Completed acquisition by Stagecoach plc of the business and assets operated from the Lockett Road, Wigan depot of First Manchester Limited

CR/14/13

The OFT's decision on reference under section 22(1) given on 25 February 2013. Full text of decision published 22 March 2013.

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

PARTIES

1. Stagecoach plc (**Stagecoach**) is an operator of local bus services and is active in Manchester via its wholly owned subsidiary, Greater Manchester Busses (West) Limited (**GMBW**).[1] In and around Greater Manchester GMBW operates commercial and tendered bus and coach services. GMBW's turnover for the year ended 30 April 2012 was £97.3m.

2. First Manchester Limited (**First Manchester**) is a wholly owned subsidiary of FirstGroup plc (**First**), operating commercial and tendered bus and coach services in and around Greater Manchester concentrated in the Metropolitan Borough of Wigan. The relevant turnover earned from the Lockett Road depot for the year ended 31 March 2012 was £13.2m.

[1] The company name was changed from Greater Manchester Buses East Limited to Greater Manchester Buses West Limited on 3 December 2012. The transaction was completed under the name of Greater Manchester Buses East Limited.

TRANSACTION

3. In early 2012, First invited bids for [ ], this included the business and assets of First Manchester's Lockett Road, Wigan depot (**the Wigan depot**). First held a competitive tendering programme and received initial offers from a number of serious bidders. As a result of the competition, Stagecoach emerged as the successful bidder.

4. Stagecoach acquired the business and assets of the Wigan depot on 3 December 2012 (the **Transaction**). The business and assets of the Wigan depot comprises the operation of the routes supplied by buses from the Wigan depot and the assets based at the depot, including 115 vehicles and 300 employees. The OFT considers that the assets acquired amount to an enterprise within the meaning of section 129 of the Enterprise Act 2002 (**the Act**). The purchase price is £12m (subject to various adjustments).

5. The Office of Fair Trading (**OFT**) became aware of the transaction through an own-initiative investigation commenced by the OFT's Mergers Intelligence Unit.

6. The administrative deadline for OFT to made a decision in this case is 25 February 2013.

JURISDICTION

7. The OFT considers that the transaction would result in two or more enterprises ceasing to be distinct.

8. The parties overlap in the provision of local bus services in the Greater Manchester area. The CC's recent Market Investigation[2] identified the shares of First in the Urban Areas of the Borough of Wigan as being 41.7 per cent in Wigan and 46.7 per cent in Leigh. Stagecoach operated a small number of services in Wigan. The OFT therefore considers that the merger qualifies for investigation on the share of supply test, with the parties together supplying more than 25 per cent of local bus services in the

[2] Competition Commission: Local bus services market investigation: A report on the supply of local bus services in the UK (excluding Northern Ireland and London); 20 December 2011. competition-commission.org.uk/our-work/directory-of-all-inquiries/local-bus-services-market-investigation/final-report-and-appendices-glossary.

Metropolitan Borough of Wigan. Consequently, the share of supply test in section 23(4) of the Act is satisfied.

MARKET DEFINITION

9. The parties overlap in the provision of local bus services (commercial and tendered) and competition for tender contracts in Greater Manchester.

Product scope

Commercial bus services and competition for tenders

10. Stagecoach submitted that there are separate markets for the provision of commercial bus services and the right to operate tendered services.

11. This is consistent with previous OFT and CC decisions[3] and with the CC's local bus market report which concluded that competition for tenders should be analysed separately from the provision of local bus services, while taking into account that there may be some linkages between commercial and tendered services.[4]

12. The OFT's market investigation has not uncovered any evidence that contradicts this analysis. Therefore, the OFT assesses competition for tender contracts separately from the provision of commercial bus services, while taking into account that there may be some linkages between the commercial and tendered businesses.

Commercial bus services and tendered bus services

13. As noted above, the OFT considers that there are separate frames of reference for competition for tendered contracts and the provision of

[3] See for example, OFT decision anticipated acquisition by Arriva Northumbria Limited of the bus operations of Go North East Limited in Ashington, Northumberland, 11 February 2010, OFT decision anticipated acquisition by Stagecoach Bus Holdings Limited of Islwyn Borough Transport Limited, 23 December 2009, CC Report, completed acquisition by Stagecoach Group plc of Preston Bus Limited, 11 November 2009 and OFT decision anticipated acquisition by Stagecoach Group Plc of the North Devon business and assets of First Devon And Cornwall Limited, 28 August 2012.

