

**STAGECOACH GROUP PLC/EASTBOURNE BUSES LIMITED/
CAVENDISH MOTOR SERVICES LIMITED MERGER INQUIRY**

A report on the completed acquisition by Stagecoach Group PLC of Eastbourne Buses Limited and Cavendish Motor Services Limited

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The Competition Commission has excluded from this published version of the 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 [X]. Some numbers have been replaced by a range. These are shown in square brackets.

The completed acquisitions by Stagecoach Group PLC of Eastbourne Buses Limited and Cavendish Motor Services Limited

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Summary

1. On 13 May 2009, the Office of Fair Trading (OFT) in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the completed acquisitions of Eastbourne Buses Limited (EBL) and Cavendish Motor Services Limited (Cavendish) by Stagecoach Group PLC (Stagecoach).
2. Stagecoach is an international public transportation group, with operations in the UK, the USA and Canada. Its operating unit, Stagecoach in East Kent & East Sussex, operates bus services from six depots across the region. Prior to the acquisitions, Stagecoach's only operations in the Eastbourne area were its two inter-urban services operating between Hastings and Eastbourne, from its Hastings base.
3. Pre-acquisition, EBL provided local bus services in the Eastbourne area and two inter-urban routes to East Grinstead and Tunbridge Wells. It was majority owned by Eastbourne Borough Council (EBC). The remaining 20 per cent share was held by the French transport group, Keolis SA (Keolis). Immediately prior to the acquisition, EBL had a fleet of 50 vehicles, a depot with a capacity of 100 vehicles, and 152 employees. It had sustained operating losses since 2004 and had negative cash flows. In July 2008, EBC initiated a formal sale process to dispose of its and Keolis' stake in EBL, 'in order to get the best sale arrangement and to maintain continuity of bus services to the public'.
4. Stagecoach and Go-Ahead Group PLC (Go-Ahead) submitted initial bids in August 2008. Stagecoach submitted its second offer on 10 November 2008, of £5.35 million enterprise value (EV). EBC told us that it accepted Stagecoach's offer based on a 'best value' assessment. The acquisition of EBL completed on 18 December 2008.
5. Prior to its acquisition, Cavendish provided local bus services in Eastbourne and the neighbouring town of Hailsham. Cavendish was in common ownership with Renown Coaches Limited (Renown), a bus and coach operator based in Bexhill in East Sussex, around 12 miles from Eastbourne. Cavendish operated from a rented parking area in Polegate, about 6 miles north of Eastbourne, but relied on Renown's depot in Bexhill for maintenance.
6. Stagecoach paid [£1–£2] million (EV) for Cavendish; the Cavendish share purchase agreement was signed on 2 October 2008, before Stagecoach submitted its final bid for EBL, and was completed on 5 January 2009, shortly after it had completed its acquisition of EBL. Cavendish's assets acquired consisted of 28 buses and 65 employees but no depot facilities.
7. Following the acquisitions, Stagecoach introduced a revised service and timetable, and it also adjusted fares; single and return fares have settled at the higher, EBL rate, but the area of validity for cheap day tickets has been extended. It has also introduced some new vehicles. The Cavendish operations were closed and its vehicles taken out of service.
8. We were satisfied that Stagecoach, EBL and Cavendish are enterprises for the purposes of the Act, and that they have ceased to be distinct as a result of these transactions. Based on Stagecoach's estimates of the share of bus passenger revenues in the Eastbourne area in 2008, EBL had a share of around 75 per cent of total revenue on commercial services in the Eastbourne area, while Cavendish supplied around 18 per cent, and Stagecoach just under 1 per cent. The share of

supply test is therefore satisfied in respect of the supply of bus services in the Eastbourne area.

9. We defined the relevant markets affected by the mergers to be the supply of bus services in the Eastbourne area. This broad market rather than flow level markets reflected the fact that competitive conditions on flows in the Eastbourne area are generally similar, and so it was appropriate to aggregate them together for these purposes. We also noted that pre-merger, operators with depots in the Eastbourne area had the ability easily to expand or redeploy buses within the area, imposing a constraint within the area from supply-side substitution.
10. We decided that the appropriate counterfactual for evaluating the effects of the mergers was one where the two bus operators would have continued operating under separate ownership. We accepted that any bidder for EBL may have sought to purchase both operators to avoid rivalry with Cavendish. However, that proposal would in effect give rise to a similar situation to the merger under consideration and would be likely to fall for competition assessment itself. Any such proposal would not be permitted if it gave rise to competition concerns. It is therefore not appropriate to consider this as the likely counterfactual.
11. We expected that, absent the merger, EBL would either have been sold as a going concern, or its assets would have been purchased out of administration; its depot in particular would provide an attractive means of entry for the provision of bus services in Eastbourne. We expected that any purchaser would have sought to improve EBL's efficiency and make it more effective as a competitor across a network of services. We did not expect that any other operators would have chosen to purchase Cavendish absent the merger.
12. Renown told us that the network of services Cavendish operated around March 2008 was covering at least its direct costs (these are the costs arising directly from the operation of a bus, including driver costs, fuel, tyres, licence and insurance costs) and generated a positive contribution to Renown. However, it acknowledged that its expanded network after August 2008 failed to cover even these costs. Following responses to our provisional findings, we conducted further analysis to allow us to examine the profitability of Cavendish's operations in detail. We found, on the basis of the best available evidence, that even at March 2008, several routes did not cover their direct costs. Overall, taking account of all incremental costs to Renown's owners of supporting the Cavendish operations (both semi-direct (eg maintenance and repair costs) and certain fixed costs (eg depreciation and leasing costs)), all routes were unprofitable on the basis of commercial revenues alone.
13. The rationale for Cavendish's entry and expansion in the Eastbourne area had been to exploit gaps in EBL's network, to seek to displace EBL as the main network operator, or to force a sale of Cavendish to EBL's owner. While these objectives might have justified supporting a loss-making operation, in the counterfactual situation the objectives would no longer be achievable. In addition, under the counterfactual, Cavendish would be likely to be in competition with a more efficient EBL, in consequence of which Cavendish's revenues could have reduced. We expected that Cavendish would have been likely to choose to withdraw from a large number of routes. It may have retrenched to just one commercial route, concentrated on tendered services, or chosen to close Cavendish and withdraw from commercial services in the Eastbourne area altogether. We expected that this period of retrenchment would have happened reasonably quickly, and most probably within 12 months.
14. We noted that Stagecoach paid a substantial sum to acquire Cavendish. Stagecoach told us that it made commercial sense to cap its exposure to additional costs from the

clearly unsustainable Cavendish competition and so aimed to achieve the benefits of restructuring the business quickly. We found that Stagecoach may have had a number of motivations for the acquisition of Cavendish, including some indications consistent with an anti-competitive motivation. However, for the reasons set out above in our assessment of Cavendish, we concluded that the competitive constraint Cavendish offered was unlikely to continue.

15. Prior to the acquisitions, EBL and Cavendish had been in competition throughout the Eastbourne area, with Cavendish undercutting EBL's fare structure, introducing some new routes, and operating in direct head-to-head competition with EBL on many flows. We also found that there had been a further 'potential competition' constraint on the behaviour of EBL and Cavendish on both overlap and non-overlap flows arising from the ability of each of them to amend services quickly and easily or add services on additional flows. Immediately pre-merger, both operators had extensive networks in place which could be reconfigured, or additional services added because of their spare 'depot' capacity. We did not expect that operators with more limited operations in the Eastbourne area would have the same flexibility to expand rapidly on a significant scale, and we understood that it would be difficult or unattractive to add to services from a depot a substantial distance away.
16. The effect of the acquisitions is to remove nearly all head-to-head competition on flows in the Eastbourne area, and to lose the constraint from potential competition that existed between EBL and Cavendish. However, the effects of the mergers need to be assessed relative to the counterfactual situation that would have applied in the absence of the mergers. Because we expected that Cavendish would have chosen to reduce its operations very substantially, or to exit, we concluded that the loss of head-to-head competition from the acquisitions was likely to have been small at most, and similarly there would have been little or no loss of potential competition resulting from the acquisitions. Having tried to compete on a large scale with EBL once, and failed, we thought Cavendish would be unlikely to do so again against a rejuvenated EBL. In so far as it chose to continue to operate, we conclude that the constraint Cavendish exerted on EBL would have been likely to be similar to potential entrants or existing rivals, notably Brighton & Hove Buses (Brighton & Hove, which is owned by Go-Ahead).
17. East Sussex County Council (ESCC) procures tendered bus services. Given the merged parties' relatively limited involvement in tendered services, the number of alternative suppliers, ease of entry and ESCC's ability to encourage alternative suppliers to bid for contracts, we did not expect that the effect of the mergers would be to reduce significantly rivalry in the market for the right to run tendered services.
18. In conclusion, while the effect of the acquisition has been to reduce the number of competitors in Eastbourne, we did not expect that Cavendish would have been likely to choose to continue as an effective competitor on any significant scale in the Eastbourne area. On balance of all the evidence, we thought that any ongoing competition between EBL and Cavendish in the absence of the mergers would have been transitory and limited in extent.
19. We concluded that the mergers may not be expected to lead to a substantial lessening of competition (SLC) in the market for the provision of bus services in the Eastbourne area.

Findings

1. The reference

1.1 On 13 May 2009, the OFT, in exercise of its duty under section 22(1) of the Act, referred to the CC for investigation and report the completed acquisitions of EBL and Cavendish by Stagecoach. The reference requires us to determine:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.

1.2 We published our provisional findings on 6 August 2009. We are required to report by 27 October 2009. Our terms of reference are in Appendix A, together with an explanation of how we have conducted our inquiry. Appendix A also covers the steps we took to ensure that there were no actions taken during the course of our inquiry which might prejudice the reference or impede the CC's ability to take any remedial action that might be determined to be necessary, including measures to ensure that there was no further integration between Stagecoach, EBL and Cavendish.

1.3 This document (together with its appendices) constitutes the final report that we must publish under [section 38\(1\)](#) of the Act. Non-commercially-sensitive versions of the main-party and third-party written submissions are on our website¹ along with other documents relevant to this inquiry. We cross-refer to them where appropriate.

2. The companies

EBL

2.1 EBL had been established as a municipal bus operator since 1903. It was directly owned by EBC under the name of the Eastbourne Corporation Transport Department, until the assets and services were transferred to a new company, EBL, in 1986, as required by the Transport Act 1985, which obliged local authorities to transfer their bus operations to entities operating at arm's length.

2.2 Pre-acquisition, EBL was majority (80 per cent) owned by EBC. The remaining 20 per cent share was held by the French transport group, Keolis, under an agreement entered into with EBC in June 2001 in order to provide the company with 'extended business expertise'. However, EBC operated the company on an arm's-length basis and had little active involvement in EBL's day-to-day operations and management decisions. Keolis told us that as a 20 per cent minority shareholder, it also had little active involvement in EBL's management.

2.3 Immediately prior to the acquisition, EBL had a fleet of 50 vehicles (47 were commercial vehicles, 37 of which were required to provide peak services whilst the remainder covered for breakdowns, planned maintenance etc), a depot in Birch Road, Eastbourne, with capacity of 100 vehicles, and 152 employees. It provided local bus services in and around Eastbourne, and also a number of ancillary activities which together accounted for under 10 per cent of its 2008 revenues.

¹www.competition-commission.org.uk/inquiries/ref2009/stagecoach/index.htm.

- 2.4 For the financial year ended 31 December 2008, EBL generated turnover of £5.5 million² (2007: £6.1 million). Further detail of EBL's financial performance is given in Appendix B. Between 2004 and 2007, EBL sustained cumulative operating losses, had net current liabilities and negative cash flows. It also made an operating loss of £[~~8~~] million in 2008. Stagecoach told us that these ongoing financial difficulties were due to ineffective management, lack of investment, poor operational performance, unwise decisions on certain routes, and the need for EBL to provide top-up contributions to its pension fund which was in deficit. Keolis referred to a number of factors including EBL's structurally high cost base and its inability to realize economies of scale due to the size of the Eastbourne market. Stagecoach also told us that the losses were exacerbated in late 2007 and 2008 by large increases in the cost of fuel and by the entry of Cavendish in 2006.
- 2.5 In April 2008, EBL informed EBC that: (a) the company's 'trading position was now not tenable'; (b) EBL's auditors had qualified its audit opinion on its 2007 accounts; and (c) 'the level of the overdraft was critical and the bank would not extend its exposure without some form of security for both the existing overdraft and any extension'. EBC initiated a formal sale process to dispose of its and Keolis' stake in EBL, 'in order to get the best sale arrangement and to maintain continuity of bus services to the public'.

