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Anticipated acquisition by Greater Manchester Buses South Limited  
of A. Mayne & Son Limited

No. ME/3398/07

The OFT's decision on reference under section 33(1) given on 10 January 2008.  
Full text of decision published 16 January 2008.

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**Please note that square brackets indicate text or figures which have been deleted or replaced with a range at the request of the parties and third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Greater Manchester Buses South Limited** (GMBS) is a wholly owned subsidiary of Stagecoach Group plc (Stagecoach). GMBS operates commercial and tendered local bus services throughout the Greater Manchester area.
2. **A. Mayne & Son Limited** (Mayne) operates commercial and tendered local bus services in the Greater Manchester area. Until recently it also operated a Manchester-based coach hire service which is not being acquired by GMBS. In 2006 the turnover of the bus services business that is being transferred was [around £3 million].

## **TRANSACTION**

3. Mayne was restructured for the purpose of the transaction. The coach hire business has been transferred to Maynes Coaches Limited, a separate company and not part of the transaction [ ]. The entire share capital of Mayne (comprising the bus services business) will be acquired by GMBS for [less than £5 million].

## **JURISDICTION**

4. As a result of this transaction GMBS and Mayne will cease to be distinct.
5. The parties overlap in the supply of local bus services in the Greater Manchester area where they have a share of supply of around 30 per cent. As a result the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The Office of Fair Trading (OFT) therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **FRAME OF REFERENCE**

### **Product market**

6. Previous OFT and Competition Commission (CC) cases have taken the view that commercial and tendered local bus services operate in different product markets.<sup>1</sup>
7. Tendered services are subsidised (in whole or in part) by the local authority in order to provide transport services in areas where operators would otherwise find it unprofitable to operate commercial services. In Manchester, the Greater Manchester Passenger Transport Executive (GMPTE) is responsible for tendering local bus services. It is common for commercial operators in Manchester to operate both commercial and tendered services (as do both merging parties as well as First Group and Arriva). However, supply side substitution may not be symmetric as tendered operators would find it more difficult to start to operate commercial services. The two services have very different pricing mechanisms. A tendered service begins operations with effectively a minimum guaranteed revenue stream making investments and other business decisions less risky.<sup>2</sup> This suggests that commercial and tendered services form separate product frames of reference.

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<sup>1</sup> See for example, Anticipated acquisition by Arriva plc of the Darlington Local Bus Service business of Stagecoach Group plc, OFT decision of 22 August 2007; Completed acquisition by Arriva plc of Premier Buses Limited, OFT decision of 1 June 2006; and Competition Commission, Arriva plc and Sovereign Bus & Coach Company Ltd: a report on the acquisition by Arriva plc of Sovereign Bus & Coach Company Ltd, January 2005.

<sup>2</sup> In this case the GMPTE requires operators to have buses before it bids for the tender.

8. However, on the demand side fares on tendered services are not regulated by the GMPTE (only the routes and timetables are approved by the GMPTE). Therefore, on any flow on which both a tendered and commercial service operates it is possible that each has the potential to constrain the other with respect to the prices that they charge the passenger.
9. In this case the OFT has not found it necessary to conclude on whether tendered and commercial services are in the same market. However, since the OFT has not received sufficient evidence for it to depart from its previous approach, this case has been examined on the basis of commercial and tendered services as being distinct and separate.
10. The parties considered that along various routes other modes of transport including rail, private cars and even cycling and walking will provide some competition to local buses to some extent. Also, in relation to the Manchester–Droylsden route, a new Metrolink tram connecting central Manchester to Droylsden will be built in the next few years (its aim is to be operational in 2011) and this may offer further competition to local buses along that route.<sup>3</sup> However, the OFT has not concluded on this point as the outcome of the competition assessment does not differ according to whether other modes of transport are included in the same product market.

### **Geographic market**

11. The parties operate tendered and commercial services within the Greater Manchester area and therefore the OFT has restricted its assessment to this area. In past cases both the OFT and CC have considered local markets in commercial services on the basis of competing services on point-to-point flows.<sup>4</sup> The OFT has not found any reason to depart from this approach in this case. Therefore, this merger has been examined on the basis of the relevant individual flows for commercial bus services and, separately, tendered bus services in the Greater Manchester area.

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<sup>3</sup> The Manchester-Droylsden journey captures some of the GMBS route 216 and Mayne route 217/218.

<sup>4</sup> A 'flow' may be an entire route or a sub-set of a route. It comprises the point at which customers get on the bus and the point at which they get off and so therefore represents customer demand. See footnote 1 for a list of cases in which this approach has been used.

