COMPETITION COMMISSION

ACQUISITION BY ARRIVA PLC OF SOVEREIGN BUS & COACH COMPANY LTD

Provisional findings report

Published: December 2004

The Competition Commission has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

Provisional findings report

The proposed acquisition by Arriva plc of the business of Sovereign Bus & Coach Company Ltd

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Glossary

Provisional findings

1. The reference

1.1 On 3 August 2004 the Office of Fair Trading (OFT) referred the proposed acquisition by Arriva plc of the business of Hertfordshire bus operator Sovereign Bus & Coach Company Ltd (Sovereign) to the Competition Commission (CC) for investigation and report. The reference was made under section 33(1) of the Enterprise Act 2002 (the Act). Our terms of reference are set out in Appendix A. These require us to consider whether arrangements are in progress or contemplation which would result in the creation of a merger situation which may be expected to result in a substantial lessening of competition within any market or markets in the UK. We are required to publish our final report by 17 January 2005.

1.2 This document, together with the appendices, constitutes our provisional findings report, which we are required to notify to the main parties under the CC's *Rules of Procedure*. Further information, including non-sensitive versions of main party and third party written submissions and non-sensitive summaries of third party key arguments and views, can be found on our web site.[1] We cross-refer to these documents as appropriate.

2. The companies

Arriva

2.1 Arriva plc is an international public transport company listed on the London Stock Exchange. It provides bus and train operations in the UK, Denmark and the Netherlands, bus operations in Italy, Portugal, Spain and Sweden and train operations in Germany; it also operates a vehicle rental business and a bus and coach distribution business in the UK. Net assets as at 31 December 2003 were

[1] www.competition-commission.org.uk.

£396 million and operating profit[2] in the year to 31 December 2003 was £115 million on turnover of £1.6 billion.[3] In the same year, just under half of the Arriva plc group's operating profit and 40 per cent of its turnover were accounted for by the group's UK bus operations.

2.2 Arriva Passenger Services Limited (APS), based in Leicester, is a wholly-owned subsidiary of Arriva plc and the holding company for the group's UK bus subsidiaries. The latter provide local bus services in London, the North-East, the North-West, the South-East, Yorkshire, the Midlands, Scotland and Wales. APS has some 6,000 vehicles and 17,000 employees and is the third largest bus operator in Great Britain, with an overall share of supply of just under 15 per cent, behind FirstGroup plc (FirstGroup) (22 per cent) and Stagecoach Group plc (Stagecoach) (16 per cent).[4]

2.3 Arriva The Shires Limited (ATS), a direct subsidiary of APS, and Arriva East Herts & Essex Limited (AEHE), a direct subsidiary of ATS, operate commercial and tendered local bus services in Hertfordshire.[5] These companies are operated together under the trading name 'Arriva The Shires & Essex' and are reported on jointly for management information purposes. We shall refer to AEHE and ATS collectively as 'Arriva'. In the year to 31 December 2003, Arriva generated operating profits of £[✂] million on revenues of £[✂] million; return on capital employed[6] was [✂] per cent.

2.4 Arriva is headquartered in Luton, having evolved from the purchase by British Bus Group Limited (British Bus) in 1994 of Luton & District Transport Ltd (LDT), renamed LDT Ltd—trading as 'The Shires'—in 1995. LDT had previously acquired London

[2]Calculated as profit from continuing operations and excluding goodwill amortization and exceptional items.
[3]Source: *Arriva plc Annual Report and Accounts 2003*.
[4]Source: *Bus Industry Monitor 2003*.
[5]Arriva told us that some tendered services (see paragraph 5.7) operated by Arriva North London Limited penetrate, to a very limited extent, into Hertfordshire; these services are excluded from the local bus data for Hertfordshire in this report.
[6]Calculated as EBIT divided by total assets (excluding intangibles) less current liabilities.

Country Bus Services (North West) Ltd, which operated in Hemel Hempstead and Watford. British Bus was acquired by Cowie Group plc in 1996 which was renamed Arriva plc in 1997; LDT Ltd was renamed Arriva the Shires Ltd in 1998. In 1998, Arriva plc acquired Lutonian Buses Ltd (Lutonian) but was required to divest it following an inquiry by the MMC;[7] Lutonian was sold to a consortium in 2000 and acquired by Centrebus Ltd (Centrebus) in 2004. There have been no significant acquisitions or disposals of bus operations by Arriva since 2000.

2.5 Arriva employs 1,567 staff and operates 617 buses. Its operations are organised into nine separate depot profit centres. Four of these depot profit centres are based on Hertfordshire sites at Hitchin/Stevenage in north Hertfordshire, Watford and Hemel Hempstead in south-west Hertfordshire and Ware in east Hertfordshire. Together these account for [✄] staff and a fleet of [✄] buses. Arriva told us that its Stevenage depot was held on a lease which was due to expire at the end of 2007 and which it understood would not be renewed by the landlord. Arriva has the right to terminate this lease early, in December 2005, and stated that it proposed to exercise this right if the merger went ahead. We were told that the Hemel Hempstead depot also was held on a lease, due to expire in 2015, whilst the depots at Hitchin, Ware and Watford were freehold. Further details on Arriva including the profitability and key performance indicators of the services operated from these depots are summarized in Appendix B.

[7] *ARRIVA plc and Lutonian Buses Ltd: a report on the merger situation*, The Stationery Office, Cm 4074, November 1998.

Sovereign

2.6 Sovereign is a wholly-owned subsidiary of Blazefield Holdings Limited (Blazefield), a privately-owned company based in Harrogate which commenced trading in 1991 and operates bus services mainly in Yorkshire and Lancashire from depots in Harrogate, Keighley, Malton, Burnley and Blackburn. Blazefield's net assets at 31 December 2003 were £9.8 million and in the year to 31 December 2003, Blazefield generated profits before taxation of £1.5 million on turnover of £38.7 million.[8]

2.7 Sovereign has its origins in the 1986 pre-privatization break-up by the National Bus Company of London Country Buses into four separate geographically-based companies. One of these, London Country Bus Services (North East) Ltd, operating in Hertfordshire and south-west Essex, was purchased in 1988 by AJS Group Limited (AJS) and in 1989 further split into Sovereign (with operating bases in Stevenage, Hatfield and St Albans) and another new company (operating in east Hertfordshire and south-west Essex). Sovereign sold the majority of its Stevenage area services to LDT in 1990. In 1991, the current directors of Blazefield, through a management buy-out from AJS, acquired 75 per cent of the share capital of Sovereign and the other bus operating subsidiaries of AJS, which had operations based in Yorkshire, Cambridgeshire and London. In 1996, Blazefield transferred across to Sovereign the business and operations of Welwyn and Hatfield Line Bus Co Limited, and Sovereign exchanged with Arriva five Sovereign vehicles and two routes in the Stevenage area in return for Arriva's 797 Stevenage–London coach service (and a small cash consideration). Blazefield purchased the remaining 25 per cent of the share capital of the AJS bus operating subsidiaries in 1997.

2.8 Sovereign operates commercial and tendered local bus services within Hertfordshire (primarily central Hertfordshire) from leased depots in Stevenage and Hatfield. The

[8]Source: *Blazefield Annual Report and Accounts 2003*.

lease for the Stevenage depot, which includes engineering facilities, is owned by AJS and is due to expire in 2022 whilst the (informal) lease for that part of the Hatfield depot used by Sovereign (for parking, engineering and maintenance) is subject to three months' notice to/from Universitybus Limited (Universitybus), which in turn leases it from the property arm of the University of Hertfordshire (the University). Of Sovereign's fleet of 52 buses, 35 are based at the Stevenage depot and 17 at the Hatfield depot; in all, Sovereign has 131 employees.

2.9 In four of the last five years (the exception being the year to 31 October 2001), Sovereign's turnover has been insufficient to cover its operating costs. [✂] the St Albans business, which was acquired by Centrebus Limited (Centrebus) in January 2004. Sovereign's earnings before interest, tax, depreciation and amortization (EBITDA) for 2003 were £[✂] on turnover of £[✂]. Further details of Sovereign's financial performance are provided in Appendix C.

3. The proposed merger and relevant merger situation

Events leading up to the proposed merger

3.1 In 2000, Blazefield was approached by Stagecoach with a view to purchasing Stagecoach's east Lancashire operations. Before proceeding with the purchase, the Blazefield board discussed future strategy and decided that its long-term focus would be on its businesses in Yorkshire and Lancashire, with the consequent disposal of the group's southern operations. As well as the Stevenage and Hatfield depots, the southern operations included depots in London, Huntingdon and St Albans. The London business, Sovereign Buses (London) Ltd, was sold in 2002 to a UK subsidiary of a French transport group; the Huntingdon business (which had been run as a separate trading division since its purchase in 1998) was purchased by a Lincolnshire-based operator a year later; and, in January 2004, the St Albans business of Sovereign was sold to Centrebus. We were told that Blazefield had regarded the St Albans unit as under-performing and had therefore considered that, if a buyer could not be found for the remainder of the Sovereign business, it would at least be able to earn a level of profit sufficient to justify its remaining within the Blazefield group.

3.2 During the course of the sale of the St Albans business to Centrebus, in July 2003, Arriva approached Blazefield regarding a possible purchase of Sovereign, having seen information regarding Blazefield's disposals of its southern operations in the trade press and realized that the business might be up for sale. Blazefield advised Arriva that there was a current expression of interest in the St Albans business and negotiations subsequently continued with Arriva for the remainder of the Sovereign business. Blazefield told us that it was not approached with a view to a possible purchase of Sovereign by any other party, nor did it approach any other party during the negotiations with Arriva. On 23 June 2004, ATS announced the conditional agreement with Blazefield and Sovereign that is the subject of our inquiry.

Outline of merger situation

3.3 Under the business sale agreement of 23 June 2004, ATS is to acquire from Sovereign and Blazefield the business comprising Sovereign's commercial and tendered bus services operating out of the Stevenage and Hatfield depots. The assets to be acquired include 46 vehicles;[9] Sovereign's interest in contracts with (or bids submitted to but not yet determined by) local authorities; associated plant and equipment, fixtures and fittings, stock, commercial information, two domain names and goodwill. Total consideration was less than £5 million. Blazefield would grant a sublease of the Stevenage depot to Arriva. In addition, Sovereign and Blazefield would use their reasonable endeavours to assist Arriva in negotiating a lease or

[9]In order to continue to operate the current Sovereign routes, Arriva proposes to source five vehicles from within its existing fleet and to rent four coaches.

licence to that part of the Hatfield depot occupied by Sovereign. Completion of the transaction is conditional on any regulatory outcome being satisfactory to Arriva and on written consent from the landlord of the Stevenage depot authorizing Blazefield to sublet it to Arriva. The agreement acknowledges that Sovereign's employees would be transferred to Arriva under the TUPE regulations.[10]

The rationale for the merger

3.4 Blazefield stated that since 1994 it had sought to operate Sovereign's service network to high quality standards, underpinned by a modern fleet, staff training and attention to detail. However, Sovereign had been unable to earn adequate profits to support this strategy. Sovereign told us that operating bus services in the south of England was much harder than in the north of England, as it was harder to recruit and retain drivers and skilled engineers (leading to increased pressure on wages and bonuses); there were greater constraints on depot capacity and location (for example, near residential areas); and, compared with annual passenger growth of 3 to 6 per cent achieved by Blazefield's subsidiaries in Yorkshire and Lancashire, growth in the South outside London lay between stagnant and 1 per cent. Blazefield explained that, as a result, it could no longer justify its continued investment in the Sovereign fleet and the age of the fleet would therefore increase.

3.5 Arriva stated that its objective through the proposed acquisition was to increase profitability and its service offering to customers through the more efficient use of its existing and acquired assets and greater customer benefits, such as wider availability of return tickets, in order to grow passenger volumes, thereby lowering unit costs. Arriva stated that this intended increase in profitability was in no way contingent upon any increase in fares. It stated that the merger would allow it rapidly to expand its network in and around Stevenage and Hatfield. The lease on its current Stevenage

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[10]The Transfer of Undertakings (Protection of Employment) Regulations 1981.

depot was due to expire in December 2007 and the landlord had indicated a wish to redevelop the premises. Nor did Arriva have any depot facilities in Hatfield. Through the proposed sublease of Sovereign's Stevenage depot, Arriva would continue to have a depot in Stevenage from which it could provide services after 2007. Early termination in December 2005 of the lease on Arriva's Stevenage depot (see paragraph 2.5) would allow Arriva to achieve earlier economies of scale, in which case Arriva would also aim to relocate some of the Sovereign services and operate them from its other Hertfordshire depots. Arriva subsequently told us that it was aiming to achieve savings from the merger in excess of [✂] a year.

3.6 We discussed with Arriva a statement made in a presentation to the Chief Executive of Arriva plc regarding the proposed merger. In this it was stated that 'Whilst the proposal can be justified on its own merits, it can also be viewed as a defensive move and a statement of intent to competitors'. Arriva explained that 'defensive move' referred to the fact that Arriva would rather buy Sovereign than let someone else buy it. In this regard, we noted that an Arriva appraisal of the Sovereign acquisition dated 19 January 2004 mentioned 'some risk to Arriva's Stevenage operations should Centrebus/Peddle[11] look to further expand into other parts of Hertfordshire by acquiring the remaining Sovereign operations'; a possible management buyout, encouraged by Blazefield, should Arriva choose not to proceed with the acquisition was also suggested. As to 'statement of intent', Arriva said that the acquisition would signal to other bus operators that Arriva was 'back in the market to buy suitable targets', following a period of many years in which for various reasons it had not been acquisitive.

