



Department
for Transport

Response to the consultation on implementation of the Competition Commission remedies on bus registration

February 2015

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1. Introduction

- 1.1** In December 2011 the Competition Commission (CC) concluded its local bus services market investigation. They found a lack of sustained head-to-head competition between bus operators in many local markets and a lack of potential competition. The CC recommended to Government a series of remedies to help open up the market for bus services mainly focusing on multi-operator ticketing and operator behaviour.
- 1.2** Four of the operator behaviour remedies proposed changes to the existing rules for the registration of local bus services with the Traffic Commissioners. The Government's response, March 2012, made a commitment to develop secondary regulations to bring about:
- an extra 14-day pre-notification period during which local transport authorities may review and discuss a registration application with the operator;
 - a minimum standard notice period of 90 (as opposed to the current 56) days following acceptance of a change to an existing service registration;
 - a restriction on making changes to any registration application during any notice period except by making a short-notice application and alignment of the reasons for any short-notice application to those used in Scotland (to prevent circumvention of the 90 days); and
 - a requirement that operators specify the frequency of services currently registered as 'frequent' (those with six or more services per hour) with a default band, so only frequencies in excess of this need to be detailed.
- 1.3** The CC concluded that these remedies were necessary to address the barriers to entry and expansion associated with the expectations of post-entry competition, with the expectation that these remedies would increase the likelihood of head-to-head competition being sustained.
- 1.4** In March 2014 the Department for Transport ran an 8 week consultation on the implementation of these four remedies. Forty responses were received, with a mixture of support, scepticism and hostility. Whether the four remedies would deliver the expected competition benefits was questioned, to varying degrees, by many of the respondents. This was not unexpected given the response from stakeholders to the publication of the CC final report.
- 1.5** This report summarises the responses to the specific questions asked in the consultation paper and sets out the Government's position. The report does not attempt to summarise all of the comments made by respondents, but all comments were considered.

2. Summary of responses and Government position

14 day pre-notification period for local transport authorities

Summary of responses

- 2.1** Of the four CC remedies the introduction of a 14 day pre-notification period for local transport authorities received the most support. The main support was from local authorities who welcomed the additional visibility and time it gave them to act on bus registrations. A few thought it should just apply to wholly commercial services. Many questioned whether it would bring the cost savings to local authorities identified in the impact assessment (this has been revised post consultation).
- 2.2** Those opposing the 14 day pre-notification period, mainly operators, felt there was no evidence that the CC remedy would address competition issues. They thought it would introduce inflexibility preventing operators from responding quickly to unforeseen events, such as changes to school opening times, and would delay the introduction of service improvements to the detriment of passengers. There was concern from a few respondents that it could discourage new entrants as it would take longer to exit a non-profit making route. Some commented that the dis-benefits to passengers of delayed service improvements had not been included in the impact assessment (this has been revised post consultation).
- 2.3** Concern was expressed over the continuation of existing voluntary agreements on advance notice periods and fixed service change dates, as a result of the inflexibility created by the longer notice periods. Concerns were also raised, mainly from organisations with an interest in passenger information that increasing the time it takes to introduce a service would lead to an increase in the number of short-notice applications. This in turn would decrease the quality of passenger information, as respondents said short-notice applications are the major reason that Traveline give for travel information not being completely up to date. Issues were raised over how the remedy would work in practice.

Government position

- 2.4** The 14-day pre-notification period for local transport authorities will be implemented. The Department supports the CC conclusions in relation to this remedy and based on the cost benefit analysis believes the benefits of the 14-day pre-notification period will outweigh the costs.
- 2.5** A competition case can be made for implementing this remedy as new entrants would have at least 14 days to operate before a reaction from

the incumbent(s) as the information would be kept confidential. This is because the incumbent will not know about a new entrant's proposal until it is registered with the Traffic Commissioner. The incumbent will then have to comply with the 14-day pre-notification period before varying an existing service in response to the new entrant. We agree with the CC that the extra visibility to local authorities could discourage anticompetitive reactions by an incumbent as an operator would not want to risk a local authority bringing to the attention of the Traffic Commissioner potential predatory behaviour.

- 2.6** The requirement to share information builds on Government policy to promote partnership working between operators and local authorities and should result in the identification of mutually beneficial changes to the registration. It should also encourage engagement where none has previously happened. This supports the CC remedies for "effective partnerships" where they recommend that local authorities consider the potential for tailoring partnerships in order to facilitate increased competition within their local area.
- 2.7** The Department recognises concerns over reduced flexibility to operators in terms of changing services quickly, but feel this can be mitigated in some instances through the use of short-notice applications. The pre-notification period will provide operators with the chance to get local authority support for a short-notice application. Concerns over a potential reduction in the quality of passenger information would be addressed through the Department's decision to move to a fully digital bus registration system in two to three years (see paragraph 2.32). Excluding local authority tendered services, would add complexity to a very simple registration process and cause confusion particularly as some registrations may cover both tendered and commercial services.

