

**REFERENCE RELATING TO THE PROPOSED ACQUISITION BY FIRSTGROUP PLC OF
THE SCOTTISH PASSENGER RAIL FRANCHISE**

**NOTICE OF PROPOSAL TO ACCEPT UNDERTAKINGS REQUIRED TO BE GIVEN IN
ACCORDANCE WITH THE ENTERPRISE ACT 2002, SCHEDULE 10**

Introduction

1. On 13 January 2004 the Office of Fair Trading referred the proposed acquisition by FirstGroup plc (FirstGroup) of the Scottish Passenger Rail Franchise (the Scottish Rail Franchise) currently operated by ScotRail Railways Limited to the Competition Commission (the Commission) for investigation and report under section 33 of the Enterprise Act 2002 (the Act).
2. In its report entitled "*FirstGroup plc and the Scottish Passenger Rail Franchise: A Report on the proposed acquisition by FirstGroup plc of the Scottish Passenger Rail franchise currently operated by Scotrail Railways Limited*" (the Final Report) published on 25 June 2004, the Commission concluded that the award of the Scottish Rail Franchise to FirstGroup would result in a relevant merger situation and the creation of that situation could be expected to result in a substantial lessening of competition:
 - a. in particular markets for point to point public transport journeys on specified overlap flows. The Commission expects this to occur on certain routes serving overlap flows in hours and on certain routes out of hours (including many of the routes identified in hours);
 - b. in at least some cases on other possible bus routes in hours and others out of hours as a result of changes in the level of competition from other bus operators on those routes during the term of the Scottish Rail Franchise;
 - c. on bus routes (other than those the Commission specifically identifies) that overlap with rail services as a result of the development of new rail routes, services or stopping patterns; and
 - d. in wider public transport network markets in the SPTE area, Edinburgh and the Lothians, and elsewhere in Scotland;and such substantial lessening of competition may be expected to have the further adverse effects of higher bus fares, poorer services on overlapping bus routes and reduction in choice of services available to passengers on overlap routes, with similar adverse effects on other services resulting from the effects on the broader network markets.
3. For the purpose of remedying mitigating or preventing the adverse effects in these markets the Commission concluded that FirstGroup and its subsidiaries First Edinburgh Limited, First Glasgow (No.1) Limited, First Glasgow (No.2) Limited and First Scotrail Limited should give undertakings in relation to:
 - a. the fares charged on each problem overlap flow during a problem time of day;
 - b. the availability of ticket types on each problem overlap flow during a problem time of day
 - c. the reduction in the level of service on those flows, including frequency, capacity and route configuration;
 - d. the inclusion of other bus operators by FirstGroup in a multi-modal ticketing schemes;

- e. the provision of advice on FirstGroup's competitors' multi-modal tickets and the sale of such tickets;
- f. the participation of FirstGroup and its bus subsidiaries in multi-modal multi-operator ticketing schemes;
- g. the restriction of FirstGroup's influence over the terms and conditions of multi-operator, multi-modal ticketing schemes; and
- h. the displaying of information on other bus operators' bus services in rail stations.

Notice of proposal to accept undertakings

- 3. The Commission in exercise of the powers conferred by sections 41(2) and 82 of the Act, proposes to accept undertakings from FirstGroup and its subsidiaries First Edinburgh Limited, First Glasgow (No. 1) Limited, First Glasgow (No.2) Limited and First Scotrail Limited (the Undertakings), for the purpose of remedying mitigating or preventing the adverse effects which may be expected to result from the substantial lessening of competition identified in the Final Report.
- 4. A copy of the Undertakings is annexed to this Notice. The purpose of the Undertakings is to prevent FirstGroup and its subsidiaries First Edinburgh Limited, First Glasgow (No. 1) Limited, First Glasgow (No.2) Limited and First Scotrail Limited from increasing bus fares, changing ticket availability, providing a poorer service on overlapping bus routes and reducing the choice of services available to passengers on overlapping bus routes, and to prevent similar adverse effects on other services resulting from the effect of the merger on the broader network markets (see note (i)).
- 5. The provisions of the Undertakings that require FirstGroup to appoint and remunerate the Monitor (paragraph 3) and that require FirstGroup and/or any of its Bus Subsidiaries and the Rail Subsidiary, to provide data to the Monitor and the OFT shall continue in force until the monitor's final six monthly review is completed. The remaining provisions of these Undertakings shall continue in force for as long as First Scotrail Limited is the Franchisee for the Scottish Rail Franchise, unless the Undertakings are varied, released or superseded under the Act.
- 6. The Undertakings may be varied, superseded or released by the Commission in accordance with section 82(2) of the Act.

The next steps

- 7. Comments are invited on why the Undertakings should not be accepted or, as the case may be, should be varied before being accepted.
- 8. Comments should be received by the Commission no later than 12 October 2004 (see note (ii)) and should be addressed to:

Jeremy Simon,
Inquiry Secretary, FirstGroup/Scotrail
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

Or email: firstgroup.scotrail@competition-commission.gsi.gov.uk

- 9. Before accepting the Undertakings, the Commission will have regard to any representations made in accordance with this Notice and not withdrawn (see note

(iii)), and may make modifications to the proposed undertakings as a result of such representations (see note (iv)).

Signed

Professor Paul Geroski
Group Chairman
27 September 2004

Notes

- (i) For a more detailed explanation see paragraphs 6.5-6.38 the Final Report.
- (ii) Being a period of not less than 15 days starting with the date of publication of this Notice, in accordance with Schedule 10, paragraph 2(2)(f).
- (iii) As required in accordance with Schedule 10, paragraph 2(1)(b) of the Act.
- (iv) The Commission may not accept the Undertakings with material modifications unless it has given notice of the proposed modifications and considered any representations made in accordance with the notice and not withdrawn. There is a period of not less than seven days starting with the date of publication of the notice relating to proposed modifications within which representations may be made (Schedule 10, paragraph 2(4) and (5) of the Act).