## HORIZONTAL ISSUES

### TENDERED SERVICES

12. The GMPTE told the OFT that there are 45 operators providing tendered bus services in the Greater Manchester area, although 11 provide school services only. The GMPTE also submitted that the average number of bidders per contract is 3.5. As well as the parties, tendered services providers include First Group, Arriva, Speedwell, Vale and Finglands.
13. Currently in the Greater Manchester area there are around 550 ordinary tendered bus services (and 400 tendered school only services for which the parties do not compete). Of the 550 ordinary services, GMBS provides 174 services and Mayne provides 25. There are a considerable number of third party competitors involved in providing tendered services and so the OFT considers that the amount of choice in the tenders will not be significantly reduced such that there will be no substantial lessening of competition. [ ].
14. GMBS submitted that barriers to entry are low and provided the OFT with a list of 11 operators who it had competed against in recent years for tendered services contracts. Third parties told the OFT that it is easy to set up a depot and obtain vehicles which meet GMPTE standards. Some commercial operators may be able to use existing depots and buses in order to compete for some tendered services (particularly off-peak services where the peak services are provided on a commercial basis). The OFT considers that entry into tendered services is likely to be easier and more likely than in commercial services because the risks are lower; once a new entrant has won a new contract its minimum revenues are guaranteed for the contract period.<sup>5</sup> Further, supply side substitution from commercial services is likely to be straightforward. Previously, the CC has found that barriers to entry into tendered services were relatively low.<sup>6</sup> However, given the outcome of the competition assessment in this case the OFT has not needed to conclude on this point. In any case, the OFT recognises that the degree of entry required to offset any loss of competition arising from this merger would not need to be significant.

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<sup>5</sup> This was also the view the OFT took in Completed acquisition by Stagecoach plc of Traction Group Limited, OFT decision of 12 April 2006, paragraph 39.

<sup>6</sup> Arriva plc / Sovereign Bus & Coach Company Ltd, paragraph 13.

15. No third party competitors expressed concern about the merger with regard to tendered services.

## COMMERCIAL SERVICES

16. The parties identified 12 flows on which they overlap in commercial services. The OFT identified a further three overlapping flows but the overall size and increment of these overlaps were very minor and therefore are not considered further in this decision.<sup>7</sup>
17. In all but one case the merger will reduce the number of operators along those flows from two to one. In the one remaining flow First Group and Speedwell also operate bus services and the increment (measured by passenger numbers) is low (less than five per cent). First Group runs more than 10 buses per hour on this route on weekdays, substantially more than GMBS which runs two per hour, and will therefore offer effective competition to GMBS after the merger. Therefore, competition concerns do not arise on this particular flow and no further discussion is required for this flow.
18. The increments resulting from the merger in all of the overlapping flows are very small - the largest being less than six per cent (the Piccadilly-Edge Lane flow).<sup>8</sup> Similarly small increments arise when measured by value. The increment on the Piccadilly - Stalybridge flow is negligible.<sup>9</sup> Consequently, competition concerns do not arise on that flow, leaving 10 relevant flows for analysis.
19. In its assessment of Arriva / Sovereign Bus & Coach Company and in its assessment of FirstGroup / Scottish Passenger Rail, the CC adopted a methodology, based on the frequency of buses, to identify whether competitors on a route provided effective competition. The CC considered that on 'frequent' services (that is, running every 10 minutes or less) for a competitor to be effective it would have to run with a frequency of no more than 10 minutes greater than the frequently running service. On 'less frequent' services, the CC considered that a longer gap between competing services would not be inconsistent with effective competition as passengers were more likely to plan their journey according to a timetable.

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<sup>7</sup> On none of the three flows was Mayne's total annual passenger numbers greater than [ ].

<sup>8</sup> On this flow GMBS has [ ] passengers per year while Mayne has [ ] passengers.

On 'less frequent' services, competitors running with frequencies no lower than half those of the more frequently running service were considered effective.<sup>10</sup>

20. In this case GMBS's services are far more frequent than Mayne's along the relevant routes (for both peak and off-peak times). On seven of the remaining 10 flows GMBS operates 183 services per weekday (12 per hour during both peak and off-peak periods). In comparison, Mayne operates between 24 and 30 services per weekday (three per hour during peak periods and either one or two during off-peak periods). In line with the CC's approach in the cases mentioned above, on these seven flows the OFT therefore does not consider that Mayne offers effective competition to GMBS because of the disparity of frequency between the parties' bus services.
21. In the remaining three overlapping flows (all on the GMBS 216 route Ashton–Manchester), pricing information indicates that Mayne has not provided a constraint on GMBS. On no overlapping flow is Mayne's prices more expensive than those of GMBS. Pricing information available to the OFT with regard to GMBS's 216 route show that prices have increased on seven occasions since May 2004.<sup>11</sup> Single fares on this route, for example, have increased five times over the past three years by a total of almost 40 per cent – a significantly higher figure than general bus price inflation in the UK and Stagecoach's pricing changes elsewhere in Greater Manchester (and elsewhere in the UK). Over the same period of time Mayne has not changed its prices<sup>12</sup> and the OFT does not have any evidence of it picking up a significant number of GMBS passengers as a result. This would tend to indicate that Mayne has not exerted substantial pricing constraint on GMBS over the past three years on these flows. This is consistent with the OFT's previous findings with regard to GMBS's route 216 in Manchester in which the OFT concluded that any constraint on the merged entity (in that case, GMBS/Dennis's Coaches) provided by Mayne (and Northern Trains)

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<sup>9</sup> On the Piccadilly-Stalybridge flow GMBS has [ ] passengers per year while Mayne only has [ ].

