

Completed acquisition by Greater Manchester Buses Limited of certain assets from JP Executive Travel

ME/6436/14

The CMA's decision on reference under section 22(1) given on 21 August 2014. Full text of the decision published on 17 October 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. **Greater Manchester Buses (South) Limited (Stagecoach)**, a subsidiary of Stagecoach Group plc, acquired certain assets comprising a local bus business in Manchester (the **Target**) from JP Executive Travel (**JPET**) (the **Merger**). Prior to this Merger, Stagecoach and the Target (together **the Parties**) overlapped in the provision of commercial and tendered bus services in and around Greater Manchester.
2. The Competition and Markets Authority (**CMA**) considers that it has jurisdiction to assess the competitive impact of the Merger as it has, or may be the case that it has, created a relevant merger situation according to the merger control provisions of the Enterprise Act 2002 (the **Act**). It has, or may be the case that it has, resulted in two or more enterprises ceasing to be distinct and the share of supply test is met.
3. The CMA has considered whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the supply of local bus services (commercial and tendered) on both overlap flows and separately for competition for tendered contracts in Greater Manchester.
4. Stagecoach submitted that the Target would have exited the market. Although the CMA considers that there is evidence that JPET may have inevitably exited the market absent the transaction, the CMA has not needed to conclude definitively on this issue in this case as no competition concerns arise on any realistic counterfactual.

5. With regard to competition in local bus services, the CMA has used well-established filtering methodology to find that none of the overlaps between JPET and Stagecoach gives rise to significant competition concerns.
6. As regards to competition for tenders, the CMA considers that there is no realistic prospect of an SLC. Transport for Greater Manchester (**TfGM**), the relevant authority that runs tenders for subsidised bus services, was not concerned about the Merger.[END NOTE 1]ⁱ Post-Merger, there will remain a number of possible bidders for future tenders, including First and several bus operators. The CMA also notes that JPET had been unable to bid for tendered contracts with TfGM since October 2013 due to failing to meet the minimum standards it requires. However, given that competition concerns do not arise even if JPET were considered a potential bidder, the CMA has not needed to conclude on this point.
7. Accordingly, the CMA does not consider that the Merger has resulted, or may be expected to result, in an SLC in the provision of commercial and tendered local bus services in Greater Manchester.

Decision

8. This merger will therefore **not be referred** under section 22(1) of the Act.

Assessment

Parties

9. Stagecoach operates commercial and tendered bus and coach services in and around Greater Manchester. It is part of Stagecoach Group plc and employs over 1,900 personnel who run a fleet of over 680 buses and coaches from five depots located in the area. Its turnover for the year ended 30 April 2013 was £101.3 million.
10. The Target comprised 41 buses, contracts, IT systems, stock, business information, staff,¹ records and goodwill relating to the business. It was formerly controlled by JPET, a partnership owned by Mark Walsh, Peter Walsh and Janet Walsh (**the Vendors**).
11. Prior to the Merger, JPET operated commercial and tendered local bus services in the Greater Manchester area, principally in the City of Manchester (Moston, Crumpsall and Harpurhey) but also in the Metropolitan Boroughs of

¹ The staff working for the Target transferred to Stagecoach by the application of Transfer of Undertakings (Protection of Employment) Regulation 2006.

Rochdale (including Middleton), Oldham, Salford, Trafford, Tameside, Stockport. The UK turnover of JPET in the 2012 financial year was just below £3.6 million.

Transaction

12. Stagecoach acquired the Target on 26 April 2014 through an asset purchase.

Jurisdiction

13. The CMA gave notice to Stagecoach that its Merger Notice was satisfactory on 26 June 2014. The 40-working-day deadline for the CMA's decision under section 34ZA(1) of the Act is therefore 21 August 2014. The four-month deadline for the CMA's decision under section 24 of the Act is 26 August 2014.
14. The CMA considers that each of the Parties constitutes an enterprise under section 23 of the Act. Stagecoach has acquired full control over the Target and, consequently, the Parties have ceased to be distinct.
15. Prior to the Merger, the Parties overlapped in the supply of commercial and tendered local bus services in Greater Manchester. Stagecoach submits that its share of supply has increased following the Merger and it is in excess of 25% (based on bus mileage operated) in Greater Manchester, a substantial part of the UK.² The CMA therefore considers that the share of supply test is met and that it is or may be the case that a relevant merger situation has been created pursuant to section 23(2) of the Act.

