

Deregulation of the Buses

Research Paper 95/57

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This Research Paper describes the background to the deregulation of the bus services in Great Britain, excluding London which is covered by separate legislation. It summarises some of the areas of concern and the powers of the various authorities to deal with those concerns. The Transport Committee is currently studying the consequences of bus deregulation.

The selected statistics in Appendix 1 have been provided by Adrian Crompton, Social and General Statistics Section.

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- 1 Statistics [provided by Adrian Crompton Social and General Statistics]**
- 2 Extract from Transport Committee's 4th report, 1992-93 - HC 623**

Summary

By 1980, bus services were declining, costs rising and subsidies increasing. The Government decided that the way to deal with the problem was to deregulate the industry and allow services to be subject to competition. Licensing on the basis of quantity was seen as a hindrance to competition and therefore as an obstacle to the provision of the bus services the community needed. Restrictions on the number of services were abolished in October 1986. It was argued that this would lead to a more efficient service, thus reducing costs. It would benefit the consumer and in turn lead to increased usage. It was recognised that some services would continue to need subsidy but big changes were proposed to the way this was to operate. Legislation was introduced through the *Transport Acts 1980 and 1985*. The former dealt with express coach services and the latter with the traditional bus service. At the same time proposals were also put forward to change the structure of the bus industry through privatisation. The National Bus Company reorganised its services into separate companies and these were all sold to the private sector or to management and/or employee buy-outs by April 1988. The first local authority bus service was sold in June the same year and the sales are continuing, if rather slowly. Although the deregulation provisions of the 1985 Act applied to Scotland the privatisation provisions did not. The Scottish Bus Group was privatised by the *Transport (Scotland) Act 1989*. Privatisation was seen to be a means of achieving a more committed management and better access to private capital.

The impact of deregulation seems to have been neither as disastrous as the opponents to the legislation feared or as successful as its proponents had predicted. It would seem to have failed to deliver the Government's stated objective of halting the decline in the bus industry but has reduced the costs of providing the services and the government subsidy. Much of the debate these days seems to be concentrated on the regulation of the industry and relatively little on the ownership. Major concern is expressed about the continuing decline in bus usage, fares, the lack of information available to the consumer and the lack of investment by many companies. The behaviour of some of the companies also gives rise to considerable concern and the powers of bodies such as the Traffic Commissioners and the Office of Fair Trading to control them seem to be either misunderstood, insufficient or inappropriate.

I Introduction

About eighty per cent of all journeys by public transport are made by bus and yet these bus journeys only account for seven per cent of all journeys made. This compares with the seventy six per cent of journeys being made by car. Although traditionally associated with journey to work, buses are predominantly used for other purposes outside large city centres, notably travel to and from education, and for shopping and personal business. Many of the users are concentrated in the younger age categories (associated with journeys to education) and other groups (associated with use of concessionary travel by pensioners). Buses have only a small market penetration among the working-age adult sector, which largely uses car and rail.

Public awareness about the environmental and pollution effects of increased traffic congestion has meant that attention has become concentrated on how one can dissuade the private car user and encourage the use of public transport. The "stick" of limiting access to city centres or charging for road use through road pricing or increased road taxes, needs to be used in conjunction with the "carrot" of better, higher quality, public transport which people find enjoyable and convenient to use. The recent report of the Royal Commission on Environmental Pollution recommended that a target should be set for increasing public transport use from 12% at present to 30% by the year 2020¹.

The general public have given little indication that they are prepared to use buses more. Traffic planners are increasingly taking a more positive role and introducing park and ride schemes, new bus lanes and bus priority systems to try to persuade travellers of the advantages of bus travel. However, the basic components of an efficient service have to be provided by the individual operators and planners may have little influence over these. It may also be that the advantages of one's own car are so great that no exhortation, however good may be the alternative means of transport provided, will convince a driver to give it up voluntarily.

¹ Royal Commission on Environmental Pollution 18th Report *Transport and the Environmental*, October 1994 - Cm 2674

II The Legislation

A. The 1985 Legislation

The regulation of passenger-carrying motor vehicles was introduced by the *Road Traffic Act 1930*. This Act marked the beginning of comprehensive state intervention in the bus industry by its introduction of both quality and quantity regulation. The Act remained virtually unchanged, despite two government reviews in 1953 and 1961 and its general effects remained intact until 1980.

The *Road Traffic Act 1930* established a system of road vehicle licensing which was controlled by regional Traffic Commissioners. This covered quality regulation - of the operators, vehicles and drivers - and quantity regulation of the number and types of services operated. It provided for the award of licences to operators to run a service defined by a route and timetable and by accepted convention with a specified fare scale. Once granted, a licence in effect conferred local monopoly rights on the operator particularly where local services in urban areas were concerned. Such services were developed on a comprehensive basis and provided a co-ordinated network, parts of which were usually dependent on cross subsidy. Ownership of the local services was predominantly public, lying in 1985 in the hands of municipal undertakings, the Passenger Transport Executives, London Transport and the subsidiaries of the National Bus Company or Scottish Bus Group.

Following the *Transport Act 1968*, and the *Local Government Act* of 1972 and of 1973, local authorities played an increasing role in sustaining public transport through revenue support payments, in line with their statutory obligations to provide co-ordinated public transport to meet the needs of their populations. Bus services in large parts of rural Britain, together with many commuter-based rail and bus networks in the conurbations, continued in existence only because of the subsidy paid by local authorities and the urban Passenger Transport Authorities. Wide variations existed in the level of support reflecting factors such as the degree of rurality, bus operating costs, and councils' fares policies. Thus, the continuing pattern of supply of public transport in Britain from the 1960s and, more particularly, from the mid-1970s, was strongly influenced by national and local government support, bus services being subsidised from Rate Support Grants in Scotland and Transport Supplementary Grants in England and Wales, and rail services by Public Service Obligation payments from central government and from Passenger Transport Authorities in their conurbations.

But whilst the structure of the bus industry had changed little over the 50 years up to 1980, the market in which it operated had altered dramatically with the rise of the car. Patronage of the buses halved between the 1960s and 1980s. Concomitant with this the bus industry was finding that operating costs, fares and levels of subsidy were on the increase. There was little disagreement on the need for:

- change to halt the continuing decline in bus services;

- significant improvements in efficiency and productivity, and reductions in operating costs and fares;
- a transport subsidy system under which the amount for each service was clear.

It was against this background that the Government moved towards deregulation, that is reducing the regulations concerning the organization of the bus industry.

During the early 1980s the Government, committed to reductions in public expenditure and an increased role for commercial objectives, developed policies to reduce subsidies to buses, to reduce the role of local government in planning and controlling bus systems and to increase competition between bus companies. The policy instruments effecting these changes were the *Transport Act 1980* and the *Transport Act 1985*.

Transport Act 1980

The *Transport Act 1980* lifted regulations on long distance bus services (for journeys of over 30 miles) for which road service licences were no longer required. The Act also allowed county councils to set up "trial areas" in which road service licences were no longer required and operators could run services on any routes they wished. Three areas, Devon, Hereford and Worcester, and Norfolk took the opportunity to have trial areas. The Transport and Road Research Laboratory reported on the trial areas in 1984². The main results in Hereford and Worcester were the appearance of a substantial number of new operators and a 38% reduction in revenue support paid by the County Council. There were dramatic reductions in fares and increases in services; but there were also problems caused by overcrowding by buses in the town centre and with the operation of the concessionary fare scheme. The TRRL report concluded that "At this stage the situation appears to be unstable and the final outcome is uncertain". Nevertheless, all three trial areas had shown reductions in revenue support, as well as lower fares and better levels of service while deregulation had provided opportunities for operators to experiment with new services.