[11]Arriva told us that Mr Julian Peddle had been involved in the bus industry for about 20 years and had been an investor in, vendor of and managing director of a number of privately-owned bus companies; Arriva understood that he was also a shareholder in and director of Centrebus.

Jurisdiction

3.7 Under our terms of reference (see Appendix A), we are required to investigate and report on whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation (within the meaning of the Act). Under the Act, we must consider, first, whether completion of the business sale agreement of 23 June 2004 outlined in paragraph 3.3 would result in two or more enterprises ceasing to be distinct (within the meaning of the Act) and, secondly, whether either the turnover test or the share of supply test would be satisfied. The turnover test requires the value of the turnover of the enterprise being taken over to exceed £70 million and the share of supply test requires the arrangements in progress or in contemplation to create or enhance a share of supply of more than 25 per cent of goods or services of any description in the UK, or a substantial part of the UK.

3.8 As regards the first question, we find that Arriva's acquisition of Sovereign's bus operations in accordance with the business sale agreement of 23 June 2004 will result in two or more enterprises ceasing to be distinct.

3.9 As regards the second question, APS's overall share of supply of local bus services in Great Britain is just under 15 per cent (see paragraph 2.2). It follows that Arriva accounted for less than 25 per cent of local bus services in the UK as a whole before the merger, and that it would continue to do so if the merger took place. We have therefore considered whether the share of supply test is satisfied in respect of a substantial part of the UK.

3.10 As set out in our terms of reference, the OFT believed the share of supply test was met with respect to the supply of bus services in Hertfordshire (the reference area). In the House of Lords judgment in *R v MMC and another ex parte South Yorkshire*

Ltd,[12] it was held that for a given area to be a substantial part of the UK it must be 'of such size, character and importance as to make it worth consideration for the purposes of the Act'. The case was concerned with the share of the supply test under the Fair Trading Act 1973, but in our opinion the same principles apply to the share of supply test under the Enterprise Act 2002.

3.11 The reference area has a population of some 1.034 million,[13] 1.7 per cent of the total population of the UK, and covers 0.7 per cent of the UK land area (1,639 sq km). The CC and the MMC have found that a locality constituted a substantial part of the UK in a number of cases where the population or the land area were no bigger than in the case of Hertfordshire.[14] Further, Hertfordshire has a number of important towns, including Hatfield, Hemel Hempstead, Stevenage and Welwyn Garden City. The county is of economic and social significance, containing industries of national importance, such as pharmaceuticals, and major research, educational and leisure facilities.

3.12 Having regard to the above factors, we consider that the reference area is of such size, character and importance as to make it worth consideration for the purposes of the Act and hence 'a substantial part of the UK' for those purposes.

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[12][1993] 1 WLR, p23.
[13]Census 2001, Office for National Statistics. This includes 0.519 million aged between16 and 74 and in full-time employment.
[14]For example, the reference areas in the following reports:
(a) in *Archant Limited and the London newspapers of Independent News and Media Limited*, The Stationery Office, October 2004, an area extending into Government Office Regions constituting 700 sq km (44.6 per cent) of Inner and Outer London and population equivalent to 5.2 per cent of the overall UK population over the age of 15;
(b) in *Stagecoach Holdings plc and Chesterfield Transport (1989) Limited*, Cm 3086, HMSO, January 1996, an area equivalent to 1.1 per cent of the UK and population equivalent to 1.1 per cent;
(c) in *Stagecoach (Holdings) Ltd and Portsmouth Citybus Ltd*, Cm 1130, HMSO, July 1990, an area of 0.9 per cent of the UK and population of 2.0 per cent of the UK;
(d) in *Western Travel Ltd and G&G Coaches (Leamington) Ltd*, Cm 1226, HMSO, October 1990, an area of 0.9 per cent of the UK and 1.7 per cent of the population;
(e) in *British Bus Plc and Arrowline (Travel) Ltd*, Cm 3183, HMSO, March 1996, an area of 0.7 per cent of the UK and 1.2 per cent of the population; and
(f) in *Stagecoach Holdings plc and Ayrshire Bus Owners (A1 Service) Limited*, Cm 3032, HMSO, November 1995, 1.8 per cent of the UK area and 1.4 per cent of the population.

3.13 According to Hertfordshire County Council (HCC), Arriva supplies some 51 per cent of total scheduled local bus miles on commercial and tendered services in Hertfordshire (see Appendix H, Table 5) and some 55 per cent of registered commercial miles (see Figure 3). Sovereign's corresponding shares are approximately 12 per cent and some 15 per cent, respectively. Hence, by either measure, Arriva already accounts for over 25 per cent of the supply of bus services in the reference area and as a result of the merger its share of supply in that area will be enhanced.

3.14 In our view, therefore, the share of supply test is satisfied; the parties did not contest this. We are therefore not required to consider the turnover test.

3.15 For the reasons set out in paragraphs 3.8 and 3.14, we conclude that arrangements are in progress which, if carried into effect, will result in the creation of a relevant merger situation.

4. Market definition

4.1 We begin this section by setting out the framework for defining markets including Arriva's criticism of this approach and our response to these criticisms. Next we discuss the demand of two broad types of customers—fare-paying passengers and local authorities; and then consider supply-side issues. Sensitivity to changes in fares and in other factors are discussed next. Finally we look at the characteristics of bus passengers and car users, and the availability of the car for bus passengers, before concluding with our market definition.

Framework

4.2 In defining markets, the CC adopts the concept of the SSNIP test whenever it is feasible to do so.[15] In this inquiry, this test asks whether it would be profitable for a hypothetical monopoly bus service supplier to introduce a SSNIP (normally 5 per cent). This will depend in part on the extent to which customers would respond (demand-side substitution) and other firms would respond (supply-side substitution) to such an increase and whether this would result in an increase or a decrease in the revenue of the supplier.[16] It also depends on whether the consequent reduction in output would also reduce costs: if so, even if revenue decreased, a fare increase could nonetheless be profitable. If such a fare increase was profitable and could be sustained, the product or service supplied by the hypothetical bus service supplier could be regarded as being monopolizable, and would therefore be considered a distinct market.

4.3 Arriva submitted that it was impossible to define markets without some understanding of the nature of competition in the bus segment of the wider transport market, which included the private car, and of the factors which customers considered in making their transport decisions. It said that the nature of competition in the bus segment, which aimed to retain passengers on buses and to attract people from their cars, demonstrated that whilst fares were not irrelevant they were far from being the most important consideration in any customer's choice of transport mode. Arriva stated that its surveys over the years showed that both for users and non-users of buses, punctuality, frequency, convenience of stops, reach of the service, knowledge of the location of bus stops, and of the availability of timetable and route in advance of any journey were far more important than fares. For existing bus users there was no customer loyalty—subject to a minimum standard, any bus going the right way would

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[15]Small but significant and non-transitory increase in price. See *Merger References: Competition Commission Guidelines (CC2)*, Part 2.

[16]If elasticity is greater in absolute value than –1, the percentage reduction in usage would be greater than the percentage increase in prices and revenue would fall.

be acceptable. In order to attract people away from their cars, which would lead to substantial increases in bus usage,[17] Arriva nationally had invested heavily in new buses and in improving service levels. Arriva also said that using a fare rise of 5 per cent in the SSNIP test in this case was too small as it translated into a small absolute increase in penny terms that was incapable of signalling anything important to any customer, even if aggregated over a working year.[18] All of this, in Arriva's view, meant that it was inappropriate in this case to reach a decision on market definition based on the SSNIP test. Arriva's views on market definition are also set out in Appendix D.

4.4 With regard to the importance of fares, we accept that fares are only one of the factors that customers take into account when deciding which mode to use. Other factors, as noted by Arriva, include in-vehicle time; any interchange penalty, which reflects the need to change services or modes to complete a journey; waiting time, which is partly a function of frequency and reliability; and the time spent travelling between the passengers' origin and destination. These factors together with fares are normally referred to as the generalized cost of a journey.[19] In response to Arriva's point that its surveys showed other factors to be more important than fares, we note that in the survey Arriva provided to us customers were not, in fact, asked to rank fares (see Appendix D). Furthermore, we have seen examples of fare competition indicating that fares can influence customers' travel choices to some degree (see paragraph 5.36 and Appendix H, paragraphs 50 and 78).

4.5 Accepting that fares are not the only factor taken into account by customers does not in our view invalidate the SSNIP test. In merger cases, the SSNIP test starts, on the

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[17]Arriva referred to a model showing that a 1 per cent switch from car to bus would result in an increase in bus usage of 13.8 per cent at the national level—see footnote to paragraph 4.6. Arriva said that in Hertfordshire, owing to higher car ownership and use, the favourable impact on local bus operators would be much greater, and these new customers were most likely to pay cash, making the impact on profits even more marked.
[18]Arriva said that as the average single fare was £1.10, a 5 per cent increase would be 5.5p, or only an extra £26 over a year.
[19]Sometimes other aspects of the journey are included such as convenience, reliability or 'image' of the mode of transport.

whole, by considering the existing demand for a product, which is based on both price and non-price factors. The test then holds these non-price factors constant and asks what would happen to demand if prices were raised by a small amount, normally 5 per cent.[20] All available evidence suggests that there would be very little demand response in response to changes in fares in the short term (see paragraphs 4.15 to 4.17). We look further at the effect of changes in price and non-price factors in paragraphs 4.20 to 4.22.

4.6 In coming to our view of market definition we have not just relied on the SSNIP test. We have taken into account the views of the parties and third parties (see Appendix D); and a report carried out on behalf of the Commission for Integrated Transport (CfIT report) and published on our web site.[21]

Substitutability

4.7 In considering substitutability we are concerned with two sets of customers and their associated demand:

(a) passengers who pay for journeys;[22] and

(b) local authorities such as HCC which pay for tendered services.

Passenger demand

4.8 Fare-paying passengers can buy two types of tickets: the first is a ticket that is related to a particular route or part of a route; and the second is a ticket that is related to a collection of interrelated—interconnected, overlapping or adjacent—routes in a particular area, ie a network. Bus passengers in Hertfordshire use far more route-

[20] Arriva believes that buses and cars are in the same market together with all other modes of transport. This means that cars exert a competitive constraint on the behaviour of bus operators. As a result, small changes in the competitive offerings of a bus operator should lead to a demand response. This being the case, we would expect to see a 5 per cent increase in fares lead to a reduction in passenger usage which made such a fare rise unprofitable.

[21] *Competition in the UK Passenger Transport Industry*, A Final Report to CfIT, August 2004, The TAS Partnership Limited, www.competition-commission.org.uk/inquiries/current...........; see also first footnote to paragraph 4.3.

[22] This category includes concessionary passengers who pay reduced fares. Most concessionary passengers in Hertfordshire pay half fare but in some cases they travel free.

specific tickets than network tickets. In the case of Arriva, network tickets account for [✂] per cent of its on-bus revenue[23] whilst for Centrebus and Universitybus the corresponding proportion is around 10 per cent.

4.9 Based on the elasticity evidence referred to below, passengers who buy flow- or route-specific tickets are unlikely to change their route in response to a fare rise unless there are other routes that pass close to their origin and destination. This demand-side evidence suggests that for these passengers there is a narrow market definition of a point-to-point journey.

4.10 The same rationale applies for passengers who buy network tickets. They will not use other networks in response to a small fare rise on one network unless these other networks include their origin and destination and the same set of flows or routes they want to use. This suggests that for these passengers the relevant market is a network. The town of Stevenage and the areas around it is an example of a network. For fare-paying passengers in Hertfordshire, network markets are unlikely to be wider than a town and its surrounding areas as there is little evidence of inter-urban bus travel. Arriva commented that Sovereign's inter-urban CentraLine service, running between Hitchin and Hemel Hempstead, was really operated as no more than a series of interconnected feeder services from small communities into the nearest town.

The role of local authorities for tendered services

4.11 The demand for bus services is also affected by decisions and actions taken by local authorities, and in this sense local authorities can be regarded as customers. Local authorities may seek tenders for non-commercial bus services on a route-by-route

[23]This figure includes sales in Hertfordshire of Arriva's zonal tickets, an Arriva UK pass and Intalink Explorer tickets for the period from 1 January 2004 to 27 August 2004. For other estimates of the proportion of sales of Arriva's network tickets, which include [✂] per cent in terms of on-bus revenue for overlap flows and [✂] per cent in terms of the number of tickets sold by Arriva in Hertfordshire, see Appendix H.

basis and/or, occasionally, for a collection of routes or services. Unlike commercial services, competition for tendered services takes place in the bidding for the contracts and not 'on-the-road', ie it is competition *for* the market and not competition *in* the market. Increases in the bid prices for services operating at a route level (for example, particular tendered services) and services operated at a network level (for example, a collection of tendered services) are unlikely to lead to the local authorities inviting bids for other routes or networks unless these alternatives include the same origins and destinations. These demand-side reasons suggest that the relevant markets for local authorities are also based on or around routes and networks. However, given finite budgets, local authorities have to make trade-offs between support for services in different parts of their areas, implying that prospective markets for local authorities may be wider than specific towns and their surrounding areas and may include the county of Hertfordshire. Also these demand factors indicate that tendered services and commercial services are not in the same market.

Supply-side substitution

4.12 Supply-side considerations—including whether already-established suppliers could move from one route into another within a short period of time (usually a year) with little additional investment required—suggest that the relevant markets may be wider than individual flows or routes.

4.13 Bus companies organize themselves around bus depots and fleets and the wider networks they operate; within these networks, existing operators can relatively easily switch buses between routes. The existence of such a network can enable an operator to alter the allocation of resources among its individual routes, and also to offer network tickets to passengers. These factors may point toward a network market around particular depots, for example Stevenage. Entry lags in the bus industry are sufficiently short to make it reasonable to consider at least some entry as a possible supply-side response to the actions of a hypothetical monopolist. In practice, however, entry at a route level by a new operator may encounter a number of obstacles (see Appendix H). However, although supply-side considerations may point towards a network market, we still think it important to analyse some routes or parts of them, particularly overlapping parts of routes, because bus companies can charge different fares on their routes.

