



DfT Regulatory Triage Assessment

Title of regulatory proposal	Provision of patronage and revenue data to local authorities by operators varying or cancelling bus services
DfT RTA number	DfTRTA00123
Lead DfT directorate/Agency	Local, DfT(c)
Expected date of implementation	Please select
Origin	Domestic
Date	07/11/2016
Lead Policy	Laura Teale
Lead Economist	Shamanthy Ganeshan
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

The Competition Commission (now the Competition and Markets Authority), in its report into the local bus market in the UK (Excluding Northern Ireland and London) in 2011 found that competition in the tendering process for local authority supported bus services is restricted by a lack of bidders for some contracts. The Commission found that it can be difficult for local transport authorities (LTAs) to collect robust information about the likely revenue performance of a service they intend to put out to tender, particularly where this service has previously been operated commercially without support. This means that an incumbent operator can have an advantage when bidding for the contract and potentially increase tender prices.

The Commission recommended as part of its supported services remedies that LTAs should have powers to request and make available information from operators about revenue and patronage of commercial services that are deregistered. This is intended to prevent incumbent operators of the deregistered services having an unfair information advantage when preparing a bid if the LTA decides to tender for a replacement service. The Commission concluded that the information should be provided to the LTA 14 days prior to the application for deregistration, in the 14 day pre-notification period that the Commission had recommended was introduced as part of its remedies

relating to operator behaviour (this has not yet been implemented). Bus operators currently have to apply to register, vary or cancel a service with the Traffic Commissioner – the bus industry regulator – 56 days in advance of the service either starting, being varied, or cancelled.

Viable policy options (including alternatives to regulation)

Option 0: do nothing. The Commission proposed that prior to the legislation being in place LTAs should seek to obtain information about deregistered services on a voluntary basis.

Option 1: introduce regulations requiring bus operators to provide patronage and revenue data about the deregistered service to LTAs on request, within a specified pre-notification period.

Option 2: introduce regulations requiring bus operators to provide patronage and revenue data about the deregistered service to LTAs on request, within a specified time period (there would be no pre-notification period ahead of the registration being submitted to the Traffic Commissioner the information would be supplied during the 56 day notice period).

Our preferred option is option 1 as this would give LTAs time to consider whether they intend to put a deregistered service out to tender, prior to the operator giving 56 days' notice to the Traffic Commissioner of its intention to deregister a service.

Initial assessment of business impact

Describe how the business or voluntary sector will be affected, whether beneficially/adversely:

- The main impact on businesses will be the requirement placed on bus operators to a. familiarise themselves with the new requirements placed on them by the regulatory change, b. where a Local Transport Authority (LTA) wishes to tender a commercial service that is deregistered, providing revenue and patronage information associated with that service, c. any costs (net of revenue received) associated with running cancelled and varied services for 14 additional days.
- The costs to operators associated with familiarising themselves with the new regulations will be a one off cost. Costs associated with providing revenue and patronage information on deregistered services when requested by an LTA and any net costs associated with running cancelled or varied services for 14 additional days will be ongoing.
- We estimate familiarisation costs to be 4 hours FTE of an admin staff member's time in each of the operators' companies. This has been estimated using the ONS Annual Survey of Hours and Earnings, where an administrative staff member's hourly wage is estimated at £10.16 per hour in 2014 prices. We have estimated this to be £44,000 in 2014 prices in the year of implementation of the policy. We have used 3 years'

(2013, 2014 and 2015) data from the traffic commissioner on commercial services that are deregistered or varied and 3 years' (2012, 2013 and 2014) data from the ATCO (The association for Transport Coordinating Officers) price, competition and expenditure survey on the number of deregistered commercial services that are then re-tendered as supported services by local authorities. Making the very pessimistic assumption that it will take 5 hours of admin staff members time to respond to local authority requests for information, we have estimated that the costs to operators from providing information to LTAs that request it for the purposes of tendering a service will be in the range of £3,000 - £13,000 per annum in 2014 prices. The information available to us on the likely net costs to operators associated with running services for an additional two weeks is limited. Using information on the number of live registrations in 2014/15 from the Traffic Commissioner's report, data on total number of vehicle miles operated in 2015 from DfT Bus Statistics and pessimistic assumptions on the likely losses made from running all commercial services that are currently varied or cancelled we have for two additional weeks, we estimate these to be in the range of £110,000 to £460,000 to per annum in 2014 prices.

