
Completed acquisition by Stagecoach Group plc of Traction Group Limited

The OFT's decision on reference under section 22 given on 12 April 2006. Full text published 3 May 2006.

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

PARTIES

1. **Stagecoach Group plc (Stagecoach)** is an international transportation group with operations in the UK, USA and Canada. It is a UK listed company. Of most relevance to this merger is Stagecoach's UK bus division (Stagecoach Bus Holdings Limited) which comprises 17 regional companies that provide local and regional bus transport services. Stagecoach also operates the Sheffield Supertram. In 2003, Stagecoach launched megabus.com, offering 'long distance' intercity coach services. It acquired the Motorvator coach service brand, operating between Glasgow and Edinburgh, in 2004. In September 2005, Stagecoach took a 35 per cent interest in Scottish CityLink Coaches Limited, a provider of inter-urban coach services in Scotland (see Background below).
2. **Traction Group Limited (Traction)** is an operator of bus services whose operations are centred on South and West Yorkshire, Lincolnshire and Scotland. Prior to the acquisition by Stagecoach, Traction was privately-owned. In the financial year ended 31 December 2004, Traction reported UK turnover of £56.6 million.

TRANSACTION

3. On 14 December 2005, Stagecoach acquired the entire share capital of Traction. The administrative deadline, as extended, expires on 12 April 2006. The statutory deadline, as extended, expires on 28 April 2006.
4. On 20 February 2006 the OFT accepted undertakings given by Stagecoach pursuant to section 71 of the Enterprise Act 2002 (the Act) for the purpose of preventing pre-emptive action that may prejudice a reference or later action by the

Competition Commission (CC) (the Undertakings). Subsequently a number of consents were given in relation to integration of the Traction business, mainly in Yorkshire.

JURISDICTION

5. As a result of this transaction Stagecoach and Traction have ceased to be distinct. The OFT believes that the share of supply test in section 23 of the Act is met since the parties combined share of supply of tendered and commercial bus/coach services (by passenger numbers) in the area comprising the local authority areas of Aberdeenshire, Fife, Perth & Kinross, Angus and Dundee City exceeds 25 per cent. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

BACKGROUND

6. On 15 March 2006, the OFT referred to the CC the completed joint venture between Stagecoach Bus Holdings Limited and Braddel PLC in relation to the megabus.com, Motorvator and Scottish CityLink brands (the CityLink merger).¹ We have based our analysis of this case on the market situation post the CityLink merger and have ignored the fact that the CC may attach conditions to that merger. If the current merger does not raise competition concerns on that basis, then it will not do so if any conditions are attached to the CityLink merger by the CC.

RELEVANT MARKET

7. The parties overlap in the supply of bus/coach/tram services in a number of areas in the United Kingdom, including Scotland, Lincolnshire, Yorkshire and Nottinghamshire.
8. The public transport sector has been considered in the recent past by both the OFT and the CC. Annex 1 of the CityLink decision sets out the main relevant conclusions from the past reports. Of these, Arriva plc and Sovereign Bus & Coach Company, January 2005 (Arriva/Sovereign) and FirstGroup plc and the Scottish Passenger Rail Franchise, June 2004 (FirstGroup/Scotrail) are of particular relevance to this case.

¹ See OFT decision of 15 March 2006: Completed joint venture between Stagecoach Bus Holdings Limited and Braddell plc in relation to megabus.com, Motorvator and Scottish CityLink brands (CityLink decision).