Transport Act 1985

Proposals to deregulate local bus services were contained in the White Paper *Buses*³ and a subsequent series of more detailed consultation papers. They were brought into effect by the *Transport Act 1985*. This Act abolished road service licensing in Great Britain from October 1986 and replaced it with a system of registration; removed the duties of local authorities to co-ordinate public passenger transport in their area; and empowered them to subsidise public passenger transport services on condition that they went out to open tender. It placed on the

² TRRL Report LR 1131 *Deregulation of bus services in the trial areas 1981-84* 1984

³ *Buses* July 1984 - Cmnd 9300

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National Bus Company a duty to draw up and implement proposals for the restructuring of its operations to compete fairly on deregulation and for its transfer to the public sector within three years. The changes made by the Act can be summarised as follows:

- it abolished road service licensing in Great Britain, (though not in London) and replaced it with a system of registration
- it strengthened quality controls through operator licensing. In parallel the Department of Transport was to increase the number of Vehicle Inspectors to cope with increases in operator numbers
- it removed the existing duties of local authorities to co-ordinate public passenger transport in their area
- it empowered local authorities to subsidise public passenger transport services, conditional upon going out to open tender, and empowered them to promote the availability of public transport within their area
- it placed a duty on the National Bus Company to draw up and implement proposals (subject to approval by the Secretary of State) for the restructuring of its operations and for their transfer to the private sector within three years
- it required Passenger Transport Executives and District Councils to transfer their bus undertakings to Companies Act companies
- it required local transport and education authorities to cooperate with each other to secure the best value for money
- it preserved local authorities' existing powers to establish concessionary fare schemes for elderly and disabled people and clarified and brought together existing powers for children's concessions
- it entitled any operator who so wished to participate in a concessionary fares scheme on the same reimbursement basis, and also empowered local authorities to require operators to participate in any such schemes if they considered it necessary
- it provided a transitional rural grant of up to £20m in the first year to be paid directly to operators
- it provided rural innovation grants of over £1m a year for special projects, to be administered in England by the Development Commission

The Act did not deal with buses in London which were the responsibility of London Regional Transport and for which comparable changes were not proposed "for the time being".

There was considerable opposition to the legislation at the time, particularly from those directly involved in the industry. Even amongst those who advocated greater competition, deregulation was viewed with some apprehension. The Transport Select Committee proposed a very different form of competition, based on competing for a local government tender.⁴ The government's view could be summed up by Nicholas Ridley when he said: "The introduction of competition into local bus services will put the emphasis on the customer rather than the operator. It will bring the opportunity for lower fares, new services, more passengers and better value for money for the ratepayer and the taxpayer ... The present system of regulation, which has been with us for 50 years, has stifled the flexible and innovative approach necessary if the bus industry is to meet the travel needs of the 1980s"⁵. Certainly the 1985 Act resulted in dramatic changes to both the operating environment and the pattern of ownership in the bus industry.

⁴ Transport Select Committee *Buses*; February 1985 - Cmnd 9300

⁵ Department of Transport press notice 31.1.85

B. Deregulation

The White Paper pointed out in the opening chapter that from 1930 to 1980 local bus services were subject to a "highly restrictive" licensing system. Operators had to demonstrate a need for their services in order to avoid wasteful competition and to keep the number of services to a minimum in the interests of public safety. It argued that half a century of regulation had led to excessively high cost, inadequate innovation and a structure of internal cross-subsidy which was both inequitable (as it meant that the poor subsidised the better-off) and inefficient (as it meant the resources were devoted to the maintenance of services for which there was little current demand or potential):

"Within this system the belief grew up that the way to provide comprehensive public transport is to protect the existing operators so that their profits from popular routes can cross-subsidise services for which there is less demand. The result of these worthy intentions has been to maintain a pattern of services developed for a different age and to neglect the best parts of the market. There has been too little incentive to develop markets, to woo the customer. Operators have been hampered by a philosophy that is defensive and inward-looking. For too long they have been placed in the highly discouraging position of having to argue with the traffic commissioners about every new service which might affect some part of the existing network."

The *Transport Act 1985* (Part 1) brought road service licensing to an end. After the Act was implemented any operator holding an operator's licence was free to operate services where and when they wished provided that the Traffic Commissioners were assured that the route was fit for bus operators. Anyone with an Operator's Licence was allowed to operate a bus service wherever they wished, subject only to safety and road traffic provisions. Operators had to give six weeks notice of the introduction, the termination, or any changes to these services to the Traffic Area Office.

Passenger Transport Executives and County Councils were given powers to secure, using subsidy, socially necessary services which were not provided by the commercial market. Subsidies were only to be given for contracts for defined services which were to be advertised by competitive tender. Controls over these services in terms of fare levels, type of bus etc., could be maintained. Operators had the right to participate in concessionary fare schemes and the PTA had powers to compel participation in the schemes. Operators were to be reimbursed for the net financial loss incurred by participating in the scheme.

Prior to deregulation almost all companies suffered from the shortfall between revenue from fares and their operating costs. To retain the network of services and maintain fares at acceptable levels, local authorities were asked to make good the losses by subsidy payments. The level of support which the councils were willing to provide varied considerably from area to area. Because of the extent of cross-subsidy between routes, it was often difficult to assess the value for money obtained. Under the terms of the 1985 Act the concept of network support was abolished. A bus company could register any service which it chose to operate

on a commercial, i.e. unsupported, basis. If there was deemed to be any social needs not met by commercial services then the local authority could invite competitive tenders for additional routes or journeys on a case by case basis.

C. Privatisation

The 1985 Act also laid the foundations for a major restructuring of the industry. Deregulation was intended to increase competition, through an increase in the number of competitors and by reducing the possibilities of entry deterring behaviour. Privatisation, per se, is not necessarily going to increase competition. In this case the White Paper that preceded the Transport Act 1985 envisaged that the various types of public ownership that then existed in the local bus sector would be gradually dismantled and eventually replaced by private companies. The fundamental idea underpinning such a change of ownership was that industry efficiency and the general efficiency of the economy would be improved. A strong argument for ownership change would be that privatisation is required to ensure that a competitive environment can be maintained, and through this that consumer wants can be satisfied.

There are a number of reasons that public companies may not satisfy consumer wants as well as private companies. First, public companies may not in practice bear the full cost of not satisfying consumer wants: there seems to be no notion of bankruptcy in the public sector and therefore the incentive to satisfy consumers is lessened. However, this is not strictly a function of the ownership structure but a reflection of government attitude towards public ownership. Second, public companies have suffered from political interference and the privatised companies should be better able to respond to consumer wants because they should be less prone to this problem. If, however, the poor performance of public companies is attributed to political interference, a commitment to interfere less is a more obvious policy option than privatisation although it should be recognised that politicians may find the distancing afforded by privatisation essential. Finally, it is a common argument that, in practice, consumers are supplied with goods or services by public companies at less than their market value, implying that the goods or services are being subsidised by taxes or government borrowing. Private companies will also have readier access to the private capital market. So privatisation is intended to reduce the possibility of political interference in the running of the industry, to introduce capital market incentives to efficiency, and to reduce the scope for anti-competitive behaviour. A remaining objective of privatisation is, of course, the creation of a one-off benefit to the PSBR.

More particularly in the case of the National Bus Company, the government's desire to privatise may have been influenced by the experiences of deregulation in the Trial Areas. In the Trial Area that included the town of Hereford, there was intense competition between small private operators and a subsidiary, Midland Red, of the publicly owned company. Midland Red had recourse to resources from those parts of its network **not** subject to competition and therefore perhaps competed unfairly. It is also a possibility that a public company's greater access to public resources may enable it to sustain periods of competition. Hence, in this context, privatisation may be thought necessary to distance operators from the subsidy giving body as well as correcting for potential capital market imperfections in terms of access to resources. Evidence from the other Trial Areas may have been influential too. In these essentially rural areas, very little change took place at all and hence a greater competitive profile, through privatisation, may have been thought to be required to realise the potential gains offered by deregulation.

