TravelWatch
NORTHWEST

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promoting quality public transport..........

David Fowlis
Inquiry Manager
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

26th May 2011

Dear Mr Fowlis,

Response to the Competition Commission's Inquiry into the bus industry – provisional findings.

1. Introduction

1.1 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.

1.2 In June 2009 TWNW responded to the OFT's study of local bus services which was then being referred to the Competition Commission to investigate. We note with satisfaction that a number of the issues then concerning us have now been addressed.

2. Comments on the Commissions findings

2.1 The market is **oligopolistic** with just over 2/3rds accounted for by the five major operators. TWNW agrees.

2.2 Where there is only one dominant incumbent operator, its share of the market is also around 2/3rds. In such areas of poor competition passengers are generally losers. TWNW knows of some local near monopolies where the dominant incumbent provides such a good service that other operators see no advantage in competing. Passengers do not have to be losers and **can indeed benefit** if a properly regulated environment is introduced under a Quality Contract scheme or other franchise arrangement.

2.3 Large operators are reluctant to compete with each other. There is anecdotal evidence of this.

North West Public Transport Users' Forum Community Interest Company trading as TravelWatch NorthWest
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2.4 "Bus Wars" – on road head-to-head competition is usually brief and destabilising, and can deter potential entrants. TWNW agrees.

2.5 Limited numbers of potential bidders along with the design of tenders themselves can restrict competition and so increase costs. TWNW agrees but believes this is largely a result of the **consolidation** which often follows deregulated competition.

2.6 Incumbent operators can gain competitive advantage where **multi operator network tickets** are significantly dearer than their own network tickets. TWNW made this point in its 2009 response to the OFT because it was felt that where an operator had negotiated with its competitors a network price this would demonstrably be close to the commercial break even point and selling its own ticket at a substantial discount would therefore equate to the illegal and **anti-competitive practice of "predatory pricing".**

2.7 Franchising is one possible way of encouraging off road competition for the market. TWNW appreciates that this is not the Commission's first preference but is encouraged that it is by no means ruled out. From the passenger's point of view there are good arguments (ticketing, information, stability) for replacing **on-road competition in the market with off-road competition for the market.**

2.8 The existing **Quality Contract** (QC) provisions of the Local Transport Act 2008 may not be the most suitable form of franchise. TWNW agrees and has looked at the Association of Transport Co-ordinating Officers' (ATCO's) model of Tendered Network Zones **(TNZ)** where Bus Service Operator Grant (BSOG) would be paid to Local Transport Authorities to subsidise (by tender) services which the loss of BSOG makes non commercial. This could be most effective in rural areas. TWNW would like to see some trial areas created where the merits of QCs, QPs and TNZs could be tested. We note that DfT is proposing to establish **taxi bus trial areas** in rural districts.

2.9 It can sometimes be difficult for LTAs to access revenue data for tendered services, especially where these have previously operated commercially. TWNW agrees. In our original submission to OFT we drew attention to the then perceived (since there was no confirmatory commercial data) increase of **tactical de-registrations** (aimed at persuading LTAs to put out tenders to preserve services which would otherwise be withdrawn). More recently in 2010 TWNW drafted a report highlighting the difficulty passengers faced in accessing **"commercially confidential" fares data** ahead of making a journey. Without transparency competition is imperfect and TWNW also argues that operators should have a **duty to disclose data** to LTAs, not just of revenue, but also of performance.

2.10 Long contracts are likely to attract more and better bids. TWNW agrees and notes that this is the preference of the rail industry. However the design of contracts can often not maximise competition as LTAs may have other agendas, such as insisting on operators who run tendered services in evenings and on Sundays accepting the return or network tickets of the daytime commercial operator.

2.11 Entrants sometimes find it hard to access **bus stations** on fair terms Section 116 of the Transport Act 1985, by applying competition law to bus stations, could, if properly used, refute this finding**.**

2.12 The **concessionary fares** regime encourages operators to charge higher fares. This certainly has been the case, but although operators have been able to raise fares to maximise their reimbursements, the DfT's very recently revised (after this consultation) guidance should prevent that happening.

2.13 Operators can be constrained by fear of adverse publicity and concern about relationships with LTAs. TWNW would welcome clarification of this finding. What is indisputable is that deregulation makes the market **contestable** - even where competition doesn't emerge there is the fear that it might!

3. Proposed Remedies.

3.1 The report contains a number of proposed remedies for correcting real and perceived significant failures of competition.

3.2 Local Transport Authorities could be encouraged to make **statutory fare schemes** which operators could be required to join. Where no such scheme exists operators could be required (by the CC) to enter into new schemes. TWNW considers that this would be helpful and notes that section 135 of the Transport Act 2000 already permits the making of such schemes, as also do the provisions of the Local Transport Act 2008 relating to Quality Partnerships and Contracts. However we welcome any measures to increase the numbers of multi operator ticketing schemes.

3.3 Restricting aggressive and anti-competitive behaviour such as **"over-bussing".** TWNW agrees, but reminds the Commission that the Transport Act 1985 contains powers for Traffic Commissioners to do this, albeit these powers are used less frequently than we would like, because of the TCs lack of enforcement resources.

3.4 Specifying a maximum fare premium over comparable single operator tickets. TWNW believes this could help reduce or in some cases eliminate instances of predatory pricing.

3.5 Restricting large incumbent operators **from increasing frequencies or lowering fares** in response to emergent competition or alternatively preventing them from immediately restoring the status quo if their competitor exits the market. TWNW concurs that ultimately this would be a matter for OFT, but we have difficulty in agreeing that the Traffic Commissioners could play a role in reporting fares changes as they too (like LTAs) have no means of accessing fares data. Were the next recommended remedy (compulsory supple of data - below) to be enacted it would be a very powerful disincentive to operators to persuade them to avoid **predatory pricing** and parallel **anti-competitive practices.** However the proposed remedy appears to be at odds with the Commission's stated decision (with which TWNW does not agree) to **rule out price controls.**

3.6 Operators could be obliged to supply revenue and other data about registered local services**.** TWNW agrees this could have the effect of increasing the number of tender bids (see comments above on access to revenue, patronage and performance data).

3.7 Recommending to LTAs the circumstances under which it would be appropriate to pursue Quality Contracts or Quality Partnerships. TWNW believes some LTAs outside the five large Integrated Transport Authorities could find this useful but reminds the Commission that the Local Transport Act 2008 has already made provision for the appointment of a Quality Contract Schemes Board to do this.

3.8 As shown there are a number of parallel **existing statutory remedies** and we suggest that LTAs should be encouraged to use these whilst the proposed "new" remedies could initially be held in abeyance as last resorts. This should concentrate operators' and LTAs' minds, some of whom may recall pre deregulation (1985) days when Traffic Commissioners took it upon themselves to control fares so that they were "not unreasonable" (Road Traffic Act 1930)

4 Conclusions

4.1 TWNW is grateful for the opportunity to comment on this report. We welcome the fact that it addresses many of the concerns which in the first place (in 2009) prompted us to comment on the OFT's referral to the Commission of the local bus market.

4.2 Whilst appreciating the terms of reference of the report it is worth saying that it is the private car, not other operator's services which is the bus' main competitor. It is also pertinent to point out that a major adverse effect on passengers and operators alike is that of competition for road space**.**

4.3 Overall we think the report points in the right direction and we look forward to seeing the final version in November 2011.

Yours sincerely,

(signed)

JOHN MOORHOUSE, COMPANY SECRETARY

(Author : Paul Fawcett MPhil FCILT)