

Anticipated acquisition by First Manchester Limited of certain assets of Finglands Coachways Limited

ME/6229/13

The OFT's decision on reference under section 33(1) given on 27 January 2014. Full text of decision published 14 February 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 or third parties for reasons of commercial confidentiality.

PARTIES

1. **First Manchester Limited ('First')** is a wholly owned subsidiary of FirstGroup plc ('**FirstGroup**'). FirstGroup operates public transport services in the UK, Ireland and North America. FirstGroup's UK regional bus services in the UK are structured as three regional operations. First operates within FirstGroup's North of England region and, in particular, provides the group's commercial and tendered bus services in the Greater Manchester area. Its turnover for the financial year to 31 March 2013 was £101 million.
2. **Finglands Coachways Limited** is a wholly owned subsidiary of EYMS Group Limited ('**EYMS**'). Finglands Coachways Limited provides commercial and tendered regional bus services in the Greater Manchester area, and also operates a coach business. Finglands Coachways Limited's bus business ('**Finglands**') operates a fleet of 41 vehicles from a leased depot on Wilmslow Road. Its turnover for the year to 31 December 2012 was £3.8 million.

TRANSACTION

3. On 31 July 2013 First signed an Asset Purchase Agreement to acquire Finglands bus business operating out of the Wilmslow Road depot and

certain assets from Finglands Coachways Limited (the '**Merger**'). The Merger excludes the coach operations of Finglands Coachways Limited. The completion of the Merger is conditional on it being confirmed that the Office of Fair Trading ('**OFT**') does not intend to refer the Merger to the Competition Commission ('**CC**').

4. The business to be acquired includes Finglands' lease of the existing depot in Wilmslow Road, the benefit of certain bus service contracts operating to the south of Greater Manchester and the goodwill associated with such contracts, certain items of stock, plant and machinery and the transfer of approximately 100 employees. Finglands' bus fleet is not included in the sale.
5. On 8 October 2013, the OFT received an informal submission from the parties concerning the Merger. The OFT's administrative deadline is 27 January 2014.

JURISDICTION

6. As a result of the Merger First and Finglands will cease to be distinct. The parties overlap in the provision of local bus services in Greater Manchester and, following the Merger, First will hold approximately 36.8 per cent¹ share of the supply of commercial and tendered bus services in Greater Manchester. The share of supply test in section 23(4) of the Enterprise Act 2002 (the '**Act**') is therefore met.
7. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

COUNTERFACTUAL

8. The OFT generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of a merger. However, the OFT will assess a merger against an alternative counterfactual where, based on the evidence available to it, it considers the prospect of prevailing

¹ Based on parties' estimated market share by revenue.

conditions continuing is not realistic (for example, because the OFT believes that one of the firms would inevitably have exited the market).²

9. The parties submit that, notwithstanding the Merger, Finglands would have exited the market as Finglands had been loss making since 2004 (with the exception of 2005 and 2007), with losses increasing to over £[] in 2013. The parties submit that Finglands exiting the market was a strategic decision for EYMS, since EYMS would not be able to sustain continued losses from Finglands in the future.
10. The OFT has therefore considered whether, on the evidence available to it, it should assess the Merger based on a counterfactual where Finglands would have inevitably exited the market.

Would Finglands have inevitably exited the market absent the Merger?

11. For the OFT to adopt an exiting firm scenario as its counterfactual, it would need (on the basis of compelling evidence) to believe that it was inevitable that the firm would exit the market.³
12. The parties submit that EYMS decided that it could not continue to support Finglands and that it had to be sold or closed down before the end of 2013.
13. The OFT was provided with evidence that Finglands was considered insolvent by its auditor, Smailes Goldie which stated in a letter to the OFT that Finglands, as a standalone business, was insolvent and that 'it appeared impossible to return Finglands to profitability.' The parties also provided a letter from EYMS to one of the directors of Finglands, setting out the options for the business going forward, one of which was its closure. However, the OFT notes that EYMS had been supporting Finglands financially for several years and, without evidence to the contrary,⁴ the OFT cannot rule out that it would have continued to do so.
14. The board minutes of Finglands' board meeting of 27 November 2012 state that 'a decision on the future of the Company had to be made no later than the end of March 2013'. However, the OFT has not been

² OFT Mergers Assessment Guidelines 1254, September 2010, paragraph 4.3.5.

³ OFT, Merger Assessment Guidelines, paragraph 4.3.10.

