



Submission to the Department of Transport, Tourism and Sport

Statement of Strategy 2015-2017

October 2014

S/14/06



The Competition Authority
An tÚdarás Iomaíochta

1. INTRODUCTION

- 1.1 The Competition Authority welcomes the opportunity to provide input into the drafting of the Department of Transport, Tourism and Sport's (the Department") revised *Statement of Strategy 2015-2017*.
- 1.2 The Department's mission statement is:

"To ensure that the transport, tourism and sport sectors make the greatest possible contribution to economic recovery, fiscal consolidation, job creation and social development."
- 1.3 We believe that competition can make a vital contribution towards the Department's mission statement. Competition in transport services can promote economic recovery and job creation by improving efficiency and innovation, by keeping prices, costs and Exchequer funding down. Most importantly, competition can help to provide transport services that consumers really want.
- 1.4 Over the past five years, the Authority has actively encouraged the Department to facilitate greater competition in transport sectors including bus passenger services, taxis and ports¹. Broadly, the Authority has called for greater reform of licensing and leasing arrangements to remove barriers to entry and place greater competitive pressure on incumbent service operators.
- 1.5 We have already seen the benefits that deregulation and competition in the airline industry brought to the Irish economy in terms of job creation, tourism, choice, and lower prices for consumers. While we have also seen the benefits of competition in other sectors including intercity bus transportation and taxis, reform has been slower with the result that the benefits of competition have not yet been maximised. This means that consumers are not currently being provided with the best transport services possible.
- 1.6 The Authority acknowledges the progress made regarding the reform of bus licensing legislation and the Department's on-going assistance in relation to our work in the ports sector. However, we believe that the Department and the National Transport Authority (NTA) should realign their core objectives towards providing transport services that are consumer-focused. Reforms that place greater competitive pressure on incumbents contribute enormously towards meeting this objective and should be clearly stated in the Department's revised *Statement of Strategy 2015-2017*. Moreover, the Department should identify output targets and set down performance indicators to ensure that the level of competition in transport services is continually being improved.
- 1.7 This submission focuses on what reforms we consider are required in bus passenger, taxi and the ports sectors so that the services on offer meet the needs of consumers, businesses and the economy, as these are areas in which the Authority has had substantive public engagement with the Department and/or the NTA.

¹ All Competition Authority submissions to the Department and the NTA are available to download from our website. Available from: www.tca.ie.

2. PORTS

Background

- 2.1 The Minister for Jobs, Enterprise and Innovation, Mr Richard Bruton TD asked the Competition Authority to carry out a study of competition in the ports sector as part of the *Action Plan for Jobs 2012*. The study was published in November 2013 and includes six recommendations². The main objective of the study was to examine whether competition in the Irish ports sector is working well for consumers and the economy.
- 2.2 The Department's *National Ports Policy* was published in March 2013. The main objective of the policy was "to facilitate a competitive and effective market for maritime transport services"³. This is consistent with the objectives of the Authority's study.
- 2.3 The Authority's study found that the characteristics of the Irish ports sector are such that competition between ports (i.e., inter-port competition) appears limited. This means that ensuring that competition within ports (i.e., intra-port competition) works well is especially important.
- 2.4 The study's key findings and recommendations are⁴:
- Existing leasing and licensing arrangements for Lo-Lo terminal operators and general stevedore services in Dublin Port appear to have the effect of restricting competition. These arrangements need to be amended to address their anti-competitive effects.
 - There is a lack of data collection and performance measures within the Irish ports sector. The Department should prioritise the collection and development of new data metrics and port performance measures.
- 2.5 The Department committed to considering and responding to the recommendations within six months of publication and delivered on this commitment. We welcome the Department's on-going assistance regarding the implementation of these recommendations.

Leasing and licensing arrangements

- 2.6 Regarding leasing and licensing arrangements:
- The Department's response to our recommendations accepts the principles of the Competition Authority recommendations. However, the Department views the ability to unilaterally alter the terms and conditions of existing leases and licences to be

² Competition Authority (2013), *Competition in the Irish Ports Sector*. Available from: www.tca.ie.

