



The Competition Authority
An tÚdarás Iomáiochta

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1. INTRODUCTION

- 1.1 The Competition Authority welcomes the opportunity to make a submission to the public consultation issued by the National Transport Authority ("NTA") on its Proposal to Directly Award a Public Bus Services Contract to Dublin Bus in 2014 ("the Consultation Paper").
- 1.2 The Competition Authority made a submission to the NTA's non-statutory public consultation on future Public Bus Service Contracts in 2012 ("2012 submission").¹ In its 2012 submission, the Competition Authority explained the benefits of competitive tendering compared to another direct award contract and outlined some practical issues associated with implementing competitive tendering.
- 1.3 The NTA proposes in the Consultation Paper that a new contract for the operation of all services covered by the current Public Contract in the Dublin market will be awarded directly to Dublin Bus on 1st December 2014. While the consultation proposes that 10% of the services covered by the current contract will be opened to competitive tender in 2016, **90%** will still be covered by a directly awarded contract for a period of another **five years** until 30th November 2019.
- 1.4 The Competition Authority queries the grounds for the NTA's proposal to grant another direct award contract to Dublin Bus in 2014. It is not clear from the consultation documents that continued adequacy of the public bus passenger services can "only be guaranteed" by another direct award contract to Dublin Bus – the relevant legal test to be applied by the NTA. In the Consultation Paper, the NTA recognises the potential benefits associated with introducing competitive tendering. However, it goes on to propose another direct award contract to Dublin Bus. The rationale behind this decision is not immediately apparent from the consultation documents. Moreover, there is no indication whether the NTA plans to increase the scope of competitive tendering, including the radial and cross city bus services, after 2019.
- 1.5 Elements of the consultation document and of the supporting economic analysis suggest that the decision to leave Dublin Bus with 90% of routes after 2016 is based on regarding Dublin Bus's current resources and overheads as fixed, and then ensuring that the scale of their operations is such as to use those resources efficiently. The point about competitive tendering is that other operators might be able to use those or other resources more efficiently. Fixing the size of the contract to suit Dublin Bus's current scale of operations will not lead to efficiency in the long run. Moreover, accepting as a given that Dublin Bus should continue to operate at its current scale does not appear to be the only way in which the continued adequacy of these services can be guaranteed. This again brings into question whether the legal test for a direct award contract has been met.
- 1.6 The Consultation documents provide little information on why the NTA believes that the orbital routes selected are most suited for competitive tendering in 2016. The documentation suggests that the choice of size and location of routes on which the NTA proposes to initiate competitive tendering in the Dublin bus service market is not influenced by whether those routes are profitable or loss-making. This

¹ <http://www.tca.ie/EN/Promoting-Competition/Submissions/Bus-Service-Contracts.aspx>

creates an information asymmetry between the NTA and Dublin Bus, and between Dublin Bus and potential entrants. The Competition Authority believes that this is a factor that should be examined by the NTA to ensure that it can maximise the benefit associated with effective competitive tendering.

- 1.7 The Competition Authority welcomes the NTA's acknowledgement of the factors to be considered in maximising the benefits of competitive tendering in its Technical Report on Contract Options. Issues raised by the Competition Authority in its 2012 submission are considered in detail in the Consultation. For example, our comments with regard to the importance of equality of access to infrastructure, maintaining integration, specific service levels and contract type. These are important considerations to be borne in mind in designing an effective tender competition for public bus services.
- 1.8 In summary, while the Competition Authority welcomes the NTA's proposal to open up some part of the Public Bus Services Contract to competition from 2016, we question the basis for the decision to
 - delay the introduction of competitive tenders until 2016, and
 - directly award at least 90% of the services to Dublin Bus in 2014 for another five years.

We urge the NTA to reconsider its proposal and allow the introduction of effective competition in the Dublin Bus services sector as early as possible.