Cavendish

- 2.6 Prior to its acquisition, Cavendish provided local bus services in the town of Eastbourne and the neighbouring town of Hailsham.
- 2.7 Cavendish was in common ownership with Renown, a bus and coach operator based in Bexhill in East Sussex, around 12 miles from Eastbourne. Established in 1962, Renown's primary business is local authority contracts for tendered bus services and travel-to-school statutory journeys. Cavendish started operating buses in Eastbourne on 13 March 2006 with services initially being provided by three second-hand buses. By March 2008 it had grown to 13 buses, and by September 2008 this increased to 28 buses, when it employed 65 people.³ Cavendish operated from a rented parking area in Polegate, about 6 miles north of Eastbourne, but used Renown's depot in Bexhill for maintenance; in addition, Renown provided Cavendish with back-office functions. The integral nature of Cavendish and Renown's operations is also reflected in Cavendish's financial performance. Renown told us that Cavendish and Renown were sharing the revenues generated within Eastbourne, and that there was a 'cross-subsidy between the network and between Renown and Cavendish as well', ie many of the indirect costs of operating Cavendish's services (such as maintenance and repair costs) were borne by Renown.
- 2.8 Subject to these caveats, for the financial year ended 31 July 2008, Cavendish generated revenues of around £0.6 million (2007: £[~~8~~] million). Further detail of Cavendish's financial performance is given in Appendix C. In paragraphs 6.16 to 6.28 and Appendix H, we discuss the profitability and longer-term prospects of Cavendish's operations.

²EBL's 2008 turnover is based on management accounts; 2007 turnover is based on its 2007 statutory accounts.

³Stagecoach told us that some Cavendish services were supplemented by Renown's buses, as there were more services registered than Cavendish had operator discs (see Appendix C, paragraph 6, and Appendix E, paragraph 7).

Stagecoach

- 2.9 Stagecoach is an international public transportation group, with operations in the UK, the USA and Canada. Its businesses, which include bus, train, tram and express coach operations, operate around 12,000 vehicles and rolling stock and employ approximately 27,000 people. These businesses have been expanded in part through many acquisitions of bus operators since 1987, both domestically and internationally, as well as organic growth. Stagecoach is a UK listed public company headquartered in Perth, Scotland. Its turnover from continuing operations for the financial year ended 30 April 2009 was £2,103.3 million (2008: £1,763.6 million), most of which was derived from its UK operations.
- 2.10 Its UK bus operations (held through Stagecoach Bus Holdings Limited) are active in more than 100 towns and cities in the UK. For the financial year ended 30 April 2009, Stagecoach Bus Holdings Limited generated revenues of £[~~XX~~] million⁴ (2008: £[~~XX~~] million). It operates approximately 7,000 vehicles. Its regional operating units are each managed separately and are led by a managing director, reporting directly to the head of the UK bus division. The operating unit, Stagecoach in East Kent & East Sussex, employs around 900 personnel who run a fleet of about 325 buses from six depots across the region (at Herne Bay, Thanet, Dover, Ashford, Folkestone and Hastings (St Leonards-on-Sea)). For the financial year ended 30 April 2009, Stagecoach in East Kent and East Sussex generated revenues of about £[~~XX~~] million (2008, £[~~XX~~] million). Further detail of Stagecoach's financial performance is given in Appendix D.
- 2.11 Prior to the mergers, Stagecoach's only operations in the Eastbourne area were its two inter-urban services (services 98 and 99) operating between Hastings and Eastbourne.

3. The acquisitions and the relevant merger situations

- 3.1 This section sets out the transaction by which Stagecoach, through Stagecoach Bus Holdings Limited, acquired EBL and Cavendish, and the stated rationale for the acquisitions.

Events leading up to the acquisitions and the merger situations

- 3.2 As noted in paragraph 2.4, there were concerns over the financial health of EBL. EBL had already attempted to cut costs. In October 2007, EBC resolved to review its options in relation to its stake in EBL. At around the same time, Keolis indicated that it wished to exit from its investment. Its shareholding in EBL was eventually acquired by EBL itself immediately ahead of the sale of EBL to Stagecoach.
- 3.3 EBC decided to sell the business, and in July 2008, it requested offers for the entire share capital of EBL. Five companies expressed an interest, Stagecoach, Go-Ahead, Arriva PLC (Arriva), Rotala PLC (Rotala) and Renown; of these only Stagecoach and Go-Ahead submitted initial bids in August 2008. According to the Chief Executive of EBC, Renown's interest was not taken forward because it did not have an established track record in commercial services and because EBC was reluctant to provide EBL's main competitor with access to commercially sensitive information.

⁴Stagecoach's preliminary results for the financial year ended 30 April 2009 (24 June 2009).

- 3.4 The Chief Executive of EBC stated that it had been EBC's preference to sell EBL as a going concern to a viable transport operator, as its priority was to ensure the continuation of bus services in Eastbourne.
- 3.5 On 18 August 2008, Stagecoach submitted an initial bid for EBL of £3.7 million EV, which included a net debt component of £[redacted] million and an equity value component of £[redacted] million.
- 3.6 Stagecoach and Go-Ahead were admitted to the second round of the bidding process. Immediately prior to the deadline for final offers, EBC agreed to indemnify the buyer of all costs arising in relation to EBL's defined benefit pension scheme. Stagecoach submitted its second offer on 10 November 2008, of £5.35 million EV, comprising net debt of £1.3 million and equity value of £4.05 million.
- 3.7 EBC told us that it accepted Stagecoach's offer based on a 'best value' assessment. This took into account that Stagecoach's offer was £1.2 million higher than that of Go-Ahead and also its offer to (a) 'invest in 12 new single deck vehicles by the end of January 2009'; and (b) guarantee 'job and salary security for the operational staff at EBL for a period of two years', both of which we understand from EBC did not form part of Go-Ahead's offer.
- 3.8 The acquisition of EBL completed on 18 December 2008. EBL assets acquired included: 50 buses, 152 employees and its Birch Road depot for maintenance and parking (on long leasehold).
- 3.9 In the early part of 2008, Renown approached Brighton & Hove to see if Go-Ahead would be interested in purchasing Renown and Cavendish. There were several months of discussions which resulted in Go-Ahead making an offer for Cavendish (subject to due diligence). However, Go-Ahead informed Renown that it only wanted to complete the purchase of Cavendish if it was successful in acquiring EBL. Renown was concerned that consequently it might not achieve a sale for Cavendish, and so it said that it approached Stagecoach as an alternative purchaser of Cavendish.
- 3.10 Stagecoach offered [£1–£2] million (EV) for Cavendish, comprising an upfront non-refundable payment of £[redacted] million followed by a deferred element of £[redacted] million payable on completion. The Cavendish share purchase agreement was signed on 2 October 2008, before higher second-round bids were submitted for the sale of EBL, and was completed on 5 January 2009, shortly after Stagecoach had completed its acquisition of EBL. Cavendish's assets acquired consisted of 28 buses and 65 employees but no depot. Under the share purchase agreement, Renown was obliged under a non-compete clause to not enter the Eastbourne local bus market for a period of two years,⁵ save for Cavendish services 126 and 143, which were excluded from the non-compete clause and continue to be operated by Renown as tendered services.
- 3.11 Following the acquisitions, Stagecoach announced the closure of Cavendish. Most of its drivers were offered posts with Stagecoach. Stagecoach said that as several of Cavendish's vehicles were not roadworthy, it replaced these with other Stagecoach vehicles while the period of notice before closure was served. On 8 March 2009, Stagecoach introduced a revised network. A new ticket and pricing structure was introduced—see paragraphs 4.11 and 4.12. All services are now operated by Stagecoach from the Birch Road depot.

⁵Stagecoach offered to the OFT that it was willing to waive the non-compete clause.

The rationale for the mergers

- 3.12 Stagecoach stated that its rationale for the acquisition of EBL was that in the long term EBL could return to profitability through: (a) managing the business ‘in conjunction with [its] neighbouring South Eastern operations’; (b) ‘better use of EBL’s network’; (c) ‘changes in management’; (d) ‘investments in new buses’; and (e) efficiency gains.
- 3.13 Stagecoach submitted that its rationale for paying [£1–£2] million for Cavendish was that it would improve Stagecoach’s ‘positioning strategy’ in its bid for EBL and that ‘acquiring Cavendish was not ... the acquisition of market power and a reduction in competition as such. Instead, the acquisition of Cavendish was inextricably linked to Stagecoach’s purchase of [EBL]. Had [EBL] not been up for sale, Stagecoach would not have acquired Cavendish’.
- 3.14 Stagecoach also told us that Cavendish was not worth the money paid for it as a stand-alone business, but the purchase made sense as part of the Eastbourne network. It said that while it had closed down the Cavendish business, it had kept part of its operational network, avoiding the short-term costs of developing those network enhancements itself. It stated that the rationale for the acquisition of Cavendish was not to buy out the competition, although it acknowledged that if Cavendish was continuing to compete against EBL, it would have had to factor in the costs of ongoing competition into its plans.

Jurisdiction

- 3.15 Under section 35 of the Act, and pursuant to our terms of reference (see Appendix A), we must investigate and report on whether a relevant merger situation has been created.
- 3.16 Under section 23 of the Act, a relevant merger situation is created if two or more enterprises have ceased to be distinct within the statutory period for reference and if either the share of supply test or the turnover test specified in the Act is satisfied. The turnover test requires the value of the turnover of the enterprises being taken over to exceed £70 million, and the share of supply test requires that as a result of the merger, the enterprises ceasing to be distinct create or enhance a share of supply of more than 25 per cent of goods or services of any description in the UK, or a substantial part of the UK.
- 3.17 We are satisfied that Stagecoach, EBL and Cavendish are enterprises for the purposes of the Act, and that they have ceased to be distinct as a result of the transactions described in paragraphs 3.2 to 3.10.
- 3.18 Stagecoach’s overall share of the supply of local bus services in Great Britain is around 13.8 per cent.⁶ Following the acquisitions, its share of supply in the UK as a whole would be below 25 per cent. We have therefore considered whether the share of supply test is satisfied in respect of the Eastbourne area.
- 3.19 Based on Stagecoach’s estimates of the share of bus passenger revenues in the Eastbourne area⁷ in 2008 (see Table 1), EBL had a share of around 75 per cent of

⁶Source, *Bus Industry Monitor* 2007.

⁷We have treated the ‘Eastbourne area’ as approximating to the Eastbourne Borough, and the Hailsham, Pevensey and Polegate sectors of Wealden district. This is the area which was served by Cavendish, EBL and Stagecoach prior to the merger, excluding parts of EBL’s and Stagecoach’s inter-urban services where there was no overlap with the other operators (ie it excludes EBL’s inter-urban services after they pass north of Hailsham, and Stagecoach’s as they approach Hastings).

total revenue on commercial services in the Eastbourne area, while Cavendish supplied around 18 per cent, and Stagecoach just under 1 per cent. For commercial and tendered services combined, the respective shares were estimated at 74 per cent for EBL, 19 per cent for Cavendish and just under 1 per cent for Stagecoach.

- 3.20 The share of supply test is therefore satisfied in respect of the supply of bus services in the Eastbourne area in relation to the acquisition by Stagecoach of EBL, as Stagecoach already supplied services in this area while EBL had a share of the market far above 25 per cent.
- 3.21 In relation to Cavendish, we note that Stagecoach entered an agreement for the acquisition of Cavendish before EBL, but completed the acquisition of Cavendish after EBL. On the basis that Stagecoach acquired control of Cavendish at the time of completion of the deal, the share of supply test is also satisfied in respect of the supply of bus services in the Eastbourne area in relation to the acquisition by Stagecoach of Cavendish, as by that time Stagecoach already supplied more than 25 per cent of such services in the area through its ownership of EBL.
- 3.22 We examined whether the Eastbourne area could be considered as a substantial part of the UK within the meaning of the Act. In the House of Lords judgment in *R v MMC and another ex parte South Yorkshire Ltd*,⁸ it was held that for a given area to be a substantial part of the UK it must be 'of such size, character and importance as to make it worth consideration for the purposes of the Act'. The case was concerned with the share of the supply test under the Fair Trading Act 1973. However, the same principles will apply to the share of supply test under the Act.
- 3.23 The Eastbourne area has a population of around 131,000 including Hailsham, Polegate and Pevensey.⁹ Eastbourne is a substantial town, the largest in East Sussex excluding the Unitary Authority of Brighton & Hove. It attracts a substantial number of visitors in the summer months, and it has a higher-than-average proportion of the population who are retired.
- 3.24 The CC has found in a number of cases that a local market, centred around a particular town or city, could be regarded as a substantial part of the UK. Although we recognize that Eastbourne is smaller than previous examples, we decided that it shared similar characteristics as a significant and distinct town.
- 3.25 Having regard to the above factors, we found that the reference area was of such size, character and importance as to make it worth consideration for the purposes of the Act and hence 'a substantial part of the UK' for those purposes. We therefore concluded that the share of supply test was satisfied and a relevant merger situation had been created.

4. Bus services in the Eastbourne area

- 4.1 In this section, we set some of the background to consideration of the bus market in Eastbourne. We start by describing the provision of bus services in the Eastbourne area, both commercial and tendered, and developments in the network of bus services offered in the Eastbourne area in recent years. Second, we consider some evidence on the nature of pre-merger rivalry between the parties. Third, we discuss aspects of the regulation of bus services, and the role of local authorities including the operation of concessionary ticketing schemes.

⁸[1993] 1 WLR, p23.

