



**Stagecoach Holdings plc
and
Lancaster City Transport Limited**

A report on the merger situation between
Stagecoach Holdings plc and Lancaster City Transport Limited



MONOPOLIES AND MERGERS COMMISSION

Stagecoach Holdings plc and Lancaster City Transport Limited

A report on the merger situation between
Stagecoach Holdings plc and Lancaster
City Transport Limited

Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
December 1993

LONDON : HMSO

**Members of the Monopolies and Mergers Commission as at
2 November 1993**

Mr G D W Odgers (*Chairman*)
Mr P H Dean CBE (*Deputy Chairman*)
Mr D G Goyder (*Deputy Chairman*)
Mr H H Liesner CB¹ (*Deputy Chairman*)
Mr A G Armstrong
Mr C C Baillieu
Mr I S Barter
Professor M E Beesley CBE
Mrs C M Blight
Mr P Brenan
Mr J S Bridgeman
Mr R O Davies
Professor S Eilon
Mr J Evans
Mr A Ferry MBE¹
Mr N H Finney OBE
Sir Archibald Forster
Sir Ronald Halstead CBE
Ms P A Hodgson
Mr M R Hoffman
Mr D J Jenkins MBE
Mr A L Kingshott
Miss P K R Mann
Mr G C S Mather
Mr N F Matthews
Professor J S Metcalfe CBE
The Baroness Miller of Hendon MBE JP
Professor A P L Minford
Mr J D Montgomery
Dr D J Morris
Professor J F Pickering
Mr L Priestley
Dr A Robinson¹
Mr J K Roe
Dr L M Rouse¹
Mr D P Thomson
Mrs C Tritton
Professor G Whittington¹

Mr A J Nieduszynski (*Secretary*)

¹These members formed the group which was responsible for this report under the chairmanship of Mr H H Liesner.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests. The omissions are indicated by a note in the text.

Contents

	<i>Page</i>
<i>Chapter</i> 1	Summary 1
2	The companies: history, finance and the acquisition 3
3	Local bus services in the reference area 15
4	Views of other parties 28
5	Views of Stagecoach 48
6	Conclusions 59
<i>Appendices</i>	(The numbering of the appendices indicates the chapters to which they relate.)
1.1	The reference 74
1.2	The reference area: Lancashire and Cumbria 76
2.1	Chronology of key events 77
2.2	Acquisitions and disposals by Stagecoach Group April 1987 to July 1993 79
2.3	Stagecoach North West: financial results 80
2.4	LCT (including Lonsdale) financial results 81
2.5	Copy of the bid from Stagecoach Holdings plc 82
6.1	Legal authorities 83
6.2	Regina v Monopolies and Mergers Commission and Another, <i>Ex parte</i> South Yorkshire Transport Ltd and Another—extract from Opinion of Lord Mustill 84

1 Summary

1.1. On 3 August 1993 the Secretary of State asked the MMC (see Appendix 1.1) to investigate and report on a possible merger between Lancaster City Transport Limited (LCT) and Stagecoach Holdings plc (Stagecoach). Stagecoach is one of the largest bus companies in the UK; its subsidiary Stagecoach (North West) Limited (Stagecoach North West), through its divisions Ribble Buses (Ribble) and Cumberland Motor Services (Cumberland), is the main operator of bus services in Lancashire and Cumbria. LCT was formerly owned by Lancaster City Council, providing services mainly in the district of Lancaster (see Appendix 1.2).

1.2. Stagecoach acquired various assets of LCT, namely its depot, a number of buses, and various plant, equipment and stock. In the circumstances of this case, we believe that the depot was so closely connected with LCT's business of operating bus services that the acquisition represented a merger situation as defined in the Fair Trading Act 1973 (the Act). As a result of the merger, Stagecoach increased its share of commercial bus miles in Lancashire and Cumbria—an area which, in our view, constitutes a substantial part of the UK—from about 48 per cent to about 51 per cent, satisfying the requirements for our investigation under the Act.

1.3. As a result of the merger, Stagecoach now operates almost all commercial services in the district of Lancaster although other bus companies have a significant share of services run under contract to the County Council.

1.4. We have acknowledged that competition between Stagecoach and LCT before the merger was weak, the two companies having entered into a timetable agreement in 1989 under which almost all commercial services in the district of Lancaster were jointly operated. We believe, however, that LCT still offered the potential for competition to Stagecoach, as had occurred between LCT and Ribble before 1989: LCT's acquisition by a company other than Stagecoach would have maintained, or increased, potential competition, particularly as regards commercial services within the district of Lancaster. Competition and potential competition, in our view, are the main safeguards against higher fares and lower levels of service, and provide scope for operators to offer different combinations of fares and service standards. We do not believe that potential competition from other new entrants could prove as effective a constraint on Stagecoach in its current dominant position: we also do not believe that competition from other forms of transport provides as effective a constraint on fares or service standards.

1.5. We have therefore concluded that the merger may be expected to operate against the public interest by removing competition and potential competition to Stagecoach in commercial services in the district of Lancaster, which may in turn be expected to result in higher fares, lower levels of service and less choice than would otherwise be the case.

1.6. We have recommended a number of undertakings to remedy these adverse effects by limiting Stagecoach's ability to retaliate against new entrants in the district of Lancaster by temporary reductions in fares or increases in frequency. The result of these

undertakings would be to enhance the effectiveness of potential competition from other operators should Stagecoach abuse its position. If such undertakings were not forthcoming, Stagecoach should be required to divest the depot. We have also recommended that Stagecoach be required to publish information on the financial performance of its operations in the district of Lancaster.

2 The companies: history, finance and the acquisition

Introduction

2.1. This chapter opens with a short description of the regulatory background in the bus industry since 1985. It then provides information on the history and financial performance of Stagecoach group, Stagecoach North West and LCT. The chapter examines the steps taken by Lancaster City Council to sell LCT, compares the alternative bids and then considers the valuation of Heysham Road bus depot, one of the main assets purchased by Stagecoach North West from LCT. A chronology of the events leading to the sale of LCT is at Appendix 2.1.

2.2. The various topics are dealt with in the following order:

	<i>Paragraph</i>
Background to the industry	2.3
Stagecoach group: history, financial performance and aims	2.6
Stagecoach North West and Ribble: history and financial performance	2.17
LCT: history and financial performance	2.22
The sale of LCT's assets to Stagecoach	2.25
Comparison of bids	2.46
The valuation of Heysham Road bus depot	2.49

Background to the industry

2.3. In recent years the legal and administrative framework within which the bus industry in Great Britain operates has been subject to substantial changes. As a result there have been, and continue to be, major changes in the structure of the industry.

2.4. The Transport Acts of 1980 (the 1980 Act) and 1985 (the 1985 Act) paved the way for deregulation of the bus industry. The 1985 Act provisions included removal of the restrictions on the quantity of local bus services which could be offered outside London. Another important change was the 1985 Act's provision for the splitting up and privatization of the National Bus Company (NBC) and for the formation of local authority bus operations into arm's length public transport companies. NBC was divided into 72 companies which were sold between 1986 and 1988, many to their former managements and employees. In October 1986 municipal bus operations and Passenger Transport Executive (PTE) bus operations were formed into separate limited companies, which operate at arm's length from the local authorities which are the shareholders.

2.5. In April 1992 the Conservative Party Manifesto indicated that the Government intended to require local authorities to sell their bus companies. In June 1992 the Minister for Public Transport made a statement confirming the Government's intentions. On 23 November 1992 the Minister for Transport made an announcement that reflected a change in the Government's financial policy for any sales of assets by local authorities. Provided the local authority controlling a public transport company completed the disposal of its bus company's business prior to 31 December 1993, the authority would be allowed to use all of the proceeds of sale in connection with the continued provision of any of its services in its area. For sales after 31 December 1993 the previous rule would apply once again, which was that 50 per cent of the proceeds would have to be applied towards the reduction of local authority debt.

Stagecoach group: history, financial performance and aims

2.6. Stagecoach started in 1976 as a small self-drive motor caravan and minibus rental business. In the early 1980s it expanded into long-distance express coach services. Until 1985 Stagecoach's local bus services were comparatively minor in relation to express coach services, and consisted of a number of limited stop destinations between the larger Scottish cities and towns. However, Stagecoach found that the express coach services were more seasonal and less profitable than local bus services. Management therefore decided to concentrate its future efforts in the local bus market.

Growth by acquisition

2.7. Following the Government's decision to privatize NBC, Stagecoach was the first independent bus operator to acquire an NBC bus subsidiary, Hampshire Bus Company Ltd. Its integration into the group in April 1987 established the pattern for future acquisitions, with immediate action taken to improve the profitability and the efficiency of bus operations. Property which was surplus to operational requirements and had development value was sold. During the period between May 1989 and January 1993 £10.9 million was raised from sale of properties with profits of £2.7 million. In three cases bus operations were relocated at different sites at a total cost of £2.9 million.

2.8. Stagecoach investigated over 20 NBC companies to identify businesses with profit growth potential and sound property assets in other parts of England and Wales, and by the end of 1987 the businesses of Cumberland Motor Services Ltd (Cumberland Motor Services) and United Counties Omnibus Company Ltd had been acquired.

2.9. In 1988 an institutional share placing provided Stagecoach with the financial resources to continue the acquisition programme.

2.10. A number of NBC companies had previously been the subject of management buy-outs and of these East Midland Motor Services Ltd, Ribble Motor Services Ltd (Ribble Motor Services), Southdown Motor Services Limited and Hastings & District Transport Ltd were acquired by Stagecoach during 1989. Portsmouth CityBus Limited was also purchased in 1989.

2.11. The restructuring of the acquired businesses was accompanied by capital investment in new buses, improvements in the productivity of the labour force, reviews of the bus networks and reductions in overheads. These actions led to improvements in profits.

2.12. By the beginning of 1989 the express coach operations, which amounted to around 10 per cent of the group's turnover, had been confirmed as a relatively low profit earner compared with the local bus operations and were taking up a disproportionate amount of senior management time. The express coach business was therefore sold to National Express in August 1989 for approximately £1.1 million.

The early 1990s—recent developments

2.13. By 1991 Stagecoach was increasingly benefiting from the improved cash flow from existing local bus operations and was ready to embark on further expansion. This included acquisition of two local bus companies from Scottish Bus Group which was being privatized in the same manner as NBC (which operated in England and Wales). Stagecoach also acquired bus companies in Kenya, Malawi, New Zealand and Canada. A list of acquisitions and disposals made by Stagecoach between 1987 and 1993 is shown in Appendix 2.2.

2.14. In March 1993 Stagecoach and its shareholders made a Placing and Offer for Sale of part of its ordinary share capital at 112p per share. £20.6 million was raised by the company from the issue of 19.7 million new shares. This was used to repay the £3 million redeemable preference shares and reduce borrowings, which stood at £54 million in March 1993. After these transactions gearing was reduced to around 60 per cent. The existing shareholders sold 33.8 million shares. Following these sales and the share issue by the company, Mr Souter and Mrs Gloag (who had developed the company from its early days) hold 26.8 per cent and 22.2 per cent respectively of the ordinary shares.

2.15. In the offer for sale document Stagecoach expressed interest in the opportunities which could arise from the privatization of local authority-owned bus companies. The offer document contained the following comment:

The Directors consider that the greatest potential for profitable growth will come from the privatisation of publicly-owned bus operators in the UK. Management has identified acquisition opportunities from among 32 remaining municipal bus operators and ten operating companies within London Buses which the Government has stated will be privatised.

Stagecoach group: financial performance

2.16. The financial performance of Stagecoach over the last four years is summarized in Table 2.1. The expansion has come from both acquisitions and internal growth.

TABLE 2.1 **Stagecoach: financial summary**

	<i>Year ending 30 April</i>				<i>£'000</i>
	<i>1989/90</i>	<i>1990/91</i>	<i>1991/92</i>	<i>1992/93</i>	
Turnover	98,381	103,354	140,672	154,311	
Operating profit before interest and tax	7,999	10,642	15,675	18,113	
Interest payable	5,724	8,140	7,434	5,159	
Profit after interest	2,275	2,502	8,241	12,954	
Net operating assets	48,491	66,005	64,769	72,061	
Average net operating assets	48,491	57,248	65,387	68,415	
					<i>per cent</i>
Operating profit on turnover	8.1	10.3	11.1	11.7	
Operating profit on average net operating assets	16.5	18.6	24.0	26.5	

Source: Stagecoach.

Stagecoach North West and Ribble: history and financial performance

2.17. In July 1987 Stagecoach acquired Cumberland Motor Services as part of the NBC privatization. The price paid was £2.8 million. At that time Cumberland Motor Services operated 280 buses in the north and west of Cumbria. In April 1989 Stagecoach bought Ribble Motor Services, which operated 840 buses in south Cumbria, Lancashire and Manchester. Ribble Motor Services had earlier been sold to a management buy-out as part of the NBC privatization. Stagecoach paid £6.3 million for Ribble Motor Services, which was losing about £3 million per year. Its Manchester operations (apart from those based at Bolton) were sold to Drawlane plc and the south Cumbria operations transferred to Cumberland Motor Services.

2.18. In 1991 Cumberland Motor Services was renamed Stagecoach (North West) Ltd and the assets and liabilities of Ribble Motor Services were transferred into this company, which thus comprises the operations of Cumberland and Ribble. However, Cumberland and Ribble have continued to trade as separate operating divisions and profit centres.

2.19. The financial performance of Stagecoach North West since the inclusion of Ribble in 1991 is summarized in Table 2.2. In the last two years the company's profits have been in excess of 10 per cent on turnover. The lower returns on net assets in 1992/93 reflect the investment of £5.0 million in buildings, buses and equipment during the year. The investment has increased the assets employed in the business but is not yet fully reflected in operating profits, which are not significantly different from those in 1991/92. A summary of the profit and loss accounts and balance sheets is at Appendix 2.3.

TABLE 2.2 Stagecoach North West: financial summary

£'000

	Year ending 30 April	
	1991/92	1992/93
Turnover	32,607	33,249
Operating profit	3,535	3,629
Interest payable	<u>329</u>	<u>103</u>
Profit after interest	<u>3,206</u>	<u>3,526</u>
Net operating assets	19,730	24,153
Average net operating assets	17,480	21,942
	<i>per cent</i>	
Operating profit on turnover	10.8	10.9
Operating profit on average net operating assets	20.2	16.5

Source: Stagecoach.

2.20. The results of the Ribble division, which includes the Lancaster and Morecambe operations, are summarized in Table 2.3. The decline in turnover has occurred in both commercial revenue and tendered contracts, but with lower unit costs the profit has improved. Ribble's latest forecast for the year ending April 1994 is for turnover of £17.8 million and for profit before interest and group overheads of £2.7 million.

TABLE 2.3 Ribble: financial summary

£'000

	Year ending 30 April		
	1990/91	1991/92	1992/93
Turnover	19,907	18,554	18,408
Bus operational costs	<u>(17,307)</u>	<u>(15,648)</u>	<u>(14,761)</u>
Depot profit	2,600	2,906	3,647
Head Office and other costs	<u>(838)</u>	<u>(1,128)</u>	<u>(1,096)</u>
Operating profit before group overheads	<u>1,762</u>	<u>1,778</u>	<u>2,551</u>
	<i>per cent</i>		
Depot profit on turnover	13.1	15.7	19.8
Operating profit (before group overheads) on turnover	8.8	9.6	13.9

Source: Stagecoach.

2.21. Ribble has eight depots which are profit centres; seven, including Lancaster, are in Lancashire. The results of the Lancaster depot are summarized in Table 2.4. Commercial turnover has grown in the last three years, whereas the level of income from tendered contracts has remained unchanged at about £300,000. Head Office expenses, interest and exceptional costs are not charged to depots and so the returns on turnover should be compared with depot profits of 13.1, 15.7 and 19.8 per cent shown in Table 2.3. The comparison shows that the Lancaster depot achieves an above-average profit.

TABLE 2.4 Lancaster depot: profitability

	£'000		
	Year ending 30 April		
	1990/91	1991/92	1992/93
Turnover	2,932	3,187	3,233
Bus operational costs	(2,237)	(2,471)	(2,335)
Depot profit	<u>695</u>	<u>716</u>	<u>898</u>
	<i>per cent</i>		
Depot profit on turnover	23.7	22.5	27.8

Source: Stagecoach.

Lancaster City Transport: history and financial performance

2.22. LCT was formed as a limited company in 1986, to take over, under the 1985 Act (see paragraph 2.4), the local bus operations of Lancaster City Council. The share capital was wholly owned by Lancaster City Council. In 1988 LCT acquired Lonsdale Coaches Limited (Lonsdale), a small local coach operator. LCT sold the Lonsdale subsidiary company as a going concern for £179,000 in 1993.

2.23. The financial results of LCT and its subsidiary Lonsdale for the last five years are summarized in Table 2.5. The company made a loss in 1988/89, but has achieved small profits in subsequent years. It has had some success in reducing its net borrowings (borrowings less cash balances), which have fallen from £323,000 in 1989 to £150,000 in 1993. The results for the last five years are set out in more detail in Appendix 2.4.

2.24. The figures for 1992/93 in Table 2.5 and the balance sheet figures for that year in Appendix 2.4 are not directly comparable with earlier years which are at book value. The 1992/93 assets are at estimated realizable values (including £700,000 for the Heysham Road depot, compared with the previous year book value of £354,000). 1992/93 net assets have also been reduced by a provision of £344,000 for possible redundancy payments.

TABLE 2.5 LCT (including Lonsdale): summary of financial performance

	£'000				
	Year ending 31 March				
	1988/89	1989/90	1990/91	1991/92	1992/93
Turnover	2,745	2,634	2,499	2,599	2,513
Trading profit/(loss)	(127)	(59)	0	31	87
Profit on sale of buses and other fixed assets	25	85	29	66	16
Release of provisions for painting and maintenance	-	-	-	-	39
Operating profit/(loss)	(102)	26	29	97	142
Net assets	979	971	965	1,042	1,376
Net operating assets	1,303	1,215	1,226	1,193	1,871
Average net operating assets	1,303*	1,259	1,221	1,210	1,193†
	<i>per cent</i>				
Operating profit on turnover		1.0	1.2	3.7	5.7
Operating profit on average net operating assets		2.1	2.4	8.0	11.9

Source: LCT.

*31 March 1989 net assets.

†Net operating assets at the start of the year were £1,193,000 and have been used instead of the average for the year, to provide a figure on the same valuation basis as earlier years.

The sale of LCT's assets to Stagecoach

2.25. As stated in paragraph 2.5, the Government indicated in April 1992 that it intended to require local authorities to sell their bus companies. In June 1992 the Minister for Public Transport made a statement confirming the Government's intention. Not long after the City Council received enquiries from some potential bidders, including Stagecoach.

2.26. At the time Stagecoach acquired Ribble in 1989, Ribble owned two relatively small bus depots in the Lancaster area. These were Morecambe (South Avenue) and Lancaster (Skerton). The sizes and configuration of these and other Stagecoach North West depots are set out in Table 2.8. Ribble told us that, following its acquisition by Stagecoach, it had attempted to find a larger and more suitable site, which would enable it to construct a new depot for its Lancaster operations and achieve economies of scale. However, the search for a new depot had not been successful.

2.27. Stagecoach perceived the possible privatization of LCT as an opportunity for the Ribble division to increase its commercial bus services in the Lancaster and Morecambe area. However, the possibility of future growth was limited because of the size of the existing depots; moreover, the South Avenue depot was situated in a residential area where the level of noise generated by the buses at certain times of the day had become an environmental issue for local residents. As a first step the sites looked at in 1989 were once again examined with a view to constructing larger depot facilities to support the projected expansion of operations in the Lancaster area.

2.28. In September 1992 the Chairman of Stagecoach (the Chairman) wrote to the Town Clerk of Lancaster (the Town Clerk) about the possibility of Stagecoach acquiring an interest in LCT (according to Stagecoach similar letters went to other local authorities owning bus companies). The Chairman subsequently visited the Town Clerk to discuss the situation. There was a further meeting in November at which, according to the Town Clerk, the possible sale of LCT was considered in more detail, along with other subjects such as fares. However, Stagecoach told us that the possible sale of LCT had not been discussed; the meeting had been concerned with the 'recession buster' fares initiative (see paragraph 3.50).

2.29. In the wake of the Stagecoach and other approaches and following the Government's encouragement for sales of local authorities' assets to be completed before 31 December 1993, the City Council passed a resolution on 16 December 1992 to proceed with the sale of LCT. Coopers & Lybrand were appointed to prepare the sale documents, administer the bidding procedure and advise the City Council on the merits of the various bids.

2.30. The sale documents were prepared on the basis that the City Council was seeking to dispose of a going concern and would be selling the shares in LCT. The sale document noted that the City Council would consider offers for the group as a whole or separately for LCT and Lonsdale. The document also noted that the City Council's decision to sell was in response to the Government's policy statement that privatization of municipally-owned transport companies would be enforced.

2.31. The City Council's intention to sell was formally announced at the end of February 1993. The confidential sale documents were circulated to all major national and major local (north-west England) bus operators including Stagecoach. Indicative offers were to be submitted by 31 March 1993. Eight such offers were received. Final offers were invited from five of these companies. The bidders did not include Stagecoach. Originally the date for final offers was 22 May, but this was brought forward to 12 May.

2.32. Although it received the confidential sale documents, Stagecoach decided in March 1993 not to bid for the LCT business because of the possibility of a reference to the MMC. Stagecoach told us that it also decided that, instead of constructing a new depot, it was a commercially and financially attractive solution to purchase LCT's Heysham Road depot, which was of a size that could satisfy its need for larger premises. The purchase of Heysham Road depot would enable Ribble's smaller depots at South Avenue and Skerton to be sold.

2.33. On 7 April 1993 Stagecoach registered additional services to commence on 21 June on two routes then operated jointly with LCT. The new registrations, which Stagecoach considered would only

require seven vehicles, coincided with the LCT timings on the two routes, which, according to the former Managing Director of LCT (see paragraph 4.124), accounted for more than half of LCT's profit. Stagecoach told us that it could just accommodate these vehicles at its existing premises. It intended to operate these new services regardless of whether it eventually acquired the Heysham Road depot and who purchased LCT.

2.34. In a press notice released on 21 April 1993 Stagecoach announced that it would not bid for LCT. In the same press notice it also announced the registration of the additional services to commence on 21 June; it stated that once they were in place Ribble would consider substantial changes to fares and ticket arrangements. These measures were described in the press notice as a 'defensive position'. The notice also said that Stagecoach would defend its share vigorously if LCT was acquired by a company 'merely interested in sparking off bus wars to increase their market share'.

2.35. On 28 April, at the request of Stagecoach, the Town Clerk, accompanied by Coopers & Lybrand, met the Chairmen of Stagecoach group and of Stagecoach North West. The Town Clerk's record of the meeting showed that the Chairman of Stagecoach had explained why his company had decided not to bid for LCT and why the company had decided to register a number of new services on LCT's routes. According to the Town Clerk's record the Chairman had stated that Stagecoach was still anxious to secure all the commercial routes in the Lancaster area (though Stagecoach subsequently told us that its representatives did not recall saying this).

2.36. The Town Clerk's record also showed that Stagecoach proposed to purchase certain LCT assets, such as the Heysham Road depot and some of LCT's buses, and that Stagecoach's proposal included the conditions listed below. Stagecoach told us that the 'conditions' were simply items of discussion intended to be of assistance to the Town Clerk. Stagecoach firmly denied that they were in any sense proposals or conditions (see paragraphs 5.12 to 5.14).

Summary of conditions noted by the Town Clerk, with Stagecoach's comments to the MMC

(a) *Town Clerk's record:* LCT would deregister all its commercial routes from 21 June.

Stagecoach's comments: This arose from the requirement to give the Traffic Commissioner 42 days' notice; thus LCT would need to deregister if it ceased to operate its routes from that date (see also note (c) below).

(b) *Town Clerk's record:* Stagecoach would employ some 30 of LCT's staff. Any staff not engaged by Ribble or Lonsdale would be the responsibility of LCT, who would bear the redundancy costs.

Stagecoach's comments: At no time did Stagecoach indicate that it intended to agree to the transfer of any LCT staff. It was merely an estimate of the number of LCT drivers who might satisfy its recruitment standards. This item was discussed in the context of drawing the Town Clerk's attention to the options available to the City Council if it accepted the asset purchases approach of Stagecoach.

(c) *Town Clerk's record:* Stagecoach would take possession of the Heysham Road depot by no later than 28 June.

Stagecoach's comments: No comment made.

(d) *Town Clerk's record:* Stagecoach would give a written undertaking on the level of service to be offered by Stagecoach.

Stagecoach said that 'as a matter of fact, Stagecoach did not give an undertaking to the City Council as to the level of service it would operate throughout the area. Stagecoach did, however, indicate that, subject to commercial developments in the area, it would anticipate maintaining at least the level of service available at that time.'

- (e) *Town Clerk's record:* Stagecoach would soon be recruiting from LCT's existing staff the drivers required for its additional services.

Stagecoach's comments: This was no more than a reflection of its position at this time when it was recruiting staff to operate its newly-registered services and its confidence that some LCT drivers would seek jobs.

As a result of the 28 April meeting with Stagecoach the City Council decided to bring forward the closing date for final bids from 22 to 12 May.

2.37. Stagecoach submitted its bid on 4 May. The bid is shown in full in Appendix 2.5. It comprised £700,000 for the Heysham Road depot, £250,000 for 20 vehicles (double- and single-decker buses), assumption of the lease liabilities on three Optare Metrorider vehicles and £115,000, subject to verification, for the plant and equipment and stock at book value. The bid did not refer to the conditions noted in paragraph 2.36. Negotiations between Stagecoach and the City Council continued after 4 May and some revisions were made to the original offer.

2.38. The City Council had been advised that the likely sale price for LCT as a going concern was in the region of £850,000 to £1,250,000. The highest offer to purchase the shares of LCT was £899,000 from Blackpool Transport Services Limited (Blackpool), the municipally-owned bus operator in the Blackpool area. In addition an interest had been shown by MTL Trust Holdings Limited (MTL), a substantial bus operator based in Liverpool and operating services throughout Merseyside.

2.39. MTL had examined LCT when indicative bids were requested. It had considered a bid in the region of £500,000. Its financial advisers had cautioned that this would be too low and so MTL did not submit an indicative bid. In May the LCT trade unions asked MTL to consider making a joint bid with LCT employees, who would own a minority of the shares, and so at this late stage MTL became involved in the bidding process.

2.40. The City Council's Policy Committee met on 13 May, but was adjourned to 17 May to allow further consideration of the bids. Blackpool and MTL were asked to review their positions and submit revised offers to the meeting of 17 May, taking account of Stagecoach's decision to register services on the two most profitable LCT routes and of the contents of the 21 April press release by Stagecoach.

2.41. In its revised bid Blackpool reduced its offer to £809,000 (including Lonsdale). MTL asked for a further 14 days to come to a firm decision on its bid.

2.42. On 17 May the Policy Committee considered the position and compared the bid made by Blackpool and the MTL approach with the total amount expected to be realized from a voluntary liquidation of LCT, which would be achieved by selling to Stagecoach the assets described in Table 2.6 and a piecemeal sale of all other assets. The City Council felt that neither of the revised offers from Blackpool and MTL took fully into account the likely effect of Stagecoach's registration of LCT's routes. The City Council also believed that, if the bidding process were prolonged, Stagecoach might withdraw its offer. It was decided to accept the Stagecoach offer and wind up LCT. This was 'reluctantly' agreed by the Department of Transport (DOT) on 20 May 1993, after the Department had taken note of the City Council's advice that the sale to Stagecoach would provide an orderly run down of LCT and avert its possible collapse into bankruptcy.

2.43. The bid from Blackpool and the amounts realized from the sale to Stagecoach and other piecemeal realizations are compared in more detail in paragraphs 2.46 to 2.48.

2.44. The contract for Stagecoach to purchase from LCT the Heysham Road depot, 12 buses, plant, equipment and stores was signed on 4 June. Stagecoach also agreed to lease the depot to LCT until 22 August, thus enabling LCT to continue with the bus services until replaced by Stagecoach. On 11 July Stagecoach gave 42 days' notice for registration of a range of bus routes and services to commence on 23 August. These routes and services were similar to those operated by LCT, thus ensuring continuity of service to bus users in the Lancaster and Morecambe area. In accordance with the registrations, Stagecoach commenced the services on 23 August. LCT ceased trading on 22 August.

2.45. Stagecoach took over the depot at midnight on 22 August. It retained two of the three LCT telephone numbers, using one for passenger enquiries and one for emergency calls by drivers in the event of breakdowns. Gas and electricity meter readings were taken on or about 22 August, with Ribble billed for usage after that date. Stagecoach advertised for drivers in the local press and considered applications for employment from former LCT staff and from other candidates. It accepted 20 of the 38 applicants from the former LCT staff and 36 other candidates from a total of 101. LCT made redundancy payments to all its employees including those subsequently taken on by Stagecoach.

Comparison of bids

2.46. As we have noted in paragraph 2.41, the final bid which the City Council considered from Blackpool was £809,000. This comprised £700,000 for the share capital of LCT (including Lonsdale) and £108,000 represented by immediate repayment of a loan previously made by the Council to LCT. The sale of LCT in this manner would have resulted in the continuation of LCT employees' rights to redundancy payments based on their years' service with LCT, since the liability would have passed to Blackpool.

2.47. The final offer from Stagecoach amounted to £1,055,432. Details are set out in Table 2.6. In addition, if Stagecoach sells the Heysham Road depot at a profit within five years, the City Council is entitled to claw back a proportion of that profit. If the sale is within 12 months the claw-back is 100 per cent of the profit; this falls to 20 per cent in the fifth year.

TABLE 2.6 Assets purchased by Stagecoach

	£
Heysham Road depot	700,000
10 double-decker buses	200,000
2 Optare Metrorider midi-buses	93,000
Plant and equipment	23,298
Stock (spare parts, fuel)	<u>39,134</u>
	1,055,432

Source: Stagecoach.