2. PROPOSAL TO DIRECTLY AWARD THE CONTRACT

- 2.1 The Competition Authority notes that the NTA has concluded that another directly awarded contract is the only way to provide adequate subsidised public bus services to the public in the Greater Dublin Area ("GDA"). While we welcome the fact that the proposal builds in the possibility of tendering out 10% of the services covered by the current contract in 2016, it is unclear that this will provide sufficient scale to provide for effective competition and it is regrettable that there will not be any competition in the subsidised public bus service sector in the GDA for at least another two years.
- 2.2 The Competition Authority has long advocated for the introduction of competitive tendering for Public Service Obligation ("PSO") bus services in the GDA. It was first recommended in our 1999 report on the "Bus and Rail Passenger Transport Sector". The Government accepted this recommendation in principle and the Dublin Transport Authority Act 2008 ("2008 Act") and the Transport Regulation Act 2009 ("2009 Act") were introduced to facilitate the introduction of competition in the provision of PSO bus services.
- 2.3 The Competition Authority emphasised the benefits of effective competition in the public bus services sector in our 2012 submission. We concluded that *"the competitive tender procedure can actually give the NTA greater power and a stronger framework to achieve [its] goals than a direct award contract"*.² The Competition Authority's conclusion is acknowledged in the Consultation Paper and the Economic Analysis of Direct Award Bus Contract in the Dublin Market prepared by Ernst & Young ("the Economic Analysis Report").
- 2.4 The Consultation Paper acknowledges that *"the clear finding of the literature is that enhanced value for money is available through a move to competitive tendering"*. The Economic Analysis Report also states that *"A further benefit put forward for moving to competitive tendering relates to the potential for enhanced customer service levels. The meta analyses cited above also found evidence of service improvements in the studies reviewed..."*. This suggests that, particularly under the current public finance constraints and given the financial state of CIE group, introducing effective competition in the subsidised public bus service sector is needed now more than any other time. Hence, there should be a solid basis for any decision to directly award another contract to Dublin Bus rather than introducing effective competition in the subsidised public bus services sector.

Has the correct test been applied?

- 2.5 Section 52(6) (c) (ii) of the 2008 Act provides that the NTA can only grant direct award contracts for the provision of public bus services to Dublin Bus, if it is *"satisfied that the continued adequacy of the public bus passenger services to which the contracts relate can **only** be guaranteed **in the general economic interest**"* by entering into a direct award contract (emphasis added). This imposes a high standard for any decision not to introduce competition.

² The goals referred to are the NTA's three main objectives of achieving (i) improved service quality, (ii) a more integrated transport system (iii) greater value for taxpayer's money.

- 2.6 The economic justification for another direct award contract to Dublin Bus is not clear from the Consultation Paper. The Consultation Paper states that *"The Authority judged that it was not in the general economic interest of the state for the Authority to determine, [in 2012], that a significant Direct Award contract would be awarded to Dublin Bus given the financial circumstances of the holding CIE Group—the nature of what they could discharge as a company was in question"*. It is not clear to the Competition Authority that the correct standard has been applied to determine the general economic interest. We believe the test to be applied should be consistent with the European Commission's rules on Services of General Economic Interest ("SGEI").
- 2.7 Transport networks are generally considered as SGEI. To comply with European Commission rules on SGEI, as set out in the Commission's *Decision on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with operations of SGEI*, the NTA should take care that PSO bus services operate on the basis of principles and conditions which enable them to fulfil their goals. For example, the level of subsidies to Dublin Bus must be determined on the basis of an analysis of the costs of a typical well-run company.³ The Consultation Paper states that in 2012 the CIE group, of which Dublin Bus is a subsidiary, was in very challenging financial circumstances and required refinancing. However, the Competition Authority believes that the NTA should distinguish between the concept of "the general economic interest" referred to in Section 52(6) (c) (ii) of the 2008 Act and the "general economic interest of the state" referred to in the Consultation Paper. It is not clear that CIE's financial situation is relevant for an assessment of whether another direct award Public Contract to Dublin Bus is in the general economic interest.
- 2.8 The Consultation Paper states that *"The Authority considers that the general economic interest would be best served in the coming 5 years by Dublin Bus retaining a substantial proportion of services, but not all services"*. However, it is unclear from the Consultation Paper how the general economic interest, as opposed to the interests of the CIE Group, could be served by directly awarding the contract to Dublin Bus and delaying the introduction of competition. It may in fact be contrary to the general economic interest, as a directly awarded contract to Dublin Bus on 1st December 2014 could delay the accrual to consumers of the potential benefits associated with introducing competition.
- 2.9 The Competition Authority notes the statement on page 9 of the Consultation Document that *"The Authority considers it is in the public interest to leave Dublin Bus with a scale of operation which remains efficient for the company's resources and overheads."* This statement is repeated at point 4.4.1 of the Economic Analysis report. This approach assumes that Dublin Bus's costs are fixed, and that, if the scale of its operations is reduced because other, more efficient firms win tenders, it will maintain the same level of resources and overheads but operate less efficiently. We would respectfully submit that the efficiency of Dublin Bus's operations is a matter for its own management, and should not be taken into consideration by the NTA in

