Anticipated acquisition by Stagecoach Devon Limited of the Plymouth Depot business and certain associated assets of First Devon & Cornwall Limited

ME/6555-15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 21 September 2015. Full text of the decision published on 4 November 2015.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Stagecoach Group, through its local operating company Stagecoach Devon Limited (**Stagecoach**), has agreed to acquire the Plymouth Depot business and certain associated assets of First Devon and Cornwall Limited (**First**) (the **Merger**). The acquiring entity and target business are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. Stagecoach and First submitted evidence that, absent the Merger, First may have retrenched its operations within, or withdrawn from, the Plymouth and South Devon area. However, in light of the CMA's conclusions on the competitive assessment, it has not been necessary for the CMA to conclude whether, absent the Merger, First would have exited the market. On a cautious basis, the CMA has evaluated the effects of the Merger against the prevailing conditions of competition.

4. The Parties overlap in the supply of commercial and tendered bus services in the South Devon area. Consistent with its previous practice in local bus

merger investigations, the CMA has assessed the impact of the Merger on existing competition on the basis of the following frames of reference:

(a) Competition for tendered bus service contracts in the South Devon area.

(b) Provision of local bus services (commercial and tendered) on specific transport flows in the South Devon area.

(c) Provision of local bus services (commercial and tendered) in the Plymouth and Dartmouth/Torquay areas on a network level.

5. With respect to existing competition for tendered bus service contracts in South Devon, the evidence shows that there has historically been little competitive interaction between the Parties. On the basis of this evidence, the CMA believes that the Merger will not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to competition for tendered bus service contracts in South Devon as a result of horizontal unilateral effects.

6. With respect to specific overlapping transport flows in South Devon, the CMA also believes that the Merger will not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects. One overlap, which existed at the time the Merger was notified, has been removed following Devon County Council's decision to withdraw the tendered bus service currently run by First. For the remaining overlapping flows, in each case the Parties' services do not compete closely, and/or the overlapping flow is *de minimis*, and/or the CMA believes the Parties will face effective competition from third parties remaining in the market, including Plymouth Citybus.

7. With respect to competition at a network level in the Plymouth and Dartmouth/Torquay areas, the CMA also believes that the Merger will not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects. There is no significant existing geographic overlap in Stagecoach's and First's main areas of operation in South Devon and, furthermore, there are several multi-operator ticketing schemes in operation in the South Devon area, which the CMA believes will be unaffected by the Merger.

8. The CMA has also considered the impact of the Merger with respect to potential competition in relation to the provision of local bus services at a network or flow level, assessing whether, absent the Merger, either Party would be constrained by the perceived threat of entry by the other Party. From the Parties' internal documents, it appears that neither Party has developed its future entry plans on the basis of a perceived threat of entry by the other Party on specific flows, or into the other Party's main geographic areas of operation, indicating that no constraint from potential competition would be

lost as a result of the Merger. The CMA therefore believes that the Merger will not give rise to a realistic prospect of a substantial lessening of potential competition as a result of horizontal unilateral effects.

9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Stagecoach is a company incorporated in England and Wales, which operates commercial and tendered bus and coach services in and around Exeter, East Devon, Torbay, South Devon, North Devon, Somerset and into Cornwall and Dorset. Stagecoach forms part of Stagecoach Group's wider national and international transport business, which includes bus, train, tram and express coach operations.

11. First is a company incorporated in England and Wales, which operates commercial and tendered bus services in the South West of England, including local services in Plymouth. First is part of FirstGroup plc, which operates bus, coach, rail and tram services in the UK, the USA, Canada and Ireland.

Transaction

12. On 10 July 2015, Stagecoach and First signed a business purchase agreement under which Stagecoach would purchase the freehold of First's bus depot at Wakehams Quarry, Plymouth, and the leasehold of First's outstations at Little Cotton Farm, Dartmouth and Langsford Park, Tavistock, in addition to certain other assets, including First's employees.[1]

13. [✄]

14. Completion is not conditional on CMA merger clearance but is conditional upon First de-registering certain routes that it operates in South Devon and the registration by Stagecoach of those routes.[2] The transaction is not subject to review by competition authorities in any other country.

[1] Assets excluded from the transaction include (but are not limited to) the owned bus depot at Torpoint, First's vehicles, overalls and uniforms, IT systems and debtors.
[2] Stagecoach told the CMA that it does not plan to operate all the services that First currently operates in the South Devon area.

Jurisdiction

15. As a result of the Merger, the enterprises of Stagecoach and First will cease to be distinct.

16. The CMA believes that the assets acquired by Stagecoach constitute an enterprise for the purposes of section 23 of the Act. Stagecoach will purchase the assets as a going concern. The assets include property and employees, who will transfer under the TUPE regulations[3] to Stagecoach. Stagecoach told the CMA that it intends to honour tickets purchased by customers for use on routes currently serviced by First.