[4] Competition Commission, Local Bus Services Market Investigation, paragraph 7.120.

commercial bus services. However, once tendered, in some circumstances, a tendered service may overlap or compete with a commercial service.

14. Stagecoach submitted that tendered services do not compete with overlapping commercial services or other tendered services on the basis of price and/or frequency, as these parameters are determined by the local authority 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.

15. The OFT notes that this position is not consistent with the CC's findings in its local bus market report where it found that, for passengers, tendered bus operations provide a service in the same way as they would for a commercial route.[5] The OFT has also previously noted that competition may occur between overlapping commercial and tendered services.[6] The OFT considers that a merger involving overlapping commercial and tendered services may, under these circumstances, lead to a loss of competition (since the structure of the contracts incentivises the tendered operator to compete with the commercial service provider).

16. The OFT has not been provided with evidence in this case that indicates overlapping commercial and tendered services do not compete from a demand-side perspective (that is from the perspective of a passenger seeking to travel from one point to another).

17. Therefore, on a cautious basis, the OFT considered that the frame of reference for the provision of bus services should include both commercial services and overlapping tendered services.

[5] Competition Commission, Local bus services market investigation, a report on the supply of local bus services in the UK (excluding Northern Ireland and London), 20 December 2011, paragraph 7.114.

[6] Anticipated acquisition by Stagecoach Group Plc of the North Devon business and assets of First Devon and Cornwall Limited, OFT decision, 10 July 2012 and Completed acquisition by Arriva Midlands North Limited of the business and assets of Liyell Limited trading as Midland, OFT decision, 21 January 2013.

Other forms of transportation

18. In its recent local bus market report, the CC concluded that other forms of transport did not form part of the same product market as bus travel.[7]

19. Stagecoach submitted that competition from the local rail network is potentially relevant in considering product definition. In particular Stagecoach highlighted three local rail services that operate out of Wigan to Preston, Bolton and Manchester. The OFT notes that the CC did note that competition from fixed modes of transport, such as rail or tram services, may provide an effective competitive constraint.[8]

20. The OFT has not received sufficient evidence to conclude that the constraint imposed by either private cars, journeys on foot or by bicycle, or the constraint that may be present from rail transport would be sufficient to render unprofitable an increase in the price or deterioration in quality of local bus services, nor that rail transport. Therefore, the OFT considers that the frame of reference should not include forms of transport other than local bus services.

Geographic scope

Flow level

21. Consistent with previous cases, the OFT has assessed the impact of the transaction on a flow-by-flow basis, where a 'flow' is defined as a connection between two specific points. This approach is taken because passenger demand is for travel between two points. The OFT has also considered whether nearby flows on other routes may be in the same market, given the CC's finding that flows that have their origin and destination within 500 metres of one another are likely to be demand-side substitutes.[9]

[7] Competition Commission, Local bus services market investigation, a report on the supply of local bus services in the UK (excluding Northern Ireland and London), 20 December 2011, paragraph 7.64.

[8] Competition Commission, Local Bus Services Market Investigation, paragraphs 7.52 to 7.63.

[9] Competition Commission Report, completed acquisition by Stagecoach Group plc of Preston Bus Limited, 11 November 2009.

Network level

22. Consistent with previous cases,[10] the OFT considers it may be appropriate to assess the impact of the merger at a network level in addition to competition on specific point-to-point flows.

23. As regards demand-side considerations, there is evidence to suggest that some customers may use the parties' services to make multi-journey (as opposed to point-to-point) trips across their networks. Supply-side considerations can also make it necessary to assess competition at the network level. This is especially relevant where potential entry/expansion from one party may exert a significant competitive constraint on the other party on non-overlap flows.

24. GMBW and First Manchester services operating out of the Wigan depot overlap in the supply of bus services. The OFT therefore considers it appropriate to assess the merger in relation to the supply of bus services in Greater Manchester, as well as assessing specific flow-by-flow overlaps.