³ See for example, the ECJ's decision in Altmark, Case C-280/00

deciding the optimal model for public transport passengers in Dublin. It is up to the company to ensure that its resources and overheads match the level of its operations, rather than being up to the regulator to ensure that the level of operations awarded to the company without competition matches the current resources and overheads.

- 2.10 The argument that the vast majority of routes should remain with Dublin Bus because it would be “easier for the Authority” (p. 10) to manage the integration of the new Luas Cross City light rail route under a direct award contract with the incumbent may not be sufficient. Firstly, it is not clear why it should be easier. Presumably the same information would be available to a new operator as to the incumbent, and the same issues would arise. Secondly, this argument does not appear to meet the “general economic interest” test. Thirdly, accepting that future complexity is a valid reason for not opening up routes to competition would set a bad precedent, as it is likely that any future changes to complementary modes of transport could be used as an excuse to defer competition.
- 2.11 There are significant benefits that have been identified as being associated with introducing competition. These include
- i. financial benefits to consumers through lower fares and/or subvention costs to the Exchequer;
 - ii. improved quality of services and incentives for innovation in service delivery - such as more reliable, punctual services; and
 - iii. improving the bus network to better match consumers’ needs and better incentives for the public bus services to integrate into the wider public transport system.⁴

Granting another directly awarded contract to Dublin Bus will further delay realisation of these potential benefits to consumers and harm the general economic interest.

Competition concerns associated with the proposal

- 2.12 A directly awarded contract to Dublin Bus on 1st December 2014 could further entrench Dublin Bus’s market position and thereby discourage private firms from expanding the network of licensed commercial routes and entering the competitive tendering market in 2016.
- 2.13 The current Public Contract for Dublin Bus provides competitive advantages to Dublin Bus in the public bus services sector in the GDA. Even though, there are very few licensed commercial routes in the GDA, it is difficult for private firms to compete on licensed commercial routes with Dublin Bus, where its operations are facilitated by its direct subvention from the Exchequer for all PSO routes.⁵ This could hold private operators back from developing and expanding their licensed commercial routes.

⁴ For a detailed analysis of these benefits, please see the Competition Authority’s 2012 submission.

⁵ Up to early 2013, Dublin Bus holds five commercial routes licences in the GDA.

