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By email

Dear Matthew,

Moving Buses Forward – proposed franchising scheme for Liverpool

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 with responsibilities including merger control, antitrust and consumer enforcement as well as conducting market studies and investigations to address sector-wide issues.¹

The CMA has a role in providing advice and recommendations to government and public authorities.² 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.

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. Buses are the most used mode of public transport in the UK, albeit with declining usage,³ which is consistent with the experience of the Liverpool City Region.⁴ It is the CMA's view that bus franchising can be an important tool to improve local bus markets directly.

We are responding to this consultation as a statutory consultee in the Transport Act 2000 (as amended).⁵ A move to franchising replaces competition *in* the bus market with competition *for* the bus market. The change requires careful oversight from the Local Transport Authority (LTA) or Combined Authority (CA) to ensure that the intended benefits for passengers are delivered. The CMA's interest in this area

¹ CMA website, [Competition and Markets Authority - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

² 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)."

³ DfT, [Annual bus statistics: year ending March 2022 \(revised\)](#).

⁴ LCRCA, [Bus Franchising in the Liverpool City Region: Assessment](#), paragraph 3.2.10 and DfT, [Annual bus statistics: year ending March 2022 \(revised\)](#), Table BUS01f ("Merseyside ITA")

⁵ Legislation.gov.uk, [s.123E\(4\)\(i\), Transport Act 2000 \(as amended\)](#)

concerns designing a franchised scheme which holds franchised operators to account during its operation whilst also maintaining or creating the conditions in the market for future competitive tendering of franchises to achieve intended outcomes for local areas.

We have focused our response, in the attached annex, on those areas where we believe we can add greatest insight. We recognise that Liverpool City Region Combined Authority (LCRCA) 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 to be informed by a strong understanding of the relevant markets and that the impacts on competition and consumers, now and in the future, are carefully considered. We would be happy to discuss anything contained in this response, or otherwise engage with LCRCA as it develops its final proposals.

Competition and Markets Authority

Annex – response to the Moving Buses Forward consultation

Background and the CMA’s view on bus franchising

1. The CMA is responding to Liverpool City Region Combined Authority’s (LCRCA) *Moving Buses Forward* consultation as a statutory consultee on bus franchising proposals in England, under the Transport Act 2000 (as amended) (herein “the Act”). The CMA has previously responded to Greater Manchester Combined Authority’s (GMCA) consultation on franchising under the Act.
2. The Competition Commission’s 2011 market investigation into local bus services identified franchising as a possible remedy for some of the competition issues that the investigation had outlined. Ultimately, the independent group which led the investigation decided against using franchising as a way of remedying the specific competition issues it had identified, on the grounds of proportionality.⁶
3. Since the 2011 market investigation, the Bus Services Act 2017 has significantly changed the regulatory toolkit available to local transport authorities (LTAs) to shape local bus markets and has given mayoral combined authorities (herein “CAs”) the ability to introduce franchising. While the 2011 Market Investigation provides insights into how local bus markets operated, this analysis is now outdated and the way that local and national bus markets have developed make its findings less relevant.
4. It is in the context of the intent of the Bus Services Act 2017 and the UK government’s 2021 national bus strategy for England, “Bus Back Better”,⁷ that we provide our advice – recognising that the economic, political and regulatory climate has changed since the 2011 market investigation. The CMA recognises that franchising is an important policy option for CAs who intend to secure better outcomes for passengers, residents, local economies and taxpayers. It is the CMA’s position that it is for CAs and LTAs more generally to decide on the appropriate policy approach for their area. The CMA’s advice is focused on how to design and implement that policy to both harness and facilitate the benefits of competition for the benefit of passengers.
5. Franchising changes the fundamental nature of competition for the duration of a franchise award but also the long-term structure of the market and potentially the number and size of operators in each area. In this response we outline at a high-level some relevant considerations on the design of franchising, which is contained in the proposals that LCRCA is consulting on. We also include some broader reflections from CMA engagement on bus policy.

⁶ Competition Commission, [Local bus services market investigation \(CC\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531212/Local_bus_services_market_investigation_(CC)_-GOV.UK_(www.gov.uk).pdf).

⁷ DfT, [Bus back better: A long-term strategy for buses in England, outside London](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531212/Bus_back_better_A_long-term_strategy_for_buses_in_England_outside_London.pdf).

