

**MONOPOLIES AND MERGERS COMMISSION REPORT ON THE MERGER
BETWEEN FIRSTBUS PLC AND S B HOLDINGS LTD**

**UNDERTAKINGS GIVEN BY FIRSTGROUP PLC TO THE SECRETARY OF STATE
FOR TRADE AND INDUSTRY**

FirstGroup plc (formerly FirstBus plc) hereby gives to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973 the following undertakings for the purpose of remedying or preventing adverse effects specified in the report of the Monopolies and Mergers Commission entitled *FirstBus plc and S B Holdings Ltd - a report on the merger situation* (Cm 3531, January 1997):

Fares not to increase for a fixed period

1.- Subject to clause 5 below, except with the prior written consent of the Director General, FirstGroup shall not:

- (a) until 1 September 1999 charge a fare for a journey within the First Glasgow operating area which exceeds the fare which it charged for that journey on 1 September 1997; or
- (b) until 1 February 2000 charge a fare for a journey within the Midland Bluebird and Lowland operating area which exceeds the fare which it charged for that journey on 1 February 1998.

Average increase in fares not to exceed the rate of retail price inflation

2.- (1) Subject to clause 5 below, except with the prior written consent of the Director General, FirstGroup shall not in any fare year:

- (a) from 1 September 1999 set the average fare increase for journeys within the First Glasgow operating area; or
- (b) subject to paragraph (2) below, from 1 February 2000 set the average fare increase for journeys within the Midland Bluebird and Lowland operating area -

at a level which exceeds the permitted fare increase for that fare year in that operating area.

(2) Subject to clause 5 below, except with the prior written consent of the Director General, FirstGroup shall not during the periods:

(a) from 1 February 2000 until 27 August 2000; and

(b) from 27 August 2000 until 26 August 2001,

set the average fare increase for journeys within the Midland Bluebird and Lowland operating area at a level which exceeds the interim permitted increase for that period.

Terms and conditions of bus services and fares not to be altered

3.- Subject to clause 5 below, except with the prior written consent of the Director General FirstGroup shall not:

(a) change the location of any fare stage within the relevant area from its location on the date of these undertakings and, in relation to any bus services introduced in the relevant area after the date of these undertakings, any new fare stage shall reflect existing fare stages as closely as reasonably practicable and, in the case of any dispute, shall be determined by the Director General;

(b) change the boundary of the fare stage area;

(c) change the boundary of any fare zone;

(d) extend or introduce a peak fare period for the 'rush hour' or otherwise for a fare in the standard fare scheme;

(e) for journeys in the First Glasgow operating area:

(i) other than on the first day of any fare year (but only for those fares which are not set by reference to the number of fare stages travelled through), directly or indirectly withdraw any fare value (e.g. "£1.10 adult single");

(ii) directly or indirectly withdraw any fare category (e.g. "3 stages adult single" where fares are set by reference to the number of fare stages travelled through or "adult single" where fares are not so set) in the standard fare scheme; or

(ii) vary the terms and conditions which apply on the date of these undertakings to any fare in the standard fare scheme, all such terms and conditions being set out in schedule 4; or

- (f) for journeys in the Midland Bluebird and Lowland operating area:
 - (i) other than on the first day of any fare year, directly or indirectly withdraw any fare value (e.g. "£1.10 adult single");
 - (ii) directly or indirectly withdraw any fare category (e.g. "adult single") in the standard fare scheme; or
 - (iii) vary the terms and conditions which apply on the date of these undertakings to any fare in the standard fare scheme, all such terms and conditions being set out in schedule 4.

Revised fares in force to be delivered to the Director General

4.- Within the period of one month after the beginning of any fare year, FirstGroup shall deliver to the Director General:

- (a) a revised standard fare table effective during that fare year; and
- (b) a spreadsheet showing that FirstGroup has complied with the undertaking in clause 2 above

and any variations to that revised standard fare table during that fare year shall be delivered to the Director General within 30 days of such variation together with a spreadsheet showing that FirstGroup continues to comply with the undertaking in clause 2 above.

