

# FirstGroup/Scotrail Merger Inquiry

## Remedies Consultation Paper

- 1.1 This consultation paper should be read in conjunction with the Remedies Notice published on 28 April 2004.
- 1.2 It is a discussion document intended to explore in further detail some of the remedies set out in the Remedies Notice. It does not discuss in detail how any of the remedies should best be implemented, monitored or enforced and should not be taken to indicate that any decisions on remedies have been reached by the CC. As stated in the Remedies Notice, the CC welcomes views on the remedies it has proposed or on any alternative remedies which the Group should consider by 13 May 2004.

### Overlap flows

- 1.3 The remedies proposed in the section entitled 'overlap flows' would apply to problem routes only. Problem routes are those identified in Appendix G of the provisional findings, and any other routes which fulfil the following criteria (which are based on the criteria used in our analysis to identify problem routes, as discussed in Appendix G of the provisional findings):
- (a) The route includes bus and rail service catchment areas that overlap.<sup>1</sup>
  - (b) Share of revenue on overlaps is greater than 10 per cent of total revenue on route.
  - (c) There is not effective competition, either 'in-hours' (ie weekdays and Saturdays, 0700–1900) or 'out of hours' (ie at some period of time during weekdays and Saturdays, 1900–0700, and Sundays where both FirstGroup buses and Scotrail trains are running on the overlap flows) where this means:
    - (i) for First's 'frequent' services: the expected headway of the competitor's service is not more than 10 minutes greater than the expected headway of First's service; or
    - (ii) for First's services which are not 'frequent' services: the expected headway of the competitor's service is not more than double the expected headway of First's service; or
    - (iii) the services taken into account for the purposes of assessing effective competition are all those on the given overlap flow for FirstGroup and for all

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<sup>1</sup>The appropriate catchment areas vary with region and density of public transport provision: in Glasgow an overlap was identified where bus stops fell within 300 meters of a rail station; in rural areas around Edinburgh overlaps were identified where bus stops and rail stations served the same settlement (for example, town or village) regardless of the distance between them; in more urban areas in the First Edinburgh area an overlap was identified if there were any overlap between a catchment area of 800 meters around a rail station and 400 meters around a bus stop (ie the bus stop and train station were within 1,200 meters of each other). The appropriate definition of catchment areas for the purpose of remedies is still being considered in order to take account of the approach we have used in determining our provisional substantial lessening of competition. We may need to consider further whether there should be provision to apply the remedy to any further routes (additional to those identified in paragraphs 25, 26 and 32 of Appendix G) where a future change in the configuration of routes extends the potential catchment areas beyond such distances.

competitors, and not just those for particular service numbers, or for individual competitors.

### **Restrictions on ability to shift passengers from bus to rail by raising fares**

1.4 The following restrictions on fares are proposed:

(a) Either:

- (i) The percentage by which First raises fares on each problem route in each year must be no more than or perhaps equal to the average percentage rise in its fares on competitive routes (ie all routes excluding tendered routes and the problem routes) in the same area (for example, within the SPTE area) in the same year. The average fare increase for competitive routes could be calculated on a revenue weighted basis.
- (ii) The controlled percentage increase should be applied to the fare associated with each ticket type individually and not a basket of fare types.

(b) Or:

- (i) If an individual fare value (for example, 70p, 90p, £1.20 etc) on a problem route rose by a given amount, First must raise fares of the same value on other routes in the same area (for example, within the SPTE area) by the same amount. This would mean that if a 70p fare rises to 75p on a problem route, other 70p fares within the same area must also rise to 75p.
- (ii) The terms and conditions associated with controlled ticket types should not change.
- (iii) Fare stages should not change.
- (iv) The restrictions should be applied to all existing ticket types.

### **Restriction on ability to shift passengers from bus to rail by reducing frequency/service levels or rerouting or reducing capacity**

1.5 The following restrictions on frequency/service levels are proposed:

(a) Either:

- (i) Route miles and/or frequencies on specified routes must not fall below 95 per cent of current levels.
- (ii) First must not change the intervals between buses (possibly +/- 5 per cent).
- (iii) First must not change the times of the first and last buses (where these occur within with the hours of operation of railway services) on problem routes.

(b) Or:

- (i) Current timetables must be adopted as the basis for First's services on problem routes (subject to the change mechanism set out in paragraph 1.6 below).

- 1.6 With regard to restricting rerouting, one of the following:
- (a) Specified routes must not be rerouted to the extent that the route mileage increases by more than 5 per cent or to the extent that the rerouting persists for more than a given number of days, unless required to do so by the local authority, for example for highway or utility maintenance work, or permanently required to do so by the local authority, for example in the event of changes to the road system.
  - (b) For each problem route, First must not exceed a specified journey time.
  - (c) First must not reroute its services on problem overlap flows.
- 1.7 First must not reduce by more than 5 per cent the capacity it provides on each route with a problem overlap, or the distribution of that capacity.

