



Public Consultation on 2014 Public Bus Service Contracts

Submission to the National Transport Authority

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The Competition Authority
An tÚdarás Iomaíochta

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1. INTRODUCTION

- 1.1 The Competition Authority welcomes the opportunity to make a submission regarding the non-statutory public consultation on 2014 Public Bus Service Contracts (the "Consultation") issued by the National Transport Authority (the "NTA"). The Competition Authority has previously recommended to the Government to introduce competitive tendering in the market for subsidised, or Public Service Obligation ("PSO"), bus services in the Greater Dublin Area.¹ The purpose of this submission is to explain the benefits of competitive tendering and outline some practical issues associated with implementing competitive tendering.
- 1.2 The Consultation document explains that the NTA is currently considering whether it should enter into new direct award contracts with Dublin Bus and Bus Éireann, or whether it should undertake competitive tenders in relation to some or all of the bus services subsidised by the State. The Consultation document also asks specific questions in relation to the design of the new public service contract, such as: how to ensure the quality of service, how to best ensure the integration of the public bus services and how to best ensure value for taxpayer money.
- 1.3 International experience of competitive tendering for subsidised public services is favourable. There are many benefits associated with introducing competitive tendering for subsidised public bus services, provided that the system of competitive tendering is well designed. Experience has shown that these benefits include the NTA's three main objectives of (i) improved service quality, (ii) a more integrated transport system, and (iii) greater value for taxpayer's money. Ultimately, the competitive tender procedure can actually give the NTA greater power and a stronger framework to achieve these goals than a direct award contract.
- 1.4 There is no one-size-fits-all method of introducing competitive tendering, but there are lots of experiences that Ireland can usefully draw on. However, it is important for policy makers to recognise the dangers associated with inefficient tender design and processes. If competitive tendering were not well thought through, it could facilitate cartels or lead to a reduced number of bidders over time. Therefore the expected cost savings would not materialise and so could not be passed on to consumers or to the Exchequer.

¹ Meanwhile, the Government has indicated that it considers our recommendation to have been implemented through two pieces of legislation; the Dublin Transport Authority Act 2008 ("the 2008 Act") and the Transport Regulation Act 2009 (the "2009 Act") and the creation of the NTA.

2. BENEFITS OF EFFECTIVE COMPETITION IN PUBLIC BUS SERVICES

2.1 This section is mainly relevant to question 6 in the Consultation document.

Q6. What are the potential benefits or otherwise of competitively tendering for the award of new bus service contracts, compared to directly awarding contracts to Dublin Bus or Bus Éireann?

2.2 Competition keeps prices and costs of goods and services down, and improves choice and quality. These benefits arise because competition encourages businesses to focus on their customers needs and constantly manage their costs. One of the key features that occurs from competition is innovation and long term dynamic improvements to the service arising from the operators having to try to do things differently.

2.3 Competitive tendering remains an attractive reform strategy for subsidised public bus services. A monopoly bus service provider is less likely to use routes that best suit the needs of its customers and more likely to pass cost increases on to their customers. Competitive tendering of bus services generally leads to a better network, better service and competitive prices.

2.4 As discussed below, both economic literature and experience in other countries have shown that there are significant benefits associated with introducing competitive tendering in subsidised public bus service markets. These benefits include:

- **Financial benefits** - to consumers through lower fares and/or to the Exchequer;
- **Improved quality of services and incentives for innovation** - such as more reliable, punctual services and improving the bus network to better match consumers' needs;
- **Better incentives** for the public bus services to **integrate** into the wider public transport system.

2.5 The precise gains from competitive tendering are highly dependent on the previous arrangements in each country/area and the particular policy objectives. Which combination of these benefits our society gets - for example, how much of the saving goes to the Exchequer and how much goes to consumers through lower bus fares - will depend on the policy decisions and trade offs the NTA makes and how well the competitive tendering process is carried out.

Financial benefits

2.6 The Consultation document stresses that one of the NTA's objectives and considerations is to ensure that any subsidies for the operation of public bus services provide good value for taxpayer money. Competition is an effective way to achieve value for money and keep prices and costs down.