Excluded fares

5.- Nothing in clauses 1 to 4 above shall prevent FirstGroup:

- (a) from charging:
 - (i) a tendered fare;
 - (ii) a concessionary fare; or
 - (iii) a multi-operator fare -

which exceeds a fare which FirstGroup would otherwise be required to charge in accordance with those clauses, or

- (b) where FirstGroup has satisfied the Director General that it is not reasonably practicable for FirstGroup to charge for a journey within the relevant area a fare differing from a tendered fare for that journey, from charging the same fare for that journey as the tendered fare.

Fares and frequency to be maintained on routes where competitor ceases to operate bus service

6.- (1) If:

(a) during the prescribed period FirstGroup operates a bus service within the Midland Bluebird and Lowland operating area wholly or mainly on a route on which a competitor operates a registered bus service;

(b) after the competitor:

(i) sets a fare for a journey on that route, FirstGroup sets a fare for a journey on that route lower than the lowest equivalent fare set by the competitor for the equivalent journey; or

(ii) sets the frequency of the bus service in any hour on that route, FirstGroup increases the frequency of the bus service in any hour which it provides on that route at a level higher than the frequency set by the competitor;

(c) the competitor ceases to operate its bus service within 3 years of the date of these undertakings; and

(d) the condition set out in paragraph (2) below is not satisfied -

FirstGroup shall comply with the fare and frequency obligation.

(2) The condition referred to in sub-paragraph (1)(d) above is that FirstGroup has satisfied the Director General:

(a) that FirstGroup took the action under sub-paragraph (1)(b) above as a result of a specific and clearly identified cause unrelated to the registration or operation of the bus service by the competitor;

(b) that the competitor ceased to operate the bus service as a result of a specific and clearly identified cause unrelated to the action taken by FirstGroup under sub-paragraph (1)(b) above; or

(c) that in respect of a tendered service, FirstGroup was required to take the action taken under sub-paragraph (1)(b) above by the other party.

Bus services to be evenly spaced between competitors' bus services

- 7.- (1) Except with the prior written consent of the Director General, FirstGroup shall not provide a bus service within the Midland Bluebird and Lowland operating area at any point on a route which immediately precedes a bus service provided by a competitor at that point on that route by an interval shorter than the interval between the immediately preceding bus service provided by the competitor at that point and the bus service provided by FirstGroup at that point.
- (2) Nothing in sub-paragraph (1) above shall prevent FirstGroup from providing:
- (a) a bus service in respect of a tendered service where the supply of that bus service is required by the other party;
 - (b) a bus service which immediately precedes a bus service provided by the competitor by more than 30 minutes at every point along that route;
 - (c) the first journey on any day; or
 - (d) a bus service which it provided on a route on the date when the competitor first registered a bus service on that route.

No competition with tendered services

- 8.- If:
- (a) FirstGroup makes a formal application to operate a tendered service within the Midland Bluebird and Lowland operating area; and
 - (b) a competitor enters into a tendered service agreement in relation to that tendered service -

except with the prior written consent of the Director General and the other party, FirstGroup shall not during the period of the tendered service agreement:

- (c) provide or operate wholly or mainly on the route of that tendered service during the prescribed period a commercial service other than an existing commercial service; or
- (d) increase the frequency of an existing commercial service provided or operated wholly or mainly on the route of that tendered service from the frequency provided or operated on the date when it applied to operate the

tendered service.

Commercial mileage not to be reduced below 95%

9.- Except with the prior written consent of the Director General FirstGroup shall not reduce its commercial mileage in the Midland Bluebird and Lowland operating area below 95 per cent of its commercial mileage in that area on the date of these undertakings.

Compliance

10.- FirstGroup shall procure that each of its subsidiaries shall comply with these undertakings as if it had given them.

11.- FirstGroup shall comply with such reasonable written directions as the Director General may from time to time give:

(a) to take such steps within its power as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings, and

(b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or refrain from doing.

12.- FirstGroup shall promptly deliver to the Director General:

(a) such reports on the business or any part of the business of FirstGroup prepared by its accountants or other independent advisers, and

(b) such other documents and information -

as he may from time to time reasonably require for the purpose of performing any of his functions under section 88 of the 1973 Act in relation to these undertakings.

