

Main parties' behavioural remedies proposals

1. This appendix sets out the main parties' proposals for behavioural remedies.

Monitor

2. The parties propose that a monitor be appointed for the purposes of the undertakings. The monitor would be a person with bus industry experience, appointed and paid for by the parties, but approved by the OFT. The role of the monitor would be to ensure the effective administration of the undertakings and to report to the OFT in relation to this. In particular, the monitor would have responsibility for the following:
 - (a) considering any requests for consent for changes made under the provisions of the undertakings (in particular, the provisions indicated in paragraph 5 below) and, if appropriate, granting consent to such changes;
 - (b) considering any reports served under the suspension and review regime provided for in paragraphs 22 to 27 below and making his own report to the OFT in relation to any such matters;
 - (c) reviewing compliance with timetable and service quality obligations;
 - (d) liaising with the nominated compliance officer and receiving Statements of Compliance; and
 - (e) providing regular reports to the OFT.
3. The monitor would be provided with access to all books, records etc. as he might reasonably require to ensure the effective administration of the undertakings.
4. It is anticipated that any requests for changes made pursuant to paragraph 5 below would follow a procedure similar to that currently adopted for requests for changes under the interim undertakings dated 2 June, given by the parties to the CC in the context of this inquiry.

Service level obligations

5. The parties propose that obligations as set out in paragraph 6 would apply in relation to the services provided by the joint venture¹ on each of the relevant flows, save that the joint venture would be able to make a written request to the monitor for consent in relation to a specific change that would otherwise infringe the provisions of paragraphs (a), (b), (d), (g) or (h), and the monitor would have the power to grant such a consent, if satisfied that the request arose from a reasonable business need and/or was reasonable in the interests of consumers (or, alternatively, the monitor would refer the matter to the OFT for further consideration).

¹For the avoidance of doubt, this restriction has effect in relation to both megabus- and Scottish-Citylink-branded services.

6. The service level obligations proposed are:
- (a) The joint venture will schedule its first service of the day no later than 10 minutes after the first service is scheduled for the equivalent day of the week in the winter 2006 timetable.
 - (b) The joint venture will schedule its last service of the day no earlier than 10 minutes before the last service is scheduled for the equivalent day of the week in the winter 2006 timetable.
 - (c) The total number of services operated by the joint venture will be no less than the number of its services for the equivalent day of the week in the winter 2006 timetable and when the summer timetable is in operation the number of return journeys per day between Inverness and Glasgow will be at least one (or two, if the CC prefers) more than the number of journeys in the winter 2006 timetable.
 - (d) The headway between services operated by the joint venture will be no greater than the headway between services at that time of day, for the equivalent day of the week in the winter 2006 timetable.
 - (e) The number of megabus services operated by the joint venture will be no fewer than the number of megabus services for the equivalent day of the week in the winter 2006 timetable.
 - (f) The number of Scottish Citylink services operated by the joint venture will be no fewer than the number of Scottish Citylink services for the equivalent day of the week in the winter 2006 timetable.
 - (g) The joint venture will continue to provide duplicate vehicles on the relevant flows in accordance with pre-joint-venture practice.² In relation to joint venture fast services, the joint venture will determine when duplicate vehicles are to be provided in accordance with the following criteria:
 - a duplicate service will be activated if a journey is nearing full capacity and the journeys from the same departure point before and after are also nearing full capacity;
 - if a duplicate is required, it will only be activated if a return journey is also required the same day, on the same criteria; and
 - for the purpose of the above, 'nearing full capacity' means that the vehicle in question has fewer than 20 per cent of available seats left at any time prior to 24 hours before timetabled departure.

Duplicate vehicles may also be provided in other circumstances for joint venture fast services or joint venture slow services³ where there is substantial additional demand and a vehicle is available.⁴

²The practice drawn upon to formulate these criteria is also current practice for megabus in Scotland. Duplication on megabus services in England is not always possible for operational reasons. However, regular duplication occurs on megabus services between Birmingham and London at weekends, and also follows this practice.

³In proposals supplied by the main parties 'joint venture fast services' are joint venture services M9 (with the exception of journeys operating via Arbroath, Montrose and Stonehaven), M10, M90, M11 and M20, and 'joint venture slow services' are joint venture services M8, M9 journeys operating via Arbroath, Montrose and Stonehaven, and M91.