2.7 Savings in state subsidies for bus services following the introduction of competitive tendering have been found to be between 20% and 30% of the cost of services previously provided by a monopoly public company.

These estimates take account of the administrative costs of competitive tendering. The cost savings are mainly linked to reduced wages, reduced use of labour, and the deployment of more appropriately-sized vehicles.²

- 2.8 Hensher and Wallis (2005) summarise the evidence from 10 developed countries, covering more than 20 cities, and assess the unit cost impact associated with competitive tendering of urban bus services.³ The survey suggests very substantial cost savings from initial round tenders - savings ranging between 20% to 30% for Scandinavian countries to almost 40% in some Australian cities.⁴
- 2.9 Introducing competitive tendering to the Greater Dublin Area alone, could save the Exchequer a considerable amount of money. For example, the Exchequer provided a total of €631 million of subvention to Dublin Bus between 2002 and 2010.⁵ If we apply a 20% saving (which is at the lower end of the spectrum of estimated cost savings), introducing competition in the Greater Dublin Area alone could have saved the Exchequer €126 million over the period between 2002 and 2010.
- 2.10 Therefore, at a time when the public purse strings have to be tightened, the potential financial gain from competitive tendering of bus services is critical in achieving one of the NTA's objectives - value for taxpayer money through reduced use of subsidies from the State.
- 2.11 The cost saving made from competitive tendering can also be shared with public transport users in the form of lower fares.⁶ Decreased bus fares is one factor that can encourage people to use public bus services. The National Competitiveness Council's *Annual Report 2010* found that "Dublin ranks poorly compared to other European cities in terms of ... the proportion of people taking public transport to work". This contributes to congestion and damages the performance of the urban centres which are important engines of growth for our economy.

Improved quality of services and innovation

- 2.12 Competition also encourages business to compete for consumers through improved choice and quality of goods and services. Where public bus service contracts are directly awarded to semi-state companies without a competition, as is the current case, Dublin Bus and Bus Éireann are not incentivised to compete for customers. As a result the consumer suffers poorer quality of service and less travel options than they would otherwise enjoy.
- 2.13 The competitive tendering process could specify the frequency of service required, the quality of bus to be provided, and so on. This will ultimately help the NTA to achieve one of its objectives - maintaining or improving the quality of service.

² Preston, J (2001): "An overview of Public Transport Reforms in Great Britain and Forecasts for the Future", International Journal of Transport Economics, issue 28, pp23-48

³ Unit cost is typically measured as per bus kilometre or per bus hour.

⁴ The cost savings vary widely and depend on pre-tendering conditions, such as the initial cost efficiency of operators and the ownership structure. For example, competitive tendering reduced costs by only 10% in Norway because the bus industry has improved efficiency over a long period before competitive tendering was introduced. Terje B.J Longva. F, Fearnley. N, Oddgeir. (2006), "Norwegian experiences with tendered bus services".

⁵ Data - Dublin Bus Annual Reports.

⁶ CSO data (CPI monthly) shows that the real bus fares in the Greater Dublin Area have been on an upward trend for the past ten years. There has not been one single downward adjustment in Dublin Bus's fares since 2001.

- 2.14 Buses are widely recognised as the best option for increasing public transport capacity in the short-term. Network design and scheduling of drivers and buses should be led by the needs of the passenger. Monopoly providers who are not required to tender are thereby less motivated to take the initiative to redesign a bus network to meet the needs of passengers. The Deloitte 2009 "*Cost and Efficiency Review of Dublin Bus and Bus Éireann*" report identified a number of areas where there are opportunities to create a simplified bus network, offering improved services with improved cost efficiency.⁷
- 2.15 Competition can lead to innovative services that meet even unrecognised consumer demands. An Irish example of this is the entry of Air Coach. Air Coach entered into the Irish bus market initially by providing express coach services to Dublin Airport through the city centre. After Air Coach successfully entered the market, Dublin Bus started to provide direct express bus services from Dublin city centre to Dublin Airport to meet its new competition. Dublin Bus either did not previously realise the public's need to transfer directly from Dublin Airport to and from city centre or it did not respond to this demand. In any case, this example shows that competition creates external pressure for Dublin Bus to provide services that meet consumers' needs.
- 2.16 An efficient and passenger-oriented bus network promotes the usage of bus services. The experience in London shows that bus usage grew by 68% per cent between 1999 and 2008 after competitive tendering was introduced, and by 2008 buses in London were carrying the highest number of passengers since 1962.⁸ Competition for public bus service contracts in Ireland would promote Ireland's consumers' needs and help the development of a consumer-oriented bus network. Consumers are more likely to use public transport when the bus actually goes where they want to go. This will ultimately contribute to the national objective of sustainable travel and in particular promote the use of public transport.
- 2.17 Monopoly service providers have little or no incentives to introduce new technology. However, firms operating in a competitive market must constantly seek for new and better technology to strengthen their market positions. Competition speeds up the creation of new and innovative services to passengers. For example, bringing in technologies such as buses with Wi-Fi services serve the consumer interest.

