
Completed acquisition by Lancashire United Limited of the business and assets of Blackburn Borough Transport Limited

The OFT's decision on reference under section 22(1) given on 18 April 2007. Full text of decision published 24 April 2007.

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

PARTIES

1. **Lancashire United Limited** (Lancashire United) is a subsidiary of Blazefield Holdings Limited (Blazefield). Blazefield is owned by Transdev plc, which is itself, a subsidiary of Transdev SA, and comprises all of the group's transport operations in the UK. Transdev SA is controlled and majority owned by Caisse des Dépôts et Consignations, a French state-owned financial institution. Lancashire United operates bus services into and around Blackburn with Darwen, Hyndburn and the Ribble Valley. Its services are, primarily, longer distance inter-urban commercial and tendered bus services, which also link Blackburn with Preston, Bolton and Manchester.
2. **Blackburn Borough Transport Limited** (BBT) is a bus operating company that was owned and controlled by Blackburn with Darwen Borough Council. BBT operates commercial and tendered bus services in the Blackburn area from a depot at Intack, an area to the north east of Blackburn town centre. A further six vehicles are based at a leased outstation on the Fylde Coast. BBT's UK turnover was £6.58 million for the year ended 27 March 2006.

TRANSACTION

3. Lancashire United acquired the business and assets (excluding the property) of BBT on 22 January 2007. The parties notified a satisfactory submission to the OFT on 16 February 2007. The extended administrative deadline is 18 April 2007. The statutory deadline is 23 May 2007.

JURISDICTION

4. As a result of this transaction Lancashire United and BBT have ceased 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 Blackburn with Darwen Borough Council, the district of Hyndburn¹, the Ribble Valley (as far north as Wilpshire) and Preston. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

Product scope

5. Both parties are active in the supply of bus services, which can be segmented into tendered or 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. 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.²

¹ With certain outlying districts, including the towns of Oswaldtwistle and Accrington.

² OFT decision on the completed acquisition by Arriva plc of Premier Buses Limited, 1 June 2006.

6. The Competition Commission (CC) has previously considered the degree of substitutability between public and private (i.e. car) transport.³ Evidence collated by the CC suggests that the degree of substitutability varies depending on, amongst other things, the level of car ownership in the area and whether the journey made is urban or rural. In this case, one third party response indicated that there are low levels of car ownership in the areas served by the routes in question and the OFT received no further evidence to suggest that private car transport formed a constraint in this area. As no concerns arise in this case it is unnecessary to conclude on this issue in this instance.
7. The OFT has previously considered the extent to which bus services compete with other modes of public transport (such as coach, train and tram) on a case by case basis. In this case the OFT has considered the degree of competitive constraint offered by rail (given that the other modes are not relevant), as discussed in the competitive assessment below.

Geographic scope – commercial services

8. The OFT and the CC have previously considered local markets in transport cases on the basis of the substitutability of competing services on point-to-point flows.⁴ 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.
9. In this case, the evidence suggests that supply-side substitution between point-to-point flows is relatively easy and likely for either incumbent or potential entrant bus operators (discussed below). The OFT's analysis in this case has therefore concentrated on the overlapping sections of routes identified by the parties⁵, as well as the constraints from actual or potential

³ CC report on the acquisition of Arriva plc of Sovereign Bus & Coach Company Ltd, January 2005 and CC report on the acquisition by First Group plc of the Greater Western Passenger Rail franchise, March 2006.

⁴ CC report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited, June 2004; OFT decision on the anticipated acquisition by FirstGroup plc of the Greater Western Franchise, 30 September 2005. A flow is a bus journey between specific start and end points, which may be all or part of a longer bus route.

⁵ Although there are a number of smaller point-to-point flows within 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.

competitors over a wider geographic area.⁶ The scope of that area is determined by the extent to which the OFT considers it is possible for such incumbent and potential entrant bus operators to provide services along the overlapping sections of routes identified by the parties. The OFT's analysis also includes those operators currently providing services in nearby major cities such as Bolton and Preston, which could act as a competitive constraint on the overlapping sections of routes.

Geographic scope – tendered services

10. In relation to tendered services, competition for the market⁷ 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 services tendered by Blackburn with Darwen Borough Council and Lancashire County Council.

HORIZONTAL ISSUES

11. Lancashire United and BBT both operate commercial and tendered bus services in the area covered by Blackburn with Darwen Borough Council.

