



## **Unite Submission to the Department of Transport's Sale of Trust Ports in England and Wales - Consultation on revised criteria**

### **1 Introduction**

- 1.1. Unite is the UK's largest trade union with 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, food, agriculture, education, health, not for profit and, of particular relevance to this submission, the docks, rail, ferries and waterways sectors.
- 1.2. Unite's docks, rail, ferries and waterways sector has just under 19,000 members and is continuing to grow. Unite has membership in port-based and coastal maritime activity in companies such as Associated British Ports, Hutchison Port Holdings, Forth Ports, DP World, as well as British Waterways canals. Unite has members who are tug boat operatives and masters in companies like Svitzer. Unite also organises ferries in Scotland, Liverpool and Southampton. Unite is also the biggest maritime union in British waters, uniting masters and ratings. Unite is, in addition, the largest union at the port of Dover.
- 1.3. Unite also represents 66,000 members in the road transport sector, who use the ports of Dover, Tyne and Harwich extensively to ship freight to and from continental Europe and Poole to access the Channel Islands.
- 1.4. Consequently, Unite welcomes the opportunity to comment on the appropriateness of the sale of a major trust port under the Ports Act 1991.

### **2 Executive Summary**

- 2.1. Unite is opposed to any compulsory sale of the trust ports and oppose the current application by Dover Harbour Board to elect to seek a buyer for this national asset.
- 2.2. Despite assurances from the Dover Harbour Board over continued independence, once in the private sector it is difficult to see this being maintained unless the Government retains a controlling interest or the rights are transferred to a trust set up to benefit the people, employees and companies that operate through the port.
- 2.3. Privatisation will end the obligation on the port to support the local community's charitable works and therefore, Unite believes, any such move would not be in

the interests of the local population. It will also terminate a valuable revenue stream back into HM Treasury's central funds.

- 2.4. There are a number of alternative options open which could provide the Port of Dover with the funding it claims it requires for redevelopment which stop short of full privatisation. These would be better for the local community and those who use the facility. Unite believes these options need to be more fully explored.
- 2.5. Unite believes there is a clear need for an overall plan to cope with demand through the ports rather than relying on the vagaries of market forces and a race to the bottom in terms of price, often at the expense of quality and safety.
- 2.6. This potential reduction in safety, which is likely to result from privatisation, also increases the likelihood of temporary port closures and disruption to the connection between UK and mainland Europe whilst holding the potential to disrupt the flow of natural gas to homes and industry.
- 2.7. Trust Ports like Dover provide a vital link to Europe and resilience to potential disruptions to the Channel Tunnel or air links. Should a problem occur with these alternatives, it would create a sizable opportunity for private sector profiteering.
- 2.8. One of the key reasons given by the Dover Harbour Board (DHB) for privatisation does not stack up. The authority claims that further investment is needed to develop more capacity, yet one of the ferry routes that operates the route to France from Dover has halved the number of ships on the route from early September due to over capacity.

### **3 Do you agree that these are the right criteria to apply to the consideration of applications for sale of a trust port?**

- 3.1. Unite welcomes the suggested requirement that there is a significant level of community and employee participation in the port including the ability to influence the port's long term development. Such a stance reflects a return to the basic aims envisaged when the trust ports were first set up. The coalition government now has a golden opportunity to prove there is substance behind the rhetoric of the 'Big Society'. The people of Dover, the workers at the port and the ferry operators all back the 'Peoples Port', that is why the government should make this a reality<sup>1</sup>. Unite does not agree, that the views of the community should be ignored in the operation of the port.
- 3.2. The key issue here is what the definition of community is in this context. Community could simply mean the people who live in the local area neighbouring the port, or it could be extended to incorporate the workers at the port. Equally, community could include the ferry and shipping companies that make use of the services provided by the port. Unite believes 'community' should have the widest practical definition to ensure that none of the interested bodies are excluded.

