner examined whether the assets were transferred to BCFS at less than fair market value.

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[28] BCFS Submission dated 31 August 2010, page 29 line 18

[29] Seaspan Submission dated 26 November 2010 page 33 line 37.

Vessels

Ownership of the former crown corporation's vessels passed to BCFS in 2003.

Journal entries and schedules of asset disposals over the 2003-2008 period were reviewed. It was found that vessels and other assets were effectively transferred at net book value on creation of BCFS.

In addition, there appear to be no unusual gains on disposal of these assets that would suggest assets were initially transferred at less than fair market value, indicating no unfair competitive advantage to BCFS in respect of vessels that were government-owned.

Terminals

The commissioner's examination of the transfer of terminal assets was significantly more complex than in the case of vessels, for several reasons: the type of transaction, accounting rules and real property valuation methods.

On its creation, BCFS pre-paid a 60-year lease for exclusive use of ferry terminals on all its 25 routes. The objective of the lease arrangement was to maintain the ultimate ownership of the underlying land with the Province.

Through the pre-paid lease, the terminal assets were initially transferred to BCFS at a total value (assessed by the BC Assessment Authority) of $331 million, which the commissioner takes as a proxy for market value. In comparison the terminals' combined book value at the time was lower, at $253 million.

Because generally accepted accounting principles require that assets transferred between related parties be recorded at book value, the carrying value of the assets on BCFS accounts was then reduced to the book value.

The effect was that in 2003 BCFS had use of terminal assets which, when combined, were recorded at less than fair market value—a potential cost advantage.

However, the commissioner examined in more detail the valuations for the three ferry terminals used for BCFS' drop trailer service, broken into land and infrastructure components. This revealed different relationships between assessed and book values in 2003. For example, at Tsawwassen terminal the assessed value of infrastructure in 2003 was $65 million vs. a lower book value of $30 million; at Swartz Bay the assessed value was $24 million, vs. a slightly higher book value of $25 million; and at Duke Point the assessed value was $22 million vs. a higher book value of $31 million.

Furthermore, subsequent developments suggest that the 2003 assessed values of the terminals were too high. In 2006, well before the introduction of the drop trailer service, BCFS successfully challenged the assessments for the terminals. It was successful in lowering the assessed values substantially, by over 50% in each case (see table below).

BCFS asserts that this 2006 reassessment effectively negated any of the potential advantage from assets being transferred at less than the value assessed in 2003.

While it is difficult to directly compare 2006 assessed values to those in 2003 because of significant additions to the terminals, the commissioner concurs with BCFS' assertion.

Summary of BC Ferries Route 1 and 30 Terminals 2006 Tax Assessments

Terminal	2006 Original Assessment	2006 Revised Assessment	Reduction in Assessed Value
Duke Point	$26,547,000	$12,283,000	54%
Swartz Bay	$48,458,000	$20,662,000	57%
Tsawwassen	$117,748,000	$52,166,000	56%
Total	$192,753,000	$85,111,000	56%

Also, the commissioner confirmed that BCFS does not receive any property tax exemptions.

As a result, the commissioner does not perceive there to be a competitive advantage as a result of the transfer of terminal assets.

Acquisitions Since 2003

As to acquisition of assets since 2003, the commissioner understands that, since the original transfer of assets in 2003, BCFS has acquired all other assets at fair market value. BCFS received a duty remission in 2010 related to the acquisition of its three Super C vessels over the 2003-2009 period. These vessels are used on the major route group. The commissioner is of the view that the remission of duty was not a benefit particular to BCFS, and could have occurred in similar circumstances for other ferry operators.

Accordingly, the commissioner finds no competitive advantage from the use of vessels/terminals that were government-owned.

ii Tax Exemption

As mentioned at the end of chapter 3, the commissioner finds that BCFS' exemption from income tax affords it an unfair competitive advantage.

BCFS has taken the position that it does not enjoy a competitive advantage due to the fact that it is not taxable for purposes of income tax. It argues that this factor relates to an external benefit conferred upon BCFS rather than an advantage arising from the way in which BCFS operates.

BCFS has also argued that the tax benefit is moot since it would not have paid any income tax since it was formed under its current legal structure due to the availability of accelerated depreciation for tax purposes that would have reduced taxable income to nil in each year since 2003. It commissioned a tax analysis by the law firm Blakes in August 2010 to demonstrate this point. The commissioner reviewed this tax memo. He did not audit this work or the information on which it is based. He corroborated the initial asset values used to calculate capital cost allowances ("CCA") with the depreciated balances contained in BCFS audited financial statements as at March 31, 2003.