Product market

Tendered and commercial bus services

9. The legal framework within which bus companies operate is described in Appendix E of Arriva/Sovereign. This explains that bus services may be operated either on a commercial or tendered basis; if tendered, the contract may be cost-based or subsidy-based.² Tenders can vary considerably in scope, covering either the entire service, only specific days (e.g. Sundays) or specific times of the day (off peak), specific timed journeys or detours (particularly for school services).
10. In the context of the competitive assessment, the main differences between tendered and commercial services are: (i) operators of commercial services are free to set frequency and fares, whereas frequency and fares of tendered services are usually determined by the local authority that puts the service out to tender; (ii) the customers for commercial services are individual passengers whereas the customers for tendered services are the relevant local authorities; (iii) price competition for tendered services is by way of bidding for contracts whereas price competition in commercial services is by way of posted fares; and (iv) smaller operators tend to play a more limited role in the supply of commercial services, which typically require greater resources and have a greater financial risk than tendered services.
11. Responses received from third parties in this inquiry indicate that it may be appropriate to distinguish between two different types of tendered services, i.e. local bus services and education/community care/special needs services. However, the parties did not provide arguments and evidence on this point and in any case this further segmentation would not have materially affected our conclusions in this case.
12. In light of the above, and in line with previous OFT and CC decisions, tendered services will be considered separately from commercial services.

Private car travel

13. Consistent with representations made in previous CC and OFT investigations in the sector, the parties and some competitors suggest that private car travel competes with public transport. However, evidence collated by the CC in recent

² For cost-based contracts the local authority receives the revenue and the contractor tenders for the whole cost of operating the contract (i.e. the revenue risk is taken by the authority). For subsidy-based contracts, the operator retains the revenue and tenders for the cost (the subsidy) of operating the tendered element of the service less the estimated revenue it might expect to receive from that element (i.e. the revenue risk is taken by the operator). See Arriva/Sovereign, Appendix E.

investigations³ suggests that generally there is limited substitution between public and private transport in response to price changes, although the exact extent 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. While the parties maintain that private car travel is a key constraint on bus operations, limited evidence was provided to support this proposition. For the purpose of this decision, private car travel will not be considered as part of the relevant frame of reference.

Bus and coach travel

14. The CC noted in NEG/Scotrail⁴ that the distinction between bus services (services which stop less than 15 miles apart and are registered with the Traffic Commissioner) and coach services in Scotland is blurred. This still appears to be the case given the difference between the two modes is technical and no evidence has been provided in this case to contradict the above. A competitive assessment has been carried out on the basis of individual overlapping flows.⁵

Bus and rail travel

15. In FirstGroup/Scotrail, the CC concluded that train and local buses were at least potentially substitutable on some routes; and that control of bus and rail on a flow where bus services and train services overlap could create or enhance market power on that flow. In contrast, in First Group/Greater Western the CC found that on the majority of flows considered in that case bus and rail services to a large extent had different characteristics and met different passenger requirements. A competitive assessment would typically be carried out on a flow-by-flow basis. However, the issue of bus/coach and rail competition was not material on any of the overlapping flows we considered in this case.

Bus and tram travel

16. Stagecoach operates the Supertram in Sheffield and Traction operates bus services into Sheffield. Some respondents in this inquiry expressed the view that operators of tram and bus services compete. For the purpose of this transaction we considered competition between tram and bus services on a flow-by-flow basis.

³ See, for example, Arriva/Sovereign and CC report on the acquisition by FirstGroup plc of the Greater Western Passenger Rail franchise, March 2006 (FirstGroup/Greater Western).

⁴ Competition Commission: National Express Group plc and ScotRail Railways Limited: A report on the merger situation, 1997, paragraph 2.66 – 2.75.

⁵ An overlapping flow is a point-to-point journey on which the merging parties each operate a bus, coach or tram service; see section dealing with geographic market.

