

## Relevant customer benefits

1. This appendix sets out the main parties' and third parties' comments on each of the relevant customer benefits identified in paragraph 8.62, along with our assessment, for each benefit, of its extent and the impact on it of both divestiture and behavioural remedies.

### Timetable benefits

#### *Main parties' views*

2. The main parties submitted that cross-selling of tickets between the megabus and Scottish Citylink websites and a unified and simplified timetable had contributed to passenger growth and added that several public sector bodies had commented on improvements in services since the joint venture. The parties claimed that the unified timetable offered more services per day on several flows and that where services were reduced, this affected at most one or two journeys per day and that such service reductions affected services that were insubstantial in terms of passenger numbers. They also commented on the regularity of the service pattern and the connectivity between fast and slow services.
3. [REDACTED]
4. The parties contended that the unwinding of the joint venture would result in a reduced timetable in terms of services and frequencies and therefore a decrease in passenger numbers and increase in car usage. They argued that 'leapfrogging'<sup>1</sup> and a clustered timetable would result from competition, as shown by the irregular intervals and departure times that were characteristic of the (aggregate) pre-joint-venture timetable on the Saltire Cross. The public would lose the convenience of seeing the whole timetable at a glance, given that services at regular intervals were, in their view, very unlikely to continue where two operators offered competing timetables.
5. The parties also argued that an operator with a comparatively large network would have little incentive to facilitate 'interconnection' with a smaller operator. They argued that regular intervals could not be guaranteed through agreement due to the risk of breaching the Chapter I prohibition in the Competition Act 1998 and that two operators on the Saltire Cross were unlikely to settle into a similar service pattern to that achieved by the joint venture timetable. They further argued that if services were in different ownership operators were less likely to provide assistance in the event of a missed connection.
6. The parties argued that any of the structural remedies in our notice of possible remedies would require a reconfiguration of the services and the loss of the timetable benefits described above due to the inability of the operators to preserve them by agreement. They said that loss of timetable simplicity would be likely to lead to passengers switching away from coach travel.

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<sup>1</sup>Leapfrogging is the provision by one operator of a service a few minutes in front of a competitor's service.

7. The parties suggested that, to preserve these benefits, the CC would have to impose a cooperative, unlawful regime. In their view, there would be, at the very least, a period of either artificially imposed stability or of turmoil before the benefits could be recreated by either party.

### ***Third parties' views***

8. Third parties' views on timetable benefits were mixed. Some believed that a consolidated, standard pattern timetable could not have occurred absent the joint venture, but others merely thought that 'clockface' departure times (ie departures at regular numbers of minutes before or after the hour) and regular service patterns would arise in the long run even in competitive situations. One party commented that connectivity between Scottish Citylink services and megabus services was a real benefit of the joint venture. Another party suggested that connectivity with local Stagecoach services was a benefit, although the CC has received no evidence of such connectivity being instigated by the joint venture.

### ***Our views—extent of benefits***

9. We noted the OFT's guidance: *Frequently asked questions on competition law and the bus industry*, April 2005, OFT448, in particular that:
  - the OFT considers it likely that, where two or more operators run on the same route, they will settle into a pattern of relatively even headways;
  - the OFT has no objection to operators publishing joint timetable documents;
  - if operators do not compete on a route and merely wish to agree timings to achieve good connections, then this is allowed and there is no restriction on competition; and
  - operators are allowed to inform each other of impending timetable changes to reduce the risk of unequal headways, provided they do so through the Traffic Commissioner registration procedure and following the process described by the OFT in its guidance.
10. Whilst we noted that the OFT's guidance on competition law and the bus industry related to local bus services rather than long-distance coach services, we considered that it indicated plausible approaches that could be taken to integration by two independent coach operators. We considered it possible that timetable benefits could be achieved absent the joint venture and that the parties could have published joint timetables and regular frequencies could also have arisen, as explained by the OFT in its guidance in relation to local bus services. In our view, clockface timetables could have been achieved absent the joint venture, but we noted that such a benefit was probably less important for coaches (where more passengers pre-book) than for buses (where more passengers turn up and go).
11. However, we recognize that timetable coordination is made easier to achieve by the joint venture because information flows are improved and transaction costs are decreased when the two operators are under common ownership.
12. We considered that, to the extent that the joint venture made timetable coordination easier, it would also make connectivity easier. However, we noted that there would be an incentive for an independent operator of slow services to feed into another operator's express services, since the connection should increase demand for the

