

STATEMENT OF ISSUES

1. The inquiry group is considering the acquisition by Railway Investments Ltd, a wholly-owned subsidiary of English Welsh and Scottish Railway Holdings Ltd, (together 'EWS') of Marcroft Holdings Ltd and its wholly-owned subsidiary Marcroft Engineering Ltd (together 'Marcroft').
2. The issues that the Group intends to focus on are set out below.

Market definition

3. The Group will identify the relevant economic markets affected by the merger (the 'relevant markets'). In terms of the product market it will explore whether:
 - (i) the different types of wagon maintenance activity—in-field maintenance, general repair maintenance, component-based maintenance, and strip-down and gauging maintenance (balanced maintenance)—constitute separate relevant markets or are parts of a single relevant market;
 - (ii) the maintenance of different types of rail freight wagon constitutes separate relevant markets;
 - (iii) individual activities comprised in rail freight wagon maintenance, eg wheel re-profiling and brake servicing, constitute separate relevant markets;
 - (iv) the relevant market is the supply of all forms of rail freight wagon maintenance services;
 - (v) the relevant market is the supply of maintenance services for all types of railway rolling stock (excluding locomotives); and
 - (vi) the relevant market comprises the supply of maintenance services to third parties only or whether it extends to the in-house provision of such services.
4. In terms of the geographic market, the Group will consider whether the scope of the relevant markets extends beyond Great Britain (which seems unlikely), taking into account planned measures to enhance the interoperability of freight wagons between Great Britain and mainland Europe. It will also consider whether there are separate identifiable regional markets within Great Britain (which also seems unlikely).

Assessment of the competitive effects of the merger

Maintenance market

5. The Group will explore the competitive effects of the merger within the relevant maintenance markets, considering in particular:
 - (i) the extent to which EWS competed with Marcroft in the supply of services in the relevant markets ('relevant maintenance services') prior to the merger, or was a potential competitor to Marcroft in the supply of relevant maintenance services prior to the merger;
 - (ii) the extent to which Marcroft is likely to continue to offer relevant maintenance services to third parties on the same basis in terms of price, quality and timeliness, as it did prior to the merger;

- (iii) the extent to which EWS is likely to provide relevant maintenance services to third parties, using EWS employees, following the merger;
- (iv) the extent to which other suppliers of third party relevant maintenance services provided competition to EWS and Marcroft prior to the merger and are likely to do so following the merger;
- (v) the extent to which there is over- or undercapacity in the market for relevant maintenance services; whether this may change as a result of the merger; and whether it would have changed had the merger not taken place;
- (vi) whether there are significant barriers to entry and expansion in the relevant markets and the likelihood of future entry and expansion, and whether the merger affects the nature or of extent of these barriers;
- (vii) whether there are significant barriers to customers switching between one rolling stock maintainer and another and whether this might vary between different types of customer and different types of rolling stock;
- (viii) whether the regulatory environment in which the rail industry operates has an impact on competition in the supply of relevant maintenance services and how that might affect the relevant markets following the merger;
- (ix) whether there are any discernible market, technological or other trends which might have an impact on competition in the relevant markets in the foreseeable future and what that impact might be;
- (x) the role of price negotiation in the relevant markets, including the effect of price discrimination and price transparency (if any) on competition;
- (xi) whether some customers require a national rail freight wagon maintenance service, whether this restricts the number of firms that can supply the needs of those customers, whether this is affected by the merger and, if so, how;
- (xii) the relative importance of price and non-price factors to competition in the relevant markets;
- (xiii) whether, and to what extent, the merger is likely to lead to a rise in prices or a greater resistance to price cuts, a reduction in service quality, support or choice for some or all customers, or a reduction in innovation in the relevant markets; and
- (xiv) whether the merger is likely to make coordination between the suppliers of relevant maintenance services more sustainable or more effective following the merger (in the case where it existed prior to the merger) or increase the likelihood of coordination (in the case where it did not exist prior to the merger), so as to lead to a rise in prices or a greater resistance to price cuts, a reduction in service, support or choice for some or all customers, or a reduction in innovation in the relevant markets.

The freight market

6. The Group will also explore the competitive effects of the merger within the relevant freight markets. To do this an appropriate market definition is required; possible definitions include:

- (a) a market for each type of rail freight service;
 - (b) the supply of all rail freight services, taken together; and
 - (c) the supply of freight services generally, ie including road and other types of haulage.
7. The Group will consider whether:
- (i) the merger is likely to have an impact on competition in any part or parts of the relevant freight market, and what that impact might be;
 - (ii) in addition to any effects described in paragraph 5(ii), the merger gives EWS any additional incentives and ability to start or stop supplying (or alter its offering of) maintenance to downstream competitors so that it gains a competitive advantage in the freight market(s) to the detriment of consumers; and
 - (iii) the merger will affect the entry barriers to the freight market, and whether any new entrant, following the merger, would require its own in-house maintenance provision.

General issues

8. The Group will also consider whether:
- (i) the merger is likely to give rise to efficiency gains, and if so, whether these will increase competition in the relevant markets or have other benefits;
 - (ii) the merger is likely to allow EWS and Marcroft, either separately or together, to bundle relevant maintenance services, either with other relevant maintenance services or with other services, such as the haulage of wagons, in ways that could lead to a substantial lessening of competition; and
 - (iii) any potential lessening of competition as a result of the merger might be offset by the buying power or dual sourcing behaviour of some customers.

The counterfactual

9. The Group will consider what would have happened in the short to medium term if the merger had not occurred (the counterfactual), and in particular:
- (i) whether some parts or all of Marcroft would have been acquired by an alternative purchaser;
 - (ii) whether Marcroft would have continued as an independent supplier of rolling stock maintenance services in the absence of an acquisition by EWS or another purchaser;
 - (iii) whether, had Marcroft ceased to offer rolling stock maintenance services for any reason, competition in the relevant markets would have continued at the same level or decreased;
 - (iv) had Marcroft been put into administration or receivership, what was likely to have occurred in relation to its assets and its business and how that might have affected competition in the relevant markets;

- (v) whether EWS would have increased its presence in the third party maintenance market; and
- (vi) whether EWS would have subcontracted to Marcroft for some or all of its maintenance, either in respect of its own rolling stock or in respect of the offering of maintenance services to third parties or in both these cases.

Remedies

10. Should the Group consider that the acquisition may be expected to result in a substantial lessening of competition in a relevant market, it will consider whether and, if so, what remedies might be appropriate, and will issue a further statement at a later date.

Relevant customer benefits

11. Should it be necessary to consider the question of appropriate remedy, the Group may have regard to any relevant customer benefits resulting from the merger. These are defined as: lower prices, higher quality or choice of goods or services in any relevant market or greater innovation in relation to such goods and services. The Group therefore wishes to explore what those benefits are likely to be, which customers they will benefit and the significance of those benefits.