

NATIONAL EXPRESS GROUP/THAMESLINK AND GREAT NORTHERN MERGER INQUIRY

Statement of issues

The reference

1. Under Section 66(3) of the Railways Act 1993 (as amended) the award of a rail franchise is treated as a merger. Our terms of reference require us to consider the proposed acquisition of the Thameslink and Great Northern (TGN) rail franchise by the National Express Group plc (NEG). In particular we propose to consider the effect of the merger on rail and coach services between London and:
 - (a) Luton, Luton Airport and Bedford; and
 - (b) Gatwick Airport.

The main issues we propose to consider are as follows.

The relevant markets

2. In determining the relevant market or markets, the Group will consider:
 - (a) the extent to which coach and rail services which overlap should be regarded as serving separate markets or as competing in a single market. And the extent to which demand for coach or rail services is affected by the price of the service (the own price elasticity of demand), or by the price of other services (the cross price elasticity of demand);
 - (b) the extent to which rail services which overlap should be regarded as serving separate markets or as competing, and, again, the relevant price elasticities. The Group will consider in particular the extent to which the rail services between London stations in the City and Gatwick, and those between London Victoria and Gatwick can be regarded as competing;
 - (c) the extent to which particular rail and coach services on the one hand and private transport (cars and taxis) on the other should be regarded as serving separate markets or as competing, and the extent to which changes in rail and coach prices relative to the cost to the user of private transport affect their use (the cross price elasticities of demand between public and private transport);
 - (d) other factors affecting the use of public and private transport and, in particular, the use of car and taxis by travellers to and from the airports. The factors may include convenience, reliability, congestion, journey time, the availability and cost of car parking, luggage, numbers travelling together, and the extent to which users of public transport have access to private cars; and
 - (e) whether the market can be segmented by journey purpose, for example between journeys for leisure, commuting or business purposes.

The effect of the merger on competition

3. In determining whether as result of the acquisition coach or rail fares on the services identified above, might increase, or service frequency or quality decline, the Group will consider:
 - (a) the extent to which there is competition, or potential for competition, between rail and coach services, between rail and private transport (cars and taxis), and between rail services, on particular flows or routes (in particular those identified above in paragraph 1), or at a network level; and the barriers to entry of new coach or rail services;
 - (b) the extent to which NEG, or other operators, will have scope or motivation to change rail fares, service levels or quality of service, given the terms proposed for the franchise; the arrangements for fare regulation; the impact of the financial arrangements with the DfT (eg the cap and collar arrangements) on incentives; capacity constraints, especially on the London section of the Thameslink service; and any network effects;
 - (c) the extent to which NEG would have scope or motivation to seek to move passengers from coach to rail; and whether there would be disincentives to increase coach fares or reduce services; and
 - (d) any other constraints on NEG's scope or incentive to change fares or service quality.

Whether the merger may be expected to result in a substantial lessening of competition

4. In determining whether the merger may be expected to result in a substantial lessening of competition the Group will consider the counterfactual; that is, what might happen in the absence of the merger. The Group propose to regard as the counterfactual the operation of the TGN franchise by one of the other shortlisted bidders. The issue that the Group will address is whether the acquisition by NEG of the TGN franchise would involve a substantial lessening of competition compared to that counterfactual. They will take into account any customer benefits that might arise as a result of the merger.
5. If the Group does identify a substantial lessening of competition, they will consider appropriate remedies to any such substantial lessening of competition or any adverse effects that may result, for example on fares or the level or quality of service.

Customer benefits and possible remedies

6. Although the Group will not consider remedies until it has reached its provisional findings, it would nonetheless welcome comments at this stage on:
 - (a) any benefits to customers attributable to the merger that might be taken into account in considering possible remedies, including benefits for transport integration and efficiency that would not occur if other operators held the franchise; and
 - (b) whether any structural or behavioural remedies, on the operation of either coach or rail services, would be appropriate, taking customer benefits into account.