



*press notice*

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3 October 1989

BADGERLINE HOLDINGS LIMITED/MIDLAND RED WEST HOLDINGS LIMITED

Nicholas Ridley, Secretary of State for Trade and Industry, has accepted undertakings from Badgerline Holdings Limited in relation to its operation of contract bus services in the Bristol and Avon area.

The undertakings have been offered as a result of discussions between Badgerline and the Director General of Fair Trading following publication in March of the Monopolies and Mergers Commission (MMC) report on the acquisition by Badgerline of Midland Road West Holdings Limited. Midland Red West, trading as Cityline, provided bus services in the centre and suburbs of Bristol. Badgerline provides bus services in the area surrounding Bristol and linking it to the centre of the city.

The MMC concluded that the merger may be expected to operate against the public interest with regard to contract bus services (ie services subsidised by local authorities, principally Avon County Council). Two areas of particular concern were:

- the practice whereby Badgerline, having de-registered certain commercial services, re-registered them after failing to win the contracts for the subsidised services which replaced them; and
- the loss of Cityline as a major competitor for the Avon County Council's contract services.

The Secretary of State announced on 8 March that he accepted the MMC's conclusions, and requested the Director General to seek appropriate undertakings from Badgerline.

The text of the undertakings is attached.

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**NOTES FOR EDITORS**

1. The Secretary of State for Trade and Industry referred the acquisition by Badgerline Holdings Limited of Midland Red West Holdings Limited to the Monopolies and Mergers Commission on 17 October 1988. The MMC's report was published on 8 March 1989. The report is available from HMSO (Cm 595, price £5.90).
2. Appendix 1 to the undertakings refers to Appendices 2. These appendices are not being published since they contain confidential commercial information on Badgerline's operations.

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**ENDS**

### Undertakings

Following the report of the Monopolies and Mergers Commission published in March 1989 on the merger between Badgerline Holdings Limited ('the Company') and Midland Red West Holdings Limited, the Company hereby gives to the Secretary of State the following undertakings and will procure that its subsidiaries comply with the undertakings as if they had been given by them.

(1) In circumstances where:

- (a) Badgerline Limited ("Badgerline") or City Line Limited ("City Line") deregisters a bus service;
- (b) Avon County Council in consequence invites tenders for a subsidised service to replace the service so deregistered in whole or in part; and
- (c) the contract for the subsidised services in question is awarded by Avon County Council in accordance with the Regulations and any advice issued from time to time by the Department of Transport to an operator other than Badgerline or City Line;

then neither the Company nor any of its subsidiaries will register for commercial operation a bus service which substantially duplicates such subsidised service, whether by a

new registration or variation of an existing registration, without first giving notice to the Director General of Fair Trading and Avon County Council of its intention to do so and obtaining the consent of the Director General of Fair Trading. Such notice to be given at least 4 months prior to the date on which Badgerline or City Line (as the case may be) intends to commence operation of the commercial service.

- (2) (a) When Avon County Council invites tenders to operate bus services on a subsidised basis, Badgerline will submit tenders for every service in Avon, and City Line will submit tenders for all services starting or finishing in Bristol.
- (b) The price quoted by Badgerline and City Line (as the case may be) in each such tender will be so calculated as not to exceed the sum of (i) the direct costs reasonably expected to be incurred in the operation of the service in question, and (ii) a contribution towards overheads and profit equal to no more than 20 per cent of the amount determined pursuant to (i) above, less the revenue reasonably expected to be earned in operating the service.

(c) On an individual company basis a record will be kept of the revenue estimated for each successful tender for a contract service; and in respect of each such tender if actual revenue exceeds estimated revenue in any year then 50% of the excess will be refunded to Avon County Council. For these purposes revenue will be defined as on-bus revenue plus 10%.