The memo demonstrated that BCFS would not have paid income taxes since it was formed under its current legal structure in April 2003. This is due to the ability to claim accelerated capital cost allowance on vessels, terminals and other assets. Factors that influence the availability of large CCA pools include:

- the undepreciated balance of assets as at April 1, 2003 is available for purposes of capital cost allowance;
- BCFS undertook a major capital phase since being formed under its current structure; and
- vessels acquired in Canada which compose the majority of the fleet can be depreciated for tax purposes over four years.

The commissioner has no reason to dispute the analysis and accepts it as presented. While having no issue with the mechanics of these calculations, the commissioner's main comment is that the CCA tax shelter is temporary as it simply defers taxes that would otherwise be payable.

In the commissioner's view, BCFS' tax free status allows BCFS to build equity more quickly than otherwise, by retaining greater-than-otherwise earnings. This is a benefit in a competitive environment which is not available to other firms who pay income tax, and is therefore an unfair competitive advantage for purposes of the Act.

As to indirect taxes, in contrast to income taxes, BCFS is not exempt from provincial and federal sales taxes.

The Canada Excise Act prevents BCFS from charging GST/HST for fares on routes carrying passenger vehicles connecting two highways. BC Ferries has interpreted the provisions of the Excise Act to include the drop trailer service. As a result, the GST/HST represents a net cost to BC Ferries. Since April 2003, BC Ferries has paid $111.6 million in non-recoverable GST on inputs to its business including the drop trailer service. Since the Harmonized Sales Tax (HST) was introduced on July 1 2010, it has paid this latter tax.

BC Ferries' competitors in the drop trailer business pay HST on inputs and claim these back as input credits. There is no net cost except for the administration of the tax and the carrying cost between the time of paying the tax and collecting on the credit.

While sales taxes represent a cost to BC Ferries and are effectively tax neutral to its competitors in the drop trailer business, BCFS is able to recover these additional costs through the regulated tariff system. Indirect sales taxes therefore do not represent a source of competitive advantage to BCFS. Rather, they are at a competitive disadvantage due to timing differences because BC Ferries recovers the sales tax costs over a longer period of time through the collection of tariffs.

The commissioner therefore finds that BCFS has no unfair competitive advantage in respect of indirect taxes, but that BCFS does have an unfair competitive advantage in respect of income tax.

In the commissioner's view the income tax benefit to BCFS that arises from its tax-exempt status should be calculated as the difference between taxable and non-taxable status. For purposes of the analysis, the commissioner estimates this benefit as the difference between the pre-tax and post-tax return on equity calculated for the second performance term. The commissioner has applied this to the assumed 35% equity portion associated with the net assets in Routes 1 and 30, and the drop trailer assets.

iii Any Subsidy

On balance, the commissioner finds no unfair competitive advantage from subsidy for drop trailer services on the major route group.

Unlike the other three route groups (comprising a total of 22 smaller routes) the major route group is not directly supported by provincial user fees or by federal contract subsidy.

Internal cross-subsidization

Nor is the major route group of three routes cross-subsidized by the other groups: in the price-cap setting process, s. 41(4) of the Act requires the commissioner to set the price cap for each route group without reference to the price cap for any other route group. The Act does not intend that the major route group be cross-subsidized by others, and in fact it is not. This is verified by the route statements in the annual reports submitted by BCFS to the commissioner.

However, cross-subsidy *within* a route group is not prohibited by the Act or by the Coastal Ferry Services Contract. The commissioner examined recent route financial statements for each of the two routes on which BCFS offers drop trailer service. Route 30 shows net losses of $23.9 million in both FY2009 and FY2010. Route 1, in contrast, shows net earnings of $36.5 and $24.4 million respectively. Accordingly, a consolidated statement of the two drop trailer routes would show positive earnings for both years, indicating no cross-subsidy to these routes, combined, from other routes. It is conceivable, however, that it could occur in the future.

Hypothetical Situation If Subsidy to BCFS' Non-Major Route Groups Did Not Exist

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- Some routes (e.g. in the north) would be non-viable and discontinued by BCFS.
- Lifeline services would be supplied by other modes/ carriers (e.g. tug and barge and aircraft).
- This would increase the weighting of overhead/fixed costs onto major routes, supporting Seaspan's point.