The intention of the government was to maximise the potential for local competition within the industry. In the ten years before 1985 the bus industry was dominated by public sector companies. In the six English metropolitan counties and Greater Glasgow the vast majority of urban bus services were planned, funded and operated by Passenger Transport Executives. A number of other cities and towns had, by historical precedent, municipal bus companies under the control of the relevant district council in England and Wales, or the regional council in Scotland. Most of the remaining urban services and a high proportion of inter-urban and rural routes were operated by subsidiaries of the State owned National Bus Company in England and Wales, and by the Scottish Bus Group subsidiaries north of the border.

1. National Bus Company

Part III of the Act required the sale of the National Bus Company subsidiaries to the private sector. The NBC was required to submit to the Secretary of State a programme for the disposal of its operations and to complete the agreed programme by January 1989. Under Section 48(5) of the 1985 Act, the Secretary of State could give directions to the company and he directed that each of its local bus operating subsidiaries should be sold individually. The disposal programme was approved on 19 May 1986. The programme provided that where basically comparable bids were received from management or employee groups and from third parties, NBC would give preference to the management or employee group, assuming the difference was not more than 5 per cent. The privatisation of the NBC bus operations was completed on 22 April 1988 with the sale of London Country (North East) to Parkdale Holdings plc and Mr. Alan Stephenson, a bus operator. Details of sales of the other companies were listed in a PQ⁶. Forty of the companies were bought by management or employee teams and many of the sales included provision for employee share schemes or profit-sharing schemes. Victoria Coach Station Ltd was the only subsidiary not privatised. This was kept in the public sector by being sold to London Regional Transport.

Transport Minister, David Mitchell approved the increase in competition⁷:

"separate sales have also achieved their objective of promoting competition in the bus industry. There are already numerous examples of ex-NBC subsidiaries competing with each other to provide better services for bus passengers up and down the country. Privatisation has thus reinforced and enhanced the success of our policy of bus deregulation".

A guidance note explaining how competition law applied to the bus industry was issued by the Department of Transport in August 1986. Bus operators were now liable to the law on restrictive practices and monopolies. On 3 November 1988, the Director General warned bus

⁶ PQ HC Deb 18 April 1988 cc357-360w

⁷ PQ HC Deb 30 March 1988 c556w

companies about their possible anti-competitive agreements⁸. He also started two separate investigations into South Yorkshire Transport and West Yorkshire Roadcar Company about anti-competitive practices⁹. The Monopolies and Mergers Commission was also examining the Bristol and Northern Ireland bus companies. Since then bus companies have been examined by both bodies on a number of occasions. This aspect is considered further in section IV.

The other point made by Mr. Mitchell in the PQ of 30 March 1988 was that "separate sales have proved good for proceeds". Individual sale prices have not been disclosed for commercial reasons but on 25 January 1989, Mr. Channon announced that the gross proceeds of the NBC privatisation amounted to £323 million. This resulted in a net surplus to the Government of £89 million after all debts and privatisation expenses had been accounted for¹⁰.

The Public Accounts Committee considered the arrangements for and the outcome of the sale and was critical of the Department's conduct of the sale of the individual companies as it felt that they had not accurately forecast their value¹¹.

2. Local Authority Bus Companies

The status of bus operations controlled by the local authorities was changed by the requirement to establish commercial companies under Part IV of the 1985 Act. The government would like to see all local authority bus companies voluntarily sold into the private sector. Section 75 of the Act allows for local authorities, should they so choose, to dispose of their bus undertakings subject to the Secretary of State's approval. In a press notice, Mr. Portillo, then Minister of State for Transport outlined some of the points the Government would look at in deciding whether to approve a proposed sale¹²:

- 1) LAs were free to sell either by competitive tender or by single tender to the company's employees and/or managers.
- 2) LAs should think hard about competitive tendering. This could be in the best interests of the ratepayers, the company itself and its employees.

⁸ OFT press notice 3 November 1988

⁹ OFT press notice 22 June 1988

¹⁰ PQ HC Deb 25 January 1989 c573w

¹¹ PAC 9th report *Sale of the National Bus Company*; 18 March 1991 - HC 119

¹² Department of Transport press notice 70, 20 February 1989

- 3) If the LAs were to proceed by single tender, the Government would need to be reassured that the price was not out of line with what would have been achieved on the open market.
- 4) The Government would not look sympathetically at applications for sale of only part of a company's shareholding.

Portsmouth City Council was the first municipal bus company to sell its bus operation. The sale to Southampton City Bus Ltd. and the employees of Portsmouth City Transport Ltd. was agreed 1 June 1988. Since then the policy has altered in certain respects following the PAC's criticism of the government over the sale of Rover Group PLC to British Aerospace PLC¹³. In its report, the PAC recommended inter alia that, "in all future sales of public assets .. anything other than full and open competition should be the exception". The Government, in consequence now require that local authority bus companies must be offered on open tender. However discounts of up to 5% are allowed in respect of local authority management employee buy-outs and the Secretary of State will agree to the exclusion of certain bidders if a local monopoly would result. Following the Autumn Statement 1992, local authorities who sold their bus companies before the end of 1993 would be able to use all the proceeds of the sale for capital projects instead of the 50% allowed previously and which applied again after 1 January 1994¹⁴. In March this year, Dr. Mawhinney announced that from 5 April, for one year, the set-aside rate for receipts from the sale of bus companies should be reduced to 25%, so allowing local authorities to keep more of the money¹⁵. The situation at present is that 28 companies have been sold, 6 have ceased trading and 20 remain in local authority ownership. Details are summarised below:

In October 1986 as part of bus deregulation under the Transport Act 1985, 53 local authority owned bus companies were set up in England, Wales and Scotland after the Transport Act 1985 came into operation. The splitting of Greater Manchester Buses Ltd in December 1993 added the extra company. The present position is:				
	Start	Sold	Ceased trading	Remaining
England	42	22	4	16
New company	1	1	0	0
Wales	7	2	2	3
Scotland	4	3	0	1
TOTAL	54	28	6	20

Source: Department of Transport, November 1994

¹³ PAC November 1991 - HC 51

¹⁴ PQ HC Deb. 2.7.93 c638w

¹⁵ PQ HC Deb 3.3.95 c 732w

On 16 February 1989, Mr. Portillo said "The Government are encouraging local authorities to sell their bus companies and does not rule out the possibility of seeking powers to require them to do so"¹⁶. And more recently, Mr. Freeman said "Measures to require the sale of local authority bus companies will be introduced when a suitable legislative opportunity occurs"¹⁷. However with the collapse of Darlington Transport Co Ltd, the government is less likely to continue to press for action in this area as purchasers become more wary.

3. Scottish Bus Group

In Scotland the position was slightly different as the Scottish Bus Group operated the buses and coaches. As in England, long distance journeys had been deregulated by the Transport Act 1980 and local bus services had been deregulated in October 1986 by the Transport Act 1985. However, whereas the 1985 Act placed on the NBC a duty to draw up plans for its privatisation, a similar duty was not placed on the SBG. It was not until 1988 that Malcolm Rifkind, then Secretary of State for Scotland, announced he would privatise the company. The *Transport (Scotland) Act 1989* restructured the SBG into 10 separate independent bus companies before being privatised. Guidance was given by the Secretary by State for Scotland on the disposal programme¹⁸ and the first subsidiary, Lowland Scottish, was sold to its management - employee buy-out team in August 1990. The sales were completed by October 1991 and yielded some £90 million for the Exchequer compared with an earlier expectation of £103 million. The sale was considered by the National Audit Office in 1993¹⁹ and the Public Accounts Committee in 1994²⁰. The PAC were critical that the costs of the sale had increased so much and that a considerable amount was spent on work not subject to competitive tender.