slow services. Further, we had some doubts as to the extent of—or benefits arising from—increased connectivity following the joint venture. Increased connectivity between the parties' services at Perth has been accompanied by the loss of direct Scottish Citylink services and there was no clear increase in connectivity between slow Scottish Citylink and megabus services at Perth. Connectivity between slow and fast Scottish Citylink services already existed prior to the joint venture. We have examined the joint venture's timetables and the only readily apparent increase in connectivity following the joint venture appeared to be between some Scottish Citylink slow services and megabus services at Dundee.

13. We did not consider that leapfrog competition was a major issue in coach markets because of the high proportion of pre-booked seats. Further, although clustering may happen in coach markets, to the extent that it is a response to concentrated demand at particular times of day (as described to us by the main parties), loss of clustering would not be a benefit.
14. We acknowledged that figures provided by the main parties indicated that there had been significant passenger growth following the joint venture compared with equivalent periods in the previous year, over and above the growth generated by the new concessionary travel scheme. We accepted that an integrated timetable and cross-selling of tickets, which made it easier for customers to book tickets, may have contributed to this increase in passenger numbers. However, we considered that there were other possible contributory factors to this growth, including underlying economic growth and promotional activity since the joint venture. It was also not clear how far the joint venture had contributed to the declining use of cars, as many other external factors (such as increased congestion, petrol prices and government initiatives to encourage people to use public transport) could affect car usage.

### ***Our views—effect of remedies on benefits***

15. We considered whether the divestiture of Scottish-Citylink-branded services or megabus-branded services would result in the loss of timetable benefits. In our view, although coordination of timetables could still occur, worsening of the information flows and increases in transaction costs would reduce the chances of timetable coordination happening to the same extent, and in particular would reduce commercial incentives for timetable coordination to be introduced. The lack of timetable coordination on the relevant routes prior to the joint venture supported this conclusion. We noted, however, that, in the event of divestiture of megabus-branded services on the Saltire Cross, the joint venture would continue to operate Scottish Citylink services and could continue to do so on the basis of its simple consolidated timetable. We also noted that in the event of divestiture of the Scottish-Citylink-branded services on the Saltire Cross, the joint venture would continue to operate its remaining services and could continue to do so on the basis of the consolidated timetable. The CC considered that connectivity would be affected only to a limited extent by divestiture. In the event of a divestiture of megabus-branded services or Scottish-Citylink-branded services on the Saltire Cross, the joint venture would continue to operate services on the Saltire Cross and would be able to ensure connectivity between those services and Stagecoach local bus operations. The independent operator on the Saltire Cross would have an incentive to maintain connections in order to maximize the attractiveness of its own services. We did, however, recognize that, in the event of divestiture, there was a possibility that some connections would be lost and that it might be more difficult to cross-sell tickets and to coordinate timetables and coaches.
16. We also considered whether behavioural remedies would result in the loss of timetable benefits. In the short run, behavioural remedies would not jeopardize the

ability of the joint venture to provide a simple consolidated timetable. In the longer run, enough flexibility in any behavioural remedies would allow timetable benefits to continue to be preserved. We also noted that behavioural remedies imposed on the joint venture would not prevent Stagecoach local services changing their timetables to improve coordination. We did not believe that behavioural remedies would jeopardize easy-to-remember departure times, unless restrictions on service levels prevented the movement to (even) easier departure times. However, we considered that it should be possible to design a certain amount of flexibility into the remedies and the ability for the joint venture to seek consent for changes to its services could address these issues as well.

