



Northern Ireland  
Assembly

Committee for Regional Development

# OFFICIAL REPORT (Hansard)

Inquiry into Comprehensive Transport  
Delivery Structures: Office of Fair Trading  
Briefing

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conclusion, I will outline some illustrations of practical ways in which competition can play a part in helping to make markets work better.

At the outset, I should make it clear that it is not the role of the OFT to make a pitch for the privatisation of transport services. We understand that current policy in Northern Ireland is to retain Translink as lead operator, despite changes to the roles of the bodies being put in place and the introduction of a middle tier in the regulatory framework. We are keen to contribute to arrangements of service delivery that benefit users and secure value for money for taxpayers, particularly in times of reduced budget.

I noticed in the 2011 reduced regional transportation strategy from the Department for Regional Development (DRD) the following ambition:

*"We do not want to design infrastructure or services that suit policy makers, planners or engineers, rather we want to focus on the user, understand their needs and demonstrate the value and benefits to them that can also benefit the community".*

That focus on the user rather than the provider is something that I shall come back to.

Although work on local bus markets by the OFT and the Competition Commission was confined to GB, some general findings are of relevance here. We have been able to show, for example, that effective contestability is the best way to improve quality and to keep prices down. In an open market, that may be head-to-head competition, but we know that experience of early bus deregulation has shown that that can cause its own problems. For example, bus wars between operators may deliver short-term benefits, but, ultimately, that can raise barriers to entry, and fares in the longer term. That goes back to the free-for-all that Professor Smyth referred to.

Alternatively, contestability may be pitched as competition for the market, with opportunity for more than one operator to bid for rights to supply particular services over defined periods. The benefits that flow from that possibility of challenge typically are lean business models, tight management of costs, quality service and innovation. There is at least the prospect of another operator snapping at your heels. I suggest that those operating the service in Dublin are not able to slump into a comfortable inertia, because they know that they hold that right only for a period, after which others will be able to contest that same service.

To achieve those benefits, it follows that there need to be contract arrangements that allow opportunities for new or smaller suppliers to participate in a particular market. Where access to common infrastructure is essential for there to be competition in the market, that must be provided to rivals on terms that are fair and reasonable in respect of access charges and conditions of use. An example of that is where access to certain bus stances or bus station facilities is necessary for a rival operator to compete with the incumbent.

Any new entrants must also have certainty for the period of their contract and be assured of fair competition from an incumbent monopoly supplier such as Translink. There needs to be openness to proposals from operators for new services where service gaps are identified. I have heard that the recent pilot scheme run by a Newry operator to meet the specific requirements of college students is a good illustration of that kind of niche service. Those are some of the considerations that we would expect the new Transport NI to have in mind as it develops the regulatory framework and the contracts that will be required from 2014. We believe that those can be consistent with the designation of Translink as lead operator.

For most effective contestability, however, it is important that alternative operators, which may have a narrow offering initially, do have the opportunity to expand and grow. If competition is limited to the margins, it is much less likely to have the beneficial effect of prompting quality and value from the incumbent, and firms are unlikely to believe that there is opportunity of sufficient scale to be worth their while. The rapid transit tender that was discussed earlier may be an example of that.

In a market that does not have genuine competitive constraint, as in the current transport framework in Northern Ireland, there is particular responsibility on the regulator to hold operators to account, and to be seen to do so. I gather that there has already been discussion here about the availability of information about costs, price and performance, as well as about the relevance of benchmarks. The OFT would underline the significance of the incentives provided through outcome-based contracts on the one hand and accountability that can be delivered through clear and transparent measures on the other. Transparency about standards, cost and price are critical to public confidence, and

presentation of material in a style that is meaningful and accessible to transport users and taxpayers is also necessary. I reiterate the focus on the user, as expressed in the transport strategy.