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<sup>1</sup> This point was made in our press release of 17 May 2011.  
[http://www.unitetheunion.org/news\\_\\_events/latest\\_news/serious\\_about\\_the\\_big\\_society.aspx](http://www.unitetheunion.org/news__events/latest_news/serious_about_the_big_society.aspx)

- 3.3. Unite agrees that it is important that any body taking over the operation of a trust port would need to show that they have the financial ability to fund the continuation of operations at the port and future developments that are necessary for the viability of the port. Unite believes that it is equally important to ensure that the party has access to the required knowledge to enable the port to continue its core functions to benefit the community which they serve.
- 3.4. Unite would also agree that there needs to be an element of fair competition to ensure that there is not a monopoly or duopoly in the sector. Some of the major trust ports are unique as they provide key services to the UK economy.
- 3.5. In 2009 Dover was the top UK port for ro-ro freight with 2.3 million main freight units. Of the 9.7 million foreign and domestic main freight units travelling through the ports, 2.3 million used Dover<sup>2</sup>. Dover Strait ports (including the Channel Tunnel) are by far the most significant gateways for powered vehicles. For UK-registered vehicles, 77 per cent travelled to continental Europe via the Dover Strait in 2009; the corresponding figure for foreign vehicles was 88 per cent<sup>3</sup>.
- 3.6. Milford Haven provides the UK with its main liquid natural gas terminal and is one of the country's busiest ports. Approving the sale of this port would have serious repercussions for energy policy.

#### **4 Do you consider that the relative weighting of criteria is appropriate?**

- 4.1. Unite believes that given the importance of the major trust ports that it is important to ensure the security and affordability of services at these ports. Consequently, these key assets should only be handed to a body which will ensure that charges are not increased beyond what is absolutely necessary. This should be given the highest priority. Unite believes that worker, user groups and local society interests should then follow as they will be the party who provide the services to the wider population.
- 4.2. Unite supports the option which has been proposed by Dover's MP Charlie Elphicke and his plans to move ownership of the Trust Port into a replacement Peoples' Trust. Instead of a straight, old fashioned 1980s style privatisation, it is proposed that the port should be acquired and owned by the people of the Dover community through a mass membership, charitable, not for profit trust.
- 4.3. The alternative proposed by the DHB is based on spurious expansionist arguments which do not have any foundation in reality. Unite further believes that the members of the DHB have lost sight of the guiding aims of the trust - to benefit the people of Dover. Given this, Unite does not believe that the current management of the DHB would consequently fit the criteria of a body fit to run such a vital facility.

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<sup>2</sup> <http://www.dft.gov.uk/pgr/statistics/datatablespublications/maritime/ports/portsannual/tsgb0596.xls> TSGB 5.5 MS 2.3(historic)

<sup>3</sup> <http://www.dft.gov.uk/pgr/statistics/datatablespublications/freight/goodsbyroad/roadfreightstatistics2009>

