

LOCAL BUS SERVICES MARKET INVESTIGATION

Updated Issues Statement

Background

1. We published our Statement of Issues in relation to the Local Bus Services market investigation on 4 February 2010.¹ In that statement we set out the issues which appeared to us at that early stage of the investigation to be relevant to our decision as to whether any feature, or combination of features, of the market prevents, restricts or distorts competition. To focus the analysis, we identified a number of hypotheses (or theories of harm) that described how a possible market characteristic (or characteristics) could give rise to an adverse effect on competition (AEC).
2. The purpose of this document is to update the issues statement, to indicate:
 - (a) the evidence that has been received;
 - (b) the analysis that we have undertaken to date and the further analysis that we are proposing; and
 - (c) given the analysis we have undertaken, the issues on which we are likely to focus as our investigation moves towards provisional findings, as well as the issues which might be of less relevance.
3. We have not yet drawn any conclusion on any aspect of whether or not there is an AEC in this market.

Progress of the investigation

4. We have gathered a large quantity of information about local bus markets and bus operations from UK bus operators and a wide range of other interested parties in England, Wales and Scotland.² We have received views and submissions from operators, Councils and local transport authorities (LTAs), consumers, trade associations, passenger representatives, Government and regulators, among others. We have held hearings with a wide variety of parties, including many held in connection with detailed case studies exploring market conditions and competition issues in a selection of local areas.
5. This evidence is being carefully studied and various pieces of analysis are under way or near completion, including:
 - (a) a review of policies and regulation relating to local bus services;

¹On 7 January 2010 the Office of Fair Trading (OFT) referred local bus services to the Competition Commission (CC) for investigation. The reference was made under section 131 of the Enterprise Act 2002 (the Act). In accordance with section 133(2) and (3)(a) of the Act, the OFT required the CC to confine its investigation to the effects of features of such market or markets for local bus services as exist in connection with the supply of such services in the UK excluding Northern Ireland and London. Our terms of reference define 'local bus services' as all bus services, both commercial and tendered, which fall within the definition of a local service in [section 2 of the Transport Act 1985](#).

²These include LTAs, Councils, the Department for Transport (DfT) and the devolved Governments, regulators including Traffic Commissioners, VOSA, the OFT and others.

- (b) an analysis of the demand for local bus services (based on data from the National Travel Survey);
 - (c) an analysis of operator cost structures;
 - (d) an analysis of operator profitability;
 - (e) an analysis of how fares and operator margins are influenced by direct and potential competition (based on revenue, cost and operational data submitted by the following six operators: Arriva, First Group, Go-Ahead, National Express, Stagecoach and Transdev);
 - (f) an analysis of operators' approach to ticketing;
 - (g) an analysis of how operators analyse and change their offerings;
 - (h) an analysis of entry and exit;
 - (i) an analysis of competition for tendered services (including econometric analysis of the determinants of outcomes and bidder competition), based on questionnaire responses received from 90 LTAs and extensive bid data supplied by 75 LTAs; and
 - (j) a series of case studies exploring market conditions and competition issues in a selection of local areas.
6. Our analysis is continuing and we will shortly start publishing working papers detailing the analysis that has been undertaken. Summaries of hearings with third parties and submissions are being published on our website. We will shortly be holding hearings with Arriva, First Group, Go-Ahead, National Express and Stagecoach.³
 7. A customer survey has been undertaken, although practical difficulties with the fieldwork have resulted in some delays. We anticipate that the results from the survey will be published for comment in November 2010.
 8. We now set out our current thinking on the theories of harm identified in the issues statement. Before we consider each individual theory, we discuss three areas that underpin our analysis: market definition; possible high level indicators of a lack of competition; and an appreciation of whether or not bus markets are contestable through the threat of entry or potential competition.