- On other routes fares would increase, possibly with service reductions negotiated.
- If price elasticity of demand is between minus one and zero on these mostly essential routes (as evidence suggests), total fare revenue could increase.
- This would reduce the weighting of overhead/fixed costs, contrary to Seaspan's point.

- The significant service changes contemplated above are likely to lower the total overhead/"fixed" costs to be allocated, also weakening Seaspan's point.

Seaspan asserts[30] that subsidy "supports larger overheads and other fixed costs of the entire business that allow for economies of scale that would otherwise not be available to the major routes on a 'stand alone' basis."

The commissioner considers that BCFS' ability to spread overhead and fixed costs among all its 25 routes is not in itself an unfair advantage.

However, Seaspan's submission makes a more subtle point towards an unfair potential effect of the provincial and federal subsidies: that the subsidies (which are for the non-major routes but not for the major) foster a larger-than-otherwise non-major ferry business for BCFS; therefore, the major routes' share of allocated overhead/fixed cost is less (and the non-major routes' is more) than it would be in the absence of the subsidies.

The commissioner's approved method for allocating system overhead/fixed costs among route groups is by share of total system fare revenue (i.e. excluding revenue from subsidies). In the absence of subsidies, it is not clear how the major route groups' share of fare revenue would differ from today's. A system without subsidy would be a very different one (see box, left). The commissioner considers Seaspan's point moot and conjectural.

[30] Seaspan's submission of 26 November 2010, p 31 line 19

One-time Direct Provincial Subsidy in 2008/9

Seaspan points to a direct Provincial subsidy of $20.8 million starting December 2008, in exchange for which BCFS reduced fares on all its traffic including trucks by some 33% for a period of two months. As far as the commissioner is aware, there was no opportunity for other ferry operators to receive the subsidy. In as much as some of the freight carried on Seaspan's drop trailer service could switch to live truck service on BCFS to access cheaper fares for the short period that the subsidy was in effect, the commissioner views the subsidy as creating an unfair competitive advantage for BCFS. However, he finds it not relevant to this inquiry since, as noted by BCFS,[31] the subsidy predated the introduction of BCFS' drop trailer service.

Other benefits conferred on BCFS by government as identified by Seaspan (interest relief and duty remission) are, in the commissioner's view, in principle accessible to Seaspan and not a source of advantage that is unfair.

Seaspan argues that BCFS' deferred fuel costs, allowed by the commissioner, are a form of subsidy. On this point the commissioner concurs with BCFS' position[32] that deferred fuel accounts operate in such as way (not repeated here) as not to confer an unfair advantage to BCFS. The commissioner confirms that the $1.7 million provincial pay-down of fuel cost deferral accounts did not apply to the account for the major route group on which BCFS' drop trailer services operate, and it is therefore not relevant.

iv Any Other Factor

The commissioner considered whether there were any other sources of unfair competitive advantage beyond the above three specified for examination. As extensively discussed in chapter 3, he found an unfair competitive advantage inherent in the regulatory framework. In this, he disagrees with BCFS and concurs with BCFS' competitors and with the comments of some members of the public.

i. Commissioner Must Regulate

In summary, the commissioner finds that:

(a) BCFS is pricing drop trailer service below the direct costs and an appropriate portion of the indirect costs associated with the drop trailer service, and
(b) BCFS has an unfair competitive advantage from two sources.

[31] BCFS reply submission of 8 December 2010, p.26 and following

[32] BCFS Reply Submission of 8 December 2010, page 27 line 11

Due to the use of the word “or” in the first paragraph of s. 45.1(1) of the Act, only one of these determinations has to be made for the commissioner to be required to regulate BCFS’ drop trailer service.

As a result of his findings, s. 45.1(2) requires that the commissioner must regulate by ordering BCFS either to:

(a) provide the service through an alternative service provider or
(b) charge for the service at least a minimum tariff.

The commissioner has decided on (b), i.e. to set a minimum tariff, as the simpler and more workable option for the drop trailer services on the major routes. He is of the view that, even if BCFS’ drop trailer services were to be provided by an alternative service provider, a minimum charge or tariff would still have to be established for that provider.

j. Minimum Allowed Average Tariff

Accordingly, under s. 45.1(2)(b) the task is to “calculate the amount that the commissioner considers would be charged as a tariff for that ferry transportation service to recover the direct costs and an appropriate proportion of the indirect costs attributable to providing the service were none of the factors referred to in [s. 45.1(1)] present, and order the ferry operator to charge at least that tariff when providing that ferry transportation service.”

