Local Government Group response to provisional findings and possible remedies proposed by the competition commission investigation into the local bus services.

31 May 2011

About the Local Government Group

The Local Government Group (LG Group) is made up of six organisations that work together to support, promote and improve local government. The six organisations are:

a. The Local Government Association (LGA)
b. Local Government Regulation
c. Local Government Improvement and Development
d. Local Government Employers
e. Local Government Leadership
f. Local Partnerships

The LGA is a cross-party and politically led voluntary membership body. Our 422 member authorities cover every part of England and Wales, and together they represent over 50 million people, spending around £113 billion a year on local services.

Key Messages

1. The Local Government Group strongly supports the Competition Commission's key findings that competition within local bus markets is limited and that this adversely affects services and outcomes for bus passengers. The most effective way to remedy this is to shift the focus of competition regulation from on-road competition between operators to competition between operators for contracts to operate services.

2. Stronger franchising powers should be accompanied by reform of the current bus subsidy system – which at £2.6 billion per year accounts for 50% of industry turnover - to create a single stream of public subsidy for bus services that is devolved to local transport authorities to commission bus services from providers at the local level.

3. This would resolve the bus industry's competition issues by refocusing regulation from seeking to eliminate unacceptable monopolies locally – an approach which has manifestly failed – to a system in which competition can be promoted through tender design.

4. This supports what councils report, the findings of our own work and other recent studies into the bus market[1].

Response to provisional findings and remedies

Competition, profitability and barriers to market entry

5. The consolidation of the bus industry to a point where the five largest operators provide 69 percent of local bus services means the only effective competition comes when the major players compete against each other. As the report demonstrates this type of head-to-head competition is relatively rare and tends to be short-lived as rivalry on routes usually leads to the exit of one operator with no guarantee that the most efficient operator survives. We also agree with the report's findings that the costs and risks to entering the market are significant and act as a barrier to introduction of competition.

Franchising

6. The LG Group strongly supports the Commission's recommendation for greater use of franchising. It is clear that the current approach to regulation of the bus services to encourage on-street competition is not working. The LG Group has argued that competition regulation should be refocused away from attempting to enforce on-street competition to introducing and ensuring genuine competition in the market at the point where bus operators compete for contracts. Local Transport Authorities (LTAs) have an important role to play in encouraging competition and ensuring that the benefits are captured for passengers and the tax payer.

7. Greater use of commissioning services through contracts should be strengthened by replacing the existing package of support for bus subsidies with a single stream of public funding for bus services delegated to councils to commission services and specified outcomes from operators. This would end unconditional payments and allow subsidy to be more effectively targeted and more accountable to the public.

8. Given the very local nature of bus services, decisions about the best model of procurement of services need to take account of features of the local market, including demand, market size, neighbouring markets, capacity and historic relationships with operators. LTAs need access to a range of tools to influence competition in the bus market, as was recognised in the Local Transport Acts of 2000 and 2008. We therefore oppose prescriptive national guidance or mechanisms to impose franchising models or blanket recommendations to "types" of area.

[1] LGA, The Future of Bus Subsidies, 2010; Review of Bus Profitability in England, Final Report, 22 June 2010, LEK International for DfT

9. Rather, the CC's remedies should focus on removing barriers to implementing franchising and partnership tools which are currently significant, in order to ensure that regulation focuses on competition at the level at which contracts are tendered in a way that encourages multiple bids for contracts. The process and requirements for putting a Quality Contract in place are complicated, costly and involve considerable risk for LTAs. The hurdles are intended to protect the free operation of the market. Since the CC's investigation demonstrates that the market does not operate freely and competitively, the remedies should focus on making it easier for LTAs to implement franchising models by enhancing their powers to implement QCs and simplifying the franchising process.

Ticketing

10. We agree with the Commission's finding that multi-journey tickets offered by a single incumbent operator can give them a competitive advantage over new entrants or smaller operators. We also agree that multi – operator integrated ticketing schemes would effectively tackle this advantage and deliver significant benefits to passengers and increase patronage, especially if combined with smart ticketing.

11. Integrated smart ticketing products could be implemented most simply through franchising, which would allow an LTA to stipulate participation in a multi-operator ticketing scheme as a condition of the contract.

12. Currently, where multi-operator ticketing schemes do exist, operators are able to discount their own ticketing products in areas where they are dominant to undercut multi-operator tickets and increase their own market share. In a situation where franchises do not exist, LTA's should have stronger powers to require operators to participate in a multi-operator smart card ticketing schemes. This could be done by:

    a) devolving subsidy to LTAs to enable them to incentivise operators to participate in LTA-led smart card schemes that offer multi-operator products;

    b) removing the ability for any one operator to veto a multi-operator scheme and by requiring them to promote multi-operator products.

Partnerships

13. Partnerships between operators and local authorities do not in themselves encourage competition in the way that franchising can. However partnerships do offer a way in which LTAs can influence operators' behaviour and incentivise improvements to services and encourage multi-ticketing products and other mechanisms that could mitigate the lack of competition. However, by their nature partnerships require voluntary agreement from operators and LTAs therefore need to be able to apply some leverage or incentives to operators to participate.

14. Greater use of partnerships could be encouraged by:

   a) reducing barriers to franchising as a viable option if operators are not willing to participate in partnerships;

   b) devolving subsidy to LTAs who could then stipulate participation in a partnership as a condition of accessing public funding.

Regulation

15. The CC considers proposals to increase the powers of the Traffic Commissioners and the OfT to intervene in the market to reduce barriers to entry and act against predatory or anti-competitive practices. In our view, Local Transport Authorities are far better placed than a national regulatory body to understand local bus markets and to monitor and intervene where necessary. LTA regulation of local markets would also be less costly, more timely and responsive than the proposed enhanced role for Traffic Commissioners or another national regulatory body.

Tendered Services

16. We welcome the CC's emphasis on ensuring sufficient competition to tenders for supported services. A significant issue identified by the report is that aspects of tendered services, such as the location or timing, that make the tender unattractive to most operators. Greater franchising could assist by allowing tendered services to be packaged with contracts covering other routes and networks to remove some of these obstacles and attract competition.

17. There remains a role for the Department for Transport, working with the Competition Commission to ensure a level playing field for tendered services and updating or revising existing guidance on tendered services should be based on the experience from the sector. The LGA would be happy to be involved in further discussions on how best practice can be most effectively disseminated.