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From: Douglas Cooper
Project Director

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Dear Mr Young

Sheffield City Region Devolution Deal – Bus Network

Thank you for your letter sent on 18 May 2015 to our Chairman, David Currie, and for coming in to meet us along with colleagues from DFT, Stagecoach and FirstGroup.

In the letter and at the subsequent meeting you explained the aims of the Sheffield City Region Devolution Deal and SYPTE's plans to reform bus services in the South Yorkshire region. You explained that the Devolution Deal has set out four aims in relation to buses:

1. The ability to work with partnership operators to introduce a coordinated, efficient and integrated bus network. This is to reduce congestion and pollution and introduce efficiency
2. A simplified ticket range, attractively priced commercial fare structure, offered to customers (including the young, those entering training and work and adults) through either an inter-operable or multi-operator ticketing scheme on a single Smart platform. This is to make ticketing understandable to customers and easier to use
3. Transform the customer relationship by integrating customer management records, smart ticketing and real time data
4. The ability to ensure that operators outside of the partnership arrangements participate in the arrangements described above

We have considered whether the Devolution Deal and accompanying reforms proposed by SYPTE to the bus network in the Sheffield City Region raise competition concerns. We set out our views in this letter. These are based on the

information you have shared with us and our broader understanding of bus markets from previous work, including the Competition Commission's Market Investigation into Local Bus Markets.¹

We have focused on whether the proposed changes to the design of bus network and ticketing arrangements are likely to create potential competition concerns. We would note, however, that arrangements for integrated customer management records, smart ticketing and real time data have the potential to create competition concerns if these were to result in competing operators being able to share commercially sensitive information which, in turn, could allow operators to coordinate their activities. We therefore welcome your assurances that there will be appropriate firewalls in place to ensure integrating customer management records, smart ticketing and real time data does not result sharing of commercially sensitive information between competitors.

Integrated bus network

You explained to us that the aim of redesigning the South Yorkshire bus network is to design a network that allows South Yorkshire to reach its pollution and congestion targets, get citizens to work and to integrate buses with other forms of transport. In the meeting you also explained the process through which the integrated network was designed and how operators will subsequently express an interest in running routes.

Overall, we do not have fundamental objections of principle to the approach to network planning you have adopted. The approach to network planning builds on the business practice of conducting network reviews and uses partnership mechanisms already in place under existing legislation. Importantly, as described to us, it should provide for some continuing rivalry between operators, both in 'bidding' to run particular services and through on-the-road competition, where routes overlap. However, there are a number of points of detail which we advise SYPTTE to carefully assess to ensure that the scheme delivers benefits to consumers and does not harm competition:

- SYPTTE will need to be alert to the risk that the process whereby operators express an interest in running different routes does not lead to an increase in geographic market segregation (or a retreat to 'core territories') compared to the current market position, as this would reduce the effectiveness of potential and actual competition. We would expect this to become apparent to SYPTTE relatively soon after inviting expressions of interest to run routes within the network.

¹ <https://www.gov.uk/cma-cases/local-bus-services-market-investigation-cc>

- To ensure that the scheme delivers long-term customer benefits it is important that there is scope for the network to evolve, for new entry to take place and for existing operators to propose new services. SYPTE should therefore ensure that the scheme allows for LTA approval of new and revised services. In particular, you described a process to us by which rival operators could seek LTA approval to enter on to a route to run services in competition with an existing operator, if they believed they could offer more attractive or efficient operations. We consider such a process to be very important in ensuring operators are disciplined to maintain the quality of their services and to avoid disincentivising innovation by potential competitors. This is however dependent on the LTA's willingness to allow such competition and allow the provision of services to evolve, especially if there are already restrictions in place due for example to congestion and pollution concerns. It is therefore important that there is an understanding that such adjustments would be allowed to occur, and we would strongly advise that the commercial impact on an incumbent operator's services is not part of the assessment of whether an operator could establish a new service.
- It should not be made unnecessarily difficult for operators to meet requirements to run bus services within South Yorkshire. Entry requirements should be proportionate and clearly justified in relation to the objectives of the scheme. In this context, we note that the control of routes and quality of service will be achieved through a statutory partnership, so is subject to the existing public interest test. This issue would become even more important in the event that legislative change gives PTEs the ability to require compulsory participation in partnership schemes.

Ticketing and alignment of fare zones

You explained in our meeting that consumers can be confused by different ticketing schemes and fare zones operated by different operators and may find it difficult to judge value for money. As a result, members of the partnership are seeking to standardise the definition of commonly used ticket types and fare zones to try and achieve some commonality.

The alignment of fare zones and types of tickets offered are both explicitly outside the public transport ticketing schemes block exemption from the Competition Act 1998 (CA98)². It is possible therefore that agreements between operators to align

² Article 7 of the Block Exemption states: "A public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of limiting:
 (a) the variety or number of routes on which any operator or long distance operator provides or may provide public transport services; or

fare zones might breach CA98 where the object or effect of the agreement is to prevent, restrict or distort competition within the United Kingdom, and/or could breach Article 101 of the Treaty on the Functioning of the European Union should the agreement affect trade between member states³. However, we note that there is a legal exception regime under the CA98 which means that an agreement that falls within the scope of the Chapter I prohibition but which satisfies the exemption conditions set out in section 9(1) of the CA98 is not prohibited, no prior decision to that effect being required. In very broad terms, this test means that potentially restrictive agreements will still be lawful where they produce countervailing economic efficiencies that outweigh the restriction, and which are shared with consumers. It would be sensible therefore for SYPTE and partner operators who are considering taking part in agreements to standardised ticket types and zones to self-assess whether the agreements in meet the exemption criteria.⁴

In doing so, we consider that it would be relevant to take into account the potential consumer benefits in standardising some aspects of the tickets which consumers find confusing. Doing so could allow passengers to make informed comparisons between the aspects of ticketing offers that matter to them (such as price and frequency) and would be unlikely to have an appreciable effect on competition. As such, proportionate restrictions on the type of ticketing products available in South Yorkshire – of the types we discussed (for example, a common definition of “students” or other customer types, or agreed boundaries of the main urban zones within South Yorkshire) may satisfy the criteria for a specific exemption. However, there is a balance to be struck and, in conducting a self-assessment, you should also be alert to risks of excessive standardisation and avoid unduly restricting aspects of suppliers’ ticketing offering which are valued by consumers and serve to drive competition (including operators’ own period/area tickets).

Yours sincerely

Douglas Cooper
Project Director

(b) the freedom of operators or long distance operators to set the price or availability of, the fare structure relating to, or the zones or geographical validity applicable for, any ticket entitling the holder to make a journey solely on the public transport services of any one operator or any one long distance operator.”

³ You will also be aware of the competition tests in Parts 1 and 2 of the Transport Act 2000, as amended, which apply to certain specific types of arrangement. See further OFT452 *Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008*, which has been adopted by the CMA.

⁴ Similarly, if you are proposing introducing a statutory multi-operator ticketing scheme to achieve this aim, you will need to ensure that this satisfies the competition test set out in the Transport Act 2000. The European Commission’s Guidelines for the assessment of horizontal agreements can be found here: <http://ec.europa.eu/competition/antitrust/legislation/horizontal.html>