Use of filters in relation to commercial bus services

17. There is some scope to differentiate between the competitive constraint that different bus operators exert on each other. First, the competitive constraint of one service on another may be affected by the relative frequency of the services, because passengers may not regard services with very different frequencies as substitutable. Second, the revenue that an operator derives from the overlap flow affects that operator's incentive to alter route-specific variables such as fares and frequencies that would affect the entire route. On this basis, the CC has previously used a number of 'filters' (also referred to as thresholds or criteria) to exclude from the competitive analysis flows that are unlikely to raise any competition concerns.
18. In its initial submission, Stagecoach analysed the effect of the transaction on overlapping flows (of commercial and tendered services) by applying various filters used by the CC in FirstGroup/Scotrail and Arriva/Sovereign. Stagecoach's application of the filters led to the exclusion of most of the overlapping flows. However, in the OFT's view the application of the filters (in particular, the revenue filter) by the parties was not consistent with the approach of the CC in Arriva/Sovereign. Following the approach of the CC in Arriva/Sovereign, the filters did not eliminate many flows.
19. More importantly, in relation to filters generally, the CC stated in FirstGroup/Greater Western⁶ that the application of the filters is a pragmatic method used to identify overlaps that should be prioritised in the competitive analysis of the case. It is not necessarily the case that there can be no substantial lessening of competition on flows which have been filtered out, or that flows that have not been filtered out are problematic.
20. The OFT recognises that filters can be an important tool in analysing public transport cases, particularly as a starting point or to help focus the analysis. However, in this case the application of the filters would not have eliminated many flows from our analysis. In addition, in this case, we have been able to analyse details of each individual overlapping flow, whilst taking the principles underlying the filters into account in our competitive analysis.

Geographic market

21. The OFT and the CC have previously considered local markets on the basis of the substitutability of competing services from one point to another. In making a journey, passengers travel from a particular origin to a particular destination.

⁶ FirstGroup/Greater Western, Appendix E, paragraphs 9-11

Such point-to-point journeys are known as 'flows'.⁷ A flow may constitute an entire train or bus route, or it may be only a part of a longer route. Bus passengers seeking to travel from point A to B are unlikely to consider other journeys as substitutes. In line with previous cases, it is therefore appropriate to focus the competitive analysis on point-to-point flows where an overlap exists.

22. However, there are a number of factors that indicate that it is also relevant to consider the competitive effect of the transaction in a wider geographic area. For commercial services, 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.
23. For tendered services, competition on an individual flow will be limited if local authorities specify fares and frequencies. Most competition therefore takes place across the wider market during the tendering process. Local authorities will consider bids from any bus operator as long as that operator meets contract conditions regarding vehicles, ticketing equipment, health and safety issues, etc.
24. For the purpose of this decision, the geographic frames of reference include the various point-to-point flows on which the parties overlap but the competitive effect of the merger is also assessed on a wider geographic basis corresponding to the areas which could effectively be served by the parties' depots. This is in line with the approach taken by the CC in transport cases.⁸

Conclusion on frames of reference

25. In terms of product scope, tendered and commercial bus services have been considered separately; private transport has been excluded from the frame of reference because there is insufficient evidence to conclude that it forms a constraint on public transport. The extent to which different modes of transport compete, and the application of filters, has been considered on the basis of individual overlapping flows. In terms of geographic scope, the effect of the merger on actual competition is considered on a flow-by-flow basis, while a

⁷ See FirstGroup/Scotrail and the OFT's decision in the anticipated acquisition by FirstGroup plc of the Greater Western franchise of 30 September 2005.

⁸ See, for example, First Group/Greater Western, paragraph 5.19 and FirstGroup/ScotRail, paragraph 4.36.

consideration of potential competition extends to a wider geographic area, approximately corresponding to the overlapping areas which could effectively be served by both the parties' depots. The Traction business was managed on the basis of three operating divisions, namely Scotland, Yorkshire and Lincolnshire; for practical reasons the decision reflects this split, although a separate section analyses the Grimsby area, which raises different issues to that of the remainder of Yorkshire and Lincolnshire.⁹

HORIZONTAL ISSUES

Scotland – Shares of supply

26. The parties' combined share of turnover in relation to Scottish bus services is around 23.8 per cent (increment 2.4 per cent). The other large bus operators in Scotland are FirstGroup (39.6 per cent), Arriva (3.5 per cent) and National Express (3.4 per cent).¹⁰
27. The shares of supply of the parties in each of the local authority areas where their activities overlap are set out in Table 1 below. The data indicates overlaps are limited and that the parties tend to focus on different areas. However, the extent to which this data can be used to inform the competitive assessment of the merger should not be overestimated: the local authority areas do not necessarily correspond to economic markets. Nevertheless, this is the best available proxy for market structure on a wider geographic basis. The extent to which the merger gives rise to concerns depends on the constraint the parties placed on each other before the merger and the role of the remaining competitors.