2.48. Account also has to be taken of the sale of assets not purchased by Stagecoach and of liabilities incurred by LCT, principally in the form of redundancy payments. The City Council told us that the overall realizations under the winding-up process, from Stagecoach and other sources, are provisionally expected to amount to nearly £1.4 million, as set out in Table 2.7. The piecemeal realization has resulted in the Council receiving about £600,000 more than would have been achieved by a sale of LCT as a going concern to Blackpool.

TABLE 2.7 Net amount realized in voluntary liquidation of LCT

	£
Amounts to be received from Stagecoach (details in Table 2.6)	1,055,435
Separate sale of Lonsdale as a going concern	179,000
Redundancy payments	(297,500)*
Vehicles not purchased by Stagecoach (estimate—final realization may be higher)	600,000
Legal and liquidation costs	(100,000)
Trade creditors and other accounts payable and provision for contingencies less receipts from trade debtors	<u>(40,023)</u>
	1,396,912

Source: Lancaster City Council.

*The Council has considered enhancing the pension rights of 15 employees. This potential liability is not included in these figures.

The valuation of Heysham Road bus depot

2.49. In October 1992 LCT obtained a professional valuation of the Heysham Road depot. The existing use valuation was £450,000.

2.50. The Heysham Road depot was the only freehold property owned by LCT in 1992/93. It was included in the LCT 1992 balance sheet at its historic cost of £396,000, less accumulated depreciation of £42,000, to give a net book value of £354,000. For the 1993 balance sheet it was included at its expected realizable value of £700,000.

2.51. The site area of the Heysham Road depot is 1.76 acres. The bus depot buildings are divided into three workshop areas and an office block. The main workshop covers 25,000 square feet and has an internal tyre store, rolling road test facility, four pits, three hoists and fixtures for use in the maintenance and cleaning of buses. One pit is made available to the DOT to be used as a public service vehicle (PSV) testing station. The second workshop covers 15,000 square feet and has two pits and two small integral offices. The third workshop (6,000 square feet) includes a paint shop, fitters' and electricians' area, stores, and a mess room. There is also an office block which is a small modern building of 5,100 square feet. Also on the site are three 6,000 gallon fuel tanks, a large fixed ramp, and associated facilities.

2.52. Table 2.8 provides details of those Stagecoach North West bus depots which are about the same size as the Heysham Road depot. For convenience and comparison we have included the figures for Heysham Road and for the two Ribble depots in the Lancaster area, even though they are both rather smaller than the other depots listed. Table 2.8 also shows Stagecoach's assessment of the general condition of each site. The assessments vary from Lillyhall, 'excellent', to Lancaster (Skerton) and Heysham Road, both rated as 'average'.

TABLE 2.8 Stagecoach North West: major depots and all depots in the Lancaster area

Location	Valuation/ cost £'000	Site area Acres	Condition*	Office, workshop and covered parking Sq ft	Concrete area Sq ft	Aggregate of covered and concrete areas Sq ft
Lillyhall	1,211†	2.5	Excellent	21,133	86,000	107,133
Carlisle	700‡	2.86	Very good	54,482	67,062	121,544
Barrow	430‡	2.2	Average	41,321	48,351	89,672
Blackburn	325‡	1.1	Good	35,542	15,781	51,323
Bolton	300‡	1.0	Good	28,820	6,111	34,931
Preston	775‡	2.0	Good	80,148	All covered area	80,148
Morecambe (South Avenue)	135‡	0.74	Reasonable	15,585	12,620	28,205
Lancaster (Skerton)	225‡	0.62	Average	26,994	All covered area	26,994
Morecambe (Heysham Road)	700§	1.76	Average	49,090	29,700	78,790

Source: Stagecoach.

*Stagecoach description refers to the physical condition of the buildings, not their suitability as bus depots.

†Comprises: £360,000 paid by Stagecoach for the site and buildings and £851,000 cost to Stagecoach for conversion to a high-quality bus depot in 1992.

‡Existing use valuations made by Healey & Baker (International Real Estate Consultants) in January 1993.

§Price paid by Stagecoach.

2.53. The depot valuations in Table 2.8 are on the basis of open market value for existing use, except for Lillyhall (Cumbria) which is at cost. The existing use valuations were made by Healey & Baker (International Real Estate Consultants) on 9 January 1993 and included in the offer for sale issued at the time of Stagecoach's share offer in March 1993. The existing use value is normally lower than the open market value where there is a possibility of developing the property for other uses. For example, the existing use value of £135,000 attributed in Table 2.8 to Ribble's former South Avenue depot is expected to be exceeded if the property (now surplus to Stagecoach's needs) is sold for other uses.

2.54. The Lillyhall depot is a site on an industrial estate near Workington. The site was purchased by Stagecoach in 1992 for £360,000. Between its purchase and April 1993 Stagecoach spent £851,000 to create a modern bus depot, including workshops, and uncovered concrete areas for overnight parking of buses.

2.55. Stagecoach has told us that the £700,000 paid for Heysham Road reflected three factors:

- (a) the need to obtain in the Lancaster area a larger and more suitable bus depot, which would replace the two small and badly sited depots it owned;
- (b) the difficulties it had experienced in 1989, when attempting to find a suitable green-field site for a new depot; and
- (c) the potentially high cost of a new depot, the £1,251,000 cost of Lillyhall being an example.

Stagecoach estimated that it could build a depot of similar type to Lillyhall (covered maintenance facility and open air parking) for about £1.4 million.

2.56. Stagecoach also told us of another calculation which had affected its assessment of the price to be paid for Heysham Road. It estimated that it might take £400,000 to £500,000 to bring Heysham Road depot up to the same standard as Lillyhall. However, it also expected to realize about £575,000 from the sale of the Skerton and South Avenue depots. Thus the net cost of a modernized Heysham Road depot would be about £575,000, when calculated as £700,000 for the purchase of the depot, an estimated cost of £450,000 for new buildings, less £575,000 from sales of Skerton and South Avenue.

2.57. The depots listed in Table 2.8 differ greatly in size of site area and of buildings. To assist in making comparisons of the values attributed to each site, four ratios have been calculated in Table 2.9. The ratios represent an attempt to allow a broad comparison to be made between depots of different size and configuration. The valuations, and therefore the ratios, will also be affected by the condition of each depot, as noted in Table 2.8, and the position of the site. A town centre or suburban depot has the advantage of being near the start of the routes, but may be more susceptible to vandalism to buildings or buses parked overnight. In this respect Lillyhall may be considered a very favourable site, as it is close to Workington and Whitehaven and at least some of its routes, but located in an industrial estate, thus reducing the possibility of vandalism.

TABLE 2.9 Stagecoach North West: valuation ratios

Location	Site area	Covered area	Combined covered and concrete area	Proportion of site occupied by covered areas
	£'000 per acre (1)	£ per sq ft (2)	£ per sq ft (3)	% (4)
Lillyhall	484	57.30	11.30	19
Carlisle	244	12.85	5.76	43
Barrow	195	10.40	4.90	43
Blackburn	295	9.14	6.33	73
Bolton	300	10.41	8.59	66
Preston	387	9.66	9.67	100
Morecambe (South Avenue)	182	8.68	4.79	46
Lancaster (Skerton)	362	8.33	8.33	100
Morecambe (Heysham Road)	398*	14.89*	8.88*	64
Morecambe (Heysham Road)	255†	9.16†	5.71†	64

Source: Ratios calculated from figures in Table 2.8.

*Based on the £700,000 paid by Stagecoach.

†Based on the £450,000 valuation (see paragraph 2.49).

2.58. The ratios in Table 2.9 include alternative calculations for Heysham Road depot, based on the £700,000 paid by Stagecoach and the existing use valuation of £450,000. Lillyhall is included at cost, not existing use valuation, the basis used in the audited accounts of Stagecoach.

2.59. Column 2 of Table 2.9 (value per square foot of covered area) shows Lillyhall as by far the most expensive, followed by Heysham Road and Carlisle (whose condition is rated as very good in Table 2.8), with little difference among the remainder which range from £8.33 for Skerton to £10.41 for Bolton. The £14.89 ratio calculated on the £700,000 value for Heysham Road is therefore about 40 per cent higher than those for most other depots.

2.60. In ratios based on total site area (column 1), Heysham Road (valued at £700,000) comes out at £398 per acre. The sites with ratios just below Heysham Road are Preston and Skerton, but these two sites are totally covered, a factor which may be expected to push up valuations per total area. Ratios based on the combined covered and concrete areas are shown in column 3. Using this calculation, Preston and Lillyhall are more valuable than Heysham Road.

2.61. Stagecoach said that, when setting a price to bid for the Heysham Road depot, it had taken account of the possible cost of building a new depot, and in this context it referred to the £1.2 million price tag for Lillyhall. Stagecoach estimated that it could cost £400,000 to £500,000 to bring Heysham Road up to the standard of Lillyhall. The total outlay on Heysham Road would thus come to about £1,200,000, less the amounts realized from selling Skerton and South Avenue. The benefits of selling the existing depots would, however, accrue whether the choice was a green-field site or Heysham Road.

2.62. Table 2.9 suggests that at £700,000 the price paid for Heysham Road was high by comparison with the existing use valuations of other Stagecoach depots. This is also indicated by the £450,000 existing use valuation of the Heysham Road depot made for LCT in November 1992.

3 Local bus services in the reference area

The reference area

3.1. The reference area covers the counties of Lancashire and Cumbria, stretching from the boundary with Greater Manchester and Merseyside in the South to the Scottish border in the North. Lancashire is more densely populated than Cumbria, though both have their urban and rural areas. A map of the reference area is at Appendix 1.2.

TABLE 3.1 Population density and car availability by county and district

	Population density			Car availability
	Population '000	Area (hectare) '000	Density (head per hectare)	Percentage of households with car(s) available
Cumbria	489.4	681.675	0.7	63.1
Allerdale	96.7	125.054	0.8	62.1
Barrow-in-Furness	72.2	7.786	9.4	54.3
Carlisle	100.0	104.010	1.0	60.3
Copeland	71.4	74.149	1.0	60.1
Eden	46.4	215.645	0.2	74.0
South Lakeland	102.6	155.030	0.6	71.3
Lancashire	1,370.3	306.989	4.5	58.8
Blackburn	133.7	13.706	10.0	49.9
Blackpool	145.2	3.492	41.8	50.6
Burnley	89.5	11.070	8.2	50.1
Chorley	95.2	20.279	4.8	67.9
Fylde	70.6	16.553	4.3	67.8
Hyndburn	76.6	7.299	10.7	53.9
Lancaster	126.7	57.618	2.1	59.0
Pendle	83.0	16.936	5.0	54.5
Preston	127.0	14.229	8.9	52.0
Ribble Valley	51.3	58.447	0.9	73.4
Rossendale	64.4	13.800	4.8	55.7
South Ribble	100.2	11.296	9.0	71.8
West Lancashire	107.0	33.840	3.2	69.1
Wyre	100.0	28.424	3.6	66.0
UK	57,649.2	24,410.0	2.4	66.6

Source: OPCS County Monitors; 1991 Census.

3.2. In Cumbria the average density of population is 0.7 persons per hectare compared with 4.5 for Lancashire. The provisional figure from the 1991 Census for the UK is 2.4. Population density by district is shown in Table 3.1. Barrow-in-Furness is the most densely populated district of Cumbria (9.4 persons per hectare) and Eden the least densely populated (0.2). In Lancashire, Blackpool is the most densely populated district (41.8 persons per hectare) and Ribble Valley the least densely populated (0.9). The Lancaster district at 2.1 is below the average for the UK.

3.3. Table 3.1 also indicates that in both Cumbria and Lancashire the percentage of households with at least one car available is below the average for the UK of 66.6. In Cumbria it is 63.1 and in Lancashire the average is 58.8. Lancaster is very close to the Lancashire average, at 59.0.

3.4. Overall, in economic and social terms, the reference area is very diverse, both within and between counties. In this chapter the main focus is on the urban areas of Lancaster and Morecambe that form part of the Lancaster district.

The supply of bus services

Lancashire and Cumbria

3.5. Table 3.2 shows estimates of the total number of bus miles operated in the reference area in June 1993. The estimates are based upon our own survey of bus companies operating in the reference area. We asked for total registered bus miles for each operator and the figures therefore take account of both route length and service frequency.

TABLE 3.2 Registered bus miles in Cumbria and Lancashire, June 1993

Area	'000	%
Cumbria	782	24
Lancashire	<u>2,540</u>	<u>76</u>
The reference area	3,322	100

Source: MMC survey 1993.

3.6. In the reference area, registered services provided an estimated 3.3 million bus miles in June 1993, of which Lancaster district accounted for about 250,000.

3.7. Table 3.3 shows the market shares of the main operators in the total reference area. Size is measured by bus miles.

TABLE 3.3 Market shares in the reference area, June 1993

Operator	%
Stagecoach North West (Cumberland)	23
Stagecoach North West (Ribblesdale)	23
	} 46
Blackpool	9
Burnley and Pendle Transport Company Limited	7
Blackburn Borough Transport Ltd	7
Fylde Borough Transport Ltd	6
LCT	4
Others	<u>21</u>
Total	100

Source: MMC survey 1993.

3.8. As the table shows, Stagecoach North West's share of services in the total reference area in June 1993 was 46 per cent, far in excess of the shares of the other operators—Blackpool, Burnley and Pendle Transport Company Limited (Burnley & Pendle), Blackburn Borough Transport Ltd (Blackburn Transport), Fylde Borough Transport Ltd (Fylde Transport) and LCT, all of them municipally owned.

3.9. Table 3.4 shows the market shares, again measured in bus miles, in some parts of the reference area in June 1993. Stagecoach North West's market share varied from about 95 per cent in Cumbria to only 29 per cent in Lancashire excluding the district of Lancaster (and 30 per cent in Lancashire taken as a whole). In both counties Stagecoach North West had a larger share than any other operator.

TABLE 3.4 Market shares in parts of the reference area, June 1993

Operator	<i>per cent</i>						Reference area
	Lancaster	Elsewhere in Lancashire	Lancashire total	South Lakeland	Elsewhere in Cumbria	Cumbria total	
Blackburn Transport	-	10	9	-	-	-	7
Blackpool	-	13	12	-	-	-	9
Burnley & Pendle	-	10	9	-	-	-	7
Fylde Transport	-	8	8	-	-	-	6
LCT	47	*	5	*	-	*	4
Stagecoach North West (Ribble)	42	29	30	-	-	-	23
Stagecoach North West (Cumberland)	5	-	*	96	95	95	23
Others	6	30	27	4	5	5	21
Total	100	100	100	100	100	100	100

Source: MMC survey.

*Less than 1 per cent.

3.10. Although Stagecoach North West has, on the basis of registered bus mileage, a comparatively high market share for commercial bus services in Lancashire, Stagecoach told us that Ribble provided a smaller percentage of the total number of commercial bus services used in Lancashire. Further, because Ribble tended to serve rural areas rather than urban, it carried, according to Stagecoach, fewer passengers per mile than most other operators.

3.11. The operation of the former LCT services (except for those LCT tendered services now run by other operators) is estimated to have increased Stagecoach North West's share of registered bus miles in the reference area as a whole from about 46 per cent to about 49 per cent, and in Lancashire from about 30 per cent to about 34 per cent. Stagecoach North West's share of commercial services was somewhat higher than that of bus mileage as a whole. On the figures available to us, it is estimated that Stagecoach North West's share of commercial services rose from about 48 per cent to about 51 per cent in the reference area as a whole; in Lancashire alone Stagecoach North West's share of commercial services is estimated to have increased from about 31 per cent to about 35 per cent.

Lancaster and Morecambe

3.12. Commercial bus routes in Lancaster and Morecambe form a network of interlocking services, dictated to a large extent by the geography of the bay and its hinterland. The hub of the system is Lancaster bus station with 31 services terminating there and an additional 23 services also calling there. Routes run south to Lancaster University and thereafter to Garstang, to Preston and Blackpool; east to Williamson Park and Lancaster Moor Hospital and Hornby; north to Holton and Carnforth; and west round the bay to Morecambe, Heysham and on to Middleton and Overton.

3.13. Prior to deregulation in 1986, Lancaster and Morecambe's bus services were provided by LCT, a municipal operator, and Ribble Motor Services, an NBC subsidiary. The two companies offered integrated services embodied in a formal operating agreement between Ribble Motor Services, the City Council and LCT on the basis of a 55:45 share of bus miles in Ribble Motor Services' favour.

3.14. In the period immediately before deregulation, LCT received legal advice to the effect that the two companies would not be able to operate together after deregulation. In the event they provided separately services which previously had been joint, and also introduced new services. Ribble Motor Services launched a number of minibus services on urban routes. LCT looked beyond its own area and introduced services both in Ribble Motor Services' traditional operating area (including services to Preston and Blackpool) and to Humberside; it also established an outstation in Kendal.

3.15. As described in paragraphs 2.17 and 2.18, a management buy-out of Ribble Motor Services was followed by its sale to Stagecoach in April 1989, and in 1991 it became the Ribble Buses (Ribble) division of Stagecoach North West. Cumberland had been acquired by Stagecoach in 1987.

3.16. Both for Ribble Motor Services and for LCT the provision of competing services in and around Lancaster and Morecambe proved unprofitable and in 1989 the two companies agreed to co-ordinate their commercial services, adopting a single set of timetables, though these distinguished between the services of each operator. From the passengers' perspective, had they ever considered these services as anything other than one integrated network, the division of services between Ribble and LCT would have appeared somewhat unsystematic.¹

3.17. Up to August 1993 LCT continued to operate a combination of commercial and tendered services in the urban areas of Lancaster and Morecambe and in the surrounding area. Commercial services represented around 70 per cent of its mileage. Almost all LCT's routes were in the district of Lancaster (which includes Lancaster, Morecambe, Carnforth and Heysham) although a few services operated outside, eg to Kirkby Lonsdale in Cumbria, to Settle in the Craven district of North Yorkshire, and to Todmorden and Halifax in West Yorkshire.

3.18. As shown in Table 3.4, LCT and Stagecoach North West each had a 47 per cent share of services in the district of Lancaster in June 1993. The figures include both commercial and tendered services. Under the timetable agreement mentioned in paragraph 3.16 commercial services were divided approximately on a 60:40 basis in favour of Ribble. LCT's higher share of total services reflected its greater involvement in tendered services.

3.19. On 23 August following the demise of LCT, the services (measured in bus miles) operated by Stagecoach North West included some 80 per cent of the services previously operated by LCT, the remaining LCT services being tendered services awarded to other operators. The share of bus miles operated by Stagecoach North West on both commercial and tendered services in the district of Lancaster increased from 47 per cent to about 86 per cent.

3.20. The only other commercial bus services in Lancaster and Morecambe, apart from LCT's and Ribble's, are service 206 in Morecambe operated by Charterbus with 16 single journeys a week, and very limited commercial services currently operated by Heysham Travel, associated with services operated under contract to Lancashire County Council (LCC).

Competition

3.21. Competition may be considered in the context of each of three different geographic areas, which are in ascending order of size:

- (a) the Lancaster and Morecambe urban area in which LCT and Stagecoach North West operated commercial and tendered bus services;
- (b) the wider network area comprising the Lancaster and Morecambe urban areas, and the rural hinterland in which both LCT and Stagecoach North West operated commercial and tendered bus services commencing or ending in Lancaster; and
- (c) the reference area, ie Lancashire and Cumbria.

(a) The Lancaster and Morecambe area

Commercial bus services

3.22. Until August 1993, LCT and Stagecoach North West provided almost all of the urban commercial bus services in the Lancaster and Morecambe area. The other existing competitors had less than 1 per cent of the market.

¹For example, on routes 271 and 274 from Morecambe to Lancaster and the University, services after 0900 were as follows: 0900, 0915, 0930, 0944 Ribble; 0954, 1004, LCT; 1014 Ribble; 1024 LCT; 1034 Ribble; 1044 LCT; 1054, 1104, 1114, 1124 Ribble; 1134 LCT etc.

3.23. As mentioned in paragraph 3.16, LCT and Ribble Motor Services had entered into an agreement in 1989 to provide combined services that would achieve a wide spread of departure times and use the same route numbers, stopping points and network tickets. The split of the market between the two operators varied according to the season but Ribble had a somewhat higher share of between 52 and 60 per cent of the bus mileage operated.

3.24. The 1989 agreement provided that each company would accept the other's return and prepaid tickets (except for Stagecoach North West's Explorer ticket range). LCT and Stagecoach North West generally charged the same cash fares, though each operator was free to set its own. LCT also substantially reduced its services outside Lancaster and Morecambe, and closed its Kendal outstation, but continued to operate services to Kirkby Lonsdale, Leeds, Doncaster and Halifax.

Tendered services

3.25. LCT and Stagecoach North West both provided tendered bus services in the Lancaster and Morecambe area but there were a number of other operators including Heysham Travel, Shaw Hadwin Coaches, Lonsdale Travel, Charterbus, Kirkby Lonsdale Mini Coaches, and Watson's Coaches. Tendered services account for less than one-quarter of bus miles in the Lancaster and Morecambe area. In terms of the gross value of contracts, Stagecoach North West had about a quarter of the total and LCT almost one-half.

3.26. The number of operators competing for tendered services in the Lancaster and Morecambe tendering area has been growing in recent years, though it is just below the county average. In the spring 1993 tendering round, the average number of bids received per contract tendered had been 3.8; but Stagecoach expected that this figure would show an increase when the information became available on the extra round required to replace LCT's contracted operations.

Competition with cars, taxis and rail

3.27. Approximately two-thirds of householders in the Lancaster district own a car. Stagecoach told us that it hoped to attract some car users on to its buses. One measure which will assist it is LCC's development of public transport priority schemes (see paragraph 3.41).

3.28. Stagecoach told us that taxis competed strongly with buses within the Lancaster and Morecambe area. It noted that, although charges were made for the use of the city bus station, the City Council did not charge for taxi stands. At present 95 taxis operated in the area. Stagecoach said that the cost for three or four persons sharing a taxi was not very different from the sum of individual bus fares on some of its routes.

3.29. Stagecoach argued that, on a number of routes, rail services provided by British Rail were to some degree competitive with bus services provided by Stagecoach North West. There was heavy traffic congestion in the Lancaster and Morecambe area and this gave trains a speed advantage at many times of the day. There was a relatively high number of railway stations which allowed passengers easy access to the city centres and consideration was being given to the construction of two extra stations.

(b) The network area

3.30. The network area is defined by Stagecoach as the commercial and tendered routes previously operated by LCT and Stagecoach North West which commenced or terminated in Lancaster. People living in the surrounding towns and villages may work, attend schools and colleges, and use the shops or market in Lancaster and Morecambe. In general, the 'network area' extends 20 miles from the Lancaster City Centre, only three routes extending beyond this distance. Until LCT's demise, two of these routes were operated by LCT and one by Cumberland.

3.31. While most of the network area is in Lancashire, it extends to a small degree into Cumbria and North Yorkshire, though whether measured by population, by area, or by bus mileage (in relation to the total for Stagecoach North West) the extension into Cumbria is less than 1 per cent of the total.

3.32. Stagecoach also told us that competition to existing operators could generally be mounted by a new entrant within a radius of approximately one hour's drive from its base. In the context of north Lancashire the main determinant of the implied geographical area would be the M6, which provided fast access from both north and south. On the east/west axis, the area of potential entry was restricted by the sea to the west and by the Pennines and Yorkshire Dales to the east. As an example of entry Stagecoach instanced AOR Travel, which had entered the tendered market from its base in Bamber Bridge, some 25 miles away from Lancaster. Stagecoach told us that other potential new entrants were looking at opportunities in the market.

Commercial bus services

3.33. There are three basic corridors for commercial operations radiating out from Lancaster into the network area, and they are served by the following bus services:

- (a) two services going south along the A6 to the town of Garstang, then splitting to Preston and Blackpool; the entire service is provided by the Lancaster and Morecambe area depots of Ribble;
- (b) a number of services running northwards along the A6 to the Carnforth area, Kendal and the Central Lakes; the services are shared by Cumberland from its Kendal base, and Ribble from its Lancaster and Morecambe depots, though in the past some were provided by LCT; the section of route between Lancaster and Carnforth was covered by the 1989 agreement; and
- (c) a range of services running eastwards along the A683 to service a number of rural communities along the Lune Valley; under the 1989 agreement, buses were previously provided by both LCT and Ribble.

Tendered services

3.34. The main tendering authority is LCC, but some services are tendered in combination with North Yorkshire County Council. A number of the services provide frequency infilling for commercial routes and many relate to evening and Sunday operations on the commercial route network. In addition to tendered services in Lancaster and Morecambe there are three wholly tendered rural routes radiating from Lancaster, though none were or are operated by Ribble.

(c) The reference area

3.35. Stagecoach has pointed to the different characteristics of bus operations in the two counties of Cumbria and Lancashire. In Cumbria the services are generally either urban or inter-urban and rural, whereas in Lancashire a much denser range of services is provided that cannot be divided in this way.

Lancashire: commercial services

3.36. With the demise of LCT there are 26 operators providing commercial bus services. Stagecoach has told us that, since Ribble serves many rural areas, its buses operate over longer distances but carry fewer passengers per mile compared with the average Lancashire bus operator. It acknowledges that it has a large market share on the basis of bus mileage or number of vehicles but says that it provides only a small percentage of the total number of bus services in the county. It said that most passenger journeys were from residential parts of urban areas into the town centre or to and from work and were provided by bus operators other than Ribble.

3.37. Of the 26 operators of commercial services, six are owned by municipal councils, one was municipally owned until 1993, one is owned by a Passenger Transport Authority (PTA), two are former PTA companies which are now employee owned, and two, apart from Stagecoach North West, are private companies that were formerly NBC subsidiaries. The other 13 are small-scale private operators.

3.38. Ribble is the dominant commercial operator in three of the 17 urban areas of Lancashire. Of these three, the largest is Lancaster and Morecambe; the others are Chorley and Clitheroe.

3.39. Since deregulation a number of new operators have established services in competition with Ribble and—to a lesser extent, Stagecoach told us—with the municipal operators. Since 1989 there had been 16 new registrations competing with Ribble's services in Lancashire, an average of approximately one every three months. Stagecoach added that Ribble had responded to the competition provided by some of these new entrants; some of these had in turn, for a variety of reasons, subsequently much reduced their services, whilst others had not. These events had on occasion triggered complaints to the Office of Fair Trading (OFT), but in no case had Ribble been found to engage in anti-competitive practices, and it did not knowingly do so.

Lancashire: tendered services

3.40. Tendered services are provided by 54 operators including Ribble (but not Cumberland). A further 46 operators are contracted to provide home to school transport. Ribble's share of tendered services has been falling. In spring 1993 the average number of bids received per contract tendered was 4.2.

Lancashire: competition with cars and trains

3.41. LCC has set up an environment forum which has produced a Lancashire environmental action plan. Among its proposals it has recommended the widespread adoption of public transport priority measures, and this has now been adopted as County Council policy. Stagecoach expects that this will be one factor that will attract car users to switch to buses, particularly for the journey to work and for town centre trips.

3.42. LCC has a policy of encouraging local rail travel by making capital grants for improvements to station infrastructure. It also has an approved policy of reopening some stations and lines. Stagecoach told us that the opening of some 12 stations would be publicly funded whereas parallel commercial bus services received no comparable assistance.

Cumbria: commercial and tendered services

3.43. Stagecoach told us that the area between Lancaster and the Cumbrian border required few bus services and was unlikely therefore to provide the basis for competition in the Lancaster area. Cumberland accounts for at least 95 per cent of total registered bus miles in Cumbria and operates the vast majority of Cumbria's commercial bus services. Cumbria County Council (CCC) has one of the smallest budgets in the UK for the provision of public transport services. Most of its input is in the statutory provision of school bus services, which are also often registered as local services and available to the public. We were told that there were 51 operators of tendered services, including Cumberland.

3.44. Ribble Motor Services purchased the assets of the former municipal operator in Barrow shortly after it was itself purchased by Stagecoach in 1989. Subsequently, Stagecoach through Cumberland also acquired Yeowart's, an independent operator in the Whitehaven area; and another independent operator, Brownrigg, significantly reduced its services as a result of what has been

described in a history of Stagecoach¹ as 'aggressive competition' from Stagecoach. Stagecoach also gave us a number of instances of recent entry into the market in Cumbria. It had taken action, such as service changes or fare reductions, in response to several of these new entrants, some of whom, for a variety of reasons, had subsequently ceased operation.

Cumbria: competition with cars, taxis and trains

3.45. Given the low population density and the above average percentage of car ownership in rural areas (see Table 3.1), it is more difficult for buses to compete with cars in Cumbria than in more urbanized areas. Stagecoach told us that Cumberland's bus services in major towns had been facing competition for local journeys from taxis, whose number had been increasing, and that this had been particularly so in Whitehaven. CCC had been making capital grants available for railway station improvements but had not provided assistance for bus terminal infrastructure. Stagecoach on the other hand had upgraded three bus stations (out of a total of five) which it owned or leased in the county.

The quality of bus services

3.46. The quality of bus services, and in particular their frequency and reliability, are important to bus passengers. Stagecoach told us that both Ribble and Cumberland monitored the reliability of both tendered and commercial services by several methods including recording details of lost mileage,² and extra or delayed mileage. They also had systems for monitoring aspects of service quality. For example, cleaning was undertaken according to a set time-scale; and daily vehicle despatch records required a supervisor's signature in order to ensure that vehicle and driver presentation was up to standard.

3.47. Ribble told us that it had monitored its performance closely even prior to the launch by the Bus and Coach Council in 1992 of a code of practice on handling complaints. Ribble's depots in Lancaster and Morecambe had consistently received the lowest number of complaints, relative to the size of their operations, within Ribble. Cumberland had a parallel monitoring system to Ribble's. In addition Ribble and Cumberland made substantial and increasing use of surveys of passenger movements and of opinion surveys.