⁹Source: Population Estimates in 2008 (wards), CACI, from www.eastsussexinfigures.org.uk.

Background to transport in the Eastbourne area

- 4.2 The population of the Eastbourne area was around 131,000 in 2008. 28.8 per cent of the population of Eastbourne were aged over 60 compared with an average for Great Britain of 21.2 per cent.¹⁰ The percentage of households with no car was 31.7 per cent, considerably more than the average for England and Wales of 26.8 per cent. Average household income was slightly below the average for Great Britain.¹¹
- 4.3 The town of Eastbourne is mostly flat in the east, and hilly in the west, with an area of marshland in the centre, around which the town has grown. We were told that this results in a need for a more complex bus route network. There is a rail service with local stations at Eastbourne, Hampden Park, Polegate and Pevensey Bay.
- 4.4 Stagecoach noted that with regard to travel-to-work patterns, 13.5 per cent of Eastbourne's population commuted on foot and 3.5 by bike, compared with 10 and 3 per cent respectively for Great Britain. It said that this reflected the geography and small size of the town. Car and bus use for commuting were similar in Eastbourne to Great Britain as a whole at 62.4 per cent and 6.0 per cent respectively.
- 4.5 We have not identified any sources of information on changes in transport use in the Eastbourne area over time, but Stagecoach submitted that bus patronage generally in Great Britain has declined over the past 50 years due to increased car ownership.¹²
- 4.6 Stagecoach told us that Eastbourne had traffic congestion problems at some points and this could lead to operational unreliability and reductions in the possible frequency of scheduled bus services. It said that many areas of the town had bungalows designed for a one- or two-person household, many of whom were elderly, which resulted in a requirement for more bus routes running at lower frequencies, and which were thus inherently less likely to attract casual or new users.
- 4.7 Figure 1 shows the pattern of bus services and operators in the Eastbourne area at September 2008, which is largely the pattern of services that prevailed in Eastbourne until the completion of the acquisitions. This reflects a substantial expansion of services, and particularly frequency of operations, by Cavendish after March 2008. Figure 2 shows the bus services operating in the Eastbourne area at March 2008.

The Eastbourne area bus network

- 4.8 Pre-merger, EBL offered a network of services in and around Eastbourne with inter-urban services also running on to East Grinstead and Tunbridge Wells. Stagecoach told us that EBL had revised its services in 2001; in particular, it had withdrawn the circular service around Eastbourne. Stagecoach told us that this reconfiguration of the network was one of the main factors in the decline in bus usage in Eastbourne. Stagecoach also commented that EBL had made frequent timetable changes and since 2007 a number of frequency and network cuts.

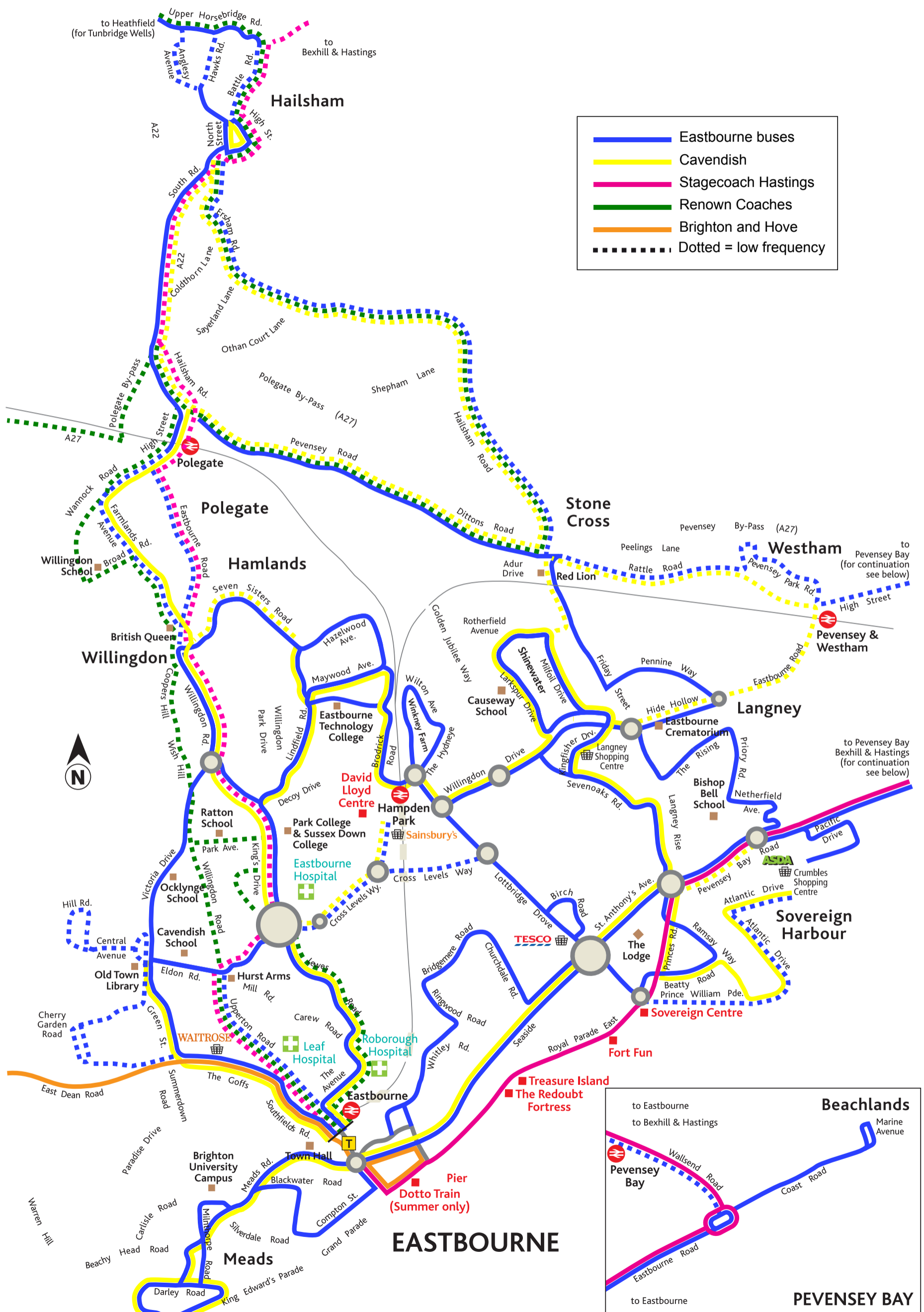
¹⁰Source: ONS–SNPP 2006. See www.statistics.gov.uk/downloads/theme_population/SNPP-2006/Table4.xls.

¹¹Source: ONS 2001 Table KS17; CACI Paycheck Data; from www.eastsussexfigures.org.uk.

¹²The extent to which rising real incomes have increased car ownership and usage is difficult to separate from relative cost effects. Over the past 20 years, for example, average bus fares have increased in real terms by some 40 per cent, whereas the inflation-adjusted cost of using a private car has been broadly unchanged. (*Arriva plc and Sovereign Bus & Coach Company Ltd*, Competition Commission, January 2005, paragraph 4.13.)

FIGURE 2

Map of bus services in the Eastbourne area, March 2008



- 4.9 Cavendish entered the Eastbourne market in March 2006, with services initially being provided by three second-hand buses, operating an hourly service on its route 10 between the Asda store and the Old Town, and route 11 to Hailsham. By July 2007 it had seven buses (plus one off-peak) operating eight routes, some half hourly; it re-introduced a circular round-Eastbourne route in 2007. In March 2008 it was still operating eight commercial routes, with some revisions, but with 12 buses (plus one off-peak). In July 2008 Cavendish increased its fleet to 23 buses (plus two off-peak) on a further revised network of eight commercial routes, including four services an hour on the circular route, with a further three buses added in September 2008.
- 4.10 Both EBL and Cavendish offered single and return tickets (with a flat-rate fare in Eastbourne and Polegate), and day and weekly tickets. EBL had various other options available, including wider area tickets, extended period tickets, 12 trip tickets and transfer tickets (allowing passengers to take a trip involving a change of bus on one ticket).
- 4.11 Following the acquisitions, Stagecoach introduced a revised network of services in Eastbourne on 8 March 2009. It took the opportunity to introduce an expanded service compared with that operated by EBL, using 47 vehicles (seven fewer than were operated by EBL and Cavendish combined in March 2008). Stagecoach told us that a range of different routes which covered common corridors at low frequencies (typically 30-minute frequencies, with unevenly spaced arrivals/departures) were replaced with single, higher-frequency routes. Stagecoach said that where different services operated in part over common corridors, the different services were coordinated to provide a better overall service for passengers. Stagecoach told us that the quality of buses in use had risen; this was in part because of the retirement of the Cavendish fleet and in part because of the new buses purchased by Stagecoach (see paragraph 3.7).
- 4.12 Both operators' tickets were accepted on EBL and Cavendish services (following the acquisitions and pending the introduction of the new pattern of services). In March 2009, standard single and return ticket prices were set at the higher, EBL level. However, the weekly ticket was discounted for approximately eight weeks and the area of validity covered by the £3 day ticket was extended.
- 4.13 Apart from EBL and Cavendish, three other bus operators offered bus services in the Eastbourne area. Stagecoach (from its Hastings base) runs two services from Hastings into Eastbourne: the 98 via Hailsham and the 99 via Pevensey Bay. Brighton & Hove runs its service 12 (and 12A and 12B which take slightly different intermediate routes) between Brighton and Eastbourne via Newhaven and Seaford. These services continue to operate. Renown also operates two tendered services: the 126 runs from Seaford to Eastbourne via Alfriston four or five times a day, and the 143 runs from Lewes to Eastbourne via Hailsham three times a day.

Pre-merger competition in the provision of bus services

- 4.14 We now consider the nature of pre-merger competition in the provision of commercial bus services in the Eastbourne area.¹³
- 4.15 Stagecoach provided estimates of shares of revenues (based on passenger ticket revenues and concessionary revenues) for the Eastbourne area—see Table 1. It derived these estimates from a variety of data sources and assumptions, eg on

¹³The appropriate market definition is discussed in [Section 5](#).

revenues from other operators and the proportion arising within the relevant area; consequently we note that there is some uncertainty attached to these estimates.

TABLE 1 Estimated market share of bus passenger revenues in the Eastbourne area, 2004 to 2008

	<i>per cent</i>				
	2004	2005	2006	2007	2008
<i>Commercial services</i>					
EBL	93.5	93.4	89.0	84.2	75.2
Stagecoach Lewes	2.9	1.9	0.0	0.0	0.0
Stagecoach Hastings	0.5	0.6	0.6	0.8	0.8
Cavendish	0.0	0.0	4.6	9.0	18.3
Renown	0.0	0.0	0.0	0.0	0.0
Brighton & Hove	2.9	3.9	5.5	5.6	5.3
Other operators	0.1	0.1	0.4	0.4	0.4
<i>Commercial and tendered services</i>					
EBL	93.2	93.1	87.8	83.0	74.2
Stagecoach Lewes	2.9	1.9	0.0	0.0	0.0
Stagecoach Hastings	0.5	0.6	0.6	0.8	0.8
Cavendish	0.0	0.0	4.4	8.9	19.0
Renown	0.5	0.5	1.4	1.4	0.4
Brighton & Hove	2.9	3.8	5.3	5.5	5.2
Other operators	0.1	0.1	0.4	0.4	0.3

Source: Stagecoach estimates.

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- 4.16 Stagecoach's share of bus revenues in the Eastbourne area diminished when it closed its Lewes depot in 2005; it sold some of the services to Brighton & Hove, whose share increased between 2005 and 2006. Cavendish entered in 2006, and the data shown in Table 1 appears consistent with the view that as Cavendish entered on routes in head-to-head competition with EBL, and undercut it on fares, passengers transferred from EBL to Cavendish services. Stagecoach attributed a small share of revenues to National Express coaches and community transport routes. National Express coaches do not provide local bus services, while community transport operators expressed no interest in entering the provision of commercial local bus services in the Eastbourne area and so we do not consider these further.
- 4.17 Stagecoach acknowledged that there had been considerable competitive interaction between EBL and Cavendish, prior to the acquisitions. It told us that it was Cavendish's entry in 2006 which exacerbated EBL's losses in late 2007 and 2008, and it noted that the growth in EBL's losses mirrored the growth in Cavendish's revenues.
- 4.18 Stagecoach said that Cavendish took advantage of gaps in EBL's network of services by introducing new routes. We note that while Cavendish's routes did not directly replicate EBL's routes, there was still a considerable degree of overlap where EBL and Cavendish buses were running along the same roads. In part it is inevitable that different bus routes will tend to converge on key corridors, particularly as they approach or leave Eastbourne's centre. The extent of overlap between Cavendish and EBL services at March 2008 is assessed in Appendix I.
- 4.19 Stagecoach said that pre-merger competition between EBL and Cavendish was focused primarily on frequency of service, and to some extent on price, but it thought that the two companies did not compete on quality given the lack of investment in the fleet by both.
- 4.20 Renown said that Cavendish competed against EBL on a combination of factors. However, it thought that the level, reliability, type and choice of service being offered was more important than price; it said that driver attitude was important, and it said

that it had also adopted an aggressive marketing campaign, but that it never really competed on price against EBL. Although we note that Cavendish had raised its prices, they had almost all been kept below EBL's. Cavendish chose to adopt a policy of charging at least 20p less than the equivalent EBL fare; it introduced a weekly ticket that included Hailsham at a cheaper price than the EBL equivalent; and it offered a special peak-time deal for concessionary pass holders.