Commercial services – actual competition

12. Within this area, the parties are the two major providers of commercial bus services, with a combined share of supply for commercial bus services of 83 per cent (with an increment of 25.5 per cent) based on turnover. The parties have also identified six overlapping sections of commercial routes (which comprise many individual flows) in the area covered by Blackburn with Darwen Borough Council, the district of Hyndburn⁸ and the Ribble Valley (as far north as Wilpshire), which are set out in Table 1 below.

⁶ This is consistent with the Monopolies and Mergers Commission's approach in *Arriva plc and Lutonian Buses Ltd - A report on the merger situation*, 18 November 1998, paras. 2.22-2.23 and the OFT decision on the Anticipated acquisition by Arriva plc of the assets of the Hertfordshire Bus Operations of Sovereign Bus and Coach Company Ltd, 3 August 2004.

⁷ 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.

⁸ With certain outlying districts, including the towns of Oswaldtwistle and Accrington.

13. The parties submitted that this relatively low number of overlaps reflects the differing focus of the two operators - Lancashire United's routes are designed to deal mostly with inter-urban traffic between Blackburn and other local towns or villages, whereas BBT's services are mostly urban services within and around Blackburn.

Table 1: Overlaps for Lancashire United and BBT services

Lancashire United route number	BBT route number	Description of overlapping section of route	Overlap length (miles)
6, 6A, 7, 7A	8A/8B, 8C/8D	Blackburn Penny Street to Accrington Road	0.98
6, 6A, 7, 7A, 152	1	Blackburn Boulevard to Burnley Road	1.22
152	8A/8B, 8C/8D	Blackburn Penny Street to Burnley Road	0.72
6, 6A, 7, 7A	1	Blackburn Boulevard to Accrington ⁹	5.2
225	2	Blackburn Boulevard to Wilpshire, Bull's Head ¹⁰	2.38
225	1	Blackburn Boulevard to Darwen Cemetery	5.1

Overlapping sections from Blackburn to Accrington

14. The OFT has considered the first four overlapping sections of routes listed above in aggregate as they all comprise sections within one route from Blackburn to Accrington. The parties face actual competition from two other commercial bus operators, M&M Coaches and King Travel, along the entire route between Blackburn and Accrington. The merger therefore represents a reduction from four to three bus operators on the overlapping sections identified between Blackburn to Accrington. Evidence before the OFT indicates that one of the above competitors has recently utilised an increase in the number of vehicles it can run under its vehicle operating licence to expand services between Blackburn and Accrington.

⁹ These routes diverge at Thwaites Road near Stanhill before reaching Accrington, however, given the short distances involved, the OFT does not consider this to affect materially the competitive analysis.

¹⁰ Lancashire United's route 225 continues straight along the main road to Wilpshire, whilst BBT's route 2 leaves the main road at Emerald Avenue, running through nearby a housing estate before rejoining the main road (and therefore Lancashire United's route) at the Brownhill Roundabout. There is, therefore, a section of the main road of 0.32 miles where the parties do not overlap.

15. In addition, evidence indicates that the route between Blackburn and Accrington is subject to the highest passenger usage in the local area, making it particularly attractive to new entrants. Blackburn with Darwen Council has identified Accrington Road as a 'bus route corridor' along which it has plans to improve passenger facilities and give greater presence to buses. King Travel is itself a recent successful entrant, having started its operations in September 2006. The OFT also notes that another potential competitor has a strong presence in commercial services in Accrington itself.
16. In light of the actual competition faced by the parties along these overlapping sections of routes and the possibility of potential competition from other operators in the local area - examined further in the potential competition section below – the OFT believes that it is unlikely that the merger will lead to a substantial lessening of competition in commercial services along the route from Blackburn to Accrington on which the parties have overlapping sections.

Overlapping section from Blackburn Boulevard to Wilpshire, Bull's Head

17. The parties overlap on a number of flows on Lancashire United's route 225, heading north out of Blackburn towards Wilpshire. The OFT has considered these flows together as one overlapping section - identified by the parties as Blackburn Boulevard to Wilpshire, Bull's Head.¹¹
18. The parties face off-peak competition during school holidays from Darwen Coach Services (DCS), which operates a de facto bus service of seven to eight daily services each way along this overlapping section. While DCS is unlikely to be a strong constraint at the moment, the OFT considers it to be in a good position to expand services on this overlap in response to an increase in price and/or a reduction in the frequency of services offered by the merged parties.
19. Northern Rail also provides rail services between Blackburn and Ramsgreave & Wilpshire stations, which run on an hourly basis. The journey takes six minutes and costs 80 pence for an open standard single ticket. While bus services are more frequent (Lancashire United operating services every half an hour and BBT's services every ten minutes), the

¹¹ See footnote 5.

journey time is twice as long as that of rail and the bus costs £1 for a single ticket. Third party evidence submitted to the OFT on the degree of competition between bus and rail services in this area was mixed. The OFT considers that such competition from rail operators would only be effective for the flows along which bus stops and train stations overlap – in this case this would be for the longest flow (Blackburn-Wilpshire, Bull's Head) but not intermediate stops.¹² In addition, the OFT's analysis in this regard was based on limited data and was therefore inconclusive.

