

Acquisition by Inter City Railways Limited of the ICEC Franchise

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

Introduction

1. On 27 November 2014 the Department for Transport (**DfT**) announced that the InterCity East Coast rail franchise (**ICEC** or the **ICEC Franchise**) had been awarded to Inter City Railways Limited (**ICRL**) (the **Franchise Award**), a subsidiary of Stagecoach Group plc (**Stagecoach**) and the Virgin Group Holdings Limited (**Virgin**). On 6 February 2015 the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it believes that it is or may be the case that the Franchise Award may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom (the **SLC Decision**). The text of the CMA's decision is available on the CMA's web pages.¹
2. On 13 February 2015, Stagecoach offered undertakings to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, Stagecoach made this offer within five working days beginning the working day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act. The CMA gave notice to Stagecoach on 20 February 2015, pursuant to section 73A(2)(b) of the act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Stagecoach's offer. A copy of that decision is available on the CMA's web pages.² As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation.

¹ See [CMA case page](#).

² See [CMA case page](#).

The undertaking offered

3. As set out in the SLC Decision, the CMA found that the Merger gives rise to a realistic prospect of a substantial lessening of competition in regards to the following overlap flows:
 - (a) the overlap of ICEC rail services with East Midland Trains services (**EMT**) operated by East Midlands Trains Limited, a subsidiary of Stagecoach, between Peterborough and Grantham and between Peterborough and Lincoln; and
 - (b) the overlap of ICEC rail services with coach services that are operated and owned by Citylink, in which Stagecoach has a 35% interest, between Edinburgh and Dundee as well as between Edinburgh and Aberdeen.
4. To address the CMA's concerns, Stagecoach has offered the following undertakings:
 - (a) **Lincoln–Peterborough:** the proposed undertaking will commit Stagecoach to retaining the current EMT dedicated fare and prohibit it from increasing the dedicated fare by more than is permissible for price increases to fare baskets in the EMT franchise agreement; and
 - (b) **Peterborough–Grantham:** Stagecoach will commit to maintaining the current competitive constraint on this flow by continuing to manage EMT services on the flow as part of the wider Peterborough–Nottingham segment, and not to worsen its offer on this flow relative to that wider segment. More specifically, Stagecoach will undertake that EMT dedicated fares on the Peterborough–Grantham flow will be offered at the same price point groups³ and for the same number of seats within these groups as dedicated fares on the Peterborough–Nottingham flow. Stagecoach will also commit to introducing a cap on the level of any increase in the EMT dedicated fare on this flow.
 - (c) **Edinburgh–Aberdeen and Edinburgh–Dundee:** Stagecoach has agreed in principle with the majority shareholder of Citylink, ComfortDelGro, to make structural changes to the joint venture arrangements to grant ComfortDelGro sole control over all material operations of Citylink services on these two flows in order to remove Stagecoach's ability to weaken Citylink as an effective competitor to ICEC on these flows. Stagecoach will commit to secure changes to the decision

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

making and corporate governance structure of Citylink so that all decisions relating to fares, frequency of service, timetable and quality of service are board-reserved matters and are taken only by Citylink directors nominated by ComfortDelGro. To ensure that this is achieved in a clear-cut manner, Stagecoach will commit to abstain from voting on any of these matters.

5. The CMA considered that in the specific circumstances of the case, taking into account that Stagecoach is a minority shareholder in the coach operations and that Scotrail and Cross Country are present as competitors on these flows, the CMA considers that the proposed undertakings are likely to provide a clear-cut, proportionate and effective remedy to the competition concerns identified and are capable of ready implementation given the in principle agreement of ComfortDelGro.

Proposed decision and process going forward

6. For the reasons set out above, the CMA considers that the proposed undertakings offered by Stagecoach are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.
7. The CMA therefore gives notice that it proposes to accept this undertaking in lieu of a reference for a phase 2 investigation. The text of the proposed undertaking is available [on the case page](#).
8. Before reaching a decision as to whether to accept the proposed undertaking, the CMA invites interested parties to make their views known.
9. The CMA will have regard to any representations made in response to this consultation and may make modifications to the proposed undertakings as a result. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.
10. Representations should be made in writing to the CMA and be addressed to:

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Deadline for comments: by 17:00 on Friday 27 March 2015