

Acquisition by Inter City Railways Limited of the ICEC Franchise

ME/6506/14

Background

1. On 27 November 2014 the Department for Transport (**DfT**) announced that the InterCity East Coast rail franchise (**ICEC** or the **ICEC Franchise**) had been awarded to Inter City Railways Limited (**ICRL**) (the **Franchise Award**). ICRL is a subsidiary of Stagecoach Group plc (**Stagecoach**), which indirectly holds a 90% interest, and Virgin Group Holdings Limited, which indirectly holds a 10% interest. ICRL began operating the ICEC Franchise on 1 March 2015.
2. On 6 February 2015 the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it believes that it is or may be the case that the Franchise Award may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). A copy of the SLC Decision is available on the CMA's webpages.¹
3. Under section 73 of the Act, the CMA may, instead of making a reference for a phase 2 investigation, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
4. On 13 February 2015, Stagecoach offered undertakings to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, Stagecoach made this offer within five working days beginning the working day after the CMA notified it of the SLC Decision under section 34ZA(1)(b) of the Act. The CMA gave notice to Stagecoach on 20 February 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a

¹ See the [case page](#).

modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Stagecoach's offer. A copy of that decision is available on the CMA's webpages.²

5. On 13 March 2015, the CMA issued a notice of consultation on the proposed undertakings offered by Stagecoach (the **Original Undertakings**) asking interested third parties to make their views known. As a result of the consultation and in light of the third party representations received by the CMA, Stagecoach submitted modified undertakings which strengthen its offer and provide a more effective and clear-cut remedy to address the competition concerns identified in the SLC Decision (the **Final Undertakings**).

The undertakings offered

6. As set out in the SLC Decision, the CMA found that the Franchise Award gives rise to a realistic prospect of a substantial lessening of competition in regards to the following overlap flows:
 - (a) The overlap of ICEC rail services with East Midlands Trains (**EMT**) services operated by East Midlands Trains Limited, a subsidiary of Stagecoach, between Peterborough and Lincoln and between Peterborough and Grantham.
 - (b) The overlap of ICEC rail services with coach services that are operated and owned by Citylink, in which Stagecoach has a 35% interest, between Edinburgh and Dundee and between Edinburgh and Aberdeen.

Peterborough–Lincoln

7. On the Peterborough–Lincoln flow, the Final Undertakings will commit Stagecoach to retaining the current EMT and ICEC dedicated fares and prohibit it from increasing these fares by more than is permissible for price increases to fare baskets in the EMT and ICEC franchise agreements respectively. Additionally, the Final Undertakings commit Stagecoach to continuing ICRL's current practice to link the number of seats that are available for sale at a particular price point group on the indirect services on the Peterborough–Lincoln flow (routed via Newark North Gate) to the number of seats available at the equivalent price point group on ICRL's services on the Peterborough–Newark North Gate flow (which is managed as part of the principal trunk route on the ICEC network).

² See the [case page](#).

8. In this way the Final Undertakings aim to remove Stagecoach's ability to remove or significantly increase the dedicated fares on this flow.
9. The Final Undertakings will be monitored by the CMA through reports to be provided by Stagecoach at each fare setting round detailing, in particular, any changes to dedicated fares on the flow and providing information about the number of seats in each price point group. These monitoring reports will also be sent to the relevant DfT franchise manager.

Peterborough–Grantham

10. On the Peterborough–Grantham flow, the Final Undertakings will commit Stagecoach to maintaining the current competitive constraint on this flow by continuing to manage EMT services on the flow as part of the wider Peterborough–Nottingham segment, and not to worsen its offer on this flow relative to that wider segment. The Peterborough–Nottingham segment is commercially a materially more significant flow, generating around seven times the revenue of the Peterborough–Grantham flow.
11. More specifically, Stagecoach will undertake that EMT dedicated fares on the Peterborough–Grantham flow will be offered at the same price point groups³ and for the same number of seats within these groups as dedicated fares on the Peterborough–Nottingham flow.
12. Stagecoach will also commit to introducing a cap on the level of any increase in the EMT dedicated fare on this flow. The cap will prohibit increases in the dedicated fare on the Peterborough–Grantham flow that are greater (in percentage terms) than increases in the corresponding price point group for the EMT dedicated fare on the Peterborough–Nottingham flow.
13. The Final Undertakings will be monitored by the CMA through reports to be provided by Stagecoach at each fare setting round detailing, in particular, any changes to dedicated fares on the flow and providing information about the number of seats in each price point group. These monitoring reports will also be sent to the relevant DfT franchise manager.