¹⁶ PQ HC Deb 16.2.89 c.187w

¹⁷ PQ HC Deb 19.4.94 c.438w

¹⁸ Scottish Office *Scottish Bus Groups Disposal Programme* - February 1990

¹⁹ National Audit Office *Sale of the Scottish Bus Group* 23 July 1993 - HC 884

²⁰ Committee of Public Accounts 21st report *Sale of the Scottish Bus Group* 21 April 1994 - HC 97

D. Changes to the Legislation

In March 1993, the Department of Transport circulated a consultation paper on local bus services outside London²¹. While deregulation had brought some clear advantages, particularly through the reduction in costs and in local authority subsidies, concerns had been expressed over:

- timetables changing so frequently that passengers find it difficult to obtain up-to-date information;
- the short period of notice required for changes in services causes instability and discourages potential users;
- the bunching of services by competing operators on busy routes leads to congestion in city centres;
- no right of appeal for companies excluded from travelcard schemes run by other operators.

Following the consultation exercise, Roger Freeman ruled out major changes to the legislation but announced a package of minor rule changes²². There was to be further consultation on the powers of the Traffic Commissioners to use their powers to control congestion.

The Traffic Commissioners have powers under section 7 of the 1985 Act to place traffic regulation conditions on the licences of bus operators to regulate buses when there is a danger to the public of severe traffic congestion. These powers have enabled them to regulate the routes, stopping places and when and for how long vehicles may stop at such stopping places. In a recent appeal case some doubt was thrown on the use of these powers to control the number of vehicles and clarification seemed advisable. The Minister therefore decided a new regulation would be introduced to make it clear that traffic commissioners when determining traffic regulation conditions might use their powers to regulate the number of buses used in providing a service and to control the use of duplicate buses. New regulations were laid before Christmas and came into effect on 1 February 1995 to²³:

- a) Make clear that traffic commissioners have powers, under s.7 of the 1985 Transport Act, to use traffic regulation conditions to control the number of buses used in providing a service.

²¹ Consultation paper on the operation of local bus services outside London Department of Transport, 24 March 1993

²² Department of Transport press notice 455, 16.11.93

²³ Department of Transport press notice 264, 19.7.94

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- b) Restrict the use of duplicate buses to circumstances where operators have reasonable grounds for expecting their vehicles will have insufficient capacity to cope with demand.

III The Effects of Deregulation

Deregulation has helped to reduce costs but the other benefits of increased competition remain elusive. The TRL reviewed the operation of the industry after the first five years²⁴. It found that while the threat of competition appeared to have acted as an incentive to bus companies to reduce operating costs and improve services, only a small minority of bus services had been affected by actual on-the-road competition. The more remarkable cases attracted considerable publicity but, since they were atypical, may have produced a somewhat distorted impression of competition in general.

In 1993 the Transport Committee considered the government's proposals for the deregulation of buses in London and made a particular point of asking witnesses about the effects of deregulation on buses outside London. A comprehensive analysis of the effects of bus deregulation was carried out by Dr. Goodwin at the Committee's request and printed as Appendix 1 of their report²⁵. The evidence showed substantial changes in the pattern and delivery of bus services since the implementation of the 1985 Act. The most important of these are summarised as (para. 13):

- an increase in the total number of bus routes run;
- an increase in the real level of fares;
- a fall in operating costs;
- a fall in the number of passengers.
- a fall in public subsidy.

The picture varied considerably in different areas: the greatest increases in services have occurred in some inner and central urban areas at busy times whereas reductions have been in the less well-used suburbs, weekend and evening services. There was broad consistency in the statistical evidence submitted to the Committee by the various interested parties, but there were significant differences in the interpretation of the figures. In particular, there was no consensus about which of the principal effects observed are due directly to deregulation and which are the result of other factors. The evidence was summarised in tabular form and is reproduced in Appendix 2.

In their evidence, the Government emphasised the success of deregulation and identified the

²⁴ Report 353 1992

²⁵ Transport Committee 4th report *The Government's Proposals for the Deregulation of Buses in London*, 14 July 1993- HC 623

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following benefits to the industry²⁶:

- bus mileage increased by 20 per cent outside London between 1985-86 and 1991-92;
- 84 per cent of mileage is now run on a commercial basis;
- subsidies have been halved in real terms;
- innovations, such as the use of smaller buses, have been introduced, providing fast and efficient services, connecting new areas to the network.

The Committee, however, was concerned about reductions in financial support for bus transport, the fare rises and service instability.

Two years later, the Committee is again studying the bus industry and is considering the consequences of bus deregulation outside London. The emphasis of the debate now is less on privatisation than the effects of deregulation. There seems to be no desire on the part of the local authorities to own the companies again, but there is serious concern about some aspects of their operation. It must be recognised, however, that the degree of disquiet does depend to some extent on where one lives. There seems to be less concern at the effects of deregulation in, say Oxford or Bristol, than there is in Sheffield or Warrington.

The topics of concern can be summarised as follows:

Subsidies

Public subsidies for bus services, in the form of concessionary fares reimbursement, fuel duty rebate, payments for secured services and other grants, currently amount to almost £1 billion per annum. But the subsidy is falling: for example, payments for secured services outside London have fallen by 55% between 1985/86 and 1993/94. About 85% of the services are provided without subsidy, although it is difficult to be precise. For example, in Manchester 15% of the bus mileage is subsidised, but probably 80% of services have some section of subsidised service in them. Some less obvious costs to the local authorities may be increasing, such as the cost of providing customer information.

Operating Costs and Investment

Costs per vehicle km have been reduced. Many restrictive practices have disappeared and the numbers employed have decreased. Reduced costs in some areas may also have come about from a reduction in wages in real terms and through lack of investment in new vehicles. In some cases reduced costs have meant fewer services at expensive times, such as in the evenings or on Sundays. Bus operators in the metropolitan areas have trimmed their

²⁶ Ibid, Evidence p. 250

operating costs by rather more than in the shire areas. However the decrease in passengers has meant that although the cost per km has been reduced there is little change in the real cost per passenger km.

Initially new investment was low. The pattern now is that investment in new or better vehicles only occurs on established routes where the operator has some stability. Where there is most competition, quality becomes less important as the competition tends to depend on price. Certainly the statistics show that 35% of all buses are now over 12 years old compared to 18% in 1985. The figures are particularly striking for the larger buses.

The large companies do seem to find more money for investments in new buses. FirstBus and Stagecoach have both invested in new buses. They also seem to have the resources for a more strategic view of the industry. Badgerline, now part of FirstBus, has examined the potential of light rail systems and other technological developments, while Stagecoach has carried out centrally maintained experiments with network development, vehicle design and fare levels.

Passenger Miles

Since 1985/86, annual bus patronage has been steadily declining at a rate of 3% a year. By 1993/94, total bus passenger journeys outside London had fallen by 27%. The decline has been particularly acute in the metropolitan areas and yet in London, where a different system has been introduced, there has been very little decline. This fall coincides with an increase in car ownership but it is not clear whether increased car use was a contributory factor to the decrease in bus use or whether discontent with the buses led to increased car use.

Vehicle Miles

Since 1985/86, local bus miles have increased by 24%. However this takes no account of occupancy. If two buses leave within five minutes of each other, there may be twice as many miles but there is not any increased benefit to the passenger. One double decker may be replaced by three small buses and the number of seats remains the same while the number of miles triples. Buses will be contributing to traffic congestion while not taking any more passengers out of their cars.