Fares and ticketing

3.48. Stagecoach told us that in the past both Ribble and Cumberland had used standard fare scales based on mileage; more than one such scale would usually exist (eg rural and urban). Until 1986 this had been industry practice, often required for separate reasons by both the Traffic Commissioners and the local authority that provided financial support. From about 1989 onwards Stagecoach North West had started to move to market pricing of routes. Stagecoach stated that its fares reflected a route-by-route pricing approach, having regard to prevailing market conditions. It was also moving to differential pricing between services on the same route reflecting differences in quality of service.

3.49. Since 1989 there have been a number of fare reductions in the reference area, though a few fares have risen. In 1991 Stagecoach North West elected to freeze fares for an indefinite period. The policy was first implemented in Cumbria in January 1991 and later in the year in Lancashire. According to Stagecoach, in the Lancaster area the last increase in fares on a Ribble bus had been in November 1990; the longer period without fare increases reflected the fact that the level of fares in Lancaster and Morecambe had been relatively high.

¹Stagecoach and its Subsidiaries, Autabus Review Publications Ltd, 1988.

²Registered passenger mileage which was not run.

3.50. Stagecoach told us that during this period Ribble had refused requests by LCT to raise fares in line with inflation. In January and September 1992 there were reductions in fares on services to and from the University, to attract passengers and in response to proposals for the development of alternative transport services to the University. In October 1992, at Ribble's initiative, the two companies undertook experimental off-peak fare reductions. After one month LCT restored its fares to the previous level, but Ribble continued the experiment. In response, LCT withdrew from the arrangements for interchangeable tickets and as a result Ribble was forced, after a further two weeks, to revert to the previous fare levels. We were told by LCT that the reduction in fares had had a significant impact on revenue, but Stagecoach stated that the impact on revenue had been sufficiently small for it to have maintained the lower fares, and still have achieved adequate profitability. Stagecoach said that there had subsequently been cuts in fares on University services. Since 23 August 1993 Ribble has reduced a number of fares in the Lancaster and Morecambe area.

Trend of fares in Lancashire and Cumbria

3.51. Stagecoach provided a set of indices showing the way in which fares charged by different operators increased in the period from mid-1989 to mid-1992. This evidence shows that, while the RPI rose by 21 per cent, Ribble's fares in Lancaster rose by 8 per cent, Cumberland's by 13 per cent, and Ribble's fares across all its services by 23 per cent. Except for the fares of Blackpool, which rose by 16 per cent, all the other major operators' fares showed increases above Ribble's, ranging from 26 to 58 per cent.

Multi-operator ticketing schemes

3.52. Until 23 August 1993 Ribble, Cumberland and LCT participated in a multi-operator ticket scheme, which marketed three types of ticket:

- one-day tickets, allowing unlimited travel for one day on all Ribble, Cumberland and LCT services within the Lancaster City Council area, which covers both the Lancaster and Morecambe urban area and the rural hinterland;
- tickets valid for either five days, eight days, one month or three months, to be purchased in advance, allowing unlimited travel on Ribble, Cumberland and LCT services within the Lancaster and Morecambe urban area; and
- tickets valid for either five days, eight days, one month or three months allowing unlimited travel on all Ribble, Cumberland and LCT services within the Lancaster City Council area.

The scheme ceased with the demise of LCT, but Ribble has maintained this range of tickets.

Concessionary fares

3.53. Stagecoach told us that its companies operated the following concessionary fare schemes without support from local authorities:

Ribble:

- OAP daily and weekly Explorer tickets;
- Summer Explorer tickets for the registered unemployed; and
- children's reduced fares, ranging from 50 to 65 per cent of an adult fare.

Cumberland:

- children's reduced fares, ranging from 70 to 75 per cent of an adult fare; and

— reduced fares for senior citizens and disabled and blind persons in the Barrow-in-Furness area only.

3.54. Stagecoach added that within the reference area it also participated in concessionary fare schemes operated by the following local authorities:

Ribble: Lancashire County Council (for District Councils in Lancashire)

Cumberland: Carlisle City Council
Allerdale District Council
Copeland District Council
South Lakeland District Council
Barrow Borough Council

In the case of the last four councils listed the concession takes the form of a transport token which has a set value, can only be used on certain types of journey and is not transferable.

Information provision and marketing

3.55. In Cumbria, Cumberland produces a range of timetable leaflets for each of its local bus services, whether commercial or tendered. From March 1993, this has been supplemented by a telephone enquiry centre which is manned seven days a week and well beyond normal office hours. Special attention is paid to the marketing of seasonal services for the Lakes area. Cumberland provides all bus stop flags and timetable information for its services throughout the county. It also advertises its services on local radio stations.

3.56. In Lancashire, Ribble faces different circumstances because of LCC's policy to provide passenger information itself. Operators are not allowed by LCC to advise passengers of their services at bus stops or shelters, in order to ensure that smaller operators are not disadvantaged. Stagecoach said that, in its view, the policy tends to militate against the more innovative operators. Ribble had therefore decided to move away from the production of conventional publicity towards easy-to-read leaflets for particular areas and the use of local radio advertising.

3.57. Stagecoach stated that both Ribble and Cumberland were improving on-bus passenger information by better destination indicators. For example, Ribble was replacing conventional destination and number rolls in older buses with high-visibility fluorescent ones. The two divisions were also paying greater attention to the information needs of passengers, both on the vehicle and at the bus stop.

Barriers to entry

3.58. One of the major objectives of deregulation was the removal of barriers that might prevent or limit the entry of new competitors into the bus industry. This was done primarily by abolishing road service licensing throughout Great Britain (except London). However, a number of factors have been suggested that may still act as barriers to entry into bus markets. These are discussed below.

Cost of buses

3.59. New buses are expensive—a double-decker will cost in the region of £100,000—but second-hand vehicles are readily available at a fraction of the cost of new vehicles. Stagecoach told us that most new operators entering the market will be able to, and do, purchase older vehicles for a small fraction of the cost of new vehicles. Vehicles can also be leased in order to reduce initial investment costs.

Depot and maintenance facilities

3.60. Stagecoach told us that depot and maintenance facilities did not need to be large or comprehensive. Given that there were competent garages to which maintenance could be contracted out, all that a new operator required was space for parking vehicles, and this was usually easily available and inexpensive. In many cases owner drivers simply parked their vehicle in the street. However, as an operation grew it would be desirable, for reasons of economy and security, to obtain a site and buildings. A depot facility would allow the larger operator to store vehicles safely and to install maintenance and administrative facilities. In practice, all major operators would need to have their own depot, and it was unlikely that the Traffic Commissioners would consider allowing them to operate services without such a facility.

Access to bus stations

3.61. Access to bus stations can be important. Stagecoach told us that, as a general rule, bus station pick-up and set-down points were available to all operators on an equal basis. This was because such facilities were either owned by local authorities, which would have a policy of granting equal access to all registered bus operators, or by major bus operators themselves, who also generally adopted an equal access policy, mindful of the action taken by the competition authorities in the Southern Vectis¹ and Mid-Kent² cases.

3.62. It is Stagecoach North West's policy to offer equal access to other operators at its own bus stations in the reference area (at Chorley, Whitehaven, Workington and Carlisle), subject to payment of the requisite fee. All other bus stations in the reference area, including Lancaster, are owned by local councils, and access is given to all registered bus operators upon payment of a departure fee or annual stand rental.

Passenger information

3.63. Existing operators have the advantage that passengers already know of their services and can thus form a favourable view of their service reliability. By contrast a new entrant may need to incur additional costs of information provision and advertising to promote its services and establish a reputation for reliability. This need for information is less on routes with a high-frequency service, as operators' experience suggests that passengers will board the first bus which arrives (see also paragraph 5.33). As new entrants generally use existing corridors, at least in part, they may be able to concentrate information provision on how their own services vary from existing services and thus reduce the initial outlay. Stagecoach has told us that, where an established route is involved, a new operator requires very little advertising or promotional material as it is enough for its bus to arrive at the stop immediately before the existing operator's bus in order to pick up business very quickly.

3.64. Stagecoach contrasted the differences in approach of LCC and CCC towards the provision of passenger information. In Lancashire, the County Council had a policy of itself providing passenger information, such as timetables: operators were not permitted to provide their own information at bus stops and bus stations. New operators did not therefore need to make passenger information available, and this removed the advantage which existing operators might otherwise enjoy. In Cumbria, on the other hand, operators were free to provide such information to passengers as they deemed necessary. The cost of doing this did not, however, need to be great.

¹*The Southern Vectis Omnibus Company Limited: refusal to allow access to Newport Bus Station, Isle of Wight*, published 17 February 1988. A report by the Director General of Fair Trading on an investigation under section 3 of the Competition Act 1980.

²*The supply of bus services in Mid and West Kent*, Cm 2309, August 1993.

Return and other forms of prepaid tickets

3.65. The availability of season tickets and return fares may provide a barrier to entry depending on the travel patterns of local bus passengers. For example, an existing large-scale operator may offer a season ticket which is available on all its services but not on those of competing operators. If a significant number of passengers want to travel on more than one service, this may form a barrier to entry to a new operator intending to run a few routes or to an operator that is unable to match the frequency of the incumbent.

3.66. Stagecoach claimed that in practice an incumbent operator enjoyed relatively little competitive advantage over a new entrant derived from prepaid tickets. This was especially the case for standard returns and other one-day tickets since they could only tie the passenger to the incumbent operator to a very limited degree. Moreover, the longer-term return tickets frequently represented only a relatively small percentage of total revenue generated. Stagecoach indicated from a recent sample that in the reference area the percentages of total bus income accounted for by prepurchase ticketing were 1.44 per cent in Lancashire, 4.49 per cent in Lancaster, and 4.23 per cent in Cumbria. Stagecoach asserted that, more generally, a newcomer was free to introduce his own prepaid tickets ranging from ordinary return tickets to season tickets. A prudent operator seeking to become established in the market as a long-term supplier of bus services would almost certainly use prepaid tickets initially to challenge the incumbent's position in the market.

Concessionary fare schemes

3.67. The 1985 Act requires that local authority concessionary fare schemes are open to all operators. Such schemes may, however, place a new operator at a disadvantage if they make it difficult for the entrant to estimate revenue from concessionary fares, or to ensure that the operator is fairly reimbursed, and that its revenue base is not eroded. We have received no evidence indicating that concessionary fare schemes operate as a barrier to entry in the reference area.

The threat of retaliation

3.68. A number of operators we spoke to referred to the threat of retaliation by an existing operator as a strong factor deterring new entry into a local bus market. The perceived financial strength of an incumbent operator, and its apparent commitment to a particular area, give an indication of its ability and willingness to fight to protect its market position. In addition, a large incumbent operator with an extensive network may be able to use profits from routes on which it faces little or no competition to finance retaliation against a new entrant.

3.69. Stagecoach argued that an efficient and determined operator need not be deterred by the perceived financial strength of the incumbent and the threat of retaliation because, depending on the circumstances, the incumbent might have very few advantages; it pointed to the number of new entrants (see paragraph 3.39). It noted that the entry path for the newcomer had been smoothed by deregulation. A new operator that had come into the market initially by winning a contract for a tendered service could easily register for a commercial service with little financial risk. The tendered contract would cover the costs of running the bus, and any additional patronage the newcomer attracted through operating a commercial route would be a bonus. There was virtually no brand loyalty in the bus market and passengers would take the first available bus for their desired destinations. Stagecoach provided evidence of this by conducting the experiment described in paragraph 5.33. By timing a bus to arrive a few minutes before an incumbent operator's vehicle the new entrant might be able, at no risk to himself, to take all or virtually all the incumbent's business.

Barriers to tendering

3.70. An existing operator of commercial services may be at an advantage when bidding for tendered contracts in its own area of operation compared with operators from other areas, as it may be able to run the tendered services as an extension of its existing network at little additional cost. The greater ability of the local operator to forecast revenue accurately in its own area may also give

it an advantage in winning contracts. Moreover, a large operator may have a cost advantage in bidding for tendered services through its ability to bid for a number of contracts as part of a package.

3.71. Existing operators may also have an information advantage over new entrants in winning contracts. Stagecoach told us, however, that the tender documents issued by the local authority provided enough initial basic information for a newcomer as well as for an existing operator.

4 Views of other parties

Department of Transport

4.1. The DOT told us that its policy was to support and foster competition within the bus industry. The DOT was broadly content with the way that competition was working. It was aware that this was leading to the emergence of a number of strong regionally dominant groups and local bus monopolies. This was not a major concern, though the DOT was happy that the competition authorities were watching developments closely.

4.2. The DOT explained that the City Council had first asked for advice about the sale of LCT in April and May 1992. From the outset it had been clear that Stagecoach could be a likely bidder. Ministers at the DOT had expressed dissatisfaction and said that they would be unhappy if LCT was sold to Stagecoach and would need to be persuaded that this was in everybody's interests.

4.3. The DOT explained that for several years, immediately after deregulation, management/employee buy-outs had had a privileged position. Ministers had been prepared to agree to single tender, negotiated-price sales, subject to certification of the price by independent financial advisers. Open market sales had always been preferred by Ministers but, with acceptance of the criticism by the Public Accounts Committee (over the sale of the Rover group to British Aerospace), sales to which consent in principle had not already been given had to be by open competitive tender. However, Ministers were happy to see owning authorities give a 5 per cent preference to buy-outs following a competitive tender. Ministers continued to be content to see owning authorities exclude a dominant operator, if there was one, from the tendering process. In this instance the DOT had advised the City Council that Stagecoach could be excluded from the bidding; indeed it would have needed much persuading before consenting to a successful Stagecoach bid, and even that would have been without prejudice to the actions of the competition authorities.

4.4. In February 1993 the City Council invited indicative offers for LCT and subsequently invited firm offers to purchase by 22 May (later brought forward to 12 May). On 21 April, in the middle of the tendering period, Stagecoach announced to the press that it had not bid for LCT 'because of the rules imposed by the Government's Office of Fair Trading'; it had therefore concluded that 'it will seek to secure its own future in the City by increasing the number of routes on which it offers a full service in its own right', rather than share with LCT. In the face of these plans it had become apparent that LCT would not survive as a viable operation. In order to minimize potential loss to the local taxpayers the City Council had explored an alternative put to it by Stagecoach, ie that Stagecoach purchase the assets and the City Council wind up the activities of LCT. The DOT said that it had been very unhappy with this situation, particularly in relation to its policy towards municipal bus companies. The City Council had, however, convinced the DOT that it was better to have an orderly winding down of its bus company rather than a collapse into bankruptcy and liquidation.

4.5. Eventually the DOT had felt that it had no alternative but to give its reluctant consent, particularly when it had become apparent that no other bidder was likely to offer anything approaching the Stagecoach figure. The DOT stressed that it was not the seller in such circumstances. The Secretary of State's powers under the 1985 Act were to give, or refuse to give, consent to a request by a local authority.

4.6. This did not mean that the DOT's powers were fettered. The DOT could have refused consent to the sale of the assets to Stagecoach because it would almost certainly have led to Lancaster

having only one operator. Although this outcome was virtually certain, the DOT had not refused consent because it was being realistic and had accepted that the alternative would have been a chaotic collapse and that a similar competitive position would have resulted.

4.7. On the possible detriments and benefits to the public interest, the DOT outlined its general principles that competition in the bus industry was beneficial, perhaps especially when competitors were evenly matched, and that monopolies were undesirable. The DOT added that it was not aware of any evidence of monopoly abuse or adverse effects on tendering in Cumbria where Stagecoach was the sole operator.

4.8. On possible remedies, the DOT thought that a simple divestment of the Heysham Road depot would not alter the competitive position. It suggested that, for such a remedy to work, a divestment would have to be coupled with assurances to the new operator that there would, at least for a period, be no competing registrations for the services offered by the newcomer.

Local authorities in Lancashire

Lancashire County Council

4.9. LCC told us that it had not been involved in any way with the City Council's sale to Stagecoach of LCT's assets. Nor had Stagecoach itself approached LCC regarding the purchase. Indeed LCC had fully expected LCT to be sold as a going concern.

4.10. LCC did not have enough detailed knowledge to be able to offer an opinion on how essential the Heysham Road depot would be to Stagecoach. However, LCC did consider that, if necessary, Stagecoach or another operator could probably readily find a new site, although premises already equipped for a bus operation could be a more difficult proposition.

4.11. Asked about the possible need for depot facilities within an operator's principal operating area, LCC thought that both Lancaster and Morecambe could be adequately served from one depot, if necessary with the use of outstations.

4.12. LCC's policy was to provide full information about all bus services in a particular area. In line with that policy LCC had produced the timetable leaflets for 23 August. Stagecoach had not managed to produce timetables for all of its services in time and LCC had provided it with copies of the Council's timetables, making a charge. LCC pointed out that this was out of keeping with Ribble's normal practice as it was one of the better operators for providing timetable information.

4.13. Following the acquisition LCC was satisfied that there would be continuity in the level of service. LCC had held discussions with Stagecoach immediately after the acquisition, when the company had affirmed that it intended to maintain virtually all the existing services. To the citizens of Lancaster, apart from some buses being a different colour the service had remained the same.

4.14. LCC explained that the total number of operators tendering for non-commercial services, with the exception of LCT, had not changed and stood at 11. Those services previously operated by LCT had been retendered and all the operators had increased their share of this market. Stagecoach now operated some 37.7 per cent by gross value of these contracts (26.5 per cent prior to 23 August) including 51.5 per cent of all non-school local bus contracts (43.6 per cent prior to 23 August). Surprisingly the cost of tenders for the LCC school routes had dropped slightly in the summer of 1993 because of the increased interest following LCT's demise. LCC was concerned as to how Stagecoach might use its monopoly of commercial bus services or its dominance of non-commercial bus services, but nothing suggested that it was currently abusing its position.

4.15. LCC also explained that it used commercial bus services for the carriage to and from school of children for whom it had a responsibility under the Education Act 1944 and for whom it would be uneconomic to provide a dedicated contract bus service. Prices for the carriage of children on commercial bus services were obtained by competitive tender between operators providing those

services. Ribble would now be virtually the only provider of commercial bus services in the area in 1993/94.

4.16. On the question of commercial services following the acquisition, LCC had been conscious that there had been only two substantial commercial operators. Possibly this might be accounted for by the area's geographical isolation from other large bus operators, but the fact remained that there had been little attempt on the part of other operators to run commercial services since LCT and Ribble Motor Services had reached agreement to operate some services jointly in 1989. The prospects for commercial competition were limited. LCC thought that the main barrier was the possible reaction from Stagecoach to competition and the extent to which it would use its financial muscle to prevent competition. Clearly this was a deterrent factor.

4.17. The only other public transport service in the area was on the limited local rail network provided by British Rail. By the very nature of rail services, and the limited number of stations, there was little effective competition between bus and rail except for passenger travel to or from the immediate vicinity of the six stations in the area. LCC had considered the possibility of opening a station at Hest Bank; even if this were to go ahead it was unlikely to be built before 1998.

4.18. LCC considered the prospects for new entry or expansion in non-commercial bus services to be reasonably healthy at the moment and there was currently no indication that smaller operators were being deterred. It was easier to enter this market because operators tendered a price for the service to LCC in open competition, the contract being awarded to the most suitable contender. The system was essentially fair and the fact that LCC closely monitored contracts might deter obviously deliberate loss-leader bids.

4.19. With regard to *de minimis* bus services—those that were extensions or variations to existing commercial routes—LCC and Stagecoach had discussed these when the commercial bus services were being considered. The total value of Stagecoach's and LCT's former *de minimis* services, taking into account Stagecoach's county-wide obligations, exceeded the amount payable under the 1985 Act. A number of LCT's *de minimis* services had been reduced and assigned to Stagecoach, which had taken them over at the price that was being paid to LCT.

4.20. On the question of return tickets, of which Stagecoach was by far the largest issuer, LCC explained that, where there was a daytime commercial service which became non-commercial in the evening, LCC required that the return portion of the ticket should not be accepted on the non-commercial service; otherwise there could be a loss of revenue to the County Council. LCC believed this problem was important to travellers seeking out a lower return fare but then having to pay a separate single fare to two operators. There were two ways round the problem. Firstly, the same operator might be running the daytime and the evening tendered service on a minimum subsidy basis and taking the revenue risk. Secondly, LCC had a policy of seeking an agreement with the operator on a fair allocation of revenue for return tickets which had been taken on the commercial services, LCC being content to accept them on its non-commercial ones. LCC would like to reach such an agreement with Ribble. Behind this was LCC's aim of encouraging bus travel generally and its desire for operators to participate in this aim through ticket interavailability.

4.21. Turning to the public interest, LCC said that, following the demise of LCT, there had been no reduction in the number of commercial bus services operated in the area nor any increase in the cost of providing tendered bus services. However, whilst there was no evidence that the provision of bus services had worsened, there had always to be a concern about the loss of the only major competitor to Stagecoach in the area between Preston and the Scottish Borders and the way in which that market dominance might be used in the future.

4.22. On possible remedies, LCC found it difficult to recommend how any divestment might take place if it were concluded that the merger was against the public interest. It would be difficult to implement a remedy involving divestment of the depot with the purchasing operator being protected from competition.

Lancaster City Council

Background to the disposal of LCT

4.23. The City Council told us that, to comply with the 1985 Act, it had transferred its transport undertaking to LCT in October 1986. Thereafter LCT had been operated as an arm's length company by directors appointed by the Council. In 1989, when Stagecoach acquired Ribble Motor Services, discussions had already been taking place between Ribble and LCT with a view to co-ordinating services and curtailing the heavy losses which both companies were suffering and which they perceived as resulting from considerable oversupply in a market which could not possibly sustain such levels of service. The two companies reached an agreement to optimize the spread of their departure times on existing services. Details of the agreement had been furnished to the OFT for registration under the Restrictive Trade Practices Act, but the OFT had concluded that this legislation did not apply to the arrangement.

4.24. Following the Minister for Public Transport's statement in June 1992, confirming the Government's intention that Councils should sell municipally-owned bus companies, the City Council had begun to receive enquiries from a number of potential bidders for LCT, including Stagecoach. The Council told us that, towards the end of 1992, both Ribble and LCT had experimented with a fare reductions initiative in an attempt to increase ridership. They had announced that the experiment would run for one month, but at the end of this time Ribble had stated that it would continue with the discounted fares for a further period. LCT had decided not to follow suit and had increased its fares back to their previous levels. Ribble's action had resulted in a serious reduction in the income generated by LCT, illustrating, in the Council's view, the fragile nature of LCT's operation and the need to be aware of the likely impact on its services of changes in Ribble's operation.

4.25. In October 1992 the Finance and Resources Policy Committee (the Policy Committee) had recommended that the Council dispose of its interest in LCT, appointing advisers to assist with the sale. Coopers & Lybrand had been selected in November 1992, and on 16 December the Council had passed a resolution to proceed with the disposal. Coopers & Lybrand had prepared sale documents on the basis that the Council would be selling the shares of LCT as a going concern. Of the major national and local bus operators, all of which received these particulars, eight had made indicative offers and five had submitted final offers; these had not included Stagecoach.

4.26. The City Council told us that, without giving any prior indication to the Council, Stagecoach had issued a press release on 21 April 1993 stating its intention not to bid for LCT and announcing that it had registered additional services on LCT's timings on two of the routes which it operated jointly with LCT.

4.27. Drawing on a record based on notes made by the Town Clerk following a meeting between representatives of the City Council, Coopers & Lybrand and Stagecoach on 28 April 1993, the Council told us that Stagecoach had said that it was anxious to secure all the commercial routes in the Lancaster area and that it would, within a week, put a formal proposal to the Council. More particularly, Stagecoach had indicated that it would wish to buy the depot and other assets, be prepared to offer jobs to some 30 of LCT's staff, and give a written undertaking as to the level of service to be operated. These conditions had, however, subsequently been omitted from Stagecoach's formal bid. The Council told us that, at the same meeting, Stagecoach had said that its extra services would come into operation on 21 June and that, within the two or three weeks following the meeting, it would be recruiting the drivers it required from LCT's existing platform staff because they were all fully trained and Stagecoach could offer them security and continuity of employment. Stagecoach had added that, if this happened, LCT would have difficulty in providing drivers for its existing services and could be involved in expensive training of new drivers.

4.28. On 4 May Stagecoach had submitted its formal offer, not for LCT or its business, but to purchase the Heysham Road depot and certain other assets. This offer had been subject to acceptance only until 21 May 1993. As a result of this tight timetable the Council had brought forward the deadline for offers for the shares of LCT from 22 May to 12 May 1993.

4.29. The Council had originally been advised that the value of LCT, for a third party acquisition of the shares, was in the region of £850,000 to £1.25 million. The highest offer for the shares had been a bid of £899,335 by Blackpool. MTL had also shown interest, but without making an offer. On 13 May 1993 the Policy Committee had met to consider the sale of LCT, but had adjourned to allow a further evaluation of the bids. Through Coopers & Lybrand the City Council had asked Blackpool and MTL to review their position in the light of a decision by Stagecoach to register progressively services on all LCT's existing routes, and to submit revised offers by 17 May.

The decision to sell assets and the transaction

4.30. The City Council said that, at a reconvened meeting on 17 May, the Policy Committee had considered a reduced offer of £808,668 from Blackpool, a request from MTL for a 14-day extension of the deadline for bids, and the possibility of selling to Stagecoach the assets for which it had bid, disposing separately of the remaining assets and winding up LCT. The Council had to make its decision in the light of the fiduciary duty owed by Councillors to taxpayers under the Local Government Act 1972. It had also taken into account:

- (a) the offers received;
- (b) the risk that an extension of the time could have led to the Stagecoach offer being withdrawn; and
- (c) trade union advice that neither of the revised approaches from Blackpool or MTL fully took into account the likely effect of Stagecoach's decision to register LCT's services.

The City Council had decided against the Blackpool bid contrary, we were told, to the views on the sale of the Town Clerk and its financial advisers, who had recommended the sale of LCT to Blackpool. The Council felt that Blackpool had not assessed the full impact on the business of LCT of increased competition from Stagecoach, and had no confidence that an independent operation could be maintained in the face of that increased competition. The City Council felt that to allow MTL's request for an extension could have led to the Stagecoach offer being withdrawn. The City Council considered that the business of LCT would in due course have to be closed if the Stagecoach offer was not accepted, whereas acceptance would enable the book value of LCT to be recovered. The Council had therefore voted to recommend that the LCT Board accept the Stagecoach offer and work towards the winding up of the company. The Board had accordingly sold LCT's depot, 12 buses and certain other assets to Stagecoach on 4 June 1993, leasing them back from Stagecoach until 22 August, when LCT had ceased to operate.

4.31. The City Council told us that it had kept the DOT fully informed throughout the above process and had obtained the Department's consent to the sale of assets to Stagecoach. When seeking the DOT's consent the City Council had indicated, through its legal advisers, that, in the absence of a reasonable bid for the issued share capital of LCT or for Lonsdale, it regarded the closure and liquidation of the two companies as inevitable and believed that the offer from Stagecoach provided the Council with the only prospect of realizing a reasonable value of the assets.

4.32. The City Council said that LCT would continue to be a local authority-owned company until the winding-up was completed in late 1993 or early 1994. Any operator had been free to register services on LCT's routes and to purchase LCT vehicles; there had been no physical merger and Stagecoach had purchased less than half of the assets of LCT. It was therefore difficult to see that Stagecoach and LCT had ceased to be distinct enterprises.

The Heysham Road depot

4.33. The City Council told us that, although the redundancy payments and the lack of employment opportunities for former LCT staff caused the Council concern, it considered that the £700,000 which Stagecoach had paid for the depot was a fair price and that, so far as LCT was concerned, it was more than fair. This price certainly contained a premium element over the market value to save

Stagecoach the need to build an enlarged depot. Stagecoach had explained that the purchase of the Heysham Road depot was a far better commercial option for the company than buying a green-field site and building a depot from scratch. The price which it had paid took account, in the Council's view, of Stagecoach's difficulties in operating from its existing very constricted site in Morecambe, where it was not universally welcome as a neighbour.

4.34. The Council considered that it would have been difficult for LCT to have operated without the Heysham Road depot because of the extent to which the depot was central to LCT's services. The Council said that, although Stagecoach had neither said nor implied that if it bought the depot and some of the buses that would be the end of LCT, it had been the generally held view within the Council that Stagecoach's bid inevitably involved the winding-up of LCT.

Competition

4.35. The Council said that, with the sale of the depot, it had not given any further consideration to continuing the business of LCT. It believed that even the existing degree of competition between LCT and Stagecoach's services could not have been sustained, given LCT's vulnerability to action by Stagecoach. Moreover it was not aware of any benefit to passengers from the existence of two operators in view of the co-ordination of timetables and fares between Stagecoach and LCT. Return tickets had been interavailable and passengers would hardly have known whether they were on a Stagecoach or an LCT bus. The City Council had, however, been conscious of the danger that Stagecoach could decide at any time to disregard the co-ordination arrangement and register services on LCT's timings.

Treatment of LCT staff

4.36. The City Council told us that it had been no part of Stagecoach's formal bid that a block of LCT staff would transfer to Ribble following the transaction; though Stagecoach had stated that LCT employees would be welcome to apply for Ribble vacancies. Accordingly the Council had resolved that the Town Clerk should seek the best redundancy terms possible. Although there had been no difficulty over the payment of loyalty bonuses, the enhancement of pensions was proving more difficult due to the legal provisions of the local government superannuation scheme as it applied to former employees of a municipal bus company. The Council considered that it could arrange to enhance the pensions of former LCT staff subject to the views of the district auditor which it currently awaited.

The public interest

4.37. We asked the City Council what it considered to have been the overall effect of the acquisition on the public interest. The Council responded that on the commercial routes there was now a unified timetable and Ribble's fleet appeared to be more modern than the LCT fleet. On the tendered routes there was a wider range of operators, including a number of newly emerged small operators, which increased competition for tendered services. For coach users, Lonsdale was still operating, but under different ownership.