17. The turnover attributable to the enterprise being acquired in the financial year ending March 2015 was £[✂]. Therefore, the turnover test in section 23 of the Act is not met.

18. The Parties overlap in the supply of commercial and tendered local bus services in the South Devon area. Stagecoach submits it has a share of supply greater than 25% in the South Devon area and that First's share of supply in this area is greater than zero. Stagecoach does not dispute that South Devon is a 'substantial part of the UK' for the purposes of assessing jurisdiction. The CMA therefore considers that the share of supply test in section 23 of the Act is met.

19. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

20. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 August 2015 and the statutory 40 working day deadline for a decision is therefore 7 October 2015.

Counterfactual

21. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

[3] The Transfer of Undertakings (Protection of Employment) Regulations 2006.

a realistic prospect of a counterfactual that is more competitive than these conditions.[4]

22. Stagecoach told the CMA that, absent the Merger, it is unlikely that the pre-existing competitive situation would continue. Stagecoach said that First had been operating at a loss for several years and could not continue in its current form. Stagecoach expected that, absent the Merger, First would sell or restructure its business, which could entail closing the Plymouth depot. Stagecoach told the CMA that the only other potential alternative purchaser of the First business was Plymouth Citybus (**PCB**), which competed closely with First on a number of routes in the Plymouth area.

23. First confirmed to the CMA that its business around Plymouth had been making heavy losses for some time. It said that it had tried to sell the business several years ago but had not been successful. First explained that, following its attempt to sell the business, it had introduced various initiatives to increase passenger numbers. Although some initiatives had been successful, First had continued to make losses on routes around Plymouth. By late 2013/early 2014, First had recognised the closure of the South Devon business as 'inevitable', and around October 2014 it began seriously exploring its exit options.[5]

24. In order for the CMA to accept an alternative counterfactual based on an exiting firm, the CMA would need (on the basis of compelling evidence) to believe that it was inevitable that the firm would exit the market, be confident that there was no substantially less anti-competitive purchaser for the firm or its assets[6] and that exit would not result in a substantially more competitive outcome than a sale to Stagecoach.[7]

25. However, in light of the CMA's conclusions on the competitive assessment, it has not been necessary for the CMA to conclude whether, absent the Merger, First would have exited the market. On a cautious basis, the CMA has used the prevailing conditions of competition as the counterfactual.

[4] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).
[5] CMA call with First on 27 July 2015.
[6] One competitor told the CMA that it had been interested in acquiring First when the business was last marketed for sale. However, discussions had not advanced. The competitor was unaware that FirstGroup was now proposing to sell First to Stagecoach.
[7] *Merger Assessment Guidelines*, paragraph 4.3.10.

Frame of reference

26. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[8]

Product scope

27. The Parties overlap in the supply of local bus services (commercial and tendered) in the South Devon area.

Tendered bus service contracts

28. Previous UK merger decisions have assessed competition to provide local bus services separately from competition for tendered bus service contracts, while taking into account that there may be some linkages between commercial and tendered services.[9]

29. Stagecoach submitted that there are separate markets for the provision of commercial bus services and for tendered bus service contracts.[10]

30. The CMA has not found any evidence during its merger investigation to suggest that an alternative approach is appropriate in this case. The CMA has therefore considered competition for tendered bus service contracts as a distinct frame of reference from the provision of local bus services.

Local bus services (commercial and tendered)

31. The UK competition authorities have previously assessed the impact of local bus mergers on the provision of all bus services in the relevant geographic area, irrespective of whether those bus services are provided by the operator under a tender contract with the local authority or on a commercial basis. This is because, while there are differences on the supply side between commercial bus services and the supply of tendered bus services, from the

---

[8] *Merger Assessment Guidelines*, paragraph 5.2.2.
[9] See, for example: Anticipated acquisition by Stagecoach Group plc of the North Devon business and assets of First Devon and Cornwall Limited, OFT decision of 10 July 2012; Anticipated acquisition by Stagecoach Bus Holdings Limited of Islwyn Borough Transport Limited, OFT decision of 23 December 2009.
[10] Stagecoach Merger Notice of 16 July 2015, p14.

customer perspective these services are typically interchangeable.[11] The CMA has not found any evidence during its merger investigation to indicate that it should depart from its established practice in this case.

32. The CMA also considered whether the frame of reference could be widened to include other forms of transport. In previous UK merger investigations, the OFT/CMA has not found sufficient evidence to include forms of transport other than local bus services (such as private cars, or journeys on foot or by bicycle) in the frame of reference.

33. Stagecoach submitted that the potential for passengers to switch some or all of their demand from bus journeys to car, cycle, or foot journeys, especially in rural areas, imposes a competitive constraint on the price and quality of service which can be set by a local bus operator.[12]

34. One third party told the CMA that the 'principal competition to the bus in rural areas comes from the private car and private hire taxi services' rather than rival bus operators.[13] No other third parties commented on this issue.

