

ME 6506/14 ACQUISITION BY INTERCITY RAILWAYS LIMITED OF THE ICEC FRANCHISE

PROPOSED UNDERTAKINGS GIVEN BY STAGECOACH TO THE COMPETITION AND MARKETS AUTHORITY PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (A) On 27 November 2014 the Department for Transport (**DfT**) announced its intention to award the InterCity East Coast passenger rail franchise (**ICEC Franchise** or **ICEC**) to InterCity Railways Limited (**ICRL**). ICRL and the DfT entered into the Franchise Agreement on 9 December 2014 (**Franchise Award**);
- (B) ICRL is a subsidiary of Stagecoach Group plc (**Stagecoach**) and the Virgin Group Holdings Limited (**Virgin**) established solely for the purpose of bidding for and operating the ICEC Franchise. Stagecoach has a 90% interest in ICRL with Virgin holding the remaining 10% stake;
- (C) Under section 33(1) of the Enterprise Act 2002 (**EA2002**) the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (D) Under section 73 of the EA2002 the CMA may, instead of making a Phase 2 reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (E) Pursuant to section 66(3) of the Railways Act 1993 and section 23(1)(b) of the EA2002, the Franchise Award constitutes an arrangement which is in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (F) The CMA commenced its investigation into the Franchise Award on 9 December 2014 following the receipt of a satisfactory submission by the parties;
- (G) As set out in the CMA's decision of 6 February 2015 (**Decision**), the CMA believes that it is or may be the case that the Franchise Award may be expected to result in a substantial lessening of competition and, in the absence of appropriate undertakings, it would be under a duty to refer the Franchise Award for a Phase 2 investigation;
- (H) In particular, the CMA found that the Franchise Award could potentially reduce competition on the following overlap flows:

- (1) Rail-on-rail overlaps: ICEC rail services that overlap with rail services of the East Midlands Franchise operated by East Midlands Trains Limited, a subsidiary of Stagecoach, between Peterborough and Grantham and between Peterborough and Lincoln;
 - (2) Rail-on-coach overlaps: ICEC rail services that overlap with coach services operated by Citylink, a joint venture in which Stagecoach holds a 35% interest, between Edinburgh and Dundee and between Edinburgh and Aberdeen.
- (I) The ICEC Franchise commenced on 1 March 2015, when ICRL acquired all of the issued share capital of East Coast Main Line Company Limited, the operator of the ICEC Franchise;
 - (J) The CMA considers that the undertakings given below by Stagecoach are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from the Franchise Award, as specified in the Decision.

NOW THEREFORE Stagecoach hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it.

1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Stagecoach, they are accepted by the CMA.

PART A: RAIL-ON-RAIL OVERLAPS

2. LINCOLN - PETERBOROUGH

- 2.1 The provisions of this paragraph 2 shall apply to fares offered by EMT on the point to point flow between Lincoln and Peterborough ("**Flow LP**").
- 2.2 Stagecoach shall ensure:
 - 2.2.1 EMT Dedicated "via Spalding" Fares shall remain available on Flow LP; and
 - 2.2.2 EMT Dedicated "via Spalding" Fares shall not increase by more than RPI+k in any Fare Year, where:

"**Fare Year**" means the period from 1 January in any year to 31 December in the same year;

"**RPI**" in respect of any relevant Fare Year means RPI as defined in paragraph 4.2 of Schedule 5.4 to the EMT National Rail Franchise Terms; and

"**k**", in respect of any Fare Year shall until the expiry of the EMT Franchise Agreement have the value attributed to that term in paragraph 4.2 of Schedule 5.4 to the EMT National Rail Franchise Terms, which may be varied from time to time by the DfT pursuant to paragraph 5 of Schedule 5.7 to the EMT National Rail Franchise Terms, and following the expiry of

the EMT Franchise Agreement shall have the value attributed to the equivalent term in the equivalent provision (Regulation of Fares Basket Values) of the franchise agreement then in force for the East Midlands Franchise.

- 2.3 At the same time as it is provided to the DfT, Stagecoach shall provide to the CMA a copy of the summary provided to the DfT pursuant to paragraph 2.2 of Schedule 5.8 to the EMT National Rail Franchise Terms;
- 2.4 At the same time as the summary referred to at paragraph 2.3 above is provided to the CMA, Stagecoach shall provide to the DfT and the CMA an update on the levels of the EMT Dedicated "via Spalding" Fares by completing the tables in a form materially similar to the template monitoring report set out at Appendix 1 to these undertakings.

