

**COMPLETED ACQUISITIONS BY STAGECOACH GROUP PLC OF
EASTBOURNE BUSES LIMITED AND CAVENDISH MOTOR SERVICES LIMITED**

Statement of issues

12 June 2009

Summary

1. Stagecoach Group plc has completed the acquisitions of Eastbourne Buses Limited (EBL) and Cavendish Motor Services Limited (Cavendish). The merger situation appears to have had the effect of reducing the number of significant local bus operators in the Eastbourne area from two to one; Stagecoach offered a very limited bus service in the Eastbourne area prior to its acquisitions. We will consider the series of issues outlined in this statement. It will be particularly important for us to establish whether there was competition between EBL and Cavendish which has been lost as a result of the acquisitions. We will compare this to what was likely to have happened in the absence of the acquisitions. In particular, we will consider whether a process of rivalry between the two might have been expected to continue. If so, then unless the combined entity is effectively constrained by other factors such as potential entry, there is likely to have been a substantial lessening of competition (SLC). In the event of an SLC finding, in assessing what remedies would be appropriate, we will take account of any customer benefits that have arisen or may be expected to arise as a result of the acquisitions.

The reference

2. Our terms of reference require us to consider the completed acquisitions by Stagecoach of EBL and Cavendish. We must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK.
3. To enable us to do this, we will consider the following issues.

Market definition

4. Before the acquisitions, EBL and Cavendish both provided local bus services in Eastbourne and Hailsham. In the same area, Stagecoach ran two inter-urban bus routes into Eastbourne. EBL also ran inter-urban bus routes to Tunbridge Wells and East Grinstead but these did not overlap with Cavendish or Stagecoach services outside Eastbourne.
5. We will consider the following questions in relation to market definition:
 - (a) Whether markets should be defined by reference to a bus network as well as, or instead of, point-to-point flows or routes. This may depend on whether bus users value the ability to make multiple bus journeys across a single company's network.

- (b) To what *extent* services on flows which serve similar but non-identical origins and destinations can be regarded as being in competition with one another.
- (c) To what extent services on flows which run to different timetables and/or offer different *frequencies* can be regarded as being in competition with one another.
- (d) Whether the relevant market includes other types of public transport (such as trains), and/or private transport (particularly cars), and/or taxis, walking and cycling. In this context, we will consider how bus passengers would react to a small but sustained increase in bus fares and in particular whether sufficient passengers would be likely to switch to these modes of transport to render such an increase unprofitable.

We will also consider the likely reactions of bus operators in response to a change in market conditions, for example whether there is an effective constraint on individual flows or routes by virtue of an ability for other bus operators easily to switch buses between routes, or to new or modified routes. If so, it may be appropriate to treat these other bus operators or their relevant services as already being part of the market, rather than as potential entrants.

- 6. We will also consider whether there is any relevant segmentation of the market, for example by passenger type or journey purpose, and whether there is a separate market for the supply of tendered bus services.

Assessment of the competitive effects of the acquisitions

- 7. We will consider the possible competitive effects of the acquisitions within each of the relevant markets we identify, compared with the counterfactual situation (ie the situation that would have arisen in the short to medium term, had one or both of the acquisitions not occurred).

Counterfactual

- 8. To determine the appropriate counterfactual against which to assess the acquisitions, we will consider what is likely to have happened in the relevant market(s) in the absence of the acquisitions, in particular whether:
 - (a) EBL and/or Cavendish would have been purchased by a different owner, and/or would have exited the market.
 - (b) EBL and/or Cavendish would have revised their business model including their network of routes and/or operations.

Theory of harm

- 9. To focus analysis of the competitive effects of the acquisitions, we have so far identified four possible ways in which the acquisitions might result in an SLC, which we will investigate further. The theories of harm are not mutually exclusive, and their identification does not mean that we have reached any conclusions.
- 10. The four theories of harm that we have identified to date are as follows:
 - (a) *The elimination of competition on overlap flows.* Rivalry may occur between bus operators where they offer similar journey options, ie the flows they serve

overlap. We will consider whether the acquisitions have reduced or eliminated competition between bus operators on specific flows.

- (b) *The elimination of competition arising from contestability on non-overlap flows.* Rivalry could arise on non-overlap flows where an operator who does not serve a particular flow could quickly and easily change or extend its routes to serve this flow, and this contestability may exert a competitive discipline on the current operator. We will consider whether this possibility exerted an effective competitive constraint on bus operators prior to the acquisitions.
- (c) *The elimination of network competition.* If passengers value the ability to make use of a network of bus routes and if customers value a network provided by a single operator rather than a combination of operators, competition could occur between rival networks, and the acquisition could lead to a loss of network competition.
- (d) *The elimination of competition on tendered services.* The parties also operate some tendered services. These are services which are either fully or partially funded by the council and competition occurs between bus operators to gain the council contract to operate these services. Our current thinking is that there are a large number of potential operators of tendered services, and East Sussex County Council is likely to have the ability to design a competitive tender process. Our provisional view is that it is unlikely that the acquisitions have reduced the effectiveness of competition for the operation of these services. However we will consider submissions on this subject.

- 11. The loss of rivalry between Stagecoach, EBL and Cavendish arising from an SLC according to the first three theories of harm could be higher fares, and/or lower levels of service (eg reduced bus frequency, hours of operation and bus quality) and/or innovation than would otherwise occur, either on specific flows or routes, or at a network level. The effect of an SLC under the fourth theory of harm could be to increase the cost to the council of supporting tendered services or to reduce the quality of services provided.
- 12. The identification of these theories of harm does not preclude an SLC being identified on another basis following further work by us or the receipt of additional evidence.

Related competition issues

- 13. Among the issues that we will consider when deciding whether any of the theories of harm set out above have been or are likely to be realized (and therefore whether the acquisitions have resulted or may be expected to result in an SLC) are:
 - (a) the extent of competition between Stagecoach, EBL and Cavendish before the acquisitions, on overlap flows and/or on a network basis, and whether EBL and Cavendish were the closest competitors to one another (we note that the pre-acquisition overlaps between Stagecoach and each of Cavendish and EBL were both very limited);
 - (b) how fares and services have changed since the acquisitions;
 - (c) the ability and incentive of other existing or potential competitors to provide bus services in the Eastbourne area. This will need to take account of any barriers to entry or expansion, including access to facilities such as depots and maintenance, and the anticipated response by existing bus operators; and

(d) what effect the existence of concessionary travel arrangements has on customer behaviour and incentives on bus operators to compete.

Possible remedies and relevant customer benefits

14. Should we conclude that the acquisitions have resulted or may be expected to result in an SLC, we will consider whether and, if so, what, remedies might be appropriate, and will issue a further statement.
15. In any consideration of possible remedies, we will take into account whether any relevant customer benefits¹ have arisen or might be expected to arise as a result of the acquisitions. Issues which might be considered include whether the acquisitions have allowed a higher-quality service to be provided (eg more frequent or better-spaced bus services, an improved or more extensive route network, or better quality buses to be used), which would not have arisen in the absence of the acquisitions. We will consider what any relevant customer benefits are likely to be and which customers would be likely to benefit.

¹Relevant customer benefits' are defined in [section 30\(1\)](#) of the Enterprise Act 2002.