- 4.4. DHB claim that they need to privatise in order to raise capital funds for a new terminal to provide additional capacity. They suggested that such funds could not be obtained under the current status of being a trust port. Despite this DHB announced recently that they have approved a major capital investment plan totalling around £85m. The investment includes capacity improvements and pier extensions to cater for the new super-ferries, major improvements to the existing berths and the complete replacement of berth 6, additional assembly and pre-assembly space and major resurfacing works.
- 4.5. The last Government, in a response to the similar claims by the management of the DHB, amended the limitations on borrowing by introducing the Dover Harbour Revision Order 2006 provides that:-
- The Board may save and invest money to raise the funds required.
  - The Board may borrow money for any purpose relating to the harbour or harbour land in such a manner and on such terms as they consider expedient
- 4.6. Unite therefore believes that such claims relating to the inability to borrow are without foundation and threaten the job security of the 5,000 employees at the port, together with many more in the support industries and on the ferries.
- 4.7. Unite believes that assets such as Dover, Milford Haven, Harwich Haven, the Port of London and Tyne in particular are key to the prosperity of this nation.
- 4.8. Milford Haven has become the country's major liquefied Natural Gas import facility, providing access to a wide range of sources of this vital resource. Due to the reliance on market forces to dictate electrical generation policy, investment in generation facilities to replace ageing coal and nuclear facilities has principally been achieved by constructing new gas powered generation. With predictions that natural gas is going to become a very rare commodity in the not to distant future, the potential for exploitation is too great.
- 4.9. Harwich Haven manages the gateway to two of the UK's major ports. Felixstowe handles 3 million TEU's (Twenty-foot equivalent units) per annum and has plans to expand this capacity by a further 2.2 million TEU's in the near future. This represents over half of the total freight container tonnage moved into and out of the UK. Harwich provides host to one of the country's vital ferry links to the Hook of Holland and beyond. Passing Harwich Haven to private owners could therefore unbalance the market place for both the deepwater shipment of goods and public access to continental Europe.
- 4.10. The Port of London is still a vital freight shipping asset to the UK despite the loss of the London Docks. The management of this waterway which extends a considerable way up the Thames enables the most environmentally friendly method of moving all manner of freight through one of the most congested cities in the world.
- 4.11. Tyne has become a vital link in the coastal shipment of goods around our coast avoiding the need for long distance road journeys. It also serves as a major shipping port in its own right. Passing Tyne out of public hands will have the

potential to stifle this traffic increasing the strain on our overstretched rail and road network.

- 4.12. All of these and the other trust ports are entrusted with the fiduciary duty to act for the benefit of the local communities in which they reside. Any sale to the private sector would therefore go against this duty and instead reduce the level of involvement to community participation only. Due to financial pressures and the level of competition it would not be surprising if such an obligation to involve the communities dissolved over time. Consequently, Unite believes that if there needs to be a change in ownership it should be a situation where the ports are transferred to the community.

**5 Do you consider that the relative weighting of criteria is appropriate?  
Do you consider that there are any other criteria which should be included?**

- 5.1. Whilst opposed to any liberalisation of the UK Ports, Unite notes that no weighting of the various criteria appears to have been set out in the consultation. Unite would suggest that the first overriding aim should be to prevent the sale if such a move would open up the potential for exploitation. This would certainly be the case in Dover, Milford Haven and potentially Harwich Haven.
- 5.2. Secondly, the balance of the market needs to be preserved to ensure that jobs will not be lost at other UK ports as a result of the distortion caused by the dominant position commanded by some of these ports. This potential for distortion includes the looming prospect of job losses at Felixstowe, Southampton and Liverpool as a result of the opening of the London Gateway container port.
- 5.3. Unite believes that the financial stability of the new owners should be the next determining factor to ensure that any new owner has the access to the funds required to properly maintain and develop the port. This is one of the principal reasons why Unite believes that such assets should remain in public hands. These ports are of such importance to the UK, the financial stability of the owner needs to be secure and not built on foundations of excessive debt.
- 5.4. Given the local community should be heart of the trust port operation; any replacement should have a similar commitment to the community. Unite believes that this fiduciary duty has been forgotten by some port managers in favour of increased profits and payments to those managers who have made a financial investment in the port.
- 5.5. Given the Government's aims to reduce environmental pollution; Unite believes any new owner should have a firm commitment to maximise the potential of environmentally friendly transport and working practices. Such moves should include the development of wind farm, tidal and wave generational capacity together with connectivity to inland waterways and rail wherever practicable. Such a commitment would reduce the need move passengers and freight to the key side by road, freeing up much needed capacity.