⁴ Such as evidence that a decision was made by EYMS to close the business absent the Merger

provided with evidence that such a decision was in fact made. Instead, the minutes of Finglands' board meeting of 5 March 2013 contain references to relatively optimistic forecasts [see end note 1].

15. The OFT does not therefore have compelling evidence to conclude that it was inevitable that Finglands would have exited the market had the Merger not taken place.

Conclusion on counterfactual

16. For the reasons above, the OFT has assessed the Merger against the prevailing conditions of competition.

FRAME OF REFERENCE

17. The parties operate commercial and tendered bus services in the Greater Manchester area. First's operations in Greater Manchester are concentrated in the northern part, whereas Finglands' operations are concentrated on the southern part of Greater Manchester.

Product scope

Commercial bus services and competition for tenders

18. In previous decisions, the OFT has assessed competition for tenders separately from the provision of commercial bus services, while taking into account that there may be some linkages between commercial and tendered services.⁵ In particular, the OFT recently considered competition for tendered contracts and the provision of commercial bus services separately in assessing a merger of local bus services in Greater Manchester.⁶
19. The OFT has not seen evidence that contradicts this approach and the parties provided information on this basis. The OFT has therefore assessed

⁵ See for example the OFT's decisions regarding the completed acquisition by Stagecoach Plc of the business and assets operated from the Lockett Road Wigan Depot of First Manchester Limited, 26 February 2013; the anticipated acquisition by Greater Manchester Buses (South) Limited, a wholly owned subsidiary of Stagecoach Plc, of Bluebird Bus and Coach, 22 February 2013 ('**Stagecoach/Bluebird**'); and anticipated acquisition by Stagecoach Group Plc of the North Devon business and assets of First Devon and Cornwall Limited, 10 July 2012.

⁶ Stagecoach/Bluebird'

competition for tendered contracts separately from the provision of commercial bus services, noting that there may be linkages between them (see below).

Competition between commercial bus services and tendered bus services

20. Although the OFT considers that there are separate frames of reference for competition for tendered contracts and the provision of commercial bus services, in some circumstances, once tendered a tendered service may compete with a commercial service.
21. The CC in its local bus market report (the '**CC Report**') also found that commercial and tendered services can constitute alternatives from a demand-side perspective since, for passengers, tendered operations provide a service in the same way as a commercial route does.⁷ The OFT has also previously considered that, as operators are encouraged to grow passenger revenue on tendered services, the structure of the contracts incentivises the tendered operator to compete with the commercial service provider.⁸ A merger involving overlapping commercial and tendered services may therefore lead to a loss of competition.
22. The OFT's investigation in the present case has not uncovered evidence that contradicts this approach. It has therefore considered it appropriate to include the provision of commercial and tendered services in the same frame of reference (but, as noted above, it considers separately competition for tendered contracts).

Other forms of transportation

23. First submits that the car is one of its biggest competitive constraints. The OFT notes that the CC found that other forms of transport did not form part of the same product market as bus transport.⁹ In previous decisions, the OFT also did not include other forms of transport in its product frame of reference.¹⁰

⁷ CC Report paragraph 7.114.

⁸ Stagecoach/Bluebird paragraph 17.

⁹ Competition Commission, Local bus services market investigation report, 2011 paragraph 7.64.

¹⁰ For example, Completed acquisition by Stagecoach Plc of the business and assets operated from the Lockett Road, Wigan depot of First Manchester Limited, OFT decision 25 February 2013, paragraph 20.

24. In the present case, the OFT did not receive sufficient evidence to conclude that the constraint imposed by private cars or other forms of transport would be sufficient to render unprofitable an increase in the price or deterioration in quality of local bus services. Therefore, the OFT considers that the frame of reference should not include forms of transport other than local bus services.

School services

25. School bus services are provided in Greater Manchester mainly under two types of contractual arrangements. First, those funded by Transport for Greater Manchester ('TfGM'), the body responsible for co-ordinating public transport services throughout Greater Manchester, but operated by bus operators where the ticket revenues from the operation of the service are transferred to TfGM. The OFT has examined the potential lessening of competition in the tender of these contracts alongside the impact on the tender for other services.
26. Secondly, school bus services are provided as tendered and commercial services where operators retain the revenue. However, the OFT considers that school bus services are unlikely to represent an alternative to either tendered or commercial services, as school buses are operated at very low frequency (generally once a day in each direction). Further, although in principle school buses (with the exception of some exclusive school buses) are accessible by any passengers, the parties submit (and a third party agreed) that an overwhelming majority of tickets are sold to pupils, which indicates that passengers do not generally consider school buses as a good alternative to other bus services.
27. For these reasons, and in particular due to the difference in frequency, the OFT considers that often school services would be unlikely to provide a competitive constraint on commercial services.
28. The OFT considers that it may be possible for operators of school services where revenue is retained by the operator to compete against each other. In the present case, the parties overlap on one flow where both operate a school service. However, the OFT considers that competition between these services is very limited as they run at different times, 50 minutes apart.

