

Anticipated acquisition by First Glasgow (No. 2) Limited of the assets of Hutchison Coaches (Overtown) Limited

The OFT's decision on reference under section 33(1) given on 4 June 2007. Full text of decision published on 21 June 2007.

PARTIES

1. **First Glasgow (No. 2) Limited** is a subsidiary of **FirstGroup plc** (First), a publicly owned company listed on the London Stock Exchange. First operates public transport businesses in the UK and US.
2. **Hutchison Coaches (Overtown) Limited** (Hutchison) is a small bus and coach operator based in North Lanarkshire. It is a wholly owned subsidiary of S.A.H. Limited, which has interests in property and haulage. Hutchison's turnover in the year ending 31 December 2005 was £2.5 million.

TRANSACTION

3. First will acquire the assets (i.e. buses and employees) of Hutchison by means of an asset purchase agreement, excluding the private hire coaching business of Hutchison (the Hutchison Business).

JURISDICTION

4. As a result of this transaction First and the Hutchison Business will cease to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in relation to the supply of bus services in the area covered by the following Strathclyde Partnership for Transport (SPT) unitary areas: North Lanarkshire, South Lanarkshire, Glasgow City, East Dunbartonshire, West Dunbartonshire, Renfrewshire and East Renfrewshire which the OFT considers to collectively form a substantial part of the United Kingdom. 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.

FRAME OF REFERENCE

Product scope

5. The parties overlap in the supply of bus services in the North Lanarkshire area. First also operates rail services through its operation of the ScotRail franchise, which overlaps with Hutchison's bus services.
6. The supply of bus services can be segmented into tendered and commercial services. Although it is common for operators of commercial services to provide tendered services and, to a lesser extent, for operators of tendered services to provide commercial services, the OFT considers that these two types of services have different characteristics. Tendered services are subsidised by the local authority in order to provide transport services where it would otherwise be unprofitable for private companies to do so (such as school bus services). Bus operators bid for tendered contracts, which are re-tendered every few years. However commercial bus services are run for profit, without subsidy from the local authority. In view of these differences, the OFT has considered tendered and commercial bus services separately in this case.¹
7. The Competition Commission (CC) has previously considered product market definition for commercial bus services in a number of public transport investigations,² including in the SPT area as part of the FirstGroup/ScotRail report.³ Evidence collated by the CC suggests that the degree of substitutability between different modes of public transport, and public and private transport, varies on a case-by-case basis. In FirstGroup/ScotRail, the CC considered it appropriate to regard point-to-point public transport journeys as relevant local markets. First submitted during the current investigation that rail services are rarely anything like as close substitutes to bus services as other bus services on the same point-to-point flows, and that travel by car will often be a close substitute for bus travel. However, as no concerns arise in this case regardless of how the product market is defined it is unnecessary to conclude on the issue in this instance.

¹ This is consistent with previous OFT decisions, including OFT decision on the completed acquisition by Arriva plc of Premier Buses Limited, 1 June 2006 and the completed acquisition by Lancashire United Limited of the business and assets of Blackburn Borough Transport Limited, 18 April 2007.

² CC report on the acquisition of Arriva plc of Sovereign Bus & Coach Company Ltd, January 2005 (*Arriva/Sovereign*), CC report on the acquisition by First Group plc of the Greater Western Passenger Rail franchise, March 2006 (*First/Great Western*) and CC report on the completed joint venture between Stagecoach Bus Holdings Limited and Braddell plc in relation to megabus.com, Motorvator and Scottish Citylink, October 2006.

³ CC report on the acquisition of the Scottish Passenger Rail franchise, June 2004.

Geographic scope – tendered services

8. In relation to tendered services, competition for the market⁴ occurs at the point when operators bid for contracts. Tendering authorities typically award contracts to a single operator for a particular route at specified times, with the result that there is no competition between operators for tendered services on a flow-by-flow basis. The OFT has therefore considered the relevant geographic scope to be the area served by these bus operators in relation to tendered services in the North Lanarkshire area.