⁹ Traction's operating division in Lincolnshire also serves the Nottinghamshire area. Therefore, references to Traction's Lincolnshire operations should be read as including its Nottinghamshire services.

¹⁰ Passenger Transport Monitor, Scotland 2006, TAS. Shares of supply are based on 2003/04 turnover of subsidiaries owned at December 2005.

Table 1: Shares of supply Scottish local authority areas

Local authority	All bus services (%)		Commercial (%)		Tendered (%)	
	Stagecoach	Traction	Stagecoach	Traction	Stagecoach	Traction
City of Dundee	[< 1 %]	[0 – 5 %]	Not available		Not available	
Angus	[< 1 %]	[80 – 90 %]	[< 1 %]	[90 – 100 %]	[< 1 %]	[80 – 90 %]
Perth & Kinross	[80 – 90 %]	[5 - 10 %]	[90 – 100 %]	[5 - 10 %]	[80 – 90 %]	[5 - 10 %]
Fife	[90 – 100 %]	[0 – 5 %]	[90 – 100 %]	[0 – 5 %]	[90 – 100 %]	[< 1 %]
Aberdeenshire	[90 – 100 %]	[< 1 %]	[90 – 100 %]	[< 1 %]	[90 – 100 %]	[< 1 %]

Source: The parties' best estimates, based on passenger numbers.

Scotland - Overlapping flows

28. The parties overlap on 18 flows in Scotland, with the bulk of revenue from these overlaps arising from the Dundee-Perth flow and the Dundee-Montrose flow. The effect of the merger on competition on these flows is described in more detail below. In respect of these and the other overlap flows we considered whether, post-merger Stagecoach will have the ability and incentive to increase fares, reduce frequencies and/or lower innovation and service levels on those services.

29. We examined the extent of competition between the parties by examining the particular characteristics of the flows in question. On a number of flows where the parties' services have the same start and end point, they predominantly served different customers and needs with significantly different route configuration and journey times. On other flows, on-road competition was limited by a significant degree of tendering. In some cases, the flow comprised only a small part of the overall route. Finally, some flows were also served by frequent services operated by other commercial operators. In addition, we obtained the views of third parties, and considered the parties' fare and service history on overlapping flows. On the basis of this assessment there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen actual competition on any of the overlapping flows in Scotland. However, due to the proportion of revenue they attract, our analysis and conclusions in relation to the Dundee-Montrose and Dundee – Perth flows are set out in more detail below.

Dundee-Montrose

30. According to the parties, there is limited competition between Stagecoach coach services and Traction's local bus services because the journey time for the bus services is more than twice as long, the services have different fare structures and coach passengers generally make longer journeys than passengers on local bus services. The OFT notes that there is only one (early morning) coach service, while the buses run frequently throughout the day. As in previous cases, the OFT agrees that flows which have very different journey times, either because of differences in stopping frequency along the route or differences in the actual route, might not compete. This may be reflected in differing fare levels along a route.
31. The CityLink case considered Traction and CityLink overlaps on the Dundee-Perth flow, but Traction was not considered a competitor to the coach services. This reflected a cautious approach, as no evidence was provided to suggest otherwise. However, on the basis of the distinguishing features outlined above, we conclude that the bus/coach overlap does not raise competition concerns on this flow.

Dundee-Perth

32. Both parties operate local bus services on this flow, while Stagecoach also operates the megabus/Motorvator/Scottish CityLink coach service. National Express Group also operates a coach service on the route, which is less frequent than the CityLink service. According to the parties, the coach services operated by Stagecoach do not compete with the local stopping services operated by Stagecoach and Traction because the journey time for the bus services is more than twice as long, the services have different fare structures and coach passengers generally make longer journeys than passengers on local bus services. Having additionally analysed the competitive interaction between the coach and bus services in terms of fares and frequencies, the OFT agrees that the coach/bus overlap does not raise concerns on this flow.
33. The parties also overlap on three local bus services. One of these services - the service 16 - is jointly run by the parties. The parties argue that the joint nature of the service limits competition between them on this flow. The timetable is agreed jointly between the parties in conjunction with the local authority, limiting the scope for competition through service frequency. The scope for price competition is limited as the parties already accept each others' tickets and Traction's fares are regulated (although it offers promotional fares). The remaining two local bus services covering this flow are operated by Traction. Of these, one service is wholly tendered, with fares and frequencies set by the local council; the other

