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From: Simon Harris
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[redacted]

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One network, one timetable, one ticket: planning buses as a public service for Wales. Cover letter to the CMA's response to the consultation.

The Competition and Markets Authority (CMA) has a statutory duty to promote competition for the benefit of consumers. Our aim is to make markets work well for consumers, businesses and the economy, across the whole of the UK. We are an independent non-ministerial department responsible for merger control, antitrust and consumer enforcement as well as conducting market studies and investigations to address sector-wide issues.

The CMA has a role in providing advice and recommendations to government and public authorities through its markets and advocacy functions.[1] The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and on consumers. As part of our response we invite the Welsh Government to consider the CMA's Competition Impact Assessment guidelines of which we have an associated training session for officials. We have previously run two sessions on these guidelines to Welsh Government officials, one in Cathays Park, one in Llandudno.

Improved public transport networks benefit passengers through improved choice, service and better value fares. They benefit residents through improved air quality and reduced congestion and they benefit the local economy driving wider economic

[1] Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, ''on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).''

growth and productivity. The CMA works with national and local bodies to provide competition and consumer advice to inform policy making across all modes of transport.

The CMA recognises bus transport as a crucial part of the UK's transport infrastructure, particularly for those on low incomes, those without access to private transport and those in vulnerable circumstances. This and the CMA's experience of engaging with local bus markets means that the CMA is keen to support policy makers in making local bus markets work better.

Our response does not comment on the policy objectives themselves, but rather focuses on the implications for competition and how these might affect the outcomes for consumers in local bus markets. We recognise that the Welsh Government will have multiple policy objectives, and any trade-offs are for policy makers and elected representatives to consider. We would, in all cases, encourage policy making to be informed by a strong understanding of the relevant markets and that the impacts on competition and consumers are carefully considered.

We have limited our comments to those aspects where the CMA has expertise and can offer the greatest insight and have grouped our responses thematically. We would be happy to discuss anything contained in this response, or otherwise engage with the Welsh Government as it develops its policy in this area. The CMA will be publishing our response.

Yours sincerely

[redacted]

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One network, one timetable, one ticket: planning buses as a public service for Wales - response from the Competition and Markets Authority

Response to Questions 1-3 "Do you agree that change is required in how we deliver bus services to meet the needs of Wales' citizens and respond to the climate emergency?"; "Do you agree that franchising is required to deliver the depth and pace of change to the bus network that is required in the context of the climate emergency?"; "Do you agree with the Welsh Government's preferred franchising model as described above?"

1. The CMA recognises bus transport as a crucial part of the UK's transport infrastructure and supports measures to make local bus markets work better for consumers. Effective competition is an important part in making this market work and for governments to achieve their objectives in improving the experience of consumers. Consumer law and competition law can also produce outcomes that have significant sustainability benefit. The CMA recognises the importance of the commitment, across the UK, to net zero and has committed in its Annual Plan (2022 to 2023) to support the transition to low carbon growth.[2]

2. Where there is evidence that on-road competition in deregulated bus markets is not delivering benefits for consumers, or where policy makers consider that their wider policy objectives are not being delivered by the market, policy makers have a number of options at their disposal. These include franchising models and strengthened or statutory partnership arrangements.

3. Each option has its own benefits and risks, and it is for policy makers to judge and balance those risks and benefits, both in relation to the impacts on competition and consumers, and in relation to wider policy objectives. It is important, however, that these options are suitably considered and it is good to see that the Regulatory Impact Assessment includes partnership-based approaches alongside franchising in its assessment. This response does not provide further detail on partnership arrangements, given the focus in the White Paper on the Welsh Government's preferred option of franchising. However, the CMA would be happy to engage on these alternative options if required.

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[2] For further information, see Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government. Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government - GOV.UK (www.gov.uk)

4. Franchising can be an attractive option to policy makers looking for greater control in delivering wider policy objectives. The White Paper notes a number of objectives and potential benefits from franchising including giving policy makers greater input to maximise broader social, economic and environmental benefits alongside maximising benefits for passengers. Franchising has the potential to deliver significant benefits through facilitating greater coordination of ticketing and of complex networks, along with the potential for cost savings through optimal network design.

5. These benefits should be balanced against the possible costs associated with moving away from 'on-road' competition, including the potential exit of competitors and assets from the local bus market and the impact of this on passenger choice. Some key potential risks related to franchising include:

   (a) Difficulties for local authorities in acquiring and developing additional skills and capabilities in areas such as network design and monitoring, especially if there is widespread simultaneous adoption.