The diagram at the end of this chapter illustrates the results of the calculation, in terms of the average dollars per vessel-foot. It shows, as a function of traffic volume today and at the target “mature” state in some years’ time, the charge needed to recover the costs and an appropriate proportion of the indirect costs (line B).

Included in the calculation are allowances for the two sources of unfair competitive advantage as found above:

(a) to account for BCFS’ income-tax exempt status, which is a relatively small adjustment, the cost calculation includes an amount each year equal to the equity directly and indirectly associated with the drop trailer service, multiplied by the difference between a pre- and post-tax percentage annual return; and

(b) to account for the advantage inherent in the price cap regulatory framework, the commissioner’s allocation of a portion of “route overhead charge” makes the appropriate adjustment, which is a significant one. The commissioner accepts a method used by BCFS to allocate certain costs between passengers and vehicles onboard vessels, which is to use deck area exclusively used by passengers and vehicles as the basis for allocation.[33]

The allocation of a portion of the "route overhead charge" also addresses the factor of the service being priced below cost, by requiring that an appropriate proportion of indirect costs are associated with the drop trailer service.

k. Order 11-01 Issued

On 7 February 2011 in Order 11-01 the commissioner ordered that:

1. the drop trailer minimum allowed average tariff (MAAT) shall be set at $X.XX[34] per vessel-foot for fiscal 2012, and shall be changed for each subsequent fiscal year by a consumer price index adjustment equal to the sum of the 12 monthly increases/decreases of the last calendar year over corresponding months of the previous year, divided by 12.

2. Fuel surcharges and rebates applied to other traffic types carried by BCFS on the major routes shall apply in the same proportion to the drop trailer minimum tariff.

3. Beginning with service provided during the first quarter of fiscal 2012 (which starts on 1 April 2011), BCFS shall report quarterly to the commissioner within 60 days of the end of each quarter: (a) the quarterly total revenue from its drop trailer tariff on the major routes and (b) the number of vessel-feet occupied (lane feet occupied by drop trailers and their hostler units).

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[33] BCFS Submission of 31 August 2010 states (page 6 of Appendix C):

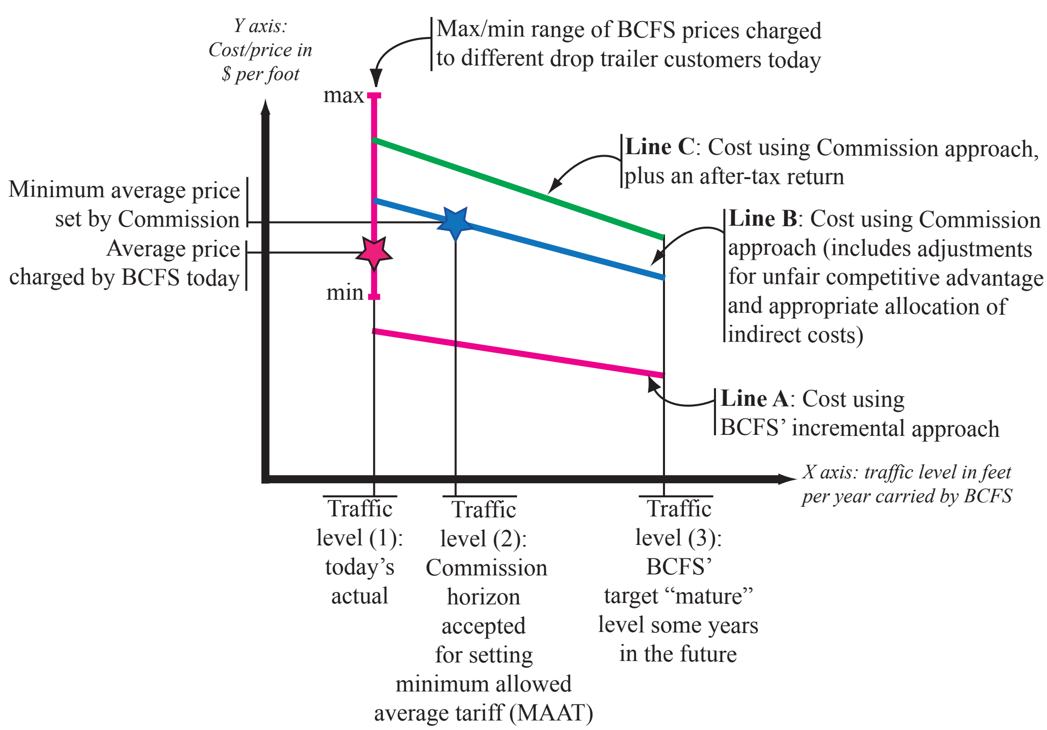
The vessels are used by both passengers and vehicles. In order to appropriately classify the cost of these vessels between passengers and vehicles an analysis of the percent of space available on each vessel for vehicles and for passengers (eliminating common space) was performed. For each vessel, the detail regarding square meters on each level of the vessel was determined. The included space was limited to those decks that support vehicles or passengers (all other areas were considered common area and used by all). Next, the percent of space attributable to vehicles and passengers based on the total of the "included space" was calculated. Finally, the available space was multiplied by vessel sailing time, to determine the weighted average of all the vessels providing service on Route 1 and Route 30 respectively. The resulting classification factor was used to allocate the non-catering costs not allocated based on vehicle thru-put and revenue by the Route Statement allocation.

