

## **CC FINDS ANTI-COMPETITIVE ASPECTS TO PROPOSED ACQUISITION BY FIRSTGROUP OF SCOTTISH RAIL FRANCHISE AND CONSULTS ON REMEDIES**

The Competition Commission (CC) has provisionally found that the proposed transfer to FirstGroup plc (FirstGroup) of the Scottish rail franchise (the merger) may be expected to result in a substantial lessening of competition and adverse effects. However, the CC currently considers that behavioural undertakings are likely to be effective in remedying this, and that it is unlikely to be necessary to impose structural remedies such as blocking the merger or requiring the divestment of any of FirstGroup's bus operations. The CC is now consulting on these possible remedies.

After over three months of investigation and deliberation, the CC's inquiry group today published its provisional findings, which found that the merger may be expected to result in a substantial lessening of competition. This may be expected to result in higher bus fares and poorer services for, and a reduction in the choice of service available to, passengers on some bus routes, mainly in the Glasgow and Edinburgh areas.

Furthermore, the merger would create a large public transport network operator, accounting for a large share of all revenues from operation of public transport in Scotland. This may be expected to give rise to adverse effects in wider public transport network markets.

Chairman of the Inquiry Group, Deputy Chairman of the CC, and Chairman of the CC from the start of May 2004, Professor Paul Geroski commented:

"After three months of careful consideration, we have provisionally concluded that, if the Scottish rail franchise were to be awarded to FirstGroup, it would lead to a substantial lessening of competition. We do not at this stage expect that the substantial lessening of competition would be offset by other competitive constraints, such as entry or expansion by other operators, and we anticipate that remedies, most likely behavioural rather than structural, will be required."

FirstGroup, which operates a wide range of bus services in Scotland, has bid to take over the Scottish rail franchise currently operated by ScotRail Railways Ltd (a subsidiary of National Express Group plc (NEG)). FirstGroup's bid, along with those from two other companies—Arriva plc and NEG—is currently being assessed by the Strategic Rail Authority. On 13 January 2004, the Office of Fair Trading asked the CC to consider the merger.

As well as holding a number of hearings in Scotland with interested and affected parties, the CC commissioned a customer survey and carried out detailed research into journeys for which passengers have a choice of rail or FirstGroup bus services (overlap flows). It provisionally found that the acquisition could be expected to lead to a substantial lessening of competition because it would:

- reduce competition on overlap flows on a small number of FirstGroup's bus routes in the Glasgow and Edinburgh areas (noting that, over the life of the rail franchise, routes may change and other routes may come into being which would give rise to concern);
- enable FirstGroup to switch some passengers from bus to rail by reduction in frequency, increased fares or reconfiguration of routes, which it would be expected to do;

- allow FirstGroup to introduce its own multi-modal ticket scheme, confined to its own services, and to influence the setting of fares of, for example, multi-operator, multi-modal ZoneCards, and to favour its own bus operation in provision of information, to the disadvantage of other operators, which it would also be expected to do; and
- in our view, be likely to lead to higher bus fares, poorer service and reduction in choice of service available to passengers on the overlapping bus routes mainly in the Glasgow and Edinburgh areas, but also elsewhere in Scotland.

The CC does not expect that this substantial lessening of competition would be offset by other competitive constraints, in particular by entry or expansion by other operators; nor by undertakings currently in force in relation to FirstGroup's bus operation in Scotland.

The CC's reasoning is summarized in the executive summary of the provisional findings report being published today on its web site, [www.competition-commission.org.uk](http://www.competition-commission.org.uk), and is set out in full in the provisional findings report which the CC proposes to publish on its web site on 30 April 2004.

In the light of these provisional findings, the CC is about to consider possible remedies. The CC is also publishing a notice of the actions which might be taken to remedy the substantial lessening of competition and the adverse effects provisionally identified. The current view of the CC is that this can be remedied effectively by a number of behavioural undertakings, and that it is not likely to be necessary for structural remedies (such as the prohibition of the proposed acquisition, or a requirement for the divestment of any of the bus operations) to be imposed. It has therefore invited views on possible remedies that would:

- restrict FirstGroup's ability to raise prices, reduce frequencies, reduce number of services, reduce service quality, change last/first bus times, and reconfigure the affected routes;
- restrict FirstGroup's ability unfairly to disadvantage other established players or new entrants;
- restrict FirstGroup's ability to damage competition through the introduction and/or administration of a multi-modal ticket; and
- ensure the provision of information to the public about services of other bus and rail operators serving its railway stations.

The Group will have regard to the effects of any remedial action on any relevant customer benefits (within the meaning of the Enterprise Act 2002) in relation to the merger.

The Group would be willing to consider any practical alternative remedies, structural or behavioural, that FirstGroup or other persons would like to propose to address the substantial lessening of competition and the adverse effects provisionally identified (and would also welcome comments on the specific routes listed in Appendix G of the provisional findings report to which particular remedies could relate).

With regard to the provisional findings, FirstGroup is requested to respond, in writing, within 21 days and third parties are invited to respond, in writing, by 13 May 2004.

With regard to remedies, FirstGroup is requested, and third parties are invited, to provide their views on possible remedies, in writing, by 13 May 2004.

To submit views, please write to:

The Inquiry Secretary  
FirstGroup/Scotrail Inquiry  
Victoria House  
Southampton Row  
London  
WC1B 4AD

or by email to: [firstgroup.scotrail@competition-commission.gsi.gov.uk](mailto:firstgroup.scotrail@competition-commission.gsi.gov.uk)

### **Notes for editors**

1. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
2. The CC is required to publish its report by 28 June 2004, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period, but hopes it may be able to complete this inquiry earlier.
3. The FirstGroup/ScotRail Inquiry Group consists of four members—Professor Paul Geroski (currently Deputy Chairman of the CC but who will become Chairman of the CC from the start of May 2004), Robert Bertram, Chris Goodall and Charles Henderson—supported by the CC's staff.
4. Further information can be obtained from the CC's web site at: [www.competition-commission.org.uk/inquiries/current/first/index.htm](http://www.competition-commission.org.uk/inquiries/current/first/index.htm).
5. Enquiries should be directed to Francis Royle, Press Officer, 020 7271 0242, or Rory Taylor on 020 7271 0488/[rory.taylor@competition-commission.gsi.gov.uk](mailto:rory.taylor@competition-commission.gsi.gov.uk).
6. The full text of the OFT's referral of this case can be found on the OFT web site at <http://www.of.gov.uk/Business/Mergers+EA02/Decisions/Clearances+and+referrals/First+Group+Plc.htm>. There is also a link to this from the CC web site.