

**NOTICE OF ACCEPTANCE OF UNDERTAKINGS NO 6 OF 2004**

IN THE MATTER OF A REFERENCE RELATING TO THE PROPOSED ACQUISITION  
BY FIRSTGROUP PLC OF THE SCOTTISH PASSENGER RAIL FRANCHISE

WHEREAS on 13 January 2004 the Office of Fair Trading referred the proposed acquisition by FirstGroup plc (FirstGroup) of the Scottish Passenger Rail Franchise (the Scottish Rail Franchise) currently operated by ScotRail Railways Limited to the Competition Commission (the Commission) for investigation and report under section 33 of the Enterprise Act 2002 (the Act).

AND WHEREAS in its report entitled *"FirstGroup plc and the Scottish Passenger Rail Franchise: A Report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by Scotrail Railways Limited"* (the Final Report) published on 25 June 2004, the Commission concluded that the award of the Scottish Rail Franchise to FirstGroup would result in a relevant merger situation and the creation of that situation could be expected to result in a substantial lessening of competition:

- a. in particular markets for point to point public transport journeys on specified overlap flows. The Commission expects this to occur on certain routes serving overlap flows in hours and on certain routes out of hours (including many of the routes identified in hours);
- b. in at least some cases on other possible bus routes in hours and others out of hours as a result of changes in the level of competition from other bus operators on those routes during the term of the Scottish Rail Franchise;
- c. on bus routes (other than those the Commission specifically identifies) that overlap with rail services as a result of the development of new rail routes, services or stopping patterns; and
- d. in wider public transport network markets in the SPTE area, Edinburgh and the Lothians, and elsewhere in Scotland;

and such substantial lessening of competition may be expected to have the further adverse effects of higher bus fares, poorer services on overlapping bus routes and reduction in choice of services available to passengers on overlap routes, with similar adverse effects on other services resulting from the effects on the broader network markets.

AND WHEREAS that FirstGroup plc, First Edinburgh Limited, First Glasgow (No.1) Limited, First Glasgow (No.2) Limited and First Scotrail Limited have agreed to give undertakings to the Competition Commission for the purpose of preventing the anti-competitive outcome identified.

AND WHEREAS the Competition Commission:

- (a) gave notice of the proposed undertakings in accordance with Schedule 10 to the Act on 27 September 2004; and

(b) did not receive any representations in accordance with the notice referred to in paragraph (a) which required any further material modification to such proposed undertakings.

NOW the Competition Commission pursuant to section 82(1) of the Act hereby accepts the undertakings, a copy of which is set out in the attached annex below, and accordingly the undertakings come into force in accordance with section 82(2) of the Act.

Signed by authority of the Competition Commission

(signed) PAUL GEROSKI

15 October 2004

## **ANNEX**

### **Competition Commission Undertaking No 6 of 2004**

**Undertakings given to the Competition Commission by FirstGroup plc,  
First Edinburgh Limited, First Glasgow (No.1) Limited,  
First Glasgow (No.2) Limited and First Scotrail Limited**

**Competition Commission undertakings No.6 of 2004**

**Undertakings given to the Competition Commission by  
FirstGroup plc, First Edinburgh Limited, First Glasgow (No. 1) Limited, First  
Glasgow (No.2) Limited and First ScotRail Limited**

Whereas:

On 13 January 2004 the Office of Fair Trading (the OFT) referred the proposed acquisition by FirstGroup plc (FirstGroup) of the Scottish Passenger Rail Franchise (the Scottish Rail Franchise) currently operated by ScotRail Railways Limited to the Competition Commission (the Commission) for investigation and report under section 33(1) of the Enterprise Act 2002 (the Act).

A report of the Commission entitled 'FirstGroup plc and the Scottish Passenger Rail Franchise: A Report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited' was published on 25 June 2004 (the Final Report). The Commission concluded:

- (a) (and FirstGroup accepted) that the award of the Scottish Rail Franchise to FirstGroup would, under the terms of the Railways Act 1993, constitute an acquisition of control leading to two or more enterprises ceasing to be distinct for the purpose of Part 3 of the Act.
- (b) that the current turnover derived from the Scottish rail franchise significantly exceeds £70 million.
- (c) that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- (d) that the merger may be expected to give rise to a substantial lessening of competition (SLC) in particular markets for point to point public transport journeys on specified overlap flows. The Commission expects this to occur on certain routes serving overlap flows in hours and on certain routes out of hours (including many of the routes identified in hours). The Commission also expects that such SLC would occur in at least some cases on other possible routes in hours and others out of hours as a result of changes in the level of competition from other bus operators on those routes during the term of the Scottish Rail Franchise. Such an SLC would also be expected to result on routes (other than those the Commission specifically identifies) from development of new rail services.
- (e) that the merger may be expected to give rise to an SLC in wider public transport network markets in the SPTE area, Edinburgh and the Lothians, and elsewhere in Scotland.
- (f) that the SLC that would be expected to result from the merger would be expected to have the further adverse effects of higher bus fares, poorer services on overlapping bus routes and reduction in choice of services available to passengers on overlap routes, with similar adverse effects on other services resulting from the effects on the broader network markets.
- (g) that the Final Report contains the decision that undertakings under the Act would be proportionate and effective for the purpose of remedying, mitigating or preventing the

SLC and the resulting adverse effects identified in (d), (e) and (f) above and that undertakings should be given by FirstGroup which:

- (i) limit each fare charged on each overlap flow during a problem time of day on the routes identified, with reference to that on other routes;
- (ii) restrict reduction in the level of service on those flows;
- (iii) require FirstGroup to ensure that other bus operators in Scotland are invited to participate in a multi-modal ticketing scheme on terms that are fair, reasonable, and no less favourable than the terms on which the FirstGroup bus operator participates in the scheme and to support and use its reasonable endeavours to ensure the success of all such schemes;
- (iv) require FirstGroup to provide factual, accurate and impartial advice about its and its competitors' multi-modal tickets and to sell such tickets on an impartial basis at point of sale where practical to do so;
- (v) restrict FirstGroup's influence over the terms and conditions of multi-operator, multi-modal ticketing schemes; and
- (vi) require FirstGroup to use its reasonable endeavours to display information on other operators' bus services in rail stations with equal prominence to information about its own bus services.
- (vii) agree the appointment of a monitor to ensure the effective administration of these undertakings.

**Now Therefore** FirstGroup, and the Bus Subsidiaries and the Rail Subsidiary, hereby give to the Commission the following undertakings (the Undertakings) under section 82 of the Act for the purpose of remedying mitigating or preventing the SLC identified in the Final Report and any adverse effects resulting from, or expected to result from the SLC.

## 1. Interpretation

- 1.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 1.2 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.
- 1.3 The headings in the Undertakings are for convenience and shall have no legal effect.
- 1.4 For the purposes of these Undertakings the following terms have the meaning ascribed to them below:

<b>Act</b>	Enterprise Act 2002.
<b>Base Fare Group</b>	All those fares on the set of <b>Comparator Routes</b> for the relevant region, namely the <b>Glasgow Comparator Routes</b> , the <b>Edinburgh 1 Comparator Routes</b> or the <b>Edinburgh 2 Comparator Routes</b> (as the case may be) which at 2 May 2004 were at the same level as a particular <b>Restricted Fare</b> . For this purpose each <b>Restricted Fare</b> shall be assigned to a particular Base Fare Group. The <b>Fare Limit</b> for a <b>Restricted Fare</b> shall be determined by reference to the

	Base Fare Group so assigned.
<b>Bus Route</b>	A local bus service provided by a bus under a particular number.
<b>Bus Subsidiary</b>	<p>The following subsidiary companies of <b>FirstGroup</b>:</p> <ul style="list-style-type: none"> <li>(i) First Edinburgh Limited (a company registered in Scotland with registered number SC091923) whose registered office is at Carmuir House 300 Stirling Road Larbert Stirlingshire FK5 3NJ;</li> <li>(ii) First Glasgow (No. 1) Limited (a company registered in Scotland with registered number SC097299) whose registered office is at 197 Victoria Road Glasgow G42 7AD; or</li> <li>(iii) First Glasgow (No. 2) Limited (a company registered in Scotland with registered number SC127012) whose registered office is at Larkfield Garage 197 Victoria Road Glasgow G42 7AD,</li> </ul> <p>or any other subsidiary of FirstGroup carrying out the activities currently carried out by the companies listed above.</p>
<b>Capacity</b>	The number of seats on a bus. Each bus type shall be assumed as having a capacity equal to that assigned to it in Annex C.
<b>Commencement Date</b>	The date that, having been signed by FirstGroup the Bus subsidiaries and the Rail subsidiary, the <b>Undertakings</b> are accepted by the Commission.
<b>Commission</b>	Competition Commission.
<b>Comparator Routes</b>	The <b>Glasgow Comparator Routes</b> , the <b>Edinburgh 1 Comparator Routes</b> and the <b>Edinburgh 2 Comparator Routes</b> (as the case may be).
<b>Competition Test</b>	The process set out in paragraph 5.1 of the <b>Undertakings</b> .
<b>Controlled Routes</b>	Those <b>Bus Routes</b> identified as <b>Controlled Routes</b> in accordance with paragraphs 4.8 to 4.16 and listed as such in part I or II of Annex F as amended from time to time in accordance with the Undertakings.
<b>Edinburgh 1 Comparator Routes</b>	The set of <b>Bus Routes</b> drawn from those <b>Bus Routes</b> in the <b>Edinburgh 1 Region</b> which are neither <b>Possible Routes</b> nor <b>Controlled Routes</b> and which are not <b>Tendered Services</b> and comprise only the most significant of such <b>Bus Routes</b> , in terms of annual revenue, which account for 95 per cent of the relevant <b>Bus Subsidiaries'</b> total bus revenue in that region.
<b>Edinburgh 2 Comparator Routes</b>	The set of <b>Bus Routes</b> drawn from those <b>Bus Routes</b> in the <b>Edinburgh 2 Region</b> which are neither <b>Possible Routes</b> nor <b>Controlled Routes</b> and which are not <b>Tendered Services</b> and comprise only the most significant of such <b>Bus Routes</b> , in terms of