[34] The commissioner withheld the data marked X.XX and Y.YY from publication in this non-confidential version of Order 11-01 on the basis that disclosure of the data would cause a real and substantial possibility of future harm to the financial or economic interests of BCFS.

4. BCFS shall ensure that the amount (a) divided by (b), being the average revenue per vessel-foot for the quarter, shall not be less than the MAAT as defined above.

5. When the drop trailer volume exceeds a rate of Y.YY million vessel-feet per year, or at the discretion of the commissioner, the minimum tariff shall be re-set in light of experience with actual costs and drop trailer traffic volumes. For this purpose the commissioner has archived the electronic workbook files which he used to calculate unit prices and revenues based on data from fiscal 2010.

l. Diagram of Price and Cost Relationships



To protect commercial confidentiality, this chart is not drawn to scale. It illustrates relationships.

7 Appendix A: Competing Services

There are two principal competitors of BCFS in drop trailer services across Georgia Strait.

a. Seaspan Ferries Corporation

Seaspan Ferries Corporation (Seaspan) (formerly Seaspan Coastal Intermodal Company or SCIC), is part of the Washington Marine Group, a family- owned company that also owns Vancouver Shipyards. Formerly the Canadian Pacific Railway's Coastal Marine Operations, the company has operated for over 60 years. It runs 5 or 6 vessels and a total of 11 daily mid-week return trips and 9 weekend return trips to Vancouver Island over two routes – Tilbury, Delta to downtown Nanaimo and Tilbury, Delta to Swartz Bay.

b. Van Isle barge Services Ltd.

Van Isle Barge Services Ltd (Van Isle) re-introduced its drop trailer service from Vancouver to Nanaimo in 2004. The firm is part of the 3PLogix Group of Companies, a group of privately owned third party logistics and supply chain management companies. VIBSL operate two articulating tugs and barges designed for ocean carriage of roll-on and roll-off traffic, including semi-trailers between terminals on the Fraser River in Surrey and Duke Point in Nanaimo.

8 Appendix B: Published Drop Trailer Tariff

BCFS' agreements with drop trailer customers are based on rack rates for various terminal and vessel services less rebates. The rebates are based on minimum volumes which are specified in the agreements with each customer. Pricing is also based on a standard 53 foot trailer. The posted rack rates are shown in the following table.

Service	Definitions	Rate
Tariff for the trailer per / ft	-	$6.75 per foot
Terminal Charge	The hook and unhook fee for trailer transport.	$31 per unit
Hot-Shot Fee	Delivery of goods within 24 hours of booking.	$13.50 per foot
Reservation Cancellation / Change Fee	Any alteration to a reservation from the time of the initial booking.	$3.38 per foot
No-show Fee	Missing the appointment cut-off time of the "at" or "by" products. It is assessed at the drop trailer tariff list price in effect.	$6.75 per foot
Parking and Storage Fee	Any trailer left on the terminal beyond 24 hours is subject to charges of $75.00 per 24 hours or portion thereof.	$75 per unit
Live Semi Trailer	-	$5.25 per foot
Passenger Fee	-	$14.00 per pax

9 Appendix C: Reference Materials

The following materials were considered in the commissioner's determinations in the drop trailer enquiry.

c. Submissions and Correspondence from BCFS and Seaspan

Throughout the inquiry the commissioner received several submissions and correspondence from BCFS and Seaspan. Because they often respond to each other, for convenience they are grouped together below, in chronological order.