Competition for tender contracts

25. In previous cases the OFT has considered the geographic frame of reference for tenders to be sub-national, based on the region where the tenders are offered.[11]

26. This is consistent with the CC's local bus services market investigation which found that the market for tenders will generally include all bus operators in the local area. The parties did not disagree in this case. Accordingly, the OFT considers that the geographic frame of reference for competition for tenders includes at least Greater Manchester, and may include neighbouring areas.

[10] OFT decision, acquisition by McGill's Bus Services Limited of the Arriva Scotland West local bus business, 18 April 2012.

[11] OFT decision, anticipated acquisition by Stagecoach Bus Holdings Limited of Islwyn Borough Transport Limited, 23 December 2009. 15

Conclusion

27. The OFT considers that the relevant frames of reference for consideration are:

- local bus services (commercial and tendered) on overlapping flows
- competition for tender contracts in the Greater Manchester area, and
- local bus services in Greater Manchester at a network level.

RATIONAL

28. The divestment of the Wigan depot formed part of a strategic review of the UK bus operations by First and is consistent with their aim [ ]. Stagecoach viewed the Wigan operation as one they could improve the yield from following investment.

HORIZONTAL ISSUES

29. The parties overlap on three routes (table 1). For the purpose of this decision the OFT refers to them as Route 1, Route 2 and Route 3.

Table 1: Overlap Services between GMBW and First Manchester out of the Wigan Depot

Overlap Route #	First (Wigan)		GMBW		Flow origin	Flow destination	Overlap flow distance
	Route number(s)	Mon – Fri Daytime Frequency	Route number(s)	Mon – Fri Daytime Frequency			
1	32 X34[12]	30 Min 30 Min	50	10 Min	Manchester (Portland Street)	Broad Street / Broughton Road	3.5km
2	625 626	10 Min	113[13]	60 Min	Wigan Bus Station –	Mesnes Road / Walkden Road	1.7km

[12] Only half of the service (that is, one bus per hour) is included in the Transaction. The other half of the service is to be retained by First.

[13] Weekday overlap service operated by Stagecoach Merseyside and South Lancashire.

Overlap Route #	First (Wigan)		GMBW		Flow origin	Flow destination	Overlap flow distance
	Route number(s)	Mon – Fri Daytime Frequency	Route number(s)	Mon – Fri Daytime Frequency			
3	600	15 Min	600/979 (Tendered)	1 per day	Lowton High School	Leigh	5.6km

Filtering approach

30. In this case, and in line with its past decisional practice, the OFT has applied a methodology to ascertain whether any of the overlapping flows should be examined closely for potential competition concerns. This method analyses:

- the relative importance of overlapping flows: the OFT excludes those flows for which the overlaps account for less than 10 per cent of passengers and revenue across the route overall
- countervailing competition: the OFT excludes those flows that are the subject of effective countervailing competition from third parties could be filtered out of the analysis. The appropriate definition of an effective competitor differs
- de minimis: the OFT excludes those flows which are of relatively little importance, in terms of either revenue, number of passengers or frequency of service.

31. On the basis of this methodology, in this case, all three overlapping routes can be dismissed from presenting possible competition concerns.

Route 1: Manchester (Portland Street) to Broad Street / Broughton Road:

32. The main competitor to GMBW on overlap Route 1 following the Transaction will continue to be First Manchester which maintains a strong presence in North Manchester. The Route 1 overlap is the North West access corridor into Manchester towards the North West of Greater Manchester including Wigan. It is used by a large number of routes to access the city centre.

33. On overlap Route 1, post merger First will still operate at least seven services with a total frequency of 30 buses per hour, Stagecoach will operate three services with a total frequency of nine buses per hour and a further competitor, Maytree Travel, will operate one service with a frequency of one bus per hour.

34. The OFT has noted that one of First's retained services is subject to a revenue sharing agreement with respect to two of the acquired services. However, including or excluding this service as offering competition post merger would not materially alter the analysis of countervailing competition, nor affect the OFT's conclusion.[14] Hence, the OFT has not made any judgement on whether this route should be included as providing countervailing competition or not.