- 4.21 Stagecoach told us that EBL appeared to have tried to increase fares to cover growing losses, whilst at the same time being required to react to competition from Cavendish. These reactions included the reintroduction of 12 journey prepaid ticket cards during 2007, and setting up ticket purchases through Paypoint¹⁴ to encourage customers to buy tickets before they got to the bus stop, and thus before they had the opportunity to get on a Cavendish bus. Renown told us that it did not know why EBL had not responded more forcefully to Cavendish, but it might have been due to a lack of resources.
- 4.22 A former interim Managing Director of EBL told the OFT that he estimated that EBL was losing £4,000 a week from competition with Cavendish and that he changed a route (1 through Hampden Park) to protect business in response to Cavendish's entry. He also said that Eastbourne had dropped the price of a weekly ticket from £15 to £12, had a 'winter sale' on certain tickets in 2006 and introduced a family ticket. He said that although EBL wished to raise fares to counter its financial difficulties, competition from Cavendish prevented this.
- 4.23 Stagecoach operates two inter-urban services between Eastbourne and Hastings (from its Hastings depot). Stagecoach submitted that prior to the acquisitions, these competed with EBL and Cavendish services to a limited extent only (as revenues on overlap flows were only a small proportion of total route revenues). Stagecoach told us that fares on its service 98 were adjusted slightly downwards in October 2008 (to maintain a degree of comparability to EBL's services), but we did not find any other evidence of a direct competitive interaction between Stagecoach and EBL or Cavendish.

Regulation of local bus services

- 4.24 The regulation of local bus services is set out in Appendix E.¹⁵ Bus operators need to meet a number of statutory criteria in order to be granted a public service vehicle operator's licence relating to good repute, appropriate financial standing and professional competence. They also need to register services with the Traffic Commissioner and generally are required to give 56 days' notice of the introduction of new services, and any amendments or withdrawals of services.
- 4.25 The Traffic Commissioner may take regulatory action against operators who have failed to comply with a condition or undertaking which has been attached to the licence, eg a failure to comply with the timetables they have submitted, or poor maintenance of an operator's vehicles.

¹⁴Paypoint allows tickets to be purchased in advance from a variety of retailers. EBL sold day and longer period tickets at a discount to on-the-bus prices. One benefit of this to EBL was that it had the effect of encouraging customers to make a commitment to travelling on its services.

¹⁵Over 80 per cent of local bus services in Great Britain are provided on a commercial rather than tendered basis—see www.dft.gov.uk/pgr/regional/buses/localbusservicesinenglandbri6075.

Role of local authorities

4.26 In paragraphs 4.27 to 4.37, we focus upon the following aspects of local authority involvement in the local bus industry: the provision of tendered services, the operation of concessionary fare schemes, and local authority powers to introduce quality schemes and ticketing schemes.

Tendered services

4.27 Local authorities have powers to secure provision of school bus services and socially necessary services that are not provided commercially (collectively known as tendered services). ESCC procures these in East Sussex. From time to time, most commonly on an annual basis, ESCC issues specifications for tenders, ranging from a network of rural or small town routes requiring several buses, down to a single peak school journey. Some contracts require only parts of a route to be tendered.

4.28 Contracts for tendered services are of two main types:

- cost based: the local authority receives the revenue and the contractor tenders for the whole cost of operating the contract (ie revenue risk is taken by the authority); and
- subsidy based: the operator retains the revenue and tenders for the cost of operating the service less the estimated revenue (ie revenue risk is taken by the operator).

4.29 The contract usually specifies the details of the service, and the fares (or a range of fares); ESCC told us that these were usually set at a similar rate as commercial fares. Most contracts include clauses allowing them to be suspended if another operator decides to register the service commercially.

4.30 Details of the organization of tendered services in East Sussex are set out in Appendix F.

Concessionary fare schemes

4.31 District councils are required by statute to provide concessionary fare permits for the elderly and the disabled.¹⁶ EBC is responsible for setting up and administering the concessionary fares scheme in Eastbourne. The Concessionary Bus Travel Act 2007 provides that everyone aged 60 and over or disabled in England can obtain free off-peak travel on all local buses anywhere in England.

4.32 There were around 22,000 concessionary pass holders in Eastbourne in March 2009. Stagecoach told us that there were a large number of concessionary journeys in Eastbourne; it estimated the number of over-60 concessionary passengers in Eastbourne to be around 45 per cent of ridership in 2008. It told us that EBL carried 1,635,840 concessionary passengers in 2008 compared with a total of 4,428,739 passengers, a proportion of 36.9 per cent.

4.33 Local authorities are required to organize schemes with the objective that compensation to bus operators should leave the operators no better and no worse off as a result of the scheme. In the Eastbourne area bus operators are reimbursed for con-

¹⁶Section 145 of the Transport Act 2000.

cessionary travel through The Sussex Countrywide Concessionary Travel Scheme. This is described in Appendix E. In summary, bus operators are reimbursed a proportion of a commercial fare for each concessionary passenger, where that fare is calculated from a basket of that operator's single, return and other fares. Under the scheme, for urban services in the Eastbourne area, the proportionate reimbursement rate is 0.529 (but inter-urban routes are reimbursed at a factor of 0.393). This proportion is intended to reflect the fact that there will be many more journeys undertaken by concessionary passengers because of the free travel scheme. In addition, operators get a small fixed payment per passenger to cover any extra costs.

- 4.34 As described in Appendix E, there are measures within the Sussex scheme that can lead to concessionary reimbursements being reduced in the event of fare increases.¹⁷ The scheme's administrator, MCL, told us that it also had some discretion to scale back reimbursement, if it judged that there were extreme fare increases which were out of line with reasonable justifications (for example, in comparison with previous levels and other similar bus services). MCL told us that if a review of an operator's fares was triggered, it could reduce these fares to the average for other operators providing similar services.¹⁸ The way in which these provisions would be applied in practice is unclear, as they have not yet been invoked and different parties seem to have differing expectations of how these rules can be applied. This means that there is some uncertainty as to what might be the net effect on an operator's concessionary revenues in the event of a fare increase—revenues might increase pro rata to fares, or by some lesser amount (but there was no suggestion that they could decline, thus offsetting part of any gain in revenue on commercial fares).
- 4.35 Local authorities have powers under the 1985 Act to make travel concessions schemes for children, but no such scheme exists in East Sussex. ESCC provides home-to-school transport for pupils and students who are eligible, generally low-income families, which may include provision of bus passes.¹⁹ Additionally, there are a small number of additional tendered bus services paid for by ESCC in the Eastbourne area, primarily for school transport, and timed to coincide with school start and finish times. Bus operators generally offer lower fares to children and there are East Sussex-wide weekly area tickets available to children and students.

Local authority powers

- 4.36 Local authorities have powers to improve the quality of local bus services including reviewing and proposing a Local Transport Plan which may include voluntary partnership agreements; statutory quality partnership schemes; statutory quality contract schemes; and/or statutory ticketing schemes. These are described in Appendix E, but no statutory schemes exist or are being developed in the Eastbourne area.
- 4.37 There is a voluntary partnership agreement between ESCC, EBC and Wealden District Council with EBL and Stagecoach Coastline/Stagecoach in Hastings. Under a

¹⁷If a bus operator increases its commercial fares, there will be a pro rata increase in reimbursement revenue on concessionary fares. Higher fares feed back into subsequent determinations of reimbursement rates as these are assumed to have an elasticity effect on concessionary passengers (ie fewer of them would have been travelling if they had had to pay the higher commercial fares), which reduces the rate of reimbursement in later years. These measures are applied at an aggregate, rather than individual operator level, and so their effect is likely to be more to limit growth in overall costs than to act as a disincentive to individual operators to increase fares. There will also be a lag before this effect applies.

¹⁸In contrast, Stagecoach told us that control of reimbursements could be achieved by the administrators adjusting the notional commercial fare basket, by assuming a greater proportionate use of discounted tickets. MCL disagreed: it said that the notional fare basket was a factual calculation based on actual sales and agreed with the operator.

¹⁹Under the Education Act 1996. This is carried out either by operation of specific bus, coach or taxi contract or by purchase of bus or train passes used on the passenger transport network as appropriate.

voluntary partnership agreement, a local authority typically provides improved facilities such as bus shelters, bus stations and bus lanes, while bus operators undertake to provide bus services of a particular standard, for example by introducing modern low-floor buses. Such a partnership would be expected to enable greater coordination between the council and the bus operator over matters such as bus prioritization and access and investments in real time information systems. We understand that the objectives of this partnership have not been advanced but both Stagecoach and EBC are interested to revive the objectives of this partnership agreement.

5. Market definition

Introduction

- 5.1 The purpose of market definition in merger analysis is to help to provide a framework for the analysis of competitive effects. Market definition normally identifies a collection of products or services, and an appropriate geographic area, that delineates the market and thereby provides a tool to help frame our consideration of the effects of the merger. Further details of our consideration of market definition are set out in Appendix G. We start by considering market definition in the context of commercial services. In paragraphs 5.34 to 5.36 we address whether tendered services are part of the same market.
- 5.2 In transport inquiries, the delineation between the product and geographic aspects of market definition may not be clear cut. For example, one can view purchasing a ticket to journey from A to B by bus as an element of the product offering or as a geographic aspect of the offering, and we have for this purpose considered these two aspects together.
- 5.3 Wherever possible, the CC adopts the hypothetical monopolist test to define markets. Starting with the narrowest possible market definition, this test typically asks whether it would be profitable for a hypothetical monopolist over the 'candidate market' to impose a small but significant non-transitory increase in prices (SSNIP, which is often considered to mean a 5 per cent price increase for a year). Whether or not this would be profitable will depend on the nature of competitive constraints, such as the extent to which customers would respond by switching to other products (demand-side substitution), and the extent to which other firms would be able to substitute quickly and easily output from other uses into the market in question (supply-side substitution). It will also depend on the degree to which the price increase results in cost savings (as a result of lower volumes sold). If a fare increase is unprofitable, it suggests that the hypothetical monopolist is constrained by competitive factors outside the market, and so the candidate market needs to be widened. If such a fare increase was profitable and could be sustained, the product or service supplied by the hypothetical bus service supplier could be regarded as being monopolizable, and would therefore be considered a distinct market.
- 5.4 Stagecoach submitted that the SSNIP test was not appropriate for observing switching decisions in bus services (especially for passengers enjoying concessionary fares), because fares were not the only consideration for passengers and because a 5 per cent increase was not particularly significant in monetary terms for passengers when talking about bus fares. Indeed, Stagecoach told us that it did not consider that a 5 per cent price rise would generally be sufficient to persuade passengers to switch between operators.
- 5.5 We accept that fares are not the only factor taken into account by passengers. However, this does not in our view invalidate the SSNIP test; in the context of the bus industry it is possible to think of the hypothetical monopolist test as a small but sig-

nificant non-transitory worsening of fares, service quality (such as reductions in frequency, hours of operation or quality of the buses), or some combination of those factors. In practice, it can be difficult to make the hypothetical monopolist test based on non-price factors operational. However, we have referred to the available evidence on non-price demand elasticities in Appendix G, Table 4.

- 5.6 On the second point, we do not accept the proposition that a 5 per cent price increase is insignificant to passengers, particularly those who undertake regular journeys. In any case, our objective is to help assess whether any constraints (other than competition between bus operators in the same candidate market) limit an ability to increase fares or cut service quality.
- 5.7 As noted in paragraph 4.32, there are a large number of concessionary journeys made in Eastbourne; operators are remunerated via the Sussex Countrywide Concessionary Travel Scheme (see Appendix E). Concessionary passengers are likely to be insensitive to price increases since under the concessionary scheme, bus travel for them is, for the most part, free (although they may be sensitive to changes in non-price factors such as frequency). However, there may be adjustments in the way that the scheme reimburses operators following fare increases, although it is uncertain how this would be applied in practice (see Appendix E, paragraphs 37 and 38). Consequently we cannot be sure of the extent to which a hypothetical fare increase would increase revenue from the concessionary scheme. However, there was no suggestion that changes in the concessionary scheme would offset the profitability of a hypothetical fare increase for commercial fares, and if reductions in concessionary payment rates are not triggered or they are limited, it is likely that the profitability of a fare rise increases. It does not appear that the concessionary fare scheme would act to reduce the profitability of a SSNIP-type fare increase, nor would it reduce any incentives to increase commercial fares.

