

DETERMINATION OF MERGER NOTIFICATION M/21/009 – M/21/009 – CITYLINK/GoBUS

Section 21 of the Competition Act 2002

Proposed acquisition by ComfortDelGro Irish Citylink Limited of sole control of certain assets and business of Cummer Bus Group Limited

Dated: 20 August 2021

Introduction

1. On 03 March 2021, in accordance with section 18(3) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a voluntary notification of a proposed transaction whereby ComfortDelGro Irish Citylink Limited (“Citylink”), a wholly-owned, indirectly-held subsidiary of ComfortDelGro Corporation Limited (“ComfortDelGro”), would acquire sole control of the GoBus business (“GoBus”) currently operated by the Cummer Bus Group Limited and its subsidiaries (“Cummer Group”) (the “Proposed Transaction”).

The Proposed Transaction

2. The parties informed the Commission in the notification that Citylink and Cummer Group signed a heads of terms relating to the Proposed Transaction on 30 November 2020 (“Heads of Terms”). The Heads of Terms were submitted to the Commission as part of the notification. On this basis, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) and section 18(3) of the Act.
3. The parties informed the Commission that the Proposed Transaction will involve the acquisition by Citylink of such of the business and assets of Cummer Group as represent GoBus.

The Undertakings Involved

The Acquirer

4. Citylink is a wholly-owned subsidiary of Braddell Limited, a holding company which is, in turn, wholly-owned by ComfortDelGro.
5. ComfortDelGro is headquartered in Singapore and is a leading provider of transport services in Singapore. ComfortDelGro also has a significant international presence with operations currently extending from the United Kingdom and Ireland to Australia, Vietnam, Malaysia, as well as across nine cities in China, including Beijing, Shanghai, Guangzhou, Shenyang and Chengdu.
6. ComfortDelGro's businesses include bus services, taxi services, rail services, car rental and leasing, automotive engineering services, inspection and testing services, driving centres, non-emergency patient transport services, insurance broking services and outdoor advertising.
7. In the State ComfortDelGro's activities consist of the provision of coach services, through Citylink. Citylink's activities in the State are regulated by the National Transport Authority ("NTA").
8. Citylink currently provides coach services on the following interurban routes:
 - (i) Galway – Dublin/Dublin Airport;
 - (ii) Limerick – Dublin Airport;
 - (iii) Galway – Limerick; and
 - (iv) Galway - Cork.
9. In respect of the coach services provided by Citylink from Galway to Dublin/Dublin Airport, Citylink provide both express services and commuter services. In relation to the express services the licences held by Citylink with the NTA permit Citylink to operate 29 departures per day from Galway to Dublin of which:
 - (i) 13 travel directly to Dublin Airport (i.e. do not stop in Dublin city and terminate at Dublin Airport);

- (ii) 9 travel directly to Dublin city (i.e. do not travel on to Dublin Airport and terminate in Dublin city); and
 - (iii) 7 stop in Dublin City before travelling on to Dublin Airport.
- 10. Citylink is licensed to operate the same number of departures in the opposite direction. Furthermore, Citylink is authorised to operate one extra departure in each direction on Sundays.
- 11. In relation to the commuter services between Galway and Dublin/Dublin Airport, the licence held by Citylink with the NTA allow it to operate eight departures per day in each direction.
- 12. Prior to the Covid-19 pandemic, on the express service Citylink would operate 29 departures per day from Galway to Dublin/Dublin Airport, and the same number in the other direction. However, due to the impact of Covid-19 restrictions, the parties submit that route licensing has in effect been suspended. Due to Covid-19 with support from the NTA, Citylink is operating 12 departures from Galway to Dublin/Dublin Airport, and the same in the other direction. Citylink's Galway – Dublin/Dublin Airport commuter service is currently operating to its usual timetable.
- 13. For the financial year ended 31 December 2020, ComfortDelGro's worldwide turnover was approximately €[...] billion, of which approximately €[...] million was generated in the State.

The Target – GoBus

- 14. GoBus is currently operated by Cumer Group. Cumer Group consists of Cumer Bus Group Limited and its subsidiaries, Cumer Coaches Limited, Evobus & Coach Limited, Commercial Coach Sales & Rentals Limited and GoTours Ireland Limited.
- 15. Evobus & Coach Limited hold the route licences from the NTA for the routes currently operated by GoBus as detailed below in paragraph 16. Cumer Coaches Limited holds an operator's license¹ and is engaged in the business of transport services, consisting of carriage for reward of passengers under contracts for group transport, and holds an offer from the NTA to commence a licensed service on the Castlebar to Dublin route.