35. The CMA believes that it has not received sufficient evidence to justify departing from its established practice in this case and, in light of its conclusions on the competitive assessment, it has not been necessary for the CMA to consider the extent of the constraint imposed on local bus services by these other means by which people might undertake a journey. The CMA has therefore excluded modes of transport other than local buses from the frame of reference.

Conclusion on product scope

36. For the above reasons, the CMA has assessed the impact of the Merger with regard to the following product frames of reference:

    (a) Competition for tendered bus service contracts.

    (b) Provision of local bus services (commercial and tendered).

[11] See, for example: Anticipated acquisition by Stagecoach Group plc of the North Devon business and assets of First Devon and Cornwall Limited, OFT decision of 10 July 2012; Competition Commission final report on the supply of local bus services in the UK (excluding Northern Ireland and London), 20 December 2011, paragraph 7.114.
[12] Stagecoach Merger Notice of 16 July 2015, p14.
[13] [✂] submission of 13 August 2015.

Geographic scope

Tendered bus service contracts

37. In previous local bus merger investigations, the UK competition authorities have assessed competition for tendered bus service contracts using a sub-national geographic frame of reference, based on the region where the tenders are offered.[14]

38. Stagecoach told the CMA that Plymouth City Council, Devon County Council, Torbay Council and Cornwall Council (which runs tenders in Cornwall which may be viewed as part of the Plymouth commuter belt) all run tenders for local bus services within their respective boundaries. Stagecoach told the CMA that, while district councils do not normally run tenders, South Hams District Council runs a tender in relation to Dartmouth Park & Ride.[15]

39. In the present investigation, it has not been necessary for the CMA to conclude on the precise sub-national geographic frame of reference because, based on the evidence the CMA has found, no competition concerns arise in relation to tenders on any frame of reference.

Local bus services (commercial and tendered): flow-by-flow level

40. Previous UK local bus merger investigations have assessed the impact of the merger on a flow-by-flow basis. A ‘flow’ is a connection between two specific geographic points. The investigations have followed this approach because on the demand-side, passengers require local bus services for travel between two specific points, ie their origin and destination.

41. Stagecoach agreed that the appropriate geographic frame of reference was a series of flow level markets in the South Devon area. [16]

42. The CMA has not found any evidence to suggest that it should follow a different approach in this investigation. The CMA has therefore assessed the effects of the Merger on specific point-to-point transport flows within the South Devon area. Consistent with its practice in previous investigations, the CMA has assessed the Merger on the basis that flows with their origin and

---

[14] See, for example: Anticipated acquisition by Stagecoach Group plc of the North Devon business and assets of First Devon and Cornwall Limited, OFT decision of 10 July 2012, paragraph 53; Anticipated acquisition by Stagecoach Bus Holdings Limited of Islwyn Borough Transport Limited, OFT decision of 23 December 2009.
[15] Stagecoach submission of 1 September 2015, paragraph 3.1.
[16] Stagecoach Merger Notice of 16 July 2015, p12.

destination within 500 metres of one another are likely to be sufficiently close that they are substitutes for local bus passengers.[17]

Local bus services (commercial and tendered): network level

43. In previous investigations, the UK competition authorities have found that competition in the supply of local bus services may take place at a network level in addition to specific point-to-point flows.[18]

44. Stagecoach told the CMA that there is no evidence that local bus operators compete on the basis of their network or networks across the whole South Devon area. Stagecoach said that network competition across South Devon was unlikely because it was a geographically large and predominantly rural area, which takes several hours to cross from end to end. Accordingly, few, if any, passengers would choose an operator based on the network offered over the whole of South Devon.

45. Stagecoach told the CMA that, when considering competition at the network level it was more meaningful to focus on Plymouth and its surrounding areas, which in Stagecoach's view would include the city boundary of Plymouth and to a lesser extent the commuter belt within a 60-minute journey time, ie Tavistock, Totnes, Kingsbridge, Wembury, Cremyll, Torpoint, Looe, Liskeard and Callington. Stagecoach submitted that network competition was less relevant in the area around Dartmouth because it was a large, rural area, separated by an expanse of water from the nearest towns of Torquay, Paignton and Brixham.

46. The CMA notes that four of the six flow overlaps between the Parties are located in the city of Plymouth. One overlap flow is between Sourton Down and Okehampton, which is located in a rural area. The sixth overlap is in Dartmouth. Dartmouth is a small town but is located close to several larger towns (Brixham, Paignton and Torquay).

47. On a cautious basis, the CMA has therefore considered network competition in the Plymouth area and the Dartmouth/Torquay area (including Brixham and Paignton). However, given the absence of competition concerns the CMA has not found it necessary in this investigation to conclude on the precise geographic frame of reference for network competition.

