



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1145/4/8/09

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application, on 8 December 2009, under section 120 of the Enterprise Act 2002 (“the Act”), by Stagecoach Group Plc (“Stagecoach”) of 10 Dunkeld Road, Perth, Perthshire, PH1 5TW, challenging a decision (“the Decision”) by the Competition Commission (“the Commission”), notified to Stagecoach on 10 November 2009 and published on 11 November 2009, under section 35 of the Act, to the effect that the acquisition (“the Acquisition”) by Stagecoach of Preston Bus Limited (“PBL”) may be expected to result in a substantial lessening of competition (“SLC”) in the market for the supply of commercial bus services in the Preston area¹. Stagecoach is represented by Maclay Murray & Spens LLP of 151 St Vincent Street, Glasgow, G2 5NJ (reference: DL/MJD/STA).

In summary, the principal grounds of review on which Stagecoach relies are that:

1. the Commission has committed an error of law in assessing the effects of the Acquisition against the situation prevailing in late 2006 and early 2007. Stagecoach submits that it is clear from section 35(1)(b) of the Act that the Commission was required to consider whether the creation of the relevant merger situation, namely the Acquisition, led to an SLC. Instead the Commission wrongly considered whether Stagecoach’s conduct from late 2006 or early 2007 onwards, including its lawful conduct preceding the merger, has led to an SLC.
2. the Commission has made highly material findings of fact which are unsupported by the evidence and so has acted unreasonably. Stagecoach submits that at least four of the Commission’s critical findings of fact in support of its counterfactual are unsupported by the evidence and are therefore unreasonable, namely:
 - (a) that Stagecoach would not have expanded its presence on the Preston intra-urban market after early 2007;
 - (b) that Stagecoach acted with little regard for profit and without reference to “normal commercial considerations” over a period of 18 months prior to the Acquisition;
 - (c) that it was predictable that Stagecoach’s entry on the Preston intra-urban market would have the effect of “removing PBL from the market or marginalising it as a competitive threat”;
 - (d) that PBL responded reasonably to competition from Stagecoach, having no alternative, and did not cause or contribute to the so-called “abnormal” competition on the market following Stagecoach’s entry.
3. the Commission acted in a procedurally unfair manner in rejecting the evidence of Stagecoach and of other parties where that evidence supported Stagecoach’s position, accepting uncritically the evidence of one of PBL’s directors and failing adequately to investigate key facts.

¹ The Report may be found at: http://www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/551.pdf

4. the Commission committed a manifest error of assessment in relation to remedy, in that it imposed a remedy which was in any event disproportionate, going beyond what was necessary to remedy the SLC.

Stagecoach seeks the following relief from the Tribunal:

1. a declaration pursuant to section 120(4) of the Act that the grounds of review are well-founded;
2. an order quashing the Decision pursuant to section 120(5)(a) of the Act;
3. an order referring the matter back to the Commission with a direction to reconsider and make a new decision under section 35 of the Act in accordance with the ruling of the Tribunal pursuant to section 120(5)(b) of the Act;
4. an order that the Commission pay Stagecoach the costs it has reasonably incurred in bringing its application.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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