6. The CMA has previously highlighted four key areas for LTAs and CAs to consider when consulting on franchising.⁸ We outline each in our response.
- **Design of individual franchises.** Franchise design should best enable competition amongst a range of potential operators now and in the future.
 - **Access to fleets and depots.** Infrastructure represents a high barrier to entry and expansion for new or growing firms in the market. A well-designed asset strategy may allow new entrants into the market without being hampered by the high fixed costs of purchasing infrastructure.
 - **Impact on fares and ticketing.** By taking control of fares and ticketing the LTA or CA will be able to affect the cost of bus services directly. Care needs to be taken to ensure that passengers benefit directly through a combination of lower or simpler fares and ticket types.
 - **Supporting ongoing innovation.** For franchising to continue to be successful, it must be able to identify and respond and adapt to changing patterns of passenger demand, finding ways to identify signals from the market and making periodic change in response to passenger needs and demands.

CMA observations on LCRCA's proposals

Design of individual franchises

7. The introduction of bus franchising will effectively end competition *in* the market and will replace it with competition *for* the market. Therefore, if benefits are to flow from competition, it is the design of the individual franchises and the competition to win the franchise contracts that is most important. The number and the size of the franchises will have significant impacts on an operator's ability and incentive to bid for contracts, and the outcome of franchising awards may in turn dictate the number of operators left competing in the market. However, structuring franchising in a way that intentionally maintains market structure or protects incumbents may lead to a reduction in intensity of competition. This could manifest itself through a lack of pressure on operators in future franchise rounds (leading to higher costs for the LTA and ultimately passengers or taxpayers) and a lack of pressure to innovate and keep quality of service high for passengers.
8. Our observations on the design of individual franchises are broken down into three separate areas:

⁸ GMCA, [Doing Buses Differently: Greater Manchester Consultation on a Proposed Franchising Scheme, Stakeholder Responses](#), pg. 1245.

- **Size of the franchise.** As well as considering the specific dynamics of a local region, LTAs must ensure that franchise lots are of the right size to encourage competition from multiple potential operators.
- **Length of the franchise.** If franchises are tendered too frequently this may blunt an operator's incentive to invest in the network, whilst too long between tenders could lead to stasis in the market.
- **The ability for the LTA to oversee franchising and take remedial action.** Effective scrutiny of operators is essential in ensuring franchised agreements are adhered to and passengers are getting the benefits committed to.

Size of the franchise

9. LCRCA proposes to use five franchise areas to be rolled out sequentially across five rounds, with each round/area containing a set number of lots varying in size.⁹ The CMA's understanding is that at present two firms hold a large market share in the Liverpool City Region, which varies across the region with depots located in different strategic areas.¹⁰ If the five franchise areas directly align with a particularly high concentration for a given firm, there may be a risk that the firm with the largest share has an advantage in participating as a tenderer, which may deter other firms from participating.
10. Good franchise design should ensure that the largest firms are forced to compete against each other and that smaller firms have opportunity to bid for a range of lots. Should smaller firms be unable to compete for enough lots, there is an increased risk that smaller operators could potentially exit the market resulting in a further lessening of competition for future franchises.
11. The CMA understands that LCRCA's approach is to bring all areas under the franchised system at the same time, even if lots are tendered in stages. As discussed below, LCRCA anticipate this will bring forward passenger benefits through fares and ticketing changes sooner.
12. LCRCA has included consideration of Small and Medium Operators (SMOs) when designing its lotting strategy. The smaller B and C lots present existing operators and potential new entrants with opportunities to enter new, smaller markets.¹¹ However, the scale of franchises for lot A contracts is considerably larger than for smaller lot B and C contracts. While medium sized operators might be able to acquire a few small franchises, LCRCA should consider its role in shaping franchising markets through lotting strategies, especially how

⁹ LCRCA, [Lotting Strategy](#), paragraph 3.

¹⁰ LCRCA, [Bus Franchising in the Liverpool City Region: Assessment](#), figure 1.6

¹¹ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.4.18

an SMO could realistically expand their business to demonstrate the track record that may be needed to win a larger franchise.¹²

13. LCRCA proposes to retain the option to limit the number of lots within a round that a single operator could bid for or win.¹³ Within rounds, this should support competition, especially for SMOs, who could otherwise be forced out of B and C lots through competition from large operators. Additional clarity should be provided to operators on the mechanism for limiting bids, its objectives and the circumstances in which it might be expected to apply.
14. Our understanding is that for smaller lots, operators may be able to provide their own depots and can incorporate the cost into their bid price. For larger category A lots, LCRCA would seek to provide operators with a publicly owned/leased depot for the term of the franchised contract.¹⁴ Whilst this may be pragmatic for existing operators in the region, a new entrant without existing access to a depot could struggle to acquire smaller lots, and may be hindered in the bidding process, if an existing depot is one of the tendering criteria. Our general view on depots is outlined below.

