

Andrew Jones MP
Parliamentary Under Secretary of State for Transport
Department for Transport
Great Minster House
33 Horseferry Road
London, SW1P 4DR

From: Alex Chisholm
Chief Executive

29 June 2016

Dear Minister

CMA Recommendations on the Bus Services Bill

I am writing on behalf of the Competition and Markets Authority (CMA) regarding the Bus Services Bill ('the Bill') currently before Parliament. This letter is copied to the Secretary of State for Transport.

The Enterprise Act 2002¹ now includes provision for the CMA, at its discretion, to 'make recommendations to ministers on the impact of proposals for legislation on competition within an UK market(s) for goods and services'. This letter sets out the CMA's position on the regulation of bus services and contains the CMA's recommendations in relation to the Bus Services Bill.

Based on previous work, most notably the 2011 Competition Commission Local Bus Services Market Investigation, the CMA believes that local on-road competition can deliver benefits to passengers, including:

- incentives for private operators to deliver innovation and evolution of networks and service provision
- incentives to offer a high quality of service, low fares and efficient service operation.

The CMA recognises that the introduction of franchising may be appropriate in specific circumstances, but believes that on-road competition should only be

¹ Section 7, as amended by the Small Business, Enterprise and Employment Act 2015.

abandoned in favour of competition *for* the market in circumstances where it is clear that this is the only way to secure better outcomes for the travelling public.

Where a deregulated market does not deliver the bus services desired, we consider that improved outcomes are most likely to be delivered by making the local market work better through partnerships. Such strengthened partnership arrangements can provide a good alternative to the franchising proposals which risk being more harmful to competition and passenger interests. To this end we wrote to Local Transport Authorities (LTAs) in February this year,² providing our views on how best to achieve an appropriate balance between competition and collaboration in partnership arrangements for the benefits of the travelling public. As stated in our letter, we have discussed the development of significant schemes with some LTAs and are willing to do so with others.

The CMA believes that LTAs will develop local bus service arrangements which best capture the benefits of both competition and partnership if they are obliged to take the following critical steps before taking action:

- Consider how best to make the deregulated market work in the first instance in order to retain the benefits of competition for passengers
- Assess the impact of their proposed partnership scheme or franchising scheme on competition
- Demonstrate that any distortion to competition created by the proposed arrangement is justified by the contribution to achieving other policy aims
- Consult openly, including with the CMA.

The Bill helpfully provides for most of these steps by bringing the new designs of partnership schemes within the scope of Schedule 10 of the Transport Act. The remainder of this letter makes recommendations that would ensure these considerations are always, consistently and fully taken into account.

Franchising

Whilst the CMA does not object to the Government's objective of widening the tools available to some LTAs to include franchising, our previous work has identified a number of risks associated with franchising, including:

- Requiring LTAs to acquire and develop additional skills and capabilities in areas such as network design and monitoring.

² www.gov.uk/government/publications/letter-from-the-cma-to-local-transport-authorities-on-bus-partnership-arrangements

- The evolution of network design under central control may be less responsive to changes in customer demand. Incentives for efficiency and service quality may be less marked than under a deregulated system, particularly if there is no effective competitive threat posed during the contract period. Whilst minimum service standards may raise the attractiveness of bus travel, if they are over-specified they may unnecessarily raise costs.
- The need for effective competition for the franchise: competition for the right to operate a franchise can help ensure value for money. In London there are multiple operators with substantial facilities which can serve different routes within the city. This may not be the case in other localities, which may limit the opportunities for competition to operate the franchise and also limit the incentives on incumbent operators to invest.

The CMA recognises from previous work that each local situation is different and requires a tailored approach to policy making. As such we support the devolutionary aspect of the developing policy. In the first instance, however, our preference is generally to make the existing market work better for consumers, including through local partnerships.

Recommendation 1: it should be made clear (in the Bill, secondary legislation and/or guidance) that LTAs are expected to assess, and if possible test, whether the deregulated market and/or partnership arrangements can deliver their objectives before seeking to introduce franchising arrangements.

Competition assessments for franchising schemes

Following the introduction of these broader powers, LTAs may seek to use them where they are not necessary for the purposes of delivering benefits to consumers, or may not be transparent about the reasons for the choice of intervention. We expect that, in many cases, enhancements to a deregulated market by, for example, effective multi-operator travel cards, might deliver the outcomes the LTA seeks without sacrificing the benefits of competition. It must be for the LTA to demonstrate failures which would justify the choice of more intrusive measures.