	annual revenue, which account for 95 per cent of the relevant <b>Bus Subsidiaries'</b> total bus revenue in that region.
<b>Edinburgh 1 Region</b>	The region comprising the unitary authority areas of the City of Edinburgh, West Lothian, Midlothian and East Lothian and a journey or bus service within the Edinburgh 1 Region means that part of any journey or any bus service that is within the Edinburgh 1 Region regardless of whether the journey or bus service continues to or from a place outside the Edinburgh 1 Region.
<b>Edinburgh 2 Region</b>	The region comprising the unitary authority areas of Stirling, Clackmannanshire and Falkirk and a journey or bus service within the Edinburgh 2 Region means that part of any journey or any bus service that is within the Edinburgh 2 Region regardless of whether the journey or bus service continues to or from a place outside the Edinburgh 2 Region.
<b>Fare Limit</b>	The level of fare which is equal to or exceeded by the fare charged on at least 75 per cent of the fares in number in the applicable <b>Base Fare Group</b> .
<b>Fare Stage</b>	A bus stop or group of bus stops to or from which fares are set.
<b>Final Report</b>	The report of the Commission entitled 'FirstGroup plc and the Scottish Passenger Rail Franchise: A Report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited' published on 25 June 2004.
<b>FirstGroup</b>	FirstGroup plc (a company registered in Scotland with registered number SC157176) whose registered office is at 395 King Street, Aberdeen, AB24 5RP.
<b>Flow</b>	A particular journey between start and end points, which may be all, or any part, of a longer bus or train route.
<b>Force Majeure Event</b>	An event beyond the reasonable control of <b>FirstGroup</b> and/or any of its <b>Bus Subsidiaries</b> or the <b>Rail Subsidiary</b> including war, civil war, armed conflict, terrorism, revolution, insurrection, riot, rebellion, civil commotion, mob violence, acts of piracy, acts of sabotage, industrial action (other than by employees of <b>FirstGroup</b> and/or any of its <b>Bus Subsidiaries</b> or the <b>Rail Subsidiary</b> ), nuclear, chemical or biological contamination, pressure waves, plague, explosion, fire, earthquake, volcanic eruption, windstorm, tidal wave, flood, drought, lightning, quarantine, embargo, loss destruction or malfunction of or damage to critical equipment, general suspension of transportation or navigation, power utility fuel or other raw materials shortages, or any similar or analogous events.
<b>Frequent Service</b>	A bus service operated with <b>Headway</b> of 10 minutes or less.

<b>Glasgow Comparator Routes</b>	The set of <b>Bus Routes</b> drawn from those <b>Bus Routes</b> in the <b>Glasgow Region</b> which are neither <b>Possible Routes</b> nor <b>Controlled Routes</b> and which are not <b>Tendered Services</b> and comprise only the most significant of such <b>Bus Routes</b> in terms of annual revenue, which account for 95 per cent of <b>FirstGroup's</b> total bus revenue in that region.
<b>Glasgow Region</b>	'The Glasgow region' means the unitary authority areas of the City of Glasgow, North Lanarkshire, South Lanarkshire, East Dunbartonshire, West Dunbartonshire, Argyll and Bute, Renfrewshire and East Renfrewshire and a journey or a bus service within the Glasgow region means that part of any journey or any bus service that is within the Glasgow region regardless of whether the journey or bus service continues to or from a place outside the Glasgow region.
<b>Headway</b>	The average, scheduled interval between bus services, measured in minutes, for each hour of service. It is the inverse of the frequency of services, eg six services an hour gives an average headway of 10 minutes. The less frequent the service, the higher the measure of headway.
<b>In Hours</b>	Between 7 am and 7 pm on Mondays to Saturdays.
<b>Mandate</b>	The terms of the <b>Monitor's</b> mandate set out in Annex A.
<b>Monitor</b>	A person appointed in accordance with paragraph 3 of the <b>Undertakings</b> .
<b>Monitor's Report</b>	A report prepared by the Monitor as referred to in paragraph 3.8 or 3.12 of the <b>Undertakings</b> .
<b>Multi-modal Ticket</b>	A ticket entitling the holder to make a journey on two or more modes of public transport services (eg bus and train) whether in conjunction with each other or as alternatives.
<b>Multi-modal Ticketing Scheme</b>	A scheme which provides for members of the public to purchase, in a single transaction, a <b>Multi-modal Ticket</b> for use on two or more modes of public transport services (whether in conjunction with each other or as alternatives).
<b>Out of Hours</b>	Between 7 pm and 7 am Mondays to Saturdays and on Sundays.
<b>Overlap Flow</b>	A particular point-to-point bus <b>Flow</b> where FirstGroup's bus and Scottish Rail Franchise services overlap including in the case of each <b>Wider Catchment Route</b> such <b>Flows</b> as are specified in Annex E of the <b>Undertakings</b> .
<b>Possible Route</b>	A <b>Bus Route</b> identified as a <b>Possible Route</b> in accordance with paragraphs 4.1 to 4.6 and listed as such in part I or part II of Annex F as amended from time to time in accordance with the <b>Undertakings</b> .
<b>Problem Overlap</b>	An <b>Overlap Flow</b> on a <b>Controlled Route</b> where there is no effective competition as assessed by the application of the



	<b>Competition Criteria</b> or paragraph 5.2 of the <b>Undertakings</b> (as the case may be).
<b>Problem Time of Day</b>	<b>In Hours</b> or <b>Out of Hours</b> periods, depending on the times of day to which the <b>SLC</b> identified applies on a particular <b>Controlled Route</b> .
<b>Public Transport Multi-modal Multi-operator Ticketing Scheme</b>	A written agreement between undertakings supplying local public transport services as defined in the Public Transport Ticketing Schemes block exemption which provides for members of the public to purchase, in a single transaction, a <b>Multi-modal Ticket</b> for use on two or more modes of public transport services (whether in conjunction with each other or as alternatives) operated by more than one operator.
<b>Rail Subsidiary</b>	Means First ScotRail Limited (a company registered in Scotland with registered number SC185018) whose registered office is at 395 King Street Aberdeen AB24 5RP, or any other subsidiary of FirstGroup carrying out the activities currently carried out by that company.
<b>Restricted Fare</b>	A fare which is available for use on a <b>Problem Overlap</b> during a <b>Problem Time of Day</b> .
<b>Registered Service</b>	A local bus service registered with the Traffic Commissioner for Scotland.
<b>Scottish Rail Franchise</b>	The Scottish Passenger Rail Franchise granted by the <b>SRA</b> pursuant to <b>Scottish Rail Franchise Agreement</b> .
<b>Scottish Rail Franchise Agreement</b>	Agreement between the <b>SRA</b> , <b>SPTE</b> and First ScotRail Limited relating to the operation of the <b>Scottish Rail Franchise</b> , dated 20 August 2004.
<b>Scottish Rail Franchise Area</b>	The geographical area covered by the <b>Scottish Rail Franchise Agreement</b> .
<b>SESTRAN</b>	South East Scotland Transport Partnership.
<b>SLC</b>	Substantial lessening of competition.
<b>SPTE</b>	The Strathclyde Passenger Transport Executive (and the Strathclyde Passenger Transport Authority, where appropriate) and its successor bodies.
<b>SRA</b>	The Strategic Rail Authority and its successor bodies.
<b>Subsidiary</b>	has the meaning given by section 736 of the Companies Act 1985.
<b>Strathclyde Zoncard Scheme</b>	A <b>Public Transport Multi-modal Multi-operator Ticketing Scheme</b> administered by the SPTE for unlimited travel using rail, Glasgow subway, most buses and some ferries in the Strathclyde area.
<b>Tendered Services</b>	Services operated under contract to <b>SPTE</b> or local authorities, who

	seek tenders for doing so; these services are not operated on a normal commercial basis.
<b>Traffic Commissioner</b>	The traffic commissioner for Scotland appointed under the Public Passenger Vehicles Act 1981 by the Secretary of State for Transport.
<b>Train Route</b>	A point to point route over which <b>Train Services</b> are provided.
<b>Train Service</b>	A service provided by a train, usually identified by origin and destination of the train.
<b>Train Stopping Pattern</b>	A list of all the stations at which a <b>Train Service</b> stops, arranged in sequential order of its stopping.
<b>Undertakings</b>	The undertakings given by <b>FirstGroup</b> and the Bus Subsidiaries and the Rail Subsidiary to the <b>Commission</b> for the purpose of remedying, mitigating or preventing the <b>SLC</b> and the adverse effects identified in the <b>Final Report</b> .
<b>Wider Catchment Routes</b>	<b>Bus Routes</b> listed in part II of Annex F.

## **2. Commencement and duration**

- 2.1 The Undertakings shall commence on the Commencement Date.
- 2.2 The provisions of these Undertakings that require FirstGroup to appoint and remunerate the Monitor (paragraph 3) and that require FirstGroup and/or any of its Bus Subsidiaries and the Rail Subsidiary, to provide data to the Monitor and the OFT (as the case may be) (including but not limited to paragraphs 4.5, 5.1–5.6, 6.10–6.14, 6.18, 6.20, 6.23, 6.26, 6.27(c), 6.28, 11.1 and 11.2) shall continue in force until the final six monthly review is completed unless the Undertakings are varied, released or superseded under the Act.
- 2.3 The remaining provisions of these Undertakings shall continue in force for as long as First ScotRail Limited is the Franchisee for the Scottish Rail Franchise, unless the Undertakings are varied, released or superseded under the Act.