3. **PETERBOROUGH - GRANTHAM**

- 3.1 The provisions in this paragraph 3 shall apply to fares offered by EMT on the point to point flow between Peterborough and Grantham ("**Flow PG**").
- 3.2 Stagecoach shall ensure:
- 3.2.1 at any point in time and in relation to any particular service, EMT Dedicated Fares for travel on Flow PG shall be available at the same Price Point Group and for the same number of seats within that Price Point Group as EMT Dedicated Fares for travel on the point to point flow between Peterborough and Nottingham ("**Flow PN**"). For the avoidance of doubt, in relation to a particular service, the number of seats available at any point in time at a particular Price Point Group shall be common to both Flow PG and Flow PN;
- 3.2.2 in relation to each Price Point Group, EMT Dedicated Fares for travel on Flow PG shall not in any Fare Year increase by a percentage greater than the increase in the corresponding Price Point Group for EMT Dedicated Fares for travel on Flow PN.
- 3.3 At the same time as it is provided to the DfT, Stagecoach shall provide to the CMA a copy of the summary provided to the DfT pursuant to paragraph 2.2 of Schedule 5.8 to the EMT National Rail Franchise Terms;
- 3.4 At the same time as the summary referred to at paragraph 3.3 is provided to the CMA, Stagecoach shall provide to the DfT and the CMA an update on the levels of the EMT Dedicated Fares on Flow PG and Flow PN by completing the table in a form materially similar to the template monitoring report set out at Appendix 2 to these undertakings.
- 3.5 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year Stagecoach shall deliver to the DfT and CMA an update on the number of seats for the EMT Dedicated Fares on Flow PG and Flow PN by completing the table in a form materially similar to the template monitoring report set out at Appendix 3 to these undertakings.

4. **DURATION**

- 4.1 The provisions of paragraphs 2 and 3 shall apply only for so long as both the operator for the time being of the ICEC Franchise and the operator for the time being of the East Midlands Franchise are subject to Control by Stagecoach.

PART B: RAIL-ON-COACH OVERLAPS

5. CITYLINK FLOWS

- 5.1 The provisions of this paragraph 5 shall apply in relation to Direct Coach Services operated by Citylink on the point to point flows between Edinburgh and Aberdeen, and Edinburgh and Dundee (**Citylink Flows**).
- 5.2 Stagecoach has obtained agreement in principle from ComfortDelGro in relation to amendments proposed to the Citylink Shareholders' Agreement and the Citylink Management Agreement set out in paragraphs 5.3 and 5.4 below.
- 5.3 Stagecoach shall secure amendments to the Citylink Shareholders' Agreement to give effect to the following:
 - 5.3.1 to add as a matter reserved for the Citylink Board any material matter relating to the Citylink Flows, including frequency of service, timetable, quality of service and fares, but excluding the determination of fares for tickets for the Citylink Flows sold through megabus.com or any other megabus branded online channel (**Citylink Flows Reserved Matters**);
 - 5.3.2 to provide that the quorum for meetings of the Citylink Board which include discussion relating to the Citylink Flows Reserved Matters shall be two ComfortDelGro Directors; and
 - 5.3.3 to provide that Stagecoach Directors shall not be entitled to vote in relation to any Citylink Flows Reserved Matters.
- 5.4 Stagecoach shall secure amendments to the Citylink Management Agreement to give effect to the following:
 - 5.4.1 to exclude from the scope of Part 1 of the Schedule to the Citylink Management Agreement (Management and Supervision Functions) the Citylink Flows Reserved Matters;
 - 5.4.2 to provide that Citylink procure that, at each meeting of the Citylink Board, the Citylink Board is provided with a report showing the seats sold on the Citylink Flows through megabus.com (or any other megabus branded online channel) in the preceding three full calendar months and the price of each seat sold. If the ComfortDelGro Directors determine, acting reasonably, that the manner in which the pricing policy for seats being sold on the Citylink Flows through megabus.com (or any other megabus branded online channel) are being set in a manner which is detrimental to Citylink and to the benefit of ICRL (or any other subsidiary

company of Stagecoach), Stagecoach agrees that the Citylink Board can direct that an alternative policy should be adopted for the pricing of such seats;

- 5.5 Stagecoach shall provide to the CMA a report twice per year on or shortly before 1 June and on or shortly before 1 December, setting out the following:
- 5.5.1 all decisions relating to Citylink Flows Reserved Matters that were made in the preceding year;
 - 5.5.2 a confirmation that any decisions relating to Citylink Flows Reserved Matters that were made in the preceding year have been approved by the Citylink Board in accordance with the Citylink Shareholders' Agreement and the Citylink Management Agreement, as amended pursuant to provisions in paragraph 5.3 and 5.4 above;
 - 5.5.3 a confirmation that accurate and complete minutes have been produced of meetings of the Citylink Board at which any decisions in relation to Citylink Flows Reserved Matters were discussed or made;
 - 5.5.4 a summary of any changes introduced in relation to the pricing policy for seats being sold on the Citylink Flows through megabus.com (or any other megabus branded online channel) in the preceding six full calendar months.
- 5.6 Stagecoach shall provide the first report referred to at paragraph 5.5 above to the CMA on or shortly before 1 June 2015.
- 5.7 This paragraph shall apply only for so long as both Citylink and the operator for the time being of the ICEC Franchise are subject to Control by Stagecoach.

