



Department  
for Transport

From the Parliamentary  
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**Andrew Jones MP**

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*Dear Ms Coscelli,*

## **COMPETITION & MARKETS AUTHORITY RECOMMENDATIONS ON THE BUS SERVICES BILL**

Thank you for your letter of 29<sup>th</sup> June, which made several recommendations in relation to the Bus Services Bill under the powers set out at section 7 of the Enterprise Act 2002. I am grateful for these recommendations and can confirm that the Government is content to accept them.

**Recommendation 1: it should be made clear (in the Bill, secondary legislation, and/or guidance) that LTAs are expected to assess, and if possible test, whether the deregulated market and/or partnership arrangements can deliver their objectives before seeking to introduce franchising arrangements.**

The Bill requires local authorities to undertake an assessment of their proposed franchising scheme, including comparing and assessing it against one or more other courses of action. The statutory guidance to be issued will expand on this point and will be used to implement this recommendation. Our current intention is to consult on a draft of this guidance in the autumn.

It will be important, however, to recognise in the guidance that there is a material difference in the outcomes that franchising, enhanced partnership schemes and the de-regulated market can achieve, and that there will be circumstances where partnerships or the de-regulated market simply cannot achieve the outcomes that elected politicians are working towards. A single fares structure across a wide geographical area and transport modes – as in London – is a good example of such an outcome.

**Recommendation 2: it should be made clear (in the Bill, secondary legislation and/or guidance) that where an LTA has decided that only franchising can deliver the desired outcomes, LTAs must have considered fully the implications for consumers arising from the loss of competition within the market and how best to mitigate any harm arising.**

We agree entirely that the impacts of the proposed franchising scheme on competition, and therefore on the quality, price and availability of services that local passengers will receive, should be considered carefully by the authority. The Bill already requires authorities to consider the effects of their proposed scheme, and we will ensure that the need to specifically consider the effects on competition are referenced in the statutory guidance.

**Recommendation 3: the CMA should be a statutory consultee on the introduction of franchising schemes (as we are in relation to partnership arrangements) to ensure competition issues are sufficiently identified and addressed.**

As above, we agree entirely that the impact of the proposed franchising scheme on competition is something that should be considered by the authority, and we will therefore look to encourage authorities to engage fully with the CMA as they develop and assess their franchising proposals. We will bring forward amendments to the Bill with a view to ensuring that the CMA appears as a required consultee for franchising schemes, subject of course to the necessary clearances.

**Recommendation 4: the Bill should provide a route for LTAs to share information with the CMA for relevant purposes.**

We agree entirely that the CMA, as a statutory consultee, would want to form a view of the impacts on competition of either a franchising or enhanced partnership scheme.

The Bill itself does not prohibit franchising authorities from disclosing information to the CMA, with such authorities needing to take decisions on whether or not to disclose information using the existing legal framework. With respect to enhanced partnerships, the Bill only prohibits an authority from disclosing information obtained under section 143B of the Transport Act 2000, as inserted by the Bill, if the authority could refuse to disclose that information in response to a request under the Freedom of Information Act 2000 on the basis of a section 40, 41, 42 or 43 exemption.

I do appreciate however, that it is for local authorities to decide whether to disclose information they hold and that there may be differences in approach. This is something that we will seek to address in guidance, where we intend to encourage authorities to work constructively with the CMA as schemes are developed and during the consultation process. We can use this guidance to remind authorities of the legal framework within which they have to operate, and to highlight the issues that are of particular relevance in the context of developing franchising and enhanced partnership proposals.

**Recommendation 5: there is a role for competition both in the allocation of routes and slots, and in stimulating ongoing improvement and innovation by operators and/or new entrants.**

The provisions at clause 12 of the Bill are designed with precisely this outcome in mind. Where an enhanced partnership includes requirements in relation to the frequency or spacing of services on a particular route, we have provided a new mechanism to ensure there is flexibility to accommodate competition and innovation by operators or new entrants. The detail of this mechanism will be set out in regulations, and our initial thinking on how we will use this power is set out in the policy scoping notes which we published on 16<sup>th</sup> June. These can be found at:

<https://www.gov.uk/government/publications/bus-services-bill-overview>.

**Recommendation 6: voting mechanisms for EP plans and schemes should ensure that the views of smaller operators are sufficiently taken into account, and do not unnecessarily exclude contractors, community transport operators and other interested parties.**

We agree that all operators running local bus services in the area to which an enhanced partnership related should be able to have their say on the proposals. The voting mechanism will be set out in secondary legislation, and our current thinking on how it will work is set out in the policy scoping document referred to above. This states that the mechanism should be set at a level which:

- gives a fair say to both the most significant companies in a local bus market and small and medium sized operators in the area; and
- allows progress to be made on where there is not a unanimous view amongst affected operators; but
- does not give LTAs the ability to make a scheme which would not – overall – be supported by the bus operators who will have to pay for much of its implementation.

**Recommendation 7: LTAs should be required to review an EP scheme if it has reason to believe a change of circumstance has resulted in the scheme no longer meeting the competition test.**

We agree and intend to implement this recommendation through the statutory guidance that will be issued in relation to Enhanced Partnership schemes. Our current intention is to consult on a draft of this guidance in the autumn.

**Recommendation 8: Frameworks for the pricing and structure of multi-operator travel cards must not restrain operators from making their own decisions about pricing their own services.**

We agree with this recommendation which we see as relating primarily to partnership and advanced ticketing schemes. We will address your points in the relevant statutory guidance or issue non-statutory guidance where relevant statutory guidance powers are not available.

**Recommendation 9: Increased collection and sharing of data must not lead to anti-competitive information sharing between individual operators.**

We agree that any information gathered for the purposes of establishing an enhanced partnership or ticketing scheme should be appropriately protected. Again, we will address your points in the relevant statutory guidance or issue non-statutory guidance where relevant statutory guidance powers are not available.

#### Next steps

Thank you for recognising the constructive way in which the Department has sought to work with the CMA in developing the Bus Services Bill. I am grateful for the assistance your officials have given mine in the preparation of the Bill and look forward to this close working continuing. My team will be in touch with yours to discuss the precise wording of the guidance and secondary legislation that we are preparing and the form of the Government amendments we will bring forward.

*Yours sincerely,  
Andrew Jones*

**ANDREW JONES**