

**GREATER MANCHESTER INTEGRATED TRANSPORT AUTHORITY****REPORT FOR INFORMATION / RESOLUTION**

**COMMITTEE:** POLICY AND RESOURCES  
**DATE:** 11 SEPTEMBER 2009  
**SUBJECT:** OFFICE OF FAIR TRADING STUDY INTO LOCAL BUS SERVICES  
**REPORT OF:** CLERK OF THE AUTHORITY

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**PURPOSE OF REPORT**

To advise members of the Office of Fair Trading (OFT) report into local bus services which identifies features of local bus markets that it proposes to refer to the Competition Commission for a full investigation.

**RECOMMENDATIONS**

Members are recommended to:

- 1) Note the OFT report and comment as appropriate on its findings;
- 2) Agree that the Authority should respond to the OFT consultation, and delegate authority for agreeing this response to the Clerk of the Authority and the Interim Chief Executive of GMPTE, in consultation with the Chair and Vice Chair of the Authority and the Leader of the Opposition.

**BACKGROUND DOCUMENTS**

Local Bus Services; report on the market study and proposed reference to make a market investigation reference, OFT, August 2009.

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## **1. Introduction**

- 1.1 The Office of Fair Trading (OFT) is a non-ministerial government department, established by the Fair Trading Act 1973, which enforces consumer protection and competition law and acts as the UK's economic regulator. Its goal is to make markets work well for consumers.
- 1.2 The OFT announced in March that it was embarking on a market study of local bus services in the UK, excepting the regulated bus markets in London and Northern Ireland.
- 1.3 In 2007/08, almost 3.1 billion journeys were made in Great Britain, excluding London. The bus industry's recent commercial revenues amount to approximately £2.4 billion and it also receives public subsidy receipts equivalent to £1.2 billion.
- 1.4 The following factors influenced the OFT's decision to carry out its study:
  - evidence from merger enquiries that suggested that local markets were more profitable once they were monopolised
  - OFT investigation of and decision against Cardiff Bus for predatory behaviour and a number of other allegations of exclusionary behaviour in bus markets across the UK, and
  - concerns about the rising cost of bus services, both for commercial services and for supported services, and whether this may be, in part, related to weak competition.
- 1.5 The OFT spoke with a range of interested parties, including the major bus operators, industry bodies, PTEs (including the GMPTE) and also undertook a public consultation.

## **2. Findings**

- 2.1 The OFT report concludes that neither the commercial nor the supported parts of the markets appear to be working as well as it should be for bus passengers or the taxpayer.
- 2.2 On commercial services, the OFT found that:
  - “markets tend to concentration (monopoly or near-monopoly) at the route, local and regional level.”
  - “there were a number of barriers to entry to local markets that make it difficult for new operators to get into these concentrated areas. This included aggressive responses by the incumbent bus operator designed to damage the incoming rival.”
  - “operators with a strong market position charge fares nine per cent more than operators who are challenged by a large well resourced rival.”

- the “concessionary fares regime (which is paid for by the tax payer) may be distorting the market. [The OFT] have concerns that bus operators have been able to manipulate the regime to increase the amount they are paid for providing concessionary services.”

2.3 On supported services, the OFT found that in some areas of the country supported services receive low numbers of bids in response to tenders - more bids tends to mean lower prices so this is a concern for the OFT when roughly a quarter of all tenders only receive one bid. Members should note however that in Greater Manchester, 93% of contracts have two bidders or more.

### **3. Next steps**

3.1 The OFT identified a number of features of local bus markets in Great Britain (outside London and Northern Ireland) which it has reasonable grounds to believe prevents, restricts or distorts competition. On this basis they propose to ask the Competition Commission to investigate these concerns thoroughly.

3.2 Before it does so, the OFT is obliged to consult on its proposal to make a market investigation reference to the Competition Commission, on the basis that consultation can bring to light new evidence and also allows industry practitioners and others to consider the OFT's analysis and to suggest improvements. The consultation closes on 15 October.

3.3 If a reference is made, the Competition Commission will conduct a detailed public investigation and reach its own conclusions. During an investigation, the Commission can compel parties to submit particular evidence. In addition, it also has the power to impose remedies which go beyond the outcomes available from an OFT market study.

3.4 Finally, the OFT outline in their report a number of possible remedies to correct the market failures it has found (these are reproduced in the Appendix of this report), although it will be for the Competition Commission to endorse these remedies, or otherwise, as part of their investigations.

### **4. Recommendations**

4.1 Given that a number of interested parties are likely to respond to the OFT's findings and its proposed remedies, it is suggested that the Authority also submits a response.

4.2 A full set of recommendations can be found on the front page.

## **Appendix – Extract from OFT report on the Local Bus Services market study**

### **Availability of remedies**

- 5.24 In accordance with our Market Investigation References Guidelines where the OFT has not investigated a market in sufficient depth to be confident that it can identify effective remedies it will not give this factor much weight. In light of the study's findings we consider that this applies in this instance.
- 5.25 Nevertheless, it is our view that there are efficient and proportionate potential remedies available to address the competition concerns we have outlined. We consider that those remedies may likely to include one or more of:
- Tighter controls on 'over-bussing' to prevent this being used to exclude rivals without providing long term benefits to bus users. In our view, this would be most efficiently and proportionately administered by the Traffic Commissioners.
  - Encourage the use of QCSs to develop competition for the market rather than in the market.
  - Development of a depot access regime to support the use of the new regulatory regime introduced by the Local Transport Act 2008.
  - Depot divestments or divestments of other assets.
  - A better exchange of best practice between LTAs with respect to supported services: some LTAs do not appear to have severe competition problems with respect to tendered services.
  - Mandatory multi-ticketing arrangements to prevent large incumbents from refusing to work with smaller operators.
  - National benchmarking on PQRS (price, quality, reliability, service) and profitability to make it easier for LTAs to identify where they have local commercial service provision that falls below that provided by operators in other similar areas – this would support the new regulatory regime introduced in the Local Transport Act 2008.
- 5.26 It is the CC's role, if it finds that there are adverse effects on competition, to undertake the detailed analysis of the causes and devise potential remedies taking into account any interactions between them, which would require further detailed consultation. It is possible that some of what may be required would involve CC order-making powers to impose remedies or at least to orchestrate their implementation.