

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

Dear Tim,

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 26 January 2022

Anticipated merger between National Express Group plc with Stagecoach Group plc (the 'Merger')

We refer to your submissions of 26 and 27 January 2022 requesting that the CMA consents to derogations from the Initial Enforcement Order of 26 January 2022 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save with written consent from the CMA, National Express plc ('**National Express**') and Stagecoach Group plc ('**Stagecoach**') (together, the '**Parties**') are required to hold separate the Stagecoach business from the National Express business and refrain from taking any action which might prejudice a reference under section 22 or 33 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Stagecoach may carry out the following actions, in respect of the following specific paragraphs of the Initial Order:

1. Paragraphs 7(b)(i), 7(b)(ii), 7(b)(iii) of the Initial Order

Stagecoach submits that it owns land in [X] (the '[X] Land') which had been marketed for sale [X] prior to the imposition of the Initial Order and that, shortly before the imposition of the Initial Order, Stagecoach received an offer from a third party to acquire the [X] Land for £[X].

Stagecoach further submits that (i) the [X] Land is currently unused, and has not been used for operational purposes for over five years and that (ii) as far as

Stagecoach is aware, National Express does not provide any services in the [X] local area.

In addition, Stagecoach submits that the acquirer of the [X] Land would take on the risks associated with [X] and resolving certain [X], which are known to affect the [X] Land. Stagecoach has explained that Stagecoach's property adviser, Montagu Evans, [X] and that commercial terms for the disposal of the [X] Land have not yet been agreed.

On the basis of Stagecoach's representations, the CMA consents to a derogation from paragraphs 7(b)(i), 7(b)(ii), 7(b)(iii) of the Initial Order to permit Stagecoach to negotiate and enter into an agreement for the disposal of the [X] Land and to complete such disposal.

This derogation is granted strictly on the basis that:

- (a) the [X] Land is not currently (and has not for the past five years been) utilised by Stagecoach in any way to support the ongoing operation of the Stagecoach business in the United Kingdom ('UK'). As such, the disposal of the [X] Land will neither impact the ongoing viability nor disrupt the operations of the Stagecoach business in the UK; and
- (b) the disposal of the [X] Land shall not 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 that may be justified by the CMA's decisions on such a reference.

2. Paragraphs 7(b)(i), 7(b)(ii), 7(b)(iii) of the Initial Order

Stagecoach submits that it currently holds a leasehold interest over a bus depot located in [X] (the '**Bus Depot**') which is due to expire on [X]. In addition to the bus depot, Stagecoach currently benefits from [X] bus stops at the existing bus station plus [X] layover bays, a controller office, and a mess room.

Stagecoach submits that the local authority, [X] ('[X]') wishes to develop the area around the depot, for which purpose it has offered to relocate the Bus Depot to a site located approximately 1 mile away by road (the '**[X] Relocation**').

Stagecoach explains that commercial terms for the [X] Relocation have not yet been agreed but under draft heads of terms initially prepared in November 2021 and updated in January 2022:

- (a) Stagecoach will surrender to [X] its existing lease over the Bus Depot;
- (b) [X] will grant to Stagecoach a new long leasehold interest over land at [X] (i.e. the new bus depot location), on terms consistent with

Stagecoach's existing ground lease ([X]) in respect of the Bus Depot, but subject to [X];

- (c) [X] and Stagecoach will engage in a process to identify feasible and affordable bus stop and layover solutions. If a solution cannot be identified pre-exchange, [X];
- (d) [X] and Stagecoach will work together to identify a solution for a controller office and mess room, [X];
- (e) exchange of contracts is targeted for [X], with the entry of a new leasehold agreement targeted for no later than [X]; and
- (f) completion of the new depot will be subject to a long-stop date of [X] from signing of the lease agreement.

Stagecoach submits that the [X] Relocation concerns a geographic area where there is no potential overlap between the activities of the Stagecoach business and those of the National Express business (i.e. bus services in [X]). Further, Stagecoach submits that, in any event, under the proposed terms of the arrangement there would be no meaningful change to the facilities available to Stagecoach for the operation of its services, nor to the terms on which those facilities are available.

On the basis of Stagecoach's representations, the CMA consents to a derogation from paragraphs 7(b)(i), 7(b)(ii), 7(b)(iii) of the Initial Order to permit Stagecoach to negotiate and enter into an agreement with [X] or an entity acting on its behalf for the relocation of the Bus Depot and to complete such transaction, strictly on the basis that:

- (a) the new bus depot in [X] will be available for use by Stagecoach as an operational base before relocation is required and so the proposed [X] Relocation will neither impact the ongoing viability nor materially disrupt the operations of the Stagecoach business in the UK;
- (b) the control office and mess room are not critical to the ongoing operation of Stagecoach's bus services in [X], being expected that an alternative location within the centre of [X] will be identified before Stagecoach is required to relinquish the occupation of the current ones;
- (c) the [X] Relocation will not lead to any integration between the Stagecoach business and the National Express business; and

- (d) the implementation of the [~~§~~] Relocation shall not 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 that may be justified by the CMA's decisions on such a reference.

Yours sincerely,

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
1 February 2022