[17] Completed acquisition by Stagecoach Group plc of Preston Bus Limited, CC report of 11 November 2009.
[18] See, for example: Anticipated acquisition by Stagecoach Bus Holdings Limited of Islwyn Borough Transport Limited, OFT decision of 23 December 2009; Completed acquisition by Stagecoach Group plc of Preston Bus, OFT decision of 28 May 2009.

Conclusion on frame of reference

48. For the reasons set out above, the CMA has considered the impact of the Merger with respect to the following frames of reference:

   (a) Competition for tendered bus service contracts in the South Devon area.

   (b) Provision of local bus services (commercial and tendered) on specific transport flows in the South Devon area.

   (c) Provision of local bus services (commercial and tendered) in the Plymouth and Dartmouth/Torquay areas on a network level.

Competitive assessment

49. The CMA assessed the Merger against the following four theories of harm:

   (a) Horizontal unilateral effects in relation to existing competition:

      (i) for tendered bus service contracts;

      (ii) for the provision of local bus services (commercial and tendered) on specific transport flows; and

      (iii) at a network level.

   (b) Horizontal unilateral effects in relation to potential competition for the provision of local bus services at a network or flow level.

Horizontal unilateral effects – existing competition

50. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[19] The CMA has considered whether horizontal unilateral effects concerns will arise as a result of the transaction in relation to existing competition within each frame of reference.

---

[19] *Merger Assessment Guidelines*, paragraph 5.4.1.

Competition for tendered bus service contracts in the South Devon area

51. Stagecoach told the CMA that its lack of depot facilities in the area had hindered its ability to submit bids for tendered services in the South Devon area.[20]

52. Stagecoach's submission was consistent with evidence received from third parties. [✂] told the CMA that Stagecoach had not submitted any tenders in relation to the Plymouth area in the last three years, and suggested that this may be because Stagecoach did not have an operating base in the area or because its backup facilities were too remote.

53. Based on bidding data from two councils, the CMA found that there has historically been little competitive interaction between the Parties in local bus tenders in South Devon. In the last three years, the Parties competed against each other in only one of 53 tenders (a tender organised by Devon County Council, in which the Council placed two other competitors ahead of the Parties). The Council told the CMA that although, in purely quantitative terms, the Merger would reduce the potential number of tender responses it received,[21] it generally expected the Merger to have a positive effect on services in South Devon.

54. In light of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC for the supply of tendered bus service contracts in the South Devon area.

Provision of local bus services (commercial and tendered) on specific transport flows in the South Devon area

55. In previous merger investigations involving a large number of overlap flows, the UK competition authorities have applied a filtering approach in order to focus the analysis on those areas which may give rise to competition concerns. This filtering approach is based on the following indicators of competition between the merging parties on particular overlap flows: [22]

---

[20] Stagecoach Merger Notice of 16 July 2015, p20.
[21] The CMA calculated that the average number of bidders per tender organised by Devon County Council was 3.75.
[22] See, for example: Completed acquisition by Stagecoach Plc of the business and assets operated from the Lockett Road, Wigan depot of First Manchester Limited, OFT decision of 25 February 2013; Anticipated acquisition by Greater Manchester Buses (South) Limited, a wholly owned subsidiary of Stagecoach plc, of Bluebird Bus & Coach, OFT decision of 22 February 2013; Competition Commission final report on the supply of local bus services in the UK (excluding Northern Ireland and London), 20 December 2011; Completed acquisition by Arriva Passenger Services Limited of the remainder of the entire share capital of Centrebus Holdings Limited, CMA decision of 6 May 2014; Anticipated acquisition by Stagecoach Group plc of the North Devon business and assets of First Devon and Cornwall Limited, OFT decision of 10 July 2012; Completed acquisition by Greater Manchester Buses Limited of certain assets from JP Executive Travel, CMA decision of 21 August 2014.

(a) **Relative importance of overlapping flows** – the proportion of the target business' passengers and revenue accounted for by the overlap. In previous decisions, UK competition authorities have excluded from more in-depth analysis flows for which the overlaps account for less than 10% of passengers and revenue across the route overall.

(b) **Countervailing competition** – whether the parties face effective countervailing competition from third parties. The appropriate definition of an effective competitor depends on the geographic characteristics of the flows/routes at issue. However, in previous investigations, the UK competition authorities have considered a competitor effective where it offers services at least half as frequently as the merging parties.

(c) ***De minimis* flows** – the UK competition authorities have found that flows of relatively little importance, in terms of either revenue, number of passengers or frequency of service, can be excluded from more in-depth analysis.

56. In the present investigation, Stagecoach submitted that it overlapped with First's operations in Plymouth and South Devon on the following six flows.

(a) Overlap flow 1: Plymouth City Centre/Marsh Mills.

(b) Overlap flow 2: Plymouth City Centre/Laira Flyover.

(c) Overlap flow 3: Laira Flyover/Marsh Mills.

(d) Overlap flow 4: Plymouth City Centre/Prince Rock.