Fares and Tickets

Fares generally are up 17% in real terms, although there individual exceptions, such as Oxford for example.

Tickets usable on all buses often disappear under competition as it is hard to divide up the revenue. In some areas multi-operator and multi-mode tickets have been introduced and are popular with passengers. Operators may participate in such schemes provided they do not restrict their ability to compete by doing so. However many operators refuse to participate, perhaps because they want to continue in a cash economy, perhaps because of the costs of

investing in the technology, perhaps because frequent, short journeys are more profitable for them.

Information

One of the main criticisms expressed about deregulation is that it has made it more difficult for passengers to obtain information on bus services, given the number of different operators providing the services. It is clearly in each operator's interest to provide information on its own services, in that it is likely to help in attracting and retaining passengers. But operators are unlikely to wish to co-operate with each other in providing information on all their services, any more than do competitors in other markets, although it should be mentioned that co-operation between operators on timetables is **not** an agreement needing to be registered under the Restrictive Practices Act.

Local authorities have powers to produce information covering all operators' services, and many do so, but if they decide not to, then actual and prospective passengers must seek information from individual operators. It is often rather difficult to do in practice as timetables change frequently. Proposals have been put forward that any changes should be made by all operators on fixed dates, say once a quarter, but this has been ruled out by the Government. There are some informal arrangements which are acceptable under the Restrictive Practices legislation.

There is little hard evidence on the extent to which the provision of information (or the lack of it) affects bus patronage. The Department of Transport therefore commissioned research into the types of information which passengers find most valuable, and the effects on patronage of variations in information provision. It now has the preliminary results and they will be considered by the Bus Working Group, a group of representatives of the Department and the local authorities, chaired by the Minister of State, Steven Norris.

Publicity is important, not just for the convenience of the passenger but also because more people will use a service they know of. This makes it more likely an operator can run a commercially viable service and less need for it to be a tendered, socially necessary, service.

Rural Areas

As a consequence of the 1985 Act, block grants of subsidies by local authorities to bus operators ceased, and have been replaced by payments under contract awarded by competitive tender, generally in respect of individual services. Early studies of the effects of bus deregulation under the *Transport Act 1985* indicated that rural bus services had been maintained at pre-deregulation levels, despite predictions from some operators that this would prove impossible²⁷. Nevertheless, there was concern that with the phasing out of the Rural Bus Grant and increases in prices for subsidised services as bus operators became more

²⁷ TRRL Report RR 161 *Bus Deregulation in Great Britain, a review of the first year, 1988*

familiar with competitive market conditions, local authorities would be driven to abandon many of the more lightly used services.

A further report by the TRL in 1993 looked at four sample areas, Northumberland, Shropshire, Hampshire and Cambridgeshire²⁸. Nationally, there was estimated to be a decline of some 11 per cent in the number of passenger journeys by local bus in England and this was assumed also to be so in rural areas. Despite this, the level of bus services (measured in bus hours) had increased in all the areas except Cambridgeshire where there had been a slight reduction. The changes were not, however, distributed uniformly over rural areas. There was a tendency for services to improve in major rural settlements and to decline in more sparsely populated areas. To some extent these changes are the result of LAs now being able to target resources more accurately in areas with greater needs. In all four counties, the overall costs of subsidising rural bus networks had fallen.

Predatory Behaviour

There have been many stories of operators running buses a minute or two ahead of their competitors in order to squash any rivals; fares have been cut temporarily to price rivals out of the market; staff have been poached from rival companies; even the occasional bump by rival drivers. A quarter of all complaints made to the Office of Fair trading since 1986 have related to the bus industry. The Monopolies and Mergers Commission has conducted 14 investigations into anti-competitive practices and acquisitions as well as two monopoly references. This aspect is considered in the next section.

Conclusion

There is little agreement about the long term effects of the 1985 legislation. Critics point to an asset base diminished by property sales since privatisation and windfall gains from sales; a decreasing passenger use and dissatisfaction from those who have no choice but to use the buses. Others can see emerging a new stable structure of profitable companies with large sources of city finance to invest in new vehicles, improve quality and seek to attract more passengers. This may well enable the industry to fulfil its emerging role in combating urban traffic congestion. Some regulation seems to be central to the management of the industry, but different views exist as to whether the existing institutions provide sufficient backing, whether only minor changes are needed to fine tune the system or whether radical action is needed to ensure a better industry.

IV Competition and Regulation

In 1985, 75% of bus turnover was in the hands of the public sector. In 1995, about 5% was held by the 20 municipal companies which are the only operations still in the public sector. The Department of Transport say there are 1,800 bus operators drawing the fuel duty rebate but despite this figure, the large number of units set up after 1985 have been quickly consolidated into a smaller number of large players. Three groups are currently quoted on the stock exchange - Stagecoach, FirstBus (a merger of Badgerline and GRT), and the Go-Ahead Group. The private company, British Bus, is probably third in size, ahead of the Go-Ahead Group, and West Midlands Travel has recently announced it has been acquired by National Express.

To some extent mergers and eventual flotation may be inevitable. It is more difficult for private companies to raise money either to repay debt or fund acquisitions and a company may find itself starved of capital with which to grow and compete. A stock market flotation enables a company to discharge its debts and make acquisitions, and allows management and employees to sell their shares if they want to. But it is an expensive option and not recommended for companies with a profit of less than £2m a year.²⁹ A trade sale on the other hand realises cash for the business and gets access to the borrowing facilities of a much larger group more quickly and more easily than a flotation. Declining passenger numbers mean that acquisitions may be the easiest route to meaningful profits growth.

It is one of the problems of the increasing concentration in ownership that although the quality of bus provision is often higher where there is not excessive competition, a reduction in the number of operators may lead to a fall in the numbers able and willing to tender for local authority contracts. At present competition in this market for local authority contracts to operate supported services continues to exist, with a large number of small, local operations continuing to keep tender prices low.

A situation does seem to be developing where a few very large private groups control the majority of the bus industry. Some of the remaining single companies have been threatened by the competitive strength of the large groups and some recent cases, for example in Darlington and Lancaster, have been widely reported in the press and have been referred to the regulatory authorities. The Government remains committed to the promotion of competition in the provision of bus services and the Office of Fair Trading promotes the view that competition is in the best interests of the consumer, and the public interest. But there has been criticism about such predatory behaviour and that the regulatory authorities either do not have the powers to control the situation or are not using them.

²⁹ Janet Cohen, director of Charterhouse in *Bus Industry Monitor* June 1994

A. The Traffic Commissioners

The *Transport Act 1985* provided for the deregulation of bus services outside London and allows any qualified operator an unrestricted right to provide local bus services on a commercial basis. Part 1 of the Act abolished Road Service licensing and introduced instead a new system whereby operators offering local services (i.e those carrying passengers less than fifteen miles) were simply required to register the services they intended to operate with the Traffic Commissioner for their area. Six weeks' notice is all that is required to introduce or change services. The Traffic Commissioners are prohibited from taking into consideration the number of operators on a particular route when registering another service on that route. There is therefore no limit to the number of operators who can run a service on a particular route. The highway authority can make representations to the TC about a particular route on the grounds of **severe traffic congestion and perceived danger to road users** but not on the basis of unfair competition.