   (b) Reduced incentives for ongoing improved efficiency, service quality and innovation than under a deregulated system, particularly if there is no effective competitive threat posed during the contract period, and if there is no contractual mechanism to set and revise minimum standards or the service required more generally meaning that the network may be less responsive to changes in customer demand or expectations.

   (c) Consolidation of existing bus operators, and associated loss of competitive pressure, as a result of operators failing to win a particular contract or being unable to compete for contracts (eg due to scale). This may be particularly relevant to smaller or more local operators.

   (d) The need for enough credible operators to be bidding for franchise contracts so that the benefits of competing *for* the market are achieved.

   (e) Potential long-term changes to the structure and functioning of local bus markets (eg potential operator exit resulting from franchising) creating difficulties in reversing the policy should any franchising scheme not deliver the intended outcomes.

6. To help mitigate some of these risks and ensure effective competition for franchises occurs, the CMA would encourage careful consideration is given to:

   (a) Understanding the local context, the existing nature of competition and who is likely to compete for franchises. Relevant factors may include the number of competitors and their historical market shares, potential

operator entrance or exit, the range of business models active in the market, the nature of existing government and public authority interventions and the extent to which the market is currently delivering good outcomes and delivering wider policy objectives.[3] This sort of market understanding, alongside direct engagement with industry, should inform the objectives of any interventions (such as franchising) and build a picture of how such changes might play out in practice (eg who may bid for what types of contracts in different areas).

(b) How the franchise arrangements are designed and the impact that is likely to have on competition for contracts (including who can compete) and consumer outcomes. Relevant factors may include the scale of the franchises (ie the number of routes and size of required fleet and depot infrastructure), the length of contracts, how routes are packaged together, the service standards and other requirements placed on operators, any break clauses, the incentives for efficiency and service quality and the ability of local authorities and the government to intervene. Careful design of bidding lots may be particularly important to allow smaller operators to bid to service parts of the market.

(c) How the competition for the franchise contracts is managed and the impact this is likely to have on the ability of different operators to compete for the market or remain in the market if unsuccessful in a bid for a contract. Relevant factors may include the frequency of tenders, the phasing of competition for different contracts and the process and length of time for those tenders.

(d) Other potential barriers to bidding for franchise contracts and how they may be addressed. The acquisition of depots by local authorities for the use of franchisees for example, might facilitate new entrants by mitigating their financial uncertainty of acquiring necessary facilities to participate in the local market.

7. The CMA notes there are currently few examples of authorities across the UK which have either implemented or intend to implement franchising models. London has experience of managing multiple rounds of franchise awards and

[3] There are a number of existing sources that provide potentially relevant information to gather to understand markets including: CMA Market Investigation Guidelines:CC3 pp 24-30 (noting for example, market shares, nature and characteristics of the products and substitutes, nature of the customer base, legal and regulatory framework, industry practices, the history of the market, and market outcomes such as prices, profitability, quality, innovation and other non-price indicators); HM Treasury Green Book (noting for example, evaluation of previous interventions and what works, background academic research, specially commissioned research or surveys, and international comparisons); and Government Commercial Function Market Management Guidance Note pp 11-13. This list is indicative, and the CMA can provide further sources and information on understanding markets.

potential comparators generally tend to be large, densely populated cities. We also note and have engaged with Greater Manchester Combined Authority on their plans to move to a franchising scheme.

8. While there will be much to learn from these comparators in the UK, and wider international examples, it is important to ensure that full consideration is given to how franchise design reflects the local and Welsh context and also continues to support the consumer and wider benefits of competitive tension.

Response to Questions 5-6 "Do you agree that there is a need for regional consideration and coordination of bus network plans by Corporate Joint Committees, before combining them at a national level?"; "Do you agree that letting and managing contracts at the national level by the Welsh Government through Transport for Wales offers the best opportunity to pool franchising expertise, deliver economies of scale?"

9. As noted in our response to Questions 1-3, a key potential risk with franchising lies in the need to acquire and develop skills and capabilities in areas such as network design and monitoring. While the CMA is not in a position to comment on the effectiveness of the specific proposals here, it is good to see thought is being given to how local knowledge, understanding, information and needs may feed through to decisions on franchising and begin to address one of risks we identify in para 6 (a) on understanding local market conditions. Accessing the expertise of staff, operators and consumers at a local and national level (the latter through Transport for Wales) is likely to enhance decision making if a franchising model is pursued.

Response to Question 9 "Do you agree with the proposed requirement to consider the impact on SME bus operators when franchising?"

