

## **COMPETITION MINISTER ACCEPTS UNDERTAKINGS FROM ARRIVA**

7 February, 2000

Kim Howells, competition and consumer affairs minister, today announced that he had accepted undertakings from ARRIVA plc which require them to divest Lutonian Buses Limited and subject them to behavioural controls over their future conduct towards the divested business. His decision is in accordance with the advice of the Director General of Fair Trading.

On 18 November 1998, Dr Howells published the Monopolies and Mergers Commission's (MMC) adverse report into ARRIVA's acquisition of Lutonian Buses Limited. Dr Howells announced that he had decided to require ARRIVA to divest Lutonian and to subject ARRIVA to behavioural controls.

The undertakings require ARRIVA to:

- dispose of Lutonian within 3 months, and not re-acquire any interest in, or assets of, Lutonian
- until that time, continue to operate the Lutonian business separately
- not (without the DGFT's consent) for the 2 years following the sale, register or operate a new commercial service which is in competition with an existing Lutonian service
- comply with requirements relating to fare and frequency changes and journey intervals
- ensure that the revenues from each of its bus services (or group of bus services) competing with Lutonian shall cover the variable and semi-variable costs of operating that service

The text of the undertakings is attached to this press notice.

### Notes

1. The MMC report 'ARRIVA plc and Lutonian Buses Ltd: a report on the merger situation' (Cm 4074) was published on 18 November 1998. Dr Howells's decision on remedies was announced in DTI press notice P/98/911 of the same date.
2. Section 45 of the Companies Act 1998, which came into force on 1 April 1999, dissolved the MMC and transferred its functions to the Competition Commission.
3. Under section 93A of the Fair Trading Act 1973, undertakings given following an MMC report are enforceable through the courts. Under section 88 of the Act they must be published.

## ARRIVA PLC/LUTONIAN BUSES LTD

### UNDERTAKINGS TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY

The following undertakings are given under section 88 of the Fair Trading Act 1973 (the 'Act') by ARRIVA plc ('ARRIVA') to the Secretary of State for Trade and Industry (the 'Secretary of State') following a report of the Monopolies and Mergers Commission entitled 'ARRIVA plc and Lutonian Buses Limited: A report on the merger situation' (Cm 4074, November 1998)(the 'Report') to take action requisite for the purpose of remedying or preventing the adverse effects specified in the Report.

#### Divestment of and continued separation from Lutonian

1 (1) ARRIVA shall ensure that, by no later than three calendar months from the date hereof or such other date as may be agreed by the Director in writing, the sale to a single purchaser is completed of all the Interests held by ARRIVA or by any of its Subsidiaries in Lutonian.

(2) ARRIVA shall ensure that not less than fifteen Working Days' notice is given to the Director of the identity of any person to whom it intends to sell its Interests or the Interests of any of its Subsidiaries in Lutonian and it shall not sell or permit the sale of such Interests without the Director's prior written consent.

(3) After it has fulfilled the undertaking in paragraph 1 above, except with the prior written consent of the Director, ARRIVA: (a) shall not directly or indirectly:

(i) acquire any Interest in Lutonian;

(ii) acquire any Interest in any company or other undertaking having Control of Lutonian;

(iii) acquire, other than in the ordinary course of its Business, any assets of Lutonian;

(b) shall procure that none of its employees or directors holds any directorship or managerial position in Lutonian or in any company or other undertaking having Control of Lutonian; and shall not nominate any person to any such directorship or managerial position;

(c) shall not participate in the formulation or making of, or influence or attempt to influence any policy with respect to Lutonian, of any person having Control of Lutonian;

(d) shall not co-operate or attempt to co-operate with Lutonian, or with any person having Control of Lutonian, with respect to any matter, including but not being limited to, the purchase of goods or services from third parties, staff training, insurance, property management and finance;

(e) shall not enter into or carry out any Agreement with any person, if the entry into or carrying out of the Agreement is intended to, or may, result in any Associated

Person of ARRIVA, directly or indirectly, doing any of the things described in subparagraphs (a) to (d) above.

2 Prior to the sale pursuant to the undertaking in clause 1 above, ARRIVA shall continue to act in accordance with the provisions contained in the Interim Undertakings, which shall continue in full force and effect as if they were terms of this document.

#### Short-term behavioural undertakings

3 Save with the prior written consent of the Director, for a period of two years following the sale pursuant to the undertaking in clause 1 above, ARRIVA shall not Register or operate a Commercial Service, other than any Commercial Service which ARRIVA already operated at the date of the Reference, which is in Competition with any Bus Service carried on Service is provided.