## **3. The Monitor**

### ***Appointment of Monitor***

- 3.1 To ensure the effective administration of the Undertakings, and in particular those matters set out in paragraphs 4 to 8 below as a remedy for the SLC and the adverse effects resulting from it, FirstGroup shall appoint a Monitor in accordance with the provisions set out below.
- 3.2 The Monitor shall be independent of FirstGroup and possess the necessary qualifications to carry out its functions.
- 3.3 FirstGroup shall appoint the Monitor in the following way:
  - (a) Within 60 days of the Commencement Date (or within 60 days of the OFT giving written notice to FirstGroup requiring termination of the Monitor's appointment under paragraph 3.6, or such longer period as may reasonably be necessary to comply with any applicable legislation), FirstGroup will submit to the OFT for its approval a list of two or more persons that FirstGroup proposes as candidates for the appointment of Monitor and the proposed terms and conditions of such appointment. The list shall contain sufficient information for the OFT to verify that the proposed Monitors fulfil the requirements set out in paragraph 3.2. The terms and conditions shall be prepared having due regard to the Mandate.
  - (b) The OFT shall have the discretion to approve or reject the proposed Monitor and to approve the terms and conditions of appointment of the Monitor subject to any modifications it deems necessary for the Monitor effectively to fulfil its obligations.
  - (c) FirstGroup shall appoint, or cause to be appointed, the person approved by the OFT as the Monitor, in accordance with the terms and conditions of appointment approved by the OFT. If the OFT chooses to approve more than one person, FirstGroup shall appoint, or cause to be appointed, one of the approved persons. The Monitor shall be appointed within seven days of the OFT's approval, in accordance with the terms and conditions of appointment approved by the OFT.
  - (d) If all the proposed Monitors are rejected by the OFT, the OFT shall nominate a list of candidates for the appointment of Monitor, one of whom FirstGroup shall appoint (subject to compliance with any applicable legislation) or cause to be

appointed, in accordance with the terms and conditions of appointment approved by the OFT.

- 3.4 If at any stage during the lifetime of the Undertakings the OFT considers that a change to the terms and conditions of the Monitor's appointment is necessary to ensure the effective administration of the Undertakings, the OFT shall be entitled by written notice to require FirstGroup to change the terms and conditions in such a way as to ensure the effective administration of the Undertakings. Following any such notice, FirstGroup must take action to change the terms and conditions in accordance with the notice within 28 days of receipt of the notice.
- 3.5 FirstGroup agrees that the Monitor will be remunerated by FirstGroup in accordance with the terms and conditions of the appointment and in a way that does not impede the independent and effective fulfilment of its functions.
- 3.6 If at any stage during the lifetime of these Undertakings the OFT has any concerns regarding the Monitor's performance of its functions in respect of the Undertakings, the OFT shall be entitled by written notice to require FirstGroup to terminate the appointment of the Monitor (such termination to be in accordance with the terms and conditions of appointment of the Monitor). Following any such termination or following resignation by the Monitor a new Monitor shall be appointed by FirstGroup in accordance with the provisions in paragraph 3.3.
- 3.7 If from time to time an event occurs which under these Undertakings would lead to action by the Monitor but a Monitor is not at such time validly appointed, FirstGroup agrees that the OFT shall take action instead of the Monitor and that obligations owed by FirstGroup, the Bus Subsidiaries and the Rail Subsidiary to the Monitor (other than remuneration of the Monitor) under the Undertakings will be owed instead to the OFT.

### ***Duties of the Monitor***

- 3.8 FirstGroup shall specify in the terms and conditions of appointment of the Monitor that the Monitor shall have the duty to conduct a first review seven months after the Commencement Date, a review every six months thereafter and otherwise when requested by the OFT in accordance with the processes and procedures set out in the Undertakings and to prepare a report for submission to the OFT and to FirstGroup in which the Monitor provides:
  - (a) a list of Bus Routes that the Monitor considers after application of the Competition Test or paragraph 5.2 should be classified as Controlled Routes during In Hours and/or Out of Hours as appropriate (noting any changes from the previous list of Controlled Routes), and a list identifying Problem Overlaps; and
  - (b) in the case of each six monthly review, a statement as to whether or not, on the basis of the Monitor's assessment FirstGroup, the Bus Subsidiaries and the Rail Subsidiary are, and throughout the previous six months have been, complying with the Undertakings.
- 3.9 FirstGroup shall specify in the terms and conditions of appointment of the Monitor that the Monitor shall have the duty to request, 28 days before commencement of the review, such data as the Monitor or the OFT may reasonably require effectively to monitor compliance with the Undertakings and FirstGroup agrees that it will, for these purposes, or for any other purposes for which data is reasonably requested by the Monitor or the OFT, provide (or procure the provision) promptly to the Monitor or the

OFT (as the case may be) such data as is requested. The review will normally be completed no more than 28 days after the receipt of this data from FirstGroup. If the Monitor requests information that FirstGroup considers is not reasonably necessary, FirstGroup agrees that it is for the OFT to determine whether such a request is reasonable for Controlled Routes.

- 3.10 FirstGroup shall specify in the terms and conditions of appointment of the Monitor that where the Monitor is requested by the OFT to do so, the Monitor will conduct spot checks for the purpose of assessing whether the Bus Subsidiaries are running bus services observing the route and stopping pattern specified in the corresponding published timetable for Controlled Routes.
- 3.11 FirstGroup shall specify in the terms and conditions of appointment of the Monitor that where the Monitor is requested by the OFT (in response to complaints or other evidence received by the OFT) to do so, the Monitor will carry out spot checks to monitor the Bus Subsidiaries' and the Rail Subsidiary's compliance with the requirements in paragraph 8 concerning provision of information at railway stations, provided always that the OFT and/or the Monitor shall first have consulted with FirstGroup with a view to resolving the issue without the requirement for a spot check wherever this is practicable.
- 3.12 Upon a request from FirstGroup or a Bus Subsidiary in relation to specific Bus Routes the OFT may direct the Monitor to undertake a review at any time between the six monthly reviews. FirstGroup shall specify in the terms and conditions of appointment of the Monitor that where the Monitor is requested by the OFT to undertake a review at any time between the six monthly reviews, it will do so in accordance with the processes and procedures set out in the Undertakings and prepare a report for submission to the OFT.
- 3.13 FirstGroup shall not itself terminate the appointment of the Monitor without the prior written consent of the OFT.

#### **4. Identification of Bus Routes/Flows where restrictions will apply**

##### ***Possible Routes***

- 4.1 A Bus Route shall be a 'Possible Route' if:
  - (a) it is listed as such in part I or part II of Annex F;
  - (b) it has been assessed by the Monitor and determined by the OFT to be a Possible Route, on the basis of an assessment by the Monitor under paragraphs 4.4 and 4.5 of the impact of a new Train Route, a new Train Service or a new Train Stopping Pattern (where a new Overlap Flow is established); or
  - (c) it includes part of a Possible Route which has been split,but save as expressly provided for in this paragraph 4.1 no new Bus Routes will be added to the list of Possible Routes.
- 4.2 If a new Train Route, a new Train Service or a new Train Stopping Pattern is planned to be operated by the Rail Subsidiary in the Scottish Rail Franchise Area, FirstGroup and/or the relevant Bus Subsidiar(y)(ies) will, no later than 28 days before that new Train Route, new Train Service or new Train Stopping Pattern comes into operation, notify the OFT and the Monitor of that new Train Route, new Train Service or new

Train Stopping Pattern. In this notification FirstGroup and/or the relevant Bus Subsidiary(ies) will:

- (a) identify any new Overlap Flows that will be created;
- (b) give the total annual revenue over the most recent financial year for which FirstGroup and/or its relevant Bus Subsidiar(y)(ies) has revenue data available for each of its Bus Routes where, as a result of the new Train Route, new Train Service or new Train Stopping Pattern, there is a new Overlap Flow identified under paragraph 4.2(a);
- (c) allocate the total annual revenue for each such Bus Route between the Flows on those Bus Routes using the methodology specified in Annex B so that the percentage of total annual revenue for the Bus Route allocated to each Overlap Flow is clear.

- 4.3 Promptly following receipt of this data from FirstGroup and/or its relevant Bus Subsidiar(y)(ies), and any other data it may reasonably require, the Monitor will in accordance with paragraph 4.4 advise the OFT whether the new Train Route, a new Train Service or a new Train Stopping Pattern will give rise to an additional Possible Route and shall promptly notify FirstGroup accordingly. The OFT will then decide on the basis of the Monitors advice, whether a new Possible Route has been created, and following any such decision of the OFT that a new Possible Route has been created, the list in part 1 of Annex F shall be amended accordingly.
- 4.4 A new Train Route, a new Train Service or a new Train Stopping Pattern will give rise to an additional Possible Route(s) if, on the basis of the methodology set out in Annex B aggregate annual revenue on Overlap Flows on the relevant Bus Subsidiar(y)(ies)'s Bus Route(s) accounts for more than 10 per cent of annual route revenue on the relevant Bus Route for the period referred to in paragraph 4.2(b) above.
- 4.5 At the six monthly review following at least 28 days operation of the new Train Route, a new Train Service or a new Train Stopping Pattern, FirstGroup and/or the relevant Bus Subsidiar(y)(ies) will resubmit to the Monitor and the OFT the data provided in implementation of 4.2(a) to 4.2(c) updated to cover the period for which the new Train Route, a new Train Service or a new Train Stopping Pattern has been operating. As part of such six monthly review, the Monitor will use this new data to reassess whether the new Train Route, a new Train Service or a new Train Stopping Pattern will give rise to an additional Possible Route(s) and the Monitor shall advise the OFT accordingly. The OFT will then decide, on the basis of the Monitor's Report, whether a new Possible Route has been created, and following any such decision of the OFT that a new Possible Route has been created, the list in part I of Annex F shall be amended accordingly.
- 4.6 If a Possible Route is split, the original Bus Route shall be removed from the list of Possible Routes in part I or part II of Annex F but all the resulting new or reconfigured Bus Routes which include parts of the original Bus Route which has been split will be added to the list of Possible Routes in the corresponding part of Annex F.
- 4.7 In relation to any Bus Route which was identified in Appendix G to the Final Report as a 'probable' route but has since the date of the Final Report been split or is otherwise not being operated in accordance with the Undertakings at the Commencement Date, the relevant Bus Subsidiar(y)(ies) will take such steps as are necessary to ensure that the Bus Route is being operated in accordance with the Undertakings within a period of 2 months following the Commencement Date. For

the avoidance of doubt, where a Bus Route identified in Appendix G to the Final Report as a 'probable' route has been split, compliance with the Undertakings will be judged by reference to the Bus Route as configured at 2 May 2004.