- 5.6. Unite is concerned that the port could be transferred to an operation which will sweat the asset and its customers beyond what could be considered a reasonable profit margin. If the Government has no other option but to divest itself of these assets, then it should first investigate the possibility of passing the ownership of the port to a community run trust, to ensure such a situation would not occur. Whilst an owner needs to be conversant with port operations, it needs to have the support of the workforce, neighbours and its customers in any operational decisions. This would prevent the asset being stripped and run down by parties who are more interested in making profits than the effect the port can have on the community and the nation.
- 5.7. Should a community option for the ownership and operation of the port not be a realistic option, a fair price for the port (whilst important for the nation's finances) should feature as a key consideration to prevent repeats of government sell offs of the past. Some of the nation's trust ports have a very dominant position in the markets they serve and the sale price of such a port should reflect this. Unite therefore believes if there is no other option that the ports should face an auctioning process rather than secret bidding. The only allowed participation in such an auction should be those bodies who meet the qualifying criteria as stated above.
- 5.8. Unite believes that there are solutions open to the Government to retain the trust ports under government ownership. Under the last government legislation removed barriers to investment in the Port of Dover as stated earlier, but this has not stopped other artificial barriers to investment being placed in the way. Unite believes that the rectification of these barriers is not beyond the capabilities of government.

## **6 Do you agree that the same criteria should apply to compulsory and voluntary sales?**

- 6.1. Having defeated the 'Access to Ports Services Directive' and the 'Services in the Internal Market Directive' (commonly referred to as the 'Bolkestein Directive')<sup>4</sup> Unite repeats its request to the Government to give assurances that it will not support any measures for liberalisation of the UK ports.
- 6.2. In October 2008 Dover Harbour Board made a series of statements to guide thinking around potential governance structures. The first of these was that their "*Long term vision: any restructuring must preserve the values and independence inherent in trust port status and continue to develop a sustainable, successful and commercial business*". Once in private hands, where the direction of the company is at the influence of the shareholders, how can true independence be maintained especially if these shares are for sale on the open market, unless a controlling interest in the ports is maintained by the Government?
- 6.3. Unite has recently witnessed the attempts of a consortium including, the Peel Group to effect a hostile takeover of Fourth Ports. Fortunately, independence on that occasion was retained, seeing off the potential for a virtual monopoly of the ports in Scotland.

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<sup>4</sup> <http://www.espo.be/pages/ezone.aspx?newsletter=310>

- 6.4. In its potential governance statement the harbour authority has stated that the move towards a privately owned company would enable the “*Removal of constraints to enable growth: access to capital with no statutory or artificial constraints on the Port’s development and growth; optimisation of its capital structure and user charges*”.
- 6.5. LD Lines has recently announced the redeployment of one of its two ferries on the Dover to Boulogne route at the end of August due to the over capacity on this route<sup>5</sup>. P&O Ferries has also warned staff of cutbacks due to lack of demand and Sea France has accumulated debts estimated at €180m. The move to increase the capacity potential of Dover as a ferry port cannot be justified at this time and any “*optimisation*” of user charges can only lead to an increased burden on the ferry operators who provide the service.

## **7 Acceptability: having regard to the aspirations and interests of the Port’s stakeholders and minimising objections.**

- 7.1. Unite does not believe that the proposed privatisation of the Dover trust ports can possibly be in the public interest. As a Trust port, the authority is obliged to send a percentage of profits back into central government funds and any surplus has either to be reinvested or paid back to the local communities and charities. Unite believes that this help to communities and charities will be seriously threatened by privatisation.
- 7.2. Equally, the Port has a considerable amount of land at its disposal which has been set aside for the transiting and short term storage of freight. Such land has significant commercial potential and for the development of housing. Once this land has been handed over, however, it cannot be returned to its original purpose. As one of the country’s principle ports of entry for road hauled freight, the loss of these areas could cause significant long term problems.
- 7.3. PricewaterhouseCoopers stated in the report to DHB that a return to Trust port status is not in the interest of the port and “*does not meet the requirements of its major stakeholders going forward and, indeed, acts as an inhibitor of progress and investment*”<sup>6</sup>. Unite believes that this conclusion could only be achieved by not considering the peoples port option and would not preclude a move towards a company limited by guarantee.
- 7.4. Unite believes that the worst thing the Government could do would be to release the assets retained by the Dover Harbour Board to private sector investors who would be keen to strip away assets for short term gain. Dover is a major UK asset providing the gateway for business to trade with our neighbours in mainland Europe and beyond. Unite is fearful that such a move to fully privatise would, in turn, result in the removal of government limitations on charges and therefore create an additional trade barrier.