20. Although actual competition from both bus or rail operators does not currently appear to provide much of a constraint on the parties, the strength of potential competition in the local area – examined further in the potential competition section below – and the lack of third party complaints indicated to the OFT that it is unlikely that the merger will lead to a substantial lessening of competition in commercial services along the overlapping section from Blackburn Boulevard to Wilpshire, Bull's Head.

Overlapping section from Blackburn Boulevard to Darwen Cemetery

21. The parties overlap on a number of flows on Lancashire United's route 225 between Blackburn Boulevard to Darwen Cemetery. The OFT has considered these flows together as part of one overlapping section identified by the parties from Blackburn Boulevard to Darwen Cemetery.¹³ There is no directly overlapping bus or coach service competing on this overlapping section but DCS operate a bus service between Blackburn and Darwen coach station every two hours and evidence before the OFT suggests that it may be possible for DCS to expand or amend its route to serve the directly overlapping route.
22. There are also a number of smaller operators including DCS, King Travel and M&M Coaches operating around both Blackburn and Darwen. The OFT has received evidence that one of these operators has previously operated on this overlap route in competition with the parties and, although it has been suggested to the OFT that these competitors will more likely focus on

¹² Following the approach adopted by the Competition Commission in First Group-Great Western, bus and rail stops are considered to 'overlap' if they are within 400m (for urban areas) or 1200m (for journeys outside an urban area) of each other. Here, Blackburn rail station is 50m from Blackburn Boulevard and Ramsgrave & Wilpshire station is 140m from Wilpshire Bull's Head bus stop.

¹³ See footnote 5.

smaller routes, there is nonetheless potential for expansion by these operators.

23. In addition, the overlapping section between Blackburn Boulevard to Darwen Cemetery forms part of the East Lancashire Rapid Transit initiative, which has been identified as a transport investment priority by Blackburn with Darwen Borough Council. The OFT believes this initiative may encourage future entry or further expansion for bus operators in the area. Blackburn to Darwen is also noted as an urban commuter route which might also make it relatively more profitable than other routes.
24. Northern Rail also provides services between Blackburn and Darwen which run on an hourly basis daily. The journey takes seven minutes and costs £1.90 for an open standard single ticket. Prices by bus are comparable for single tickets at £1.80 on Lancashire United and £2.10 on BBT. While bus services are more frequent, with Lancashire United leaving every 30 minutes, the journey time is longer, at 23 minutes. As discussed above, competition from rail operators would only be effective for the flows along which bus stops and train stations overlap – in this case for the flow between Blackburn and Darwen Circus, but not intermediate stops.¹⁴ Again, third party views on the extent of competition between bus and rail on this overlapping section are mixed and the OFT's analysis based on limited information was inconclusive in this regard.
25. Although actual competition from rail services does not currently appear to provide much of a constraint on the parties, the strength of potential competition in the local area - examined below - including evidence of previous entry by an existing operator along this route, leads the OFT to believe that it is unlikely that the merger will lead to a substantial lessening of competition in commercial bus services along the overlapping section from Blackburn to Darwen Cemetery.

Commercial services – potential competition

26. Third party evidence suggests that there is currently limited actual competition between the parties as Lancashire United concentrates on arterial routes and BBT on more localised services. The location of the

¹⁴ Blackburn rail station is 50m from Blackburn Boulevard bus stop and Darwen rail station is 330m from the bus stop at Darwen Circus.

parties' depots and operations meant that they would have been particularly well placed to enter onto one another's routes and therefore would have been close potential competitors prior to the merger.