4.38. On the prospects for competition on commercial routes in the Lancaster and Morecambe area, the City Council thought it possible that MTL, following its acquisition of Heysham Travel, would wish to mount a challenge. The scale and strength of MTL, which had 1,000 vehicles, made it a rather more formidable competitor than the small LCT, and any major work on its vehicles could be carried out at its main depot in Liverpool, which was only about 50 miles from Lancaster. Care and maintenance facilities only would be required locally, and Heysham Travel had a small depot.

Remedies

4.39. The City Council believed that bus services in the Lancaster and Morecambe area would be severely affected if Stagecoach had to sell the Heysham Road depot. The possible withdrawal of over

75 vehicles due to lack of depot capacity would inevitably have repercussions on the level of service to the public. If Blackpool were to buy the depot its operation of services in Lancaster would only be short-term because of the probability of legislation obliging local authorities to sell their municipal bus companies. However, MTL was apparently interested in acquiring Watson's Coaches and other small companies in the area. MTL would need a bigger depot if it were to take a much larger share of the commercial services, but there was capacity at the existing Heysham Travel depot to allow for some expansion.

4.40. The City Council said that it would be anxious that any future operator in Lancaster should be a full and active partner in the transport co-ordination policies which it was pursuing, with LCC, in the light of Lancaster's serious traffic problems. It would also be looking for good frequencies, easily accessible buses and stable fares.

Blackburn Borough Council

4.41. Blackburn Borough Council (Blackburn) was concerned at the proposed take-over of LCT and the events that had led up to the acquisition. Blackburn thought that Stagecoach's apparent predatory tactics in precipitating the sale of LCT should be questioned, particularly in view of the implications this might have for other local authority-owned bus companies. Stagecoach had access to substantial funding and was able to undercut fares artificially, thereby attracting passengers and thus reducing revenue and causing operating problems for the local operator. It appeared that was what had happened in Lancaster.

4.42. If the merger went ahead, Stagecoach would be in a monopoly position, able to introduce whatever price rises it chose, to the detriment of passengers. Blackburn believed that this was totally against the principles which the Government wished to introduce in the proposed sale of local authority bus companies. Instead of prompting increased local competition, local monopolies would be created. The opportunity would be presented for the major national operators to adopt similar tactics, thereby influencing market prices in the run-up to open market sales.

4.43. LCT's viability and value had undoubtedly been affected in the prolonged struggle against Stagecoach, and other potential purchasers might have been deterred through their reluctance to enter into a potential price war. Blackburn believed that, even if the MMC found against Stagecoach, its purchase of LCT's depot would make it difficult for another operator to enter the market.

4.44. The situation in Lancaster thus raised serious issues. Blackburn urged the MMC to understand that the acquisition, which gave Stagecoach control over bus services from the Scottish border to Preston, was contrary not only to the local interest but also to fair competition generally in local bus services.

Chorley Borough Council

4.45. Chorley Borough Council (CBC) told us that Chorley was approximately 25 miles from the operating area of LCT. CBC explained that Stagecoach's local subsidiary, Ribble, was the major local operator in the borough and had been for many years. Ribble appeared to be a good operator, providing services at competitive fares, with a high standard of vehicle. The merger with LCT seemed unlikely to affect the local area but CBC was concerned that similar mergers might happen elsewhere in Lancashire.

4.46. In Lancashire there were seven bus companies, extending over an area from Blackpool to Burnley, which either were, or were until recently, owned by District Councils. They represented the only real competition to Stagecoach between Wigan and the Scottish border. CBC believed it to be in the public interest that these companies should survive as viable operators and urged the MMC to take this into account in determining this reference. What had happened to LCT could happen to these operators, and in the medium term the lack of competition could have an adverse effect on fare levels and the cost of subsidized services.

Hyndburn Borough Council

4.47. Hyndburn Borough Council had vigorously opposed the original legislation and would have preferred to have kept its public transport company within its control. After much planning and considerable expenditure, it had fully complied with the regulations and had a marginally profitable local bus company. It would view with dismay the emergence of large amalgamations which in its opinion merely replaced public monopolies by private ones.

Borough of Pendle

4.48. The Borough of Pendle (Pendle) operates a joint transport business with the neighbouring authority of Burnley, the deregulated company being Burnley & Pendle.

4.49. LCT had been somewhat remote from Pendle, and Pendle saw no immediate difficulty in Stagecoach acquiring the company. Pendle was worried that, as some companies became larger and larger, the opportunities for them to make further acquisitions and thus reduce the number of smaller operators would be increased. This would have the effect of severely reducing competition.

4.50. Pendle argued that encouragement should be given to municipally-owned operators to ensure the existence of competition. Should Government policy continue to insist on privatization of these municipally-owned operators then specific encouragement should be given to employee or management buy-outs in order to maintain diversity of ownership. Pendle believed there was a real concern that, without such encouragement, the diversity of public transport provision and the level of real competition would be lost within the next few years.

Local authorities in Cumbria

Cumbria County Council

4.51. CCC's Public Transport Officer told us that Stagecoach, through its subsidiary Cumberland, operated the overwhelming majority of bus services in Cumbria. CCC referred to a report of its Transportation Sub-Committee dated September 1988. At that time Barrow Borough Transport, Ribble Motor Services and Cumberland had operated nearly 90 per cent of the bus mileage in Cumbria. All these services were now run by Cumberland.

4.52. Stagecoach's acquisition of LCT services into Cumbria (between Lancaster and Kirkby Lonsdale, which was just within Cumbria) would not, in CCC's view, add significantly to Stagecoach's dominance in Cumbria.

4.53. The public interest in Cumbria was affected by the level of service operated by Stagecoach, the fares charged and the extent to which CCC felt obliged to put additional services out to tender. Whilst the services operated in rural Cumbria had declined by 10 per cent between pre-deregulation and 1988, the service level had not subsequently changed significantly. There had been gains and losses.

4.54. CCC found it hard to comment on fare levels. Operators were not obliged to provide county councils with their fares tables, although information could always be obtained where required. Generally fares in Cumbria's urban areas had been kept down, with few increases in the last three years. Rural fares varied significantly across the county, with fares in the south (old Ribble Motor Services territory) being generally higher. However, there had not been a discernible level of complaint from the public. Indeed there were some good bargains for regular travellers. Occasionally tourists complained about the high fares in South Lakeland, but their views apparently depended largely on where they lived elsewhere in Britain.

4.55. In contrast to many other areas in Britain, Cumbria had a relatively modern fleet of buses, many to DiPTAC¹ standards. Large sums had been spent on new vehicles over the last year, and a new vehicle maintenance depot ensured that buses were in better condition.

4.56. CCC's expenditure on subsidizing bus services was limited by a budget of £100,000 extending over 35 to 40 contracts. Despite the low level of spending, the number of complaints concerning inadequate services was not felt to be too significant.

Allerdale Borough Council

4.57. Allerdale Borough Council, whose district includes Workington and Maryport, said that Stagecoach's acquisition of assets of LCT would have no direct effect on local bus services in Allerdale. The Council's principal concern was the maintenance of a satisfactory level of bus services in the district. The acquisition was therefore welcome to the extent that it strengthened a company which was able to provide services in the rural area of Allerdale. Stagecoach had in the past been willing to introduce additional services where they were needed; it had also increased its service levels where rail services had been reduced.

Copeland Borough Council

4.58. Copeland Borough Council (Copeland), whose district includes Whitehaven and Sellafield, thought that Stagecoach had a monopoly of bus services in west Cumbria except for a few marginal or subsidized services in the rural area. There had been a period of about two years after deregulation when a number of private operators had competed on the popular and profitable routes to the detriment of the overall level of service provision. On the evidence available from west Cumbria, the community at large did not gain from competition on general bus services under the present legislative framework. Services that were subsidized by CCC did benefit from the availability of a number of operators which were in a position to tender for a route, but these were normally small coachhire or minibus firms.

4.59. It was quite possible that, in the name of rationalization, Stagecoach would seek to 'strip' LCT of its assets, perhaps by disposing of a town centre site. Copeland thought it was important to establish that appropriate safeguards were in place to maintain existing levels of service should the merger go ahead.

Bus operators in the reference area

Blackburn Borough Transport Ltd

4.60. Blackburn Transport is an east Lancashire operator and, although it has no current commercial or tendered service interest in the Lancaster and Morecambe area, it stated that it wished to comment. In its view, the merger would have no immediate impact on Blackburn Transport other than to reinforce the message that 'might is right' in the bus industry. Blackburn Transport felt that the merger would further enhance the dominance of Stagecoach throughout Lancashire and Cumbria. The acquisition of LCT's operations of a commercial nature in the immediate area, approximately 45 per cent of commercial mileage, would deter any independent operator from implementing meaningful commercial registrations to compete with Stagecoach.

4.61. Blackburn Transport had understood that the objective of breaking up and privatizing NBC, and retaining legislative powers to split the larger PTE companies, had been to ensure the promotion of sustained and fair competition in a deregulated environment. The inability, or unwillingness, of the Government through its appointed bodies to restrict the growth of the large bus groups would ensure that the reverse applied in the not too distant future.

¹Disabled Persons Transport Advisory Committee.

4.62. Blackburn Transport believed that scenarios similar to that in Lancaster had been brought about before and would undoubtedly occur again; this was not through mismanagement, inefficiency or any other failing but was simply due to the financial and operational muscle of the large groups. Without any restrictions on the size of such groups the concept of fair competition would be a pipe-dream, and what came about would be contrary to the Government's wish that management/employee teams buy out municipally-owned companies.

4.63. The acquisition of the remaining municipally-owned companies by the large groups, particularly in towns and cities where both parties operated alongside each other, would, in the long term, result in higher fare levels, reduced frequencies, abandonment of less remunerative routes and more unemployment—all to the detriment of local communities and against the public interest.

Blackpool Transport Services Limited

4.64. Blackpool is a local authority-owned company. Currently it does not operate in the Lancaster area but it attempted to purchase LCT.

4.65. Blackpool explained that it had decided to bid for LCT because it wished to expand and consolidate. Originally it had put in an indicative bid of about £1 million, to comply with the City Council's memorandum. Subsequently this had been reduced to about £800,000. Blackpool had never intended to pay £1 million, as this figure was intended purely as a means of progressing to the final short list. The amount of the reduction had been affected by the information that Stagecoach had not bid but had registered a number of new routes in the area on top of its already close-knit joint operation with LCT. Moreover, a closer examination had persuaded Blackpool that LCT was weaker than it had first imagined.

4.66. Blackpool had been surprised at the City Council's final decision concerning the disposal of LCT because it thought that the City Council would have wanted to look after its employees, and the disposal seemed contrary to the Government's criteria on the disposal of local authority companies, particularly the requirement to maintain competition.

4.67. Blackpool saw the Heysham Road depot as essential to LCT's network of services, and indeed to any bus company wishing to operate successfully in the area. It was difficult to imagine the business being viable without the depot, but Blackpool would have considered buying the business on its own and looking for another depot if this option had been included in the invitation to bid. Blackpool had not researched this option, given the tight disposal timetable set by the City Council.

4.68. The situation following the acquisition was of great concern to Blackpool, which believed that it and similarly placed bus companies in Lancashire would have to reassess their long-term strategies. The decision of Lancaster City Council to put its business on the open market had created instability in the local bus market which Stagecoach had used to its benefit. It looked as if Lancaster had been picked off and other operators should be aware of this.

4.69. The threat to the survival of local authority companies came from the process of sale on the open market now being advocated by the Government. The threat was not only from Stagecoach but from the other groups which were progressively emerging in the bus industry. The time-scale of Blackpool's concerns would be dictated by the Government's policy regarding the sale of local authority companies. Blackpool foresaw a rapid reduction in the number of municipal operators in Lancashire. It was unfortunate that the privatization of local authority companies had come about after a period which had seen the emergence of a number of powerful strategically minded groups. In Blackpool's view, the Lancaster case brought concerns about the process itself rather more than about the outcome in Lancaster.

4.70. Blackpool did not consider that there was a contestable market for a major player in Lancaster and Morecambe; it would need a decision by Ribble to withdraw from part of the area before any major new operator developed. Nor did Blackpool consider that a company operating Lancaster bus services from an outstation, ie with a fenced-off area and contracted-out maintenance, would do any better. There would probably be instant retaliation from Stagecoach in the operator's core business area.

4.71. On barriers to entry, Blackpool told us that whilst it would not be hard to find a niche market or to win local authority tenders, there was not a great deal of scope for the development of a company of a significant size running purely commercial services. Much would depend on the new entrant's cost base and on the quality of vehicles introduced by a new competitor. Blackpool was concerned about the uncertainty which passengers could face if there was instability as a result of competition.

4.72. Turning to the public interest, Blackpool thought that the public was unconcerned by the acquisition and remained largely indifferent to the situation. The public might be fearful of the future as there had been press speculation earlier in the year about the potential for Stagecoach to abuse its monopoly power. However, Blackpool did not believe that there was any evidence elsewhere that this was something which Stagecoach would do, even where it was effectively the monopoly operator; it drew attention to cities such as Carlisle. Blackpool did not think that Stagecoach had an enormous opportunity to exploit a monopoly because the car and walking were real competitors to buses, as was the decision of some passengers not to travel at all. Blackpool questioned whether the maintenance of competition in the bus industry was not better achieved in some urban areas by reviewing the privatization process.

4.73. Asked to consider possible remedies, Blackpool did not consider that Stagecoach's divestment of the Heysham Road depot would necessarily mean the re-creation of LCT or another bus company. Nor did it think that a purchaser, whether it was a minor or major player, being given a period of grace free of competition, would be successful in practice. That solution would be tantamount to trying to turn the clock back.

Burnley and Pendle Transport Company Limited

4.74. Burnley & Pendle considered that whether the merger would make Ribble even stronger and better able to compete in the Burnley area had to be a matter of conjecture. Broadly Ribble's services approached Burnley from the west. Two other substantial operators came in to Burnley, Yorkshire Rider from the south-east and Keighley & District (part of Blazefield Holdings) from the east. Greater Manchester Buses was already relatively close to the south, whilst the municipally-owned undertakings in Blackburn, Hyndburn and Rossendale also competed.

4.75. Whilst Ribble was a keen competitor, Burnley & Pendle did not believe that it abused its significant power in Burnley. Of greater concern was the increase, about 50 per cent, in the number of metered taxis and private hire cars in the Burnley area.

Charterbus Coaches

4.76. Charterbus Coaches (Charterbus) operates one commercial and some tendered services in the Lancaster area and these represent 50 per cent of its business.

4.77. Charterbus told us that it did not compete directly with Stagecoach on its commercial service. On its Sunday evening tendered service (the only tender it had won in competition with Stagecoach) Stagecoach did in fact run a commercial service ten minutes in front of Charterbus. Charterbus suspected that Stagecoach's long-term strategy was to force smaller firms such as itself off the tendered routes by running commercial routes, declare these to be non-viable and subsequently dictate the price of the resulting tendered service.

4.78. The Stagecoach/LCT transaction had provided an opportunity for Charterbus to expand, but only in that it had picked up a former LCT tendered service. Charterbus foresaw little or no scope in introducing commercial services in the Lancaster area, so great was Stagecoach's dominance. The only possibility would be to create a niche operation or explore new markets.

4.79. Charterbus did not have any operational contact with Stagecoach at all, nor did it co-operate with other smaller operators in order to compete. It did have contact with Heysham Travel, but this had now been clouded because this company had very recently been taken over by MTL. For its part,

however, Stagecoach other than duplicating routes had not deliberately created difficult conditions which might have prevented Charterbus from running its services.

4.80. On new entry to the bus industry, Charterbus said that, while there were few barriers to entry, identifying a service to actually register and operate was difficult. An incumbent major operator would do everything to inhibit a newcomer from establishing a service. Entry had to take the form of finding a niche market and/or gaining a tendered route. Charterbus had little doubt that Stagecoach's reputation for retaliation deterred operators from expanding and new ones from entering the market. It was widely known that retaliation was Stagecoach's company policy.

4.81. Turning to Stagecoach's purchase of LCT's assets and particularly the Heysham Road depot, Charterbus thought that the depot was the key. In buying the depot Stagecoach had in reality bought LCT's business, although nominally only the assets had been transferred. Most local people concurred with this view.

4.82. Charterbus agreed that it would be difficult to operate large-scale local bus services without a depot and preferably such a depot should be in Morecambe. Thus the former LCT depot in Heysham Road was a prized asset; since anything comparable would have to be purpose-built, it was a natural target for Stagecoach, given its wish to centralize its operations.

4.83. Looking at the public interest, Charterbus thought that the introduction by Stagecoach of the former LCT services from 23 August had not been smoothly implemented.

4.84. In the longer term Charterbus foresaw a repetition of the Cumbrian pattern. Cumberland, Stagecoach's Cumbrian subsidiary, had cut services, particularly on rural routes. Further, whilst Stagecoach had promised an injection of new buses into the Lancaster area, apparently this would only take place after a review of the routes and after a number of drivers had been made redundant.

4.85. Asked to comment hypothetically on possible remedies should the MMC find against the merger, Charterbus considered that the only viable remedy would be divestment of the LCT assets. Whilst the depot was the focus of what was the LCT business, Charterbus believed it could be operated even if Stagecoach retained the depot because LCT's requirements, about 30 to 40 vehicles, had not matched the size of the depot. Similarly Charterbus thought that Stagecoach could continue competing even if it had to divest the depot as it would adapt its own operations and utilize its two existing depots.

Heysham Travel

4.86. Heysham is a small operator operating only LCC tendered services apart from some commercial positioning journeys. It began operating in April 1993, basically running schools journeys. Following LCT's demise Heysham had picked up three of its former tendered routes and Heysham's vehicle complement now numbered 11.

4.87. Heysham told us that its depot, the former Lonsdale premises, was strategically important. Heysham also believed maintenance should not be contracted out; it was cheaper to employ one's own staff, maintenance staff were scarce and moreover an existing depot had no problems with regard to planning application or permission.

4.88. Despite Heysham's services being predominantly tendered, Stagecoach had in fact 'shadowed' several of these with unregistered ones. Subsequently Heysham explained that, following an approach to LCC, Stagecoach had stopped making these journeys.

4.89. Heysham also explained that, where routes overlapped, its drivers had experienced difficulties. Stagecoach buses lingered at bus stops and ran early or late on journeys which to Heysham's knowledge were unregistered. The situation at Lancaster bus station had been intimidatory during Heysham's initial period of operation but it had now eased considerably.

4.90. Prospects for future expansion by Heysham, and thus competing with Stagecoach, were very limited. Heysham wanted to wait and see how Stagecoach would rationalize its routes following the LCT acquisition. Heysham could simply not match Stagecoach resource for resource, nor withstand the pressures which Stagecoach could exert. This was typified by the current situation where Heysham accepted Ribble's return tickets but there had been no reciprocity. Officially Heysham could refuse to accept the tickets but good customer relations dictated otherwise. Indeed, at the time when the relevant tenders had been awarded, Ribble had made it plain that any encroachment into commercial registrations would be regarded as hostile.

4.91. Heysham told us that the company's assets were being acquired by MTL. Apparently this company's attitude to Stagecoach was similarly one of prudence. [

Details omitted. See note on page iv.

]

4.92. Asked about barriers to entry into the Lancashire and Cumbria bus market, Heysham thought that there were several. There was a lack of suitable sites for depots in the Lancaster area from which potential bus companies could operate, a difficulty compounded by Lancashire's restrictive attitude to the transport business in city centres. In Heysham's view a local depot was vital to minimize dead mileage and response time. In the context of this inquiry, Stagecoach's purchase of LCT's depot had been tantamount to purchasing the company.

4.93. There was the question of economic viability. Quite simply Stagecoach had near total monopolies and strong bus networks in Cumbria and in Lancaster and Morecambe and was very well placed financially to repel any newcomer trying to enter the business.

4.94. Looking at the public interest, whilst admittedly Stagecoach's acquisition had not long taken place, Heysham's initial reaction was that there were too many buses in the area and it foresaw a thorough revision of the network taking place.

4.95. On the benefit side Heysham pointed to Stagecoach's active policy of reducing fares. But weighed against this was the potential for monopolistic abuse. LCT had been an alternative; now there was only one service with no great pressure to change or improve it.

4.96. Requested to consider remedies on a hypothetical basis, Heysham thought that if Stagecoach had to divest the Heysham Road depot it would revert to using its existing Morecambe and Lancaster garages. The only realistic way of remedying the public interest detriments would be for Stagecoach to divest certain routes or for minimum headways to be stipulated on given routes.

MTL Trust Holdings Limited

4.97. MTL is a holding company owned entirely by the employees of Merseybus. Keen to expand and extend its services, MTL had been involved at a late stage with LCT employees in a joint bid for LCT. An earlier independent approach from MTL to bid for the company had come to naught. Following an initiative from the Transport and General Workers' Union, MTL's interest had been rekindled and a bid for £500,000 had been made, to be financed from cash resources within MTL, basically out of future profits.

4.98. The bid of £500,000—the same as that originally envisaged by MTL on its own—included Lonsdale and took into account Stagecoach's decision not to bid for LCT but to introduce additional registrations in the area. This had been the reason why MTL's bid had been below those of other potential purchasers. At no time during the negotiations had MTL been aware that Stagecoach had been seeking to purchase the assets.

4.99. Subsequently MTL had purchased Heysham Travel. Preliminary overtures had been made by Heysham, and MTL had seen an excellent opportunity to expand. Heysham had a niche in the tendered market, with the prospect of winning further tenders, and was tolerated by Stagecoach.

4.100. In bidding for LCT, MTL saw the ownership of the Heysham Road depot as integral to the LCT operation. MTL could not have operated the LCT facilities as an outstation with contracted-out maintenance; the company was sure that such provisos would apply to any bus companies wishing to run a successful commercial business in Lancaster.

4.101. MTL believed that Stagecoach's now near total monopoly would in fact be relatively short-lived despite Stagecoach's size and experience. Barriers to entry were very low, second-hand buses were cheap and drivers were available. MTL envisaged, based on its experience in Merseyside, that a small number of companies would develop to compete, particularly on the high-density routes. Typically MTL foresaw small companies operating maybe ten outstationed buses, not competing head-on with Stagecoach, but carving out niches and winning tendered services.

4.102. MTL in fact considered that it would be difficult to enter the Lancaster market in a comprehensive way because of fear of retaliation from Stagecoach. In addition a potential operator would be hampered by a lack of suitable premises; a covered depot and engineering facilities would probably be essential.

4.103. In considering the public interest MTL argued against 'excessive competition' and cited the experience of Merseyside and Manchester. Some competition was inevitable; the question was one of degree. There came a point when competition was excessive, services were reduced to the lowest common denominator and quality driven down. Effectively this was the opposite end of the monopoly spectrum and just as disadvantageous.

4.104. Regarding competition from other forms of transport in Lancaster, MTL believed rail could be disregarded. Nor did it consider that there was genuine competition from cars in the short term, the great majority of bus passengers having no alternative. The main competition to buses came from other buses, bicycles and walking.

4.105. MTL accepted to an extent the proposition that Stagecoach could argue that, as it had a virtual monopoly, it could operate services far more efficiently. But undermining this argument was always the potential for Stagecoach to exploit and abuse its monopoly.

4.106. On the question of hypothetical remedies, MTL doubted whether making Stagecoach divest the Heysham Road depot and allow the newcomer to establish itself would be successful. The clock could not be put back. In MTL's opinion the root of the whole problem was Stagecoach's and LCT's route-sharing agreements. Stagecoach had been given the opportunity to compromise LCT to the extent that ultimately it was submerged and taken over. Adoption of this remedy made it likely that such a situation would be repeated.

Owen's

4.107. Owen's, a bus operator based in Chorley, said that, whilst a municipally-owned bus company might give a better service, it might not pay due regard to its costs, which were subsidized by the rates, and was more likely to be subject to the will of the trade unions; this was not always beneficial to the customers. A private bus company was primarily interested in profit. Its overall service could be affected because loss-making routes were subject to cost-cutting and timetable alterations.

4.108. Ultimately Owen's foresaw a continuing decrease in demand for public transport as more and more people bought cars.

Watson's Coaches

4.109. Watson's Coaches (Watson's), a small operator based in Lancaster, considered that Stagecoach had been allowed to buy too many bus and coach companies in the UK. As a result Stagecoach had monopolized Cumbria and parts of Lancashire as well as other areas of the UK. When meeting with resistance from a company that it wished to purchase, Stagecoach would register buses to operate services some minutes in front of and behind buses from the other company.

4.110. Watson's felt that the Traffic Commissioners were to blame. Stagecoach was able to register extra services without a check being made to see if there was a demand for the extra services or if the new routes could take the increased traffic congestion. Watson's thought that in many instances there was no real need for extra services as the number of passengers actually using buses was decreasing.

4.111. Furthermore, Watson's contended that in certain parts of Lancashire Stagecoach was operating more buses and coaches than were required; Stagecoach did not have the necessary maintenance facilities.

4.112. Watson's said that, when LCT had first been offered for sale, the City Council had received a number of tenders, but before the closing date Stagecoach had made it clear that it was no longer interested in the purchase. Instead it had registered extra services on the existing most lucrative routes. This had made the sale of LCT appear a poor investment, which had led to a reduction in the value of LCT, possibly deterring any company that had tendered for LCT from actually continuing with its bid. In Watson's opinion the best option would have been for the City Council to have sold LCT to LCT staff and MTL.

Other bus operators

Cardiff Bus

4.113. Cardiff Bus (Cardiff) believed that events in Southend, Lancaster and the probable outcome in Leicester and Northampton confirmed what had been obvious for some time, namely that the ownership of bus companies was becoming concentrated in the hands of relatively few companies. The stated Government policy regarding the compulsory sale of municipally-owned bus companies, together with an insistence that in future such sales would be by open tender, would in practice reduce the number of independent operators and facilitate a process whereby this relatively small number of very large bus companies would continue to expand.

4.114. There was ample evidence, eg from Southend, Lancaster, Leicester and Northampton, that predatory competitive activity could be expected in advance of the sale of a municipal bus company. The effects were again obvious, ie lower sales proceeds to the owning authority than would otherwise be the case, unstable bus service provision and a reduction in the number of operators.

Others

4.115. The MMC undertook a survey of operators with services in the reference area to enable us to obtain information concerning the local bus market. When responding, five operators commented on the acquisition. One said that anyone attempting to operate commercial services in the LCT area would be swamped by Ribble buses. Another remarked that Stagecoach had a monopoly from Preston to Carlisle which would make effective competition difficult to sustain and lead to an increase in subsidy costs. A third said that the threat of unfair competition made it virtually impossible to register commercial services in the area. A fourth operator claimed that it had previously been denied access to Chorley bus station, even though there was a 15-minute gap to accommodate its service. One operator said that the acquisition would make no difference to services in the area.

Other organizations

Bus and Coach Council

4.116. The Bus and Coach Council told us that the bus industry had seen a steady decline in ridership over several decades as it strove to survive in the wider competitive market comprising taxis and subsidized local rail services and, most notably, the spread of private car ownership. Consumers needed to be enticed to use bus services, and this required them to be regular, reliable and attractive. Stagecoach, along with other market leaders, was doing much to generate this class of service improvement. In Lancashire specifically, Stagecoach had helped the industry to encourage the local authorities to introduce infrastructure and procedural improvement schemes to enhance the appeal of bus travel, and was one of the major purchasers of new vehicles meeting the most modern emission control standards. These recent purchases had clearly helped to sustain the domestic bus manufacturing market during the recent recession.

4.117. Amongst the Council's membership were seven other significant bus operators based in Lancashire, all long experienced in the provision of local bus services. Their combined fleet totalled some 780 vehicles. Any of them could constitute a threat to any perceived monopoly situation within the county, and their presence and potential were likely to ensure the absence of any abuse of market power in the foreseeable future. The Council also pointed out that the barriers to entry into the bus market for new operators were low; there were many licensed PSV operators in the area who could readily develop new bus operations; and there were a significant number of established bus operators and coach operators over the landward county borders.

Association of Local Bus Company Managers

4.118. The Association of Local Bus Company Managers' (ALBUM's) comments represented broadly those of various municipal bus companies. ALBUM told us that the acquisition of LCT's assets by Stagecoach had effectively circumvented any restriction on the purchase of the company as a going concern.

4.119. A disproportionately high market share in commercial services would now be held by Stagecoach. Had LCT continued to trade, whether in the public or private sector, a degree of competition would still have existed despite the relatively high degree of integration of timetables and fares in that area. In the tendered market there would certainly be a significant reduction in competition as a direct result of the acquisition. This would almost certainly result in higher tender prices, with consequential pressure on local authority budgets.

4.120. ALBUM considered that developments in Lancaster, if repeated elsewhere, would mitigate against an orderly transfer of local authority bus companies into the private sector. Effectively, any major competitor would have the potential to mount an 'LCT' exercise in order to create a virtual local monopoly, with detrimental effects on competition and choice, employment, and subsequently and consequentially on local and central Government finances.

Former directors of LCT

Mr T Knowles

4.121. Mr T Knowles, the former Managing Director of LCT, said that he had not been involved in taking decisions concerning the disposal of LCT. He told us that there had been an attempt to put pressure on LCT or the City Council in the autumn of 1992, when Stagecoach had introduced what was described as a 'fares experiment' to stimulate passenger growth; this, in Mr Knowles' view, had been a euphemism for a fares war. Stagecoach had reduced fares by between a third and a half inviting LCT, at very short notice, to do likewise. Since there was a joint operation between the two companies, with interavailability of tickets, and as passengers would have tended to catch Ribble buses with fares at half the previous level, LCT had decided to join the experiment.

