

Completed acquisition by Abellio Greater Anglia Limited of the Greater Anglia Franchise

ME/5301/11

The OFT's decision on reference under section 22(1) given on 10 February 2012. Full text of decision published 16 February 2012.

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. **Abellio Greater Anglia Limited ('AGA')** is a subsidiary of Abellio Transport Holding Limited ('ATH') and was established in the UK specifically for the purpose of bidding for and operating the **Greater Anglia Franchise** ('the Franchise'). The Franchise comprises of local, suburban and express services from, London Liverpool Street to north and east Greater London, Essex, Hertfordshire, Cambridgeshire, Suffolk and Norfolk.
2. ATH's principal activity is the operation of transport services in the UK. Its ultimate parent company is NS Groep, based in the Netherlands.

TRANSACTION

3. The Department for Transport on 20 October 2011 following a competitive tender, which began on 21 April 2011, awarded the Franchise to AGA. AGA operates the Franchise from 5 February 2012 until 20 July 2014.
4. The Office of Fair Trading's (OFT) statutory deadline for deciding whether to refer the merger to the Competition Commission (CC) is 5 June 2012. The administrative deadline is 23 February 2012.

JURISDICTION

5. The award of the Franchise to AGA constitutes an acquisition of control of an enterprise by virtue of section 66(3) of the Railways Act 1993. AGA and the Franchise will therefore cease to be distinct. As the anticipated turnover from the first year of operating the Franchise is expected to exceed £70 million (turnover for 2010 on the Franchise was approximately £526 million) the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

COUNTERFACTUAL

6. Applying the substantial lessening of competition test involves comparing prospects for competition with and without the merger. In most merger cases, the natural basis for assessing prospects for competition in the absence of the merger – the 'counterfactual' – is given by conditions prevailing pre-merger (the 'status quo ante'). However, transactions involving the award of a rail franchise are an example of where the status quo ante is not the correct counterfactual. The main reason for this is that the franchise agreement will terminate (or, in this case, has terminated) and it is not possible to reach an expectation that the company running the franchise prior to the takeover by the new franchise holder would continue to operate the franchise in the absence of the merger.
7. As in previous cases,¹ the OFT takes the view that the appropriate counterfactual to the merger is the award of the franchise to a company that raises no competition concerns or where any competition concerns could be remedied through undertakings.

MARKET DEFINITION

8. The activities of AGA and the Franchise overlap in the provision of passenger transport services.

¹ See for example the CC report on *FirstGroup plc and the Greater Western Passenger Rail franchise* 8 March 2006 (the *FirstGroup/GWF report*), paragraph 4.6.

Product scope

9. Consistent with previous CC and OFT cases,² the OFT notes there are a range of different factors which determine a passenger's mode of transport (including for example, journey cost and journey time). Given this route specific nature of substitutability for passengers, the OFT in this case considered the supply of all public transport services³ for the purpose of assessing the competitive effect of the transaction.

Geographic scope

10. In making a journey, passengers travel from a particular point of origin to a specific destination. Past CC reports and OFT decisions⁴ have concluded that point-to-point public transport journeys are the relevant geographic frames of reference for competition assessment in relation to bus-on-rail and rail-on-rail overlaps.
11. In considering origin and destinations, AGA used the catchment areas as defined in the *First Group/GWF* report:
 - in rural areas, flows were considered to overlap where bus and rail served the same settlement regardless of the station/stop location, and
 - in urban areas, bus stops and train stations within 400 metres of each other are treated as overlapping. For journeys with one end outside the particular urban area, a catchment area of 1,200 metres was used at both ends.⁵
12. In the absence of evidence in the present case suggesting that a different approach would be appropriate, and in accordance with the parties' submission, the OFT assessed the competitive effects of the merger on the basis of frames of reference that relate to the provision of public transport

² *FirstGroup/GWF report*, paragraph 13.