4.14 Supply-side considerations also suggest that commercial services and tendered services are in the same market as commercial bus operators are able to participate in the next tender round in response to an increase in the bid prices for tendered services. However, because of the different pricing mechanism for tendered services (bidding for contracts) and commercial services (posted prices)—competition for the market as opposed to competition within the market—we think it important to analyse tendered services separately from commercial services.

Sensitivity to changes in fares

4.15 There is extensive evidence available on the fare elasticity of demand for different modes of transport (see Appendix D). This evidence was summarized by OXERA in a recent CC inquiry[24] which drew on work by the Institute of Transport Studies at Leeds University. In summary, the evidence from work carried out throughout the UK shows that short-term bus usage elasticities are generally estimated to be in the range –0.35 to –0.5, with long-run elasticities approaching –1,[25] satisfying the SSNIP test in both cases.[26] Arriva noted that the OXERA report was prepared for an inquiry concerned with a more urban area than Hertfordshire, and also noted that some of

[24] *FirstGroup plc and the Scottish Passenger Rail franchise: a report on the proposed acquisition by FirtsGroup plc of the Scottish Passenger Rail franchise currently operated by ScotRail Railways Limited,* June 2004; and see Appendix D.
[25] For the UK as a whole, price elasticities are higher for buses in off-peak as opposed to peak periods, and for leisure travel as opposed to commuting.
[26] The SSNIP test is satisfied as the price rise is profitable. Even on the basis of long-run elasticities approaching –1, although the increase in fares may result in a proportionate reduction in volume, and little or no change in revenue, it would still be profitable to increase fares if the reduction in demand led to cost savings, which we believe to be the case (see paragraph 4.17).

the individual studies reviewed by OXERA reported higher elasticities. The evidence summarized by OXERA indicates a level of competition from other transport modes (together with the extent to which, if bus fares increased or services decreased, bus passengers would stop travelling altogether) which is insufficient to constrain bus fare increases or service level reductions. With regard to the car, this is supported by trends in fares of public transport differing significantly from trends in the costs of using a car. Over the past 20 years, for example, bus fares have increased in real terms by some 40 per cent, whereas the inflation-adjusted cost of using a private car has been broadly unchanged. Although there has been a shift in demand from public to private transport in this period, to a large extent this appears to us to reflect other factors (as shown in the low own-fare elasticities of bus), in particular the extent to which rising real incomes have increased car ownership and usage.

4.16 These elasticity estimates are broadly consistent with evidence provided by Arriva and Sovereign. APS stated that experience across the Arriva group (it does not monitor fare elasticity systematically) indicated that fare elasticity exceeded –1 (in absolute terms) for bus fare increases above the rate of inflation (measured by the retail prices index (RPI)) except in the short term, when it was approximately –0.5. The values put forward by Arriva (in absolute terms) are at the higher end of the generally accepted estimates for the short term and higher than the generally accepted estimates for the long term. Arriva had found that over the last few years the [✂] annual increases in fares had corresponded to an increase in revenue of about [✂] per cent. Similarly, Sovereign stated that it would not expect to see much passenger resistance to a 5 per cent annual fare increase. More precisely, it would expect demand to contract by a maximum of 3 per cent.

4.17 The elasticity estimates imply that bus passengers are unlikely to change their behaviour by much in response to a 5 per cent increase in fares, while there may be variable cost savings if demand decreases to some extent. This evidence clearly points to increases in fares of 5 per cent being profitable, implying a product market no wider than bus services. Arriva's view on short-term elasticities and Sovereign's view are consistent with this finding as they see elasticities as being less than –1 (in absolute terms). Arriva's view on the long-term elasticity could be seen as being inconsistent with this view as it sees the elasticity being greater than –1 (in absolute terms). However, as noted in paragraph 4.2, where the reduction in demand is greater than the increase in fares (elasticity greater than –1 in absolute terms), the SSNIP test is satisfied where cost reductions offset revenue reductions and the fare rise is profitable. This occurs in markets where a high proportion of firms' costs are variable, which applies to Arriva and Sovereign (see Appendix B, paragraph 16, and Appendix C, paragraph 30—Arriva, however, maintained that there was little scope to reduce costs without vehicle withdrawal).

4.18 In the CfIT report, however, it is argued that cars, in particular, should be viewed as the main competitors to buses, a view shared by a number of the bus operators that gave evidence to us including Arriva and Sovereign. CfIT's view is based on the idea that short-run elasticities are not the appropriate ones as they fail to take into account the long-run horizon of the bus companies. The report suggests that bus companies have been investing above the level of net profit earned since 1991 (though they invested below this level in 2002 and 2003), indicating a long-run perspective. The report also suggests that bus companies cannot avoid the threat posed by increasing car ownership and shrinking demand for public transport and the opportunity that derives from the fact that even attracting a small percentage of car users means a substantial increase in demand for bus services.

4.19 This view was not shared by HCC, which commented that, in Hertfordshire, although there might be reductions in demand associated with fare increases, these did not seem to be linked to people switching to cars, as a high proportion of people travelling on buses appeared to be a captive market. On CfIT's points, we have already noted that long-run demand elasticities for buses are consistent with a relevant market not wider than buses (see paragraphs 4.15 to 4.17).

Sensitivity to changes in fares and other factors

4.20 The CfIT report stresses the importance of conducting any analysis of inter-modal competition on the basis of the generalized cost because this is the variable customers take into account in their transport decisions. The example from the report reproduced in Appendix D calculates predicted shares of car, bus and rail based on a real-life case. Car has the lowest generalized cost and is therefore predicted to capture 76.6 per cent of total demand.

4.21 This base scenario is also compared with alternatives. In one of these the bus fares are reduced by 10 per cent and the frequency of the bus service doubled: these changes are much higher than those normally used by the CC in the SSNIP test. This increases the bus share to 14.8 per cent (an increase of 2.6 percentage points and an increase in bus usage of 21.3 per cent), with cars still accounting for 74.3 per cent. The CfIT report sets these changes in the context of the generalized cost and describes this scenario as providing at least a chance that the outcome would be sustainable.[27] The CfIT report does not analyse the mirror case, that is where fares are increased by 10 per cent and frequency halved. However, assuming the same demand response,[28] and given the high level of variable costs of Arriva and Sovereign (see paragraph 4.17), an increase in the generalized cost along these lines would in our view be profitable as lost revenue would be offset by a reduction in costs.

[27] In the sense that the operation of these services would be profitable.
[28] This assumption is likely to overestimate the proportion of customers that would switch away from the use of the bus: whilst all car users face a clear choice between car and bus, many bus users do not have this choice.

4.22 Based on the responses to changes in fares and other factors, we find that the relevant market does not include modes of transport other than bus services. This finding is supported by evidence on the different characteristics of bus users and car users and the lack of availability of cars for bus passengers. We look at each of these in turn.

Characteristics of bus users and car passengers

4.23 There may be significant differences in the characteristics of bus users and car passengers and their ability to use alternative modes of transport. The Hertfordshire County Travel Survey 2002 indicates that most bus users are either retired or below the age of 18 and that most are female, and travel on weekdays, often for travel connection and shopping. The typical bus user travels between 1 and 5 miles. By contrast, car drivers are more likely to be male and their passengers (if any) female. Cars are used by passengers more during the weekends, whereas there is no difference for car drivers nor any 'specific' trip purpose. Some two-thirds of car passengers travel between 1 and 3 miles (less than the average bus journey), again with no 'specific' travel destination. Areas with high bus usage tend to show comparatively lower car usage.

Availability of the car for bus passengers

4.24 The Arriva plc group's most recent national survey of bus passengers showed that, on routes operated by Arriva, 14 per cent of the passengers could have made their journey as a car driver instead of taking the bus. A further 31 per cent indicated that they could have made the journey as a car passenger. In Arriva's view, these findings imply that 45 per cent of bus passengers saw the car as a feasible substitute for their regular or normal bus journey. We disagree with this view. Arriva provided us with data from HCC that showed that most of those using a car for travelling to work did so as a driver and not as a passenger (59 per cent as a driver and 5 per cent as a passenger). This suggests that we should attach little importance to the 31 per cent who said they could have made the journey as a car passenger. We also have doubts about the significance of the 14 per cent. There is no reference to respondents' regular or normal bus journey in the question. The question asked whether passengers could have made this journey by car and not whether they would do so. The question did not test passengers' responsiveness to changes in fares or any other factors. In our view, 14 per cent is an overestimate of the proportion of bus users who see cars as being a substitute for buses.

4.25 Arriva pointed out that the proportion of bus users with no access to a car was falling each year. In addition, it noted that the proportion of those within the age range 60 to 69 who held a driving licence had increased from 35 per cent in 1975/76 to 81 per cent in 2002 (85 per cent male and 56 per cent female); for those aged over 70, the proportion had increased from 15 to 45 per cent (68 per cent male and 28 per cent female).[29]

Conclusions on market definition

4.26 In conclusion, for the purposes of our analysis in the present inquiry we have defined the relevant markets affected by the proposed merger to be the supply of bus services on point-to-point journeys and broader network markets in Hertfordshire. For fare-paying passengers, these network markets are no wider than the six towns linked by Sovereign's inter-urban service and their surrounding areas.[30] It is appropriate to segment these markets between commercial and tendered services. For tendered services, network markets include not only the six towns and surrounding areas but also the county of Hertfordshire as a whole.

[29] Source: National Travel Survey 2002, revised July 2004.
[30] The towns are Hitchin, Stevenage, Welwyn Garden City, Hatfield, St Albans and Hemel Hempstead—see paragraph 5.40.

5. Assessment of the competitive effects of the merger

5.1 In this section we assess the effects of the proposed merger on competition in the relevant markets identified in paragraph 4.26 having regard to the *CC Guidelines*.[31] We begin with a description of bus services and bus usage in Hertfordshire. We then look at some of the key features of the main competitors of Arriva and Sovereign and at their respective market shares. Following an evaluation of the counterfactual (what in our view would happen in the absence of the merger) which provides us with a benchmark against which to compare the competitive effects of the merger, we then analyse the effects that we would expect the proposed merger to have, first, on existing competition between Arriva and Sovereign, and, secondly, on potential competition, including the expected effects on competition for tendered services.

Provision of bus services in Hertfordshire

5.2 Both the parties and a number of third parties, including HCC, explained to us that Hertfordshire was not 'good bus territory'. Reasons given for this included the general prosperity and dispersed population of the county, and consequently a relatively high level of car ownership. In Hertfordshire, only 18 per cent of households do not have a car (or van) (see Appendix H, Table 1), and HCC's web site notes that Hertfordshire has the fourth highest car ownership in Great Britain.[32] In part, we were told, this degree of dependence on the car was a historical legacy, resulting from the chronically poor quality of bus services that had been provided by London Country Buses. Further, towns such as Welwyn Garden City and Stevenage were specifically designed around the car and it appears that congestion seriously affects only a few centres, in particular St Albans. Convenient parking at low or no charge is also said to be widely available and there is no apparent will on the part of local authorities to

[31] *Merger References: Competition Commission Guidelines, CC2,* June 2003.
[32] www.hertsdirect.org/roadtrans/hertstransdirect/background/. Arriva pointed out that the proportion of households having no car (or van) had decreased from 22 per cent in 1991; and also that households with two cars had increased as a proportion from 28 to 32 per cent and those with three or more cars from 7 to 8 per cent.

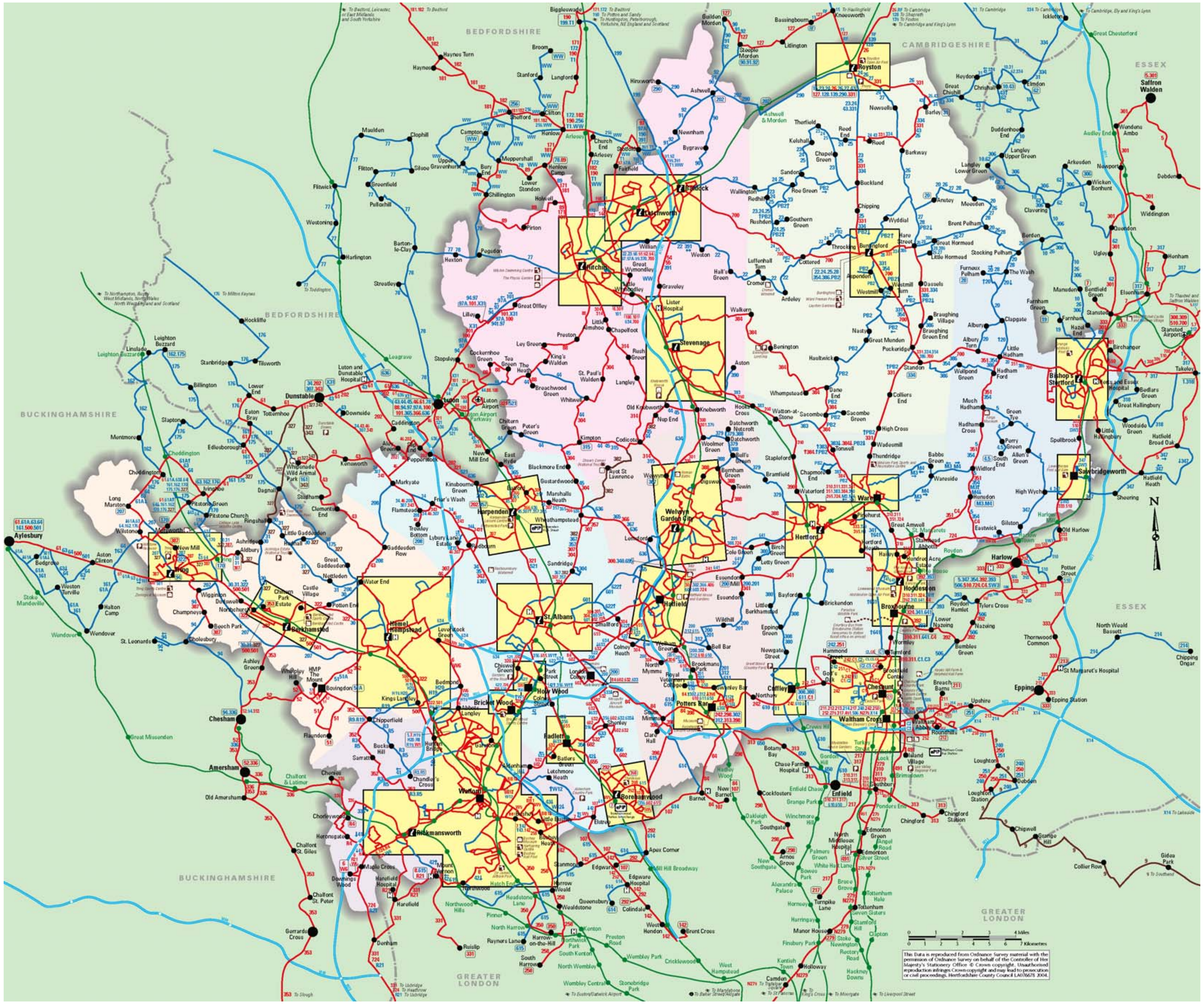
introduce bus priority measures, such as bus lanes, to encourage car users to travel by bus.

