Anticipated acquisition by Thames Rail Corridor Limited (a joint venture between DSB and English Welsh & Scottish Railway Holdings Limited) of the Thameslink/Great Northern Rail Franchise


Please note that square brackets indicate information excised or replaced by a range at the parties' request.

PARTIES

1. **DSB UK Limited** (DSB) is part of DSB Group which operates the Danish State railway system and is an independent public corporation wholly-owned by the Danish Ministry of Transport. The Group operates urban, intercity, regional and international passenger rail services within Denmark and other European countries. The DSB Group achieved turnover of DKK 8.9 billion (approximately £816 million) for year ended 31 December 2004.

2. **English Welsh & Scottish Railway Holdings Limited** (EWS) is a UK company organised into four business units (rail freight haulage; rail industry services; rail passenger charter services; and non-freight operations) and providing services principally via English Welsh & Scottish Railway Limited, Rail Express Systems Limited and English Welsh & Scottish Railway International Limited. For the year ended 31 March 2004, EWS achieved a UK turnover of £516.4 million.

3. **Thameslink/Great Northern Rail Franchise** (TGN franchise) is a rail passenger franchise tendered under the auspices of the Department for Transport. It will combine two existing rail passenger franchises. Thameslink operates from Bedford through Central London to Brighton, and also serves the London suburban area on the Wimbledon-Sutton-Carshalton line and London Luton and Gatwick airports. West Anglia Great Northern Railway Ltd currently operates the Great Northern (GN) franchise which provides services between London King's Cross and Moorgate to Stevenage and Hitchin either direct by Welwyn Garden City or via the
Hertford Loop line, and then on from Hitchin to Peterborough, Cambridge and the Fenline to King’s Lynn. For the financial year ended 31 December 2004, the combined UK turnover of the two franchises was £292 million.

TRANSACTION

4. DSB and EWS have formed a joint venture company, Thames Rail Corridor Limited (TRCL)\(^1\), as the bidding vehicle for the TGN franchise. DSB and EWS own 60 per cent and 40 per cent of the shares in TRCL respectively. Following the consultation stage of the franchising process, TRCL was one of five bidders to pre-qualify. The deadline for delivery of the bids to the SRA is 6 September 2005 and the SRA is scheduled to award the TGN franchise to the successful bidder in December 2005.

5. The parties notified the proposed transaction to the OFT on 12 May 2005. The statutory deadline is 28 June 2005.

JURISDICTION

6. By virtue of section 66(3) of the Railways Act 1993 the award of a rail franchise constitutes acquisition of control of an enterprise and therefore DSB/EWS and the TGN franchise will cease to be distinct. The combined UK turnover of the two franchises being amalgamated exceeds £70 million. Therefore, the transaction meets the turnover test in section 23 (1) of the Enterprise Act 2002 (the Act). Accordingly, a relevant merger situation will be created for the purposes of section 23(2) of the Act.

RELEVANT MARKET

Light Maintenance Depot Services, Re-fuelling Services and Train Servicing

Product market

7. The parties overlap in the supply of light maintenance depot services, re-fuelling services and train servicing.

8. The OFT has in previous cases drawn a distinction between light and heavy maintenance, while recognising a convergence between the two.

\(^1\) Thames Rail Corridor Limited was renamed CapitalTrains Limited on 31 May 2005.
• Light maintenance involves day-to-day maintenance such as repairs, interior and exterior cleaning, component exchanges and re-fuelling. These services are generally carried out overnight in depots;

• Heavy maintenance services (not normally carried out more than once a year) and refurbishment services involve trains being taken out of service in depots that tend to be located in more remote locations. DSB/EWS contend that neither the Thameslink/GN franchise depots nor the EWS depots located in the Thameslink/GN franchise territory offer dedicated heavy maintenance or refurbishment services to any material extent.

9. A distinction can also be drawn between freight and passenger light maintenance depots although it is possible that freight light maintenance depots and passenger light maintenance depots are interchangeable with respect to certain limited services such as re-fuelling and minor repair services.

10. On the demand side, Train Operating Companies (TOCs) cannot use a freight maintenance depot for light maintenance to passenger trains, other than for limited refuelling and minor repair services detailed above. These limited services alone mean that companies operating only freight maintenance depots are unlikely to be successful in bidding for a passenger train maintenance contract.

