ITEM 10

Regional Transport Partnerships Chairs Meeting

Nairn

1 June 2011

ITEM 10: RTP Response to Competition Commission Local Bus Services Market Inquiry – Provisional Findings and Proposed Remedies.

1.0 Summary

The object of this report is to homologate the RTP response to the Competition Commission Local Bus Services Market Inquiry's Provisional Findings and Proposed Remedies.

2.0 Recommendations

The Chairs are recommended to note the contents of this report, and to approve the principles of the RTP response to the Inquiry.

3.0 Detail

Further to earlier reports, the Chairs will be aware of the importance of the outcomes of the Inquiry on the bus market in Scotland.

In early May, the CC published its provisional findings and possible remedies – summarised in the CC's News Release attached at Appendix 1 – arising from the Inquiry. For the remedies, the Inquiry requested responses by 27 May 2011 and for the provisional findings by 3 June (Check).

The principles of the RTP response are as follows:

- The RTPs support the findings as a basis for the identification of provisional remedies for Adverse Effects on Competition
- **Ticketing Schemes** – The RTPs consider multi-operator tickets provide a benefit for the travelling public and assist in meeting transport policy outcomes and welcome options to secure the future of statutory Local Transport Authority (LTA) ticketing schemes.
- **Single Operator multi journey tickets** – The RTPs agree that single operator multi-journey tickets should be priced in relation to the LTA multi-operator schemes and be based on common zones and fares stages.
- **Fare and quality changes** – The RTPs support further powers for the Traffic Commissioner to address registration changes and

considers LTAs could have a valuable role in supporting the Traffic Commissioner with investigation and monitoring of registration proposals for new and amended services.

- **Bus Stations** – The RTPs support the development of "Fair Access Obligations" for the operation of all bus stations and consider LTAs could have a valuable role in monitoring and specifying these.
- **Tendered Services** – The RTPs support options to increase information to the LTA about the performance of Tendered Services and specific Scottish guidance.
- **Franchising and Partnerships –** The RTPs recognise the advantages of franchising approaches, if supported and financed by the Scottish Government, to address bus market failure and meet policy objectives. However, the RTPs also consider that, with some changes, existing legislation on Quality Partnerships and Contracts could be strengthened and provide similar benefits at minimal cost. .

There will be further opportunity for involvement in the Inquiry, and the CC will complete their Inquiry by 6 January 2011. Accordingly, further reports will be submitted to RTP Chairs meetings in future.

Bruce Kiloh
SPT
May 2011

Appendix 1 – CC News Release

APPENDIX 1 – CC NEWS RELEASE

News Release

26/11 6 May 2011

CC LOOKS FOR MORE COMPETITION ON THE BUSES

The Competition Commission (CC) is looking at ways to open up more bus markets across the country after concluding that too many operators face little or no competition in local areas.

In a summary of the CC's provisional findings report on the local bus market in the UK (excluding London & Northern Ireland) published today, it provisionally concludes that although there are 1,245 bus companies in England, Scotland and Wales, the great majority of routes and local areas experience a high degree of concentration. Consequently in many local areas, the largest operator has consistently faced little or no competition.

Many passengers dependent on bus services in those areas can expect less frequent services and in some cases higher fares than where there is more competition.

The CC has also concluded that the way local authorities tender for supported services—necessary services which would not be provided without public subsidy—and the limited number of potential bidders in local areas can restrict competition and increase the cost of supporting these services.

The CC is now consulting on measures to open up more markets by tackling the factors which can hinder competition. The CC is also seeking views on whether Local Transport Authorities (LTAs) should take measures to encourage competition, including whether franchising (where operators would compete for the right to provide services) might be required in cases where there has been a particularly marked failure of competition.

Jeremy Peat, Chairman of the Local Buses Inquiry Group, said:

There are a large number of towns and cities where bus operators face limited competition and little prospect of significant change. In a market that was deregulated in anticipation of widespread competition that is clearly a problem and there are evident risks of disadvantages for passengers when there is little to keep local operators on their toes.

Buses provide an essential, if unsung, daily service for millions of people in the UK, carrying twice the number of passengers as do trains. Their importance warrants this examination to see whether those passengers are receiving a 2

good service and benefiting—or not—from active competition. Many passengers are dependent on the bus and do not have a realistic or desirable alternative, such as getting into a car or a train, if fares rise or services deteriorate.

Competitive conditions can and do differ across hundreds of local areas and unsurprisingly there are significant variations in passengers' experience. We have seen a number of factors that can prevent new or enhanced competition in local areas and we are looking for practical measures that will address these factors and open markets up to the greater rivalry which will benefit passen-gers. Some of these positive effects can be achieved through bodies already present at local level, such as LTAs and traffic commissioners. In many cases, those on the ground will be best placed to tackle the issues. We also want to hear views on whether more hard-hitting measures are required in the most affected areas.

We are aware that head-to-head rivalry on particular routes has resulted in destructive short-lived 'bus wars' and other behaviour that doesn't benefit passengers. We have found that head-to-head competition can be unstable, given the unusual characteristics of the bus industry, and this instability has the effect of preventing competition taking root over a longer period. Where there is extensive competition on a route, only one operator tends to succeed in the longer run. That operator then has the field to itself but this outcome is not necessarily as a result of the operator concerned being the most efficient provider. Moreover we find that there are other barriers which restrict the competitive constraints from new entry and potential competition from rival operators located nearby. We believe that the right combination and choice of measures can tackle these problems and encourage the development of sustainable and beneficial competition.