10. The consultation recognises the importance of harnessing competition from SMEs, municipal operators and larger commercial operators.

11. A requirement to consider the impact on SME bus operators when franchising is welcome, but alone this may not avoid negative impacts on SMEs and potential operator exit. It is good that the Welsh Government is working with others to consider how to address potential concerns for smaller operators in relation to accessing zero emission vehicles and depot facilities, though this will need careful consideration.

12. Without careful consideration of the potential risks outlined above and appropriate mitigations, franchising may lead to otherwise viable operators exiting the market or lead to consolidation and increased concentration. This may impact the medium and long-run outcomes in the bus market. The need

to access finance may disproportionately affect smaller operators, particularly if they are required to invest in improved depots or fleets. For example, if a smaller operator is required to operate one or more routes with an electric fleet, its depot's electrical supply may need to be upgraded. As a result, some financial support may need to be considered to ease transition on equal terms.[4,5]

13. There is a broader risk that operators with a particular focus or specialism (such as the vehicles in their fleet) in a local area may be at risk of not being well-suited or able to demonstrate their ability to deliver services according to the design of new franchise contracts.

14. The extent to which operator exit may occur will depend on the nature of local markets, the design of franchises, the design of competition for those franchises and the flexibilities available to reflect local circumstances. Better understanding of the likely ability of different operators (current and new) to effectively compete for franchises should help anticipate how and where there may be contraction in the number of operators in the market.

15. The number and nature of effective competitors is key to achieving a competitive tendering process for franchises and maintaining a credible competitive threat to operators of franchises. This competitive threat should help incentivise lower costs, higher service levels and innovation both during the franchise and in subsequent rounds of competition.

16. We understand there has, over time, been a reduction in the numbers of operators in Wales. It is therefore important to consider the potential impact of a move to a franchise model in Wales may have on the market, in order to avoid accelerating further market contraction.

Response to Questions 10, 12-15 "Do you agree with the benefits of establishing a mechanism to allow a public service operator of last resort to ensure services keep running if a franchise fails?", "Do you agree that local authorities should be able to run bus services directly?"; "Do you agree that local authorities should be able to set up arms-length companies to operate local bus services?"; "Do you agree that local authorities should be able to

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[4] See for example the experience of Auckland, New Zealand where the estimated cost of upgrading the electrical grid for 15 depots ranged from NZ$500,000 to NZ$4,500,000 https://www.c40cff.org/knowledge-library/a-study-of-the-impact-of-electrification-of-aucklands-bus-depots-on-the-local-electricity-grid

[5] Coventry in England is an example of how a combination of government and private operator funding has been used to deliver an 'all electric bus city'. https://www.coventry.gov.uk/news/article/3786/all-electric_bus_city_plan_backing_finalised

invest in or acquire bus companies?"; "Do you agree that municipal bus companies should be able to raise fund by borrowing or selling shares?"

17. Greater credible competition in the market is generally beneficial regardless of ownership. In the context of franchising, a 'potential' municipal bus company (that is a municipal bus company that does not yet exist but in theory could be formed) may helpfully provide the threat of competition to a current operator of a franchise that is not otherwise expecting to face competition in future franchises.

18. It is important, however, that steps are taken to ensure the principle of competitive neutrality is adhered to and that public sector trading operations do not enjoy a commercial advantage solely because of their ownership by or association with a public body or government. Any decisions taken by the local authorities, the Welsh Government or any other public bodies should be taken at appropriate distance from public sector trading operations. In a franchising setting there may be particular risks around conflict of interests that need managing if losing bids for particular contracts would lead a municipal bus company to exit the market or considerably downsize. The CMA's review of local authorities and competition and open letter to local authority chief executives provide further information on how local authorities affect competition, including where local authorities act as suppliers.[6]

19. Further, we would encourage the Welsh Government to engage with local authorities to understand whether there is a realistic prospect of market entry and greater competition from municipal bus companies and in what circumstances that is likely, particularly if this is expected to provide a credible competitive threat to other operators.

20. The CMA has no objection in principle to establishing a mechanism for a public service operator of last resort as there is currently within rail franchising (noting practical differences to rail such as access to and transfer of rolling stock). We would encourage, however, consideration of how that mechanism intends to ensure that the benefits of open competition are maintained, for example by requiring re-tendering within certain timeframes. The wider comments above on municipal operators would also apply to a public service operator of last resort.

Competition and Markets Authority
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[6] Other materials that may be helpful include Government in markets: Why competition matters – a guide for policy makers and Public bodies and competition law [OFT]