13.- Compliance with these undertakings does not affect the duty on FirstGroup to comply with or restrict the application of the Competition Act 1998.

Interpretation

14.- For the purpose of these undertakings:

"the 1973 Act" means the Fair Trading Act 1973;

"the average fare increase" is to be calculated in accordance with schedule 1;

“business” has the meaning given by section 137(2) of the 1973 Act;

“bus service” has the meaning given by section 159(1) of the Transport Act 1968 as amended by paragraph 1 of schedule 1 to the Transport Act 1985 but excludes services on which the fare charged includes payment for a live or recorded commentary about the locality being services primarily for the benefit of tourists;

“commercial mileage” (in relation to FirstGroup) means the total of its registered bus miles in respect of its commercial services;

“commercial service” means a bus service other than a tendered service;

“competitor” means a bus operator other than FirstGroup or any subsidiary of FirstGroup;

“concessionary fare” means a fare charged in accordance with a travel concession scheme made under section 93 of the Transport Act 1985 or such other similar schemes as the Director General may determine from time to time;

“the Director General” means the Director General of Fair Trading;

“discounted fare” means a fare whose value is reduced below that which would otherwise ordinarily be charged for that fare and such a fare shall be a discounted fare only for the period of the reduction;

“excluded fare” means a concessionary fare, a multi-operator fare or a tendered fare;

“existing commercial service” means a commercial service which FirstGroup provided on the date when it made a formal application to operate a tendered service;

“the fare and frequency obligation” means an obligation not, in relation to bus services wholly or mainly on a route on which a competitor has previously registered its bus service, for a period of 3 years from the date on which the competitor gives or (if earlier) is required to give notice of deregistration of a bus service:

(a) to charge any fare for a journey on a bus service exceeding the sum of:

(i) the lowest level at which FirstGroup set it after the competitor registered its bus service, and

(ii) the amount which corresponds to any increase in the index since:

(A) the last date on which the fare was charged at that level on that bus service; or

(B) (if earlier) the date on which the competitor ceases to operate its bus service, or

(b) to reduce the frequency of the bus service below the highest frequency which FirstGroup operated after the competitor registered and before it ceased to operate its bus service, provided that FirstGroup may operate such seasonal variations to the frequency of bus service as it operated during the same periods in the year preceding the date on which the competitor ceased to operate its bus service;

“fare stage area” means the area delineated on the map in schedule 2;

“fare year” means a period of 12 months commencing on 1 September in any year or, where that date does not fall on a Sunday, the Sunday immediately preceding that date;

“fare zone” means the areas identified in schedule 3 or any one of those areas;

“the First Glasgow operating area” means the areas identified in the report as the unitary authorities of the City of Glasgow, North Lanarkshire, South Lanarkshire, East Dumbartonshire, West Dumbartonshire and East Renfrewshire and a journey or a bus service within the First Glasgow operating area means that part of any journey or any bus service that is within the First Glasgow operating area regardless of whether the journey or bus service continues to or from a place outside the First Glasgow operating area;

“FirstGroup” means FirstGroup plc;

“the index” means the general index of retail prices (for all items) published by the Office for National Statistics;

“interim permitted increase” means:

(a) for the period from 1 February 2000 until 27 August 2000, the figure of 1.2%; and

(b) for the period from 27 August 2000 until 26 August 2001, the figure of 2.1%;

“journey” means an individual passenger journey on a bus service;

“the Midland Bluebird and Lowland operating area” means the areas identified in the report as the unitary authorities of Stirling, Clackmannanshire, Falkirk, West Lothian, Midlothian, East Lothian and the Scottish Borders and a journey or bus service within the Midland Bluebird and Lowland operating area means that part of any journey or any bus service that is within the Midland Bluebird and Lowland operating area regardless of whether the journey or bus service continues to or from a place outside the Midland Bluebird and Lowland operating area;

“multi-operator fare” means a fare the payment of which as a matter of practice enables the passenger to use transport services operated by:

- (a) FirstGroup or any of its subsidiaries; and
- (b) persons other than FirstGroup or any of its subsidiaries;