90 day notice period for variations to services

Summary of responses

- 2.8** In assessing the implementation of a 90 day notice period for variations we did not reach the same conclusion as the CC that the circumvention risk of an operator cancelling and then re-registering a service could be adequately addressed through guidance issued by the TC. The consultation proposed an option of a 70 day notice period for all registrations, as well as the 90 day notice period for variations.
- 2.9** There was strong support for the Department's proposal for a consistent notice period for all types of registrations, rather than the CC recommendation of 90-days for variations only, in order to avoid confusion. However, a number of respondents, mainly operators but some local authorities and one passenger group, felt that an extended notice period was unnecessary, particularly in addition to the 14-day pre-notification period. This was due to concerns over the lack of flexibility it introduced, preventing industry from making minor adjustments for non-competition reasons, to the detriment of passengers. With undue emphasis placed on the small number of registrations that occur for competition reasons, whilst increasing bureaucracy and inflexibility for the majority that are not.

- 2.10** Concern was expressed that increased notice periods would lead to an increase in the number of short-notice registrations which could lead to a decrease in the quality of passenger information. A couple of respondents thought wholly tendered services should remain at 56 days. Where support for the 70 day notice period was given it was mainly for the additional stability or the additional time for providing travel information. Some responses pointed out that longer notice periods would deter innovation as it would take longer to exit the route.
- 2.11** Passenger groups were mixed, one felt that 70 days was too long and that the notice period should be shortened whilst another supported a 70 day notice period but highlighted the need for operators to be able to make tweaks quickly where the motivation is passenger benefit.

Government position

- 2.12** As set out in paragraph 2.8 the Government did not agree with the CC that a 90 day notice period for variations only would be workable in practice and so proposed a 70 day notice period for all services. We recognise that registration changes for competition reasons are heavily outweighed by registrations for non-competitive reasons. Following consultation the Government believes this proposal is disproportionate, in terms of the costs incurred by operators and passengers, compared to the potential competition benefits, and so we are not taking it forward.

Restricting changes to applications and short-notice applications

Summary of responses

- 2.13** The majority thought restricting changes during a notice period except by a short-notice application would have unintended consequences. These included: the remedy favouring the incumbent; loss of flexibility to make relatively minor adjustments to address passenger detriment; a registration may cover many journeys and an operator may need to change part of the route for one reason one week and then another part for a separate reason another week; that operators, particularly smaller ones with a limited number of vehicles, are less able to respond to local authority tenders; could lock an operator into a loss making service for an excessive period; and some issues not foreseen at early planning stage.
- 2.14** Those who supported the proposal (mainly local authorities) mostly felt that the existing short-notice approval process would prevent any unintended consequences. They thought it: supported service stability; should improve quality of initial application/planning; would increase the accuracy of passenger information and prevent tit-for-tat registrations.
- 2.15** The ability to make short notice applications when the timetable is to be changed by no more than 10 minutes earlier or later was seen by many as useful for improving punctuality and dealing with the impact of road works. Many did not support the removal of this short-notice application category, including some of those respondents who had supported a restriction on changes during a notice period.

Government position

- 2.16** These remedies were identified by the CC as necessary to avoid circumvention of the 90 day remedy. Given that the 90 day remedy is not being taken forward these are no longer necessary and are not being progressed.

Banding of frequent services

Summary of responses

- 2.17** There was a very mixed response to the implementation of this remedy. Some respondents highlighted that it would impact services where demand can vary significantly, such as services to special events or tourist services where demand is sensitive to weather conditions, and where flexibility to meet demand is essential.
- 2.18** A number of respondents, particularly local authorities, felt that the ability to register a frequent service should be removed with all services having to register a full timetable. This was mainly on the basis of the quality of public data produced, although a couple stated that this would also prevent anti-competitive responses. They argued that this would also remove the need for a workaround to the EBSR system.
- 2.19** Industry thought the proposal was unnecessary, unworkable in practice and just added unnecessary complication, both in terms of operations on the ground and in relation to the registration system. They felt that trying to address this rare problem through the bus registration system would be burdensome and disproportionate and unhelpful to passengers. Operators stated that existing competition law already provided a remedy if market entrants believe that incumbents are abusing a dominant position. If the remedy was to be introduced most operators favoured flexible bands, as fixed bands caused the most problems.
- 2.20** Difficulties identified included: fixed bands are hard to define; unclear how fixed bands can be defined on routes which have a mixture of end-to-end and short journeys; concerns over how it would be effectively enforced. On enforcement, a couple of respondents thought an operator who provides additional journeys to reduce disruption should not be penalised. Others stated that EBSR operators include every trip on the timetable so monitoring of frequent services was possible.
- 2.21** Only a few respondents commented on the proposed interval bands (e.g. for 9-11 buses the service interval between buses must not exceed 8 minutes). Some supported them but others felt it was not practical to state the minimum interval where headways were 5 minutes or less, as delays of this magnitude occur from traffic or even passengers boarding.
- 2.22** Nearly all of those who responded on how existing frequent services should be identified agreed that operators were best placed to do this.
- 2.23** Given the industry assertions that such a system would be unworkable a meeting with the Confederation of Passenger Transport was held to gain an understanding of the issues. A number of operational scenarios were explained where the remedy would work to the direct detriment of passengers. The key issues included: the complexity it introduced, the