runs via a different route and takes twice the time, such that we do not believe it to be substitutable with the other services on this flow. On balance we conclude that pre-merger competition between the parties on this overlap flow was very limited and there is no realistic prospect that the merger will substantially lessen competition on this overlap flow.

Scotland – Potential competition in supply of commercial bus services

34. As noted above, the areas most likely to be affected by any loss of potential competition resulting from the merger are those that are capable of being served by the parties' depots. The evidence available to us indicates that in this case the pre-merger level of potential competition between the parties in terms of commercial bus services was low. As discussed above, even though the parties operate on some overlapping flows, we found no evidence of significant direct competition between the parties on flows where there are no other significant operators present. Neither have they done so in the recent past. The TAS Passenger Transport Monitor, Scotland 2006, states that Traction's expansion potential in Scotland was limited, since it was surrounded by Stagecoach operations. Internal documents provided by the parties indicate that their shares of supply have been relatively static over time and there was considered to be limited scope for expansion into each others' areas of operation other than at the margin through '*de minimis* arrangements' and additional tendered service contracts. The only examples of entry by the merging parties into each others' area related to minor tendered services.
35. Turning next to the question whether the limited competitive constraint removed by the merger would be replicated by the remaining players in the market, we note that Travel Dundee, a subsidiary of National Express Group, is located in the centre of Traction's area of operation. Currently Travel Dundee focuses on the provision of bus services in Dundee City, but there are overlaps with Traction on some routes. [We received evidence that Traction monitored a number of competitors]. Competitors contacted by the OFT in this inquiry noted that barriers to expansion are not significant and that they would be willing to expand if a profitable opportunity arose.
36. On the basis of this assessment there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen potential competition in the supply of commercial bus services in Scotland.

Scotland – Potential competition in supply of tendered bus services

37. In assessing potential competition in the supply of tendered bus services, we have examined the effect of the merger by obtaining the views of the relevant local

authorities and competitors. The assessment was also informed by analysis of bidding data, review of internal documents, an examination of the locations of the parties and other operators' depots and assessment of barriers to entry and expansion (see below).

38. The bidding data indicates that there was limited competition between the parties pre-merger. In the few areas where the parties bid against each other, a sufficient number of competitors and/or the possibility of new entry remains post-merger to safeguard competition.
39. The weight of evidence considered by the OFT in this investigation, including the views expressed by local authorities and internal documents provided by third parties, indicates that smaller players are more likely to be active in the tendered segment (including school and special needs transport) than the commercial segment. We note that entry into the tendered segment requires less resources and risks are generally lower than for the commercial segment. The parties also submitted that local authorities may be able to encourage new entry structuring the bid process in such a way as to enable smaller players to bid competitively.
40. On the basis of this assessment there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen competition in the supply of tendered bus services in Scotland.

Yorkshire and Lincolnshire – Shares of supply

41. Shares of supply for the parties are set out in Table 2 below. The data indicates overlaps are limited and that the parties tend to focus on different areas, but that concerns may arise in North East Lincolnshire. However, as noted above, the extent to which this data can be used to inform the competitive assessment of the merger should not be overestimated. This is because the local government areas do not necessarily correspond to economic markets and comprehensive data corresponding to these areas is not available.