(e) Overlap flow 5: Sourton Down/Okehampton.

(f) Overlap flow 6: Dartmouth Townstal/Dartmouth Pontoon.

57. Given the small number of overlapping flows, the CMA has not found it necessary to employ a filtering approach in this case. However, the CMA has considered the substantive considerations used in the filters as part of its assessment for each flow overlap.

58. Third parties generally did not express views on the level of competition on specific overlap flows. However, a passenger group told the CMA that there was a competing PCB and/or Target service on each of the overlap flows and therefore Stagecoach would not acquire a monopoly on any route.[23]

[23] [✂] submission of 17 August 2015.

Overlap flow 1: Plymouth City Centre/Marsh Mills

59. The Parties overlap on the flow between Plymouth City Centre and Marsh Mills. Stagecoach runs two services that use this flow (X38 and Gold).[24] First runs one service that uses this flow (First Route 6). Half of the buses on First Route 6 terminate at Laira; the remainder continue on to Marsh Mills.

60. Based on the evidence before it, the CMA believes that the Parties' services on this flow do not compete closely, for the following reasons:

(a) First Route 6 and Stagecoach X38/Gold follow different routes for most of this flow. First Route 6 runs north-east out of Plymouth City Centre, via Efford and Lipson Vale, whereas Stagecoach X38/Gold runs east out of Plymouth City Centre, via St Judes and Prince Rock.

(b) Stagecoach X38 (every two hours) and Stagecoach Gold (every 30 minutes) run less frequently than First Route 6 (every 15 minutes between 9am and 6pm).

(c) Stagecoach X38/Gold are long-distance, inter-city services, whereas First Route 6 is a short-distance, urban service. Stagecoach X38 runs from Plymouth to Exeter, and Stagecoach Gold runs from Plymouth to Torquay.[25] Each has a total journey time of around two hours. First Route 6 starts at the Royal Parade in Plymouth City Centre and terminates at the Sainsbury's supermarket at Marsh Mills, a total journey time of around 25 minutes.[26]

61. It appears that third party services compete more closely on this flow with the Parties' services than the Parties compete with each other. Specifically:

(a) PCB Route 20[27] and Target Travel (**Target**) Route 19[28] follow a similar route to First Route 6 out of Plymouth City Centre, passing through Efford and Lipson Vale. (PCB Route 20 runs approximately every 20 minutes and Target Route 19 runs every hour.)

[24] Stagecoach told the CMA that Stagecoach Gold uses smaller, higher quality vehicles than Stagecoach X38, with leather seats and free Wi-Fi on board.
[25] Stagecoach told the CMA that the services use the Plymouth City Centre-Marsh Mills corridor because it is the most direct path onto the A38 towards Exeter/Torquay. Stagecoach submission of 1 September 2015, p1.
[26] See the Route 6 map and timetable.
[27] See the Route 20 map and timetable.
[28] See the 19 - Merafield timetable.

(b) PCB Routes 21,[29] 45 and 50,[30] and Target Route 59[31] follow a similar route to Stagecoach X36/Gold out of Plymouth City Centre.

62. In total, PCB operates four services on this flow: Routes 20, 21, 45 and 50. Target also operates two services that use this flow: Routes 19 and 59. Combined, PCB's and Target's services run three to five times more frequently on this flow than the Parties' combined services. Based on this evidence, the CMA believes that, post-Merger, the merged entity will face effective competition on this flow.

63. Furthermore, based on data submitted by Stagecoach,[32] the CMA believes that overlap flow 1 is of very small significance to Stagecoach's services. Passengers on the City Centre/Marsh Mills flow account for only a small proportion of the total number of passengers using each service (X38: [less than 6]%; Gold: [less than 6]%). The CMA believes that Stagecoach would not have a significant incentive to change competitive parameters which affect and are set on the basis of a much larger overall route.

64. Based on the evidence before it, the CMA believes that the Merger does not raise competition concerns in relation to this flow.

Overlap flow 2: Plymouth City Centre/Laira Flyover

65. The Plymouth City Centre/Laira Flyover flow is part of overlap flow 1. Stagecoach, and the competitors listed above, run the same number of services with the same frequency on overlap flows 1 and 2. First provides more services on overlap flow 2 than on overlap flow 1 because half of its Route 6 services terminate at Laira Flyover and do not continue on to Marsh Mills. The competitive assessment in respect of overlap flow 1 therefore applies equally here. The CMA has found no evidence which would support a different conclusion concerning the impact of the Merger in respect of the Plymouth City Centre/Laira Flyover segment of the Plymouth City Centre/Marsh Mills flow. Therefore, the CMA believes that the Merger does not raise competition concerns in relation to this flow.