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<sup>5</sup> Source :- Lloyds List Tuesday 17 August 2010 page 3

<sup>6</sup> As reported in the Dover Harbour Board “A Change of Corporate Structure for the Port of Dover” [http://www.doverport.co.uk/\\_assets/client/images/collateral/Briefing%20document.pdf](http://www.doverport.co.uk/_assets/client/images/collateral/Briefing%20document.pdf)

- 7.5. Unite strongly believes that the statement, at point 6 in the paper, to the effect that *“the benefits for the local community whilst the Port retains its current trust port structure can only be indirect benefits derived from the Dover Harbour Board administering, maintaining and improving the Port in the exercise of its statutory functions”* is completely misleading and inherently untrue. One of the main beneficiaries of the charitable donations which the trust is currently obliged to make is a scheme which forges links between schools and industry called Young Enterprise. This programme enables 15 to 19 year olds the opportunity to gain valuable personal experience of how business works. This charitable funding obligation is at risk if the sale goes ahead.
- 7.6. If the port is to be privatised then it should be in line with the Portsmouth model where the only shareholder is the government. This would remove trust obligations but retain the benefits of having a limited company without relinquishing control to the private sector. Another option is to follow the Network Rail or Welsh Water model of a company limited by guarantee. Unite believes that this option has not worked in either case to the satisfaction of its customers but believes it could if structured correctly.
- 7.7. The peoples’ trust proposal could hold the key to ending the dispute between the port and its key users who account for some 5,000 local jobs. The scheme could also ensure certainty of ownership is effected in months rather than far off in 2012 as currently proposed by Dover Harbour Board and enable the people of Dover to have their say on the port’s future in a community referendum. Such a move towards a peoples’ trust would have the added advantage of ensuring that the ownership of the port remains in British hands.
- 7.8. According to Charlie Elphicke MP, advice taken in the City of London, from senior financiers indicates that the Dovorian Bonds could be issued to local residents for as little as £10, would find a ready market and raise the monies to acquire the port for the purchase price required, so long as the key port users are supportive. Either way this suggestion is far better than passing this national asset into the hands of investors who could asset strip the port.

## **8 Need for an overall plan rather than leaving it to the market**

- 8.1. Unite believes it is important that government has a strategic overview of port development over the next 30 years, similar to that which we have seen in aviation. Port development is too important to be left to the vagaries of the ‘free market’. 95 per cent of UK international trade by volume is transported through our ports and over 15 per cent of international passenger movements<sup>7</sup>. A market led approach to ports has not been beneficial. It encourages ports to compete with each other, with no overall plan, which in turn leads to inefficiency and a race to the bottom on terms and conditions for the workforce.
- 8.2. Leaving the market to decide the future will lead to short term thinking with the aim of creating maximum profit from minimal investment. The results of this market led approach can clearly be illustrated by the energy industry where the markets’ short-term thinking has led to a far greater reliance on natural gas fired generation

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<sup>7</sup> UK MG statistics presented to the draft NPS event in London

(despite predictions of spiralling future gas prices and supply insecurity) rather than investment into more dependable avenues for the generation of energy. This has left the country facing a future which will suffer potential blackouts and a far stronger link between the cost of both energy sources. This market failure could undermine the benefits of a move away from fossil fuelled vehicles to electrical modes of travel.