Table 2: Shares of supply Yorkshire and Lincolnshire

	Total market (passenger numbers) (%)		Tender revenue (%)	
	Stagecoach	Traction	Stagecoach	Traction
Derbyshire	[30 – 40%]	-	[5 – 10%]	-
Nottinghamshire	[20 – 30%]	[0 – 5%]	[20 – 30%]	[10 – 20%]
South Yorkshire PTE ¹¹	[0 – 5%]	[30 – 40%]	[0 – 5%]	-
North East Lincolnshire	[90 – 100%]	[5 – 10%]	[10 – 20%]	-
Lincolnshire	-	[50 – 60%]	-	[20 – 30%]
North Lincolnshire	-	[60 – 70%]	-	[40 – 50%]
West Yorkshire	-	[0 – 5%]	-	-

Source: The parties' best estimates (figures rounded)

Yorkshire and Lincolnshire (excluding Grimsby) - Overlap routes

42. In Lincolnshire, the parties overlap on 15 flows; eight of these are in the Doncaster/Bawtry/Retford/Worksop area; six are in Grimsby; and one runs between Hull and the Humber Bridge. There are eight overlapping flows in Yorkshire (six are bus/bus overlaps and two are bus/tram overlaps).
43. As for overlaps in Scotland, we considered whether, post-merger Stagecoach will have the ability and incentive to increase fares, reduce frequencies and/or lower innovation and service levels on those services. Again, in addition to obtaining the views of third parties, we determined the extent of competition between the parties by considering the particular characteristics of the flows in question. Similar characteristics as those described in relation to the Scotland overlaps existed in relation to the Yorkshire and Lincolnshire overlaps, for example: the presence of third parties; different route configurations/journey times; proportion of the route accounted for by the flow; and tendering. These characteristics suggested that there was limited actual competition on overlapping flows, and that there would be little incentive post-merger to increase fares, reduce frequencies and/or lower innovation and service levels on those services.
44. On the basis of this assessment there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen actual competition on overlapping flows in Yorkshire and Lincolnshire, excluding Grimsby (which is dealt with below).

Yorkshire and Lincolnshire (excluding Grimsby) – Potential competition in supply of commercial bus services

45. Internal documents submitted by the parties and responses from third parties indicate that shares of supply in bus services in the area are stable. The

¹¹ This area covers Barnsley, Doncaster, Rotherham and Sheffield.

documents do not indicate that the parties' monitor each other's operations. The parties' depots are situated in different locations within the Yorkshire/Lincolnshire area, and Stagecoach has stated that it has not considered entering any significant new routes in the overlap areas in the past three years. The parties state that Traction has gained two new tendered routes and started one new commercial route in an area where FirstGroup is also active.

46. Similar to our analysis of services in Scotland, we found that even though the parties operate on some overlapping flows there was no evidence of significant direct competition between the parties on flows where there are no other significant operators present. Neither have they done so in the recent past. Views expressed by third parties support this conclusion. No third party raised concerns about the loss of competition in respect of commercial services in the overlap areas. Third parties also noted that access to depot sites is unproblematic in Yorkshire and Lincolnshire (see barriers to entry below).
47. A number of other companies operate in and around the areas in which the parties are active, including two of the large national bus companies, Arriva and FirstGroup. There is evidence that FirstGroup does compete to some extent with Stagecoach in Yorkshire (but less so in Lincolnshire) and that expansion would be considered in appropriate circumstances. Internal documents suggested that the merger may increase competition with FirstGroup. Following the acquisition of Traction, Stagecoach made a number of changes to bus service registrations that suggest competition with FirstGroup could intensify.¹²
48. In light of the above, there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen potential competition in the supply of commercial buses services in Lincolnshire and Yorkshire, excluding Grimsby (which is dealt with below).

Grimsby – Commercial services

49. The competitive situation in Grimsby differed in some respects to the rest of Yorkshire and Lincolnshire. In Grimsby, both parties own a depot and run services on six overlapping flows in and around the town. This includes one example of the parties running commercial services on the same route (Wybers Wood - Grimsby). Together, the six overlapping flows account for [between £1m and £2m] of annual revenue post-merger.
50. On five of the six overlapping flows, Traction's services are tendered, such that scope for on-road competition is limited. Stagecoach's commercial services in and around Grimsby are relatively high frequency services into the town centre,

whereas Traction's tendered services are low frequency from rural villages. The services overlap only at the points where they both enter Grimsby town centre. However, on the Wybers Wood – Grimsby Town Centre flow, the parties offer very similar services in terms of frequency and operate over the same end-to-end route.¹³ This flow currently accounts for total annual revenue of [between £300,000 and £400,000].