Finally, there are two examples of practical ways to introduce some of the principles that I have alluded to. The first concerns ticketing. Multi-operator ticketing has been signalled as a reason not to permit alternative operators to provide services linking to the incumbent provider. The OFT is not close to the detail of any particular instances in Northern Ireland, but we are aware in general that there is little incentive for a bigger operator to make it easy for others to link to their ticket platform. It might therefore be effective to explore how the ticketing element of the service might be contracted through a separate, neutral third party.

My second example is the possibility of franchising different bundles of services, which has just been discussed. We hear that the income stream from profitable routes across the network is necessary to subsidise those routes that are more marginal owing to rurality or low usage, but that should not automatically translate into total monopoly. There may be opportunity to bundle some profitable and unprofitable services together to be delivered in a franchise arrangement. That would provide some greater opportunity for alternative operators to develop, without compromising the operational model of the current incumbent.

Finally, I will refer to the relevance of competition between modes of public transport. Community transport may, by definition, be a bit of a niche area of service because of the customers that it serves or the geography, but public taxi services are often a very viable alternative to buses. When we did some work last year about remote communities, both of those were highlighted as necessary to meet the rather more occasional needs of those who live in rural communities. That is just to flag that there is a variety of different types of transport that complement and compete with each other.

Essentially, the OFT urges consideration of the possibilities to introduce some elements of competition, even within the existing regulated market, and to ensure that the framework being developed has the interests of users, including the need for transparency, at its heart.

**The Chairperson:** Thank you very much, Kyla, for your presentation. It was very interesting and is helpful to the Committee's inquiry. Your office previously referred the supply of local bus services in GB to the Competition Commission. Have you any plans to do something similar to cover the service in Northern Ireland? Secondly, can you give us some examples of the incentives to improve performance and effectiveness that you referred to in your paper?

**Ms Brand:** When we initially looked at the local bus services in 2008-09, we excluded London and Northern Ireland from the study because of the particularity of those markets. It is a wholly regulated market here and London has a very different model and scale, so they were taken to be *sui generis* and not included in that study. Therefore, it was the rest of the GB market that was referred to the Competition Commission and fully investigated. We have not had any representation to suggest that the work that we could do on the Northern Ireland bus service in the current framework would be especially effective. Our powers would be around abuse of dominance, for example. If a local operator who sought to come into the market found that it was unreasonably excluded, that would potentially be the sort of trigger for us to look at the market. As it stands, however, there is nothing that we would be able to prescribe or suggest that would overturn the political decisions about how the market is operating.

**The Chairperson:** Just allow us a second to change. The Deputy Chair will take the Chair for a minute or two. He will then ask you a question.

*(The Deputy Chairperson [Mr Lynch] in the Chair)*

**The Deputy Chairperson:** Although you were not referring to here, you said that concessionary fares distort the market. Will you elaborate on that?

**Ms Brand:** We found that, where there is a high proportion of concessionary fares, there is a tendency for higher fares to be charged across the relevant market. Our understanding is that there is sometimes a perverse incentive for the operator to charge higher prices in order to get a higher return from the concession. In principle, it is supposed to be of no benefit, and the rates are supposed to be set so that it is not a profit-making channel for a bus operator. However, we found in our overall study that there was that tendency to see high concessions and higher fares.

**The Deputy Chairperson:** The qualifying age for concessionary fares is, I think, lower here. Would that mean even greater distortion of the market here?

**Ms Brand:** It is quite difficult to compare the Northern Ireland situation with most of the other examples, because you do not have the opportunity for competition to deal with any excessive fare-setting. In principle, however, the more concessions there are, the more likely it is that those will be reflected in higher fares.

**Mr Ó hOisín:** In real terms, how much value for money do transport monopolies, such as that which we may have here, provide? You said that community transport is very much a niche market. Surely that would be reflective of the rurality of this part of the world, in that having a couple of taxi firms is not a viable option across much of the geographical area.