(h) The joint venture will maintain vehicle quality by ensuring that, in relation to vehicles on timetabled services (other than duplicate and reserve vehicles):

- any double-deck vehicle will be no more than eight years old, will be fitted with reclining seats and a toilet, and have no fewer than 65 seats;
- any single-deck vehicle will be no more than seven years old, will be fitted with reclining seats and toilet, and have no fewer than 45 seats;
- a mobile telephone will be available to the driver; and
- all vehicles will be fitted with a PA system.

The joint venture will endeavour to ensure that vehicles are kept clean, and that at the start of each journey toilets are clean and sanitary and in full working order.

(i) When duplicate or reserve vehicles are required, the joint venture will provide vehicles with coach seats and a toilet, which have been refurbished within the past seven years, except where no such vehicle is available, in which case the joint venture will endeavour to provide the best-quality vehicle available when a duplicate or reserve vehicle is required.⁵

(j) The joint venture will maintain the minimum number of seats currently sold on the Scottish Citylink website for travel on megabus vehicles, and will offer such seats for sale on the same basis as seats for travel on Scottish Citylink vehicles. [X]

(k) The joint venture will maintain the minimum number of seats sold on the megabus website for travel on Scottish Citylink vehicles, and will offer such seats for sale on the same basis as seats for travel on megabus vehicles. [X]⁶

7. [X]

8. The main parties proposed that the obligations set out in paragraphs 6(c), 6(e) and 6(f) above (the 'core service level obligations') will continue in effect in relation to a particular flow, subject to the regime set out in paragraphs 22 to 27 below.

9. The main parties submitted that it would be important for the core service level obligations to be subject to review in the circumstances set out in those paragraphs because [X] would impact on the joint venture's operations in terms of a likely reduction in passenger numbers to such an extent that it would be necessary for the joint venture to respond. [X]

10. Whilst the main parties believe that the service level obligations would provide an adequate remedy for the SLC identified by the CC, they have noted the CC's observations in relation to this and set out below their proposals for additional fares

⁴The main parties noted that most duplication occurs on joint venture fast services. Duplication on joint venture slow services is minimal. There are 440 scheduled journeys a week on joint venture slow services M8 and M91 and only five duplicate journeys have been operated since the beginning of May. Pre-joint-venture (summer 2005, Scottish Citylink operated a duplicate vehicle only once (on a late-running service, between Dunfermline and Perth).

⁵It is noted by the main parties that, although the joint venture would wish to provide vehicles of a similar quality to those used for timetabled service on duplicates and in cases where a reserve vehicle is used (eg where a vehicle has broken down), in practice the constraints of time and place mean that this is not always possible and the joint venture may have little or no choice of vehicle, if it is to operate a duplicate at all. This provision imposes minimum quality criteria to be met where such vehicles are available, whilst retaining the flexibility required if duplicates/reserves are to operate (and it is clearly in the interests of the travelling public that they do operate).

⁶[X]

restrictions. For this purpose, the main parties state that a distinction would need to be drawn between fares for Scottish-Citylink-branded services and fares for megabus-branded services.

Fare obligations

Scottish Citylink fare restrictions

11. In relation to Scottish Citylink services on the relevant flows, the parties propose that increases in the [X] standard fares⁷ [X] for those services be permitted only in accordance with the following sub-paragraphs:

(a) fares to be reviewed no more frequently than once every 12 months, with the first review to have effect from 30 April 2007;

(b) on a review, the percentage increase in fares should be no greater than the percentage increase (if any) in the specified index over the period since the last fare increase. For this purpose, the specified index means the index described in paragraph 19; and

(c) for the avoidance of doubt, if in a given year Scottish Citylink fares rise by less than the specified index, then the Scottish Citylink fares can increase by more than specified index in the following year(s), so long as the cumulative percentage increase in Scottish Citylink fares remains equal to or below the cumulative percentage increase in the specified index since the commencement of the Scottish Citylink fare obligations.

12. The fare restrictions set out in paragraph 11 above are referred to in this appendix as the 'Scottish Citylink fare restrictions'.

megabus fare restrictions

13. The main parties' proposals for fare restrictions for megabus services are slightly more complex, which is unavoidable in the context of a yield management system for megabus fares. They combine a price freeze for lower fares with increases in higher fares being linked to increases in the specified index described in paragraph 19. The main parties consider that this use of long-established regulatory controls provides a complete answer to concerns raised about the effectiveness of regulating yield-managed fares.