“the other party” (in relation to a tendered service) means the other party to the tendered service agreement under which the tendered service is supplied;

“passenger” includes an animal where a fare is charged for carriage of an animal;

“the permitted fare increase” means the total of:

- (a) the percentage change in the index between:
 - (i) the edition relating to the April immediately preceding the fare year in which the increase is made; and
 - (ii) the edition relating to the April immediately preceding the April referred to in paragraph (i); and
- (b) any part of the permitted fare increase:
 - (i) applicable in any year or fare years preceding the fare year in which the increase is to be made, but
 - (ii) not applied by FirstGroup in that or any subsequent year,

and for the avoidance of doubt where there is deflation, the permitted fare

increase will be negative and clause 2 will require a reduction in fares;

“the prescribed period” (in relation to a bus service operated by FirstGroup or any of its subsidiaries on a route on which a competitor operates a bus service) means a period in any day commencing 30 minutes before and ending 30 minutes after the period during which that competitor operates a bus service on that route;

“provide” (in relation to bus services) means register or show on a timetable;

“registration” means the registration of a local service in accordance with section 6 of the Transport Act 1985, and references to registering a bus service and to deregistration of a bus service are to be construed accordingly;

“relevant area” means the First Glasgow operating area and the Midland Bluebird and Lowland operating area and a journey or bus service within the relevant area means that part of any journey or any bus service that is within the relevant area regardless of whether the journey or bus service continues to or from a place outside the relevant area;

“relevant date” means, in relation to the fares being charged by FirstGroup or any of its subsidiaries:

- (a) in the First Glasgow operating area, 1 September 1997; and
- (b) in the Midland Bluebird and Lowland operating area, 1 February 1998;

“the report” means the report of the Monopolies and Mergers Commission entitled *FirstBus plc and S B Holdings Ltd - a report on the merger situation* (Cm 3531, January 1997);

“return journey” means a journey involving outward and return travel by a passenger between two single points, whether made on the same day or different days;

“season fare” means a fare entitling a passenger to make an unlimited number of journeys of a certain description on any day during a specified period of at least 7 consecutive days on bus services within the relevant area;

“service subsidies” has the meaning given by section 63(10)(b) of the Transport Act 1985 or such other similar meaning as the Director General may determine from time to time;

a "single journey" is made by a passenger and excludes a journey which can be made only by changing from one bus service to another;

"the standard fare scheme" means all regulated fares listed in schedule 5 being:

(a) the categories of standard fares charged by FirstGroup or any of its subsidiaries as at the relevant date for single journeys and return journeys within the relevant area which can be made on bus services operated by FirstGroup or any of its subsidiaries; and

(b) all season fares charged by FirstGroup or any of its subsidiaries as at the relevant date for all journeys within the relevant area;

but excludes excluded fares and discounted fares;

"standard fare table" means a table or tables showing all the individual fare values for all journeys in the relevant area;

"subsidiary" has the meaning given by section 736(1) of the Companies Act 1985 as substituted by section 144(1) of the Companies Act 1989;

"tendered fare" (in relation to a tendered service operated by FirstGroup or any of its subsidiaries) means a fare which First Group or its subsidiary is required to charge by the other party;

"tendered service" means a bus service supplied under an agreement providing for service subsidies and tendered service within the Midland Bluebird and Lowland operating area means that part of any tendered service within that area regardless of whether the tendered service continues to or from a place outside that area;

"tendered service agreement" means an agreement under which a tendered service is supplied; and

where the consent of the Director General is required, he shall not unreasonably withhold or delay it.

