

CMA RESPONSE TO WEST YORKSHIRE COMBINED AUTHORITY BUS REFORM PROPOSALS

Background

1. The Competition and Markets Authority (CMA) is the UK's principal competition and consumer authority. It is an independent non-ministerial government department, and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA has a role in providing advice and recommendations to government and public authorities.² The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and on consumers.
3. The CMA is responding to West Yorkshire Combined Authority's (WYCA) consultation on bus reform in West Yorkshire (WY) as a statutory consultee on bus franchising proposals in England. The CMA is a statutory consultee to any proposed new Enhanced Partnership (EP) or variation, under the Transport Act 2000 (as amended) (herein "the Act"). The CMA has previously responded to Liverpool City Region Combined Authority's (LCRCA)³ and Greater Manchester Combined Authority's (GMCA)⁴ consultations on franchising under the Act.
4. The CMA's overarching views on franchising remains the same as that set out in our response to the LCRCA consultation.⁵ The CMA recognises that franchising is an important policy option for Combined Authorities (CAs) who intend to secure better outcomes for passengers, residents, local economies and taxpayers. It is the CMA's position that it is for CAs and local transport

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law)."

³ [CMA response to Liverpool City Region Bus Franchising Consultation](#), CMA.

⁴ [Stakeholder responses](#), pg.1236-1253, GMCA.

⁵ [Proposed franchising scheme for Liverpool \(publishing.service.gov.uk\)](#) pg 3

authorities (LTAs) more generally to decide on the appropriate policy approach for their area. The CMA's advice is focused on how to design and implement that policy to both harness and facilitate the benefits of competition for the benefit of passengers.

CMA Enhanced Partnership (EP) observations

5. The CMA has a dual role in relation to EPs: first it is a statutory consultee to any proposed new EP or variation of an existing EP, and second, the CMA can conduct an investigation if it considers that an EP may not meet the bespoke competition test.
6. The CMA has engaged extensively with different LTAs on the implementation of EPs. The CMA has also published advice for LTAs: [Bus Enhanced Partnerships – CMA advice for Local Transport Authorities](#). This advice aims to consolidate competition insights and reflections from the CMA's review of EPs to date and to assist LTAs as they develop, monitor or vary their plans and schemes over time. The purpose of the advice is to enable good policy, and to ensure that LTAs are not discouraged from pursuing new and innovative approaches.
7. WYCA introduced an EP in April 2022 and proposes the option to build on the current EP to form an EP+ in their bus reform proposals.⁶ The EP+ is governed by the same legislation as the existing EP. In its consultation WYCA sets out its view that it would aim to drive the partnership further, make further use of policy levers and powers, and create the most ambitious EP that could be delivered in WY within the funding available.⁷
8. The different options to manage local bus markets (EP, franchising, or otherwise) have their own benefits and risks, and it is for policy makers to judge and balance those risks and benefits, both in relation to the impacts on competition and consumers, and in relation to wider policy objectives within their local areas. When deciding whether to pursue franchising, policy makers should consider the benefits against the possible costs associated with moving away from 'on-road' competition, including the potential exit of competitors and assets from the local bus market and the impact of this on passengers. Paragraphs 4-7 of the [CMA's consultation response to One network, one timetable, one ticket: planning buses as a public service for Wales](#), set out further views on the potential benefits, risks and risk mitigations of bus franchising.
9. This response does not engage further on the specifics of WYCA's EP+ proposals. The CMA encourages WYCA to examine the CMA's published advice

⁶ WYCA full assessment para 1.4.2

⁷ WYCA full assessment para 9.5.3

on EPs in the first instance but the CMA is open to discussions with WYCA, and LTAs more generally, on its published advice and on the competition implications of particular measures under consideration.

