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***promoting quality public transport**……….*

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The Competition Commission's Inquiry into competition in the bus industry – TWNW's comments to HOCTC on the Commission's proposed remedies.

TravelWatch NorthWest (TWNW) is an independent Community Interest Company representing users of all forms of public transport in North West England. We welcome this opportunity to comment on the Competition Commission's proposed remedies for the "imperfect" bus market

1. Background

1.1. We submitted our views in June 2009 when the OFT referred the bus industry to the Competition Commission, and in May 2011 commented in detail on the Commission's interim proposed draft remedies. On 25th October 2011 we again commented by letter on their final proposals, endorsing some of their remedies for the imperfect competition they had found. ***These submissions are attached with this paper.***

2.2. We agreed that LTAs should be given greater powers to introduce and reform multi-operator ticketing schemes in their local area and that there should be restrictions on bus operators making changes to service frequency to discourage "overbussing" and other anti-competitive practices, such as predatory pricing.

2.3 However we could not agree with the Final Report's finding that there is no case for endorsing **Quality Contracts**, nor that off road competition "for the market" (franchising) need necessarily be more expensive than on the road competition "in the market.

3. The Competition Commission's Conclusions and Recommendations

3.1 We consider that the HOCTC's brief summary of the Commission's conclusions and recommendations fairly reflects these. We note with satisfaction that a number of issues previously concerning us have since been addressed.

3.2 The Competition Commission's **conclusion** was that sustained head-to-head competition between bus operators was uncommon and that bus operators avoided competing in another operator's core territories. As a consequence there were "adverse effects on competition". These have led to a detriment to consumers; less frequent, poorer quality services and possibly higher fares. In addition, lack of competition may be responsible for higher contract prices for tendered services.

3.3 The Commission has **recommended** a series of measures ("Remedies") intended to increase head-to-head competition. These include more multi-operator ticketing, longer notice periods for service changes, closer monitoring by the OFT of bus company mergers and incentives through revisions to BSOG.

3.4 The Commission considered whether bus services should be awarded under franchises (as in London) but concluded that enhanced competition was generally the better solution.

3.5 We note in particular here the Transport Committee's observation in their invitation to submit evidence that "the Competition Commission's findings have been criticised by the bus industry as unrealistic. The Passenger Transport Executives have expressed disappointment that the Competition Commission did not recommend franchising (Quality Contracts)". TWNW considers that the failure by the Commission to look at the bus market in London and Northern Ireland alongside the rest of Great Britain was a lost opportunity to gather evidence on the costs and effectiveness of this market model.

4. The Transport Committee's six questions

Has the Competition Commission addressed the issues of most importance to the bus passenger?

- Only indirectly. Bus passengers' major concern is reliability, and, allied to this, the stability of the bus network.
- Price competition is seriously imperfect as there is sparse "off bus" transparency of fares information on which passengers can make comparisons. Some operators see fare tables as "commercially confidential. (See "Information about fares" TWNW June 2009)
- The Commission's desire to promote more "head to head" competition is short sighted - the fundamental issues are falling demand and the fact that the private car, not other operators, is the major competitor.
- Competition does not always result in lower fares or more frequent services.
- We believe that the emphasis of the report is wrongly directed to "on road" competition in the market when it should also be examining "off road" competition for the market.

How effective are the remedies proposed by the Competition Commission likely to prove?

- We note that only review of ticketing block exemption, vigilance on mergers and bus station access are enforceable by competition authorities.

- Many matters fall within the purview of Traffic Commissioners (TCs) who rely on VOSA for monitoring services
- Local Transport Authorities (LTAs) could be more proactive in reporting errant operators to the TCs whose powers the report largely ignores.
- Multi-Operator Ticketing (MOT) depends on the enthusiasm and powers of persuasion of the LTA, although most appear to have overlooked their powers under the Transport Act 2000 to make their own ticketing schemes.
- The Commission places an over reliance on their proposed remedies, particularity MOT, to increase ridership. There are some very successful examples of MOT but also some not so successful ones in metropolitan areas and larger urban areas. The freedom of operators participating in MOT schemes to sell their own discounted tickets alongside could encourage predatory pricing.
- Increases to registration notice periods could constrain not encourage competition by over protecting the incumbent, but on balance TWNW supports this remedy because it should help stabilise bus networks and might constrain anti competitive behaviour.
- A code of Conduct (to be produced by Traffic Commissioners) could be a sensible interim measure.
- Tendering can only be more effective if the number of bidders for contracts increases. In times of austerity the rewards can be insufficient to encourage significant numbers of new entrants. Increased information on patronage and revenue may increase willingness to tender and will assist Local Transport Authorities better to understand the local market. TWNW suggests that operators should be compelled to release their data to LTAs.

