



**SUBMISSION TO THE COMPETITION AND MARKETS AUTHORITY
IN RELATION TO THE RELEASE OF UNDERTAKINGS GIVEN IN
CONNECTION WITH THE ACQUISITION BY BADGERLINE HOLDINGS
LIMITED (NOW FIRSTGROUP HOLDINGS LIMITED) OF MIDLAND RED
WEST HOLDINGS LIMITED (NOW FIRSTBUS GROUP LIMITED)**

9 December 2016

A. BACKGROUND

1. As discussed with the Competition & Markets Authority (the **CMA**), FirstGroup Holdings Limited¹ (**FGH**) has set out below its submissions on the changes in circumstances that, in FGH's view, would support the release of undertakings that were imposed in 1989² following the Monopolies and Mergers Commission's (**MMC**) review of FGH's acquisition of Midland Red West Holdings Limited, trading as Cityline, a bus operator in the centre and suburbs of Bristol (**Cityline**)³.
2. The undertakings apply to contract bus services only, where the MMC concluded that the merger may be expected to operate against the public interest in relation to two particular areas of concern:
 - (a) The practice whereby Badgerline Holdings Limited (now FGH), having de-registered certain commercial services, re-registered them after failing to win the contracts for the subsidised services which replaced them; and
 - (b) The loss of Cityline as a major competitor for the Avon County Council's (**Avon CC**) contract services.
3. The undertakings have two principal components:
 - (a) A prohibition on FGH or any of its subsidiaries, without the prior consent of the Director General of Fair Trading, registering a new or varied commercial service which substantially duplicates a previous commercial service which FGH or Cityline has deregistered and is subsequently tendered by Avon CC; and
 - (b) A requirement to submit tenders for every service in Bristol and Avon that is tendered by Avon CC, and restrictions on the tendered price.
4. Since the undertakings were imposed in 1989, there have been a number of changes of circumstance in the market, the effect of which has been material and far-reaching. These changes in circumstance have rendered the undertakings unnecessary.

¹ Formerly called Badgerline Holdings Limited.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520343/badgerline-midland-red-west-unds-03-10-89.pdf

³ For clarity, it was **not** Midland Road West Holdings Limited, nor Cityline Limited, which was acquired, contrary to various statements in the DTI's press release and text of the undertakings. The relevant legal entity was called Midland Red West Holdings Limited, which has subsequently changed its name to FirstBus Group Limited.

5. Having regard to the CMA's current framework for assessing requests for variation or termination of undertakings,⁴ FGH considers this is an appropriate case in which undertakings should be released, for the reasons set out below.

B. CHANGES OF CIRCUMSTANCES SINCE 1989

6. Undertakings imposed by the CMA, or its predecessor, to address competition concerns arising from a merger may become inappropriate "by reason of *any* change of circumstances".⁵ Since the undertakings were imposed in 1989, there have been a number of *significant* changes of circumstances, as discussed below.

Avon County Council has ceased to exist

7. Avon CC was the county council of the non-metropolitan county of Avon at the time of the undertakings being introduced. It was abolished in 1996 at the same time that the county of Avon was abolished, pursuant to the powers introduced by the Local Government Act 1992. It was replaced with four unitary authorities: Bristol City Council, South Gloucestershire Council, North Somerset Council and Bath & North East Somerset Council.
8. Each of these authorities individually has considerable buying power, and since 2004 they have worked together under the auspices of the West of England Partnership for major transport projects⁶, thereby increasing their countervailing buying power.
9. *In conclusion*, the abolition of Avon CC constitutes a relevant change of circumstance for the purposes of section 92 of the Enterprise Act. Moreover, its replacements each have considerable buying power, meaning that the areas of concern originally identified by the MMC are no longer an issue.

Changes to local authority powers since 1989

10. There has been a significant increase in the oversight of bus services by local transport authorities over the past several years.
11. First, the Transport Act 2000 provides a framework for local transport authorities to enhance the provision of local bus services. The Act allows local authorities to introduce Quality Partnerships, Quality Contracts,

⁴ CMA, *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders*, January 2014, paragraph 3.3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270251/CMA_11_Remedies_Guidance.pdf, and *Enterprise Act 2002* (as amended) (**Enterprise Act**), section 92.

⁵ See Enterprise Act, section 92 (emphasis added).