4.122. Mr Knowles said that the results of the fares experiment, which had covered a closely defined area to affect the routes covered by LCT, had been catastrophic for the company. LCT, which had about 40 per cent of the joint operation to Stagecoach's 60 per cent, had lost some £7,000 to £8,000 a week of fare box revenue in addition to the reduction in reimbursements under the concessionary fares scheme. After almost a month Stagecoach had said that it wanted to continue the experiment. LCT had responded by refusing to accept Stagecoach's return tickets. This had restored about 80 per cent of LCT's shortfall in revenue and two weeks later Ribble had ended the fares experiment.

4.123. Mr Knowles said that LCT had now been put out of business because to run a bus company it was essential to have an operating centre, which was effectively the depot. Without this facility, a company such as LCT would be unable to undertake maintenance and would therefore need to seek alternative premises if it was to retain its operator's licence. Since the shareholders, meaning the City Council, were selling LCT's premises, it was clearly not their intention that the company should seek additional premises.

4.124. Mr Knowles told us that his understanding was that Stagecoach, in addition to approaching the City Council to ask if it was interested in selling the business of LCT, had written to a number of local authorities with municipal bus companies asking a similar question. Mr Knowles said that it had long been known that, if Stagecoach obtained the entire bus operation in the Lancaster area, it could make economies of scale and improve its profitability; the directors and senior staff of LCT had been aware that, if Stagecoach were so minded, it could remove LCT by acquisition. Mr Knowles confirmed that, by acquiring LCT's main assets, Stagecoach had effectively restricted competition in Lancaster. Earlier in 1993 Stagecoach had registered services at LCT's times on two key routes, including the jointly operated route from Heysham to the University, which was by far LCT's biggest revenue earner and its most profitable service. (Together the two key routes represented over 50 per cent of LCT's profit.) The effect would have been at least to halve LCT's revenue from those services, and in Mr Knowles' view, Stagecoach's action was a warning to any potential purchaser of LCT. In the event Stagecoach had twice deferred those new registrations, first so that they would not take effect until after the City Council's Finance and Resources Policy Committee had decided on which bid to accept, and second, to allow LCT to deregister its services within the proper time-scale. After it had become clear that the City Council had decided to accept the offer for the assets of LCT rather than the company, Stagecoach had registered on practically all LCT's commercial services. The City Council had instructed LCT to deregister its services to coincide with the handover date of 22 August 1993.

4.125. Mr Knowles believed that LCT had come on to the market mainly because of Stagecoach's approach, although the incentive to the Council that it could spend the capital receipts from a sale made before the end of 1993 had also been a factor in the Council's decision to sell LCT. He said that in May 1992 the LCT Board had met the leaders of the four political groups represented on the Council with the shareholders' representatives and trade union representatives to ascertain the City Council's intentions regarding the disposal of LCT. The leader of the Council had said of a possible disposal that nothing was further from Councillors' minds, and that they would hold on to the bus company until the last possible minute. In the event, however, they had changed their minds within four months.

4.126. Mr Knowles considered that the £700,000 which Stagecoach had paid for the Heysham Road depot was an extremely good price for the City Council, being way above the depot's market value for existing use. He thought that Stagecoach would have been secure in the knowledge that no other bidder would be able to match the aggregation of the elements which would accrue to the City Council under the Stagecoach bid, even when the Council's responsibility for redundancy payments of over £300,000 was taken into account. Mr Knowles thought that the City Council's net income would have been less, had it sold LCT as a going concern. On the basis of the prices which LCT had obtained for the older double-decker buses not acquired by Stagecoach, the amounts paid by Stagecoach for the newer LCT vehicles which it had bought, although slightly on the high side, had not been excessive.

4.127. We asked Mr Knowles about the treatment of LCT staff. He found it surprising that only 20 of the 43 LCT drivers and inspectors who had applied for Ribble vacancies had been successful,

since the others were trained, knew the area and worked well. He understood that Ribble had experienced a severe staff shortage, despite having also recruited non-LCT staff. Ribble had taken on three former LCT fitters and a few cleaners, but no clerical staff. Twenty of LCT's drivers had not applied for jobs with Ribble, which paid substantially less than LCT.

4.128. Mr Knowles told us that there had been co-ordination between Stagecoach and LCT to ensure an orderly handover on Sunday 22 August 1993. Stagecoach personnel had been coming to the Heysham Road depot prior to that date to make preparations, such as the wiring up of ticket machine points, for its operation of vehicles from the depot on Monday 23 August. Stagecoach had depended on employing some former LCT staff from 23 August in order to maintain continuity of operations.

4.129. Of the 12 LCT buses which Stagecoach had purchased, it had operated only two in the Lancaster area. LCT had made these vehicles (which carried all-over advertising) available during 22 August to enable Stagecoach to affix its logos and company lettering. In view of its wish to remove any sign of LCT, Stagecoach had asked LCT to have those two vehicles reregistered since they carried personalized registrations including the letters 'LCT'. Mr Knowles said that LCT had continued operating services until midnight on 22 August. LCT and Ribble had jointly paid for the police to be present during the weekend of 21 and 22 August in view of the possibility that tax discs would be removed from some vehicles to prevent them being used on Monday 23 August.

4.130. Mr Knowles said that Stagecoach had taken over LCT's telephone enquiry number and that there had been continuity in the supply of electricity and gas, although the meters had been read for billing purposes. Because Stagecoach and LCT had been operating services under a joint agreement, Stagecoach already had access to data concerning the timings and mileages of LCT's commercial services.

4.131. Mr Knowles told us that, from his observation, a significant number of services had run late since 23 August; this would be due to the use of new drivers who were unfamiliar with the routes and former LCT drivers who were unfamiliar with Stagecoach's ticket machines. The drivers had been wearing Stagecoach uniforms since 23 August and the route numbers had remained the same as those used under the previous joint operation. Stagecoach had said that it would honour period travel passes and return tickets issued under the previous joint arrangement. Some jointly produced publicity material showing LCT's name was still available, but Stagecoach had otherwise sought to delete the name: at the depot LCT's signs had been removed and a 'Ribble Buses' sign erected during the night of 22 to 23 August. There had been some adjustments of fares to bring them all into line with the Ribble fare scale.

4.132. Mr Knowles did not think it likely that Stagecoach would reduce services significantly in the Lancaster and Morecambe area. Since it doubtless aimed to purchase other municipal bus companies, in Lancashire and elsewhere, it would wish to establish a good reputation in Lancaster and Morecambe so as to ensure that any discussion between councillors and shareholders' representatives was favourable towards Stagecoach. Mr Knowles considered that, given the comprehensive nature of the service network in Lancaster and Morecambe, there were few, if any, attractive opportunities for new entrants to commercial services. In Lancashire in general, there was clearly the possibility that one of the larger groups would obtain a foothold as the sale of other municipal bus companies created opportunities. Since most of Cumbria was so sparsely populated, it was difficult to envisage new entry there.

4.133. Commenting on the public interest effects of Stagecoach's acquisition, Mr Knowles said that there was little immediate detriment to the travelling public, although there was the potential for them to be adversely affected at a later stage. The transaction had clearly acted against the interests of the former staff of LCT. Ribble was currently employing fewer staff than LCT and Ribble had together employed in Lancaster, but this had been partly offset by the additional staff employed, in some cases on a part-time basis, by the small operators which had won tendered services formerly operated by LCT. A further adverse effect had been to depress earnings levels in the area.

4.134. Although much had been heard about Stagecoach's investment in new vehicles, and there was no doubt that it played a part in keeping the bus manufacturing industry alive, the vehicles added

to Ribble's fleet in Lancaster and Morecambe since the transaction had predominantly been middle-aged vehicles brought in from the Cumberland fleet.

4.135. On hypothetical remedies, Mr Knowles considered that, if the Heysham Road depot were divested to another operator, there might be some advantage in a locally-based company running the bus services in Lancaster and Morecambe, even if it was a specially created subsidiary of a larger group. Ribble was based in Preston and, although it had a good local operations manager, a locally-based management team would be better equipped to know the needs of the area. Although he did not expect that Stagecoach would wish to cut services or increase fares, there could be advantage in obtaining undertakings from the company on these points.

4.136. Mr Knowles said that there had been a feeling of inevitability that Stagecoach would come to operate all the services in the Lancaster area. The management and employees of LCT had not made a bid to preserve the company, in the employees' interests, because of its inadequate profit levels and its vulnerability to actions by Stagecoach. Mr Knowles' concern was that tactics similar to those used in the case of LCT could be adopted elsewhere to undermine the viability of, for example, another municipal bus company, by cutting fares or duplicating registrations to prepare the ground for a quick acquisition before the shareholders saw their business financially undermined.

Mr D Whalley

4.137. Mr D Whalley, the former Director of Engineering at LCT, told us that, shortly after Stagecoach's acquisition of Ribble Motor Services, LCT and Stagecoach had concluded a route-sharing agreement providing for a 60:40 split in Stagecoach's favour. In his opinion neither Ribble Motor Services nor, more particularly, LCT had been profitable since deregulation, and LCT had already tried to rationalize services. Ribble Motor Services' reaction had been lukewarm until the Stagecoach take-over, when LCT had been offered the 60:40 sharing agreement as a *fait accompli*.

4.138. At the time of the agreement there had been no indication from Stagecoach that its overall intention was to acquire LCT's assets. Now that the transaction had taken place, and despite offers having been invited from interested parties, the outcome had been a foregone conclusion. It had seemed inevitable that Stagecoach would take over the company.

4.139. Mr Whalley explained that the management team at LCT had seriously considered a management buy-out but had been deterred by the threat of Stagecoach retaliating. Already Stagecoach had instigated what had been a virtual fares war when it had imposed the fares reduction in October 1992. Although it had been described as an experiment to generate more passengers, Mr Whalley felt that its true motive had been to pressurize the Council into selling LCT. After some six weeks or so LCT had restored its fare levels and Stagecoach had followed suit. Reversing the fares cut had been an act of desperation on LCT's part but interestingly, Mr Whalley believed, it could have been interpreted by Stagecoach as a show of strength.

4.140. Mr Whalley agreed with the proposition that in selling the Heysham Road depot LCT had effectively sold the business. There was no convenient site from which LCT could operate its remaining assets and Stagecoach had, furthermore, registered additional services on the two principal routes which had accounted for 50 per cent of LCT's profits. Stagecoach had acquired a strategic asset that would have been difficult to replicate elsewhere and which would be integral to a rationalized network. Mr Whalley considered that the depot was a prerequisite to running an operation the size of LCT.

4.141. The acquisition was seemingly in contradiction to a policy statement made by all parties on the City Council that it would only sell the company when absolutely forced to do so. Mr Whalley explained that the Council had felt that at that time it had a saleable asset which it would not have had after another one or two years of competition from Stagecoach.

4.142. Whilst neither Stagecoach nor the City Council had indicated what they expected the effect of the transaction to be, Mr Whalley was sure that it was common knowledge. He was convinced that, besides the demise of LCT, services would be reduced and the network rationalized because there

were too many buses in the area. He could not predict when this would occur, but did not think it would take long.

4.143. During the negotiations to acquire the assets, Stagecoach had expressed no interest in taking staff directly from LCT. Stagecoach had made it clear throughout the discussions that it would only take staff by application after LCT had ceased trading, the redundancy payments had been made and the winding up of the company had been completed. The City Council, for its part, had been fair in its treatment of staff and had paid what they were entitled to, plus a small incentive.

4.144. Mr Whalley agreed that barriers to entry into local bus services were low, particularly into local authority tendered services. Goodwill, which arguably could be a barrier, was not relevant. In his experience passengers caught the first bus that came along and loyalty counted for little. On the other hand, Mr Whalley did think that fear of retaliation from Stagecoach or a similar dominant operator could act as a barrier to entry. Mr Whalley had little doubt that, had LCT remained in being or another operator had entered the market after the acquisition, Stagecoach would have reacted by reducing fares and registering extra services.

4.145. As regards the public interest, Mr Whalley did not consider that in the short term there would be any noticeable effect. He did think that in time there would be a reduction in bus services and an increase in fares.

4.146. Mr Whalley reaffirmed his belief that, irrespective of the acquisition, the area was over-bussed. Patterns of demand and travelling habits had changed. The area was suffering from long-term unemployment; moreover Morecambe was a holiday town in decline and the combined result of these factors was that the number of people travelling by bus had fallen markedly.

4.147. On the benefit side Mr Whalley foresaw that the acquisition could lead to a stabilization of bus services. Prior to the acquisition passengers had been confused by Ribble and LCT continually changing timetables and frequencies; Stagecoach had a deserved reputation for setting and keeping to timetables.

4.148. Finally, on the question of possible remedies, Mr Whalley thought that ideally the pre-acquisition situation should be reinstated. Whilst LCT and Ribble had had an agreement, they had kept each other on their toes. But he could not envisage a way in which a return to this position could be satisfactorily achieved. He did not believe that forcing Stagecoach to divest itself of the depot and assets would amount to much, although possibly nearby operators such as Blackpool and MTL might be tempted to enter the market, albeit circumspectly.

Members of the public

4.149. Five members of the public wrote to us; all opposed the merger. The first said that Stagecoach's monopoly and dominance could easily drive out new entrants to the market. Stagecoach was in a position to dictate services and fares and had been particularly uncooperative with regard to return tickets, which meant that some travellers had had to pay more. The second said that Stagecoach bought up assets for later disposal at a profit and forced competitors out of the market. The third was concerned at the City Council's decision to sell. LCT had been owned by the citizens, who should have been consulted over the sale, which should not have been to Stagecoach. The fourth believed that the acquisition and resulting lack of competition threatened Lancaster's much needed bus priority system. The fifth pointed out that Stagecoach's monopoly meant that there was no choice, and considered that LCT should have been sold to another operator, not Stagecoach, in the interest of competition.

5 Views of Stagecoach

5.1. This chapter summarizes the views of Stagecoach and its subsidiary Stagecoach North West, which it provided in written submissions and in oral evidence to the MMC.

Jurisdiction

5.2. Stagecoach suggested that the MMC should decline to consider the transaction on the basis that they had no jurisdiction to do so. It considered that its purchase of certain assets of LCT did not give rise to a merger situation qualifying for investigation by the MMC for a number of reasons which it explained as follows.

Two or more enterprises did not cease to be distinct within the meaning of section 65(1)(a) of the Fair Trading Act 1973 (the Act), and the assets of LCT purchased by Stagecoach could not, on any footing, reasonably be described as an 'enterprise', within the meaning of section 63(2) of the Act.

5.3. In support of this view Stagecoach argued that no part of LCT's business had been transferred to Stagecoach on a going concern basis; none of the commercial bus routes operated by LCT had been transferred to Stagecoach North West; none of its contracts with customers or suppliers had been transferred to Stagecoach; and none of LCT's drivers and employees had any entitlement to employment with Stagecoach North West. Stagecoach drew our attention to the 'helpful guidance which the Commission gave' in the AAH report¹ but argued that none of the factors identified by the MMC in the AAH case were present in this case; support for its argument could also, in its view, be found in the case law of the European Court of Justice and the courts of the UK.

5.4. Stagecoach considered, moreover, that the acquisition of certain assets was, in terms of customer perceptions and commercial and legal considerations, an entirely different matter from the acquisition of a business. In particular, if Stagecoach or anyone else had bought the business of LCT, customers would not have seen any immediate changes because the company would have taken the opportunity to assess what it had purchased before making any decisions about the future direction of the newly acquired business. It was because Stagecoach had purchased bare assets, rather than a business, that there had been material changes visible to customers immediately after the purchase in such items as uniforms, ticket machines, passenger-carrying vehicle (PCV) licences, and the nameplate on the Heysham Road depot. The effect of the transaction on commercial services had also differed in a number of other ways from that had Stagecoach acquired the business. For example, the LCT livery had disappeared overnight, and the vehicles, ticket machines and even bus tyres had immediately been different. Stagecoach argued that, had LCT been purchased as a going concern, such matters would have been given consideration and any changes would have been introduced over a longer period.

Two or more enterprises did not cease to be distinct within the meaning of section 65(1)(b) of the Act.

5.5. Stagecoach said that there was no indication that either Stagecoach or LCT had as its purpose to prevent competition between the two companies. Indeed Stagecoach firmly denied that it had bid for the Heysham Road depot in order that the business of LCT be discontinued, or to prevent competition between the enterprises. Moreover, there was ample evidence to suggest that Stagecoach's

¹AAH Holdings plc and Medicopharma NV: a report on the merger situation, Cm 1950, May 1992.

only motivation had been the straightforward commercial one of wishing to acquire, particularly, a bus depot, with a view to satisfying its operational needs. Whereas a finding under section 65(1)(b) of the Act would require the acquisition of the depot and other assets to have been in order 'to prevent competition', the affirmations submitted by directors of Stagecoach to the OFT made it clear that the company's intention had been to acquire a depot irrespective of whether or not LCT remained in business.

In any event Stagecoach had not acquired a market share of 25 per cent or more in the supply of bus services in Lancashire and Cumbria 'as a result of the purchase of certain assets of LCT.

5.6. The fact was that the LCT assets had no impact whatever on Stagecoach's market share in over 99 per cent of Cumbria, nor were they likely to do so. Since LCT operated such limited services in Cumbria, the merger could not be regarded as increasing Stagecoach's market share in the reference area as a whole.

5.7. While Stagecoach did not deny that the reference area could be regarded as a substantial part of the UK, it did dispute the validity of the reference area on the grounds that it was not open to the MMC to find that the market share test was satisfied in the reference area because the merger affected only a limited part of the area. Stagecoach argued that the Act required that there be a nexus between the consequences of a merger for the market share of the surviving enterprise on the one hand, and the reference market on the other, in order for a merger situation qualifying for investigation to arise, and that this was absent in the present case. Moreover, if there was no such nexus, it was not, in Stagecoach's view, open to the MMC to consider, for purposes of establishing jurisdiction, any area other than that specified in the reference.

Stagecoach's policy and development

5.8. Stagecoach said that the company had come into existence and developed against a background of general decline in the bus industry, characterized by increasing bus vehicle miles, declining patronage, rising costs per passenger and generally inadequate profitability. Against this background Stagecoach had as its objective to reverse the trend, encouraging travellers out of cars, taxis and trains and on to buses by constant investment, improvements in all aspects of the service and competitive fares. This required rigorous cost control, and it was Stagecoach's core belief that an overall improvement in bus transport could only be secured if it was founded at all times on effective control of costs. Stagecoach argued that it achieve ' its current level of profitability by offering efficient, high quality services that were in the public int rest.

5.9. Stagecoach provided us with details of achievements in support of its assertion that it had a record second to none when judged by such criteria as new investment, safety, improvements to services and attention to staff training, and quoted particular examples where improvements in services or reductions in fares had generated additional passengers. The company said that it was committed to providing good value for money in bus transport as a means of increasing levels of patronage. This required flexible working practices, good staff communication and effective management.

5.10. Stagecoach told us that, in the Lancaster and Morecambe area, and indeed throughout the reference area, Stagecoach North West's approach to competition had been highly innovative, leading developments in the way bus services were designed, provided and marketed. Stagecoach North West had invested heavily in its business so that the average age of its fleet was 5.4 years, by contrast with the national industry average of 10 to 11 years. Stagecoach North West had also invested in bus depots, bus terminals and roadside bus shelters. Broadly, it had tightly controlled costs, and had invested the proceeds in its business. It had retained commercial subsidy and had introduced a fares freeze which would soon be entering its fourth year. Where it was dominant, as in Cumbria, it had acted in the public interest, given its objective to enhance the position of the bus industry in the longer term, and the strength of potential competition from new entrants.

The acquisition

5.11. Stagecoach told us that it had identified a need for a new bus depot in Lancaster as long ago as 1989. When Lancaster City Council had announced that it proposed to sell LCT, Stagecoach had decided not to tender for the company but, shortly thereafter, it had offered to purchase certain of the assets of LCT: principally a bus depot and 20 buses (later reduced to 12), out of a total fleet of 74. Stagecoach said that, following the acceptance of its offer, the total consideration paid by Stagecoach had been some £1,055,000 (see paragraph 2.47).

5.12. Commenting on the meeting to discuss the disposal of assets of LCT, which Stagecoach had attended with representatives of the City Council and Coopers & Lybrand on 28 April 1993 (see paragraphs 2.35, 2.36 and 4.27), Stagecoach stated that, in an attempt to be helpful, because the Town Clerk had not been accompanied by anyone having a detailed knowledge of bus operations, it had brought to the Town Clerk's attention the various options before him as Stagecoach saw them at the time. The company denied any suggestion that a different transaction from that in fact consummated might have been under consideration at the meeting. While the language used had necessarily been that used by businessmen at a commercial meeting, the Chairman of Stagecoach North West had no recollection of the words '... anxious to secure all the commercial routes in the Lancaster area' having been used at the meeting, and Stagecoach rejected any inference that it was looking to prevent competition. Its motivation had been simply to acquire the assets which it needed.

5.13. Stagecoach told us that, at the time of the meeting on 28 April, its concern had been to expand its services in the Lancaster area. Accordingly, Ribble had already registered to run extra buses from 21 June 1993 on two commercial services, on which it already operated its own timings, to mirror those of LCT, and was at that time recruiting staff for the new services it had registered. A number of LCT employees had already approached Stagecoach for employment since the proposed sale of LCT had been announced. Stagecoach strongly denied any implication that it would resort to 'poaching' LCT drivers; it was well aware of the concern among LCT employees about job security, and its comments at the meeting on 28 April had been no more than a description of the current position as Stagecoach saw it. The company's estimate at that time had in fact been that some 20 to 30 LCT drivers might satisfy its standard recruitment criteria and might therefore be offered employment if they applied for jobs under Stagecoach's recruitment programme. It had not been Stagecoach's intention, nor had it indicated at any stage, that it would agree to the transfer of any LCT employees to Stagecoach as a part of a sale of assets.

5.14. Referring to the deregistration of LCT's commercial services, Stagecoach said that it had not been part of its requirements that LCT deregister; however, LCT would have been required by the Traffic Commissioner to give the standard 42 days' notice of deregistration had it proposed to cease operating its commercial services from 21 June 1993. Stagecoach's statement regarding its new services coming into operation on that particular date should, it suggested, be regarded as no more than part of the normal commercial negotiating practice of setting deadlines for the acceptance of offers. The company had not given an undertaking to the City Council about the level of service it would operate, although it had indicated at the meeting that, subject to commercial developments in the area, it would expect to maintain at least the level of service available at that time for the reasons further explained in paragraph 5.27.

The market

5.15. Stagecoach said that Stagecoach North West operated in a highly competitive transport environment which, as a result of progressive deregulation, was characterized by the following factors:

- (a) minimal regulatory requirements;
- (b) competitive tendering for local authority contracts;
- (c) the virtual absence of barriers to entry;
- (d) the constant threat of new entry;

- (e) change and vibrancy in the bus services market, fuelled by deregulation and competition; and
- (f) competition from other modes of transport (ie cars, taxis and trains).

Lancaster and Morecambe area

5.16. Stagecoach said that there had, in fact, been no material competition in the Lancaster and Morecambe area between Stagecoach and LCT in relation to commercial bus services since 1989. Early that year, Ribble, prior to its acquisition by Stagecoach, had entered into a fares and services agreement with LCT limited to Sunday services, and had furnished details to the Director General of Fair Trading (DGFT), pursuant to the Restrictive Trade Practices Act 1976. Later in 1989, following Stagecoach's acquisition of Ribble, this agreement had been extended to other services, establishing an integrated network within Lancaster and Morecambe (the 1989 Agreement). The details of this extension had been notified to the DGFT. The two companies had used the same route numbers and a common timetable, providing common frequencies and interavailability of return and prepaid tickets. The share of services between the operators had been 60 to 40 per cent in Ribble's favour in winter, falling to some 52 to 48 per cent in summer. It was against this background, and in view of the importance which Stagecoach attached to fostering customer confidence in public transport, that Stagecoach had told its staff to advise passengers that, following the closure of LCT, there would be no change to the commercial timetable.

5.17. Stagecoach considered that, although there had been no material competition between Ribble and LCT in relation to commercial bus services, Stagecoach North West was subject in the Lancaster and Morecambe area to ample countervailing economic power. In addition to the ever-present threat of new entry, there was considerable competition from taxis and trains, as well as from cars. There was also considerable competition from other bus operators for tendered services, and the number of operators of such services was growing.

5.18. Stagecoach said that, following the demise of LCT, it would be able to expand both its commercial and its tendered services, so that the proportion of its licensed vehicles in the area in which it operated would be 49.1 per cent. On this basis, 50.9 per cent of the licences to operate PCVs in the area represented potential competition for Stagecoach North West.

5.19. Stagecoach considered that a depot was necessary for the operation of its services within Lancaster and Morecambe, and that it would require facilities larger than those previously available to it to support any increase in services from the previous level. Stagecoach said that it had bid for the Heysham Road depot having concluded that there was no suitable alternative site available, and that construction of a new depot would be significantly more expensive. It subsequently told us that it could have operated the two additional services registered on 7 April from its existing premises, but it would have been highly constrained from further expansion; conversely, if it were now required to vacate the depot, it could only operate the current level of services from its two former depots if it could obtain the use of additional land for parking vehicles, while in the medium to long term it would need larger facilities in one centralized operation to support its current operation or to develop or expand its services any further.

5.20. Stagecoach acknowledged that the cessation of the business of LCT was one 'possible consequence' of its acquisition of the Heysham Road depot; in a letter to the OFT dated 7 July 1993 it stated: 'there appears to be no doubt that the business of LCT will cease to be carried on, and that this will be the case as a result of (Stagecoach) North West's purchase of LCT's assets'. Stagecoach told us that other options had been open to the City Council, had it chosen to pursue them, for the disposal of LCT's bus business as a going concern, as indeed it had achieved in respect of LCT's Lonsdale coaching business. Stagecoach argued that the price which it had paid for the depot did not represent any element of goodwill, but that the value of the depot to Stagecoach reflected the greater cost that would have been incurred had a new depot been constructed: the cost compared favourably to that of the new depot at Lillyhall, even allowing for any further expenditure that would be required to bring the depot up to the standard of Lillyhall.

The reference area

5.21. Stagecoach told us that parts of the reference area, in particular large parts of Cumbria, were remote in terms of distance and travelling time from the core of LCT's operation and, in its view, would be unlikely to be affected by the acquisition. In Lancashire, Stagecoach North West was the dominant operator of commercial bus services in only three urban centres out of a total of 17, representing some 9.4 per cent of Lancashire's total population and some 16.1 per cent of its urban population. Furthermore, each of the other urban areas was dominated by at least one other operator which could challenge Ribble's services. The reality was that Ribble had a thin network, which stretched over a wide area and was vulnerable to competition from other operators, who themselves had greater local urban dominance.

5.22. Stagecoach considered that the municipal or former municipal bus companies, which operated most of the urban services in Lancashire, were characterized by insufficient investment in vehicles and passenger facilities, relatively high costs, and inadequate profit margins. Stagecoach told us that it was interested in acquiring a number of these businesses. Although some municipal operators had, since deregulation, established services in competition with Ribble, they had done so to a lesser extent than new privately-owned operators.

5.23. Stagecoach said that, more generally, its operations in Lancaster and Morecambe were vulnerable to challenge from potential new entrants, particularly from within what it called the 'primary new entry zone'. This it described as the area lying within one hour's drive from Lancaster, using the M6 motorway where appropriate. The company considered it noteworthy that, by reference to licences to operate PCVs in the primary new entry zone, Stagecoach North West estimated that it had a market share of only some 20.4 per cent, and that the corresponding figure for the reference area as a whole was 22.8 per cent. In addition Stagecoach North West faced competition throughout the reference area from cars and, on many routes, from trains.

The effect on the public interest

5.24. Stagecoach North West believed that its purchase of certain assets of LCT was positively in the public interest and that there were no grounds on which the transaction might be expected to operate against the public interest. Key considerations which led to this conclusion were that:

- (a) when LCT had last competed with Ribble, in 1989, both companies had made losses;
- (b) the 1989 Agreement had been seen by both companies as essential to their survival, and to the survival of a comprehensive bus service in the network area comprising Lancaster and Morecambe and their rural hinterland;
- (c) since 1989 there had been no sustained effective competition between Stagecoach North West and LCT; accordingly, there had not been and would not be any material diminution in competition as a result of the purchase;
- (d) there could not have been sustained effective competition if the 1989 Agreement had been terminated;
- (e) Stagecoach North West was not protected by barriers to entry in the circumstances of this market, and was subject to ample countervailing economic power from buses, trains, taxis and cars;
- (f) significant economies and other benefits would result from the purchase by Stagecoach North West of assets of LCT; and
- (g) Stagecoach North West would develop an integrated, reliable and efficient bus service in the network area for the benefit of the travelling public.

5.25. We put it to Stagecoach that it might be argued that the transaction had removed competition, or potential competition, on those routes previously served by LCT and Stagecoach, and that Stagecoach was now in a stronger position, for example, to raise fares or reduce the level of service. Stagecoach responded that to act in such a way would be to destroy the nucleus of what the company was trying to build. In Cumbria, where Stagecoach was dominant, it did not abuse its position and was investing in its services. Moreover, in the Lancaster area, one of its competitors, Heysham Travel, had recently been acquired by MTL, a Liverpool-based operator with 1,150 vehicles. MTL had since acquired virtually all the tendered operations of Watson's, thereby increasing its presence in the market. The potential competitive threat which this posed was such as to ensure that Stagecoach would not reduce its services or increase its fares.

5.26. In response to the related point that competition from other forms of transport, such as cars, taxis, railways and walking, provided a less strong safeguard for the public interest than the presence of a competing local bus operator such as LCT, Stagecoach said that it had continually had to resist LCT's efforts to persuade it to increase fares. In Stagecoach's view it had been due to LCT's inefficiency that it had wanted to continue to increase fares; LCT's existence in the market had been no guarantee of either good quality services or competitive fares. Stagecoach referred to the Manchester bus market, where a fall in the number of passengers had resulted from the confusion associated with a large number of operators. By contrast, in Carlisle and the rural shire county of Cumbria, Stagecoach had invested in new vehicles and a good public information system, and had not increased its fares for three years.