¹ An operator licence is different to a route licence. A route licence is provided by the NTA and is specific to a route. An operator licence is provided by the Department of Transport, Tourism and Sport. An operator's licence is required by the entity actually operating the buses / coaches in question. An operator's licences are not specific to any given route.

16. GoBus currently provides coach services on the following interurban routes:
- (i) Galway – Dublin/Dublin Airport;
 - (ii) Dublin – Cork; and
 - (iii) Galway – Ballina.
17. In respect of the coach services provided by GoBus from Galway to Dublin/Dublin Airport, GoBus provides express coach services and the licences held with the NTA permit it to operate 25 departures per day from Galway to Dublin of which:
- (i) 10 travel directly to Dublin Airport (i.e. do not stop in Dublin city and terminate at Dublin Airport);
 - (ii) 1 travels directly to Dublin city (i.e. does not travel on to Dublin Airport and terminates in Dublin city); and
 - (iii) 14 stop in Dublin City before travelling on to Dublin Airport.
18. GoBus is licensed to operate the same number of departures in the opposite direction. Furthermore, GoBus is authorised to operate one extra departure in each direction on Fridays and Sundays.
19. Due to the impact of Covid-19 restrictions, the parties submit that route licensing has in effect been suspended. Due to Covid-19 with support from the NTA, GoBus is operating 10 routes from Galway to Dublin, and the same in the other direction.
20. For the financial year ended 31 December 2019, GoBus' turnover was approximately €[...] million, [...] of which was generated in the State.

Rationale for the Proposed Transaction

21. The parties state the following in the notification:

[...] [The Proposed Transaction will give Citylink the opportunity to expand its network, achieve operational efficiencies and strengthen its market position]

Contact with the Undertakings Involved

22. On 14 April 2021, the Commission served Requirements for Further Information (“RFIs”) on Citylink and GoBus, pursuant to section 20(2) of the Act. The service of these RFIs adjusted the

deadline by which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

23. Upon receipt of full responses to each of the RFIs from the parties on 13 July 2021 (the “RFI Responses”), the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 13 July 2021.²
24. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the undertakings involved in the Proposed Transaction.

Market Enquiries

25. During its investigation, the Commission conducted market enquiries which included issuing questionnaires to various competitors active in the commercial coach sector. The Commission received responses from four of the five parties it contacted. None of the parties who responded to the questionnaires indicated serious competition concerns with the Proposed Transaction.
26. The Commission also engaged with the NTA in relation to the Proposed Transaction.

Third Party Submissions

27. There have been four third party submissions received from a mix of individual consumers, businesses and representative bodies in Galway City.
28. All such submissions referred to the creation of a potential monopoly in service provision on the Galway - Dublin route should the Proposed Transaction proceed as intended. They also had particular concerns over Bus Éireann’s planned exit from the Galway - Dublin route.
29. Three of the submissions highlighted the importance of the Galway - Dublin route to commercial activity in Galway and had concerns that the Proposed Transaction may lead to the potential for increased prices or reduced services. Particular concern was paid to the connectivity requirement of linking Galway City to Dublin Airport.

² The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.

30. One of the submissions stated that any resulting unilateral pricing effects would have a disproportionate effect on third level university students.
31. The Commission has considered the competition concerns raised in the submissions and has taken them into account as part of its review of the Proposed Transaction.

Industry Background

32. The provision of licensed scheduled bus services is regulated by the NTA.³ Under the Public Transport Regulation Act 2009, the NTA is responsible for the licensing of public bus passenger services. Access to a given route is predicated on a successful application to the NTA for a route licence, which sets out the set departure times, and frequency of services a given operator may operate on a given route.
33. The NTA cannot control the prices set by commercial operators if the operator in question is not operating under a public service obligation. If a route operator wishes to change their prices, they must notify the NTA, though this regulatory requirement does not go beyond notification.
34. The industry is characterised by a diverse number of market actors, with a wide variety of operators at different levels of scale. This is both in terms of the number of vehicles owned, and the number of active route licenses. The Commission notes that there are 9,264 Large Public Service Vehicles (LPSV) (i.e. public service vehicles capable of carrying more than eight passengers) currently registered by 1,724 private operators in Ireland.⁴ It should be noted that sub-contracting is a feature of the sector and that for example, Citylink subcontracts all of the services which it provides in Ireland (including subcontracting its service on the Galway – Dublin route to Callinan Coaches).

³ In their 'Guidelines for the Licensing of Public Bus Passenger Services' the NTA lists "*regulated competition in the provision of licensed bus passenger services in the public interest*" as one of the things it will seek to achieve in considering an application for the granting of a license.

