

ACQUISITION BY NATIONAL EXPRESS GROUP PLC OF PRISM RAIL PLC

VARIATION TO UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY NATIONAL EXPRESS GROUP PLC PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973

WHEREAS:

(a) The merger between National Express Group plc ('National Express') and Prism Rail plc ('Prism') was completed on 19 September 2000 ('the Merger Situation');

(b) The Director General advised the Secretary of State that a merger reference to the Competition Commission under section 64(1) of the Fair Trading Act 1973 (the 'Act') should be made and gave advice under section 75(1)(c) of the Act specifying particular effects adverse to the public interest which in his opinion the Merger Situation may have or might be expected to have;

(c) On 17 January 2001 it was announced that the Secretary of State accepted undertakings given by National Express for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director General ('the Original Undertakings');

(d) National Express Group requested a variation to or release from the Original Undertakings, pursuant to section 75J of the Act;


(e) The Original Undertakings were specified in the Enterprise Act 2002 (Enforcement Undertakings) Order 2006 (SI 2006 No.354) which came into force on 10 March 2006, and thereby pursuant to Schedule 24 paragraph 16 of the Enterprise Act 2002 the OFT was given the power to supersede, vary or release the Original Undertakings;

(f) Following a consultation process, and after consideration of any representations made and not withdrawn, the OFT indicated that it proposed to accept a variation to the Original Undertakings;

NOW THEREFORE National Express hereby gives to the OFT the following variation to the Original Undertakings, with a view to this variation to the Original Undertakings being accepted by the OFT:

1. The section entitled 'London- Stansted Fares' namely paragraphs 1, 2 and 3 of the Original Undertakings shall no longer apply. The Original Undertakings shall continue to apply other than as amended by this variation.
2. This variation to the Original Undertakings shall take effect from the date that, having been signed by National Express, it is accepted by the OFT.

FOR AND ON BEHALF OF NATIONAL EXPRESS


..... Signature

A. WALKER Name

DIRECTOR Title

3 August 2006 Date

(Director)


..... Signature

A. McDONALD Name

COMPANY SECRETARY Title

3 August 2006 Date

(~~Director~~/Company Secretary)

ACQUISITION BY NATIONAL EXPRESS GROUP PLC OF PRISM RAIL PLC

Undertakings given to the Secretary of State for Trade and Industry by National Express Group Plc pursuant to section 75g(1) of the Fair Trading Act 1973

WHEREAS:

- (A) National Express Group plc ('National Express') made an offer for the entire issued share capital of Prism Rail plc ('Prism') on 18 July 2000;
- (B) it appears to the Secretary of State that as a consequence there is a merger situation qualifying for investigation;
- (C) the Secretary of State has power to make a merger reference to the Competition Commission under section 64(1) of the Fair Trading Act 1973 ('the Act');
- (D) the Director General has:
 - (a) made a recommendation to the Secretary of State that such a reference should be made; and
 - (b) given advice to the Secretary of State under section 75(1)(c) of the Act specifying particular effects adverse to the public interest which in his opinion the merger situation qualifying for investigation may have or might be expected to have; and
- (E) the Secretary of State considers the undertakings given below by National Express appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director General.

THEREFORE National Express gives to the Secretary of State the following undertakings for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director General.

London-Stansted Fares

1. National Express shall procure that each fare charged for travel on a National Express Stansted Coach Service is:
 - (a) no greater than the Heathrow Fare; and
 - (b) made available on Terms and Conditions which are no less favourable than the Terms and Conditions on which the Heathrow Fare is made available.

2. In the event that National Express Heathrow Coach Services cease, the provisions of paragraph 3 shall apply for a period of up to twelve months thereafter pending a review of these undertakings under section 75J of the Act.
3. If paragraph 2 applies, National Express shall procure that each fare charged for travel on a National Express Stansted Coach Service is:
 - (a) no greater than the lowest Heathrow Fare charged during the notice period referred to in paragraph 13 below; and
 - (b) made available on Terms and Conditions which are no less favourable than the most favourable Terms and Conditions on which the Heathrow Fare was made available during the notice period referred to in paragraph 13 below.

