

**REFERENCE RELATING TO THE COMPLETED ACQUISITION
BY RAILWAY INVESTMENTS LIMITED OF MARCROFT
HOLDINGS LIMITED**

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

Introduction

1. On 6 February 2006 the Office of Fair Trading (OFT) in exercise of its duty under section 22 of the Enterprise Act (the Act) referred to the Competition Commission (CC) for investigation and report the completed acquisition by Railway Investments Limited (a wholly-owned subsidiary of English Welsh & Scottish Railway Holdings Limited (EWS)) of Marcroft Holdings Limited, including its wholly-owned subsidiary, Marcroft Engineering Limited (together, Marcroft).
2. In its provisional findings on the reference notified to EWS (the main party) on 23 May 2006, the CC inquiry group (the Group) concluded provisionally that the acquisition had resulted in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the market for rail freight haulage services in Great Britain.
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)).

Possible remedies on which views are sought

Divestiture

4. The Group invites views on whether divestiture would be effective in addressing the SLC identified as expected to result from the merger. In particular the Group invites views on:
 - the scope of the divestiture package. The CC generally prefers the divestiture of an existing business that can compete effectively in the market on a stand-alone basis. The Group is currently of the view that, in this case, the divestiture of the outstation business of Marcroft should be sufficient to address the SLC. However, views are invited on whether a divestiture package should also include all or part of Marcroft's Stoke-on-Trent site and whether any other assets or rights would be necessary for the business to compete effectively;
 - possible purchasers. In order to be an effective remedy, divestiture would need to result in Marcroft being purchased by someone who would operate

it as an effective competitor in the market. Views are invited on possible suitable purchasers.

5. The Group is not, at this stage, proposing other remedies for discussion as it considers that behavioural remedies are unlikely to be effective in addressing the SLC and its resulting adverse effects and, in particular, are likely to be difficult to monitor and enforce. Notwithstanding this, the Group remains willing to consider any practical alternative remedies to divestiture that the main party or other persons would like to propose which they consider would address the expected SLC effectively.

Criteria

6. 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 identified as expected to result from the merger. 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.

Relevant customer benefits

7. 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 acquisition. 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.
8. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

Next steps

9. The main party is requested to provide any views in writing, including any practical alternative remedies it wishes the Group to consider, by 5 June 2006 (see note (i)).
10. A copy of this notice will be posted on the CC's web site. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish the Group to consider, by 5 June 2006.

Jeremy Seddon
Group Chairman
23 May 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 party on 23 May 2006. The main party has until 14 June 2006 to respond to the provisional findings notified to it on 23 May 2006. In the light of any responses by the main party, 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.