Integration

- 2.18 The NTA may be concerned that competitive tendering could increase the risk of fragmentation of public transport services. However, tender contracts can specify requirements, such as timetable integration, co-ordination with other modes of transport services, a single bus fare system and accepting the integrated public bus ticket. Therefore, the NTA may use competitive tendering to ensure an integrated transport system.
- 2.19 Competitive tendering may even contribute to better public transport integration. Entrants will have new ideas and better incentives to develop an integrated public transport system in Ireland. For example, the Luas operator may have a better idea of how to integrate bus services with Luas services. Existing local bus service providers may have a better idea

⁷ Deloitte (2009) "*Cost and Efficiency Review of Dublin Bus and Bus Éireann*". Dublin Bus is reviewing its bus network according to the report.

⁸ Transport for London, "*London's Bus Contracting and Tendering Process*".

of how to integrate local bus services with the train services. Allowing operators other than CIÉ to bid for routes and suggest route changes should ultimately promote the improved integration of public bus services into the wider public transport system in Ireland and accelerate overall public transport integration.

Other potential benefits

2.20 Although the current public bus service contracts were issued by means of direct award to Dublin Bus and Bus Éireann, it is not actually clear which Dublin Bus and Bus Éireann routes are loss-making and which are profitable. The Transport Act 1964 did not require a link between the subsidy to the CIÉ and the unprofitable routes. This situation has not really been changed by the introduction of the Dublin Transport Act 2008 and the Transport Regulation Act 2009. The current Public Contracts are still awarded as a single grant for the provision of a large network of services, so a specific amount of subsidy is not attributed to a specific route or a specific time of day.

2.21 The current Public Contracts for bus services provide competitive advantages for Dublin Bus and Bus Éireann's positions in the public bus services markets in the State. Facilitated by its direct grant of all PSO routes and subsidies, it is difficult for private firms to compete with CIÉ even on commercial routes. Competitively tendering out (subsidies for) loss-making, but socially desirable, bus services would allow for a real challenge to be made to Dublin Bus and Bus Éireann's positions.

2.22 Competitive tendering can also facilitate the achievement of other policy goals. Frankfurt provides an interesting example of how competitive tendering can be used to achieve other social objectives.⁹ In 2006, the organising authority responsible for local public transport services (TraffiQ) tendered a 6 year contract. One of the main policy aims of the tendering process was to reduce air pollution in the city. This was achieved by stipulating that the winning tender must use environmentally-friendly vehicles.

⁹ Inno-V/KCW/RebelGroup/NEA/TOI/SDG/TIS 2008, "*Contracting in Urban Public Transport, Submission to EC-DG TREN*".

3. INTRODUCING COMPETITIVE TENDERING

3.1 This section is relevant to questions 1, 2, 3, 4, 5, and 7 in the Consultation document.

Q1 How can the new public service contracts best ensure a good quality of service is provided to passengers?

Q2. How can the new public bus contracts best ensure the integration of the public bus services and the integration of these services with the wider public transport network?

Q3. How can the new contracts best ensure value for taxpayer money?

Q4. Are there benefits in introducing separate contracts for different bus market segments within the Dublin area? If so, how should such market segments be defined?