### ***Controlled routes***

- 4.8 The restrictions set out in paragraph 6 of the Undertakings will apply to Bus Routes identified as Controlled Routes as set out below.
- 4.9 As at the Commencement Date, Controlled Routes will comprise those identified as such in parts I and II of Annex F by service number.
- 4.10 Following the first six monthly review by the Monitor, and every six monthly review or other review thereafter, Controlled Routes will comprise those Bus Routes listed in Annex F by service number as Controlled Routes (during In Hours or Out of Hours or both) as modified from time to time by the OFT in accordance with the Undertakings.
- 4.11 Save for Wider Catchment Routes, a Possible Route which is a Possible Route in accordance with 4.1(a) or 4.1(b) shall be a Controlled Route during In Hours or Out of Hours, or both if, applying the Competition Test, the relevant Bus Subsidiar(y)(ies) do not face effective competition on Overlap Flows during In Hours, Out of Hours, or both, as the case may be, which account for at least 10 per cent of total revenue on that Bus Route.
- 4.12 In relation to Wider Catchment Routes a Bus Route which is a Possible Route shall be a Controlled Route during In Hours or Out of Hours, or both if and only if, applying paragraph 5.2, the relevant Bus Subsidiar(y)(ies) do not face effective competition on the relevant Overlap Flows during In Hours, Out of Hours, or both as the case may be.
- 4.13 A Possible Route which is a Possible Route as set out in accordance with 4.1(c) shall be a Controlled Route during In Hours or Out of Hours, or both if and only if, applying the Competition Test, (except that paragraphs 5.1(b) and 5.1(c) will not be applied), the relevant Bus Subsidiar(y)(ies) do not face effective competition on all Overlap Flows on that Bus Route during In Hours, Out of Hours, or both as the case may be.
- 4.14 Subject to paragraph 4.15 of the Undertakings, the Monitor shall, at each six monthly review, re-apply the process set out in paragraph 5 to all Controlled Routes which it has been requested to review by the OFT and Possible Routes which it has been requested to review by the OFT.
- 4.15 If a Controlled Route during In Hours or Out of Hours, or both, is split, then the original Bus Route shall be removed from the list of Controlled Routes but all resulting new or reconfigured Bus Routes which include parts of the original Bus Route which has been split will be added to the list of Controlled Routes for the corresponding Problem Time of Day. These Controlled Routes shall remain on the list of Controlled Routes for the applicable Problem Time of Day throughout the life of the Undertakings unless and until it is determined by application of the Competition Test or paragraph 5.2 that the relevant Bus Subsidiary faces effective competition on all Overlap Flows on such Controlled Route during the applicable period whereupon such Bus Route shall become a Possible Route.
- 4.16 For the purpose of the Undertakings, Possible Routes and Controlled Routes are identified by service number and, save with the prior approval of the OFT or where a Possible Route or a Controlled Route is split, FirstGroup and/or its relevant Bus

Subsidiaries shall ensure that the routes in Annex F retain the same service number throughout the life of the Undertakings.

## **5. Review of Controlled Routes and Possible Routes**

### ***Routes appearing in part I of Annex F***

5.1 FirstGroup shall specify in the terms and conditions of appointment of the Monitor that the Monitor will, at the first six monthly review and at each six monthly review thereafter, and when requested to do so by the OFT in accordance with paragraph 3.12, except in relation to the Wider Catchment Routes, apply the process set out below to each of the Controlled Routes and Possible Routes which the Monitor has been requested to review by the OFT to determine which of such Bus Routes should be treated as Possible Routes or Controlled Routes:

- (a) Taking into account all bus services on a given Overlap Flow operated by each Bus Subsidiary and by all other bus operators, the Monitor will assess whether there is effective competition on each Overlap Flow on a Bus Route. There will be no effective competition if:
  - (i) for the relevant Bus Subsidiary's Frequent Services: the expected Headway according to the timetable of the bus services operated by all competitors of the relevant Bus Subsidiary taken together (the expected Headway for competitors' Frequent Services will be assumed to be 10 minutes unless evidence to the contrary is produced) is more than 10 minutes greater than the expected Headway according to the timetable of the relevant Bus Subsidiary's bus services; or
  - (ii) for the relevant Bus Subsidiary's bus services which are not Frequent Services: the expected Headway according to the timetable of all of the relevant Bus Subsidiary's competitors' bus services taken together is more than double the expected Headway according to the timetable of the relevant Bus Subsidiary's bus services; and
- (b) The Monitor will then determine whether those Overlap Flows on which there is no effective competition account for more than 10 per cent of total Bus Route revenue.
- (c) If those Overlap Flows on which there is no effective competition account for more than 10 per cent of total Bus Route revenue, then the Bus Route will be treated as a Controlled Route; otherwise the Bus Route will be treated as a Possible Route, and Part I of Annex F shall be amended accordingly.

### ***Routes appearing in part II of Annex F***

5.2 In relation to any Wider Catchment Routes which it has been requested to review by the OFT, at the first six monthly review and at each six monthly review thereafter and when requested to do so by the OFT, FirstGroup shall specify in the terms and conditions of appointment of the Monitor that the Monitor will assess whether there is effective competition on such Bus Route(s). There will be no effective competition on a Wider Catchment Route if there is not effective competition on all of the Overlap Flows described as such and marked with an asterisk for that Wider Catchment Route in Annex E. There will be no effective competition on an Overlap Flow described as such and marked with an asterisk for that Wider Catchment Route in Annex E if:



- (a) for the relevant Bus Subsidiary's Frequent Services: the expected Headway according to the timetable of the services operated by all of the relevant Bus Subsidiary's bus competitors taken together (the expected Headway for competitors' Frequent Services will be assumed to be 10 minutes unless evidence to the contrary is produced) is more than 10 minutes greater than the expected Headway according to the timetable of the relevant Bus Subsidiary's bus services; or
- (b) for the relevant Bus Subsidiary's bus services which are not Frequent Services: the expected Headway according to the timetable of all of the relevant Bus Subsidiary's competitors' bus services taken together is more than double the expected Headway according to the timetable of the relevant Bus Subsidiary's bus services.

### ***Controlled Routes and Possible Routes***

- 5.3 When the Monitor is reviewing whether a Bus Route should be treated as a Controlled Route or a Possible Route FirstGroup will specify in the terms and conditions of appointment of the Monitor that the Monitor will apply the process in paragraph 5.1 or 5.2 above (as appropriate) to the given Bus Route separately for the In Hours and Out of Hours periods. If the Bus Route is assessed to be a Controlled Route only In Hours or Out of Hours, where it is practicable to do so, the Bus Route will be treated as a Controlled Route only In Hours or Out of Hours as appropriate, and the appropriate entry shall be made in the relevant Monitor's Report and in Annex F.
- 5.4 At the six monthly reviews, or at any other review conducted by the Monitor at the request of the OFT, FirstGroup and/or its Bus Subsidiaries will submit to the Monitor data that will enable the Monitor to conduct the review in accordance with the Undertakings. This will include:
  - data for both In Hours and Out of Hours periods showing the Headway of its own services for Overlap Flows;
  - data for both In Hours and Out of Hours periods on the existence of its Bus Subsidiaries' competitors on the Overlap Flows comprising the route in question, and of their Headway;
  - data showing its Bus Subsidiaries' revenue for each Overlap Flow on the route, the total revenue on the route; and
  - its own calculations of whether Overlap Flows on which there is effective competition (according to the process in paragraph 5.1) account for 10 per cent of total revenue on the route or less, where relevant.
- 5.5 If following any review by the Monitor of any Bus Route in connection with the Undertakings it is determined by the OFT that there should be a change in designation of a Bus Route from or to being a Controlled Route In Hours or Out of Hours or both during any time period, then the OFT shall amend Annex F accordingly and the change in designation shall take effect as soon as Annex F is amended and FirstGroup is notified in writing by the OFT of such change, provided always that where any relevant Bus Subsidiary has prior to the date of such notification committed to introduce a change on a newly designated Controlled Route then on condition that such Bus Subsidiary seeks to reverse or modify such change as soon as reasonably practicable after the notification date referred to above (taking into account any relevant mandatory time periods), to the extent that such prior change

would result in any non-compliance with the Undertakings then FirstGroup and its Bus Subsidiaries shall be deemed to be complying with the Undertakings.

- 5.6 For the purposes of application of the Competition Test and paragraph 5.2 (as the case may be) for Bus Routes which:
- (a) are Controlled Routes and/or Possible Routes at the Commencement Date, revenue for Overlap Flows and total route revenue shall be the revenue for Overlap Flows and total route revenue based on a sample week in May 2003 (as provided to the Commission prior to the publication of the Final Report); or
  - (b) become Controlled Routes and/or Possible Routes pursuant to paragraphs 4.2 to 4.5 (inclusive), revenue for Overlap Flows and total route revenue shall be such revenue as provided pursuant to paragraph 4.2 (as amended following resubmission of revenue data pursuant to paragraph 4.5).

## **6. The Restrictions**

### ***Level of Service***

- 6.1 The undertakings set out below in paragraphs 6.2 to 6.27 apply both to In Hours and Out of Hours on those Bus Routes identified as Controlled Routes in both periods; and In Hours or Out of Hours only to those Bus Routes identified as Controlled Routes In Hours or Out of Hours respectively.

### ***Fares***

- 6.2 The Bus Subsidiary shall ensure that, throughout the lifetime of the Undertakings, each Restricted Fare is no higher than the relevant Fare Limit.
- 6.3 The Bus Subsidiaries agree that the Fare Limit for each Restricted Fare shall be calculated using the Base Fare Group appropriate for that Restricted Fare.
- 6.4 The Bus Subsidiaries agree that the Base Fare Group associated with a particular Restricted Fare shall not change as either the Restricted Fare or the levels of the fares in the Base Fare Group change. If a ticket type which has fares associated with it which are in the Base Fare Group is withdrawn, the relevant fares shall be withdrawn from the Base Fare Group. If any Base Fare Group contains less than 50 per cent of the original number of fares the OFT, in consultation with FirstGroup or the relevant Bus Subsidiary, shall be free to include additional fares in the Base Fare Group and make whatever other adjustment (if any) it considers is necessary to maintain the relativity of the Restricted Fare and the Base Fare Group.
- 6.5 The Bus Subsidiaries shall ensure that where a ticket type is available for use on a Problem Overlap at a Problem Time of Day changes are not made to the terms and conditions associated with that ticket type unless the same changes are made to the terms and conditions associated with the same ticket type on not less than 75 per cent in number of the Comparator Routes in the same region (Glasgow, Edinburgh 1 or Edinburgh 2 as appropriate) as the Problem Overlap on which such ticket type exists.
- 6.6 The Bus Subsidiaries shall ensure that a ticket type which is available for use on a Problem Overlap at a Problem Time of Day will not be withdrawn unless that ticket type is withdrawn on at least 75 per cent in number of the Comparator Routes in the same region (Glasgow, Edinburgh 1, or Edinburgh 2 as appropriate) as the Problem Overlap on which that ticket type exists.