29. The OFT therefore has not considered school bus services further and has not reached a conclusion regarding the frame of reference in this regard.

Geographic scope

Flow level

30. Consistent with previous cases, the OFT has assessed the impact of the transaction on a flow-by-flow basis, where a 'flow' is defined as a connection between two specific points. This approach is taken because passenger demand is for travel between two points. The OFT has also considered whether nearby flows on other routes may be in the same market, given the CC's finding that flows that have their origin and destination within 500 metres of one another are likely to be demand-side substitutes.¹¹

Network level

31. In previous cases,¹² the OFT considered that it may be appropriate to assess the impact of the Merger at a network level in addition to competition on specific point-to-point flows, since there was evidence to suggest that some customers might have used the parties' services to make multi-journey (as opposed to point-to-point) trips across their networks. Also, on the supply side, potential entry/expansion from one party may exert a significant competitive constraint on the other party on non-overlap flows.
32. However, in the present case, the parties' networks are located in different geographic areas with minimal route overlaps. Finglands' network is mainly located in the south of Greater Manchester, whereas First's network is mainly located in the north. For passengers travelling across Greater Manchester, the parties' networks may therefore be complements rather than substitutes. In addition, the parties' networks differ considerably in their size and density, in that First's network is much more extensive and denser than Finglands' network.

¹¹ CC Report, completed acquisition by Stagecoach Group plc of Preston Bus Limited, 11 November 2009, Appendix I, paragraphs 5-10.

¹² For example, OFT decision acquisition by McGill's Bus Services Limited of the Arriva Scotland West local bus business, 18 April 2012.

33. The OFT will therefore not discuss network competition further in the present case.

Competition for tender contracts

34. In previous cases the OFT has considered the geographic frame of reference for tenders to be sub-national, based on the region where the tenders are offered.¹³ This is consistent with the CC Report which found that the market for tenders will generally include all bus operators in the local area.¹⁴

35. In particular, in Stagecoach/Bluebird the OFT assessed competition for tenders in the Greater Manchester area.¹⁵ In the absence of evidence to depart from this approach, the OFT adopts Greater Manchester as the appropriate geographic scope for the competition for tender contracts.

Conclusion

36. The OFT considers that the relevant frames of reference for consideration are:

- local bus services (commercial and tendered) on overlapping flows and
- competition for tendered contracts for local bus services in Greater Manchester.

UNILATERAL EFFECTS

37. The OFT considers below firstly whether the Merger may result in a loss of competition on a flow-by-flow such that fares for bus users may increase post-merger or the competitive offering (such as frequency, quality of service or other non-price aspects) will be diminished. Secondly the OFT considers whether the Merger may lead to a substantial lessening of competition for tender contracts such that future tender payments made by tendering authorities may increase compared with the pre-merger situation.

¹³ For example, OFT decision, anticipated acquisition by Stagecoach Plc of the business and assets operated from the Lockett Road, Wigan Depot of First Manchester Limited, 25 February 2013, paragraph 25.

¹⁴ The CC Report paragraph 7.120.

¹⁵ Stagecoach/Bluebird paragraph 22.

Bus services with different frequencies

38. The CC has previously distinguished bus routes according to the frequency of their services.¹⁶ In particular:

- Frequent services are those services running every 10 minutes or less. To provide an effective constraint a competitor would need to run a service with a frequency of no more than 10 minutes greater.
- For 'less frequent' services competitors running with frequencies no more than twice as long were considered effective competitors.

39. The OFT has followed this approach in considering the extent of the overlaps between the parties.

Head-to-head competition on overlap flows

Manchester City Centre to Wilmslow Road overlap

40. The parties overlap in one of the main bus corridors in Greater Manchester. The overlap starts from the centre of Manchester, near Piccadilly Gardens, in the proximity of a major bus station, and extends westwards along Portland Street and then southward along Oxford Street, which then becomes Oxford Road up until the crossroads with Moss Lane East (where Oxford Road changes name into Wilmslow Road).