5.3 In addition, as already noted, Blazefield has found operating buses in the south of England generally much harder than in the north of England, due to shortages of both labour and depots and consequently higher costs for both, and a lack of passenger growth (see paragraph 3.4). We were also told by several Hertfordshire bus operators of the comparatively high costs of operating commercial bus services on the borders of London, where all services are tendered and drivers' pay levels high, pushing up wage costs and making driver recruitment more difficult in the Home Counties. Both Blazefield and Arriva told us that they were seeking to improve relatively poor profit margins (see Appendices B and C) and one major bus company operating outside Hertfordshire told us that it considered Hertfordshire unattractive in that it required the provision of provincial services but with high wage and other operational costs, resulting in profitability likely to be lower than in other areas where it could achieve better investment returns.

5.4 Figure 1 shows the Hertfordshire bus network.

FIGURE 1

Intalink Hertfordshire County public transport map

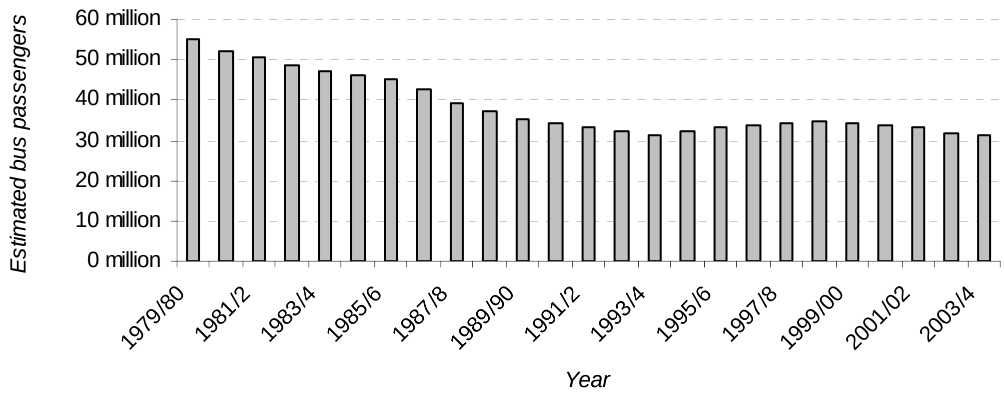


Bus usage in Hertfordshire

5.5 The number of bus passengers has declined in Hertfordshire, as elsewhere (excluding London) in Great Britain, since 1985, as can be seen from Figure 2. Among the additional reasons that HCC gives for this in its bus strategy document 2002/2003–2005/2006 are the fact that bus fares in Hertfordshire have risen by around twice the rate of inflation during the last 15 years or so. HCC also states that there has been less stability in the bus network, as commercial routes have been subject to operators' constant review and alteration.

FIGURE 2

Passenger bus journeys in Hertfordshire



Source: HCC.

5.6 Overall bus usage as a proportion of all travel in Hertfordshire (for example, journeys to work or for other purposes such as shopping, business or leisure travel) is relatively low, although it is closer to the national average (7.4 per cent for travel to work) in larger towns such as Stevenage (5.5 per cent).[33] As shown in Appendix H, Table 1, 18 per cent of households in Hertfordshire have no car (or van) and remain more dependent on bus travel, albeit to an extent somewhat below that in the country as a whole.

[33] Census 2001, Office for National Statistics.

Role of local authorities

5.7 Local authorities have powers to secure the provision of socially necessary public passenger transport services that are not provided commercially, and school bus services, generally following competitive tenders (tendered services[34]). In addition, local authorities have powers to make travel concessions schemes for the elderly, the disabled and children, and promote voluntary multi-operator and multi-modal ticketing schemes.[35] Local authorities also manage the bus network infrastructure (for example, bus stations, stops and shelters). County councils have a statutory duty to produce a bus strategy document setting out their policies for the promotion of safe, integrated, efficient and economic transport facilities in their areas. (Further details on the relevant regulatory background are provided in Appendix E.) HCC's expenditure on tendered services and travel concession schemes amounted to just over £12 million in 2002/03 out of a total HCC budget of some £30 million.

Tendered services

5.8 Besides specifying the routes to be operated, HCC contracts for tendered services lay down (among other things) the timetable, fares (which are set to match those charged on comparable commercial services), vehicle size, accessibility, maximum age and service standards. Contracts are offered for up to five years, with HCC phasing the tenders in order to provide operators with a regular opportunity for tendered work. In practice, the vast majority of contracts are 'cost-based' contracts, under which HCC pays a fixed amount to the operator and takes all the revenue

[34]In this report we use the term 'tendered services' to include all public bus services provided under contract to HCC (in certain, limited circumstances, HCC may enter into a contract with an individual operator without going through competitive tender—see Appendix E).
[35]County councils now have power to make compulsory schemes under the Transport Act 2000. See Appendix E. None has been made in Hertfordshire.

risk.[36] Most contracts include clauses allowing them to be terminated by HCC should another operator register the service commercially.

5.9 In 2002/03, HCC spent £5.2 million net (£9.4 million gross[37]) funding 75 per cent of tendered services and 100 per cent of school bus services, the balance of the funding coming from the district councils. HCC has budgeted £6.8 million net for tendered services in 2004/05, representing a 28 per cent increase year on year. HCC has estimated that 39 per cent by revenue of local bus services within Hertfordshire are currently provided on a tendered basis (7 per cent of these under contract to Transport for London); this compares with around 18 per cent of local bus services in Great Britain as a whole. HCC has further estimated that tendered services account for 45 per cent of the bus routes in Hertfordshire. Of the 30 operators listed by HCC as providing local bus routes in the county in 2002, a large proportion are involved solely in the provision of tendered bus services.

Concessionary fare schemes

5.10 Turning now to concessionary fares schemes, HCC has made a concessionary fare scheme for the elderly and disabled on behalf of the district councils (the Elderly & Disabled Scheme). Under the scheme, travel permits are available to residents for a small fee (currently around £30) from district councils in Hertfordshire allowing the elderly and disabled to travel at no more than half fare throughout the county and, in some cases, free.[38] HCC coordinates and administers this scheme on behalf of the district councils. Operators participating in the scheme are reimbursed (broadly) on the basis of their proportion of total eligible mileage (registered mileage[39]) operated in

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[36]Occasionally a 'subsidy-based' contract is awarded. With both types of contract, HCC pays a fixed amount to the operator, but, in the case of cost-based contracts, receipts from fares and the concessionary fares schemes are handed over by the operator to HCC, whereas, in the case of subsidy-based contracts, the operator retains these receipts (ie takes the revenue risk).
[37]£9.4 million gross cost, before on-board revenue collected under the terms of cost-based contracts (see paragraph 5.8).
[38]Under the Transport Act 2000 an eligible resident in a district council area is entitled to be issued free of charge with a permit for half-fare travel within that area only.
[39]Some services have to be registered but fall outside the concessionary fare schemes.

the area of each district council. Hence operators receive an amount per mile operated rather than per passenger carried.[40] The Elderly & Disabled Scheme cost the district councils £5.4 million in 2002/2003; current budgeted cost for 2004/05 is £4.95 million.[41]

5.11 HCC has an additional concessionary fare scheme for residents under 19 years of age and in full-time education. This scheme works similarly on a permit system, and offers half-fare travel. Operators are reimbursed on the basis of a fixed rate per mile registered for operation before 9.00 am on school days. The cost of the scheme to HCC in 2002/03—which is also the current budgeted cost—was £1.5 million. Additional information on HCC concessionary fares schemes is set out in Appendix E.

The Intalink Partnership Agreement

5.12 In 1999, HCC developed the Intalink Partnership Agreement (Intalink), a marketing collaboration agreement between bus and train operators, HCC and district councils that aims to improve the quality of available information on passenger transport services. Participating operators must satisfy a number of mandatory quality standards and commercial services operators pay an annual subscription (currently £125 per bus) towards the Intalink roadside information programme, Area Travel Guides and Hertfordshire's element of the national Traveline enquiry service. Through Intalink, HCC currently runs three multi-operator/multi-modal ticketing schemes, including the Explorer ticket, which originated as an Arriva ticket of the same name. Explorer is available on the bus and allows a day's unlimited travel for £7 for parties of four comprised of one or two adults and two or three children; a

[40] HCC (in association with operators and manufacturers) has piloted SmartCard technology for the scheme and anticipates that this will eventually offer a more accurate and reliable system of providing information on travel by permit holders which would be reflected in a change to the reimbursement method.
[41] The reduction is due to one of the district councils (Hertsmere) changing from a predominantly free scheme to a predominantly half-fare scheme from 2003/04.

single person fare of £3.50 is available for holders of permits under either of the two concessionary fare schemes and other children under 14.

Competitors of Arriva and Sovereign

5.13 As already noted, many of the 30 bus operators listed by HCC are involved solely in the provision of tendered services. Currently, the three main competitors of the parties operating commercial services are Centrebus, Transit Group and Universitybus, as described below.

5.14 *Centrebus* is a two-year-old privately-owned bus company, the current management of which consists mainly of former Arriva employees. It has recently expanded mainly by acquisition into Hertfordshire, where it acquired the St Albans business of Sovereign in January 2004 and operates some 30 vehicles, and into south Bedfordshire, where it acquired Lutonian in August 2004 and operates a further 35 vehicles. LQT Ltd, which also trades as In Motion, is another wholly-owned subsidiary. Centrebus has depots in St Albans and Luton and a small outstation in Dunstable. It also operates approximately 40 vehicles in Leicester and Leicestershire.

5.15 Transit Group is privately owned and operates commercial services in Hertfordshire from Buntingford, some 10 miles to the east of Stevenage. It has recently expanded its services in Stevenage, where it has rebranded itself as Stevenage Link and operates between 10 and 14 buses. It competes on several routes against Arriva, whose services it regards as poor and unreliable, and since the announcement of the proposed merger has introduced two new services on parts of Sovereign's SB1 route in Stevenage (also one service, subsequently deregistered, on the Hitchin–

Stevenage section of the CentraLine route).[42] Transit Group charges a flat fare of £1 single (£1.40 return) on all its services. It told us that it intended further expansion and had been looking for a suitable depot for some time. It has a total of 40 vehicles across all its operations.

5.16 *Universitybus* is a limited company wholly owned by the University, which set up Universitybus originally to attract more students to its Hatfield campus. Universitybus told us that its funding came from the University, which charged it an arm's length rate of interest. The current chairman of its board is also the University's finance director. Universitybus's revenue comes in part from the University, which subsidizes the fares paid by students, although services are open to all bus passengers and some are run outside term time; students represent between 18 and 22 per cent of Universitybus passengers on an annual basis. The University generally asks Universitybus how it can serve the areas that are important to it and Universitybus develops a proposal to suit those catchments. Universitybus told us that, before awarding contracts, the University did a limited degree of market testing, in that it might look at fares of other operators.

5.17 Universitybus operates some 50 buses from a recently-built depot in Hatfield which it leases on an arm's length basis from the property arm of the University and which has space for around 80 buses. The Universitybus service network covers areas such as Welwyn Garden City and St Albans as well as Hatfield, where it accounts for nearly half of all commercial services.

5.18 In addition to Centrebus, Transit Group and UniversityBus, *Metroline Limited* is a sizeable bus operator, with 29 vehicles based in Hertfordshire and a depot in Potters

[42] For details of Sovereign's routes, see Table 4. We were later told that Transit Group had also deregistered one of the two new services introduced on the SBI route, with effect from 10 January 2005.