Section 6 of the Act and the *Public Service Vehicles (Registration of Local Services) Regulations 1986*³⁰ set out the requirements governing registration. As has been mentioned, the regulations were amended earlier this year to introduce restrictions on the use of duplicate vehicles³¹. There was evidence that duplicate vehicles were being used as a competitive device to interfere with the legitimately registered services of competing operators. The Department proposed that Regulation 9(2)(g) of the regulations covering the registration of local services should be amended so that duplicate buses might be run only when the vehicles normally providing the service had insufficient capacity to cope with passenger demand. It was also proposed that duplicate buses should arrive and leave at the same time or immediately after the bus which they were duplicating.

The majority of respondents to the consultation process agreed that duplicates were being misused and were in favour of an amendment to the regulations although the Confederation of Passenger Transport argued that if duplicates were being used anti-competitively it was a matter that should be dealt with by the Office of Fair Trading. The Minister decided that it was unrealistic to expect the Office of Fair Trading to intervene in every case where duplicate buses were being used anti-competitively and felt there were good grounds for introducing a clear control of duplicate buses so they could be policed by the Traffic Commissioner.

Section 7 allows the Traffic Commissioners to determine, following a request from a traffic authority, conditions governing routes and stopping places of local services with a view to preventing danger to road users or reducing severe traffic congestion:

³⁰ SI 1986 no 1671

³¹ *The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 1994* SI no 3271

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Application of traffic regulation conditions to local services subject to registration under section 6

7.— (1) If a traffic authority asks him to exercise his powers under this section in relation to a particular traffic problem, the traffic commissioner for any traffic area may determine conditions ("traffic regulation conditions") which must be met in the provision of services in the area to which the conditions are expressed to apply.

(2) In this section "service" means any local service to which section 6 of this Act applies.

(3) The area to which traffic regulation conditions may be expressed to apply is any part of the traffic area of the traffic commissioner determining them.

(4) No traffic commissioner shall determine traffic regulation conditions unless he is satisfied, after considering the traffic in the area in question, that such conditions are required in order to

- (a) prevent danger to road users; or
- (b) reduce severe traffic congestion.

(5) In considering what traffic regulation conditions to apply to a particular area a traffic commissioner shall have regard in particular to the interests of—

(a) those who have registered under section 6 of this Act services which are or will be operated in the area;

- (b) those who are, or are likely to be, users of such services; and
- (c) persons who are elderly or disabled.

(6) The purposes for which traffic regulation conditions may be determined are the regulation of—

- (a) the routes of services;
- (b) the stopping places for services;
- (c) when vehicles used in providing services may stop at such stopping places and for how long they may do so; and
- (d) such other matters as may be prescribed.

The Traffic Commissioners have powers under this section to place traffic regulation conditions on the licences of bus operators to regulate buses when there is a danger to the public or severe traffic congestion. These powers currently enable them to regulate the routes, stopping places and when and for how long vehicles may stop at such stopping places. In a recent appeal case some doubt was thrown on the use of these powers to control the number of vehicles and clarification of the law seemed advisable. To clarify the law, a new regulation was introduced to make it clear that traffic commissioners, when determining traffic regulation conditions, might use their powers to regulate the number of buses used in providing a service³².

Powers are available under section 26 of the Act to institute disciplinary procedures against any operator who breaks the rules. The Scottish Traffic Commissioner called twelve bus

operators to public enquiries in connection with alleged irregularities in the operation of their registered services³³.

The powers of the traffic commissioners do therefore seem reasonable in theory, but in practice they are criticised for being slow to deal with cases, having few penalties available to them to impose for minor misbehaviour, for being unable to take the initiative and for having no resources to monitor compliance.

B. Restrictive Trade Practices

The *Restrictive Trade Practices Act 1976* governs agreements made between companies which may have the effect, if not necessarily the intention, of limiting competition between the signatories. If two or more parties accept restrictions under an agreement it is registrable with the Director General. Possible restrictions may include, for example, agreement to share a particular market in some way.

When two or more bus operators reach agreement (even an informal understanding) about any aspect of the service they provide - for instance on the areas or stops served, routes, timings, fares or even bus liveries - they may well be making an agreement which comes within the scope of the Act. It would be unlawful to operate such an agreement unless the details had first been sent to the Office of Fair Trading. The operators are not prevented from making agreements but they must be sent to the OFT to be evaluated for their effect on competition. Some conduct that was once widely accepted in the bus industry is now considered anti-competitive, and is unacceptable now that the industry is subject to the same law on restrictive practices as other industries.

The OFT gives some guidance on the view the Director General is likely to take on certain arrangements³⁴. It explains that most agreements between operators relating to such matters as travelcard schemes, acceptance of other operators' tickets, through-ticketing arrangements, publishing of a joint timetable or the provision of information about each other's services are not likely to be registrable with the OFT. Agreements to use, or not to use, certain bus stops or liveries are likely to be registrable but would probably not be regarded as significantly anti-competitive and can be dealt with under the procedures for releasing the Director General from pursuing the case to the Court. Agreements to charge particular fares or establish common fare zones or structures, or not to encroach on each other's territories, or to run or not to run on certain routes, are all likely to be regarded by the OFT as significantly anti-competitive. The Court has generally found that such agreements cannot be justified on public interest grounds.

³³ Scottish Traffic Area Office press notice 25.4.94

³⁴ Office of Fair Trading *Restrictive Trade Practices in the Bus Industry*, HMSO 1995

C. The Fair Trading Act and Monopoly

A monopoly situation exists if 25 per cent or more of the supply of a good or service in the UK or a part of the UK is accounted for by one person or business (a scale monopoly), or by two or more persons or businesses who conduct their respective affairs, whether by agreement or otherwise, in such a way as to prevent, restrict or distort competition (a complex monopoly).

If the Director General has reason to believe that a monopoly situation exists, he can refer it to the MMC for investigation. The MMC must establish whether a monopoly situation does exist, and in whose favour, and decide whether any matters attributable to that situation operate, or may be expected to operate, against the public interest. If it so finds, it may make recommendations as to how the adverse effects might be remedied.

The Secretary of State is responsible for deciding whether and how to act on any adverse public interest findings of the MMC. He is empowered to impose remedies by order but he may, and usually does, request the Director General to negotiate undertakings from the parties concerned. Such undertakings have statutory force and may, like orders, give rise to third party rights. Undertakings given are published and monitored by the OFT. The *Deregulation and Contracting Out Act 1994* allowed the Secretary of State to accept binding undertakings in lieu of a monopoly reference.

There have been two monopoly references to the MMC about bus companies, one in mid and West Kent involving Maidstone & District, and one in the North East in 1993 covering Busways, a subsidiary of Stagecoach. In the former case, the MMC found that a monopoly existed and recommended that Maidstone and District give behavioural undertakings, which have still not been received. It was in this report that the Commission called on the government to set up a "searching review" of the bus industry as a whole³⁵. [It has done so on other occasions too, most recently in its report on Stagecoach and Mainline³⁶.] The MMC is due to report on the second reference this month. The reference followed complaints that Busways had acted anti-competitively in the operation of its bus service in South Shields, and that in Darlington it had operated in such a way that it led to the collapse of Darlington Transport.

D. The Fair Trading Act and Mergers

The Secretary of State has overall responsibility for merger control, the policy framework in which it operates, and for making references to the MMC. For a merger situation to qualify for investigation by the MMC, it must **either** create a market share of at least 25 per cent of the supply **or** the gross value of the assets required must exceed £70 million. The Director

³⁵ MMC *The Supply of Bus Services in Mid and West Kent* 18.8.93 - Cm 2309

³⁶ MMC *Stagecoach Holdings plc and Mainline Partnership Ltd* March 1995 - Cm 2782 para 2.115

General has a duty to monitor transactions and advises the Secretary of State on whether the mergers should be referred to the MMC for further investigation.