Edinburgh–Aberdeen and Edinburgh–Dundee

14. Stagecoach has agreed in principle with the majority shareholder of Citylink, ComfortDelGro, to make structural changes to the joint venture arrangements to grant ComfortDelGro sole control over all material operations of Citylink

³ As part of its yield management system, Stagecoach specifies the number of seats available at a particular fare point on a particular point to point flow.

services on these two flows in order to remove Stagecoach's ability to weaken Citylink as an effective competitor to ICEC on these flows.

15. The Final Undertakings will commit Stagecoach to secure changes to the decision-making and corporate governance structure of Citylink so that all decisions relating to fares, frequency of service, timetable and quality of service are board-reserved matters and are taken only by Citylink directors nominated by ComfortDelGro. To ensure that this is achieved in a clear-cut manner, Stagecoach will commit to abstain from voting on any of these matters.
16. In regards to the determination of coach fares for tickets for direct services sold through Stagecoach's megabus.com website, Stagecoach commits that the management of Citylink will report to the Citylink board at each board meeting on the fares for seats sold through megabus.com and citylink.co.uk (the Citylink website) in the preceding three full calendar months. The Citylink directors nominated by ComfortDelGro (the majority shareholder of Citylink) may require Citylink management to adopt a different pricing policy for fares sold through megabus.com in the event that ComfortDelGro directors considered that these fares were being yield managed in a manner that was to the detriment of Citylink (and, therefore, ComfortDelGro's commercial interests).
17. The Final Undertakings will be monitored by the CMA through reports to be provided by Stagecoach twice a year detailing material changes to the relevant Citylink services, confirming that the decision-making process has been consistent with the terms of the Final Undertakings, and summarising changes to the pricing policy for tickets sold through megabus.com.

Consultation

18. On 13 March 2015, the CMA issued a notice of consultation on the Original Undertakings under paragraph 2(1) of Schedule 10 to the Act and received one response from a third party.⁴ In light of the response, Stagecoach submitted the Final Undertakings which were published by the CMA on 2 June 2015 under paragraph 2(4) of Schedule 10 to the Act in order to give interested parties an opportunity to make their views known in relation to the Modified Undertakings.⁵

⁴ See notice of consultation available on the CMA's [case page](#).

⁵ See notice of consultation available on the CMA's [case page](#).

19. The CMA did not receive any comments from third parties during the consultation on the Final Undertakings.

Assessment

20. The CMA found in its SLC Decision that, because of the realistic prospect of the SLC concerned, the Franchise Award would be referred for an in-depth investigation if Stagecoach failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to remedy the substantial lessening of competition concerned.
21. The CMA considers that the Final Undertakings provide as comprehensive a solution as is reasonable and practicable to the competition concerns identified in the SLC Decision.
22. The existence of a well-established regulatory framework relating to rail franchises and the existence of restrictions on increases in certain fares in the rail franchise agreements themselves create suitable benchmarks and provide an effective mechanism for the capping of rail fares as proposed in the Final Undertakings.
23. In regards to coach services, in the specific circumstances of the case, taking into account that Stagecoach is a minority shareholder in the coach operations and that Scotrail and Cross Country are present as rail competitors on these flows, the CMA considers that the Final Undertakings provide a clear-cut and effective remedy to the competition concerns identified and are capable of ready implementation given the in principle agreement of ComfortDelGro.
24. For these reasons (and those more fully set out in the two notices of consultation),⁶ the CMA considers that the Final Undertakings offered by Stagecoach are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision in a clear-cut manner.

Decision

25. The CMA has therefore decided to accept the Final Undertakings offered by Stagecoach pursuant to section 73 of the Act. The Franchise Award will therefore not be referred for an in-depth phase 2 investigation.

⁶ See notices of consultation dated 13 March 2015 and 2 June 2015 available on the CMA's [case page](#).

26. The Final Undertakings, which have been signed by Stagecoach, will come into effect today.

Andrea Coscelli
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Competition and Markets Authority
17 June 2015