11. On the supply side, the cost and time required to convert a freight depot to provide light maintenance depot services to passenger trains varies significantly from one depot to another. Third parties indicate that, depending on the specific requirements of the depot, investment of £30,000 to £8 million would be required to install washing facilities, extra re-fuelling facilities, and additional platforms to allow access to the train’s interior and also the installation of pits to allow access beneath the train.

12. Re-fuelling involves the provision of fuel to TOCs and can either be carried out at depots or at additional fuelling sites. Train servicing involves the overnight preparation of a train for the next day, and typically includes washing and cleaning, filling of water ranks and emptying of toilets. Evidence on supply-side substitutability between re-fuelling and train servicing on the one hand and light maintenance depot services on the other is mixed, and appears to be site-specific.

13. Overall, it has not been necessary in this case to reach a final view on the appropriate frames of reference since no competition issues arise under any reasonable definition. For the purposes of this decision, the OFT has considered the competitive effects of the transaction on the supply of light maintenance depot services to passenger trains, re-fuelling and train servicing.
Geographic market

14. The OFT’s inquiries suggest that in respect of each of passenger train light maintenance, refuelling and train servicing, the site of supply (depot, refuelling or train servicing site) must be located within a radius of around 50 miles – or a journey of time of one hour or less – in order to be a viable alternative. The relevant geographic frames of reference adopted in this case correspond to these criteria.

Rail Passenger Services

15. Passengers’ choice of transport on any journey depends on a number of different factors, including access to a particular means of transport at point of journey origin and destination, personal preference, and value of time and relative costs of the available alternatives. The prospects of substitution between rail and other forms of transport for a given journey are specific to the routes and passenger profiles in question. As to geographic scope, passengers wish to travel between particular points of origin and destination. This explains the focus on 'point-to-point' overlap flows in previous cases, and adopted again below.

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2 The same geographic scope was taken in the OFT’s decision of DSB/EWS’ bid for the InterCity East Coast rail franchise on reference under section 33 on 8 December 2004.

3 For a more detailed discussion on the relevant product scope of rail-on-rail overlaps please see the OFT’s decision on FirstGroup-InterCity East Coast rail franchise on reference under section 33 on 21 December 2004.
### HORIZONTAL ISSUES

**Light Maintenance Depot Services, Re-fuelling and Train servicing**

Actual and potential overlaps

16. The overlaps between EWS and the TGN operations may be summarised as follows:

<table>
<thead>
<tr>
<th>Maintenance Depots</th>
<th>Train servicing sites</th>
<th>Re-fuelling points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EWS</strong></td>
<td>Three Bridges</td>
<td>Hither Green</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Peterborough</td>
</tr>
<tr>
<td><strong>Thameslink/GN franchise</strong></td>
<td>Bedford, Hornsey, (Selhurst)</td>
<td>Luton, Welwyn Garden City, Letchworth, Peterborough, (Brighton), (Cambridge)</td>
</tr>
</tbody>
</table>

17. Of the above sites, the Selhurst depot and the Brighton and Cambridge train servicing sites currently associated with the Thameslink and/or GN franchises are expected to remain with their current operators rather than transferring with the franchise; accordingly, these are not considered further.

18. Taking light maintenance depots and train servicing sites together, there is no overlap in the 50 mile radius between EWS’ Three Bridges depot and any of TGN franchise’s depots or train servicing sites.

19. The OFT has also considered whether EWS’ fuelling points could be converted to provide light maintenance services or train servicing for passenger trains, and could therefore be currently or potentially a constraint on TGN franchise’s depots in their vicinity. The parties submit that EWS’s Hither Green re-fuelling points is outside one hour’s journey time of any of the depots or servicing sites at issue. However, EWS’s Peterborough re-fuelling point is within one hour’s journey time of the TGN franchise’s Letchworth, Welwyn and Peterborough train servicing sites and may be within an hour’s journey time of Hornsey depot.

20. The Peterborough site was operated as a small light maintenance depot for freight services until 2003. However, it did not carry out any light maintenance services or servicing to passenger trains. In order for the site to be suitable for passenger trains, it appears that it would need to be extended considerably to take passenger carriages and this would be dependent on planning permission, as well
as the installation of necessary facilities and staff accommodation. The estimate cost of this conversion would be in the region of several million pounds. In addition, there are other light maintenance depots in the vicinity of Peterborough, such as London Eastern and Maintrain in Cambridge. As a result, it is not expected that this merger will provide the parties with an incentive to raise prices of light maintenance services or servicing within the TGN franchise area.\(^4\)

21. As regards the constraint placed by light maintenance depots on re-fuelling points, any possible overlap in the provision of re-fuelling is not expected to cause competition concerns as both passenger and freight light maintenance depots are subject to an 'open access' regime supervised by the Office of the Rail Regulator (ORR).

