

Rt Hon Sadiq Khan MP
Minister of State for Transport
Department for Transport
Great Minster House
76 Marsham Street
London
SW1P 4DR

16 September 2009

Dear Mr Khan,

Re: Local Transport Act and competition law

We were pleased to meet with you recently and to discover how keen you are to see the new Local Transport Act powers being used. We support you in this – and I thought it would be useful to set out two ways forward.

1) The Department should actively encourage the use of Local Transport Act powers, by providing legal and financial support to reduce the risk for local transport authorities

The Department should be actively encouraging transport authorities to pilot the new Local Transport Act powers, to set up and experiment with different kinds of voluntary agreements, statutory quality partnerships (covering fares and frequencies) and quality contracts and to join together to create new Integrated Transport Authorities (ITAs may well have more resources than regular transport authorities so may feel more confident in setting up partnerships and contracts.) Once these powers have been used, it should be easier for other transport authorities to follow.

The Department's role should be to seek out and encourage transport authorities to act as pilots, not just by providing guidance on the legislation and potential legal issues involved, but by providing financial support. Introducing a quality contract, in particular, will have serious legal and financial implications. Small transport authorities with limited resources may be afraid of the risks involved, and it would make sense for the Department to provide financial backing and security, so that they don't have to bear all the risk alone. (Kickstart funding should be available for quality contracts too, with a delayed implementation date to allow for the guidance to be finalised.) The Conservatives have said that they are opposed to quality contracts; it would be useful to have at least one as a demonstration, so that its costs and benefits can be clear and debate on future bus legislation take place in the light of this. Discussion about quality contracts has always taken place with the London model in mind, but we know that in other European countries there are contracts with more sharing of revenue risk and it would be useful to encourage experiments with different kinds of contracts.

2) The Department should discourage the OFT from referring the bus market to the Competition Commission

As you will be aware, the Office of Fair Trading recently published its study into the local bus market and announced its intention to refer the market to the Competition Commission. This announcement is likely to discourage transport authorities and bus companies from considering using the new powers from the Act. We are concerned that this means opportunities to improve buses will be missed.

There is general agreement that the current system is not delivering what it should for bus passengers. But the OFT's assumption that more on-road competition will solve the problem is misguided. The Government rightly introduced the Local Transport Act 2008 so that, where the free market wasn't working, transport authorities could develop partnerships or contracts with bus companies to ensure that passengers' needs were met. In its study, the OFT itself 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.

The OFT's approach should be to welcome intervention in the market – such as the use of Local Transport Act powers - where this improves services for passengers. In 2007, we commissioned advice on competition law and bus services from John Swift QC (enclosed). 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

We are concerned that the OFT's decision to refer the local bus market to the Competition Commission could have serious adverse consequences. It could delay the use of Local Transport Act powers and/or reduce the likelihood of them ever being used. The OFT's actions are 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.

I can give you a practical example. As I said at the meeting, CBT has 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 Transport Act 2008. However, the OFT's recent announcements are making the local bus operators nervous, and there appears to be a lack of clarity about whether operator agreement on pricing might be against competition law. We are planning to clarify the legal situation, but if the OFT is successful in referring the bus market to the Competition Commission, transport authorities and bus companies are unlikely to use the new powers, and many opportunities to improve bus services on the ground will be delayed or lost. Hence we suggest the DfT uses its influence to avoid a referral to the Commission.

I look forward to hearing your thoughts on these suggestions. I will keep you updated with any developments regarding the St Albans agreement. If we can do anything further to help, do let me know.

Yours sincerely,



Stephen Joseph
Executive Director

¹ *Transferability of Best Practice in Transport Policy Delivery*, Colin Buchanan and Partners for the Scottish Executive, 2003.