CMA observations regarding WYCA bus franchising proposal

10. The response to this consultation builds on the CMA's views set out in its responses to the GMCA and the LCRCA consultations on bus franchising. Where relevant to WYCA's proposals we reproduce text from the LCRCA response below, for the purposes of consistency and ease of use by WYCA.
11. Franchising changes the fundamental nature of competition for the duration of a franchise award but also the long-term structure of the market and potentially the number and size of operators in each area. In this response we outline at high level some relevant considerations on the design of franchising.
12. The CMA has previously highlighted four key areas for LTAs and CAs to consider when consulting on franchising. The four key areas are outlined below:
 - a. **Design of individual franchises:** Franchise design should best enable competition amongst a range of potential operators now and in the future.
 - b. **Access to fleets and depots:** Infrastructure represents a high barrier to entry and expansion for new or growing firms in the market. A well-designed asset strategy may allow new entrants into the market without being hampered by the high fixed costs of purchasing infrastructure.
 - c. **Impact on fares and ticketing:** By taking control of fares and ticketing the LTA or CA will be able to affect the cost of bus services directly. Care needs to be taken to ensure that passengers benefit directly through a combination of lower or simpler fares and ticket types.
 - d. **Supporting ongoing innovation:** For franchising to continue to be successful, it must be able to identify and respond and adapt to changing patterns of passenger demand, finding ways to identify signals from the market and making periodic change in response to passenger needs and demands.

Design of individual franchises

13. The introduction of bus franchising will effectively end competition *in* the market and will replace it with competition *for* the market. Therefore, if benefits are to flow from competition, it is the design of the individual franchises and the competition to win the franchise contracts that is most important. The number and the size of the franchises will have significant impacts on an operator's

ability and incentive to bid for contacts, and the outcome of franchising awards may in turn dictate the number of operators left competing in the market. However, structuring franchising in a way that intentionally maintains market structure or protects incumbents may lead to a reduction in intensity of competition. This could manifest itself through a lack of pressure on operators in future franchise rounds (leading to higher costs for the LTA and ultimately passengers or taxpayers) and a lack of pressure to innovate and keep quality of service high for passengers.

14. Our observations on the design of individual franchises are broken down into three separate areas:
 - a. Size of the franchise. As well as considering the specific dynamics of a local region, LTAs must ensure that franchise lots are of the right size to encourage competition from multiple potential operators.
 - b. Length of the franchise. If franchises are tendered too frequently this may blunt an operator's incentive to invest in the network, whilst too long between tenders could lead to stasis in the market.
 - c. The ability for the LTA to oversee franchising and take remedial action. Effective scrutiny of operators is essential in ensuring franchised agreements are adhered to and passengers are getting the benefits committed to.

Size of the franchise

15. WYCA proposes to use eight franchised areas representing ten franchised zones. These areas are to be rolled out sequentially across three rounds, with each round/area containing a set number of lots varying in size and commercial value.⁸ The consultation indicates at present there are three major commercial operators that control 85% of bus mileage across WY.⁹ Given that the three largest operators control the 13 largest depots, many based in strategic areas, there is a risk that an operator with a high market concentration in a franchised zone could deter other firms from competing in the tendering process.
16. Good franchise design should ensure that the largest firms are forced to compete against each other and that smaller firms have opportunity to bid for a range of lots. Should smaller firms be unable to compete for enough lots, there

⁸ Noting that the Leeds zone is split into three larger contracts.

⁹ WYCA Commercial case 3.3.3

is an increased risk that smaller operators could potentially exit the market resulting in a further lessening of competition for future franchises.

17. WYCA proposes that as the first franchise round is awarded there will be a transition period for the later rounds and areas to become franchised. The franchising scheme provision plans to revoke the existing EP in areas that the franchising scheme operates. There are several network and passenger risks that have been highlighted in the commercial case with the addition of how these risks can be mitigated.¹⁰ It is important that the CA engages with operators and plans accordingly to minimise risks and maximise the proposed mitigations. Further points regarding passenger impacts related to the proposed phased transition of franchising are discussed in the fares and ticketing section.
18. WYCA has included consideration of small and medium operators (SMOs) when designing its lotting strategy.¹¹ The smaller B and C lots present existing operators and potential new operators with opportunities to enter new, smaller markets.¹² However, the scale of franchises for lot A contracts is considerably larger than for smaller lot B and C contracts.
19. WYCA have set out potential proposals to allow SMOs to consolidate and grow in the market to be able to eventually compete successfully for a lot A franchise.¹³ This includes offering larger packages under B lots which would intend to allow a phased level of growth, which could be facilitated through combining B lots or moving certain services from A lots to B lots.¹⁴ Such consideration of ways to facilitate future competition is welcome, and the CMA encourages monitoring of the impact of these proposals on the ability of SMOs or other operators to effectively compete.
20. Our understanding is WYCA intends to take a different approach to the use and provision of depots for the smaller B and C lots compared to the larger A lots, partly with the intention to manage competition for the smaller lots. We understand that for the larger category A lots, WYCA would seek to provide operators with a publicly owned/leased depot for the term of the franchised contract, reducing the impact of existing depot ownership on the ability of firms to effectively compete for those franchise lots. WYCA is considering proposals such that lot B and C franchise winners would not be able to operate from strategically owned franchised depots provided to lot A franchise winners. This