- 6.7 The Bus Subsidiaries shall ensure that where changes are made to the terms and conditions associated with a particular ticket type on 75 per cent in number or more of a set of Comparator Routes the same changes will be made to the terms and conditions associated with that ticket type on all the Problem Overlaps in the same region (Glasgow, Edinburgh 1, or Edinburgh 2 as appropriate) at a Problem Time of Day.
- 6.8 The Bus Subsidiaries shall ensure that where, after the Commencement Date, a new ticket type is introduced on 25 per cent in number or more of a set of Comparator Routes the same ticket type is available on all the Problem Overlaps in the same region (Glasgow, Edinburgh 1, or Edinburgh 2 as appropriate) at a Problem Time of Day on the same terms and conditions as on the relevant set of Comparator Routes.
- 6.9 The Bus Subsidiaries shall ensure that Fare Stages on any Bus Routes in the Glasgow Region, the Edinburgh 1 Region or the Edinburgh 2 Region are not changed without the prior approval of the OFT. If any Bus Subsidiaries do wish to make changes to any Fare Stage(s) in the Glasgow Region, the Edinburgh 1 Region or the Edinburgh 2 Region FirstGroup and/or the relevant Bus Subsidiaries must apply to the OFT, including calculations setting out the impact of any such changes on fares on any Possible Routes or Controlled Routes.
- 6.10 FirstGroup and/or the relevant Bus Subsidiaries shall within 14 days of a request from the OFT or the Monitor provide to the OFT or to the Monitor (as the case may be) a list of all ticket types available for use on Controlled Routes or Comparator Routes with the general terms and conditions of each, and a list of the Controlled Routes and Comparator Routes on which the ticket type may be used and, in relation to Controlled Routes, a list of the Flows on which a ticket type may be used and whether In Hours, Out of Hours or both.
- 6.11 FirstGroup and/or the Bus Subsidiaries shall within 14 days of a request from the OFT or the Monitor provide to the OFT or to the Monitor (as the case may be) fare tables for each Controlled Route showing each Restricted Fare and the Flows on which it is available. FirstGroup and/or the relevant Bus Subsidiaries shall also within 14 days of a request from the OFT or the Monitor provide to the OFT or to the Monitor (as the case may be) fare tables for each Comparator Route showing each fare which is included in a Base Fare Group and in which Base Fare Group it is included.
- 6.12 For each six monthly review within 28 days of receiving notice of the review from the Monitor, FirstGroup and/or the relevant Bus Subsidiaries will notify the Monitor of any changes to the terms and conditions of a ticket type and whether and when any ticket types were withdrawn or introduced and which Comparator Routes and/or Controlled Routes were affected during the preceding six months.
- 6.13 FirstGroup and/or the relevant Bus Subsidiaries shall provide to the OFT or to the Monitor (as the case may be) all the information referred to in paragraphs 6.10 to 6.12 (inclusive) in the form of an electronic spreadsheet together with supporting data and calculations which enable the Monitor to assess whether the restrictions on fares and ticket types set out in these undertakings are being complied with.
- 6.14 FirstGroup and/or the relevant Bus Subsidiaries shall also provide to the OFT or to the Monitor (as the case may be) at the Commencement Date and at each six monthly review thereafter route maps for all Controlled Routes showing Fare Stages in the Glasgow Region, the Edinburgh 1 Region and the Edinburgh 2 Region using Microsoft Map Point or similar software.

## ***Frequency***

- 6.15 For Bus Routes other than those listed in paragraph 6.17 of the Undertakings becoming Controlled Routes after the Commencement Date, the relevant Bus Subsidiaries shall ensure that, as from the date the Bus Route in question becomes a Controlled Route, scheduled Headway between the furthest points of Problem Overlap during a Problem Time of Day on that Bus Route will not increase by more than 5 minutes from the level immediately before the Bus Route became a Controlled Route.
- 6.16 For Bus Routes other than those listed in paragraph 6.17 of the Undertakings which are Controlled Routes at the Commencement Date, the relevant Bus Subsidiaries shall ensure that scheduled Headway between the furthest points of Problem Overlap during a Problem Time of Day will not increase by more than 5 minutes from the levels set out in the timetables as at 2 May 2004.
- 6.17 For the Bus Routes with service numbers X23, X24, X26 and X32 which are Controlled Routes at the Commencement Date or which become Controlled Routes after a review, the relevant Bus Subsidiaries shall maintain at least the number of services in the morning and in the evening as in the period immediately before the Bus Route became a Controlled Route. In addition the relevant Bus Subsidiaries shall run such services in accordance with the timetables in operation immediately before the Bus Routes became Controlled Routes plus or minus no more than 20 minutes, provided that for the X23 in the morning period the two journeys will depart no less than 30 minutes apart and no more than 90 minutes apart.
- 6.18 In order to demonstrate compliance with paragraphs 6.15 to 6.17,
- (a) FirstGroup and/or the relevant Bus Subsidiaries will submit to the Monitor and to the OFT for each six monthly review within 28 days of receiving notice of the review from the Monitor the following information:
    - (i) any timetable which has applied to the section of any Controlled Route between the furthest points of Problem Overlap during the previous six months prior to receiving notice of the review, or in the case of the first six monthly review, the five months prior to receiving notice of the review, with the times of buses that relate to Overlap Flows on the Controlled Routes clearly marked; and
    - (ii) details as submitted to the Traffic Commissioner of any timetable change on Controlled Routes during the last six months prior to receiving notice of the review or in the case of the first six monthly review, the five months prior to receiving notice of the review, which had led to changes in Headway on sections of the Bus Route concerned between the furthest points of Problem Overlap, highlighting any changes in Headway; and
  - (b) for any Bus Route notified by the Monitor to FirstGroup as becoming a Controlled Route at any time outside a six monthly review FirstGroup and/or the relevant Bus Subsidiary will provide to the Monitor within 14 days of receiving the notification the timetable applying to that Bus Route at that time.

## ***Capacity***

- 6.19 Save as provided in paragraph 6.21 below, for any four-week period on each Controlled Route the Bus Subsidiaries shall ensure that the weighted average bus capacity, as calculated in accordance with the methodology set out in Annex C, does

not fall below the minimum weighted average bus capacity, as calculated in accordance with the methodology set out in Annex C.

- 6.20 FirstGroup shall specify in the terms and conditions of the appointment of the Monitor that the Monitor will, when it assesses a Bus Route to be a Controlled Route, calculate the minimum weighted average capacity for that Bus Route in accordance with the methodology set out in Annex C. FirstGroup and/or the relevant Bus Subsidiaries shall provide the Monitor with the data it needs to perform this calculation, as specified in Annex C, within 28 days of having received a request from the Monitor.
- 6.21 Paragraph 6.19 shall not apply where the OFT is satisfied that any one or more relevant Bus Subsidiaries decide or are required for safety or technical reasons beyond its or their reasonable control to withdraw a substantial part of its or their fleet of a particular type of bus from service as long as the relevant Bus Subsidiaries use all reasonable endeavours to replace buses withdrawn from Problem Overlaps at Problem Times of Day with buses of capacity as close as possible to that of the buses withdrawn.
- 6.22 If FirstGroup or the Bus Subsidiaries believe that the categories and/or benchmark percentages calculated in accordance with the methodology set out in Annex C are no longer realistic, for example because of general changes to its relevant Bus Subsidiaries' fleet, FirstGroup and/or the relevant Bus Subsidiaries may submit a reasoned request to the OFT to review those percentages. Following such a request, the OFT may make such changes to Annex C as it considers appropriate.
- 6.23 FirstGroup and/or its relevant Bus Subsidiaries shall provide within 28 days of receiving notice of a review from the Monitor (or the OFT as the case may be) information in relation to weighted average bus capacity to demonstrate compliance with these requirements. Such information shall be provided to the Monitor (or, if otherwise directed by the OFT, to the OFT) and shall be produced in accordance with the methodology set out in Annex C in respect of each Controlled Route for a four week period chosen at random by the Monitor (or the OFT as the case may be) and notified to FirstGroup at the time notice of a review is given.

### ***Route reconfiguration***

- 6.24 The Bus Subsidiaries shall not reconfigure during a Problem Time of Day any Controlled Routes listed in parts I and II of Annex F, unless route reconfiguration does not result in the distance on each individual Problem Overlap on such Controlled Route increasing by more than 10 per cent or 2 kilometres, whichever is the less.
- 6.25 The Bus Subsidiaries shall not reconfigure during a Problem Time of Day:
- (a) any Controlled Route listed in part I of Annex F in such a way that the distance at the end of each Problem Overlap from the nearest railway station increases by more than 400 metres as compared to in the case of a Bus Route which:
    - (i) is a Controlled Route at the Commencement Date, the distance from such railway station as at 2 May 2004; or
    - (ii) becomes a Controlled Route after the Commencement Date, the distance from such railway station immediately before the Bus Route became a Controlled Route; or

- (b) any Controlled Route listed in part II of Annex F in such a way that the distance at the end of each Problem Overlap from the nearest railway station, where the end of each such Problem Overlap is referred to in Annex E by the letters RS, increases by more than 400 metres as compared to, in the case of a Bus Route which:
    - (i) is a Controlled Route at the Commencement Date, the distance from such railway station as at 2 May 2004; or
    - (ii) becomes a Controlled Route after the Commencement Date, the distance from such railway station immediately before the Bus Route became a Controlled Route; or
  - (c) any Controlled Route listed in part II of Annex F in such a way that the end of each Problem Overlap, where the end of each such Problem Overlap is referred to in Annex E by the letters RP, is moved in the case of a Bus Route which:
    - (i) is a Controlled Route at the Commencement Date, by more than 400 metres away from where it was located as at 2 May 2004; or
    - (ii) becomes a Controlled Route after the Commencement Date by more than 400 metres away from where it was located immediately before the Bus Route became a Controlled Route.
- 6.26 For the purpose of demonstrating compliance with paragraphs 6.24 and 6.25 FirstGroup and/or the Bus Subsidiaries shall provide to the Monitor (or if otherwise directed by the OFT, the OFT) within 28 days of having received notice of a review from the Monitor (or the OFT as the case may be), using Microsoft Map Point or such other software as is agreed with the OFT:
- (a) prior to the first six monthly review, route maps as at 2 May 2004 for all Bus routes that are Controlled Routes at the Commencement Date;
  - (b) route maps for all Controlled Routes, showing distances between bus stops and between bus stops and relevant train stations on Overlap Flows for Controlled Routes at each six monthly review, or within 14 days of receiving the OFT's notification of a Bus Route becoming a Controlled Route;
  - (c) A copy of any notification of change (including a revised Bus Route map) to a Controlled Route made to the Traffic Commissioner.