Frame of reference

16. Prior to the Merger, the Parties overlapped in the supply of commercial and tendered local bus services in Greater Manchester, and specifically in North Manchester.
17. The CMA³ has an extensive decisional practice on markets related to the supply of local bus services in the UK.⁴ During this assessment, the CMA has

² Stagecoach submits that TfGM information shows that Stagecoach and JPET operated [more than 25]% and [less than 5]% of bus mileage in Greater Manchester respectively.

³ And its predecessors, the Office of Fair Trading (**OFT**) and the Competition Commission (**CC**) which merged on 1 April 2014 to form the CMA.

⁴ See, for example, of particular relevance to this case, the OFT decision of 22 February 2013 in the anticipated acquisition by Greater Manchester Buses (South) Limited, a wholly owned subsidiary of Stagecoach plc, of Bluebird Bus & Coach (**Stagecoach/Bluebird**). Also, Competition Commission, Local bus services market investigation, a report on the supply of local bus services in the UK (excluding Northern Ireland and London), 20 December 2011 (the **CC Local bus market investigation**); the CMA's decision of 6 May 2014 in Arriva Passenger Services/Centrebus Holdings (**Arriva/Centrebus**). Other cases stating the approach adopted by the

not uncovered any reasons to depart from the findings of that decisional practice as to frame of reference.

18. On product frame of reference, Stagecoach submitted that there are separate markets for the provision of commercial bus services and the right to operate tendered services. Consistent with its decisional practice, the CMA believes that commercial and tendered services form separate frames of reference but, in its assessment it has taken into account that there might be some links between the two.⁵ Consequently, it has assessed separately the impact of the Merger on the overlap flows (observing any competitive constraints between commercial and tendered services or vice-versa) and tender contracts.
19. In the current case, Stagecoach submitted that private car travel constitutes a viable alternative to local bus services for some customers. The evidence before the CMA in this case does not indicate that it should widen the product frame of reference to include forms of transport other than local bus services.
20. On the geographic frame of reference for overlap flows, consistent with its decisional practice, the CMA has assessed the impact of the Merger on a flow-by-flow basis. A 'flow' is a connection between two specific points. This approach is taken because passenger demand is for travel between two points. The CMA has also considered whether nearby flows (within 500 metres) on other routes may be in the same market, given the finding by the CC that flows that have their origin and destination within 500 metres of one another are likely to be demand-side substitutes.
21. In relation to tender contracts, the decisional practice of the CMA has found the geographic frame of reference to be sub-national, based on the region where the tender contracts are offered. This is consistent with the CC Local bus market investigation which found that tenders will generally be competed for by all bus operators in the local area. Accordingly, the CMA has assessed the impact of the Merger on competition for tender contracts in Greater Manchester.
22. The CMA considers that no competition concerns arise from the Merger on network competition in the Greater Manchester area, in particular due to the size of the JPET network which consisted of only three commercial routes,

UK competition authorities in these markets include the OFT's decision of 10 July 2012 on the anticipated acquisition by Stagecoach Group plc of the North Devon business and assets of First Devon and Cornwall Limited (**Stagecoach/First North Devon**).

⁵ On the link between commercial services and subsidised or tender services, see Arriva/Centrebus, paragraphs 25–27.

one of which was an evening-only service. Therefore, network competition is not considered further in this decision.

Conclusion on relevant frames of reference

23. The CMA has assessed the impact of the Merger on the following frames of reference:
- (a) competition in local bus services (commercial and tendered) on overlapping origin and destination flows; and
 - (b) competition for tender contracts in the Greater Manchester area.

