

**REFERENCE RELATING TO THE COMPLETED JOINT VENTURE  
BETWEEN STAGECOACH BUS HOLDINGS LIMITED AND  
BRADDELL PLC IN RELATION TO MEGABUS.COM, MOTORVATOR  
AND SCOTTISH CITYLINK BRANDS**

**Notice of possible remedies under Rule 11 of the  
Competition Commission Rules of Procedure**

**Introduction**

1. On 15 March 2006 the Office of Fair Trading (OFT) in exercise of its duty under section 22(1) of the Enterprise Act (the Act) referred to the Competition Commission (CC) for investigation and report the completed joint venture between Stagecoach Bus Holdings Limited (Stagecoach Bus) and Braddell PLC (Braddell) in relation to the Scottish bus and coach businesses operated by Scottish Citylink Coaches Limited (SCCL) under the megabus.com, Motorvator and Scottish Citylink brands (the joint venture).
2. In its provisional findings on the reference notified to Stagecoach Bus and Braddell (the main parties) on 11 August 2006, the CC inquiry group (the Group) concluded provisionally (i) that the acquisition had resulted in the creation of a relevant merger situation; and (ii) that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the supply of scheduled coach services on the Saltire Cross route group. The Group also expects that the joint venture will lead to prices being higher than would otherwise be the case, and to a decline in service levels, in relation to the supply of scheduled coach services on the Saltire Cross route group.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies (see note (i)).

**Criteria**

4. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects that the Group expects to result from the joint venture. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction. One of the important issues for the remedy process will be to determine whether a remedy that addresses the SLC and any resulting adverse effects by reference to the Saltire Cross<sup>1</sup> services alone is sufficient to be effective.

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<sup>1</sup>The Saltire Cross consists of the Glasgow–Aberdeen and Edinburgh–Inverness coach routes, crossing at Perth. SCCL also referred to its services on these routes (some of which were direct and did not travel through or require a vehicle change at Perth) as ‘trunk services’.

5. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the joint venture. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

## **Possible remedies on which views are sought**

### ***Option 1: Fully or partially unwinding the joint venture***

6. This option consists in reversing the joint venture, so that the brands revert to their original owners with the joint ownership of SCCL being undone. The Group invites views on whether unwinding the joint venture, returning the megabus and Motorvator services and brands within the joint venture to Stagecoach and returning the Scottish Citylink services and brand to Braddell, would be effective in addressing the SLC identified as expected to result from the joint venture. The Group in particular invites views on whether, to be an effective remedy, the joint venture would need to be unwound in its entirety or whether it would be feasible and effective to unwind only that part of the joint venture concerned with operations on the Saltire Cross.
7. The Group also invites views on:
  - whether, if only that part of the joint venture concerned with operations on the Saltire Cross were unwound, the brands concerned (ie megabus and Scottish Citylink) should remain within the joint venture or whether they should return to Stagecoach or Braddell, as appropriate and what arrangements, if any, would need to be put in place to allow the use of the brands for the services on the Saltire Cross. For example, one possibility is that the megabus brand could be returned to Stagecoach for use on the Saltire Cross and be licensed by Stagecoach to the joint venture for use elsewhere. Alternatively, the megabus brand could remain with the joint venture and be licensed to Stagecoach for services on the Saltire Cross;
  - whether the reliance of SCCL on Stagecoach management and the integration of certain support functions since September 2005 has had any effect on the ability of SCCL as a stand-alone business to compete effectively with megabus, how this would affect the effectiveness of this remedy, and whether and what specific measures could be put in place to address this issue.

### ***Option 2: Divestiture***

#### ***Option 2a: Simple divestiture***

8. The Group invites views on whether the divestiture by SCCL of either its Scottish Citylink branded operations or its megabus branded operations (ie those megabus operations wholly within, originating and terminating in, Scotland) would be an effective remedy. In particular, the Group invites views on the scope of the divestiture package, and on:

- whether the divestiture package should comprise the megabus branded operations within the joint venture or the Scottish Citylink branded operations within the joint venture;
- whether the divestiture package would need to include the whole of the megabus operations or Scottish Citylink operations currently within the joint venture, or whether a divestiture of only the megabus-branded or Scottish-Citylink-branded operations on the Saltire Cross would be feasible and effective in addressing the SLC; and
- whether, depending on the scope of the divestiture package, it would be necessary to ensure that the purchaser had access to certain facilities in order to ensure its ability to compete effectively (for example, ticketing and booking systems, sales channels etc), and if so, access to which facilities would be necessary.