To this end, we welcome the provisions in the Bill designed to ensure that LTAs have to properly identify and explain their concerns, and make a strong case for the approach they consider optimal. We would like these requirements – in the Bill or the expected guidance – to be more explicit that such an assessment must take sufficient account of competition issues, including but not limited to:

- Risks associated with franchising, relating both to outcomes and implementation,
- Benefits associated with on-road competition that they may be giving up, and
- The circumstances in which franchising is likely to be least/most effective.

Recommendation 2: it should be made clear (in the Bill, secondary legislation and/or guidance) that where an LTA has decided that only franchising can deliver the desired outcomes, LTAs must have considered fully the implications for consumers arising from the loss of competition within the market and how best to mitigate any harm arising.

The CMA has already issued guidance on competition and partnership arrangements, and stands ready to provide advice to LTAs on the potential competition implications of franchising proposals.

Recommendation 3: the CMA should be a statutory consultee on the introduction of franchising schemes (as we are in relation to partnership arrangements) to ensure competition issues are sufficiently identified and addressed.

In order to carry out an assessment of a franchising scheme, the Bill makes provision for LTAs to require the relevant information. If the CMA is to be able to support LTAs in their competition assessments, it will also need access to that information. The CMA has no specific information gathering powers in relation to franchising schemes, so it will be necessary for the Bill to create a gateway to enable the LTA to share information received from bus operators or others with the CMA for the purpose of assessing the impact of proposals on competition.

Recommendation 4: the Bill should provide a route for LTAs to share information with the CMA for relevant purposes.

Enhanced Partnership plans and schemes

As set out above, the CMA supports the strengthening of the partnership arrangements available to LTAs through the Advanced Quality Partnership Scheme (AQP) and Enhanced Partnership (EP) provisions.

It will be important that the detail of how routes and slots are allocated under the EP model does not allow operators to 'carve up' the market between them. The allocation of routes and slots needs to be flexible so that an alternative operator could offer services if it believed it could do so more efficiently or to a higher standard than an incumbent supplier. This threat of entry maintains discipline on incumbent suppliers.

There should also be potential for new or existing operators to adapt services, including in response to changing demand or circumstances. A new entrant might be able to identify different operations, services or routes that might be attractive to customers and result in improved services. Schemes should, therefore, not offer operators guaranteed, unchanging entitlement. Instead LTAs must permit some

flexibility over time. Moreover, the financial interests of an incumbent should not be a reason to resist changes.

Much of the detail of how partnership schemes will operate will be set out in secondary legislation or in guidance. In drawing these up, we urge the Department to ensure that:

Recommendation 5: there is a role for competition both in the allocation of routes and slots, and in stimulating ongoing improvement and innovation by operators and/or new entrants.

Recommendation 6: voting mechanisms for EP plans and schemes should ensure that the views of smaller operators are sufficiently taken into account, and do not unnecessarily exclude contractors, community transport operators or other interested parties.

Recommendation 7: LTAs should be required to review an EP scheme if it has reason to believe a change of circumstance has resulted in the scheme no longer meeting the competition test.

Ticket pricing and access to data

As our recent recommendation³ to extend the existing ticketing block exemption shows, the CMA recognises that although agreements between transport operators can raise competition concerns they can also, under certain circumstances, provide real benefits for passengers, for example through integrated ticketing schemes.

The Bill provides for operational requirements that can be placed on bus operators which include common ticketing arrangements, the price of multi-operator tickets, and the provision of information to the public. The CMA has recently published draft guidance which is aimed at helping operators, local authorities and scheme administrators make their own assessment of public transport ticketing schemes, including multi-operator travel cards, and decide whether their schemes fall within the scope of the block exemption.⁴ The CMA would welcome an opportunity to work closely with the Department on such issues.

³ The CMA [recently recommended](#) that the Secretary of State for Business, Innovation and Skills should renew the existing ticketing block exemption for an additional 10 years. The block exemption exempts agreements between public transport providers concerning ticketing schemes which improve the quality, flexibility and ease of use of public transport from the Competition Act provisions that prohibit anti-competitive agreements.

⁴ www.gov.uk/government/consultations/public-transport-ticketing-schemes-block-exemption-draft-guidance

The detail of such arrangements will be set out in secondary legislation or guidance, and we urge the Department to draft these in a way that avoids systems that have the unintended effect of reducing competition and/or increasing fares:

Recommendation 8: Frameworks for the pricing and structure of multi-operator travel cards must not restrain operators from making their own decisions about pricing their own services.

Recommendation 9: Increased collection and sharing of data must not lead to anti-competitive information sharing between individual operators.

We are grateful for the constructive way in which your officials have engaged and continue to engage with us, and would be very happy to provide further information or assist in any other way, particularly in the development of secondary legislation and relevant guidance.

Competition and Markets Authority
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