³ Department of Transport (2013), *National Ports Policy*. Available from: www.transport.ie.

⁴ Please refer to section 5 of the Competition Authority's study for a detailed description of the main recommendations. See footnote 2 for full reference.

constrained. Dublin Port Company (DPC) expressed a similar view in its *Franchise Policy* document⁵.

- The Department has indicated that legislative developments at EU level – namely the *Directive on the award of concession contracts* (2014/23/EU) and the proposed *Regulation establishing a framework on market access to port services and financial transparency of ports* (COM2013/296) – may address Competition Authority concerns regarding leasing and licensing arrangements.

2.7 While the Authority was broadly positive regarding the policy direction being proposed in DPC's *Franchise Policy Consultation*, we felt that DPC should give a clearer signal that it is resolute in its efforts to improve intra-port competition⁶. Also, while acknowledging legislative developments at EU level, it is unclear how effective this legislation will actually be in terms of addressing our concerns regarding leasing and licensing arrangements.

2.8 Consequently, the Authority recommends that the Department's *Statement of Strategy 2015-2017* should include a firm commitment to promote competition in the ports sector as per the *National Ports Policy* objectives. This will ensure that port services meet the needs of consumers, businesses and the economy. This can be achieved if the Department:

- Encourages port companies to be resolute in their efforts to improve intra-port competition;
- Commits to implementing proposed EU Directives and regulations that can in effect promote competition in Ireland.

Data collection and performance measures

2.9 Regarding data collection and performance measures:

- The Department's response to the Competition Authority's recommendation notes that the *National Ports Policy* commits to the development of a port performance management system by 2016.
- The response also notes that DPC has itself committed to introducing its own performance monitoring which it intends to publish annually.

2.10 While this is a step in the right direction, the Authority is concerned regarding the rate of progress in this area. The development of a comprehensive and independent port performance management system as envisaged by the Authority will require a significant engagement of time and resources in advance of the 2016 deadline. Moreover, we do not view DPC's performance monitoring proposals as being appropriate to implement this recommendation.

⁵ The purpose of the *Franchise Policy* is to develop appropriate policies and objectives regarding how Dublin Port's finite estate could be best utilised to cater for the expansion in port volumes in the years ahead. Source: DPC (2014), *Franchise Policy*. Available from: www.dublinport.ie.

⁶ Competition Authority (2014), *Submission to DPC Franchise Review Consultation Document*. Available from: www.tca.ie.

- 2.11 As for all transport sectors, the collection of accurate data metrics and performance is vital to reliably inform future ports policy, not just in relation to the level of competition, but also to identify the most effective port management and ownership models and where investment to improve port capacity and internal connectivity is needed most. This will also ensure that port services meet the needs of consumers, businesses and the economy.
- 2.12 The Authority suggests that the Department's *Statement of Strategy 2015-2017* include a firm commitment to progress the collection and data metrics in the ports sector with immediate effect. Such a commitment would again be consistent with broader Departmental objectives and those outlined in the *National Ports Policy*.

3. TAXIS

Background

- 3.1 The Competition Authority has for some time actively advocated for change in the taxi industry through written submissions⁷ and by representing the interests of the consumer on the Taxi Advisory Committee.
- 3.2 The Authority recognises the need to regulate for driver standards (i.e., qualitative regulations) to ensure service quality is of a sufficient standard. However, multiple individual qualitative regulations can combine to create quantitative barriers to entry by increasing the costs of new entrants, not only in absolute terms, but also in comparison to those already in the industry⁸.
- 3.3 Earlier this year, the Authority raised concerns regarding the introduction of regulations that copper-fastened provisions introduced in 2010 whereby all new entrants must drive a Wheelchair Accessible Vehicle (WAV)⁹. These vehicles are more expensive to purchase and drive compared to standard vehicles. The regulations also state that new entrants must drive a WAV that is less than six years old¹⁰. This increases the financial burden for new entrants and places them at a significant disadvantage compared to existing licence holders.
- 3.4 It is reasonable to expect limited new entry in the current economic environment, where prices are being discounted and the number of taxis has been falling. However, the introduction of the new rule means that when the economy revives and the demand for taxis increases there will be fewer taxis because of the higher cost of WAVs. This will limit the flexibility of the market to respond to changes in supply and demand leading to increased waiting times and less fare discounting. This is bad for consumers, and especially wheelchair users, who already experience considerable difficulty accessing taxi services since, even if a driver has a WAV, there is no incentive to use it to pick up wheelchair users rather than other customers.
- 3.5 The rule that new entrants must drive a WAV was intended to improve the availability of taxi services to people with disabilities. However, the Authority believes that the current policy is not working and there is no evidence or research to support the argument that such a restriction will increase the number of WAVs¹¹. Instead these regulations will in