<sup>10</sup> Arriva plc / Sovereign Bus & Coach Company Ltd, Appendix F, paragraphs 17-20; FirstGroup plc and 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, June 2004, Appendix G, paragraph 21.

<sup>11</sup> Sometimes a single or return ticket price was changed, sometimes the day ticket price was changed.

<sup>12</sup> Apart from introducing a £1 minimum fare.

would be limited given that the majority of revenue was represented by flows on which neither Mayne nor Northern Trains operated.<sup>13</sup>

### **Barriers to entry and expansion**

22. The parties submitted that barriers to entry and expansion into commercial services are low. They provided to the OFT a list of nine recent entrants into commercial services in the Greater Manchester area (as well as five operators who have exited). Further, the parties argued that existing operators in the Greater Manchester area could easily expand into the areas in which the merging parties currently operate.
23. Third parties also told the OFT that barriers to entry are low in this particular case. The OFT has been told that acquiring buses and a depot, and obtaining an operator's licence, is easy. Third parties have also told the OFT that alterations to local bus services (such as changing the route) are easy - although in order to build customer trust a degree of stability is required.
24. One third party has told the OFT that there are capacity constraints in terms of bus stands within central Manchester since the Manchester City Council wishes to prevent 'over bussing' of central Manchester. Other third parties have told the OFT that they have experienced difficulties in gaining access to central Manchester while some have not experienced difficulties. The GMPTE told the OFT that there is some spare capacity at Shudehill bus station in central Manchester (which Mayne uses on its 232-35 routes).
25. The OFT also considered the impact of the merger in terms of extending GMBS's bus network in the Manchester area and whether this could act as a barrier to entry. Extending a network can be an important factor in the competition assessment if a significant proportion of customers change buses in order to complete their journeys. However, when specifically asked about this third parties told the OFT that they are not concerned about the merger extending GMBS's bus network. The OFT was unable to obtain data on the number of passengers who use more than one bus along the relevant bus routes, but for Greater Manchester as a whole less than

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<sup>13</sup> Completed acquisition of Dennis's Coaches by Greater Manchester Buses South Limited, a subsidiary of Stagecoach Group plc, OFT decision of 22 September 2005, paragraph 24.

10 per cent of customers use buses operated by different bus companies in their local bus journeys.

26. Given that it does not affect the outcome of the competition assessment, the OFT has not found it necessary to conclude on barriers to entry and expansion. However, the OFT recognises that any entry offsetting the loss of competition arising from this merger would not need to be on a large scale.

### **Countervailing buyer power**

27. For commercial bus services buyers are individual bus users and do not possess any countervailing buyer power.

### **THIRD PARTY VIEWS**

28. Most third parties (competitors) were unconcerned about the merger. One was concerned that the merger would increase GMBS's already strong position within the Greater Manchester area and between Ashton and Manchester in particular. One customer was concerned that the merger would give GMBS a monopoly on some routes.

### **ASSESSMENT**

29. The parties overlap in the supply of commercial and tendered local bus services within Greater Manchester. Although not concluding on the product market, the OFT has examined this merger on the basis of commercial services (on a flow by flow basis) and tendered services (within the Greater Manchester area) separately.
30. For tendered services the OFT considers that after the merger sufficient competition will remain to constrain the merged entity. The OFT has not found it necessary to conclude on whether barriers to entry into tendered services are low, but it does consider that they are likely to be lower than for commercial services and supply side entry from commercial services is likely to be easy. In any case, the OFT recognises that the degree of entry required to offset any loss of competition arising from this merger will not need to be significant.

31. For commercial services, the parties overlap on 15 flows. On all but one of these the parties are the only two operators. In that one flow First Group and Speedwell also operate bus services and the increment arising from the merger is small. First Group runs a service along the flow significantly more frequently than what does GMBS and will provide effective competition to GMBS after the merger.
32. On all of the overlapping flows Mayne has a very low share of overall passengers - the largest increment arising as a result of the merger in any of the flows is less than six per cent. The increment arising from the merger on four of the flows is particularly negligible and so the OFT dismissed the possibility of competition concerns occurring as a result of the merger on those flows.
33. On seven of the flows, the OFT does not consider Mayne to be an effective competitor to GMBS because the frequencies of its buses are considerably less than those of GMBS's buses. Therefore, the OFT does not consider that the merger will lead to a substantial lessening of competition on those seven flows. This approach is in line with the approach taken by the CC in previous bus cases.
34. In the remaining three overlapping flows, the OFT has observed pricing evidence that demonstrates that Mayne has not exerted a competitive constraint on the prices of GMBS and therefore there is no realistic prospect of a substantial lessening of competition arising as a consequence of the merger on those three flows.
35. In the main, third parties are unconcerned about the merger.
36. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

37. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.