The *Companies Act 1989* introduced provisions allowing the Secretary of State to accept undertakings from the parties to a merger to divest part of the merged company's business in lieu of a reference to the MMC. The power was extended by the *Deregulation and Contracting Out Act* with effect from 3 January 1995 to cover the possibility of behavioural undertakings in lieu of a reference.

Over 150 mergers have been considered in the bus industry since deregulation, 123 of them since 1990. Over one third of cases have not qualified for reference to the MMC because they did not meet the assets or market share tests. Since 1990, ten cases have been referred to the MMC. Ministers have accepted the MMC's findings in all cases, but in three merger cases they asked the Director General to negotiate undertakings which went further than the MMC recommendations³⁷.

Mergers and proposed mergers considered

(including management buy-outs and coach mergers)

	Qualifying mergers		Found not to qualify		Total cases considered	Referred to MMC
	Public (not referred)	Confidential guidance	Public	Confidential guidance		
1990	12	1	6	0	19	5
1991	3	1	5	1	10	0
1992	1	0	1	1	3	0
1993	7	7	6	3	23	2
1994	15	31	9	13	68	3
Total	38	40	27	18	123	10

Source: OFT statistics

The gap in references to the MMC in 1991 and 1992 arose as a result of South Yorkshire Transport seeking a judicial review on the question of whether "the county of South Yorkshire together with part of Nottinghamshire and Derbyshire" (the reference considered by the MMC) was indeed a "substantial part of the United Kingdom" as required by s.64 of the Fair Trading Act. The case was concluded in favour of the OFT.

³⁷ PQ HC Deb 4.4.95 c.1010w

E. Anti-Competitive Behaviour

The *Competition Act 1980* supplements the monopoly provisions of the Fair Trading Act by providing a more focused way of dealing with anti-competitive practices than a monopoly reference in circumstances where a business is pursuing a particular course of conduct which appears to restrict, distort or prevent competition. Until January 1995, the Act empowered the Director General to carry out a formal investigation into a course of conduct which might amount to an anti-competitive practice; to the end of 1994, 35 formal investigations had been carried out, nine of which were into practices of bus operators.

From 1987 to the end of 1994, the OFT received 541 complaints alleging anti-competitive behaviour by bus operators. Nine complaints led to formal investigations, eight of which were about predatory behaviour. Bus services and subsidised services have been the subject of other complaints.

Complaints about bus operators: 1987-94

Subject	1987	1988	1989	1990	1991	1992	1993	1994	Total
Bus stations	9	11	7	4	7	6	10	2	56
Subsidised services	7	13	15	6	4	16	7	1	69
Predation	23	24	19	23	39	52	51	36	267
Other	18	10	12	18	18	16	40	17	149
Total	57	58	53	51	68	90	108	56	541

Source: OFT statistics

Predation

Predatory behaviour may be defined as the acceptance of losses in a particular market which are deliberately incurred in order to eliminate a specific competitor. The OFT's approach to predation has been set out in various Competition Act reports over the years, and in a Research Paper³⁸. The distinction between a vigorous response to competition, which is generally to the

³⁸ Office of Fair Trading *Predatory Behaviour in UK Competition Policy* November 1994

benefit of consumers, and a predatory response which may offer consumers advantages in the short term but which will reduce competition in the long term (and which may justify intervention by the competition authorities) can be fine.

When new entry occurs in a bus market, the response by an incumbent operator to competitive entry may be any combination of a reduction in fares, increase in service levels by flooding the route with buses, blocking stands and stops, and the registration of new or varied services to operate only minutes in front of the entrant's. Alternatively, if a small operator identifies a gap in the incumbent's existing network and registers a new route, the incumbent may register a similar service scheduled slightly ahead of that of the entrant. The response may be predatory and thus anti-competitive if the incumbent incurs losses on the routes in question through either a reduction in fares and a consequent drop in revenue, or the addition of further buses to the route and increased costs.

The OFT has developed a standard approach to allegations of predation which involves the use of a three-stage test:

- whether predatory behaviour is feasible in the particular market, in terms of the alleged predator's size, market share and reputation;
- whether the alleged predator has deliberately incurred losses arising from the course of conduct; and
- whether the intentions of the alleged predator were clearly to remove the competitor from the market so as to recoup the losses and make supra-normal profits thereafter.

In response to complaints alleging predation, the OFT normally seeks information about the costs incurred and the revenues gained from particular services or networks. It is possible to take a preliminary view on the justification of a complaint only when such information is available. The final report done under the old rules found that United Automobile Services had operated in a predatory manner in Darlington, but by the time the report was published, the situation in Darlington had changed to such an extent that the Director General decided he could take no further action³⁹.

³⁹ OFT *United Automobile Services Ltd - the operation of local bus services in Darlington* March 1995

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Bus station access

Access to a bus station is generally considered important for operators to be able to compete effectively with a dominant operator: it is clearly beneficial to passengers that all buses to a particular destination leave from the same place, and from the - usually - more agreeable surroundings of a bus station. Operators obviously prefer to use a bus station not simply because that is the passengers' preference, but because of the facilities provided for passengers and crew, and they clearly believe that they need to be able to use a bus station to compete fully with the major operators. Access to a bus station is thus important for effective competition.

Complaints about access to a bus station are usually that a larger bus operator which owns or leases the bus station refuses to allow another operator to use the station for its buses. The OFT established in its report on the refusal by Southern Vectis to allow another operator access to Newport bus station in the Isle of Wight that, subject to capacity constraints, access should be allowed on an equal basis to all operators on payment of reasonable departure charges⁴⁰.

Subsidised services

The third major area of complaint is the registration of commercial routes in competition with subsidised ones. A local authority may grant a subsidy (subject, in most cases, to competitive tender) towards the operation of what it considers to be a socially necessary service if the service cannot be operated economically. The precise circumstances of complaints vary, but the common factor is usually that an operator who has lost, or failed to win, a contract for a subsidised service registers a commercial service in competition with the subsidised one⁴¹.

F. Conclusion

The conflicts between rival operators have highlighted the absence of a regulatory framework, leaving an ad hoc policing arrangement to the OFT and the MMC. Some alternatives or changes to the existing system have been discussed although few positive suggestions have been put forward: there is more agreement about what is wrong than what should be done. The Government has clarified the powers of the Traffic Commissioners and is currently working with local authorities on the Bus Working Group to look at issues concerning the

⁴⁰ OFT *Southern Vectis* February 1988

⁴¹ OFT *Fife Scottish* March 1994

provision of bus services and ways in which they may be improved. The group is planning research to analyse competition, fares, service levels and patronage as well as the provision of information.

Some think the structure of the system can remain unchanged but the powers of some of the players could be increased or made more flexible. The Traffic Commissioners could perhaps be given more resources to initiate action against unsatisfactory behaviour or the OFT could be given increased powers. At present the OFT can order a bus company to stop predatory behaviour but is unable to impose fines or to impose real redress to a company which goes out of business. Nor does the OFT have any interim powers. A preliminary investigation and then a reference to the MMC can take months, by which time the company threatened may well be out of business.

More radical options have also been put forward. The point at which the competition for services takes place could be changed by introducing a tendering system similar to that which now exists in London. The MMC in their report in August 1988 discussed the possibility of introducing effective competition through a form of franchising such as that applied in the television industry and which appears to be the preferred route for the railway industry. Alternatively the concept of class-licensing could be introduced, as is applied in the telecommunications industry. For buses, a licence would be issued which permitted any firm to operate bus services subject to certain conditions. Alternatively an "Ofbus" regulator could be appointed, of the kind introduced to supervise some of the utilities. Any changes which are made to the existing system need to give operators a clearer indication than they have at present of what is considered acceptable and unacceptable behaviour; to have the clout to impose their findings; to be flexible to cope with a fast changing industry; and to be able to take action quickly.