22. Accordingly, the transaction raises no material concerns based on actual or potential overlaps in the provision of any of these services.

**Rail passenger services**

23. Based on the SRA’s current Invitation to Tender (ITT) for each of the TGN and IKF franchises, there is the potential for a total of six rail-on-rail overlap flows if (i) the parties' venture is the successful bidder for the TGN franchise, and (ii) the bidding vehicle in which DSB is a majority participant wins the IKF franchise (the 'overlap scenario').\(^5\) On this basis, DSB would own a majority stake in the TOCs operating the TGN and IKF franchises respectively. Assuming that each pre-qualified bidder were to stand an equal chance of winning the relevant franchise, the probability that the overlap scenario will occur is small (1 in 20).\(^6\) The following nevertheless proceeds on the basis that overlaps will arise.

**Blackfriars – Elephant and Castle – Herne Hill**

24. This route gives rise to three such potential overlap flows. However, the fact that the overlaps between the IKF and the TGN on this route would only occur at peak times, when all fares are regulated, eliminates the scope for price increases by the

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\(^4\) Note that a price increase for light maintenance services could only be implemented by freight depots; access to passenger depots is regulated by the Railways Act 1993.

\(^5\) DSB and Stagecoach have formed a joint venture company, South Eastern Railways Limited (SER), in which they hold shareholdings of 70.1 per cent and 29.9 per cent respectively, in order to participate in the tender let by the SRA for the IKF. If the parties are successful in their bid, SER will be the IKF franchise operator. See further the OFT’s SER/IKF decision of 31 March 2005.

\(^6\) On this basis, in light of the number of pre-qualified bidders for each franchise, the parties have a 1 in 5 chance of winning the TGN franchise, and the DSB vehicle has a 1 in 4 chance of winning the IKF franchise. The SRA is expected to announce its preferred bidder for the IKF by early Autumn 2005; as noted, the likely timing of award of TGN is December 2005.
rail operators on these flows (i.e., outside of increases permitted under regulation). Similarly, service levels are regulated. While the presence of regulation appears to preclude any merger effects on the flows in question, two further points also support the conclusion that no competition concerns arise: first, most passengers are likely to be using travelcards as all stations are within Transport for London (TfL)’s Travelcard zone; second, bus and/or the underground appear to be viable travel alternatives for a large number of passengers.

London Bridge to Redhill via East Croydon

25. According to the ITT for IKF,7 the SRA anticipates that this route may be transferred to a Brighton mainline TOC (currently Southern), which would remove the overlap between the IKF and the TGN. Given that at the time of investigation this is only a proposal, it has been assumed for the sake of caution that the route will be included, giving rise to three overlap flows.

26. If the overlap scenario occurs, the increment (e.g. in terms of service frequency) created by the merger is limited, and DSB would continue to face competitive discipline from Southern, currently the predominant operator by revenue (accounting for over [ ] per cent of total revenue and over [ ] per cent of season ticket revenue on any of the given flows).8

Conclusion

27. The OFT does not believe there is a realistic prospect of a substantial lessening of competition on the above flows due to the combination of factors identified above – including the small probability that the overlap will occur and the presence of regulation and another major operator, respectively.

THIRD PARTY VIEWS

28. A number of third parties including passenger committees and competing light maintenance depot operators were contacted. No significant third party concerns were received.

ASSESSMENT

29. The OFT’s investigation into the merger’s impact on the supply of light maintenance depot services, train servicing, and re-fuelling services has revealed no material competition concerns for various reasons canvassed above, including

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7 See the IKF Stakeholder Briefing document (Jan 2005)
8 These figures refer to the years 2003 and 2004
limited overlaps and limited potential competition (through site conversion) as regards depots and servicing, ORR regulation of fuelling provision, and lack of third party concern.

30. A limited number of rail on rail overlaps will arise, depending on the SRA’s ultimate plans, only if DSB wins both this and the IKF franchise (via its majority stakes in two joint ventures). However, even if this scenario were to arise, certain factors described above – including SRA regulation and the presence of another major operator – variously limit the competitive impact of the merger and preclude significant concerns.

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

DECISION

32. This merger will therefore not be referred to the Competition Commission under section 33 (1) of the Enterprise Act.