Counterfactual

24. Stagecoach submits that the pre-Merger conditions of competition do not represent the appropriate counterfactual against which to assess the Merger. It submits that due to the poor financial performance of JPET, it would have ceased supplying bus services in Greater Manchester absent the Merger. It also submits that there was no realistic alternative less anti-competitive purchaser. Therefore, it submits that the appropriate counterfactual is a scenario whereby Stagecoach (and other competitors) would not face competition from JPET or from an alternative less anti-competitive purchaser of the Target.
25. The CMA will assess a merger against a counterfactual different from the pre-merger conditions of competition where, based on the evidence available to it, it considers that the prospect of these conditions continuing is not realistic (or where there is a realistic counterfactual that is more competitive than the pre-merger conditions of competition). The CMA notes that where a merger raises concerns relative to the pre-merger situation, the CMA is reluctant to clear the merger based on an alternative counterfactual and will only do so when it has sufficient compelling evidence.⁶
26. In considering whether the exiting firm scenario is met, the CMA applies the following analytical framework:
- (a) whether JPET would have exited (through failure or otherwise); and, if so
 - (b) whether there would have been an alternative substantially less anti-competitive purchaser for the firm or its assets; and

⁶ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010, adopted by the CMA as set out in Annex D to *Mergers: Guidance on the CMA's jurisdiction and procedure*, CMA2, January 2014), paragraph 4.3.5.

- (c) what would have otherwise happened to the sales of the firm in the event of its exit.⁷

Inevitable exit

27. Stagecoach told the CMA that JPET was struggling financially and the opportunity to acquire the Target arose just before the Vendors were forced to close the business down on or around 17 April 2014. It provided some limited historical information it had acquired regarding the Target, some documentary evidence of the negotiations leading to the Merger and technical reports about the mechanical condition of the acquired buses. Stagecoach submitted that, when it acquired the Target, many of its services were not operating lawfully due to [redacted], and that JPET did not have the financial resources to [redacted].
28. The CMA also contacted the administrator of JPET (that had previously acted as supervisor of a Partnership Voluntary Arrangement (**PVA**) JPET was subject to) (the **Administrator**). The Administrator supplied a comprehensive and well-documented description and data on JPET's poor financial position, the commercial and strategic reasons which might have triggered such a situation and its conclusion that absent the Merger, the most likely outcome would have been the exit of JPET from supplying local bus services in Greater Manchester.

Views of the Vendors

29. The CMA understands that at the time of the Merger, JPET was being run by Mark Walsh, one of the Vendors. Mr Walsh told the CMA that the only option was to sell the business or cease trading. In his view, JPET had been badly affected by some commercial tactics employed by its competitors in Greater Manchester. He instructed professional advisors to help him turn around the business. Those advisers told him that selling was the only option given the financial position of the company.

Financial difficulties

30. The management accounts presented to the CMA show mixed results with some profits in [redacted] and losses in [redacted]. They also show an apparent slight improvement in revenues at the beginning of 2014, but given [redacted],⁸ the CMA has placed little weight on this evidence.

⁷ [Merger Assessment Guidelines](#), paragraph 4.3.8.

⁸ The CMA was provided data by the Administrator who told the CMA that the data may not be up to date.

31. Therefore, the CMA has, for the main body of evidence of JPET's financial situation, relied on the detailed knowledge of the Administrator, Mark Walsh and some knowledge of other third parties close to the events leading to the Merger.
32. Due to concerns about JPET's ability to pay, a PVA was drawn up and approved by creditors on 28 August 2013. [§] As JPET's financial situation deteriorated, under the terms of the PVA, the Administrator was required to consider issuing a winding-up petition. According to the Administrator, this was required at the latest in April 2014.
33. The Administrator told the CMA that JPET tried to rationalise its operations and exited a number of loss-making routes in a bid to turn around its business.[END NOTE 2]ⁱⁱ However, according to the Administrator, these plans were ultimately unsuccessful and there was no prospect of additional finances being raised.
34. Several third parties corroborated Stagecoach and the Administrator's views. For example, TfGM informed the CMA that JPET had advised it some weeks before the acquisition that it was experiencing financial difficulties which could ultimately prevent it from continuing to trade. In view of JPET's precarious financial and operational situation, TfGM developed an emergency plan in order to ensure service continuity, as it expected JPET to cease trading in the immediate future. TfGM also informed the CMA that it had excluded JPET from tendering for new tender contracts run by TfGM since October 2013 because of its failed performance against the applicable criteria over time. This would prevent JPET from earning some important revenues until such ban was lifted (which in TfGM's view was unlikely given JPET's financial position).
35. Another provider informed the CMA that it had become aware of the likelihood that JPET was about to cease trading and entered into some very preliminary discussions about a possible transaction involving some staff, assets and services.

