

OFT proposal to refer local bus services market to Competition Commission

Response from Campaign for Better Transport

A referral of the local bus market to the Competition Commission would be counterproductive

We are concerned that referring the bus market to the Competition Commission could have serious adverse consequences, as it could delay the use of Local Transport Act 2008 powers and/or reduce the likelihood of them ever being used. A referral is likely to create an atmosphere of heightened concern and uncertainty about competition law, so that bus companies and transport authorities will be unwilling to take any risks, or perceived risks, by using the new powers. It is therefore likely to discourage transport authorities and bus companies from considering using the new powers from the Local Transport Act, and many opportunities to improve bus services on the ground will be delayed or lost.

We also believe that the OFT have not given sufficient consideration to alternative effective remedies before making a reference to the Competition Commission. Given that some of the remedies, such as quality contracts and partnerships, are relatively new (or at least have been made easier by the 2008 Local Transport Act), these should be explored before a potentially disruptive investigation by the Competition Commission. These remedies could be expected to both enable more entrants to the market and new depots. In addition, the OFT's study suggests that many local authorities are developing their skills and capability about the tender of supported services (for instance with bundled bids and better information about contracting) and the effects of these should be better explored, particularly as authorities draft their local transport plans in 2010 ahead of the 2011 deadline for LTP3. A Competition Commission investigation may hinder that process which is a statutory duty for local transport authorities.

We are also concerned that it appears that the study did not consider usage of bus services and the effects of competition on that, merely considering the cost of fares. Although this may be considered outside the remit of the OFT, it should be key to considerations of whether local bus provision is seen as a success.

We have commissioned legal advice which we ask the OFT to take into account in its consultation

We have been working with St Albans City Council and Hertfordshire County Council to develop an area-wide voluntary partnership with local bus operators. As part of this, they are attempting to introduce a joint ticketing scheme with the same fares charged by all operators and so that passengers can buy one ticket for all operators in the network. It should be possible for the county council, as the transport authority, to certify that this is in the public interest, under the Local Transport Act 2008. However, the recent OFT report appears to suggest that this could be anti-competitive, and so the local bus operators are getting nervous about the agreement. We have commissioned legal advice to clarify whether Hertfordshire County Council and St Albans District Council can judge public benefit from such a scheme, which follows from the Act and

supporting secondary legislation and guidance, or whether the Competition Acts overrides this. Unfortunately this legal advice is not yet finished but we will be able to send it within the next week, and we would be grateful if the OFT could take it into account as part of its consultation.

The OFT should welcome intervention in the market where this improves buses

We would agree with the OFT that the current system is not delivering what it should for bus passengers. But it cannot be assumed that more on-road competition will solve the problems in the local bus market. The Government introduced the Local Transport Act 2008 so that, where the free market (in terms of on-road competition in the market) was not working, transport authorities could develop partnerships or contracts with bus companies to ensure that passengers' needs were met. In the OFT's study, it is suggested that the bus market does not operate as it should because bus passengers do not choose between companies as consumers might be expected to – they just get on the first bus that comes along. This suggests that relying on consumer choice in the bus market is not going to work; encouraging transport authorities to use the powers from the Act is a more sensible approach. This will enable local authorities and operators to do their best to improve buses.

Therefore, we believe the OFT's approach should be to welcome intervention in the market – such as the use of Local Transport Act powers to effectively develop competition for the market - where this improves services for passengers. In 2007, we commissioned advice on competition law and bus services from John Swift QC, which we sent to the OFT at the time. He raised concerns about the application of competition law and suggested that passenger benefit and economic activity in the bus market should be the outcomes aimed for by the OFT, rather than competition for its own sake. The Government's approach of giving transport authorities more powers over buses is supported by a study comparing best practice across Europe which concluded that 'In no region or city that can be considered to be delivering better or exemplary practice in transport policy implementation is the local roads-based public transport system deregulated; the most successful systems are run on a franchised (quality contract-type) basis.'¹

Cat Hobbs
Campaign for Better Transport
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Campaign for Better Transport is the leading transport NGO. Our compelling arguments and ideas have won us the support of national decision-makers and local activists, enabling us to secure transport policies and programmes that improve people's lives and reduce environmental impact.

16 Waterside, 44-48 Wharf Road, London N1 7UX
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¹ Transferability of Best Practice in Transport Policy Delivery, Colin Buchanan and Partners for the Scottish Executive, 2003