

Anticipated acquisition of the Caledonian Sleeper Franchise by Serco Caledonian Sleepers Limited

ME/6486/14

The CMA's decision on reference under section 22(1) given on 30 September 2014. Full text of the decision published on 13 October 2014.

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

Summary

1. On the basis of the information available to it, the Competition and Markets Authority ('CMA') has decided that the anticipated acquisition of the Caledonian Sleeper Franchise ('CSF') by Serco Caledonian Sleepers Limited ('Serco'), which is ultimately owned by Serco Group Plc, does not qualify for investigation under the Enterprise Act 2002 (the 'Act'), because neither the UK turnover test nor the share of supply test in section 23 of the Act is met. A relevant merger situation will not, therefore, be created.

Transaction

2. CSF is a 15-year rail franchise operating overnight services between London Euston and Aberdeen, Edinburgh, Fort William, Glasgow, Inverness. On 28 May 2014 Transport Scotland announced the award of CSF to Serco. Serco is scheduled to commence operations on CSF on 1 April 2015.

Jurisdiction

3. The award of a rail franchise constitutes an acquisition of control of an enterprise by virtue of section 66(3) of the Railways Act 1993. Serco and CSF are therefore enterprises which, as a result of the transaction will cease to be distinct.
4. The UK turnover of CSF is less than £70 million, so the turnover test in section 23(1)(b) of the Act is not satisfied.

5. In the UK, Serco currently operates the Docklands Light Railway ('DLR') in London and, with its JV partner, Abellio, it operates the Merseyrail and Northern Rail franchises. There are no point-to-point overlaps between Serco's services and CSF. The CMA considered whether there may be an overlap between Crewe and Preston, where Northern Rail operates an indirect stopping service via Stockport or Manchester and the CSF operates a sleeper service. However, the CMA dismissed this as the CSF is a reservation-only sleeper service, where passengers are not able to make intermediate journeys, being only able to book a journey from Crewe to Edinburgh or London, or from Preston to Edinburgh or London, but not Crewe to Preston or vice versa. As a result the CMA considers that there is no overlap on this service and the share of supply test in section 23 of the Act is therefore not met in this case.

Conclusion

6. The CMA therefore does not believe that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Nelson Jung
Director of Mergers
Competition and Markets Authority
30 September 2014