Conclusion on inevitable exit and counterfactual

36. In light of the above, the CMA considers that there is considerable evidence that JPET would have inevitably exited the market absent the Merger.
37. However, the CMA did not need to conclude definitively on whether exit was inevitable in this case, as no competition concerns arise on any basis, irrespective of whether the criteria relating to the failing firm scenario are met.

38. The CMA assesses this case against the standard counterfactual of pre-merger conditions of competition.⁹

Competitive assessment

Horizontal unilateral effects

39. The CMA considered whether the Merger gives rise to a realistic prospect of a SLC in relation to competition on overlap flows and tenders.

Competition in local bus services (commercial and tendered)

40. Before the Merger, the Parties overlapped on over 74 flows. These included commercial and tendered services running along the same flows.
41. In previous cases, in order to focus the analysis on those overlap flows that are most likely to give rise to competition concerns, the CC developed a filtering approach to the overlap flows in order to screen out flows that are unlikely to be considered problematic.¹⁰ The applicable filters are:
- (a) *the relative importance of overlap flows* – excluding those routes for which overlap flows account for less than 10% of passengers and revenues;
 - (b) *countervailing competition* – excluding flows subject to effective competition. The appropriate definition of an effective competitor differs depending on the characteristics of the flows or routes and also on frequency;¹¹ and
 - (c) *de minimis* – excluding flows of relative little importance in terms of either revenue, number of passengers or frequency of the service.
42. In addition, the CMA notes that an asymmetric constraint may exist between buses operating at different times. This is because, whilst a more frequent service may not lose a significant amount of customers to a less frequent service in the event of a price increase or service reduction, the reverse is unlikely to be true. For customers of the less frequent service, the more frequent service may well present a constraint. Therefore, the CMA has not

⁹ The CMA also considers that there is no evidence in this case to suggest that there is another realistic situation that could be considered more competitive against which to compare the effect of the Merger.

¹⁰ Review of methodologies in transport enquiries, Competition Commission, 2007, paragraphs 25–29. The OFT also adopted this framework in a number of bus cases since then, see footnote 4 for a list of some of those cases.

¹¹ Report on the completed acquisition by Stagecoach Group plc of Eastbourne Buses Limited and Cavendish Motor Services Limited, Competition Commission, October 2009, Appendix I.

filtered out overlaps between Stagecoach and the Target on the basis of differing frequencies between the overlapping services.

43. In this case, all overlapping flows can be excluded on the basis of one of the above filters. For a significant proportion, First will remain as an effective competitor. In the remaining overlap flows, the overlaps are of insufficient relative importance to raise competition concerns, for instance in terms of the overall revenue they generate or their distance.¹²
44. The CMA's analysis of route overlaps in this case has revealed a significantly greater degree of overlap between First and the Target than between Stagecoach and the Target, and the CMA considers that this competition will remain post-merger.

Third parties' views on overlap flows

45. A number of third parties told the CMA that they thought the Parties' services competed before the Merger, particularly since the acquisition of Bluebird by Stagecoach in 2012. However, these parties also confirmed to the CMA that First is the largest operator of bus services in the area and would be active on all of the main corridors where Stagecoach and JPET overlapped.
46. TfGM told the CMA that the Merger would likely increase competition between First and Stagecoach. First confirmed to the CMA that it was present on the vast majority of routes where Stagecoach and JPET overlapped.

Conclusion on the impact of the Merger on overlap flows

47. As a result, the CMA does not believe that the Merger raises competition concerns in relation to the overlap for commercial and tendered services.

Competition for tender contracts

48. The CMA considered whether the Merger would result in an SLC for tenders.¹³

¹² With respect to distance, the CMA considers that overlaps between routes of less than 2km are excluded from the need to be assessed. This is on the evidence that the average bus journey length conducted by passengers is significantly longer than this. This suggests that very few passengers would consider the two overlapping routes as alternatives for a particular flow. Final report on McGill's Bus Services Limited/Arriva Scotland West Limited merger inquiry, Competition Commission, Appendix F.