Overlap flow 3: Laira Flyover/Marsh Mills

66. The Laira Flyover/Marsh Mills flow is part of overlap flow 1. The competitive assessment in respect of overlap flow 1 therefore applies equally here. The CMA has found no evidence which would support a different conclusion

[29] See the Route 21 timetable.
[30] See the Route 50 timetable.
[31] See the 59 – Plympton timetable.
[32] Stagecoach submission of 1 September 2015.

concerning the impact of the Merger in respect of the Laira Flyover/Marsh Mills segment of the Plymouth City Centre/Marsh Mills flow. Therefore, the CMA believes that the Merger does not raise competition concerns in relation to this flow.

Overlap flow 4: Plymouth City Centre/Prince Rock

67. The Parties overlap on the flow between Plymouth City Centre and Prince Rock. Stagecoach runs two services that use this flow (X38 and Gold). First runs three services that use this flow 4: Routes 2, 48 and 93.

68. The CMA believes that, post-Merger, Stagecoach will face effective competition on this flow. First Route 2 runs approximately every ten minutes; but First Routes 48 and 93 run less frequently (approximately every one to two hours). PCB operates four services on this flow: Routes 4, 5, 21 and 50. These services run every ten to 15 minutes throughout the day. PCB therefore runs more, and more frequent, services on the flow than the Parties. In addition, Tally Ho! runs a service on this flow five times a day,[33] and the flow is also served by Target (Route 19, which is an hourly service running Monday to Friday, and Route 59, which runs seven times per day Monday to Friday). In total, third party competitor services run around two to five times more frequently than the Parties' services on this flow, depending on the time of day.[34]

69. The Stagecoach services running on overlap flow 1 also run on overlap flow 4 (because these services pass through Prince Rock on the way to Laira Flyover and Marsh Mills).[35] As noted above, based on data submitted by Stagecoach,[36] the CMA believes that overlap flow 1 is of very small significance to Stagecoach's services. Passengers on the Plymouth City Centre/Prince Rock flow will account for an even smaller proportion of the total number of passengers using Stagecoach X38 and Gold (because this is a sub-segment of the longer Plymouth City Centre/Marsh Mills flow). The CMA therefore believes that Stagecoach will not have a strong incentive to raise fares or change service levels on this flow post-Merger.

[33] Target will take over the Tally Ho! service from September 2015.
[34] Monday to Friday, in hours (Parties: 115; competitors: 272); Saturday, in hours (Parties: 111; competitors 244); Monday to Friday, out of hours (Parties 12; competitors 58); Saturday, out of hours (Parties 12; competitors: 47); Sunday (Parties 48, competitors: 111).
[35] The First services considered in overlap flow 4 are not the same as those considered in overlap flow 1 as the First services that run on overlap flow 1 take a different route to Stagecoach's competing services on that flow and do not pass through Prince Rock.
[36] Stagecoach submission of 1 September 2015.

70. Based on the evidence before it, the CMA believes that the Merger does not raise competition concerns in relation to this flow.

Overlap flow 5: Sourton Down/Okehampton

71. The Parties overlap on the flow between Sourton Down and Okehampton. Stagecoach runs one service that uses this flow: Route 6A. First runs one service that uses this flow: Route 187. First Route 187 is a tendered service and runs only on Sundays during the summer months.

72. Devon County Council told the CMA that it has decided to withdraw subsidies for the tendered service operated by First, with the last tendered service scheduled to run on 13 September 2015. Devon County Council told the CMA that First had given notice to terminate the service early, and that the Council had contracted with Stagecoach to operate the final two Sunday services (ie on 6 and 13 September 2015).[37] Based on the evidence before it, the CMA therefore believes that there is no longer a competitive overlap on this flow.

Overlap flow 6: Dartmouth Townstal/Dartmouth Pontoon

73. The Parties overlap on the flow between Dartmouth Townstal and Dartmouth Pontoon. Stagecoach runs one service that uses this flow (the X64). First runs several services that use this flow (Routes 90, 90A, 90B, 90C[38] and 93[39]).

74. Based on the evidence before it, the CMA believes that the Parties' services on this flow do not compete closely, for the following reasons:

(a) The Parties' services mostly follow different routes on this flow: Stagecoach X64 runs principally along major roads (College Way (A379), Townstal Road (A3122)), whereas First's services run along relatively minor roads in more residential areas (Britannia Avenue, Collingwood Road, Victoria Road).[40] Furthermore, although both Stagecoach X64 (Exeter/Dartmouth) and First Route 93 (Plymouth/Dartmouth) are long-distance services, the First 90A, 90A, 90B and 90C services are short-distance urban services with an approximate total journey time of 30 minutes.

(b) The First 90A, 90A, 90B and 90C services run much more frequently than the X64 service. The X64 runs ten times per day during the week, nine

[37] Devon County Council submission of 4 September 2015.
[38] See the Routes 90, 90A, 90B and 90C timetables.
[39] See the Route 93 timetable.
[40] First Route 93 follows a different route during school hours and outside school hours. During school hours, First Route 93 runs through residential areas not covered by Stagecoach X64. Outside school hours, the routes taken by First Route 93 and Stagecoach X64 on the overlap flow are more similar.

times on Saturdays, and four times on Sundays. First's 90 services run much more frequently, with 56 daily services from Monday to Saturday, running every 15 to 30 minutes between 7:00am and 11:30pm. On Sundays, First runs 18 services on this flow.

