

Acquisition by Inter City Railways Limited of the ICEC Franchise

Notice under paragraph 2(4) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on modifications to the proposed undertakings in lieu of reference pursuant to section 73 of the Act

Introduction

1. On 27 November 2014, the Department for Transport (**DfT**) announced that the InterCity East Coast rail franchise (**ICEC** or the **ICEC Franchise**) had been awarded to Inter City Railways Limited (**ICRL**) (the **Franchise Award**), a subsidiary of Stagecoach Group plc (**Stagecoach**) and Virgin Group Holdings Limited (**Virgin**). On 6 February 2015, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it believes that it is or may be the case that the Franchise Award may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom (the **SLC Decision**). The text of the CMA's decision is available on the CMA's webpages.¹ As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation.
2. As set out in the SLC Decision, the CMA found that the Franchise Award gives rise to a realistic prospect of a substantial lessening of competition in regards to the following overlap flows:
 - (a) The overlap of ICEC rail services with East Midlands Trains (**EMT**) services operated by East Midlands Trains Limited, a subsidiary of Stagecoach, between Peterborough and Grantham and between Peterborough and Lincoln.
 - (b) The overlap of ICEC rail services with coach services that are operated and owned by Citylink, in which Stagecoach has a 35% interest, between Edinburgh and Dundee as well as between Edinburgh and Aberdeen.

¹ See the [case page](#).

3. On 13 February 2015, Stagecoach offered undertakings to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, Stagecoach made this offer within five working days beginning the working day after the CMA notified it of the SLC Decision under section 34ZA(1)(b) of the Act. The CMA gave notice to Stagecoach on 20 February 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Stagecoach's offer. A copy of that decision is available on the CMA's webpages.²
4. On 13 March 2015, the CMA issued a notice of consultation on the proposed undertakings (the **Original Undertakings**) asking interested third parties to make their views known. The notice of consultation stated that the CMA will have regard to any representations made in response to this consultation and may make modifications to the proposed undertakings as a result. The CMA received representations from one third party, which submitted that:
 - (a) the Original Undertakings in relation to the rail-on-rail overlaps (Peterborough–Grantham and Peterborough–Lincoln) do not offer a complete solution, as they only place a restriction on the availability and pricing of dedicated fares offered by EMT and not ICEC; and
 - (b) the Original Undertakings proposed for coach-on-rail overlaps maintain Stagecoach's pricing flexibility for seats on the Edinburgh–Dundee and Edinburgh–Aberdeen overlap flows sold on Stagecoach's megabus.com website as they are governed by less restrictive provisions than seats sold by Citylink.
5. As a result of the consultation and in light of the third party representations set out above, Stagecoach has submitted modifications to the Original Undertakings in order to strengthen its offer and provide a more effective and clear cut remedy to address the competition concerns identified in the SLC Decision. Since the CMA considers that these are material modifications, in accordance with paragraph 2(4) of Schedule 10 of the Act, the CMA is required to consult on and consider any representations from interested third parties on the modified undertakings.

² See the [case page](#).

The modifications to the undertakings offered

6. Stagecoach has offered the following modifications to the Original Undertakings.

Peterborough–Lincoln (rail-on-rail overlap)

7. The Original Undertakings proposed for the Peterborough–Lincoln flow committed Stagecoach to retaining the current EMT dedicated standard class fares and prohibited it from increasing these fares by more than was permissible for price increases to regulated fare baskets under the EMT franchise agreement.
8. The proposed modification extend the Original Undertakings to commit Stagecoach to:
 - (a) retain ICEC dedicated standard class fares on the Peterborough–Lincoln flow (both for direct ICRL services and for indirect services routed via Newark North Gate);
 - (b) continue ICRL’s current practice to link the number of seats that are available for sale at a particular price point group on the indirect services on the Peterborough–Lincoln flow (routed via Newark North Gate) to the number of seats available at the equivalent price point group on ICRL’s services on the Peterborough–Newark North Gate flow (which is managed as part of the principal trunk route on the ICEC network); and
 - (c) introduce a cap on the level of any increase in the ICEC dedicated standard class fares at each price point group on all services on the Peterborough–Lincoln flow (both for direct ICRL services and for indirect services routed via Newark North Gate). The fare cap will be the same as the cap for permissible increases to regulated fare baskets under the ICEC Franchise Agreement.
9. These modifications result in the undertakings applying to both EMT and ICEC dedicated fares on the Peterborough-Lincoln flow. The CMA notes that the Original Undertakings already maintained the current EMT dedicated fare for customers choosing between ICEC and EMT on this flow. This could be expected to provide an indirect constraint on the unregulated flow, given that the price capped EMT fare would be available for passengers making this journey. However, the CMA considers that the proposed modifications to the Original Undertakings will provide a more comprehensive remedy, in particular taking account of the not insignificant proportion of EMT and ICEC