Market definition

9. Market definition is not an end in itself. We use market definition as a framework for assessing the extent to which substitution to alternative offerings constrains the ability of bus operators to raise prices, reduce frequency and quality, or otherwise worsen their offer. This will enable us to understand whether the offering when bus operators compete directly is substantially different from that when an operator faces no direct competition from a rival bus operator. We recognize that, in practice, the analysis of market definition will overlap significantly with the assessment of competition in the market. Our preliminary observations about market definition based on the evidence we have seen so far are as follows:

³Where appropriate, these companies are collectively referred to as the multi-regional operators.

- (a) Demand for local bus services appears to be essentially local. The size of the geographic areas over which competition takes place depends on local circumstances (including, for example, demographics, geography, and access to alternative modes of transport), and areas may overlap to varying extents according to those circumstances.
- (b) In the short run, the demand for local bus services seems relatively unresponsive to changes in price. We intend to explore further the relationship between demand and price, as well as other elements of the offering (frequency, quality, etc), through our demand analysis (based on National Travel Survey data) and customer research.
- (c) In the longer term, the operation of local bus services may be subject to constraints from other modes of transport. We will consider whether other modes of transport, including private cars, impose a significant constraint on the offerings of bus operators; where we find this to be the case, we will consider whether this is simply because there is no effective competition from rival bus operators in the particular area. We will also consider whether the constraint from other modes of transport represents as effective a constraint as competition from other bus operators.
- (d) Initial indications are that the presence of rival bus operators frequently triggers responses from operators, suggesting that bus-bus competition has an effect above and beyond the constraint from alternative modes of transport. This is an area that we intend to explore further, in particular by carrying out additional empirical tests.
- (e) To the extent that there is potential for supply-side substitution, the routes which can reasonably be served from a depot are confined to a local area because of the costs involved in getting buses to and from their route (see paragraphs 14 to 17).
- (f) We are examining how the particular characteristics of a local area affect the offerings of bus operators.
- (g) The market for tendered services is likely to be determined by the services put out to tender and the ability of different operators to bid for those contracts. We recognize that there may be some interaction between tendered and commercial services. Winning tenders may form a means of entering or expanding into new areas and there have been examples in recent years of both large and small operators building commercial operations, having first gained a foothold in a local area by winning tendered services.

High-level indicators of the degree of competition

- 10. We are examining high-level indicators of the degree of competition in the market alongside conditions specific to each theory of harm.
- 11. We have considered a range of measures of concentration, in order to examine market structure:
 - (a) We have gathered information on depot location and areas of operation of bus operators, describing the nature of the supply of bus services in particular geographic areas, and mapping all routes using Traveline data sources.

- (b) Whether we think of areas at a regional, LTA or a smaller level, we find that some areas are served by multiple operators, and others by very few. The number of operator depots in an area also varies.
 - (c) In some areas several of the multi-regional operators are present; in others only one of the multi-regional operators is present; and some areas (eg Nottingham) are not served by any of the multi-regional operators.
 - (d) There appear to be few instances where two operators operate identical routes and therefore face head-to-head competition on an entire route. Where this does occur, it tends to be on routes with high levels of demand. It is more common to find that routes overlap for a proportion of their length (for example, where they converge on corridor roads, or on roads leading to a town centre) but branch off to serve different destinations.
 - (e) We see large numbers of small and specialist operators existing in the tendered services market. However, our quantitative analysis also suggests that there are fewer bids for tendered services in areas where particular operators (including certain of the multi-regional operators) have a high share of all services.
12. Working papers are being prepared separately on our approach to the analysis of profitability, including an evaluation of published reports on bus operator profitability. Our assessment of operator profitability is under development.
 13. We have collected the necessary data to enable us to carry out a price-concentration analysis to look at the relationship between, on the one hand, prices and indicators of service quality and, on the other, the presence of rival bus operators on the route or in the locality (ie showing the effect on pricing and service of head-to-head and potential competition). This analysis is still under development.

