

Review of FirstGroup undertakings

Final report

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

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Summary

1. On 30 October 2015 the Competition and Markets Authority (CMA) announced its decision to conduct a review of the undertakings given in 2002 by FirstGroup plc (FirstGroup)¹ applying to certain of its bus operations in Scotland (the ‘undertakings’). The undertakings were given following the Monopolies and Mergers Commission’s (MMC) conclusion that the completed acquisition by FirstBus plc of SB Holdings Limited (SBH) which took place in 1996 created a merger situation which may be expected to operate against the public interest. The undertakings specifically apply to services operated by FirstGroup across the ‘First Edinburgh’ and ‘First Glasgow’ areas,² where FirstGroup operates approximately 255 tendered and commercial routes.³
2. The undertakings were given under the Fair Trading Act 1973 (FTA). The CMA has a statutory duty⁴ to keep under review undertakings given under the FTA. From time to time, the CMA must consider whether, by reason of any change of circumstances, the undertakings are no longer appropriate and either:
 - (a) the relevant parties can be released from the undertakings; or
 - (b) the undertakings need to be varied or to be superseded by a new undertaking.
3. This has been an unusual case. On the basis of its findings the MMC stated in 1997 that behavioural remedies alone would be inadequate and recommended a divestiture remedy to the Secretary of State for Trade and Industry (the Secretary of State). However, following the entry of Stagecoach into the Glasgow bus market after the MMC report was published, the Secretary of State, in 1998, decided instead to pursue behavioural undertakings which were agreed in 2002.

¹ FirstBus plc became FirstGroup plc in 1997. In this final report when we are referring to the post-merger situation we will refer to the merged company as FirstGroup. When we are referring to the pre-merger situation, including quotations from the 1997 MMC Report, we use FirstBus (and SBH). The MMC did not make this distinction and referred to the merged company as FirstBus. We have not amended such references when quoting the report.

² The First Edinburgh area comprises the unitary authorities of Stirling, Clackmannanshire, Falkirk, West Lothian, Midlothian, East Lothian and the Scottish Borders. Throughout this report we refer to this area as the First East area. The First Glasgow area comprises the unitary authorities of the City of Glasgow, North Lanarkshire, South Lanarkshire, East Dunbartonshire, West Dunbartonshire and East Renfrewshire. Throughout this report we refer to this area as the First West area.

³ Commercial services are bus services that are run on a commercially viable basis without tendered support. Tendered services are services where a local authority has invited tenders for the operation of the service, and a contract exists as a result of that tender.

⁴ Sections 88(4) and (5) of the FTA (as preserved in Schedule 24 of the EA02).

4. Given the unusual facts of the case, in relation to identifying whether a change of circumstance has occurred, our approach has been to:
 - (a) first, identify what it was about the prevailing circumstances at the time of the merger in 1996 that led to the MMC concluding that the SBH/FirstGroup merger ‘operated against the public interest’ with identified adverse effects on competition;⁵
 - (b) second, consider how the undertakings, imposed in 2002, were intended to address the adverse effects on competition arising from the merger; and
 - (c) third, reach a decision as to whether there has been a change in circumstances from those which led to the adoption of the undertakings.
5. We note that the MMC recognised that there was little head-to-head competition between FirstBus and SBH before the merger, either in commercial services or tendering, but concluded that the merger would reduce competition as a result of two theories of harm:
 - (a) The merger caused a loss of potential competition between FirstBus and SBH (we refer to this as MMC concern 1).
 - (b) The merger meant that there would be a loss of potential competition between the merged entity and other operators (MMC concern 2) and because the dominance of FirstBus in central and south-east Scotland as a result of the merger would deter entry (MMC concern 3).
6. The undertakings imposed by the Secretary of State required FirstGroup:
 - (a) in the First East and First West areas, excluding the city of Edinburgh, not to raise bus fares in excess of the Retail Price Index;
 - (b) in the First East area to operate a mileage of at least 95% of the mileage that FirstGroup was operating in January 2002 (excluding the city of Edinburgh) and to comply with additional anti-predatory behavioural restrictions.⁶

⁵ The underlying issue in the public interest test is a lessening of competition. This is based on the ‘Tebbit Doctrine’ set out in 1984 by the then Secretary for State for Trade and Industry, Norman Tebbit – ‘references to the Monopolies & Mergers Commission would be made primarily, but not exclusively, on competition grounds, taking into account the international dimension of competition.’ See Antony Seely (January 2016), [Takeovers: the public interest test](#), section 2.

⁶ Anti-predation restriction include: (a) a requirement for bus services to be evenly spaced between those of competitors’ services; and (b) an obligation not to increase commercial competition against tendered services in areas where FirstGroup has been unsuccessful in tendered bids.

7. We have based our assessment on the MMC's analysis and have considered how circumstances have changed since the merger to determine whether the undertakings should be retained, lifted or varied.
8. We noted that before the merger, each of the two companies had a strong position in their own areas but very little presence in each other's areas. The merger therefore made little difference to the share of the companies since there was little overlap between the two. The focus of the 1997 MMC Report was therefore on potential competition, which the MMC noted could be as effective as head-to-head competition in instances where the dominant operator in one area expected that operators in adjacent areas would take advantage of any opportunities to extend their networks. The MMC found that the threat of competition from other large operators (as actual or potential competitors), competition from smaller operators, and competition from other modes of transport did not compensate for the loss of potential competition nor therefore constrain the merged entity.
9. With regard to MMC concern 1, FirstGroup submitted that there had been a material change of circumstances since 1997 in relation to depot changes, in particular the sale of its Cumbernauld depot to Stagecoach. It also said that head-to-head competition and potential competition had increased since the time of the 1997 MMC Report due to significant entry and expansion by a number of competitors.
10. We noted that since 1997, competitors' shares of registered mileage in the unitary authority areas⁷ have generally increased, while FirstGroup's share has reduced. We noted that, as is frequently the case in bus competition, sustained competition with more than one competitor on a route is unusual. While the increase in competitor shares does not necessarily represent a sustained increase in head-to-head competition on specific routes, it does reflect a significant change when considered in the context of the pre-merger situation where FirstBus and SBH held very strong positions in their respective areas and faced little actual competition.
11. We also considered how potential competition has evolved. We considered that since the time of the merger, there had been an increase in the constraint that Stagecoach and McGill's placed on FirstGroup as potential competitors. This stemmed from Stagecoach's acquisition of the Cumbernauld depot and the increase in route coverage operated by Stagecoach and McGill's in particular. Lothian, although not active in the area where the MMC would have considered potential competition to have been reduced by the merger, has

⁷ A unitary authority is a type of local authority that has a single tier and is responsible for all local government functions within its area.

also become a stronger competitor to FirstGroup than at the time of the merger.

12. We therefore concluded that there has been a change of circumstance in the area where the MMC would have considered potential competition to have been reduced by the merger:
 - (a) The purchase of the Cumbernauld depot by Stagecoach has enabled Stagecoach to free up depot capacity in Glasgow and become a stronger potential competitor in Glasgow and North Lanarkshire. The change in ownership of the Cumbernauld depot has also substantially reduced the overlap area between FirstGroup (formerly FirstBus) and SBH if they had remained separate.
 - (b) Compared with the pre-merger situation the share of FirstGroup has reduced in many areas, in particular in Glasgow when it has gone from 90% to 76%. Conversely the share of competitors, particularly Stagecoach and McGill's, has increased from 1% to 8% and 3% to 8% respectively. This increase is significant when considered in the context of the pre-merger situation where FirstBus and SBH held very strong positions in their respective areas and faced little actual competition.
13. We considered MMC concerns 2 and 3. We noted evidence of some entry and expansion by competitors in a significant number of areas covered by the undertakings. FirstGroup's main competitors told us that FirstGroup's size did not deter them from expanding or entering an area. This demonstrated to us that MMC concerns 2 and 3 were no longer material. Therefore, we concluded that the undertakings were no longer needed to address MMC concerns 2 and 3.
14. We also considered whether the undertakings themselves may be giving rise to a distortive effect. We noted that in certain circumstances, and particularly over protracted periods of time, behavioural remedies might have adverse effects. We concluded that the fare cap, as described in paragraph 6 above, had resulted in a fare structure for FirstGroup that would not have been based on commercial considerations and was likely to have resulted in distortions in FirstGroup's fare basket. We also considered that the mileage floor was likely to be forcing FirstGroup to operate services that were not commercially viable. A number of parties told us that the mileage floor was forcing FirstGroup to maintain mileage that it would not otherwise maintain and that its inability to cut mileage acted as a constraint on competitors entering FirstGroup's markets. Based on this we considered that the mileage floor may be acting to prevent entry and/or expansion. We also noted that the undertakings may be acting to constrain FirstGroup's ability to invest in its bus services and the

quality of the bus fleet is likely to be lower than it would have been if FirstGroup had been able to raise fares to recover its investment.

15. We placed strong weight on the fact that none of the public bodies or competitors that we spoke to argued that the undertakings were having a beneficial effect and should be retained. In our view, this provided strong support for lifting the undertakings.
16. We considered the possible impact of removing the undertakings. We recognised that FirstGroup is likely to restructure its fares in some areas if the undertakings were removed and there may be price increases for certain customers. The price controls have been in effect over a long period of time and are unlikely to reflect fully changes in costs and regulation. Some price increases may be offset by reductions elsewhere but overall prices may increase. FirstGroup would also be likely to restructure some routes, because the mileage cap would be likely to have caused FirstGroup to operate routes that it would otherwise have withdrawn from. In our view these effects may be mitigated to some extent because competitors such as Stagecoach and McGill's are stronger potential competitors than at the time of the merger and may react to price increases and operate additional routes. A number of third parties and FirstGroup have also told us that in their opinion the market would not bear significant price increases.

Final decision

17. We have considered each of the three MMC concerns. We have found that the constraint that Stagecoach, McGill's and Lothian Buses now place on FirstGroup is as great, if not greater than, the constraint that FirstBus placed on SBH pre-merger (and vice versa).
18. As noted in paragraph 16, we recognise that if the undertakings are removed, FirstGroup would be likely to restructure its fares and as a result may increase prices to certain customers. FirstGroup would also be likely to restructure some routes, particularly in the First East area. Holding prices down and maintaining unprofitable routes would be likely to have had negative effects on competition and investment by FirstGroup. Another effect is that by artificially maintaining routes the prices cap and mileage floor have reduced the opportunities for other companies being able to compete with FirstGroup.
19. We recognise that the area covered by the undertakings is far from perfectly competitive. However, we also note that it was unlikely to have been before the merger, since SBH and FirstBus both had very strong positions in their own areas then. The purpose of the undertakings was not to achieve perfect

competition; rather the undertakings sought to restore outcomes to pre-merger levels.⁸

20. Therefore we conclude that the undertakings are no longer appropriate by reasons of a change in circumstance and should be released. In parallel to this final decision we have published a notice of release of the undertakings.

⁸ See Competition Commission (November 2008), [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.6–1.7: 'Where the [CMA] concludes that a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC), it is required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC. ... The [CMA] will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.' Since the SLC reflects the impact of the merger on competition, this means that the remedy is designed to restore competition to pre-merger levels.

Final decision

1. Introduction and background

1.1 On 30 October 2015 the Competition and Markets Authority (CMA) announced its decision⁹ to conduct a review of the undertakings given in 2002 by FirstGroup plc (FirstGroup) applying to certain of its bus operations in Scotland ('the 'undertakings').¹⁰ The undertakings were given following the Monopolies and Mergers Commission's (MMC) conclusion that the completed acquisition by FirstBus of SB Holdings Limited (SBH) which took place in 1996 created a merger situation which may be expected to operate against the public interest. The undertakings specifically apply to services operated by FirstGroup across the First East and First West areas, where FirstGroup operates approximately 255 tendered and commercial routes.

1.2 The undertakings were given under the Fair Trading Act 1973 (FTA). The CMA has a statutory duty to keep under review undertakings given under the FTA. From time to time, the CMA must consider whether, by reason of any change of circumstances the undertakings are no longer appropriate and either:

(a) the relevant parties can be released from the undertakings; or

(b) the undertakings need to be varied or to be superseded by a new undertaking.

1.3 The CMA's decision to conduct a review of the undertakings was made pursuant to the guidance in CMA11¹¹ and followed receipt of an application for review from FirstGroup and consideration of responses to a public invitation to comment on that application.¹² This process provided grounds for the CMA to consider there to be a realistic prospect of finding a change of circumstances.

1.4 Applying the statutory test set out in paragraph 1.2 (above) the Group has been assisted by the guidance provided in CMA11, which helpfully encapsulates the task as follows:

The precise nature of the CMA's consideration of any change of circumstances will depend entirely on the individual circumstances affecting a particular undertaking or order.

⁹ See [decision statement](#).

¹⁰ These undertakings can be viewed at: [FirstBus plc – notice of undertakings \(CC\)](#).

¹¹ CMA (January 2011, revised August 2015), [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA11\)](#).

¹² See [FirstGroup plc – request to release undertakings](#).

However, the change of circumstances must be such that the undertaking or order is no longer appropriate in dealing with the competition problem and/or adverse effects which it was designed to remedy, if it is to lead to either variation or termination.¹³

Background to remedies and theories of harm

The 1997 MMC inquiry and 2002 undertakings

- 1.5 The MMC investigated the 1996 merger and concluded in 1997 that the merger would reduce competition as a result of two theories of harm:
- (a) The merger caused a loss of potential competition between FirstBus and SBH (we refer to this as MMC concern 1).
 - (b) There would be a loss of potential competition between the merged entity and other operators (MMC concern 2). The dominance of FirstBus in central and south-east Scotland as a result of the merger would deter entry (MMC concern 3).
- 1.6 The MMC concluded that the particular adverse effects arising from the merger were that fares and the cost of tenders in central and south-east Scotland would be expected to be higher, and frequency of service lower, than would otherwise be the case.
- 1.7 FirstBus, in its views set out in the 1997 MMC Report, contended any loss of competition was of little account because of other constraints on SBH's behaviour due to:
- (a) competition from small bus operators;
 - (b) competition from other modes of transport; and
 - (c) potential competition from major operators.

The MMC dismissed each of these. It concluded that the two larger operators at that time, Stagecoach and Cowie, did not constitute a major threat to FirstGroup and competition from small operators and other transport modes did not compensate for the loss of potential competition resulting from the merger.

¹³ CMA11, paragraph 2.5.

- 1.8 The MMC, in its 1997 report, also considered whether the merger would remove head-to-head competition between FirstBus and SBH, but noted that there was little head-to-head competition between FirstBus and SBH before the merger either in commercial services or tendering.¹⁴
- 1.9 On the basis of its findings the MMC concluded that behavioural remedies alone would be inadequate and recommended a divestiture remedy to the Secretary of State for Trade and Industry. Following the entry of Stagecoach into the Glasgow bus market, the Secretary of State decided instead to pursue behavioural undertakings. These were agreed in 2002. These undertakings required FirstGroup:
- (a) in the First East and First West areas, excluding the city of Edinburgh, not to raise bus fares in excess of the Retail Price Index; and
 - (b) in the First East area to operate a mileage of at least 95% of the mileage that FirstGroup was operating in January 2002 (excluding the city of Edinburgh) and to comply with additional anti-predatory behavioural restrictions.

The 2006 review and revised undertakings

- 1.10 In 2006 the Office of Fair Trading (OFT) recommended that FirstGroup should be released from the undertakings. The Competition Commission (CC) reviewed the undertakings in 2008 (the 2008 CC Review of Undertakings) and decided not to follow the OFT's recommendation and instead varied the undertakings by revising the fare cap and rebasing the mileage floor. The CC came to the conclusion that FirstGroup could not be released from the undertakings on the basis that it did not see evidence that allowed it to conclude that the competitive constraint lost as a result of the merger had been restored.¹⁵

¹⁴ SBH was strong in the west of central and south east Scotland and FirstBus strong in the east.

¹⁵ In particular, the CC noted that although there had been entry and expansion by existing operators in the First East and – more so – the First West operating areas, FirstGroup's shares in most of the unitary authority areas in these two operating areas remained high in relation to other operators. As such, the CC felt it was unlikely that the competitive conditions absent the merger had been substantially restored. See Competition Commission Notice of provisional decision to retain Undertakings given pursuant to section 88 of the Fair Trading Act 1973 following the acquisition by FirstBus plc of SB Holdings Limited, p2.

- 1.11 In summary, the undertakings in place since the 2008 CC Review of Undertakings are as follows:
- (a) A price cap based on the H-CPT index¹⁶ in the First East and First West areas.
 - (b) A mileage floor (no less than 75% of 2002 levels) in the First East area.
 - (c) Other anti-predatory behavioural restrictions:
 - (i) A requirement for bus services to be evenly spaced between those of competitors' services.
 - (ii) An obligation not to increase commercial competition against tendered services in areas where FirstGroup has been unsuccessful in tendered bids.

FirstGroup 2015 request for a review of the undertakings

- 1.12 FirstGroup's application to request a review of the undertakings contains a number of submissions in relation to increased actual and potential competition between when the undertakings were imposed and now.¹⁷ The application also contains submissions that the original rationale for the undertakings is incompatible with the CC's Local Bus Services Market Investigation (Bus Market Investigation Report), stating that the CC had found that potential competition and entry were not significant constraints on incumbent operators.¹⁸ Even if potential competition was a significant constraint, FirstGroup submitted that other bus operators were stronger actual and potential competitive threats than that lost as a result of the merger.
- 1.13 FirstGroup also submitted that a reduction in demand and increases in costs that disproportionately affected the local bus travel market in Scotland meant that it had been unable to fully recover its costs, including the costs of financing investment. Accordingly, it contended that the undertakings distorted FirstGroup's fare structure and precluded it from rationalising unprofitable routes.

¹⁶ The H-CPT index was created following the CC's review in 2008. It is calculated from the components of a cost index published by the Confederation of Passenger Transport UK (the CPT index). The H-CPT is calculated using the cost increases from the index used in Great Britain for all cost categories except fuel costs, and using the fuel increases from the CPT (Scotland) index.

¹⁷ [FirstGroup application to request a review of the undertakings](#).

¹⁸ FirstGroup made reference to the Bus Market Investigation Report, pp11–12, paragraph 11.54.

2. Overview of the nature of bus competition and regulation

2.1 This section provides a brief overview of how bus competition works and describes the nature of regulation of bus services in Scotland.

The nature of bus competition

2.2 In 2011 the CC published the findings of its Bus Market Investigation Report.¹⁹ The report identified three categories of competition between bus operators:²⁰

- (a) Head-to-head competition which is the constraint on operators from passengers switching to rival operators for a particular journey. This arises where operators overlap in whole or in part on their routes and compete directly.
- (b) Potential competition which is the constraint on incumbent operators from the threat that nearby rivals might redeploy or expand their existing services and start competing head-to-head. Potential competitors are operators with existing services and facilities in or near the incumbent's area of operation.
- (c) New entry defined as the constraint on incumbent operators' current behaviour from the threat that new entrants might start competing head-to-head. New entrants are operators without existing services and facilities nearby.

Head-to-head competition

2.3 The CC, in its Bus Market Investigation Report, found that head-to-head competition could take place over the entire length of a route or over a section of it. As long as any overlap is sufficient to provide an alternative for some passenger journeys, there will be some head-to-head competition between operators. However, the intensity of head-to-head competition between two operators depended on the similarity of service provided by them, both in terms of the passenger flows they serve and the nature of the service that they offer on those flows, as this will determine the number of passengers who view them as substitutes.

2.4 The investigation found that head-to-head competition was uncommon and may prove unsustainable in that it will result in a costly period of rivalry between operators which is likely to be loss-making culminating in the exit of

¹⁹ [Bus Market Investigation Report](#).

²⁰ Bus Market Investigation Report, paragraphs 26–33 and chapters 6 and 8.

one operator. This occurs because operators both have an incentive to increase the number of services to attract more passengers from their rivals, and have an ability to target activity where they face competition so as to increase the likelihood of their own survival and the exit of the competitor. It also noted that head-to-head competition tends to be less sustainable, the closer the competition between operators becomes and that where sustained head-to-head competition was observed, the services provided by rival operators were often differentiated in some way.²¹

- 2.5 These findings are consistent with the position described in the 1997 MMC Report. In that report the MMC noted that head-to-head competition among larger operators in the designated area was limited. Share of supply data indicated that First West and First East had strong position in their own areas.²² The report also quoted a previous MMC study, 'The supply of bus services in the north-east of England',²³ where it found evidence that the larger operators consciously refrained from competing against each other. The MMC noted that this accorded with a widely-held view that large operators did not see it as in their interest to compete with one another since competing on routes may well lead merely to both losing money.

Potential competition

- 2.6 The CC, in its Bus Market Investigation Report, found that incumbent bus operators that did not face head-to-head competition could be constrained by entry, or the threat of entry. In general, the investigation considered this potential competition from other operators to be less of a constraint than head-to-head competition. However, it also noted that the strength of the constraint was dependent on the nature of the potential entrant and on specific local circumstances.

- 2.7 These findings are also consistent with the position described in the 1997 MMC Report which noted:

Where the dominant operator in one area can expect that operators in adjacent areas will take advantage of any opportunities to extend their networks, the effect can be similar to

²¹ Bus Market Investigation Report chapter 8.

²² In the First West area the 1997 share data indicated that the merger added no increment to SBH's very large shares in South Lanarkshire, West Dunbartonshire, Renfrewshire and East Renfrewshire. There was a 1% increment in the City of Glasgow (89 to 90%), 2% increment in West Dunbartonshire (80 to 82%), 4% in North Lanarkshire (61 to 65%) and 8% in East Dunbartonshire (87 to 95%). In the First East area, the 1997 share data indicated that the merger added no increment to FirstGroup's shares in Edinburgh (25%), Midlothian (64%), East Lothian (45%), West Lothian (91%), Scottish Borders (88%) or Clackmannanshire (71%). There was a 1% increment in Stirling (91 to 92%) and a 4% increment in Falkirk (86 to 90%). 1997 MMC Report, paragraph 2.87 and paragraph 4.20.

²³ HMSO (August 1995), *The supply of bus services in the north-east of England* (Cm 2933).

that of head-to-head competition where operators compete directly on routes. In these circumstances the dominant operator feels obliged to maintain a full network of services and to hold down fares in order to avoid providing any opportunities to adjacent operators. Such pressures on the dominant operator are especially effective when the adjacent operators are both efficient and financially strong. This virtuous outcome – a high level of services and a low level of fares – is, however, dependent on the competitive stance of the main operators.²⁴

New entry

- 2.8 The third category of constraint identified by the CC in its Bus Market Investigation Report was new entry. The CC classified new entrants as operators without existing services and facilities nearby and found that new entry did not act as a strong constraint, and was likely to be weaker than potential competition.
- 2.9 The MMC in its 1997 report did not discuss entry in this way. The report considered expansion in terms of the scope for other large operators in adjacent regions to expand, thus constraining the merged entities' behaviour.
- 2.10 The Bus Market Investigation Report²⁵ stated that there are several entry and/or expansion models operators can use. These included: increasing frequencies of existing services; revising and extending networks (either to new locations or increased hours of operation); expanding capacity on a route with larger vehicles; launching new services in competition with an existing operator; acquiring another operator; tendering for contracted services (using this as a springboard into commercial operation); and operating other types of services including airport services and park-and-ride services. Some of these expansion approaches do not fall into the head-to-head category because they do not directly compete with existing services but encompass new opportunities for existing operators in adjoining regions.

²⁴ 1997 MMC Report, paragraph 2.60.

²⁵ Bus Market Investigation Report, paragraphs 6.76–6.78.

Regulation

Key public bodies

2.11 Local bus services in Scotland are regulated by a number of public bodies:

- (a) The Scottish Government is responsible for setting and implementing transport strategy in Scotland.
- (b) Transport Scotland oversees the safe and efficient running of the transport system and runs the national concession scheme.
- (c) Regional Transport Partnerships (RTPs) are responsible for planning and delivering transport solutions at a regional level, bringing councils together to help them act collectively and strategically over a larger area. In central and south east Scotland the relevant RTPs are:
 - (i) Strathclyde Partnership for Transport (SPT) which covers 12 local authority areas in the west of Scotland²⁶ and exercises the transport functions of the local authorities in its area; and
 - (ii) South East of Scotland Transport Partnership (SEStran) which covers eight local authority areas in the south east of Scotland.²⁷
- (d) Local authorities have the statutory duty to secure the provision of public transport services that they consider appropriate to meet social needs that would not be available on a purely commercial basis. They may also own and maintain bus stops and bus interchanges and enter into quality improvement schemes. Local Authorities may also own, or own a share of, a bus operator; this is the case with Lothian Buses (see paragraph 3.19).
- (e) The Traffic Commissioner for Scotland (TCS) is responsible for issuing public service vehicle operators' licences and registers local bus services.