¹⁰ WYCA Commercial case para 5.7.6

¹¹ WYCA Commercial case para 5.5.5

¹² Noting lot B and C franchises are smaller based on Peak Vehicle Requirement (PVR) sizes. Lot A 45-100 PVR, lot B 1-45 PVR, lot C 1 PVR (school contracts)

¹³ Commercial case para 5.5.13

¹⁴ WYCA Commercial case para 5.5.14

increases the impact of existing depot ownership on the ability of firms to effectively compete for B and C franchise lots. With regards to this proposal:

- a. The CMA's understanding is that the exclusion of the strategically owned depots for lot B and C contracts is intended to make it easier for depot owning SMOs currently operating in WY to compete against larger operators for these contracts.
- b. Given that a strategic depot cannot be used for lot B franchises, an SMO must own or have access to their own depot close to the franchised area. Owning a depot in WY is therefore likely to be critical to winning lot B and C contracts. A potential new entrant without existing access to a depot could struggle to compete in the bidding process if having access to an existing depot is one of the tendering criteria.¹⁵ This may deter entry for SMOs that do not currently operate in the region.
- c. As set out in paragraph 13, the CMA encourages policymakers to avoid structuring franchising in a way that maintains market structure or protects incumbents, as it may lead to a reduction in intensity of competition. This could manifest itself through a lack of pressure on operators in future franchise rounds (leading to higher costs for the LTA and ultimately passengers or taxpayers) and a lack of pressure to innovate and keep quality of service high for passengers.
- d. We understand, however, that this particular proposal intends to mitigate against the risk that the first rounds of tendering across WY leads to considerable structural change and exit of operators in a way or scale that would undermine competition *for* the market in future franchising rounds.
- e. The CMA would therefore encourage WYCA to see this proposal as smoothing the transition to a franchised market structure and have the intention in future franchising rounds to more actively facilitate wider competition and potential operator entry or expansion across lot sizes.

Length of the franchise

21. Tendering higher numbers of smaller packages of lots could give more flexibility and stronger competition in the future.¹⁶ Given the proposed seven-year franchise length, there is a risk of significant change in the structure of the market in each area of WY region by the time of the next franchising round, and that some operators may have left the market. The proposed shorter-term

¹⁵ Our general views on depots is outlined in the fleets and depots section of this response

¹⁶ GMCA, *Doing Buses Differently: Greater Manchester Consultation on a Proposed Franchising Scheme*, Stakeholder Responses, pg. 1246.

contracts for smaller lots should mitigate some of the risk of operator exit by providing greater flexibility and reducing the levels of risk for SMOs.¹⁷

The ability of the LTA to oversee franchising and take remedial action.

22. WYCA has included a performance regime calibrated to reflect the specific performance requirements of different contracts.¹⁸ It is crucial that operators are consistently held to certain standards contained in the franchise. It is also important that WYCA has the capacity to monitor these standards and implement measures and penalise operators that do not meet these standards swiftly and effectively. WYCA should utilise the benefits of providing commercial incentive schemes to reward high achieving operators. Having a franchised agreement, in place of a deregulated market, can allow LTAs to reward investment and innovation which benefits passengers.
23. Understanding operator performance is essential and WYCA's proposal to manage all central customer service functions will provide a single point for passengers to provide their views on operators' service.¹⁹ Passengers will be able to outline poor performance as well as offer suggestions. This timely information on customer satisfaction should help WYCA to respond quickly to passengers' demands, holding operators to account.
24. WYCA consulted operators in its market engagement process when designing the lotting strategy and wider franchising proposals.²⁰ As part of its ongoing market management, WYCA should consult and engage with operators of all sizes including SMOs to understand how franchise design will affect the nature of competition now and in the future.