Since starting the investigation in January 2010, the CC has carried out an extensive investigation of an industry that carries 2.9 billion passenger journeys a year and has 1,245 different operators. The inquiry has held hearings and received submissions from a wide variety of parties in England, Wales and Scotland (which each have transport policies and funding set by their respective governments) including bus operators, trade associations, passenger groups, LTAs, national and local Government and regulators. It has also carried out detailed passenger surveys, and various economic and accounting analyses, as well as case studies on local bus markets.

Aspects of the market that the CC's investigation has provisionally found include:

• Local areas are, on average, persistently and highly concentrated—the average share of supply of the largest operator in an urban area is 69 per cent.

• Several factors inhibit or prevent new entry or expansion in markets by other operators and thus reduce the constraint from potential competition.

• These factors include the tendency for instability in head-to-head competition, which means that competition is unlikely to be sustained and one or other rival is likely to exit. This prevents lasting competition developing in these areas and also deters potential entrants.

• Incumbent operators can benefit where multi-operator network tickets are inferior to their own network tickets.

• Another factor is the advantage that incumbents have over new entrants by running an existing network.

• Entrants can sometimes have difficulties in accessing bus stations on fair terms and developing depots.

• The great majority of urban areas have not experienced any large-scale entry in recent years—risks and costs are likely to increase with the scale of entry.

• Many of these factors result from both the historical and present-day operation of the bus industry.

• The five largest operators (Arriva, FirstGroup, Go-Ahead, National Express and Stagecoach) provide 69 per cent of local bus services in the whole reference area.

• The five largest operators have tended to make profits above the cost of capital over the last five years.

• A substantial proportion of trips are accounted for by multi-trip tickets.

• Partnerships between operators and LTAs do not cause an adverse effect on competition, although the concessionary fares schemes could encourage higher fares if new guidance to travel concession authorities is not followed.

• Concern about adverse publicity and relationships with LTAs can moderate operators' behaviour.

• The low number of operators in some areas, along with the design of tenders themselves, restricts competition for tendered services.

The CC proposes a number of possible remedies to address competition problems including:
• measures to increase the number of multi-operator ticket schemes and to ensure that these are effective and attractive to customers;

• restrictions on aggressive behaviour, such as 'overbussing' on particular routes and other obstructive behaviour aimed at reducing a rival's ability to compete;

• ensuring fair access to privately owned and managed bus stations for all operators.

• recommendations to LTAs on the circumstances in which to pursue Quality Contracts, or other franchising models, in areas most affected by a lack of competition;

• recommendations to LTAs on how to use other powers (for example, Quality Partnerships) to promote competition or improve outcomes to local consumers;

• recommendations to the Department for Transport (DfT) to update its best practice guidance on supported services in the light of the CC's findings, to the Scottish Government and Welsh Assembly Governments to develop suitably tailored guidance and to LTAs to follow this guidance, in order to increase the number of operators bidding to win such contracts; and

• measures to make more information available to LTAs and potential bidders about the performance of supported services.

The CC has for the moment ruled out price controls and selective divestment of local bus operations.
A summary of the provisional findings report and notice of possible remedies are available at: www.competition-commission.org.uk. The full report will be published next week. The CC will now consider responses to the report and remedies notice and hold further hearings with interested parties before publishing its final report in November 2011.
Any comments on the provisional findings or notice of possible remedies should be made in writing, by 27 May 2011 for the notice of possible remedies or 1 June 2011 for the provisional findings, either by email to buses@cc.gsi.gov.uk or by writing to:
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Inquiry Manager
Competition Commission
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LONDON
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Notes for editors

1. The Office of Fair Trading (OFT) referred the local bus market to the CC in January 2010, following its initial study into the sector and public consultation. The CC is now carrying out its own comprehensive investigation to see if any features of this market prevent, restrict or distort competition and, if so, what action might be taken to remedy the resulting adverse effects on competition.

2. The CC is an independent public body, which carries out investigations into mergers, markets and the regulated industries.

3. Under the Enterprise Act 2002, the OFT can make a market investigation reference to the CC if it has reasonable grounds for suspecting that competition is not working effectively in that market.

4. The members of the local bus inquiry group are Jeremy Peat (Chairman), Ivar Grey, Thomas Hoehn, Katherine Holmes and Michael Waterson. Jeremy Peat took over as Inquiry Group Chairman from previous Chairman, Diana Guy, when her term as a CC member and as CC Deputy Chairman ended on 30 November 2010.

5. In its inquiry, the CC is required to decide whether ‘any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom’. If so, then there is an adverse effect on competition and the CC will also consider whether this is resulting in a detrimental effect on customers such as higher prices, lower quality or less choice of goods or services. The CC will then decide whether the CC should introduce remedies to tackle the adverse effect on competition or detrimental effect on customers or whether the CC should recommend that action be taken by other bodies to remedy the adverse effects on competition and, if so, what actions or remedies. If the CC finds that there is no adverse effect on competition, the question of remedies will not arise.

6. The Enterprise Act 2002 requires the CC to consult the main parties on its proposed decisions, and it will also publish notice of its provisional findings on the CC website as

required by its rules. Full details on the CC's guidelines for market investigation references are available on the CC website at:

www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/cc3.pdf.
7. Enquiries should be directed to Rory Taylor or Siobhan Allen or by ringing 020 7271 0242.