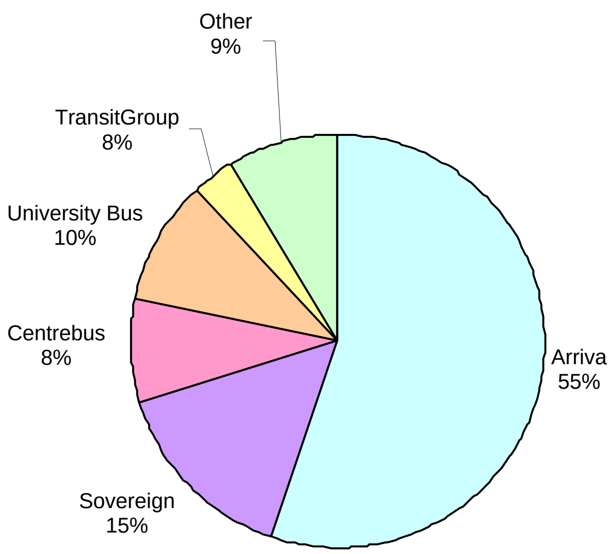
Bar; however, its principal business is the provision of bus services under contract to Transport for London and it currently runs only one commercial route and one that is part commercial, part tendered in Hertfordshire.

Shares of supply of commercial services

5.19 Figure 3 shows the current shares of supply of commercial services of Arriva and Sovereign and their main competitors in Hertfordshire, based on data provided by HCC. This data is based on registered mileage, as a proxy for passenger numbers or revenues, which are not available on a consistent basis across all operators.

FIGURE 3

Shares of commercial bus services in Hertfordshire, 2004



Source: HCC elderly and disabled concessionary fares mileages, period 1 2004/05 (28/3/2004 to 24/4/2004).

5.20 Arriva provided us with market shares for each of the six towns in which Sovereign currently operates commercial services,[43] as shown in Table 1.

[43]See Table 4 for details of Sovereign's commercial services.

TABLE 1 **Shares of commercial services by towns with overlaps, August 2004**

per cent

	Hemel Hempstead	*St Albans*	*Hatfield*	*Welwyn Garden City*	*Stevenage*	*Hitchin*
Commercial						
Arriva	81	19	10	13	53	78
Sovereign	15	18	37	68	18	5
Arriva + Sovereign	96	37	47	81	71	83
Transit Group					29	
Centrebus	4	39	6	9		
Metroline		8				
Universitybus		16	47	10		
Other	0	0	0	0	0	17

Source: Arriva.

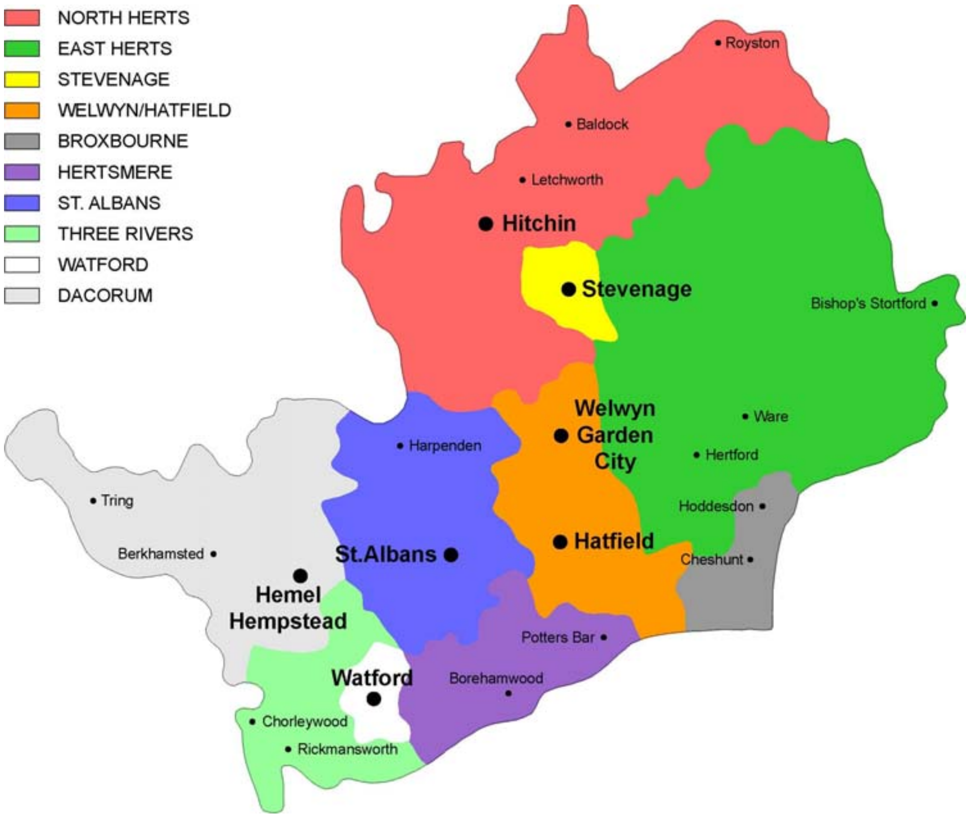
Note: Centrebus includes LQT.

5.21 As shown in Table 1, Arriva had, in August 2004, around an 80 per cent share of commercial services in Hemel Hempstead and Hitchin, and a 53 per cent share in Stevenage. Following the merger, Arriva would have a share in excess of 70 per cent in each of these three towns and in Welwyn Garden City, a 47 per cent share in Hatfield and a 37 per cent share in St Albans. Sovereign is mainly represented in Welwyn Garden City and Hatfield—where Arriva has its lowest shares at present—having sold its business in St Albans to Centrebus (now the largest operator there) in January 2004, whilst having shares between 15 and 20 per cent in all of the other towns except Hitchin. Other operators, in particular Universitybus, Centrebus and Transit Group, account for sizeable shares in Hatfield, St Albans and Stevenage, respectively. Arriva later pointed out that, since the compilation of Table 1, both Universitybus and Transit Group had introduced new Stevenage services.

5.22 HCC provided us with shares of the supply of commercial bus services by district. The districts are shown in Figure 4.

FIGURE 4

The districts of Hertfordshire



Source: HCC.

5.23 The shares of supply of commercial services by district, including HHIs,[44] are shown in Table 2. We calculated these shares using HCC elderly and disabled concessionary fares mileages data, which HCC compiles over four-weekly periods in order to avoid the problems associated with registration and de-registration of routes.[45]

[44]The Herfindal-Hirschman Index of concentration (HHI) is obtained by summing the squares of the shares of all firms in the market. The CC Guidelines on Merger References, in line with OFT Guidelines, regard any market with an HHI in excess of 1800 as 'highly concentrated' and state that, in a highly concentrated market, a merger which increases the HHI by more than 50 may give rise to potential competition concerns. The Guidelines also state that the CC will have regard to these thresholds as one factor in its wider assessment of competition.
[45]Given that routes can be frequently registered and de-registered, shares calculated at one point in time may be affected by routes that are only operated for a short period of time or not operated at all.

TABLE 2 **Commercial services shares, HHIs and increments by district, period 1, 2004/05 (28/3/2004 to 24/4/2004)**

	Shares									
Districts	*Arriva*	*Sovereign*	*A+S*	*Centrebus*	*Universitybus*	*Transit Group*	*Other*	*HHI pre-merger*	*HHI post merger*	*HHI increment*
Broxbourne	82	0	82	0	3	0	16	6,657	6,657	0
Dacorum	87	8	95	4	0	0	1	7,607	9,008	1,401
East Herts	71	0	71	0	3	0	26	5,044	5,044	0
Hertsmere	14	0	14	1	45	0	41	2,190	2,190	0
North Herts	73	9	82	5	0	3	10	5,432	6,709	1,277
St.Albans	21	17	38	42	13	0	8	2,620	3,325	705
Stevenage	56	23	80	0	0	19	1	4,095	6,718	2,623
Three Rivers	97	0	97	1	0	0	1	9,502	9,502	0
Watford	89	0	89	5	3	0	3	7,918	7,918	0
Welwyn Hatfield	10	51	61	4	34	0	2	3,865	4,849	983
Total Herts	55	15	70	8	10	3	9	3,452	5,102	1,650

Source: CC calculations, based on HCC elderly and disabled concessionary fares mileages, period 1 2004/2005 (28/3/2004 to 24/4/2004).

Note: The HHIs are calculated ignoring the ‘other’ column, so they are certainly below the actual HHIs.

5.24 Table 2 shows that Arriva currently has shares between 56 and 97 per cent in all districts apart from St Albans, Hertsmere and Welwyn Hatfield. The merger would significantly increase Arriva's share in all districts where Sovereign operates, and particularly in Stevenage, Welwyn Hatfield and St Albans. In terms of the HHI, all districts are very concentrated and in all districts where Sovereign currently operates the merger would lead to very significant increments in the HHI, with the highest increment occurring in Stevenage. In Stevenage the share of Transit Group is significantly lower, at 19 per cent, compared with a market share of 29 per cent in Table 1, and this seems more in line with Transit Group's own view of its share. However, HCC also supplied provisional figures for the four-week period from 12 September to 9 October 2004 reflecting both recent expansion by Transit Group in Stevenage (see paragraph 5.15), where, during this period, Transit Group had a 26 per cent share, and Universitybus's expansion, resulting in an increase in Universitybus's market share in Hertfordshire to 13 per cent; in addition, the figures showed a marginally lower share for Centrebus, at 8 per cent.

5.25 We also calculated these shares for previous years on the basis of HCC data, as shown in Table 3.

TABLE 3 **Shares of commercial services by district, period 1, 2001/02 to 2004/05***

	2001			*2002*			*2003*			*2004*		
District	*Arriva*	*Sovereign*	*Other*	*Arriva*	*Sovereign*	*Other*	*Arriva*	*Sovereign*	*Other*	*Arriva*	*Sovereign*	*Other*
Broxbourne	75	0	25	70	0	30	72	0	28	82	0	18
Dacorum	87	8	5	83	7	10	89	8	3	87	8	5
East Herts	64	0	36	65	0	35	59	0	41	71	0	29
Hertsmere	14	6	80	13	7	81	13	4	83	14	0	86
North Herts	78	8	14	73	9	18	73	10	17	73	9	18
St.Albans	21	53	26	20	50	30	22	48	30	21	17	62
Stevenage	58	23	19	54	23	23	53	21	26	56	23	20
Three Rivers	99	0	1	97	0	3	96	0	4	97	0	3
Watford	94	0	6	92	0	8	90	1	9	89	0	11
Welwyn Hatfield	11	55	34	9	54	37	9	54	37	10	51	39
Total Herts	56	21	24	53	21	27	53	20	27	55	15	30

Source: CC calculations, based on HCC elderly and disabled concessionary fares mileages.

*Period 1 broadly covers the first four weeks of April though the exact period may vary slightly from one year to the next.

5.26 Table 3 shows that over the past four years shares have fluctuated to some degree. Arriva's share in Hertfordshire as a whole decreased between 2001 and 2002 but has since increased to a level comparable to 2001. Sovereign's share has decreased reflecting the sale of its St Albans operations. In Stevenage, its share has remained broadly stable while Arriva's share has fluctuated and is now two percentage points below its 2001 share. Arriva has also significantly increased its presence in Broxbourne and East Herts, whilst its share has dropped in Watford and North Herts. Apart from St Albans, the most significant reductions in Sovereign's shares occurred in Hertsmere and Welwyn Hatfield. Among the 'other' operators, Universitybus's share in Hertfordshire grew by one percentage point to 9 per cent, mainly due to growth in Hertsmere and St Albans.

Counterfactual

5.27 In order to analyse the competitive effects of the proposed merger, we need to consider what we would expect to happen in the absence of the merger (the counterfactual).

5.28 Blazefield indicated that, if the merger did not go ahead, it would expect to continue the Sovereign business, albeit in a reorganized and smaller form, involving [✂], in order to increase its profitability to a level in line with the rest of the Blazefield group. Blazefield stated that, in any event, Sovereign would be unlikely to increase its operations in Hertfordshire in the foreseeable future and would continue to tender [✂] for those contracts not requiring additional vehicles; the timing of its restructuring would depend in part on negotiations, including negotiations over its continued use of the Hatfield depot. Additional information on Blazefield's plans for the Sovereign business is set out in Appendix I.

5.29 Blazefield explained that it had not sought bids for Sovereign, nor had anyone apart from Arriva approached Blazefield with an unsolicited offer for Sovereign.

5.30 We believe that Blazefield is likely to reduce Sovereign’s operations in Hertfordshire, from over 50 peak vehicles to fewer than 40, in order to increase Sovereign’s profitability. We also accept that Sovereign would [✂] its reliance on Universitybus for depot space. We expect that the timing for any such reduction in operations will take into account any negotiations with HCC (over relinquishing tendered services), Universitybus (in terms of its depot) and Sovereign’s employees and trades unions, and could be up to two years. We also accept Blazefield’s assertion that Sovereign will be unlikely to expand its operations in Hertfordshire in the foreseeable future.

5.31 We accept that Blazefield would be unlikely to see an acquiror for the totality of the Sovereign business able and willing to pay a price acceptable to Blazefield in the near future, although we cannot predict for how long that might remain the case (see paragraphs 5.58 and 6.5).

5.32 Arriva stated that it regarded Sovereign as a ‘bolt-on’ acquisition. It also stated that if the merger did not go ahead it would maintain its present services in the relevant markets whilst continuing to improve the quality of those services. It would also remain in occupation of its current Stevenage depot until the end of 2007, after which it would relocate the [✂] buses based there and operate the services from its other Hertfordshire depots (see Appendix B).

5.33 We concluded the appropriate counterfactual to be that Sovereign would reduce and reorganize its operations, as described in paragraph 5.30, and would continue to provide bus services in the relevant markets but would not seek to expand. We have no evidence that would suggest that Arriva would be interested in selling its business in Hertfordshire, or that it is considering exiting the relevant markets if the merger does not go ahead, and we therefore conclude that Arriva would continue to supply its services in the relevant markets.