### ***First and Last Bus times***

- 6.27 The Bus Subsidiaries agree that first and last bus times will be restricted on all Problem Overlaps during Problem Times of Day as follows:
- (a) In the case of a Bus Route which:
    - (i) is a Controlled Route at the Commencement Date, where as at 2 May 2004 the first bus started earlier or the last bus finished later (at each end of the Problem Overlap) than the rail service on that Problem Overlap, the relevant Bus Subsidiary must operate a bus at least as early as the first train on the Problem Overlap as at 2 May 2004 and at least as late as the last train on the Problem Overlap as at 2 May 2004, as appropriate.

- (ii) becomes a Controlled Route after the Commencement Date, where immediately before the Bus Route became a Controlled Route the first bus started earlier or the last bus finished later (at each end of the Problem Overlap) than the rail service on that Problem Overlap, the relevant Bus Subsidiary must operate a bus at least as early as the first train on the Problem Overlap immediately before the Bus Route became a Controlled Route and at least as late as the last train on the Problem Overlap immediately before the Bus Route became a Controlled Route, as appropriate.
- (b) Where the Train Service that overlaps with the relevant Bus Subsidiary's bus services on the Problem Overlap starts earlier or finishes later than the bus the relevant Bus Subsidiary must ensure in relation to Bus Routes which are Controlled Routes at the Commencement Date, that first bus times on Problem Overlaps are not later and last bus times on Problem Overlaps are not earlier than they were on 2 May 2004 and in relation to Bus Routes which become Controlled Routes after the Commencement Date that first bus times on Problem Overlaps are not later and last bus times on Problem Overlaps are not earlier than they were in the period immediately before the Bus Route became a Controlled Route.
- (c) Within 14 days of being notified by the Monitor that a Bus Route is to be treated as a Controlled Route, and of which Overlap Flows on that Controlled Route are Problem Overlaps at what time of day (In Hours and/or Out of Hours), FirstGroup and/or the relevant Bus Subsidiary will provide the Monitor (or if otherwise directed by the OFT, the OFT) with data showing the period of operation of rail service (first and last trains) that overlaps with the relevant Bus Subsidiaries' bus services on all Problem Overlaps on that Controlled Route. FirstGroup and/or the relevant Bus Subsidiary will also provide to the Monitor (or if otherwise directed by the OFT, the OFT) a copy of the bus timetable which applied at the time that the Bus Route becomes a Controlled Route for each Controlled Route. If the overlapping Train Service starts earlier and/or finishes later than the bus service, FirstGroup and/or the relevant Bus Subsidiary will mark on the relevant timetable the first and/or last bus (as appropriate) that coincides with the period of rail operation.

6.28 In order to demonstrate compliance with these requirements, FirstGroup and/or the Bus Subsidiaries shall provide to the Monitor or to the OFT (as the case may be) the timetables that applied during the six months covered by the six monthly review on the Problem Overlaps during Problem Times of Day, marking on the first and last bus times that coincide with the period of rail operation on the overlapping Train Service.

## **7. Broader effects on competition**

7.1 The Rail Subsidiary and the Bus Subsidiaries shall not introduce a Multi-modal Ticket for use on both their own bus and rail services in the Scottish Rail Franchise Area without complying with paragraphs 7.2 to 7.4 below.

7.2 Where the Rail Subsidiary and/or the Bus Subsidiaries propose to introduce a Multi-modal Ticket for use on both their respective rail and bus services it or they shall invite other actual or potential bus operators in Scotland to participate in the relevant scheme on terms that are fair, reasonable, and no less favourable than the terms on which the Bus Subsidiaries participate in the scheme. For the purposes of this paragraph 'actual and potential bus operators' means all bus operators included in the most recent available list of operators licensed to run buses in Scotland.

- 7.3 The Rail Subsidiary and the Bus Subsidiaries agree that in order to comply with paragraph 7.2 of the Undertakings, at least one of them or FirstGroup will write to the other bus operator(s) and to the OFT at least 28 days before the scheme is due to come into operation, setting out details of the scheme and the terms and conditions on which participation is offered. For the avoidance of doubt, the bus operators referred to above in this paragraph will not be required to commit to joining the scheme within the 28 days before it begins operation.
- 7.4 FirstGroup, the Rail Subsidiary and the Bus Subsidiaries further agree that they will cause to be included in any such communication a summary of the requirement in the Undertakings that they must offer to that other bus operator terms which are 'fair, reasonable and no less favourable than the terms on which the relevant Bus Subsidiary participates in the scheme' and informing the bus operator that if it does not believe that this is in fact the case, the bus operator may submit a complaint in writing to the OFT. In the event that such a complaint is made by a bus operator to the OFT, FirstGroup, the Rail Subsidiary and the Bus Subsidiaries shall cooperate fully with any investigation of the complaint carried out by the OFT and will provide promptly such documents as the OFT may reasonably request.
- 7.5 The relevant Bus Subsidiaries will continue, as a bus operator(s), to support and participate in:
- (a) the existing Multi-modal Ticketing Schemes in which FirstGroup or the relevant Bus Subsidiaries is or are a participant at the Commencement Date, namely:
    - (i) Strathclyde Zonecard Scheme;
    - (ii) One-Ticket-SESTRAN;
  - (b) the following ticketing schemes specified in the Scottish Rail Franchise Agreement and in which the Bus Subsidiaries can participate as a bus operator(s), namely:
    - (i) Strathclyde Zonecard Scheme (Including Conference Delegates' Travel Ticket);
    - (ii) Day Tripper;
    - (iii) Playscheme Travel Pass;
    - (iv) One-Ticket-SESTRAN;
    - (v) Plusbus;
    - (vi) And such other ticketing schemes in which the Bus Subsidiaries can participate as the SRA may from time to time specify under paragraph 3.2 of Schedule 25 to the Scottish Rail Franchise Agreement,
      - as long as continued participation in any of such schemes would make the participating relevant Bus Subsidiary financially no worse off (by way of distribution of income or otherwise).
  - (c) For these purposes 'financially no worse off' shall be construed to mean that, over a reasonable time period:
    - (i) in respect of any of the existing ticketing schemes specified in paragraph 7.5(a) or 7.5(b) the participating relevant Bus Subsidiary incurs no



materially greater financial loss than the financial loss (if any) incurred by the participating relevant Bus Subsidiary at the Commencement Date under that scheme, as adjusted by reference to any change in the Retail Prices Index (CHAW) since that date;

- (ii) in respect of any ticketing scheme which replaces and (in the OFT's reasonable opinion) is reasonably similar to any such scheme as is set out in paragraph 7.5(a) or 7.5(b) above, the participating relevant Bus Subsidiary incurs no materially greater financial loss than the financial loss (if any) incurred by it at the Commencement Date under the replaced scheme, as adjusted by reference to any change in the Retail Prices Index (CHAW) since that date,
  - (iii) in respect of any other schemes referred to in paragraph 7.5(b) the relevant Bus Subsidiaries incur no materially greater financial loss than the financial loss (if any) it would have incurred had it not been required to participate in any such scheme as a bus operator, as adjusted by reference to any change in the Retail Price Index (CHAW).
- (d) Nothing in this paragraph 7.5 above shall require FirstGroup, the Rail Subsidiary, or any Bus Subsidiary to continue to support or participate in 'One-Ticket-SESTRANS' where it or they can satisfy the OFT at any time that:
- (i) it would not be commercially acceptable for the relevant Bus Subsidiary to do so over a period of two years (based on forecast data or otherwise); and
  - (ii) any decision by FirstGroup or its relevant Bus Subsidiary to exit 'One-Ticket-SESTRANS' is not as a result of the award of the Scottish Rail Franchise to the Rail Subsidiary.

7.6 The Bus Subsidiaries shall also use their reasonable endeavours to ensure the success of these schemes.

7.7 The Rail Subsidiary and the Bus Subsidiaries shall, as far as is reasonably practicable, provide factual, accurate and impartial advice about their own and their competitors' Multi-modal Tickets, and shall sell such tickets on an impartial basis at the point of sale.

7.8 Save as required by the Scottish Rail Franchise Agreement, the Bus Subsidiaries agree that they will not participate in any Public Transport Multi-modal Multi-operator Ticketing Scheme in which they are not a participant at the Commencement Date, unless:

- (a) its terms provide for non-pricing decisions to be made by at least a simple majority (ie more than 50 per cent);
- (b) its terms provide for pricing decisions to be made by a majority of at least 65 per cent; and
- (c) the terms of the scheme are such that the Rail Subsidiary and the Bus Subsidiaries' votes (combined) are capped at 40 per cent and any additional votes to which they would have been entitled are reallocated among the other operators participating in the scheme according to their actual or forecast share of revenue from the scheme.