Potential competition/contestability

14. It has been put to us that, even if there is no head-to-head competition on a route, bus operators are constrained by the threat of potential competition⁴ from nearby rivals, or by new entry. If a local bus market were truly contestable (ie it satisfies the conditions necessary for a perfectly contestable market⁵), then (all else being equal) we would expect the same outcomes in markets served by a single bus operator as in those served by multiple operators. Were we to find this, it would negate the harm envisaged under the first three theories of harm discussed below.
15. We are considering whether the threat of entry or expansion by a nearby operator (in terms of reconfiguring routes or diverting resources), or by a more distant operator (by setting up a new operation), ensures that an incumbent operator cannot price above competitive levels, offer deficient service or leave gaps in its network. To this end, we will consider the costs involved in service reconfiguration, including any costs involved in running 'dead miles' on buses to enter a neighbouring area, and the costs involved in establishing a separate operation. We note that by virtue of the fact that operators of networks often set prices at network, rather than route, level,

⁴We use the term 'potential competition' to describe a possible constraint where operators are not in head-to-head competition but are located sufficiently close together that they might be able to introduce new routes or reconfigure existing services to take advantage of profitable opportunities. We will explore whether potential competition can be an effective constraint on existing operators in an area. In contrast to entry, the constraint from potential competition would not require any significant additional investment, as existing depots, and possibly vehicles and staff, could be used.

⁵See Baumol, Panzar and Willig (1982) *Contestable markets and the theory of industry structure*, Harcourt Brace Jovanovich (New York).

benchmarking activities of a competitor's prices will often tend to be across networks. This suggests that other operators' prices may sometimes exert a constraint beyond those routes that experience direct head-to-head competition.

16. However, while local bus services may be constrained by the threat of entry to an extent, our preliminary view is that the bus market is unlikely to be strictly contestable:
 - (a) We have gathered and analysed evidence on entry and expansion in local markets. Although we have observed a number of entry events by a variety of operators (eg the entry of Stagecoach in north Devon, Rotala in Bristol, Bath and Worcester, Premiere and Yourbus in Nottingham and Norfolk Green in King's Lynn), these tend to have been on a relatively small scale in recent years. Entry on a substantial scale appears to have been by means of acquisition.
 - (b) Our preliminary view is that entry seems likely to involve at least an element of sunk costs.
 - (c) The incumbent appears able to respond rapidly to entry because of the need for the entrant to pre-register services and the ability of the incumbent to cut fares temporarily, and (with prior notice to the Traffic Commissioner for non-frequent services) increase services or revise timings.
17. We will test the strength and extent of the constraint from potential competition through our price-concentration analysis (ie whether the proximity of rivals appears to affect the pricing and service decisions of operators).

Theories of harm

18. We now address the theories of harm that were raised in the issues statement. To the extent that our initial findings suggest that a theory of harm may be supported, we will also need to consider whether these apply throughout the entire reference area or whether they are only applicable in certain areas or under certain circumstances.

Commercial services

Theory of harm 1: Intrinsic features limit head-to-head competition and barriers to entry mean that incumbents face limited constraints from potential competition

19. The first theory of harm is that limited head-to-head competition between bus operators may result from intrinsic features of the market or markets (as opposed to features that might arise from the activities of particular operators or regulation). In addition, there might be significant barriers to entry/expansion such that incumbents face limited constraints from potential competition (in other words, the market is not contestable).
20. A number of factors appear to be relevant to this theory of harm:
 - (a) It has been put to us that there is too little demand on many routes (they are too 'thin') to support more than one operator. We are exploring the characteristics of a route that might mean that it can only support one operator, ie whether any routes are natural monopolies.
 - (b) Significant economies of scale might suggest that a single operator is better placed to provide services than two or more competing operators. We have not

yet seen conclusive evidence on the extent to which economies of scale are a feature of local bus markets. It has been suggested that there are some cost advantages in increasing the size of depots up to some limit, while larger groups also benefit from purchasing economies. We note, however, that smaller operators do not have to replicate the operating model of larger operators, and may benefit from lower overall labour costs, different vehicles, restricted operating hours etc. We will be exploring this further in our analysis of operators' cost information.

