

ANTICIPATED MERGER BETWEEN NATIONAL EXPRESS GROUP PLC AND STAGECOACH GROUP PLC

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in National Express Group plc (**National Express**) and Stagecoach Group plc (**Stagecoach**) ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to National Express and Stagecoach (the **Order**).

Commencement, application, and scope

1. This Order commences on the commencement date: 26 January 2022.
2. This Order applies to National Express and Stagecoach.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige National Express or Stagecoach to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

4. This Order does not prohibit the completion of the transaction provided that National Express and Stagecoach observe the restrictions set out below.

Management of the National Express and Stagecoach businesses until determination of proceedings

5. Except with the prior written consent of the CMA, National Express and Stagecoach shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Stagecoach business with the National Express business;
 - (b) transfer the ownership or control of the National Express business or the Stagecoach business or any of their subsidiaries in the United Kingdom; or
 - (c) otherwise impair the ability of the Stagecoach business or the National Express business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, National Express shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the National Express business in the United Kingdom is maintained as a going concern and sufficient resources are made available for the development of the National Express business in the United Kingdom, on the basis of its pre-merger business plan;
 - (b) except in the ordinary course of business:
 - (i) all of the assets of the National Express business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the National Express business are disposed of; and
 - (iii) no interest in the assets of the National Express business is created or disposed of.
7. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, Stagecoach shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Stagecoach business in the United Kingdom is maintained as a going concern and sufficient resources are made available for the development of the

Stagecoach business in the United Kingdom, on the basis of its pre-merger business plan;

- (b) except in the ordinary course of business:
 - (i) all of the assets of the Stagecoach business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Stagecoach business are disposed of; and
 - (iii) no interest in the assets of the Stagecoach business is created or disposed of.

Compliance

- 8. National Express and Stagecoach shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 9. National Express and Stagecoach shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by National Express and Stagecoach, and their subsidiaries with this Order. In particular, on 9 February 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of National Express and the Chief Executive Officer of Stagecoach or other persons of National Express and Stagecoach as agreed with the CMA shall, on behalf of each of National Express and Stagecoach, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
- 10. At all times, National Express and Stagecoach shall each actively keep the CMA informed of any material developments relating to the Stagecoach business in the United Kingdom, or the National Express business in the United Kingdom, which includes but is not limited to:
 - (a) any disposal of any assets of the National Express business or Stagecoach business which is expected to occur outside the ordinary course of business;
 - (b) any interruption of the Stagecoach business or National Express business in the United Kingdom (including without limitation its procurement, operations, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) any other issues which may result in the degradation of the National Express business and the Stagecoach business in the United Kingdom.

11. If National Express or Stagecoach has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that National Express or Stagecoach may be directed to appoint under paragraph 12.
12. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
13. National Express and Stagecoach shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

14. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
15. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'assets' means all assets which are relevant to the operation of the Stagecoach business and the National Express business in the United Kingdom, including all of the activities and shareholdings which would be acquired as a result of the CDG transaction;

'business' has the meaning given by section 129(1) and (3) of the Act;

'CDG transaction' means the proposed acquisition by ComfortDelGro Corporation Limited of the marketing, retail and customer services activities of Stagecoach's UK Megabus and Falcon South-West business as well as Stagecoach's 35% interest in Scottish Citylink Coaches Limited;

'commencement date' means 26 January 2022;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

‘National Express’ means National Express Group plc, a public limited company organised under the laws of England and Wales with its registered office at National Express House, Birmingham Coach Station, Mill Lane, Digbeth Birmingham, B5 6DD, company number 2590560;

‘National Express business’ means the business of National Express and its subsidiaries carried on as at the commencement date;

‘the ordinary course of business’ means matters connected to the day-to-day supply of goods and/or services by Stagecoach or National Express in the United Kingdom and does not include matters involving significant changes to the organisational structure of Stagecoach or National Express in the United Kingdom, including those related to the CDG transaction (as contemplated in any form), or post-merger integration of Stagecoach and National Express;