Operators and route registration

2.12 In order to operate a local service in Scotland the bus operator must be licenced and the bus service route(s) need to be registered. Commercial bus

²⁶ These are: East Dunbartonshire; East Ayrshire; East Renfrewshire; Glasgow City; Inverclyde; North Ayrshire; North Lanarkshire; Renfrewshire; South Ayrshire; South Lanarkshire; West Dunbartonshire; and the Helensburgh and Lomond area of Argyll and Bute. A [map of the area](#) is available on the SPT website.

²⁷ These are: Fife; Clackmannanshire; Falkirk; West Lothian; Midlothian; East Lothian; Edinburgh; and the Scottish Borders. A [map of the area](#) is available on the SEStran website.

operators in Scotland must apply to the TCS for a public service vehicle (PSV) operator's licence.²⁸ To be granted a licence the applicant must satisfy the TCS that it is of good repute, has appropriate financial standing and is professionally competent.²⁹ An operator must also demonstrate that there will be adequate facilities or arrangements to ensure that its buses are maintained properly in the interests of road safety and that it is capable of complying with the law relating to the driving and operating of passenger transport services.

- 2.13 The TCS has the power to take action (eg impose a fine or place conditions on the licence) if an operator no longer meets the conditions of its licence or does not operate services in line with the registration that it made.
- 2.14 Operators' licences do not have an expiry date but are subject to five-yearly review by the TCS. There were 907 bus and coach operator licences in Scotland in 2014/15.³⁰

Concession schemes

- 2.15 The primary concession scheme permits free bus travel within Scotland on any registered bus service to anyone who lives in Scotland and is aged 60 or over, or who meets certain disability criteria. Bus operators are reimbursed for their participation in the scheme at a rate based on a proportion of the adult single fare. The principle behind reimbursement is that operators should be no better or worse off than carrying a paying passenger, but since 2010 the total compensation available under the scheme has been capped.
- 2.16 There is also a concessionary travel scheme for young people which gives a discount of one-third off the adult single fare. It applies to 16- to 18-year-olds and young full-time volunteers up to the age of 25, who are resident in Scotland.

The Bus Service Operator's Grant (BSOG)

- 2.17 BSOG is a subsidy that reduces mileage costs incurred by local bus operators. The grant is calculated in Scotland on the basis of a rate per eligible kilometre. Travel between the depot and the start and end of the route does not count as eligible mileage. This is referred to as 'dead mileage'. Only travel on the route itself counts as eligible mileage.

²⁸ Those operating bus services without a view to profit are not required to obtain a PSV operator's licence but instead require a section 22 (Community Bus) permit. This is not relevant in relation to this matter.

²⁹ These are set out in 14ZA of the Public Passenger Vehicles Act 1981.

³⁰ See [Traffic Commissioners' Annual Report 2014-15](#), Table 8.

Statutory quality partnerships and quality contracts

- 2.18 The Transport (Scotland) Act 2001 provides a framework for regional authorities to enhance the provision of local bus services to introduce statutory quality partnerships (SQP) and quality contracts (QC).
- (a) An SQP is a scheme in which the local authority or RTP specifies factors such as the quality of buses, and minimum frequencies that must be provided by bus operators using specific infrastructure provided by the authority (eg bus stops or bus priority measures). Operators can use that infrastructure only if they meet the requirements of the SQP.
- (b) A QC is a voluntary scheme similar to franchising. A local authority can stipulate which local services should be provided, define bus routes, set the standard and quality of service, and the level of fares.

Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

- 2.19 The PSVAR are regulations made under the Disability Discrimination Act 1995 (DDA). They require public service vehicles in the UK to meet certain accessibility standards for wheelchair users and other passengers. Single-decker buses up to 7.5 tonnes, designed to carry 22 passengers or more and used on local or scheduled services are required to be compliant by 1 January 2015; 1 January 2016 is the deadline for all single-decker buses over 7.5 tonnes; and 1 January 2017 for all double-decker buses.

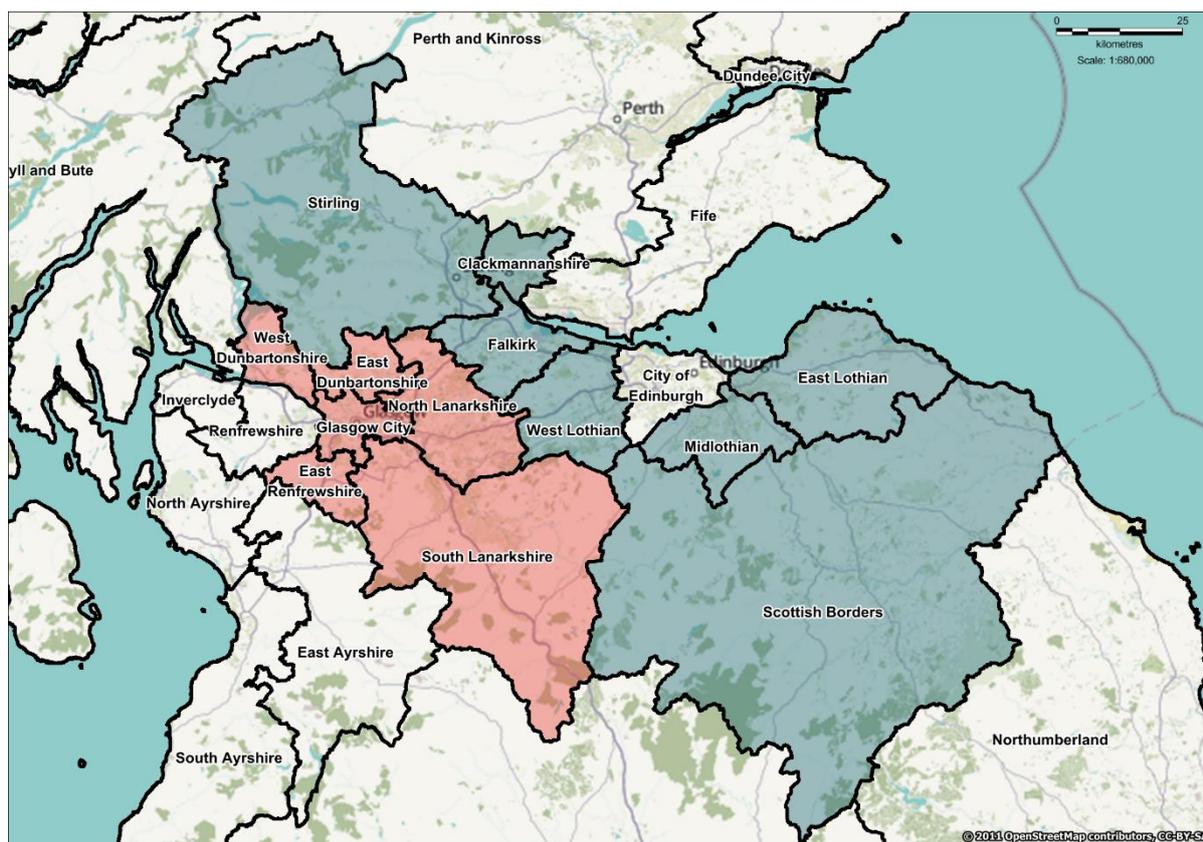
3. Geographical context and the companies

- 3.1 In this section we describe the geographical area to which the undertakings relate. We also describe the bus operators that were present in these areas at the time of the 1997 MMC Report followed by an overview of the position of the major operators today.

Geographical context

- 3.2 Figure 1 shows the area covered by the undertakings. The area in pink is the First West area where a price control is in operation. The area in blue is the First East area where the undertakings include a price control, mileage floor and anti-predation measures as described in paragraphs 1.10–1.11.

Figure 1: Map of area covered by the undertakings



Source: CMA.

Companies in the area

3.3 In this section we describe the bus operators that were present in these areas at the time of the 1997 MMC Report. We then describe the position of the major operators today.

Companies in the area at the time of the 1997 MMC Report

S B Holdings Limited (SBH)

3.4 In 1997 SBH was the holding company of three subsidiaries: Strathclyde Buses Limited (SBL), Comlaw 313 Limited trading as GCT and Kelvin Central Buses Limited (Kelvin). The operations of SBL and GCT were concentrated in Glasgow City and some adjacent areas. The network provided dense coverage in these areas, but did not extend significantly into outlying regions. The Kelvin network was focused on serving corridors between Glasgow city centre and satellite towns.³¹

³¹ Kelvin was acquired by SBH in October 1994. 1997 MMC Report, paragraphs 4.7–4.9.

FirstBus

3.5 FirstBus had two operating subsidiaries in the designated area:

- (a) **Midland Bluebird** operated rural, inter-urban and town services. Its operating area stretched across the rural areas to the north-east of Glasgow and down through West Lothian to Edinburgh City.³²
- (b) **Lowland** was also largely an operator of inter-urban services. Lowland's operating area spread to the east and south of Edinburgh, East Lothian, Midlothian and the large but sparsely populated area of the Scottish Borders.³³

Stagecoach

3.6 Stagecoach had three operating subsidiaries:

- (a) **Western Buses** operated in a wide area south of Glasgow extending to the Solway Firth, the islands of Arran and Bute and on the Cowal Peninsula to the north-west of Glasgow.
- (b) **Bluebird Buses** covered the area surrounding Aberdeen, Inverness and Perth.
- (c) **Fife Scottish** had operations primarily located in Fife, but included inter-urban services to Perth, Edinburgh, Glasgow and Dundee.³⁴

Cowie

3.7 Cowie, the owner of British Bus plc, operated in the designated area through its subsidiary Clydeside Buses. Clydeside Buses' operating region was in the areas to the west of Glasgow, primarily Inverclyde and Renfrewshire. Clydeside had depots at Inchinnan, Johnstone and Greenock.³⁵ Cowie rebranded itself as Arriva Group in 1997.

³² Midland Bluebird's depots are located in Balfron, Bannockburn, Larbert, Linlithgow, Deans, Livingston and Westfield. 1997 MMC Report, paragraphs 4.10–4.11.

³³ Its depots were located in Berwick, Galashiels, Hawick, Jedburgh, Kelso, North Berwick Peebles, Dalkeith and Musselburgh. 1997 MMC Report, paragraphs 4.10–4.11.

³⁴ Stagecoach's Western Buses and A1 Service subsidiaries had depots at Kilmarnock (which is the one situated closest to the operating area of SBH and is located some 23 miles from Glasgow) and Ardrossan. Stagecoach Bluebird Buses and Fife Scottish are contiguous with the northern and eastern parts of Midland Bluebird's operating area. The nearest depot to Glasgow of these companies is located at Dunfermline, which is 19 miles from Falkirk, 22 miles from Stirling and 30 miles from Cumbernauld. 1997 MMC Report, paragraphs 4.14–4.15 and 4.53–4.54.

³⁵ 1997 MMC Report, paragraphs 4.12 and 4.55.

Lothian Region Transport (LRT)

- 3.8 LRT had remained in local authority ownership after deregulation in 1986 with its operating territory in Edinburgh, East Lothian and Midlothian.³⁶

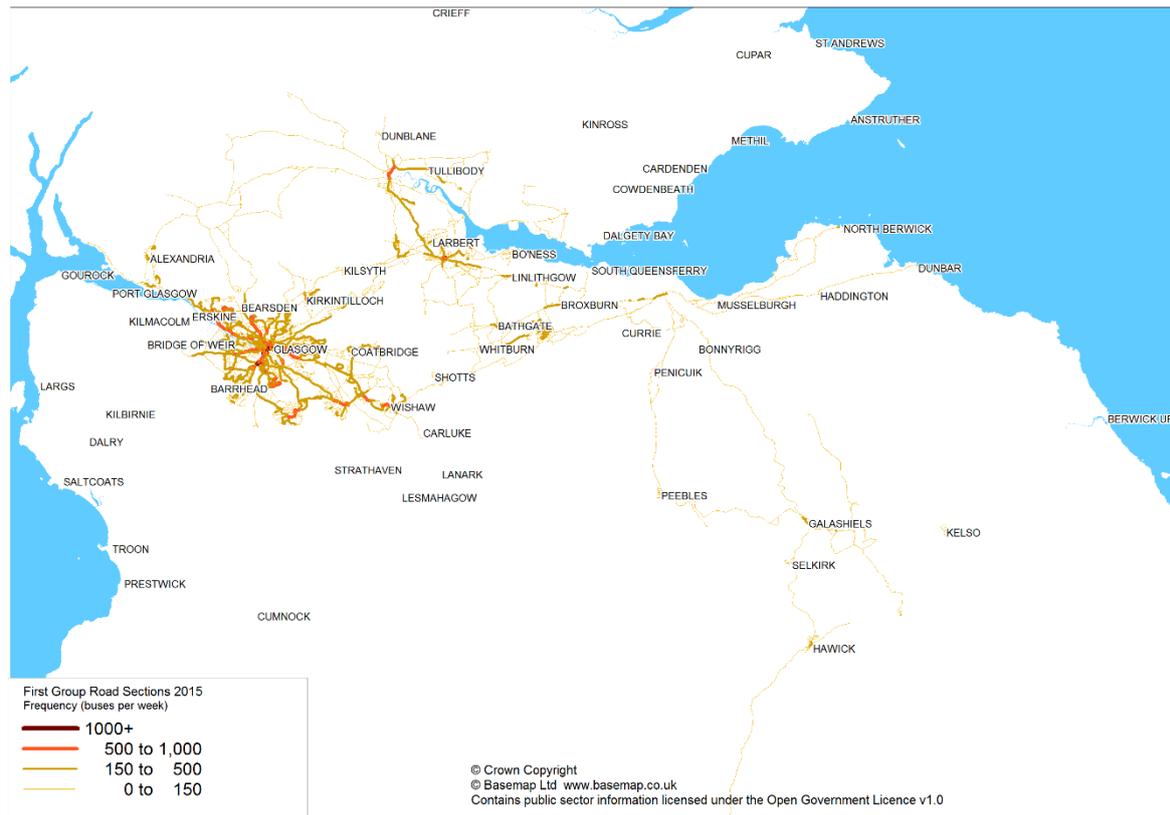
Companies' position today

FirstGroup

- 3.9 FirstGroup has five subsidiaries that are active in the provision of local bus services in Scotland. The undertakings affect four of these subsidiaries, two operating in Glasgow and two operating further East (including in Edinburgh).
- 3.10 We refer to both operating companies collectively in Glasgow as 'First West'. These are the subsidiaries owned by SBH prior to its merger with FirstGroup:
- (a) First Glasgow (No 1) operates approximately 40 tendered and commercial bus routes in and around the city of Glasgow. First Glasgow (No 1) had revenue of £85.1 million for the financial year ended 31 March 2015.
 - (b) First Glasgow (No 2) operates approximately 35 tendered and commercial bus routes in and around the city of Glasgow. First Glasgow (No 2) had revenue of £42.7 million for the financial year ended 31 March 2015.
- 3.11 We refer to both operating companies that were owned by FirstBus prior to its merger with SBH collectively as 'First East'.
- (a) First Midland Bluebird Limited (FMBL) operates approximately 140 tendered and commercial bus routes in and around Edinburgh, Stirling, Alloa, Falkirk, Galashiels, Hawick and Peebles. FMBL had revenue of £29.9 million for the financial year ended 31 March 2015.
 - (b) First Scotland East Limited (FSEL) operates approximately 40 tendered and commercial bus routes in and around Edinburgh, Bathgate, Livingston, Musselburgh and North Berwick. FSEL had revenue of £13.4 million for the financial year ended 31 March 2015.
- 3.12 FirstGroup is a large entity with operations throughout the UK, Ireland and North America. In 2015 its Group revenue was £6 billion, of which 15% (£0.9 billion) was attributed to UK buses. 2015 Group operating profit was £303.5 million. Its network in the designated area is shown in Figure 2.

³⁶ It had 537 vehicles based in three depots in Edinburgh. LRT's nearest depot to Glasgow was 27 miles away in Larbert. MMC's report, paragraph 4.56.

Figure 2: FirstGroup network 2015



Source: Basemap.

Stagecoach

3.13 Stagecoach Group has two businesses that operate in the regions covered by the undertakings:

(a) Stagecoach West Scotland – operates two depots within the regions covered by the undertakings: one in the City of Glasgow (capacity of 70) and the other being the Cumbernauld depot in North Lanarkshire (purchased from FirstGroup in 2015).

(b) Stagecoach East Scotland – it operates no depots within the regions covered by the undertakings.

3.14 Figure 3 provides an overview of Stagecoach’s network. The company operates a number of mainly inter-urban services in the area covered by the undertakings and has no operations in East Dunbartonshire, West Dunbartonshire and East Lothian.

3.15 Stagecoach’s 2015 Group revenue was £3.2 billion with £1 billion attributed to UK regional bus operations (excluding London). 2015 Group operating profit

was £227 million with £141 million attributed to regional bus operations (excluding London).

Figure 3: Stagecoach network 2015

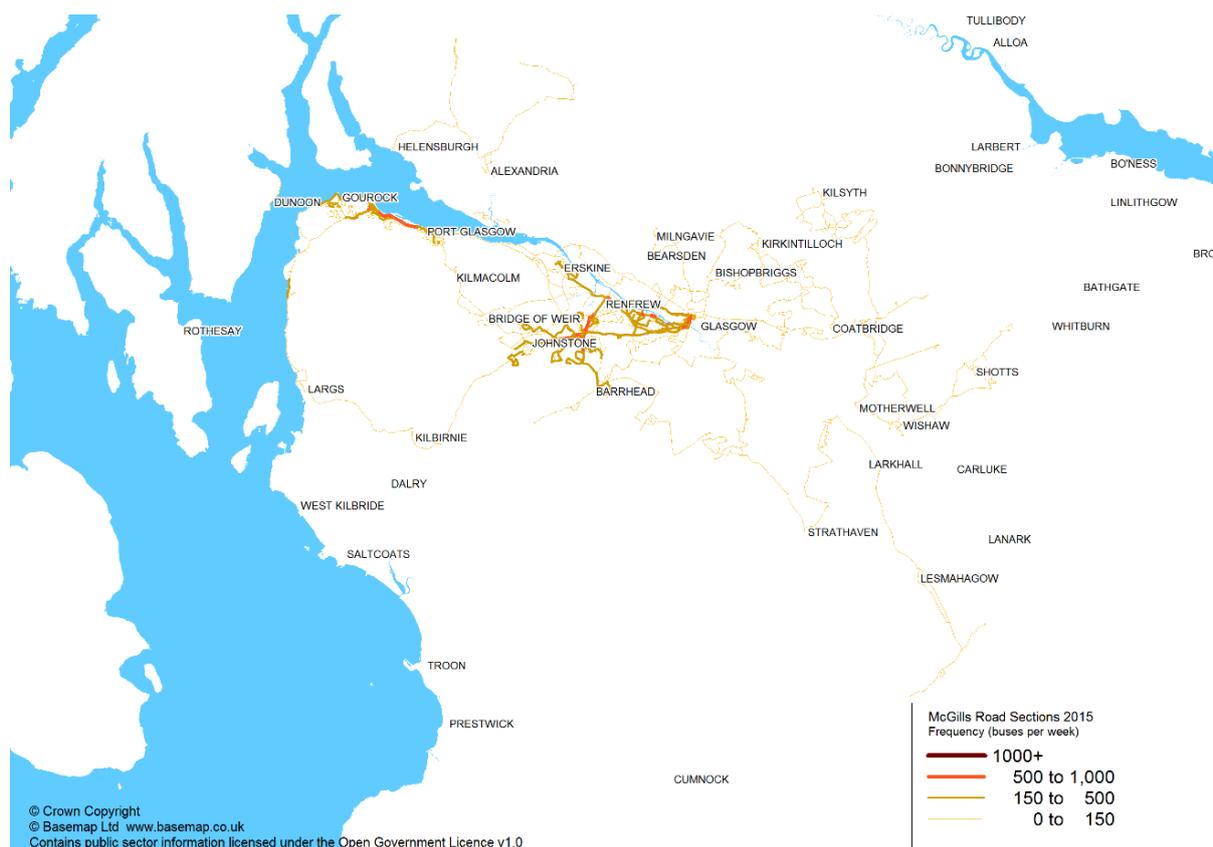


Source: Basemap.

McGill's

3.16 McGill's operates a network of routes covering much of Inverclyde, Renfrewshire and the west of Glasgow. It also operates tendered contracts in North Lanarkshire. McGill's has no presence in the First East area. Its depots are located at Greenock, Barrhead, Blantyre (Hamilton), Inchinnan and Johnstone. Figure 4 provides an overview of McGill's network.

Figure 4: McGill's network 2015



Source: Basemap.

3.17 McGill's is a privately-owned bus operator and was originally established in 1933. Its history is as follows:

- (a) It was acquired by Arriva Group in 1997.
- (b) In 2001, Alex Kean bought the McGill's company from Arriva Scotland West (a subsidiary of Arriva Group), together with Arriva Scotland West's operation in Greenock, Inverclyde.
- (c) In 2005, McGill's was acquired by Arranglen.³⁷ It continued to expand through further acquisitions of services from other operators.
- (d) In 2012 McGill's bought the Arriva Scotland West operation in the Glasgow area from Arriva Group.

3.18 In the financial year to 31 December 2014, McGill's reported revenues of £35.3 million and profit before tax of £3.2 million.

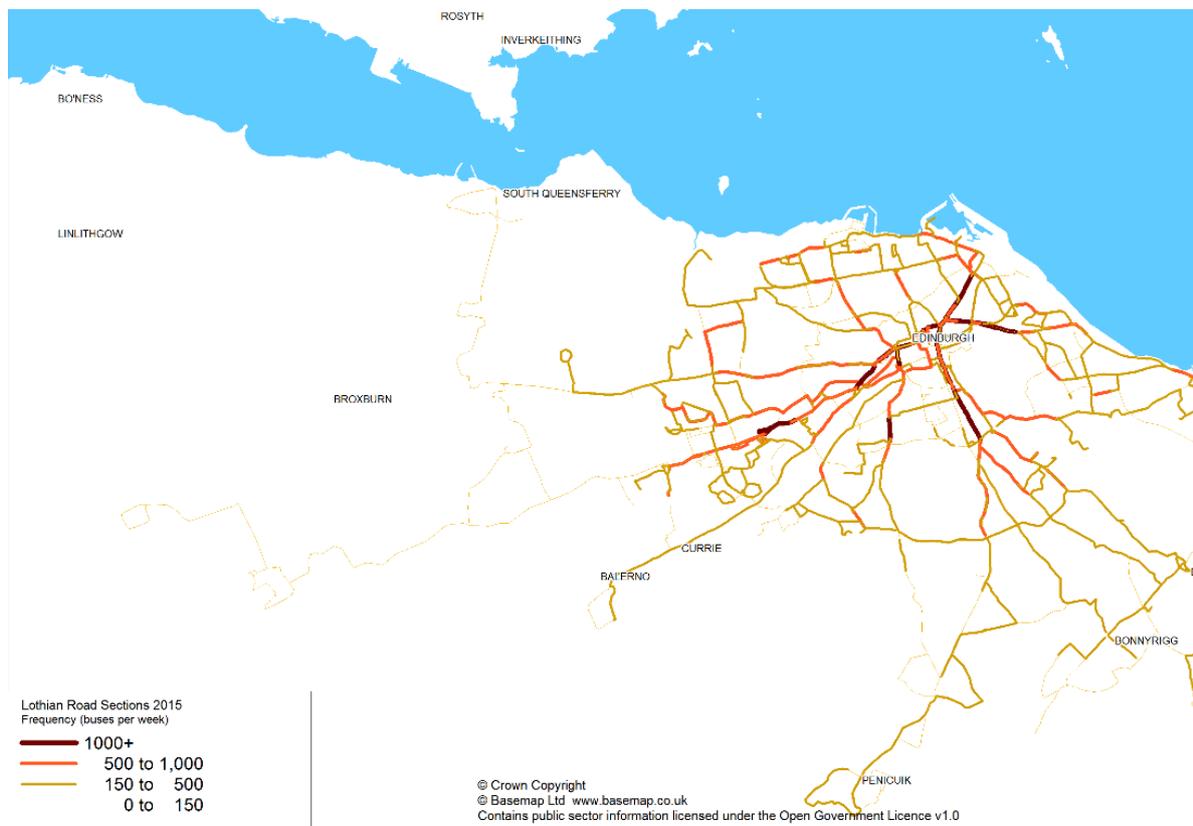
³⁷ Arranglen is a private company. Mr James Easdale owns 99.98% of the shares in Arranglen. McGill's is the largest of Arranglen's subsidiaries by turnover (2010).