- (c) It has been put to us that customer brand loyalty to particular bus operators is low, that customers are not very responsive to relative fare levels, but are responsive to waiting times. Our consumer research will explore this further. If this is the case, there might be a reduced incentive for operators to compete directly on fares or quality.
- (d) To the extent that this is true, head-to-head competition seems most likely to focus on service frequency and timing. However, the ability and incentive for operators to compete by 'leapfrogging' (providing services ahead of a rival service to catch customers), and to engage in other practices to seek to exclude rivals, might suggest that stable head-to-head competition will not always be achieved. The evidence that we have examined so far on this issue is mixed, as operators sometimes seem to adopt more even scheduling patterns and try to differentiate themselves from competitors by other means (eg quality or price). We note that separate routes often converge on corridors, and that inter-urban services will sometimes overlap with intra-urban services, and we will consider whether competition on such overlaps is different in any way from competition which might apply if rival operators overlapped substantially or entirely on a route.
- (e) Where operators offer products which are relatively cheaper than single tickets, eg Travelcard-type products, customers may pre-commit to a particular operator, making it difficult for a new entrant to gain access to the market and reducing any threat of potential entry. In addition, where customers pre-commit to a ticket (such as a season ticket), alternative operators are unlikely to be able to attract that customer. In most cases, the evidence that we have seen to date suggests that the availability of multi-operator tickets does not counter this effect, as they are often priced too high to attract significant demand. We have noted that in some areas commercial decisions relating to multi-operator tickets may be largely determined by incumbent operators, by virtue of their market shares and the governance structures of the organizations set up to manage multi-operator ticketing schemes. This may have the consequence of reducing the relative attractiveness of multi-operator tickets so reducing the ability of smaller operators to compete.
- (f) Larger operators (across a route or network) may have advantages in publicizing and marketing their services and tickets, making it harder to compete effectively against them. We are still gathering evidence on the extent to which consumers value networks but the evidence received to date suggests that these advantages may not be significant.
- (g) There seem to be non-trivial sunk costs associated with entry on a significant scale such that a potential entrant will have to expect a return in excess of those costs in order to enter a given area.
- (h) The ability and willingness of an incumbent to respond to entry (see discussion of exclusionary conduct below) can reduce the competitive constraint from potential competition if the incumbent knows that this could help to deter entry.

- (i) Difficulty in gaining access to bus stations, bus stops and congested roads may prevent competition in particular situations.
- (j) We have not yet received conclusive evidence on the extent to which difficulties in gaining access to depot facilities may create a barrier to entry. While we have received some complaints about difficulties in accessing suitable depot facilities, this view was not widely held and we have not been told of cases where operators were unable to obtain any depot facilities in an area.

Theory of harm 2: Exclusionary conduct

21. This theory is that unilateral exclusionary conduct on the part of individual firms raises strategic barriers to entry or otherwise affects competition.⁶ By exclusionary conduct, we mean the provision of a retail offer (ie combination of price and frequencies) or other behaviour that is only commercially rational if it raises the barriers to entry of rival operators or excludes a rival operator. Such tactics might be deployed if an operator believes it has greater resources or more commitment to a particular market than its rivals.
22. Aspects of exclusionary conduct might include cutting fares below sustainable levels or increasing frequency above sustainable levels, or which would adversely affect profits unless it is expected that a rival will exit as a consequence. Control of bus stations in certain areas may also be relevant, where they may be seen as essential facilities (eg it is possible that where operators manage bus stations they may favour their own services above those of other operators). The assessment of whether a particular behaviour is exclusionary will depend on its purpose and the way in which it is deployed.
23. Although we have heard of many allegations of exclusionary conduct, and there are examples where it appears that operators have engaged in exclusionary conduct to eliminate, deter or limit rivals, the number of recent incidents we have been told about to date is not large. We are planning to explore further the information we have received surrounding market exit to identify any possible examples of exclusionary conduct and are also exploring this issue through our case studies.
24. Based on the evidence received to date, we observe that:
 - (a) Some operators, particularly smaller operators, report the perception of a threat of an exclusionary reaction to entry. In so far as this restricts their willingness to respond to market opportunities, this reduces the threat that they might pose through entry or potential competition.
 - (b) The potential for exclusionary conduct means that operators with the necessary resources and commitment may be able to avoid head-to-head competition if they believe that it would be profitable in the long run to eliminate a competitor and potential rivals are aware of this.
 - (c) The evidence that we have examined suggests that it may be that not all cases of exclusionary conduct will be picked up by the existing regulatory regime. The differing responsibilities of the OFT (under the Competition Act 1998) and the