6. **COMPLIANCE**

- 6.1 Stagecoach shall comply promptly with such written directions as the CMA may from time to time give:
- 6.1.1 to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - 6.1.2 to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 6.2 Stagecoach shall co-operate fully with the CMA when the CMA is:
- 6.2.1 monitoring compliance with the provisions of these undertakings; and
 - 6.2.2 investigating potential breaches of the provisions of these undertakings.
- 6.3 Stagecoach shall procure that any member of the same Group of Interconnected Bodies Corporate as Stagecoach complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Stagecoach shall be attributed to Stagecoach for the purposes of these undertakings.

6.4 Where any Affiliate of Stagecoach is not a member of the same Group of Interconnected Bodies Corporate as Stagecoach, Stagecoach shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

7. PROVISION OF INFORMATION

7.1 Stagecoach shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

8. SERVICE

8.1 Stagecoach hereby authorises Herbert Smith Freehills LLP, whose address for service is Exchange House, Primrose Street, London, EC2A 2EG, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Stagecoach, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings). A copy of any document, order, request, notification or other communication sent to Herbert Smith Freehills LLP or other nominees in connection with these undertakings will also be sent to Stagecoach Group plc, 6th Floor, Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ.

8.2 Unless Stagecoach informs the CMA in writing that Herbert Smith Freehills LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Stagecoach if it is served on Herbert Smith Freehills LLP; and service shall be deemed to have been acknowledged by Stagecoach if it is acknowledged by Herbert Smith Freehills LLP or such other nominee.

8.3 Paragraph 8.2 above has effect irrespective of whether, as between Stagecoach and Herbert Smith Freehills LLP or other nominees, Herbert Smith Freehills LLP or other nominees has or continues to have any authority to accept and acknowledge service on Stagecoach's or any of its respective Subsidiaries' behalf.

8.4 No failure or mistake by Herbert Smith Freehills LLP or other nominees (including a failure to notify Stagecoach of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.

8.5 Any communication from Stagecoach to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

9. EFFECT OF INVALIDITY

9.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Stagecoach undertakes to continue to observe the remaining provisions.

10. **GOVERNING LAW**

- 10.1 Stagecoach recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 10.2 In the event that a dispute arises concerning these undertakings, Stagecoach undertakes to submit to the courts of England and Wales.

11. **TERMINATION**

- 11.1 Stagecoach recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the EA2002.
- 11.2 Stagecoach recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

12. **INTERPRETATION**

- 12.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 12.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 12.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 12.4 For the purposes of these undertakings:

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the EA2002) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the EA2002;

"Braddell plc" means a Registered Company No 3899736, Registered Office, 5th Floor, Hygeia, 66-68 College Road, Harrow, Middlesex, HA1 1BE, a wholly owned subsidiary of ComfortDelGro and the direct parent company of Citylink;

"Citylink" means Scottish Citylink Coaches Limited, a Registered Company SC091931, Registered Office, Buchanan Bus Station, Killermont Street, Glasgow, G2 3NP, a joint venture company owned by Stagecoach and ComfortDelGro, with a 35 per cent interest and 65 per cent interest, respectively;

"Citylink Board" means the board of directors of Citylink;

"Citylink Flows" means Direct Coach Services operated by Citylink on the point to point flows between Edinburgh and Aberdeen, and Edinburgh and Dundee;

"Citylink Flows Reserved Matters"	means any material matter relating to the Citylink Flows, including frequency of service, timetable, quality of service and fares, but excluding the determination of fares for tickets for the Citylink Flows sold through megabus.com or any other megabus branded online channel;
"Citylink Management Agreement"	means the management agreement between Braddell plc, Stagecoach Bus Holdings Limited and Citylink in relation to the provision of operational supervision and management of Citylink, dated 12 September 2005;
"Citylink Shareholders' Agreement"	means the shareholders' agreement between Braddell plc, Stagecoach Bus Holdings Limited and Citylink in relation to Citylink, dated 12 September 2005;
"CMA"	means the Competition and Markets Authority or any successor body;
"ComfortDelGro"	means the global transport company which holds a 65 per cent interest in Citylink through its wholly owned subsidiary Braddell plc;
"ComfortDelGro Director"	means a director on the Citylink Board appointed by ComfortDelGro (through its wholly owned subsidiary Braddell plc), pursuant to clause 5 of the Shareholders' Agreement;
"Confidential Information"	means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;
"Control"	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise within the meaning of section 26 of the EA2002;
"Decision"	means the CMA's decision under section 33 of the Act dated 6 February 2015 in connection with the Franchise Award;
"DfT"	means the Department for Transport;
"Direct Coach Service"	means a coach service which does not require a change of coach vehicle between the origin point and the destination point of the journey;
"EA2002"	means the Enterprise Act 2002;