Frequencies of the parties' services

41. First's main service on this overlap flow is service 18, which runs at a frequency of one bus every 10 minutes or less. First's service 53 also overlaps for part of the route but is operated at a lower frequency (one bus every 30 minutes) and is therefore not considered to compete to any material degree with Finglands' services on the overlap.

42. Finglands' main services on the overlap flows are services 41 and 42/157, which separate from each other beyond the south end of the overlap. Service 41 is a frequent service (on the basis of the criteria set out at

¹⁶ Competition Commission report in Stagecoach/Preston, Appendix I, paragraph 14.

paragraph 40), whereas service 42 is operated every 20 minutes.¹⁷ Service 157 is a tendered service that runs in the evening only every 70 minutes.

Relative importance of the overlap in the parties' routes

43. In previous cases the OFT and CC have applied a filtering approach to ascertain whether any overlapping flows should be examined closely for potential competition concerns.¹⁸
44. In line with this approach, the OFT has considered the relative significance of the overlap flows as compared with the remainder of the route. The relative importance of an overlapping flow is used to determine the extent to which a loss of competition on that flow would change the incentive of the parties in terms of fares or quality on the entire route.
45. The parties submit that the overlap is relatively unimportant if compared to the rest of the routes which the overlapping flows form part of, whether this is measured in terms route length, passenger number or revenues.
46. The parties estimate the number of passengers and associated revenues for the affected flows. The OFT considers that these estimates are subject to considerable uncertainty and only cover one section of the overlap. Nevertheless, these figures show that the overlap cannot be excluded on the basis of revenue or passenger figures since the section for which the figures were received accounts for over 10 per cent of revenue and passengers of Finglands' routes 41 and 42.
47. The OFT also considered the length of the overlap in proportion to the total length of the routes in order to consider the relative importance of the overlap flows. The overlap length is approximately 2.8 kilometres. The OFT found that the overlap represents more than 10 per cent (in length) of First's route 18 (17 per cent), of Finglands' services 41 (19 per cent), 42 (30 per cent) and 157 (13 per cent).

¹⁷ Finglands also operates service 16 during the evening from Monday to Friday and during the day and the evening on Sunday. This service has a frequency of one bus every two hours, that is at considerable lower frequency than the other services operated on this overlap at the same time by Finglands. This service is therefore excluded from the analysis analysis for this overlap (other overlaps for service 16 are considered at paragraph 52 below).

¹⁸ For example, completed acquisition by Stagecoach Plc of the business and assets operated from the Lockett Road, Wigan Depot of First Manchester Limited, OFT decision 25 February 2013, paragraph 30.

48. The OFT therefore could not exclude the possibility of competition concerns on the basis of the relative importance of the overlap flow. On a cautious basis, it therefore considered whether the overlap flow was subject to effective competition.

Presence of competitors

49. The parties submit that there are a number of competitors providing bus services on the overlapping corridor, or part of it: Stagecoach, Arriva, Bullocks and Manchester Community Transport ('MCT').

- Stagecoach operates a number of services in competition with the parties on the overlap flows, which it runs as frequent services. Further, Stagecoach's services overlap with Finglands' for a considerably longer proportion of the route length than First's services, which suggests that Stagecoach provides a strong competitive constraint and will continue to do so post-Merger. Finglands also considers Stagecoach to be its main competitor along the Wilmslow Road corridor, as demonstrated in various internal documents provided to the OFT. The OFT therefore considers that Stagecoach's services constitute effective competitors to the merged firm's services.
- Bullocks' service 147 overlaps with the parties' services on only part of the overlap flows. However, the Bullocks service is a frequent one and the OFT considers that it therefore constitutes an effective competitor for the relevant part of the overlap flows.
- Arriva's service 16 and the MCT service 44 also overlap with the parties' services over a large part of the overlap. However, service 16 is operated only every 30 minutes and service 44 only hourly, thus they are unlikely to represent a viable alternative for passengers. The OFT therefore considers that Arriva and MCT are not effective competitors of the parties on the overlap flows.

50. For the reasons set out above, the OFT considers the Stagecoach and Bullocks services to represent effective competition operating on the overlap flows that will continue to constrain the parties post-merger.