revenues from dedicated fares on this flow.³ The CMA therefore considers that the proposed modifications resolve the SLC identified in the SLC Decision for the Peterborough–Lincoln flow.

Peterborough–Grantham (rail-on-rail overlap)

10. Stagecoach has not offered to modify the Original Undertakings in relation to the Peterborough–Grantham flow. The Original Undertakings committed Stagecoach to maintaining the current competitive constraint on this flow by continuing to manage EMT services on the flow as part of the wider Peterborough–Nottingham segment, and not to worsen its offer on this flow relative to that wider segment.
11. As noted in response to the CMA’s consultation on the Original Undertakings, they do not place restrictions on ICEC fares. However, the CMA considers that, given the very small proportion of dedicated fares on the ICEC flow and the focus of the SLC Decision on the EMT services on the flow,⁴ the Original Undertakings provide an effective, proportionate and clear-cut solution to the competition concerns identified in the SLC Decision.

Edinburgh–Aberdeen and Edinburgh–Dundee (rail-on-coach overlaps)

12. The proposed modification to the Original Undertakings relates to the determination of coach fares for tickets for direct services on the Edinburgh–Aberdeen and Edinburgh–Dundee flows sold through the megabus.com website. This applies to Citylink branded coaches and Megabus branded coaches on these flows, which are both operated by Citylink.
13. The Original Undertakings provided for a reporting obligation that required the management of Citylink to report to the Citylink board at each board meeting on the fares for seats sold through megabus.com in the preceding three full calendar months. The Original Undertakings further provided for the ability of the Citylink directors nominated by ComfortDelGro (the majority shareholder of Citylink) to require Citylink management to adopt a different pricing policy for fares sold through megabus.com in the event that ComfortDelGro directors considered, acting reasonably, that these fares were being yield managed in a manner that was to the detriment of Citylink (and, therefore, ComfortDelGro's commercial interests).

³ See paragraph 127 of the SLC Decision.

⁴ See paragraphs 117 to 123 of the SLC Decision.

14. The proposed modifications are aimed at enhancing the monitoring of Stagecoach's actions by ComfortDelGro and increasing its ability to act in the event that it considers that Stagecoach's yield management of the fares sold through megabus.com is detrimental to Citylink. The proposed modifications are as follows:
 - (a) Removal of the requirement to 'act reasonably' from ComfortDelGro's right to adopt a different pricing policy.
 - (b) As part of the reporting requirements, include separate data for seats sold through the Citylink website for the Citylink flows. It is envisaged that this would enable a comparison to be made easily between seats and prices for different sales channels for the coaches serving the Edinburgh-Aberdeen and Edinburgh-Dundee flows.
15. These proposed modifications to the Original Undertakings further reduce Stagecoach's pricing flexibility for coach fares on the Edinburgh-Aberdeen and Edinburgh-Dundee flows sold through megabus.com. The CMA therefore considers that the Modified Undertakings resolve the competition concerns identified in the SLC Decision for these flows in an effective, proportionate and clear-cut way.

Proposed decision and process going forward

16. For the reasons set out above, the CMA considers that the Modified Undertakings offered by Stagecoach are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.
17. The CMA therefore gives notice that it proposes to accept the Modified Undertakings in lieu of a reference for a phase 2 investigation. The text of the Modified Undertakings is available on the [case page](#). A version of the Modified Undertakings showing the changes compared to the Original Undertakings is also available on the case page.
18. Before reaching a decision as to whether to accept the proposed undertakings, the CMA invites interested parties to make their views known.
19. The CMA will have regard to any representations made in response to this consultation and may make modifications to the proposed undertakings as a result. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.

20. Representations should be made in writing to the CMA and be addressed to:

Cleo Alliston
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

E-mail: cleo.alliston@cma.gsi.gov.uk

Telephone: 020 3738 6669

Deadline for comments: by 9 June 2015