¹³ The CMA has not needed to conclude on the counterfactual in this case as no concerns arise on any basis. However, the CMA notes that, compared to a hypothetical counterfactual of the Target exiting the market, a reduction in competition could theoretically occur if the tendered contracts it previously operated dispersed to other bidders and this allowed the other bidders to compete more strongly against First and Stagecoach for tendered contracts in the future. The CMA considers that no concerns would arise on this basis due to the

49. The CMA notes that, prior to the acquisition, JPET had been prohibited from submitting bids for tendered services to TfGM. TfGM told the CMA that this had been since October 2013 due to a fall in JPET's standards below a minimum acceptable level. TfGM added that, in order to be allowed to bid again, JPET would have been required to meet performance standards for two consecutive quarters and that it had not met the standard for any quarter since failing below the threshold. Therefore, compared to pre-merger conditions of competition, the Merger does not lead to a reduction in the number of bidders for tendered services.
50. The CMA considered whether it was realistic that JPET would, absent the Merger, have been in a position to begin competing for tendered contracts in the future. Given the financial situation of the company, the CMA considers it may be unlikely that JPET would have been able to meet these criteria again and begun competing for tendered contracts in the foreseeable future. However, the CMA does not need to conclude on this point in this case as it considers, due to factors set out below, that competition concerns do not arise on any basis.
51. TfGM was not concerned about a loss of competition in tenders for supported services.[END NOTE 3]ⁱⁱⁱ It told the CMA that [REDACTED] would continue to bid for services that JPET ran and that there were around 18 registered companies to bid for tenders in Greater Manchester.
52. A number of third parties told the CMA that they are interested in tendering for routes previously held by the Target and for other tenders from TfGM in the future.
53. First confirmed to the CMA that it would be interested in a number of tenders previously held by JPET and across Greater Manchester. Given that First is currently the largest operator in North Manchester, the main area of operation for the Target, the CMA considers that First will remain as a significant constraint on Stagecoach post-merger.
54. Three other independent bidders told the CMA that they would be interested in bidding for contracts in Greater Manchester and the contracts held by JPET. MCT told the CMA that it would have been interested in several of the routes and had submitted tenders for these for the emergency period. Stotts Tours highlighted [REDACTED] routes that it would have been especially interested in

number of other bidders that will continue to compete for contracts post-merger and the fact that a significant proportion of the tendered contracts acquired by Stagecoach from the Target will expire within the next year. The CMA considers that, in any event, this could provide other competitors with a similar opportunity to acquire these contracts as they would have had if JPET had exited the market, as in that case, TfGM would have put all of the tenders to the market for retendering.

since it operated [✂]. Rosso Bus told the CMA that it competed for tenders against JPET and that it held an interest in some of those tenders.

55. The CMA therefore considers that, on the basis of the evidence available, the Merger does not raise concerns in relation to competition for tenders.

Third party views

56. No third party raised concerns about the Merger. TfGM told the CMA the Merger would be likely to increase competition between Stagecoach and First and could result in benefits to customers as the operators begin to offer cross-city services.
57. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

58. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result in an SLC within a market or markets in the United Kingdom.
59. This Merger will therefore **not be referred** under section 22(1) of the Act.

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ⁱ END NOTE 1 – paragraph 6. TfGM has pointed out that it was not ‘unconcerned’ about the Merger, but that having considered the circumstances surrounding this transaction, on balance, it preferred this Merger go ahead rather than not.

ⁱⁱ END NOTE 2 – paragraph 33. The CMA understands that the withdrawal from exit routes was completed prior entering into a PVA.

ⁱⁱⁱ END NOTE 3 – paragraph 51. TfGM explained to the CMA that as a result of JPET’s poor performance record, JPET had for the foreseeable future excluded itself as a competitor for tendered services. In the absence of another purchaser, its acquisition by Stagecoach would not make things worse, and against the alternative no one taking over JPET’s operations, would be a modest improvement, since it increased Stagecoach’s capacity to bid for tenders.