Conclusion on Manchester City Centre to Wilmslow Road overlap

51. Given the presence of effective competition on the overlap flow, the OFT has not found a realistic prospect of a substantial lessening of competition on this flow.

Other overlap flows

52. The parties submit information on four additional overlaps between First's and Finglands' services in Greater Manchester. One of these overlaps, between route 168 (First) and route 99 (Finglands), is limited in length (350 metres) and accounts for only two bus stops in one direction and one in the other. The CC Report found that bus routes less than 500 metres apart were considered by passengers to be substitutable by walking.¹⁹ Given the limited length of this overlap and the fact that few passengers are likely to use the bus on just the overlap flow, the OFT does not believe that it merits close consideration, as it is not significant relative to the remainder of the routes involved. The loss of competition between the parties on this overlap is therefore unlikely to materially change the incentives of the parties to worsen their competitive offering on the entire route.
53. The other three overlaps identified relate to overlaps between Finglands' route 16 and three services operated by First, detailed below. Route 16 is an evening service from Monday to Saturday²⁰ and a day and evening service on Sunday running at a low frequency of one bus every two hours
- Route 54 is only operated by First Monday to Friday in one direction and operates in the early morning. The OFT therefore considers that this service does not overlap with Finglands' route 16.
 - Route 22 is operated by First every 30 minutes during the day and every hour in the evening. First's service 22 overlaps with Finglands' service 16 only for one evening trip from Monday to Sunday and all day on a Sunday. The Sunday day-time services are operated at considerably different frequencies (route 16 runs every two hours, whereas route 22 runs every 30 minutes). The OFT therefore

¹⁹ CC Report

²⁰ The daily service on this route is operated by Arriva.

considers that Finglands' route 16 does not constitute an effective competitor to First's route 22 on this overlap.

- Route 168 is only operated by First on a Sunday (day and evening) on an hourly basis. As mentioned in paragraph 24, the OFT considers that competitors running with frequencies no more than twice as long were considered effective competitors. Therefore, service 168 and service 16 can be considered to be competing services on the overlapping flows, as service 168 is operated twice as frequently as service 16. However, the OFT considers that the length of the overlap is minimal (approximately 1.3 kilometres), relative to the rest of the route. In terms of route length, the overlap only represents five per cent of route 16's length and six per cent of route 168's length. The OFT therefore considers that the competitive constraint exerted by the parties' routes 16 and 168 on each other is unlikely to be significant.

Conclusion on competition on overlap flows

54. For the reasons set out above, the OFT finds that there is no realistic prospect that a substantial lessening of competition will arise on a flow-by-flow basis as a result of the Merger.

Competition for tendered services

55. First and Finglands are both active in bidding for tendered contracts from TfGM.
56. The OFT examined bidding data provided by TfGM for the period from April 2010 to March 2013. The OFT considers that this data indicates that there is very limited competition between the parties for tendered contracts. In addition, Stagecoach will continue to be present as a competitor in bids for tenders post-Merger.
57. No third parties raised concerns about a loss of competition for tendered services as a result of the Merger. In particular, TfGM told the OFT that sufficient competition would remain after the Merger. [See endnote II]
58. For these reasons the OFT considers that the Merger does not give rise to a realistic prospect of a substantial lessening of competition with respect to competition for tendered services.

Loss of potential competition

59. A degree of competition can arise on flows where operators are not currently both present if one operator could quickly and easily change its routes to serve that flow. The threat of that new entry may in itself constrain the ability of the incumbent operator to increase fares or reduce service quality.
60. The OFT has therefore assessed the extent to which the Merger has reduced potential competition which acted as a constraint on the parties.
61. As noted in paragraph 9 above, Finglands has experienced financial difficulties in recent years. In January 2013 Finglands withdrew some services. Finglands' internal documents do not contain any indication that it was seeking to expand its routes in the future. The OFT considers that there is no realistic prospect that Finglands would have expanded into routes operated by First in the near future or that it would have represented a significant threat of expansion to First.
62. Conversely, the OFT has seen some evidence that suggests that First was considering expanding into the south of Manchester notwithstanding the Merger. However, it is not clear that this expansion would have resulted in competition with Finglands. Further the OFT considers that Stagecoach would have continued to represent a strong competitive constraint [].
63. The OFT therefore considers that there is not a realistic prospect for a substantial lessening of competition resulting from the loss of potential entry of First into the south of Greater Manchester.