Geographic scope – commercial services

9. The OFT and the CC have previously considered⁵ local markets in transport cases on the basis of the substitutability of competing services on point-to-point flows.⁶ When making a journey, passengers travel from a particular origin to a particular destination, therefore other origin/destination combinations are not likely to be substitutable from a demand-side perspective.
10. Based on the approach taken in previous CC and OFT investigations, the OFT has also considered the competitive effect of the transaction in a wider geographic area.⁷ This is principally because operators with depots in neighbouring areas may easily be able to divert resources to the route in question, and this threat may act as a constraint on the operator on the route. This kind of competition falls broadly under the heading of potential competition (i.e. the potential for head-to-head (actual) competition) that in itself acts as a competitive constraint. In addition, operators with depots in neighbouring areas may provide an actual constraint on each other across the wider area through offering network tickets or by setting up new (non-overlapping) commercial services as a competitive response to other operators.
11. While the OFT has considered, where relevant, the actual and potential constraint from competitors over a wider geographical area, the impact of the merger on network ticketing and other network issues is likely to be minimal. The parties' activities overlap only in the Motherwell/ Wishaw

⁴ This type of competition is distinct from competition in the market where no tender procedure is required as a pre-requisite for entry e.g. commercial bus services.

⁵ CC report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited, June 2004 (*First/ScotRail*); OFT decision on the anticipated acquisition by FirstGroup plc of the Greater Western Franchise, 30 September 2005.

⁶ A flow is a bus journey between specific start and end points, which may be all or part of a longer bus route.

⁷ See OFT decision in Completed acquisition by Stagecoach Group plc of Traction Group Limited, 12 April 2006, OFT decision in Completed acquisition by Lancashire United Limited of the business and assets of Blackburn Borough Transport Limited, 18 April 2007 and CC decision in *Arriva/Sovereign*.

area, and the transaction will only have a small impact on the scale of First’s operation in North Lanarkshire and an even smaller impact on the wider SPT area. Network issues are therefore not considered further.

HORIZONTAL ISSUES

Tendered services

12. The parties operate a limited number of tendered services in North Lanarkshire. Of the 274 school bus services contracts in North Lanarkshire, First operates eight and Hutchison one. Of the 28 local tendered bus services in North Lanarkshire, First operates seven and Hutchison one. As well as First and Hutchison, 16 operators run tendered services in the area, including three bus operators whom First identified as having a substantial presence in the supply of tendered services. This suggests that there are a number of potential bidders for tendered services within the North Lanarkshire area. On this basis, and given the lack of concern on the part of SPT, the OFT considers that the merger will not substantially lessen competition in the supply of tendered bus services in North Lanarkshire.

Commercial services

13. First provided information on their commercial fleet strength, depot capacity, number of commercial services and commercial mileage, together with estimates for Hutchison and their competitors. First is currently the largest bus operator within the North Lanarkshire area and it will increase its position slightly as a result of the merger. However, no third party considered that First and Hutchison were each other’s closest competitors and there appear to be other viable competitors in the area. First also provided evidence to show that these competitors had been actively competing with First and Hutchison in recent years.
14. First identified nine overlapping sections of commercial routes in the North Lanarkshire area. These are set out in Table 1 below:

Table 1: Overlaps for First and Hutchison services

| First route number(s) | Hutchison route number(s) | Description of overlapping section of route ⁸ |
|---------------------------|---------------------------|--|
| Local bus overlaps | | |
| 240 | 1 & 2 | Wishaw and Motherwell via Craigneuk |

⁸ Although there are a number of smaller point-to-point flows within some of these overlapping sections of routes, it made no material change to the competition assessment whether the flows were considered singularly or in aggregate because of the existence of other constraints discussed below.