35. Consequently the OFT does not consider that the Transaction gives rise to a realistic prospect of a substantial lessening of competition on the overlap on Route 1.

Route 2: Wigan Bus Station – Mesnes Road / Walkden Road:

36. Route 2 is the North West access corridor into Wigan. Before the Transaction Stagecoach Merseyside and South Lancashire operated one bus an hour during peak weekday times from Preston to Wigan which accessed Wigan along this corridor. In contrast, First operated a 10 minute local service (that is, six per hour) on the overlap flow.

37. Since the Stagecoach service is so infrequent relative to the First service on this overlap, the OFT considers that the Transaction will not give rise to a realistic prospect of a substantial lessening of competition on the overlap on Route 2.

Route 3: Lowton High School – Leigh:

38. The overlap in Route 3 is created by the tendered school service operated by GMBW. This service operates once a day during term time only. In contrast, First operated a 15 minute local service (that is, four per hour) on the overlap flow during peak weekday times.

[14] Including the service would result in GMBW operating 9 out of 40 services on Route 1; excluding the service would result in GMBW operating 9 out of 39 services on Route 1.

39. Since the Stagecoach service is so infrequent relative to the First service on this overlap, the OFT considers that the Transaction will not give rise to a realistic prospect of a substantial lessening of competition on the overlap on Route 3.

Tendered services

40. GMBW and First are both active in bidding for tender contracts from Transport for Greater Manchester (TfGM).

41. Stagecoach submitted that the transaction will not impact on the tendered services market as there are a large number of actual and potential operators of tendered services in Wigan, many of whom have had recent success in winning tenders. Stagecoach submitted that in the last 12 months contracts for bus services tendered by TfGM attracted an average of over seven bids per contract. Of over 150 contracts awarded over the period, GMBW has won approximately 10 per cent.

42. The OFT notes that 32 different operators are currently registered on TfGM's tender award system, which requires bidders to meet a set of pre-award requirements for professional competence and operational capability. OFT has also analysed the most recent three years of tender awards by TfGM. The OFT further noted that GMBW and First rarely bid against each other for specific tenders in the Wigan area, and Stagecoach provided evidence that it had only bid for six tender awards in the Wigan area in the last three years, of which it won none. In addition, the OFT identified at least eight other operators which have previously bid against the parties in Wigan area, indicating that GMBW and First were not strong competitors pre-Transaction.

43. Further, no third parties had concerns about the impact of the transaction on competition for tendered services.

44. In light of the above evidence, the OFT does not believe that the transaction gives rise to a realistic prospect of a substantial lessening of competition in respect to tenders in the Manchester / Wigan area.

Network competition

45. The OFT has considered whether the merger would give rise to a loss of actual or potential competition between GMBW and First at a network level, such that the effects of the merger could be expected to extend beyond the overlap flows.

46. The evidence available to the OFT indicates that there is limited actual competition between GMBW and First at a network level. Although both GMBW and First Manchester operate in the TfGM area, there is no significant geographic overlap in their main areas of operation of GMBW and First Wigan:

- GMBW's main area of operation is South Manchester, (including South Manchester, Trafford and Stockport) including routes from these areas into Manchester City Centre.
- First Manchester operates services in the TfGM area from a number of depots in North Manchester. The main area of operation of services from the Wigan depot is in and around Wigan including inter-urban services to Manchester City Centre.

47. TfGM also operates a multi-operator ticketing system in Greater Manchester. Both the parties participate in this scheme. The merger will have no detrimental effect on the operation of this ticketing scheme.

48. Several third parties (TfGM, passenger groups, competitors and individual passengers) anticipate greater actual competition between First and GMBW in North West Manchester as a consequence of the transaction. In addition, there was no evidence presented by the parties, or by third parties, that First has altered its strategy to take explicit account of GMBW's entry into the Wigan area. First's strategy in Wigan and in the wider TfGM area appears more focused on current actual competitors than on the impact of GMBW's entry.

49. As regards loss of potential competition, First will remain a strong competitor in North Manchester in spite of the loss of the assets based at the Lockett Road depot.

50. Accordingly, the OFT considers that the Transaction does not give rise to a realistic prospect of a substantial lessening of competition with respect to network level competition.