(d) If requested to do so by Avon County Council the Company will provide to an independent auditor ("the Auditor") to be appointed by agreement between Avon County Council and the Company (or failing such agreement to be nominated by the President of the Institute of Chartered Accountants) such information as the Auditor may require sufficient to enable him to verify and certify to Avon County Council that on the basis of a 20% sample of all tenders (or such other figure as may be agreed by the Director General of Fair Trading) the revenue and cost estimates incorporated in the tender price are reasonable having regard to such relevant information as is available, and the price so tendered and the refunds made have been determined in accordance with the terms of this

undertaking and if they have not, to specify what adjustment needs to be made in order to give effect to the undertaking retrospectively (subject to the agreement of the auditor not to disclose to Avon County Council or anyone else, other than the Director General of Fair Trading, confidential information so provided by the Company);

(e) The Company will pay to the Avon County Council such adjustment as the Auditor may specify

(f) The Company will pay the fees of such Auditor as may be appointed or nominated pursuant to paragraph d) hereof.

3. The Company will provide promptly to the Director General of Fair Trading such information as he may require to ascertain whether these undertakings are being complied with.

APPENDIX 1

BASIS OF IMPLEMENTATION OF THE UNDERTAKINGS

1. For the purpose of the first undertaking, 'substantially duplicate' shall include without derogation from the generality of the phrase:

The provision by Badgerline or City Line of a new service which would enable passengers to travel, without changing buses from the starting point of the tendered service to the point at which the tendered service joins a route on which either Badgerline or City Line (or both) are providing a service, or from any recognised stopping place on any part of the route of the tendered service to such point. For the purpose of this clause, account shall be taken of the registration or variation of any service on which a passenger is able to board within 200 metres of a recognised bus stop on a section of tendered route on which neither Badgerline or City Line is providing a service.

2. For the purpose of the second undertaking, a costing procedure has to be devised which will allocate costs to the tenders fairly and without discrimination. The revenue estimates must include a provision for off-bus revenue.

The costing procedure proposed by the Company, and accepted by the County Council is attached as Appendices 2 and 3, where Appendix 2 refers to the City Line operation and Appendix 3 identifies variations which will apply to Badgerline.

3. In order to enable the County Council and the Company to take final tender figures into account for financial planning purposes, the tenders will be referred to the Auditor by the County Council as soon as practicably possible and the Auditor will be instructed to commence his check immediately on receipt of the tenders. The Auditor will report the results of his audit directly to the County Council. The County Council will then inform the Company of the post-audit tender prices which, subject to the revenue adjustment process, will be incorporated in the contracts. A copy of the Auditor's report will be supplied to the Company where the price has been amended.
  
4. The "on bus" revenue on all tenders will be checked annually against the figure used in the tender quotation, unless the contract is for less than one year in which case it will be on completion of the contract, and 10% will be added to both as the agreed allowance for "off bus" revenue to determine excesses and deficits. Each year the excesses arising in the year to the previous 31 March will be



calculated and 50% of the total will be repaid to Avon County Council as soon as practical but not later than 31 May of the same year.

5. "Emergency tenders" are not to form part of these arrangements.
6. The independent Auditor will be selected from a list of three to be agreed by the Company and the County Council. Interviews will be conducted by representatives from the Company and the County Council. In the event of the two parties failing to agree, an auditor will be nominated by the President of the Institute of Chartered Accountants of England and Wales, in accordance with the provision of the second undertaking.
7. The Auditor will be appointed by the Company who will be responsible for his fees which will not be fixed in advance but will on all occasions act in accordance with instructions issued by, and report to, the County Council. Copies of all instructions issued to the Auditor are to be given to the Company.

8. The Company will allow the Auditor to have access to all records relating to commercial services and tendered services provided to the County Council, to enable him to form a view on the methods of cost allocation and their application to tendered services, and will provide the Auditor with any additional information which he may reasonably request either orally or in writing.
  
9. In the undertakings the word "subsidiary" shall have the same meaning as in section 736 of the Companies Act 1985.