27. Other potential competing operators including King Travel, M&M Coaches and DCS already replicate some of the services provided by the parties and these could be expanded given the proximity of their depots in the Blackburn and Accrington area. Indeed, two of these operators indicated to the OFT that they intend to expand their commercial bus services in the future. Evidence received by the OFT indicated that both have recently been awarded increases in the number of vehicles they can run under their vehicle operating licences, which they applied for in response to the merger. This appears to show that barriers to expansion even for these relatively small operators are likely to be low. The recent entry of King Travel also indicates that barriers to entry – further examined below – are also likely to be low. The OFT considers that such low entry barriers will facilitate future entry of additional competitors, in the event that the merged entity increases prices and/or a reduction in the frequency of its services.
28. One such potential competitor, with a strong presence in commercial services in nearby Accrington, commented that they saw the merger as representing a very strong opportunity for it and would be looking to expand both their commercial and tendered services in the Blackburn area in the future. In addition, operators such as Stagecoach (with depots in Chorley and Preston) and Arriva NW (with depots in Bolton and Rawtenstall) operate either commercial or tendered services in and around Blackburn. There is evidence to suggest that they may pose an effective further constraint on the merged entity as potential competitors, particularly given the size and strength of these players.

Conclusion – commercial services

29. The ability of actual competitors to expand their services, coupled with the ability of potential competitors to enter along the overlap sections leads the OFT to the conclusion that competition concerns do not arise in commercial bus services as a result of the merger.

Tendered services

30. The parties overlap in tendered services in Blackburn with Darwen Borough Council and Lancashire County Council. However, the overlapping sections in respect of such services are small.
31. In addition, there are a number of local operators who account for a significant proportion of tendered services in both the areas run by Blackburn with Darwen Borough Council and Lancashire County Council. Major national operators including Arriva and Stagecoach are also present in the area. The OFT therefore believes that the merger will not lead to competition concerns in tendered services in those areas covered by either Blackburn with Darwen Borough Council or Lancashire County Council.

Barriers to entry and expansion

32. All of the evidence before the OFT indicates that barriers to entry and expansion are low in this case. The parties submitted evidence to support their claim that a new operator could enter on a particular route for as little as £10,000, which would cover the cost of a single bus and driver. Furthermore, King Travel is a relatively new operator having started its operations in September 2006. In addition to King Travel, previous new entrants have included DSP Travel and Pilkingtons, both of which exited the market in 2004 due to regulatory difficulties. One third party commented that the Central and East Lancashire area has seen numerous entrants into the bus market since 1986, that this trend has continued to the present day and they could see no reason for competitive activity in the area to diminish.
33. The parties submit that both M&M Coaches and King Travel have the necessary depot capacity to expand their services. The fact that both of these operators were recently awarded an increase in the number of vehicles they can run under their vehicle operating licences appears to support this view. Regarding depot location, there are many sites close together within the Blackburn with Darwen area which should facilitate expansion along local routes, including those sections upon which the parties overlap.

34. In addition, the OFT considers that neither of the merged parties had any significant incumbency advantages. There is no evidence that either party had previously engaged in behaviour against new entrants that might deter future entry.
35. The OFT therefore believes that barriers to entry and expansion are sufficiently low to allow new entrants to make up for any loss in competitive constraint resulting from the merger.

Buyer power

36. The customers of commercial bus services are individual passengers and are unlikely to be able to exercise buyer power to any significant degree. In relation to tendered services, however local councils may have a degree of buyer power but given the lack of any horizontal concerns, it is not necessary to examine this issue any further.

THIRD PARTY VIEWS

37. None of the third parties who were contacted by the OFT during the course of its investigation raised any competition concerns about this transaction, save for one competitor. This competitor's concerns were not found by the OFT to be merger specific. Third parties commented that they expected the merger to deliver customer benefits such as the inter-availability of tickets between the merging parties' services and increased investment, which would lead to bus service improvements in the area. In relation to tendered services, none of the tendering authorities who were contacted raised any concerns about the merger.

ASSESSMENT

38. The parties overlap in the supply of commercial bus services in the area covered by the Blackburn with Darwen Borough Council and some surrounding areas, as well as in the supply of tendered bus services for both Blackburn with Darwen Borough Council and Lancashire County Council.
39. For commercial services, the parties identified four overlapping sections of routes which represent a reduction from four operators to three as a result

of the merger. The remaining other two competitors have expressed an interest in expanding their commercial bus operations in this area and have been granted approval for an increase in the number of vehicles they can run under their vehicle operating licences. One operator intends to provide competition along the route on which the merged parties overlap.

40. The parties identified another two commercial services which represent a merger to monopoly in terms of directly overlapping sections within routes in Blackburn with Darwen. The OFT believes that potential competition in the area is strong, with a number of operators present. Third parties had no concerns and there is healthy record of entry into the area.
41. The parties' overlaps in the supply of tendered bus services in the areas covered by Blackburn with Darwen Borough Council and Lancashire County Council are small and there is evidence of competition from both existing and potential operators of tendered services in both respective areas.
42. No third parties raised competition concerns in relation to this merger.
43. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

44. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.