inability to move quickly between frequency bands in response to passenger demand, and the day-to-day disruption on routes meaning that there would be too many buses running requiring an operator to take action such as holding buses back or “turning short”.

- 2.24** Views on the EBSR workaround solution were varied. Many agreed that it would be the cheapest most cost effective approach, but others highlighted the associated dis-benefits. Others pointed to this problem being indicative of the complication that the remedy would introduce. Most concerns were over the impact on the quality of information and thought that an upgrade was necessary or a business case developed to identify the best long-term solution. Others commented on the costs of upgrading the TransXChange standard and the potential delay to implementation of the remedy if a software upgrade was chosen.

Government position

- 2.25** We recognise that the proposed banding of frequent services could reduce the perceived and actual risk of an incumbent flooding a route in response to a new entrant. However, a number of practical examples were provided as part of the consultation demonstrating how the remedy could work to the direct detriment of passengers. Given that the majority of variations to a frequent service band would not be in response to competition, we do not believe the potential benefits to passengers through increased competition are likely to outweigh the direct detriment to passengers from an operator’s inability to respond quickly to passenger demand, so we are not taking this forward.

Electronic Bus service registration (EBSR)

Summary of responses

- 2.26** The majority of respondents supported the further roll out of EBSR, with many recognising the benefits of providing travel information that can be used by public facing websites, especially if the data is generated to all stops level. Some pointed out that if tendered bus service details were generated electronically, this could also be used as part of the contracting procedure, as well as for registration purposes.
- 2.27** Some operators did not support the roll-out of EBSR, mainly because of the potential additional costs and complexity of registering services electronically when compared to paper registrations. One small operator made the point that if registrations are made infrequently, operators may struggle to remember how to use an electronic registration system, and a local authority suggested that some smaller operators may not be familiar with computer systems.
- 2.28** Financial incentives to move to electronic registrations were put forward by a number of respondents. Many said that an internet-based system should be provided, which should be simple to use, and training provided in how to make an electronic registration. Any system would need to be able to import existing electronic registrations, to enable those operators already submitting EBSRs to continue with their current systems.

- 2.29** One respondent suggested that the roll out of EBSR be considered as part of an overall review of the registration regulations. Another suggested that smaller operators may be more willing to participate if all of the bigger operators submitted their registrations electronically.
- 2.30** Whilst there was some support for Traveline taking on an 'agent' role to produce electronic files, many respondents made clear that operators needed to be involved and have a final 'sign-off' of details before a registration was made. Some were concerned about how this solution would be funded, and whether existing Traveline costs to operators might be increased. There were also some concerns that if Traveline were to take on this role, there may be an increase in the number of errors in the data if operators were not consulted to ensure the information was accurate, and/or this may cause additional work for operators in clarifying details about their services.
- 2.31** Some respondents noted that this suggestion of using Traveline as an agent may lead to duplication of work, as local authorities are already required to create electronic services data for their own purposes. Several therefore suggested that it might be more appropriate for local authorities to act as agents in creating registrations. Others suggested that DVSA could take on the agency role.

Government position

- 2.32** The full roll out of EBSR will be progressed. The Department will engage further with key players to discuss the barriers and how these might be resolved.

3. Summary and next steps

- 3.1** In light of consultation responses and based on the impact assessment analysis prepared as part of the legislative process, the Government has decided to only proceed with one of the four CC registration remedies, the 14-day pre-notification period for local transport authorities.
- 3.2** Introducing a 14-day pre-notification period for local transport authorities should make a material contribution towards meeting the CC's concerns in a way that supports Government policy in this area. DfT intends to bring this measure into force at the earliest possible opportunity.
- 3.3** The Government will pursue the full roll out of digital service registration by all bus operators. The Department will engage further with key players to discuss the barriers identified and how these might be resolved.
- 3.4** DfT continues to work to ensure that the bus market operates efficiently and that the funding provided supports Government objectives.