14. [X]^{8,9,10,11,12}

15. The fare restrictions set out in paragraph 14 are referred to in this appendix as the 'megabus fare restrictions'.

16. [X]

17. [X]

⁷[X]

⁸[X]

⁹[X]

¹⁰[X]

¹¹As defined in paragraph 19.

¹²[X]

18. [REDACTED]

Specified index

19. For the purposes of the Scottish Citylink and megabus fare restrictions the main parties defined the specified index to mean an index comprising the following indices/commodity price, weighted in the proportions set out below against the respective index/commodity price:

- [REDACTED] Average Earning Index
- [REDACTED] Average retail price of DERV
- [REDACTED] Retail price index

[REDACTED]

20. The main parties proposed that both the Scottish Citylink fare restrictions and the megabus fare restrictions (together, the 'joint venture fare restrictions') will continue in effect in relation to a particular flow, subject to the regime set out in paragraphs 22 to 27 below.

21. The main parties submitted that it would be important for all fare restrictions to be subject to review in these circumstances because [REDACTED] would require the joint venture to undertake a comprehensive fare review across the entire Saltire Cross. The continued application of restrictions in these circumstances would prevent the joint venture from responding effectively.

Suspension and review provisions

22. The main parties proposed that the core service level obligations and the joint venture fare restrictions will continue in effect in relation to a particular flow, subject to the regime set out below. [REDACTED]

23. Following the occurrence of any of the events set out in paragraph 26, the parties may, if they consider that the situation makes the service level obligations or the joint venture fare restrictions unsustainable or unnecessary, make a report to the monitor and the OFT. Any such report may indicate: [REDACTED].

24. The main parties submitted that, in the event [REDACTED], the undertakings shall thereupon be varied so as to allow such action to be taken until such time as the OFT reaches a decision to the contrary in response to the parties' request.

25. The main parties proposed that all such reports shall be treated as a request for complete release of the undertakings in relation to the affected flow or flows [REDACTED]¹³ and shall be considered in accordance with the appropriate regulatory timetable for review of undertakings.

26. The main parties submitted that the events on which a report may be made in relation to any flow are as follows: [REDACTED].^{14,15}

¹³[REDACTED]

¹⁴This provision takes into account the notice required in respect of registered services.

¹⁵This provision takes into account the notice required in respect of registered services.

27. The main parties noted additionally that these provisions are without prejudice to the right of the parties to apply for full or partial release of the undertakings at other times in the light of circumstances then applying.

Compliance monitoring

28. The main parties stated that, at a general level, the joint venture would adopt a number of measures designed to ensure that the undertakings were understood and taken into account at a day-to-day level, and regular consideration given to the overall pattern of compliance. In particular:
- responsibility for compliance would be allocated to a named individual within the joint venture;
 - all key Scottish Citylink personnel would be provided with copies of the undertakings and would be made aware of the implications of these, and the need for regard to be had to the undertakings in the operation of the day-to-day business; and
 - the named individual responsible for compliance would carry out an audit at the end of each financial period, and provide the monitor with a Statement of Compliance (in a form similar to those given to the CC under the provisions of the interim undertakings).
29. The main parties' proposals in respect of each of the key areas of service frequency, service quality and fares are as follows:
- Timetables would be provided to the monitor at specified intervals (the monitoring of frequency undertakings, by means of comparing the Scottish Citylink timetables, should be comparatively straightforward).
 - Service levels (in terms of vehicles quality etc) could be monitored by the monitor by means of random spot inspection and audits, to be carried out, say, four times a year.¹⁶
 - Fare rises could be reviewed by an independent firm of accountants, which would review any proposed fare changes, and certify that they fell within the specified index, and report to the monitor or the OFT. It is noted that no additional process would be necessary as fare increases within the terms of the undertakings (and effectively pre-cleared) would be permitted.
30. The monitor would report to the OFT in relation to all compliance issues.
31. The monitor would be granted access to all books, records etc to which he or she might reasonably require access for the fulfilment of his or her functions.

¹⁶This could be done through physical inspection of services on that day and, in addition, records and invoices can be produced. The joint venture records all departures and has the registration details for all vehicles.