Q5. Are there benefits in introducing separate contracts for different bus market segments outside the Dublin area? If so, how should such market segments be defined?

Q7. Are there any other considerations you wish to identify or comment on, that are relevant to the new contracts for bus passenger services?

3.2 A well designed competitive tendering process limits the monopoly rent that operators can charge, prevents the emergence of a dominant national operator and ensures a minimum level of service on tendered routes. Therefore, there is a growing interest internationally in using competitive tendering to achieve maximum incentives for bus operators to compete and deliver value for money over the long term for society.

3.3 It is important to carefully design the tender process to encourage competition, both in the short and long term, to achieve the desired outcomes. Many aspects of competitive tendering can be used to foster effective competition and achieve the social and economic objectives set by the regulator. A coherent institutional framework for competitive tendering is the key to obtaining the desired benefits.¹⁰ There are a number of issues that need to be determined when designing the actual tender contract, such as:

- (a) Network design,
- (b) Access to network facilities,
- (c) Type of contract,
- (d) Identifying subsidised routes,
- (e) Bundling of routes,
- (f) Contract periods,
- (g) Monitoring performance,

¹⁰ Yvrande-Billon, (2006) reveals that although there are cost savings associated with the introduction of competitive tendering in the bus sector, over time fewer bidders compete and the proportion of competitive tendering procedures with only one bid increases.

- (h) Big-rigging prevention,
- (i) Long term planning.

(a) Network design

- 3.4 Designing a bus network involves a huge amount of expertise, experience and time. The efficient public bus network is designed to achieve economic efficiency and meet the consumers' need. One of the measures outlined by the NTA's *Transport Strategy, 2030 Vision* in the public bus area is *"the Authority will regularly review the network of bus services and implement modifications as appropriate."*. That public authorities are responsible for designing the network is not rare, for example, both Copenhagen and London use public authorities to draw up the public transport service.¹¹
- 3.5 The Department of Transport engaged Deloitte to prepare a review on Dublin Bus and Bus Éireann's cost and efficiency in June 2008.¹² The Deloitte 2009 report *"Cost and Efficiency Review of Dublin Bus and Bus Éireann"* identified that *"several areas are serviced by multiple and duplicated routes. Where services share a significant portion of a route with other bus services, the timetables are not coordinated"*. If this still is the case, the potential route and/or routes for tendering could be inefficient.¹³
- 3.6 The Dublin Transport Authority Act 2008 and the Transport Regulation Act 2009 together provide the legislative basis for the contractual arrangement for the procurement of public bus transport services on a national basis. This facilitates the development of a coherent, consistent and overarching national tendering policy, which would help maximise national expertise in this area. Effective communication with local authorities on transport strategy, planning and integrated public transport, can play an important role in designing local bus networks.
- 3.7 The NTA could develop the network over time using competitive tendering, potentially by inviting bidders to suggest modifications to routes as part of their tender.

(b) Access to network facilities

- 3.8 Bus network facilities such as bus terminals, bus stops, bus depots, parking slots at the train station or airport pick up points, are required to provide public bus services. International experiences differ in the ownership of those assets, however, it is normal practice to grant non-discriminatory access to the winning bidders. In some cases, bus terminals and stops owned by the transport authorities can be rented by winning bidders. In other cases, the winning bidder has access to the relevant infrastructure and the transport authority owns and maintains those facilities.
- 3.9 Without a clear decision on how those facilities can be accessed by potential service providers and what the costs of using those facilities are, it is difficult to encourage potential bidders to participate in the tender

¹¹ Van de Velde, D.M. (2005) "The Evaluation of organisational forms in European public Transport during the last 15 years".

¹² Deloitte (2009) "Cost and Efficiency Review of Dublin Bus and Bus Éireann".