5.27. We asked Stagecoach whether, in the light of what some people saw as overbussing in Lancaster and Morecambe, there might not be service reductions. Stagecoach said that, given that it was making good profits from its current levels of service, there was no reason why it should reduce services. The company looked, wherever possible, to increase its service network, in line with its overall policy of growth.

5.28. On the question of tendered services, we asked Stagecoach whether the disappearance of LCT, as the second largest operator in the Lancaster and Morecambe area, might not adversely affect the competition for LCC contracts. Stagecoach agreed that tender prices might have gone up, but the reason was that LCT had clearly sought volume irrespective of costs and profitability. Given the higher cost structure of LCT's operations, the fact that LCT's share of tendered services had been larger than that of Stagecoach reflected LCT's policy of underpricing tenders, which, in Stagecoach's view, could not have been sustained. Prices had certainly not risen as a result of Stagecoach's presence; because its policy was not to pursue volume, Stagecoach's position had tended to be towards the top end of the price structure and a number of new, price-conscious operators had competed for and won a number of the retendered services formerly operated by LCT. These were typically operators which, having only two, three or four vehicles, had a significantly lower cost base than larger operators, but which, nonetheless, could or would not run tendered services at LCT's prices.

5.29. Commenting on the transport of school pupils on behalf of LCC on commercial services, Stagecoach did not consider that there would be any lack of competition following the demise of LCT. Since September 1992 LCC had allowed operators either to submit prices for individual children on commercial services or to put together and submit a bulk tender. The Council had introduced that flexibility to ensure that no commercial operator could dominate this type of provision; indeed some operators had tendered for the first time in late 1992 and had taken a significant amount of work from Stagecoach on the basis of bulk tenders for the carriage of school pupils on commercial services.

5.30. Stagecoach said that it responded vigorously to new entry, while not knowingly engaging in anti-competitive practices. Despite various complaints to the OFT, in no case had Stagecoach North West been found to engage in such practices. The company suggested that the only point relating to anti-competitive practices raised by the present acquisition was whether it would encourage such practices. Stagecoach's view was that the MMC would not be justified in reaching any conclusion that the acquisition would encourage anti-competitive practices, and that the Competition Act provided an adequate remedy, should any problems occur in the future.

5.31. Noting that Ribble tickets had been accepted by LCT on LCC tendered services but were not now accepted by other operators, we asked Stagecoach whether passengers were not disadvantaged

by this lack of interavailable tickets. Stagecoach replied that it was for LCC to set the criteria for acceptance of other operators' tickets on tendered services and that it was regrettable if the Council had chosen to restrict such acceptance. It cited the example of a morning tendered service where another operator collected outward passengers' fares but where LCC considered that Ribble should, without recompense, carry those passengers back in the evening. The tendered service had formerly been operated by LCT with interavailability of tickets with Ribble under an arrangement which had been registered with the OFT in 1989. Stagecoach considered that the current problem had not arisen as a result of LCT's closure because, even had LCT remained in the market, another operator, with whom no OFT-registered agreement on interavailability was in force, could have won the LCC contract concerned.

5.32. We asked Stagecoach whether the demise of LCT in effect removed one of the few companies able to compete from Lancaster into Cumbria, reducing potential competition both there and on other routes radiating from Lancaster. Stagecoach replied that while, in its view, LCT had not been in a fit financial state to extend beyond its operating area, MTL, which had more resources than Stagecoach in north-west England, had the opportunity to move resources from Merseyside to Lancaster and, for example, to compete with services to Kendal, as LCT used to do, from its newly-acquired base at Heysham Travel, which was within about a mile from LCT's former depot. MTL, which was, like Stagecoach, in the private sector, constituted a much larger and stronger potential competitor in the region than LCT in terms of size, though not necessarily of profitability.

Market entry

5.33. Stagecoach told us of a number of specific instances of recent entry in Cumbria. It had taken action, such as service changes or fare reductions, in response to several of these new entrants, some of whom, for a variety of reasons, had subsequently ceased operation. Stagecoach said that there was a new entrant about every three months in its operating area in Lancashire (see paragraphs 3.39 and 3.69). Almost all of these had duplicated Stagecoach services, running a few minutes ahead of Stagecoach, and had not developed the market. In this situation the market would not necessarily remain profitable for entrants and it was their lack of judgment, rather than retaliation by Stagecoach, which made it difficult for them to operate profitably. However, some smaller operators had successfully entered and remained in the market. By using a bus in an unfamiliar livery on a route between Wigan and Chorley, Stagecoach demonstrated to us the ease with which a new operator can pick up passengers. In the experiment passengers waiting at bus stops for another service hailed the unfamiliar bus (although Stagecoach did not in fact pick up any passengers since it was not a registered journey).

5.34. Stagecoach argued that, in the absence of formal barriers to entry, the threat of potential competition was sufficient to ensure that it did not abuse its position, even when dominant as in Cumbria. Although Stagecoach would compete vigorously with new entrants to hold on to business that it wished to retain, it would do so within its understanding of the law. Clearly new entrants, in Lancashire in particular, did not see Stagecoach as a dominant force; otherwise they would not continue to challenge Stagecoach, but would turn their attention to the municipal operators. Stagecoach emphasized that it was not worried about competition in the sense that it had no objection to any operator seeking to enter the market and compete vigorously in the way that Stagecoach did.

5.35. Stagecoach observed that there were more long-established large bus companies in Lancashire than in any other shire county in the UK; all were more dominant in their operating areas than was Stagecoach in its areas. If Stagecoach were to enter their markets it would expect them to react vigorously but legally. Stagecoach's understanding was that the competition system encouraged a company to compete provided that it did not do so in an anti-competitive manner.

5.36. We put it to Stagecoach that the municipal companies in Lancashire would be unlikely directly to challenge Stagecoach in case it began to compete on their most profitable routes. Stagecoach responded that, if others saw a business opportunity in Stagecoach's area, they would make a judgment about entering and competing in that market, taking into account what Stagecoach's response would be. Similarly, if Stagecoach decided to operate in one of the urban areas of Lancashire, it would consider the likely response of the dominant operator in that area.

5.37. Referring to the primary new entry zone and the role of the M6 motorway (see paragraph 5.23), Stagecoach gave the example of an operator 25 miles south of Lancaster which had won an LCC contract in the Lancaster area in competition with a substantial number of other operators. Although a large company could operate from its main base if this was within one hour's drive of Lancaster, as the size of the operation grew it became increasingly necessary to have a local workshop and engineering facilities. For example, if MTL did not have adequate resources at Heysham Travel (see paragraphs 5.25 and 5.32) it could easily purchase the necessary facilities from another private operator.

Remedies

5.38. We asked Stagecoach to comment on a number of remedies which might be considered if an adverse public interest finding was made. Before commenting on particular remedies, Stagecoach responded that, even if the MMC were to conclude that the acquisition of the assets of LCT operated or might be expected to operate against the public interest, behavioural undertakings would be unnecessary. This was because there was ample countervailing power in the reference area including, more particularly, Lancaster and Morecambe, providing all the competitive discipline that might be required. The essential point was not the degree of actual competition in the market, but the ever-present threat posed by:

- (a) the presence of other bus operators already in the market for commercial or tendered services, which could expand to operate on services previously provided by LCT;
- (b) the countervailing power of the private motor car and other forms of transport such as trains; and
- (c) the relative ease of new entry into local bus services.

In terms of new entry, the threat posed by MTL could not be underestimated. MTL was considerably larger than Stagecoach North West and, with a low-cost base in the area through its recent acquisition of Heysham Travel, was in a position to enter the local commercial bus services market on a significant scale, and at very short notice.

5.39. Stagecoach considered that, to the extent that any further safeguards were necessary, these already existed and were to be found in the Competition Act 1980. The company did not believe that the hypothetical remedies put to it by the MMC provided any material additional safeguard, particularly given that the OFT had shown no reluctance to use its powers under this legislation in respect of conduct in bus markets. Moreover, Stagecoach had regard to, and believed it complied with, the competition rules as it understood them. Its policy was never to engage in an anti-competitive course of conduct within the meaning of section 2 of the Competition Act. In these circumstances, any recommendation that Stagecoach be required to give behavioural undertakings on frequency or timing of services or on prices would be unwarranted in the absence of a specific finding of an anti-competitive course of conduct under the Competition Act.

5.40. Stagecoach believed, furthermore, that the hypothetical remedies would be unworkable in practice, could act to the detriment of Stagecoach's operations in Lancaster and Morecambe, and would be against the public interest. The company said that, where behavioural undertakings of the type suggested were in place, competing operators were frequently well placed to take advantage of the constraints imposed on the operator subject to the undertakings. It was entirely possible for a competing operator selectively to register services on routes and timings to compete with the operator subject to the undertakings, which had little choice but to respond, within the bounds of the undertakings given, by adding new services or varying existing ones. By progressively registering such services and then deregistering them, a competing operator could, effectively, force the operator subject to the undertakings to increase its services (and mileage) to levels which could not be sustained for the periods required by the undertakings without causing serious loss.

5.41. In Stagecoach's view, the ability to seek release from the undertakings in circumstances such as these would not provide adequate protection. Existing operators could commence new services or vary existing services subject only to the requirement to give 42 days' notice to the Traffic

Commissioner. In practice, it was often the case that other operators received little or no notice of the new or varied registrations. It was thus open to operators to move swiftly on to and off services and to 'cherry-pick' on the most profitable routes of the operator subject to the undertakings. Stagecoach's concern was that release from behavioural undertakings could not be obtained within the time-scale necessary to provide effective relief from operators using the undertakings in a damaging manner. It believed that their actions would harm not only Stagecoach, but also the competitive process in the market, the standard and reliability of local bus services in Lancaster and Morecambe and the public interest more generally.

5.42. Stagecoach commented as follows on specific hypothetical remedies.

- A. Divestment of the depot, associated possibly with a requirement to deregister former LCT services, and to refrain for a period from active competition with any company acquiring the depot.*

Stagecoach told us that divestment of the depot would have the immediate disadvantage of forcing Stagecoach to revert to its existing Morecambe and Skerton depots. This would involve withdrawing the Morecambe site from sale and recommissioning it. The Morecambe and Skerton depots would be just adequate as a short-term measure with the proviso that Stagecoach would have to obtain the use of additional land for parking vehicles. In the medium to long term Stagecoach would need larger facilities in one centralized location to support its expanded operations in Lancaster and Morecambe. This would require the purchase and development of a green-field site at a cost which Stagecoach considered would well exceed the total cost of purchasing and upgrading the Heysham Road depot. Such expenditure would inevitably have implications for fares.

5.43. The divestment of the depot would have the following further disadvantages:

- (a)* Stagecoach would lose the economies, estimated at no less than £100,000, to be achieved by centralizing its depot services on one site.
- (b)* The environmental disruption to residents near the Morecambe depot would recommence and the road safety problem of having to reverse blind on to the A6 trunk road at Skerton would continue for longer.
- (c)* Until a new centralized site was developed Stagecoach would lose the benefits of having substantially upgraded depot facilities in one central location. These included the facilities needed for greater daily attention to safety aspects, which could be achieved at Heysham Road on a more cost-effective basis than hitherto. This would affect not only Stagecoach as a company, but also its depot staff, its drivers and other road users (although every effort would be made to minimize disruption and avoid accidents).
- (d)* Until a new depot was in place, Stagecoach's capacity to develop and expand its services would be very limited.

5.44. Stagecoach considered that a requirement that it deregister services on former LCT timings would be excessive and punitive, placing it in a worse position than would have been the case had it not acquired the depot. It was always open to other operators to choose whether and to what extent they wished to provide services to reflect LCT's former operations, and Stagecoach should not be denied the same possibility, regardless of the position with respect to the depot. If Stagecoach acted anti-competitively, the Competition Act was available.

5.45. A requirement to refrain from active competition would be both punitive and detrimental to the competitive process since, as Stagecoach had already indicated, its policy was not to engage in anti-competitive conduct and the Competition Act was available.

- B. Possible behavioural undertakings to improve the prospect of new entry, should Stagecoach abuse its position in Lancaster and Morecambe, including the following:*

- (i) that, if Stagecoach reduces fares to below those of a competitor on any route or part of a route serving the Lancaster and Morecambe area, it will not subsequently increase fares, should the competitor withdraw, for a period of at least three years after the competitor's withdrawal.*

5.46. Stagecoach considered that, given unforeseeable variables such as changes in the market, levels of inflation, fuel prices and prices for spare parts, undertakings requiring that fares be held at particular levels for three-year periods were most unreasonable, especially since Stagecoach had already, of its own initiative, held its fares down for almost three years.

(ii) that, if Stagecoach increases its frequencies on any route or part of a route serving the Lancaster and Morecambe area operated by another company, or on which another company has announced its intention of operating services, should the competitor withdraw Stagecoach will not subsequently reduce commercial frequencies for a period of three years after the competitor's withdrawal. As in other cases Stagecoach could be able to seek release from these undertakings should circumstances change in the Lancaster and Morecambe area, or should Stagecoach, for example, be seriously disadvantaged by smaller operators temporarily operating routes in such a way.

5.47. Stagecoach said that its general comments (see paragraphs 5.40 and 5.41) regarding operators skilled in taking advantage of behavioural undertakings, to the detriment of the operator who had given the undertakings, were especially pertinent to this hypothetical remedy. It was not satisfied that the possibility of seeking release from the undertakings would provide an adequate safeguard because such release could not be obtained in the necessary time-scale. Moreover, the remedy might cause serious detriment to Stagecoach by preventing it from responding competitively to changes in the market.

(iii) that, should a competitor enter a route, or a substantially similar route, operated by Stagecoach, Stagecoach should not register a journey before the competitor's service within a shorter interval than the competitor had itself registered before an existing Stagecoach service.

5.48. Stagecoach did not believe that this hypothetical remedy would be workable in practice, even if it were desirable and justified, as a result of the manner in which the North West Traffic Commissioner applied the rules on service registrations. Services registered on particular timings might be run up to five minutes before and five minutes after the registered timing. This flexibility allowed operators to run a service seconds in front of a competing service, notwithstanding that it might be registered on a timing either five minutes ahead or five minutes behind the competing service. Furthermore, as a result of traffic conditions in Lancaster and Morecambe and the leap-frogging that occurred between buses on the same route, it was impossible, in practice, for operators to keep to their registered timings. Because registered timings were merely indicative of actual timings on the road, any undertakings not to register services within minimum intervals in front of a competitor's registered services would be unworkable.

5.49. Moreover, where 'frequent services' were operated, the North West Traffic Commissioner required only that the timings of the first and last bus be registered. Buses could then run at any interval between those times (provided there was at least one every ten minutes), and the intervals between buses might vary throughout the day. For these services it would serve no purpose to require Stagecoach not to register services in front of a competitor within intervals which were shorter than those between the competitor's service and Stagecoach's.

C. That Stagecoach should be required to publish information on the financial performance of its Lancaster depot, and supply to OFT similar information on those other depots operated by Ribble or Stagecoach North West for purposes of comparison. (Improved monitoring of fares and services, for example by LCC or the OFT, to detect abuse might be unnecessary, at least as regards service levels, given LCC's role in publishing service information.)

5.50. Stagecoach commented that the Companies Act imposed obligations on companies to publish financial information. It considered that any requirement to publish any financial information beyond the requirements of that legislation would be unwarranted, except possibly in cases where anti-competitive conduct was found to exist and to operate against the public interest. As to the monitoring of fares and timetables, LCC already received from Stagecoach, and other local bus service operators, details of fares and timetables. Thus LCC already had available sufficient information to enable it to detect potential abuse.

5.51. In conclusion, Stagecoach said that it had established an enviable track record in operating bus services in Lancashire and Cumbria and was committed to sustaining and developing commercial bus services in Lancaster and Morecambe. Its commercial interests lay in local bus passenger transport and it would succeed or fail on the quality and value of service that it offered to the travelling public. Stagecoach's commitment to bus services in the reference area, combined with the constant threat of new entry and competition from other modes of transport, provided all the assurance necessary that it would continue to operate local bus services in Lancashire and Cumbria in a manner consistent with the public interest.

6 Conclusions

The reference

6.1. Under the reference (Appendix 1.1) dated 3 August 1993 (made under sections 64, 68 and 69(2) of the Fair Trading Act 1973—the Act), we are required to investigate and report whether a merger situation qualifying for investigation has been created in that enterprises carried on by or under the control of Lancaster City Transport Limited (LCT), incorporated in the UK, have within the six months preceding the date of the reference ceased to be distinct from enterprises carried on by or under the control of Stagecoach Holdings plc (Stagecoach). For this purpose, the terms of reference refer to the test specified in paragraph (a) of section 64(1) of the Act, the market share test, in respect of the supply in Lancashire and Cumbria of bus services (as defined in section 159(1) of the Transport Act 1968, as amended by paragraph 1 of Schedule 1 to the Transport Act 1985).

The merger situation

6.2. Stagecoach disputed both whether a merger situation had been created by what it regarded as the acquisition only of assets of LCT; and secondly whether ‘as a result’ of such an acquisition the market share test had been satisfied. We have to consider these arguments in the context of the background to the acquisition.

The background to the acquisition

6.3. LCT was wholly owned by Lancaster City Council (the City Council) and operated bus services primarily in the district of Lancaster (which we generally refer to in this chapter as Lancaster, and which includes as well as the city of Lancaster towns such as Morecambe, Carnforth and Heysham, and adjacent rural areas: see Appendix 1.2). Some LCT services also extended into Cumbria, and occasional services into Yorkshire and other districts of Lancashire. Commercial services accounted for 70 per cent of LCT’s bus operation, the remaining 30 per cent being tendered services operated on behalf of Lancashire County Council (LCC) and, to a lesser extent, North Yorkshire County Council. In addition to running bus services, LCT had a fully-owned subsidiary, Lonsdale Coaches Limited (Lonsdale), a coach operator. Turnover of LCT was £2.5 million in the year to 31 March 1993, including revenue of Lonsdale of £0.4 million. Operating profit in that year was about £142,000 (both for LCT alone, and including Lonsdale, which, therefore, just broke even); profit after interest and taxation about £93,000. Both LCT and Lonsdale were based at LCT’s depot at Heysham Road in Morecambe.

6.4. Stagecoach is one of the largest bus operators in the UK, with total turnover in the year to the end of April 1993 of some £150 million including overseas activities. It provides bus services throughout the reference area through its subsidiary, Stagecoach (North West) Limited (Stagecoach North West): one division of Stagecoach North West, Ribble Buses (Ribble), operates primarily in Lancashire, a second division, Cumberland Motor Services (Cumberland), principally in Cumbria. As explained further below, Ribble operated a number of services within Lancaster under a timetable agreement with LCT; Cumberland provides longer-distance services to and from Lancaster. The timetable agreement allocated approximately 60 per cent of bus mileage in the Lancaster and Morecambe area to Ribble, the remainder to LCT (although LCT’s share tended to be higher in

summer); most services within the town were jointly operated to provide evenly-spaced services for passengers with the further benefit of interchangeable tickets between the two companies.

6.5. Operating profit of the Stagecoach group was about £18.1 million in the year to the end of April 1993 (£13 million after interest). Stagecoach North West made an operating profit of some £3.6 million on turnover of £33.2 million in that year. The services run from its Lancaster and Morecambe depots were among Ribble's most profitable operations.

6.6. The background to the acquisition is discussed in detail in Chapter 2. When the Government indicated in April 1992 that it intended to require local authorities to sell their bus companies, initial discussions took place between the City Council, LCT and the Department of Transport (DOT) with regard to local authority-owned bus companies. In June 1992 the Minister for Public Transport made a statement confirming the Government's intention, and the City Council received enquiries from a number of potential bidders including Stagecoach (which also expressed an interest in the acquisition of other municipal bus operators). On 23 November the Secretary of State urged local authorities to dispose of their bus companies, and on 16 December the City Council passed a resolution to proceed. The City Council's intention to sell was formally announced at the end of February 1993, with indicative offers to be sent in by 31 March 1993. Eight indicative offers were received: from these, five companies were invited to submit formal tenders for the entire share capital of LCT by 22 May 1993.

6.7. Stagecoach told us that, having become aware that the City Council intended to privatize LCT's bus operation and its subsidiary Lonsdale, it decided to increase its operations in Lancaster and, to that end, considered the possibilities for procuring larger depot facilities to support these enhanced operations. A number of sites first looked at as alternative premises in 1989 were reviewed. After learning that tenders were being sought for the business of LCT, Stagecoach decided not to bid for that business because of the possibility of a reference under the Act. According to Stagecoach, it did, however, conclude that, instead of constructing a new depot, it would be a commercially attractive solution to purchase LCT's Heysham Road depot to satisfy its need for larger premises.

6.8. On 7 April Stagecoach registered additional services to begin on 21 June on two routes previously operated jointly with LCT under the agreement referred to in paragraph 6.4, to coincide with LCT's timings on the two routes. These were among the most profitable of LCT's routes: we were told by a former senior manager of LCT that the two routes earned more than one-half of LCT's profits. Stagecoach told us that it intended to operate these services regardless of who should buy the LCT business, and of whether it might eventually acquire the Heysham Road depot. The intention not to bid for LCT and the registration of the routes was announced in a press notice on 21 April 1993, which also stated that Ribble would consider substantial changes to the fares and ticket arrangements. The press notice described these measures as a 'defensive position' and stated that Stagecoach would defend its share vigorously if LCT was acquired by a company 'merely interested in sparking off bus wars to increase their market share'.

6.9. There was a meeting between the Town Clerk of the City Council and Stagecoach on 28 April. According to the Town Clerk's note of that meeting written shortly after, Stagecoach said that it was still anxious to secure all the commercial routes in the Lancaster area (although the Stagecoach representatives could not recall saying this) and would within a week bid for the Heysham Road depot and other assets. The Town Clerk also noted that Stagecoach had said that it would offer jobs to some 30 of LCT's staff: Stagecoach told us that at no stage did it indicate that it intended to agree to the transfer of any LCT drivers as part of any sale of assets. The Town Clerk also recalled that Stagecoach had indicated that it would be prepared to give a written undertaking as to the level of service to be operated; Stagecoach did not give such an undertaking, but told us that it did indicate that it would anticipate retaining at least the level of service available at the time. We were also told that Stagecoach had said that within the next two or three weeks it would be recruiting from LCT's existing platform staff the drivers required for its additional services. Stagecoach strongly denied any implication that it would resort to 'poaching' LCT drivers; it said that this was no more than a reflection of its position at the time, when it was recruiting staff to operate the newly-registered services, and its confidence that some LCT drivers would seek jobs.

6.10. On 4 May 1993 Stagecoach submitted a bid of £700,000 for the Heysham Road depot, £250,000 for 20 vehicles, and £115,000 (subject to subsequent verification) for plant and equipment and stock at book value. It also offered to take over the leases on three minibuses. The bid was open for acceptance until 21 May. In response, the City Council decided to bring forward the deadline for formal tenders from other companies from 22 May to 12 May, by when five other offers were received. The highest offer for the issued share capital of LCT, from Blackpool Transport Services Limited (Blackpool), was initially almost £900,000, subsequently reduced to £809,000, reflecting a number of factors including, Blackpool told us, the effects of the additional services registered by Stagecoach. Contrary, we were told, to the views of the Town Clerk and its financial advisers on the sale, the City Council decided against the bid from Blackpool; it felt that the bidder had not assessed the full impact on the business of LCT of increased competition from Stagecoach, and had no confidence that an independent operation could be maintained in the face of that increased competition. Another company (not one of the original companies which had submitted an indicative offer) had requested an extension of time to submit a bid: the City Council felt that this could have led to the Stagecoach offer being withdrawn. The City Council considered therefore that the business would in due course have to be closed if the Stagecoach offer was not accepted, whereas acceptance would enable the book value of LCT to be recovered.

6.11. The City Council accordingly voted on 17 May 1993 to accept the Stagecoach bid. Since the City Council had said that, in the absence of an acceptable bid for LCT or for Lonsdale, it regarded the closure and liquidation of the two companies as inevitable, the DOT 'reluctantly' gave its consent on 20 May 1993. Lonsdale and the remaining buses would be sold separately while LCT, after ceasing operations, would go into voluntary liquidation. Stagecoach agreed to delay its move into the depot until 23 August (the depot being leased back to LCT for that period), to provide LCT with the required 90-day period of notice for redundancy of its staff. The agreement for purchase of the assets was signed on 4 June. In the event, only 12 buses were acquired by Stagecoach (including two minibuses), with a total price paid for the depot, buses and other assets of £1,055,432. Total receipts of the Council, from sale of the depot to Stagecoach and other assets separately, less expenditure including redundancy costs are currently estimated at £1.4 million (subject to consideration of enhancing the pension rights of some LCT employees and the price finally realized for the buses).

6.12. Stagecoach considered applications for employment from LCT staff, as from other sources: it employed 20 former LCT staff as drivers, out of 38 applying, and of the 56 drivers it was looking to recruit. Stagecoach took over the depot at midnight on 22 August, retaining two of the three existing LCT telephone numbers, one for passenger enquiries, and one for emergency calls by drivers in the event of breakdown. Final utility meter readings were taken on or about 22 August, with Ribble billed thereafter. LCT was expected to be wound up later in 1993 or early in 1994.

6.13. Stagecoach issued a number of press notices assuring passengers that services would be maintained and confirmed this in an interview on local radio. The additional registrations (announced in April to commence in June, coinciding with certain LCT services) were postponed, Stagecoach registering all former LCT commercial services (those previously registered to commence in June, and remaining LCT commercial services), which it operated as from midnight on 22 August. LCT's former contracted services were tendered by LCC, most of the services being won by operators other than Ribble. Most of the buses which Stagecoach acquired from LCT were subsequently redeployed outside the Lancaster and Morecambe area.

The merger situation

6.14. Under section 65(1) of the Act, enterprises shall be regarded as ceasing to be distinct enterprises if either:

- (a) they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control)—section 65(1)(a); or

(b) either of the enterprises ceases to be carried on at all and does so in consequence of any arrangements or transaction entered into to prevent competition between the enterprises—section 65(1)(b).

An enterprise is defined by section 63(2) of the Act as ‘the activities or part of the activities of a business’. We note that ‘business’ is defined in section 137(2) of the Act, not exhaustively, but includes ‘a professional practice and includes any other undertaking which is carried on for gain or reward or is an undertaking in the course of which goods or services are supplied otherwise than free of charge’. ‘Activities’ is not defined by the Act.

6.15. We have therefore to consider whether the activities or part of the activities of the business of LCT were brought under common ownership or common control with enterprises of Stagecoach. We return below (paragraph 6.23) to the enterprises of LCT, which may have ceased to be distinct from those of Stagecoach.

6.16. We note, from further provisions of section 65, that ‘control’ may, but need not, include a ‘controlling interest’, an expression which is not specifically defined in the Act. We further note that the opening words of section 65(2), in specifying instances of ‘common control’ for the purpose of section 65(1), recognize that these are ‘without prejudice to the generality of’ this expression in that subsection.

Section 65(1)(a)

6.17. We first consider section 65(1)(a). As we have indicated (paragraph 6.2), it is Stagecoach’s view that the acquisition summarized in paragraph 6.11 above involved a transfer to Stagecoach of assets only and that, in consequence, no merger situation qualifying for investigation was created. In support of this view Stagecoach argued, *inter alia*, that no part of LCT’s business was transferred to Stagecoach on a going concern basis; none of the commercial bus routes operated by LCT had been transferred to Stagecoach North West; none of its contracts with customers or suppliers had been transferred to Stagecoach; and none of LCT’s drivers and other employees had any entitlement to employment with Stagecoach North West. Stagecoach argued that none of the factors identified by the MMC in the AAH report—to which we refer below—were present in this case; support for its stance could also, in Stagecoach’s view, be found in the case law of the European Court of Justice and the courts of the UK.

6.18. We have also had regard to the legal authorities listed in Appendix 6.1. We do not regard these as determinative of the issue to be decided under section 65(1)(a), although we believe that they support and are consistent with our views, expressed below.

6.19. In two recent inquiries, it was argued by parties that the transactions concerned involved the transfer of assets and not the creation of a merger situation.¹ In both instances, we identified the existence of a merger situation qualifying for investigation. We mention this point, not because it affects the reaching of a conclusion in the present case, but because it emphasizes the need for us to scrutinize with great care the facts and surrounding circumstances, against the legal background. It is, we believe, on these, and on the inferences reasonably to be drawn from them, that our conclusion, in whatever sense, must be based. We should add that, in reaching such a conclusion, we are concerned, in connection with section 65(1)(a), with an objective view of the circumstances and the effects of what has taken place rather than primarily with Stagecoach’s intention underlying the transaction (a point which was similarly made in paragraph 6.71 of the AAH report).

6.20. This leads us conveniently to three observations which we believe it desirable to make on the legal background. First, as regards the expression in section 65(1)(a) ‘brought under common ownership or common control’, the word ‘brought’ is not defined in the Act. The Act, therefore, does not expressly define or limit how the result of two enterprises being under common ownership or

¹ *William Cook PLC acquisitions: a report on the merger situation*, Cm 1196, August 1990 (William Cook); *AAH Holdings plc and Medicopharma NV: a report on the merger situation*, Cm 1950, May 1992 (AAH)—this was the case mentioned by Stagecoach, paragraph 6.17.

common control is to be, or can be, achieved. In this context, we were advised, in connection with the AAH inquiry (paragraph 6.67 of that report), that the phrase 'brought under common ownership or common control' is to be construed, and that the question whether it limits what can be taken into account is to be examined, having regard to its context and the purpose of the Act. We believe that this advice is equally relevant to our consideration of the present circumstances—and note that Stagecoach drew our attention to the 'helpful guidance which the Commission gave' in the AAH report.

6.21. Second, we believe that one of the intentions and purposes of the Act is to enable the MMC to consider commercial realities and results and not merely the results of legally enforceable agreements and arrangements (a point also made in the AAH report, paragraph 6.69). It is, we believe, our duty to look at substance, not form.

