

FirstGroup plc – invitation to comment on a request to release merger undertakings

Invitation to comment on a request by FirstGroup plc to review the undertakings given to the then Secretary of State for Trade and Industry under section 88 of the Fair Trading Act 1973 (the FTA) as varied by the Competition Commission (the CC) pursuant to paragraph 16 of Schedule 24 to the Enterprise Act 2002 and in relation to the completed acquisition by FirstGroup of SB Holdings Limited (the undertakings).

The Competition and Markets Authority (CMA) is currently considering whether to launch a review under section 88(4)(a) of the FTA as applied by paragraph 16(3) of Schedule 24 to the Enterprise Act 2002 of the above undertakings which were made to remedy the competition and other public interest concerns arising from the merger.

In 2002, the Secretary of State accepted undertakings from FirstGroup plc under section 88(2)¹ of the FTA (the original undertakings), to take the action necessary to remedy or prevent the adverse effects specified in the CC's report and sets out such conclusions as are mentioned in section 73(1)² of the FTA.

In 2008, FirstGroup requested a variation of the original undertakings as it believed they were no longer required. After considering advice on the proposed variation prepared by the Office of Fair Trading, the CC published a report proposing variations to the amended undertakings on 11 April 2008.³ The proposed variations came into effect from 11 April 2008.

FirstGroup, by reason of a change of circumstances, is now seeking a release of the undertakings. FirstGroup provided an application for this process.

If a review were to proceed, the CMA would be required to assess whether there had been a change of circumstances since the acceptance of the original undertakings in 2002 and the variations to the undertakings since that date.

¹ Section 88(2) of [the FTA](#).

² Section 73(1) of [the FTA](#).

³ CC (April 2008), [Review of undertakings given by FirstGroup following its acquisition of SB Holdings Limited](#).

The CMA is now seeking views on whether it should carry out a review in the light of the issues raised by FirstGroup and the CMA's [prioritisation principles](#). In particular we are seeking views on:

- whether there has been a change in circumstance in this market, which obliges the CMA to consider a review of these undertakings;
- whether we should prioritise this case for review; and
- whether this review should be carried out now.

Representations with any relevant evidence should be made, preferably by email only (with any attachments in PDF), by 5pm on Friday 25 September 2015 to:

firstgroup.undertakings@cma.gsi.gov.uk

Or:

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7 September 2015