⁴ "*The Private Bus & Coach Sector in Ireland*", The Coach Tourism & Transport Council of Ireland, February 2020.

35. The Commission undertook an analysis of a number of major interurban routes in the State and found that two public transport operators on a given route is the mean⁵ across the majority of the analysed routes.⁶ For example Dublin – Kildare, Dublin – Donegal, and Galway – Sligo all have two operators at present.
36. [...]. Market operators are reactive, and are likely to apply to fill the gap in a given route if it emerges. For instance, the Commission notes that Aircoach was granted a route licence from the NTA to operate an express service on the Galway – Dublin/Dublin Airport route on 23 April 2021, with services having commenced in late July 2021. In its response to the Commission’s market enquiry, Aircoach indicated that part of the rationale for Aircoach to enter the route was the announcement of the planned exit of Bus Éireann’s express services. In September 2020 Bus Éireann indicated its intention to discontinue its services between Dublin and Galway.⁷

Horizontal Overlap

37. As described in paragraphs 8 to 18 above, Citylink provides interurban coach services on the following routes: Galway – Dublin/Dublin Airport; Limerick – Dublin Airport; Galway – Limerick; and Galway – Cork. GoBus provides interurban coach services on the following routes: Galway – Dublin/Dublin Airport; Dublin – Cork; and Galway – Ballina. Both Citylink and GoBus provide express services on the Galway – Dublin/Dublin Airport route, this is the only area of horizontal overlap between the activities of the parties. The Commission considers this overlap in its competitive analysis of the Proposed Transaction below.

Product Market Definition

38. The Commission has not previously considered merger cases involving the provision of interurban coach services. The Commission notes that other competition authorities⁸ in similar cases have considered the competitive constraints on different modes of transport on a flow-

⁵ 2.48 if rail is included, 1.86 if rail is excluded.

⁶ On routes where rail is included, the median is 2, and the mode is 3. On routes where rail is excluded, the median is 2, and the mode is 2.

⁷ See: <https://www.irishtimes.com/news/ireland/irish-news/bus-%C3%A9ireann-to-shut-many-inter-city-routes-due-to-financial-p pressures-1.4366478>

⁸ See for example in UK - Stagecoach Group plc / Eastbourne Buses Ltd (Competition Commission - 2009) and Stagecoach and Scottish Citylink (Competition Commission 2006)

by-flow basis in order to determine whether the merger may provide an incentive or ability to increase fares or reduce service levels.

39. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly, consisting solely of express coach services on the Galway - Dublin/Dublin Airport route, or more broadly, which captures all interurban public transport services including commuter services and rail services on that route.
40. In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its likely impact by reference to the narrower potential market of express coach services on the Galway – Dublin/Dublin Airport route.
41. In terms of the relevant geographic market, in line with the UK and Portuguese competition authorities’ approach, the Commission has analysed the likely competitive effects of the Proposed Transaction at a local level, namely on the Galway - Dublin/Dublin Airport route.

Competitive Assessment

42. Table 1 below provides the parties’ estimates of the annual passenger numbers on the Galway - Dublin/Dublin Airport route in 2019. Given the average number of operators on a given route is two, the market shares provided should be considered in this context.

Table 1 – Annual passenger numbers by operator on the Galway – Dublin/Dublin Airport route

Operator	Estimated Annual Passenger Numbers for 2019	Estimated Market Share for 2019
Citylink	[...]	[40-50]%
Bus Éireann	[...] ⁹	[20-30]%
GoBus	[...]	[20-30]%

Source: The parties

⁹ This figure is based on the Parties’ own estimate of Bus Éireann’s passenger numbers on the Galway – Dublin route.