- 2.14 If Dublin Bus's monopoly position is guaranteed for another five years by another directly awarded contract of at least 90% of services covered by the current contract, this is likely to further entrench its market position and could discourage interested private firms from entering the market in the long run.
- 2.15 Setting an end date for Dublin Bus's contract on the 10% in 2016, with the possibility that it will lose the routes at that point, may also create adverse incentives for the operator. For instance, if an operator is tied to a route which it considers to be uneconomic, awkward to operate or otherwise undesirable, it may have no interest in bidding for the route at the end of the contract period. In this case the operator may be incentivised to allow quality to diminish during the tail-end of the contract, by running fewer buses, using older or less reliable buses on that route, or allowing punctuality to decline.
- 2.16 On the other hand, if the operator values the routes but fears it may lose out in the tender process, it may seek to safeguard its position by setting up alternative, partly overlapping routes or by improving existing interconnection services, which attract some or all of the passengers away from those routes. In this case the operator would be likely to make such alternative routes or interconnection services more attractive through their frequency, punctuality, better connection with rail services, or closer bus stops, with the aim of undermining the service of the new entrant when it takes over the original route.
- 2.17 The NTA should guard against such activities. It should be vigilant in ensuring that quality is maintained right through to the end of the contract. Furthermore, the NTA should avoid authorising Dublin Bus to set up alternative or near-alternative routes to ones which will be opened out to tender within a specified time.
- 2.18 The proposals set out by the NTA could also have serious implications for the future development of competition in public transport services in the GDA. In our 2012 submission, the Competition Authority advised that *"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 sector as early as possible.
- 2.19 It is not clear from the consultation documents whether competitive tendering of all services covered by the current Public Bus Contract is on the agenda after 2019. If there is to be further opening of the public bus contract in the Greater Dublin Area from 2019, the NTA needs to set out the steps it will take to achieve this now.
- 2.20 An important part of this would be a commitment to greater accounting separation by Dublin Bus and the CIE group in general. For example, financial information on each route requires Dublin Bus to separate accounts by route, day and time of the day. That information is crucial in deciding the correct route and/or bundle of routes and designing the effective tendering process. The apparent lack of commitment in the Consultation Paper to opening up the market from 2019 could discourage interested bidders from participating in the 2016 tender process.

2.21 In summary, another direct award contract to Dublin Bus in 2014 could

- run contrary to the general economic interest by delaying the realisation of benefits to consumers and the Exchequer associated with competition,
- provide competitive advantage to incumbent operators and discourage private firms from entering the market in 2016,
- create adverse effects on the proposed tendering routes, and
- create uncertainty for incumbent and private operators on the future of competition in the relevant sector.

3. CONCERNS REGARDING THE PROPOSED SIZE AND LOCATION OF THE ROUTES TO BE OPENED TO COMPETITION

- 3.1 The choice of size and location of the routes to be opened to competition is crucial to fostering effective competition. How the bus network is divided among competitors could have serious implications for the introduction of competition into the PSO sector in Ireland in both the medium and long run. It does not appear that the NTA has taken all the necessary steps in determining the size and location of the routes to be opened to competition in 2016.

Only genuine PSO routes should be subsidised

- 3.2 Identifying the true PSO routes is the first and most important element that the NTA should consider in issuing competitive tendering for the subsidised bus services. Funding should be limited to socially necessary and financially unviable public transport services only. Therefore, it is important that the NTA has information on which routes are potentially loss-making and which are potentially profitable. However, the Consultation Paper suggests that the NTA's decision on the size and location of bus routes on which it proposes to initiate competitive tendering in the Dublin bus services market is not informed by whether those routes are profitable or loss-making.
- 3.3 In our 2012 submission, the Competition Authority re-stated that "*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 Competition Authority appreciates that there are other issues which need to be taken into account when considering the size and location of routes on which the NTA proposes to initiate competitive tendering. However, without clear information on the financial status of the services covered by the current Public Contract with Dublin Bus, it is difficult to determine which are genuine PSO routes that should be retained within the Public Contract.
- 3.4 The European Commission state aid rules require that "*The parameters that serve as the basis for calculating compensation to the SGEI must be established in advance in an objective and transparent manner in order to ensure that they do not confer an economic advantage that could favour the recipient undertaking over competing undertakings.*"⁶ This would need to be addressed by the NTA in designing the tender competition(s).
- 3.5 The current Public Contract to Dublin Bus is awarded as a single grant for the provision of a network of services in the GDA. The subsidy is not attributed to specific routes or a specific time of day. Dublin Bus does not provide separated accounts for subsidised routes and profitable routes. Thus, under the current system there is implicit cross-subsidisation between profitable and loss-making routes. Dublin Bus may have more detailed accounting information on the profitability of its routes, however, the Consultation Paper suggests that the NTA does not yet have such information.