⁷ All submissions to the Department and the National Transport Agency (NTA) are available to download from our website (www.tca.ie).

⁸ For example, while regulations on the maximum permissible age for SPSVs or vehicle branding may not in themselves raise serious competition concerns, the combination of these regulations with other qualitative regulations – namely the requirement since June 2010 that all new taxi and hackney entrants must drive a Wheelchair Accessible Vehicle (WAV) – will in effect create a quantitative barrier to entry.

⁹ Competition Authority (2014). *Submission to the NTA regarding a proposal to make regulations under the provisions of the Taxi Regulation Act 2013*. Submission available from: www.tca.ie.

¹⁰ In contrast, the maximum age for existing licence holders is between 10 and 15 years for standard vehicles, while the age requirements for WAVs that are already licensed is to be removed.

¹¹ The number of WAVs as a percentage of all small public service vehicle licences (i.e., taxis, hackneys and limousines) fell from 6% to 4% between June 2010 and December 2013. Source: NTA data.

effect create a permanent quantitative barrier to entry and at the same time being ineffective in terms of increasing WAV availability.

- 3.6 To improve the percentage of WAVs in the market, the Government should prioritise effective ways to match demand with supply - as per Action 18 and 19 of the Taxi Regulation Review which recommend the introduction of a single point of contact for ordering WAVs and a smartphone app that facilitates self-ordering¹². While the recent introduction of subsidies for the purchase of WAVs is a positive step, subsidies should be distributed so that WAV drivers are incentivised to provide taxi services to wheelchair users¹³. This is currently not the case, as there is no obligation or incentive for drivers in receipt of WAV subsidies to provide services to wheelchair users. With significant barriers to entry in place, this means that if the demand for taxis increases, subsidised WAV drivers are unlikely to focus on providing services to wheelchair users.

Putting the consumer first

- 3.7 The current regulations favour existing licence holders at the expense of future entrants. The level of consumer harm will increase as economic recovery takes hold and supply fails to keep pace with demand, resulting in a return to long queues and poor customer service.
- 3.8 The *Statement of Strategy 2015-2017* should encourage competition in the taxi sector and firmly place consumer/taxi users' interests at the heart of any future proposals to introduce or remove regulations in this sector.
- 3.9 The Competition Authority has previously highlighted the lack of any Regulatory Impact Assessment (RIA) and/or cost-benefit analysis to examine the impact of proposed regulations on consumers/taxi users. For example, regarding WAV regulation, there was no analysis presented comparing the cost of purchasing and operating WAVs versus standards taxis and the likely effect of the regulation on consumers/taxi users.
- 3.10 The *Statement of Strategy 2015-2017* should also include a commitment to include robust data analysis on the impact of any proposed regulations on consumers/taxi users.

¹² The Taxi Regulation Review is available online at:
<http://www.nationaltransport.ie/news/government-report-on-taxi-regulation-review/>

¹³ For example, taxi drivers could be paid extra for providing services to wheelchair users to compensate for the higher costs associated with purchasing and operating WAVs. This would be a more efficient and effective way of using government subsidies.

