

Submission on Bus Services (No2) Bill ahead of Scrutiny Committee

1. Thank you for the opportunity to submit our views. We are supportive of the government's commitment to grow bus usage – better connecting communities, breaking down barriers to opportunity, growing the economy, and achieving Net Zero. We are also supportive of the government's intention to empower local leaders to decide which governance model works best for their areas. We are grateful for ministers, MPs, and officials having engaged with us constructively so far as the Bill has progressed.
2. We have one significant issue with the Bill as drafted, and this relates to the powers of Direct Award and how they interact with a newly established Local Authority Bus Company (LABCo). Note this is not an issue with the Direct Award power per se.
3. Clause 13 of the Bill introduces a Direct Award mechanism as a way of enabling LTAs to move towards a franchise model more quickly, by awarding first round contracts directly on a net cost basis to incumbent operators for a maximum of five years. We do not have concerns with this provision and understand the rationale behind it.
4. We do, however, have concerns about the way in which the provisions which enable a new LABCo to be set up, and existing procurement law that relates to such a directly controlled entity, could potentially interact with the powers in the Bill to move to a franchised model for buses.
5. An LTA can award a contract to a company it controls without going to tender (under the "Teckal Rules" as per the Procurement Act 2003 schedule 2 paragraph 2 (vertical arrangements)).
6. The requirements of the Transport Act 1985 Clause 88(1) (the requirement to go out to tender for expenditure on local bus services) apply to existing municipal bus companies meaning that, in non-franchised areas, an LTA cannot Direct Award to a LABCo without competition.
7. However, that part of the Transport Act does not apply to franchised areas, meaning that the franchising process is exempt from this requirement (Clause 123A (8) of the Transport Act 2000 disapplies clause 88(1) of Transport Act 1985, (the requirement to go out to tender for expenditure on local bus services)).

8. We are therefore concerned that an LTA could establish both a franchise model and a new LABCo (via the new powers in the Bill), then award a franchising contract to the LABCo directly without competition, therefore (1) circumventing the Bus Services Bill clause on Direct Award and its time limitation; (2) not having to go through a procurement process to achieve the best quality/value for taxpayers' money.
9. Bus operators require a stable environment in which to operate, so that medium- to long-term investment decisions can be taken with confidence.
10. The threat of an LTA being able to award a franchise in the way described at paragraph 8, at any point in the future does not provide this stable environment.
11. We respect and understand that government does not wish to make changes to the Procurement Act. We had proposed a simple amendment, carefully drafted with our lawyers and supported by industry, but DfT were reluctant to accept it – they didn't deem it necessary and don't foresee the risk materialising. Whilst it may be the case that such an award is unlikely the short- to medium-term, this will nevertheless be seen as a risk at Plc Board level in perpetuity.
12. We therefore seek assurance in the House (that is not out of step with government policy), and for the government to provide confidence to bus operators in the House about forthcoming guidance to accompany the Bill, and what it will cover, including statements that reaffirm the following:
 - Competitive procurement processes help to achieve both quality and value for taxpayers' money.
 - The government does not support the establishment of new LABCos with the intention of using Teckal Rules to direct award a franchise and circumvent a competitive procurement process.
 - Franchises should only be directly awarded to a newly established LABCo where the award is required to be made to an "operator of last resort"
 - Authorities should under no circumstances use these powers as an alternative to seeking and reaping the benefits of market competition.
 - The government commits to publishing such guidance and to consulting operators as part of its development.