⁶ <http://www.westofenglandlep.co.uk/place/transport-investment>

provision of information about local bus services and joint ticketing schemes.

- (a) *Quality Partnership*: a Quality Partnership is a scheme in which the local authority specifies factors such as the quality of buses, and minimum frequencies that must be provided by bus operators using specific infrastructure provided by the authority (e.g. bus stops or bus priority measures). Operators can use that infrastructure only if they meet the requirements of the Quality Partnership scheme.
 - (b) *Quality Contract*: a Quality Contract is a scheme similar to franchising. Under a quality contract, a local authority can stipulate which local services should be provided, bus routes, the standard and quality of service, and the level of fares. A local authority can introduce a Quality Contract where five public interest criteria are met: (i) the scheme will result in increased bus use; (ii) it will improve the quality of the local services; (iii) it will contribute to the implementation of the policies of the LTA; (iv) it will contribute to implementation in a way which is economic, efficient and effective; and (v) any adverse effects on operators will be proportionate to the improvement in well-being of local persons.
12. Second, the proposed devolution of additional powers to cities across the UK will increase the constraints that local authorities can impose on bus operators. Three of the four authorities which replaced Avon CC are proposing to move ahead with a devolution deal which will explicitly include public transport in its remit.⁷ This is in addition to the powers proposed under the Bus Services Bill.⁸
 13. The ability and growing willingness of local authorities to exercise oversight over bus services in local areas is a relevant change in circumstances. Further, local authorities may have enhanced powers to regulate local bus services in the future following the devolution of further powers to cities.
 14. *In conclusion*, the powers introduced since 1989, and more recently the increasing willingness of local authorities, to control bus services in local areas, as well as the further powers envisaged under devolution and the Bus Services Bill, each constitutes a relevant change of circumstance for the purposes of section 92 of the Enterprise Act. Moreover, this significant development mitigates any possible concerns (and FGH

⁷ Bristol City Council, along with Bath and North East Somerset and South Gloucestershire Councils, have agreed to move forward with a devolution deal for the West of England. North Somerset Council voted not to move forward with the devolution deal. <https://www.bristol.gov.uk/policies-plans-strategies/the-west-of-england-devolution-deal>.

⁸ For information on the Bus Services Bill, please see the Government's website here - <https://www.gov.uk/government/collections/bus-services-bill-overview>.

believes no such concerns would arise in any event, not least because neither of the relevant undertakings provides bus services) about potential risks to consumers or market outcomes resulting from release of the undertakings.

Neither Citylink nor Badgerline Holdings Limited, nor any of their subsidiaries, operates any bus services

15. In November 1993, Badgerline Holdings Limited changed its name to Badgerline Group plc, and then changed its name again in 1997 to FirstGroup Holdings Limited⁹.
16. FGH no longer operates any bus services. As confirmed in its last annual report and accounts, FGH is a non-operational holding company within the FirstGroup plc group of companies, and no changes in its activity are envisaged for the foreseeable future¹⁰. It does not operate any bus or other public transport services, nor does it hold an operating licence¹¹. The same is true for its subsidiaries, none of which holds an operating licence.¹²
17. Midland Red West Holdings Limited changed its name to FirstBus Group Limited in December 1997¹³. It is a subsidiary of FGH and is registered at Companies House as a non-trading company. It no longer operates any bus, or other public transport, services, nor does it hold an operating licence.
18. The only FirstGroup operating companies which provide bus services in the area covered by the undertakings are First Bristol Limited and First Somerset & Avon Limited, neither of which is a subsidiary (direct or indirect) of FGH or Cityline (now FirstBus Group Limited).
19. *In conclusion*, the fact that neither of the relevant entities (nor their respective subsidiaries) operates bus services in the affected area constitutes a relevant change of circumstance for the purposes of section 92 of the Enterprise Act.

⁹ For completeness, it was also named FirstBus Group Limited for a 9-month period in 1997. The certificates for each relevant name change are attached at **Annexes 1A to 1D**. For further details, please see the various entries at Companies House: <https://beta.companieshouse.gov.uk/company/02029363>.

¹⁰ See strategic report section of annual report attached at **Annex 2**.

¹¹ Legal entities holding an operating licence can be found via the VOSA website - <https://www.vehicle-operator-licensing.service.gov.uk/search/find-lorry-bus-operators/>.