"East Midlands Franchise"	means the East Midlands passenger rail franchise operated by EMT pursuant to the EMT Franchise Agreement and any successor passenger rail franchise awarded by the DfT in respect of substantially the same routes as are operated by EMT as at the date hereof pursuant to the EMT Franchise Agreement;
"EMT"	means East Midlands Trains Limited, the current operator of the East Midlands Franchise, and any successor operator of the East Midlands Franchise which is subject to Control by Stagecoach;
"EMT Dedicated Fares"	means standard class fares determined by EMT and valid for travel exclusively on services provided by EMT;
"EMT Dedicated "via Spalding" Fares"	means the standard class fares determined by EMT and valid for travel on Flow LP exclusively on services provided by EMT routed via Spalding and which at the date hereof have the values specified in the column headed "Dedicated EMT "via Spalding" Fares at 1 st March 2015" in the table provided at Appendix 1;
"EMT Franchise Agreement"	means the Franchise Agreement between the DfT and Stagecoach Midland Rail Limited dated 21 June 2007 in respect of the East Midlands Franchise;
"EMT National Rail Franchise Terms"	means the National Rail Franchise Terms incorporated into the EMT Franchise Agreement by clause 1.2 of the EMT Franchise Agreement;
"Flow LP"	means the point to point flow between Lincoln and Peterborough;
"Flow PG"	means the point to point flow between Peterborough and Grantham;
"Flow PN"	means the point to point flow between Peterborough and Nottingham;
"Franchise Award"	means the award of the ICEC Franchise to ICRL, as announced by the DfT on 27 November 2014 and reflected in the Franchise Agreement, entered into by the DfT and ICRL on 9 December 2014;
"Franchisee Year"	means as defined in clause 3.1 of the EMT National Rail Franchise Terms;
"Group of Interconnected Bodies Corporate"	has the meaning given in section 129(2) of the EA2002; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;
"ICEC Franchise Agreement"	means the Franchise Agreement between the DfT and ICRL, dated 9 December 2014 in respect of the ICEC Franchise;

"ICEC Franchise" or "ICEC"	means the InterCity East Coast passenger rail franchise;
"ICRL"	InterCity Railways Limited, a subsidiary of Stagecoach and Virgin established solely for the purpose of bidding for and operating the ICEC Franchise;
"Price Point Group"	means: <ul style="list-style-type: none"> (A) one of the seven groups specified in the column headed "Price Point Group" in the tables provided at Appendices 2 and 3 (SC, SD, SE, SF, SG, SH, SI) to which EMT allocates: <ul style="list-style-type: none"> (i) a specified number of seats that are available for purchase as EMT Dedicated Fares on a particular point to point flow or across a collection of point to point flows; and (ii) in relation to a particular flow, one or more fare values; or (B) any equivalent grouping of seats and fares comprising part of a successor arrangement for the pricing of EMT Dedicated Fares
"Reporting Period"	means as defined in clause 3.1 of the EMT National Rail Franchise Terms;
"Stagecoach"	means Stagecoach Group plc with headquarters at 10 Dunkeld Road, Perth, Perthshire, PH1 5TW;
"Stagecoach Bus Holdings Limited"	means a Registered Company SC176671, Registered Office, 10 Dunkeld Road, Perth, Perthshire, PH1 5WA, a wholly owned subsidiary of Stagecoach, a wholly owned subsidiary of Stagecoach and a direct parent company of Citylink;
"Stagecoach Director"	means a director on the Citylink Board appointed by Stagecoach (through its wholly owned subsidiary Stagecoach Bus Holdings Limited), pursuant to clause 5 of the Shareholders' Agreement.
"Subsidiary"	shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;
"Virgin"	means Virgin Group Holdings Limited with headquarters at The Battleship Building, 179 Harrow Road, London W2 6NB;
	unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF STAGECOACH

Signature

Name

Title

Date

APPENDIX 1

Lincoln-Peterborough

Template UIL monitoring report for the EMT Dedicated "via Spalding" Fares

	Dedicated EMT "via Spalding" Fares at 1st March 2015	Dedicated EMT "via Spalding" Fares at 18th May 2015	Difference £	Difference % (A)	RPI % [Source:]	k %	RPI+k % (Y)	A – Y
Anytime return (period return)	£33.80							
Off peak return (period return, outward and return journey must be made after 0930)	£26.20							
Off peak day return (return same day, valid on all trains after 0830)	£15.50							

Anytime Single (valid on any train)	£22.20							
Off peak single (valid after 0830)	£15.40							

RPI + k% = Y and column A is never greater than Y.