Barriers to entry and expansion and countervailing buyer power

51. Given the OFT has not identified any competition concerns in this case it has not found it necessary to examine barriers to entry and expansion or countervailing buyer power in this case.

THIRD PARTY VIEWS

52. The OFT received four responses to its questionnaire to competitors, only one expressed any concern. The competitor questioned the financial viability of the new Stagecoach operation in Wigan, believing that the fare reductions introduced by Stagecoach in Wigan may make the operation unprofitable. This raises the concern that Stagecoach's 'unrealistic fare levels' may restrict competition and suppress new, or enhanced, services. However, no evidence in support of this view was provided.

53. TfGM considers the Transaction to be positive given that, in its view Stagecoach's presence in an area where it was not previously operating will exert competitive pressures on at least First's neighbouring operations in Bolton and Salford, if not on operations further afield. TfGM also felt that the Transaction will directly benefit the former passengers of First through reduced fares and improved stock (already in place) which will likely also increase reliability and may also improve the frequency of services in the area.

54. The OFT received responses from three passenger groups, generally welcoming the Transaction, seeing the reduction in fares as positive for passengers. However, concerns were expressed that some passengers could be disadvantaged by no longer being able to buy through tickets, or return tickets from a single operator, but would now need to purchase several tickets.[15] The number of passengers adversely affected was anticipated to be small, in particular compared to the numbers benefiting

[15] Passenger groups recognised the reverse also applied: that some passengers would now be able to buy a single ticket for journeys from Wigan through to South Manchester on Stagecoach busses.

from the reduction in fares. The OFT also notes that passengers are able to purchase tickets covering journeys with different operators through TfGM's joint ticketing scheme and that First and GMBW have agreed to a joint ticketing arrangements on the X34 / 32 routes - where First retains half of the X34 service, this will significantly reduce the number of passengers adversely affected by being unable to purchase a return ticket from a single operator.

ASSESSMENT

55. The parties operate bus services in the Greater Manchester area. GMBW's main areas of operation are concentrated in South Manchester, whilst First's operations from the Wigan depot are concentrated in the Wigan area – to the North West of Greater Manchester. The parties overlap in a small number of local bus services in Greater Manchester. The most significant overlap occurs on an access corridor for a number of services, including two of the services from the Wigan depot, from the North West of Greater Manchester into the centre of Manchester.

56. None of their three overlapping flows give rise to a realistic prospect of a substantial lessening of competition for the reasons given above.

57. Moreover, sufficient competition for tendered services will remain after the Transaction:

- The evidence indicates that there is limited actual competition between GMBW and First at a network level as there is no significant geographic overlap in their main areas of operation of GMBW and First Wigan.
- The merger will have no detrimental effect on the operation of TfGM's multi-operator ticketing system in Greater Manchester.
- The view of third parties was that there was likely to be increased competition for tendered service between First and GMBW in North West Manchester as a result of the merger.
- The OFT has not been presented with any evidence that the Transaction would substantially lessen competition at the network level.

58. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

59. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

OFFICE OF FAIR TRADING
25 February 2013

END NOTES:

1. The OFT is clarifies that Stagecoach's relevant turnover in and around Greater Manchester prior to the transaction was as a result of tendered bus and coach services operated exclusively through its subsidiary Greater Manchester Buses (South) Ltd (GMBS).
    a. GMBS's turnover for the year ended 30 April 2012 was £97.3m. (Paragraph 1)
    b. The OFT accepts that when discussing Network competition (Paragraph 45 – 58), references to 'GMBW' would be better read as 'Stagecoach'
2. The OFT clarifies that the OFT's Mergers Intelligence Unit became aware of the transaction following initial contact from Stagecoach. (Paragraph 5)
3. The OFT clarifies the current position on the operators of Stagecoach's overlap services in Table 1, Paragraph 29:
    a. Service 50 is operated by GMBS
    b. Service 113 is operated by Stagecoach Merseyside and South Lancashire
    c. Service 600/979 is operated by Stagecoach Merseyside and South Lancashire
4. The OFT accepts that the agreement mentioned in paragraph 34 refers to a reciprocal agreement to accept day and week tickets issues by each operator, the agreement does not contain any provision for revenue sharing.