Demand-side considerations

- 5.8 We now consider issues relating to demand-side substitution. For the purposes of considering demand-side substitution, our starting candidate market is bus services on a particular flow.
- 5.9 We examined whether sufficient passengers might consider substituting between alternative flows to render a 5 per cent increase in price (or a small but significant diminution of service quality, such as reductions in frequency, hours of operation or quality of the buses) on one 'candidate' flow unprofitable. If this was so, the market would be widened to include the substitutable flows—see Appendix G, paragraphs 20 to 23. Passengers will only consider options that allow them to complete the same desired journey. As passengers will need to walk to and from bus stops, it is possible that they would be willing to walk to alternative bus stops where substitute routes are positioned close together.
- 5.10 For the purposes of analysing competition between operators at the flow level (see paragraphs 7.4 to 7.9 and Appendix I), we therefore worked on the basis that any two flows that have both their origins and destinations within 500m of one another could be considered as possible demand-side substitutes. We would expect this to be applicable both in the cases of a fare increase or a diminution of service quality (such as a cut in frequency). However, we understand that there are very few examples of such substitutability between flows in Eastbourne.

Constraints from other forms of transport

- 5.11 We considered whether the relevant market should be widened to include other forms of transport, because passengers may be prepared to substitute other forms of transport for bus travel.
- 5.12 In previous CC investigations, we have generally found that private transport is not an effective constraint to SSNIP-type fare increases on public transport operators, although we have in some cases found that alternative modes of public transport can be substitutes. There is an extensive and complex array of elasticity estimates available on the demand for different modes of transport used for point-to-point journeys (see Appendix G). In general, estimates of the price elasticity of demand for bus travel tend to be low, especially in the short run. This suggests that insufficient numbers of passengers would switch to alternative modes of travel in the event of a fare increase so as to render the fare increase unprofitable, ie other forms of transport are not a sufficiently strong competitive constraint to suggest that markets should be wider than bus services.
- 5.13 Stagecoach said that passengers chose between a wide range of transport options when making journeys. Depending upon the individual passenger or group of passengers and the journey which they wish to make, Stagecoach said that car, taxi, cycling, walking and rail services could all be potential substitutes for bus services in and around Eastbourne. It considered that the relevant product market is therefore at least as wide as an ‘all public transport’ market on a given flow, and it believed that the market also included cars and possibly walking (see paragraph 5.18).
- 5.14 Whether or not alternative modes of transport are available does not indicate whether sufficient customers would shift to them in the event of a SSNIP-type fare change to act as a constraint.
- 5.15 There are in Eastbourne six flows²⁰ which could potentially be served by rail. For the purposes of this inquiry, we have not needed to conclude on whether rail should be considered as part of the relevant market because of the very limited number of overlaps between rail and bus flows.
- 5.16 In relation to competition between bus and private transport, Stagecoach gave various examples of observed substitution between private car and bus services (see Appendix G, paragraph 44), but these tended to relate to industry developments that are quite different from a SSNIP-type price or frequency change.
- 5.17 Stagecoach also commissioned a survey to investigate the price sensitivity of bus passengers in the Eastbourne area (described in Appendix G). One of the survey questions asked bus passengers how they would respond to a 10 per cent increase in bus fares. Using the answer to this question, Stagecoach computed a range of ‘actual losses’ of passenger journeys which it could compare to a ‘critical loss’ to determine whether a 10 per cent fare increase would be profitable (taking account of the balance between increased fares and decreased passenger numbers).
- 5.18 Stagecoach said that for a variety of assumptions, the survey results generally indicated that the relevant market could be wider than just bus services. Stagecoach told us that of the various ‘actual loss’ estimates obtained, the most appropriate set to use for this purpose was the results obtained by reweighting the data by off-peak/peak usage. This is intended to reflect more accurately the mix of peak and off-peak pas-

²⁰Eastbourne Town Centre–Pevensy Bay, Eastbourne Town Centre–Hampden Park and Eastbourne–Polegate (and vice versa).

sengers who travel by bus in the Eastbourne area compared with those who were sampled in the survey. This method indicated reductions in journeys by customers in response to a 10 per cent fare increase (ie 'actual losses') that exceeded the calculated critical loss of 10.1 per cent by a varying margin, depending on how the survey responses were interpreted. These results are set out in Appendix G, Table 5. Stagecoach told us that, since the estimates exceeded the critical loss level, and so the hypothetical fare increase would be unprofitable, the survey responses indicated that the market should be widened to include either walking (if the data is weighted by off-peak/peak usage) or car (if the data is unweighted).

- 5.19 Stagecoach said that this survey represented real and objective evidence, directly relevant to the Eastbourne area, in contrast to more dated non-specific evidence. It also referred to a survey by Dargay and Hanly (2002) (see Appendix G, Table 4), which it noted found that the elasticity of demand for bus services in East Sussex was higher than for England generally, which it suggested indicated that customer behaviour in the Eastbourne area might differ from other areas.
- 5.20 While we recognize that the Stagecoach survey is potentially relevant evidence on demand substitution patterns in the Eastbourne area, we had a number of concerns about the survey methodology and analysis of the results, which meant that we did not find Stagecoach's interpretation of the survey evidence to be persuasive.²¹ The concerns were:
- The implied fare elasticities used by Stagecoach in this analysis are much higher than academic estimates of short-run fare elasticities among bus users, which suggests that Stagecoach's estimates of actual losses are likely to be too high. As discussed in Appendix G, we saw no compelling evidence to suggest that customer behaviour and price sensitivity in the Eastbourne area should be different from other areas in Great Britain.
 - The number of passengers surveyed was fairly small (eg nine morning peak passengers were surveyed). While this reflects the limited time available for the survey, the small numbers mean that we are uncertain that the results are truly representative of all bus users in Eastbourne, and this applies particularly in relation of the number of peak passengers sampled.
 - The estimate of the 'actual loss' cannot be directly derived from the survey responses, but depend on exogenous assumptions. In particular, of those respondents who said that they would change their behaviour in response to a fare increase, a large proportion said that they would reduce bus travel by an unspecified amount, and the survey provides no basis for assessing how small or large this reduction would be. Stagecoach reported a range of possible reductions in travel, but we do not know on the basis of the survey which, if any, of these are most relevant.
 - The critical loss analysis assumes that the hypothetical monopolist would receive no additional revenue from the concessionary fare scheme. As discussed in paragraph 4.34 and Appendix E, we think that it is more likely that there would be some increase in concessionary revenues if commercial fares were raised.

²¹There can also be a general risk in posing SSNIP-type survey questions in that respondents may not fully understand a hypothetical scenario, may overstate their willingness to respond to incentives, or may deliberately wish to overstate their willingness to react to a price increase in an attempt to deter a possible price increase. These issues necessitate careful survey design and caution when interpreting responses.

- The critical loss calculations need to take account of both the reduction revenue resulting from fewer passengers travelling, and also any savings in costs to the bus operator from transporting fewer passengers.²² The analysis assumes that the marginal cost of passengers is 13p (based on the reimbursement under the Sussex concessionary travel scheme). We are not convinced that this is an appropriate proxy for the marginal cost to use for the critical loss purpose and we think that the gross margin implied could be too high. In particular, there may be further reductions in costs following a fare increase as fewer or smaller buses might be required to serve a reduced number of passengers. If more costs vary with the number of passengers, the gross margin will be lower, thus making a hypothetical fare increase more profitable as less profits are forgone for any given reduction in demand (see Appendix E, Annex 2, paragraphs 4 and 5).

5.21 While we recognize that Stagecoach's survey has directly addressed the issue of customer behaviour in the Eastbourne area, we find that its interpretation of the results delivers a range of possible conclusions dependent on the assumptions made, and this means that we cannot find the survey evidence, on its own, to be persuasive. When we also take into account other evidence, and what we consider to be more reasonable assumptions within the critical-loss analysis (in particular, the most likely fare elasticity), we conclude that a SSNIP-type fare rise is likely to be profitable. Therefore we find that other modes of transport are not in the same market as bus travel.

The role of the network

5.22 Whilst some passengers may only be interested in making one or a series of point-to-point journeys along a single flow, others may be interested in making one or a series of multiple journeys across several distinct and possibly interconnecting flows. For the latter group of customers, the bus services along different flows are complements to one another (in so far as they will tend to make use of them together).²³ We therefore need to consider whether it is appropriate to define a 'network' market as a result of demand-side complementarities.

5.23 According to Stagecoach, the majority of bus passengers travelling within Eastbourne use a single bus service only for their regular journeys. It believed that the small size of the town means that a network of bus services is of little relevance to most passengers and the proportion of passengers switching bus services within a journey is insignificant. However, single-operator network tickets were the most popular type of ticket for fare-paying passenger journeys on EBL's services in 2008 (see Appendix G, Table 1), whereas there was proportionately more use of single and return tickets on Cavendish's services. Stagecoach told us that many of the 'network' tickets that were sold were purchased by passengers who were only interested in making a series of return journeys on the same flow because this was cheaper for them. It noted in particular that during the first half of 2008, the price of an Eastbourne Day Rover ticket was the same price or less than the price of a return ticket and EBL's drivers were instructed to issue day tickets instead of returns at this time. Stagecoach told us that it considered a network approach was not appropriate for demand-side substitution, given the features of the market in Eastbourne.

²²Although any reductions in frequency of quality of service are likely to have a further, knock-on impact on passenger demand.

²³Technically, if two products are complements, the cross-price elasticity between them is negative, ie if the price of one increases, the demand for the complementary product will fall.

- 5.24 Concessionary passengers are not restricted by operator-specific tickets and can travel on any operator's services, and so it will be irrelevant to them whether any one operator has a network of services.
- 5.25 We found that overall, the evidence on whether a significant group of customers within the Eastbourne area place value on demand complementarities between routes is not persuasive; network ticket sales may largely reflect the ticket pricing structures that have been adopted. Therefore we conclude that there is no separate network market for bus travel in the Eastbourne area.

Supply-side considerations

- 5.26 We now address whether the market should be expanded because of the potential for reactions on the supply side by rival bus companies. For example, if rival bus companies are able to 'enter' or 'expand' services on a particular flow by substituting resources from one service to another service, or with new capacity, on a sufficient scale and sufficiently rapidly to render a price increase or diminution of service quality by a hypothetical monopolist on a flow unprofitable, then it may be appropriate to take a wider market definition.
- 5.27 Stagecoach said that because buses were themselves mobile, this meant that bus capacity could be shifted from one route to an alternative route relatively easily and at short notice so long as there was sufficient depot capacity. For this reason, Stagecoach submitted that supply-side substitution would take place around depots. However, it acknowledged that the location of depots which could do this would be restricted by the costs of 'dead runs' where buses transfer from the depot to start serving the route. It believed that the locations from which one could economically operate services in Eastbourne included the immediate Eastbourne area and might include depots further afield. We note that, excluding the merging parties, none of the operators with depots elsewhere in Sussex told us that they considered it viable to start operating significant levels of local bus services for the Eastbourne area from their existing bases. This suggests that depots would need to be located reasonably close to the Eastbourne area—closer, for example, than Brighton.
- 5.28 We agree that bus operators who run a set of routes and have depot facilities with spare capacity sufficiently close to Eastbourne to serve the Eastbourne area (which was limited pre-merger to just EBL and Cavendish) should in principle be able to amend bus capacity across most, if not all, flows at relatively short notice to take advantage of profitable opportunities. Running a 'portfolio' of routes in an area from a depot with spare capacity provides incumbent operators with knowledge of the area, brand awareness to passengers and flexibility to change or add to their services at relatively short notice. In other words, these bus operators should be able to provide a competitive constraint, which we refer to as 'potential competition', on one another's flows by virtue of their ability easily to amend their route network (or by bringing in extra vehicles where this does not require substantial investment).
- 5.29 This supply-side constraint could be considered as reason either to recognize potential entrants as actual competitors on all flows or to adopt a wider, all-flow, market definition. The consequences for the evaluation of the effects of the mergers are similar.

Conclusion on market definition for commercial services

- 5.30 We conclude that on the demand side the appropriate market definition is a series of flow level/group of flow level markets in the Eastbourne area. However, we note that there is also some potential for supply-side reactions.
- 5.31 Moreover, in many cases the characteristics of flows in the Eastbourne area, and the identity of competitors on those flows pre-merger, are similar (see paragraphs 7.4 to 7.6). Consequently, in the specific circumstances of this case, the similarity of competitive conditions means that these flows can be aggregated together for the purposes of convenient analysis (while noting that in a few instances there will be additional competition, eg because of the presence of third-party transport operators on particular flows).
- 5.32 For these reasons, we adopt a market definition of the provision of bus services in the Eastbourne area.
- 5.33 Our competitive effects analysis will therefore assess the impact of the merger on both (a) head-to-head competition between the parties (resulting from demand-side substitutability on overlap flows) and (b) potential competition between the parties (resulting from supply-side considerations across flows in the Eastbourne area).