⁶ Communication from the Commission-European Union framework for state aid in the form of public service compensation (2011)

- 3.6 The Consultation Paper further suggests that Dublin Bus could participate in the competitive tendering process. Without a separated accounting system, it would be difficult to tell whether Dublin Bus has cross-subsidised the competitively tendered routes with subsidies from the Public Contract. This creates further uncertainty for private operators participating in the tender process. On this basis the NTA should consider excluding Dublin Bus from the tendering process. Dublin Bus could then act as supplier of last resort in the event that there are no suitable competitive bids.
- 3.7 In summary, in the absence of information on each route's profitability,
- the NTA could over-compensate service providers and would not create the correct efficiency driving incentives,
 - Dublin Bus could cross-subsidise competitively tendered routes with subventions intended for their direct award contract routes and create uncertainty for private operators participating in the tender, and
 - it is difficult for the NTA to assess how efficiently either type of route is being run and whether it is possible that competing operators could run the loss-making routes with a lower level of subsidy, or none at all.

Therefore, it is crucial that accounting separation is introduced now to address this information asymmetry. If this issue cannot be addressed in advance of the tendering process, Dublin Bus should perhaps be excluded from the tendering process and act as a supplier of last resort only.

Is 10% enough to generate effective competition?

- 3.8 The Public Consultation states that "*The Authority considers it is in the public interest to leave Dublin Bus with a scale of operation which remains efficient for the company's resources and overheads.*" It is not clear to the Competition Authority how the NTA has arrived at the figure of 90% of the current services, as the scale of operation that will remain efficient for Dublin Bus's resources and overheads. It is not clear either that this justification is consonant with the "general economic interest" test, as it suggests that the extent of the subsidised direct award contract should be tailored to Dublin Bus's existing operations, rather than the other way around.
- 3.9 A comparative analysis of subvention levels across Europe outlined by the Economic Analysis Report indicates that, when all State interventions are taken into account, the level of subvention to Dublin Bus is at the upper end of the range. However, the prices of annual tickets in European cities in 2012 shows that Dublin with €1416 is at the top of the range along with London €1246 and Oslo €914. This calls into question whether Dublin Bus is efficient for its resources and overheads with the current scale of operation. Maintaining the current scale of operation may not be the ultimate solution for enhancing Dublin Bus's operational efficiency.
- 3.10 Ensuring that the market places effective competitive pressure on the incumbent operator would limit the ability of Dublin Bus to extract monopoly rents and create incentives for it to increase its efficiency.

Effective competition would push Dublin Bus to be innovative and competitive. This would be beneficial to Dublin Bus in the long run and would better serve the public interest in both the short and longer term.

- 3.11 Even if it is true that Dublin Bus needs 90% of the Public Contract to retain its operational efficiency, without detailed information on the routes, it is not clear whether the 10% routes chosen by the NTA are enough to foster effective competition. Therefore, the NTA should consider opening more than 10% of the bus network to competition in 2016.

Will the routes chosen provide effective competition?

