
Review of undertakings regarding bus services in Mid and West Kent

30 June 2005

Introduction

1. Following a 1993 Monopolies and Mergers Commission (MMC) monopoly report on the supply of bus services in Mid and West Kent,¹ five undertakings were given in 1995 by Maidstone & District Motor Services Ltd (M&D) and its parent, Einkorn Ltd (now Arriva Southern Counties Ltd²) under section 88 of the Fair Trading Act 1973.
2. One of these related to access to the Pentagon Bus Station in Chatham. This undertaking remains in force, together with an undertaking to provide information to the OFT. The other three undertakings time expired in 1998.
3. The OFT has a duty to keep under review the carrying out of the undertakings and to consider whether parties should be released from them or whether the undertakings need to be varied or superseded by new undertakings.³ This report sets out the findings of the OFT's review of the undertakings.

Findings

4. In 1993 the MMC reported on the supply of bus services in Mid and West Kent. It found that a scale monopoly situation existed with M&D providing about two-thirds of the local bus services in the area.
5. The MMC found that M&D applied restrictions to access to the Pentagon Bus Station at Chatham which disadvantaged competitors and operated or might be expected to operate against the public interest.⁴ It also found that other

¹ Monopolies and Mergers Commission 1993, *The Supply of Bus Services in Mid and West Kent*, Cm 2309, HMSO, London. The routes serving Mid and West Kent were defined in the MMC's 1993 report as the districts of: Maidstone, Rochester Upon Medway, Gillingham, Swale, Tonbridge and Malling, Tunbridge Wells, Sevenoaks and Gravesham Kent.

² ASC.

³ This duty is still in force by virtue of paragraph 14 of Schedule 24 of the Enterprise Act 2002.

⁴ MMC 1993, paragraphs 6.63, 6.55 and 6.59. In particular, the MMC referred to M&D's conditions (1) that the arrangements with any operator allowed to use the Pentagon Bus Station would be terminated if the operation of its services caused M&D operational difficulties, (2) that departure charges set by M&D would be levied. The MMC found that these charges were considerably above those needed to cover an appropriate share of the costs of operating the Station.

unrelated practices by M&D operated or might be expected to operate against the public interest.

6. The MMC recommended that M&D should give undertakings to provide all operators with equal opportunity of gaining access for their services on reasonable terms and charges to Pentagon bus station, and to remove from its current terms and conditions the power summarily to eject an operator if it infringes M&D's operating conditions.⁵
7. As a consequence, M&D gave undertakings to the Secretary of State for Trade and Industry on 7 August 1995 that it would, amongst other things, grant licences to other operators of local bus services to use bus stands at the Pentagon Bus Station in Chatham.
8. The company continues to operate the Pentagon Bus Station under the same lease that was in place at the time of the MMC report.⁶ It also continues to be the main supplier of bus services in Mid and West Kent. Indeed, its share of bus services seems to have increased since the MMC reported. In 1992 M&D accounted for around two thirds of bus service revenue and registered vehicle miles in the area. Today it accounts for around 90 per cent of passenger numbers on contracted and commercial services.⁷
9. Furthermore, there are now nine bus operators supplying the local area whereas in 1993 there were over 20 operators servicing this area of Mid and West Kent.^{8, 9}
10. Located near the Pentagon Bus Station is the Military Road bus stop. While the MMC considered that the Pentagon Bus Station was a superior facility to the Military Road bus stop, Medway Council has indicated that there is some customer preference for the bus stop at Military Road rather than the Pentagon Bus Station. Services contracted by Medway Council and Kent County Council generally use Military Road, to avoid the departure charges for the use of the Pentagon Bus Station.¹⁰
11. However, some bus operators told the OFT that they were unaware of their right to use the bus station and that they are currently locked into service agreements with the councils. Therefore, how well the undertakings work for those parties who were unaware of them will not be known until after the tender process for letting new service contracts. These will take place between 2005-2008.
12. There is no evidence to suggest that the company has breached the terms of the undertakings.

⁵ MMC 1993, paragraph 6.82.

⁶ Information provided by Medway Council. Although the parties have changed the lease terms have stayed the same.

⁷ MMC 1993, paragraph 3.57 and information provided by Medway Council. These figures are not on a like-for-like basis and may cover slightly different areas.

⁸ Information provided by Medway Council.

⁹ MMC 1993, paragraph 3.24.

¹⁰ Information provided by both Medway Council and Kent County Council.

Conclusion

13. There is no evidence of a breach of the undertakings, or complaints about the company. However, during the OFT's review it became apparent that some bus operators in the area were unaware of the undertakings.
14. In light of this and the company's continued strong position in the supply of bus services in the area, the OFT decided:
 - not to advise the Secretary of State to release the company from the undertakings or to vary or supersede the undertakings, and
 - to address the lack of awareness by writing to all the local bus operators reminding them of the undertakings.¹¹
15. The OFT will continue to keep under review the carrying out of the undertakings and will reconsider the undertakings in due course.

¹¹ The local operators which the OFT wrote to are: ASC, Amberlee UK, ASD Coaches, Chalkwell Coaches, Jaycrest, Kings Ferry, Manns Travel, Nu Venture Coaches Ltd and Redroute Buses.