a Seaspan and Washington Marine Group, submission dated 15 June 2010 re: Regulation of Unfair Competitive Advantages

b Seaspan, letter dated 30 July 2010 re: Regulation of Unfair Competitive Advantage

c BCFS, letter dated 5 August 2010 re: Section45.1 of the Coastal Ferry Act: Regulation of Unfair Competitive Advantage

d Seaspan, letter dated 17 August 2010 re: Section45.1 of the Coastal Ferry Act: Regulation of Unfair Competitive Advantage

e BCFS, filing with the British Columbia Ferry Commission regarding Section 45.1 (1) of the Coastal Ferry Act and Drop Trailer Service, dated 31 August 2010

f Seaspan, letter dated 3 September 2010 re: Memorandum 37

g BCFS, letter dated 16 September 2010 re: Process for Drop Trailer Filing

h Seaspan, letter dated 17 September 2010 re: Regulation of Unfair Competitive Advantages in the provision of Drop Trailer Service i Seaspan, letter dated 15 October 2010 with enclosure dated 14 October 2010 containing information request

j BCFS, letter dated 18 October 2010 re: Third Party Notice – Request for Disclosure of BCFS Confidential Information

k BCFS, letter dated 21 October 2010 re: Third Party Notice – Request for Disclosure of BCFS Confidential Information

l BCFS, untitled document by hand to commissioner on 22 October 2010, containing response to the commissioner to questions in the information request of Seaspan that was dated 15 October 2010

m Seaspan, letter dated 27 October 2010 re: Request for Disclosure of Further Information and Confidential Submissions of BCFS

n BCFS, letter dated 2 November 2010 with no subject line, responding to Seaspan's letter of 27 October 2010

o Seaspan, e-mail dated 10 November re: Commission response to SCIC's questions sent October 15

p BCFS, letter response with attachment dated 19 November to commissioner's information request regarding Section 45.1 (1) of the Coastal Ferry Act and Drop Trailer Service,.

q Seaspan, Response dated 26 November 2010 to BCFS' submission to the commissioner regarding Section 45.1 (1) of the Coastal Ferry Act and Drop Trailer Service

r BCFS, letter dated 8 December 2010 with appendices re: Reply to Comments Received by Commissioner

s Seaspan, submission dated 15 December 2010 re: Response to BCFS' Reply Submission to the BC Ferries Commissioner

t BCFS, letter and attachment dated 5 January 2011 re: Information Request Regarding Section 45.1(1) of the Coastal Ferry Act and Drop Trailer Service, in response to a commissioner request covering a PwC Memorandum dated 31 December 2010 u Seaspan, letter dated 21 February 2011 re: February 14 Email to Stakeholders in the Natter of Drop Trailer Service

v Seaspan, letter dated 22 February 2011 re: BC Ferry Commissioner Order #11-01 and Memorandum 42

w BCFS, letter and attachment dated 23 February 2011 re: Errors in Commissioner's Calculations of MAAT

x Seaspan, letter of 2 March 2011 re: BC Ferries' Alleged Errors in Commissioner's Calculations

y Seaspan, letter dated 4 March 2011 re: BC Ferries' Alleged Errors in Commissioner's Calculations

d. Responses Received During Period for Public Comment

The commissioner considered responses from the following persons which were received before the closing date of 1 November 2010 for public comment (in alphabetic order):

Ainey, Ron, Pactow Transport Services
Chapman, John
Coleman, Bruce (2 submissions)
Crisanti, Gino, 3PLogix Group of Companies (incl. Van Isle Barge)
Dugan, Alex, Central Island Distributors
Fisher, Jim
Holmgren, Robin
Huntington, Vicki, MLA
Jones, Darren
Kanakos, Jeannie, Golder Associates
Knaus, Jakob
Lansdowne, Heath, Homecraft Design
Long, Craig, City Transfer Inc
New, W.A. (Bill) formerly of Coast Ferries (2 submissions)
Payton, Robert J
Renton, Grant
Robinson, Michael P.
Rosling, Dale, Summit Logistics
Sultan, Ralph, MLA
Thompson, Frank (2 submissions)
Tritschler, Bob
Welp, Ted

e. Other Documents

- BCFS Annual Reports 2002/03 – 2009/10
- BCFS bond rating reports
- BCFS Route Financial Report, in BCFS Annual Report to the British Columbia Ferries Commissioner for the Year Ended March 31, 2010
- BCFS prospectus for bond offering
- PricewaterhouseCoopers LLP, Review of Section 45.1(1) of the Coastal Ferry Act as it relates to the Drop Trailer Service, dated 31 January 2011, prepared for the commissioner