⁶Whether or not aspects of conduct can be considered to be exclusionary will depend on their effect on competition, and for these purposes does not turn on whether or not they would amount to a breach of Chapter II of the Competition Act 1998 or Article 102 of the Treaty on the Functioning of the European Union.

Traffic Commissioners (under the Transport Act 1985) for regulating the behaviour of local bus operators may leave some gaps in this area.

Theory of harm 3: Geographic market segregation

25. This theory considers whether operators choose to keep to their own areas of operation and do not encroach on other operators' areas, because of the reaction this could provoke in generating a sustained or more widespread reaction from incumbents. This could result in stable geographic market segregation, as a result of each operator's own rational strategic decisions, and does not depend on any conscious or deliberate market-sharing behaviour.
26. As discussed above in paragraph 11, the evidence that we have seen to date suggests that there are substantial areas where the larger bus operators do not overlap with the other large operators; however, there are also identifiable areas of overlap and some examples of entry and expansion into the operating areas of other large bus companies.
27. To supplement our analysis of this theory, we propose to use the extensive market data that we have collected to analyse if and how entry decisions are affected by the identity of the incumbent in each area.

Theory of harm 4: Impact of the regulatory environment

28. There is considerable policy and regulatory involvement in the bus industry to pursue social and environmental objectives, encouraging bus use and offering more services. Some schemes are applied nationally (eg BSOG) but others are implemented to a varying extent by particular LTAs (eg bus prioritization measures).
29. We are considering whether any aspect of bus industry regulation, or the implementation of transport policy, including the operation of the concessionary fares regime, has the effect of preventing, restricting or distorting competition. While we recognize the benefits of such measures, we will consider whether they might have any adverse effects on competition that should be acknowledged, such as distorting behaviours or creating a barrier to entry (eg statutory partnerships excluding potential rivals), or operators reaching qualifying agreements that might have the consequence of lessening competition between them.
30. Our analysis so far of this theory suggests that:
 - (a) The concessionary scheme might change the way operators compete, dampening some of the incentive to compete on price and resulting in fares that may be higher than would otherwise be the case. It may possibly have the potential to distort competition where the concessionary arrangements for different operators vary in an area, although no evidence to demonstrate any impact of this effect has been identified.
 - (b) Smaller operators might be hampered by the need to keep adequate financial reserves to meet the Traffic Commissioners' financial standing requirement; because of the way it is applied, this requirement does not seem to impact on the larger operators to the same extent.
 - (c) The requirement to give notice to the Traffic Commissioner of changes to services may inhibit competition, as it allows incumbent operators to plan their responses to entry, thus potentially deterring competitive changes in the industry.