For and on behalf of FirstGroup plc:

Signed (director)

Name:

Signed (director/secretary)

Name:

Date:

SCHEDULE 1

AVERAGE FARE INCREASE

1.- The average fare increase for journeys within the First Glasgow operating area is the percentage figure which is the solution to the following equation:

$$\left(\frac{\sum_{i=1}^n P_i^{new} Q_i^{old}}{\sum_{i=1}^n P_i^{old} Q_i^{old}} - 1 \right) * 100$$

Where:

i = an individual fare category or fare value in the standard fare scheme for journeys within the First Glasgow operating area (e.g. "3 stages adult single" where fares are set by reference to the number of fare stages travelled through or "£1.10 adult single" where fares are not so set and, for the avoidance of doubt, when making this calculation, unless the Director General gives his prior written consent and pursuant to such terms as he sees fit, each fare category and fare value in the standard fare scheme for the First Glasgow operating area must be used);

n = the total number of fare categories (for fares set by reference to the number of fare stages travelled through) and fare values (for other fares) in the standard fare scheme that exist during the relevant fare year for the First Glasgow operating area;

P_i^{new} = the new price in the relevant fare year of fare category or fare value i , and for the avoidance of doubt, in any fare year every regulated fare shall be allocated a weight by reference to passenger numbers and any dispute on the allocation of weights shall be settled by the Director General;

P_i^{old} = the price of fare category or fare value i in the latest available sample period;

Q_i^{old} = the number of passengers purchasing tickets of fare category or fare value i in the First Glasgow operating area in the latest available sample period. For fares in the standard fare scheme other than season fares, Q_i^{old} is estimated by counting passengers in the sample period, and annualising them by a factor to be approved by the Director General; and

the sample period is:

- (a) for fares in the standard fare scheme other than season fares:

(i) a period of any 6 weeks in any one year (whether or not consecutive, but not in any week in June, July or August) selected by the Director General, or

(ii) (in default of selection by the Director General on or before 1 June in any one calendar year) the first two complete weeks in each of March, April and May (excluding any week which contains a bank holiday) in any one year, and

(b) for season fares, the most recently available period of 12 consecutive months commencing on 1 April -

and, for the avoidance of doubt, where there is more than one fare category at the same price, each fare category shall be treated as a separate fare category for the purposes of this calculation.

2.- The above formula shall be used *mutatis mutandis* to calculate the average fare increase for journeys within the Midland Bluebird and Lowland operating area and, for the avoidance of doubt, where the fare values charged are the same for the same fare categories in respect of different journeys made on bus services operated from:

(a) Midland Bluebird depots in the areas identified in the report as the unitary authorities of Stirling, Clackmannanshire, Falkirk and West Lothian; and

(b) the Lowland depots in the areas identified in the report as the unitary authorities of Midlothian, East Lothian and the Scottish Borders -

each fare value in each case shall be treated as a separate fare value for the purpose of this calculation.

SCHEDULE 2

THE FARE STAGE AREA

SCHEDULE 3

FARE ZONES – RELEVANT AREA

First Glasgow

1. Firstcard
2. Paisley local card
3. Eastwood and East Kilbride local cards

Midland Bluebird and Lowland

4. Falkirk zonal
5. Stirling and Alloa zonal
6. West Lothian zonal ticket – Westcard
7. Livicard
8. Capital cards : Grangemouth
Bo'ness
Bridgend/Philipstoun/Winchbrugh
South Queensferry
Linlithgow
9. East Lothian zonal ticket – Eastcard
10. Mid Lothian zonal ticket (known as Midcard)
11. Waverley Wanderer
12. Reiver Rover

SCHEDULE 4

TERMS AND CONDITIONS APPLYING TO FARES IN THE STANDARD FARE SCHEME

First Glasgow

1. Firstcard leaflet
2. First Glasgow conditions of carriage: 1 December 1998
3. First Glasgow – terms and conditions for season fares

Midland and Lowland

4. First Edinburgh conditions of carriage: 1 January 2001
5. Falkirk zonal leaflet
6. Stirling and Alloa zonal leaflet
7. Westcard leaflet
8. Livicard leaflet
9. South Queensferry Capital Card
10. Eastcard leaflet
11. Midcard leaflet
12. Season Saver and Supersaver terms and conditions
13. Reiver/Waverley Plus card leaflet
14. Reiver Rover/Waverley Wanderer ticket

SCHEDULE 5

STANDARD FARE SCHEME : LIST OF REGULATED FARES AT THE RELEVANT DATE

1. First Glasgow – relevant date 1 September 1997
2. Midland Bluebird and Lowland – relevant date 1 February 1998