- 3.12 The routes which the NTA proposes for competitive tendering in the Consultation Paper are orbital routes which connect the city suburbs and local routes which operate in and around local centres in the suburbs and outer areas.
- 3.13 The Consultation Document outlines the rationale as being that *"the network in the outer areas was not addressed by Network Direct and has consequently not been reconfigured, so there is greater potential to gain efficiencies through opening the market."* The Competition Authority is surprised to learn that the NTA proposes to tender out routes which have **not** been addressed by the Network Direct project. The NTA envisages that opening the market for these routes could help to reconfigure them. However, it could also create difficulties in identifying appropriate markets for the initial competitive tender process. The Network Direct project provides the NTA with practical knowledge and information regarding the routes covered. It could be more effective to tender out those routes rather than routes on which the NTA has less information to inform the performance specifications of the contracts. Having practical knowledge of the relevant routes could increase the efficiency of the competitive tender and smooth the tendering process. It better empowers the NTA to drive the tendering process to achieve its goals.
- 3.14 The Competition Authority appreciates that the NTA considers that the risks relating to the reconfiguration of public transport services to complement the new cross city light rail route would be greater if radial and cross city bus services were included in a competitive tender package. However, we understand that the NTA and Dublin Bus completed the re-organisation of radial and cross-city routes in 2013 with reconfiguration for the new Luas Cross City light rail route in mind. Even if that is not the case, it should be possible to build a clause into the competitive tender contract such that the tendered routes could be subject to reconfiguration to complement the new Luas Cross City light rail route. In any case, as outlined in paragraph 2.10, it is not clear why the NTA would be at a disadvantage in dealing with a new entrant compared to dealing with Dublin Bus, as presumably the information from the Network Direct project would be available to both.
- 3.15 The Consultation Paper indicates that one of the purposes of tendering out the orbital routes is to allow the NTA to test market pricing and enable benchmarking. However, the Economic Analysis Report points out that these orbital routes have not kept pace with the development of those areas in recent years. It is likely that it would take time for operators (whether incumbent or new entrant) to improve the

efficiency of those services. Therefore, it is unclear whether the orbital routes provide an effective means to benchmark the sector rather than some radial and cross city services.

- 3.16 We understand that another concern in relation to tendering out radial and cross city bus services is the fact that these routes are strongly dependent on existing property held by the CIE group. The Technical Report on Contract Options states that "*The Authority has no statutory powers to ensure depot facilities of those buses purchased pre2012 would be available to new operator/s.*" However, the issue of access to key network facilities, such as depots, bus stations, needs to be addressed by the NTA *ex-ante* in the design of the competitive tendering process if there is to be any prospect of effective competition in the market for PSO bus services in the future.
- 3.17 In its 2012 submission, the Competition Authority states that "*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 process.*" A clear policy on access to bus network facilities would give confidence to potential entrants that their entry plans are not at risk due to difficulties in securing access to bus stations and enable third party operators to compete on a level playing field.
- 3.18 Although the NTA may not have the power to ensure access to depot facilities or those buses purchased pre 2012, CIE is a state-owned company. The NTA could seek Government support in reaching a solution to address this issue. For example, the UK Competition Commission recommended some measures to the Office of Fair Trading to reduce barriers to entry and expansion in the local bus services market in December 2011.⁷ One of those measures is the Local Bus Services Market Investigation (Access to Bus Stations) Order 2012.⁸ This Order requires local bus operators that manage bus stations to provide access to rival operators on fair, reasonable and non-discriminatory terms and to publish Conditions of Use, which contain, among other things, information about charges and the allocation of stands.⁹
- 3.19 In summary, decisions regarding the size and location of routes for competitive tendering should be informed by whether such routes are profitable or loss-making to ensure that the State can optimise the benefits to be accrued from the competitive tendering process. They should also be of a scale and type that facilitates effective competition to ensure they provide useful price comparison and benchmarking. For these reasons the Competition Authority urges the NTA to reconsider its decision not to open any radial and cross-city bus services to competitive tender.

⁷ UK Competition Commission, Local Bus Service Market Investigation. A Report on the supply of local bus services in the UK December 2011.

⁸An Order is one of the primary means by which remedies are given effect under the Enterprise Act, and its predecessor, the Fair Trading Act 1973.

⁹This Order applies to Great Britain excluding any Bus Station which is managed by Transport for London, and any relevant bus station to the extent to which it provides a local bus services within London.