Lothian Buses (formerly LRT)

3.19 Lothian Buses is the only remaining municipal operator in Scotland. It employs 2,500 staff and operates 700 buses. The City of Edinburgh is the majority shareholder (90%); East Lothian Council, Midlothian Councils and West Lothian Councils own smaller shares. The City of Edinburgh is not covered by the undertakings. In 2014 Lothian Buses' revenue was £135 million³⁸ with a profit of £10 million.

3.20 Figure 5 provides an overview of its network. Lothian Buses operates mainly local and urban services in the area covered by the undertakings.

Figure 5: Lothian Buses network 2015



Source: Basemap.

4. Our approach

Our legal duties

4.1 As the undertakings were originally given under the Fair Trading Act 1973 (the 'FTA') we are required to apply the test set out in that Act to decide whether

³⁸ [Lothian Buses accounts](#).

they should be released, varied or superseded. Specifically we have applied the test set out in section 88(4) of the FTA:

to consider whether by reason of any change of circumstances the undertaking is no longer appropriate and either the relevant parties can be released from the undertaking or the undertaking needs to be varied or to be superseded by a new undertaking.

- 4.2 Undertakings given under section 88 of the FTA may be superseded by a new undertaking accepted by the CMA; varied by an undertaking accepted by the CMA; or released by the CMA.³⁹
- 4.3 In relation to identifying a change of circumstance our approach has been to:
- (a) first, identify what it was about the prevailing circumstances that led the MMC to conclude that the SBH/FirstBus merger 'operated against the public interest' with identified adverse effects;⁴⁰
 - (b) second, consider how the undertakings were intended to address the adverse effects arising from the merger; and
 - (c) third, reach a decision as to whether there has been a change in circumstances from those which led to the adoption of the undertaking.
- 4.4 Our guidance, CMA11, sets out three examples of types of circumstances that have led to variation in the past:
- (a) Undertakings that have time-expired or clearly become obsolete.
 - (b) Undertakings that are affected by new legislation.
 - (c) Undertakings that are affected by changes in market conditions.⁴¹
- 4.5 If a change of circumstance is to lead to either variation or termination it must be such that the undertaking is no longer appropriate in dealing with the competition problem or the adverse effects arising from the merger, which the

³⁹ Paragraph 16 of Schedule 24 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 [Sch.1\(1\) para.18\(4\)\(a\)](#).

⁴⁰ The underlying issue in the public interest test is a lessening of competition. This is based on the 'Tebbit Doctrine' set out in 1984 by the then Secretary for State for Trade and Industry Norman Tebbit – 'references to the Monopolies & Mergers Commission would be made primarily, but not exclusively, on competition grounds, taking into account the international dimension of competition.' See Antony Seely (January 2016), [Takeovers: the public interest test](#), section 2.

⁴¹ Paragraph 2.6.

undertaking was designed to remedy. This is a matter of judgement for the Group.

- 4.6 The acquisition of SBH by FirstBus occurred 20 years ago and market information from the time is generally not available. To the extent possible we have therefore sought to focus on relevant changes and their effect on the concerns raised in the 1997 MMC Report. We have also noted the conclusions from the 2008 CC review of the undertakings.

Evidence gathering

- 4.7 Prior to the 30 October 2015 decision to review the undertakings, we launched a consultation process on 7 September 2015. 12 responses were received to the consultation.⁴²
- 4.8 During the review process we received questionnaire responses from three competitors to FirstGroup and nine public bodies. We also held 10 hearings in Scotland with competitors and public bodies (and a phone hearing with another competitor).⁴³ Finally we held a main party hearing with FirstGroup on 4 February 2016 to test aspects of our analysis and address points raised by other parties in questionnaires or hearings.

5. Economic assessment

- 5.1 In this section we analyse the concerns identified by the MMC in 1997 and whether there have been any changes in circumstance to mitigate the concerns identified.
- 5.2 This section is set out as follows:
- (a) Discussion of the nature of the MMC's concerns in 1997 and how we assess these.
 - (b) Views from FirstGroup and third parties.
 - (c) Assessment of whether circumstances have changed.
 - (d) Effects of the undertakings and whether the undertakings are having a distortive effect.

⁴² Lothian, Transport Focus, Strathclyde Partnership for Transport, Stirling and Clackmannanshire councils, East Lothian Council, Transport Scotland, South East Scotland Transport Partnership, Age Scotland, Scottish Borders Council, Stagecoach, McGill's, and West Lothian Council.

⁴³ Lothian, Transport Focus, Strathclyde Partnership for Transport, South East Scotland Transport Partnership (East Lothian Council, Falkirk Council), Traffic Commissioner for Scotland, Edinburgh City Council, Transport Scotland, McGill's, Age Scotland, Stagecoach (teleconference).

(e) Conclusions.

Nature of MMC's concerns in 1997 and how we interpret these

- 5.3 The MMC's recommendation⁴⁴ for a divestment remedy was not implemented. However we consider it appropriate to base our assessment on the MMC's analysis and to consider how circumstances have changed since the merger to determine whether the undertakings should be retained, released or varied.
- 5.4 As discussed in paragraph 2.3, the 1997 MMC Report found that there was little head-to-head competition between FirstBus and SBH before the merger either in commercial services or tendering.⁴⁵
- 5.5 In practice the two companies both had a strong position in their own areas but very little presence in each other's areas. The merger therefore made little difference to the share of the companies since there was little overlap between the two (see paragraph 2.5 and Appendix 1).
- 5.6 The focus of the 1997 MMC Report was therefore on potential competition, which the MMC noted could be as strong as head-to-head competition in instances where the dominant operator in one area expected that operators in adjacent areas would take advantage of any opportunities to extend their networks. Further detail is provided in paragraph 2.7.
- 5.7 The MMC's concerns are set out in paragraphs 1.5 to 1.8. We now look at each of the MMC's concern in closer detail.

MMC concern 1 – A loss of potential competition between FirstBus and SBH

1997 MMC Report

- 5.8 The MMC's main evidential analysis looked at the location of depots and the distance between them. The MMC said:

[...] on the basis of the positioning of their depots, both SBH and FirstBus were able, should they have so decided, to launch new services from existing depots into each other's core areas (see Figure 4.1). Similarly they could have competed for tenders. Midland Bluebird⁴⁶ had suitable depots at Balfron, Bannockburn and Larbert, while SBH could have moved into FirstBus territory

⁴⁴ 1997 MMC Report, paragraph 1.9.

⁴⁵ 1997 MMC Report, paragraphs 2.57–2.60.

⁴⁶ Midland Bluebird was operated by FirstBus.

from its SBL depots in central Glasgow or its Kelvin depots in Cumbernauld, Airdrie and Motherwell. (paragraph 2.63)

- 5.9 The MMC also considered whether SBH perceived FirstBus to be a constraint. The MMC concluded that:

A key consideration is whether SBH itself perceived FirstBus as a serious competitive threat. Given FirstBus's adjacent operations, its resources and GRT's⁴⁷ published intention of looking for opportunities in Glasgow (before its merger with Badgerline to form FirstBus), we would expect SBH to have seen FirstBus as a potential competitor in the lucrative Glasgow market, and therefore to have felt pressure to maintain a full network of services, to exercise restraint in its fares policy and to make competitive bids for tenders in order to minimize the attractions of competitive entry. (paragraph 2.89)

Our assessment

- 5.10 The MMC found that the overlap between the two companies was low overall and there was little head-to-head competition between the companies. However the MMC found the merger would result in a loss of potential competition between FirstBus and SBH. The two areas highlighted in the MMC report were:
- (a) the interface between SBH and FirstBus operating regions; and
 - (b) Glasgow. The MMC said that FirstBus had the ability to enter Glasgow⁴⁸ and it believed SBH would have viewed FirstBus to be a threat.
- 5.11 The MMC focused on the depot locations as an indicator of potential competition. The MMC based its findings on the assumption that the maximum range of bus services from a depot was 15 to 20 miles in rural areas and 5 to 10 miles in urban areas.⁴⁹
- 5.12 We have applied the MMC's assumption to form a view of the area where the MMC considered that potential competition was likely to act as a constraint on the merger parties. Figure 6 shows mileage radii around the depots in place in

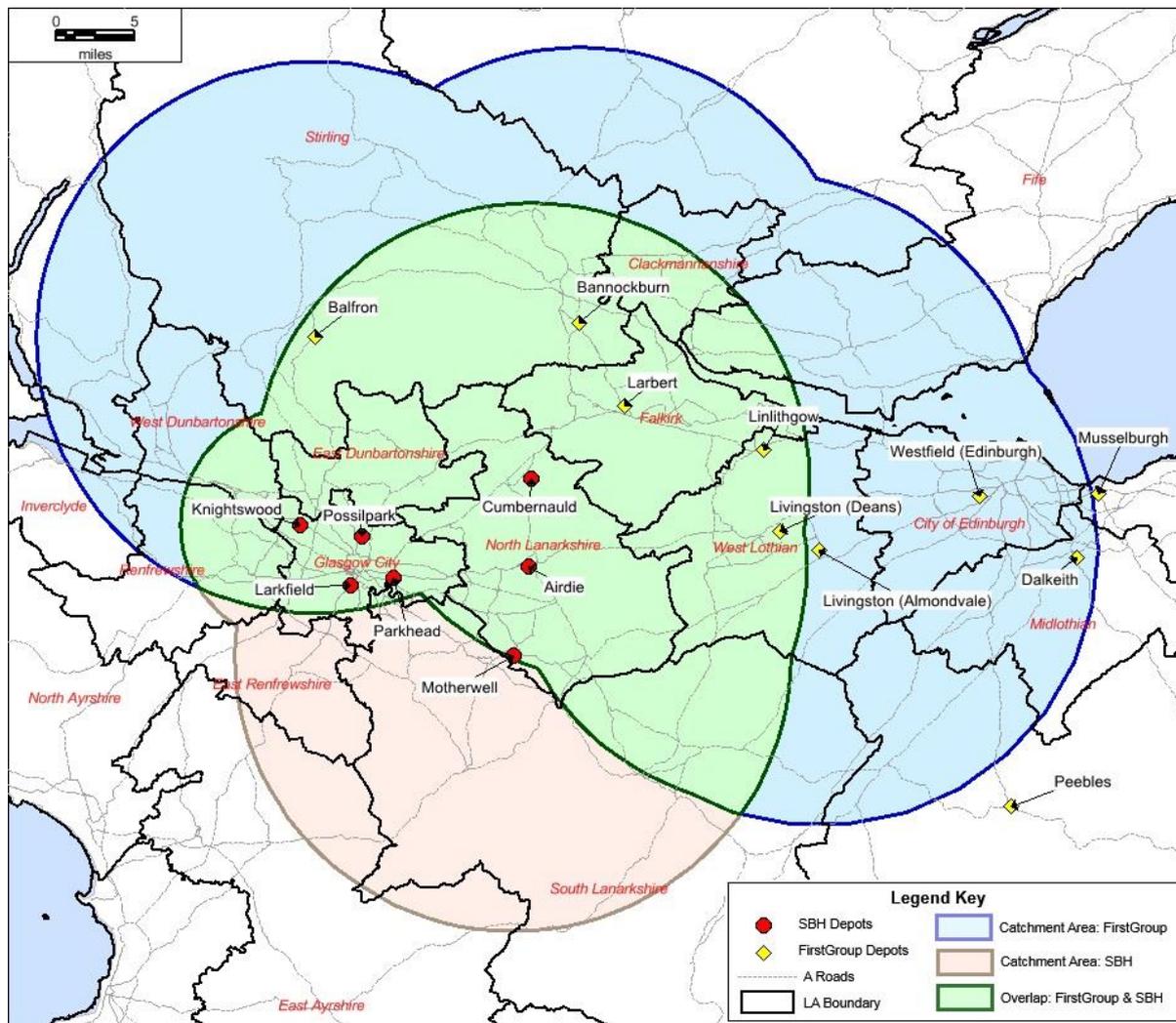
⁴⁷ GRT later merged with Badgerline to become FirstBus. MMC report paragraph 3.8.

⁴⁸ MMC report Para 2.88: 'FirstBus seems to have been well placed to compete in Glasgow given Midland Bluebird's presence north and east of the City. To make a major impact it would have needed at least one depot in Glasgow itself (see paragraph 2.46(a)) and a prolonged campaign, but FirstBus's ability to acquire SBH at substantial cost suggests that this would not have been beyond its resources. In our view there was strong potential for FirstBus to compete with SBH.'

⁴⁹ The MMC's report highlighted that the Larbert, Bannockburn and Balfron depots were located within 20 miles of at least one SBH depot.

1997 (assuming a 17.5 mile radius around the rural depots and 7.5 miles radius around the urban depots). The green shaded area shows where the catchment area of the SBH and FirstBus depots overlapped. We consider that this broadly represents the area in which the MMC felt that a reduction in potential competition between SBH and FirstBus could be a concern. The region covers a wide area reaching quite a long way towards Edinburgh.

Figure 6: 1997 mileage radii



Source: CMA.

MMC concerns 2 and 3 – A loss of potential competition between FirstBus and other operators and entry deterrence in central and south-east Scotland due to the merged entities dominance

1997 MMC Report

5.13 When analysing the potential constraint from other operators, the MMC concluded that the breadth of the geographical area within which FirstBus was

the dominant operator after the merger, and the strength in financial and operational terms would deter competition.⁵⁰

We considered whether the size and extent of FirstBus's operations in central and southeast Scotland were likely to deter competition from other major operators. There are two reasons why this may be expected to be so, one related to the breadth of the geographical area within which FirstBus is the dominant operator after the merger, and the second to its strength in financial and operational terms.

On the first point, FirstBus's dominance has effectively turned most of central and south-east Scotland into a 'safe haven', that is an area which is out of reach of the existing depots of major players in contiguous areas. We discussed the location of large operators' depots in paragraph 2.67 and concluded that the prospects for competition were poor. On the second point, the ability of FirstBus to retaliate against an existing operator that seeks to expand its business in central and south-east Scotland is significantly increased by the merger: potential competitors are likely to be deterred from entering into significant competition with FirstBus by the size of its bus fleet and its access to finance, as well as by the extent of its operations in the area. (paragraph 2.93)

- 5.14 In assessing a loss of potential competition between the combined FirstBus/SBH and other large contiguous operators, the MMC identified 'two facets' of competition:⁵¹
- (a) Competition from Stagecoach and Cowie with SBH's core operations in Strathclyde (the MMC considered that there was only a remote possibility that these two operators would compete in Glasgow).
 - (b) Competition between FirstBus and other companies in the rest of central and southeast Scotland.
- 5.15 Although entry deterrence in central and south-east Scotland was presented as a separate concern by the MMC in its conclusion, it was not separately analysed. The MMC was concerned that the breadth of the geographical area within which FirstGroup was the dominant operator after the merger, and its

⁵⁰ 1997 MMC Report, paragraph 2.93.

⁵¹ 1997 MMC Report, paragraph 2.66.

strength in financial and operational terms, would deter entry by other operators not established in the region.

Our assessment

5.16 As discussed in the paragraphs above, the MMC concluded that the breadth of the geographical area within which FirstBus was the dominant operator after the merger, and its increased strength in financial and operational terms would deter competition. The undertakings adopted did not, and were not intended to, prevent these concerns materialising. It was, in part, because behavioural remedies would not address these concerns that the MMC recommended some divestments. Instead the undertakings were intended to address the detriment caused by the loss of competition. Given that almost 20 years have elapsed since the merger it is therefore possible to determine whether these concerns have materialised.

5.17 Prior to the merger, FirstBus and SBH each had a strong position in their own, but separate areas. A smaller company, embedded within one or other area, would already have faced a strong competitor in the area, whether it was in the SBH or FirstBus area. Therefore we consider MMC's concerns 2 and 3 relate specifically to larger operators that could operate in several areas. Following the merger, entry by a competitor in an area where one of the two merged companies was strong could be punished by retaliation in the area where the other merged company was strong. In assessing whether the MMC's Concerns 2 and 3 have materialised we have therefore focused on whether these larger operators have been deterred from competing against FirstGroup due to the effect of the merger on its size and extent of operations in the area.

- *Stagecoach*

5.18 The 1997 MMC Report stated:

It emerged from Stagecoach's evidence that it had no intention of taking on a dominant FirstBus in Glasgow in the foreseeable future, despite its earlier interest in the area. However, it also told us that if FirstBus' high fares policy was sustained over a number of years it would seriously consider entering the Glasgow market with a low fares policy, but stressed that there were difficulties in challenging an incumbent operator of the size of FirstBus which was fully able to respond to incursions into its operating area. (1997 MMC Report, paragraph 2.66)

5.19 Stagecoach now operates in much of the First West and First East areas. It told us that it is not concerned about retaliation from FirstGroup, either in the First West and First East areas or elsewhere in the UK. It explained that it would expand in the First West and First East areas if an opportunity arose. It has recently purchased the Cumbernauld depot and explained that doing so freed up capacity to expand further within the City of Glasgow. The purchase also provided the ability to expand into the surrounding regions of the Cumbernauld depot if it wished to do so.

- *McGill's*

5.20 The 1997 MMC Report stated that:

there is no indication in Cowie's evidence that it is interested in taking on FirstBus in Glasgow. It told us that the group had a small bus operation in the Glasgow area and noted that FirstBus had the resources and apparent determination to provide frequent services on good-quality, modern buses to meet passenger demand. (1997 MMC Report, paragraph 2.66)

As to potential competition in the rest of central and south-east Scotland from large operators, the prospects are poor.

Clydeside/British Bus (Cowie) has depots only to the west of Glasgow. (1997 MMC Report, paragraph 2.67)

5.21 As noted in paragraph 3.7, Cowie was rebranded as Arriva Group. Paragraph 3.17 then describes how Arriva Scotland West (a subsidiary of Arriva group) became part of McGill's.

5.22 McGill's has continued to grow and has recently established a new depot in Blantyre providing it with the facility to compete within the Lanarkshire area. McGill's told us that it is a potential competitor to FirstGroup in the First West area. It said it is in a stronger position to compete now, both in terms of turnover and the depth of its operations. It also said that following the acquisition of Arriva Scotland West, it now has more staff available. Nevertheless, McGill's said that it would rather not enter into head-to-head competition with FirstGroup (or others) as there were very few routes on which would it be profitable to do so. While we note that McGill's does not currently have a depot in the First East area it told us that it would consider expansion there if it could recover costs. It also said it had been interested in purchasing the Dalkeith depot from FirstGroup; however, this did not materialise as I found out about the closure too late.

- *Lothian Buses*

5.23 The 1997 MMC Report stated:

That leaves competition from Lothian Region Transport (LRT) [...] Our understanding is that LRT seized the opportunity to expand aggressively into the territory of SMT (then part of the Scottish Bus Group) on deregulation in 1986. Following privatization of the Scottish Bus Group companies in 1989/90, GRT acquired Midland Bluebird in 1990, and the adjacent SMT and Reiver (Lowland) companies in 1994. At the time of the GRT/SMT merger, LRT withdrew services from South Queensferry and West Lothian and SMT withdrew four high-frequency services from Edinburgh City. LRT told the Director General of Fair Trading (DGFT) that it had realized that it could not carry on running these loss-making services against SMT following its acquisition by GRT. Edinburgh City Council told us that competition had since stabilized at this lower level. Indeed, after its experience in South Queensferry and West Lothian it seems unlikely that LRT would engage in intensive competition with the largest bus operator in the UK. (1997 MMC Report paragraph 2.68)

5.24 Since the 1997 MMC Report, Lothian Buses has increased its network around the Edinburgh region with an increased presence within Midlothian and East Lothian. This is also reflected in its increase in share of supply data (see Appendix 1). We have been told that Lothian Buses replaced FirstGroup when it exited these regions. It told us it is not deterred from entry due to FirstGroup's size but it was reluctant to go head-to-head due to strategic decisions.

Conclusion on MMC concerns 2 and 3

5.25 The evidence of some entry and expansion by competitors in a significant number of areas covered by the undertakings and the fact that FirstGroup's main competitors have told us that FirstGroup's size does not deter them from expanding/entering has demonstrated to us that MMC concerns 2 and 3 are no longer material. This is consistent with FirstGroup's argument that competitors are not deterred from entering an area or competing with it due to its increased size post-merger. Therefore, we conclude that circumstances have changed such that the undertakings are no longer needed to address MMC concerns 2 and 3.

5.26 The rest of this report therefore focuses on whether circumstances have changed such that MMC concern 1 no longer persists.

View from FirstGroup and third parties on MMC concern 1

5.27 Below we summarise FirstGroup's and third party views on MMC concern 1, namely that the merger would cause a loss of potential competition between the pre-merger FirstBus and SBH.

Views from FirstGroup on MMC concern 1

5.28 FirstGroup argued that there had been a change of circumstances since 1997 in relation to the proximity of the depots of each firm (if they had remained under separate ownership) due to the closure of some of its depots.⁵² FirstGroup said that there would be limited opportunities now for First West or First East to expand into each other's territory using their existing depots as a result of the closures.

5.29 FirstGroup also told us that head-to-head competition, potential competition and entry had increased since the time of the 1997 MMC Report:

- (a) FirstGroup⁵³ submitted that there had been instances of significant entry and expansion by McGill's and Stagecoach. FirstGroup said there was also a large number of smaller bus operators active in the undertaking areas.
- (b) FirstGroup argued that Stagecoach, McGill's and Lothian Buses had depots that were strategically placed to compete with FirstGroup in the First West area (formerly SBH) and First East area (formerly FirstBus). It provided analysis of Stagecoach, Lothian Buses and McGill's depots with 20 minute and 30 minute drive time isochrones showing that these overlapped with any regions where FirstGroup in the First West and First East areas would overlap today. It noted Stagecoach's acquisition of the Cumbernauld depot from FirstGroup and that McGill's had opened a new operating centre in Blantyre (currently used for tendered services only).

Views from third parties on MMC concern 1

5.30 Stagecoach and McGill's view themselves as direct competitors to FirstGroup, especially in the City of Glasgow. Both provided examples of some route expansion and Stagecoach also noted its purchase of the Cumbernauld

⁵² FirstGroup response to Issues statement, paragraph 3.5.

⁵³ First application 5 August 2015.

depot. However, Stagecoach stated that competition was principally on the inter-urban routes. Similarly, while SPT acknowledged the presence of both Stagecoach and McGill's, it noted that there was little head-to-head competition between them and FirstGroup.

- 5.31 Stagecoach told us that it was a potential competitor to FirstGroup and always had been. It looked for opportunities to expand where they arose. These opportunities may be new areas. Stagecoach considered that it constrained FirstGroup's behaviour so that it maintained a good service.
- 5.32 Stagecoach told us that its rationale for acquiring the Cumbernauld depot was that it allowed it to consolidate the maintenance of all of its Scottish Citylink express contract operations at one location. It said this would free up space at other depots, such as Glasgow Blochairn (City of Glasgow), which would allow it to increase competition with FirstGroup on Glasgow urban services.
- 5.33 McGill's told us that it was a potential competitor to FirstGroup. It said it was in a stronger position to compete now, both in terms of turnover and in the depth of its operations. Nevertheless, McGill's said that it would rather not enter into head-to-head competition with FirstGroup (or others) as there were very few routes on which would be profitable to do so.
- 5.34 Lothian Buses told us that it tended not to aggressively seek to venture into new areas. However, it was open to exploiting opportunities when these arose. Lothian Buses believed that, since its network was Edinburgh-centric, it would be comparatively easy for it to expand services out from Edinburgh. However Lothian Buses said that it was not actively encouraged to expand its boundaries by its shareholders who wanted Lothian Buses to focus on the people of Edinburgh and the surrounding area.⁵⁴ Lothian Buses submitted that a lot of the territory in Central and East Scotland was not viable and returns were insufficient to justify the co-existence of two operators.

Our assessment of MMC concern 1 – A loss of potential competition between FirstBus and SBH

- 5.35 As discussed in paragraph 5.6 the constraint between FirstBus and SBH was based on potential competition rather than head-to-head competition. The MMC did not believe that the constraint placed on the merged entity by other operators or alternative modes of transport was strong enough to counter the

⁵⁴ The City of Edinburgh Council is the 90% majority shareholder and minority shares are held by East Lothian Council, Midlothian Council and a marginal share by West Lothian Council.

loss of potential competition between the parties nor therefore constrain the merged entity.

5.36 In this section, we examine changes in circumstances over time to test whether the level of constraint that FirstGroup now faces is at least as great as the level of constraint that FirstBus placed on SBH (and vice versa). Specifically, we look at:

- (a) the area over which potential competition was likely to have been removed as a result of the merger;
- (b) changes to depots;
- (c) increases in competition by existing bus operators;
- (d) increases in potential competition; and
- (e) other changes to constraints that the merged entity faces (eg from other modes of transport).