Tendered services

- 5.34 We also considered whether tendered services were in the same market as commercial services. In most cases, tendered services do not overlap with commercial services, otherwise there would be no reason for councils to put these services out to tender. Occasionally there can be limited overlaps, eg along corridors where routes start or end in a town centre. In such cases, we would expect them to represent a demand-side substitute for passengers. On balance, we do not think there is a strong reason to treat tendered services that overlap at the flow level any differently from commercial services. We therefore include them in our analysis of the impact of the acquisitions on head-to-head competition for bus services on particular flows, in the limited cases where they do overlap with commercial services.
- 5.35 Tendered services cannot compete with overlapping commercial services or other tendered services on the basis of price and/or frequency. These are set by the local authority for a specific period, and there is no scope for short-term supply-side substitution of buses to or away from tendered services to compete with other tendered or commercial services, as the service levels are contractual commitments.²⁴ Consequently, to understand the impact of the acquisitions on tendered services, rather than looking at competition against them from commercial services, we need to look at them separately from commercial services, and consider the different competitive processes involved in bidding for contracts to supply tendered services.
- 5.36 Therefore, for the purposes of considering tendered services, we identify a separate market for the tendering of the right to operate these bus services.

²⁴However, Stagecoach note that there are some economies of scope between the service types as bus depot capacity can be used to service either, and buses and drivers used for peak tendered services can be used on commercial services at other times of the day at a very low incremental cost.

6. The counterfactual situation

- 6.1 The purpose of setting a counterfactual is to identify the situation against which the effects on competition arising from the mergers should be assessed. Our merger guidelines²⁵ state:

In applying the SLC test, the CC will evaluate the competitive constraints on firms with the merger compared to the situation that would have been expected to prevail without the merger (sometimes referred to as the 'counterfactual'). The counterfactual will be that situation which the CC expects to arise in the absence of the merger under consideration and will, in many cases, relate to the existing, pre-merger, competitive conditions. However, in certain circumstances the CC may need to take account of other factors ... This is in order to reflect as accurately as possible the CC's expectation of the rivalry which will occur in the absence of the merger.

In this case, there may be reasons to believe that the immediate pre-merger situation is not an appropriate counterfactual. We were aware that EBL's financial position had been weak and that Cavendish had incurred considerable losses in the second half of 2008. Because of the limited presence of Stagecoach in the Eastbourne area prior to its acquisitions of EBL and Cavendish (see Table 1), our consideration centres on the counterfactual relevant to EBL and Cavendish coming under common control, rather than Stagecoach's initial acquisition.

- 6.2 Stagecoach told us that a process of competition between two bus network operators in the Eastbourne area would be unsustainable in the medium or long term. Stagecoach said that '... while Cavendish was competing with EBL, they were sharing the total revenue in the town but at—both separately and collectively—a cost which was more than the revenue'. It said that if, instead of one exiting, both EBL and Cavendish were to continue in the market, they would have had to retrench substantially. Stagecoach submitted that Cavendish would have been likely to close those routes in its portfolio that were unprofitable, and this was likely to result in a situation where overlaps would be minimal. Stagecoach considered that any loss of competition would be transitory and that moving from a situation of two operators, with little or no head-to-head competition, to one principal operator would not give rise to an SLC as the level of actual competition would be unchanged.
- 6.3 A number of other parties also told us that the Eastbourne area would not be capable of supporting two large network operators (see Appendix J, paragraph 57). Go-Ahead said that in its view it was only sustainable for there to be one large bus operator in the Eastbourne area, as the market was not large enough (in terms of passenger demand for services) to support two operators. Renown also told us that it did not believe that there was a big enough market in Eastbourne to support more than one operator on a network basis in the long term.
- 6.4 In this counterfactual assessment, we address whether it was likely that EBL and Cavendish would have continued to operate given the particular circumstances that applied to each of them at the time of the acquisitions, and form a view on the extent of competition between them in the absence of the acquisitions. In particular, we assessed whether it was likely that, in the absence of Stagecoach's acquisitions of both EBL and Cavendish, either operator would have exited the market in the foreseeable future, or otherwise would have retrenched or changed its operations to such

²⁵Merger References: Competition Commission Guidelines, CC2, paragraph 1.22.

an extent that it would cease to provide a competitive constraint on the other. We look at the counterfactual in two stages: first, whether an immediate exit by either party was likely with reference to the failing firm test; and second, what strategic choices the parties would be likely to make over the longer term in the absence of the acquisitions.

- 6.5 Stagecoach thought it very likely that any likely alternative purchaser of EBL would also have attempted to purchase Cavendish. Go-Ahead was the other party to submit a final bid for EBL, and it told us that it had also intended to purchase Cavendish if it had purchased EBL. That proposal would in effect give rise to a similar situation to the merger under consideration and would be likely to fall for competition assessment itself. Any such proposal would not be permitted if it gave rise to competition concerns, and the fact that alternative purchasers may also see an opportunity to eliminate competitive pressures cannot, we conclude, serve as a justification for any anti-competitive acquisitions. It is therefore not relevant or appropriate to consider this as the likely counterfactual, nor is it relevant or appropriate to consider a counterfactual where Renown acquires EBL, since that would also give rise to a similar situation to the merger under consideration.

Failing firm assessment

- 6.6 We first addressed whether either firm could be expected to fail in the immediate future, using the criteria of the failing firm test as detailed in our guidelines.²⁶ Our analysis of the failing firm test is set out in detail in Appendix H. Stagecoach acknowledged that neither EBL nor Cavendish could be considered as failing firms within the context of the test to establish whether they would exit the industry in the short term, but it noted that they were, for different reasons, both weak.

EBL

- 6.7 We have seen that EBL faced financial problems (see paragraph 2.4 and Appendix B), and that it had been unable to turn itself around under its existing management. EBC and Keolis were unwilling or unable to commit to a restructuring of EBL, and EBC told us that administration was the likely alternative if a sale was not achieved. However, the sales process for EBL revealed that at least two large bus companies believed that there was value attached to EBL's business and assets. There appears to have been a recognition that EBL had some potential to perform satisfactorily under different management. Stagecoach itself acknowledged that it would have purchased EBL without Cavendish—and we saw no reason to think that other operators would not come to a similar view, even if they might have preferred to purchase both operators if the opportunity were available.²⁷ Stagecoach also acknowledged that somebody would eventually buy EBL as long as it was trading and for sale. While Go-Ahead was the only other party to bid for EBL, we do not think that this implies that there would be no other credible buyers for EBL under any other circumstances. We also note that EBC was anxious that EBL was sold as a going concern to preserve the provision of bus services in Eastbourne. Even if EBL had gone into

²⁶ CC2, paragraphs 3.61 to 3.63.

²⁷ This is corroborated by an internal Stagecoach email around the time it submitted its first offer for EBL that attributed around £[redacted] million to EBL's fleet and property assets on a market value basis, compared to a net book value of around £2.5 million. It would also seem plausible to assume that some buyers would be able to attribute some intrinsic value to EBL given that EBL's assets immediately provided the acquirer with an infrastructure with which it could provide bus services within Eastbourne, ie it provided a platform for immediate market entry into the Eastbourne area. There is also the potential to reduce costs through improved efficiencies or economies of size in being part of a larger group; Stagecoach told us that it was able to identify around £[redacted] million of annual cost savings for EBL.

administration, we think it unlikely that it would have ceased trading; rather a sale while still trading would have been achieved at some price.²⁸

- 6.8 We did not find that EBL was likely to exit the market in the immediate future. Instead we expect that an alternative owner would purchase and utilize its assets, especially given the nature of the large bus depot, to provide bus services in the Eastbourne area. Thus its business, if not necessarily trading as the same legal entity or in the same ownership, would be expected to continue.
- 6.9 For these reasons, we conclude that EBL was not a failing firm which was likely to exit the industry in the near future.

Cavendish

- 6.10 Renown bore many of the maintenance and repair costs as well as the overheads of the Cavendish business, and may also have taken some of its revenues. Because many of these costs were already committed, Cavendish operated primarily with regard only to direct costs (and was not managed as a stand-alone business). Within this context, Cavendish's operations appear to have been making a direct contribution to the maintenance and overheads costs incurred by Renown's business (ie more than covering direct costs) , until the service expansions in the second half of 2008.
- 6.11 We found that Cavendish would not have been an attractive stand-alone acquisition for any business which did not already have access to existing depot facilities and spare capacity in the vicinity of the Eastbourne area. Renown told us that it had been seeking buyers for some time (prior to the sale of EBL) without success.
- 6.12 Renown told us that if Cavendish had not been acquired and EBL had been acquired by another operator, Cavendish would have been faced with a wide 'range of possibilities'. It did not say that Cavendish would, necessarily or immediately, have exited from Eastbourne. Stagecoach also said that Cavendish would not necessarily have exited the market immediately but said that 'it is conceivable that Cavendish would have continued to operate independently in the short term', albeit with substantial retrenchment.²⁹ Therefore, in the absence of being acquired by the owner of EBL, we expect that the most likely outcome would be that Cavendish would continue to operate while in common ownership with Renown.
- 6.13 We concluded that, following the sale of EBL to another party, Renown would have undertaken a fresh appraisal of its strategy and options given the circumstances applying at the time, rather than necessarily withdrawing immediately. This appraisal would have taken account of the likely profitability of continuing to operate some level of services. We consider the profitability of Cavendish's operations in paragraphs 6.18 to 6.27 and in Appendix H, and we found that while some of its services were covering their direct costs, other routes were not. Renown told us that Cavendish's

²⁸We would also expect that a number of EBL's pre-acquisition liabilities would not exist following a sale, including the £0.2 million EBC debenture and its net pension deficit. Stagecoach told us that the cost to the fund of meeting its future obligations to current and former bus company employees in membership of the fund, up to the time of sale, required a payment into the fund by EBC of £2.627 million. We think it likely that absent Stagecoach's acquisition, EBC would also have agreed to indemnify EBL's pension funding costs with an alternative buyer, on a similar basis to EBC's arrangements with Stagecoach.

²⁹Stagecoach told us that it had never been its intention to own Cavendish without EBL. However, if it had been left with an obligation to purchase Cavendish but had not been successful in acquiring EBL, it would most likely have sought to sell Cavendish to the owner of EBL. If this had not been possible, it had considered plans to run Cavendish from an outstation in Eastbourne, with buses maintained from the depot in Hastings. It said that it would downsize and keep the routes where the earnings were best, and run a very cheap, minimum-cost operation to be as much of a nuisance as it could" until someone paid it to go away". Stagecoach did not propose a strategy where it would choose to continue to operate Cavendish as a competitor in the Eastbourne area in the long run.

overall operations at December 2008, following the uplift in services in the second half of 2008, were not even covering their direct costs. In the counterfactual situation, we expect that Cavendish's first action would likely have been to withdraw from routes that did not cover their direct costs, as even in the short run this would be the most profitable course of action.

- 6.14 However, in the absence of an acquisition by Stagecoach, we do not see that Cavendish would necessarily have been compelled to exit the market immediately, and therefore we find that Cavendish was not a failing firm within the meaning of our merger guidelines.

Longer-term strategic options for Cavendish and EBL

- 6.15 We then considered how the parties would be likely to operate over a longer period of time, given a situation where EBL had been purchased by another operator and restructured, but Cavendish remained in common ownership with Renown. We recognize that Cavendish's and EBL's actions will be linked, as each one's strategic choices are to a considerable degree going to be dependent upon the choices that the other makes.
- 6.16 In assessing what would have happened to Cavendish in the absence of the acquisitions by Stagecoach, we start by noting Renown's original strategy, which had justified its expansion in the Eastbourne area. Renown felt that Cavendish might displace EBL as the main network operator if EBL failed, or it might be in a position to acquire EBL. Its expansion in the second half of 2008 was based on protecting its investment such that any purchaser of EBL would also be likely to seek to acquire Cavendish.³⁰
- 6.17 Under a counterfactual situation where EBL was acquired by another operator, which did not also acquire Cavendish, we expect that Renown would have reviewed its position. Renown told us that in such circumstances, Cavendish might have moved to a smaller operation or left the market altogether, but this would depend on who the new operator of EBL was. There was a chance that it would not have carried on operating but it might also have reduced services and continued.
- 6.18 We examined the profitability of Cavendish's operations to help indicate what strategic choices it may have made. While Cavendish's management accounts indicated that its operations were profitable in March 2008, Renown told us that they were not an accurate reflection of the operation as an ongoing concern. It said that the operating profits (as reported in the management accounts) did not include full engineering costs or provision for vehicle replacement. In consequence, the business was not profitable at any level of service, as revenue was unlikely to be sufficient (to cover Cavendish's costs) whilst EBL still existed. It said that therefore, it was unlikely that any scaled-back operation on a network basis could have succeeded against an operator more organized than EBL.
- 6.19 Stagecoach submitted that it would be wrong to assume that Renown would have continued to provide support (at the same or increased levels) to Cavendish in the counterfactual, or that Cavendish would have provided similar services to those operated in March 2008. It submitted that the profitability of individual routes would have been likely to impact on Renown's overall business and strategy as regards

³⁰Stagecoach said that our counterfactual assessment should be based on the market situation before Cavendish's entry to reflect a sustainable point of comparison. We do not agree as this presupposes the answer to our consideration of the sustainability of the counterfactual.

Cavendish. Stagecoach told us that even with support from Renown, some of the Cavendish routes were loss-making, and even 'profitable' routes would have suffered against an improved and reinvigorated EBL. It therefore said that Renown would have reconsidered its support for Cavendish and its overall commercial strategy.