#### Journey intervals

5 (1) Subject to paragraph (3) below, if at any time other than on a Corridor:

(a) Lutonian commences operation of a Journey on a Route on which ARRIVA operates a Bus Service; or

(b) ARRIVA commences operation of a Journey on a Route on which Lutonian operates a Bus Service; and:

(c) ARRIVA:

(i) Registers, shows on a time-table or operates a Journey on the Route which is too close to Lutonian's Journey, within the meaning of paragraph (2) below; or

(ii) Registers a Bus Service such as to allow it to operate a Journey on the Route which is too close to that of Lutonian, within the meaning of paragraph (2) below; and

(d) Lutonian ceases to operate its Bus Service, ARRIVA shall comply with the fare and frequency obligation set out in clause 6 below.

(2) For the purposes of paragraph (1) above, a Journey is too close to that of Lutonian if at any point on ARRIVA's Journey (Registered, time-tabled or operated) the time interval between that Journey and the same point on Lutonian's next following Journey (Registered, time-tabled or operated) is shorter than the time interval between that point on Lutonian's Journey and the same point on the next following Journey of ARRIVA (Registered, time-tabled or operated).

(3) ARRIVA shall not be required to comply with the fare and frequency obligation set out in clause 6 below if:

(a) ARRIVA's action falling within paragraph (1) above was the result of a specific and clearly identified cause unrelated to the Registration or operation of Lutonian's Journey;

(b) Lutonian ceased to operate the Bus Service in question as a result of a specific and clearly identified cause unrelated to ARRIVA's action falling within paragraph (1) above; or

(c) in respect of a Tendered Service, ARRIVA's action falling within paragraph (1) above was required by the other party to the agreement providing for service subsidies under which their passenger journeys on the Route, reduce the frequency of Journeys on the Route or take such other steps as may be necessary to ensure that the failure does not occur again.

(2) In respect of any Bus Service operated by it on a Route, the Company shall supply to the Director, within five Working Days of a written request being made by him (or, to the extent that the account requested relates to the last ended Management Accounting Period of ARRIVA, within twenty Working Days of such written request), an account, relating to any Management Accounting Period of ARRIVA, of:

(a) the revenue accruing to it; and

(b) the Variable and Semi-variable Costs incurred by it.

(3) On an application by ARRIVA in writing in relation to specified Bus Services, the obligations in paragraphs (1) and (2) above in relation to the operation by ARRIVA of a Bus Service on a Route in Competition with Lutonian may, with the written consent of the Director, be varied from time to time so as to apply to the operation by ARRIVA of a specified Group of Bus Services.

Further information to be provided to the Director

8 (1) ARRIVA shall provide to the Director in respect of the last ended accounting year:

(a) within two calendar months of the end of such year management accounts on the performance of its operations in the Reference Area;

(b) within three calendar months of the end of such year a statement of its return on capital in respect of its operations in the Reference Area; and

(c) within two weeks of filing the same at Companies House the audited accounts of ARRIVA and of any Subsidiary which has during the course of that year operated a Bus Service in the Reference Area.

(2) ARRIVA will within such reasonable time as the Director may specify provide to the Director such other information as he may from time to time reasonably require for the purpose of monitoring compliance by ARRIVA and its Subsidiaries with these undertakings.

(3) ARRIVA shacial Service' means a Bus Service other than a Tendered Service;

'the Commission' means the Monopolies and Mergers Commission;

the Bus Service of an operator is 'in Competition with' the Bus Service of another operator if:

(a) it is Registered to operate along more than thirty (30) per cent of the bus route along which the other Bus Service is Registered to operate or operates; and

(b) it is Registered, shown on a time-table or operated at any time within thirty (30) minutes before or after any time at which the other Bus Service in question is Registered, timetabled or operated;

but

(c) for the purpose of this definition any part of a Bus Service along a Corridor shall be disregarded, and the term 'Competitor' shall be construed accordingly;

'Control' is to be construed in accordance with section 65 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

'Corridor' means all or any part of the following:

(a) Biscot Road between the Town Centre and the junction with Montrose Avenue;

(b) Crawley Green Road between the Town Centre and the junction with Somerset Road;

(c) Marsh Road, Bramingham Road and Stockholm Way;

(d) New Bedford Road between the Town Centre and the junction with Icknield Way; and

(e) Darley Hill Road between the Town Centre and the junction with Whipperley Ring Road and Whipperley Way.

'the Director' means the Director General of Fair Trading;

'Group of Bus Services' means such combination of two or reference Area and the term includes part of any such route;

'Semi-variable Costs' means the cost of staff other than drivers (including wages, National Insurance and pension contributions), public service vehicle depreciation, engineering costs other than engineering materials and the cost of cleaning, licensing and public service vehicle insurance;

'Subsidiary' has the meaning given by section 736(1) of the Companies Act 1985 (as amended);

'Tendered Service' means a Bus Service provided under an agreement providing for service subsidies (as defined in section 63(10)(b) of the Transport Act 1985);

'Variable Costs' means the cost of drivers (including wages, National Insurance and pension contributions) and the cost of fuel, tyres and engineering materials; and

'Working Day' means any day of the week other than a Saturday, Sunday or any other day which is a public holiday in England