House of Commons
Transport Committee

GOVERNMENT AND OFFICE OF FAIR TRADING RESPONSES TO THE SEVENTEENTH REPORT OF THE TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS COMMITTEE IN SESSION 2001-02

First Special Report of Session 2002–03

Report

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Contacts

All correspondence should be addressed to The Clerk of the Committee, Committee Office, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 6263; the Committee’s e-mail address is: transcom@parliament.uk.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPECIAL REPORT</td>
<td>5</td>
</tr>
<tr>
<td>APPENDIX 1</td>
<td>5</td>
</tr>
<tr>
<td>APPENDIX 2</td>
<td>13</td>
</tr>
</tbody>
</table>
FIRST SPECIAL REPORT

The Transport Committee has agreed to the following Special Report:


2. The Government’s reply, received on 13 November, is published as Appendix 1 to this Special Report.

3. The Office of Fair Trading’s reply, received on 7 November, is published as Appendix 2 to this Special Report.

APPENDIX 1

GOVERNMENT RESPONSE TO THE SEVENTEENTH REPORT OF THE TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS COMMITTEE, SESSION 2001-02 (HC 828-I)

The Department welcomes the Transport Sub-Committee’s interest in the provision of better bus services, which is a priority for the Government. We are already actively working on many of the issues which are the subject of the Sub-Committee’s recommendations. We are also having ongoing and constructive dialogue with key bodies in the bus industry, local authorities and other government organisations to ensure we build on progress to date, and continue to overcome any potential barriers to improving bus services. Our response to the Sub-Committee’s individual recommendations is set out below.

Recommendation (a)

Bus companies must commit to a fixed schedule of locally agreed timetable changes to enable the provision of co-ordinated and up-to-date information. To ensure that a stable network of bus services is provided, there should be no need to change the timetable more than six times a year (paragraph 30).

The Confederation of Passenger Transport has recognised that frequent changes to bus routes and timetables can deter passengers and potential passengers. This issue is being addressed through the Bus Partnership Forum, which John Spellar set up in July 2002 to bring the industry and local government together at national level, with the Department for Transport, to tackle barriers to increased bus use. The Forum has established a number of Task Groups, one of which is working on Network Stability. The Group’s aim is to develop a model agreement and then encourage local agreements to limit the dates on which service changes will be made. It is essential however not to impose an inflexible model that would either prevent operators from responding to urgent local needs or act as a barrier to new operators entering the market.

Recommendations (b) and (c)

The Office of Fair Trading must allow services to be co-ordinated. If the application of the Competition Act to the current deregulated regime does not permit this then it is clearly at odds with the Government’s aim of providing a truly integrated transport system (paragraph 39).

We find it unacceptable that the Competition Act is being applied without sound evidence, based on observation and research from the bus industry and bus users.
There are significant negative side effects of on-the-road competition, including uncoordinated services, instability of the network and restrictions on ticket use. Local authorities should be able to make common sense agreements with bus companies about services in their area without fear of investigation by the Office of Fair Trading. Co-operation and co-ordination are not synonymous with collusion. The application of the Competition Act, or the Act itself, must be adjusted to this sensible outcome. If it is not, many local authorities will request quality contract powers as the only means of ensuring a co-ordinated network of bus services (paragraph 40).

There has been considerable progress in recent months on these issues, and we will continue to work with the OFT and the bus industry to facilitate better co-ordination of services. The OFT are responding separately to the specific points raised by the Committee.

Recommendation (d)

Bus companies must push ahead with the introduction of multi-operator Travelcard schemes. They should not use the Competition Act as an excuse for failing to progress such schemes. New schemes should adopt Smartcard technology wherever possible, to reduce boarding times (paragraph 41).

The Department is working closely with the transport sector, through the ITSO group, to enable a smart card based environment for transport ticketing systems. The technical work required to create this environment is entering the final testing phase with a full launch expected early in the new year. Local Transport Authorities and bus operators will then be able to develop new ticketing products representing major steps towards achieving the concepts of seamless travel and through ticketing based on smart card solutions.

Recommendation (e)

Bus lanes must be enforced to be effective. The police have a responsibility to police bus lanes and must do so. The Government has promised to decriminalise enforcement of bus lanes fully by the end of the year. We welcome this initiative as it will allow a combination of static cameras, on-bus cameras and mobile patrols to catch offenders (paragraph 45).

This is in hand and will be available to all authorities carrying out decriminalised parking enforcement. We expect regulations to be laid before Parliament by the end of the year.

Recommendation (f)

The Traffic Commissioners should continue to take local traffic conditions into account when assessing the reliability of bus services (paragraph 46).

External factors outside the bus operator’s control, such as accidents and short-notice roadworks, are difficult to cater for in the registered timetable. Commissioners are aware that they must take such factors into account when determining whether the punctuality standard has been met on individual routes.

Recommendation (g)

The Department should issue guidance on how to reduce the time taken to design and implement bus priority schemes. It should assess what regulatory burdens can be removed. The responsibility for implementation lies with local authorities. These schemes must be implemented if the speed and reliability of bus journeys are to be improved. The Department should link future local capital funding settlements to progress made in this area (paragraph 47).
The Department is chairing one of the Task Groups under the Bus Partnership Forum to identify ways of making buses run faster and more reliably. This includes improving the implementation of bus priority schemes, including any that might involve reducing regulatory burdens where they impede schemes going in. A ‘best practice’ guide is likely to be a key output from this group. Local Transport Plan funding is already related to performance although this will be across a wider spectrum than bus priority.

Recommendations (h), (i), and (j)

Bus service withdrawals in one area are not 'offset' by improvements elsewhere. Improvements to other services do nothing for those left without a service or with a reduced service that provides inadequate timings and connections. The trend of increasing service withdrawals is worrying, as it can leave those most dependent on public transport without a service (paragraph 52).

The Department must provide more revenue support to ensure that increasing service withdrawals and rising tender costs do not leave areas with inadequate public transport provision. More cost-effective public transport solutions should be sought to improve non-commercial services. It may prove more cost-effective for local authorities to run some non-commercial services. The Department should support the purchase of buses with local transport plan funds where local authorities demonstrate the value in doing so (paragraph 57).

The Government must face up to the need for greater revenue support for local public transport. This will benefit both low and high income groups (paragraph 60).

We have research under way which is examining the trends in tender prices and the causes of recent increases and we are in close touch with local authorities on these matters. We have already issued guidance and shall revisit it when the research is complete. The level of spending on bus support is in general a matter for decision by local authorities taking account of local needs and the resources available to them including Revenue Support Grant. The 2002 Spending Review gave local government a revenue settlement with an average increase of 3.9 per cent a year above inflation over the three years to 2005-06. Our bus grant schemes – Rural Bus Subsidy Grant, Rural Bus Challenge and Urban Bus Challenge – have provided substantial additional funding to improve services in areas not currently well served.

The Government doubled the capital funding available to local authorities in the 2000 local transport settlement. The LTP process gives authorities the flexibility to allocate capital funds for small-scale integrated transport schemes according to their own local priorities. In some cases it is possible for authorities to use this funding to purchase buses, and we are aware that some authorities e.g. Stoke-on-Trent have already done so for their tendered services.

Recommendation (k)

The failure to provide adequate public transport has significant hidden costs to the public purse. In particular, we believe the Department should:

- support the integration of health, social care, school and subsidised transport services through more co-ordinated centres such as that in Cheshire. Greater revenue support will be needed to establish these centres. However, the savings are likely to far outweigh these costs and provide a much better service, achieving better value for money.

- Commission research into what the costs of failing to provide adequate public transport are to other Government Departments and the economy.
• Ensure that local transport plans include social exclusion targets such as reducing the number of people whose transport needs are not met and determine whether wider minimum concessionary fares standards can reduce social exclusion (paragraph 65).

Some of these issues are being looked at by the current Social Exclusion Unit project on transport and by the Department’s Bus Subsidy Review.

The review is considering how bus subsidies can best be used to achieve our objectives, which include reducing social exclusion, as well as increasing patronage and encouraging modal shift from cars. One of the issues the review is looking at is whether local authorities should be given more freedom to offer concessionary fares to wider groups than at present, for example to include the unemployed or those in adult full time education.

The interim report from the Social Exclusion Unit’s current study on transport and social exclusion proposed that authorities’ Local Transport Plans should include a process of accessibility planning. It was envisaged that this process would help transport authorities and health, education and other agencies to work together to tackle barriers to access to key services and facilities. The Department is working closely with the SEU and others to develop their proposals prior to publication of their final report.

Many authorities’ Local Transport Plans already include indicators and targets relevant to social inclusion and accessibility. We will consider development of such indicators and targets further in light of the SEU’s forthcoming report.

**Recommendations (l) and (m)**

New targets for bus growth outside London are required. These targets should take into account regional variations in conditions. The targets must be challenging and should be set to achieve a minimum of 10 per cent growth in bus use outside London (paragraph 69).

The Department has set targets for improving bus services, particularly reliability, which are welcome. However, the targets relating to the age and accessibility of the bus fleet are not ambitious and should be revised. The Department must also ensure that all aspects of the bus journey including information, pavement quality and easy access bus shelters are improved to make travel easier, not just the bus (paragraph 71).

Following the 2002 Spending Review, the Department’s PSA target has been re-formulated as a combined target for local bus and light rail services. Our aim is to increase patronage by more than 12% by 2010 compared with 2000 levels, while securing improvements in accessibility, punctuality and reliability.

The Department is well aware that very different levels of patronage growth are being achieved in different parts of the country. In London, the difficulty of driving and parking, combined with transport policies, is expected to deliver high patronage growth. Outside London, the scope for patronage growth will depend on local circumstances. We would not expect it to be achieved evenly in all areas over the ten-year period. Indeed, in areas where historically car ownership and use has been low, bus patronage overall may well continue to fall as increased prosperity opens up car ownership to more people.

However, this is not a simple matter of London versus the rest of England. Nor is it primarily a matter of some regions performing better than others – even neighbouring towns can have very different prospects for bus growth. In the light of this mixed picture we are focusing on achieving targets at the national level. But we do expect the best that
can be achieved from all areas according to their circumstances, and we encourage all local authorities and bus operators to play their part.

We have agreed targets with the Confederation of Passenger Transport for reducing the average age of the bus fleet to 8 years or less, and for ensuring that 50% of the full size bus fleet is fully accessible by 2010. We shall be monitoring progress towards these targets together with the industry and will review them should that prove necessary.

Quality Partnerships are already helping to drive up quality standards for passengers all over the country. Typically, this involves the local authority upgrading bus shelters and other infrastructure and/or implementing bus priority measures, in return for operators meeting certain quality standards such as new, low floor or low polluting vehicles.

Pavement maintenance is the responsibility of local highway authorities. The Government is providing over £30 billion for local road maintenance (including pavements) over the timescale of the 10 Year Transport Plan, an extra £9 billion (23% in real terms) above the funding levels in the previous 10 years.

To encourage continuous improvement, local authorities are required to report annually against Best Value indicators, which measure carriageway condition. From 2001/02, the Best Value indicators include a survey of a proportion of each local authority’s unclassified road network.

The Department has provided funding for real-time information and a power in the Transport Act 2000 for local authorities to ensure better information and recover costs from operators if necessary.

**Recommendation (n)**

**The Police must give greater priority to reducing anti-social behaviour on and around public transport.** Attacks on public transport users and staff are as serious as any other form of anti-social behaviour. Bus companies must use the Department’s guidance on improving security in partnership with local authorities and police authorities (paragraph 73).

In August the Department announced a new forum to address bus crime. Called the Safer Travel on Buses and Coaches Panel (STOP), this official-level group will include representatives of bus operators, unions, local authorities, the police, passengers and relevant government departments. It is charged with facilitating the exchange of ideas and spreading best practice. It will encourage better partnership between different bodies.

Additionally, there are already a number of initiatives being pursued around the country. In London the successful ‘Operation Seneca’ project has also led to the ‘Buswise’ scheme being extended to schools, and a major new policing initiative for London’s buses. In the West Midlands ‘Operation Safer Travel’ involves partnership between Travel West Midlands and the West Midlands Police. This has resulted in significant reductions in assaults on drivers and passengers. In Merseyside ‘Operation Bream’ is having similar success through a multi-agency partnership.

**Recommendation (o)**

**Bus services in the areas surrounding London are a poor relation to those services running into and around the capital.** This disparity is difficult for the travelling public to understand. Local authorities surrounding London should develop bus strategies to address these problems including, where appropriate, the use of bus quality contracts. The Department should provide greater revenue support for these
new strategies to ensure that a stable network of integrated services is maintained (paragraph 76).

In many of these areas, it is difficult to sustain commercial bus services because of high wage costs, high property costs for depots, high car ownership and low bus usage. The congestion in London and the investment by the Mayor have indeed led to a contrasting level of provision and patronage. But other locations are also facing particular challenges, e.g. rural areas, deprived urban estates, market towns. Through the Partnership Forum and research projects (e.g. into shared taxis) we are looking at alternatives to conventional bus services.

Recommendations (p) and (t)

Bus quality partnerships have shown the benefits of bus companies and local authorities working together. However, bus quality partnerships will only improve services in some parts of major towns and cities, effectively creating a two-tier bus service. Whilst this will help to reduce congestion in major cities, it will offer little to improve services in smaller towns and across rural areas and there is a danger of these services deteriorating still further. The Department must ensure that operators have obligations to improve services outside quality partnership routes. Bus quality partnerships should be strengthened by allowing local authorities to agree minimum service frequencies and fares with operators using the route. Where road space is handed over to buses, the local authority must have some guarantee of the quality and level of service provision (paragraph 86).

The Department should investigate whether the quality network proposal can be developed further. In particular, the Department should examine how agreements can be negotiated within the current Competition Act and how this might need to be altered. It must also examine what contractual obligation to the agreements might be required. Local authorities and bus companies should work together to bring forward collaborative proposals showing the extra benefits to the passenger of this new approach (paragraph 108).

Quality Partnerships vary enormously in scale and content – from multi-million pound jointly financed major infrastructure projects to relatively minor schemes for bus stop and bus quality improvements. What they all have in common is the aim of driving up quality standards for bus users. The exact terms of Quality Partnerships and the respective responsibilities covered by the agreement are for the partners themselves, i.e. local authorities and operators, to determine.

Under a quality partnership scheme, operators must either meet certain quality standards (e.g. low floor, low polluting buses) set by the local authority when using the scheme facilities; or decline to do so, and forgo the benefit of those facilities. They continue, however, to have their commercial freedoms – to decide on routes, frequencies and fares – subject to the existing bus registration system with the traffic commissioners. If statutory Quality Partnerships were to specify fares and frequencies, it would blur the distinction between that option and Quality Contracts.

The Transport Act 2000 does not prevent voluntary agreement on frequencies and fares between local authorities and operators. Nor is there anything to prevent a statutory Quality Partnership with non-statutory add-ons. The partners to such an agreement would need to satisfy themselves, however, that the arrangement did not breach the requirements of competition legislation.

One of the Task Groups established under the Bus Partnership Forum is working to encourage and develop new forms of voluntary partnership between local authorities and operators beyond the now familiar Quality Partnership schemes. This includes the 'Quality
Network’s initiative, which builds on the partnership approach and can include co-operation over network coverage as well as infrastructure. Officials from the Office of Fair Trading have been involved in preliminary discussions about the proposal.

**Recommendations (q), (r) & (s)**

London has achieved an impressive growth in bus use. The wide variety of factors that contribute to this growth mean it is not possible to attribute this growth to the use of a tendered system of bus procurement. However, there are a number of separate and strong arguments in favour of an approach similar to London being used in other large cities. London has achieved an expansion of services and a level of integration of information, ticketing and fares not seen elsewhere in England. The experience in London shows that if large amounts of public subsidy are used to improve bus services, quick and significant improvements can be made. If such investment is to be made elsewhere, tendering may offer the best way of ensuring accountability for public funds (paragraph 100).

The Department should encourage those local authorities that have a strong case for introducing quality contracts to do so. It must remove the barriers to introducing quality contracts, such as the 21 month waiting period for which there appears little justification. The Department must also be prepared to find additional revenue support for areas seeking to boost bus use, particularly to pump-prime new services. It must ensure however, that those authorities given extra resources achieve best value in improving their bus networks and that the money is not siphoned off to other areas. The Department should monitor the first few quality contract schemes closely to ensure that the costs and benefits of quality contract schemes are properly understood in a variety of different geographic areas (paragraph 102).

The bus industry should take a more positive approach to bus quality contracts. Instead of down playing contracts as heavy handed regulation, the industry should engage in developing forms of contract that allow for innovation and flexibility for bus companies whilst at the same time allowing local authorities to have influence over minimum service requirements and most importantly, co-ordination of services between operators and modes. Some of these desirable outcomes do not appear possible under de-regulated operation with the current application of the Competition Act. We believe that the bus companies’ preferred solution of quality partnerships works, but only for some areas and in a limited way (paragraph 103).

The success of London’s bus services is due partly to a range of initiatives to promote bus priority and bus lane enforcement and reduce car use and congestion in inner London. A capital city has special circumstances; hence the different regulatory framework.

The London network is much denser than in most other places, and services tend to be more frequent. The patronage growth seen in London is attributable to the high level of investment the Mayor has put into bus services in London, including 2,600 new buses entered services between July 2000 and May 2002, weekly driver bonuses, and the introduction of a two-tier flat fare scheme. The amount of GLA transport grant allocated to buses to bridge the gap between farebox income and the cost of providing the service is set to rise from £200m last year to around £300m this year and to around £500m in 2004/05.

Local authorities do have the option to initiate a Quality Contract but few are yet thinking of doing so. The 21 month implementation period may be one barrier but there may be others e.g. the cost. Partnership remains Ministers’ preferred approach, though Quality Contracts represent a further option.
We have referred earlier to the level of revenue support available to local authorities and to our current Bus Subsidy Review which seeks to ensure that maximum value is obtained from existing support.

**Recommendation (u)**

It is clear that the Department must continue to provide extra funding for rural services to recognise the challenges of rising tender costs and to enable the most successful and cost-effective services to continue to operate once the challenge funding comes to an end. Few schemes will be commercially viable. The Department should publish urgently the results of its study into the effectiveness of the various schemes to enable all rural areas to benefit from the best practice it identifies. The Department should also reduce the bureaucracy surrounding Challenge Fund bids. We recommend that future bids be made as part of Local Transport Plan strategy progress reports (paragraph 115).

The Challenge schemes are fulfilling a useful role in encouraging the development of projects (over 200 so far) which provide new, flexible solutions to the problem of improving transport links in rural areas and urban deprived areas. We will however consider possible changes to the schemes in the light of the work of the Social Exclusion Unit and the current review of bus subsidies.

**Recommendation (v)**

It is currently too difficult for local authorities to put in place all of the innovative public transport improvements that they desire. A maze of regulations exist, dating from a time when many of these new schemes were not in place and they require simplification. Local authorities should not have to find ways around existing legislation to enable them to introduce new schemes that will benefit the public. We recommend that the Department undertake a full review of the regulations and legislation surrounding flexible transport services to remove these barriers (paragraph 116).

The Department has issued a consultation document on proposals to make it easier to register local bus services whose routes and timings may vary subject to demand. Consultees were asked to respond by 1 November.

We believe these changes will remove many of the current legislative barriers to the provision of demand responsive bus services. Flexible services will also receive a funding boost through eligibility for Bus Service Operators’ Grant, Rural Bus Subsidy and Rural and Urban Challenge Funding.

It will be for individual bus providers to decide how best to exploit these new flexibilities to meet local transport needs once they have been implemented next year.

The Department is continuing to explore with the various stakeholders what other barriers to providing flexible transport remain and how best they might be removed.

**Department for Transport**

13 November 2002
APPENDIX 2

OFFICE OF FAIR TRADING RESPONSE TO THE SEVENTEENTH REPORT OF THE TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS COMMITTEE, SESSION 2001-02 (HC 828-I)

1. In considering Competition under III. THE PROBLEMS (pages 13–18), the Committee considers the degree and effects of on-the-road competition, timetables and co-ordination of services, and integrated ticketing and fares. Before addressing the Committee recommendations that apply to the OFT, we make some preliminary observations.

2. Firstly, a wider perspective on competition and co-ordination may be useful. For many industries it is possible to imagine businesses co-ordinating the supply of their goods or services to customers, instead of competing. Businesses would often prefer co-ordination to competition. A large array of evidence shows, however, that consumer benefits, efficiency and economic performance generally are superior under conditions of competition than with co-ordination. Accordingly, competition law passed by Parliament prohibits anti-competitive agreements unless certain exemption criteria are met. The law applies across the economy, including the bus industry. The only block exemption so far made under the Competition Act, is for public transport ticketing schemes. The OFT developed these schemes which are of benefit to both the bus industry and the travelling public.

3. The report at times suggests that on-the-road competition is not in the interests of passengers, and that the application of the Competition Act 1998 (the Act) has ‘created significant barriers to good quality, integrated, public transport services’ (paragraph 26). There is an implication that local authority transport co-ordinating officers are necessarily right in their view that on-the-road competition ‘is the last thing the passenger wants’ (paragraph 29). The Committee then, however, states that ‘A lack of competition for tendered services contributes significantly to the higher cost of [tendered] services’ (paragraph 54). It is not easy to reconcile the two views. If there were to be no on-the-road competition for commercial services, the likelihood of competition for tendered services would be much less.

CO-ORDINATION OF SERVICES

4. In paragraph 31 it is stated that ‘bus operators claim that they would like to run buses at evenly spaced intervals but are prevented from doing so by the application of the Competition Act’. It is true that the Chapter I prohibition in the Act applies to operators agreeing timetables and headways, which would constitute sharing of the temporal market. As alluded to in paragraph 32 of the report, however, there is no reason in competition law why services should not evolve in such a way that they are, in practice, evenly spaced otherwise than by agreement. We are aware of routes on which two or more operators run services at evenly spaced intervals, where this appears to have been achieved without an agreement between the operators. The Act certainly does not prevent evenly spaced services arising nor does the OFT find evenly spaced services a matter of concern. Likewise, in a competitive market, prices may well be similar for other reasons than an agreement. Co-ordination of services is not always ruled out: connecting services do not, by definition, compete, and timings can therefore be co-ordinated, as the OFT has made clear.

INTEGRATED TICKETING AND FARES

5. In relation to the section of the report on the effect of competition law, the final version of the guideline on the block exemption has been issued since publication of the report. This followed intensive discussions with the industry through the Confederation of Passenger Transport, a number of large and small operators and individual local authorities
and their representative associations. The OFT has spent a significant amount of time discussing the application of the Act and the block exemption to individual schemes with operators and local authorities, and the attitude of bus operators is now perhaps rather more positive towards the block exemption and the guideline than the report suggests. This positive attitude may be because of the ongoing consultation and redrafting that has taken place since the Sub-Committee received evidence.

**COMPETITION CONCLUSIONS**

6. The report states in paragraph 38 that the OFT’s ‘position of investigating and approving any form of co-ordination of bus routes is a case of theory running riot over common sense’. The assertion is repeated in paragraph 39. It is both factually and legally incorrect.

7. It is for businesses themselves to ensure that they comply with the law. While the OFT is always happy to discuss issues informally with operators and local authorities, it is not the case that the OFT has to make a ruling ‘on whether the number 12 and 13 buses can agree to run every 10 minutes’ (paragraph 38). There is no requirement for agreements to be notified to the OFT for a decision in advance of them coming into effect. In any event, the OFT does not have the resources to look at each and every agreement of this sort. It may be the case that the OFT will subsequently investigate an agreement after receipt of a complaint or on its own initiative, and we therefore encourage operators and local authorities to discuss prospective schemes with OFT officials informally before putting them into action. Many have done so, with encouraging results.

8. The report asserts in paragraph 39 that the OFT’s concerns ‘about a loss of consumer benefit that co-ordinated timetables, fares and frequencies will bring are largely unfounded’. The Committee’s own view is that it is ‘unlikely’ that bus companies would seek to take advantage of co-ordination by reducing service levels and increasing fares because of the power of local authorities to introduce quality contracts. (The bus operators, however, in opposing use of quality contracts, assert that they will ‘stifle competition’, paragraph 88.) The Committee has at the same time, however, expressed its concern at the reduction by bus companies in the size of their networks.

**RECOMMENDATIONS**

9. The Committee has made 22 recommendations for action to improve bus services in England. Two of the recommendations, (b) and (c), are aimed at OFT and others indirectly affect the work of OFT.

**Recommendation (b)**

The Office of Fair Trading must allow services to be co-ordinated. If the application of the Competition Act to the current de-regulated regime does not permit this then it is clearly at odds with the Government’s aim of providing a truly integrated transport system (paragraph 39).

10. As noted above, the agreeing of timetables and headways between operators is likely to be caught by the Chapter I prohibition contained in the Act; such an agreement may, however, qualify for an individual exemption from the prohibition if it meets the necessary criteria. The criteria for exemption are, in summary, that the restriction of competition is necessary in order to create benefits for consumers. No agreement in the bus industry has yet been notified to the OFT for a decision or for formal guidance on whether it should be granted an individual exemption, so the OFT has not considered formally whether such an agreement might meet the exemption criteria.
11. Part, at least, of the problem is that its scale is not known. There is no compelling evidence, of which the OFT is aware, that there are large numbers of instances across the United Kingdom where operators 'bunch' services so that, for example, four buses arrive in the first ten minutes of the hour and none for the next 50 minutes. In his evidence to the Committee, Mr Clayton, the Managing Director of Arriva UK Bus, said that he would far rather one bus to the hospital went on the hour and the other at half past the hour, rather than two going together. There is no reason in competition law why one of the operators, without reference to, or agreement with, the other, could not bring that situation about simply by re-timing its service to do just that. The aim can be achieved without the need for the operators to discuss the matter at all, and indeed this appears to be the position where services provided by different operators are already run at reasonable intervals. If two buses were run close together, however, there might well be an incentive for an operator competitively to introduce a third bus per hour, to the benefit of passengers.

12. In the light of the Committee's recommendation, the OFT intends to investigate this issue in order to assess whether there is any evidence that operators have run bunched services for large numbers of routes, and that, if so, the Act has been an obstacle to more even spacing.

13. It has also been suggested that if one operator does make changes to its services, other operators will be forced into making consequential changes and that a period of instability will ensue in which passengers and potential passengers may find it more convenient to travel by car. It is argued in the report that such uncertainty and instability would be removed, or at least lessened, if operators were able to discuss proposed changes in advance and agree their changes so that they could all take place at one time. Again, there is no compelling evidence, of which the OFT is aware, that this is, indeed, the case, or that it is a widespread issue, but it is a matter which the OFT will examine.

14. Insofar as there is a problem, its solution might have to do with information conditions. In particular, the OFT is considering whether a form of information exchange mechanism that was consistent with the Act might overcome any perceived problem in notifying services changes to the Traffic Commissioners. It may be that any problem would be resolved if, for example, an operator were able to copy details of proposed changes to its competitors, either actual or potential, at the time of giving 56 days' notice to the Traffic Commissioner, especially if the notifying operator gave more than the statutory 56 days. That would allow other operators time to notify consequential changes so that they came into effect at a similar time to the changes notified first.

**Recommendation (c)**

We find it unacceptable that the Competition Act is being applied without sound evidence, based on observation and research from the bus industry and bus users. There are significant negative side effects of on-the-road competition, including uncoordinated services, instability of the network and restrictions on ticket use. Local authorities should be able to make common sense agreements with bus companies about services in their area without fear of investigation by the Office of Fair Trading. Co-operation and co-ordination are not synonymous with collusion. The application of the Competition Act, or the Act itself, must be adjusted to this sensible outcome. If it is not, many local authorities will request quality contract powers as the only means of ensuring a co-ordinated network of bus services (paragraph 40).

15. It is not clear to which actions of the OFT the first sentence is referring. The OFT has made only one decision under the Act regarding the bus industry (the Leeds case¹). That decision was based on a full assessment of the relevant facts and was not challenged by the

¹ CA98/9/2002, *Market sharing by Arriva plc and FirstGroup plc*
parties involved. More generally, all decisions by the OFT under the Act are subject to the possibility of appeal to the Competition Commission Appeals Tribunal, and would be struck down by the Tribunal if they were not based on sound evidence. The other action by the OFT affecting the bus industry was the ticketing scheme block exemption, which was carefully researched.

16. The OFT has not seen evidence that there are significant negative side effects to on-the-road competition: operators, as noted above, are able to run services at even headways, other than by agreement. On-the-road competition – or at least the potential for it – is important to ensure that fares are not excessive or that the quality of service does not decline. It is not clear how fares and quality of service could be protected in the absence of competition.

17. The reference to restrictions on ticket use is not clear and is not referred to in the text leading to the recommendation on page 18 other than at the end of paragraph 38 that ‘fares remain unco-ordinated’. The ticketing scheme block exemption provides for agreement on the price of travelcards and for other common types of ticket to be possible without reference to the OFT, and we are not aware of any other ticket-types that might be considered for inclusion in the block exemption. The OFT would not be prepared to recommend a block exemption covering agreement on ordinary single and return fares because such agreements are very likely to result in higher fares, with no obvious benefits to passengers. The OFT would of course consider any application for an individual exemption based on the facts and arguments put forward, but again it is not obvious how such an agreement would benefit passengers.

18. The point of this recommendation appears to be that local authorities are unable to make ‘common sense’ agreements with operators so as to allow co-ordination of services to provide a more stable network of services and to remove restrictions on ticket use. Local authorities were not given the power to include frequencies within the list of factors that could be specified in a statutory Quality Partnership under the Transport Act 2000 – see paragraph 24 below.

19. The issue of co-ordinating services, in particular the existing ability of individual operators to effect even headways, was considered above. As First acknowledged in its oral evidence to the Sub-Committee (question 32), it had not notified any proposals for a decision or formal guidance as to whether an individual exemption might be granted to a ticketing or other type of agreement. (Nor has any other bus operator, for that matter.) We have, however, discussed informally many issues with First, and other operators, over the last few years.

**Recommendation (d)**

Bus companies must push ahead with the introduction of multi-operator Travelcard schemes. They should not use the Competition Act as an excuse for failing to progress such schemes. New schemes should adopt Smartcard technology wherever possible, to reduce boarding times (paragraph 41).

20. We welcome this recommendation. We are told from time to time of particular schemes which have ceased to operate or from which operators have withdrawn ‘because of competition law’ or ‘because of the OFT’. In many of these cases, the operators or the local authorities involved have not discussed the matter with OFT (cf. the case in Hertfordshire referred to in paragraph 36 of the report, for example). We have taken the matter up with the relevant operators or local authorities in some of the cases and it has become clear that either there were other pressing commercial reasons, totally unconnected with competition law, for the scheme folding or the operators did not wish to include another operator in a scheme which would mean that the scheme no longer met the relevant condition in the block exemption, for example.
21. There is, as already noted, no reason in competition law why operators should not ‘push ahead with the introduction of multi-operator Travelcard schemes’, at least those which meet the conditions in the block exemption. While we are aware that some operators have residual reservations about use of the passenger miles criterion for revenue allocation in such schemes, the recently published guideline expands considerably on the application of the ‘as far as is reasonably practicable’ sub-clause, and suggests that an objective ‘weighting’ system might be introduced in cases where it is clear that a flat passenger miles reimbursement mechanism would not produce equitable results. Discussions with operators have shown that the revised wording in the guideline is proving to be of significant assistance in considering whether a particular scheme falls within the block exemption. The further recommendation that new schemes should adopt Smartcard technology whenever possible is also helpful insofar as use of the technology is likely to have the side effect of facilitating easier and more accurate assessment of passenger miles travelled on a travelcard if swipe-on-exit is required in addition to on entry.

Recommendation(s) (paragraph 103)

22. This recommendation urges bus operators to take ‘a more positive approach to bus quality contracts’ and recommends that they should contribute to the development of contracts which allow local authorities ‘to have influence over minimum service requirements and most importantly, co-ordination of services between operators and modes. Some of these desirable outcomes do not appear possible under de-regulated operation with the current application of the Competition Act.’ It should be noted that section 124(4)(b) of the Transport Act 2000 and section 13(6)(b) of the Transport (Scotland) Act 2001 specifically provide that the person granted the exclusive right to operate local services to which the contract relates does so on such terms as may be specified in the agreement ‘including in particular as to frequency, fares and standard of service’. The power is therefore already available for local authorities to specify frequencies and fares as part of a quality contract. The competition test contained in Schedule 10 to the Transport Act and the equivalent provision in the Transport (Scotland) Act does not apply to the granting of quality contracts.

Recommendation (t) (paragraph 108)

23. The Committee recommends that the Department for Transport should investigate whether the ‘quality network’ proposal advanced by the Association of Transport Coordinating Officers and the Institute of Logistics and Transport ‘can be developed further. In particular, the Department should examine how agreements can be negotiated within the current Competition Act and how this might need to be altered’. The OFT is, of course, very willing to discuss how quality networks might be taken forward within the context of the Act, both in general terms and in relation to any specific examples, but it must be noted that current competition law would apply to them as ‘agreements between undertakings’. (The position as to whether local authorities are ‘undertakings’ in respect of transport services within the meaning of the Act is less clear now than it seemed to be, following the decision of the Competition Commission Appeals Tribunal on the BetterCare case. This means that an agreement between a bus operator and a local authority which previously would not have been considered by the OFT to be an ‘agreement between undertakings’ and therefore not within the scope of the Chapter I prohibition, may now, as a matter of law, be precisely those things.) Whether or not the local authority is a party to any resulting agreement, it should be noted that any agreement between the operators would almost certainly be subject to the provisions of the Act.

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2 Competition Commission Case No. 1006/2/1/01, 1 August 2002, BetterCare Group Limited supported by The Registered Homes Confederation of Northern Ireland Limited and Bedfordshire Care Group v. Director General of Fair Trading
24. If however, Local Authorities wish to form non-statutory quality partnerships with bus companies that include agreements on the level of fares and/or frequencies, the OFT will consider such agreements within the provisions of the Competition Act. The criticism of the OFT regarding such agreements appears to stem from the fact that the Transport Act 2000 does not allow statutory quality partnerships to include fares or frequencies.

Office of Fair Trading
7 November 2002