Length of the franchise

15. Tendering higher numbers of smaller packages of lots could give more flexibility and stronger competition in the future.¹⁵
16. Given the proposed seven-year franchise length, there is a risk of significant change in the structure of the market in each area of Liverpool City Region by the time of the next franchising round, and that some operators may have left the market. The proposed shorter-term contracts for smaller lots should mitigate some of the risk of operator exit by providing greater flexibility and reducing the levels of risk for SMOs.¹⁶

The ability of the LTA to oversee franchising and take remedial action

17. LCRCA has included a remedial action plan based on performance KPIs.¹⁷ It is crucial that operators are consistently held to certain standards contained in the franchise. It is also important that LCRCA has the capacity to monitor these standards and implement measures and penalise operators that do not meet these standards swiftly and effectively. Furthermore, LCRCA should consider incentive schemes to reward high achieving operators. Having a franchised agreement, in place of a deregulated market, can allow LTAs to reward investment and innovation which benefits passengers.

¹² We understand from the LCRCA consultation that lot D services will be cross-boundary services which we cover in paragraph 33 of this response. We will not cover lot D services in commenting on the lotting strategy.

¹³ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.4.36.

¹⁴ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.4.27.

¹⁵ GMCA, [Doing Buses Differently: Greater Manchester Consultation on a Proposed Franchising Scheme, Stakeholder Responses](#), pg. 1246.

¹⁶ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.4.19.

¹⁷ LCRCA, [Bus Franchising in the Liverpool City Region: Assessment](#), paragraph 4.2.2.

18. Understanding operator performance is essential and LCRCA's proposal to manage all central customer service functions will provide a single point for passengers to provide their views on operators' service. Passengers will be able to outline poor performance as well as offer suggestions. This timely information on customer satisfaction should help LCRCA to respond quickly to passengers' demands, holding operators to account.
19. LCRCA consulted several operators in its market engagement process when designing the lotting strategy.¹⁸ As part of its ongoing market management, LCRCA should continue to consult and engage with operators of all sizes on to understand how franchise design will affect the nature of competition now and in the future.

Access to fleets and depots

20. To operate a franchise, an operator needs both vehicles and appropriate garaging/depot space to store and maintain buses. The ability for operators to acquire or access these assets, potentially at short notice, will affect the intensity of competition for franchises. LCRCA's intention to purchase the bus fleet and lease these to franchised operators should help operators compete on a level playing field.¹⁹
21. The proposed scheme also includes a residual value mechanism for additional fleet which guarantees the price at which fleets will be sold should an incumbent operator exit the market, reducing financial risk. We encourage LCRCA to monitor whether the residual value mechanism is having its intended effect, and particularly whether it is encouraging SMOs to enter the market.
22. CMA engagement with stakeholders on bus markets over the past 5 years has suggested that the acquisition of land in suitable strategic locations for bus depots and obtaining planning permission can be difficult. The ability to acquire a depot in the time between the initial franchise being awarded and when the bus provision starts can be challenging. We therefore recommend a sufficient period to ensure depot acquisition is achievable. LCRCA's approach for a 12-month mobilisation period between the franchise award and the start of service provision should help mitigate this risk.
23. There is a risk that if incumbent operators were to exit the market, they may choose to dispose of depots for a purpose outside the bus market which would reduce depot capacity. While there may be scope for LCRCA to acquire land through brownfield sites to build new depots,²⁰ or through compulsory purchase options, this may affect timeframes in which franchising can be delivered. Early engagement with current owners to determine the future of depots and clear communication of LCRCA's intentions may help to mitigate

¹⁸ LCRCA, [Operator Market Engagement Supporting Paper](#).

¹⁹ If operators are required to finance and acquire a fleet, larger operators may be at a competitive advantage if they can use existing fleet from other parts of their business to smooth any transition.

²⁰ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 4.3.12.

this risk of LCRCA being unable to find suitable depots at the start of the franchising scheme.

24. Innovation through entry and expansion may be limited if LCRCA restrict access to strategic depots to a single large lot A franchisee. If instead there was an opportunity for two or more smaller operators to have access to the same LCRCA-owned depot, a wider range of operators might be willing to participate for B and C lots. This approach for depot sharing among LCRCA strategic depots should be considered if practical arrangements can be established.
25. Affording preference to incumbent operators in the Liverpool City Region based on fleets or depots could exclude bids from new entrants or existing operators looking to expand who may lack similar advantages in infrastructure. LCRCA should therefore consider how it may acquire depots and fleets to, ideally, line up with the commencement of the franchise.

Impact on fares and ticketing

26. In a franchised market the LTA has control of the fare structure. This gives the ability to affect fares and ticketing in two ways, first through setting the level of individual fares and second the potential to implement network-wide through-tickets, leading to potentially simplified and potentially cheaper ticketing.
27. A further benefit, as LCRCA recognise, is the ability to simplify public information available about ticketing and bus fares to reduce barriers to bus use.²¹ LCRCA's Bus Services Improvement Plan (BSIP), includes "straight-forward ticketing and great-value fares" as one of the objectives.²²
28. Our understanding is that, should LCRCA proceed with franchising, the whole of the Liverpool City Region will become part of the franchised region at the same time, even if lots are tendered at different times.²³ Areas which will have their lots tendered later will have bus services provided through a service permit scheme, which we understand has the intention of allowing passengers to benefit earlier from simpler ticketing and fares. LCRCA should be mindful of any risks around unintended changes to the market during any interim periods where new obligations are placed on operators before franchise schemes come into effect. Such risks might include operator exit in the service permit period, which could undermine bidding for franchises or cause unintended disruption. Continued close engagement with operators will be an important input to managing the market in such interim periods.²⁴

²¹ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.2.21.

²² LCRCA, [Liverpool City Region Bus Service Improvement Plan](#).

²³ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 2.2.1.

²⁴ The CMA's advice on potential EP measures may be helpful to LCRCA in considering the impact of measures outside of final franchise scheme: [Bus Enhanced Partnerships – CMA advice for Local Transport Authorities](#).

Supporting ongoing innovation

29. Through its work and engagement on bus markets and franchise awards more generally, the CMA has found innovation and knowledge are two key determinants of successful franchised operations, especially in boosting passenger numbers.
30. As touched on above, as well as ensuring that franchising works for the initial round, attention needs to be paid to the shape of future franchise awards. This should include ensuring that routes and services adapt to changing needs of passengers and communities over time. In addition, franchising should ensure that operators feel that they are able to return to a region and bid for franchises in future rounds, even if previously unsuccessful, which may be most effectively supported by an evolving asset strategy.
31. Ultimately, any steps to reduce the fixed costs and barriers to entry and expansion (and to a lesser extent exit) of operating a franchise will help SMOs enter the market more easily and we advise that 'lot design' continues to consider these issues in future.
32. If franchising is adopted this will present opportunities to better integrate buses with other modes of transport such as the Merseyrail network including through integrated ticketing.²⁵ From the CMA's experience in other markets, if LCRCA can provide open access to fares, timetabling and live bus location data to third parties, such as app developers, this can lead to further insights on passenger demand and travelling habits. The government requires bus operators and local transport authorities to openly publish information about routes and timetables but there may be scope to go further with data on passenger use, common routes and congestion, for example.²⁶
33. The consultation includes the intention to use permit schemes for cross-boundary services that connect the Liverpool City Region with surrounding areas.²⁷ LCRCA's proposal to align standards in cross-boundary services (lot D services) with the franchising scheme should minimise confusion for bus users and ensure the same service level across the board.
34. There may be scope to extend the use of a cross-boundary scheme, for the purpose of facilitating innovation. New providers may use passenger data provided by LCRCA to propose new routes which could increase ridership. This should mean new routes would not take passengers away from existing franchised ones, subject to an assessment by LCRCA.

²⁵ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 1.6.3.

²⁶ DfT, [Bus Services Act 2017: bus open data](#).

²⁷ LCRCA, [Liverpool City Region Bus Franchising Consultation](#), paragraph 3.4.38.

Concluding remarks

35. The Bus Services Act (2017) has empowered LTAs to shape their local bus markets. The CMA recognises that franchising – whether in the Liverpool City Region or elsewhere – has the opportunity to deliver significant benefits to passengers and local economies.
36. The introduction of franchising will have potentially long-lasting effects on the local bus markets in the region. Therefore, there needs to be care that franchise schemes are designed to succeed not only following the first rounds of awards, but in future rounds to come. The competitive pressure between operators that exists now will need to be nurtured to ensure continued performance through active market management and monitoring. LCRCA will need to understand passenger demands and ensure that a sufficient range of operators are able and willing to participate in future competitions for awards, helping to provide benefits for the passengers of today and into the future.