The area over which potential competition was likely to have been removed as a result of the merger

5.37 Before examining the level of constraint that the merged entity faces, we have sought to identify the precise areas over which potential competition was likely to have been removed as a result of the merger. We have done this by applying drive time isochrone⁵⁵ analysis.⁵⁶ Figure 7 shows that the principal area of overlap between SBH and FirstBus in 1997 (shown in blue) which covers a wide geographic area. This area is broadly consistent with the 1997 overlap area (which used distance radii) illustrated in Figure 6. However a key difference is that the overlap area found using drive time isochrones does not include a large majority of the City of Glasgow. We note the equivalent MMC analysis included all the City of Glasgow and the loss of competition in this area was a key concern for the MMC. We have included the City of Glasgow in our analysis since the overlap reached the edge of the City of Glasgow and therefore buses could operate from there on revenue generating services (and there would be no 'dead mileage' from there). We recognise that these isochrones are conservative as: (a) they are based on average car speed

⁵⁵ An isochrone shows the area around a location that can be reached in a constant drive time given the local road network.

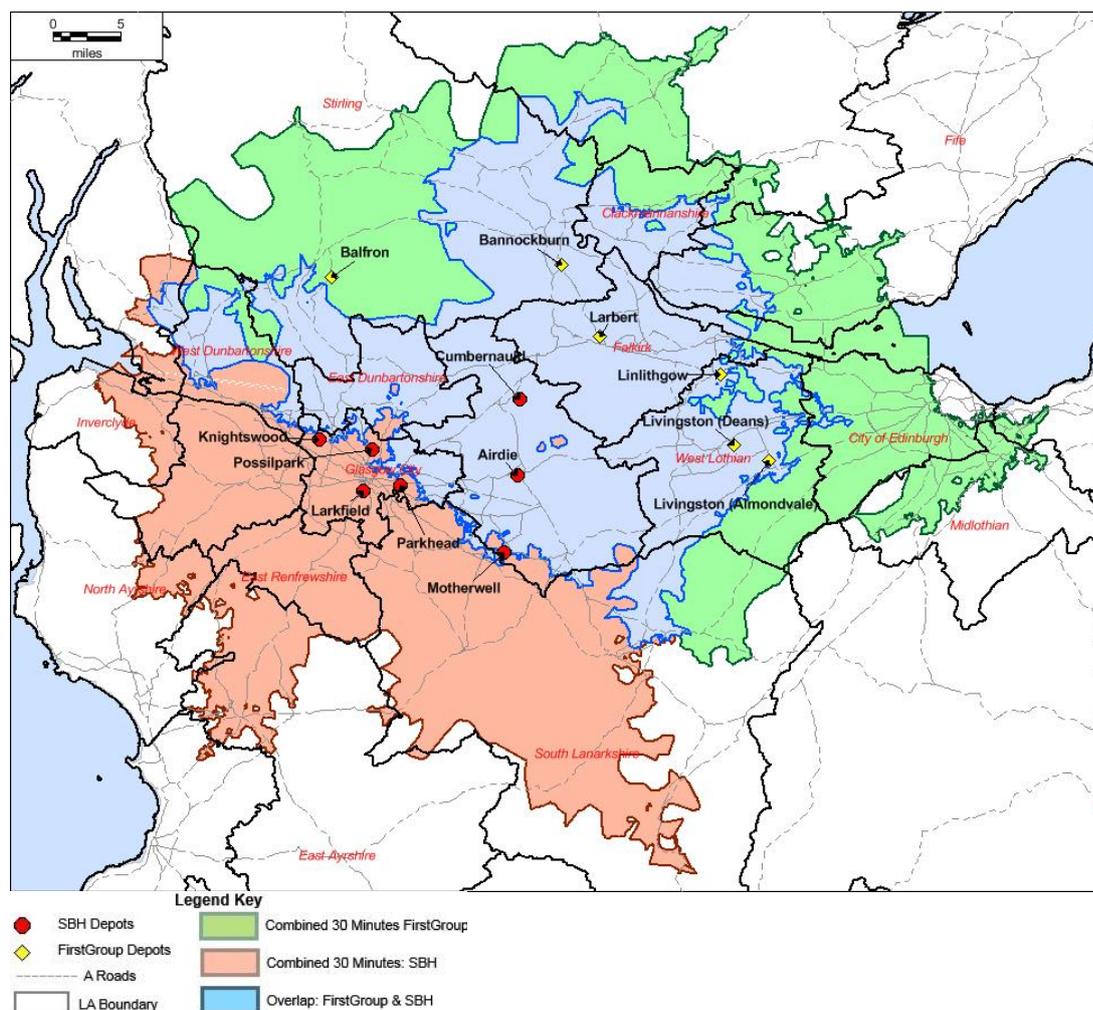
⁵⁶ The CMA is now able to use software packages to assess the actual drive time it takes to get between two locations. This is a more accurate measure of the distance from a depot that a potential competitor is likely to find it commercially viable to run a route and thus a more precise measure of the competitive constraints that an incumbent faces.

rather than bus travel times which are slower due to stopping; and (b) we have applied off peak drive times. We have considered isochrones using peak drive times and these show a similar picture. This is presented in Appendix 3 alongside our methodology and third party evidence on the drive time analysis.⁵⁷

- 5.38 In response to our provisional decision FirstGroup repeated its view (reported in Appendix 3) that, as a result of changes in the BSOG regime from April 2012, and shortcomings in the application of standard GIS mapping software to bus transport markets, 30 minute drive-time isochrones were a significant overestimation of the distances that buses would travel from their depot. In its view 20 minute drive times would be a more appropriate drive-time measure. It considered that buses were less agile than private cars and made regular stops when in service. In addition FirstGroup said buses were often speed limited and were limited in their ability to use motorways, which may be used by the software in the calculation of drive-time isochrones.
- 5.39 We noted these comments, but given our findings (reported in section 6) we did not consider it would be appropriate to investigate this matter further, causing delay in the process.

⁵⁷ Third party evidence indicated that the 30 minutes applied in the Bus Market Investigation Report still appeared reasonable, although noted there is no concrete rule of thumb.

Figure 7: Drive time based on SBH and FirstBus 1997 depots – Off peak drive times



Source CMA analysis.

Changes to depots

5.40 Despite having been told that it is relatively easy to set up a depot,⁵⁸ we consider existing depot locations to be a primary source for potential competition. This is because potential competition is likely to be strongest when an operator's existing depots are sufficiently close to the areas served by a rival operator that it can easily expand its services into that area with minimal dead mileage⁵⁹ and therefore at a minimal cost.⁶⁰

⁵⁸ McGill's told us that it only took 2 days to open the Blantyre depot. In addition Stagecoach did not think opening a depot was a constraint. Stagecoach told us they acquired the Cumbernauld depot rather than setting up a new depot due to the speed of expansion.

⁵⁹ The issue of dead mileage is described in paragraph 2.17.

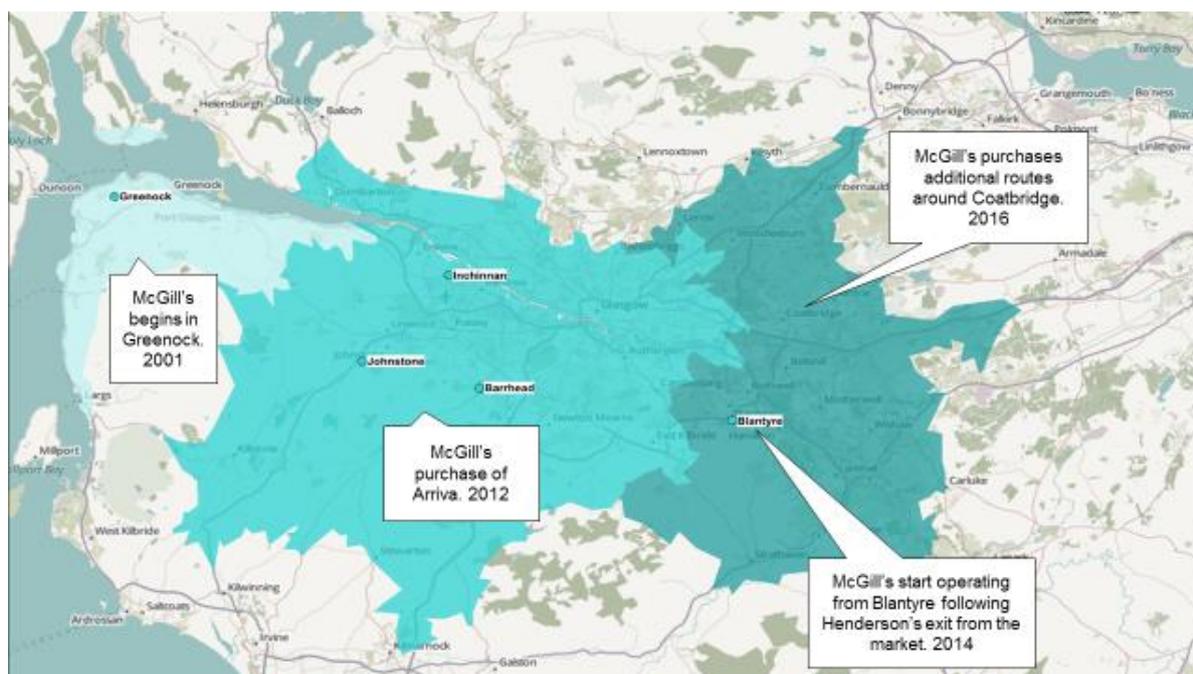
⁶⁰ In this respect, we also note that Stagecoach chose to acquire the Cumbernauld depot rather than setting up a new one.

- 5.41 Since the 1997 MMC Report, FirstGroup told us there have been the following changes to its depot locations:
- (a) The Airdrie depot was closed shortly after completion of the merger in 1997.
 - (b) The Motherwell depot was replaced by a depot in Blantyre.
 - (c) There has been the relocation of the following sites in the City of Glasgow: the Scotstoun depot opened in 2004 with a capacity of 200 vehicles and the Caledonia depot opened in 2014 with a capacity of 450. These replaced Knightwood, Possilpark, Larkfield and Parkhead depots. Parkhead depot subsequently closed in January 2016.
 - (d) The Cumbernauld depot closed in 2013 and the site was then sold to Stagecoach in 2015.
- 5.42 We have assessed each of these changes to form a view on whether the change was a consequence of the merger or would have happened in any event. If a change is clearly a consequence of the merger we will not regard it as a factor to take account of as a change of circumstance. We recognise that this is a matter of judgement, given that the merger took place 19 years ago:
- (a) The closure of the Airdrie depot took place soon after the merger and we therefore consider it to be a direct consequence of the merger. However we note that the impact of removing the Airdrie depot has little impact on the 1997 overlap area, since the Cumbernauld and Motherwell depots also cover much of the area covered by the Airdrie depot. This also applies to the overlaps shown in Figure 7.
 - (b) We consider that replacing the Motherwell depot with the Blantyre depot has had little effect, since the two depots cover similar areas.
 - (c) Similarly we consider the relocation of depots in the City of Glasgow have had little effect as the new depot locations still serve, and are focussed on Glasgow.
 - (d) Finally, the Cumbernauld depot, which closed 16 years after the transaction has been sold to Stagecoach. FirstGroup provided internal documentation to demonstrate that the closure was a result of competition against Stagecoach rather than a wider FirstGroup depot rationalisation strategy. On this basis, we consider the closure of Cumbernauld to be a change in circumstance which may increase competition in the area.

- 5.43 We consider that the sale of the Cumbernauld depot to Stagecoach has increased the constraint that Stagecoach is able to place on FirstGroup. As noted in paragraph 5.32, Stagecoach told us that its rationale for acquiring the Cumbernauld depot was that it allowed it to consolidate the maintenance of all of its Scottish Citylink express contract operations at one location. It said this would free up space at other depots, such as Glasgow Blochairn (City of Glasgow), which allows it to increase competition with FirstGroup on Glasgow urban services. At the hearing, Stagecoach confirmed this rationale, stating that it had expanded rapidly and now the City of Glasgow depot was close to full capacity. It provided us with data that verified this. The depot currently has a capacity of 70 vehicles [redacted] allocated there. Stagecoach told us it expected to transfer approximately [redacted] vehicles from the depot to Cumbernauld to ease capacity and to enable it to pursue future opportunities. Stagecoach provided us with internal emails which showed some expansion in the City of Glasgow. It also provided internal emails from 2014/15 which considered options to expand in the Cumbernauld region.
- 5.44 We note the sale of the Cumbernauld depot not only increases the area over which Stagecoach becomes a stronger potential competitor, but also reduces the area of potential overlap between FirstGroup and the former SBH. A 30 minute drive time from this depot would encompass the regions of Stirling, Falkirk and Clackmannanshire, North Lanarkshire, parts of West Lothian, East Dunbartonshire and the City of Glasgow.
- 5.45 Since the 1997 MMC Report McGill's has also opened a depot in Blantyre (referred to as Hamilton near the border of South and North Lanarkshire). Initially, McGill's started with the Greenock depot and by 2013 it had the Johnstone, Inchinnan and Barrhead depots. It opened Blantyre depot in 2015 after it took over the tendered contracts of Henderson Coaches. McGill's told us that its entry into Lanarkshire via a tendered service could be a springboard into commercial services. It has recently acquired the routes and vehicles of Coatbridge-based, McNairn Coaches, Arthur's Coaches and D.A. Coaches.⁶¹ It stated that this will see its Lanarkshire commercial network extend into Coatbridge, Chapelhall and the Salsburgh areas (North Lanarkshire) and Kirkintilloch areas (in East Dunbartonshire). It also told us that it has recently registered four commercial routes that will compete against FirstGroup in Coatbridge and Airdrie. Figure 8 shows how McGill's depot locations have expanded over time applying a 30 minute drive-time to its depots.

⁶¹ See McGill's press release: [McGill's back on the acquisition trail](#).

Figure 8: McGill's growth: 30 minute drive time isochrones



Source: FirstGroup.

Increases in competition by existing bus operators

5.46 Share of supply data (by unitary authority) was considered in the 1997 MMC Report and updated in the 2008 review of undertakings. In the previous review, the CC⁶² noted concerns in relation to share of supply data interpretation.⁶³ We also note limitations to this data, in particular:

- (a) unitary authority boundaries are slightly artificial in that they do not represent a relevant market in which competition takes place;
- (b) competition in the bus market in previous cases is assessed at a flow/route level rather than shares of supply;⁶⁴
- (c) data available are only in the form of a percentage rather than absolute measure so it does not tell us the number of passengers; and
- (d) data sources vary across time points limiting comparability.

⁶² [Provisional Decision to retain Undertakings 2007](#).

⁶³ The CC raised two concerns: (a) the data only provided a snapshot view. The CC did not place as much weight on them as it would have done had comparable data been available for other years; and (b) changes in shares of supply had been calculated by comparing FirstGroup's mileage in one four-week period in October 2005 with its mileage in one four-week period in April 1996. Furthermore, the CC questioned the reliability of the data as the OFT was unable to verify the shares of supply measured by registered mileage provided by FirstGroup.

⁶⁴ McGill's/ASW merger.

- 5.47 Given these limitations, we focus on the change in composition over time rather than the change in absolute figures.
- 5.48 As noted in paragraph 5.17 the increments to shares of supply from the merger are generally small and in all cases SBH had a strong position to begin with. In particular, SBH held an 89% of the registered mileage in the City of Glasgow and the increment from the merger was only 1%. FirstGroup's share of registered mileage has declined by 14% since 1996, from 90% to 76%. The combined shares of Stagecoach and McGill's have increased from 4% to 16%. Arguably, in the City of Glasgow, these two larger operators are able to place a greater constraint on FirstGroup now than competing operators were able to in 1996.
- 5.49 Notwithstanding the limitations of registered mileage described above, the data suggest that compared with the pre-merger situation competitors have gained share and FirstGroup has lost share in many of the unitary authority areas. The exceptions are South Lanarkshire, Falkirk, Clackmannanshire and East Renfrewshire (where the company's share has increased), and FirstGroup has only lost a 1% share in West Dunbartonshire. This increase in the presence of other operators is particularly significant when considered in the context of the MMC's concerns that the merger would deter entry.
- 5.50 The changes to the shares of supply shown in Appendix 1 reflect broader developments to the networks of other bus operators. We examine these developments in more detail below by looking at maps of the main bus operators' networks for both commercial and tendered services in 2011, 2013 and 2015⁶⁵ (as provided in Appendix 2). The networks of the bus operators have continued to develop since 1997.⁶⁶ Changes in the networks of other bus operators show:
- (a) areas where other bus operators have competed with FirstGroup routes and, in some cases, where FirstGroup has exited a route as a result of competitor initiatives; and
 - (b) further areas where other bus operators could act as potential competitors to FirstGroup. In many cases the frequency of competitor buses on these routes is low. Nevertheless, we consider an operator to be a strong potential competitor in the areas where it is actually running a route as

⁶⁵ Basemap told us 2011 was the earliest reliable data point for comparison.

⁶⁶ We note that these maps do not provide a comprehensive analysis of the competitive dynamics as they do not capture route level comparisons. However they do provide insight into how networks have changed over time. We have received no evidence that Stagecoach, Lothian Buses or McGill's have expanded into Stirling, West Lothian, or South Lanarkshire.

this demonstrates its ability to operate and compete with FirstGroup in that area. This is the case whether this route is tendered or commercial.

- 5.51 The CC, in its Bus Market Investigation Report, found⁶⁷ that head-to-head competition is uncommon. We note that rival operators to FirstGroup have said that most routes cannot sustain more than one operator. The increased presence of other operators shows that they have competed successfully with FirstGroup for routes in First West (see paragraph 5.46) and may as a result of that competition have forced FirstGroup to exit some routes. It also provides evidence that rival operators provide a greater potential competitive threat and could enter other routes if FirstGroup deteriorated its competitive offer.

Stagecoach

- 5.52 The decision of the Secretary of State in 1998 to seek behavioural rather than structural undertakings from FirstGroup appears to have been largely taken on the basis that Stagecoach's entry into the City of Glasgow had materially altered the competitive situation described by the MMC. In 2008, the CC took into account the history of Stagecoach's participation in the market and noted that its penetration appeared to have been very limited. The CC stated that although Stagecoach's entry demonstrated that entry was possible, it could not infer from mileage share figures an increase in the competitive constraint posed by Stagecoach on FirstGroup. Indeed, the CC noted that the apparent failure of Stagecoach – a large operator with an existing presence in Scotland – to expand in Glasgow could be seen as demonstrating the difficulty of successful entry sufficient to impose a significant constraint.
- 5.53 Figure 15 to Figure 17 in Appendix 2 show how the Stagecoach network has developed since 2011. We observe that it primarily operates inter-urban routes between Glasgow and Edinburgh which stop at Cumbernauld. We do not see significant changes but we note that since 2007 Stagecoach's share of registered mileage in the City of Glasgow has increased from 2% to 8% and it is consequently likely to be a more substantial competitor now than at the time of the CC 2008 review.
- 5.54 As discussed in paragraph 5.312, Stagecoach also told us, supported by internal documents, that it has expanded in the City of Glasgow, namely in Partick where it entered to some extent against FirstGroup. This included some head-to-head competition and new routes. Stagecoach said opportunities may also be in new areas such as a fairly recent expansion

⁶⁷ Bus Market Investigation Report, paragraphs 2.3–2.5.

prompted by the opening of the Queen Elizabeth University hospital, or where FirstGroup showed signs of weakness (for example if fare prices were too high or buses operated too infrequently). When Stagecoach entered the market against FirstGroup, it attempted to differentiate the service offered, for example by using smaller buses to cover areas where larger buses were unable to run.⁶⁸

McGill's

- 5.55 McGill's has expanded since 2011, as demonstrated in Figure 18 to Figure 20 in Appendix 2. This shows that McGill's network has expanded on the peripheries, especially to the East of Glasgow. The scope of this expansion is also demonstrated in Figure 8 based on depot locations.
- 5.56 As discussed in paragraph 5.45, in the City of Glasgow, a proportion of McGill's expansion is due to the acquisition of Arriva Scotland West. In North Lanarkshire, the expansion is attributed to McGill's gaining tendered contracts and opening the Blantyre depot. It has also recently made a number of new acquisition⁶⁹ and registered new commercial routes that would compete against FirstGroup. These acquisitions will also will see McGill's extend its commercial network into the Kirkintilloch areas (in East Dunbartonshire).

Lothian Buses

- 5.57 Lothian Buses has not expanded its network in the regions identified in Figure 6 and Figure 7 although it has expanded in Midlothian and East Lothian. Lothian Buses told us that its shareholders did not actively encourage it to expand its boundaries. Instead, its shareholders wanted Lothian Buses to focus on the people of Edinburgh and the surrounding area.

Summary on competition by existing bus operators

- 5.58 The MMC noted that head-to-head competition between SBH and FirstBus was limited which is reflected in the low increments to 1997 share of supply data. We considered whether there has been any change in competition from other competitors. Since 1997, competitors' shares of registered mileage in the unitary authority areas have generally increased, while FirstGroup's share

⁶⁸ Stagecoach operates on the new Fastlink bus rapid transit system linking Glasgow City Centre with the Queen Elizabeth University Hospital complex from May 2015. McGill's, withdrew from the service in November 2015. The Fastlink corridor is proposed to operate under a statutory quality partnership scheme. Stagecoach introduced a new dedicated Fastlink service, the X1. In addition, Stagecoach have recently started two additional new services in the city, each running every 10 minutes in total and requiring 13 vehicles to operate. The new Stagecoach services compete with FirstGroup services 15, 16 and 77, of which 15 and 16 are tendered services. Source: FirstGroup Response to Issues statement

⁶⁹ See McGill's press release: [McGill's back on the acquisition trail](#).

has reduced. While this does not necessarily reflect a sustained increase in head-to-head competition on specific routes, it does reflect a significant change when considered in the context of the pre-merger situation where FirstBus and SBH held very strong positions in their respective areas and faced little head-to-head competition. We also find that the increase in route coverage operated by competitors and McGill's in particular, has enabled these competitors to act as stronger potential competitors than at the time of the merger.

Increases in potential competition from other competitors

5.59 In this section we consider how potential competition has evolved. In the Bus Market Investigation Report the CC looked at four factors to determine the strength of the constraint that potential competition and new entry place on incumbents:⁷⁰

- (a) Area-specific barriers to entry are low.
- (b) Existence of a potential entrant with existing services and facilities nearby.
- (c) In the case of potential competition, whether the extent of the potential entrant's existing services is sufficient to confer a similar network advantage to that enjoyed by the incumbent operator.
- (d) Financial strength of a new entrant relative to the incumbent.

5.60 These factors provide the basis for our discussion below.

5.61 First, the CC noted that the constraint on incumbents from potential competition and new entry is strongest where area-specific barriers to entry are low. There do not appear to be any specific regions where we expect barriers to entry to be lower than others. One exception is the cost of land for depots. We are also aware of changes of regulatory conditions eg BSOG and PSVAR which may have increased barriers to entry but these apply across all regions.

5.62 Second, the CC found that the constraint on incumbents from potential competition and new entry is strongest where there is a potential entrant with existing services and facilities nearby; and where, in the case of potential competition, the extent of the potential entrant's existing services is sufficient to confer a similar network advantage to that enjoyed by the incumbent operator. We consider these factors alongside financial strength for each of

⁷⁰ Bus Market Investigation Report, paragraph 8.114. Note the CC looked at these factors in a different order.

the existing operators, namely Stagecoach and McGill's. Lothian Buses is not currently active in the region and appears to have little appetite to expand further into the First West area and therefore we do not consider it further.

Stagecoach

- *Existing services and facilities and third party views*

5.63 Stagecoach told us that it would expand in the First West and First East areas if an opportunity arose. Stagecoach has also asserted it is not afraid to go head-to-head with FirstGroup. It said expansion would occur when it could differentiate its service from others and cited examples (see paragraph 5.54). Stagecoach was clear that it would enter against FirstGroup if it saw weakness. It believed its presence ensured FirstGroup provided a good service limiting opportunities to enter.

5.64 Following its acquisition of the Cumbernauld depot there is also the potential to expand in the City of Glasgow and regions surrounding Cumbernauld (see paragraph 5.43). It is too early to measure the exact impact of the Stagecoach's acquisition of the Cumbernauld depot in 2015. There is also historic evidence of entry in this region and internal documents demonstrate that FirstGroup responded to this.

5.65 Stagecoach has a depot in the City of Glasgow that allows it the option of expanding into East and West Dunbartonshire and it therefore is a potential competitor. We have no evidence that it is presently considering expanding in the area but it told us that it monitored activity in the City of Glasgow, West Lothian, Falkirk and Stirling.

