

LOCAL BUS SERVICES MARKET INVESTIGATION

Notice of provisional findings on tacit coordination made under Rule 10.3 of the Competition Commission Rules of Procedure

1. On 7 January 2010 the Office of Fair Trading (OFT), in exercise of its duty under section 131 of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) an investigation into the supply of local bus services.¹ In accordance with section 133(2) and (3)(a) of the Act, the OFT required the CC to confine its investigation to the effects of features of such market or markets for local bus services as exist in connection with the supply of such services in the UK excluding Northern Ireland and London.²
2. On 6 May 2011 the CC inquiry group (the Group) appointed to consider this reference published its provisional findings. Although the Group had considered the issue of tacit coordination in those findings, it had been unable to complete its evaluation of the evidence. This was because some relevant material had been received at a very late stage ahead of publication of the provisional findings. The Group indicated that it would publish its provisional decision on tacit coordination at the end of July. The Group is therefore now publishing its provisional view on the basis of evidence it has received and evaluated so far in relation to this particular theory of harm.
3. The Group has not found either sufficient evidence to clearly establish the existence of tacit coordination in the provision of local bus services across the reference area, or clear examples of tacit coordination being established or successfully maintained in local markets. Therefore, the Group has provisionally found, on the statutory questions it has to decide pursuant to section 134(1) of the Act, that tacit coordination is not a feature of the relevant markets that prevents, restricts or distorts competition, and hence that there is no adverse effect on competition within the meaning of section 134(2) of the Act.
4. Notwithstanding its provisional finding above, the Group has found that the conditions for tacit coordination are met and has noted that some operators have on occasions tried to engage in tacit coordination. Therefore, the Group cannot dismiss the possibility that operators in some local areas may have achieved, or may in future achieve, a tacit understanding to refrain from head-to-head competition, and there seems every reason to be concerned about the potential for tacit coordination.
5. The Group's reasons are set out in full in its provisional findings on tacit coordination which has been published on the CC's website. This should be read in conjunction with the CC's provisional findings published on 6 May 2011.

¹ For the purposes of this reference, 'local bus services' means all bus services, both commercial (whether or not a grant is received in relation to any part of the service) and tendered (ie made under agreements pursuant to any of section 9A of the Transport Act 1968, section 63 of the Transport Act 1985 and section 7 of the Transport (Wales) Act 2006), which fall within the definition of a local service in section 2 of the Transport Act 1985.

² Defined by section 137 of the Transport Act 1985 as the administrative area of Greater London as for the time being constituted.

The next steps

6. The Group now invites interested parties to submit reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
7. These reasons should be received in writing by the Group no later than Thursday 25 August 2011.
8. The Group will have regard to any such reasons in making its final decision on the statutory questions and actions.

(signed) JEREMY PEAT
Group Chairman
4 August 2011

Note: The published version of the provisional findings on tacit coordination does not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.