Frequency and capacity of coach services between London and Stansted

4. Subject to paragraphs 5, 6 and 7, National Express shall procure that:
 - (a) the number of departures daily of National Express Stansted Coach Services from central London and from Stansted airport respectively shall be no less than during the equivalent day of the Reference Week;
 - (b) the first and last departure each day of a National Express Stansted Coach Service from central London and from Stansted airport respectively shall be not more than 1 hour later or earlier than departure of the equivalent National Express Stansted Coach Service during the Reference Week; and
 - (c) without prejudice to paragraph 4(a) above the total Seat Capacity of coaches used for the provision of National Express Stansted Coach Services in any week shall be no less than the total Seat Capacity of such coaches during the Reference Week.
5. Nothing in paragraph 4 shall prevent the provision of additional National Express Stansted Coach Services.
6. Paragraph 4(a) and (c) shall not preclude any reduction in the frequency of departures of National Express Stansted Coach Services from central London and from Stansted airport respectively or in the Seat Capacity of coaches used for the provision of National Express Stansted Coach Services if all of the following conditions are satisfied:
 - (a) a Coach Operator is providing a competing coach service on the London-Stansted Route;
 - (b) following any such reduction:

- (i) the aggregate of the number of departures daily from central London of National Express Stansted Coach Services and coach services provided by Coach Operators on the London-Stansted Route would be no less than the number of such departures of National Express Stansted Coach Services during the equivalent day of the Reference Week;
 - (ii) the aggregate of the number of departures daily from Stansted airport of National Express Stansted Coach Services and of coach services provided by Coach Operators on the London-Stansted Route would be no less than the number of such departures of National Express Stansted Coach Services during the equivalent day of the Reference Week;
 - (iii) the aggregate of the total Seat Capacity of coaches used for the provision of National Express Stansted Coach Services and the total Seat Capacity of coaches used by coach Operators for the provision of coach services on the London-Stansted route in any week shall be no less than the total Seat Capacity of coaches used for the provision of National Express Stansted Coach Services during the Reference Week; and
- (c) National Express has provided details in writing of any such reduction to the Director at least 45 days in advance; and
- (d) the Director has not given notice in writing to National Express within 30 days of receiving such notification that in his opinion the reduction is unjustified.
7. If a Coach Operator is providing a competing coach service on the London-Stansted Route, paragraph 4(b) shall not preclude a greater alteration of the times of the first and last departure times daily of National Express Stansted Coach Services to the extent that:
- (a) the departure times of that Coach Operator's coach services each day on the London-Stansted Route from central London are no more than 1 hour later or earlier than the first and last departures of a National Express Coach Service from central London on the equivalent day during the Reference Week; and
 - (b) the departure times of that Coach Operator's coach services each day on the London-Stansted Route from Stansted airport are no more than 1 hour later or earlier than the first and last departures of a National Express Coach Service from Stansted airport on the equivalent day during the Reference Week;

PROVIDED THAT:

- (c) National Express has provided details in writing of the alteration to the Director at least 45 days in advance; and
 - (d) the Director has not given notice in writing to National Express within 30 days of receiving such notification that in his opinion the alteration is unjustified.
8. Without prejudice to paragraphs 4 and 6, National Express shall procure that so far as is reasonably possible the daily Seat Capacity of coaches used for the provision of National Express Stansted Coach Services is sufficient to meet the passenger demand for such services;

Fares and frequency to be maintained where competitor ceases to provide coach service

9. If:
- (a) a Coach Operator provides a coach service on the London-Stansted Route;
 - (b) after the Coach Operator:
 - (i) sets a fare for a journey on that route, National Express sets a fare for travel on a National Express Stansted Coach Service lower than the lowest equivalent fare set by the Coach Operator for the equivalent journey; or
 - (ii) sets the frequency of its coach service on the London-Stansted Route, National Express sets the frequency of National Express Stansted Coach Services at a level higher than the frequency set by that other Coach Operator and the level prescribed by paragraph 4 above;
 - (c) the Coach Operator ceases to provide its coach service within 3 years of National Express setting the fare referred to in sub-paragraph 9(b)(i) or, as the case may be, setting the frequency of National Express Stansted Coach Services referred to in sub-paragraph 9(b)(ii); and
 - (d) the condition set out in paragraph 10 below is not satisfied –

National Express shall comply with the Fare and Frequency Obligation in relation to National Express Stansted Coach Services.

10. The condition referred to in sub-paragraph 9(d) above is that National Express has satisfied the Director:

- (a) that National Express took the action under sub-paragraph 9(b) above as a result of a specific and clearly identified cause unrelated to the operation of the coach service by the Coach Operator; or
- (b) that the Coach Operator ceased to operate the coach service as a result of a specific and clearly identified cause unrelated to the action taken by National Express under sub-paragraph 9(b) above.

Coach services to be evenly spaced between competitors' services

- 11. Except with the prior written consent of the Director, National Express shall not provide a National Express Stansted Coach Service which at any point on the London-Stansted Route precedes a coach service of a Coach Operator at that point on the London-Stansted Route by an interval of less than 10 minutes.
- 12. Nothing in paragraph 11 above shall prevent National Express from providing:
 - (a) the first coach service on the London-Stansted Route on any day; or
 - (b) a National Express Stansted Coach Service which it provided on the date when the Coach Operator first provided a coach service on the London-Stansted Route.