Existing competition between Arriva and Sovereign—Commercial services

5.34 As noted earlier, Hertfordshire is not 'good bus territory' (see paragraph 5.2), costs are high and profits relatively low (see paragraph 5.3). As a result, Arriva currently faces limited actual competition in Hertfordshire and, as we have seen, its market share has remained more or less stable over the last few years (see Table 3). Nevertheless, on certain routes Arriva competes against what it described as 'pursuit competitors',[46] which, typically, it said, registered on what they considered the most profitable parts of Arriva's existing routes.

Ticketing, fares and quality of service

5.35 We have already referred to the Intalink multi-operator ticketing products and the concessionary fare schemes available within Hertfordshire (see paragraphs 5.10 to 5.12). In addition, we looked at the parties' own ticket offerings and in particular at the comparative importance or otherwise to the parties of multi-route and/or multi-journey tickets, as these could, in principle, operate to their competitive advantage and the disadvantage of smaller bus operators (see Appendix H). Both Arriva and Sovereign told us that they had sought to simplify their ticket offering in recent years. Single and return tickets are the most popular. In addition, Arriva offers multi-journey and zonal tickets that can be used on all of its services. These can vary across areas—for example, Arriva's 'Stevenage and North Herts Day Rover' costs £4.20 (£3.20 concessionary fare) and allows travel across the stated areas whilst being valid also on route 100/101 to Luton—and tend to reflect the route network operated

[46] Arriva pointed out that several of these were run by ex-Arriva managers, and that pursuit competitors typically operated older buses which were unlikely to encourage a shift of passengers from car to bus.

by Arriva. Sovereign offers ten-journey tickets (costing five times the day return) and a seven-day ticket (costing 4.5 times the day return) but these tickets are route-specific: Sovereign does not offer ‘zonal’ tickets.

5.36 Arriva told us that it was unable to adduce any clear pattern on pricing between it and Sovereign. This was understandable, it said, as the parties’ services scarcely overlapped on individual point-to-point flows and both were aware that offering a lower fare did not encourage switching from one carrier to another, for the simple reason that customers did not choose a carrier on a particular route by reference to fare. Customers ‘at the bus stop’ tended to take the first bus that would take them to their destination. Sovereign also stated that passengers would normally catch the first bus that arrived at their bus stop and that would take them to their destination, unless that bus had a significantly slower journey time than a following one; or where there was a significant price differential (at least 10p) or the customer was in possession of a pre-paid ticket valid only on another operator’s service. Arriva stated that both parties perceived, however, that if their service was of high quality, reliable, frequent, comfortable and safe, they might attract people away from their cars ‘to the bus stop’. In this sense, therefore, both operators were in competition, not with each other, but with the car.

5.37 Arriva stated that it planned to [✄] to produce the revenue increase in the budget (this policy being subject to review depending upon market conditions and the company’s financial performance). In practice, [✄] subject to review of market conditions specific to particular routes or areas. [✄] Sovereign stated that generally its fares were directly related to the distance travelled, but because specific market conditions may vary not all fares on all services were priced on an equal rate per mile. Sovereign implemented a general fares increase of around 5 per cent on all routes in August 2004.

5.38 Arriva referred to an average fare of £1.10 for its services and said that in general its fares tended to be slightly higher than competitors' but the relative position varied on the overlap routes (see Appendix F). Where Sovereign's fares were higher than Arriva's on point-to-point overlaps, Arriva would, if the merger proceeded, reduce them to match Arriva's within the common overlap section, with the converse applying where Arriva's fares were higher than Sovereign's. Arriva stated that the intended increase in its profits arising from the merger was in no way contingent upon any increase in fares. Arriva said that it had no specific plans to alter the prevailing fares on Sovereign's services in areas not currently served by Arriva. Arriva added that its fares policy would apply to all the services acquired from Sovereign in the same way as it applied to Arriva's current routes.

Route competition

5.39 From its leased depots in Stevenage and Hatfield, Sovereign operates six commercial services as shown in Table 4.

TABLE 4 **Sovereign's commercial routes**

Service	*Route description*	*Time of day operated*
SB1	Stevenage Town Centre	Monday to Saturday, daytime only
300/301	Hitchin/Stevenage–Hemel Hempstead	Seven days a week, daytime only
401	Welwyn Garden City local service	Monday to Saturday, daytime only
403	Welwyn Garden City local service	Monday to Saturday, daytime only
405/406	Hatfield local service and Hatfield–Welwyn Garden City	Monday to Saturday, daytime only
797	Stevenage–central London via Hatfield	Seven days a week

Source: Sovereign.

5.40 The above services include local intra-urban services as well as one inter-urban service linking Hitchin, Stevenage, Welwyn Garden City, Hatfield, St Albans and Hemel Hempstead (300/301, together branded as 'CentraLine'). Apart from the SB1, which runs six buses an hour in Stevenage, the maximum frequency of these services is four buses an hour. This also applies to most of the CentraLine service, the exception being the section linking Stevenage and Hitchin which is operated only once an hour and from which Sovereign told us that it planned to withdraw within the next few months. In addition, Sovereign runs the Green Line 797 express coach service from Stevenage to London via Hatfield which is predominantly designed for and used by London commuters.

5.41 At the individual route level, head-to-head competition between Arriva and Sovereign is confined to flows on parts of Sovereign's six routes (see Appendix F, Table 3 for details) and these overlaps occur to a substantial extent as an unintended effect of road configuration (for example, a single road into a town centre). The parties told us that they had never in any event set out to compete with one another by design. Since one effect of the merger on existing competition would be to eliminate any head-to-head competition between Arriva and Sovereign, we analysed the overlapping flows between their respective bus services in order to assess the extent and possible effects of any such loss of competition.

5.42 The results of our analysis are presented in Appendix F. In summary, we identified (as did Arriva) 31 overlap flows between Arriva's bus services and those of Sovereign. We then employed a number of criteria to enable us to determine possible exclusions in terms of overlaps unlikely to cause any material lessening of competition. These were a revenue criterion, a frequency criterion, the presence of effective third-party competition and the counterfactual identified above. On the basis of the revenue criterion we excluded ten of the original 31 overlaps; applying the frequency criterion, we excluded a further 13 of the original 31 overlaps. Given Sovereign's intention to withdraw from part of the 301 service and from route 406, we then excluded a further four overlaps. Finally, we excluded the remaining four overlaps due to the presence on them of effective third party competitors.

5.43 Our analysis confirmed that there is no material direct competition between Arriva and Sovereign on most of the overlap flows and that on the remainder there is effective competition from third parties. We do not therefore expect the merger to result in a substantial lessening of competition due to any loss of actual competition on individual flows.

Existing competition between Arriva and Sovereign—tendered services

5.44 We describe the role of the HCC in inviting tenders and awarding contracts for tendered services in Appendix G. Competition in relation to tendered services takes place within the process of bidding for contracts from the tendering authority. HCC phases the tenders in at least annual rounds in order to provide operators with a regular opportunity for tendered work. Arriva submitted shares of tendered services for the parties, Centrebus and Universitybus for the six towns where its services overlap with Sovereign's as shown in Table 5.

TABLE 5 **Shares of tendered services by towns with overlaps, August 2004**

per cent

	Hemel Hempstead	*St Albans*	*Hatfield*	*Welwyn Garden City*	*Stevenage*	*Hitchin*
Arriva	66	13			73	55
Sovereign	2	9	58	38	20	9
Arriva + Sovereign	**68**	**22**	**58**	**38**	**93**	**64**
Centrebus	10	16				23
Universitybus	3	24	41	42		
Other	19	38	1	20	7	13

Source: Arriva.

Table 5 shows that Arriva has large shares of tendered services in Stevenage, Hemel Hempstead and Hitchin whilst Sovereign has large shares in Hatfield and Welwyn Garden City and a significant share in Stevenage. Thus the merged entity would have high shares of tendered services in five of the six towns where Arriva and Sovereign services overlap.

5.45 Universitybus currently holds contracts for 11 tendered services, including five school contracts, and one part-commercial, part-tendered service; it bids mainly for contracts in and around Hatfield, Welwyn Garden City and St Albans with a view to providing services for students. Centrebus has recently won a number of HCC tendered contracts (see paragraph 6.2). Transit Group does not bid for HCC tendered services because late reimbursement caused a predecessor company (London Transit, now dormant) severe cashflow problems.

5.46 Another significant tendered services operator is Sullivan Bus & Coach Ltd (Sullivan), which has a total of 40 vehicles and was originally established in 1999 to supply rail replacement services; this type of business still forms the bulk of Sullivan's operations, accounting for two thirds of its revenue. Sullivan currently runs five tendered routes and told us that it was now focusing on growth from tendered services. In addition, Metroline operates four tendered routes (and one part commercial, part tendered route) in Hertfordshire. RegalBusways, Trustline, Richmond Coaches and up to around 30 other small-scale operators, some based outside Hertfordshire, also run tendered routes in Hertfordshire.

5.47 We carried out a detailed analysis of the award of contracts for tendered services by HCC between 1999 and 2003. The results of this analysis are shown in Appendix G.

5.48 In summary, our analysis[47] showed that Arriva accounted for approximately 40 per cent by value and Sovereign 10 per cent by value of the local bus contracts. During the five years from 1999 to 2003, 248 routes were put out to tender, with Arriva winning 68 (27 per cent) and Sovereign 14 (6 per cent); 28 operators that submitted bids during this period were never successful in winning a tender. HCC received on average 3.2 bids per tender, just above the national average of 2.8. However, only

[47]Our analysis excludes all contracts currently run from Sovereign's former St Albans depot.

22 (9 per cent) of the 248 tenders involved simultaneous bids by Arriva and Sovereign, and in only three of these cases were there no other bidders. In 12 of the cases there was one other bidder and in the remaining seven cases there were two or more other bidders. Third party operators were successful in five of the 22 cases.

5.49 Only 12 combined contracts[48] were awarded by HCC in the period covered by our analysis and of these only one to Sovereign and four to Arriva. Arriva commented that having a large number of buses was irrelevant, and that many tenders, especially in relation to school contracts, were won by small operators with no more than five to ten buses. It stated that it was aware of no individual tenders requiring more than three PVR. We examined possible segmentation of contracts by high and low value. We found that although Arriva and Sovereign were no more likely to submit bids for high-value contracts than for others, a significantly higher proportion of contracts worth over £100,000 were won by Arriva.

5.50 We assess the expected effects of the merger in relation to competition for tendered services below, in paragraphs 5.63 to 5.68.

Potential competition

5.51 We now turn to the expected effects of the merger on potential competition, both in commercial and tendered services. We look first at whether the merger would remove any potential competition between Arriva and Sovereign, and then at the removal of Sovereign as a possible platform for entry or expansion by acquisition. We conclude this section with a specific discussion of the expected effects of the merger on competition for tendered services.

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[48]Described by HCC as 'The offer to run 2 or more contracts at a combined price that is better than the total of their individual bids'. Combined contracts do not refer to two or more operators jointly bidding for a route. Operators have to submit tenders for individual contracts, but may put in a combination bid for a number of contracts, giving a discount, usually due to economies of scale.

Potential competition between Arriva and Sovereign in relation to commercial services

5.52 In addition to the effects of the merger on actual competition, we have to consider its possible effects on potential competition. In particular, we need to assess whether there is a significant competitive constraint from Sovereign on Arriva (and vice versa) insofar as the fares and customer service levels of each are constrained by the potential for head-to-head competition between them in the markets that we have identified in paragraph 4.26. If so, we then need to consider whether the elimination of Sovereign through the merger would remove any such competitive constraint. From this point onwards, we use the expression 'potential competition' to refer to potential for head-to-head competition that in itself acts as a significant competitive constraint.

5.53 We have explained above the limited extent of actual head-to-head competition between Arriva and Sovereign on individual point-to-point flows (see paragraphs 5.41 to 5.43). We have concluded as our counterfactual that Blazefield would restructure Sovereign along the lines it outlined to us should the merger not go ahead and we accept that this would represent the best course open to it to enable Sovereign to become sufficiently profitable to remain within the Blazefield group.

5.54 The fact that Hertfordshire is not good bus territory, affording relatively low profit margins to operators of bus services, limits the degree and nature of head-to-head competition in which bus operators are willing to engage. Arriva told us that it faced competition on the most profitable parts of certain routes from pursuit competitors (see paragraph 5.34). Furthermore, as Sovereign has not sought in the past to compete head-to-head with Arriva (see paragraph 5.41), three of us (the three) saw no reason why it should do so, from a smaller base, by altering its routes in the future. The three noted, in particular, that there was no evidence that Sovereign had targeted Arriva routes even when, by its own admission, Arriva's quality of service dropped between 2000 and 2002, although smaller operators had targeted Arriva in that way. The three of believed that as there was no spare capacity at Sovereign's Stevenage depot it was unlikely that Sovereign would operate any additional commercial routes from there in the foreseeable future. Arriva emphasized to us its long-term strategic need to maintain and improve the quality of its services in order to grow its customer base, and hence its profitability, by attracting car users on to its buses. This was quite independent of any potential competition from Sovereign. In any event Arriva had not sought in the past to compete head to head with Sovereign. The three therefore did not expect the merger to result in any substantial lessening of competition due to the loss of any potential competition between Arriva and Sovereign.

5.55 Whilst accepting that Sovereign and Arriva do not currently compete head to head and also accepting that Sovereign will reduce the scope of its operations if the merger does not proceed, the other two of us (the two) were nevertheless satisfied that Sovereign currently represents, and, as proposed to be restructured in the absence of the merger, would continue to represent an important competitive constraint on Arriva. Sovereign has at least the potential to alter its routes, and possibly to run additional routes, and to compete more directly with Arriva, so long as it retains its crucially important Stevenage depot. The two considered that Sovereign's ability quickly and easily to redeploy buses from this depot provides a significant competitive constraint on Arriva's fares and quality of service, within operating distance of the depot. Further, the two noted the comments received from many third parties, including customers and competitors, whose evidence is published on our web site, that Sovereign provides a better quality of bus services than Arriva, in terms of its more reliable, modern and clean bus fleet, and competes in a professional and unaggressive manner.