- (d) We understand that the Traffic Commissioners' powers are designed to ensure safe and orderly operation of bus services where public safety is paramount, but also require operators to conform to acceptable standards and to operate the services they register. Our preliminary thinking is that this should be accepted as part of the intrinsic nature of the business and that we should not be concerned by the restrictions this implies on the market.
- (e) Voluntary partnerships could restrict the ways in which operators are able to compete (eg if they require a restriction on the number of services operated) while statutory quality partnerships have the potential to exclude some competition. We shall therefore consider whether these partnerships could restrict or distort competition. In so doing, we are mindful that these partnership schemes will already have been subject to a competition test devised under the transport legislation.
- (f) Although no quality contracts currently exist, some are being actively considered and we will examine their potential to change the nature of competition to one in which it is only feasible to compete for the market as a whole, and any implications of such a change.

Tendered services

Preamble

31. There are many types of services that fall within this category, including: evening and Sunday services for routes which are normally served commercially; entire services in areas where demand is insufficient for the service to be commercially viable, eg sparsely populated areas; services to and from park & ride facilities; services designed to meet the needs of scholars; and demand-responsive services.⁷
32. Our theories of harm relating to tendered services rely on the hypothesis that a smaller number of firms bidding for contracts results in a lower degree of rivalry, and thus potentially poorer outcomes for customers.
33. Several parties have argued that because operators bid for tenders without knowledge of who else would be bidding or at what price, no operator would be able to enjoy any market power where alternative bidders might also participate. Therefore it was argued that blind auctions were likely to lead to competitive outcomes regardless of the number of bidders. We note, however, that, as a matter of economic theory, a number of extreme conditions need to be in place for an auction market to work in the way described by these parties.⁸ In particular, competition needs to be 'lumpy' in that each contest is large in relation to the supplier's total sales in the period and competition needs to 'begin afresh' for each contract. We do not believe that these two conditions hold for the supply of tendered bus services. Furthermore, the necessary condition of easy entry by new suppliers appears not to hold, at least for certain types of tender.

⁷Services characterized by flexible routing and scheduling of small/medium vehicles operating in shared-ride mode between pick-up and drop-off locations according to passengers' needs.

⁸See P Klempner, CC occasional paper: *Bidding Markets*, 2005: www.competition-commission.org.uk/our_role/analysis/bidding_markets.pdf.

Empirical studies also show that auction markets tend not to deliver fully competitive outcomes in practice. See, for example, Gupta S (2002) 'Competition and Collusion in Government Procurement Auction Market', *Atlantic Economic Journal* 30, and McAfee R P and McMillan J (1987) 'Auctions and Bidding', *Journal of Economic Literature*, XXV, p729.

34. Our analysis of bidding data suggests that price increases experienced when tender contracts are renewed tend to be lower when more bidders are involved in the current tender even after taking account of a variety of other factors that may have an impact on this price change. This evidence to date therefore supports the theory that a lower number of bidders reduces competitive pressures on pricing.
35. Our analysis of information provided by LTAs showed great variability in the numbers of bids for contracts with there being very few bids for certain types of contracts and in certain areas:
 - (a) The responses to our questionnaires suggested that there were on average fewer bids in Scotland and some other areas.
 - (b) Our quantitative analysis of bid data suggests that there are fewer bidders for demand-responsive services, and park & ride services.
 - (c) Tenders relating to part of the timetable or part of a route tend to attract fewer bidders.

Theory of harm 5: Tender design

36. We are considering whether the way in which tenders are designed may diminish competition for those contracts. Our quantitative analysis and evidence received from operators suggest that this may be the case. For example:
 - (a) Minimum subsidy contracts, under which the operator bears the risk of the contract, appear to attract on average a lower number of bidders than minimum cost contracts.
 - (b) Points-scoring systems to evaluate tenders appear to reduce the likelihood of small operators bidding (although they may also reduce the likelihood that the incumbent wins).
 - (c) Operators expressed concern about the overly demanding tender application processes or a lack of suitable supporting information being available.
 - (d) On the other hand, the evidence that we have received from some LTAs indicates that they take measures to encourage further bids.
37. The evidence we have received on the effect of contract bundling is mixed:
 - (a) 47 per cent of small operators who responded to our survey told us that bundled contracts discouraged them from bidding at least to some extent.
 - (b) Other operators told us that relatively small tenders may not be sufficient to encourage new entry in an area, and so preferred substantial bundles of tenders to be offered.
 - (c) Our quantitative analysis suggests that the effect of bundling on the number of firms bidding for a contract is very small.
38. We have looked at the context in which the LTAs are acting including, in particular, taking into account considerations other than securing effective competition for tenders.