¹³ With the NTA's approval, Dublin Bus is currently conducting the Network Direct project which is aimed to improve the network design.

process. Even if they do put in a bid, they will be at an information disadvantage to CIÉ. No matter who owns the bus network facilities, winning firms should have non-discriminatory access to them. The costs of using those facilities should be fair, reasonable, transparent and non-discriminatory.¹⁴

3.10 To ensure all winning bidders have fair access to network facilities, the NTA may want to (i) publish detailed terms and conditions for winning bidders to access the relevant network facilities and (ii) outline clearly in each contract what are the relevant network facilities associated with each contract.¹⁵

3.11 It is expected that all bus service providers should be able to accept the integrated ticket, or pre-paid tickets. There should be only one fare system among all operators, i.e., consumers should not need to figure out which ticket or price applies to which operator. Competition will be a lot less efficient if some winning companies cannot accept the Leap card or pre-paid tickets.¹⁶

(c) Type of contract

3.12 In light of Ireland's current financial constraints, it is clear that our public bus services cannot afford a beauty contest type of tendering, i.e., firms bid on the best services they can offer for a certain route and/or bundle of routes and the NTA pays for it. It rather should be an auction for the provision of a given route and/or bundle of routes with a service level agreement attached.

3.13 Which type of contracts is more suitable for Ireland depends on the NTA's policy objectives. Among different types of public bus contracts, the two main types of contracts are

- (a) the Gross Cost Contract (cost-based), and
- (b) the Net Cost Contract (subsidy-based).

3.14 Gross Cost Contracts are the most commonly used, especially when the authority's main objective is to minimise the cost of running the services. The Gross Cost Contract is where the operators tender on the basis of all the costs required to operate the specified service - including vehicle, staff and overhead costs - and the authorities retain the fares revenue.¹⁷ When competitive tendering is further developed, some transport authorities use Gross Cost Contracts plus incentives to encourage improved usage, quality and/or environmental standards. For example, quality incentives can be measured and paid on the basis of monitoring punctuality and customer perception of the service.

3.15 If the authority would like to minimise the subsidy, it may decide to use Net Cost Contracts. Under a Net Cost Contract, the operators tender on the basis of all the costs required to operate the specified service -

¹⁴ See Competition Commission UK (2011) "*Local bus services market investigation, a report on the supply of local bus services in the UK*".

¹⁵ The Competition Commission UK (2011) "*Local bus services market investigation, a report on the supply of local bus services in the UK*" provides a few remedies to enable operators to have fair access to bus stations, those remedies focused on how to resolve disputes regarding access to bus stops.

¹⁶ Access to loyalty schemes or travel-agent incentive schemes is also important for effective competition. OECD DAF/CLP (2001)10.

¹⁷ It is also known as the cost-based or minimum-cost contract.

including vehicle, staff and overhead costs - and then keep all the fare revenue from operating the specified service.¹⁸ Thus a Net Cost Contract transfers the financial risk to the operators. The current Public Bus Contracts in Ireland are more similar to the Net Cost Contracts plus incentives (to encourage improved usage, quality and/or environmental standards), but without a competitive procedure, i.e., the contracts are directly awarded to CIÉ.

3.16 Before competitive tendering was introduced in Sweden in 1989, bus services were provided by public companies. When introducing competitive tendering, Stockholm used Gross Cost Contracts plus quality incentives, where the winning bidder could gain or lose up to 23% of the contract price. This is a substantial incentive for the operators to improve the quality of the service. An early example of a tendered contract in Sweden is Sundsvall. The Sundsvall example is a pure Net Cost Contract without additional quality incentives, but there were specific incentives to achieve a 2% passenger increase included in the contract.

3.17 In preparation for the introduction of competitive tendering, London Buses Limited was divided up geographically into 13 subsidiary companies in 1985. The subsidiaries competed with private bus companies for tendered contracts. The winning companies were funded by a 'block grant' agreement to cover the cost of those services. Government policy at the time was to transfer risk to the private sector, so it was decided that these 'block grant' agreements should be on a net cost basis.¹⁹ This shifted the revenue risk to the operators and gave them the incentive to generate more revenue by increasing the quality of the service provided.

(d) Identifying subsidised routes

3.18 In order for a meaningful tender to take place, the NTA has to know which routes are potentially loss-making and which are potentially profitable. The current Public Contracts are awarded as a single grant for the provision of a network of services, and a specific amount of the subsidy is not attributed to a specific route or a specific time of day. For example, Dublin Bus does not provide separate accounts for subsidised routes and profitable routes. It is claimed by private operators that some of the routes covered by the Public Contracts can be made profitable.