5.56 In the view of the two, the presence of Sovereign in the relevant markets is an important constraint obliging Arriva to maintain its standards of performance, customer service and fare levels broadly in line with Sovereign's. The two believed that Sovereign could always enter or expand on to Arriva routes if it saw a commercial opportunity to do so in the event that Arriva, for example, were to cut its frequencies or raise its fares on a given route. (The converse would also apply.) The two noted that Arriva confirmed that Sovereign 'consistently over the years have done a very good job' and that this had not given Arriva the opportunity to enter Sovereign's territory. In the view of the two, however, this competitive constraint on Arriva would disappear without the presence of a business with a combination of the size, quality and profitability of a restructured Sovereign. The two did not consider that the threat of entry by small bus operators would be an effective constraint on Arriva.

5.57 In paragraph 6.15 the two conclude that they do not expect entry or expansion on a scale sufficient to offset the removal of Sovereign as a significant competitive constraint on Arriva (and *vice versa*) in relation to commercial services. The two, therefore, expect the merger to result in a substantial lessening of competition in bus markets in Hertfordshire due to the loss of potential competition between Arriva and Sovereign.

Sovereign as a possible platform for entry or expansion by acquisition

5.58 We next considered whether the merger might give rise to a significant loss of competition by eliminating possible acquisition opportunities for entry by operators from outside Hertfordshire or expansion by existing operators in Hertfordshire. In this respect, the counterfactual is again of key importance. Since we have concluded that Sovereign would reduce and reorganize its operations as described in paragraph 5.30, the parts of the business that would become available if the merger did not go ahead would be smaller than the current Sovereign business. Further, we have accepted that Blazefield would be unlikely to see an acquiror for the totality of the Sovereign business able and willing to pay a price acceptable to Blazefield in the near future (see paragraph 5.31). Although Universitybus, Centrebus, Transit Group and Sullivan all mentioned to us their potential interest in acquiring parts (though not the whole) of the Sovereign business, we understand that none has made any approach to Blazefield. Lack of depot capacity might also be an issue for an alternative purchaser which sought to use Sovereign as a base for a larger operation in Hertfordshire. We cannot say whether or not Universitybus might be prepared to negotiate a lease of surplus space at its Hatfield depot to a future acquiror of Sovereign but it was clear to us that it proposed to occupy more if not all of the depot itself within the next three to five years.

5.59 In any event, the three of us mentioned in paragraph 5.54 do not expect that any acquiror would consider it commercially sensible to operate the business in a manner different from that expected in our counterfactual. Thus, irrespective of the identity of the owner of Sovereign, the position is unlikely to be different from that set out above. Sovereign's CentraLine and SB1 routes, its two best used bus routes, are and doubtless would continue to remain at the core of a successful business model, which has never sought to divert its focus from those two routes. Nor would the three expect Arriva to see the nature of the local bus market any differently.

5.60 Hence, the three expected that the merger would not result in a substantial lessening of competition due to the removal of the competitive constraint arising out of the fact that Sovereign under different ownership might provide more effective competition to Arriva.

5.61 The two mentioned in paragraph 5.55 noted that the threat of competition from an alternative owner of Sovereign had appeared to be of concern to Arriva, which had described the proposed merger as in part a 'defensive move' (see paragraph 3.6). Arriva explained that the words 'defensive move' referred to the fact that Arriva would rather buy Sovereign than let someone else buy it. The two noted, in particular, that an Arriva appraisal of the Sovereign acquisition dated 19 January 2004 mentioned 'some risk to Arriva's Stevenage operations should Centrebus/Peddle look to further expand into other parts of Hertfordshire by acquiring the remaining Sovereign operations'. It also mentioned a possible management buyout, encouraged by Blazefield. In the view of the two, this competitive constraint on Arriva would disappear without the presence of a business with a combination of the size, quality and profitability of a restructured Sovereign. The presence of such a business would provide a key opportunity for a competitor to enter the market at the scale necessary to provide more effective competition to Arriva, as mentioned by the Go-Ahead Group (see paragraph 6.5).

5.62 The two conclude in paragraph 6.15 that they do not expect entry or expansion on a scale sufficient to offset the removal of Sovereign as a significant competitive constraint on Arriva (and vice versa) in relation to commercial services. The two accordingly expected that the merger would result in an SLC in bus markets within Hertfordshire due to the removal of the competitive constraint arising out of the fact that Sovereign under different ownership might provide more effective competition to Arriva.

Competition between Arriva and Sovereign in relation to tendered services

5.63 HCC told us that it saw enough competition for tendered services on the whole. It agreed that most incumbent operators could expect to win the bid to retain a tendered service they already operated but said that this was because many routes had an operator that was best placed to operate them from a geographical point of view—it was difficult to contest a bus market some distance away (say more than 30 minutes' bus running time) because of the additional cost, the difficulty/cost of changing an operating base and potential reliability and service control issues. HCC was not concerned that there might be a significant reduction in the number of bidders per contract as a result of the merger, though it said that it would welcome more bidders provided they were of sufficient quality.

5.64 HCC told us that the proposed acquisition gave rise to a marginal degree of concern in relation to evening, or in some cases Sunday, routes. It said that, for a variety of operational reasons, smaller bus companies tended to leave the field on such services to the larger companies, including Arriva, Sovereign, Universitybus and Centrebus. Nevertheless, for some operators, running evening services could be attractive both in terms of the return on their contract and also because they could run these services without additional vehicles, and this situation was unlikely to change. Further, whilst HCC thought that Arriva might welcome the removal of a competitor from certain tendered evening routes, it also thought that Arriva was likely to be constrained by its knowledge that HCC resources were limited.

5.65 HCC recognized that, on a localized basis, now predominantly in the Stevenage area (see Table 5), Sovereign was one of Arriva's main competitors in the bidding market for tendered services. In particular, between 1999 and 2003 there were 13 contracts in the Stevenage area with a total value of just over £1 million (see Appendix G) where HCC saw a risk of increased cost to HCC of providing tendered services through less overall competition as a result of the merger. It was, however, a fairly small risk, probably up to 2 per cent of HCC total cost,[49] and arose because either

[49]The figure of 2 per cent is based on a hypothetical bid price increase (of 10–20 per cent) across the 13 contracts over the total value of HCC contracts in the year (£12.3 million).

the current operator would not exist or the lowest tenderer might perceive less competition when the time came to tender the contract again.

5.66 The three mentioned in paragraph 5.54 noted that of the 248 bids we examined it was in only 22 instances that Arriva and Sovereign bid for the same contract. In only three of those cases were there no other bidders. Moreover, Blazefield's plans for restructuring Sovereign would mean that Sovereign would in future tender [✄] for contracts not requiring additional vehicles (see paragraph 5.28). The fact that most incumbent operators could expect to retain a tendered service they already operated was an inherent feature of the market, for the reasons referred to above, and would not be affected by the merger. The three noted that there was an overall lack of concern on the part of HCC in particular, that there had been over 30 bidders for HCC contracts and that barriers to entry into tendered services were relatively low. Accordingly, the three concluded that Arriva's proposed acquisition of Sovereign may not be expected to give rise to a substantial lessening of competition in relation to tendered services.

5.67 The two mentioned in paragraph 5.55 took a different view. The two were concerned to note that there had been three contracts for which Arriva and Sovereign were the only bidders; that where other operators bid, Arriva or Sovereign were successful in 16 of the 22 cases of simultaneous tender bids by Arriva and Sovereign; that most incumbent operators could expect to win the bid to retain a tendered service they already operated; and that 21 per cent of routes offered only attracted one or no bid (see Appendix G, Table A3). The two also noted that Arriva held a disproportionate number of larger contracts, and that Arriva and Sovereign together had a substantial share of contracts in the Stevenage area, where HCC had identified some concern. The two also believed that in Blazefield's plans for restructuring Sovereign it retained flexibility both to tender for additional routes and to reduce commercial services and deploy buses thus released on the tender market. There also appeared to be some barriers to entry to the provision of tendered services (see paragraphs 6.8 to 6.10).

5.68 In paragraph 6.15 the two conclude that they do not expect entry or expansion on a scale sufficient to offset the elimination of Sovereign as a competitor in relation to tendered services. In the light of this and the above, the two believe that Arriva would be in a position to win contracts with higher bids than would be the case without the merger. The two therefore expect the merger to result in a substantial lessening of competition due to the elimination of Sovereign as a major competitor for tendered services contracts awarded by HCC.

6. Market entry

6.1 In this section of our report we assess the extent to which entry or expansion into the relevant markets might be expected to offset any SLC arising from the proposed merger such as is expected by two of us in relation to potential competition for commercial and tendered services. We also assess whether any increase in barriers to entry created by the elimination of Sovereign and expansion of Arriva through the merger might in itself give rise to an SLC. We begin by looking at the evidence for recent entry or expansion and exit in Hertfordshire and third parties' comments on the likelihood of entry or expansion in Hertfordshire. We then set out our assessment of possible barriers to entry.

Recent entry/expansion and exit

6.2 We sought to assess the extent of actual entry in Hertfordshire during the past five years. Details of our approach are given in Appendix H, paragraphs 35 to 36. Table 6 summarizes the results of our analysis.

TABLE 6 **Current operators* that entered Hertfordshire during the past five years**

		Set up Date	*Services currently run in Hertfordshire*	*Size in Hertfordshire (shares of commercial and tendered services)*	*Other*
Olympian coaches		-		1 school route (<0.1 per cent)	
Centrebus	Centrebus	2002	Tendered and Commercial	8 per cent of commercial mileage (9 per cent)	30 buses in Hertfordshire
	Lutonian	†			
	In Motion	2002			
Grant Palmer		2000	Tendered only	Part of one route under contract from Bedfordshire County Council (<0.1 per cent)	
Transit Group		2002	Commercial only	Three per cent of commercial mileage (< two per cent)	10–14 buses in Stevenage
Trustline		-	Tendered and Commercial	2 commercial and 9 tendered routes (< two per cent)	15 operating discs‡
Local Link–Centra group		2002	Tendered and Commercial	13 commercial and tendered routes - none for HCC - of limited mileage (about 0.1 per cent)	15 operating discs‡
Excel – Stephensons coaches		2003	Tendered and Commercial	3 commercial and 12 tendered routes (2 per cent)	15 operating discs‡
Regal Busways		2002	Tendered and Commercial	1 commercial and 4 tendered services (0.2 per cent)	Operates 3 buses from Essex
Carousel Buses		2002	Tendered only	1 tendered route (about 0.3 per cent)	

Source: CC based on HCC data on commercial and tendered mileage period 1 2004/2005 (from 28/3/2004 to 24/4/2004) and information provided by the parties.

*Included in the May 2004 Intalink Network Map as a bus operator in Hertfordshire (this does not include express coach services and journeys that operate solely on schooldays).
†Acquired by Centrebus in 2004
‡Information provided by Arriva.

We have already described expansion by third party operators; we were also given some details of exit (see Appendix H, paragraphs 52 to 53). As regards tendered services, we noted in particular that Centrebus and over 30 other operators had been awarded contracts by HCC between 1999 and 2003.

6.3 As shown in Appendix H, Table 5, Arriva's total share of commercial and tendered services, as measured by route mileage, remained constant between 2002 and 2004, although its share of commercial services rose slightly between 2003 and 2004 (see Table 3).

Potential for entry or expansion in Hertfordshire

6.4 We were told that major bus operators tended not to enter each other's core markets. Indeed, it appeared that, as a rule, there is limited expectation of entry on any significant scale in any UK bus territory outside London.[50] We sent out a questionnaire to bus operators of all sizes in and around Hertfordshire requesting information and comments, in particular in relation to recent or potential entry or expansion on their part in Hertfordshire.

6.5 Of the major national bus operators (other than Arriva), FirstGroup commented that Hertfordshire was not attractive in operational terms: high wages and other operational costs meant that other areas provided better investment returns. Stagecoach stated that it would not consider expanding in Hertfordshire, because of difficulties in setting up a depot and hiring staff, and that the current political and regulatory regime made any such expansion questionable. National Express told us that it had no intention of commencing pure local bus routes in Hertfordshire. The Go-Ahead Group stated that it would not consider the option of entry on an individual route basis, as it currently had no base of operations in Hertfordshire. However, it

[50] All bus services in London are tendered services.

would consider entry via acquisition, but saw the proposed merger as removing one potential platform.

6.6 We also asked Transit Group, Centrebus and Universitybus about potential entry or expansion in Hertfordshire. Transit Group told us that it had plans to expand its operations in and around Stevenage and that it was looking for depot facilities, although this search was proving difficult. Centrebus said that it considered significant new entry unlikely, but that there might be entry of small operators with two to three buses; its own aim was to expand by identifying and entering new or poorly served niche markets. Universitybus told us of its recent expansion and said that it envisaged in the next three to five years requiring for itself the spaces that it currently leased to Sovereign at the Hatfield depot; we noted, however, that, given its objective to provide transport links to students, it was unclear that this type of expansion would necessarily target other commercial operations to a significant degree, particularly outside the Hatfield area.

Assessment of possible barriers to entry

6.7 In the light of our analysis of possible barriers to entry (see Appendix H) and the evidence we received in this inquiry, we focused on three possible barriers to entry:

(a) depot availability;

(b) possible network effects, whether arising from *(a)* above or from network ticketing products; and

(c) the possible threat of predation or retaliation.