***Option 2b: Unwinding the joint venture and divestiture of Scottish Citylink by Braddell***

9. The Group invites views on an alternative divestiture remedy, involving first unwinding the joint venture, and second a requirement on Braddell to divest its ownership of Scottish Citylink. In particular the Group invites views on the scope of the divestiture package:
  - whether the divestiture of the whole of the Scottish Citylink business would be necessary to address effectively the SLC or whether a divestiture of the Scottish Citylink-branded services operated on the Saltire Cross would be effective in addressing the SLC. The Group notes in this regard that the CC generally prefers the divestiture of an existing business that can compete effectively in the market on a stand-alone basis;
  - whether, depending on the scope of the divestiture package, it would be necessary to ensure that the purchaser had access to certain facilities in order to ensure its ability to compete effectively (for example, ticketing and booking systems, sales channels etc), and if so, access to which facilities would be necessary.
10. Both in relation to option 2a and option 2b, the Group also invites views on possible suitable purchasers for any divestiture package. In general, the CC takes the view that a suitable purchaser should:
  - be independent of the parties to the merger or joint venture;
  - have the necessary financial resources, incentives and access to appropriate expertise and assets in order to enable the divested business to develop as an effective competitor in the market; and
  - be free from competitive concerns.

***Option 3: Franchising***

11. The Group is also considering whether franchising Scottish Citylink branded services operated on the Saltire Cross to independent operators would be effective in addressing the SLC. Views are sought on the following issues:

- the Group's current view is that it would be impractical to franchise Saltire Cross services on a flow-by-flow basis and that services should be franchised either on a route-by-route basis or as a single franchise for the entire Saltire Cross. Views are invited on whether Scottish Citylink branded services operated on the entire Saltire Cross should be franchised as a single route-group or whether it would be practicable and effective to devise separate franchises on a route-by-route basis;
  - what terms and conditions the franchise agreement should include. In particular views are sought on the duration of the franchise agreement, the level and form of any franchise fee and the obligations, if any, that should be placed on the franchisor;
  - how best to ensure, in the design and operation of any franchise, that the franchisee had the necessary incentive to compete with megabus and that megabus had the necessary incentive to compete with the franchisee; and
  - what additional restrictions, if any, should be placed on Stagecoach and/or SCCL to ensure effective competition between the franchisee and megabus.
12. The Group is also inviting views on possible suitable franchisees. In general, the Group takes the view that a suitable franchisee should fulfil those criteria set out in paragraph 10 for a suitable purchaser in any divestiture remedy.

#### ***Option 4: Fares and service level obligations***

13. Given the adverse effects resulting from the SLC identified in the provisional findings as expected to result from the joint venture, a possible remedy option would be the placing of obligations on the joint venture covering fares and service levels, in particular service frequencies. The Group has some preliminary concerns about the effectiveness of a remedy based on fare and service level obligations. In particular, the Group is concerned about:
- its effectiveness in achieving appropriate fare levels, especially given that the yield management system used by SCCL to set its fares results in fares being relatively opaque and fares levels and the structure of fares being subject to modification at short notice;
  - the complexity of any such remedy and its impact on monitoring compliance and enforcement generally;
  - the particular importance for the effectiveness of such a remedy of ensuring suitable compliance reporting within the joint venture; and
  - the length of time the remedy would need to remain in place to ensure its effectiveness.
14. However, notwithstanding these concerns, the Group invites views on the following issues:
- which fares could and should be controlled;
  - whether these fares could and should be controlled individually or in a basket, and, if in a basket, of what the basket should comprise;

- by reference to what could and should these prices be controlled (eg industry cost indices, such as the CPA Index<sup>2</sup>);
- how best to control service frequencies; and
- how compliance with any fare and service level obligations should be effectively monitored. In particular, views are invited on whether an independent third party monitor, paid for by the joint venture, would be necessary in order to ensure effective compliance monitoring.

## **Other measures**

15. The Group is also considering whether, as an adjunct to options 1, 2 and 3, it would be necessary to place obligations on Stagecoach or SCCL not to engage in behaviour that would impede competition or deter entry or expansion. In assessing any such measures, the Group will have regard to the distortive impact they may have on competition in the market.
16. In addition to the measures outlined above, the Group is considering whether any recommendations could be made to third parties, such as the Traffic Commissioner, local authorities or local passenger transport executives, that would be effective in remedying the SLC and any resulting adverse effects identified in the provisional findings.
17. The Group would, of course, be willing to consider any other practicable remedies—structural or behavioural—that the main parties or any interested third parties propose in order to address the expected SLC and any resulting adverse effects.

## **Relevant customer benefits**

18. It has been suggested to the Group that this joint venture has resulted in the following benefits, which might be relevant customer benefits within the meaning of section 30 of the Act:
  - provision of one simple consolidated timetable characterized by regular intervals between services;
  - easy to remember departure and arrival times of services;
  - efficient use of capacity and the ability to meet peak demand via the provision of duplication services;
  - interavailability of services;
  - provision of cross-border links, with Scottish Citylink services now feeding into megabus services; and
  - lower fares in other markets resulting from a claimed increase in competition with National Express coach services and with rail.
19. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

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<sup>2</sup>The CPA index is the inflator used for London buses. The CPA index is a combination of the growth of RPI, labour costs for the UK economy as a whole and diesel price weighted to reflect their share of typical bus operation costs.

## Next steps

20. The main parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **4 September 2006** (see note (i)).
21. A copy of this notice will be posted on the CC website. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish the Group to consider, by **4 September 2006**.

John Baillie  
Group Chairman  
11 August 2006

### *Note*

- (i) This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main parties on 11 August 2006. The main parties have until 4 September 2006 to respond to the provisional findings published on 11 August 2006. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.