3.19 It appears that the NTA does not yet have such information. Without information on how profitable/unprofitable a current route is, it is difficult to know if it is possible for competing operators to run the same route with a lower subsidy or none at all. It is even more difficult to make decisions such as: whether the authority should bundle a non-profitable route with a profitable routes, whether to tender the loss-making part/period of a particular route, or to reduce the services during the loss-making period of a particular route.²⁰

3.20 Therefore, the information on which routes are loss-making is important for designing the tendered route and/or routes. It cannot be taken for granted that a route currently receiving a subsidy will require one in the future. Ultimately, transparency of such information can lower the

¹⁸ It is also known as the subsidy-based or the minimum-subsidy contract.

¹⁹ These net cost contracts were initially not subject to competition as the routes were allocated to each subsidiary and the terms of the contracts were agreed by negotiation. The length of these contracts varied, to give each company a reasonable forward order book and to allow the network to be tendered over a reasonable timescale.

²⁰ Sometimes a route can be un-profitable during a particular time of the day.

barriers for private operators to tender and increase competition in the relevant market.

(e) Bundling of routes

3.21 Designing routes and/or bundles of routes involves a huge amount of expertise and it takes time to learn how best to achieve economic efficiency and attract more bidders. Whatever routes and/or bundles of routes are decided during the 2014 tender process will have implications for competitive tendering in the years to follow.

3.22 As already mentioned above, in preparation for the introduction of competitive tendering of PSO bus services, the NTA may need to work out two important aspects of the bus network:

- (i) designing a bus network that meets the consumers' need, and
- (ii) identifying which routes are PSO routes and which are not.

3.23 Routes can be tendered individually or together as a pre-packaged bundle. Routes are generally tendered individually in London, but often at the same time as other routes in the same area to facilitate service changes.²¹ The routes tendered within one auction are usually in the same area of London.²² An auction covers on average 3.77 routes, though the range goes from one route to 21 routes in a single auction. It is a continuing programme of tendering with 15% to 20% of the network up for tender each year.

3.24 It is very common for more than one contract to be issued in a tender and for bundled bids to be allowed. Bundled contracts can usually allow some efficiencies in operation, or support investment in vehicles and facilities. For example, bundled routes can allow operators to use vehicles efficiently across different contracts. However, smaller operators may not have the capacity to compete for large contracts.²³ In the early years of competitive tendering, the routes for tender may be designed so that they only require a small number of vehicles to operate, thereby allowing small companies to compete.

(f) Contract Periods

3.25 The contract period is an important aspect of competitive tendering. The current Public Contracts for bus service are five years. The bidders need a sufficient period of operation to get a return on their investments. The initial investment can be a considerable financial constraint. A new entrant may be less likely to invest in a new service if the duration of the contract is not long enough to yield an adequate financial return.

3.26 The average length of contract in the sample analysed by the Competition Commission UK 2011 report "*Local bus services market investigation*" was 4.2 years, while individual contract length varied from 18 months to

²¹ For example, if the authority wants to modify one route in this area, it may affect other routes in the same area.

²² Estelle Cantillon and Martin Pesendorfer (2004), "*Auctioning Bus Routes: The London Experience*".

²³ The Competition Commission UK (2011) "*Local bus services market investigation, a report on the supply of local bus services in the UK*" did not draw any conclusion on whether the use of bundled contracts increases or decreases competition for tenders.

seven years. The report concludes that longer contract duration significantly increases the number of bids and results in lower cost.

(g) Monitoring Performance

3.27 Clear contracting terms and monitoring schemes for evaluating the performance delivered in exchange for public funds is vital during the process of competitive tendering. During competitive tendering in London, comprehensive quality measurements are used across all aspects of delivery.

3.28 It is important that the NTA is active in identifying insufficient performance where it occurs, and active in applying effective sanctions. This is vital to secure the NTA's credibility and the effectiveness of the contracts. Bonus payments for good performance and fines for bad performance are usual in service contracting in other industries. Where performance indicators are not met, the NTA can build into the contract the ability to:

- Impose fines,
- Withhold part of the subsidy,
- Arrange for compensation,
- Deny extension/renewal option.