V Further Reading

There has been a considerable amount of material on the subject of bus deregulation and privatisation. Various organisations undertook studies to review the impact of the Act but many of these reports concentrated on the short period immediately following deregulation when the industry was still undergoing adjustment. Listed here are some of the more recent and some of the more useful material:

1. Transport Bill [Bill 68 of 1984-85] House of Commons Library Reference Sheet No. 85/4, 11 February 1985.
2. RL *Deregulation of Bus Services in the Trial Areas 1981-84* 1984 LR 1131
3. *Journal of Transport Economics and Policy*, September 1990 "Bus Deregulation" (The whole issue is devoted to the subject).
4. *Public Money and Management*, Spring 1991 "Tendered Bus Services".
5. TRRL Research Report 220, *The Financial Viability of Bus Operators since Deregulation*.
6. *Consumer Policy Review*, April 1992 "Local bus deregulation and the consumer".
7. *The Liberalisation of the British Bus and Coach Industry, an Uncompleted Enterprise* John Hibbs, Libertarian Alliance 1991.
8. Pickup et al, *Bus Deregulation in the Metropolitan Areas*, Oxford Studies in Transport, Gower 1991.
9. Tyson W.J., *Bus Deregulation five years on A Report to AMA and Passenger Transport Executive Group*, March 1992.
10. *The British Experience of Bus Deregulation in Urban Transport: Lessons for Europe* by David Banister, University College London, June 1992.
11. TRL Research Report 383, *Bus Competition in Great Britain since 1986: a national review*, 1992.

Table 1
Local bus services: the shift from public to private sector
GB outside London

	Vehicle kilometres		Passenger journeys	
	Public sector	Private sector	Public sector	Private sector
1985/86	91%	9%	96%	4%
1986/87	84%	16%	92%	8%
1987/88	58%	42%	71%	29%
1988/89	41%	59%	58%	42%
1989/90	36%	64%	50%	50%
1990/91	33%	67%	48%	52%
1991/92	25%	75%	38%	62%
1992/93	20%	80%	29%	71%
1993/94	14%	86%	19%	81%

Source: Bus and Coach Statistics GB 1993/94 Table 9.1

Table 2
Bus and coach service vehicle kilometres
million vehicle kilometres: GB

	Non-local services	Local bus services	<i>of which: outside London</i>	All services
1983	1,163	2,117	1,853	3,280
1984	1,189	2,125	1,857	3,314
1985/86	1,246	2,077	1,804	3,323
1986/87	1,253	2,160	1,882	3,413
1987/88	1,322	2,342	2,065	3,664
1988/89	1,349	2,390	2,104	3,738
1989/90	1,394	2,442	2,150	3,835
1990/91	1,390	2,448	2,144	3,838
1991/92	1,391	2,488	2,172	3,879
1992/93	1,351	2,516	2,185	3,867
1993/94	1,443	2,581	2,237	4,024
change 1985/86-93/94	16%	24%	24%	21%

Source: Bus and Coach Statistics GB 1993/94 Tables 1.1 & 1.3

Table 3
Local bus service passenger journeys
million passenger journeys: GB

	London	English metropolitan areas	English shire counties	Scotland	Wales	All outside London	Total Great Britain
1983	1,087	2,011	1,629	680	180	4,500	5,587
1984	1,162	2,047	1,604	669	168	4,488	5,650
1985/86	1,152	2,068	1,588	671	163	4,489	5,641
1986/87	1,164	1,810	1,571	644	152	4,177	5,341
1987/88	1,207	1,732	1,550	647	156	4,085	5,292
1988/89	1,211	1,695	1,501	647	161	4,004	5,215
1989/90	1,188	1,648	1,474	613	151	3,886	5,074
1990/91	1,178	1,547	1,396	585	145	3,672	4,850
1991/92	1,149	1,478	1,333	571	133	3,516	4,665
1992/93	1,129	1,384	1,308	531	129	3,352	4,480
1993/94	1,117	1,334	1,268	526	130	3,258	4,375
change 1985/86-93/94	-3%	-35%	-20%	-22%	-20%	-27%	-22%

Source: Bus and Coach Statistics GB 1993/94 Table 2.1

Table 4
Local bus service fares
real terms fare indices (a): 1985/86=100

	London	English metropolitan areas	English shire counties	Scotland	Wales	All outside London	Total Great Britain
1983	111	112	99	106	100	104	105
1984	97	105	101	105	102	103	102
1985/86	100	100	100	100	100	100	100
1986/87	103	123	102	100	101	107	107
1987/88	104	128	103	100	na	109	108
1988/89	108	128	102	98	na	108	108
1989/90	111	129	103	96	na	108	109
1990/91	111	131	103	94	na	108	109
1991/92	117	139	106	97	na	113	113
1992/93	122	144	107	100	na	115	116
1993/94	129	149	109	102	na	117	119
change 1985/86-93/94	29%	49%	9%	2%	na	17%	19%

(a) adjusted using the Retail Prices Index

Source: Bus and Coach Statistics GB 1993/94 Table 3.1

Table 5
Local bus service government support
£ million at constant 1993/94 prices (a)

	All government support	of which:			Public transport support (b)	<i>of which:</i> <i>Outside London</i>
		Concessionary fare reimbursement	Fuel duty rebate			
1983	1,556	416	167	946	580	
1984	1,578	419	200	958	572	
1985/86	1,350	415	196	739	526	
1986/87	1,238	415	188	609	443	
1987/88	1,106	432	186	465	316	
1988/89	1,078	422	204	436	286	
1989/90	989	444	182	358	256	
1990/91	1,020	460	192	368	239	
1991/92	1,054	428	202	424	254	
1992/93	1,031	417	203	411	239	
1993/94 (prov)	934	418	220	295	237	
change 1985/86-93/94	-31%	1%	12%	-60%	-55%	

(a) *adjusted using the GDP deflator*

(b) *payments to operators for subsidised services, professional and technical support and other expenditure*

Source: *Bus and Coach Statistics GB 1993/94 Tables 5.1 & 5.2*

Table 6
Age distribution of bus and coach stock
at end of year

	Number of vehicles (000s)	Vehicles with 9 or more seats		Vehicles with 33 or more seats	
		% less than 4 years old	% 12 years old or more	% less than 4 years old	% 12 years old or more
1983	67.5	29%	14%	29%	15%
1984	67.0	25%	15%	25%	16%
1985	66.8	24%	18%	24%	19%
1986	68.4	25%	19%	25%	21%
1987	70.8	25%	20%	25%	24%
1988	72.8	26%	22%	26%	28%
1989	72.9	28%	24%	28%	30%
1990	72.5	26%	26%	26%	34%
1991	71.5	24%	29%	24%	39%
1992	72.5	21%	33%	21%	44%
1993	73.5	19%	35%	19%	48%

Source: Bus and Coach Statistics GB 1993/94 Table 7.2

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12. Mellor, Andrew *The Bus Industry in the 1990s: En route to a better future?* 1992
13. *Public Money and Management*, Jan-March 1993 "Road Passenger Transport and Deregulation".
14. Transport Committee, 4th report *The Government's proposals for the deregulation of buses in London* 14 July 1993 - HC 623 - I-III
15. The Scottish Office *The Effects of Privatisation of the Scottish Bus Group and Bus Deregulation* November 1993
16. *Transport* May-June 1994 "Survival strategies in a deregulated bus market".
17. Local Government Management Board *Ticket to Ride: Policies for Better Buses* 1994
18. *Global Transport* Spring 1995 "Bus and Coach Deregulation"
19. *Local Transport Today* "Bus deregulation: passengers pay the price as market forces to deliver an upturn in usage"

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