Is sustained head-to head competition feasible or desirable?

- Only in very few corridors in some towns and cities is the maximum local bus share of the travel market likely to be big enough to sustain long term competition. Even there the conclusion reached by operators and authorities is that sensible sharing of the market – multi-operator tickets, even headways etc. with competition on vehicle quality and customer service is preferable (e.g. Oxford, Merseyside).
- Elsewhere head-to-head competition has generally succeeded in raising expectations but has been short lived and has depressed the market when expectations have not been met and competition collapses. It can also lead to congestion, undesirable behaviour (“cheap exclusion”, predatory pricing and safety risks). As well as being undesirable it is also unsustainable, usually ending in the competitor exiting, consolidation with local oligopolies and fare rises.
- Franchising (an option now left to LTAs to determine if affordable) would be more manageable.

What role should Quality Partnerships play?

- The role of **quality partnerships** includes traffic management measures to assist reliability – they are partnerships with local authorities as well as between operators. Effective partnerships with highway authorities should provide better than cosmetic responses.
- The report confuses Voluntary Partnership Agreements and Statutory Quality Partnerships (even describing Quality Contracts as "partnerships") and ignores LTAs' powers (TA 2000 s135) to make statutory ticketing schemes to run either in parallel with or within a VPA)

Has the Competition Commission adequately considered the franchising option?

- No, but TWNW is mollified by the Commission's admission that QCs still might be a lawful and feasible option if an LTA considers them affordable or Value For Money.
- The failure by the Office of Fair Trading (OFT) and the Commission to look at London and Northern Ireland alongside the rest of GB has been a lost opportunity to gather evidence on Quality Contracts. We cannot be certain that the rest of the country cannot afford the overheads of a franchising system.
- QCs should not be seen as purely an urban solution. The Association of Transport Co-ordinating Officers' suggestion of Tendered Network Zones where Bus Service Operator Grant (BSOG) could be given to their members to administer over an essentially rural network (in consequence becoming largely non-commercial) could well be revisited.

What action should local government and central government now take?

- Local government needs to promote multi-operator ticketing and partnerships (too often LTAs fail to deliver their promised inputs and frustrate operators).
- Central Government needs to trust local government and operators and provide a framework for them to work together to deliver effective services meeting transport and environmental policy requirements.
- Central Government should refrain from further tinkering with BSOG or regulations (including registration) except that there is an urgent need for review of concessionary travel reimbursement.
- Central Government is constrained by lack of time in this Parliament to enact primary legislation. However there are missed opportunities in existing legislation to make subordinate regulations and revise DfT Guidance (e.g. to aid the establishment of QPs and QCs and to foster taxi bus operations)
- It has always been a truism that "he who holds the data runs the buses" and there is a need for a voluntary code, eventually backed up by primary legislation, compelling Bus Operating Companies (BOCs) to

share data on fares, revenue, patronage and performance (especially RTPI). This is becoming rapidly more urgent as contactless smartcards with Near Field Recognition (like Oystercards touch in) and Global Positioning data is increasingly being “owned” by operators to the exclusion of LTAs.
- Data sharing could overcome the unfair advantage that a BOC which “tactically” deregisters“ a “non-commercial” service enjoys in subsequently winning it back by tender.

5. Conclusion

5.1 TWNW welcomes the fact that the proposed remedies address many of the concerns which prompted us in the first place (in 2009) to comment on the OFT’s referral to the Commission of the local bus market.

5.2 One major general criticism of the report’s findings is that, like the industry, it appears to see other operator’s services, rather than the private car, as the main competitor of the bus. It also fails to recognise the adverse effects for passengers and operators of competition for road space. BSOG is a matter for Government and is an inappropriate tool to use to encourage competition.

5.3 The failure by OFT and the CC to look at London and Northern Ireland alongside the rest of GB was a lost opportunity to gather evidence on alternative bus market models, and in particular on whether the rest of the country can afford the overheads of a franchising system.

5.4 We would be happy to discuss our submission with the Transport Committee if invited to do so.

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