43. The Commission considers that in the absence of Aircoach entering the market for express coach services on the Galway – Dublin/Dublin Airport route, there would be a real risk of competition concerns should the Proposed Transaction be implemented. As can be deduced from Table 1 above, given that Bus Éireann has since ceased the operation of its express service, the merged entity would be the sole operator on the route were it not for Aircoach’s recent entry on this route, and thus be in a monopoly position in providing express coach services on the Galway – Dublin/Dublin Airport route. Such a position may potentially give the merged entity an incentive or ability to unilaterally increase prices or reduce services on the Galway-Dublin/Dublin Airport route. However, given the entry of Aircoach into the relevant market, the Commission is of the view that any potential competition concerns which may have otherwise arisen as a result of the Proposed Transaction will not now potentially arise for the reasons set out below.
44. First, the Commission regards Aircoach’s entry to the market as empirical evidence that barriers to entry for the Galway – Dublin/Dublin Airport route are relatively low.
45. Second, the Commission considers that the head to head competition which will be offered by Aircoach on the Galway – Dublin/Dublin Airport route will serve as a competitive constraint on Citylink following implementation of the Proposed Transaction. In its market study on local bus services in the UK, the UK Competition and Markets Authority’s predecessor, the Competition Commission, found that although uncommon, where there is head to head competition on a substantial part of the route *“operators respond by improving the quality of their service and lowering their fares on those routes”*.¹⁰ Evidence of private coach operators exercising a competitive constraint on fare prices in the State can also be found in an earlier ESRI report from 2004.¹¹
46. Third, one of the competitors contacted as part of the Commission’s market enquiries suggested in their submission that from their perspective, Aircoach’s entry to the market will serve as a disciplining constraint on Citylink not to raise prices, citing the price sensitive nature of the market.

¹⁰ Competition Commission, ‘Local bus services market investigation A report on the supply of local bus services in the UK’ (2011) [para 27.]

¹¹ Sean D. Barrett, ‘Bus Competition in Ireland – The Case for Market Forces’ (2004) ESRI.

47. The Commission has also assessed whether Citylink would have incentives to reduce service levels following implementation of the Proposed Transaction. The parties to the Proposed Transaction have submitted the following in the merger notification form as their plans regarding the rescheduling of services on the Galway – Dublin/Dublin Airport route after implementing the Proposed Transaction.

“The Parties would note that the Proposed Transaction would permit certain efficiencies in the timetabling of express services on the Galway – Dublin route. The Parties’ respective timetables currently involve a degree of duplication around the most popular departure times.”

and

“Post-transaction Citylink will continue to be highly incentivised provide sufficient capacity at peak travel times. As noted above, regular coach use (for example, by users travelling on intercity routes regularly for education purposes) tends to be a matter of habit and it is vital for an operator such as Citylink that its passengers have confidence that there will be space available for them at their departure time of choice. Where, at times of high demand, there has been insufficient space on scheduled services to meet demand, it has been Citylink’s practice to arrange with its sub-contractor, at short notice and within minutes of the scheduled departure, for a further coach to carry passengers who were not able to get on the scheduled service. The NTA permits such additional services to be authorised after the event by way of an auxiliary authorisation.”

48. The Commission considers that Citylink will not have the incentive to substantially reduce its offerings of departure slots, as maintaining coverage is seen as one of the main ways that a commercial coach operator can compete on a given route, and there would be no guarantee that Citylink would be able to regain a departure slot from the NTA should it reduce the frequency of its services on the route in question.
49. In addition, as noted above, in the event that Citylink decides to cease the operation of certain departure times on the Galway – Dublin/Dublin Airport route, the Commission considers that based on the responses it received to its market enquiries and the Commission’s engagement with the NTA, it is the nature of the interurban express coach services industry for other

operators to fill potential gaps. For instance, one of the competitors contacted as part of the Commission's market enquiries suggested in their submission that this is how they assess entry to a given route.

50. Furthermore, based on evidence received in response to the Commission's market enquiry, the Commission is aware that Aircoach will actively seek to expand its services on the Galway - Dublin/Dublin Airport route. One of the competitors contacted also noted that increasing the number of departure slots on a given route not only assists in competing with incumbents, but actively drives an increase in demand for public transport services, effectively incentivising firms to continually expand.
51. In light of the above, and in particular the entry of Aircoach to the Galway - Dublin/Dublin Airport route, the Commission considers that the Proposed Transaction is unlikely to give rise to any horizontal competition concerns in the market for express coach services on the Galway – Dublin/Dublin Airport route.
52. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

53. The parties informed the Commission that there is no vertical relationship between ComfortDelGro and GoBus in the State. The Commission has not identified any vertical relationship between the parties in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

54. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

55. The parties state in the notification that certain ancillary restraints in relation to the Proposed Transaction are included in the Head of Terms. The parties submit that these restrictions are directly related and necessary to the Proposed Transaction. The Commission notes that the Heads of Terms provided are not legally binding. Therefore, the Commission does not propose to express an opinion as to whether the restrictions in the Head of Terms are directly related and necessary for the implementation of the Proposed Transaction.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the Proposed Transaction whereby ComfortDelGro Irish Citylink Limited, a wholly owned, indirectly held subsidiary of ComfortDelGro Corporation Limited, would acquire sole control of the GoBus business currently operated by the Cummer Bus Group Limited and its subsidiaries will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission