

**LOCAL BUS SERVICES MARKET INVESTIGATION (ACCESS TO BUS STATIONS) ORDER 2012**

**Notice of making an Order under section 161 of the Enterprise Act 2002 issued under section 165 of and Schedule 10 to the Enterprise Act 2002**

1. On 7 January 2010 the Office of Fair Trading (OFT) referred local bus services to the Competition Commission (CC) for investigation and report. The reference was made under section 131 of the Enterprise Act 2002 (the Act). The OFT required the CC to confine its investigation to the effects of features of such market or markets for local bus services as exist in connection with the supply of such services in the UK excluding Northern Ireland and London.
2. The CC investigated the matters referred to it in accordance with section 131 of the Act and in accordance with section 134(1) of the Act concluded that there were features of relevant markets, either alone or in combination, which prevented, restricted or distorted competition within the relevant markets. Therefore, the CC found in accordance with section 134(2) of the Act that there was an adverse effect on competition (AEC).
3. The CC published *Local bus services market investigation. A report on the supply of local bus services in the UK (excluding Northern Ireland and London)* (the Report) on 20 December 2011. The Report concluded the following.
4. In the supply of local bus services, head-to-head competition is uncommon. Many local markets exhibit persistently high levels of concentration. Ongoing sustained head-to-head competition, where present, delivers significant benefits to customers. However, the process of competition could result in periods of intense short-lived rivalry, leading to the exit of one operator. This reduces the extent of head-to-head competition. The anticipation of costly rivalry creates a barrier to entry and expansion. Along with other barriers to entry and expansion, this reduces the competitive constraint from potential competition and new entry.
5. Competition is also diminished by operator conduct leading to geographic market segregation. This conduct was found to have occurred in relation to two operators in parts of the North-East of England. This conduct reduces the extent of head-to-head competition between operators and reduces the constraint from potential competition and new entry.
6. Competition in the supply of local bus services is not effective in those local markets where head-to-head competition does not exist, and hence there is an AEC.
7. In the tendering of contracts for supported local bus services, in most cases competition works well. However, in some cases the process of competition is impaired such that the number of operators bidding for Local Transport Authority (LTA) contracts and the intensity with which operators competed for these tenders could be limited.
8. The CC found that:
  - (a) there are combinations of four features of local bus markets which mean that effective head-to-head competition is uncommon and which limit the effectiveness of potential competition and new entry. These features are the existence of high levels of concentration; barriers to entry and expansion;

customer conduct in deciding which bus to catch; and operator conduct by which operators avoid competing with other operators in 'Core Territories' (certain parts of an operator's network which it regards as its 'own' territory) leading to geographic market segregation;

- (b) there are two features of markets for the tendering of contracts for supported local bus services which alone or in combination limit the number of bidders and the intensity with which operators compete. This results in an AEC. These features are the way LTAs design tenders and the limited number of potential bidders in local areas; and
  - (c) the detriment to consumers and taxpayers as a result of the AECs in the operation of local bus services (both commercial and tendered services) and the tendering of contracts for supported local bus services is likely to be between £115 million and £305 million a year.
9. The CC consulted on a range of possible actions outlined in its Remedies Notice published on 6 May 2011. It then consulted further on the range of possible actions in its provisional decision on remedies published on 6 October 2011. In its report, the CC decided on a package of remedies with three main elements to address the AEC it had found. These were market-opening measures in relation to commercial bus services, measures to promote competition in relation to supported services, and recommendations about the wider policy and regulatory environment.
10. The three market-opening measures are aimed at reducing barriers to entry and expansion and thereby reducing high concentration in markets for commercial bus services and providing an environment in which competition is likely to be sustained. By reducing barriers to entry and expansion, the CC also expects it to become harder for operators to sustain a coordinated outcome. These measures are:
- (a) *Ticketing*: recommendations to give LTAs additional powers to determine the characteristics of mandatory multi-operator ticketing schemes and for the OFT to review certain aspects of the competition law framework governing voluntary ticketing schemes. Final decisions about ticketing schemes will be taken locally in line with the principles set out by the CC in its report. This remedy will directly address incumbency advantages arising from network and ticketing effects.
  - (b) *Operator behaviour*: recommendations for restrictions on changes in service frequency through increased registration notice periods and changes to frequent service registrations. The CC also recommended that Traffic Commissioners be given the powers to introduce and enforce a local bus operator Code of Conduct and that there should be restrictions around the sale of municipal bus companies. This will help to address the barriers to entry and expansion associated with expectations of post-entry competition and cheap exclusion.
  - (c) *Access to bus stations*: an Order requiring local bus operators that manage bus stations to provide access to bus stations for rival operators on fair, reasonable and non-discriminatory terms and to publish the Conditions of Use, which contain, among other things, information about charges and the allocation of stand and layover capacity. This will enable third party operators to compete on a level playing field and give confidence to potential entrants that their entry plans are not at risk due to difficulties in securing access to bus stations.
11. The CC decided on the following measures in relation to supported services:

- (a) *Best practice guidance*: recommendations that the Department for Transport (DfT) update its best practice guidance on tendering for supported services for LTAs, and that the Scottish and Welsh Governments develop similar guidance. This will reduce the risk that tenders are specified in ways that restrict competition.
- (b) *Information about newly deregistered services*: recommendations that LTAs are given powers to obtain, and where appropriate disclose, information about revenue and patronage of services being deregistered. This will enhance LTAs' ability to specify and manage the tenders to promote competitive outcomes and reduce the risk of competition being restricted by incumbency advantages.
12. In support of the above measures, the CC decided to make the following recommendations for changes to the wider regulatory and policy environment which applies to bus markets:
- (a) *Effective competition enforcement and compliance*: recommendations that the OFT applies a high priority to identifying bus mergers between competing operators, routinely follows up bus mergers and takes a cautious approach in exercising its discretion not to refer small bus mergers to the CC, and that the OFT publishes revised Frequently Asked Questions about the application of competition law to the bus industry.
- (b) *Partnerships*: a recommendation that LTAs consider the potential for tailoring partnerships to facilitate increased competition within their local areas and that the OFT establishes a regular forum with operators to discuss issues relating to the competition assessment of partnership arrangements with LTAs and other stakeholders.
- (c) *Bus Service Operators Grant (BSOG)*: a recommendation that as part of its current review of BSOG in England, the DfT considers ways of incentivizing the development of, and participation in, a number of the remedies the CC is proposing. This recommendation may also be of interest to the Scottish and Welsh Governments.
13. The CC concluded that these remedies will also have the effect of making it harder for operators to sustain a coordinated outcome and will reduce the incentive to coordinate.
14. The CC concluded that the above measures, taken together as a package, would be effective and proportionate in remedying the AEC and that this package of measures represents as comprehensive a solution as is reasonable and practicable to the AEC and resulting customer detriment it found.
15. On 28 March 2012 in accordance with section 165 of the Act and paragraph 2 of Schedule 10 the CC gave notice of its intention to make an Order relating to access to bus stations and invited written representations on the draft Order.
16. In light of the representations received following the 28 March 2012 consultation, the CC revised the draft Order and on 29 May 2012, in accordance with paragraph 2 of Schedule 10 to the Act, invited representations on the modified draft Order.
17. In light of the representations the CC received following the 29 May 2012 consultation some modifications were made to the draft Order. The CC does not consider those modifications to be material in any respect and has decided, in

accordance with paragraph 5 to Schedule 10 of the Act, that the Order, as modified, does not require further consultation.

18. The CC now gives notice of the making of the attached Order. The Order is made in accordance with section 138 and in exercise of the powers conferred by section 161 of and Schedule 8 to the Act. The Order is made for the purpose of remedying, mitigating or preventing the AEC which the CC identified to the extent detailed in paragraph 10(c) above and for the purpose of remedying, mitigating or preventing detrimental effects on customers in so far as they have resulted from or may be expected to result from the AEC. The Order will come into force on 26 July 2012.
19. This Notice, the Order, the Explanatory Note, the Note on Calculation of Departure Charges and the Response to second public consultation have been published on the CC [website](#).

*Signed*  
Jeremy Peat  
Group Chairman  
26 July 2012

**THE LOCAL BUS SERVICES MARKET INVESTIGATION (ACCESS TO BUS STATIONS) ORDER 2012**

**Background**

1. On 7 January 2010, the Office of Fair Trading (OFT) in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act) referred local bus services to the Competition Commission (CC) for investigation and report. The OFT required the CC to confine its investigation to the effects of features of such market or markets for local bus services as exist in connection with the supply of such services in the UK excluding Northern Ireland and London.
2. The CC investigated the matters referred to it pursuant to section 131 of the Act and, in accordance with section 134(1) of the Act, concluded that there are features of the market or markets either alone or in combination which prevent, restrict or distort competition in connection with the relevant market and, in accordance with section 134(2) of the Act, that several adverse effects on competition (AEC) existed. The CC published its findings in a report under section 136 of the Act entitled 'Local bus services market investigation. A report on the supply of local bus services in the UK (excluding Northern Ireland and London)' and dated 20 December 2011 (the report).
3. The CC considered, in accordance with section 134(4) of the Act, whether (a) action should be taken by it for the purpose of remedying, mitigating or preventing the AEC or any detrimental effect on customers, and whether (b) it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AEC or any detrimental effect on customers and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
4. In the report, the CC decided on a package of remedies to address the AEC that it found. The remedies include market-opening measures in relation to commercial bus services to reduce barriers to entry and expansion, thereby reducing market concentration and providing an environment in which competition is likely to be sustained. The measures include an Order requiring certain local bus operators which manage bus stations to provide access to those bus stations for other operators on fair, reasonable and non-discriminatory terms and to publish certain information. This will enable third party operators to compete on a level playing field and give confidence to potential entrants that their entry plans are not at risk due to difficulties in securing access to such bus stations.
5. In accordance with section 165 of the Act and paragraph 2 of Schedule 10, the CC on 28 March 2012 and again on 29 May 2012 published a Notice of its intention to make this Order as part of a package of measures to remedy the AEC that it had identified, indicating the nature of its provisions and stating that any interested person who wished to make representations should do so in writing by 27 April 2012 and 12 June 2012 respectively.
6. The CC received a number of responses and having considered the representations is now issuing this Order.

# The Order

## Reference and Power

The Competition Commission makes this Order in performance of its duty under section 138 and in exercise of the powers conferred by section 86(1) to (5) and section 87 (each applicable by virtue of section 164), section 161(1), (3) and (4) and paragraphs 5, 6, 10, 15, 18, 19 of Schedule 8 to the Enterprise Act 2002, for the purpose of remedying, mitigating or preventing the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition as specified in the report of the Competition Commission entitled 'Local bus services market investigation. A report on the supply of local bus services in the UK (excluding Northern Ireland and London)' and dated 20 December 2011.

## PART 1

### 1. General—Title, Commencement and Scope

- 1.1 This Order may be cited as The Local Bus Services Market Investigation (Access to Bus Stations) Order 2012 and shall come into force on 26 July 2012.
- 1.2 This Order applies to Great Britain excluding any Bus Station which is managed by Transport for London (or by any person or body in accordance with any arrangement with Transport for London), and any Relevant Bus Station to the extent to which it provides a Local Bus Service within London.

## PART 2

### 2. Interpretation

- 2.1 In this Order:

<b>Associate Company</b>	means: <ol style="list-style-type: none"><li>(a) a company which is a subsidiary of a Local Bus Operator; or</li><li>(b) a company which is a subsidiary of the same parent company of which a Local Bus Operator is also a subsidiary; or</li><li>(c) the parent company of a Local Bus Operator;</li></ol>
<b>Bus Stand</b>	means a designated place within a Relevant Bus Station for the picking up or setting down of passengers;
<b>Bus Station</b>	means any parking place which is used by PSVs in the provision of a Local Bus Service for the setting down and picking up of passengers, and forms part of any terminus, or transfer facilities, or interchange facilities for enabling passengers travelling by one means of transport to continue their journey by another, and includes any amenities or facilities provided for use in connection with that station, PROVIDED THAT

(a) where ninety-five per cent or more of the services operating from that Bus Station in each calendar year are Coach Services; or

(b) where the total square metreage of that Bus Station at ground floor level is 600 m<sup>2</sup> or less;

that Bus Station shall not be treated as a Bus Station for the purposes of this Order;

**Coach Service**

means a coach service using one or more PSVs to carry passengers by road at separate fares and in determining whether any service is a coach service regard shall be paid to all the circumstances including:

(a) the distance between the departure point and the final destination of the service measured in a straight line and in particular whether that distance is thirty miles or greater;

(b) whether each PSV used in the provision of the service is licensed to carry standing passengers for any length of that service;

(c) the number, frequency or infrequency of stopping points between the departure point and the final destination of the service;

(d) whether passengers can reserve seats on the service in advance of their journey; and

(e) whether or not each PSV used in the provision of the service:

(i) is required by any enactment to be fitted with seatbelts;

(ii) is limited by any enactment to travelling at a speed of no more than sixty-two miles per hour;

(iii) has separate below deck luggage compartments; and

(iv) is fitted with toilet or restroom facilities;

and PROVIDED THAT where any service is a combination of a Local Bus Service and a Coach Service, that service shall be treated as a Coach Service for the purposes of this Order;

**Company**

means a company within the meaning of the Companies Act 2006;

**Conditions of Use**

means the conditions made in accordance with Article 4 of this Order;

**Departure Charge**

means a charge paid by the User to the Manager for the use of a Bus Stand and calculated:

(a) with reference to each scheduled departure of a Local Bus;

or

(b) as otherwise specified in the Conditions of Use;

**Driver Facilities** means, in relation to a Relevant Bus Station, any amenities or facilities available for the use of or by the driver of a Local Bus;

**Dwell Time** means the length of time a PSV may be stationary at a Bus Stand or Layover Parking Bay;

**Group** means two or more Users;

**Independent Expert** means an independent and impartial person or body:  
(a) appointed in accordance with the Conditions of Use; and  
(b) having the appropriate skill, knowledge and expertise to determine the relevant dispute;

**Layover Charge** means a charge paid by the User to the Manager for the use of a Layover Parking Bay;

**Layover Parking Bay** means a designated parking slot within a Relevant Bus Station where a PSV may park when not in service;

**Local Bus** means a PSV used for the provision of a Local Bus Service;

**Local Bus Operator** means a provider of a Local Bus Service;

**Local Bus Service** means a service which falls within the definition of a 'local service' in section 2 of the Transport Act PROVIDED THAT for the purposes of this Order:  
(a) where a Local Bus Service is provided both inside and outside London, any part of the service provided outside London shall be treated as a separate Local Bus Service; and  
(b) where a Local Bus Service is part of a Coach Service, no part of that service shall be treated as a Local Bus Service;

**London** means the administrative area of Greater London as for the time being constituted;

**LTA** means a Local Transport Authority within the meaning of the Transport Act 2000 and the Transport (Scotland) Act 2001;

**Manager** means:  
(a) a Local Bus Operator; or  
(b) any person or body (other than those bound by section 82(1) of the Transport Act), acting under any arrangement with a Local Bus Operator; or  
(c) an Associate Company;



and in each case which manages the operation of the Relevant Bus Station including setting charges and or alternatively allocating the use of Bus Stands and Layover Parking Bays to Users;

<b>OFT</b>	means the Office of Fair Trading;
<b>PSV</b>	means a Public Service Vehicle within the meaning of the Public Passenger Vehicles Act 1981;
<b>Publicity Facilities</b>	means, at a Relevant Bus Station, any available marketing facility for publicizing a Local Bus Service, including timetable displays and real-time displays of arrival and departure information, which is owned or otherwise under the control of the Manager;
<b>Relevant Bus Station</b>	<p>means a Bus Station that is:</p> <ul style="list-style-type: none"><li>(a) owned and managed by a Local Bus Operator; or</li><li>(b) owned by a Local Bus Operator and:<ul style="list-style-type: none"><li>(i) managed by an Associate Company of that Local Bus Operator; or</li><li>(ii) managed by any person or body in accordance with any arrangement with that Local Bus Operator; or</li></ul></li><li>(c) owned by an Associate Company and:<ul style="list-style-type: none"><li>(i) managed by a Local Bus Operator; or</li><li>(ii) managed by an Associate Company; or</li><li>(iii) managed by any person or body in accordance with any arrangement with a Local Bus Operator; or</li></ul></li><li>(d) managed by a Local Bus Operator, other than under section 82(3) of the Transport Act or pursuant to any arrangement with a local authority;</li></ul> <p>and excludes a Bus Station operated or managed by a local authority or Passenger Transport Executive under section 82(1) of the Transport Act;</p>
<b>Report</b>	means the report of the Competition Commission entitled 'Local bus services market investigation. A report on the supply of local bus services in the UK (excluding Northern Ireland and London)' and dated 20 December 2011;
<b>Transport Act</b>	means the Transport Act 1985;
<b>Transport for London</b>	means the body corporate established by section 154(1) of the Greater London Authority Act 1999 and includes any body established by that body corporate;

**User** means a Local Bus Operator who uses, or wishes to use, a Relevant Bus Station for the provision of a Local Bus service, other than the Manager of that Relevant Bus Station. References to a User include both existing and future Users, unless otherwise specified.

- 2.2 For the purposes of this Order, 'subsidiary' includes an indirect subsidiary and 'parent' includes an indirect parent.
- 2.3 The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.
- 2.4 The purpose of this Order is to give effect to findings in the Report, and in particular the conclusions at paragraphs 15.222 to 15.290, and consequently this Order shall be interpreted consistently with the Report.

### **PART 3**

#### **3. Access to and Use of Relevant Bus Stations**

- 3.1 The Manager shall grant the User access to and use of the Relevant Bus Station:
- (a) on fair and reasonable terms; and
  - (b) without unduly discriminating (whether directly or indirectly) between the User and:
    - (i) each other User; and
    - (ii) the Manager.
- 3.2 The obligation in Article 3.1 shall include the grant of:
- (a) access to and use of Bus Stands and Layover Parking Bays;
  - (b) access to and use of any Driver Facilities; and
  - (c) access to and use of any Publicity Facilities.
- 3.3 In the case of future Users, the obligation in Article 3.1 shall not apply unless the future User:
- (a) has submitted a written request to the Manager for access to and use of the Relevant Bus Station in such form as is prescribed in the Conditions of Use; and
  - (b) has provided the Manager with such information as is specified in the Conditions of Use for consideration of the request.
- 3.4 For the purposes of Article 3.1, what is 'fair and reasonable' may include but is not limited to:
- (a) any security considerations, including restriction of access to commercially sensitive information, applicable to the Relevant Bus Station;
  - (b) any Health and Safety rules or regulations applicable to the Relevant Bus Station;

- (c) the extent to which there is available capacity at the Relevant Bus Station;
  - (d) the extent to which Driver Facilities and Publicity Facilities are available at the Relevant Bus Station;
  - (e) in the allocation of Bus Stands:
    - (i) the convenience of passengers;
    - (ii) the current allocation of any Bus Stand to existing Users and the Manager; and
    - (iii) the extent to which any Bus Stand is fully utilized by existing Users and the Manager; and
  - (f) the layout of, including access routes into and out of, the Relevant Bus Station.
- 3.5 Where a Relevant Bus Station is used in the provision of Local Bus Services and Coach Services the obligation in Article 3.1 shall apply to that Relevant Bus Station to the extent that it is used in the provision of a Local Bus Service and not to the extent that it is used in the provision of a Coach Service.

## **PART 4**

### **4. Conditions of Use**

- 4.1 The Manager shall:
- (a) make Conditions of Use for the Relevant Bus Station specifying the provisions in the Schedule to this Order; and
  - (b) as soon as is practicable after the notice period specified in Article 4.3 paragraph (c):
    - (i) display a copy of the Conditions of Use prominently on the premises of the Relevant Bus Station; and
    - (ii) where the Manager has a website, publish a copy of the Conditions of Use on the Manager's website.
- 4.2 In order to comply with the obligation in Article 4.1 the Manager shall first:
- (a) give notice of the proposed Conditions of Use; and
  - (b) consider any representations made in accordance with the notice and which have not been withdrawn.
- 4.3 A notice under Article 4.2 shall contain the proposed Conditions of Use and shall state:
- (a) that the Manager proposes to incorporate the Conditions of Use in written agreements with Users for the purposes of providing access to and use of the Relevant Bus Station;
  - (b) any information that the Manager reasonably believes Users, the relevant LTA, and any other interested party may require to make representations; and

- (c) a period of not less than 28 days starting with the date of publication of the notice within which representations may be made.
- 4.4 A notice under Article 4.2 shall be given by:
  - (a) providing a copy to all existing Users and the relevant LTA; and
  - (b) displaying a copy prominently on the premises of the Relevant Bus Station; and
  - (c) where the Manager has a website, publishing a copy on the Manager's website.
- 4.5 Subject to Article 6.8, and other than in any exceptional or unforeseen circumstances as specified in the Conditions of Use which may necessitate a temporary amendment to the Conditions of Use, where the Manager proposes to make any amendments to the Conditions of Use made under Article 4.1 the Manager shall:
  - (a) comply with the procedure specified in Article 4.2 in relation to any material proposed amendment; and
  - (b) as soon as is practicable after any amendment to the Conditions of Use:
    - (i) display a copy of the amended Conditions of Use prominently on the premises of the Relevant Bus Station; and
    - (ii) where the Manager has a website, publish a copy of the amended Conditions of Use on the Manager's website.
- 4.6 In the case of a Bus Station operating as a Relevant Bus Station on 26 July 2012:
  - (a) the obligation in Article 4.1 must be complied with no later than 31 January 2013; and
  - (b) the obligation in Article 4.2 must be complied with no later than 31 October 2012.
- 4.7 In the case of a Bus Station which becomes a Relevant Bus Station after 26 July 2012:
  - (a) the obligation in Article 4.1 must be complied with no later than six months starting with the date on which the Bus Station becomes a Relevant Bus Station; and
  - (b) the obligation in Article 4.2 must be complied with no later than three months starting with the date on which the Bus Station becomes a Relevant Bus Station.
- 4.8 Where a User is to be granted access to and use of the Relevant Bus Station, the Manager shall enter into a written agreement with the User incorporating the relevant Conditions of Use for the Relevant Bus Station:
  - (a) in the case of existing Users, within four weeks of the obligation specified in Article 4.1; and
  - (b) in the case of future Users, within four weeks of the submission of a request in accordance with Article 3.3.
- 4.9 For the purposes of Part 4 'prominently' means in a manner that ensures as far as is reasonably practicable that the User's attention is drawn to the Conditions of Use.

## PART 5

### 5. Charges at the Relevant Bus Station

- 5.1 Where the Manager imposes a charge for access to and use of the Relevant Bus Station, the Manager shall determine all applicable charges payable by the User, including Departure Charges, Layover Charges and any variation of an applicable charge:
- (a) on a fair and reasonable basis; and
  - (b) without unduly discriminating (whether directly or indirectly) between the User and:
    - (i) each other User; and
    - (ii) the Manager.
- 5.2 The Manager shall calculate the Departure Charge payable by a User in accordance with the following guidelines:
- (a) the Manager shall calculate the Relevant Operating Costs subject to paragraph (b) below;
  - (b) the Manager:
    - (i) shall take into account any upward or downward adjustment resulting from the difference between the actual and budgeted Relevant Operating Costs for the previous 12 month period; and
    - (ii) may, where the Departure Charge would otherwise increase by 10 per cent or more than that of the previous 12 month period as a result of a necessary maintenance expenditure by the Manager on the Relevant Bus Station, treat that expenditure as capital invested in the Relevant Bus Station for the purposes of assessing Relevant Operating Costs;
  - (c) the Manager shall apply the Used Capacity Percentage to the Relevant Operating Costs as adjusted in accordance with paragraph (b) above; and
  - (d) the Manager shall determine the Departure Charge payable by each User by apportioning the Adjusted Relevant Operating Costs pro rata between each User and the Manager according to the agreed utilization of the Relevant Bus Station by each User and the Manager for the 12 month period in which the Departure Charge will apply.
  - (e) The adjustment in paragraph (b) above shall not apply retrospectively to Users, nor to any specific User.
- 5.3 For the purposes of Article 5.2:

**Adjusted Relevant Operating Costs** means the Relevant Operating Costs as adjusted in accordance with Article 5.2 paragraphs (b) and (c);

**Reference Peak Period** means, in a single day:

- (a) a period of at least two consecutive hours during which scheduled utilization of the Relevant Bus Station by Local

Bus Operators is at its highest; PROVIDED THAT

- (b) the Manager's Local Bus departures do not account for one hundred per cent of the scheduled utilization during the Reference Peak Period; and
- (c) the Manager is not required to set a different Reference Peak Period to take into account days of the week or times of the year or exceptional events when usage patterns at the Relevant Bus Station may differ from normal usage;

**Relevant Operating Costs**

means, for a period of 12 months, the total of the following:

- (d) the total variable and fixed costs necessarily incurred by the Manager in the operation and maintenance of the Relevant Bus Station for use by all Local Bus Operators, including any amenities and facilities (which includes Driver Facilities and Publicity Facilities) made available to all Local Bus Operators, and also including ongoing costs necessarily incurred in complying with the provisions of this Order; and
- (e) a nominal pre-tax return of no more than 10 per cent on the capital invested in the Relevant Bus Station by the Manager and or alternatively an Associate Company based on the depreciated historic cost of the capital invested in the Relevant Bus Station, including any amenities and facilities (which include Driver Facilities and Publicity Facilities) made available to all Local Bus Operators, PROVIDED THAT:
  - (i) the investment is of benefit to all Local Bus Operators; and
  - (ii) where the investment is made by the Manager and or alternatively an Associate Company in conjunction with any other person or body, the Relevant Operating Costs shall not include any return on the capital invested in the Relevant Bus Station by such person or body; and
- (f) excluding:
  - (i) the cost incurred by the Manager in the provision of any amenities or facilities (which includes Driver Facilities and Publicity Facilities) which are recovered by the Manager other than through Departure Charges; and
  - (ii) the costs incurred by the Manager in the provision of amenities and facilities exclusively available for use by the Manager;

**Used Capacity Percentage**

means, during the Reference Peak Period, the number of scheduled Local Bus departures calculated as a percentage of the total capacity for Local Bus departures at the Relevant Bus Station.

- 5.4 The Manager shall provide the User with details of the calculations used to set the Departure Charge or Layover Charge:
- (a) upon written request from the User; and
  - (b) no later than five working days from receipt of such a request.
- 5.5 The User shall not be required to pay a Departure Charge for a scheduled Local Bus departure where the departure is prevented due to an error, act or omission of the Manager.

**PART 6**

**6. Dispute Resolution**

- 6.1 A dispute will be deemed to arise on the date on which the User (or Group) sends a written notice to the Manager stating that the User (or Group) believes the Manager to be in breach of its obligations under or in connection with this Order and that the User (or Group) wishes to initiate the dispute resolution procedure set out in the Conditions of Use.
- 6.2 Subject to Article 6.3, where a dispute relates to any provision of the Conditions of Use, the procedure for initiating a dispute as specified in Article 6.1 must be complied with by no later than 8 weeks of the date, whichever is later, on which either:
- (a) the Conditions of Use or the disputed amendment comes into effect; or
  - (b) the Conditions of Use or the disputed amendment first applies to the User.
- 6.3 Article 6.2 shall not apply where the User reasonably believes there is a material change in circumstances necessitating a review of any provision of the Conditions of Use.
- 6.4 If a dispute is not resolved within ten calendar days following the date on which it arises the User or Manager may refer the dispute to an Independent Expert at any time thereafter.
- 6.5 In all disputes arising under Article 6.1 between the Manager and the User (or Group):
- (a) the Manager shall, without unnecessary delay, provide to the Independent Expert any financial, operational and other information regarding the Relevant Bus Station requested in writing by the Independent Expert;
  - (b) such fees and expenses of the Independent Expert, as agreed between the User (or Group), Manager and Independent Expert (or in default of such an agreement, as reasonably determined by the Independent Expert), shall be borne equally between:
    - (i) the User (or Group); and

- (ii) the Manager;
  - (c) the dispute must be resolved in no more than 50 calendar days starting with the date on which the dispute arises;
  - (d) the Independent Expert's determination is final and binding on the Manager, the User (or Group) and, to the extent appropriate, all other Users;
  - (e) the Independent Expert shall, in reaching his determination:
    - (i) give due consideration to the effect of any changes to the Conditions of Use on existing Users and to the Manager in so far as and to the extent that the Manager provides a Local Bus Service; and
    - (ii) if appropriate, invite other existing Users to make representations; and
  - (f) if, and to the extent, appropriate the Manager shall amend the Conditions of Use in accordance with the final determination of the Independent Expert.
- 6.6 In the event of a dispute between the Manager and the User (or Group) regarding any applicable charge, including Departure Charges, Layover Charges or any variation of an applicable charge:
- (a) the Manager must demonstrate to the satisfaction of the Independent Expert that the disputed charge is calculated on a fair and reasonable basis and without unduly discriminating, (whether directly or indirectly) between the User (or Group) and:
    - (i) each other User (or Group); and
    - (ii) the Manager; and
  - (b) where the Manager fails to comply with paragraph (a) above, the Independent Expert may substitute a fair, reasonable and non discriminatory charge calculated in accordance with Article 5 of this Order.
- 6.7 Where a future User (or Group of future Users) is refused access to or use of the Relevant Bus Station by the Manager:
- (a) the Manager and future User, (or each future User in the Group), may enter into an interim agreement for access to and use of the Relevant Bus Station and the interim agreement shall incorporate the relevant Conditions of Use;
  - (b) the future User, (or Group of future Users), may initiate the dispute resolution procedure set out in the Conditions of Use; and
  - (c) upon final determination of the dispute and without unnecessary delay:
    - (i) the Manager and future User (or any future User in the Group) shall, vary and finalize the interim agreement referred to in Article 6.7 paragraph (a); or
    - (ii) the Manager and future User (or any future User in the Group) shall enter into a new written agreement for access to and use of the Relevant Bus Station in accordance with the outcome of the dispute; or
    - (iii) the future User (or any future User in the Group), may terminate the interim agreement referred to in Article 6.7 paragraph (a); and



- (iv) if, and to the extent, appropriate the Manager shall amend the Conditions of Use in accordance with the final determination of the Independent Expert.
- 6.8 Where the Manager amends the Conditions of Use in accordance with the final determination of an Independent Expert, the Manager is not required to comply with the procedure set out in Article 4.5 paragraph (a).
- 6.9 In the case of a dispute involving an existing User (or Group):
- (a) until final determination of the dispute:
    - (i) the existing User (or Group) shall continue to pay all applicable charges, including Departure Charges and Layover Charges to the Manager; and
    - (ii) the Manager shall continue to provide access to and use of the Relevant Bus Station to the User (or Group);
  - (b) where the Independent Expert has substituted a charge in accordance with Article 6.6 paragraph (b):
    - (i) the Manager shall repay to the existing User (or Group) any overpayment, including any interest at a rate determined by the Independent Expert, calculated between the date on which the charge was last reviewed and final determination of the dispute; or, as the case may be,
    - (ii) the existing User (or Group) shall make good to the Manager any underpayment, including any interest at a rate determined by the Independent Expert, calculated between the date on which the charge was last reviewed and final determination of the dispute.

## **PART 7**

### **7. Maintaining Records and Monitoring**

- 7.1 The Manager shall keep and maintain a written record of:
- (a) all disputes with Users, including disputes not pursued under Part 6 to this Order;
  - (b) any action taken to resolve the dispute; and
  - (c) the outcome.
- 7.2 Subject to Article 7.3, the written record shall cover the preceding two calendar years.
- 7.3 In the first year, the written record shall cover the period starting with the date on which the Conditions of Use are made in accordance with Article 4.1 to the end of that calendar year.
- 7.4 The Manager shall submit such written records to the LTA within whose boundaries the Relevant Bus Station is located by no later than 1 April for each preceding calendar year.
- 7.5 Upon written request by the OFT, the Manager shall submit such written records to the OFT as soon as is practicable.

7.6 The Manager shall review the Departure Charge and the Layover Charge specified in the Conditions of Use annually and by no later than the date specified in the Conditions of Use, and ensure they comply with this Order.

## **Schedule**

### **Conditions of Use**

#### **1. Overall Statement**

- (1) That:
  - (a) the Conditions of Use apply to the Manager and all Users of the Relevant Bus Station; and
  - (b) the Manager shall operate the Relevant Bus Station on fair and reasonable terms and without unduly discriminating, (whether directly or indirectly), between the User and:
    - (i) each other User; and
    - (ii) the Manager.
- (2) An indication of the acts or omissions which constitute a material breach of the Conditions of Use and the possible consequences of such a breach.
- (3) An indication of any exceptional or unforeseen circumstances which may necessitate a temporary amendment to the terms on which access to and use of the Relevant Bus Station is granted.
- (4) In relation to future Users:
  - (a) the form in which a written request for access to and use of the Relevant Bus Station must be submitted; and
  - (b) details of the information required from the future User for consideration of the request.

#### **2. Management of the Relevant Bus Station**

- (1) The normal and holiday operating hours of the Relevant Bus Station.
- (2) A plan of the layout of the Relevant Bus Station, including the total number of available Bus Stands and Layover Parking Bays and the locations of any other amenities or facilities available for use in connection with the Relevant Bus Station.
- (3) The total capacity at the Relevant Bus Station including details of Bus Stand and Layover Parking Bay capacity and an indication of how each has been calculated.
- (4) Details of any amenities or facilities available to passengers.
- (5) Details of all Driver Facilities and Publicity Facilities available to Users.

#### **3. Allocation of Bus Stands for Local Bus Services**

- (1) The Manager's method and policy for allocating Bus Stands.

- (2) Details of the maximum Dwell Time at Bus Stands and an indication of any permitted variation.

#### **4. Allocation of Layover Parking Bays for Local Bus Services**

- (1) The Manager's method and policy for allocating Layover Parking Bays.
- (2) The maximum Dwell Time at Layover Parking Bays and an indication of any permitted variation.

#### **5. Charges**

- (1) Details of all charges payable by the User, including the current level of:
  - (a) Departure Charges;
  - (b) Layover Charges; and
  - (c) any variation of an applicable charge.
- (2) An indication of the basis on which each charge is calculated, including any applicable price change mechanisms and taking into account the requirements in Part 5 to this Order.
- (3) Details of the Reference Peak Period as defined in Article 5.3 of this Order.
- (4) The date in each twelve month period by no later than which the Departure Charge and Layover Charge are subject to annual review.

#### **6. Dispute Resolution Procedure**

- (1) Details of the Manager's dispute resolution procedure, taking into account the requirements in Part 6 to this Order and including;
  - (a) applicable time limits at each stage of the dispute;
  - (b) the procedures for selection and appointment of an Independent Expert; and
  - (c) the role of the Independent Expert in resolving disputes.