- 6.20 Stagecoach submitted an analysis of Cavendish's profitability on a route-by-route basis, based on assumptions on Cavendish's likely cost structures, noting that it was likely to face lower-than-average industry costs. Following consideration of the responses we received to our provisional findings, we gathered further information to undertake a more detailed analysis of the revenues and likely costs incurred by Cavendish in maintaining an ongoing operation. Our assessment of Cavendish's profitability is described in Appendix H. We also modified this analysis to take account of differences in the reimbursement rates for concessionary passengers.
- 6.21 In our assessment of costs, because of the limitations of Cavendish's management accounts, we undertook an analysis of the costs per hour of Cavendish's operations at March 2008. We started with cost estimates presented by Stagecoach and examined whether these were appropriate and the costs reasonable. We looked at EBL's costs as a benchmark, although we noted evidence that EBL was not considered to be an efficient operator at this period. The costs attributed to Cavendish were lower than EBL's, and appeared consistent with the notion of Cavendish as a low-cost operator. We found, subject to some minor revisions, Stagecoach's estimate of Cavendish's hourly total costs, ie direct costs, depreciation, maintenance and incremental overheads, to be reasonable, although we noted that the figures were sensitive to depreciation and maintenance overhead assumptions. Renown agreed with our assessment of costs and told us that, if anything, the analysis may have understated some aspects of its costs.
- 6.22 While there is some uncertainty relating to the true costs faced by Cavendish, we found that overall, based on March 2008 figures and operations, Cavendish was covering its direct costs, but making a loss relative to total costs (after depreciation, maintenance and incremental overheads were taken into account). Only one route, route [redacted], was near to covering its total costs, making a loss of £[redacted] per bus operating hour. Others were making more substantial losses relative to total costs.³¹
- 6.23 We also looked at the profitability of Cavendish's routes (based on the March 2008 pattern of services) over a longer period, noting that demand for bus travel in the Eastbourne area shows substantial seasonal variations. However, the pattern of results described above remained unchanged.
- 6.24 If Cavendish was unable to cover total costs in the medium to long term, and was unable to increase its revenues, we think it likely that it would have considered exiting these unprofitable routes even where they were covering direct costs, and would also have considered revising services and fare levels. It may also have maintained its existing tendered contracts or sought further contracts for tendered services such as school contracts and run off-peak services between these times to help preserve its business. However, such opportunities may be limited.
- 6.25 We have been told that Cavendish's success was based on EBL's poor service, performance and inefficiencies during the 2006–2008 period. Given a likely change of

³¹Three routes ([redacted]) were not covering their direct costs, although two of these ([redacted]) were new or recently altered routes, and made a positive contribution (ie covered direct costs, but not all costs) in April 2008. Route 56/156 was partly tendered (for morning and afternoon school services). Two other school services, 57 and 58, were also supported by tendered revenue only, and services 126 and 143 (see paragraph 4.13—these services are now operated by Renown) were fully tendered. We also note that route 10 was partly tendered from the end of March 2008.

ownership and restructuring of EBL (see paragraph 6.29), it is probable that Cavendish would find itself competing against a rejuvenated EBL, possibly offering a revised network. If EBL offered a better service than it had in the past, fewer passengers may have chosen to use Cavendish services.

- 6.26 On balance, given the likely increase in competition from a rejuvenated EBL, we think it is unlikely that Cavendish would have chosen to keep operating its loss-making routes in the medium to long term. A retrenchment of services, to levels substantially below those in March 2008, is more likely. It is quite possible that the only commercial routes worth preserving would have been limited to route [X] (where only a small increase in profitability was required to make it worthwhile—see Appendix H). It may also have continued to operate tendered services, and possibly some commercial services linked to part-tendered routes (eg the partly-tendered route 56).
- 6.27 Whether Cavendish would have chosen to operate these services (possibly with adjustments to costs and commercial fares), or have spotted other commercial or tendered opportunities, or would have chosen to withdraw from the Eastbourne area (perhaps with tendered services still operated by Renown), is uncertain. It is not possible to anticipate the precise commercial strategies of particular operators in the hypothetical situation of competition in the absence of the mergers, and a number of outcomes are possible. However, given the costs that Cavendish faced and the revenues it was managing to generate on its routes, given the more effective competition it was likely to face from a rejuvenated EBL, and because the strategic rationale for entering the market and investing in expanded services (ie to displace EBL or to achieve a sale of Cavendish) was no longer applicable, it seems likely to us that at least a significant retrenchment of services would have occurred within the near future. It may have taken some time to determine its optimal strategy, while it waited to see what EBL would do and it considered its options (also taking account of seasonal variability in demand), but we expect that it would have taken its actions within, at most, 12 months, and possibly more quickly.
- 6.28 Renown agreed that our assessment was a good summary of the situation it would have faced.
- 6.29 We also considered EBL's position. Many of EBL's services had also been loss-making. Drawing on evidence from an analysis of the profitability of EBL's routes post-merger (after the route network was restructured), we found that several routes were unprofitable, and the overall EBL operation remained unprofitable immediately post-merger.³² Nonetheless, two bidders were prepared to pay substantial sums for EBL, which we believe shows that they expected to be able to transform it into a profitable network operator in the Eastbourne area. While its new owner may have chosen to revise EBL's services, and may have closed some routes and reduced service frequency on other poorly-performing routes, it is also likely to have sought opportunities to enhance its services. This is likely to have been backed by other actions designed to stimulate passenger demand (such as publicity initiatives). It is certainly possible that in cutting services to reduce any oversupply, some opportunities may have been created for Cavendish to operate a profitable service that was previously marginal, given its status as a lower-cost operator. However, on balance we think it unlikely that this would happen on a sufficient scale to improve Cavendish's position.

³²The effect of any actions may take some time to work through, and Stagecoach's ability to restructure EBL was restricted through undertakings to the OFT and CC during the course of this investigation.

Discussion of Stagecoach's rationale for the acquisitions

- 6.30 We noted that Stagecoach paid [£1–£2] million for Cavendish, and at the same time it increased its offer for EBL. This appears to contradict our expectation that Cavendish would have been likely to substantially retrench or exit the market. Stagecoach's explanation for paying these sums is set out in paragraphs 3.12 to 3.14.
- 6.31 Stagecoach said that the price paid for Cavendish reflected the quick realization of the customer benefits, and cost savings, that could be saved through synergies and by optimizing routes and frequencies. Following the acquisition of Cavendish, Stagecoach reduced the number of buses on the network. It said that it achieved this while improving the effective service in the town, and this claim is not contradicted by any evidence we have heard from other sources.
- 6.32 We find this a plausible explanation in principle. On the other hand, as indicated in paragraph 3.14, Stagecoach referred to the costs of ongoing competition. We found this consistent with the view that Stagecoach's motivation was, at least in part, to avoid competition, and it told us that it made commercial sense for Stagecoach to cap its exposure to additional costs from the clearly unsustainable Cavendish competition and so aim to achieve the benefits of restructuring the business quickly. However, whether and to what extent any anti-competitive motivations may be reflected in the price paid for Cavendish is unclear; we note that the transaction with Cavendish was completed quickly, and it is unlikely that Stagecoach would have carried out much detailed analysis in support of its offer price.
- 6.33 In summary, we found that Stagecoach may have had a number of motivations for the acquisition of Cavendish, including some indications consistent with an anti-competitive motivation. However, on the balance of the evidence and particularly for the reasons set out above in our assessment of Cavendish's profitability, we concluded that the competitive constraint Cavendish offered was unlikely to continue.

Conclusion on the counterfactual

- 6.34 In summary, we conclude that in the absence of the merger situation, EBL would still have been likely to have been sold to another bus operator which would have sought to improve its performance. Cavendish would have been unlikely to have been sold to a different owner and so Renown would have considered its optimal strategy in the light of these developments. Given that its strategic rationale for supporting Cavendish's expansion in the Eastbourne area would no longer be achievable, we expect that Renown would have been likely to close a very substantial proportion of its Eastbourne operations. These were failing to cover their costs and this would be unlikely to change given more effective competition from a rejuvenated EBL. While we cannot precisely predict Cavendish's final choices, it may well have retrenched to just one commercial route, relied on operating tendered services, or exited the market altogether. We expect it to be, at most, a much smaller operator than it was in 2008, and that this change would have taken place within a period of 12 months, and possibly substantially quicker.
- 6.35 In the next section, we assess the effects of the merger relative to this counterfactual situation.

7. Pre-merger competition and effects of the mergers

Introduction

- 7.1 The result of the acquisitions has been to bring the only two large operators of bus services in the Eastbourne area under common control with one of the two other, smaller operators of commercial bus services in the Eastbourne area.³³ The competitive effects of the acquisitions are considered below, with attention first to the effects on competition in commercial services, and second on competition for the tendering of tendered services.
- 7.2 In this section, we are concerned as to whether the acquisitions will lead to an SLC in the provision of bus services in the Eastbourne area, and as a consequence might allow the merging parties to increase fares relative to our counterfactual, or reduce service quality (eg hours of operation, frequency of service or quality of the buses). We therefore assess the extent to which competition existed between the parties prior to the acquisitions and the extent to which it would have continued to exist in the absence of the acquisitions under our counterfactual. It is this competition under the counterfactual which would have been lost as a result of the enterprises coming under common control.

Nature of pre-merger competition

- 7.3 We now address the effects of the acquisitions on competition under three separate categories: head-to-head competition (which in effect looks at competition between buses and any other demand-side constraints); potential competition (which effectively looks at the supply-side constraints (see paragraphs 5.26 to 5.29); and network competition.

Head-to-head competition

- 7.4 For the purposes of this analysis, where bus companies offer alternative services on a given flow that enable passengers to choose between them based on fares or service quality, we say that they are in head-to-head (or actual) competition with one another.³⁴ The effect of the acquisitions is to bring these competitors under common control and so may be expected to eliminate the competitive constraint that would have existed.
- 7.5 Prior to the acquisitions, Stagecoach, EBL and Cavendish were in head-to-head competition over a large number of flows. However, our consideration of the counterfactual determined that this situation was not likely to be sustained. Any loss of head-to-head competition as a result of the merger needs to be assessed relative to the point of reference under the counterfactual.
- 7.6 In Appendix I, we assess the extent of head-to-head competition between EBL, Stagecoach and Cavendish services prior to the merger. At March 2008 (excluding

³³EBL and Cavendish are large in the sense that they operate multiple routes specifically serving the Eastbourne area from their bases in Eastbourne. No other operator had a base in the Eastbourne area.

³⁴As background, we note that bus customers tend to attribute importance to the quality of bus services, particularly frequencies and reliability, as well as relative fare levels. Stagecoach told us that its strategies in the bus industry were based on providing customers with high-quality buses (ensuring that the bus was clean, turned up on time and was capably driven), the maximum possible frequency on any given route, a simple and easy to understand route system, and value for money (ie that fares increased only in line with costs). It said that its long-term strategies were particularly based on persuading travellers to transfer from private vehicles to buses.

some minor overlaps),³⁵ at least half of EBL's revenue came from flows on which it competed head-to-head solely with Cavendish and/or Stagecoach, with the great majority of this revenue coming from routes on which it was only in competition with Cavendish. Similarly Cavendish earned the great majority of its revenues from flows on which it was in competition with EBL (see Appendix I, Table 2). These figures understate the degree of overlap immediately prior to the acquisitions.

- 7.7 As discussed in paragraphs 6.24 to 6.27, we thought it was likely that Cavendish would at least retrench its operations substantially, and it is possible that EBL's services may also change. While the precise counterfactual situation is unknown, we considered the extent of head-to-head overlap that would occur were Cavendish to continue operating just route [X] (see paragraph 6.26), assuming that EBL continued to operate its March 2008 services. Route [X] accounted for around 25 per cent of Cavendish's revenues at March 2008. Simply adjusting Cavendish's 2008 market share for the proportion of revenues accounted for by this route implies that it would have a share of commercial services in the Eastbourne area of under 5 per cent.³⁶
- 7.8 As detailed in Appendix I, we found that although there was still a significant amount of overlap, largely because route [X], the frequency of this service was far less than the combined frequency of the services offered by EBL. Applying the filters described in Appendix I (ie that a service should run at least half as frequently as a competitor's to constrain it), the relative frequency of these Cavendish services is so low that overlap flows with 'effective' competition account for just 0.3 per cent of EBL's revenues. This finding is robust to significant changes in the frequency filters. Over the great majority of the overlap, to act as a significant constraint, we would need to accept that sufficient passengers would be willing to wait for Cavendish services running only every 45 minutes or more in preference to an EBL service running more than once every 10 minutes. This seems unlikely to form a strong competitive constraint on EBL, as we believe that few customers would be willing to wait that long or specifically plan their travel times on the basis of a small but significant difference in fares.
- 7.9 This indicates that the level of effective head-to-head competition between the merging parties would have been expected to have fallen to low levels, at most, within the foreseeable future in the absence of the acquisitions. Even on the assumption that Cavendish would have continued operating commercial routes, its market share would have been likely to have been similar to Brighton & Hove's share. While Cavendish was retrenching, EBL is unlikely to have continued to perceive it as presenting a strong a head-to-head constraint.