### ***Monitoring of these restrictions***

- 1.8 It is proposed that these remedies be monitored in the following way:
- (a) A monitoring agent, appointed by First from a list approved by the OFT and paid for by First, should be responsible for checking compliance on an annual basis, submitting a compliance report to the OFT. The monitoring agent's mandate and terms of appointment would be approved by the OFT. The mandate would include the checking of compliance with the fare control and also with the restrictions on changes to frequency/capacity/services. The latter could involve the monitoring agent in making arrangements for a specified number of spot checks to be conducted in each year in order to establish whether First is actually operating services on problem routes in accordance with the timetables.
  - (b) First will submit the information that is required for the monitoring agent to assess compliance with the undertakings. The nature of this information will clearly depend on the nature of the relevant undertakings, but would be expected to include the relevant route maps, fare schedules, and timetables.

### ***Providing for change***

- 1.9 We note that there is provision in the Enterprise Act 2002 for the OFT to keep under review the effectiveness of any undertakings and that this would allow for the undertakings to be varied or for First to be released from them in the event of a change of circumstances. However, in order to provide the maximum flexibility for First to manage its bus networks, we are considering whether the remedies set out above should include mechanisms for change.
- 1.10 We are considering whether provision for changes to fares or frequency or capacity or services or routings might be as follows:
- (a) In respect of ticket types, either:
    - (i) Any changes to availability or terms and conditions of a given ticket type available on a problem route must be made across the board, and not be limited to the particular problem route or overlap. This includes the introduction of new ticket types on problem routes, and the price of those new ticket types, and the withdrawal of any ticket types.

- (b) Or:
  - (i) The restrictions on fares on problem routes should include any new ticket types. Fares for new ticket types would not be controlled in the first year (because there can be no increase in the first year) but should be controlled thereafter.
  - (ii) The terms and conditions associated with each ticket type could change only with the prior approval of the OFT.
  - (iii) Ticket types should only be withdrawn from problem routes with the prior approval of the OFT.
- (c) Changes should only be made to fare stages with prior approval of the OFT.
- (d) Changes to capacity on a route could be made with prior approval of the OFT.
- (e) In respect of intervals between buses and first and last bus times, either:
  - (i) Intervals between buses and the times of the first and last buses (which run within the period of rail service operation) could be changed with prior approval of the OFT;
- (f) Or:
  - (i) If provision was made to retain the existing timetable, changes to that timetable would be permitted with prior approval of the OFT;
- (g) Changes to problem routes should only be made with prior approval of the OFT.
- (h) New bus or rail routes should be notified by First to the OFT. If new rail or bus routes were introduced, which if they were in existence today would be problem routes according to the given criteria, they would be included in the scope of these restrictions. All existing ticket types should be available on any new route unless with the prior approval of the OFT. The initial timetable would be agreed with the OFT. Thereafter the new routes would be subject to the same restrictions as pre-existing routes.
- (i) If existing routes change or competition on existing routes ceases to be effective (within the meaning of paragraph 1.3) First must notify the change to the OFT. If such changes mean that these routes became problem routes according to the given criteria, they would be included in the scope of these restrictions.

### **Broader effects on competition**

#### ***Disadvantaging competitors by undermining multi-operator multi-modal tickets and thereby unfairly advantaging First***

1.11 The remedy proposed is:

- (a) First must not introduce a First-exclusive multi-modal ticket anywhere in the Scotrail franchise area.

- (b) First should participate in local authority supported multi-operator multi-modal ticketing schemes and use its best endeavours to ensure their success.
- (c) First must not discriminate at the point of sale between its tickets and any multi-operator multi-modal ticket.

***Influencing of setting of fares of multi-operator multi-modal cards to disadvantage competitors and advantage First***

1.12 The remedy<sup>2</sup> proposed is:

- (a) All multi-modal multi-operator ticketing schemes in which First participates should have a formal, well-defined and transparent mechanism for the setting of terms and conditions.
- (b) First should have no more influence over the terms and conditions of multi-operator, multi-modal ticketing schemes as a bus operator and the operator of the Scotrail franchise than it had (or would have had) as a bus operator alone (for example, the votes it would have received for operating the rail franchise are given to SPTE, or First's votes as operator of the Scotrail franchise might be dispersed among other participants in the scheme according to their share of the votes).
- (c) Details of mechanisms for setting prices and terms and conditions of the multi-operator, multi-modal ticketing schemes in which First participates must be submitted to the OFT, as must any changes to them.

***Favouring First bus services through provision of information on bus services at rail stations***

1.13 The remedy proposed is:

- (a) First must display information on other operators' bus services with equal prominence to its own, to the satisfaction of SPTE (and equivalents).

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<sup>2</sup>Multi-operator ticketing schemes which satisfy certain conditions benefit from a block exemption from the Chapter I prohibition in the Competition Act 1998 (which relates to anti-competitive agreements). These conditions are set out in the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption), Order 2001 (SI 2001/319).