(c) The Stagecoach X64 service carries significantly fewer passengers per day than First's services on the overlap flow. Based on data submitted by Stagecoach and First, [fewer than 10] passengers per day on average travelled with the X64 service on the overlap flow, whereas First Routes 90, 90A, 90B, 90C were used by [between 300 and 500] passengers per day (despite these services being more expensive) and First Route 93 was used on average by [between 100 and 200] passengers per day.[41]

(d) First told the CMA that Stagecoach began operating its Gold service in September 2013. The service ran, in part, between Totnes and Dartmouth. First said that, in January 2015, Stagecoach extended its X64 service from Totnes to Dartmouth in order to replace the Totnes/Dartmouth leg of the Stagecoach Gold service. First told the CMA that neither the introduction of Stagecoach Gold nor its replacement with Stagecoach X64 had materially impacted passenger numbers on First's competing services on this flow. Nor had First adjusted its fares to respond to Stagecoach's entry.

75. Furthermore, Stagecoach estimated that the overlap flow between Dartmouth Townstal and Dartmouth Pontoon accounts for [less than 3]% of Stagecoach's total revenue, and [less than 5]% of total passengers, on the X64 route.[42] First submitted data showing that it derives [between 10 and 15]% of its total revenues on the relevant routes from the Dartmouth Townstal/Dartmouth Pontoon flow.[43] This evidence indicates that the overlapping flow is of minor significance to the Parties' overall revenues on the relevant routes. The CMA therefore believes that the merged entity would not have a significant incentive to raise fares or change service levels on this flow post-Merger.

76. Based on the evidence before it, the CMA believes that the Merger does not raise competition concerns in relation to this flow.

---

[41] First told the CMA that it did not know why First Route 93 transported significantly more passengers than Stagecoach X64, given that they are both long-distance buses with a similar route through Dartmouth. First noted, however, that First Route 93 had a slightly higher frequency than Stagecoach X86 and told the CMA that customers may be more familiar with First's service, which had been running broadly unchanged for many years (CMA call with First on 1 September 2015).
[42] Stagecoach submission of 1 September 2015.
[43] Stagecoach submission of 31 July 2015, Annex 3.

Provision of local bus services (commercial and tendered) in the Plymouth and Dartmouth/Torquay areas on a network level

77. The CMA has considered whether the Merger would give rise to a loss of existing competition between Stagecoach and First at a network level in the Plymouth and Dartmouth/Torquay areas.

78. Based on the evidence it has found, the CMA believes that there is limited existing competition between Stagecoach and First at a network level. In particular, there is no significant geographic overlap in Stagecoach's and First's main areas of operation:

- Currently, Stagecoach runs services in South Devon out of its depots in Exeter and Torquay.[44] Stagecoach operates two services in the Plymouth City area (X38 and Gold) and 22 services in the area around Dartmouth/Torquay (including Brixham and Paignton). As such, Stagecoach's services are focused on the Dartmouth/Torquay area.

- First's services are focused on the Plymouth City area. First operates services from its Plymouth depot, which supports its 19 services in the Plymouth City area. First operates significantly fewer services (five in total)[45] in the area around Dartmouth/Torquay (including Brixham and Paignton).[46]

79. No third parties expressed concerns about a loss of existing competition at a network level in the Plymouth and Dartmouth/Torquay areas, or within South Devon more generally. One third party told the CMA that the Parties did not compete extensively in South Devon.[47]

80. Furthermore, the CMA has found that there are several multi-operator ticketing systems in place in the South Devon area, including the following:[48]

    (a) The Plymouth Skipper ticket covers bus services across Plymouth and the nearby towns of Ivybridge, Wembury and Heybrook Bay. Participating operators are First, PCB, Go Cornwall Bus, Stagecoach, Target, Jackett's Coaches, Tally Ho!, and St Budeaux Taxibus.[49]

---

[44] Stagecoach Merger Notice of 16 July 2015.
[45] First also operates a school service in this area, YB1.
[46] Stagecoach submission of 1 September 2015.
[47] Devon County Council submission of 20 August 2015.
[48] Stagecoach submission of 1 September 2015.
[49] See the Plymouth City Council 'Skipper - Multi-operator bus ticket' webpage.