51. In addition to the fact that Traction's services are tendered, revenue data for the five flows other than Wybers Wood – Grimsby Town Centre was consistent with the claims by the parties that active competition is very limited on these flows. Traction revenue on each flow was a small proportion of its revenue on the relevant route, as well as being a very small proportion of the parties' combined revenue on the overlapping flow. While these factors are not apparent in relation to Wybers Wood – Grimsby Town Centre route, evidence from third parties indicated that even on this particular flow, competition is, at most, very limited.
52. Finally, we also considered evidence from local authorities and other third parties which, together with internal documents provided by the parties themselves, indicates that there is little, if any, active competition between the parties even on overlap flows. Nor did available evidence in this particular case support the view that the parties were material potential competitors – such that the merger would lead to anticompetitive effects by removing any such constraints.
53. Overall, there is some evidence to suggest that the merger may result in a lessening of competition in the Grimsby area. The focus of any lessening of competition is, primarily, the Wybers Wood – Grimsby Town Centre route. However, given the very limited extent of pre-merger constraints imposed on each other by the parties, in terms of both actual and potential competition, it is questionable whether any lessening of competition can realistically be said to be substantial.

Yorkshire and Lincolnshire (including Grimsby) – Potential competition in supply of tendered bus services

54. The share of supply data provided by the parties (see table 2 above) indicates that the parties do not tend to overlap in the supply of tendered services and that other operators have a significant presence. The parties have also provided evidence that smaller operators are successful in winning bids. Local authorities did not express concerns, noted that there is limited competition between the parties for tendered contracts, and considered there are sufficient numbers of operators in the area to maintain effective competition post-merger. On the basis

¹² As required by the Undertakings, the OFT gave prior written consent for these changes.

¹³ Note that the parties' fares were slightly different.

of this assessment there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen potential competition in the making of tenders for bus services in Lincolnshire and Yorkshire.

Coordinated effects

55. In this sector coordinated effects could lead to higher prices/lower service levels due to tacit (or explicit) coordination on pricing (bid prices or posted prices) and/or market sharing.
56. There are a number of features of the bus industry that could facilitate coordination. The product is fairly homogeneous, with price and frequency being the main parameters of competition. Fares and timetables are published, thus aiding transparency. The market for commercial services may be particularly susceptible to collusion as the market structure is much more concentrated, and barriers to entry are higher.
57. A number of third parties made general comments on the apparent lack of competition between bus operators. However, in a merger context, the relevant question is whether the merger may be expected to give rise to new concerns relating to coordinated effects or exacerbate existing concerns. In our view this is not the case in this instance because – although there is a reduction in the number of players - it is not clear that the post-merger company would be more able to or more inclined to collude than is currently the case. Indeed, there is some evidence that the merger could increase competition with FirstGroup and other competitors in a number of areas.

Barriers to entry and expansion

58. The parties are of the view that entry into the supply of bus and coach services is relatively simple, requiring only a bus or coach, a driver with a public service vehicle licence, maintenance and depot facilities and the necessary regulatory approvals. Most third parties agreed with this, noting that in respect of the areas concerned by the merger, suitable depot facilities were available. However, in certain areas, low overall demand levels may impact on entry incentives. Internal documents submitted by the parties indicate that driver shortages could be an issue in the sector generally. In line with previous cases, some respondents in this merger inquiry also expressed a fear of retaliation from the larger operators. However, despite these concerns, some of the larger third parties stated that they would compete with the merged parties in circumstances where it would be profitable to do so, and where they had the resources to do so.