4. COMPETITIVE TENDERING CONSIDERATIONS

- 4.1 The Competition Authority welcomes the NTA's detailed consideration of competitive tendering in its Technical Report on Contract Options. Many aspects of competitive tendering can be used to foster effective competition and achieve the NTA's social and economic objectives outlined in its non-statutory public consultation on future Public Bus Service Contracts in 2012. In our 2012 submission, the Competition Authority states that *"In designing the competitive tender, the NTA should make sure that competitive tendering neither limits the number of potential bidders nor the intensity with which operators compete for these tenders."*
- 4.2 It is important to design the tender process carefully to encourage competition, both in the short and long term, and achieve the desired outcomes. The UK Competition Commission Report on its Local Bus Services Market Investigation 2011 concludes that the way a local transport authority designs tenders and the limited number of potential bidders in some local areas could have adverse effects on competition. Therefore, simply introducing new operators into the sector should not be considered equivalent to introducing effective competition.

Eliminate potential barriers to entry

- 4.3 The way in which a tender competition is designed can help to eliminate deterrents or barriers to entry. In some cases, it could be difficult for private bus operators to link their services with other established services (rail, Luas) or get access to facilities. The NTA needs to ensure that any problems relating to access to car parks, station forecourts, bus stations, specific areas at the side of the road, that may raise with the incumbent operator are solved in advance. It is important that terms of access to those facilities and integrated ticketing are fair, reasonable, and non-discriminatory for all operators.
- 4.4 The Competition Authority agrees with the NTA's conclusion that *"The competition for services has to ensure equal treatment for all tenders and ensure that the incumbent has no advantage."* Equality of access to bus infrastructure is critical in the tendering process. It enables third party operators to compete on a level playing field and gives confidence to potential entrants that their entry plans are not at risk due to difficulties in securing access to bus stations. To facilitate effective competition, it should be clearly outlined in the tender process how those facilities can be accessed by potential operators and what the costs of using those facilities should be. This would eliminate uncertainty for potential bidders and reduce any potential information asymmetry between incumbent and new entrants.
- 4.5 The Competition Authority agrees with the NTA's conclusion that *"Public transport integration (ticketing, fares, passenger information, and network integration) will need to be included as a contractual requirement but it does not preclude competition"*. Ticketing integration is crucial to the effectiveness of the public transport system. The Competition Authority's 2012 submission states that *"the NTA may use competitive tendering to ensure an integrated transport system"*. Consumer uncertainty regarding tickets and prices for new operators within the transport network would undermine competition and ultimately the effectiveness of the public transport system.

Ensuring a properly integrated transport system – where the costs to new entrants are fair, reasonable and non-discriminatory - could therefore eliminate barriers to entry and allow entrants to compete efficiently with the incumbent operator.

Route bundles should be sized to encourage new operator participation

- 4.6 The Economic Analysis Report states that *"the specific bundles which are tendered should be selected so as to maximise the level of market interest and thereby increase the level of savings and enhanced customer service available."*
- 4.7 In our 2012 submission, the Competition Authority states that *"Bundled contracts usually allow some efficiency in operation. 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. In the early years of the introduction of competition, single route or small bundles of routes may be designed so that they only require a small number of vehicles to operate, thereby allowing small companies to compete. In contrast, to attract big international companies, the NTA might want to divide the network into few sub-networks geographically."*
- 4.8 The Economic Analysis Report states that the findings of the NTA's 2012 non-statutory consultation show that Irish operators typically want a smaller bundle of routes than international operators. Conversely, international companies tend to be interested in a larger bundle size compared to national operators. These industry responses are consistent with our 2012 submission. However, it is important that the sizes of the bundles offered are carefully designed to encourage effective competition, both in the short and long term, to achieve the desired outcomes of the competitive tendering process.

Contract Specification

- 4.9 The Competition Authority supports the NTA's proposal that "The Authority will maintain a fairly tight contractual specification of required service (routes, frequencies and so forth)". The Competition Authority 2012 submission states that *"Clear contracting terms and monitoring schemes for evaluating the performance delivered in exchange for public funds is vital during the process of competitive tendering"*. 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. Therefore, it is important that the NTA is active in identifying insufficient performance where it occurs, and applies effective sanctions. This is vital to secure the NTA's credibility and effectiveness of the contracts.
- 4.10 In summary, the NTA should make sure that competitive tendering neither limits the number of potential bidders, nor the intensity with which operators compete for these tenders.



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