COORDINATED EFFECTS

64. A merger may give rise to a substantial lessening of competition through coordinated effects. Coordinated effects may arise when firms operating in the same market recognise that they can reach a more profitable outcome if they coordinate to limit their rivalry. One of the ways in which firms may coordinate, for example, is through geographic segmentation where firms do not actively compete against each other in certain areas.²¹

²¹ Merger Assessment Guidelines, paragraphs 5.5.1 and 5.5.2.

65. The CC Report considered possible geographic market segregation carried out by some bus operators, though the report mainly focuses on areas other than Greater Manchester.²² The CC also recommended that the OFT take the likelihood of coordinated effects into account when considering local bus mergers.²³
66. The OFT has assessed the likelihood of the Merger leading to or facilitating geographic market segregation in Greater Manchester. Historically, after the privatisation of bus services in the UK, two companies were created in Greater Manchester, one operating mainly in the north of Manchester and one operating mainly in the south. These companies, after some transformations, became First and Stagecoach, First concentrating its operations in the north and Stagecoach in the south of Greater Manchester.
67. In 2013 Stagecoach expanded into the north of Greater Manchester through the acquisition of Bluebird²⁴. The OFT examined whether there is a realistic prospect of the Merger leading First and Stagecoach to establish a potentially mutually advantageous geographic market sharing through First's acquisition of Finglands in the south.
68. In particular, the OFT examined whether there was a realistic prospect that the acquisition of Finglands may increase First's ability to retaliate against Stagecoach for its acquisition of Bluebird, to the point of inducing Stagecoach to retrench from the north of Greater Manchester in exchange for First abandoning the south, or to rebalance each operator's activities such that a coordinated outcome in Greater Manchester is more likely.
69. The OFT undertook careful consideration of the evidence provided by First in regards to its competitive interaction with Stagecoach, including an extensive review of internal business documents and emails. The OFT also considered submissions from third parties as well as undertook an analysis of First's and Stagecoach's possible incentives to engage in geographic market segregation. While the OFT could not exclude the possibility there are characteristics of the local bus market in Greater Manchester, that may be conducive to coordination on a geographic basis, the OFT's analysis did not suggest that this Merger would give rise to a realistic prospect of a

²² See, in particular, CC Report paragraphs 8.169, 8.170.

²³ CC Report, paragraph 15.357.

²⁴ Considered by the OFT in its Stagecoach/Bluebird decision.

substantial lessening of competition through coordinated effects, such as geographic market segregation.

THIRD PARTY VIEWS

70. The OFT has sought views on the Merger from customers and competitors of the merging parties. Third party comments have been given due consideration by the OFT, and have been referenced in this decision where relevant.
71. TfGM considered that the Merger was likely to increase competition by extending First's operations to the south of Greater Manchester. Some smaller competitors raised concerns about the reduction in the number of smaller operators but recognised that there was very limited overlap between the parties' networks. Some third parties appeared to suggest that the Merger may result in a coordinated outcome, the likelihood of which is addressed by the OFT in paragraphs 63 to 66 above.

ASSESSMENT

72. The parties operate bus services in the Greater Manchester area. First's services are concentrated in the north of the area and Finglands' in the south. The parties overlap on a small number of flows, the most significant one along the Wilmslow Road corridor.
73. Given the limited nature of the overlaps and the presence of effective competition, the OFT finds that none of the overlapping flows give rise to a realistic prospect of a substantial lessening of competition.
74. In addition, bidding data provided by TfGM indicates that there is very limited competition between the parties for tendered contracts and competitors for tendered services will remain post-merger.
75. Finally, the OFT considered the prospect of the Merger facilitating geographic segregation in Greater Manchester. However, the OFT's analysis, which took account of evidence including First's internal documents and third party comments, did not suggest that such prospect was a realistic one.

76. Consequently, the OFT does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

77. This Merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.

ENDNOTES

I With regards to paragraph 14, the OFT notes that the date of the meeting referred to is in fact 5 March 2008. The OFT notes that this significantly reduces the relevance of the forecasts referred to. However, the OFT considers that this does not affect the outcome of the OFT's assessment of the counterfactual, given that the OFT was not provided with evidence that a decision on the future of Finglands was made such that it was inevitable that Finglands would have exited absent the Merger.

II With regards to paragraph 57 the OFT makes the following correction: TfGM did not state that sufficient competition would remain after the Merger but were of the view that, on balance, competition would not be adversely affected by the Merger.