4. BUSES

Background

- 4.1 The Competition Authority made six submissions regarding competition in bus passenger services between 2010 and 2014¹⁴. To improve competition, the Authority recommended introducing competitive tendering for urban and inter-city bus services. There are significant benefits associated with competitive tendering. These include financial benefits to consumers through lower fares and/or to the Exchequer, improved quality of services and better incentives for bus services to integrate into the wider public transport system¹⁵.
- 4.2 Introducing greater competition first required a significant overhaul of the bus licensing regulations. In 2010, the Authority welcomed the reform of the legislation governing the licensing of bus passenger services and the creation of the National Transport Authority (NTA)¹⁶. This created a solid platform for the development of a vibrant and competitive public transport system that could facilitate competitive tendering.
- 4.3 However, in a submission to the NTA on the *Draft Guidelines for the Licensing of Public Bus Passenger Services*, the Authority raised concerns that references to competition in the Draft Guidelines tended to be negative and did not reflect the positive benefits which competition can bring to consumers, to taxpayers and to the economy as a whole¹⁷. Indeed, in a submission to the *Draft Transport Strategy 2011-2030*, the Authority recommended that new strategy statement should clearly state that greater competition for public transport services should be introduced¹⁸.

Putting the consumer first

- 4.4 While the Department has sought to introduce more competition, the rate of progress has been slow. In 2013, the NTA proposed that a new contract for the operation of all services covered by public contract, both inside and outside the Dublin Area, should be awarded directly to Dublin Bus and Bus Éireann at the end of 2014¹⁹. While it is proposed that 7 to 10% of the services covered by the current contract will be opened to competitive tendering in 2016, 90 to 93% will still be

¹⁴ All of these submissions can be found on the Competition Authority website at: www.tca.ie.

¹⁵ Competition Authority (2012), *Public consultation on 2014 public bus service contracts*. Submission to the National Transport Agency. S/12/004. July 2012. Available at: www.tca.ie.

¹⁶ This legislative reform came about through the enactment of the Public Transport Regulation Act 2009.

¹⁷ Competition Authority (2010), *Draft guidelines for the licensing of public bus passenger services*. Submission to the National transport Agency. S/10/003. Available at: www.tca.ie.

¹⁸ The Competition Authority recommended: (a) that all public bus transport services will have equal opportunity to compete will have equal opportunity to compete to provide the subsidised Public Service Obligation (PSO) when contracts with Dublin Bus and Bus Éireann expire and (b) any proposed new public bus transport services will be subject to open competition. Source: Competition Authority (2011), *Greater Dublin Area Draft Transport Strategy 2011-2030*. Submission to the National Transport Agency. S/11/004. Available at: www.tca.ie.

¹⁹ Competition Authority (2013), *Proposal to directly award a public bus service contract to Dublin Bus/Bus Éireann*. Submission to the National Transport Agency. S/13/05 – S/13/06. Available at: www.tca.ie.

covered by a directly awarded contract for a period of at least another five years until 30th November 2019²⁰.

- 4.5 The NTA has the legislative powers to introduce greater competition for bus passenger services. However, the effectiveness of this legislation is dependent on the NTA's attitude towards competition and its willingness to licence new entrants that can place greater competitive pressure on the incumbents. So far, the NTA appears reluctant to facilitate new entrants which means consumers are not currently being provided with the best bus transport service possible while the Exchequer continues to heavily subsidise Dublin Bus and Bus Éireann.
- 4.6 Moreover, it would appear that neither Dublin Bus nor Bus Éireann provide separated accounts for subsidised Public Service Obligation (PSO) and profitable routes. Thus, under the current system there is implicit cross-subsidisation between profitable and loss-making routes. Dublin Bus and Bus Éireann may have more detailed accounting information on the profitability of its routes. However, the information provided in an NTA consultation paper suggests that the NTA does not yet have this information. This makes it difficult to determine what routes are genuine PSO routes in order to initiate an effective competitive tendering process²¹.
- 4.7 The *Statement of Strategy 2015-2017* should include a clear commitment to increase the level of competition within the bus sector and identify specific annual targets to increase the market share of private operators providing bus passenger services.

ENDS

²⁰ Competition Authority (2013), *Proposal to directly award a public bus service contract to Dublin Bus/Bus Éireann*. Submission to the National Transport Agency. S/13/05 – S/13/06.

²¹ Ibid.