59. Several third parties expressed the view that the merger could increase barriers to expansion by facilitating Stagecoach's ability to submit block bids¹⁴ for tendered contracts. Some third parties felt that Stagecoach's enhanced ability to offer network tickets could squeeze out the smaller operators to the detriment of long-term competition. We note that, in the absence of a long-term reduction of competition, the ability to submit low-cost block bids and offer network tickets represents a consumer benefit. Moreover, there is little corroborating evidence that this is a likely outcome of the merger. In the case that it is a problem, local authorities may be able to structure the bidding process in such a way as to avoid block bids if they are considered undesirable. We also note that local authorities have the ability to set up statutory bus ticketing schemes which can require all operators of local bus services in the area to provide integrated ticketing.¹⁵
60. One third party also raised the concern that the merger may eliminate the chance that a new, more aggressive operator could replace Traction in Scotland in the future. This view implicitly compares the post-merger situation with a different 'counterfactual' in which an alternative company owns Traction. This remains speculative because it lacks any evidentiary support, however.
61. In light of the above, there is insufficient evidence to conclude that there is a realistic prospect that the merger will substantially lessen actual competition by raising barriers to entry.

Buyer power

62. The customers of commercial operators are individual passengers, who do not have countervailing buyer power.
63. The customers of tendered operations are local authorities and passenger transport authorities. Stagecoach suggested that these bodies had sufficient buyer power, both in terms of ensuring there is sufficient competition for tendered services and to guard against the possible negative effects of block bidding. Most local authorities contacted by us did not believe that they have significant market power, although some stated that they had taken steps to counter pressure from larger bus operators.

¹⁴ Block bids (or combined bids) consist of bids for more than one contract where the price for the combined contracts is lower than the aggregate price of the individual contracts.

¹⁵ Transport Act 2000 and Transport Act (Scotland) 2001. See, for example, Arriva/Sovereign, Appendix E.

VERTICAL ISSUES

64. The merger does not give rise to vertical competition issues.

THIRD PARTY VIEWS

65. Third party views have been referenced in the relevant sections of the competitive assessment.

ASSESSMENT

66. Both of the parties provide bus/coach services, principally in adjacent areas of Scotland, Yorkshire and Lincolnshire. However, although there were areas within the reach of both parties' depots, there was little evidence that the parties constituted a material competitive constraint on each other's commercial services in these areas. Some of the areas were also served by other large operators.
67. Evidence obtained by the OFT also suggested that the parties did not generally bid against each other in a significant number of contracts for tendered services in each of the areas considered. In any case, in many cases there were already a sufficient number of bidders present, and barriers to entry for tendered services appeared low. In some circumstances at least, local authorities may indeed be able to encourage entry through the structure of the bid process.
68. Our analysis of the overlap flows at issue suggested that, for a variety of reasons specific to the individual flow(s), we were able to rule out concerns that the merger would give rise to a realistic prospect of a substantial lessening of competition on the flow in question. Such factors included, for example, the effects of tendering, relative journey times, or the presence of large competitors. The only potential exception to this common conclusion relates to five overlapping flows in the Grimsby area. There is some evidence to suggest that the merger may result in a lessening of competition in this area. The focus of any lessening of competition is, primarily, the Wybers Wood – Grimsby Town Centre flow, where the parties operate over the same end-to-end route and offer very similar services. However, given the very limited extent of pre-merger constraints imposed on each other by the parties in the Grimsby area, in terms of both actual and potential competition, it is questionable, on the specific evidence in this case, whether the merger gives rise to a realistic prospect of a substantial lessening of competition.
69. In any event, section 22(2) of the Act provides the OFT with a discretion as to whether to refer a merger if it believes that the market concerned is of

insufficient importance to justify the marking of a reference to the CC. The purpose of the provision is to avoid references being made where the costs involved would be disproportionate to the size of the markets concerned.¹⁶ Given the limited nature of any lessening of competition in this case and the limited revenues involved -- the Wybers Wood – Grimsby Town Centre route which is the focus of any lessening of competition is worth [between £300,000 and £400,000] in annual revenue -- we are of the view that the market concerned is not of sufficient importance to justify the making of a reference and, should a duty to refer arise, would therefore exercise our discretion under section 22(2) of the Act in this case.

DECISION

70. This merger will therefore not be referred to the Competition Commission under sections 22(1) and/or 22(2) of the Act.

¹⁶ OFT Mergers Guidelines: Substantive Assessment, page 44.