³ As regards private transport, the CC and OFT have indicated in previous cases (see, for example, the CC's report: *Review of methodologies in transport inquiries*) that there is limited substitutability between public and private transport in response to changes in relative price. In the absence of evidence to the contrary, the OFT has taken a cautious approach in this case and considers only the supply of public transport services.

⁴ See for example, *FirstGroup/GWF report*, para.22.

⁵ *FirstGroup/GWF*, Appendix E.

services between specified origin and destination points (flows) and on the above catchment areas.

HORIZONTAL ISSUES

13. ATH operates other transport services including:

- Abellio London Limited, which operate Abellio London bus routes (wholly owned)
- Abellio London West Limited which operate the Abellio Surrey bus routes (wholly owned)
- Merseyrail Services Holding Company Ltd (50 per cent owned) which owns train operating company Merseyrail Electrics 2002 Ltd, the operator of the Merseyrail Electrics' concession, and
- Northern Rail Holding Ltd (50 per cent owned) which owns train operating company Northern Rail Ltd, the operator of the Northern franchise.

14. However, ATH submitted that no overlapping flows can be identified on the basis of the catchment areas set out above.

Rail-on-rail overlaps

15. Prior to this franchise, ATH did not own or operate any rail services in London or the Eastern counties, where the Franchise will operate. In the absence of any overlap, the OFT does not consider competition concerns to arise in relation to rail-on-rail services.

Bus-on-rail

16. ATH does not operate any bus services that overlap with the rail services provided under the Franchise. AGA identified three local bus routes operated by its subsidiary, Abellio London⁶ where the start points or stop points of the route are the same as or close to Liverpool Street Station, the London train station which the Franchise services operate to and from. These include:
- Route 35: Shoreditch – Clapham Junction
 - Route 100: Shadwell – Elephant and Castle and
 - Route 344: Liverpool Street – Clapham Junction.
17. All three bus routes identified start at or nearby to London Liverpool Street. These routes then flow to the south of the river, in the opposite direction to the Franchise train services, which are in the direction of Bethnal Green and Stratford (the first two stations at which the passenger services call out of London Liverpool Street station) and beyond towards the Eastern counties. The Franchise passenger services are suburban and express services out of London, rather than local services in London. There is no overlap between the bus services operated by Abellio London and the rail services operated by the Franchise and the passenger is not able to choose between the two.

VERTICAL ISSUES

18. As the rail services operated under the Franchise and the bus services operated by Abellio London both have their origin and destination at London Liverpool Street Station or nearby, the OFT also considered the extent to which vertical or network effects may arise as a result of the merger. Passengers arriving by train or bus at Liverpool Street Station may connect to a train or bus service also operated by the Franchise or Abellio London, respectively, to continue their journey.
19. However, the OFT does not consider the volume and/or proportion of connecting passengers to be sufficiently material to raise competition

⁶ Details of the Abellio London routes can be found at the Transport for London website www.tfl.gov.uk/tfl/gettingaround/maps/buses

concerns. No third party raised any vertical or network effects concerns. Furthermore, the OFT notes that as the Abellio London bus routes are operated under contract with Transport for London who set the fares and keep all the revenue, the implications are that ATH has no ability to alter their fares or timetables unilaterally.

Conclusion

20. In the absence of any overlaps between the parties, the OFT considers that that there is no realistic prospect of a substantial lessening of competition resulting from the merger in relation to horizontal issues. While the Franchise may allow passengers to transfer to and from the rail services offered under the Franchise to bus services operated by Abellio London to continue their journey, the OFT does not consider such effects to raise any competition concerns.

THIRD PARTY VIEWS

21. No third parties raised any competition concerns in relation to this merger.

ASSESSMENT

22. AGA will commence the operation of the Franchise on 5 February 2012. The merger will result in no overlaps between the Franchise and AGA's existing rail franchises or existing bus services.
23. Third parties raised no competition concerns.
24. 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

25. This merger will therefore **not be referred** to the Competition Commission pursuant to section 22(1) of the Act.