- 7.9 The Bus Subsidiaries agree that before agreeing to join or participate in any Public Transport Multi-modal Multi-operator Ticketing Scheme in which they are not a participant at the Commencement Date, they will send details of the terms and conditions of operation of any such Multi-modal Multi-operator Ticketing Schemes to the OFT, highlighting the sections which set out voting rights and votes needed to approve changes to the scheme.
- 7.10 In relation to schemes in which the Bus Subsidiaries are participants as at the Commencement Date as listed in paragraph 7.5(a) above, the Bus Subsidiaries agree that they will use their reasonable endeavours, including tabling proposals to amend the terms of operation of such schemes and seeking to establish support for such proposals, to procure that the terms of operation of such schemes be changed to formal, well-defined and transparent terms which include in particular a transparent allocation of voting rights.

## **8. Provision of information at railway stations**

- 8.1 The Rail Subsidiary agrees that it will use its reasonable endeavours to display information about other operators' bus services with equal prominence to the Bus Subsidiaries' own bus services at railway stations in the Scottish Rail Franchise Area. For the avoidance of doubt, if FirstGroup, the Rail Subsidiary or a Bus Subsidiary pays or otherwise meets the cost for use of advertising space at any such station in respect of any advertisements for any of its bus services it shall not be required to pay or otherwise meet the cost for any advertising space to be made available to another bus operator.
- 8.2 In order to comply with this requirement FirstGroup agrees that as soon as reasonably practicable after the Commencement Date it and/or the Rail Subsidiary and/or the Bus Subsidiaries will write to all actual and potential operators (as defined in paragraph 7.2 above) in the terms set out in Annex D.

## **9. Force Majeure**

- 9.1 Notwithstanding the other provisions of the Undertakings FirstGroup the Rail Subsidiary or any Bus Subsidiary shall not be in breach of the Undertakings if such breach occurs as a consequence of any Force Majeure Event.

## **10. Subsidiaries**

- 10.1 FirstGroup, the Bus Subsidiaries and the Rail Subsidiary shall procure that its Subsidiaries comply with the Undertakings as if such companies had given them, and such compliance by relevant Subsidiaries shall be deemed to be compliance by FirstGroup.
- 10.2 Compliance with any undertaking in the Undertakings by a Bus Subsidiary and/or Rail Subsidiary shall be deemed to be compliance by FirstGroup with that undertaking.
- 10.3 A breach of these Undertakings by a Bus Subsidiary and/or Rail Subsidiary shall be deemed to be a breach by FirstGroup.

## **11. Provision of Information to the Commission/OFT**

- 11.1 FirstGroup shall promptly provide to the Commission such information as the Commission may reasonably require for the purpose of performing any of its functions under sections 82, 83, and 94(7) of the Act in relation to the Undertakings.

- 11.2 FirstGroup shall promptly provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under section 92, 93(6), and 94(6) of the Act in relation to the Undertakings.

## **12. Counterparts**

- 12.1 This agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

## **The Monitor's Mandate**

### **1. Introduction**

- 1.1 The Monitor shall assume the duties specified in paragraph 5 below in relation to the Competition Commission's Undertakings No. 6 of 2004 (the 'Undertakings').

### **2. Definitions**

- 2.1 In this mandate ('The Mandate'), unless the context otherwise requires, an expression which is defined in the Undertakings has the same meaning as in the Undertakings.

### **3. Duration of appointment**

- 3.1 The appointment of the Monitor shall continue until:
- (a) the final Monitor's Report is compiled and submitted to the OFT (and the OFT has indicated to the Monitor in writing that it is satisfied with such report) following the termination of the Scottish Rail Franchise Agreement; or
  - (b) the termination of the appointment of the Monitor in accordance with this Mandate or any terms and conditions that have been approved by the OFT; or
  - (c) until the Monitor has otherwise fully discharged its obligations as contained in the Mandate and in any terms and conditions of the Monitor's appointment that have been approved by the OFT.

whichever is the first to occur.

### **4. Basis of appointment**

- 4.1 The Monitor shall carry out its functions in accordance with the Undertakings to ensure the effective administration of the undertakings.

### **5. Duties of the Monitor**

- 5.1 The Monitor shall:
- (a) Conduct a review seven months after the Commencement Date and every six months thereafter and prepare and submit a report to the OFT and FirstGroup:
    - (i) stating whether or not on the basis of the Monitor's assessment FirstGroup, the Bus Subsidiaries and the Rail Subsidiary are and throughout the previous six months have been complying with the Undertakings; and
    - (ii) listing any new Possible Routes identified pursuant to paragraphs 4.1(b) or 4.1(c) of the Undertakings;

- (iii) reapplying the process set out in paragraph 5.1 or paragraph 5.2 of the Undertakings to all applicable Controlled Routes and Possible Routes that it has been requested to review by the OFT;
  - (iv) shall also set out a revised list of the Bus Routes that it considers should be classified as Controlled Routes In Hours, Out of Hours or both, in accordance with the Undertakings and identify any Problem Overlaps;
- (b) Conduct spot checks (if requested to do so by the OFT) for the purpose of assessing whether the bus services operated by a Bus Subsidiary are in conformity with the route and stopping pattern specified in the published timetable for that service and prepare and submit a report on its findings to the OFT and FirstGroup;
- (c) Conduct spot checks (if requested to do so by the OFT) to monitor whether the Rail Subsidiary is complying with the requirements set out in the Undertakings relating to the provision of information at railway stations and prepare and submit a report on its findings to the OFT and FirstGroup;
- (d) Conduct a review of any Bus Route (including but not limited to) new Possible Routes, Controlled Routes, Possible Routes and Wider Catchment Area Routes (if requested to do so by the OFT) at any time outside the six monthly reviews referred to in paragraph 5(a) for the duration of the Monitor's appointment and prepare and submit a report on its findings to the OFT and FirstGroup;
- (e) Advise the OFT whether there may be any additional Possible Routes in accordance with the Undertakings where there is a new Train Route, Train Service or Train Stopping Pattern or where an existing Possible Route has been split.

## **6. Access to Information**

- 6.1 The Monitor shall be provided with full and complete access to any of FirstGroup or the relevant Bus Subsidiaries' or the Rail Subsidiary's data, books, records, documents, sites and information necessary for it to fulfil its obligations under the Mandate and under any terms and conditions approved by the OFT.
- 6.2 The Monitor shall request, 28 days before commencement of any review under the Undertakings (or at any other time) such data, books, records, documents, and information as the Monitor may reasonably require effectively to monitor compliance with the Undertakings.

## **7. Completion of report**

- 7.1 The Monitor shall prepare and submit any report within 28 days (where possible) of receiving the required data, books, records, documents, and information from FirstGroup and and/or the relevant Bus Subsidiaries and/or the Rail Subsidiary.

## **8. Dispute resolution**

- 8.1 In the case of any dispute between FirstGroup and the Monitor, the OFT's decision shall be final.

## **9. Remuneration**

9.1 The Monitor shall be:

- (a) remunerated by FirstGroup; and
- (b) reimbursed by FirstGroup for all reasonable costs properly incurred,

in each case in accordance with the terms and conditions of the Monitor's appointment and in a way that does not impede the independent and effective fulfilment of its functions.

## **10. Termination**

10.1 The Monitor's appointment shall be terminated where the OFT has by written notice requested that FirstGroup terminate the appointment of such Monitor.

10.2 Firstgroup shall not terminate the appointment of the Monitor without the prior written consent of the OFT.

## **11. General**

11.1 If there is any conflict between the provisions of:

- (a) the Mandate and the Undertakings the provisions of the Undertakings shall prevail;
- (b) the Mandate and the terms and conditions of appointment, and/ or the terms and conditions of business of the Monitor, then the provisions of the Mandate shall prevail.

### **Methodology for estimating Overlap Flow passengers/revenue as a proportion of overall Bus Route patronage/revenue**

1. A representative week for the relevant bus operations is chosen that should not have any unusual seasonal or operational characteristics eg avoiding holiday periods or any substantial disruptions to services.
2. FirstGroup shall generate reports on all passenger boardings by Bus Route, by direction and by Fare Stage. Fare Stages tend to be a group of between two and five bus stops and the Bus Route and direction of travel are identified by journey numbers and/or the sequence of Fare Stages. This shall be entered on to spreadsheets for ease of analysis.
3. FirstGroup shall firstly identify the number of passengers boarding at the origin station Fare Stage (that is an identifiable section of the Bus Route that approximately equates to a rail station on an overlap route and hereafter referred to as the 'Origin Stage') in the direction of the destination station on the relevant Overlap Flow. The observed passenger boardings are then expressed as a proportion of the total passenger boardings on the route in that direction. For example if ten people boarded at Fare Stage x on a Bus Route and the total boardings on the Bus Route in that direction was 500, then the Origin Stage would represent 2 per cent of all boardings in that direction.
4. FirstGroup shall then identify the number of passengers boarding in the reverse direction at the Fare Stage(s) that best represent the destination station. The number of passengers boarding in the reverse direction will be expressed as a proportion of all passenger boardings in the same direction from Fare Stages that could have been destinations for the Origin Stage boarders. That is, Fare Stages that are up-stream of the Origin Stage should not be counted as valid Fare Stages for the denominator of this calculation. However, the Origin Stage is in itself a valid Fare Stage in this calculation as it is possible for passengers to travel within a single Fare Stage of 2–5 stops. For example, if a Bus Route is made up of 10 Fare Stages numbered 1–10 and the Origin Stage is Fare Stage 3 and the destination Fare Stage is 7, then the boarders at Fare Stage 7 (towards Fare Stage 3) should be divided by the sum of boarders from stages 10–3 inclusive in that same direction.
5. To estimate the proportion of passengers on the Overlap Flow, the product of the two proportions is then used. For example if the Origin Stage proportion of the route is 10 per cent and the destination stage proportion of the reverse valid flow is 5 per cent then the estimate of the flow proportion of the overall route is 10 per cent \* 5 per cent = 0.5 per cent.
6. To estimate the annual passenger numbers travelling on each Overlap Flow, this proportion is then applied to annual passenger numbers for the Bus Route.
7. To estimate revenue on the Overlap Flow, the same proportion is also applied to the route passenger revenue. While this may introduce a bias where the Flow is either shorter or longer than the 'average' fare it is the only way of capturing off- bus sales and concession income that would not be included if only on-bus revenue were used in the same manner as passenger numbers.