**Ms Brand:** Sorry, I am not quite clear about your first point about value for money.

**Mr Ó hOisín:** How much value for money do transport monopolies provide?

**Ms Brand:** Since bus deregulation in GB, there has been a tendency to consolidation, and greater efficiencies are being found in areas through that consolidation and not having many multiple operators. That is far short of a monopoly. The model in London is distinctive because it is a franchise model, and nobody holds the right to provide the service for ever. Therefore, operators know that there will be contestability at a certain point.

On the rurality argument, the real challenge is how to supply services effectively to those who are few, dispersed and need them only occasionally. One suggestion is that if you have a more responsive type of service, such as much community transport, you can deal with some of those economic inefficiencies more effectively than if you insist on having a scheduled service of a large bus going down many country lanes. It is a question of trying to match the sort of service with the sort of demand and being flexible about the models that you may be able to use.

**Mr McNarry:** How does competition law work here in Northern Ireland?

**Ms Brand:** It works exactly the same as it does anywhere else in the UK.

**Mr McNarry:** What is your referral with regard to competition?

**Ms Brand:** If a firm in Northern Ireland believes that it is being subject to abusive behaviour, for example, in any sector, and it can identify that that is an abuse of competition law, we would be as responsive to that case from Northern Ireland as a case from Scotland or any other part of the UK.

**Mr McNarry:** You mentioned rapid transit. In the final analysis, there was no opportunity for competition. Would that concern your office? The offer was not even made and that, to me, is an abuse.

**Ms Brand:** There is some specificity about how the rules apply where a public organisation is tendering for a service. I would not be able to say absolutely — without any of my legal experts — that that would automatically be a case for us. However, in the general principle —

**Mr McNarry:** Sorry to interrupt you, but if I asked you whether OFT could look into what I have just said regarding the absence of an ability for anyone to tender, would you look into that for the Committee?

**Ms Brand:** We would certainly be very happy to hear from you and to consider that. Normally, it would be that some firm believed or could show that it had been excluded from a process unfairly. On our work in public markets, we tend to work with the public bodies — governments and local authorities elsewhere in GB — helping them to frame their tender arrangements so that they get it right. Personally, I could not give you an example of where we had taken that kind of case under competition law, but it is certainly an area where we have competition expertise, and we would be willing to give you advice.

**Mr McNarry:** I would be grateful if you would consider that.

Would OFT be concerned if a complaint were made about an apparent cosy relationship operated between a transport monopoly provider and the Department servicing public transport with millions of pounds of public money?

**Ms Brand:** That in and of itself would probably not be a matter for us under competition law. Obviously, it is subject to some of the issues of state aid and those parts of the European legal framework. Cosiness in itself would not qualify for competition law abuse. There would have to be something rather particular within that that we could examine.

**Mr McNarry:** OK, so if I developed "cosiness" into something else that I cannot comment on now in case I get taken to court, you might be interested in it.

This is all very interesting. Where a virtual monopoly operates, what advice could you give to the Committee on challenging fair prices?

**Ms Brand:** As I said in my introduction, transparency is a huge key to being able to match the kinds of costs that are incurred and the prices that are being charged, particularly where there are changes in prices. However, there are obviously some constraints. There is commercial confidentiality, and, in competitive situations, we have to guard against people sharing too much information.

**Mr McNarry:** Are you really on the side of the operators? Are you really speaking for the public, because — if you do not mind — it does not sound like it? Everything is protective, but it is protective not for the consumer and not for an elected representative but for those companies that we cannot get to grips with.

*(The Chairperson [Mr Spratt] in the Chair)*

**Ms Brand:** The reason for the guarded nature of some of my responses is due to the fact that the scope of competition law is really quite specific, and we have to have evidence to be able to deploy our powers. Perhaps that is why I am sounding quite guarded. We try to ensure that users — consumers — are able to access choice and to get the best possible deal in the market: that is the whole point of what we try to do. Where a market is publicly controlled, it is in a rather different condition than one where you simply have private sector operators.

**The Chairperson:** Kyla, thank you very much for your presentation. I am sorry that I had to leave the room to make an urgent call. The information that you have given us has been very helpful to the inquiry. If there is anything else, we will be in touch with you.