## **Efficiency benefits**

### ***Main parties' views***

17. The parties identified interavailability of tickets and a range of operational savings as efficiency benefits.
18. The parties argued that, absent the joint venture, interavailable tickets were unlikely due to uncertainties over compatibility with the Chapter I prohibition. They also argued that, because of potentially large differences in ticket prices on the Saltire Cross, it would not be acceptable from the parties' commercial perspective for revenue to 'lie where it falls', a necessary condition for qualification for the Public Transport Ticketing Schemes Block Exemption (see Appendix C).
19. The parties commented that, absent interavailable tickets, a passenger could buy two single tickets in order to take advantage of the services of the two different operators but that this was not necessarily cheaper and that it would be more cumbersome. The parties contended that it would result in fewer journey opportunities for passengers.
20. The parties stated that reduction in scheduled mileage achieved by the joint venture had enabled more efficient use of vehicles, while at peak times vehicles were doubled (duplicated) to meet demand. They claimed that, in cases of duplication, it was often possible, by managing the loading of passengers according to destination, to offer faster and more direct journeys. They added that this had not resulted in a substantial reduction in services, but had been brought about through better timetable planning, better use of vehicles and greater reliance on interconnection possibilities. With two separate services and split demand, they argued that these possibilities would be severely reduced, which would affect passenger growth and the future prospects of the de-merged businesses especially in times when fuel costs were increasing.
21. Other efficiencies identified by the parties were: the combination of control rooms; the removal of duplicate ticket offices in Edinburgh; and the creation of links between Scottish Citylink and megabus websites enabling savings in advertising spend. The parties also suggested that additional efficiencies would result from the joint venture's participation in the One Ticket scheme (a multi-operator ticketing scheme in and around Edinburgh) which, according to the parties, was instigated by Stagecoach and would not have happened absent the joint venture.
22. The parties submitted that continuation of the joint venture would encourage increased provision of 'park-and-ride' sites, as local investment in such schemes may be justified on the basis of joint venture volumes.

23. The parties also raised the positive environmental effects, resulting, inter alia, from the efficient use of vehicles and the increased attractiveness of public transport vis-à-vis private car. They noted that such considerations had been taken into account by other competition authorities outside the UK. They argued that the use of larger-capacity vehicles and investment in new coaches to comply with more stringent emission standards were also environmental benefits brought about by Stagecoach's involvement in the joint venture.

### ***Third parties' views***

24. Some third party operators commented that the joint venture had resulted in more robust contingency arrangements, resulting in better service levels for passengers in the event of vehicle breakdowns, for example. Improvements in interavailability were not seen by third parties as particularly significant. We also received a complaint from a third party highlighting significant delays to passengers resulting from the use of duplicate vehicles at peak time.

### ***Our views—extent of benefits***

25. Taking in turn each of the benefits identified by the parties, we considered whether such benefits would be passed on to customers and would not have arisen absent the joint venture.
26. An interavailable ticketing scheme could have arisen absent the joint venture.<sup>2</sup> We noted that there was extensive OFT guidance on the operation of such schemes. However, we recognized that the joint venture brought forward this benefit and made it significantly more likely to arise because the introduction of interavailable tickets for Scottish Citylink and megabus services by the joint venture. It would not require a non-discriminatory, open-to-all scheme to be designed to qualify for the block exemption, nor would it require an assessment of the proposed agreement in line with section 9(1) of the Competition Act 1998.
27. We noted that it was plausible that a proportion of passengers would prefer to book single tickets due to the flexibility this would give them. We also noted that return tickets were not available for megabus services and that two singles were typically purchased instead. Further, only a very small number of walk-up fares are offered for megabus services, which considerably diminishes the scale of any customer benefit arising from the interavailability of tickets between Scottish Citylink and megabus services. We accepted that, following the joint venture, passengers were able to make a through-journey on some Scottish Citylink and megabus services using only one ticket, but we did not consider that this was a significant benefit, given customers' ability to book on the Internet. Also, given that [30] per cent of megabus tickets are pre-booked and megabus does not sell return tickets, we did not consider that the extent of increased journey opportunities arising from interavailability of tickets was likely to be significant.
28. We accepted that the ability to serve peak demand more efficiently through duplication (rather than two scheduled services which have to be run regardless of demand) is a specific result of the joint venture. But we were not persuaded that much of the cost savings resulting from this increase in efficiency would flow through to the benefit of customers rather than to the shareholders, in the absence of competition. Nor is it clear that the provision of duplicate services rather than

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<sup>2</sup>There are two mechanisms which could be used to achieve this, taking into account the scope of competition law: the Public Transport Ticketing Schemes Block Exemption (see Appendix C) or section 9(1) of the Competition Act 1998 as appropriate.