(h) Bid-rigging prevention

3.29 Poor design of competitive tendering can facilitate cartels. Cartels are the most serious form of anti-competitive behaviour. They are illegal and typically involve secretive and collusive behaviour among firms which would otherwise compete with each other. Collusive tendering involves competitors agreeing on who will win a tender. It occurs when two or more firms agree not to bid against one another for a tender or contract. This means that the winning tender price will be too high. It deprives consumers and the Exchequer of the benefits of competition, enabling businesses to earn higher profits for less effort.

3.30 The Competition Authority is willing to provide any assistance or input which might be useful from a competition perspective, in drawing up the terms of the tendering process and assist the NTA to minimise the potential for cartels.²⁴ In general, to help prevent competitors from knowing who to contact amongst potential competitors, the identity of proposed bidders should not be disclosed. The NTA may also consider not disclosing a contract estimate so that bidders do not have an incentive to use that estimate as a floor for their tenders.

(i) Long term planning

3.31 Given the 2014 deadline and the complexities of the tender process, the NTA may decide to proceed with competitive tendering in stages, e.g., at the beginning tendering out only a percentage of the routes covered by the Public Contracts.

²⁴ The Competition Authority had produced a guide for public procurers, "*The Detection and Prevention of Collusive Tendering*".

3.32 The systems of tendering public bus services in London were not developed overnight, there were key milestones. This graduated approach may serve as a useful model for the NTA when introducing competitive tendering for Public Contracts.

- London Transport operated nearly all the bus services in London via its wholly owned subsidiary London Buses Limited ("LBL") up to 1985.
- In 1985, LBL was divided up geographically into 13 subsidiary companies.
- The subsidiaries competed with private bus companies for tendered contracts.
- In 1994, LBL subsidiaries were privatised, either through management buyouts or through sales to larger bus operators from outside London.
- In 2001, Quality Incentive Contracts were introduced to replace Net and Gross cost contracts as routes were tendered.²⁵

3.33 The steps that the NTA takes now, will have strong implications for the future market structure of public transport in Ireland. It is crucial that the competitive tendering process is designed to maximise competition. For example, were the NTA to tender out part of the Public Contract in 2014, it may want to inform the industry that all routes covered by the Public Contracts would be subject to competitive tendering gradually, and within a particular timeframe. This would encourage more bidders to participate in the auction and to get involved in the Irish public bus transport market as early as possible.

3.34 The Competition Commission UK 2011 report "*Local bus services market investigation, a report on the supply of local bus services in the UK*" found that competition in the market for the tendering of subsidised local bus services may be restricted or distorted where the number of operators bidding for tender contract is limited.²⁶ Economic literature also reveals that, over time, fewer bidders compete and the proportion of competitive tendering procedures with only one bid increases.²⁷ Inadequate service specification, effective collusion (cartels) by the leading operators during the tendering process, and poor ex-post control on contract execution can lead to fewer and fewer bidders over time.

3.35 Overall, it is inevitable that introducing competitive tendering is a very complex procedure and cannot be done overnight. The key element for the NTA before designing the actual tender is to set out its policy objectives, such as whether to minimise subsidies or to minimise cost. While designing the competitive tender, the NTA should make sure that

²⁵ London uses gross cost contracts for 700 bus contracts in London, one for each line. These contracts include additional production incentives or penalties based on a "Quality Incentive Contract". Operators are able to earn 15% of the contract price in bonus payments and penalty payments can be 10%.

²⁶ Also in Brazil a large number of small operators in the informal transport sector has been replaced by a few larger operators after adjusting for new regulatory requirements, such as minimum vehicle and labour standards and operator accreditation. David A. Hensher and Ian P. Wallis (2005), "*Competitive Tendering as a Contracting Mechanism for Subsidizing Transport*".

²⁷ Yvrande-Billon (2006) "*The attribution process of delegation contracts in the French urban public transport sector: Why competitive tendering is a Myth*"

competitive tendering would neither limit the number of potential bidders nor the intensity with which operators compete for these tenders.



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