- *Financial strength*

5.66 In its Bus Market Investigation Report the CC noted that the constraint on incumbents from potential competition and new entry is strongest where that entrant is financially strong relative to the incumbent. We noted in paragraph 3.12 that FirstGroup is a large entity with a Group operating profit of £303.5m in 2015.

5.67 While the First East business suffers from poor profitability the First West business continues to be profitable. The First West business ROCE in 2014 was [X]% and FirstGroup noted this was above the group cost of capital of around [X]%. However, we note that this would also have been the case in the pre-merger situation, where SBH had an 89% share in the City of Glasgow and very strong positions in neighbouring regions.

- 5.68 The Stagecoach Group is smaller than FirstGroup but with greater UK bus revenue. As noted in paragraph 3.15 Stagecoach's 2015 Group revenue was £3.2 billion with £1 billion attributed to UK regional bus operations (excluding London). 2015 Group operating profit was £227 million with £141 million attributed to regional bus operations (excluding London).
- 5.69 Overall we consider Stagecoach has the ability to compete with FirstGroup should suitable opportunities arise. Stagecoach appears to be in a stronger position now than its predecessor was at the time of the merger.

McGill's

- *Existing services and facilities and third party views*

- 5.70 McGill's has depots located at Greenock, Barrhead, Blantyre (Hamilton), Inchinnan and Johnstone which serve routes in the City of Glasgow, but it does not have a depot in the City of Glasgow. McGill's has expanded since 1997 and its network has expanded further into the east of Glasgow. McGill's told us it would compete on routes where it would cover costs. McGill's competes head-to-head with FirstGroup in some areas, such as the Paisley to Glasgow corridor, but it also noted that many routes would not sustain two operators. More generally, the evidence provided by McGill's to us provided a picture of a more aggressive expansion plan than Cowie had in 1997. While we have not seen internal documents from McGill's demonstrating its expansion plans, we do observe actual expansion.
- 5.71 McGill's has a depot located in Blantyre. At present McGill's only operates tendered services from this location. It told us that it intended to expand into Lanarkshire. As discussed in paragraph 5.45 McGill's has recently acquired some smaller operators in North Lanarkshire and registered some new routes in this area. We consider McGill's has the existing facilities to expand into Lanarkshire (North and South) if it wanted to.
- 5.72 FirstGroup appears to monitor McGill's in internal documents but these documents do not provide significant evidence of McGill's constraining FirstGroup.
- 5.73 As discussed in paragraph 5.21, McGill's also told us it was interested in the sale of FirstGroup's Dalkeith depot. After the closure announcements it contacted FirstGroup and reviewed the depot accounts; however it was too late to negotiate with FirstGroup as the closure announcements had already been made and discussions with local councils were in progress. This however illustrates McGill's intention to expand.

- *Financial strength*

5.74 McGill's 2014 profit and loss account shows a turnover of £35.3 million (up from £33.8 million in 2013) and a profit before tax of £3.22 million (up from £1.75 million in 2013), as noted in paragraph 4.18.

5.75 We conclude that McGill's has the ability to compete with FirstGroup should suitable opportunities arise. McGill's appears to be in a stronger position now than at the time of the merger.

Summary on changes to potential competition

5.76 The 1997 MMC Report was concerned about the loss of potential competition between SBH and FirstBus. We conclude that since the time of the merger, there has been an increase in the constraint that Stagecoach and McGill's place on FirstGroup as potential competitors. This stems from:

- (a) Stagecoach's acquisition of the Cumbernauld depot, which frees up depot capacity in Glasgow and allows Stagecoach to become a stronger potential competitor in Glasgow and North Lanarkshire as a result; and
- (b) the increase in route coverage operated by Stagecoach and McGill's in particular.

Other changes to constraints that merged entity faces (eg other modes of transport)

5.77 We are examining whether the level of constraint that FirstGroup now faces is at least as great as the level of constraint that FirstBus placed on SBH as a potential competitor (and vice versa). Below we review how direct competition by other modes of transport (particularly car and rail) has evolved.

Car

5.78 The 1997 MMC Report noted that while cars compete with buses in the general sense they do not compete to the extent necessary for them to be regarded as part of the same market. In particular, they are not sufficiently substitutable by bus users to provide an adequate curb on the prices of bus operators.⁷¹

⁷¹ 1997 MMC Report: "there is a marked variation in car ownership across the designated area: Cars compete with buses in the general sense that they provide alternative forms of transport. There are, however, major differences between them in respect of price and convenience, while for many bus users the option of using cars is not available. They do not compete to the extent necessary for them to be regarded as part of the same

- 5.79 We have examined whether the car is a sufficient constraint on FirstGroup today. For this to be the case, we would want to see that bus passengers would switch to the car if bus operators imposed a small increase in price.⁷² This would imply that the possibility of switching to car travel constrains FirstGroup's actual behaviour in terms of its prices/offering. In previous cases, the CC found that although the demand for car and bus travel interact, any constraint from the car on bus travel will only be felt over the long term following substantial changes in consumers' travel habits or disposable income rather than following a small worsening of the competitive offer.⁷³ Flexible modes of transport (including the car) have not been included in the product market definitions in the past.
- 5.80 In this review, competitors told us that the car competes with bus travel. Many noted the increase in car ownership and reduction in bus travel. However third parties did not explain the extent to which the car is a constraint or how this interaction works in practice. FirstGroup told us that the availability and affordability of cars as an alternative to buses has increased.⁷⁴ The evidence put forward by FirstGroup included car ownership statistics, references to marketing a modal shift from car to buses; and survey evidence. While we consider this information to be useful, it does not explore how consumers would respond if bus operators increased price. We would need to see more evidence such as internal documents demonstrating that the car is constraining FirstGroup's behaviour or impacting on its pricing policy to consider it to be a sufficient constraint. We have not seen this nor have we seen sufficient evidence that direct competition from the car has significantly changed since 1997 to represent a change in circumstance.
- 5.81 In response to our provisional decision, FirstGroup said that it was concerned that our provisional decision did not fully reflect the weight of the evidence on the constraint that the private car had over bus operators. This is not an opinion held uniquely by FirstGroup. It noted that competing bus operators also made reference to the impact of the car on bus businesses. FirstGroup said that it had provided the CMA with marketing materials showing the positioning of the bus against the car and that it had explained in previous

market. In particular, they are not sufficiently substitutable by bus users to provide an adequate curb on the prices of bus operators.' (paragraph 2.38)

⁷² The [CMA Merger guidance](#), section 5, sets out the test applied for market definition. The Authorities use the 'hypothetical monopolist test' as a tool to check that the relevant product market is not defined too narrowly. In applying the hypothetical monopolist test, the Authorities will assess whether the hypothetical monopolist could profitably raise the price of at least one of the products in the candidate market by at least a small but significant amount over a non-transitory period of time (ie by a 'SSNIP' – a small but significant and non-transitory increase in price).

⁷³ Stagecoach/Preston, paragraph 7.20. Stagecoach/Eastbourne, paragraphs 5.30–5.33; First/ScotRail. McGills/Arriva.

⁷⁴ FirstGroup response to Issues Statement.

submissions that survey evidence demonstrated customer switching behaviour, such that it was necessary that FirstGroup considered the car when pricing its tickets (where it was able to do so given the fare cap). It said its general mode of operation did not involve producing a substantial volume of written analysis, but considered its evidence was a 'compelling indication of the constraint from other modes of transport such the private car on its behaviour.'

- 5.82 We reviewed these comments carefully, but we remain of the view that we have not seen sufficient evidence that direct competition from the car has significantly changed since 1997 to represent a change in circumstance.

Rail

- 5.83 The 1997 MMC Report considered that Glasgow's underground railway at best only provided limited competition to the SBH's bus network. Consideration was also given to the ScotRail overground railway network in Glasgow, which the MMC noted had an extensive network. Despite this, the MMC found that the different characteristics of rail and bus travel, particularly relative frequencies, journey times, relative prices and the location of bus stops and stations, meant that it does not follow that passengers regard the two modes as competitive alternatives. The MMC concluded that there was insufficient evidence of material price competition between bus and rail.
- 5.84 FirstGroup identified two sources of relevant changes regarding the constraint from rail and tram.
- (a) Firstly, FirstGroup argued that there was increased competition from new rail lines. Routes that fall within the regions identified in Figure 7 include:
- (i) The Bathgate–Airdrie railway opened in December 2010. It falls within the unitary authorities of West Lothian and North Lanarkshire.⁷⁵ FirstGroup told us that the increased competition represented by this service resulted in FirstGroup subsequently cancelling its X14 Livingston to Glasgow service once it was permitted to do so with the ending of the ScotRail undertakings.⁷⁶
 - (ii) The Alloa–Stirling railway falls within the Clackmannanshire and Stirling regions. FirstGroup told us that a rail track from Stirling to Alloa was re-opened in March 2008 and as part of this a new station

⁷⁵ FirstGroup submission (31 August 2015), paragraphs 56–70.

⁷⁶ FirstGroup application.

was built in Alloa. It said that this provided an alternative to the bus for journeys between Alloa and Stirling and also between Alloa and places further afield such as Falkirk.⁷⁷

(b) Secondly, FirstGroup said that a number of unique features associated with the new ScotRail franchise have the potential to significantly alter transport patterns across Scotland, leading to fewer passengers travelling by bus.⁷⁸

5.85 We consider that the new Bathgate–Airdrie Railway, providing an additional rail route to Edinburgh may have had some impact on bus demand in these areas. However third parties provided mixed evidence whether increased passenger numbers represented a transfer from bus.

5.86 We consider that the railway between Alloa and Stirling may have had some impact on bus services running similar routes. The evidence we received from third parties was however mixed on whether the new line has had an impact on FirstGroup operations in Clackmannanshire and Stirling.

5.87 We would need to see more evidence such as internal documents demonstrating that these new railways are constraining FirstGroup's behaviour or impacting on its pricing policy to consider it to be a sufficient constraint. We have not seen this.

5.88 Turning to the ScotRail franchise, the 2004 CC FirstGroup/ScotRail merger inquiry concluded that substitution between bus and rail is possible on specific flows where routes overlap. However, even on overlapping routes, there is scope for significant differences in the characteristics of the two modes. This limits the degree of competitive constraint that rail exerts on bus.⁷⁹ While the ScotRail franchise may provide a potential constraint to individual flows of bus services in some of the areas covered by the undertakings, we consider it unlikely that FirstGroup's loss of the ScotRail franchise from April 2015 has significantly increased the competitive constraint exerted by rail on local bus services.

⁷⁷ FirstGroup also said that the Borders Railway is an additional constraint on it from rail. The Borders Railway opened in September 2015 and covers a similar route to FirstGroup's X95 service but with a considerably shorter journey time. However we note this is outside the overlap area we are focusing on when assessing MMC concern 1.

⁷⁸ FirstGroup cited: (a) stricter fares regulation, with real terms reduction in off-peak tickets; and (b) off-peak patronage growth targets.

⁷⁹ Competition Commission (June 2004), [A report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited](#), paragraph 4.28.

Summary on competition by other modes of transport

- 5.89 We note that third parties consider the car to compete with buses. However we have not seen sufficient evidence that the car is constraining bus operators' pricing behaviour, nor have we seen sufficient evidence that direct competition from the car has significantly changed since 1997 to represent a change in circumstance.
- 5.90 We have also not seen sufficient evidence that the new rail lines are constraining bus operators' pricing behaviour to represent a change in circumstance. We also consider it unlikely that FirstGroup's loss of the ScotRail franchise from April 2015 has significantly increased the competitive constraint exerted by rail on local bus services.

Conclusion on changes of circumstance affecting the MMC concern 1: Loss of potential competition between FirstBus and SBH

- 5.91 The MMC found that pre-merger, head-to-head competition between SBH and FirstBus was very limited. Each had a strong position in its respective area but the increment to shares was very small. Thus the major concern of the MMC was about the loss of potential competition between SBH and FirstBus in the 1997 overlap area as a result of the merger.
- 5.92 The MMC did not believe that the constraint placed on the merged entity by other operators or alternative modes of transport was strong enough to counter the loss of potential competition between the parties nor therefore constrain the merged entity. We have examined changes in circumstances over time to test whether the level of constraint that FirstGroup now faces is at least as great as the level of constraint that FirstBus placed on SBH (and vice versa).
- 5.93 We therefore conclude that there has been a change of circumstance in relation to the following:
- (a) The purchase of the Cumbernauld depot by Stagecoach has enabled Stagecoach to free up depot capacity in Glasgow and become a stronger potential competitor in the City of Glasgow and North Lanarkshire as a result as discussed in paragraph 5.43. The change in ownership of the Cumbernauld depot also means that the overlap area between FirstBus and SBH as identified by the MMC has substantially reduced.
 - (b) Compared with the pre-merger situation, the share of FirstGroup has reduced in many areas, and in particular in Glasgow. Conversely the share of competitors, particularly Stagecoach and McGill's, has increased. This increase is significant when considered in the context of the pre-

merger situation where FirstBus and SBH held very strong positions in their respective areas and faced little actual competition.

- (c) Potential competition from McGill's and Stagecoach has also increased meaning that they now place a stronger constraint on FirstGroup than at the time of the merger. The increase in constraint appears to be particularly significant in North Lanarkshire with some impact in the City of Glasgow.

Effects of the undertakings on competition

5.94 In this section we summarise the views of parties about the effects of the undertakings, including their views on whether the undertakings are having distortive effects and their views on whether the undertakings should be retained or varied. We then set out our assessment of the effects of the undertakings and conclude whether the undertakings are having a distortive effect.

Views of parties on the effects of the undertakings

- *FirstGroup views*

- *Fare cap*

5.95 FirstGroup told us that the fare cap had restricted its ability and that of other operators to invest in new services, buses and premises. FirstGroup⁸⁰ told us that the fare cap limited the rate at which the volume weighted average price of the fares within the fares basket could increase each year. This meant that individual fares could rise at a faster rate than the H-CPT⁸¹ provided that these higher increases were offset by other fares within the fares basket increasing at a rate below the H-CPT. FirstGroup provided data on which fares were contained with the fares basket.⁸² This information showed that:

- (a) [X] % of FirstGroup's revenue in the First East area and [X] % of FirstGroup's revenue in the First West area resulted from the sale of tickets that were directly or indirectly covered by the fares control;

⁸⁰ FirstGroup submission 31 August 2015, p41.

⁸¹ Defined in Appendix 1.

⁸² Clause 5 of the undertakings states that tendered fares, multi-operator fares and concessionary fares are expressly excluded from the fares control. Moreover, Schedule 1 of the undertakings makes clear that only those fares within the Standard Fare Scheme (defined as all fares listed in Schedule 5 of the undertakings) are included within the calculation of the average fare increase. This means that fares not listed within Schedule 5 of the undertakings are not subject to the fares control. Source: FirstGroup submission 31 August 2015, footnote 58.

- (b) adult single fares accounted for the largest proportion of revenue within controlled fares; and
- (c) concessions were the main ticket type not directly covered by the fares control, however, concessions were indirectly covered by the fares control as they are calculated as a percentage of the controlled adult single fare.
- (d) multi-operator tickets and fares that FirstGroup is required to charge on tendered services were also excluded from the fares control.

5.96 FirstGroup told us⁸³ that to manage its fare structure there was a trade-off whether to:

- (a) distort its overall fare structure in order to ensure that at least some of its fares were set at a level that reflected changes in the costs of providing local bus services across the undertakings areas; or
- (b) maintain its fare structure with the result that all of the fares it charged did not reflect changes in the costs of providing local bus services across the undertakings areas.

5.97 FirstGroup said in the First West area it had opted for the former of these options, with the price of its adult singles rising at a faster rate than other fares within the fares basket (notably child fares and tickets for night bus services). In the First East area its fare increases had been more evenly spread over the range of tickets included within its fares basket.

5.98 FirstGroup also told us⁸⁴ that, even if not covered by the fare cap, all fares were (at least indirectly) constrained by it. This was because if FirstGroup were to raise the fares outside of the fares basket at a significantly faster rate than those within it, customers would be able to switch to the regulated product if it offered better value for them.

- *Mileage floor*

5.99 FirstGroup told us that the mileage floor had the effect of forcing it to operate services that were not commercially viable and that this could only have served to exclude competitors from markets, reduce competitors' ability to compete with FirstGroup and further reduce FirstGroup's ability to invest in the future provision of bus services. It said that the existence of the mileage

⁸³ FirstGroup submission 31 August 2015, p43.

⁸⁴ FirstGroup submission 31 August 2015, p43.

floor in the First East area may be one reason why new entry in this area had been less pronounced than in the First West area.

- *Anti-predation undertakings*

5.100 FirstGroup told us that the anti-predation undertakings were now obsolete as a result of the Competition Act 1998. It also told us that these undertakings put it at a disadvantage because it is unable to change its timetables in real time with the agility displayed by others.

- *Third party views*

- *Competitor views*

5.101 We spoke to Stagecoach, McGill's and Lothian Buses to get their views on the effect of the undertakings in their areas. Their views are set out below. All competitors were in favour of removing the undertakings. They noted the undertakings restricted FirstGroup's commercial freedom and may be resulting in FirstGroup operating uncommercial services.

- *Stagecoach*

5.102 Stagecoach told us that, because of the time that had passed since the undertakings had come into effect and the changed market structure since then, the undertakings constraining FirstGroup's prices and mileage were acting as a constraint on competition. It said that high fares in the marketplace gave FirstGroup the opportunity to compete with others but that if FirstGroup's fares were constrained by the cap then it was more difficult for Stagecoach to compete with FirstGroup.

5.103 Stagecoach said that if it increased its share in a particular area (as it had done in Cumbernauld) then it would normally expect FirstGroup to reduce its mileage accordingly. The feeling was that in Cumbernauld, for example, this had not happened, presumably because to do so would put FirstGroup in breach of its mileage floor. Stagecoach said that the result was that it might decide not to compete for certain markets if it believed that FirstGroup would be unable to cut some of its services in response to Stagecoach's competition.

5.104 Stagecoach told us that FirstGroup's operating mileage was not set by commercial factors alone because of the mileage floor. Its fares were lower than the commercial level because of the price cap. Consequently other operators were deterred from competing with FirstGroup.

5.105 Stagecoach said that it had made some small mileage reductions and fare increases following the changes to BSOG in Scotland. It said that FirstGroup would have been constrained from taking similar actions as a result of the undertakings.

- *McGill's*

5.106 McGill's told us that it was in favour of removing the undertakings. It said that the restrictions on FirstGroup were unfair and that FirstGroup was unable to do things that McGill's was allowed to do. This created an uneven playing field. It said that, in the past, some of the undertakings may have been needed because of the way that FirstGroup had behaved, but FirstGroup tended not to behave that way now. Lifting the undertakings would not adversely affect McGill's operations unless FirstGroup started behaving badly again. It said that the undertakings had been an extra shackle on FirstGroup that had probably stopped FirstGroup from moving as quickly or as easily as it wanted to. No-one else had these shackles and McGill's told us it thought that was a bit unfair.

5.107 McGill's told us that bus companies were not really in control of their fares any more. It said that, on single fares, one could not impose any more than a pre-agreed increase because Transport Scotland would not accept larger increases for reimbursement under the concessionary fares scheme. Multi-journey fares and other fares were driven by passenger demand and elasticity, and bus companies did not really have as much freedom of movement as they might wish to have.

5.108 McGill's said that it thought FirstGroup might unwind some mileage if the undertakings were removed. It said that FirstGroup ran certain routes where one had to wonder why it bothered running them; it was clearly connected with the undertakings.

- *Lothian Buses*

5.109 Lothian Buses said that the undertakings were the wrong option (in 2002) FirstGroup's subsequent decline in Central Scotland and East Scotland was as a result of agreeing to follow those undertakings.

5.110 Lothian Buses said that the perverse outcome of some of the undertakings was that FirstGroup had been unable to exit markets in First East. Without the undertakings, it would have done so. That also precluded a particular aggressive competitive environment because there was no point in another operator entering this market if FirstGroup could not exit. Lothian Buses said

that this was where it saw artificial barriers as being introduced. It had artificially closed off the market.

5.111 Lothian said it would expect FirstGroup to exit from a number of routes around Edinburgh if the undertakings were lifted. If that happened, Lothian would evaluate the opportunities to see if there was a business case or a long-term prospect of making the operation sustainable.

5.112 Lothian Buses said that FirstGroup in the First East area did not invest at times when it probably needed to and, as a result, a number of quite old buses were being operated in the region. It said that this was probably a result of the undertakings as FirstGroup had barely made a profit over the last ten years.

5.113 Lothian Buses did not think that the public had particularly benefitted from the undertakings. Lothian Buses said it struggled to find anyone who would have benefited.

5.114 Lothian Buses did not think the undertakings should be varied rather than lifted ('that horse has bolted'). Lothian Buses said it was a mistake for FirstGroup to have accepted the undertakings in the first place and it had constrained markets throughout Central Scotland and East Scotland.

- *Transport authority views/other*

5.115 We spoke with several of the transport authorities active in the area covered by the undertakings to understand their views on the effect of the undertakings. These views are set out below.

- *SEStran*

5.116 SEStran said that it had been quite apparent for some time that FirstGroup had difficulty functioning as a normal operator in many ways as a result of the undertakings.

5.117 Falkirk and East Lothian Councils said they had heard, anecdotally, that FirstGroup was maintaining mileages in places where a normal operator would not maintain mileage because of the mileage floor. The Councils speculated whether some of the (much increased) prices it was having to pay for tendered services was cross-subsidising maintaining that floor somewhere else in the region.

5.118 Falkirk Council said that zonal fares within the Falkirk operating area were based on the original fare zones that were locked down by the undertakings, meaning that the cost of journeys to settlements just outside the fare zones

could be high. The boundaries had no relation to where the geographic pool of that settlement was located.

5.119 Falkirk Council said that it did not think that fares would increase markedly if the undertakings were removed because if FirstGroup were to increase fares, for example in Falkirk, it would lose the business. There was not the elasticity in the market in Falkirk for further substantial fare rises.

5.120 SEStran said it could not see the attractiveness of FirstGroup, as a large operator, investing in the east of Scotland because, all the restrictions being there, it would be nervous about spending money where the outlook of obtaining a return on the money was pretty low. SEStran said that there were clearly some rural routes with not many people on them which were being maintained by FirstGroup because of the mileage floor.

5.121 On the subsidised parts of those services which Falkirk Council was paying high prices to maintain, it would be advantageous if FirstGroup gave up the little bit of commercial service during the day, because Falkirk Council could do much better with one contract to cover the whole service. If the undertakings remained, it was difficult to see what would happen. If the undertakings were removed, there would likely be some withdrawal of services. But, if Falkirk Council were then left with a more stable network going forward, that might be something Falkirk Council could deal with. It might be easier tendering an all-day service (and be of interest to more competitors) than tendering a service for only part of the day. Falkirk Council said that it could, overall, potentially save money doing this.

5.122 SEStran said it was concerned whether, if FirstGroup withdrew in scale, there would be sufficient alternative operators available to come in and take over the routes. It suggested a possible phasing out of the mileage floor over a period.

- *SPT*

5.123 SPT said the undertakings put FirstGroup in the First West business in a position where it could only react to falling patronage by controlling costs, which usually meant reducing services as it did not have the same opportunity as other operators to make good some of the difference through the fare box.

5.124 The undertakings had led to a distortion in fares between different ticket types as some tickets were caught by the price cap while others were not.

5.125 SPT said that if the fares were too low as a consequence of the undertakings, then it would not be worthwhile for another company to enter the market, because they were not going to get the required rate of return. The

undertakings were introduced to make sure that fares did not skyrocket, but it was possible that they were having the reverse effect.

5.126 SPT said it was sceptical that the removal of the undertakings would have any significant impact on the level of competition.

5.127 SPT said that, on balance, it would probably be better to release FirstGroup from the undertakings, because the consequences for the travelling public of not lifting the undertakings could ultimately be worse.

- *Traffic Commissioner for Scotland*

5.128 The Traffic Commissioner told us that FirstGroup had told her that the undertakings had limited its ability to respond to changes in the marketplace in the First East area. She said that lifting the undertakings may potentially help agility in certain parts of the First East area.

5.129 The Traffic Commissioner also told us there was far less predatory behaviour today than had been the case in 2003. Today, such behaviour was only evident from a minority of smaller operators.

- *Stirling Council and Clackmannanshire Council*

5.130 Both Stirling and Clackmannanshire Councils told us that as the commercial services of operators other than FirstGroup had remained stable and FirstGroup's share of supported services had been declining even though fewer operators now submitted bids, they doubted that the undertakings were having much effect one way or the other. They did not believe that the undertakings had had any great effect in the Stirling Council or Clackmannanshire Council areas.