Access to Fleets and Depots

25. To operate a franchise, an operator needs both vehicles and appropriate garaging/depot space to store and maintain buses. The ability for operators to acquire or access these assets, potentially at short notice, will affect the intensity of competition for franchises. WYCA's intention to purchase the bus fleet and

¹⁷ WYCA Commercial case para 5.2.26 – contract lengths for B and C categories will be determined on a contract by contract basis and may be shorter in length (e.g., 3-5 years)

¹⁸ WYCA Commercial case para 5.3.25

¹⁹ WYCA Commercial case para 5.3.23

²⁰ [Microsoft Word - Appendix 3.4 Aggregated Market Engagement Supporting paper for comms \(amazonaws.com\)](#)

lease these to franchised operators should help operators compete on a level playing field.²¹

26. WYCA does not expect to own the entire bus fleet from the start of the franchised scheme and will gradually progress towards complete fleet ownership over time.²² The proposed scheme may include a residual value mechanism (RVM) for additional fleets which guarantees the price at which fleets will be sold should an incumbent operator exit the market, reducing a given operator's financial risk.²³ We encourage WYCA to monitor whether the RVM is having its intended effect, and particularly whether it is encouraging new operators to enter the market. There are approximately 1,800 buses operating in the CA region with an average age of 11 years.²⁴ Given the average age of the fleet operators may need to invest in upgrading or replacing buses in the intervening period before WYCA owns the entire bus fleet.²⁵ The fact that operators will not have certainty that they will win future franchise rounds increases the importance that any RVM works well and enables such investment, or that an alternative approach is taken to fleet replacement during any transition phase towards WYCA fleet ownership.
27. CMA engagement with stakeholders on bus markets over the past 5 years suggests that acquiring existing depots or land in suitable strategic locations with necessary planning permission can be difficult. The ability to acquire a depot in the time between the initial franchise being awarded and when the bus provision starts can be challenging. We therefore recommend a sufficient period to ensure depot acquisition is achievable.
28. There is a risk that if incumbent operators were to exit the market, they may choose to dispose of depots for a purpose outside the bus market which would reduce depot capacity. While there may be scope for WYCA to acquire land through greenfield or brownfield sites to build new depots,²⁶ or through compulsory purchase options, this may affect timeframes in which franchising can be delivered. Early engagement with current depot owners to determine the future of depots and clear communication of WYCA's intentions may help to mitigate this risk of WYCA being unable to find suitable depots at the start of the franchising scheme.

²¹ If operators are required to finance and acquire a fleet, larger operators may be at a competitive advantage if they can use existing fleet from other parts of their business to smooth any transition.

²² WYCA Fleet strategy

²³ WYCA Fleet strategy preferred option strategy.

²⁴ WYCA assessment para 3.3.5 and 3.3.6.

²⁵ Noting that the average lifetime of a bus is 14 years.

²⁶ WYCA depot strategy approach 1.2 – noting that this is not the preferred approach.

29. Innovation through entry and expansion may be limited if WYCA restricts access to strategic depots to a single large lot A franchisee. If instead there was an opportunity for two or more smaller operators to have access to the same WYCA-owned depot, a wider range of operators might be willing to participate for B and C lots. This approach for depot sharing among WYCA strategic depots should be considered if practical arrangements can be established.
30. Affording preference to incumbent operators in the WY region based on fleets or depots could exclude bids from new entrants or existing operators looking to expand who may lack similar advantages in infrastructure. WYCA should therefore consider how it may acquire depots and fleets to, ideally, line up with the commencement of the franchise.
31. As with GMCA and LCRCA, WYCA are seeking to acquire strategic depots throughout the franchised area. These depots would then be made available to operators who win lot A franchised contracts. As previously discussed, lot B and C franchise winners may not be allowed to operate these services from strategically owned depots in which lot A franchises will be operated from. There may be a risk that the SMO depots would be more challenging to upgrade than future WYCA strategically owned depots because of the potential commercial constraints on SMOs to upgrade operating depots. This may impact how Zero Emission Buses (ZEB) can be rolled out across lot B and C franchises if the depots lack the technology to facilitate such buses. In subsequent franchising rounds the assumption that fleets will be a lesser barrier for SMOs is less likely to hold if ZEB are not rolled out proportionally across franchise types due to depot technology constraints.