- 8.3. In the logistics industry more than any other there is a clear need for an overall strategy. Transport is second only to energy generation as the principal source of greenhouse gas emissions. The use of short sea shipping of freight and passenger and freight movement through rail and other alternative means, offers a far greener alternative over an ever increasing reliance on the road for long distance journeys. Such a strategy could significantly reduce the congestion and increase the safety of our road networks, improve the predictability of service times and reduce greenhouse gas emissions. Dover forms a vital link in that chain linking the UK to Europe which should not be handed over to private ownership.

## **9 A race to the bottom caused by competition can put lives at risk and cause major delays.**

- 9.1. In the private sector in particular the ports industry has moved to using casual workers recruited through agencies. But casual workers are largely unskilled and untrained in dock work. Currently any training is offered voluntarily by employers, but as trained staff may then be 'poached' by rival employers there is no incentive to train, particularly when agency staff are easily available and cheap. Unite has also witnessed an alarming increase in zero hours contract workers in the privately owned ports in particular, who only receive basic instruction. Such an alarming increase in untrained and unqualified staff in the industry can only lead to an increase in injuries and accidents.
- 9.2. Unite believes that allowing the sale of Dover to the private sector would open up the port to an influx of untrained, unskilled labour resulting in the dramatic decline of safety of both the people who work at the port and those using it. There is no way in which a properly secured road tanker should have slipped off the back of a ferry, as was the case on the HSS Stena Voyager<sup>8</sup>, if it had been properly secured, especially in calm conditions. The use of the parking break alone is not enough. This incident trapped 153 passengers and 33 crew onboard, for 18 hours longer than they had anticipated. If this had happened at Dover, it could have had far more severe consequences to one of the nation's principle connections to mainland Europe.
- 9.3. Currently none of the agencies or bodies (HSE, Ports Safety organisation) or regulations (ILO, Ports Passport scheme) have not exercised any policy with real teeth, as their rulings tend to end up being voluntary obligations and therefore have not been able to create extensive improvements in safety. Responsibility for safety and training rests with port authorities, and as a result only tends to be acted upon when there are potential financial implications from a lack of training

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<sup>8</sup> The transcript of the investigation report can be found at [http://www.maib.gov.uk/cms\\_resources.cfm?file=/Stena\\_Voyager\\_Report.pdf](http://www.maib.gov.uk/cms_resources.cfm?file=/Stena_Voyager_Report.pdf)

or poor safety (e.g. the damage to expensive equipment, insurance claims or injury claims).

## 10 Pressure to increase profits

- 10.1. Dover is a vital terminal for the provision of Roll on Roll off traffic and passenger connectivity to Europe despite the direct competition from the Channel Tunnel and aviation. It only takes one incident, such as a fire or the wrong type of snow<sup>9</sup> to create a failure of the Channel Tunnel or another ash cloud to result in wide spread disruption. If Dover was in private hands, it is envisaged that the pressures from the shareholders to increase profitability would result in a higher cost to these passengers.
- 10.2. The wider purpose of seaports in facilitating trade and generating economic and social benefits is best stressed by publicly owned Trust Ports as it is in other countries. If the only purpose of reviewing the ownership of ports is to raise capital for port development then this could be achieved by issuing bonds or seeking investment from the companies who would most benefit from expanded facilities for long term preferential treatment or reduced costs.

## 11 Conclusion

- 11.1. Unite firmly believes that the privatisation of Dover is against the national interest and should not proceed. There is simply too much at stake to leave the running of this vital link to Europe in the hands of those who may asset strip and sweat this long term national treasure at the expense of the travelling public and British commerce.
- 11.2. The same argument can be used for a number of major trust ports especially Milford Haven and Harwich Haven.

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<sup>9</sup> The excuse used by Eurostar when services were disrupted through the Channel tunnel , the snow on this occasion was very powdery and clung to the inlet filters of the traction units only to melt once inside the tunnel causing the electric engines to short and fail.