scheduled services in close succession is perceived as a benefit by customers. We noted that, where the joint venture increases the use of duplicates in future, this may be done instead of increases in scheduled frequency. From a passenger's perspective, it seems likely that increases in scheduled services would be preferable to the provision of duplicates as there would be more certainty in the provision of scheduled services. Any benefits to customers from additional interconnection possibilities as a result of more efficient use of vehicles needed, in our view, to be balanced against the loss of some services since the joint venture (for example, the loss of direct Scottish Citylink services between Edinburgh and Aberdeen and between Glasgow and Inverness and reduced services to Perth city centre). We concluded that more efficient use of capacity and the ability to meet peak demand through the provision of duplicate services were not relevant customer benefits.<sup>3</sup>

29. In relation to other efficiencies that the main parties identified (for example, the combination of control rooms), we were not persuaded that, in the absence of competition, much of the savings from these efficiencies would be passed on to the benefit of customers rather than being translated into increased profits for the joint venture. Further, we did not consider that the existence of the joint venture was a necessary condition for Scottish Citylink's involvement in the One Ticket scheme or other similar multi-operator ticketing schemes, as other owners of Scottish Citylink would, in our view, have been equally likely to participate in such schemes. We concluded that these other efficiencies arising from the joint venture were not relevant customer benefits.
30. We did not consider that increased provision of 'park-and-ride' sites was a relevant customer benefit. We noted that the aim of park-and-ride facilities was to ease congestion in city centres and that they had, on occasion, been developed in partnership between local authorities and local bus operators. No local authority mentioned this as a relevant customer benefit. Whilst we accepted that the joint venture might have an interest in helping to fund park-and-ride facilities and securing the right to use them, we were not persuaded that local authorities would be dependent on such funding to implement their local transport policies. Therefore we considered that increased provision of park-and-ride sites was not a benefit arising specifically from the joint venture.

### ***Our views—effect of remedies on benefits***

31. We considered whether the divestiture of Scottish-Citylink-branded services or megabus-branded services would result in the loss of efficiency benefits. The joint venture would be smaller in the event of divestiture and therefore some benefits of scale would be lost. However, the restoration of competition that would result from divestiture might make it less likely that the joint venture would reduce scheduled services and should also provide an incentive to pass on any efficiency gains to customers. We accepted that interavailability of tickets between the purchaser of the divestiture package and the remaining joint venture business would be less likely due to transaction costs, difficulty in allocating revenues, and the management effort involved in constructing a scheme in such a way as to comply with the Public Transport Ticketing Schemes Block Exemption or section 9(1) of the Competition Act 1998 as appropriate. We considered that, in the event of divestiture, passengers would retain the ability to make point-to-point journeys, changing vehicles if necessary, although the lower likelihood of timetable coordination might make this

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<sup>3</sup>We also noted that the effect of the joint venture on the environment did not constitute a relevant customer benefit within the meaning of section 30 of the Act.

harder and the lack of interavailable tickets might give passengers purchasing return tickets fewer journey opportunities.

32. We considered whether behavioural remedies would result in a loss of efficiency benefits. We concluded that interavailability of tickets on routes within the joint venture would be unaffected by this remedy. Passengers would be able to make point-to-point journeys and change vehicles if necessary using one ticket. The relative ease of timetable coordination for the joint venture would also make such journeys easier for passengers.

## **Provision of cross-border links**

### ***Main parties' views***

33. The main parties submitted that through-ticketing options, particularly relating to megabus England–Scotland cross-border services and Scottish Citylink services, would be lost if the joint venture were unwound or if the Saltire Cross services were separated out of the joint venture. They further argued that the three pre-joint-venture cross-border megabus services (two of which allow passengers to travel cross-border from Inverness as a result of connections) would be adversely affected if we were to implement a divestiture remedy. The main parties maintained that, [✂].

### ***Third parties' views***

34. Only one third party recognized the provision of cross-border links as a customer benefit, as in their view the joint venture's service provision represented an improvement over National Express's service provision on these routes.

### ***Our views—extent of benefits***

35. We considered that cross-border links could have arisen independently absent the joint venture, and there would have been a commercial incentive on Scottish Citylink to schedule its services such that they connected to megabus services to English destinations (especially given that it did not provide cross-border services itself). However, the incentive for Scottish Citylink to feed into megabus services increases as a result of the joint venture, since Scottish Citylink now takes into account the gross margin earned on the cross-border journey. To the extent that the joint venture makes timetable coordination easier, it will also make cross-border connections easier to achieve.