Information

- 13. National Express shall give notice in writing to the Director no less than 3 months in advance if National Express Heathrow Coach Services are to cease.
- 14. National Express shall provide promptly to the Director such information that he may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with.

Publication of fare information

- 15. National Express shall procure that up-to-date details of fares charged for travel on National Express Stansted Coach Services and Heathrow Fares are published in each edition of the National Express Coach Guide and are available daily and readily accessible on its website.

Duration

- 16. National Express shall comply with the terms of these undertakings for as long as:
 - (a) National Express Stansted Coach Services continue to be provided; and

- (b) it or any of its subsidiaries is the Franchisee for the provision of passenger rail services between Liverpool Street Station, London and Stansted airport.

Subsidiaries

17. National Express shall procure that each of its subsidiaries complies with these undertakings as if they had given them.

Interpretation

18. In these undertakings:

'**Act**' means the Fair Trading Act 1973;

'**Coach Operator**' means an undertaking which:

- (a) does not form part of the same Group as National Express;
- (b) is not party to a contract with National Express or any of its subsidiaries relating to the provision of National Express Stansted Coach Services; and
- (c) provides coach services;

'**Control**' is to be construed in accordance with section 65 of the Act;

'**Director**' means the Director General of Fair Trading;

'**Excluded Fares**' means a fare which is negotiated on a business to business basis between:

- (a) National Express or any of its subsidiaries; and
- (b) airline or tour operators; or
- (c) BAA plc

for travel on National Express Heathrow Coach Services for the benefit of customers of such airline or tour operators or staff of BAA plc and which is not available other than to such persons;

'**Fare and Frequency Obligation**' means an obligation not for a period of 3 years from the date on which the Coach Operator ceases to provide a competing coach service on the London-Stansted Route:

- (a) to charge a fare for travel on a National Express Stansted Coach Service exceeding the sum of:

- (i) the lowest level at which National Express set a fare of that type after the Coach Operator began to provide a competing coach service on the London-Stansted Route, and
 - (ii) the amount which corresponds to any percentage increase in the Index since the last date on which the fare of that type was charged at that level; or
- (b) to reduce the frequency of National Express Stansted Coach Services below the highest frequency which National Express operated after the Coach Operator began to provide a competing coach service on the London-Stansted Route;

'**Franchisee**' is to be interpreted in accordance with section 23(3) of the Railways Act 1993;

'**Group**' means a group consisting of a body corporate, or a group of interconnected bodies corporate within the meaning of s.137(5) of the Act, and all other bodies corporate which it or any of them, have Control;

'**Heathrow Fare**' means the cheapest fare the passenger would be charged at that time on that day for taking an equivalent journey on a National Express Heathrow Coach Service and for the purpose of determining the cheapest fare, no account shall be taken of Excluded Fares;

'**Index**' means the general index of retail prices (for all items) published by the Office for National Statistics;

'**London-Stansted Route**' means any reasonably direct route in either direction between central London and Stansted airport;

'**National Express Coach Guide**' means a guide to coach services provided directly by National Express or any of its subsidiaries or by a third party pursuant to a contract with National Express or any of its subsidiaries in the United Kingdom which is published at least once every six months;

'**National Express Heathrow Coach Services**' means scheduled coach services provided directly by National Express or any of its subsidiaries or by a third party pursuant to a contract with National Express or any of its subsidiaries in either direction between central London and Heathrow airport;

'**National Express Stansted Coach Services**' means scheduled coach services provided directly by National Express or any of its subsidiaries or by a third party pursuant to a contract with National Express or any of its subsidiaries in either direction between central London and Stansted airport;

'Reference Week' means the week ending 18 September 2000;

'Seat Capacity' means the number of passenger seats in a coach multiplied by the number of return journeys made by that coach within the relevant period of time. For the purpose of calculating the total Seat Capacity of coaches used for the provision of National Express Stansted Coach Services during the Reference Week, the number of passenger seats in each such coach shall be taken to be 47;

'subsidiary' has the same meaning as in section 736 of the Companies Act 1985 (as amended);

'Terms and Conditions' includes but is not restricted to:

- (a) the classes of person to which the fare is available;
- (b) the times of year, day of the week and times of day at which the fare is available; and
- (c) terms and conditions as to:
 - (i) advance payment or booking;
 - (ii) the circumstances in which the passenger is able to change a reservation or travel on a different service from that originally envisaged or obtain a refund;
 - (iii) the date of a return journey;
 - (iv) the time before travel by which the fare has to be paid or a reservation made; and
 - (v) any other restriction to which the availability of the fare is subject; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

SIGNED FOR AND ON BEHALF OF NATIONAL EXPRESS GROUP PLC

..... Signature

..... Name

..... Title

..... Date