(b) The Plymouth PLUSBUS ticket covers bus and tram services in Plymouth City. Participating operators are PCB and Stagecoach.[50]

(c) The Plymouth Green Travel Pass ticket is an annual ticket sold to large employers by Plymouth City Council. Participating operators are PCB, First, Target, Go Cornwall Bus, Jackett's Coaches, and Stagecoach.[51]

(d) The Dartmoor Sunday Rover ticket is valid on most buses and trains in Devon on Sundays during the summer months. Participating operators are First, Stagecoach, Beacon Bus, Dartline, PCB, and Western Greyhound.[52]

(e) The Explorer Plus ticket is a day ticket which allows travel on all Stagecoach buses and is also accepted on certain services operated by PCB.

81. The CMA has not found any evidence that the Merger will adversely affect the operation of these ticketing schemes. If the merged entity were to stop participating in the multi-operator schemes, the availability of such schemes would reduce its ability to raise prices by providing customers with access to a competing network of bus services provided by third party operators. Indeed, a competitor told the CMA that the Merger may facilitate the development of an improved, 'smart' multi-ticketing system, because Stagecoach's technology is more sophisticated than First's.

82. For these reasons the CMA believes that the Merger does not give rise to a realistic prospect of an SLC at a network level within the Plymouth and Dartmouth/Torquay areas, or within South Devon more generally.

Horizontal unilateral effects – potential competition

83. In previous local transport merger investigations, the UK competition authorities have considered whether the transaction gives rise to a realistic prospect of an SLC by eliminating a constraint arising from the perceived threat of entry by one of the merging parties on particular flows or at a network level. Therefore, in this case, the CMA considered whether either Party currently faces a constraint arising from the perceived entry of the other Party.

84. Stagecoach submitted minutes of its monthly management meetings for the period July 2013 to June 2015. The minutes show that Stagecoach, in the

---

[50] See the PLUSBUS website.
[51] See the Plymouth Green Travel Pass website.
[52] See the First 'Dartmoor Sunday Rover Ticket' webpage.

ordinary course of business, actively monitors competition in the South Devon area, including possible entry or exit by operators on local routes. However, although the minutes identify several third parties, including [✂],[53] [✂],[54] and [✂],[55] they do not refer to any instances of actual or potential entry or withdrawal by First, on either commercial or tendered routes.

85. Based on evidence provided by First, [56] the CMA believes that First's strategic or commercial decisions in recent years were focused on the sustainability of its operations in South Devon and have been made in the light of actual or potential competition from competitors generally (in particular PCB), rather than any consideration of potential competition from Stagecoach. One third party confirmed that, historically, the main competition in Plymouth has been between First and PCB, not between First and Stagecoach.[57]

86. The evidence suggests that neither Party has developed its future entry plans on the basis of a perceived threat of entry by the other Party on specific flows or into the other Party's main geographic areas of operation. Therefore, the CMA believes that Merger does not result in the loss of any constraint arising from the perceived threat of entry.

Conclusion on horizontal unilateral effects

87. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the following frames of reference:

    (a) Competition for tendered bus service contracts in the South Devon area.

    (b) Provision of local bus services (commercial and tendered) on specific transport flows in the South Devon area.

    (c) Provision of local bus services (commercial and tendered) in the Plymouth and/or Dartmouth/Torquay area on a network level.

Barriers to entry and expansion

88. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA

---

[53] Minutes of Stagecoach monthly management meeting of 6 August 2014, 29 October 2014, 27 November 2014, 15 December 2014, 20 January 2015, and 18 March 2015.
[54] Minutes of Stagecoach monthly management meeting of 7 August 2013.
[55] Minutes of Stagecoach monthly management meeting of 18 March 2015.
[56] CMA call with First on 27 July 2015; CMA call with First on 1 September 2015.
[57] [✂] submission of 17 August 2015.

considers whether such entry or expansion would be timely, likely and sufficient.[58] However, in the present case the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

89. The CMA contacted customers and competitors of the Parties, as well as local councils which organise tenders for local bus services in the South Devon area. Third party comments have been taken into account where appropriate in the competitive assessment above. Overall, third parties supported the Merger. Two local councils identified various possible benefits from the Merger, including improved bus service quality and reliability. A passenger group told the CMA that, to the extent the CMA identified any possible concerns relating to specific transport flows, these may be offset by the potential strengthening of competition on the other routes in the area. This passenger group and two competitors told the CMA that they expected the merged entity to provide stronger competition to PCB than First. [59]

90. The CMA received no negative, Merger-specific concerns, although two third parties expressed concern that Stagecoach might withdraw from some commercially unattractive routes that First currently serves, leading to a reduced local bus service or no local bus service in those areas. [60]

Decision

91. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

92. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director, Mergers
Competition and Markets Authority
21 September 2015

---

[58] *Merger Assessment Guidelines*, from paragraph 5.8.1.
[59] [✂] submission of 17 August 2015; [✂] submission of 14 August 2015; [✂] submission of 24 August 2015.
[60] One local council told the CMA that, although it recognised the Merger could lead to a reduction in services in some areas, it believed the resulting level of provision would be better suited to demand and more commercially sustainable over time ([✂] submission of 21 August 2015).