- *East Lothian Council*

5.131 East Lothian Council said that there did not appear to be any distortion other than on one route which it felt in previous tenders had been overpriced by FirstGroup. East Lothian were concerned that if undertakings were removed there would be a further reduction in the service provision as had been seen in 2012. East Lothian were aware of some complaints regarding the FirstGroup operation and felt this was partially due to lack of investment within the fleet. Current pricing structures prevented full competition through overlapping areas.

- *Transport Focus*

5.132 Transport Focus said that, overall, the undertakings were having a negative effect on competition, and competition was beneficial to consumers.

- *Age Scotland*

5.133 Age Scotland said that if FirstGroup were to cut back on services (as a consequence of the undertakings being lifted) then that could have a negative effect, especially for small communities that did not have access to amenities. Overall, however, Age Scotland did not express a view on whether or not the undertakings should be varied or lifted.

Our assessment of the distortive effects of the undertakings

5.134 In our guidance⁸⁵ we note that in merger inquiries, the CMA will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies because:

- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
- (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
- (c) structural remedies do not normally require monitoring and enforcement once implemented.

5.135 We recognise that in certain circumstances, and particularly over protracted periods of time, behavioural remedies can have adverse effects. If the undertakings have resulted in substantial adverse effects, this could suggest a change of circumstance sufficient to justify their release. Similarly, if the benefits of the undertakings had diminished this might mean that the balance of costs and benefits associated with the undertakings had shifted sufficiently to justify release.

5.136 Based on the views of FirstGroup and third parties we conclude the following:

- (a) The fare cap has resulted in a fare structure for FirstGroup that in many cases would not have been based on commercial considerations. This is

⁸⁵ [Merger Remedies Guidance \(CC8\)](#), paragraph 2.14.

likely to have resulted in distortions in FirstGroup's fare basket given current market conditions.

- (b) The mileage floor is likely to be forcing FirstGroup to operate services that are not commercially viable given current market conditions. A number of parties told us that the mileage floor was forcing FirstGroup to maintain mileage that it would not otherwise maintain. Its inability to cut mileage acted as a constraint on competitors entering FirstGroup's markets (since the mileage floor was likely to prevent FirstGroup withdrawing if the entrant's foray into the market was successful). Based on this we consider that the mileage floor may be acting to prevent entry and/or expansion.
- (c) The fare cap and the mileage floor are also likely to have acted to constrain FirstGroup's ability to invest in the future of its bus services.
- (d) We note FirstGroup's view that the anti-predation undertakings are now obsolete as a result of the Competition Act 1998. We also note the CC's view, expressed in its 2008 review of the undertakings, that Chapter II of the Competition Act 1998 did not necessarily make the anti-predation undertakings obsolete, as (i) the OFT (now the CMA) was not required to investigate every complaint it received and would decide whether or not to investigate a complaint based on its administrative priorities; and (ii) were the OFT to open an investigation it would be unlikely to be able to reach a final decision within 18 months. We note that FirstGroup would be aware of the terms of Chapter II of the Competition Act 1998, which would provide some disincentive to engage in predatory behaviour, the Competition Act 1998 does not in itself necessarily remove the possibility that FirstGroup might engage in such behaviour, at least for a limited period of time. However, we also note that the structure of the market has changed since the undertakings were accepted. In particular, Lothian Buses, Stagecoach and McGill's are strong competitors to FirstGroup and would react to predatory actions by FirstGroup.

5.137 We also place strong weight on the fact that none of the public bodies or competitors that we spoke to argued that the undertakings were having a beneficial effect and should be retained. In our view this provides strong support for lifting the undertakings.

Impact of removing the undertakings

5.138 In this section we consider what might happen if the undertakings were to be removed. We first consider the constraint placed by the concessions scheme and then consider potential changes to FirstGroup's network and fares. We examine the First West and First East areas separately.

Concessionary fares

5.139 Scotland operates a single concessions scheme with reimbursement directly linked to the price of an operator's adult single fare. It was put to us by some third parties that fares may be constrained by Transport Scotland's requirement to approve a standard single fare for concessionary rebates. Transport Scotland told us that in the regulations, the reference fare has to be submitted and agreed by Transport Scotland. Transport Scotland told us that its rejection of a fare table does not stop fares being charged to paying passengers. It merely constrains what it is prepared to reimburse for the concessionary ones. On the basis of the Transport Scotland response we should not rely on the reimbursement scheme as a constraint if the undertakings were to be removed.

First West

5.140 FirstGroup would like the complete commercial freedom to 'fix' the commercial proposition in Glasgow in order to maximise its revenue, and specifically volume growth. This could be done through changes to pricing, different, simplified ticket structures or a different network approach. Without this freedom, it submits that it is unable to achieve the growth rates in its current plans. [REDACTED]

5.141 [REDACTED] FirstGroup plans to restructure its fares and remove distortions between them. This may involve price increases to certain customers. A FirstGroup 2015 internal document outlines the following: some increases in adult single fares to account for past increases that were less than relevant inflation; a rationalization of season ticket products; and an adjustment of child single ticket prices to make the discount on a child's fare [REDACTED]% of the adult fare in the absence of the price cap. However, FirstGroup is mindful that markets are very sensitive to fare price at the moment and it is therefore seeking to build margin growth from reducing costs.

First East

5.142 FirstGroup and third parties raised the issue of network withdrawal in First East. FirstGroup told us that it did not have a final plan in mind for what it would do in the First East area if the undertakings were removed. Nevertheless, it did not see wholesale fare increases; in fact, there might be price decreases. There would inevitably be some route withdrawals but, these would be on routes with very few passengers. Overall, FirstGroup told us that it would seek to redeploy resources which could lead to an increase in frequencies and/or stronger networks. [REDACTED]

5.143 [✂]

5.144 Lothian Buses told us that it expected to see the exit from a number of routes in and around Edinburgh. It noted that the economies of scale were such that single routes were not going to support depot overheads. Lothian Buses expected that in a number of cases FirstGroup would exit the market entirely.

5.145 In response to the concerns raised by some parties that a removal of the mileage floor might result in a wholesale withdrawal by FirstGroup from some parts of its region of operation, we note that some competitors, such as McGill's and Lothian Buses, expressed a readiness to evaluate positively any opportunities for entry which might arise as a result of a partial withdrawal by FirstGroup.

5.146 In terms of smaller operators: Lothian Buses told us that a number of independents operated in East Lothian and the Borders which would look to backfill or take on some of the more significant routes if FirstGroup exited.

Our assessment

5.147 Given the above, we conclude that FirstGroup is likely to restructure its fares in some areas. This may involve price increases to certain customers. This is not unexpected given that the price controls have been in effect over a long period of time and are unlikely to reflect fully changes in costs and regulation. Some price increases may be offset by reductions elsewhere but nonetheless overall prices may increase.

5.148 FirstGroup is also likely to restructure some routes. The mileage cap is likely to have required FirstGroup to operate routes that it would otherwise have withdrawn from.

6. Final decision

6.1 We have examined each of the MMC's concerns about the merger that initially led to the undertakings being imposed.

6.2 The MMC found that pre-merger, head-to-head competition between SBH and FirstBus was very limited. Each had a strong position in their respective area but the increment to shares was very small. Thus the major concern of the MMC related to the loss of potential competition between SBH and FirstBus in the 1997 overlap area as a result of the merger.

6.3 The MMC was also concerned that the increased size of FirstBus acted to constrain the ability of competitors to act as potential competitors to FirstBus and discouraged competitor entry. For the reasons set out in paragraphs 5.13

to 5.25 above, we conclude that this concern is no longer material. There has been some actual entry in the areas the undertakings covered. Moreover, the three major operators in central and south east Scotland (Stagecoach, McGill's and Lothian Buses) no longer believe that the size of FirstGroup will deter them from further expansion should a commercial opportunity arise. We conclude that large competitors are able now to enter areas where FirstGroup is present and can therefore act as potential competitors to FirstGroup.

- 6.4 The MMC did not believe that the constraint placed on the merged entity by other operators or alternative modes of transport was strong enough to counter the loss of potential competition between the parties nor therefore constrain the merged entity. We have examined changes in circumstances over time to test whether the level of constraint that FirstGroup now faces is at least as great as the level of constraint that FirstBus placed on SBH (and vice versa):
- (a) We find that the purchase of the Cumbernauld depot by Stagecoach has enabled Stagecoach to free up depot capacity in Glasgow and become a stronger potential competitor in Glasgow and North Lanarkshire as a result (see paragraph 5.43). The change in ownership of the Cumbernauld depot also means that the overlap area between FirstBus and SBH as identified by the MMC has substantially reduced.
 - (b) We have found that competitor shares of registered mileage in the unitary authority areas have generally increased, while FirstGroup's share has reduced (see paragraph 5.49). This increase is significant when considered in the context of the pre-merger situation where FirstBus and SBH held very strong positions in their respective areas and faced little head-to-head competition.
 - (c) We find that the increase in route coverage operated by competitors and McGill's in particular, has enabled these competitors to act as stronger potential competitors than at the time of the merger (see paragraphs 5.55 to 5.56).
- 6.5 We also place strong weight on the fact that in hearings there was universal agreement from competitors and public transport authorities that the undertakings were either having little effect or having harmful effects.
- 6.6 Given the above, the constraint that Stagecoach, McGill's and Lothian Buses now places on FirstGroup is as great, if not greater, than the constraint that FirstBus placed on SBH pre-merger (and vice versa). Nevertheless, if the undertakings were removed, FirstGroup would be likely to restructure its fares and there may be price increases to certain customers. The price controls

have been in effect over a long period of time and are unlikely to reflect fully changes in costs and regulation. This is a key reason why the CMA has a preference in merger cases for structural remedies over behavioural remedies.⁸⁶ Some price increases may be offset by reductions elsewhere but overall prices may increase.

- 6.7 FirstGroup would also be likely to restructure some routes, because the mileage cap would be likely to have caused FirstGroup to operate routes that it would otherwise have withdrawn from.
- 6.8 In our view these effects may be mitigated to some extent because competitors such as Stagecoach and McGill's are stronger potential competitors than at the time of the merger and may react to price increases and operate additional routes. A number of third parties and FirstGroup have also told us that in their opinion the market would not bear significant price increases.
- 6.9 However we note that holding prices down and maintaining unprofitable routes appears to have had negative effects on competition and ultimately customers. The two main effects are the on investment by FirstGroup in its bus fleet, where the quality of the bus fleet is likely to be lower than it would have been if FirstGroup had been able to raise fares to recover its investment. The other main effect is that the prices cap and mileage floor have reduced the chance of other companies being able to compete with FirstGroup.
- 6.10 We recognise that the area covered by the undertakings is far from perfectly competitive. However we also note that it was unlikely to have been before the merger, since SBH and FirstBus both had very strong positions in their own areas. The purpose of the undertakings was not to achieve perfect competition; rather the undertakings sought to restore outcomes to pre-merger levels.
- 6.11 For the reasons set out in paragraphs 6.1 to 6.10 above we conclude that the undertakings should be released by reason of a change in circumstance and that this should not be done in a phased manner.
- 6.12 In parallel with this decision we have published a notice of release of the undertakings.

⁸⁶ [CC8: Merger Remedies: Competition Guidelines](#) (adopted by the CMA) paragraph 4.1 states: the [CMA] will generally only use behavioural remedies as the primary source of remedial action in a merger inquiry where structural remedies are not feasible, or where the SLC is expected to have a short duration, or behavioural measures will preserve substantial relevant customer benefits that would be largely removed by structural measures. Also see paragraph 5.134.

Appendix 1: Share of supply data

1. In this appendix we present share of supply data for the merging parties and third parties. Table 1 and Table 2 shows the share of registered mileage held by FirstGroup and other operators in the First West area in 1996, 2007 and 2015 whilst Table 3 and Table 4 report figures in the First East area.

Table 1: First West area – Changes in share of supply by unitary authority – FirstGroup

Unitary Authority area	SBH + FirstBus	FirstGroup			Change in mileage share		
		1996	2005	2007	2015	1996–2005	1996–2007
City of Glasgow	89+1	77	78	76	-13	-12	-14
North Lanarkshire	61+4	48	48	58	-17	-17	-7
South Lanarkshire	65+0	67	61	90	2	-4	25
East Dunbartonshire	87+8	75	72	86	-20	-23	-9
West Dunbartonshire	80+2	61	60	81	-21	-22	-1
East Renfrewshire	48+0	42	35	52	-6	-13	4

Source: Data for 2005 and 2007 sourced from CC notice of provisional decision to retain undertakings (2008). Data for 2015 sourced from FirstGroup based on Traveline data.

Note: Percentages may not add up to 100 due to rounding.

Table 2: First West area – Changes in share of supply by unitary authority – Competitors

Unitary Authority area	Stagecoach			Arriva/McGill			Others		
	1996	2007	2015	1996	2007	2015	1996	2007	2015
City of Glasgow	1	2	8	3	3	8	7	17	8
North Lanarkshire	2	6	6	0	0	1	33	37	36
South Lanarkshire	2	0	1	0	0	1	33	26	9
East Dunbartonshire	1	0	0	0	0	2	5	10	12
West Dunbartonshire	0	0	0	0	0	2	18	36	17
East Renfrewshire	14	22	6	6	0	25	32	43	17

Source: Data for 2005 and 2007 sourced from CC notice of provisional decision to retain undertakings (2008). Data for 2015 sourced from FirstGroup based on Traveline data

Notes:

- Percentages may not add up to 100 due to rounding
- For 2015, other operators were grouped in the FirstGroup response so it was not possible identify individual operators other than First, Lothian, Stagecoach and McGill's.

Table 3: First East area – Changes in share of supply by unitary authority – FirstGroup

Unitary Authority area	SBH + FirstBus	FirstGroup			Change in mileage share		
		1996	2005	2007	2015	1996–2005	1996–2007
City of Edinburgh	0+25	N/A	12	2	N/A	12	2
Midlothian	0+64	44	44	15	-20	-20	-49
East Lothian	0+45	72	72	9	27	27	-36
West Lothian	0+91	78	78	70	-13	-13	-21
Scottish Borders	0+88	60	60	91	-28	-28	3
Stirling	1+91	70	70	81	-23	-23	-12
Falkirk	4+86	90	88	92	0	-2	2
Clackmannanshire	0+71	70	67	83	-1	-4	12

Source: Data for 2005 and 2007 sourced from CC notice of provisional decision to retain undertakings (2008). Data for 2015 sourced from FirstGroup based on Traveline data.

Notes:

- Percentages may not add up to 100 due to rounding.
- For 2015, other operators were grouped in the FirstGroup response so it was not possible identify individual operators other than First, Lothian, Stagecoach and McGill's.

Table 4: First East area – Changes in share of supply by unitary authority – Competitors

	<i>Lothian</i>			<i>Stagecoach</i>			<i>Other operators</i>		
	<i>1996</i>	<i>2007</i>	<i>2015</i>	<i>1996</i>	<i>2007</i>	<i>2015</i>	<i>1996</i>	<i>2007</i>	<i>2015</i>
City of Edinburgh	67	87	89	2	3	5	6	0	4
Midlothian	25	55	84	0	3	1	11	1	0
East Lothian	15	27	89	0	0	0	41	1	3
West Lothian	0	0	0	0	0	0	9	22	30
Scottish Borders	0	0	0	0	0	1	12	40	8
Stirling	0	0	0	1	2	3	6	27	16
Falkirk	0	0	0	0	0	3	9	10	5
Clackmannanshire	0	0	0	4	19	9	25	14	8

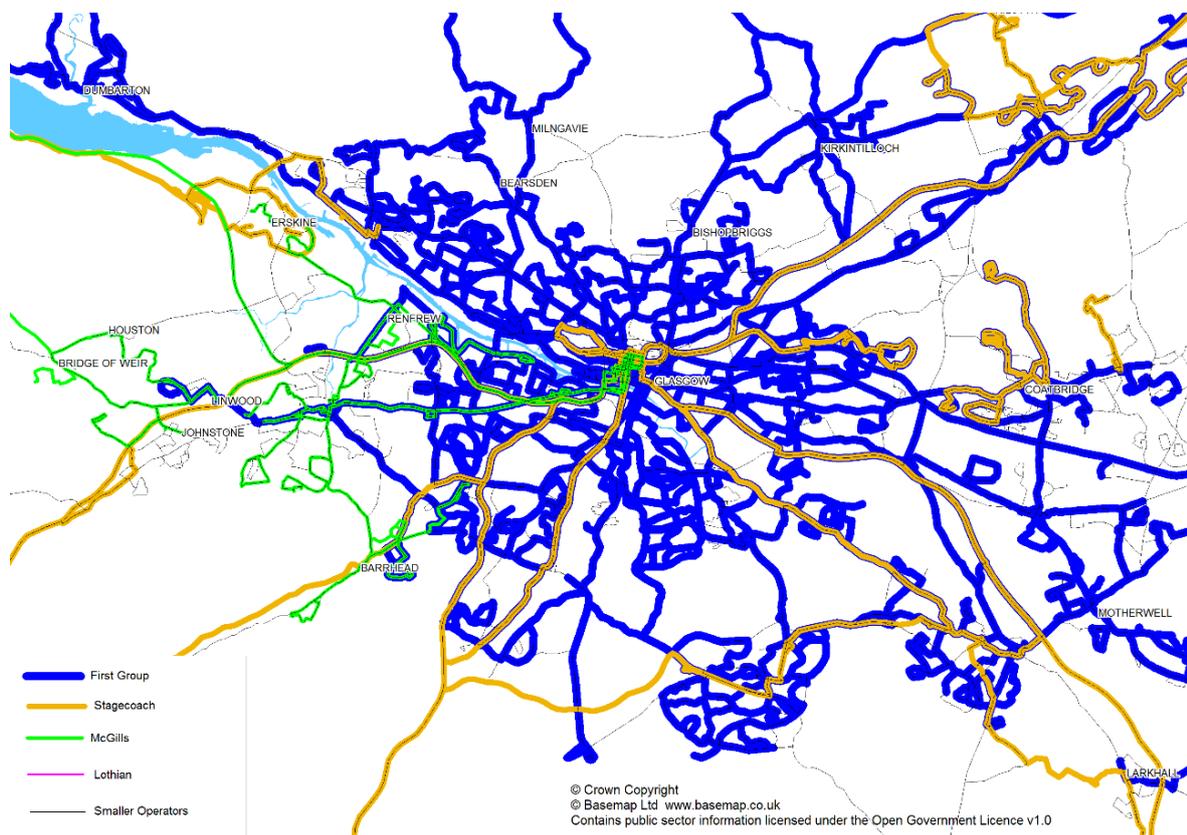
Source: Data for 2005 and 2007 sourced from CC notice of provisional decision to retain undertakings (2008). Data for 2015 sourced from FirstGroup based on Traveline data.

Note: Percentages may not add up to 100 due to rounding.

Appendix 2: Network Maps of operators

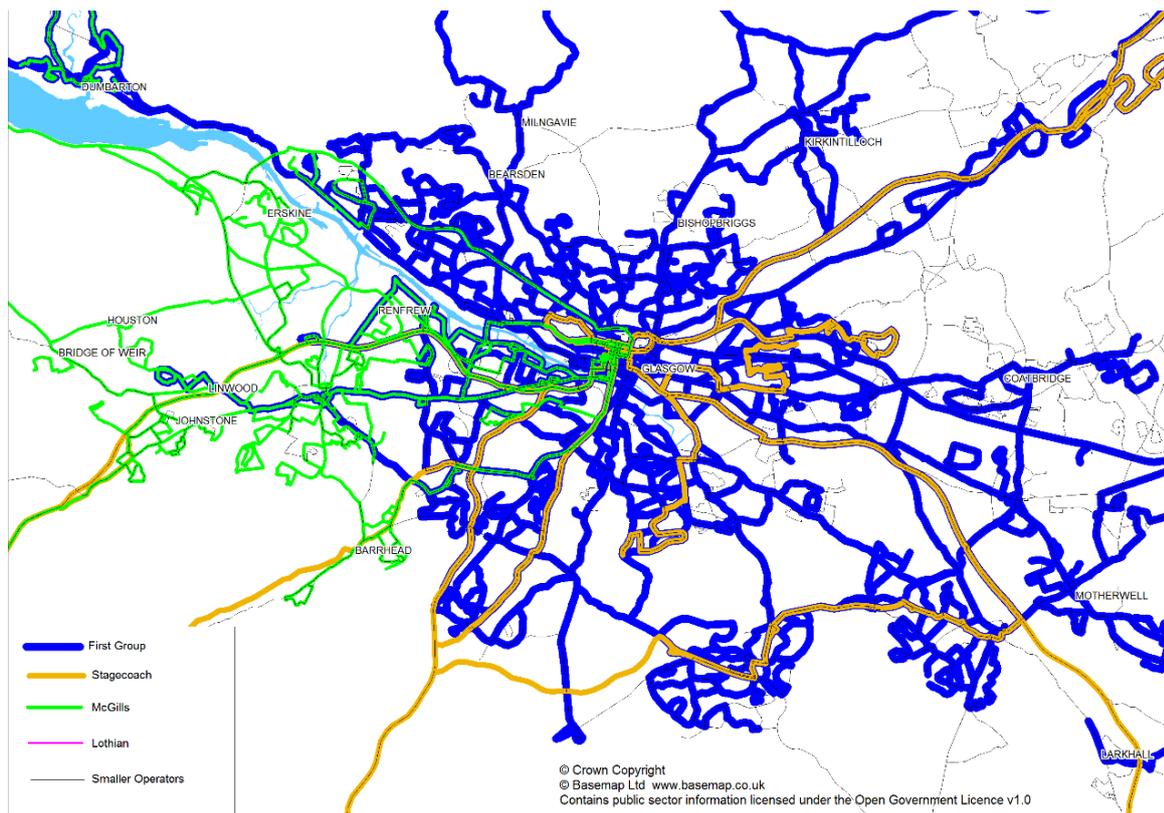
1. In this appendix we provide maps of the FirstGroup, Stagecoach's, McGill's and small operator's bus networks in 2011, 2013 and 2015.
2. These maps are based on Traveline data and include commercial and tendered services.

Figure 9: First West – 2011 – All operators



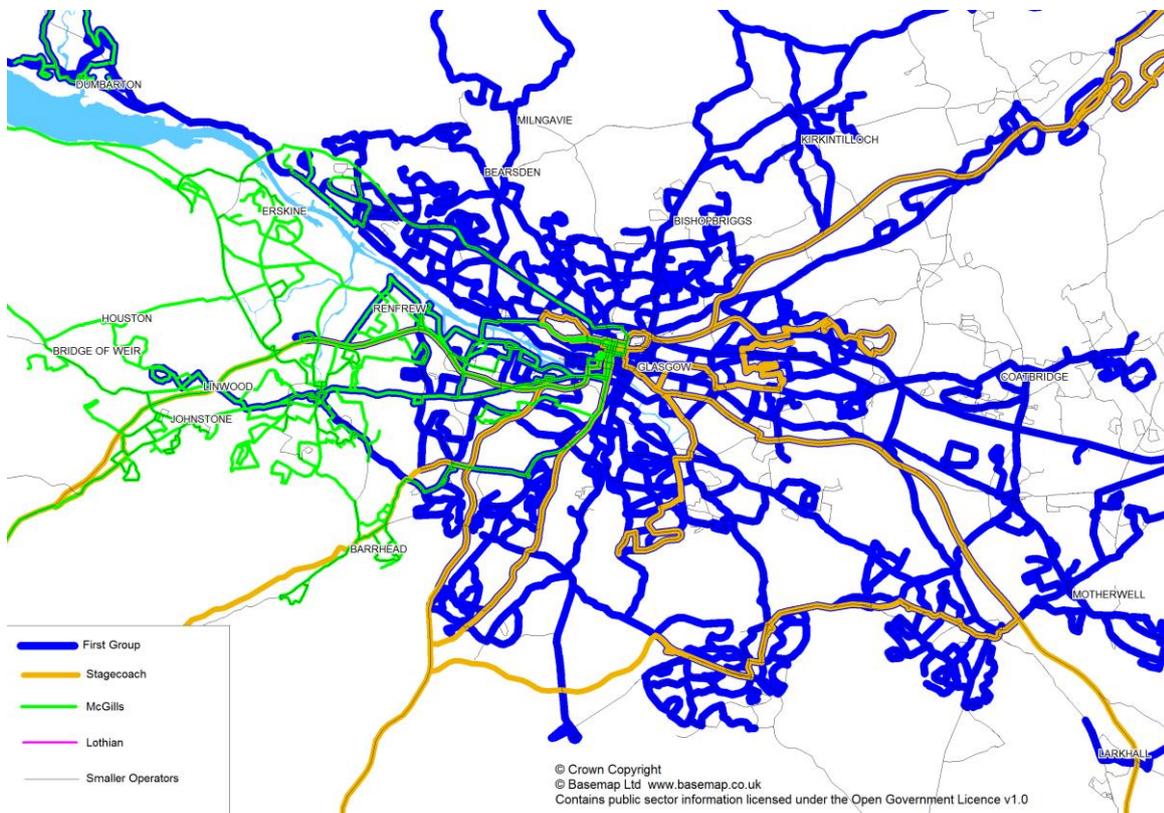
Source: Basemap.