¹² A structure chart showing each of the relevant entities is attached at **Annex 3**.

¹³ For completeness, it was also named FirstGroup Holdings Limited for a 3-week period in 1997. The certificates for each relevant name change are attached at **Annexes 4A and 4B**. For further details, please see the various entries at Companies House: <https://beta.companieshouse.gov.uk/company/02059633>.

Increased competition

20. The undertakings were initially put in place to address concerns about a possible loss of competition in the tendered market; however, since 1989 First's bus operations have reduced in scale and scope¹⁴, and faced increasing competition in the areas affected by the undertakings from a number of operators, including national operators such as Rotala Buses Limited¹⁵ and Bath Bus Company¹⁶, as well as sizeable local operators, including Faresaver Buses of Chippenham, Crosville Motor Services (based in Weston-Super-Mare) and ABus – we believe that each of these operators bids for and/or operates tendered services in the affected area. There are also a number of smaller operators which can and do bid for tendered services in the affected area.
21. In addition to increased bus competition, the competitive constraint exerted by the private car has increased significantly since 1989 across the area covered by the undertakings¹⁷, and Bristol has also seen the introduction of car sharing services and innovative services such as Uber¹⁸ and SlideBristol¹⁹. These new options for passengers to travel by public and private transport have had, or are highly likely to have, a significant impact on the level of competition faced by FirstGroup.
22. *In conclusion*, the concerns about loss of competition for contract services underlying the original undertakings imposed in 1989 have not been borne out. On the contrary, since then, FirstGroup has been subject to increasing competition from major and smaller, independent bus operators, as well as from other modes of transport, while the extent of FirstGroup's operations in the area has contracted. These

¹⁴ By way of example, the combined fleet of First Bristol Limited and First Somerset & Avon Limited (excluding Somerset operations) was 747 in October 2005 (the oldest data currently available), whereas the equivalent fleet size was 618 at the end of November 2016.

¹⁵ Rotala first entered the area in April 2007, operating in Bristol under the trading name of Wessex Connect. Later the same year, the bus business of South Gloucestershire Bus and Coach Company had been acquired and rapid growth has followed. For further detail, please see Rotala's website: <http://www.rotalapl.com/companies/wessex-bus-ltd.html>.

¹⁶ Bath Bus Company is a part of the RATP group, a French state-funded public transport operator. For further detail, see their website at <https://www.bathbuscompany.com/>.

¹⁷ Total cars in the City of Bristol local authority area from Census data: in 1991, there were 140,211 (<http://www.casweb.ukdataservice.ac.uk/index.htm>); and in 2011, there were 190,530 (<https://www.opendata.bristol.gov.uk/Mobility/2011-Census-car-Ownership/fumf-uy7h/data>). This is an increase of 36% from 1991 to 2011, so it is anticipated that the difference will be even greater from 1989 to 2016

¹⁸ See, for example, <http://www.zipcar.co.uk/car-hire-bristol> and <https://www.uber.com/en-GB/cities/bristol/>

¹⁹ SlideBristol, owned by RATP Dev UK Limited, offers demand-responsive services by 8-seater minibuses along several corridors in Bristol. See <http://www.slidebristol.com/> for more details.

developments clearly constitute relevant changes of circumstances for the purposes of section 92 of the Enterprise Act.

C. THESE CHANGES IN CIRCUMSTANCES MAKE IT APPROPRIATE TO RELEASE THE UNDERTAKINGS

23. The undertakings have become unnecessary as the concern they were originally designed to address, on an updated analysis, can no longer be considered material or relevant. Moreover, not only are they now redundant, the various FirstGroup entities to which they apply no longer operate bus services and the local authority they were designed to protect no longer exists.
24. FGH considers that there have been a number of significant changes in circumstances since 1989 that have rendered the undertakings unnecessary and inappropriate.

D. CONCLUSION

25. Avon CC, the local authority which the undertakings sought to 'protect', no longer exists and the FirstGroup companies subject to the undertakings no longer operate, or bid for, bus services. Moreover, changes in the market have resulted in significant new constraints on, and challenges to, FirstGroup's bus business in the affected area. As a result, the undertakings are no longer necessary to protect competition in the tendered bus market in this area.
26. Given these relevant changes in circumstances, FGH would submit that releasing the undertakings would now be appropriate.
27. FGH is at the CMA's disposal to deal with any matters arising from this submission.