Potential competition

- 7.10 As well as the effects of the acquisitions on head-to-head competition, we need to assess the expected effects of the acquisitions on any competitive constraint arising from potential competition between Cavendish, EBL and Stagecoach. The potential for competition could itself act as a significant competitive constraint (sometimes referred to as 'perceived potential competition'), arising from the perception that rivals

³⁵These calculations are based purely on EBL's operations in the Eastbourne area, which account for around 88 per cent of its total revenues (flows on inter-urban services outside the Eastbourne area are excluded). Minor overlaps arose on a variety of flows which Stagecoach considered to be very minor individually. It estimated that these accounted for around 10 per cent of revenues.

³⁶This calculation overstates the market share Cavendish would have been likely to achieve as EBL would have been likely to gain many of the customers who no longer travelled on Cavendish's other services. Using the 2008 market share (from Table 1) may also overstate Cavendish's share as this figure partly reflects its substantial uplift in services towards the end of the year.

could quickly and easily 'enter' or expand on particular flows where new profitable opportunities arose. Any such competition that would have existed would be lost as a result of the acquisitions.

- 7.11 Stagecoach acknowledged that there was competition from the threat of entry on routes; for example, it said: 'Within the bus market, supply-side substitution takes the form of shifting bus capacity from one route to an alternative route. As buses are themselves mobile, this can happen relatively easily, and at short notice.' It appeared to include an increase in bus capacity within this, as it went on to say, 'The main constraint on such supply-side substitution is the presence of sufficient depot capacity to enable the buses to be laid up overnight, serviced, supported, and provide rest facilities for drivers'.
- 7.12 The strength of potential competition depends on the ability to redeploy buses quickly and easily from a depot, and the ease with which the number of buses in service can be expanded. We also recognize that the strength of this constraint may be diminished if the incumbent is able to change its strategy post-entry quickly and easily, such that the potential entrant could not expect to get any benefit as a result of its entry. Potential competition is unlikely to replicate fully the strength of the constraint arising from head-to-head competition; potential competition will lead to rivals changing their behaviour but not always to the same extent as would result from head-to-head competition. For example, some effort and investment might be required to revise services which could allow a small opportunity for profitable entry to remain unexploited even if it has been detected.
- 7.13 As discussed in paragraph 5.28, in so far as the great majority of EBL and Cavendish services operated in the fairly limited geographical area around Eastbourne, we think that there was considerable potential competition between EBL and Cavendish prior to the mergers. It would have been relatively easy for either of them to redeploy or reroute services, and both had capacity to increase the number of buses in use. In March 2008, EBL had around 50 buses in use but its depot had capacity for around 100, while Cavendish had parking capacity for 26 buses at its Polegate site; indeed it substantially increased services from August 2008 and reached full capacity. We did not identify any other bus operators close to Eastbourne that had a similarly easy ability to expand or to redeploy capacity in the Eastbourne area, as they were either small and occupied with non-commercial services, or they were based a considerable distance away (including inter-urban services operated by Brighton & Hove). These operators are likely to face higher costs in establishing operations on new routes and sustaining competing services; generally they do not have a set of existing routes that could easily be reconfigured, and they face a greater 'dead' time taken to deploy buses on to the routes (and greater potential for disruption) each day. The threats offered by these other operators is discussed in our consideration of new entry.
- 7.14 We considered whether Cavendish and EBL would continue to exert a similar competitive constraint on each other under the counterfactual situation. In a case where Cavendish retrenched substantially but did not exit the market, it would have the ability to expand, should profitable opportunities arise. However, we concluded that EBL would be unlikely to perceive this as a strong constraint while it observed Cavendish in the process of retrenching. Further, after a retrenchment to a low level of commercial services, Cavendish would be unlikely to retain the same flexibility to be able to quickly and easily redeploy buses or add to its services. For example, it would be unlikely to have routes in a suitable position such that it could divert or extend the routes to service additional flows except in a very few cases. It could have chosen not to retain the spare capacity at its Polegate site, and expansion would become more difficult compared with a situation where there was more flexibility

arising from more vehicles and drivers being available. Having failed to maintain a large-scale presence in Eastbourne in competition with EBL once already, given its inability to run profitable routes, it might be less inclined to seek to expand again against a rejuvenated EBL, and hence would be less likely to be perceived by EBL as a credible potential threat. Under these circumstances, we think it probable that any constraint it would have imposed on EBL, even if it had remained active in the Eastbourne area under the counterfactual, would have been more akin to that offered by any new entrant (as discussed in the next section) rather than the potential competition which existed pre-merger.

Network competition

- 7.15 Competition between networks may be important if demand complementarities mean that customers value a network of routes more than just a series of individual routes, in which case competition might occur at a network level. As noted in paragraph 5.23, in 2008 network tickets were the most popular ticket type for journeys on EBL's services. However, it is possible that they were simply used as multi-trip return tickets.³⁷
- 7.16 The small size of the Eastbourne area suggests that the extent of network travel is likely to be less than for larger markets. There was little evidence that customers viewed bus services in terms of a network; while customers may value a variety of routes, we saw no evidence that customers in Eastbourne were concerned that these needed to be operated by the same operator to constitute a network
- 7.17 Overall it is not clear in this case that there was significant pre-merger competition based on demand complementarities, nor that network and season tickets significantly restricted pre-merger competition. In addition, under our counterfactual, Cavendish would have ceased to operate any significant network of routes.

Other market constraints

- 7.18 We now address whether there are any other constraints that may limit a party's ability and incentives to take advantage of any reduction in competitive rivalry.

Extent of competition from other modes of transport

- 7.19 As noted in paragraphs 5.11 to 5.21, we have found that the potential for customers to switch to other modes of transport, including car, taxi, bicycle and walking, does not act as an effective competitive constraint on bus operators. We accept that there may be a closer constraint from rail travel, but only on those flows where bus and rail services overlap. We do not accept that Stagecoach's intentions to seek to attract additional passengers away from cars is sufficient to replicate constraints on pricing and/or service quality that would result from competition between two bus operators.

Entry as a constraint

- 7.20 Entry, or the threat of entry, could act as a constraint on the merged entity, if it is easy, timely and sustainable. Our consideration of barriers to entry and supporting evidence is set out in detail in Appendix J.

³⁷Network and season tickets can also act as a barrier to competition if they mean that a significant proportion of customers are committed to a particular operator and so cannot easily switch between bus companies. However, because these tickets in most cases are now limited to a validity of one week, we do not consider that this effect is significant in the Eastbourne area.

- 7.21 It is doubtful whether very small-scale entry, perhaps on just one route with a very small number of buses, would be sufficient to induce Stagecoach to change its pricing and service strategy for the whole (or substantial part) of the Eastbourne area. We think that there would need to be a credible threat of large-scale entry, or alternatively repeated entry by several small-scale operators, to act as a constraint.
- 7.22 There are a variety of possible modes of entry on different scales. However, we observe that large-scale operators generally choose to operate from a dedicated depot rather than replicating other business models on a larger scale, suggesting that there are economies of scale from depots for large operations.
- 7.23 As set out in Appendix J, potential entrants told us that it was important to have a depot within a reasonable distance of the area of operations, to make entry on a significant scale possible. Otherwise, the potential for disruption of services and the additional costs of ‘dead runs’ at the start and end of shifts as buses are driven between the depot and their routes would make services uneconomic.
- 7.24 Evidence from a variety of operators indicated that a large fleet (we were told by various parties that this was likely to be over 25 vehicles, or even more) would be required to operate a dedicated depot efficiently.³⁸ We found that such an entry strategy would be risky in the context of Eastbourne. Stagecoach currently provides a fairly comprehensive bus network with less than 50 vehicles. Third party evidence also indicated that they did not expect that the Eastbourne area could support two large, network operators (see paragraph 6.3).
- 7.25 We also considered strategic barriers to entry. Potential entrants might be deterred from entry into the provision of commercial bus services in the Eastbourne area depending on how they considered that Stagecoach would be likely to react to entry.
- 7.26 An incumbent operator in most businesses would be expected, in reaction to entry, to be likely to lower fares or increase service levels. This would erode the profit margins that originally signalled an entry opportunity. In bus markets it seems likely that this reaction can occur rapidly. It is also possible that an incumbent may choose to respond in a way which is more aggressive (ie not of itself an optimal short-term response), through, for example, more substantial fare cuts, increases in service frequency, or changing timings so as to run just ahead of a rival’s services (and so be more likely to pick up customers). This would be done for the objective of driving an entrant out of the market or deterring others from entering, and so could be a profitable long-term strategy. We were told of many examples where large incumbent bus operators had responded robustly to entry. The perception that a large incumbent may respond in such a way could represent a barrier to entry, especially where entry carries any element of sunk cost.
- 7.27 Overall, we found strategic barriers to be very significant in deterring entry; in Eastbourne, the spare capacity at the depot would allow Stagecoach to redeploy buses from elsewhere and, subject to registering services with the Traffic Commissioner, allow it to expand services. Stagecoach’s ability to increase services in response to entry looks easier than an entrant’s ability to introduce new services.
- 7.28 No national bus operators or operators of commercial and tendered services in Sussex indicated that they would contemplate entry into the Eastbourne area in response to marginal changes in fares or service levels by Stagecoach.

³⁸For example, a major operator told us that as a general rule it would not have a ‘depot’ (ie with maintenance and repair facilities) unless about 10 or more buses were based there; see Appendix J for more details.

- 7.29 On the basis of the evidence, it seems unlikely therefore that there would be any entry in the Eastbourne area on a significant scale unless it was triggered in response to an incumbent seeking to exploit its market power to a substantial extent.

Tendered services

- 7.30 We now turn to considering the market for the provision of tendered services. As noted in paragraph 4.27 and Appendix F, ESCC supports a small number of tendered services in and around the Eastbourne area. ESCC told us that there tended to be only a very few companies competing for contracts for tendered services in this area. It said that in the past Cavendish had competed against EBL, and had also been in competition with Stagecoach for tendered services. However, EBL and Stagecoach had not generally been in competition with each other in Eastbourne.
- 7.31 ESCC told us that it considered that the threat of potential competition in Eastbourne from other bus operators spurred on the operators of tendered services. It said that if it felt it was not being offered reasonable prices in the tender bids in the Eastbourne area, in comparison with other areas in East Sussex, then it could encourage other bus operators from elsewhere in the county to bid for services. We heard from some operators of tendered services that they were prepared to bid for contracts a considerable distance from their depot.
- 7.32 ESCC told us that it had no significant concerns over the effect of the mergers on competition in bidding for tendered services.
- 7.33 The barriers to entry discussed in paragraphs 7.20 to 7.29 are unlikely to apply in the same way to tendered services. Because individual routes are tendered separately, small-scale entry is viable, and there is no mechanism for a strategic reaction on the tendered route by operators already in the area or those losing the tender. There are a variety of potential suppliers of these services and it represents a relatively low-risk route of entry into the bus industry.
- 7.34 Given the merged parties' relatively limited involvement in tendered services, the number of alternative suppliers and ease of entry, we do not expect that the effect of the mergers will be significantly to reduce rivalry in the market for the right to operate tendered services.

Conclusion

- 7.35 Based on the preceding evidence and analysis, we have found that EBL and Cavendish were in competition in the Eastbourne area ahead of the acquisitions (although they both competed with Stagecoach to only a limited extent), and that other market constraints are weak. Although there was some evidence consistent with the view that the acquisitions had some anti-competitive motivations, most notably that reported in paragraph 3.14, on balance we made the following conclusions. We found that, absent the merger, Cavendish was unlikely to continue operating at previous levels and that it was likely to choose to retrench or end its operations. Consequently, we concluded that the loss of head-to-head competition arising from the mergers is likely to be limited at most. We also concluded that there was unlikely to be a loss of potential competition arising from the mergers, as we did not expect Cavendish to continue providing an effective constraint in this way after its retrenchment or exit. Cavendish would still have been a potential re-entrant into the provision of commercial services, but we thought it is unlikely to grow to a substantial size again, and a similar threat is also provided by alternative bus operators.

7.36 On balance, taking account of these factors, we have concluded that there is no SLC in the provision of commercial bus services, when the acquisitions are compared with what would have happened in the likely alternative circumstances (ie the counter-factual).

8. Conclusions on the SLC test

8.1 We concluded that the completed acquisitions of EBL and Cavendish give rise to relevant merger situations under section 23 of the Act, and that we therefore have jurisdiction to consider the competitive consequences of the merger.

8.2 For the reasons set out in paragraphs 7.35 and 7.36, in comparison with the situation expected to prevail in the absence of the merger, we conclude that the merger of Cavendish, EBL and Stagecoach has not resulted, and may not be expected to result, in an SLC in the market for the provision of bus services in the Eastbourne area.

8.3 We also concluded that the merger of Cavendish, EBL and Stagecoach has not resulted, and may not be expected to result, in an SLC in the market for the provision of tendered bus services in the Eastbourne area.