

Terms of reference and conduct of inquiry

Terms of reference

1. On 13 January 2004 the OFT sent to the CC the following reference:

Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the Commission”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—

(a) arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:

(i) FirstGroup plc will acquire the Scottish Passenger Rail Franchise currently operated by ScotRail Railways Limited such that the Scottish Passenger Rail Franchise will cease to be distinct from enterprises carried on by or under the control of FirstGroup plc; and

(ii) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million; and

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, namely the supply of passenger transport services on point-to-point routes in Scotland.

Now, therefore, the OFT, in exercise of its duty under section 33 of the Act and its power under section 36(5) of the Act, hereby refers to the Commission, for investigation and report within a period ending on 28 June 2004, the following questions in accordance with section 36 of the Act—

(a) whether arrangements are in progress or contemplation as described in paragraph 1 which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom.

In relation to the question whether a relevant merger situation will be created, the Commission shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) **John Vickers**
Chairman, Office of Fair Trading
13 January 2004

Conduct of inquiry

2. Notices inviting interested parties to submit evidence to the CC were placed in *Coach & Bus Week*, *Edinburgh Evening News*, *Glasgow Evening Times*, *Local Transport Today*, *Rail, Transit, Transport Journal*, *The Herald* (Glasgow) and *The Scotsman*.
3. We also sought evidence from a number of potential third parties including other bus companies, the Scottish Executive and other government departments, rail regulators and trade unions. Non-sensitive submissions received from third parties can be found on the CC's web site, together with a summary of other third party arguments and views, and also a report on a survey that we commissioned from NOP, and reports from OXERA.
4. Written evidence was received from many of these parties and hearings were held with 12 of them. We also held three hearings with FirstGroup. A non-sensitive version of FirstGroup's opening submission can be found on the CC web site.
5. The Group visited Glasgow and Edinburgh and were given a tour of various bus and train routes.
6. In the course of the inquiry, we sent to FirstGroup and published on the CC web site a Statement of Issues and a Notice of Provisional Findings, a copy of a non-sensitive version of the Provisional Findings report, a Notice of Possible Remedies and a Remedies Consultation Paper and also consulted separately on those proposals before reaching our final decisions.
7. We should like to thank all those who have helped us in our inquiry, particularly FirstGroup.
8. A copy of this report has been placed on the CC's web site.