6.22. Third, we consider that, whether or not section 65(1)(a) applies in the present case is a matter of judgment and that we should approach and reach our conclusion thereon having regard to the factual situation with which we are presented, taken as a whole.

6.23. We now turn to the particular circumstances. We first consider whether any enterprises (as described in paragraph 6.14 above) of LCT are capable of having been brought under common ownership or control with those of Stagecoach. We described the activities of LCT in paragraph 6.3 above. We note that somewhat less than one-half of LCT's assets (by book value) were involved in the acquisition by Stagecoach; the subsidiary Lonsdale was excluded from the acquisition; there was also no transfer of existing contract services to Stagecoach, which were retendered by the County Council. We therefore consider that the only enterprise of LCT with which we are concerned is its operation of commercial bus services, being part of the activities of its business (in the remainder of this section of the report, this is referred to as 'the business').

6.24. Undoubtedly, taken individually, the specific features of this acquisition are consistent with Stagecoach's argument that it relates to assets only, the items (paragraph 6.11 above) being the Heysham Road depot, 12 buses (including two minibuses) and some other assets, which we do not consider it necessary to refer to further. It is also the case that some features were absent which may well, although do not necessarily, accompany the transfer of an enterprise. There was no direct transfer of staff. There was no assignment of goodwill or the benefit of contracts or of work in progress as in *William Cook* (paragraph 6.5 of that report), nor any handing over of customer lists, as in *AAH*. However, goodwill, as such, and work in progress seem inappropriate in the context of operating bus services for the benefit of the public; contracts are not relevant to this particular enterprise of LCT; and we consider that (as with goodwill) there was no equivalent, in the present circumstances, to customer lists, Stagecoach already having full knowledge of LCT's services (LCT's timetables anyway being in the public domain).

6.25. One fact which we regard as of significance is the continuity between the bus services provided by LCT up to (and on) 22 August 1993, and operated by Stagecoach, on and from 23 August, with no perceptible break. Indeed, as we pointed out in paragraph 6.13, Stagecoach took steps to reassure the public as to the intention of such continuity, and it duly happened. Stagecoach did not introduce the additional services initially registered to come into operation on 21 June (see paragraph 6.8) but in fact registered all the commercial services conducted by LCT to come into operation on 23 August. By doing so, Stagecoach, therefore, registered the business.

6.26. However, in our view, the decisive point, important although it is, is not the continuity itself but what made the continuity possible. No doubt the position may vary between different bus businesses, but it appears to us (and we say it with no disrespect) that LCT's was a fairly basic operation, requiring in essence staff, buses and the Heysham Road depot. As we have mentioned, in this case there was no direct transfer of staff (although some former LCT staff were taken on by Stagecoach), and the particular vehicles acquired by Stagecoach may be less necessary to the operation of services given the availability of second-hand vehicles. We therefore believe that we have to consider the nature of the connection between the ownership of the Heysham Road depot and the continued operation by Stagecoach of the commercial services conducted by LCT. In so doing we have further to consider whether so close a connection is demonstrated between, on the one hand, the Heysham Road depot and, on the other, the ability to conduct the business—and so the conduct of

the business—that, as a matter of substance and commercial reality, the acquisition of the depot by Stagecoach carried with it the business and therefore brought the business under Stagecoach's ownership or control.

6.27. In applying this to the facts, we have noted Stagecoach's previous difficulties in acquiring a depot to replace its existing facilities, and allow for expansion of its services. Stagecoach itself acknowledged that a depot was necessary for the operation of its services within Lancaster, or for any other large operator within a principal area of operations; that it would itself require facilities larger than those previously available to it to support any increase in services from the previous level; and that it bid for the Heysham Road depot having concluded that there was no suitable alternative site available, and that construction of a new depot would be significantly more expensive. It subsequently told us that it could have operated the two additional services registered on 7 April from its existing premises, but it would have been highly constrained from further expansion; conversely, if it were now required to vacate the Heysham Road depot, it could only operate the current level of services from its two former depots if it could obtain the use of additional land for parking vehicles, while in the medium to long term it would need larger facilities in one centralized operation to support its current operation or to develop or expand its services any further. The evidence in our view therefore shows that acquisition of the Heysham Road depot was necessary if Stagecoach was economically to operate the commercial services previously operated by LCT without, for example, operating buses at significant cost from other depots, or constructing a more expensive depot within Lancaster.

6.28. As regards LCT, on the other hand, two former directors confirmed that the company could not have operated without the Heysham Road depot, and other third parties, including the City Council and other bidders, considered that the depot was central to LCT's operations. There were no readily available alternative sites that would have allowed LCT's business to be maintained, on any scale, had the City Council wished to do so. Stagecoach indeed acknowledged that the cessation of the business of LCT was a 'possible consequence' of the acquisition of the depot.

6.29. It seems to us clear that, so far as LCT was concerned, the connection between the Heysham Road depot and the operation of its commercial services (the business) was so close as fairly to be described as fundamental. In our view, the matter cannot be put quite as high as this as regards the operation of the services by Stagecoach; it is not impossible that the services could have been operated by Stagecoach without the Heysham Road depot. However, bound as we believe that we are to consider commercial realities (see paragraph 6.21 above), we are concerned, not with what was possible, but with what was commercially sensible—particularly against the background of Stagecoach's experience and professionalism in the industry. In this context, which we believe to be the only realistic one, we consider that the close connection between the Heysham Road depot and the carrying on of the business, to which we referred in paragraph 6.26, has been clearly demonstrated.

6.30. We have also had regard to a number of other considerations. We have taken into account the terms offered by Stagecoach for the Heysham Road depot. Stagecoach's offer was sufficient to allow the City Council to maximize the realized value of LCT. This included a valuation of £700,000 for the depot, almost double its book value, and is to be compared with an independent valuation of the existing use value of the depot carried out in October 1992 for LCT of £450,000. Moreover, as shown in Tables 2.8 and 2.9, Stagecoach's price was considerably above the existing use valuation of comparable Stagecoach North West depots, taking into account differences in acreage or covered space, the main exception being the newly constructed depot, with modern superior facilities, at Lillyhall.

6.31. Stagecoach has argued that the price did not reflect any element of goodwill, but that the value of the Heysham Road depot to Stagecoach also reflected the greater cost that would have been incurred were a new depot to be constructed: itself, we would observe, an indication of the importance of the depot to Stagecoach. It stated that the cost compared favourably to that of the new depot at Lillyhall, even allowing for any further expenditure that would be required to bring the Heysham Road depot up to the standard of Lillyhall. Nevertheless, we note that the price paid for the Heysham Road depot was a major factor in allowing the City Council to realize considerably more than the value of the other bids for LCT (some £1.4 million in total compared with a highest bid of £800,000). Although not decisive, that Stagecoach was prepared to pay this price is a further indication that the business went with the Heysham Road depot.

6.32. We also regard it as relevant to consider what changes could reasonably be perceived in the business as operated by LCT and subsequently by Stagecoach—what might, for example, reasonably have been the perception of the passengers on these services. Stagecoach argued that the effect of the transaction on commercial services differed in a number of ways from the situation had Stagecoach acquired the business. For example, the LCT livery had disappeared overnight, the vehicles, ticket machines and even bus tyres had immediately been different: had LCT been acquired as a going concern, Stagecoach argued, such changes would have required consideration and taken longer to introduce. On the other hand, Stagecoach registered replacement services, thus ensuring that there was no discontinuity in the commercial services operated in Lancaster and Morecambe; indeed in a series of press notices and in a radio interview and at inquiry points, Stagecoach assured passengers that commercial services would be maintained. The aspects of service referred to by Stagecoach do not appear to us significant, particularly as passengers were already familiar with the Stagecoach services when they were jointly operated with those of LCT. Stagecoach indeed demonstrated to us (see paragraphs 3.69 and 5.33) that passengers are generally indifferent as to livery, and will travel on the first bus available going to their destinations. It seems to us reasonable to infer that from the passengers' perspective, the effect was that all commercial services previously operated by LCT were now operated by Stagecoach (as we have pointed out there was no break perceptible) and without any change material to the operation of the services. We take the same view.

6.33. Having considered the factors set out in paragraphs 6.15 to 6.32, and in particular the close connection which we regard as having existed between the Heysham Road depot and the business, we conclude that the requirements of section 65(1)(a) of the Act are satisfied and that enterprises carried on by or under the control of LCT and of Stagecoach have ceased to be distinct.

Section 65(1)(b)

6.34. In view of our finding under section 65(1)(a), it is not, we consider, necessary for us to reach or express any conclusion on the applicability of section 65(1)(b) to the present circumstances nor, therefore, on Stagecoach's arguments relating thereto, and we do not do so.

The market share test

6.35. We are satisfied that, in the present case, the requirement of section 64(1)(b), the assets test, is not satisfied. We are therefore required by section 64(1)(a) and (3) of the Act to be satisfied that, as a result of enterprises of LCT and Stagecoach having ceased to be distinct, Stagecoach supplies at least one-quarter of the bus services in a substantial part of the UK, or, if this was already the case, that the supply of those services by Stagecoach is enhanced ('the market share test').

6.36. Our terms of reference refer to the view of the Secretary of State that this condition was satisfied in Lancashire and Cumbria, which, as a matter of convenience, is subsequently referred to as 'the reference area'. As shown in paragraph 3.11, it is estimated that as a result of such enterprises having ceased to be distinct Stagecoach increased its share of bus miles in the reference area from about 48 per cent to about 51 per cent in respect of commercial services.

6.37. We return below (paragraph 6.42) to the question of whether the reference area constitutes 'a substantial part of the United Kingdom' for the purpose of section 64(3) of the Act. This was not challenged by Stagecoach. Stagecoach, however, argued that it was not open to the MMC to find that the market share test was satisfied in the reference area, in that the merger affected only a limited part of the reference area: in particular, LCT had operated very restricted services in Cumbria, hence the merger could not be regarded as increasing Stagecoach's market share in the reference area as a whole. Stagecoach stated that the Act requires that there be a 'nexus' between the consequences of a merger for the market share of the surviving enterprise on the one hand, and the reference market on the other, in order for a merger situation qualifying for investigation to arise, and that this was absent in the present case. If, moreover, there was no such 'nexus', it was not, Stagecoach argued, open to us to consider any area for the purposes of establishing jurisdiction other than that specified in the reference.

6.38. We do not accept these arguments. It may be more convenient to deal first with the second of them, as to what area it is open to the MMC to consider. We recognize that, by virtue of section 69(3) of the Act, a merger reference may be so framed as to limit the MMC's consideration of the market share test 'to the supply of goods or services in a specified part of the United Kingdom'. We are advised and consider that, on its true construction, the reference contains no such limitation and that the reference area does not constitute such a 'specified part'. We note particularly that the 'matter' referred does not mention any area; the reference area is mentioned only as a recital of the position as it appeared to the Secretary of State to be; and the enabling powers indicated in the reference do not include section 69(3).

6.39. We are further advised and accept that it is open to us and consistent with the intention of the Act (taking account of the point mentioned in paragraph 6.21 above) that, in considering the application of the market share test, we should determine what is the most appropriate area and, in doing so, should have regard particularly to what is sensible, in the context of the businesses concerned. We believe this to be consistent with observations in a previous report of ours on a merger of bus enterprises.¹

6.40. While, therefore, we are not confined to considering the reference area, it seems sensible to us to do so. While it is a relatively wide area, it corresponds broadly to that served by Stagecoach through its local operating subsidiary even though LCT operated only in a relatively limited part of this area. More generally, bus operators are, necessarily, not confined to the routes which they operate in any given area at any time. For example, LCT operated for a time in Cumbria, with an outstation in Kendal. Conversely it is open to other bus companies to consider offering services in a more limited area such as Lancaster—a point stressed by Stagecoach. Cumberland (a Stagecoach enterprise) moreover itself runs a regular service from Lancaster through Cumbria to Carlisle, at the northern extremity of the reference area.

6.41. It is true that, during the course of our investigation, we have accepted Stagecoach's arguments that parts of the reference area, in particular large parts of Cumbria, are remote in terms of distance and travelling time from the core of LCT's operation and would be unlikely to be directly affected by the merger. However, there could be indirect consequences and we consider that these are issues which fall to be considered in the context of the public interest, rather than in determining in what area the market share test may most appropriately be considered. We therefore regard the reference area—broadly corresponding as it does to the area of operation of Stagecoach North West—as an appropriate one for this purpose and we have already indicated that the test is satisfied in it (paragraph 6.36).

6.42. In considering whether the reference area can be regarded as a substantial part of the UK we have had regard to the Opinion of Lord Mustill in the specific context of acquisitions by South Yorkshire Transport Ltd.² The relevant passage appears in Appendix 6.2. Lord Mustill accepted that the MMC can and should take into account the relative proportions of the area concerned by comparison with the UK as a whole, as regards surface area, population, economic activities and perhaps, in some cases, other factors, but that the general principle should be that the area must be 'of such size, character and importance as to make it worth consideration for the purpose of the Act'.

6.43. The reference area constitutes 4.1 per cent of the land area of the UK, with a population equivalent to some 3.2 per cent. It includes a number of significant towns, and a range of important industrial, commercial, recreational and educational activities including the University in Lancaster. Taking these factors into account—and in particular the specific context under investigation of bus

¹*Caldaire Holdings Ltd and Bluebird Securities Ltd*, Cm 1403, January 1991, paragraphs 6.3 *et seq.*

²*Regina v Monopolies and Mergers Commission and Another, Ex parte South Yorkshire Transport Ltd, and Another*, Volume 1, Weekly Law Reports, 15 January 1993, pages 23 to 33. *South Yorkshire Transport Ltd acquisitions: a report on the merger situation*, Cm 1166, August 1990.

services which, of their nature, often concern local markets—we have no doubt that the reference area is ‘worth consideration for the purposes of the Act’, hence ‘a substantial part of the United Kingdom’, for those purposes.

6.44. An alternative approach would have been to consider the application of the market share test in Lancashire where there was the greatest concentration of the commercial services of LCT. We are satisfied that this too would be an appropriate area for the purpose of the Act; we believe that it also constitutes a ‘substantial part of the United Kingdom’ according to the approach described in paragraph 6.42 above. In our view, the ‘specific context’ which we have identified in paragraph 6.43 applies equally to Lancashire alone and we have noted that Lancashire constitutes 1.3 per cent of the land area of the UK, with a population equivalent to 2.4 per cent: it also includes a number of significant towns, and a range of important industrial, commercial, recreational and educational activities including, as we have noted in the context of the reference area, the University of Lancaster. The effect of the enterprises of LCT and Stagecoach having ceased to be distinct is to increase Stagecoach’s market share of total bus miles in Lancashire in respect of commercial services from about 31 per cent to about 35 per cent, thus satisfying the market share test.

6.45. We therefore conclude that a merger situation qualifying for investigation has been created. We have therefore to consider whether the creation of this merger situation operates or may be expected to operate against the public interest.

The market for bus services in the reference area

6.46. As discussed above, Stagecoach North West operates through its Ribble division primarily in Lancashire and its Cumberland division primarily in Cumbria. LCT’s operations were principally in the district of Lancaster. We have therefore considered the market for bus services in Lancashire and Cumbria, as well as in Lancaster where the operation of the two enterprises overlapped. On the figures we have seen, about 85 per cent of services in Lancashire, and about 95 per cent of services in Cumbria are commercial, the balance being provided under contract to the respective county councils.

Lancashire and Cumbria

6.47. There are some 26 operators of commercial services in Lancashire. Six are owned by local municipal councils, one was formerly municipally owned until 1993, one is owned by a Passenger Transport Authority (PTA), two are former PTA companies now employee owned, and two, apart from Ribble and Cumberland, are former National Bus Company (NBC) subsidiaries. There are also 13 smaller firms and other operators of contract routes. Ribble is the largest bus company in the county accounting for some 30 per cent of total bus miles (commercial and tendered) operated in Lancashire before the merger. It has, however, traditionally been primarily an inter-urban operator, most urban services being run by municipal or former municipal operators (one exception being Chorley where the bulk of urban services are operated by Ribble). Stagecoach told us that it was interested in acquiring a number of these operators which, in its view, were characterized by inadequate investment in vehicles and passenger facilities, relatively high costs, and insufficient profit margins.

6.48. Since deregulation, a number of new bus companies have established services in Lancashire in competition with Ribble and—to a lesser extent, Stagecoach told us—the municipal operators. Ribble has responded to this competition, following which a number of these new entrants have much reduced their services. Stagecoach pointed out that, although some operators had complained to the Office of Fair Trading (OFT), in no case had Stagecoach North West been found to engage in anti-competitive practices, and it did not knowingly do so.

6.49. Since deregulation LCC has retained a close involvement in bus services in the county, both in the financing of contracted services, and in the provision of timetable information for all operators’ services.

6.50. In Cumbria, Cumberland accounts for at least 95 per cent of bus miles. Ribble Motor Services acquired the assets of the former municipal operator in Barrow shortly after it was itself acquired by Stagecoach. Subsequently, Stagecoach also took over Yeowart's, an independent operator in the Whitehaven area, and another independent operator, Brownrigg, significantly reduced its services as a result of what has been described (in a Stagecoach company history) as 'aggressive competition' from Stagecoach. Stagecoach told us of a number of instances of recent entry in the county. It had taken action, such as service changes or fare reductions, in response to several of these new entrants, some of whom subsequently ceased operation.

6.51. Stagecoach's operations in Cumbria differ significantly from those in Lancashire, being primarily concentrated on the main towns, with relatively few inter-urban routes. There are also only limited rural services, due to the low level of support from the County Council. Those rural services Stagecoach does operate, particularly around Kendal, depend in part on Stagecoach's running of contract services for the local education authority with which other services are interworked.

6.52. Stagecoach has clearly taken considerable pride in the performance of its services in Cumbria. We have noted its substantial investment in new vehicles, passenger facilities, and other facilities such as the depot at Lillyhall near Workington, and its operation of evening and Sunday services in the urban areas, despite, in contrast to Lancashire, relatively limited support by the County Council for bus services.

6.53. As shown in Chapter 2, both Ribble and Cumberland are profitable, particularly by the standards of the bus industry, although Stagecoach North West as a whole still falls slightly short of Stagecoach's current target of an operating profit of 15 per cent of turnover. Stagecoach has made no general fare increases in either county for some three years.

The district of Lancaster

6.54. Before deregulation, there was a formal operating agreement between Ribble Motor Services, the City Council and LCT covering services operated in Lancaster. Following deregulation of the bus industry in 1986, the former co-operation between Ribble Motor Services—then a subsidiary of NBC—and LCT was replaced by a period of intense competition. Ribble Motor Services began to run a number of minibus services on urban routes, while LCT introduced services in Ribble Motor Services' traditional operating area, including services to Preston and Blackpool, and to Humberside. LCT also established an outstation in Kendal. There was a fares war between the two operators.

6.55. By 1989 it had become evident that severe competition was to the disadvantage of both LCT and Ribble Motor Services. A management buy-out of Ribble Motor Services was followed by its sale to Stagecoach in April 1989 (Cumberland Motor Services having been acquired in July 1987): Ribble Motor Services was incurring annual operating losses at this time throughout its operations of some £3 million. In September 1989 the two companies entered into a timetable agreement. This involved an overall division of the market 60:40 in Ribble Motor Services' favour, interworking most routes in Lancaster and providing regular frequencies to passengers and interchangeable tickets. The agreement left both operators free to operate additional services if they so wished and to set their own fares, although in practice fares were very similar. The OFT was informed of the agreement, but concluded that it was not registrable under the Restrictive Trade Practices Act. LCT also substantially reduced its services outside Lancaster, including the closure of its Kendal outstation, but continued to operate services to Kirkby Lonsdale, and occasional services to Leeds, Doncaster and Halifax.

6.56. The agreement led to a significant improvement in the financial position of both companies. LCT's profitability (including Lonsdale) subsequently fluctuated between break-even and almost 6 per cent of turnover; the profitability of Ribble's Lancaster depot consistently exceeded 20 per cent of turnover (before head office overheads).

6.57. Fares in Lancaster were generally unchanged for some two and a half years from November 1990, although the level of fares, Stagecoach told us, was relatively high. Over this period, Stagecoach refused requests by LCT to raise fares in line with inflation. In January and September 1992 there were reductions in fares on services to and from the University, to attract passengers and in response

to proposals for the development of alternative bus or other transport services to the University. In October 1992, at Ribble's initiative, the two companies undertook experimental off-peak fare reductions. After one month LCT restored its fares to the previous level, but Stagecoach continued the experiment. In response, LCT withdrew from the arrangements for interchangeable tickets and Stagecoach, after a further two weeks, also reverted to the previous fare levels. We were told that the reduction in fares had a significant impact on revenue, and illustrated the vulnerability of LCT to any action on fares or services initiated by Ribble. Stagecoach, on the other hand, told us that it could have maintained the lower fares, and still achieved adequate profitability: there were indeed subsequent reductions in fares on University services. As discussed in paragraph 6.8, on 21 April 1993 Ribble announced that it had registered additional services, to coincide with those of LCT, on two routes, and that it would consider substantial changes to fares and ticket arrangements. Following the acquisition Stagecoach reduced a number of fares in the area.

6.58. Almost all commercial services in Lancaster are now provided by Stagecoach. We are aware of two other companies based in the area, which operate mainly tendered services but also very limited commercial services. One of these has recently been acquired by MTL Trust Holdings Limited (MTL), a substantial operator of services in Merseyside. There are a small number of other operators of tendered services in the area.

6.59. Before the acquisition LCT accounted for almost one-half of the gross value of services contracted to LCC in the area, and Stagecoach for about one-quarter. Following the acquisition LCT's contracted services were retendered by the County Council; most of the contracts were won by independent operators, but Stagecoach's share of contract services in the area rose to about 37 per cent. (Stagecoach's share of non-school local bus contracts increased from 44 to 51 per cent.)

Public interest issues

6.60. We considered the extent to which the merger has reduced direct competition in Lancashire and Cumbria and, more specifically, in the district of Lancaster. There has been no significant increase in market share on services outside the district of Lancaster. The merger has, however, given Stagecoach almost 100 per cent of the commercial bus market in Lancaster, although there are other operators primarily of tendered services based in the area. The effect of the merger is, therefore, primarily in the district of Lancaster.

6.61. We have noted significant competition between LCT and Ribble Motor Services before its acquisition by Stagecoach. Since 1989 actual competition between Stagecoach and LCT was weak, given the timetable and, in effect, market share agreement, in which Stagecoach was very much the stronger partner. The two operators' fares were broadly similar, and we have noted Stagecoach's resistance to requests by LCT to raise fares from levels acknowledged by Stagecoach to be relatively high. There was a two-week period in November 1992 in which the two companies pursued different fare policies: but, until Stagecoach registered additional services in April 1993, no evidence of significant competition in fares or services. The timetable agreement did, however, leave it open to both companies to run additional services. We would therefore, as we also discuss further below, regard LCT as having offered the potential for competition to Stagecoach before the merger—as had occurred between LCT and Ribble Motor Services between 1986 and 1989.

6.62. The merger has removed choice for passengers preferring one operator over the other: but, although the operator of a particular service was recorded in the timetable, the way the services were interworked, with (from the passengers' point of view) an apparently unsystematic division of each service between the operators, the degree of choice was limited.

6.63. The City Council appears to have taken the view (see paragraph 6.10) that even the existing degree of competition between services could not have been sustained, given the vulnerability of LCT to Stagecoach. LCT had, however, made a modest operating profit since 1989/90, although considerably less than that of Ribble. We were told that both the Town Clerk and the financial advisers on the sale recommended the sale of LCT to another company, ie Blackpool, which confirmed to us that it was prepared to acquire LCT. We believe it reasonable to consider that such an acquisition by another company would have taken place, and that LCT could subsequently have

been operated at a reasonable level of profitability, especially if the acquiring company had been able to reduce the level of LCT's costs, as Blackpool had intended to do. Stagecoach's purchase of the depot precluded such an outcome, which would have maintained two significant operators in Lancaster.

6.64. Although we accept that actual competition before the merger was weak, the presence of a sizeable competitor to Stagecoach represents, in our view, a significant element of potential competition to the benefit of passengers in the long term. The maintenance of competition and potential for competition in our view constrains the level of fares over the longer term, and the ability of an operator to reduce the level of service, and acts as a stimulus to improvements in service. LCT's acquisition by a company other than Stagecoach would have maintained or increased potential competition particularly as regards commercial services within the district of Lancaster. The loss of potential competition is likely to be less significant elsewhere in the reference area, particularly in Lancashire where there remain many other operators, and those parts of Cumbria more distant from Lancaster.

6.65. The extent to which competition for tendered services in the district of Lancaster or more generally in Lancashire and Cumbria has been reduced following the merger is more limited. LCT's share of tendered services (almost one-half) had been larger than that of Stagecoach. LCT's services, having been retendered, were mainly awarded to operators other than Stagecoach. Although Stagecoach's share has increased to an extent, and it is now the biggest operator of such services in Lancaster, there are other operators in the area which have proved able to compete successfully for contracts. Two of these operators have been acquired by MTL, a company of considerable strength although based outside the reference area.

The prospects for new entry

6.66. We considered the extent to which, following the acquisition, Ribble and Cumberland may themselves face potential competition from new entrants; or whether there are barriers to entry into the operation of either commercial or tendered services.

6.67. Stagecoach argued that in the absence of formal barriers to entry, the threat of potential competition is sufficient to ensure that it does not abuse its position, even when dominant as in Cumbria. We acknowledge that there are few formal barriers to entry, and Stagecoach illustrated to us the ease with which a new operator can pick up passengers. The main barrier to entry identified in previous reports is retaliation or the threat of retaliation by the incumbent, by lowering fares or running more buses to ensure that there are few passengers to pick up, or doing the same on the new entrant's existing services. Stagecoach said that it responds vigorously to new entry, while not knowingly engaging in anti-competitive practices, and, despite various complaints to OFT, Stagecoach North West had never been found to engage in anti-competitive practices. Almost all parties to whom we spoke, however, referred to the prospect of retaliation—not only on the routes a competitor may enter, but also on that operator's most profitable services elsewhere—as a main factor likely to deter direct competition with Stagecoach. As well as its record of responding to new entrants, some parties referred to the financial resources of the Stagecoach group as enabling it to sustain low fares or high frequency for a prolonged period until a new entrant withdrew.

6.68. A new entrant would need depot facilities. We have referred to Stagecoach's difficulties in acquiring a new depot in Lancaster, and, depending on his intended scale of operation, a new entrant would face similar difficulties. In the circumstances of Lancaster, the difficulty of establishing a depot, therefore, is likely to preclude entry on any significant scale—ie similar to that of LCT's former operation. It may, however, be easier for smaller operators to establish suitable facilities.

6.69. Although therefore we cannot preclude the possibility of entry, we regard the threat of potential competition from new entrants as insufficient to offset the loss of actual and potential competition resulting from the merger.

6.70. As in previous bus inquiries, we are also doubtful about the effectiveness of competition from other forms of transport such as taxis, walking or trains. We acknowledge the considerable efforts made by Stagecoach to promote bus use and Stagecoach quoted particular examples where improvements in services or reduction in fares had generated additional passengers. Other operators, however, have taken a less ambitious view. We have seen no evidence that in general the elasticity of demand is such that competition from other forms of transport provides as effective a constraint on fares or service standards as competition or potential competition between bus operators.

The effect of the merger

6.71. In evaluating the effect of the merger on the public interest, we have to examine whether, by reducing competition in commercial services, the merger may be expected to result in higher fares, or poorer levels or quality of service; or alternatively whether there are any benefits to the public interest from the merger that could not have been achieved without the merger. Although we recognize that the merger situation we have identified is not by definition concerned with tendered services, we consider we should also examine whether there are any indirect consequences for tendered services, given their close link with commercial services: for example, some tendered services are an extension of commercial services, or tendered at off-peak times but otherwise provided on a commercial basis.

6.72. While we have acknowledged that there was only limited competition between LCT and Stagecoach before the merger, and that LCT was the weaker partner, pursuing, in the short term, higher rather than lower fares, there were companies other than Stagecoach which would have acquired the commercial business of LCT. It is reasonable to expect that LCT could have become a more effective competitor, or at the very least continued to provide potential competition to Stagecoach particularly in the district of Lancaster.

6.73. In our view, the acquisition of LCT by Stagecoach has eliminated the degree of competition and potential competition from LCT for commercial services that existed in the district of Lancaster before the merger. We do not believe that potential competition from other new entrants could prove as effective a constraint on Stagecoach in its current dominant position.

6.74. We considered carefully Stagecoach's argument that, even where it is dominant, as in Cumbria, it has acted in the public interest, given its objective to enhance the position of the bus industry in the longer term, and the strength as it sees it of potential competition from new entrants. We have noted Stagecoach's current objectives to promote bus use; its performance in parts of Cumbria, with substantial investment in vehicles and other facilities, is consistent with these objectives, as is its recent record of not increasing fare levels. There is, moreover, no evidence of adverse effects to date in Lancaster: service levels have been maintained, fares have been unchanged or reduced—indeed, as mentioned before, bus users in Lancaster would have noticed little difference. Stagecoach aims, however, at a relatively high level of profitability, in part to finance investment in new buses. In much of the reference area, passengers have little choice but to use its services and its profitability in Cumbria and Lancashire exceeds that achieved by much of the bus industry.

6.75. We have to consider the effects in the longer term of removing competition and potential competition in commercial services. Whereas Stagecoach argues that it achieves its current level of profitability by offering efficient, high quality services that are in the public interest, its approach may change, particularly if for any reason it fails to achieve the profit level at which it aims, and it should decide fares are too low, or service levels too high. Competition and potential competition, in our view, are the main safeguards against higher fares and lower levels of service. Moreover, the merger has greatly reduced the likelihood that another operator would seek to attract custom by offering a combination of fares and service standards different from Stagecoach's. The removal of competition and of potential competition entails the prospect, in our view, of higher fares and lower levels of service as well as less choice than would otherwise be the case.