Figure 10: First West – 2013 – All operators



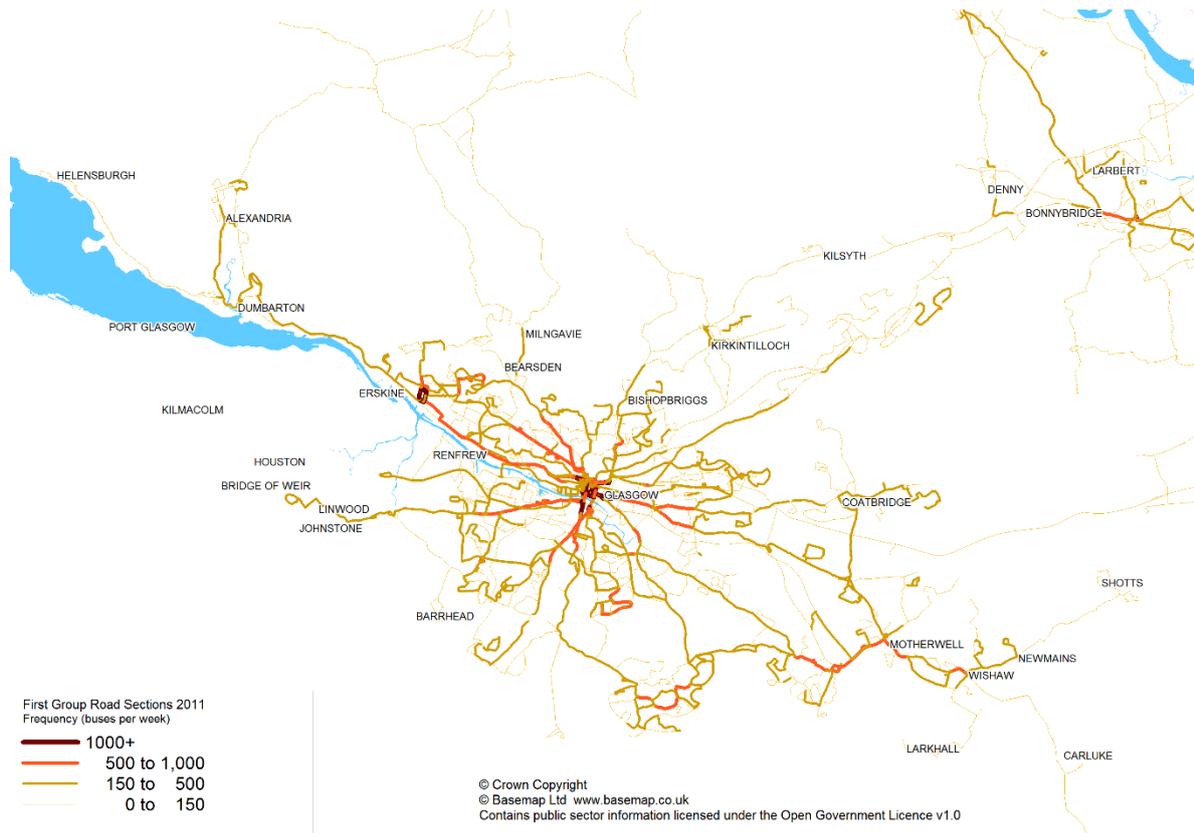
Source: Basemap.

Figure 11: First West – 2015 – All operators



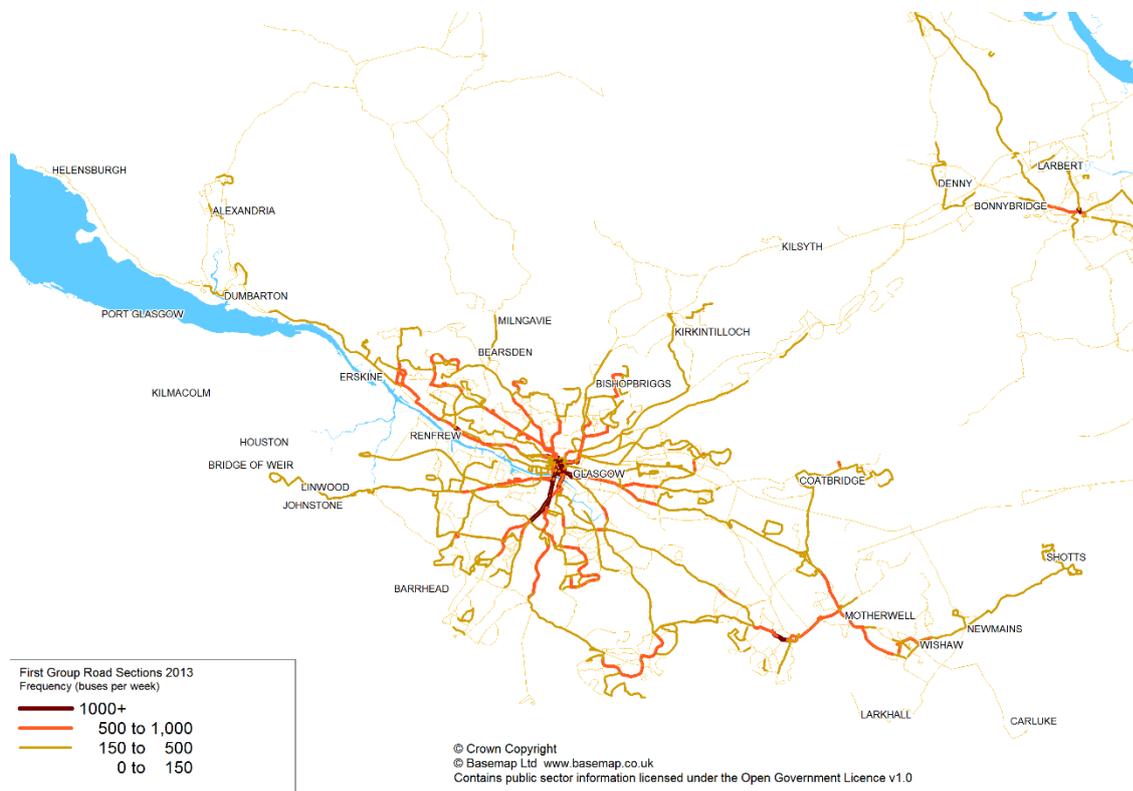
Source: Basemap.

Figure 12: First West – FirstGroup 2011



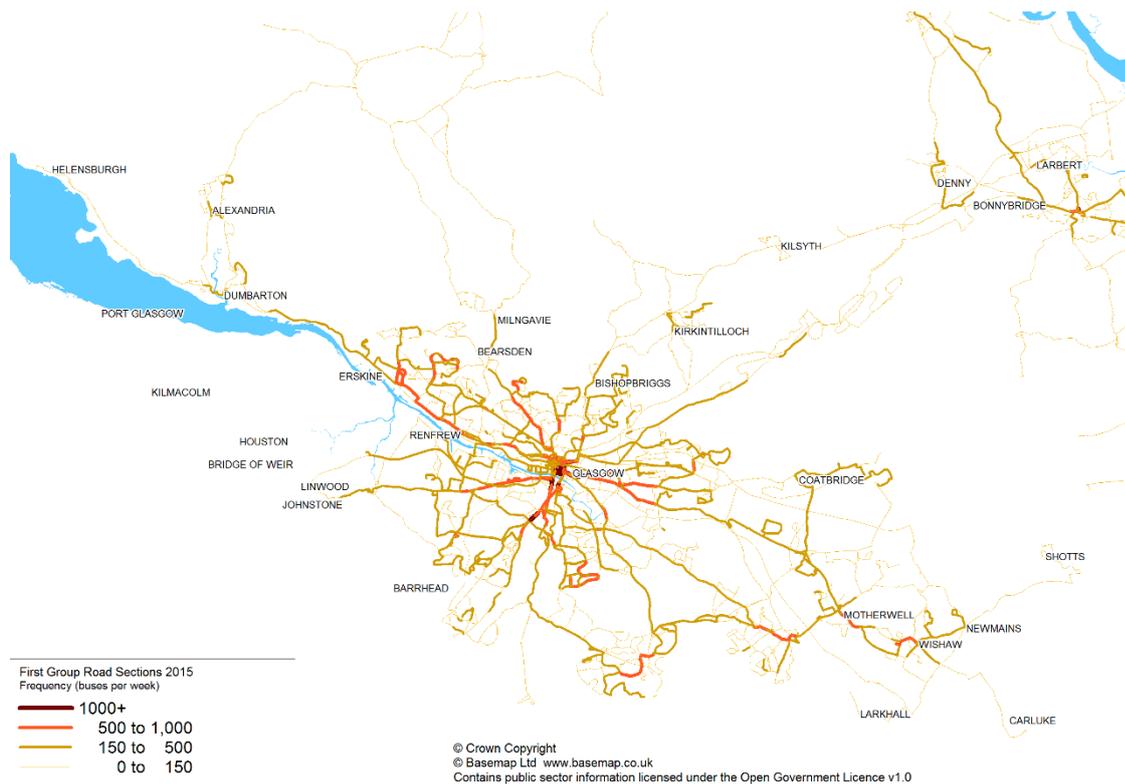
Source: Basemap.

Figure 13: First West – FirstGroup 2013



Source: Basemap.

Figure 14: First West – FirstGroup 2015



Source: Basemap.

Figure 15: First West – Stagecoach 2011



Source: Basemap.

Figure 16: First West – Stagecoach 2013



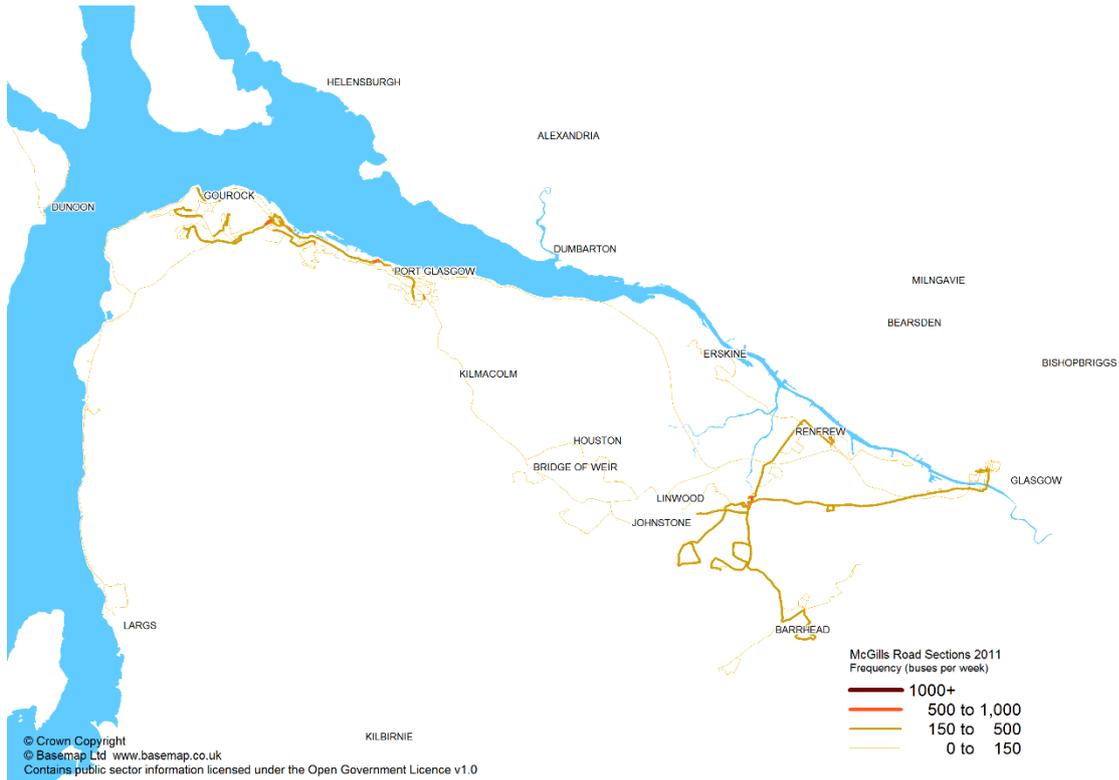
Source: Basemap.

Figure 17: First West – Stagecoach 2015



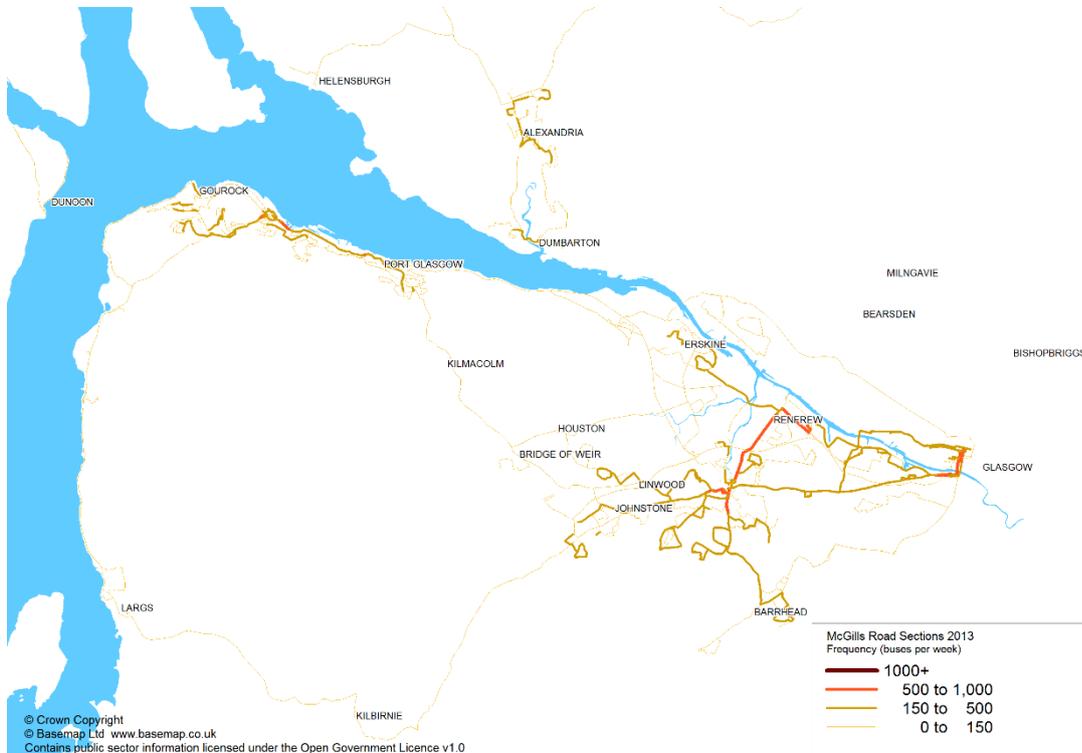
Source: Basemap.

Figure 18: First West – McGill's 2011



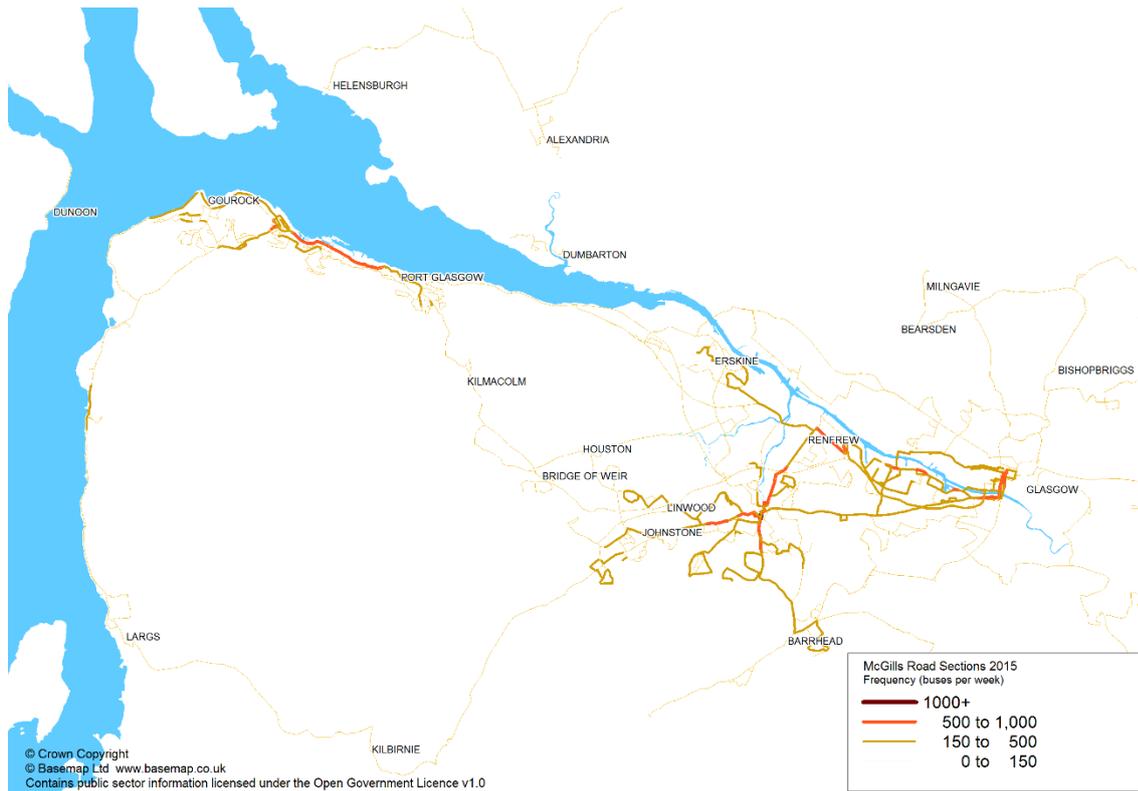
Source: Basemap.

Figure 19: First West – McGill's 2013



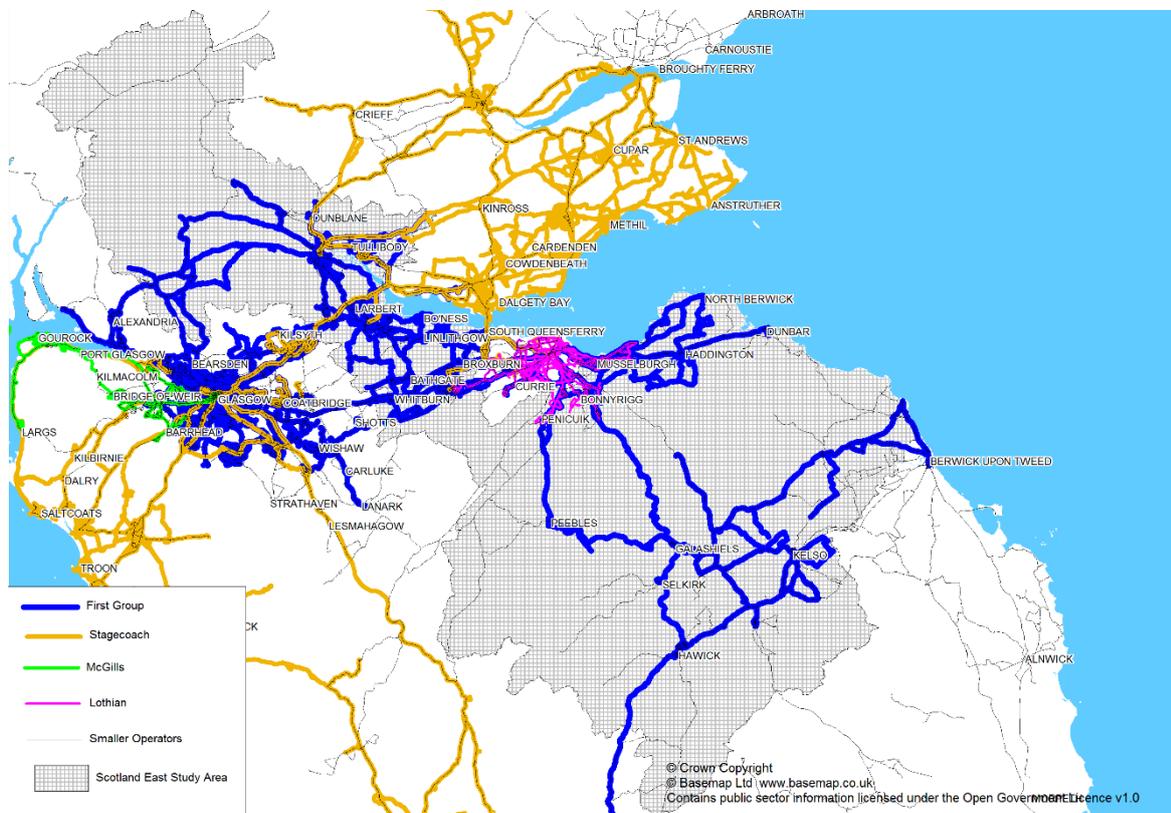
Source: Basemap.

Figure 20: First West – McGill's 2015



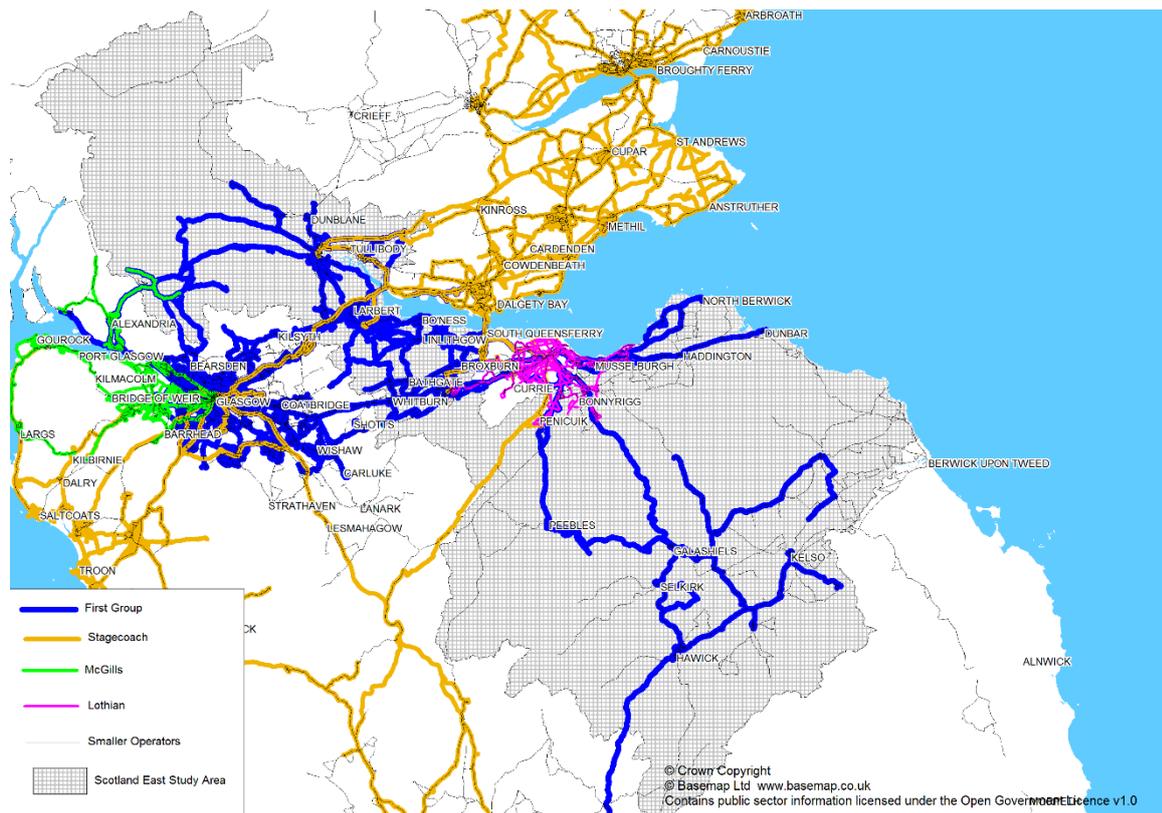
Source: Basemap.