Impact on Fares and Ticketing

32. In a franchised market the LTA has control of the fare structure. This gives the ability to affect fares and ticketing in two ways, first through setting the level of individual fares and second the potential to implement network-wide through-tickets, leading to potentially simplified and potentially cheaper ticketing.
33. WYCA notes in the consultation that under current provisions the region has complex ticketing offers with a wide range of ticket options available across multiple operators.²⁷ Under a franchised system, WYCA will be able to develop a simplified ticketing system. WYCA already has the MCard system in place as the core multi-ticketing platform available for passengers across bus and rail services. We note WYCA proposals to offer customer services through a single

²⁷ WYCA Strategic case para 6.4.1

CA brand and supported by a single ticketing scheme, building on the success of the MCard product.²⁸

34. As noted in para 17, should franchising be rolled out across WY in phases meaning some areas will be under a franchised ticketing system before others. During the transition period WYCA proposes establishing specific conditions relating to fares and ticketing that would maintain the benefits of the existing EP in regard to fares and ticketing, helping minimising the impact on passengers in non-franchised zones.²⁹ WYCA should be mindful of any risks and confusion to passengers travelling across franchised and to be franchised areas.

Supporting ongoing innovation

35. Through its work and engagement on bus markets and franchise awards more generally, the CMA has found innovation and knowledge are two key determinants of successful franchised operations, especially in boosting passenger numbers.
36. As touched on above, as well as ensuring that franchising works for the initial round, attention needs to be paid to the shape of future franchise awards. This should include ensuring that routes and services adapt to changing needs of passengers and communities over time. In addition, franchising should ensure that operators feel that they are able to return to a region and bid for franchises in future rounds, even if previously unsuccessful, which may be most effectively supported by an evolving asset strategy.
37. Ultimately, any steps to reduce the fixed costs and barriers to entry and expansion (and to a lesser extent exit) of operating a franchise will help SMOs enter the market more easily and we advise that 'lot design' continues to consider these issues in future.
38. From the CMA's experience in other markets, if WYCA can provide open access to fares, timetabling, and live bus location data to third parties, such as app developers, this can lead to further insights on passenger demand and travelling habits. The UK government requires bus operators and local transport authorities to openly publish information about routes and timetables but there may be scope to go further with data on passenger use, common routes, and congestion, for example.³⁰

²⁸ WYCA Strategic case para 9.6.26

²⁹ WYCA Commercial case para 5.7.15 and para 5.7.16

³⁰ DfT, Bus Services Act 2017: bus open data.

39. The ability of WYCA to access and interpret data coming out of franchising rounds will play an important role in determining the long-term effectiveness of the franchise. Bus passenger data should be used to assess the performance of the current network and hold operators to account. The CMA would encourage WYCA to consider what skills and monitoring it needs in place to collect and analyse such data to aid long-term franchise improvements. WYCA should also consider what additional feedback or information operators may have that could be used to improve the network over time.
40. The consultation includes the intention to use a service permit regime for cross-boundary services that connect the WY region with surrounding areas.³¹ WYCA intends to facilitate the continued running of cross-boundary services rather than setting conditions which prevent them from operating in WY,³² which may help the transition to franchising. However, WYCA will need to consider how to minimise any potential negative impacts arising from differences in ticketing, pricing or service levels between the franchised and non-franchised services.
41. There may be scope to extend the use of a service permit regime for the purpose of facilitating innovation. New providers may use passenger data provided by WYCA to propose new routes which could increase ridership. This should mean new routes would not take passengers away from existing franchised ones, subject to an assessment by WYCA.
42. The CMA would encourage WYCA to engage with other CAs that are pursuing franchising as well as CAs that may consider proposals in the future. Sharing best practice regarding innovative solutions such as network design and data interpretation, will aid a stronger franchised market across regions that is likely to be mutually beneficial across CAs.

Concluding remarks

43. The Bus Services Act (2017) has empowered LTAs to shape their local bus markets. The CMA recognises that franchising – whether in the WY Region or elsewhere – has the opportunity to deliver significant benefits to passengers and local economies.
44. The introduction of franchising will have potentially long-lasting effects on the local bus markets in the region. Therefore care needs to be taken to ensure that franchise schemes are designed to succeed not only following the first rounds of awards, but in future rounds to come. The competitive pressure between operators that exists now will need to be nurtured to ensure continued

³¹ WYCA Commercial case para 5.8.2

³² WYCA Commercial case para 5.8.7

performance, through active market management and monitoring. WYCA will need to manage the systems it puts in place to understand passenger demands and ensure that a sufficient range of operators are able and willing to participate in future competitions for awards, helping to provide benefits for the passengers of today and into the future.