‘scheme of arrangement’ means a court sanctioned scheme of arrangement of Stagecoach under Part 26 of the Companies Act 2006;

‘specified period’ means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

‘Stagecoach’ means Stagecoach Group plc, a public limited company incorporated in Scotland with its registered address at 10 Dunkeld Road, Perth, Perthshire, PH1 5TW, Scotland, company number SC100764;

‘Stagecoach business’ means the business of Stagecoach and its subsidiaries carried on as at the commencement date;

‘subsidiary’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

‘the transaction’ means the anticipated all-share combination of Stagecoach and National Express pursuant to the scheme of arrangement by which National Express and Stagecoach will cease to be distinct within the meaning of section 23 of the Act;

‘the two businesses’ means the National Express business and the Stagecoach business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Naomi Burgoyne
Director, Mergers

Compliance statement for National Express

I [insert name] confirm on behalf of National Express that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) National Express has complied with the Order made by the CMA in relation to the transaction on 26 January 2022 (the **Order**).
 - (b) National Express' subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by National Express that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Stagecoach business with the National Express business;
 - (ii) transfer the ownership or control of the National Express business or any of its subsidiaries in the United Kingdom; or
 - (iii) otherwise impair the ability of the Stagecoach business or the National Express business to compete independently in any of the markets affected by the transaction.
 - (b) The National Express business in the United Kingdom has been maintained as a going concern and sufficient resources have been made available for the development of the National Express business in the United Kingdom on the basis of its pre-merger business plan.
 - (c) Except in the ordinary course of business:
 - (i) all of the assets of the National Express business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the National Express business have been disposed of; and

(iii) no interest in the assets of the National Express business has been created or disposed of.

(d) Except as listed in paragraph (e) below, there have been no:

(i) disposals of any assets of the National Express business which have occurred outside the ordinary course of business;

(ii) interruptions of the National Express business in the United Kingdom (including without limitation its procurement, operations, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) other issues which have resulted in the degradation of the National Express business in the United Kingdom.

(e) [list of material developments]

3. National Express and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the National Express business in accordance with paragraph 10 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both** (Section 117 of the Enterprise Act 2002).

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed (Section 94A of the Enterprise Act 2002).

FOR AND ON BEHALF OF NATIONAL EXPRESS

Signature

Name

Title

Date

Compliance statement for Stagecoach

I [insert name] confirm on behalf of Stagecoach that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) Stagecoach has complied with the Order made by the CMA in relation to the transaction on 26 January 2022 (the **Order**).
 - (b) Stagecoach's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Stagecoach that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Stagecoach business with the National Express business;
 - (ii) transfer the ownership or control of the Stagecoach business or any of its subsidiaries in the United Kingdom; or
 - (iii) otherwise impair the ability of the Stagecoach business or the National Express business to compete independently in any of the markets affected by the transaction.
 - (b) The Stagecoach business in the United Kingdom has been maintained as a going concern and sufficient resources have been made available for the development of the Stagecoach business in the United Kingdom on the basis of its pre-merger business plan.
 - (c) Except in the ordinary course of business:
 - (i) all of the assets of the Stagecoach business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Stagecoach business have been disposed of; and

(iii) no interest in the assets of the Stagecoach business has been created or disposed of.

(d) Except as listed in paragraph (e) below, there have been no:

(i) disposals of any assets of the Stagecoach business which have occurred outside the ordinary course of business;

(ii) interruptions of the Stagecoach business in the United Kingdom (including without limitation its procurement, operations, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) other issues which have resulted in the degradation of the Stagecoach business in the United Kingdom.

(e) [list of material developments]

3. Stagecoach and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Stagecoach business in accordance with paragraph 10 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both** (Section 117 of the Enterprise Act 2002).

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed (Section 94A of the Enterprise Act 2002).

FOR AND ON BEHALF OF STAGECOACH

Signature

Name

Title

Date