Figure 21: First East – 2011 – All operators



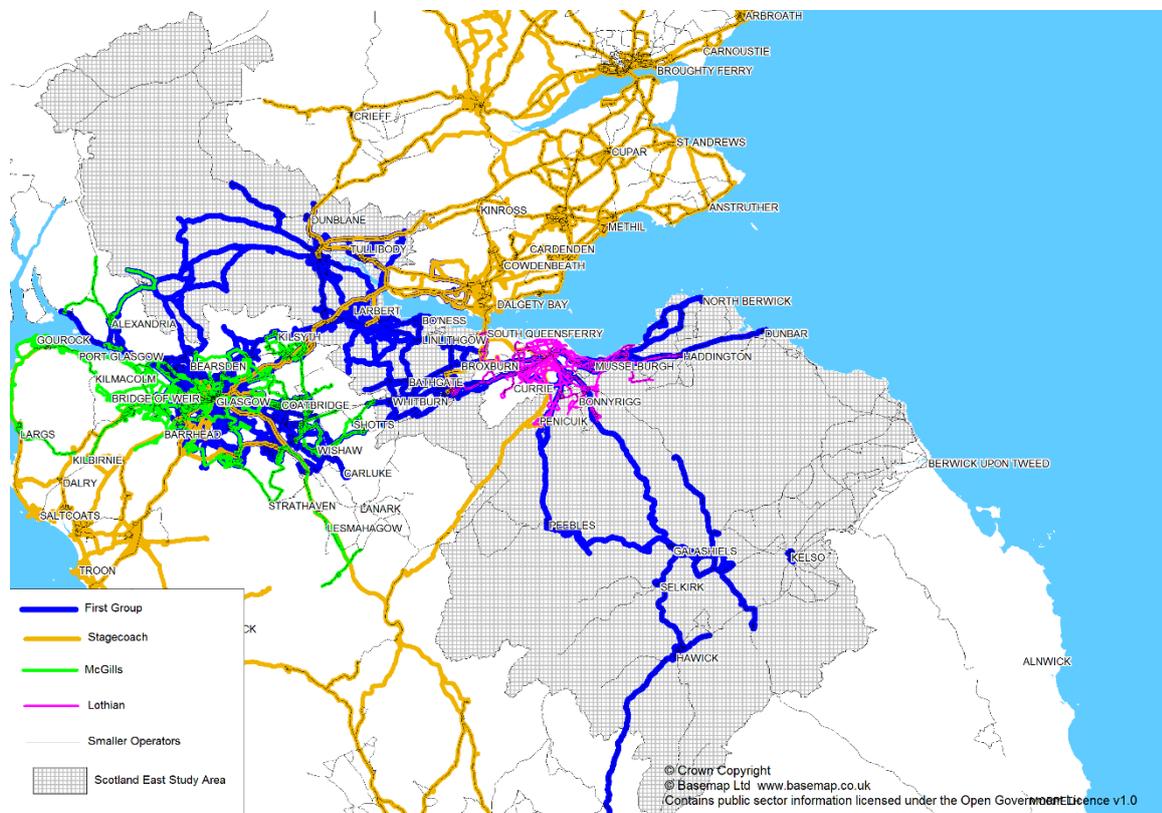
Source: Basemap.

Figure 22: First East – 2013 – All operators



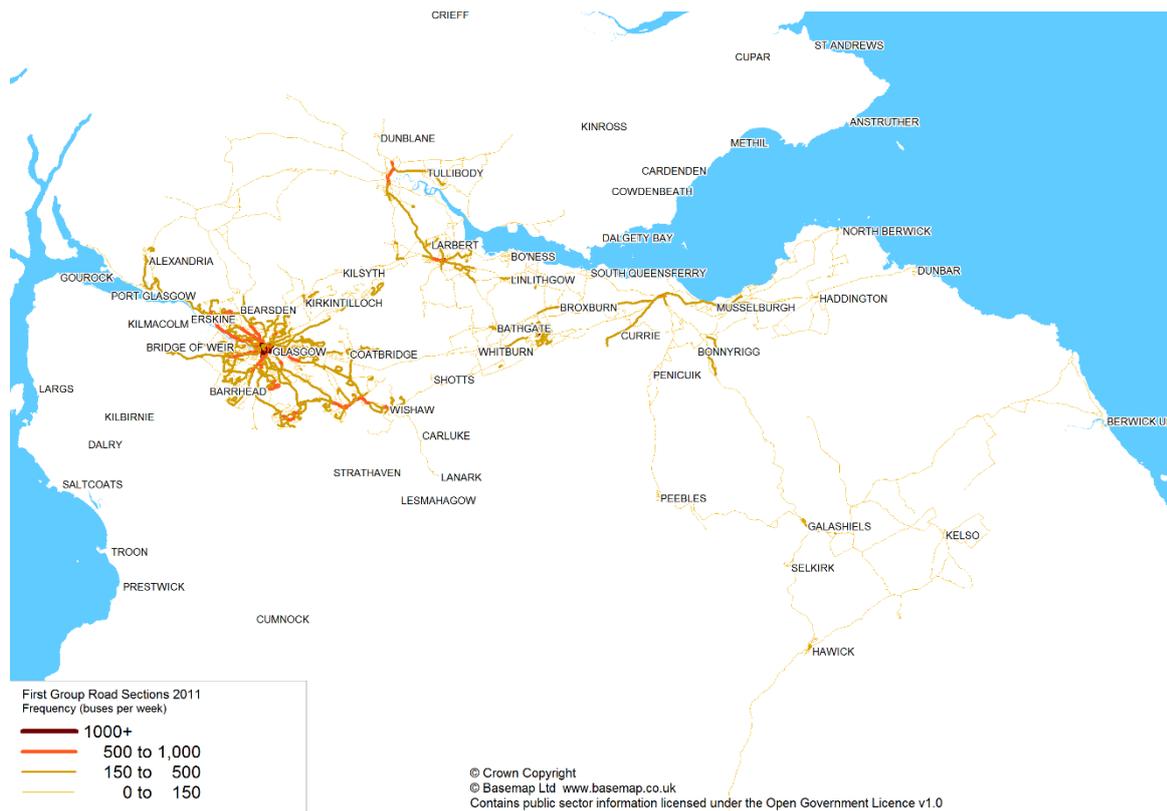
Source: Basemap.

Figure 23: First East – 2013 – All operators



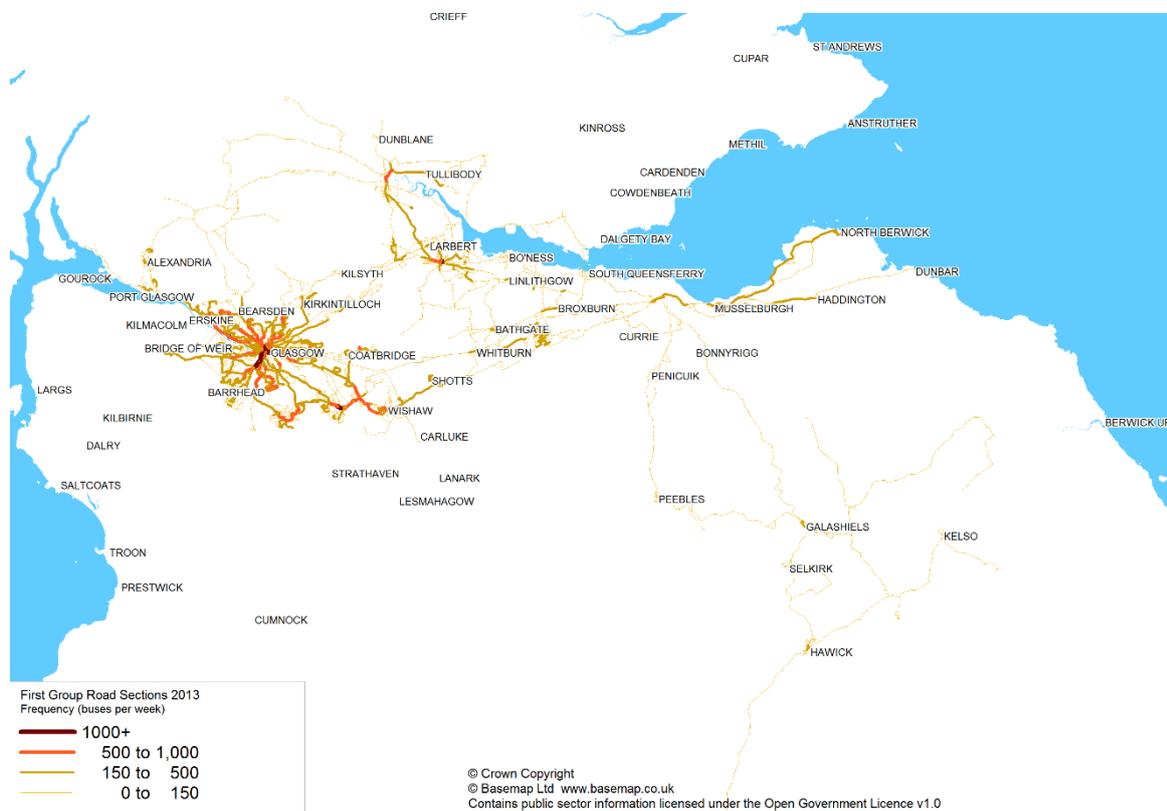
Source: Basemap.

Figure 24: First East – FirstGroup 2011



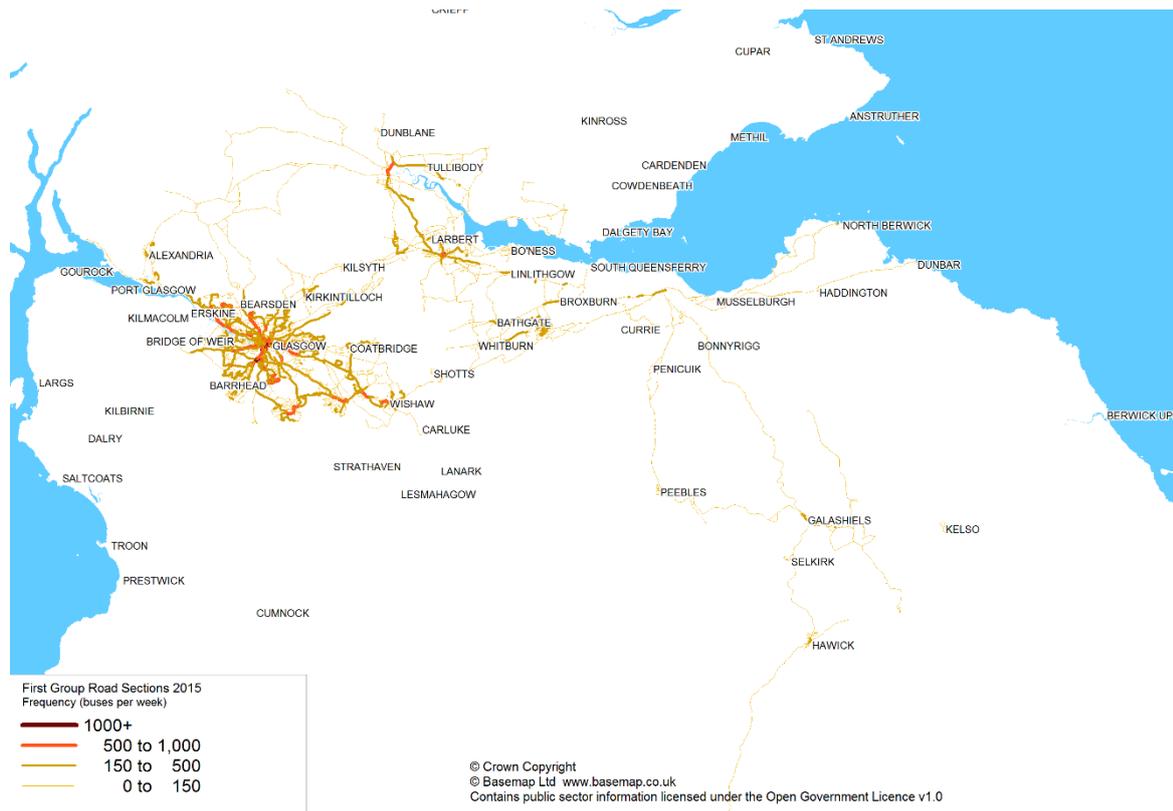
Source: Basemap.

Figure 25: First East – FirstGroup 2013



Source: Basemap.

Figure 26: First East – FirstGroup 2015



Source: Basemap.

Appendix 3: Drive time analysis

1. In this appendix we set out the CMA methodology on the drive time analysis and present the 1997 isochrone map for peak drive times.

CMA methodology

2. We have conducted isochrone analysis around the depots highlighted in by the 1997 MMC Report based on off peak and peak drive times. We have applied a 30 minute drive time based on the evidence however note that drive times are not a precise measure as distances vary by specific location. We have used MAPINFO Professional Version 12.0 and to calculate the drive times we used a package called Routefinder.

Third party views

3. In the Bus Market Investigation Report, the CC found that three of the five Large Operators (as defined in the Bus Market Investigation Report) considered it possible to operate in an area 30 to 35 minutes' drive-time from a depot.⁸⁷
4. FirstGroup told us⁸⁸ that the decision to end the payment of BSOG for dead mileage has reduced the range at which services can be profitably operated from a given depot.⁸⁹ It argued that the relevant drive time is closer to 20 minutes. Stagecoach also said in the McGill inquiry⁹⁰ that they expected the changes to BSOG to have some effect on operating distances but that they would need time to assess the effects more accurately.
5. In the hearings, Lothian Buses said drive times depended on the route in question and could not provide an estimate. Nonetheless it said drive times had not altered since the 2011 Market Inquiry. McGill's did not think depots constrained behaviour. McGill's and Stagecoach told us that setting up a depot was easy and they put the depot together over the course of two days. Stagecoach said that 30 minutes to route seemed reasonable.

⁸⁷ FirstGroup, Stagecoach, National Express and Transdev said that a useful rule of thumb for how far it was possible to operate from a depot or outstation was around 30 to 35 minutes' drive-time. Arriva's estimate was somewhat lower at 20 to 30 minutes' drive-time from a depot. Go-Ahead in Brighton and Hove submitted that routes needed to be located within 20 miles of a depot. Go South Coast and Transdev Blazefield told us that they would expect a depot to be located within 5 miles of the main route locations. Source: Bus Market Investigation Report 7.89.

⁸⁸ FirstGroup application dated 15 August 2015 and 14 December 2015.

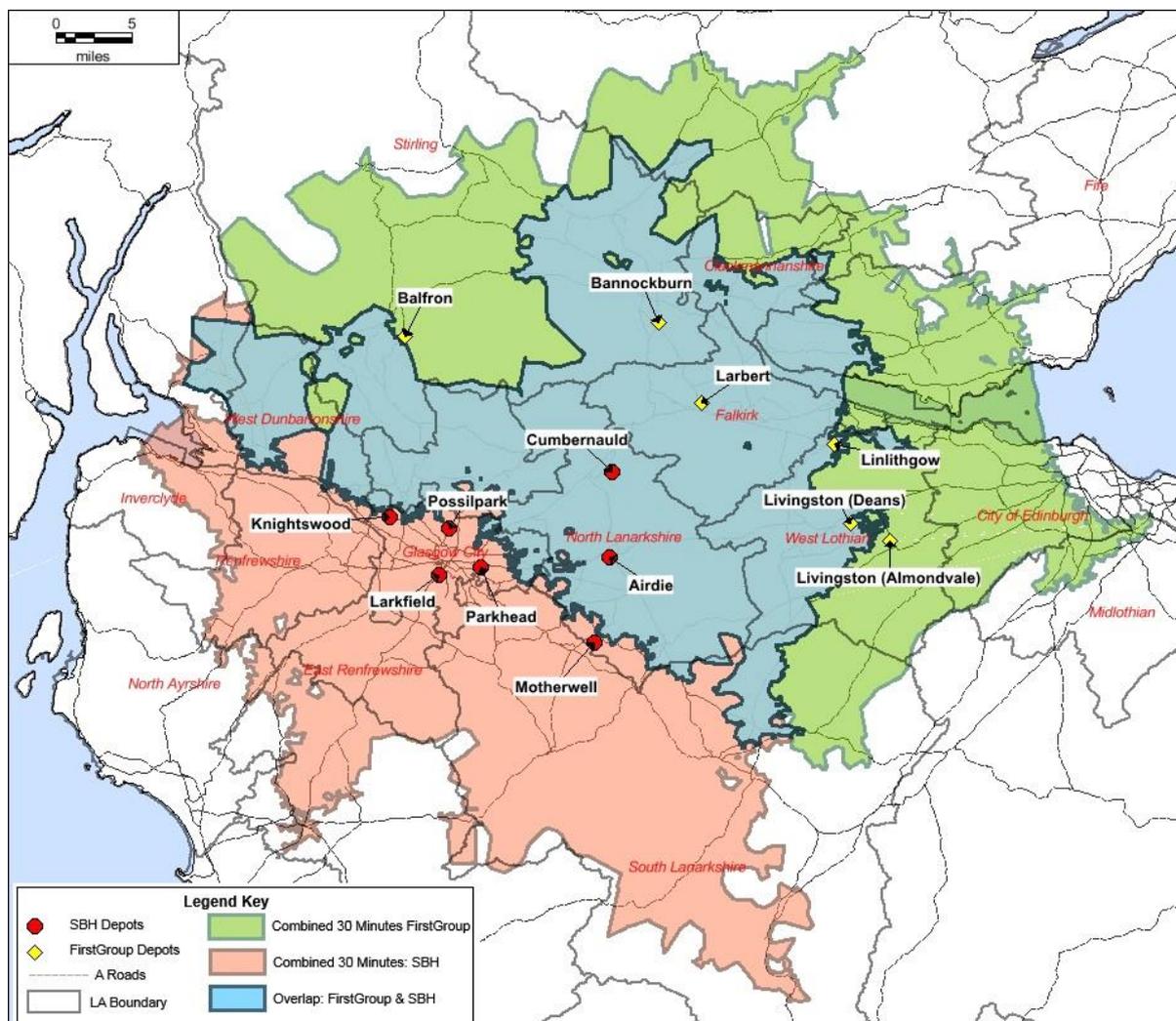
⁸⁹ The basis for reimbursement under BSOG changed in April 2012, from a rebate paid in proportion to the number of litres of fuel consumed by an operator operating eligible services, to the number of (eligible) kilometres an operator runs, excluding dead mileage.

⁹⁰ McGill's/ASW merger inquiry, appendix G.

Peak drive times

6. Figure 27 shows a 30 minute drive time based on peak AM drive times. This is similar to off peak drive times presented in Figure 7 contained in the main report.

Figure 27: Drive time based on SBH and FirstBus 1997 depots – Peak drive times



Source: CMA analysis.

Glossary

Arriva	Arriva plc, part of Deutsche Bahn AG. It is the third largest regional bus operator in the UK.
ASW	Arriva Scotland West Limited, an operating company of Arriva .
Basemap	Basemap Ltd. A consultancy which undertook preparation of data for the CC on local bus routes by producing a geocoded database of route lines in the Traveline database .
BSOG	Bus Service Operators' Grant. In England and Wales, a grant paid to reimburse bus operators for some of the excise duty paid on the fuel consumed in operating eligible local bus services . In Scotland, the grant is based on eligible kilometres operated and is no longer linked to fuel duties.
CC	Competition Commission.
CMA	Competition and Markets Authority.
Commercial services	Bus services other than supported services .
Concessionary travel	Free or discounted (ie concessionary) travel for eligible groups, for example people of pensionable age or with disabilities.
DDA	The Disability Discrimination Act 2005. Buses which are DDA-compliant are those which meet the requirements of the DDA and its secondary legislation. This includes the PSVAR.
Dead mileage	The distance a bus runs without earning revenue between a depot and a pick-up point for passengers.
Depot	A facility where buses can be stored when not in service, and which may include maintenance and refuelling facilities.
FirstGroup	FirstGroup plc, a very large provider of public transport services in the UK, the Republic of Ireland, Continental Europe and North America.

First Glasgow	In the Glasgow and Renfrewshire areas, FirstGroup operates through its subsidiary First Glasgow (No. 1) Limited (First Glasgow). It has an extensive network in Glasgow with some services also in the Renfrewshire area.
Flow	Any journey or connection between two specified points. Flows may correspond to journeys on a route (eg between bus stops).
H-CPT Index	The H-CPT index was created following the CC's review in 2008. It is calculated from the components of a cost index published by the Confederation of Passenger Transport UK (the CPT index). The H-CPT is calculated using the cost increases from the index used in Great Britain for all cost categories except fuel costs, and using the fuel increases from the CPT (Scotland) index.
Head-to-head competition	Occurs where competing operators offer rival services to consumers that perform the same function, ie they are competing for the same passengers by offering equivalent journeys.
Inter-urban services	Services that run between urban centres.
Intra-urban services	Services that run within a single urban centre.
Local bus service	A bus service using PSVs to carry passengers at separate fares over short distances. The route can be any length provided that passengers can get off within 15 miles of where they were picked up.
LTA	Local transport authority. LTAs implement transport policies within their areas and can tender supported services . The statutory definition of LTAs includes the SPT .
McGill's Buses	A privately-owned bus operator that provides local bus services in Inverclyde, Renfrewshire and East Renfrewshire, with some services running into Glasgow.
MMC	Monopolies and Mergers Commission.
Multi-journey tickets	These tickets allow travel for more journeys than one single trip. They might allow travel on only one route (eg return tickets) or on more than one route.

Networks	Collections of interconnected routes.
Network ticket	Ticket valid for more than one bus route or journey, including season tickets .
OFT	Office of Fair Trading.
ONS	Office for National Statistics.
Partnerships	There has been an increasing focus on the development of partnerships (see SQP) between LTAs and operators where each contributes to the improvement of local bus services , for example by improving punctuality or the quality of service. These can be voluntary or statutory arrangements.
Potential competition	A constraint arising from supply-side substitution where operators in or near an area can easily expand or redeploy services if a profitable opportunity arises, and this threat serves to limit the actions of incumbent operators in anticipation of the risk of such entry or expansion.
PSV	Public service vehicle.
PTA	Public Transport Authority.
PVR	Peak vehicle requirement: the maximum number of buses required to maintain planned services on a bus route or network.
Quality contract (schemes)	A form of franchise in which LTAs award contracts to operators (following competitive tendering) to operate local bus services in a defined area. Other operators are precluded from operating in the defined area. No quality contracts (schemes) yet exist.
Quality Partnership	There are two broad types, statutory and voluntary. See Partnerships , SQP and VPA.
ROCE	Return on capital employed.
RTP	Regional Transport Partnerships, responsible for planning and delivering planning and delivering transport solutions at a regional level (see SPT).
Season ticket	Any ticket that allows unlimited travel for a certain time period and for a certain set of routes. Where a season ticket

allows travel across more than one route, this is referred to as a **network ticket**.

SLC	Substantial lessening of competition.
SPT	Strathclyde Partnership for Transport, a regional transport partnership in Scotland which acts as an LTA requiring operators to meet certain standards in order to be able to use bus-related facilities.
SQP	Statutory Quality Bus Partnership, a statutory scheme made by an LTA requiring operators to meet certain standards in order to be able to use bus-related facilities.
SEStran	South East of Scotland Transport Partnership, a regional transport partnership in Scotland which acts as an LTA requiring operators to meet certain standards in order to be able to use bus-related facilities.
Stagecoach	Stagecoach Group plc, an operator of bus, coach and rail services in the UK and North America.
Supported services	Services operated under contract to LTAs , which seek tenders for doing so; these supported services are not operated commercially, ie some or all of the operator's revenue is provided by the LTA under the contract.
TCS	Traffic Commissioner for Scotland (see Traffic Commissioner).
Tendered services	Services operated under contract to LTAs , which seek tenders for doing so; these supported services are not operated commercially, ie some or all of the operator's revenue is provided by the LTA under the contract.
Traffic Commissioner	Appointed by the Secretary of State for Transport (and in Scotland there is consultation with Scottish Ministers), they have responsibility in their traffic area for the licensing of the operators of buses and coaches and the registration of local bus services .
Transport Focus	Transport Focus is an independent watchdog for British rail passengers and since February 2010 for England's bus, coach and tram passengers outside London. It is sponsored by the DfT.

- Transport Scotland** The national transport agency for Scotland. Its purpose is to help deliver the Scottish Government's policy for transport.
- Traveline database** The geocoded database of all local bus routes and their time-tables, constructed for the **CC** by **Basemap**. This combines information from three sources: the National Public Transport Data repository (a database of the operator, timetable and timing points of all **local bus services** in the UK); the National Public Transport Access Node database of all bus stops in the UK; and Ordnance Survey information on the UK road network.
- Unitary authority** A type of local authority that has a single tier and is responsible for all local government functions within its area.