- The overall costs imposed on operators from the regulatory change in the most expensive year (i.e. 2017) will be in the range of £160,000 to £510,000.
- The main benefits of the scheme will be the potential reduction in tender prices for deregistered or reduced commercial services that are turned into supported services by LTAs. In the absence of specific information and evidence on the exact impact that the regulation will have on the number of bids received and the exact impact they will have on average tender prices we have not attempted to monetise these benefits.
- The provision of information to LTAs about deregistered services will allow LTAs to provide potential bidders with the information they might reasonably require in order to assess more accurately whether and how to bid, and so will encourage more operators to bid. The majority of small operators run tendered services so they are likely to benefit from the provision of patronage and revenue information.
- The Competition Commission also found that winning a tender has been used by some operators as a way to enter the local commercial bus market. An effective tendering process can therefore be an important means by which LTAs encourage bids from operators which are currently not operating in the areas affected by the proposed tender, as a means of stimulating head-to-head or potential competition in the market for local commercial bus services.

One-in, Three-out status

Describe whether the proposal is likely to be within scope of OITO. If it is expected that the proposal will be outside of scope of OITO, provide a brief justification.

Whilst this measure does concern the regulation of business activities in our view it falls within administrative exclusion “F. Regulatory provisions that promote competition (where these result in an increase in the net direct burden on business)”. A regulatory provision can be considered to promote competition if it satisfies all of the following criteria:

- *The measure is expected to directly or indirectly increase the number or range of sustainable suppliers; to strengthen the ability of suppliers to compete; or to increase suppliers' incentives to compete vigorously:* the provision of information should encourage more operators to bid, whilst the pre-notification period reduces the incentive and ability of an operator to take short-term predatory behaviour to service changes, strengthening the ability of suppliers to compete in the market.
- *The net impact of the measure is expected to be an increase in [effective] competition (i.e. if a policy fulfils one of the criteria at (a) but results in a weakened position against another):* The Competition Commission (CC) concluded that the patronage and revenue remedy will maximise the scope for effective competition and deliberately reduce the extent of any advantages held by incumbents. They also concluded that the net impact of the pre-notification measure would be an increase in competition by reducing the perceived and actual threat of post-entry anti-competitive behaviour by incumbent operators, identified by the CC as being a significant barrier to entry.
- *Promoting competition is a core purpose of the measure:* The measure is being implemented as a direct result of the CC recommendations intended to increase competition in the local bus services market.
- *It is reasonable to expect a net social benefit from the measure (i.e. benefits to outweigh costs), even where all the impacts may not be monetised.* The CC report estimated that, overall, the annual detriment to consumers and taxpayers caused by the lack of competition in the operation of local bus services was considerably in excess of £70 million a year and was likely to be in the range of £155 to £305m. The CC found that detrimental effects arose where consumers had little or no choice of bus operator. These measures will promote competition. The social benefits of bus users using more stable bus services (by timely replacement of withdrawn services and a reduced ability to make service changes) should be significant as a result of these policies.

For these reasons we believe this measure meets the pro-competition criteria and is therefore a Non-Qualifying Regulatory Provision, and as such does not score against the BIT and is therefore out of scope of OITO.

Rationale for Triage rating

Provide a summary of the Department's rationale for selecting a fast-track appraisal route.

This is a low cost to business measure as the costs in the most expensive year, i.e. 2017 will be in the range of £160,000 to £510,000.

PLEASE NOTE CHANGES: If the measure is being put forward on grounds of "low cost" it should be based on **GROSS COSTS** in the **MOST EXPENSIVE YEAR** being **LESS THAN £1 MILLION**

Confirmation that the proposed measure is suitable for Fast Track

*Please note that sign-off has now **replaced RPC clearance** and must be G6 and above.*

Policy sign-off:

Signature

Stephen Fidler

Date

07/12/2016

Economist sign-off:

Signature

Andrew Morrison

Date

07/12/2016

Better Regulation Unit sign-off:

Signature

Denise Lovett

Date

08/12/2016