6.76. Stagecoach listed a number of benefits that it expected to result from the merger, including investment in new vehicles in Lancaster. The timetable arrangement between Stagecoach and LCT

already provided passengers with the advantage of evenly-spaced services and interchangeable tickets. Any benefits would not in our view offset the detriments of the merger, given also that Stagecoach's operation in the area is already sufficiently profitable to finance Stagecoach's planned improvements in services for passengers.

6.77. While the merger has eliminated what competition there was in the district of Lancaster, there is no evidence of adverse effects to date: nor, for the reasons summarized in paragraph 6.65, of adverse effects as regards tendered services. We have, however, concluded that the creation of the merger situation qualifying for investigation that we have identified in paragraph 6.45 may be expected to operate against the public interest by reason of the detriments referred to in paragraphs 6.73 and 6.75. The particular effects adverse to the public interest are the removal of competition and of potential competition in commercial services in the district of Lancaster which may in turn be expected to result in the further adverse effects of higher fares, lower levels of service and less choice than would otherwise be the case. We are therefore required to consider what action, if any, should be taken for the purpose of remedying or preventing the adverse effects identified.

Possible remedies

6.78. The first remedy we considered was divestment. In the circumstances of this case, including the absence of any current adverse effects, divestment would in the first instance seem disproportionate.

6.79. We considered an alternative approach, of regulation of fares or—if undertakings were to be given by Stagecoach in the absence of order-making powers under the Fair Trading Act—service levels, to ensure that Stagecoach would not abuse its position. Such an approach would be inconsistent with the deregulation of the bus industry and it could inhibit adjustment of services to changes in demand, while we would also not wish to stifle the initiative Stagecoach has shown in developing its services in Cumbria.

6.80. The adverse effects we have identified are the removal of competition and potential competition in commercial services in the district of Lancaster which may in turn be expected to result in the further adverse effects of higher fares, lower standards of service and less choice than would otherwise be the case. The ability of Stagecoach to charge higher fares or operate inadequate services would be most effectively restrained by ensuring that such behaviour would give rise to new entry. We have referred in paragraph 6.67 to the prospect of retaliation as a main factor likely to deter direct competition with Stagecoach. In particular the prospect of temporary fare reductions or increases in frequency would deter such entry. In our view, the prospects of new entry and the effectiveness of potential competition would be enhanced by limiting Stagecoach's ability to retaliate against new entrants in such a way. On the other hand, Stagecoach should not be prevented from responding to competition by taking such measures on a more permanent basis, ensuring also that users get the benefit of competition.

6.81. We therefore recommend that Stagecoach undertake that:

- (a) if Stagecoach reduces fares to below those of a competitor on any route or part of a route serving the district of Lancaster, it will not subsequently raise fares in real terms (ie greater than the increase in the retail price index), should the competitor withdraw, for a period of at least three years after the competitor's withdrawal;
- (b) if Stagecoach increases its frequencies on any route or part of a route serving the district of Lancaster operated by another company, or on which another company has announced its intention of operating services, should the competitor withdraw Stagecoach will not subsequently reduce commercial frequencies for a period of at least three years after the competitor's withdrawal; and
- (c) should a competitor enter a route, or a substantially similar route, operated by Stagecoach in the district of Lancaster, Stagecoach will not timetable, register or operate an additional or

rescheduled journey before the competitor's service within a shorter interval than the competitor had itself timetabled, registered or operated before an existing Stagecoach service.

Stagecoach argued, *inter alia*, that such measures were unnecessary, since the Competition Act 1980 would provide adequate safeguard against any future anti-competitive practices: we do not accept this. However, as in other cases, Stagecoach could be able to seek release from these undertakings, for example, should circumstances change in Lancaster.

6.82. There is no provision in the Fair Trading Act for order-making powers relating to the level of service to be operated: the full measures we have recommended can therefore only be implemented by undertakings by Stagecoach. Should such undertakings not be forthcoming, it would be necessary to require the divestment of the Heysham Road depot.

6.83. In our view, a further remedy would be to require Stagecoach to publish information on the financial performance of its operations in the district of Lancaster, which in its management accounts is represented by the performance of its depots. This would facilitate entry, but evidence of any sustained excess profitability would also allow consideration of whether any reference by the Director General of Fair Trading to this Commission under competition legislation would be appropriate. We further recommend therefore that Stagecoach should be required to publish information in a manner to be agreed with the OFT on the financial performance of its operations in the district of Lancaster, and supply to the OFT similar information on the other profit centres operated by Stagecoach North West for purposes of comparison. We have in previous reports suggested improved monitoring of fares and services, eg by the relevant County Council or the OFT, to detect abuse; but given the County Council's role in publishing service information we consider this unnecessary.

H H LIESNER (*Chairman*)

A FERRY

L M ROUSE

A ROBINSON

G WHITTINGTON

A J NIEDUSZYNSKI (*Secretary*)

2 November 1993

APPENDIX 1.1
(referred to in paragraphs 1.1 and 6.1)

The reference

1. On 3 August 1993 the Department of Trade and Industry sent to the MMC the following reference:

Whereas it appears to the Secretary of State that it is or may be the fact that a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 ('the Act'), has been created in that:

- (a) enterprises carried on by or under the control of Lancaster City Transport Limited (incorporated in the United Kingdom) have within the six months preceding the date of this reference ceased to be distinct from enterprises carried on by or under the control of Stagecoach Holdings plc, and
- (b) as a result, the condition specified in section 64(3) of the Act prevails, or does so to a greater extent, with respect to the supply in Lancashire and Cumbria of bus services (as defined in section 159(1) of the Transport Act 1968, as amended by paragraph 1 of Schedule 1 to the Transport Act 1985):

Now, therefore, the Secretary of State, in exercise of his powers under sections 64, 68 and 69(2) of the Act, hereby refers to the Monopolies and Mergers Commission ('the Commission') for investigation and report within a period ending on 2 November 1993 the following questions:

- (i) whether a merger situation qualifying for investigation has been created as a result of the matter described in paragraph (a) above; and
- (ii) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.

In relation to the question in paragraph (i) above, the Commission shall exclude from consideration one of paragraphs (a) and (b) of section 64(1) of the Act if they find the other satisfied.

3 August 1993

(Signed) JOHN ALTY
*An Assistant Secretary in the
Department of Trade and Industry*

2. The composition of the Group of members responsible for the present investigation and report is indicated in the list of members in the preface.

3. Notices inviting interested parties to submit evidence to the MMC were placed in *Coach and Bus Week*, *Bus and Coach Buyer*, *Lancaster and Morecambe Citizen*, *Lancaster Morecambe and District Visitor*, *Lancaster Guardian*, *North West Evening Mail*, *West Lancashire Evening Gazette*, *Lancashire Evening Telegraph* and *Lancashire Evening Post*.

4. We received written evidence from the Department of Transport, Lancashire County Council, Cumbria County Council, Lancaster City Council, six borough councils, three municipal transport companies, six independent bus operators, the Bus and Coach Council, the Association of Local Bus Managers, two former directors of Lancaster City Transport Limited and five members of the public.

5. We received written submissions from Stagecoach Holdings plc and the company attended a hearing. We also held hearings with the Department of Transport, Lancashire County Council, Lancaster City Council, Blackpool Transport Services Limited, Charterbus Coaches, Heysham Travel,

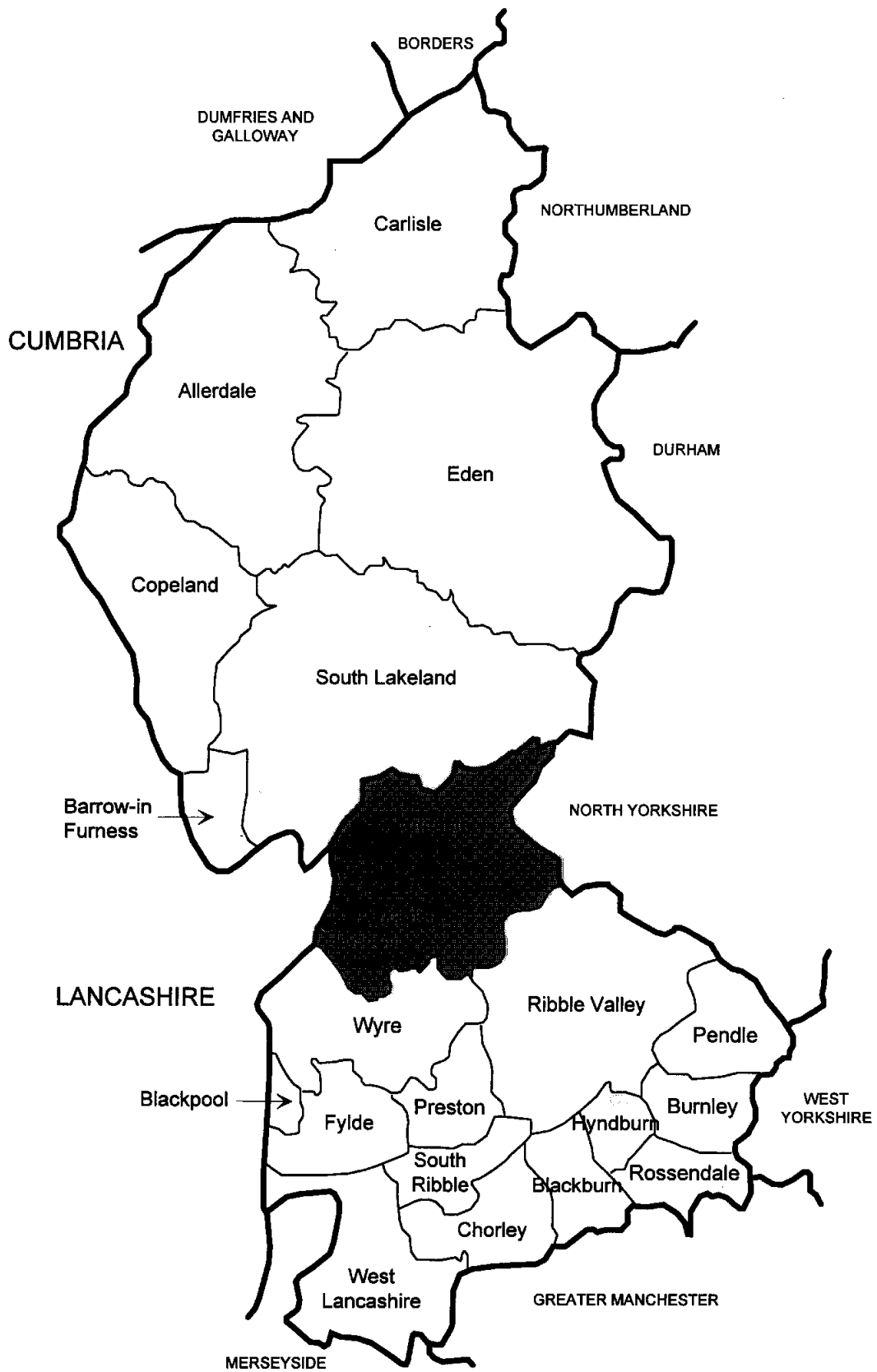
MTL Trust Holdings Limited and with Mr T Knowles and Mr D Whalley, both former directors of Lancaster City Transport Limited.

6. Visits were made by members of the Group, accompanied by staff, to Lancashire and Cumbria to view Stagecoach's operations and facilities.

7. We should like to thank all those who helped us in our inquiry.

APPENDIX 1.2
(referred to in paragraphs 1.1, 3.1 and 6.3)

The reference area: Lancashire and Cumbria



Source: MMC study.

APPENDIX 2.1
(referred to in paragraph 2.1)

Chronology of key events

1986	Transport undertaking of Lancaster City Council transferred to Lancaster City Transport.
1987	Stagecoach acquires Cumberland Motor Services.
1988	Ribble Motor Services sold by NBC to management buy-out team.
1989	Ribble Motor Services/LCT agreement on services and ticket interavailability notified to OFT. Stagecoach acquires Ribble Motor Services. Ribble Motor Services/LCT agreement extended to further services.
1991	Stagecoach establishes Stagecoach North West comprising Cumberland and Ribble as operating divisions.
April 1992	Government indicates to local authorities that it intends to require them to sell their municipal bus companies (confirmed by Minister for Public Transport in June).
23 September 1992	At a meeting with Lancaster City Council officials Stagecoach expresses interest in acquiring LCT.
October/November 1992	At Ribble's initiative, Ribble and LCT undertake experimental off-peak fare reductions; LCT abandons experiment after a month, but Stagecoach continues. Following LCT's withdrawal of ticket interavailability, Ribble reverts to previous fares.
5 November 1992	Further meeting between Stagecoach and Lancaster City Council officials.
23 November 1992	Minister for Public Transport announces that, if local authorities dispose of municipal bus companies by 31 December 1993, they will be allowed to spend all the proceeds on any council services.
16 December 1992	Lancaster City Council passes resolution to dispose of its interest in LCT.
February 1993	Lancaster City Council invites indicative offers for LCT.
By 31 March 1993	Eight indicative offers for LCT received by Lancaster City Council.
7 April 1993	Stagecoach registers additional services to begin on 21 June to coincide with LCT's timings on two key routes. (Introduction twice deferred, first until 5 July and later until 23 August.)

21 April 1993	Stagecoach issues press notice stating that it has not bid for LCT and that, following the increase in its Lancaster services, as registered on 7 April, it will consider changes to fares and ticket arrangements.
28 April 1993	Meeting between Stagecoach and Lancaster City Council officials (including their financial advisers).
4 May 1993	Stagecoach submits an offer, open until 21 May, to purchase certain assets of LCT, including Heysham Road depot, to which entry would be required by 5 July.
By 12 May 1993 <i>(Deadline brought forward from 22 May)</i>	Five offers to purchase LCT received by Lancaster City Council.
13 May 1993	Finance and Resources Policy Committee of Lancaster City Council considers bids for LCT; adjourns to allow further evaluation and to seek confirmation of bids in the light of Stagecoach's intentions.
17 May 1993	City Council's Finance and Resources Policy Committee resolves to advise LCT that the Council recommends acceptance of Stagecoach's offer.
19 May 1993	Meeting between Lancaster City Council officials and Stagecoach concerning the Council Committee's resolution of 17 May. Stagecoach defers from 5 July to 23 August introduction of additional services on two key routes.
20 May 1993	DOT consents to sale to Stagecoach of assets of LCT.
21 May 1993	<i>Deadline given by Stagecoach for acceptance of its 4 May offer</i>
4 June 1993	Stagecoach signs agreement to purchase LCT's depot, 12 buses and certain other assets, leasing them back to LCT until 22 August.
9 July 1993	Stagecoach deposits at the Traffic Commissioner's office consolidated registrations so as to introduce services on all LCT's commercial timings on 23 August 1993.
22 August 1993	LCT vacates Heysham Road depot and ceases trading.
From 23 August 1993	Stagecoach operates buses from Heysham Road depot. All commercial services previously operated by LCT now run by Stagecoach. Following retendering by LCC, small operators run most of the contracted services formerly operated by LCT, but some are operated by Stagecoach. A few LCT staff, based at Morecambe Town Hall, continue to deal with disposal of remaining assets and winding-up of LCT.

APPENDIX 2.2
(referred to in paragraph 2.13)

**Acquisitions and disposals by Stagecoach Group,
April 1987 to July 1993**

<i>Acquisitions</i>	<i>Date of acquisition</i>	<i>Price paid £m</i>	<i>Buses acquired</i>
Hampshire	April 1987	2.2	240
Cumberland Motor Services	July 1987	2.8	260
United Counties Omnibus	November 1987	4.0	250
Yeowart's (Cumbria)	May 1988	0.2	20
Kirkpatrick's	May 1988	0.2	20
Basingstoke Transit	September 1988	0.0	N/A
United Transport Malawi	March 1989	0.8	260
East Midland	April 1989	4.5	300
Ribble Motor Services	April 1989	6.3	830
Southdown	August 1989	6.3	300
Cedar Bus	September 1989	<0.1	8
Portsmouth CityBus	October 1989	0.7	70
Inverness Traction	November 1989	0.1	NIL
Hastings & District	December 1989	1.2	100
Gray Coach Lines	October 1990	Can \$16.0	100
Bluebird Buses	March 1991	5.8	200
Fife Scottish	July 1991	9.2	300
Kenya Bus Services	November 1991	0.4	330
Hants & Surrey	October 1992	1.3	80
		(to date)	
Wellington City Transport	October 1992	2.0	270
East Kent Travel	July 1993	7.4	240

Disposals

Southampton operations of Hampshire for £1.1 million in October 1987 (80 vehicles).

Inter-urban express services for £1.1 million in August 1989 (30 vehicles).

Manchester operations of Ribble Motor Services and East Midland for £0.8 million in September 1989 (229 vehicles).

London operations of East Midland for £0.8 million in September 1989 (50 vehicles).

A partial divestment (including other assets of Southdown) of Portsmouth CityBus was made in January 1991 for £3.5 million (70 vehicles).

Gray Coach Line: Northern routes for Can \$7 million in November 1991; rest of company for Can \$9 million in January 1993.

Magibus for £0.9 million in April 1992 (30 vehicles).

Source: Stagecoach.

APPENDIX 2.3
(referred to in paragraph 2.19)

Stagecoach North West: financial results

TABLE 1 Profit and loss accounts (year ending 30 April)

	£'000	
	1992	1993
Turnover	32,607	33,249
Operating profit	3,535	3,629
Interest (payable)	(329)	(103)
Taxation	(341)	
Profit on ordinary activities after taxation	2,865	3,526
Dividends	<u>(3,000)</u>	<u>(2,000)</u>
Retained profit/(loss)	(135)	1,526

Source: Stagecoach North West.

TABLE 2 Balance sheets (as at 30 April)

	£'000	
	1992	1993
Tangible fixed assets	20,233	24,766
(Creditors) less stock and debtors	(503)	(613)
Net operating assets	19,730	24,153
Borrowings, lease finance less cash	(893)	(561)
Amounts due to other group companies	(12,532)	(15,302)
Investments	<u>167</u>	<u>150</u>
	<u>6,472</u>	<u>8,440</u>
Share capital and reserves	6,272	8,240
Deferred taxation	<u>200</u>	<u>200</u>
	6,472	8,440

Source: Stagecoach North West.

APPENDIX 2.4
(referred to in paragraphs 2.23 and 2.24)

LCT (including Lonsdale): financial results

TABLE 1 Profit and loss accounts (year ending 31 March)

	£'000				
	1989	1990	1991	1992	1993
Turnover	2,744.7	2,661.1	2,499.4	2,598.9	2,513.1
Operating profit/(loss)	(102.1)	25.6	16.8	97.0	141.6
Interest (payable)/receivable	(26.4)	(34.2)	(21.9)	(20.4)	(17.8)
Taxation	-	-	-	-	(30.9)
Profit/(loss) after tax	<u>(128.5)</u>	<u>(8.6)</u>	<u>(5.1)</u>	<u>76.6</u>	<u>92.9</u>

Source: LCT audited accounts.

TABLE 2 Balance sheets (as at 31 March)

	£'000				
	1989	1990	1991	1992	1993
Tangible fixed assets	1,363.1	1,326.6	1,314.2	1,203.3	1,794.3*
Stock, debtors less creditors	<u>(60.5)</u>	<u>(111.8)</u>	<u>(88.4)</u>	<u>(10.7)</u>	<u>77.0</u>
Net operating assets	1,302.6	1,214.8	1,225.8	1,192.6	1,871.3
Borrowings, lease finance less cash	(323.6)	(209.3)	(231.5)	(111.7)	(150.6)†
Provision for redundancy	-	-	-	-	(344.9)
Provision for deferred expenses	-	(35.0)	(29.0)	(39.0)	-
	<u>979.0</u>	<u>970.5</u>	<u>965.3</u>	<u>1,041.9</u>	<u>1,375.8</u>
Share capital and reserves	979.0	970.5	965.3	1,041.9	1,372.3
Deferred tax	-	-	-	-	3.5
	<u>979.0</u>	<u>970.5</u>	<u>965.3</u>	<u>1,041.9</u>	<u>1,375.8</u>

Source: LCT audited accounts.

*Valued at their estimated saleable value, including £700,000 for Heysham Road depot. The valuation (including vehicles and plant) resulted in a surplus of £555,061 over book value.

†At 31 March 1993 LCT borrowings consisted of:

	£
Floating charge on the LCT's assets. Repaid since the end of the financial year	(194.3)
Lease finance liabilities	(99.0)
Less cash balances	<u>142.7</u>
	<u>(150.6)</u>

Copy of the bid from Stagecoach Holdings plc

4 May 1993

Coopers & Lybrand
Corporate Finance
Richmond House
1 Rumford Place
LIVERPOOL L3 9QS

For the attention of Mr Peter Shennan

Dear Sirs

Lancaster City Transport Limited ('LCT')

This letter confirms our formal offer subject to contract for the purchase of certain of the assets of LCT by Stagecoach Holdings plc or its nominated subsidiary undertaking upon the following terms:

1. The amount of our offer for the bus depot at Heysham Road, Morecambe (as set out in paragraphs 602 through 607 of the Confidential Memorandum dated February 1993) is £700,000 (Seven Hundred Thousand Pounds Only), exclusive of VAT, if any. Our offer is conditional upon entry on or before Monday, 5 July 1993.

2. We also offer to assume all future liabilities under the terms of the leases in respect of three Optare Metrorider vehicles, viz. Fleet numbers ML1, ML2 and ML3, with effect from 5 July 1993, or such other takeover date as may be agreed between the parties to the leases.

3. We also offer to pay £250,000 (Two Hundred and Fifty Thousand Pounds Only), exclusive of VAT, if any, for the following vehicles owned by LCT for delivery on 5 July 1993:

Double-deckers 200, 205, 206, 212, 213, 214, 215, 221, 222
and 223.

Single-deckers 307, 308, 309, 310, 311, 312, 313, 314, 315
and 318

4. We also offer to purchase all items of plant and equipment and stock at book value (excluding VAT) calculated on the basis of accounting policies consistent with those used in the audited balance sheet of LCT as at 31 March 1992, when the book values were £77,000 and £38,000 respectively. Our offer is subject to physical verification and payment would be due on or after 5 July 1993 on receipt of VAT invoices.

We confirm this offer remains open for acceptance until noon on Friday 21 May 1993.

Signed by Brian Souter, Executive Chairman of Stagecoach Holdings plc.

APPENDIX 6.1
(referred to in paragraph 6.18)

Legal authorities

<i>Case</i>	<i>Reference</i>
1. Edwards v Bairstow	[1956] AC14
2. Kenmir v Frizzell	[1968] 1WLR 329 DC
3. Lloyd v Brassey	[1969] 2 WLR 310
4. Melon v Hector Powe Ltd	[1981] 1 ALL ER 313
5. Humphreys v Co-ordinated Cleaning Limited Employment Appeal Tribunal	EAT/197/91 (Transcript) 20 November 1991
6. Regina v Monopolies and Mergers Commission and Another ex parte South Yorkshire Transport Ltd, and Another	[1993] 1 WLR 23
7. Kenny and Others v South Manchester College Employment Appeal Tribunal	[19 IRLR] 265 24 March 1993

**Regina v Monopolies and Mergers Commission and
Another, *Ex parte* South Yorkshire Transport Ltd and Another**

Extract from Opinion of Lord Mustill

1. My Lords, although I agree that the relationship of the part to the whole is not to be ignored, I am unable to accept that proportionality is the beginning and end of the matter. As regards geographical extent the reference to a substantial part of the United Kingdom is enabling not restrictive. Its purpose is simply to entitle the Secretary of State to refer to the commission mergers whose effect is not nationwide. Like the asset-value criterion of section 64(1)(b), the epithet 'substantial' is there to ensure that the expensive, laborious and time-consuming mechanism of a merger reference is not set in motion if the effort is not worthwhile. The reference area is thus enabled to be something less than the whole. But I cannot see why its relationship to the whole is the only measure of the commission's jurisdiction. Nor does the contrast with section 9, which omits the word 'substantial', yield any other result. As Nourse L J pointed out the introduction of this new jurisdiction for monopoly references in 1973 cannot have been intended to alter the meaning of an expression which had been in use since 1948. It may be that sections 9 and 64 involve different tests. The question is not for decision here. What does seem to me clear is that there is no cut-off point fixed by reference to geography and arithmetic alone.

2. I have reached the same conclusion as regards the argument which came to the forefront of the respondents' case in this House, namely that the decisive factor consists of a comparison between the number of bus-miles run by the services under investigation and those in the country as a whole. I find this interpretation very hard to square with the words 'part of the United Kingdom' which are surely intended to relate to the area itself, and not (at any rate primarily) to the market share of the area. Furthermore, the suggested criterion would produce odd practical results, for a sparsely-populated area of great extent would automatically fail the test if poorly served by buses. Whereas, by contrast, a tiny area such as Inner London which would fail the respondents' test of geographical proportionality would easily qualify if bus-mileage were the criterion. Moreover, as was pointed out in the argument, since local bus-services are by their nature both limited in their field of operation and in total mileage run, it is hard to see how on an uncritical application of an arithmetical test they could ever qualify for investigation under the Act. It seems to me that where the task is to interpret an enabling provision, designed to confer on the commission the power to investigate mergers believed to be against the public interest the court should lean against an interpretation which would give the commission jurisdiction over references of the present kind in only a small minority of cases. This is the more so in the particular context of local bus services, since the provision of adequate services is a matter of importance to the public, as witness the need felt by Parliament to make special provision for them in the Transport Act 1985.

3. Accordingly, although I readily accept that the commission can, and indeed should, take into account the relative proportions of the area by comparison with the United Kingdom as a whole, as regards surface area, population, economic activities and (it may be) in some cases other factors as well, when reaching a conclusion on jurisdiction, neither each of them on its own, nor all of them together, can lead directly to the answer. The parties could reasonably expect that since the test for which the respondents contend has been rejected another would be proposed in its place. I am reluctant to go far in this direction because it would substitute non-statutory words for the words of the Act which the commission is obliged to apply, and partly because it is impossible to frame a definition which would not unduly fetter the judgment of the commission in some future situation not now foreseen. Nevertheless I believe that, subject to one qualification, it will be helpful to endorse the formulation of Nourse L J already mentioned, as a general guide: namely that the reference area must be of such dimensions as to make it worthy of consideration for the purposes of the Act. The qualification is that the word 'dimensions' might be thought to limit the inquiry to matters of geography. Accordingly I would prefer to state that the part must be 'of such size, character and

importance as to make it worth consideration for the purposes of the Act'. To this question an inquiry into proportionality will often be material but it will not lead directly to a conclusion.

4. Applying this test to the present case one will ask first whether any misdirection is established, and secondly whether the decision can be overturned on the facts. As to the first it is quite clear that the approach of the commission was in general accord with what I would propose. It is true that matters such as academic and sports activities, mentioned by the commission, are of marginal importance at the most, but I do not regard their inclusion in the list of features to which the commission paid regard as vitiating an appreciation of 'substantive' which was broadly correct. On the second question the parties are at odds as to the proper function of the courts. The respondents say that the two stages of the commission's inquiry involved wholly different tasks. Once the commission reached the stage of deciding on public interest and remedies it was exercising a broad judgment whose outcome could be overturned only on the ground of irrationality. The question of jurisdiction, by contrast, is a hard-edged question. There is no room for legitimate disagreement. Either the commission had jurisdiction or it had not. The fact that it is quite hard to discover the meaning of section 64(3) makes no difference. It does have a correct meaning, and one meaning alone; and once this is ascertained a correct application of it to the facts of the case will always yield the same answer. If the commission has reached a different answer it is wrong, and the court can and must intervene.

5. I agree with this argument in part, but only in part. Once the criterion for a judgment has been properly understood, the fact that it was formerly part of a range of possible criteria from which it was difficult to choose and on which opinions might legitimately differ becomes a matter of history. The judgment now proceeds unequivocally on the basis of the criterion as ascertained. So far, no room for controversy. But this clear-cut approach cannot be applied to every case, for the criterion so established may itself be so imprecise that different decision-makers, each acting rationally, might reach differing conclusions when applying it to the facts of a given case. In such a case the court is entitled to substitute its own opinion for that of the person to whom the decision has been entrusted only if the decision is so aberrant that it cannot be classed as rational: *Edwards v Bairstow* [1956] AC 14. The present is such a case. Even after eliminating inappropriate senses of 'substantial' one is still left with a meaning broad enough to call for the exercise of judgment rather than an exact quantitative measurement. Approaching the matter in this light I am quite satisfied that there is no ground for interference by the court, since the conclusion at which the commission arrived was well within the permissible field of judgment. Indeed I would go further, and say that in my opinion it was right.

Source: Volume 1, The Weekly Law Reports, 15 January 1993, pages 31 to 33.



HMSO publications are available from:

HMSO Publications Centre

(Mail, fax and telephone orders only)
PO Box 276, London, SW8 5DT
Telephone orders 071-873 9090
General enquiries 071-873 0011
(queuing system in operation for both numbers)
Fax orders 071-873 8200

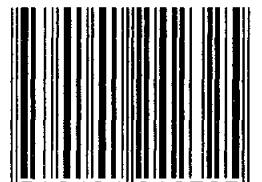
HMSO Bookshops

49 High Holborn, London, WC1V 6HB
(counter service only)
071-873 0011 Fax 071-873 8200
258 Broad Street, Birmingham, B1 2HE
021-643 3740 Fax 021-643 6510
33 Wine Street, Bristol, BS1 2BQ
0272 264306 Fax 0272 294515
9-21 Princess Street, Manchester, M60 8AS
061-834 7201 Fax 061-833 0634
16 Arthur Street, Belfast, BT1 4GD
0232 238451 Fax 0232 235401
71 Lothian Road, Edinburgh, EH3 9AZ
031-228 4181 Fax 031-229 2734

HMSO's Accredited Agents
(see Yellow Pages)

and through good booksellers

ISBN 0-10-124232-8



9 780101 242325