Depot availability

6.8 Apart from Arriva, parties told us that there were significant difficulties in finding a suitable depot in Hertfordshire. We noted that, in theory at least, this could represent a barrier to entry into or expansion both in commercial and tendered services.

6.9 HCC commented that would-be entrants had real difficulty in gaining access to depots in Hertfordshire because of planning constraints, high land prices and shortage of available land. Sovereign and Transit Group in particular both described how they had searched in vain for a suitable depot in Hertfordshire. We also noted that Arriva had told us that one of the reasons for the proposed merger was that the lease on Sovereign's Stevenage depot had a longer unexpired term than the lease on Arriva's current Stevenage depot, which the landlord intended to redevelop after 2007. Arriva submitted, however, that the fact that we had identified 11 new entrants currently operating in Hertfordshire that had entered in the last five years (see Table 6) demonstrated that it was not difficult for new entrants to set up depots.

6.10 In the light of the evidence presented to us, we took the view that there is a shortage of existing depot facilities of a particular type, namely those adequate for the needs of an operator with more than about ten buses. This is exacerbated by difficulty in obtaining planning permission for new depots of this size. However, smaller operators appear to be able to find suitable sites for their needs.

Possible network effects: ability to redeploy buses from different depots

6.11 In concluding, in paragraph 4.26, that it would be appropriate to analyse competition by reference to network markets as well as point-to-point journeys we took account of the fact that an operator that serves a network of routes can more easily alter the allocation of resources among its individual routes: operators can switch buses between routes that are within the range of their existing depots. Arriva's stated rationale for the merger was that it would allow Arriva rapidly to expand its network in and around Stevenage and Hatfield (see paragraph 3.5). As a result of the merger, partly through exercising the break clause in the lease on its current Stevenage depot in December 2005 and partly through redeploying buses from Sovereign's

Stevenage depot, Arriva said that it would relocate and reconfigure some of the Sovereign and existing Arriva services.

6.12 The three referred to in paragraph 5.54 considered that the merger would make little difference to Arriva's ability to switch buses between routes within the range of its depots. Arriva had stated that it would exercise the break clause in the lease on its current Stevenage depot in December 2005 if the merger went ahead. Consequently, although it would gain possession of Sovereign's depot in Stevenage as a result of the merger, Arriva would cease to occupy its current Stevenage depot, which the landlord proposed to redevelop after 2007. Although the three accepted that suitable depots in Hertfordshire were in short supply (see paragraph 6.10), the three did not believe that the merger affected the position.

6.13 However, in the view of the other two mentioned in paragraph 5.55, the lack of depot facilities, necessary to enable entry (other than by acquisition) to take place on a reasonable scale, represents a significant barrier to entry or expansion. Furthermore, in the view of the two, Arriva's opportunity to relocate and reconfigure its services more effectively as a result of the merger would be expected to enhance and underpin its ability to respond to potential competition, particularly in and around Stevenage.

6.14 The addition of Sovereign's commercial and tendered routes would extend and deepen Arriva's route network in all six towns in which Sovereign operates. Arriva's share of all commercial and tendered services in Hertfordshire would rise from 51 to 63 per cent, and its share of commercial services from 55 to 70 per cent. As shown in Table 2, in terms of the HHI, all Hertfordshire districts are very concentrated and, in all districts where Sovereign currently operates, the merger would lead to very significant increments in the HHI, with the highest increment occurring in Stevenage.

6.15 As a result, the two did not expect entry or expansion on a scale sufficient to offset either the removal of Sovereign as a significant competitive constraint on Arriva (and vice versa) in relation to commercial services or the elimination of Sovereign as a competitor in relation to tendered services (see paragraphs 5.57, 5.62 and 5.68). Whilst further, small-scale entry might be possible, even if this were to be sustained, such entry would be insufficient to offset the anti-competitive outcomes that the two of us identified. Nor did the two expect that there would be any significant expansion by Centrebus, Transit Group or Universitybus (see paragraph 6.6).

6.16 Furthermore, the two concluded that the merger may be expected to raise barriers to entry or expansion, in particular with respect to network effects, due to Arriva's enhanced ability to redeploy buses from its Hertfordshire depots, aggravated by a prevailing lack of suitable depot facilities. This would not only have the result the two identified in paragraph 6.15 but would also contribute to the result that operators would not enter the market who otherwise might have entered it and the two believed that Arriva would take the same view. This loss of threat from entry by a third party would remove a competitive constraint on Arriva. The two accordingly concluded that the merger may be expected to result in an SLC in bus markets in Hertfordshire due to the raising of barriers to entry or expansion.

Possible network effects: ticketing

6.17 One effect of the merger would be to enhance the coverage of Arriva's multi-journey and zonal tickets, by adding Sovereign's commercial and tendered routes to those already available to passengers purchasing such tickets. Thus, the merger would extend the coverage of Arriva's multi-journey and zonal tickets in each of the six towns where Sovereign currently operates commercial services as well as more widely. Arriva pointed out that services relevant to this inquiry were generally no more frequent than four buses per hour (every 15 minutes), such that connectivity was not spontaneous and frequent as in a metropolitan area but rare and requiring the customer to plan journeys ahead. In addition, Arriva pointed out that multi-journey tickets were often used for repeated journeys on the same route, for example as weekly passes: as such, their use by customers was no more than a convenient and discounted means of buying tickets for a regular journey. While an operator with more than one route could offer multi-journey tickets for use on the same route or for different routes, and an operator with only one service could only offer tickets for the same route, Arriva found it hard to see how this was anti-competitive, or could affect the analysis of the merger in any way. Moreover, in Hertfordshire, any operator, including new entrants, could join Intalink and offer multi-route tickets such as the Explorer. It could also offer multi-journey tickets on its own routes. Blazefield told us that Sovereign did not offer multi-route tickets and that it did not consider Sovereign to be a network operator, although it did offer a 10-trip ‘carnet’ ticket.

6.18 In considering the importance of possible network effects in relation to ticketing in our assessment of the impact of the proposed merger, we noted that multi-operator network tickets (such as Explorer), as well as the concessionary fare schemes in which all operators of eligible services have a right to participate, tend to diminish the network advantage accruing to operators offering their own multi-journey or zonal tickets. Although the sales of Explorer by Sovereign may not be considered large enough to have a material offsetting effect (see Appendix H, paragraphs 78 to 91), it is equally the case that the increment to the Arriva network resulting from the merger would be relatively small. We did not therefore consider that Arriva’s ability as a network operator to offer multi-journey and zonal tickets operated as a significant barrier to entry.

Possible threat of predation and retaliation

6.19 The takeover of Sovereign by Arriva would mean that the current Sovereign routes would become Arriva routes. As a consequence, third parties might be deterred from entry into or expansion on to those routes, as well as more widely, if they genuinely perceived Arriva as an operator more likely to react by engaging in predatory conduct (for example, reducing fares or increasing service frequencies with the intention of driving an entrant out of the market or deterring others from entering) or retaliating against new entry (for example, with like intent entering the entrant's existing market or interfering with its operation such as by blocking access into or from bus stops). We accordingly addressed the following issues:

(a) whether operators who would otherwise have started services on Sovereign's routes would not do so if the merger went ahead through fear of predatory conduct or retaliation on the part of Arriva; and

(b) whether the merger would be seen as enhancing Arriva's ability to engage in such conduct with the result that operators who would not otherwise be deterred from starting services elsewhere in Hertfordshire, would be deterred if the merger went ahead.

An affirmative conclusion in either case could form the basis of a finding that the merger would result in an SLC.

6.20 We received relevant comments from third parties both in response to our questionnaire to bus operators relating to recent or potential entry or expansion in Hertfordshire and in other written and oral submissions.[51] Arriva responded to all of these, pointing out that in three cases where specific allegations were made against Arriva these had not been made at the time of the incidents, either to Arriva or the relevant statutory authorities. In the case of Centrebus, whose complaints to the OFT had been subject to OFT investigations opened in September 2003 and August

[51]Many of these are published on our web site: www.competition-commission.org.uk.

2004 regarding alleged infringements of Chapter II of the Competition Act 1998, we understand that all the information supplied to us has also been supplied to the OFT, which is currently considering this information. Arriva denied the Centrebus allegations and emphasized that it had, in any event, every incentive not to engage in such behaviour because it would be illegal following the entry into force of the Competition Act 1998. Moreover, such behaviour would be fundamentally at odds with the Arriva group's brand values and reputation, the importance of which could not be overstated given Arriva's position as a leading international transport operator. Arriva confirmed that it had a compliance programme in place to ensure that staff fully complied as required with the Competition Act 1998.

6.21 We requested and obtained from Arriva a copy of its compliance programme and noted that this was stated to be in the process of being amended to take account of legislative changes, and to have been subject to constant updating and training over the past six years. We noted that the programme [✂] in respect of Chapter II provisions. Arriva also provided us with compliance reports from Arriva for the period September to December 2003, and these included issues concerning relations between Arriva's staff and competitors' staff.

6.22 Arriva told us that no operational division of APS had been subject to disciplinary proceedings before any Traffic Commissioner relating to intentional interference with the operation of a local bus service provided by another operator within the last five years. It stated that it had faced occasional and infrequent public inquiries in other operational areas in the last five years involving allegations that it had not run according to the published timetable (late or no/missing buses); these had invariably been in areas affected by congestion problems or staff shortages. Although Arriva had no compliance manual for dealing with Traffic Commissioner issues, it regularly monitored punctuality and reliability and used the information to alter running and layover/recovery times to improve its services.

6.23 As regards the first issue (see paragraph 6.19*(a)*), we thought that the evidence did not support the proposition that operators have been less willing to start new services on Arriva routes than they have been on Sovereign routes. In particular, we noted that the evidence showed that none of Universitybus, Centrebus or Transit Group had been deterred from expanding recently on to new routes in Hertfordshire, and that Transit Group had been deliberately targeting Arriva services. Accordingly, whatever apprehensions may be held about Arriva's likely competitive response, we did not consider that the merger would result in operators, who would not otherwise have been deterred, being deterred from starting services on Sovereign routes through fear of a predatory or retaliatory response.

6.24 As regards the second issue (see paragraph 6.19*(b)*), even if there were apprehensions about Arriva's likely competitive response and even if some operators are deterred from operating buses as a result, we did not believe that the addition of the Sovereign business would to any appreciable extent deter operators who would not otherwise have been deterred. Arriva already has the resources to conduct a predatory or retaliatory campaign if it was so minded (although we accept its evidence to us that it has no such intention) and other operators must know this.

6.25 Accordingly, we did not consider that the merger would result in operators, who would not otherwise have been deterred, being deterred from starting services through fear of a predatory or retaliatory response.

Summary assessment of possible barriers to entry

6.26 In summary, our views on the three possible barriers to entry set out in paragraph 6.7 are as follows:

(a) *Depot availability*—there is a shortage of existing depot facilities of a particular type, namely those adequate for the needs of an operator with more than about ten buses, and this is exacerbated by local authority planning restrictions. However, smaller operators appear to be able to find suitable sites for their needs (see paragraph 6.10).

(b) *Possible network effects*—three of us accepted that suitable depots in Hertfordshire are in short supply but did not believe that the merger would affect the position (see paragraph 6.12). In the view of the other two of us, the lack of depot facilities, necessary to enable entry (other than by acquisition) to take place on a reasonable scale, represents a significant barrier to entry or expansion (see paragraph 6.13). Furthermore, Arriva's enhanced ability to redeploy buses from its Hertfordshire depots as a result of the merger, aggravated by this lack of depots, would result in a deterrent to potential entrants and hence raise barriers to entry or expansion. The two accordingly concluded that the merger may be expected to result in an SLC in bus markets in Hertfordshire due to the raising of barriers to entry or expansion (see paragraph 6.16). None of us considered that Arriva's ability as a network operator to offer multi-journey and zonal tickets operated as a significant barrier to entry.

(c) *the* possible *threat of predation or retaliation*—the merger would not result in operators, who would not otherwise have been deterred, being deterred from starting services on Sovereign routes or elsewhere in Hertfordshire through fear of predatory or retaliatory conduct on the part of Arriva (see paragraphs 6.23 and 6.25).

7. Provisional conclusion on SLC question

7.1 Two of us concluded that the proposed merger may be expected to result in an SLC within markets for bus services within Hertfordshire because of:

(a) the loss of potential competition between Arriva and Sovereign (see paragraph 5.57);

(b) the removal of the competitive constraint arising out of the fact that Sovereign under different ownership might provide more effective competition to Arriva (see paragraph 5.62);

(c) the elimination of Sovereign as a major competitor for tendered services contracts awarded by HCC (see paragraph 5.68); and

(d) the raising of barriers to entry or expansion, in particular with respect to network effects, due to Arriva's enhanced ability to redeploy buses from its Hertfordshire depots, aggravated by a prevailing lack of suitable depot facilities (see paragraph 6.16).

7.2 The other three of us concluded that the proposed merger may not be expected to result in an SLC within any market in the UK for goods or services.

7.3 As the conclusion stated in paragraph 7.2 is the conclusion of three out of the five of us, the decision of the CC on the SLC question is that the proposed merger may not be expected to result in an SLC within any market in the UK for goods or services.[52]

[52]Had the Group decided by less than a two-thirds majority that there was an anti-competitive outcome, the decision would have been treated as a decision of the CC that there was not an anti-competitive outcome: see paragraph 20(1) and (2) of Schedule 7 to the Competition Act 1998. Thus, at least four of us would have had to have concluded that there was an anti-competitive outcome for there to have been an adverse decision of the CC. 'Anti-competitive outcome' is defined in section 35(2) of the Act.