39. Although we have some concerns over the use of de minimis contracts, which necessarily remove the potential to realize any gains that might be obtained from competition, we acknowledge that they have the advantage of saving on tender costs for the LTAs and operators and speed up the process. At this stage we have not been able to assess whether they are used inappropriately in practice due to the difficulties in obtaining relevant systematic information on this topic. We note that the DfT has recently consulted on extending the de minimis provision in England to the levels permissible under EU regulations, and that this could result in a much higher number of contracts being agreed without competitive tender. We note that the DfT will be carrying out an impact analysis on the possible changes to the de minimis provision.

Theory of harm 6: Barriers to entry into tendered services

40. We have considered whether there are particular barriers to entry into tendered services. The qualitative evidence we have received to date indicates that barriers to entry into tendered services in general are relatively low, although they might be higher for particular types of contract:
- (a) Operators told us that this market was more attractive than the commercial market as there was less risk.
 - (b) The majority (59 per cent) of LTAs have seen examples of entry to the market, although this was lower in Scotland and Wales.
 - (c) Few specific concerns have been raised by operators about barriers to entry, although some of the smaller operators told us that they did not have the necessary resources to operate higher-frequency services.
41. Our quantitative analysis shows that there may be advantages arising both from incumbency and, to a lesser degree, from economies of scale or scope. We will be exploring further what may be the underlying causes of this apparent incumbency advantage and will carry out further analysis on economies of scale or scope.

Theory of harm 7: Bidding strategies

42. We have seen little evidence that the larger operators were engaging in bidding strategies designed to reduce the likelihood of competition between them in tendered services. Generally operators (and LTAs) provided rational explanations of operators' bidding decisions. We did not find any systematic pattern of the large operators choosing not to bid against each other.
43. Therefore, unless new evidence is presented in support of this theory of harm, we do not envisage pursuing this issue further.

Theory of harm 8: Exclusionary conduct

44. We have not identified many examples of possible exclusionary conduct in the tendered market. One possible practice which might be considered exclusionary is the practice of registering a commercial service on the same route as a tendered service where an operator has not won the tender. 16 per cent of the LTAs we surveyed reported this as an issue.

45. We recognize that there are various possible explanations for such tactics other than seeking to exclude the new tender holder. Unless new evidence is presented in support of this theory of harm, we do not envisage pursuing this issue further.

Theory of harm 9: Gaming strategies

46. This theory relates to the potential for gaming by operators in order to gain greater financial support from LTAs if the operators perceive there to be little competitive threat. For example, operators of commercial services might withdraw commercial services where they are unlikely to face close competitors and then face an incumbency advantage if the LTA decides to support the service.
47. Relatively little concern of any gaming of the system by operators was expressed by LTAs. Some told us that they were alert to the possibility of gaming but had little evidence of it in practice. Some mentioned that gaming used to be a problem but it was now not as prevalent and others thought that though it only took place on a small scale.
48. Operators told us that although LTAs may decide to offer a contract to operate a de-registered route, this was not guaranteed to be a successful strategy by the operator and risked disturbing a wider relationship with the LTA. There was also a substantial risk in many cases that the operator would not win the retendered route. This was supported by our quantitative analysis.
49. It therefore seems likely that gaming would only be rational where operators expected there to be very few alternative bidders. Our preliminary finding is therefore that gaming is not itself a cause of a lack of competition, and unless new evidence is presented in support of this theory of harm, we do not intend to explore this issue further.