### ***Our views—effect of remedies on benefits***

36. We considered whether divestiture of Scottish-Citylink-branded services or megabus-branded services would result in the loss of cross-border links. In our view, a divestment of Scottish Citylink services on the Saltire Cross would have a limited impact on this benefit since the joint venture would still operate on the Saltire Cross, and therefore would be able to maintain links with megabus cross-border services and coordinate timetables. Similarly, a divestiture of megabus-branded services on the Saltire Cross would allow the retention of megabus cross-border links. The purchaser of the divestiture package may in addition try to link its services to megabus cross-border services, although lack of common ownership and reduced commercial incentives may make timetable coordination more difficult and less likely to arise. It is also possible that the purchaser would itself have a cross-border network into which its acquired services could feed.

37. We considered whether behavioural undertakings would result in the loss of cross-border links. We did not consider that behavioural undertakings would have any effect on such links in the short run. In the longer run, service level restrictions might adversely affect the joint venture's ability to devise cross-border links, to the extent that these are not already in place. However, we considered that the ability for the joint venture to seek consent for changes to its services or the building of some flexibility into the remedies could address these issues.

## **Increased ability to compete with rail**

### ***Main parties' views***

38. The main parties submitted that the joint venture's pricing and service levels compared well with rail and provided a strong incentive on ScotRail to provide better pricing propositions to its customers. Especially in the event that the joint venture be allowed to continue, the parties believed that ScotRail would lower its fares and that the existence of an effective competitor to ScotRail services (in the form of the joint venture) would speed up the introduction of such fares, bringing benefits to passengers. Any structural remedy would, in the parties' view, substantially weaken competition between the joint venture and rail.

### ***Third parties' views***

39. Third parties did not recognize this as a benefit.

### ***Our views—extent of benefits***

40. We were not persuaded that the joint venture would result in benefits from improved competition with rail services as we considered the parties' arguments to be speculative, particularly in relation to ScotRail's future fare strategy. As set out in paragraph 6.43, other evidence, including from third parties, did not support the main parties' arguments that we could expect First to reduce its ScotRail fares. Whilst in principle the franchisee may lower its fares, in practice service level commitments and constraints on fare increases would make this more difficult. We note that there are experiments in yield management in the rail industry but they are independent of the joint venture.
41. As a consequence, although we recognized that the joint venture may result in the creation of a stronger operator, we did not accept that this would result in a greater degree of competition with rail.

## **Increased ability to compete with National Express**

### ***Main parties' views***

42. The main parties argued that the joint venture's ability to provide more links to Scottish destinations than National Express resulted in a more 'balanced' market and would assist megabus in attracting more customers and growing as a competitor to National Express within the UK as a whole. The low-fare environment likely to be fostered by the joint venture would also, in the parties' view, increase the chances of National Express introducing its own low-price fares in Scotland. Should a structural remedy be implemented, the parties submitted that the decline in the strength of competition on the Scotland–England cross-border routes would have a detrimental effect on megabus's ability to compete with National Express. The parties further

contended that, if National Express were allowed to acquire Citylink, this would significantly increase its competitive network advantages over megabus.

43. The parties also argued that the joint venture had resulted in a customer benefit in relation to the [REDACTED].

### ***Third parties' views***

44. Those third parties that commented felt that increased competition with National Express came from the entry of megabus into the UK market and had nothing to do with the joint venture.

### ***Our views—extent of benefits***

45. We considered that, to the extent that the joint venture improves the ability to realize economies of scale, offer coordinated timetables, and interavailability of tickets, it was possible that the joint venture might increase competition with National Express. It is not, however, clear how significant these benefits are, whether the joint venture would use them in this way, and what benefits might be expected to flow to passengers as a result. Overall, it is not clear that the joint venture would give rise to significant additional benefits beyond those available to passengers from the pre-existing megabus competition with National Express. [REDACTED]
46. As a consequence, we did not regard increased ability to compete with National Express as a relevant customer benefit and did not therefore consider the effect of remedies on any such benefit.