**Methodology for calculation of weighted average bus capacity and minimum weighted average bus capacity**

1. In the case of Bus Routes which are Controlled Routes immediately after the Undertakings come into effect, a four-week period from 2 May 2004 (between Monday and Friday (inclusive) each week) shall be used for the purposes of establishing the minimum weighted average bus capacity on each Controlled Route.
2. For Bus Routes which become Controlled Routes after the Undertakings come into force, the minimum weighted average bus capacity will be calculated using a representative four week period chosen by the Monitor from the period before that Bus Route became a Controlled Route (eg avoiding holiday periods or any substantial disruption to services).
3. For such four-week period between Monday and Friday (inclusive) each such week FirstGroup or the relevant Bus Subsidiaries shall generate data showing the percentage of all journeys on the Controlled Route served by each of the following categories of vehicle: Mini, Midi, Single Deck, Double Deck, Articulated bus, Coach.
4. The following capacities shall be assigned to each of the aforementioned categories:

Category	Assigned capacity
Mini	27
Midi	37
Single Deck	49
Double Deck	79
Articulated Bus	72
Coach	49

5. Using the capacities assigned to each category and the percentage of journeys on each Controlled Route served by each category, a weighted average capacity shall be calculated for the specified four week period.
6. The weighted average bus capacity for the specified four week period on each Controlled Route shall be multiplied by 0.9 to arrive at the minimum weighted average bus capacity for each Controlled Route.
7. The Bus Subsidiaries shall ensure that, in any four-week period for any Controlled Route the observed weighted average bus capacity calculated in accordance with the above paragraphs of this Annex C shall not be below the minimum weighted average bus capacity for that Controlled Route determined under paragraph 6 above.



## Letter to go to bus operators under paragraph 8.2

[DATE]

Ref :

Operatorx

Address1

Address2

dam

Dear Sir/Ma

### Bus Service Information at ScotRail stations

As you will no doubt be aware First has been awarded the ScotRail franchise for the next 7 years and will be taking operational control from 17 October 2004.

Under the terms of the Undertakings given to the Competition Commission on DATE 2004, First will be providing space at certain rail stations to display local bus information. We hope that all local bus operators will take advantage of this facility by providing appropriate information for the allocated space.

If you have not already received a letter asking if you would like to provide information for such display you should be informed very soon of the station locations and the facilities available. Available space will be allocated equitably to operators on the basis of local bus service levels.

If for any reason through the life of the franchise you are concerned that you are not getting fair and reasonable access to these display facilities, or you are not getting a reasonable response from First ScotRail on this you may complain to the Office of Fair Trading (OFT) whose details are set out below.

Of course, First is committed to full compliance with the Undertakings and therefore believe that the OFT's involvement will not be required. First is also committed to delivering these passengers benefits in partnership with all of Scotland's public transport operators.

I look forward to working with you in the coming months and delivering ever-closer integration through partnership.

The OFT can be contacted at:

OFT

Address1

Address 2

Phone etc.

Yours sincerely

Commercial Director

## ANNEX E

Route no.	Map location	Overlap Flow		
		Marked for the purposes of paragraph 5.2	From	To
16	RP1	*	Junction of Greenhills Rd/Lickprivick Rd	Glasgow Central Station
	RP2		Westwoodhill at Mossneuk Road	Glasgow Central Station
	RS1	*	East Kilbride Station	Glasgow Central Station
	RP3		Calderwood Shops	Glasgow Central Station
18	RP1		Greenhills, Quarry Road	Glasgow Central Station
	RP2	*	Junction of Greenhills Rd/Lickprivick Rd	Glasgow Central Station
	RP3		Westwoodhill at Mossneuk Road	Glasgow Central Station
	RS1	*	East Kilbride Station	Glasgow Central Station
	RP4		Calderwood Shops	Glasgow Central Station
31	RP1	*	Greenhills Rd at Lickprivick Road	Glasgow Central Station
	RP2		Westwoodhill at Mossneuk Road	Glasgow Central Station
	RS1	*	East Kilbride Station	Glasgow Central Station
	RP3		Heritage Park	Glasgow Central Station
36	RP1		Abronhill	Queen Street Station
	RP2		Kildrum	Queen Street Station
	RP3	*	Cumbernauld Town Centre	Queen Street Station
	RP4		Craiglinn	Queen Street Station
	RS1		Cumbernauld Station	Queen Street Station
	RP5		Westfield	Queen Street Station
	RP6		Moodiesburn	Queen Street Station
87	RP1	*	Kilsyth, Howe Road	Queen Street Station
	RS1		Bishopsbriggs Station	Queen Street Station
	RP2	*	Kirkintilloch Town Centre	Queen Street Station
138	RP1		Harvie Avenue	Glasgow Central Station
	RP2	*	Mearns Cross	Glasgow Central Station
	RS1		Whitecraigs Station	Glasgow Central Station
X4/X5	RP1		Abronhill	Queen Street Station
	RP2		Kildrum	Queen Street Station
	RS1	*	Cumbernauld Station	Queen Street Station
	RP3		Condorrat	Queen Street Station

Route no.	Map location	Overlap Flow		
		Marked for the purposes of paragraph 5.2	From	To
27/X27	RS1		Bathgate Station	Edinburgh Station
	RS2	*	Livingston North Station	Edinburgh Station
	RP1		Knightsridge East	Edinburgh Station
	RP2		Craigshill Tay Walk	Edinburgh Station
	RP3	*	Livingston Bus Station	Edinburgh Station
	RP4		Dedridge Crofthead	Edinburgh Station
	RS3	*	Livingston South Station	Edinburgh Station
	RP5	*	East Calder	Edinburgh Station
28/X28	RS1		Bathgate Station	Edinburgh Station
	RS2	*	Livingston North Station	Edinburgh Station
	RP1		Knightsridge East	Edinburgh Station
	RP2	*	Livingston Bus Station	Edinburgh Station
	RS3	*	Livingston South Station	Edinburgh Station
	RP3		East Calder	Edinburgh Station
	RS4	*	Kirknewton Station	Edinburgh Station
X37	RP1		Cumbernauld Village	Queen Street Station
	RP2	*	Cumbernauld Town Centre	Queen Street Station
	RS1		Cumbernauld Station	Queen Street Station
X39	RP1		Cumbernauld Village	Queen Street Station
	RP2	*	Cumbernauld Town Centre	Queen Street Station
	RS1		Cumbernauld Station	Queen Street Station
44	RP1	*	Musselburgh Town Centre	Edinburgh Station
129	RP1		Musselburgh Town Centre	Edinburgh Station
	RP2	*	Prestonpans Town Centre	Edinburgh Station
X1	RP1	*	Blackridge	Edinburgh Station
	RP2	*	Armadale Drove Road	Edinburgh Station
	RS1		Bathgate Station	Edinburgh Station
X23	RP1		Deans South	Edinburgh Station
	RP2		Knightsridge East	Edinburgh Station
	RS1	*	Livingston North Station	Edinburgh Station
	RP3		Howden East	Edinburgh Station
X24	RP1		Deans South	Edinburgh Station

Route no.	Map location	Overlap Flow		
		Marked for the purposes of paragraph 5.2	From	To
	RP2	*	Knightsridge East	Edinburgh Station
	RP3		Ladywell East	Edinburgh Station
	RS1		Livingston North Station	Edinburgh Station
X26	RS1	*	Fauldhouse Station	Edinburgh Station
	RS2		Addiewell Station	Edinburgh Station
	RS3		West Calder Station	Edinburgh Station
	RS4		Livingston South Station	Edinburgh Station
	RS5	*	Kirknewton Station	Edinburgh Station
X32	RS1	*	Livingston North Station	Edinburgh Station
	RS2		Livingston South Station	Edinburgh Station
	RS3		Kirknewton Station	Edinburgh Station
	RP1		Ladywell East	Edinburgh Station

Maps setting out these locations are attached hereto.

RS: Rail station.

RP: Reference point.

NB for the purposes of assessing effective competition according to paragraph 5.2, and for the purposes of the restrictions in paragraph 6, the end of an Overlap Flow will be taken to be the bus stop nearest to the relevant Rail Station or Reference Point.

## Lists of Controlled and Possible Routes

### Part I

Glasgow(G)/ Edinburgh(E)	Service no.	In Hours	Out of Hours
E	38/38A	Controlled	Controlled
E	X5	Controlled	N
E	58	Controlled	Controlled
E	X29	Possible	N
G	M29	Possible	T
G	X1	Controlled	N
G	203	Possible	Controlled
G	262	Controlled	Controlled
G	54	Controlled	Controlled
G	45	Possible	Controlled
G	57	Possible	Controlled
G	109/119	Controlled	Controlled
G	216	Controlled	N
G	20/X12	Possible	Controlled
G	204/205/215	Controlled	Controlled
G	38	Possible	Possible
G	62	Possible	Controlled
G	267	Possible	Controlled
G	263	Possible	Controlled
G	44	Possible	Possible
G	64	Controlled	Controlled
E	124	Possible	Possible
E	54/54A	Controlled	Controlled
G	40	Possible	Controlled
G	19/43	Possible	Controlled
G	255	Possible	Controlled
G	61	Possible	Controlled
G	66	Possible	Controlled

## Part II—Wider Catchment Routes

Glasgow(G)/ Edinburgh(E)	Service no.	In Hours	Out of Hours
G	16	Controlled	Controlled
G	18	Controlled	Controlled
G	31	Controlled	Possible
G	36	Possible	Controlled
G	87	Possible	N
G	138	Possible	Possible
G	X4/X5	Possible	Controlled
E	27/X27	Controlled	Controlled
E	28/X28	Controlled	Controlled
E	X37/X39	Possible	Controlled
E	44	Possible	Possible
E	129	Possible	Possible
E	X1	Controlled	N
E	X23	Controlled	N
E	X24	Controlled	N
E	X26	Controlled	N
E	X32	Controlled	N

N—No out of hours service

T—Tendered out of hours service

Name            B.L. Ruppel  
Position       Company Secretary  
Date            15 October 2004

Name D.B.Stewart  
Position Director  
Date 15 October 2004

Name Eric C. Stewart  
Position Managing Director  
Date 15 October 2004

Name Eric C. Stewart  
Position Managing Director  
Date 15 October 2004

Name Gordon Dewar  
Position Commercial Director  
Date 15 October 2004

Signed G.D.