| First route number(s) | Hutchison route number(s) | Description of overlapping section of route ⁸ |
|---------------------------------------|---------------------------|--|
| 267 | 3, 5 & 8 | Wishaw and Motherwell via Muirhouse |
| 201 & 240 | 1 & 5 | Motherwell to Bellshill Road |
| 240 | 3 & 5 | Coltness to Wishaw |
| Bus/rail overlaps⁹ | | |
| 267 and ScotRail service | 5&8 | Wishaw and Motherwell railway station |
| ScotRail service | 1 | Shieldmuir and Motherwell railway station |
| Express bus/local bus overlaps | | |
| 240 | X9 | Coltness and Motherwell (Civic Centre) within North Lanarkshire and Buchanan Bus Station |
| 267 | X11 | West Crindledyke and Motherwell (Town Centre) and Buchanan Bus Station |
| 255 | X11 | Motherwell (town centre) and Buchanan Bus Station |

15. For each of the local bus overlaps, the parties operate a similar service with similar frequencies. The revenue earned by First on each of the overlaps is very low, both in absolute terms and as a percentage of total revenue on the relevant routes. On each of the overlap routes there is also ‘effective competition’¹⁰ from at least one competitor, as well as, in many cases, the presence of at least one other competitor.
16. Of the two bus/rail overlaps, on Wishaw – Motherwell four other bus companies operate competing services, two of those run a more frequent service than the ScotRail service and at similar frequencies to the parties’ current bus services. On Shieldmuir – Motherwell, the number of passengers travelling by rail is extremely small and the distance travelled is short. While there is only one competing bus operator, it operates a frequency of service substantially greater than either the existing First or Hutchison service.

⁹ In assessing bus/rail overlaps, First adopted the approach of the CC in *First/ScotRail* to determine bus/rail overlaps where a railway station is within 300 metres of one or more bus stops. The CC has subsequently used a 400 metre catchment area in *First/Great Western*. However, the catchment area in any given case will depend on the characteristics of the area being considered, and given that the North Lanarkshire area was part of the area considered in *First/ScotRail*, the OFT has adopted a 300 metre catchment area in this case.

¹⁰ Previous CC cases have applied an effective competition test to routes: on ‘frequent’ services (i.e. running every 10 minutes or less) for a competitor to be effective it would have to run with a frequency of no more than 10 minutes greater. On ‘less-frequent’ services, competitors running with frequencies no lower than half those of the target company were considered effective (since passengers were more likely to plan their journey according to a timetable).

17. As regards express services First submitted that, despite the existence of an overlap, Hutchison's express services are not a competitive constraint on First's local services. This is reflected in the difference in journey times between the services, with First's local services taking almost twice as long as Hutchison's express services. In addition, two competing bus operators offer a similar service to Hutchison on each of the overlaps, and a local operator competes with each of First's services.
18. The above analysis suggests that following the merger First will continue to face effective competition both within the North Lanarkshire area and on each of the overlaps. On the basis of this competition, and the other factors discussed above, the OFT does not believe that the merger will result in a substantial lessening of competition in the supply of commercial bus services in North Lanarkshire.

THIRD PARTY VIEWS

19. Of the third parties who responded to the OFT's requests for information, only one competitor raised concerns about the reduction in competition arising from the merger. All other third parties, including two other competitors, stated that there would be sufficient competition in the North Lanarkshire area following the transaction such that the merger did not create any competition concerns.

ASSESSMENT

20. The parties to the merger each operate tendered and commercial bus services in the North Lanarkshire area. In addition, First also operates rail services in North Lanarkshire through its operation of the ScotRail franchise.
21. The parties' overlap in the supply of tendered bus services in the North Lanarkshire area is small and there is evidence of competition from a number of existing operators of tendered services in the relevant areas.
22. The parties identified nine overlaps between Hutchison's commercial bus services and First's commercial bus and/or rail services. On each of these overlaps First will face at least one established and effective competitor post-merger. The OFT found also that competition in the North Lanarkshire area was strong, with a number of operators present that will continue to act as a competitive constraint post-merger. This was confirmed by all but one of the third parties who responded to the OFT's invitation to comment on the merger.
23. 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

24. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.